



**Ochieng v Chuna Sacco Society Ltd (Cause E068 of 2023)
[2024] KEELRC 862 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 862 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E068 OF 2023
S RADIDO, J
MARCH 20, 2024**

BETWEEN

ROSE ADHIAMBO OCHIENG CLAIMANT

AND

CHUNA SACCO SOCIETY LTD RESPONDENT

JUDGMENT

1. Rose Adhiambo Ochieng (the Claimant) was employed by Chuna Sacco Society Ltd (the Respondent) in 1997 as an Accounts Clerk and she rose to the position of acting Loans Officer by the time of separation in 2021.
2. On 12 September 2023, the Claimant sued the Respondent alleging unfair termination of employment and breach of contract.
3. The Respondent filed a Response on 1 December 2023, and the Cause was heard on 6 February 2024.
4. The Claimant filed her submissions on 29 February 2024, and the Respondent on 6 March 2024.
5. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

Procedural fairness

6. Through a letter dated 18 December 2020, the Respondent interdicted the Claimant. The interdiction letter alleged wilful neglect and refusal to discharge duties leading to illegal transactions (financial impropriety).
7. On 29 March 2021, the Respondent invited the Claimant to attend a disciplinary hearing and she attended the hearing on 8 April 2021, accompanied by a trade union representative.



8. Before the hearing, the Claimant had made a written response to the allegations facing her. The hearing was followed with a summary dismissal letter dated 15 April 2021.
9. The Claimant appealed against the dismissal but the appeal was dismissed and the summary dismissal upheld.
10. In Court, the Claimant contended that the hearing was a charade to confirm a predetermined outcome and that she was not issued with a prior notice of termination of employment as contemplated by the collective bargaining agreement in place.
11. The Respondent notified the Claimant of the allegations to confront and she made a written response after which she appeared for an oral hearing in the company of a representative of a trade union she was a member.
12. Upon dismissal from employment, the Claimant appealed, the appeal was heard but the dismissal was upheld.
13. The Court is satisfied that the Respondent was in substantial compliance with the requirements of procedural fairness as set out in sections 35(1) and 41 of the Employment Act, 2007.

Substantive fairness

14. The ground for the dismissal of the Claimant was gross misconduct and the reason or particulars were briefly, embezzlement of Sacco funds through depositing and withdrawing from her account Kshs 9,859,672/-, making fictitious expenses of Kshs 110,850/- and transferring the funds to her account, fraudulent cash withdrawals of Kshs 100,220/- on 8 December 2014, embezzling members interest payments of Kshs 69,709/-, sharing unauthorised payment of Kshs 100,000/- on 15 May 2014 and failing to charge/pay 10% top up interest totalling Kshs 793,182/-.
15. To prove the validity and fairness of the reasons leading to the dismissal of the Claimant, the Respondent produced an Inspection Report dated October 2014 by the Sacco Societies Regulatory Authority which established that some staff were using dormant accounts to defraud the Respondent.
16. The Respondent also produced an Inquiry Report by the Ministry of Industry, Trade and Cooperatives dated March 2018. The report indicated that the Claimant was amongst the staff who had benefited from an insider top-up loan irregularly.
17. The Respondent also relied on the Minutes of the Disciplinary hearing held on 8 April 2021.
18. The minutes indicate that the Claimant admitted that funds totalling Kshs 9,859,672/- passed through her account and she explained that the funds were loans for members without ATM cards and the same were withdrawn immediately upon deposit and handed over to the then Chief Executive Officer (deceased by the time of the disciplinary hearing). The Claimant could not confirm whether the members concerned had given approval for the deposit of the funds into her account.
19. The Claimant also admitted that Kshs 110,850/- was paid into her account due to liquidity problems at the time, and explained that the monies were to pay suppliers. The Respondent noted that the Claimant did not produce any records to back up the explanation.
20. On the charge of embezzlement of 10% top-up interest, the Claimant explained that part of the money was paid into her account on the instructions of the then Chief Executive Officer. The Claimant did not produce any evidence of such instructions.



21. With respect to the charge of sharing unauthorised payment from the Treasury of Kshs 100,000/- on 15 May 2014, the Claimant attributed the source of the funds to a system error but at the same time stated the money had been paid by a friend whose details she could not explain.
22. On charge of benefitting from a withdrawal of Kshs 100,220/- on 8 December 2014 from a fictitious member account, the Claimant indicated that she could not remember the transaction. The Claimant did not deny the withdrawal.
23. The last charge against the Claimant was failure to recover/pay a top-up loan interest of 10% totalling Kshs 793,182/- after accessing various loans. The Claimant stated in her explanation that there was a practice for staff not to pay the top-up interest. She also admitted that she would exempt some members from paying the top-up interest.
24. The Respondent indicated that the practice was against the loan policy.
25. The Court has looked at the Minutes of the disciplinary hearing. The proceedings leave no doubt in the mind of the Court that the Claimant took advantage of her position to misappropriate funds or monies entrusted to the Respondent. The Claimant attempted to lay blame on the then Chief Executive Officer who was deceased at the time of the hearing and could not speak from the yonder life.
26. The Court is satisfied that any reasonable employer would have taken the decision to dismiss.
27. The Court finds that the Respondent has established valid and fair grounds for dismissing the Claimant.

Breach of contract

Salary arrears

28. The Claimant prayed to be awarded salary arrears of Kshs 88,838/-.
29. The Claimant did not lay an evidential foundation for this head of the claim in the written witness statement which was adopted as part of the evidence. She also did not make any reference to this claim during oral testimony and relief is declined.

Severance pay

30. The Claimant relied on clause 7D(4) of a collective bargaining agreement between the Respondent and the Kenya Union of Commercial, Food and Allied Workers to claim what she termed severance pay.
31. A collective bargaining agreement becomes enforceable upon registration by the Court. There was no evidence put before the Court that the collective bargaining agreement was registered by the Court.
32. The Court, therefore, finds that the collective bargaining agreement is of no evidential value and it cannot be relied on to support the claim for severance pay.

Conclusion and Orders

33. Flowing from the above, the Cause is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 20TH DAY OF MARCH 2024.

RADIDO STEPHEN, MCIARB

JUDGE



Appearances

For Claimant Oscar & Associate Advocates

For Respondent Miller & Co. Advocates

Court Assistant Chemwolo

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