



**Obadha v Stanbic Bank Kenya Limited (Petition 496 of 2018)
[2023] KEELRC 118 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 118 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 496 OF 2018
MN NDUMA, J
JANUARY 26, 2023**

BETWEEN

BERLY A OBADHA CLAIMANT

AND

STANBIC BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. The claimant filed suit on April 10, 2018 praying for a declaration that her termination was unfair and unlawful and seeks compensation thereof. The claimant further prays for 4 months' salary being the remainder of the fixed term contract and one month salary in lieu of notice.
2. The claimant was employed on July 14, 2013 as an Officer in the Operations Department on a fixed term contract of six months earning a monthly salary of Kshs 40,000
3. The claimant (CW1) testified that she was not provided with targets to be met; was not given any training on the job nor was her performance appraised.
4. However, in September, 2017, CW1 received an email titled "underperformance meeting between the Human Resources team Leader and Manager in-charge of operations" In the meeting, CW1 was told that she was underperforming. This was the first time she had been informed so.
5. On September 7, 2017, CW1 fell sick and went home. The Team Leader allowed her to go for one day and return on September 8, 2017.
6. CW1 stated that the sickness persisted and on September 11, 2017, CW1 went to see a Specialist (Obstetrician) Gynecologist at Electricity House Dr GK Onyango and she was to be admitted for a minor operation to be performed.
7. CW1 went to Kenyatta National Hospital and was advised to get full bed rest for 13 days from 7th to 20th September, due to threatening abortion. CW1 called her manager M/s Teresia Thumi and informed



- her of her condition and she informed CW1 to take time and come back to work upon recovery. Teresia texted CW1 on September 12, 2017 informing CW1 that she had informed the Human Resource Team Leader about the situation.
8. On September 14, 2017, the Human Resource Team Leader called CW1 and informed her that he had to get a replacement as C.W.1's work was lagging behind and asked what CW1 thought about that.
 9. CW1 requested to be given upto September 20, 2017. The Team leader said 20th was too far away. CW1 was pressured to resign but she refused.
 10. On September 19, 2017, CW1 texted her boss and team leader and asked if she could report on September 21, 2017. They said it was okay. CW1 returned to work on September 21, 2017 and continued to work.
 11. On September 28, 2017, at 5 pm, the team leader called CW1 to the boardroom and told CW1 that her employment had been terminated.
 12. CW1 produced documents in support of her case including the contract of employment, the sick sheet dated September 5, 2017 and a sick-off note from Kenyatta National Hospital for 13 days from the period 7th to 20th September, 2017 due to threatening abortion. The sick note was by Doctor J Mbogori CW1 also produced ultra sound scan report dated 8th September, 2017 which indicates a 10 weeks pregnancy and "Bilateral Large Septated Ovarian Cysts" *interalia*. Other medical report filed include an abdominal ultra sound scan report dated September 15, 2017 showing "Di-amniotic twin pregnancy of 11 weeks and 5 days."
 13. CW1 also produced the email correspondence between C.W.1 and Teresia Thumi dated September 11, 2017.
 14. CW1 further produced letter of termination dated September 29, 2017 in which the employment of C.W.1 was terminated with immediate effect. CW1 was to be paid one week's salary in lieu of notice as per Clause 6 of the contract of employment dated July 14, 2017.
 15. No reasons were given for the termination.
 16. Further, CW1 produced a demand note from Rakoro & Co Advocates dated October 23, 2017.
 17. The respondent filed a response to the claim dated May 10, 2018 in which is admitted that CW1 was employed as a payment officer on a six months fixed term contract dated July 14, 2017. RW1 Chrisantus Owenje (RW1) testified that he was Team Leader Outward payment and was the direct supervisor of CW1.
 18. RW1 testified that the six months contract between the parties was dated July 14, 2017 and was executed on July 18, 2017. RW1 testified that the employment of CW1 was of a temporary nature as it was for the limited and specified task of T24 Technology Refresh and Data Store KYC Project which was to cover a period of only 6 months.
 19. RW1 stated that the tasks to be covered by CW1 entailed processing of Outward telegraphic swift transfers on a daily basis which entails data entry.
 20. That in September, 2017, CW1 was subjected to a performance review because of underperformance and was called to a meeting in the same month. That however, between 7th and 21st September, 2017, CW1 never turned up to work on account of being sick.
 21. That CW1 never notified the respondent of the complications or sickness through the Bank's Reporting system as required under Clause 12.13 of the Banks Human Capital Policy.



22. That the respondent was unaware of CW1's sickness past 24 hours as required under Clause 12.13 of the Bank's Human Capital Policy.
23. That the respondent never received medical certificates from CW1 as required under Clause 12.14.
24. That the Respondent could not know of CW1's sickness until CW1 disclosed the same. That CW1 never sought reimbursement of the medical expenses incurred for treatment as per Clause 12.7 of the policy.
25. That the Respondent terminated CW1's contract legally as per Clause 6 of the contract.
26. Under cross-examination, RW1 admitted receipt of letter of demand but did not respond to it. R.W.1 stated that the Human Resource Policy he referred to is dated September, 2017 after the employment of CW1 in July, 2017. RW1 stated that there is no evidence that CW1 received the policy document. RW1 stated no reason for termination is given. RW1 added that CW1 was on the job training. That set targets were not before Court. That CW1 was not served with a Notice to Show Cause. That CW1 was called to a meeting to explain why she was underperforming. That CW1 was given a chance to improve but was not done in writing. She was given one week to improve verbally. RW1 stated there were no minutes of that meeting. That there is no written document showing CW1's underperformance. That CW1 was not terminated from work for absence.

Determination

27. It is common cause that the claimant was employed on a fixed term written contract dated July 14, 2017 effective July 19, 2017 upto July 18, 2018. The contract of employment was terminated for no reason given by a letter dated September 28, 2017. The respondent vide R.W.1 states that termination was in terms of Clause 6 of the contract which provides:-

“Either party can terminate the employment by giving one (1) week's written notice, or by giving one (1) Week's salary in lieu thereof.”
28. The employment contract did not place the claimant on any probation period.
29. The respondent was under obligation therefore to comply with the requirements of termination of an employment contract provided under section 36, 41, 43 and 45 of the *Employment Act*, 2007 by *inter alia* giving the claimant at least one month notice of intended termination of employment; issuing the claimant with a notice to show cause why her employment should not be terminated for underperformance; providing the claimant with a hearing on the intended notice of termination on grounds of underperformance and allow the claimant to attend the hearing with a co-worker of choice to assist her in the process; and providing the claimant with written reasons why her employment was terminated.
30. The testimony by RW1 indicates that the respondent failed in all the above respects and therefore the respondent has failed to prove to the Court that it had a valid reason to terminate the employment of the claimant. The respondent has also failed to demonstrate that it followed a fair procedure in terminating the employment of the claimant.
31. To the contrary, the claimant has discharged the onus placed on her under section 47(5) of the *Employment Act*, to demonstrate that the termination of her employment was wrongful and unfair.
32. Clearly, the claimant was pregnant during the material period and was having medical complications associated with the pregnancy confirmed to have been of “twins”.



33. The testimony by the claimant clearly justified the absence from work during the material time and the Court is satisfied that the respondent was not candid on the matter of awareness of the difficulties the claimant was experiencing at the time, which may have impacted her work performance during the period in question.
34. The Court finds that the respondent violated Sections 36, 41, 43 and 45 of the Employment Act and the Court declares the termination of the employment of the claimant unlawful and unfair. The claimant is entitled to payment in lieu of One month notice not accorded her by the respondent in the sum of Kshs 40,000.
35. The claimant is also entitled to compensation in terms of section 49(1) (c) and (4) of the Employment Act, 2007. In this respect, the respondent disregarded the health situation of the claimant and used the same to victimize her. The claimant lost opportunity to advance her young career in banking by completing the six months contract initially accorded to her. The Court finds that there is no tangible evidence that the claimant contributed to the termination but rather was victimized on account of her absence for medical reasons. RW1 was not truthful on this issue of claimant's sickness and this is aggravating circumstance. The emails presented clearly demonstrate that the respondent was aware of the claimant's sickness.
36. The Court has considered the case of National Bank of Kenya v Samuel Nguru Mutonya (2019) eKLR and the case of Janet Nyandiko v Kenya Commercial Bank Limited (2017) eKLR and Jane Samba Mukala v Ol Tukai Lodge Limited Industrial Case No 823 of 2010 to award the claimant the equivalent of six (6) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs 40,000 x 6) = 240,000.
37. In the final analysis, the Court awards the claimant as against the respondent as follows:-
- (i) Kshs 40,000 in lieu of notice.
 - (ii) Kshs 240,000 in compensation for the unlawful and unfair termination of employment.
Total award Kshs 280,000.
 - (iii) Interest at court rates from date of termination till payment in full.
 - (iv) Costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 26TH DAY OF JANUARY, 2023.

MATHEWS NDERI NDUMA

JUDGE

Appearances

Mr. Rakoro for the claimant

Mr. Ochola for Respondent

