



**Muigai v Equity Bank Kenya Limited (Cause E160 of 2021)
[2024] KEELRC 2684 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2684 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E160 OF 2021
B ONGAYA, J
OCTOBER 30, 2024**

BETWEEN

EVANSON NJAGA MUIGAI CLAIMANT

AND

EQUITY BANK KENYA LIMITED RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 30th October, 2024)

JUDGMENT

1. The claimant filed the Statement of Claim dated 22.02.2021 through Wachira Gachoka & Company Advocates. He prays for judgment against the respondent as follows:
 - a. A declaration that the termination of employment is unlawful.
 - b. Compensation for unlawful termination at 12 months' salary.
 - c. Official and formal Certificate of Service.
 - d. Costs of the suit.
 - e. Any other relief that the Court may deem fit.
2. The claimant's case was that while working at the respondent's Kagio Branch, he received a letter from the respondent alleging that he had misconducted himself thus culminating to suspension. Subsequently on 01.12.2020, the respondent purported to pay him one (1) month salary and terminated his employment effectively. He pleaded that the purported disciplinary hearing was unprocedural and further averred that he requested the respondent for certain terminal dues and benefits but the same was never availed to him.



3. It was the claimant's averment that the respondent's failure to calculate and diligently pay his terminal dues in a fair and just manner has caused him hardships and he has not been able to make ends meet. That he has missed employment opportunities due to lacking his certificate of service from the respondent and that the same amounts to gross violation of his labour rights.
4. In his Further Witness Statement dated 09.04.2023, the claimant stated that he began working for the respondent on 21.05.2005 as a Bank Clerk before he ascended to the position of Operation Manager, which he maintained for more than 10 years. He asserted that at the time of termination of his employment, his consolidated monthly remuneration was Kshs. 146,500/= payable monthly in arrears on the last working day of each month.
5. The claimant stated that his employment was terminated effectively from 06.12.2019 following allegations by the respondent sometime in January 2015 that he had misconducted himself in the course of his employment. He noted that it was after requesting the respondent to terminate his employment in accordance with the proper procedures, that it then constituted a disciplinary committee consisting of a security officer, a human resources manager and the general manager. He argued that the security officer and the human resource manager were unfamiliar with bank operational procedures and the bank operating system and that the general manager, Mr. Miringu Ng'ang'a, should have disqualified himself from the panel as he was the Head of Operations. His case was that it was Mr. Miringu's open bias that had frustrated his smooth working in the Bank and finally resulted in him fronting the termination of the claimant's employment. The claimant further asserted that the hearing panel failed to adduce any documents to support the allegation that the transactions complained of were well within his mandate, as the Operation Manager and that they therefore had no threshold to find gross violation of the bank process.
6. The respondent's Response to Statement of Claim is dated 09.02.2023 and filed through Meritad Law Africa LLP. The respondent prays that the claim be dismissed with costs to the respondent.
7. The respondent's case was that the claimant was only an operation manager and not a bank manager as alleged and that he had a monthly consolidated salary of Kshs. 130,000/=. Regarding the process followed prior to the claimant's dismissal, the respondent averred as follows:
 - a. The respondent wrote to the claimant highlighting that he had misconducted himself, in breach of his contractual obligations, and asked him to show cause why disciplinary action should not be taken against him.
 - b. In response to the notice to show cause, the claimant wrote what was seemingly meant to be an explanation for his conduct.
 - c. Subsequently, a disciplinary hearing was held before a competent panel to establish whether the claimant was in breach of his contractual obligations.
 - d. Following the disciplinary hearing, the respondent made a decision to terminate the claimant's employment citing its reasons in a termination letter issued to the claimant.
 - e. The claimant then wrote to the respondent seeking to appeal against the decision to terminate his employment, attaching written representation in support.
 - f. The respondent subsequently reviewed the representation made in support of the appeal and through a letter addressed to the claimant, notified him that its decision to terminate his employment was upheld.



8. The respondent's case was that, following the disciplinary hearing, it terminated the claimant's employment and cited its valid reasons in a termination letter dated 06.12.2019, which letter was issued to the claimant on the same day. The respondent denied that it failed to pay the claimant terminal dues and that the claimant is not entitled to the reliefs claimed against the respondent in the Statement of Claim.
9. The claimant's Reply to the Respondent's Response to Statement of Claim is dated 09.04.2023 and reiterated the averments in his Statement of Claim.
10. The parties tendered their evidence before the Court and thereafter filed their respective submissions.
11. To answer the 1st issue, the Court returns that the parties were in a contract of service. The respondent employed the claimant by the letter dated 20.05.,2005 as a Bank Clerk. The claimant was promoted to the position of Operations Manager. The exhibited pay slips show that the claimant's last consolidated monthly pay was Kshs. 146, 500.00.
12. To answer the 2nd issue, the Court returns that the employment was terminated by the letter dated 06.12.2019. The termination letter referred to the letter to show cause dated 16.10.2019, the disciplinary hearing on 01.11.2019 and stated that the decision had been made to terminate the claimant's employment effective 06.12.2019 upon the following reasons:
 - a. Failure to conduct proper Know Your Customer (KYC) during verification of a dormant account activation for customer A/C No. 0420198684337 on 30.1.2015 leading to a loss of Kshs. 180,000.00.
 - b. Failure to conduct proper KYC during authorization of cash withdrawal for customer A/c No. 0420198684337 amounting to Kshs. 180,000.00 on 30.01.2015.
 - c. I regular verification of a fixed deposit account closure for customer A/C No. 0100101366840 leading to a loss of Kshs.977,046.55.
13. The termination letter stated that the reasons amounted to negligence and breach of the respondent's policies and procedures, code of conduct and core values. He was to be paid salary and leave due up to 06.12.2019, his last day at work. The letter stated that he was also liable to the respondent for the loss incurred being Kshs.1, 57, 046.55. He appealed the termination by the letter dated 21.12.2019 but the appeal was declined and the termination upheld by the respondent's letter dated 16.01.2020.
14. To answer the 3rd issue, the Court returns that the termination was not unfair. The claimant testified and the evidence was that he received the letter to show cause, he responded, he was invited to disciplinary hearing, he was heard, he was terminated, he appealed but the termination was upheld. As submitted for the respondent the respondent complied with due process of a notice and a hearing per section 41 of the *Employment Act*, 2007. While alleging that some documents were not availed at or before the disciplinary hearing, the claimant testified that he had not requested for the alleged documents at all material times. The claimant also did not show how the General Manager who was his supervisor rendered the disciplinary hearing unfair by attending the hearing. The procedure is found to have been fair.
15. As relates to the reasons, the claimant admitted in his testimony that he admitted to the loss of the Kshs.180,000.00 as one of the reasons for the termination. He further testified that he agreed to pay the loss. He also testified that with respect to the other allegation, it related a joint account in which one of the joint owners had died and the surviving owner had withdrawn the money supposedly without considering that the account had to remain frozen until letters of administration for the deceased joint owner had been provided to the bank. The claimant admitted that the loss had



indeed occurred. The respondent's witness (RW) as well confirmed that the claimant authorised a withdrawal from the joint account without the necessary letter of administration while aware that one of the joint owners had since died. The Court returns that as per the respondent's case, the reasons for termination were valid per section 43 of the Act and were fair reasons as they related to the claimant's breach of the respondent's operational requirements per section 45 of the Act. The Court has noted that the claimant admitted in his letter of appeal dated 21.12.2019 that there had been a lapse during verification of a dormant account and authorization of cash withdrawal for which he took responsibility to refund Kshs. 180,000.00 being the irregular debit, and, admitted irregular verification of a fixed deposit account closure leading to loss of Kshs.977,046.55. Accordingly, the reasons for termination were valid and not unfair at all.

16. As urged for the respondent, the claimant's case for unfair termination will fail. The claimant is entitled to a certificate of service and in that consideration, 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 proceedings.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 30TH OCTOBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

