



**Wangeci v Standard Chartered Bank Kenya Limited (Cause
1185 of 2018) [2023] KEELRC 1897 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1897 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1185 OF 2018
L NDOLO, J
JULY 27, 2023**

BETWEEN

GEOFFREY KIMUHU WANGECI CLAIMANT

AND

STANDARD CHARTERED BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. By a Statement of Claim dated July 6, 2018, the Claimant sued the Respondent Bank for unlawful termination of employment. The Respondent filed a Memorandum of Defence dated October 24, 2018, to which the Claimant responded by a Reply dated January 17, 2019.
2. At the trial, the Claimant testified on his own behalf and the Respondent called its Employee Relations Specialist, Anthony Kilonzo. The parties further filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent by a contract of employment dated October 15, 2013. He worked in various capacities until February 12, 2018, when his employment was terminated.
4. The Claimant further states that he was accused of stealing Kshs 5,000 from a customer of the Respondent on November 24, 2017, an allegation he denied.
5. The Claimant avers that the Respondent subjected him to a biased disciplinary process, where no evidence was tendered to prove the allegation levelled against him.
6. The Claimant's claim is as follows:
 - a. A declaration that the termination of his employment was unlawful and unfair;



- b. An order directing the Respondent to pay him gratuity equivalent to one month's salary for the remainder of the employment period until retirement;
- c. General damages for unlawful and unfair termination;
- d. General damages for lost employment opportunity;
- e. Costs plus interest.

The Respondent's Case

7. In its Memorandum of Defence dated October 24, 2018 and filed in court on October 25, 2018, the Respondent admits having employed the Claimant as a clerk by a contract of employment dated October 15, 2013.
8. The Respondent states that the Claimant breached his contractual obligations on November 24, 2017, upon which he was taken through a disciplinary process which culminated with termination of his employment on February 12, 2018.
9. The Respondent avers that on November 24, 2017, the Claimant who was deployed as a teller at the Respondent's Upperhill Branch, processed a transaction for a customer in the sum of Kshs 45,000.
10. The customer is said to have later complained that she had only received Kshs 40,000 from the Claimant. The Claimant was notified of the complaint by an email of the same date and his response was that the transaction was above board and in accordance with the customer's instructions.
11. The Respondent claims that a scrutiny of the CCTV footage for November 24, 2017 revealed that after the Claimant had reconciled his accounts at the end of the day, he had an extra Kshs 5,000 which he placed behind the printer at his workstation.
12. By letter dated January 3, 2018, the Claimant was invited to a disciplinary hearing on January 18, 2018, which he attended in the company of his union representatives. The meeting was adjourned to January 25, 2018.
13. The Claimant was put to task to explain the source of the Kshs 5,000 and in his defence he stated that this was money returned by the security guard stationed at the ATM which he had received from the Claimant for the purpose of replacing mutilated notes which customers had come to deposit at the ATM.
14. According to the Respondent, the CCTV footage did not show any exchange of money between the Claimant and the security guard inside the Bank premises on November 24, 2017.
15. The Respondent accuses the Claimant of failing to declare the excess of Kshs 5,000 as required by the cash handling policy.
16. The Respondent's case is that the termination of the Claimant's employment was substantively and procedurally fair. The Respondent adds that the Claimant was paid his terminal dues.

Findings and Determination

17. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.



The Termination

18. The letter terminating the Claimant's employment is dated 12th February 2018 and states as follows:

“Dear Geoffrey,

Notification of Termination of Employment for gross misconduct

I am writing to confirm the outcome of the disciplinary meetings you attended on 18 January 2018 and 25 January 2018 under the Group Disciplinary Procedure, which you were accompanied to the meeting (sic).

Issues of concern

The purpose of the meeting was to consider the following issues of concern:

1. On 24 November you served a customer of account number 01512007 who came to withdraw 45,000/=. The customer later called via call centre and complained that she received 40,000/= and not 45,000/- thereby having a difference of 5,000/=.
2. CCTV footage was reviewed and you were seen pocketing 5,000/= equivalent amount of what the customer was complaining about.
3. You had excess amount of 5,000/= which you did not declare as per process.

Decision

As advised in our meeting on 25 January 2018 following consideration of all the available information and after careful consideration of other matters arising, the Bank has decided to terminate your employment for gross misconduct. The reasons for your termination of your employment are set out below.

1. You were seen on CCTV footage pocketing 5,000/= after doing your end of day reconciliation. This is contrary code 5 of the group code of conduct which obligates you to always do the right thing.
2. You claimed the 5,000/= was given back to you by G4S guard of the Branch and this is after you gave him similar amount in the morning to help serving CDM client queries from customer as this is usually the norm without seeking guidance from Branch Management. This is contrary to our policies and code 9 of our code of conduct which requires you to act responsibly and within authority.
3. Upon review of CCTV Footage of November 24, 2017, it was found out that on that particular day, you did not engage with the G4S guard on any cash transactions. You did not act with integrity contrary to the Bank's values as the information you gave to the panel was false.
4. You had excess amount of 5,000/= after doing your end of day reconciliations which you did not declare as this can be witnessed through CCTV footage of 24 November 2017.

The Bank considers the above findings a serious breach of your obligations such as to warrant termination of your employment with the Bank.



Termination Date

Your termination of employment from the Bank will be effective immediately 12 February 2018. You will receive your salary and benefits up until the Termination Date, subject to normal deductions in respect of income tax.

You will be paid your terminal dues as follows:-

1. Salary earned up to and including 12 February 2018.
2. One month's salary in lieu of notice.
3. Any leave days earned but not taken.

The above payments are subject to statutory deductions and, or any money owing to the Bank.

Right of Appeal

You have the right to appeal this decision. If you wish to appeal, you must submit your appeal in writing to the Head of Human Resources, within a maximum of 10 working days of receiving this letter. You should state the specific grounds for your appeal in full. Lodging an appeal will not delay the termination from taking effect, but if you are subsequently reinstated, any lost pay will be reimbursed.

Yours sincerely

(signed)

Joan Ng'ang'a

Branch Manager-Upperhill.”

19. According to the evidence on record, the termination of the Claimant's employment was triggered by a complaint from a customer that the Claimant had withheld Kshs 5,000 out of her over the counter cash withdrawal on November 24, 2017. The Claimant denied any wrongdoing in the transaction, insisting that he had served the customer as per instructions.
20. There was however a strange twist in this case as the Claimant was found to have in his possession Kshs 5,000. He was pressed to explain this coincidence and his account was that the Kshs 5,000 in his possession was a refund from a security guard posted at the ATM, which the Claimant had given to the security guard for replacement of mutilated notes brought by customers for deposit at the ATM. The Claimant conceded that the practice of giving his own money for official use was outlawed by the Bank.
21. The Claimant complains that the Respondent had no valid reason for terminating his employment. In determining this issue, the Court is called upon to examine the action taken by an employer against what is reasonable in the circumstances. This is what is referred to as the 'reasonable responses test' as set out in the following excerpt from the Halsbury's Laws of England, 4th Edition, Vol. 16(1B) para 642:

“...In adjudicating on the reasonableness of the employer's conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide whether it would have dismissed on those facts; it must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts. The basis of this approach (the reasonable responses test) is that in many cases there is a band of reasonable responses to the employer's conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to



determine whether in the particular circumstances of each case the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; but if the dismissal falls outside the band, it is unfair.”

22. This position was restated by the Court of Appeal in its decision in *Kenya Revenue Authority v Reuwel Waitbaka Gitahi & 2 others* [2019] eKLR in the following terms:

“...the standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it genuinely believed to exist, causing it to terminate the employee’s services.”

23. In present case, even if the Court were to believe the Claimant’s account that the Kshs 5,000 in his possession was in fact a refund from the security guard posted at the Respondent’s ATM, the Claimant would still be culpable of wrongdoing because he himself told the Court that this practice was not authorised by the Bank.

24. Taking into account the highly regulated environment in which the Respondent and the Claimant operated, I find and hold that the Claimant placed himself in the crosshairs of misconduct and the Respondent had a valid reason for terminating his employment as required by Section 43 of the *Employment Act*.

25. As to whether the Respondent observed due procedure in executing he termination, the Court notes that the Claimant was notified of the customer complaint and he gave his response. He was also subjected to a disciplinary hearing at which he was accompanied by union officials. I therefore find that the procedural fairness requirements of Section 41 of the *Employment Act* were satisfied.

26. On the whole, I find and hold that the termination of the Claimant’s employment was substantively and procedurally fair. His claim for general damages is therefore without basis and is disallowed. Similarly, I find no basis for the claim for gratuity which is also disallowed.

27. In the ultimate, the Claimant’s entire claim fails and is dismissed.

28. Each party will bear their own costs.

29. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JULY 2023

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JUDGE

Appearance:

Mr. Karanja for the Claimant

Mr. Masese for the Respondent

