



Ngetich v KCB Bank Kenya Limited (Employment and Labour Relations Cause 1148 of 2018) [2023] KEELRC 3274 (KLR) (7 December 2023) (Judgment)

Neutral citation: [2023] KEELRC 3274 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1148 OF 2018
BOM MANANI, J
DECEMBER 7, 2023**

BETWEEN

STEPHEN KIPYEGON NGETICH CLAIMANT

AND

KCB BANK KENYA LIMITED RESPONDENT

JUDGMENT

Background

1. The parties to this action had an employment relation until 22nd December 2017 when it was terminated. At the time, the Claimant was serving as the Respondent's manager, Service Quality and Compliance at the Respondent's Isebania branch.
2. In August 2017, the Respondent discovered that the branch had lost approximately Ksh. 17,206,246.00. According to the Respondent, the loss arose from fraudulent transactions on its Mpesa Super Agency Suspense Account. The loss spanned over the period between May 2017 and July 2017.
3. The Respondent blames the Claimant for the loss. According to the Respondent, it was part of the Claimant's role to ensure that there were sufficient checks in place to prevent such loss. The Respondent contends that the Claimant failed to implement these checks thus occasioning the loss.
4. The Claimant has disputed the Respondent's claim. According to him, he was not responsible for the events that led to the loss of the funds in question. The Claimant avers that he had delegated the function of overseeing Mpesa transactions to his assistant. Therefore, the assistant was to blame for the loss.
5. As a result, the Claimant contends that the Respondent's decision to terminate his contract of service was unlawful. And hence this suit for compensation.



Issues for Determination

6. After evaluating the pleadings and evidence on record, I consider the following as the issues that require determination in the cause:-
 - a. Whether the Claimant's contract of service was lawfully terminated.
 - b. Whether the parties are entitled to the reliefs that they seek through their respective pleadings.

Analysis

7. On the first issue, it is the Claimant's contention that his contract was unfairly terminated. According to him (the Claimant), he had delegated the management of the Mpesa docket to his assistant. The Claimant contends that he was not required to micro-manage the said assistant in executing the delegated function. He relied on the assistant to run the platform flawlessly.
8. The Claimant contended that the assistant was to undertake daily evaluation of Mpesa transactions to ensure that they were in order. He contended that the assistant was tasked to regularly evaluate the records on the transactions in order to detect any variances and flag them for action.
9. According to the Claimant, the assistant used to check the transactions and print out editable excel records on a daily basis. He (the Claimant) contended that the assistant did not, at any time, raise concerns regarding variances in the records.
10. The Claimant contended that he had not been trained on how to run the platform in question. Thus, he left the mandate of running it to his assistant who allegedly understood it better.
11. Despite the Claimant's contention that he was not trained on how to run the platform, he averred that he held regular meetings with his assistant and bank tellers to brief them on the bank's requirements regarding management of the platform. He contended that during such meetings, transactions on the platform would be evaluated to confirm that they were in order.
12. The Claimant further suggested that the platform had its central control point in Nairobi. Therefore, it was fairly difficult to detect variances in it.
13. The Claimant further contended that variances in transactions on the platform were not an unusual occurrence. It was his case that similar variances had been detected in other branches. Thus, he did not understand why he had been singled out for disciplinary action.
14. At some point, the Claimant suggested that managing the Mpesa platform was not part of his job description. The basis for this contention was that the job description that he signed did not specifically speak to the function of managing mobile money transactions.
15. On its part, the Respondent contended that management of the Mpesa docket fell within the Claimant's mandate. According to the Respondent, this duty was part of the wider cash control functions that fell within the Claimant's docket at the branch.
16. The Respondent asserted that the Claimant failed to monitor transactions on the platform in line with the bank's protocols. According to the Respondent, the Claimant was required to undertake daily reviews of the platform to ensure that there were no variance. He was required to print, review, sign and maintain records on the platform on a daily basis.



17. Further, the Respondent stated that the bank procedure required the data that was printed for review to be in non-editable form. Yet, the Claimant had allowed the printing of editable data, a matter that exposed the process to the risk of fraud.
18. The Respondent contended that even if the Claimant had delegated the role of overseeing transactions on the platform to his assistant, he retained the overall responsibility for its safety. Therefore, he was expected to undertake daily reviews of transactions on the platform to ensure that the bank was not exposed to the risk of loss.
19. An analysis of the evidence on record leads to the conclusion that the Claimant was quite ambivalent about the issues that led to his dismissal from employment. He kept blowing hot and cold over critical issues on the subject.
20. On the one hand, he asserted that managing the mobile money platform was not part of his job description. Therefore, he was not responsible for the loss that arose from it.
21. On the other hand, he stated that although he was responsible for managing the platform, he had delegated this function to his assistant due to the heavy workload at the branch. Therefore, the assistant was to have taken full charge of it. The Claimant contended that he was not expected to have micromanaged his assistant.
22. Second, the Claimant argued that he had not been trained on management of the platform. Because of this reason, he asserted that he did not regularly interact with the platform even though he had been assigned access rights to it. Therefore, it was his position that he could not be blamed for the loss that the Respondent suffered on account of misuse of the said platform.
23. Yet, at the same time, he stated that he kept members of staff apprised regarding strict compliance with the laid down regulations on the management of the platform. This latter assertion can only be understood to mean that the Claimant had knowledge regarding management of the platform implying that he had received training on its management.
24. The wavering evidence that the Claimant gave on critical aspects of the case paints a picture of an individual who was simply trying to evade responsibility for his failures. It is evident that one of the Claimant's core functions was to ensure appropriate financial controls at the branch in order to prevent unwarranted losses to the Respondent. It is therefore strange that he would suggest that he was not responsible for monitoring mobile money transactions merely because this function was not explicitly mentioned in his job description. Mobile money transactions are cash (money) transactions in the wider sense of the word. Therefore, they are part of the transactions which the Claimant was required to monitor in order to prevent losses.
25. The Claimant's suggestion that delegation of the mobile money docket to his assistant relieved him of responsibility over its management is also without merit. Despite delegating the duties in respect of the docket, he retained overall responsibility for its sound management.
26. Indeed, the Claimant confirmed the foregoing during his cross examination. Therefore, he cannot avoid responsibility for the losses that arose from mismanagement of the platform by his assistant.
27. In law, delegation of a function does not absolve the person that delegates the function of responsibility over its implementation. This position was aptly expressed in *Okoti & 3 others v Anne Waiguru, the Cabinet Secretary, Devolution and Planning & 5 others* (Petition 42 & 27 of 2014 (Consolidated)) [2021] KEELRC 2306 (KLR) (30 July 2021) (Judgment) when the court, quoting with approval the



decision in *Attorney General & 2 others v Independent Policing Oversight Authority & another* [2015] eKLR, observed as follows:-

“Delegation is the assignment of responsibility or authority to another person usually one’s subordinate, or another officer of a lower rank. It is instructive however that the person delegating must remain fully accountable for the outcome of the delegated work. One can delegate authority but not responsibility. If a person delegates both authority and responsibility, then this becomes abdication of duty or denudation of authority and it is not acceptable.”

28. Thus, despite delegating the function of overseeing the running of the Mpesa platform to his assistant, the Claimant remained responsible for its proper and sound management. Therefore, he cannot shake off blame for the poor management of the platform which occasioned the Respondent colossal losses.
29. Under section 44 (4) (c) of the *Employment Act*, negligent performance of duty by an employee constitutes misconduct for which the employer is entitled to terminate the employee’s contract of service. The Claimant’s failure to appropriately monitor activities by his assistant on the Respondent’s mobile money platform amounted to negligent conduct by him. As a result, I find that the Respondent had a valid reason to terminate the Claimant’s employment.
30. The Claimant’s argument that the impugned loss occurred whilst he was on leave is not correct. The evidence on record shows that the Claimant took a short break from his workplace in August 2017. On the other hand, the loss in question occurred between May and July 2017 when the Claimant was in office.
31. Similarly, the record demonstrates that the Claimant’s contract of employment was terminated in accordance with fair procedure. After the financial loss in question was detected, the Claimant was suspended from duty and issued with a notice to show cause. This was followed by a disciplinary hearing where he was allowed to appear with a representative of his choice.
32. The minutes of the disciplinary hearing show that the Claimant was given an opportunity to offer his defense in respect of the accusations that were levelled against him. The record also shows that the Claimant’s representative was heard. There is evidence and the Claimant confirmed that he signed the minutes of the disciplinary hearing thereby affirming their content. It is therefore incorrect for him to suggest that he was denied a fair hearing.

Determination

33. In the ultimate, I arrive at the conclusion that the Respondent had a valid reason to terminate the Claimant’s contract. Further, the contract was terminated in accordance with fair procedure.
34. As a result, I find that the instant claim has no merit.
35. Consequently, I dismiss it with cost to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 7TH DAY OF DECEMBER, 2023.

B. O. M. MANANI

JUDGE

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived



compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M Manani

