



**Wanjiru v Barclays Bank Limited (Civil Appeal 28 of 2017)  
[2022] KECA 1084 (KLR) (7 October 2022) (Judgment)**

Neutral citation: [2022] KECA 1084 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 28 OF 2017  
F SICHALE, S OLE KANTAI & HA OMONDI, JJA  
OCTOBER 7, 2022**

**BETWEEN**

**BETH WATENE WANJIRU ..... APPELLANT**

**AND**

**BARCLAYS BANK LIMITED ..... RESPONDENT**

*(Appeal from the Judgment of the Employment and Labour Relations Court of Kenya at Nairobi (Nzioki Wa Makau, J.) dated 12th April, 2013 in ELRC Cause No. 493 of 2012)*

**JUDGMENT**

**Judgment of Kantai, JA**

1. Beth Watene Wanjiru (the appellant) was employed by the respondent (Barclays Bank of Kenya Limited) as a clerk by a letter dated February 9, 1994 and served for many years during which she was promoted. The respondent lost cash Ksh.500,000 on January 24, 2011 which was in the custody and care of the appellant and she was suspended from duty by letter of January 26, 2011 and was required to attend an interview to explain the said loss. That interview meeting communicated by letter dated February 15, 2011 took place on March 2, 2011 as per minutes of that meeting after which, by letter dated March 29, 2011 the appellant was informed that she had been negligent in performance of her duties leaving to loss of the said sum of money and her services were terminated. She appealed that decision; an appeal hearing took place on May 19, 2011 but the appeal was unsuccessful and the decision to terminate her services was upheld.
2. In a statement of claim filed at the Industrial Court of Kenya at Nairobi (today Employment and Labour Relations Court – ELRC) the history of the said employment was given it being claimed that the appellant had been invited to a disciplinary hearing but that she had been denied an opportunity to be accompanied by a union official or shop floor representative and that minutes of the disciplinary hearing meeting had been falsified. It was further claimed that the appellant had not been accorded



a fair hearing and for all that it was prayed that a declaration be made that the said termination was wrongful and unlawful; that she be reinstated to office or in the alternative be paid full terminal dues; that the respondent be ordered to compensate the appellant and the Court give such other orders as it may deem fit.

3. The Claim was denied in a Memorandum of Defence filed for the respondent by Federation of Kenya Employers where it was explained that the said money had been lost; that appellant was unable to explain the loss and this had led to termination of services. It was prayed that the said termination of services was upheld.
4. The appellant and a representative of the respondent gave evidence before Nzioki wa Makau, J., who in a Judgment delivered on 12<sup>th</sup> April, 2013 found no merit in the suit which was consequently dismissed. The appellant appealed through a Memorandum of Appeal drawn by M/S Nyabena Nyakundi & Company Advocates where five grounds of appeal are set out. It is said that the Judge erred in law by holding that the respondent had a good cause to terminate the respondent's employment; that the Judge was wrong in not holding that the appellant had been denied an opportunity to avail witnesses; that the disciplinary process was against Section 45 of the Employment Act and, finally, that the Judge erred in dismissing the appellant's case.
5. When the appeal came up for hearing before us on a virtual platform on June 8, 2022 learned counsel Mr. Alfred Nyabena appeared for the appellant but there was no appearance for the respondent which had been served with a hearing notice on May 30, 2022. Both sides had filed written submissions and Mr. Nyabena left the matter to us as he did not find it necessary to highlight submissions.
6. The appellant submits that the respondent had no good cause to dismiss the appellant; that it was not proved how the loss of cash occurred. It is submitted that the respondent acted in breach of Section 41 of the Employment Act.
7. The respondent submits that termination of the appellant's employment was fair after she was unable to explain the loss of cash which was in her custody as an employee of the respondent (bank).
8. Section 41 of the Employment Act (cited by the appellant in submissions) provides:
  - “(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
  - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make”.

I have looked at the entire record.

9. In the letter of 26<sup>th</sup> January, 2011 the appellant was suspended from duty and informed, amongst other things, that investigation, were being conducted and that once investigations were complete she would



be invited for a meeting. The letter that followed – dated 15<sup>th</sup> February, 2011 invited the appellant to a disciplinary hearing meeting to be held on 2<sup>nd</sup> March, 2011 at 10.30 a.m. and stated:

“... You are entitled to be accompanied at the meeting by a colleague or a Union Representative ...”

10. The appellant was also informed in the letter that depending on the outcome of the meeting disciplinary action could be taken and she should attend the meeting “.... fully prepared to state your case.”.
11. Disciplinary meeting took place on 2<sup>nd</sup> March, 2011 as was evidenced by the minutes of the meeting and there is no indication that the appellant, who had been advised in the letter inviting her to the meeting, required to be accompanied by any employee or union representative. It was decided, after the said meeting, that the appellant’s services be terminated and, as we have seen, the appellant appealed the decision; her appeal was heard and the respondent reached the decision to uphold the termination.
12. The trial Judge found that the appellant had been negligent in the way she had handled cash leading to loss suffered by the respondent.
13. I have considered the whole record and I am in full agreement with the decision reached by the Judge. The respondent loss of money; it gave the appellant an opportunity to explain how the said loss had occurred. It took the appellant through a disciplinary process but it was found that she had been negligent and it was decided that her services be terminated. Her appeal was considered but it was dismissed.
14. The appellant was taken through all the processes required by the Employment Act and her services were lawfully terminated. I have found no merit in his appeal and I would dismiss it with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2022.**

**S. ole KANTAI**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

**Concurring Judgment of Sichale, JA**

I have had the advantage of reading in draft the judgment of Kantai, JA. I am in full agreement with his reasoning and conclusions and, therefore, have nothing useful to add.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2022.**

**F. SICHALE**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*



**DEPUTY REGISTRAR**

**Concurring Judgment of Omondi, J.A.**

I have had the benefit of reading in draft, the judgment of Kantai, J.A. I entirely agree with the reasoning and conclusion arrived thereat and have nothing useful to add.

As Sichale, J.A. is in agreement, the judgment of Kantai, J.A. will be the Judgment of the Court.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2022.**

**H. A. OMONDI**

.....

**JUDGE OF APPEAL**

