



**Dulo v Harambee Sacco Ltd (Cause E101 of 2019)  
[2024] KEELRC 506 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 506 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E101 OF 2019**

**B ONGAYA, J  
MARCH 7, 2024**

**BETWEEN**

**RENICE AKINYI DULO ..... CLAIMANT**

**AND**

**HARAMBEE SACCO LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the statement of claim on 19.02.2019 through Omongo Gatune & Company Advocates. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the claimant was unfairly, wrongfully and unlawfully dismissed.
  - b. An order for reinstatement to the place of work without loss of benefits or seniority.
  - c. 12 months compensation for malicious, wrongful and unfair dismissal from employment.
  - d. In the alternative and without prejudice to the foregoing an order for the payment to the claimant for the actual pecuniary loss suffered as a result of the wrongful dismissal being her terminal benefits and compensation as stipulated hereunder.
    - i. Unpaid disturbance allowance for January 2013 (122,633×2)  
.....245,246
    - ii. 2 months' salary in lieu of notice Kshs 122,623×2 months  
.....245,246
    - iii. Gratuity Kshs 122,633 × 8 years .....981,064
    - iv. Leave balance for the year 2017/2018 .....122,623



- v. Compensation for irregular loss of employment 12 months × 122,633.....1,471,596
  - vi. Compensation for lost salary from 2-7-2018 to the year 2040 Kshs 122,633 × 12 months × 22 years .....32,375,112
  - Total Kshs 35,497,735/=
  - vii. A certificate of service
  - e. Any other relief or order the honourable court may deem fit and just to grant
  - f. Costs of the suit
  - g. Interest of 4 and 6 at court rates.
2. The Respondent filed the Memorandum of Reply on 28.05.2019 through Oraro & Company Advocates. The respondent prayed that the claim be dismissed with costs.
  3. The claimant's case was that she was employed and posted in Fosa Nakuru branch from January 2011 to December 2012 and was paid a disturbance allowance.
  4. In January 2013, the claimant was transferred to Fosa head office branch as deputy Fosa manager, however, no disturbance allowance was paid on transfer, which the claimant terms as wrongful and discriminatory.
  5. In August 2015, a new structure was introduced and the claimant's job title changed from Assistant Finance Officer to operations officer job grade 5.
  6. In December 2015, the claimant's appointment as an operations officer was confirmed and in June 2016 she was appointed to act as FOSA manager, job grade 6, and was paid special duty allowance for June 2016 and July 2016. Payment was then withdrawn in August 2016 for reasons that the claimant was on annual leave. A Fosa manager was substantively employed in September 2016.
  7. In January 2017, Kshs 300,000 went missing at the respondent's premises and the respondents apportioned liability on the claimant to the tune of Kshs 100,000/=.
  8. On February 2017, the claimant was transferred from Fosa branch to finance department at head office and her title changed from Fosa operations officer to finance officer.
  9. On 29.03.2017, the claimant was summoned to appear before the disciplinary committee on the loss of the previously mentioned Kshs. 300,000.
  10. On 22.09.2017, the claimant was issued with a 1<sup>st</sup> warning letter on the loss of the Kshs. 300,000 in January 2017, which letter the claimant accepted.
  11. On 06.10.2017 a week after the claimant had been given the 1<sup>st</sup> warning letter, the claimant was issued with a show cause letter for negligence of duty and financial malpractice on the loss of five blank cheque leafs which had disappeared on 11.09.2017.
  12. The claimant was sent on suspension from October 2017 to June 2018 on full pay pending investigations.
  13. A disciplinary committee was formed and the claimant was summoned to appear before it. She gave her version of events. In the disciplinary committee's report dated 16.05.2018 it directed that the claimant be warned and transferred to one of the society's branches.



14. On 02.07.2018 in a turn of events, the CEO of the respondent issued the claimant with a dismissal letter.
15. It is the claimant's case that the decision by the board to overturn disciplinary committee recommendations was unilateral, unprocedural and a nullity. By reviewing the decision of the disciplinary committee, the board was acting as an appellate body and failed to give the claimant an opportunity to be heard.
16. The claimant states that she appealed the decision and she is yet to receive communication on her appeal request.
17. On the part of the respondent, it is stated that sometime in January 2017, Kshs. 300,000 was reported missing from the respondent's finance department.
18. On 03.02.2017 the respondent issued the claimant with a show cause letter following the claimant's failure to enforce the respondent society's internal financial controls that occasioned the loss of the Kshs. 300,000/=.
19. The claimant responded to the show cause letter on 06.02.2017 and was later invited to a disciplinary hearing held on 29.03.2017.
20. Upon consideration of the claimant's response to the show cause letter dated 03.02.2017 and verbal representations at the disciplinary hearing on 29.03.2017 the respondent found the claimant's oral and written defence to be deficient and unacceptable in the circumstances.
21. In its final report over the incident the respondent found that the claimant had failed to enforce the society's internal financial controls regarding the daily preparation of the liquidity report and the dual custodial of the treasury, thereby occasioning the society a financial loss of Kshs. 300,000/=.
22. Further, the final report indicated that the claimant had been reluctant to report the loss of the Kshs. 300,000 to the FOSA manager even after the same came to her attention but instead the claimant and other members of staff attempted to make good the said loss and thereby abetting the malpractice.
23. It also emerged through the claimant's own confession that prior to the loss the claimant had varied the transactions recording procedure arguably to increase efficiency but the change in turn created weak link, which exposed the society to financial fraud.
24. On 22.09.2017, the respondent issued the claimant with a 1<sup>st</sup> warning letter for her negligence of duty and financial malpractice.
25. The claimant was also given a period of one week to regularize her overdrawn FOSA savings accounts.
26. On or about 11.09.2017 a further loss of funds occurred in the respondent's finance department involving the fraudulent printing of five blank cheques.
27. On 12.09.2017, the society's management raised a "stop order" to the Cooperative Bank of Kenya to stop the payment of the five (5) cheques, which were deemed lost.
28. Despite the "stop order", four out of the five cheques were paid out on diverse dates in September 2017 by the bank.
29. At the time of the loss the claimant was one of the supervisors in the finance department and was charged with the approval of cheque printing within the department.



30. The finance department subsequently submitted names of five employees including the claimant who by virtue of their duties and/or office location may have been directly or indirectly involved in the fraud.
31. On 06.10.2017, the respondent issued the claimant with a show cause letter. The respondent's management noted in the show cause letter that the claimant's commissions and omissions amounted to serious negligence of duty and breach of the society's policy which is tantamount to gross misconduct.
32. The claimant was required to show cause why she failed to oversee the safe custody of unprinted cheques within the finance department and why she did not report the loss of the five cheque leaves.
33. The claimant refused to receive the show cause letter dated 06.10.2017 and equally failed to show cause despite being given a specific timeline within which to respond thereby prompting the respondent to issue another letter dated 16.10.2017 demanding a response to the show cause and informing the claimant of her insubordination.
34. On 17.10.2017, the claimant responded to the two letters of 6<sup>th</sup> and 16<sup>th</sup> October 2017 and apologized for her actions.
35. On 18.10.2017 and following deliberations between the society's management and the affected department's staff, the respondent suspended the claimant from duty for one week to pave way for investigations into her conduct in line with the respondent's human resource policies, regulations and procedures manual.
36. The claimant's suspension had to be extended on various occasions to allow for the conclusion of investigations at all times the claimant being paid her full salary and being informed of the reason for the extension of her suspension.
37. By way of a letter dated 19.03.2018 and received by the claimant on 21.03.2018 the claimant was invited to a disciplinary hearing that was held on 26.03.2018.
38. On 25.03.2018, the claimant was supplied with the questions that were to be asked at the disciplinary hearing and was granted sufficient time to do a written response to the questions and present the same before the disciplinary committee during the actual hearing.
39. The respondent maintains that the claimant was given a fair opportunity to give her representations at the disciplinary hearing that was held on 26.03.2018.
40. The disciplinary committee subsequently did two reports dated 16.05.2018 and 21.06.2018 detailing the proceedings and the findings in relation to the claimant's case of gross misconduct and eventually recommending that appropriate disciplinary action to be taken against the claimant.
41. In its findings, the disciplinary committee noted that the claimant was negligent and did not perform her duties as was required of her, the claimant blamed others for her own inaction and did not assume responsibility and failed to address the weakness in her department.
42. On 25.06.2018 the respondent informed the claimant that the board of directors was in the process of finalizing the claimant's case and that the decision of the board would subsequently be communicated to the claimant.
43. On 28.06.2018 the respondent's board of directors held a meeting to deliberate on the claimant's conduct and after consideration of the claimant's representations, the various reports and recommendations of the disciplinary committee and the claimant's past performance and disciplinary records, the board of directors as the final decision making body, exercised its discretion under clauses



13.4.2.3 and 13.20 of the Harambee Sacco human resources policies, regulations and procedures manual to summarily dismiss the claimant from employment vide a letter dated 02.07.2018.

44. The respondent maintains that its decision to terminate the claimant was lawful and justified in the circumstances.
45. The parties filed their respective submissions. The court has considered the parties' respective cases, material on record and makes finding as follows:
  - a. There is no dispute that the parties were in a contract of service.
  - b. The respondent accorded the claimant the due process of a notice and a hearing per section 41 of the *Employment Act*. While the administrative appeal appears not to have been determined, the due procedure is not thereby defeated in the circumstances of the case.
  - c. The respondent had a valid reason per section 43 of the Act to dismiss and further the reason was fair per section 45 of the Act as it related to the claimant's conduct and the respondent's operational requirement. By letter, dated 17.10.2017, the claimant wrote apologising about his failures and not addressing or responding to the show-cause letters. He did not specifically address the issue of lost cheques. The evidence is that the cheques were indeed lost on 11.09.2017. The Court has considered the evidence that the claimant had refused to receive the initial show cause letter as expected within the disciplinary processes. The Court has also considered the previous misconducts of the claimant as pleaded and as confirmed in the evidence that she received warnings. The Court finds that the claimant fully contributed to her dismissal.
  - d. In particular and as submitted, for the respondent the claimant relies and supports the disciplinary committee findings. The findings were that the claimant displayed a hands-off attitude for the section she was assigned to oversee as the in-charge. While she did not handle the cheques physically save for approving the cheques in the system, the committee found that she had failed, as the in-charge, to address the issue of the combination locks and had failed to address the gaps in her department and instead had been evasive in taking charge and responsibility. The committee recommended the claimant be severely reprimanded or warned. The claimant's submission and case is that instead of imposing the punishment per the recommendation, the letter dated 02.07.2018 conveyed that the Board of Directors at a meeting held on 02.06.2018 had imposed summary dismissal. The Court considers that the claimant has not established any contractual or policy provision for the submitted and urged proposition that the Board of Directors was bound by the recommendation of the disciplinary committee. While the Court reckons that in imposing a punishment the decision maker must consider and follow the investigative, supervisor's, line manager's or disciplinary committee's findings or recommendations, the decision maker is entitled to exercise the decision making discretion reasonably and in which case, like in the instant case, may deviate from a recommendation upon disclosed grounds. In the instant case the letter of summary dismissal is elaborate in the matters the Board considered prior to imposing the summary dismissal. The Board considered the claimant's past conduct and found, "It is noted that the manner you have handled your duties cast doubts on your Supervisory skills, reliability and accountability, qualities that are mandatory for an officer entrusted with such responsibilities and working in Financial Institution. The Society cannot tolerate you in its employment." The letter noted that the claimant as an officer in-charge had failed to exercise internal controls and staff supervision resulting in a loss of Kshs. 2, 830,000.00 through loss of 5 bank cheque leaves. The Court finds that the respondent's reason for termination namely, the stated loss due to



claimant's stated supervisory failures have been fully established. The respondent has shown, first, per section 45 of the *Employment Act* the reason related to the claimant's capacity or conduct and the respondent's operational requirements, and, second, the evidential burden for employer to justify reasons for termination per section 47(5) and 43 of the Act is duly satisfied.

- e. The Court returns that the dismissal was not unfair in both procedure and merits.
- f. The claimant is not entitled to any of the reliefs except the certificate of service. The claimant confirmed that the CBA did not apply to him so that unpaid disturbance allowance based on CBA provisions was not due as claimed. The particulars of leave balance claimed were not given at all and the claim being for special damages is found not strictly proved and wanting in particulars. No justification was given for claims up to 2040. In consideration of due certificate of service each party to bear own costs of the suit.

In conclusion the suit is hereby determined with orders the respondent to deliver the certificate of service in 30 days from today and each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH MARCH 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

