



**Ochieng v KCB Bank Kenya Limited (Cause 2591 of 2016)
[2023] KEELRC 904 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 904 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2591 OF 2016
MN NDUMA, J
APRIL 13, 2023**

BETWEEN

JOSEPHINE OCHIENG CLAIMANT

AND

KCB BANK KENYA LIMITED RESPONDENT

RULING

1. The suit was filed on December 16, 2016 by the claimant seeking reliefs including:-
 - (a) That the respondent to reinstate the claimant to her previous position without, loss of seniority and benefits.
 - (b) That the respondent to pay the claimant all consolidated pay with interest from the date of termination on March 3, 2013 to date of reinstatement.
 - (c) The Court to declare the termination of the employment of the claimant was unlawful and unfair.

Background Facts

2. The facts in the cause that gave rise to the action may be summarised that on December 30, 2014, a teller under the supervision of the claimant was instructed by a customer of the bank to convert Kshs 313,000 to Ugandan shillings.
3. That the conversion rate applicable on the day of the transaction was Uganda Shillings Thirty (Ugshs 30) to one Kenya Shilling (1 Kshs).
4. That the total UGshs to be deposited in the customer account was Ugshs 9, 390,000 from a conversion of Kshs 313,000 (313,00 x 30).



5. That it was discovered on December 30, 2014 that the account of the said customer was erroneously credited with Ugshs 281,700,000 instead of the said Ugshs 9,390,000.
6. According to the evidence before Court, the Ugshs 9,390,000 was treated as Kenya Shillings and then the conversion rate of Ugshs 30, to 1 Kenya shillings was applied to the amount hence arriving at the erroneous credit of Ugshs 281,700,000. These facts are not in dispute.

What is in dispute is:-

- (a) Whether it was the negligent conduct of the claimant which resulted in the error to the loss and detriment of the bank or
 - (b) Whether the error was a result of a system failure beyond the control of the claimant.
7. The claimant (CW1) testified that she was charged for negligence of duty on the material day leading to the loss and detriment of the bank. The claimant was further accused of negligently failing to verify the transaction to arrest the error before the money was encashed by the customer.
 8. It is common cause that the error was not detected until December 30, 2014, by that time the customer had already encashed most of the money and the Bank lost about Kshs 5.5 million. The claimant was accused of misleading the teller and also failing to properly verify the transaction before approving it to allow the teller to process the same.
 9. CW1 in her defence told the Court that the till on December 30, 2015 showed the correct amount of Ugshs 9,390,000 had been credited to the customer's account. That there was no way of detecting that the conversion and actual deposit was Ugshs 281,700,000. That since the system failed to show the overpayment, this could only be detected in the trial balance which is contained in the Branch Manager's report at the end of the day. That the Branch Manager report would have been available in the system on December 31, 2014 the following day but it was not available and so the claimant testified she had no access to the Branch Manager's report and lost opportunity to arrest the error. The claimant stated that she was not in a position to know why the Branch Manager did not check the report on December 31, 2014. The claimant admitted that she was the Acting Operations Manager on December 30, 2014 and that upon being notified of the erroneous deposit she had reported a systems failure, which according to her had led to the erroneous overpayment to the customer. CW1 testified that she had served the bank diligently for over 22 years and had risen in rank from a teller to management cadre. The claimant admitted that she had received about two warnings related to her work in that period.
 10. CW1 testified that the previous warnings had lapsed and were no longer valid. The claimant admitted having authorised the teller to credit the customer with the correct converted amount but was not responsible for the error that occurred.
 11. The claimant testified that the substantive Branch Manager returned on December 31, 2014 and she had on the day relinquished the Branch Manager's acting position. That it was the substantive Branch Manager who failed to detect the error on December 31, 2014 from the Branch Manager's report.
 12. The claimant admitted that she was given a notice to show cause which she answered explaining her position on the matter. That she attended a disciplinary hearing to which she was informed of her right to go with a colleague and or union representative. That she defended herself fully but was found guilty and was dismissed from employment. The claimant appealed the decision to summarily dismiss her from work but the dismissal was upheld.



13. The claimant denied under cross-examination that she was negligent in her duty. She denied that the overpayment was a personal error by the teller and herself since she authorised the transaction. The claimant insisted that the input to the system was correct and the system did not immediately reveal the system error that had occurred.
14. The claimant stated that the respondent had no valid reason to dismiss her from employment and that she be reinstated to her work and in the alternative, if reinstatement has been overtaken by events, she be fully paid the lost income from the date of would be reinstatement to date of judgment.
15. RW1 Robley Ngoje, the Head, Employees Relations and Wellness Department testified that she dealt with all disciplinary cases.
16. RW1 testified that the claimant was lawfully dismissed from employment for negligently failing to properly supervise a teller and as a result a customer was erroneously credited with Ugshs 281,700,000 instead of Ugshs 9,390,000 being a conversion of Kshs 313,000 at a conversion rate of UG sh.30 to one (1) Kenya Shilling.
17. That as a result of the failure by the claimant in her position of Operations Manager and Acting Branch Manager to stop the transaction, the bank lost about 6,632,000.
18. That in addition the claimant failed to detect the error timeously to avoid encashment of the overpaid amount by the customer. RW1 denied that there was any system failure and stated that the teller under direct supervision of the claimant input the incorrect amount to the loss and detriment of the Bank. RW1 testified that the claimant had in her explanation to the respondent stated that the particular international transaction was a difficult one but the claimant had failed to demonstrate that she had sought any help from her counterparts in other Branches or her seniors to help in the transaction to avoid the kind of human error that occurred.
19. RW1 testified further that the claimant deliberately misled the respondent that the error was as a result of system error which allegation was found to be untrue. That the respondent had a valid reason to dismiss the claimant from employment and that the respondent followed a fair procedure and the suit be dismissed with costs.

20 The issues for determination are:-

- (a) Whether the respondent had a valid reason to dismiss the claimant from employment.
 - (c) Whether the respondent followed a fair procedure in that process.
 - (c) Whether the claimant is entitled to the reliefs sought.
21. In terms of Section 43(1) and (2) of the *Employment Act*, 2007, the employer must prove that it had a valid reason to dismiss an employee from employment. The Court has considered the testimony by CW1 vis a vis that by RW1 and has found that on December 30, 2014, the claimant approved a transaction done by a teller under her direct supervision which transaction resulted in an overpayment to a customer of Ugshs 281,700,000 instead of the proper amount of Ugshs 9,390,000.
 22. The Court is satisfied that the respondent has demonstrated that this gross error was not as a result of a system failure beyond the control and detection by the claimant. To the contrary, the respondent had proved on a balance of probabilities that the overpayment was as a result of a human error by a teller who inputted the wrong amount to the system and the claimant negligently approved the erroneous transaction to the loss and detriment of the respondent. The respondent has also demonstrated that the



- claimant being the acting Branch Manager up to December 31, 2014 had the responsibility to detect and arrest the error before the overpayment was encashed by the customer but the claimant had also failed in this respect. The Court finds the explanation by the claimant to lack credibility, the claimant having failed to demonstrate that the overpayment was as a result of a system failure and why she did not arrest the error from the Branch Manager's report of April 31, 2014 which contained the trial balance of the December 30, 2014. The Court is not satisfied with the explanation by the claimant that it was the substantive Branch Manager who had failed to detect the error. The claimant had an obligation to check the trial balance before handing over to the substantive Branch Manager on December 31, 2014.
23. The Court finds that the claimant was subjected to a fair hearing before she was dismissed from employment.
 24. The respondent complied with Sections 36, 41, 43, 44 and 45 of the *Employment Act*, 2007 in executing the dismissal.
 25. The Court has relied on the case of *Felix Mbolozzi Kioko v Director of Public Prosecutions [2020] eKLR* in which the Court cited *Walter Ogal Anuro v Teachers Service Commission [2013] eKLR* as follows:-

“for a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness.”
 26. The respondent has satisfied both tests in the present matter.
 27. The Court finds that the respondent had a valid reason to dismiss the claimant from employment and that in doing so, the respondent followed a fair procedure.
 28. The respondent paid the claimant applicable terminal benefits upon dismissal.
 29. The entire suit lacks merit and is dismissed. However, the Court recognises that the claimant had served the respondent well for a period of over 22 years. The Court considers this appropriate case where each party should bear the costs of the suit.
 30. It is so ordered.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 13TH DAY OF APRIL, 2023.

MATHEWS N NDUMA

JUDGE

Appearance

M/s Kubai for claimant

Mr. Okoth for Respondent

Ekale – Court Assistant

