



**Katana v Equity Bank Limited (Cause 902 of 2018)
[2023] KEELRC 2858 (KLR) (10 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2858 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 902 OF 2018
B ONGAYA, J
NOVEMBER 10, 2023**

BETWEEN

SAM NYINGE KATANA CLAIMANT

AND

EQUITY BANK LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the Statement of claim dated 05.06.2018 through Omingo & Associates Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the claimant's termination was wrongful and his dismissal unfair.
 - b. A declaration that the claimant is entitled to payment of his terminal dues and compensatory damages as pleaded.
 - c. General damages for wrongful or unfair termination
 - d. An order that the respondent pays the claimant his dues totalling Kshs 4,030,000/= as calculated.
 - e. An order that the respondent does issue the claimant with a certificate of service
 - f. Interest on (a) above at the prevailing commercial bank rates from the due date until payment in full.
 - g. Costs of the suit.
 - h. Any other relief that this honourable court may deem just and fit to grant.
2. The claimant claimed for:
 - a. Severance pay $0.5 \times 65,000 \times 12 \times 10 = \text{Kshs.}3,900,000.00$.



- b. A month pay in lieu of notice Kshs.65,000.00.
 - c. Unpaid leave for April 2018 Kshs.65,000.00.
 - d. Total Kshs.4,030,000.00.
3. The Response to Memorandum of Claim dated 27.09.2018 was filed through Robson Harris & Company Advocates. The respondent prayed that the suit be dismissed with costs.
 4. The claimant's case was that he was employed by the respondent through their pre-university program as a card centre officer earning a salary of about Kshs.65,000/= effective January 2007.
 5. The claimant pleaded that he diligently discharged his duties until 20.04.2018 when the respondent without lawful cause or explanation and in breach of laid down legal processes proceeded to unfairly terminate his services on account of having been adversely implicated in an ongoing fraud investigation with regard to fraud on pre-paid cards.
 6. The claimant maintains that the termination of employment letter dated 20.04.2018 did not indicate how the claimant participated or was involved in the alleged fraud and neither did it advance any specific reason for terminating the claimant's employment save for that he was "adversely implicated" in the ongoing fraud investigation with regard to fraud on prepaid cards.
 7. That he was prior to termination coerced into undertaking a polygraph test against his will. The claimant states that prior to termination he was only called upon to give evidence of how he was not implicated without being told what he was being accused of and he was therefore unable to give evidence of what he did not know about.
 8. The claimant states that he lodged an internal appeal, however, the same was dismissed without consideration.
 9. It was the respondent's case that the claimant was not only negligent, but also acted in bad faith while undertaking his duty and refused, failed or neglected to comply with the respondent's policy, control guidelines and or procedures thereby exposing the bank to monumental losses and risks.
 10. The respondent stated that the claimant's duties and responsibilities as a card center officer required him to at all material times to act in good faith, exercise due diligence and astute judgment.
 11. That the claimant's duties and responsibilities were to be undertaken in strict compliance with the respondent's key policies, control guidelines and procedures including fraud detection and prevention policies & procedures manual.
 12. The respondent states that the claimant's actions were in blatant breach of the respondent's policies, control guidelines and procedures and constituted gross misconduct, consequently, the respondent summoned the claimant to show cause why disciplinary action should not be taken against him for his negligent actions and further undertook all the disciplinary procedures in accordance with the respondent's disciplinary procedures and the *employment act* 2007.
 13. Subsequently, the respondent found the claimant liable for gross misconduct and summarily dismissed him vide its letter dated 20.04.2018 in which the respondent informed the claimant of the reasons for his dismissal and of his terminal benefits payable upon clearance with the bank.
 14. The respondent maintains that it duly conducted investigations in the matter and found the claimant liable and was in the circumstances justified to summarily dismiss the claimant for gross misconduct.



15. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
16. There is no dispute that the parties were in a contract of employment and the claimant was dismissed by the letter dated 20.04.2018 for being implicated in a fraud.
17. The respondent's witness (RW) was Wycliffe Ontumbi, the respondent's human resource manager. He testified to the following effect:
 - a. The claimant was involved in fraud together with other employees. He did not know the names of those other employees.
 - b. Some cash was stolen but he was not going to disclose the amount and no forensic audit of the fraud was undertaken.
 - c. While the claimant was at a disciplinary meeting on 19.04.2018, no minutes of the proceedings were filed and the findings were never given to the claimant.
 - d. While theft and fraud were criminal offences, no report was made to the police. He did not know why the bank did not initiate criminal proceedings
 - e. The claimant had a unique user code and while logs were retrievable, none had been so retrieved or filed to show the claimant was implicated.
18. The Court has considered the testimony by RW and returns that the termination was unfair both in procedure and substance. There was no notice and hearing as per section 41 of the Employment Act. The reasons for termination cannot be said to have been valid as per section 43 of the Act or fair as per section 45 of the Act. RW failed to show that indeed the reasons existed as at termination. The submissions for the claimant are upheld in that regard.
19. On remedies, the Court finds that justification for severance pay has been justified because there was no redundancy as envisaged in section 40 of the Act. The Court has considered the factors in section 40 of the Act for award of compensation. The aggravating factor is that the respondent dismissed the claimant for no established reason and in total denial of due process to the claimant. There is no established mitigating factor. It is not said that the claimant had a dirty record of service. The Court has considered the period the claimant has served and is awarded 6 months compensation plus a month salary in lieu of notice making 7 x Kshs.65,000.00 = Kshs.455,000.00 less PAYE. Unpaid leave appears unjustified as prayed as the basis of the amount claimed for only the month of April is not explained at all. The respondent will pay costs of the suit.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a. Payment of Kshs.455,000.00 less PAYE by 15.12.2023 failing interest to be payable thereon from the date of this judgment till full payment.
- b. The certificate of service per section 51 of the Act be delivered by 15.12.2023.
- c. The respondent to pay costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 10TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

