



**Njoroge v Equity Bank Limited (Cause 1965 of 2017)
[2023] KEELRC 2410 (KLR) (3 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2410 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1965 OF 2017
DKN MARETE, J
OCTOBER 3, 2023**

BETWEEN

SAMUEL MWANGI NJOROGE CLAIMANT

AND

EQUITY BANK LIMITED RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated 21st September, 2017. The issue in dispute is been cited as;

Wrongful and unfair dismissal from and termination of employment and refusal to pay terminal dues and other monies owed to the claimants
2. The Respondent in a Respondent's Reply to Memorandum of Claim dated 13th December, 2017 denies the claim and prays that this be dismissed with costs.
3. The claimant's case is that he entered into a contract of employment with the Respondents vide a letter of appointment dated 7th June, 2013 for the position of Bancassurance Officer and this commenced on 24th June, 2013. He was dismissed on 9th March, 2015.
4. The claimants further case is that his salary was Ksh.45,000.00 per month and his boss increased to Ksh.50,000.00 in March,2014.
5. His other case issue is that he was entitled to 21 days leave which he never per took or got paid for and occasionally worked for overtime on sundays and public holidays manning the ATM system and was not paid for this either.
6. The claimant'spenalty note case is that on 9th March, 2015, he was wrongfully and unlawfully terminated from employment having a stint of one (1) year and 9 months of dedicated service.



7. He prays thus;

Monthly Salary: June 2013 – March 2014 = Kshs 54,000/=

April 2014 – March 2015 – Kshs 50,000/=

12 months salaries for wrongful dismissal: Ksh.50,000*12 = Kshs.600,000/=

Unpaid leave days: Kshs. 50,000*1yr = Kshs 50,000/=

Overtime:

i. Sundays: 5days*200/100*Ksh.3750 = Kshs. 37,500/=

ii. Public holidays: 4 days*200/100 * Ksh.3750 = Ksh. 30,000/=

Unpaid house allowance: June 2013-March 2014 : 45,000*1/3*9 = Ksh.135,000/=

April 2014-March2015: 50,000*1/3*12 = Ksh.200,000/=

NSSF deductions: June 2013-March 2014: Kshs.2,250*9 = Kshs. 20,250/=

NHIF deductions: June 2013-March 2014: Kshs.1,100*9 = Kshs.9,900/=

April 2014-March 2015: Kshs.1,200*12 = Kshs.14,400/=

Maternity: N/A

Paternity: N/A

Salary in lieu of notice: Ksh.50,000*1 = Ksh.50,000/=

Unpaid Salary: Kshs.50,000/=

TOTAL = Ksh.1,227,290.

8. The Respondent admits to descriptive aspects of the claimants at paragraph 1, 2, 3 and 4 of the claimants but denies liability in toto.

9. It is his case that the misconduct on the part of that claimant that occasioned his termination of service and the same was all lawful.

10. The Respondent's further case comes out as follows;

- a. The Respondent hired the Claimant on 24th June, 2013 up to 9th March, 2015 when he was lawfully terminated.
- b. The Claimant in his appointment letter alongside Sections 43, 44 (3) & 4 (c) & (g) and 45 of the Employment Act 2007 knew the fate that was to befall all who were involved in gross misconduct.
- c. That despite the above, the Claimant colluded with a former Ex-Employee of the Respondent in defrauding the Respondent and the matter upon going to full investigations saw to the Claimant being implicated.
- d. The Claimant, knowing the same to be the position peacefully cleared with the Respondent and left employment on 9th March, 2015 without invoking provided mechanisms for unlawful dismissal and was paid all his dues. The suit filed 22nd November, 2017 is an afterthought.



- e. According to Section 47 (5) of the *Employment Act*, 2007 places the Burden of Proof for such a case upon the Employee – the Claimant – who in turn has failed to prove the allegation he raises.
 - f. The Claimant went to his Annual leave without fail and was paid leave allowances as per the *Employment Act* and the Appointment Letter. The Pay slip of 31st January, 2015 forming part of the claimant’s documents proves this. He never worked over-time as claims.
 - g. The Claimant was given a statutory termination notice on 9th March, 2015 was paid a month’s salary in lieu of the 30 required days. The pay slip following the termination if provided by him will attest to this.
 - h. The termination was fair as per Section 43, 44, 45, 46 and 47 of the *Employment Act* 2007 as well as the provisions of the Appointment Letter.
 - i. The Respondent remitted the NHIF and NSSF dues for the Complainant, included the house allowance in the wages as per Section 31 (2) (a) of the *Employment Act* 2007, never failed to pay monthly salary to the Claimant and acted as per the provisions of the *Employment Act* being a reputable Organization and the Claimant has not legitimate claim against the Respondent.
11. This matter variously came to court until the 14th March, 2023 when it was heard inter partes.
12. The issues for determination therefore are;
- 1. Whether the termination of employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
 - 2. Whether the Claimant is entitled to the relief sought.
 - 3. Who bears the costs of this cause
13. The first issue of determination was whether termination of employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant in his written submissions dated 4th April, 2023 discounts lawful termination of employment. He seeks to rely on the provision of a section 41 of *Employment Act*, 2007 and avers that the disciplinary process administered on him was unprocedural.
14. He puts it’s as follows;
25. ...it was evident during hearing that there was no disciplinary process that the Claimant was subjected to so as to give him an opportunity to defend himself. The Respondent’s witness could not substantiate the allegations contained in paragraph 4 and 6 of his statement that, “...the plaintiff was invited for a meeting on the 3rd March 2015...” and that “...the disciplinary committee ruled that his actions amounted to gross misconduct...”
- Again,
27. The Respondent therefore failed to comply with the provisions of Section 41 of the *Employment Act* which makes it mandatory for every employer to afford an employee a fair hearing before dismissal. The Court of Appeal in *Geoffrey Gikonyo Mathu V Intex Construction Company Limited* (2017) eKLR explained the mandatory nature of section 41. It was held therein:

“ But even if the reasons advanced by the respondent had been valid, the dismissal herein would stand impugned for want of a hearing in line with Section 41 (2) of



the *Employment Act* set out hereinabove. We note that the appellant was merely asked to provide a written account of the events of the material date to his supervisor Munene, who in turn served him with a letter informing him of the decision to dismiss him summarily. Would the foregoing action amount to a hearing? We think not as the said approach ought to be in addition to and not in substitution to a hearing as envisaged in Section 41 of the *Employment Act*.”

15. He therefore posits a case of unlawful termination of employment as Respondent fails to furnish cogent reasons for such termination and also fails to adhere to the procedural requirement as stipulated by the law.
16. The Respondent submits a case of misconduct on part of the Claimant in breach of section 44(4) of the *Employment Act*, 2007. It is her case that the Claimant had a fiduciary relationship with his employer and owed her duty of confidentiality. She puts thus;
 10. ... the claimant’s had a fiduciary relationship during his employment with the respondent’s. Under clause 11.0 of the Claimant’s Letter of Appointment it read:
 - 11.0 confidential Matters

You will not, without the express written authority of the Chief Executive or a designated officer, disclose to anyone outside Equity Bank any matter that has not been made public, including any operational or policy manual or documents: reports: accounting records or other confidential matters pertaining to the Bank.
17. The Respondent seeks to rely on the authority of *Erick Karanja Gakonyo & Another V Samson Gathimba* [2011] eKLR, where the court held as follows;

Summary dismissal usually connotes dismissal of an employee without giving the notice to which the employee is entitled by virtue of the contract of employment. It is justified if the employee’s conduct is such that it prevents “further satisfactory continuance of the relationship” *Sinclaur Vs. Neighbour* [1967] 2Q.B.275... in the case of the relationship of employee and employer, suspicion lead to erosion of confidence and trust by the employer in the employee, and in the cause of suspicion of loss or theft of property of the employer, it may lead to summary dismissal without even notice.”
18. The Respondent further sought to rely on authority of *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* [2014] eKLR where the court expressed itself on the place of suspension in the following terms;

“Suspension is a right due to an employer who on reasonable grounds suspects an employee to have been involved in misconduct, poor performance or physical incapacity and wishes to remove such an employee from the work place to enable further investigation without subjecting the employee to further commission of more acts of misconduct, underperformance or the conditions leading to incapacity.”
19. A scrutiny of the respective cases of the parties finds in favour of the Respondent. Her case overwhelmed that of the Claimant. She ably demonstrate a case of gross misconduct on the part of the Claimant in the course of employment which led to summary dismissal.
20. The Respondent also demonstrate compliance with the legal procedure for summary dismissal and compliance with section 41 of the *Employment Act*, 2007.



21. The Claimant on the contrary merely pleads and foments a case of unlawful termination of employment which he does not support in evidence. His allegations of non compliance with the law are bare and unproven. He completely fails to comply with the burden of proof as enunciated under section 47(5) of the *Employment Act*, 2007. His case therefore fails. I therefore find a case lawful termination of employment and hold as such. And this answers the 1st issue for determination.
22. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. He is not. Having failed on a case for unlawful termination of employment, he becomes disentitled to the relief sought.
23. I am therefore inclined to dismiss the claim with orders that each party bears the cost of the same.

DELIVERED, DATED AND SIGNED THIS 3RD DAY OF OCTOBER 2023.

D. K. NJAGI MARETE

JUDGE

Appearances

Mr. Omega holding brief for Ndegwa instructed by Ndegwa & Ndegwa Advocates for the Claimant.

M/s Karimi instructed by Maina Rogoi & Co. Advocates for the Respondent.

