



**Wabwire v Equity Bank Kenya Limited (Cause E103 of 2021)
[2023] KEELRC 177 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 177 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E103 OF 2021
J RIKA, J
JANUARY 31, 2023**

BETWEEN

TERESA NYANGI WABWIRE CLAIMANT

AND

EQUITY BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim dated February 10, 2021.
2. She states that she was employed by the respondent Bank, as a Senior Relationship Manager-Corporate and SME Bank, on August 14, 2017.
3. On March 9, 2018, the General Manager, Human Resource enquired from the claimant about her Credit Reference Bureau [CRB] Listing. On March 18, 2018, the Human Resource Director and the Marketing Director wrote to the claimant, detailing the listing, and enquiring how the debts came about. The claimant proposed to amalgamate the debts, and pay them off.
4. On March 27, 2018, she met the Human Resource Manager, where it was proposed that the claimant meets representatives of all her Creditor Banks, and agree on closure, to enable her to be delisted from the CRB. It was agreed that the Director Human Resource, would guide the claimant in the process. It was agreed further that the claimant's family would assist, and that she would dispose of her car to redress the debts. It was proposed that the claimant identifies property to purchase, which she could use for the proposed mortgage. She presented documents to support her application for the mortgage. The mortgage process however, stalled.
5. She received letter to show cause from the respondent, dated 1May 5, 2018. On June 25, 2018, she was invited by the Director Marketing to discuss the mortgage. Discussion was in the presence of the Directors, Operation and Marketing, and the General Manager Human Resource. When the questions begun flowing, she realized that the meeting had been converted into a disciplinary hearing.



6. She was later asked to sign minutes of the meeting, referenced ‘disciplinary hearing.’ She was issued termination letter on August 6, 2018.
7. She states that termination was unfair. The Disciplinary Manual provides for hearing notice, of at least 3 days. She was not issued notice. She did not have a statement of the charges. She was not accompanied by a colleague at the meeting. She appealed the decision in accordance with Rule 10 of the Manual. There was no consideration.
8. She invoked the doctrine of promissory estoppel, pleading that the Respondent recruited her, when she was indebted. She explained to the Respondent the genesis of all the debts. She avers that she was discriminated against, as there were other Employees similarly indebted, who were retained. In one instance, the Employee was issued a warning letter for CRB listing.
9. The claimant prays for Judgment as follows: -
 - a. Declaration that the claimant’s fundamental rights and freedoms have been violated.
 - b. Declaration that purported disciplinary hearing was illegal.
 - c. Damages for unlawful and unfair termination.
 - d. Compensation for constitutional violations.
 - e. Costs and any other relief.
10. The respondent filed a statement of response, dated March 12, 2021. It is accepted that the claimant was employed by the respondent as pleaded. The respondent carried out a routine background check of its Employees, to confirm their suitability and integrity. It was discovered that the claimant had multiple debts and was listed by the CRB. She was asked to explain. She was dishonest in her explanation. Her indebtedness extended to various institutions.
11. She was issued a letter to show cause as pleaded. She replied, alleging that the debts were incurred by her former spouse. The response was unsatisfactory, and she was invited to disciplinary hearing in a letter dated June 22, 2018. Hearing was scheduled for June 25, 2018. She was heard on this date, and on July 2, 2018. On the latter date, she disclosed further unpaid loans, which she had not disclosed from the beginning. The respondent was not aware about any mortgage arrangements with the claimant.
12. She was advised on the outcome of the disciplinary hearing, in the letter dated August 4, 2018. Her contract was terminated for poor financial management, which is against the respondent’s code of conduct. The claimant made several proposals on liquidation of the multiple debts, which proposals did not bind the respondent to keep her in employment. There was no constitutional violation of any nature. The Claim has no merit.
13. The claimant, and the respondent’s Employee Relations Manager Winifred Kyalo, gave evidence on July 5, 2022, when the hearing closed. The Claim was last mentioned in court on November 11, 2022, when the Parties confirmed filing and service of their closing submissions.
14. The claimant adopted her statements of claim and witness, and documents on record. The contents are as summarized above. Cross-examined, she told the court that she was familiar with the terms of financial management, under the claimant’s Code of Conduct. She had negative CRB rating. She did not violate the Code. She was issued letter to show cause. She responded. She was invited to the Director’s office. She did not know at the time that it was for disciplinary hearing. She did not know if the second meeting, was to clarify issues from the first. She had made full financial disclosure from the beginning. It was proposed that the claimant takes a mortgage, to absorb all



outstanding loans. She came to know what the two meeting were about, while in attendance. She was not allowed the company of a colleague or other representative. Major offences under the Code include pecuniary embarrassment. She was not in this situation. The Code did not apply before she joined the Respondent. Redirected, the claimant told the court that she was not the only Employee adversely listed by the CRB.

15. Kyalo adopted her witness statement and documents presented by the respondent. On cross-examination, she told the court that financial prudence requires one, to meet their financial liabilities. The claimant needed to have a repayment plan. There were other Employees who were listed by CRB. Negative listing is a disciplinary issue. Over 1000 Employees were taken through disciplinary hearing for negative listing. Redirected, Kyalo told the court that the respondent does not close out potential Employees just because they have negative listing. They are normally given a window of opportunity to clear their debts, failing which they are taken through a disciplinary hearing.
16. The issues are, whether termination of the claimant's contract was fair on procedure under sections 41 and 45 of the Employment Act; whether it was fair in substance under sections 43 and 45 of the Act; whether there were constitutional violations; and whether the remedies pleaded are merited.

The Court Finds: -

17. The respondent Bank's Code of Conduct, clause 2.9, regulates financial management. It states that, "The Group wishes to advise all Members of Staff to practice sound personal financial management to avoid pecuniary embarrassment. An Employee is not expected to enter into too many financial commitments that may embarrass the Employee during the repayment period."
18. In the routine background carried out on its Employees, the respondent found out that the claimant had huge loans with other financial institutions, which had led to negative listing, by the CRB.
19. She had not disclosed these loans when she was employed by the respondent, and stated she was not aware of negative listing, until March 2018. She was employed on August 14, 2017. If there was no disclosure, the respondent would not have been expected to know that the claimant was heavy in debt, and listed negatively by CRB.
20. There was no persuasive evidence from the claimant, that the respondent was aware of her financial position when it employed her, or that it was bound to retain her in employment, once it discovered that she was heavily indebted and listed.
21. The respondent explained and the court accepts this explanation, that it was not averse to employing persons simply on the ground of adverse listing or indebtedness. Its policy was to employ, and give opportunity to indebted Employees, to come up with feasible plans, on redressing indebtedness.
22. The claimant was heard by the respondent on July 25, 2018 and on July 2, 2018. There was a letter to show cause dated May 15, 2018, followed by a letter inviting her to disciplinary meeting. The invitation is specific that the claimant was called to a disciplinary hearing, not a mortgage discussion. She was advised on her right to be accompanied by a colleague of her choice. There is no doubt that, this was a disciplinary hearing, and the submission by the claimant that she attended meetings not knowing the agenda, is unpersuasive.
23. The 2 meetings cast the claimant as an Employee who did not have a clear view, on how she was going to meet outstanding financial obligations. She told the panel that she was not aware of her own CRB listing, until March 2018, a couple of months before she was asked to show cause. She blamed her estranged partner for failure to redress the loans, she had obtained jointly with her partner. She stated that, although the loans were jointly obtained, the lending institutions targeted her alone. The loans



were last serviced over 3 years ago. She could not consult her former partner, because she feared for her life.

24. At the second meeting of July 2, 2018, the claimant conceded there were further loans that she had not disclosed at the beginning.
25. The proposal by the claimant to take out a mortgage, to pay the loans, did not have the concurrence of the respondent. The mortgage facility, would perhaps, only have complicated the extent of the claimant's indebtedness. When debts are serviced by way of further debts, the result is debt delinquency.
26. The evidence above shows that the claimant was clearly in breach of clause 2.9 of the respondent's code of conduct. It did not matter when the loans were obtained. The issue was whether the claimant had a workable plan for repayment; and whether there was likelihood of financial embarrassment.
27. It is unfortunate that the claimant's former partner committed the claimant in taking huge loans from different institutions, and was not there when the couple was required to repay. The claimant states that she was aware, that the partner's businesses were profitable, and it is difficult to comprehend why this gentleman placed the claimant at such a tight corner. His conduct affected the claimant's position with the Respondent Bank, leading to her loss of employment. It is unfortunate. He became inaccessible to the claimant, and she states, to approach him was a risk upon her life. The respondent cannot however be blamed for taking out disciplinary proceedings against the claimant, and terminating her contract for breach of its Code of Conduct. The respondent has its own position to protect.
28. Fair procedure was followed. No Constitutional or Statutory rights were impaired.
29. Not without sympathy to the claimant, the Claim fails.

It Is Ordered: -

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

JAMES RIKA

JUDGE

