



Githae v Muriuki & another (Cause 244 of 2020)
[2024] KEELRC 13461 (KLR) (19 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13461 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 244 OF 2020
B ONGAYA, J
DECEMBER 19, 2024

BETWEEN

FELIX KAGEMA GITHAE CLAIMANT

AND

DR GIDEON MURIUKI 1ST RESPONDENT

CO-OPERATIVE BANK OF KENYA 2ND RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim on 18.06.2020 through R. Wafula Advocates. The claimant prayed for judgment against the respondent for:
 - a. Immediate reinstatement of the claimant as an employee of 2nd respondent as the head of finance or equivalent position with the same perks, salary and allowances, as before;
 - b. Payments for all his salary and allowances denied to him since his summary dismissal from 13.11.2019 to date.
 - c. Immediately revert the interest rate of the staff loans granted to him by the 2nd respondent's to staff rates since the date the 2nd respondent moved it to commercial rates and recalculate interest accordingly.
 - d. A declaration that the claimant is entitled to general and aggravated damages for discrimination and false accusations and breach of human dignity and the right to fair administration costs.
 - e. A declaration that the claimant's rights to fair hearing and freedom from discrimination as enshrined in *the Constitution* are grossly violated;
 - f. An order that the 1st and 2nd respondents accord the claimant a fair hearing on the issued that led to his summary dismissal;



- g. Payments for all his salary and allowances dues to him for 270 months since his summary dismissal to retirement, which is equivalent to an amount of Kshs 140,620,860 less any taxes therein.
 - h. Costs of this suit and interests at court rates; and
 - i. Any other or further relief that this honourable court may deem just and fit to award the claimant in the circumstances.
2. The respondents memorandum of response dated 27.07.2020 was filed through Waweru Gatonye & Company Advocates. The respondent prayed that the case be dismissed with costs.
 3. The claimant's case was that he was employed by the respondent as a graduate clerk and his appointment confirmed by letter of appointment dated 07.12.2007.
 4. The claimant in the course of his employment continually surpassed various targets, which saw him rise from a graduate clerk to an Internal Auditor, culminating in his appointment as head finance department reporting directly to the respondent's bank's managing director of the South Sudan subsidiary.
 5. The terms of his appointment were that his salary was Kshs 290,058/= per month, an out of country allowance of Kshs 50,760/= per month and USD 1,800 each month as subsistence allowance.
 6. By the letter dated 15.1.2017 the claimant's job description was enhanced and he was allocated more duties, in what was termed a bid to refocus the respondent's operations for an enhanced performance. The operations and retail department was restructured by delinking the premises, supply chain and transport unit from it. The premises, supply chain and transport unit would then report to the head finance and strategy department, which he headed.
 7. The claimant states that the increase in duties, new roles and job risks was not commensurate to his pay and grade and several requests to have his pay reviewed upwards to match his job description were not heeded, but rather resulted in threats of a job redeployment that would lead to a reduction in his monthly pay. This had severe psychological impact on him, especially given that other staff who had added responsibilities were rewarded with promotions and salary increments to shield them from the additional risks and reward them for the additional duties.
 8. In his employment with the respondent, the claimant states that his role model was his previous team leader Mr. Zachariah Chianda, who acted as his mentor. Mr Chianda rose from graduate clerk in the bank to be the managing director & chief executive officer of the co-operative bank subsidiary in south sudan and the claimant reported to him directly, for a duration of 4 years.
 9. Looking at the growth trajectory of both Chianda and the claimant, the claimant states that there were many similarities. The claimant states that he intended to spend his entire working life with the respondent. In the 12 years that he had been employed by the bank, he maintained a clean record and did not have a single disciplinary issue. That he scored high in performance appraisals and managed to reach managerial position, which meant that at that level, he was part of a team that had the capability to steer the bank to greater heights and also catapult his career aspirations.
 10. In the year 2019, the claimant was informed by the respondent through its managing director in the South Sudan subsidiary, that the bank had received a written statement from one Hamida Yakub, about his involvement in a fight with the said Hamida.



11. On 19.08.2019 the respondent's managing director issued a suspension letter to him, which the claimant terms unprocedural in that it ought to have been issued by the respondent's human resources director as per the respondent's staff manual. Further the suspension letter, ought to have indicated the following, which was not the case in the letter issued to him: That the suspension would be in force for 90 days. That an employee would be placed on half salary. That the employee should report each working day at 9.00 am to his line manager or security department until further notice.
12. That at the disciplinary proceedings, the claimant's evidence was never considered.
13. The final police investigations showed that the claimant had no case to answer and instead charges were levelled against Hamida for battery and assault causing grievous bodily harm to the claimant.
14. In September, 2019 after the Hamida debacle, the claimant was accused of gross misconduct which led to his summary dismissal. The accusations were as follows:
 - a. That he on boarded Dreamcast Travel Solutions to offer ticketing services to the respondent without following due process.
 - b. That he influenced the award of business to Dembesh Hotel and that he did not follow the laid down processes.
15. The claimant states that his position as head of finance and strategy was equivalent to that of chief financial officer. That he had in his entire working life, honed his career in the banking industry and having been dismissed by the bank, was rendered unemployable in other industries or sectors of the economy.
16. The position of chief financial officer in the banking sector undergoes rigorous background checks by the individual banks, this, coupled with the requirement by the Central Bank of Kenya to vet and approve all bank chief financial officers has rendered him unemployable.
17. The claimant maintains that had the respondent reviewed his evidence objectively, the resultant disciplinary process would have aborted, since the allegations were false. The claimant states he was never granted the opportunity to face his accusers nor review the adverse statements recorded against him, which were held by the respondent.
18. It is the claimants contention that the managing director in South Sudan colluded jointly and severally to frustrate his performance and initiated the disciplinary process to have him out of employment by failing to accord him a fair disciplinary hearing; using false accusation to institute disciplinary action against him; and, withholding important information pertaining to his accusations, which if addressed objectively would have absolved him of any guilt.
19. The claimant states that he suffered greatly and continues to suffer psychologically after the respondent failed and/or refused to accord him a fair disciplinary hearing and instead painted him as irresponsible, reckless and lacking integrity in performance of his duties. His request for an opportunity to be allowed to resign from employment was ignored and rejected.
20. On the part of the respondent, it is stated that sometime in September 2019 and following investigations that were conducted by the bank's security department, it was established that the claimant committed offences that amounted to gross misconduct, namely:-
 - a. He acted in conflict with his position in the bank in that;



- i. In November 2018 he deliberately on boarded Dreamcast Travel Solutions to offer ticketing services to the bank without disclosing that he had a personal relationship with a director of the said company.
 - ii. He irregularly expanded the service scope of Dreamcast Travel Solutions to include provision of taxi/or car hire services from time to time upon request.
 - iii. He influenced the choice of venue for the bank's strategy meeting on 19.11.2018 by selecting Dembesh Hotel against a competitive bidding process without disclosing that he had a personal relationship with the sales and marketing manager of the said hotel.
 - b. He approved either by signing or facilitating approval of payments without following the established bank procedures and indeed processed and paid USD 1,670 to Dembesh Hotel as payment for the venue for holding the bank's strategy meeting on 19.11.2018 against the hotel's quotation of USD 1370 thus occasioning the bank a loss of USD 300.
 - c. On 08.08.2018, he engaged in a fight with one Hamida Yakub at the bank's rented hotel room contrary to the bank's business conduct and ethics.
21. These contraventions casted doubt on the claimant's integrity as a senior employee of the bank. Consequently, the bank issued the claimant with a notice to show cause dated 26.09.2019 as to why disciplinary action was not to be taken against him in accordance with the staff manual.
 22. The claimant responded through a letter dated 01.10.2019. upon receiving the response, the respondent decided that the claimant appear before a disciplinary committee, and through a letter dated 17.10.2019 the claimant was invited to appear before the committee on 24.10.2019.
 23. Annexed to his invitation was a copy of the charges against him. He was advised to tender documentary evidence to defend himself and was advised of his entitlement to be accompanied by a member of staff of his choice.
 24. Upon hearing the claimant and considering the allegations raised against him, the decision of the committee was that the claimant's response and explanations did not exonerate him from the charges preferred against him and accordingly made a decision to summarily dismiss the claimant from service in accordance with the provisions of appendix 14 of the bank's staff manual. Which decision was communicated to him vide a letter dated 11.11.2019.
 25. Upon termination the claimant was advised of his right to appeal the decision within a period of 21 days in accordance with appendix 14 of the staff manual and via a hand written letter dated 19.11.2019 the claimant appealed against the respondents decision where he requested to be allowed to resign raising three grounds that:-
 - a. He had no prior disciplinary issue in the bank.
 - b. He admitted breach of procedures which he also apologized for.
 - c. The summary dismissal will have a detrimental impact on his career.
 26. The respondent considered the claimant's appeal and vide a letter dated 05.02.2020 he was informed that his request to be allowed to resign was unsuccessful.
 27. The respondent maintains that it had reasons to warrant disciplinary action against the claimant, it followed proper procedure to discipline the claimant and indeed took appropriate action against



him as contained in the summary dismissal letter dated 11.11.2019 which the claimant received on 13.11.2019.

28. The respondent states that it has already replaced the claimant as head of finance and strategy in South Sudan and for the Court to order reinstatement of the claimant and payment of his salary from dismissal would present a financial and human resource problem to the bank and to the he person who replaced the claimant.
29. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows:
- a. In the appeal letter signed 19.11.2019 the claimant wrote thus, "(2) I admitted to breach of procedures which I apologised for". He further stated that summary dismissal would have an adverse impact on his career. The Court finds that the claimant was given due process of a notice and hearing per section 41 of the *Employment Act*, 2007. The reasons for the summary dismissal were valid per section 43 of the Act. They were fair as they related the claimant's admitted misconduct and the respondent's operational requirements per section 45 of the Act. The summary dismissal was not unfair in procedure and substance. The respondent's submissions are upheld in that regard. In particular, the Court finds that by that express admission the claimant confirmed that the allegations and reasons for termination were fair. He appears to have pursued belated opportunity to be allowed to resign in place of the summary dismissal but which was declined.
 - b. As submitted for the respondent the claimant has failed to justify the reliefs as prayed. The prayers for lost future earnings are speculative and not established at all.

In conclusion, the suit is dismissed with costs for the respondent.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19TH DECEMBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

