



**Odiero v Spire Bank Ltd (Employment and Labour Relations Cause
2456 of 2017) [2023] KEELRC 2074 (KLR) (18 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2074 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2456 OF 2017**

**AN MWAURE, J
AUGUST 18, 2023**

BETWEEN

BENARD ODIERO CLAIMANT

AND

SPIRE BANK LTD RESPONDENT

JUDGMENT

1. The claimant filed a claim for he was unlawfully terminated and the claim is dated December 5, 2017.

Claimant's Case

2. He avers he was employed on November 7, 2013 and worked diligently to the best of his ability and he says he was never cited for misconduct. He says his responsibilities were to provide information to clients as regards bonuses and conducting interviews to open account. He says his services were exemplary and was awarded a bonus of Kshs 14,000/-
3. The claimant says on May 11, 2017 there was a walk in customer and he was in the process of interviewing him the branch manager Catherine Murigi requested claimant to hand over the customer to her claiming she had not attained her monthly sales targets.
4. The claimant on other hand claims he had already attained his sales targets.
5. He says the branch manager signed the application form and became the introducer. The customer was issued account No 0xxxx1 and the sales code was S 101.
6. The claimant says he filled the call report that he introduced the claimant and on May 19, 2017 he was summoned to the consumer banking department who informed him there were suspicious transactions detected with the account of Beatrice Ngina Muthisya. He was accused of being an accomplice to fraudulent transaction.



7. He says the anti-banking fraud investigation and he was arrested and arraigned in court with Agnes Nthenya Mwinzi alias Beatrice Ngina and Eric Njagi. He was accused of signing a call without visiting the customer. He was involved therefore in criminal case number 952/2017.
8. He avails he asked respondent for the call report but he did not give him. He says he nevertheless responded to the show cause letter and he was asked to report to work on June 16, 2017 and he expected no other disciplinary process.
9. He however says on June 22, 2017 he was sent home for two months on suspension apparently to pave way for investigations.
10. He returned to work on August 21, 2017 and was told his suspension was extended for a further one month.
11. Then on September 20, 2017 he was invited to a disciplinary hearing for September 21, 2017.
12. He says he was not given a chance to prepare his defence but he attended the meeting and he was accused of introducing the client and he denied those allegations and pointed out the name and code of branch manager were fraudulently replaced with his name and code.
13. He says he was summoned for another disciplinary hearing on September 26, 2017 and on September 27, 2017 he was summarily dismissed from employment on account of same contentions in the notice to show cause which he had responded to and had been recalled to work.
14. The claimant says his termination had no substantial justification or procedural fairness and so he prays to be reinstated to his position or to be awarded due damages as per his claim.

Respondent's Case

15. Respondent's response is dated March 7, 2018. He denies claimant performance was exemplary and avers he has been involved in several mishaps in the cause of his employment.
16. The respondent states a customer Beatrice Ngina Mutisya was attended by the claimant at their mall branch and the branch manager did not attend the customer.
17. The respondent states he assisted the client to open the account and he signed the call report and that the customer Beatrice Ngina had opened another account at their Chester house branch in the name of Agnes Nthenya Mwinzi.
18. The respondent says claimant claimed the customer was selling cereals but in fact was selling second hand clothes. It is the respondents' contention that he reported the matter to anti-fraud investigations and claimant was arrested and charges were preferred against him.
19. He also says claimant was given an option to take along an employer of his choice.
20. He says after the disciplinary hearing they concluded the claimant should be summarily dismissed. He prays that the suit be dismissed with costs.

Claimant's Evidence

21. The claimant gave his evidence in court on July 5, 2022. He insists as in the memorandum of claim that the account of B Beatrice Ngina was opened by his branch manager Catherine Murigi.



22. He says the claimant was assisted by the branch manager but he interviewed her. He says he is a trust worthy person who had worked for the bank for hiring and had not disciplinary issues during that period.
23. He also says during the disciplinary hearing he had no time to prepare and he did not sign the minutes and neither did the panellists. He insists the call report in court is not the one he signed.

Respondent's Evidence

24. The respondent witness Eunice Salation says he is HR manager of Spire bank. She says the claimant was assisting the branch manager to increase the performance index. She said the code on page 54 of her documents had the branch manager's code. She says this is a normal practice to assist a customer who has not met her targets.
25. She also says the branch manager was meant to countercheck the information of the client and she is not sure if she confirmed.
26. The claimant's submissions dated March 2, 2023 were considered by the court as well as the respondents submissions dated March 15, 2023.

Determination

27. The main issue for determination in this case is whether the respondent had a valid reason to terminate the claimant's employment. The reason given is that the claimant introduced a customer one Beatrice Ngina a/c number 0xxxx7 which information turned to be fraudulent and as a result the bank made operational losses.
28. The evidence by the claimant which has been verified by Eunice Salation the respondent witness is that the said customer was interviewed by the claimant but account was handled by Catherine Murigi the branch manager. Apparently Catherine had asked for the client because her targets were low. The claimant complied and as a result handed the client to Catherine who inserted her code being no S 101. The respondent witness confirmed that the claimant handed over the claimant to the branch manager. The branch manager was mandated to confirm all the documents were in order before opening the account.
29. In view of that the branch manager was equally negligent for failure to do her supervisory role properly and is equally culpable if the client one Beatrice Ngina was a fake client. The claimant insists the account was opened by the manager.
30. The claimant however in his report dated April 1, 2017 (the date is not very clear) the claimant said the customer was a business lady and recommended her to open the account. He denies that he signed that report and insists on a call report which he says the respondent should produce to show the client was introduced by the branch manager.
31. The evidence adduced does not allude to the respondent's availing that call report that would confirm that the claimant was the only one who dealt with that particular client Beatrice Ngina.
32. Actually it would appear from evidence from both the claimant and the respondent that the customer was handled by the claimant and his branch manager. It is therefore not fair to pin all negligence on the claimant. To quote the respondent witness during her evidence in court she admitted the branch manager also had a profound duty to confirm the information given and the documents before finalising the opening of the account.



33. The court therefore finds the respondent failed to prove he had a solid reason to terminate the claimant as provided in section 43(1) of the [Employment Act](#) and section 45(1) of the same act. Section 43(1) of the act provides As follows:

In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45 of the [Employment Act](#).

34. Section 45(1) also provides as follows:

No employer shall terminate the employment of an employee unfairly which means without a valid reason.

35. Finally in contravention of section 41(1) of the [Employment Act](#) which provides as hereunder:

“An employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”

The court finds the respondent flouted the mandatory rules of procedural provisions.

36. The claimant was given one day notice on September 20, 2017 inviting him to a disciplinary hearing on September 21, 2017. The claimant admits that even though he had no sufficient time to prepare his defence he nevertheless attended the meeting. He did not have a witness. He attended another hearing on September 26, 2017.
37. He also says that the minutes produced were not a true reflection of what he said and he neither signed them nor did the panellists sign the minutes produced in court. On September 27, 2017 he received a letter of summary dismissal.
38. The evidence seems quite mixed up and it is not clear cut that the claimant was the one who introduced that client Beatrice Ngina or if it was his branch manager. Furthermore the disciplinary procedure followed before terminating the claimant in contravention of the mandatory provisions of section 41 of the [Employment Act](#). In the case of [Postal Corporation of Kenya v Andrew K. Tanui](#) [2019] eKLR the court held:

“an explanation of the grounds of termination in a language understood by the employee, the reason for which the employer is considering termination, entitlement of an employee the presence of another employee of his choice when the explanation on the grounds of termination is made, hearing and considering any representation made by the employee and the person chosen by the employee. In my view the element can be collapsed into three board components, the information, hearing and consideration components.”

39. It is now trite law of employment that for termination to pass the fairness test it ought to be shown that there was not only substantive justification for the termination but also procedural fairness as held in [Walter Ogal Onuro v Teachers Service Commission](#) Case No 955 of 2011.
40. In this case and flowing from the evidence adduced the court is convinced that the respondent has failed to prove its case for fair termination of the claimant and so the court proceeds to enter judgment in favour of the claimant and to give the following reliefs.



1. One month salary *in lieu of* notice 71,500/-. Reinstatement is overtaken by events as termination happened on September 27, 2017 which is over three... years ago.
2. Accrued leave is not proved and so is declined.
3. Damages equivalent to 3 months x 71,500/- = Kshs 214,500/-
4. Costs to the claimant.
5. Interest at court rates from date of judgment till full payment and total award being Kshs 286,000/-

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18TH DAY OF AUGUST, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

