



**Njiru v Standard Chartered Bank Limited (Cause 679 of 2018)
[2023] KEELRC 3257 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3257 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 679 OF 2018
B ONGAYA, J
DECEMBER 7, 2023**

BETWEEN

FELISTA WAWIRA NJIRU CLAIMANT

AND

STANDARD CHARTERED BANK LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the amended statement of claim dated 28.11.2019 through Lucy Njiru & Co Advocates. The claimant prayed for judgment against the respondent for:
 - a. The Honourable Court do find and declare that the dismissal was unfair/unlawful therefore invalid.
 - b. Re-instatement of the claimant in the same position without loss of employment benefits or seniority in service and payment of all the salaries, allowance and other employment benefits.
 - c. The claimant be compensated the total salary till full retirement age.
 - d. Delist her name from the Credit Reference Bureau unconditionally
In the alternative and without prejudice to prayer (i) and (ii), (ii.a) above
1-month salary in lieu of notice Kshs 165,375.00
Number of days worked 6 days
worked in 2016 and brought forward to
2017 Kshs 38,160.00
March 2017 salary Kshs 165,375.00
10 days worked in April 2017 Kshs 63,600.00



Overtime January 2017
3 hours for 7 days between 20th January
2017 to 27th January, 2017 Kshs 19,080.00
Housing Allowance being Kshs 1,984,480.00
Severance pay Kshs 496,125.00
Damages for unlawful termination Kshs 2,282,172.00
Leave pro-rate Kshs 89,040.00
Increased loan repayment from January
2018 to September, 2020 Kshs 139,400.00
Bank to revise the loan back
to staff rate of Kshs 34,169/-
monthly from January, 2018

2. The Respondent's memorandum of defence was dated 11.03.2020 and filed through Federation of Kenya Employers. The respondent prayed that:
 - a. The court finds the claimant's termination lawful and fair and uphold the respondent's decision to terminate the claimant.
 - b. The court dismisses the claimant's suit with costs to the respondent.
3. The claimant's case was that she reported to work on 10.04.2017 and worked without much interruption. That at around 5:30pm as she was preparing to go home the branch manager Mr. Samuel Wambugu called her to his office and without discussion handed her a termination letter.
4. The claimant states that a few weeks prior to the aforesaid incident, the branch manager had written an email to Human Resource Manager asking him to organize for a disciplinary hearing with the claimant.
5. The claimant states that the branch manager had not sought clarifications from her as regards the matters raised in the said email prior to the said email.
6. The claimant was invited for the disciplinary meeting, scheduled for 22.02.2017 at Muthaiga Branch. At the meeting the Branch and Operations Manager were physically present while the human resource representative was put on conference call to follow on phone.
7. The grounds for the termination were related to two customer complaints. One by a Dr. Lian which occurred on 16.08.2016. The client had complained about his cash transfer payment that had been charged a different FX rate from what the claimant had negotiated with him at the branch. The claimant states that the payment department when doing the transfer had changed the rate as negotiated in the branch and did the transfer using a different rate without calling the client for approval as per process and procedure. The claimant took issue with the fact that no one in the payment department was ever called for a hearing to explain why they did not call the client yet, according to the claimant, it was their responsibility to inform clients when they change rates before they can effect a different rate in the transfers.
8. The second incident was as regards a complaint made on 04.08.2016 by a customer by the name Achieng Buttler. The matter was concerning an incoming Telegraphic Transfer to the client account



from an overseas bank. It is the Claimant's case that the client misunderstood the whole process of incoming and outgoing Telegraphic Transfer FX rates. The customer was upset, and had threatened to close her bank accounts and seek services from a different bank. The claimant states that she took time to call the customer and had a lengthy discussion and explained the entire process to her, and the customer eventually understood and was satisfied. As a result, the customer changed her mind as regards closing her accounts and the claimant managed to convince her to open an additional account that met her specific needs.

9. The claimant maintains that she turned a dissatisfied client to a satisfied client, and helped the respondent retain a valued client.
10. The termination letter stated that the claimant had a right to appeal within seven (7) days. The claimant appealed on 11.04.2017 to the Head of Human Resource. After a week of no feedback, the claimant wrote an email to the Head of Human resource requesting for an appointment, to which the claimant states, she has not received a response to date.
11. The termination letter did not indicate how the claimant was to handover, and as a result the claimant did not hand over and has with her the staff badge and medical card.
12. After two months of waiting, the claimant received an email from Sorayya Shareef, who stated that the case had been re-routed to her and that she would be calling her for a meeting to discuss.
13. After four months, on 01.08.2017, the claimant states she received a call from Sorayya inviting her for a meeting on 03.08.2017. Sorayya was in attendance at the meeting together with the Regional manager. After the meeting, the claimant was told she would receive feedback in two weeks, however, this was not to be.
14. Three months after the meeting, the claimant decided to call Sorayya, to request for a copy of the minutes. Sorayya informed her that the minutes were ready and promised to send them to her before end of the week. The claimant states that she has never received said communication to date.
15. On the part of the respondents it is stated that the claimant was its employee, employed on 19.07.2010 as a Regional sales Manager. The claimant rose through the ranks to become the Client Service Manager and was posted to Muthaiga Branch.
16. That the claimant underwent training of quoting rates and that she gained tremendous experience in dealing with forex. That it was her obligation as the respondent's representative in the forex rate agreements to quote rates that were applicable at the time of trading and rates that were favourable to the respondent as per the business needs and growth strategy.
17. The respondent states that sometime in February 2017, it was revealed that on 16.08.2016 the claimant had entered into an agreement with one Dr. Liam who intended to buy Euros from the respondent at a favourable rate. Instead of the claimant issuing a selling rate of Kshs 115/= for purchase of the euros by Dr. Liam, the claimant intentionally issued a buying rate of Kshs 111.50.
18. That the anomaly was detected by the respondent's dealers who applied the correct selling rate of Kshs 115/- which resulted in a debit from Dr Liam's account of an excess amount of Kshs 10,500/= which in turn led to a complaint from the aggrieved Dr. Liam.
19. That since this was an agreement between Dr. Liam and the claimant acting as the respondent's representative, the agreement was binding upon the respondent who had to reimburse the excess debited amount and thereby suffered unnecessary loss.



20. That on 04.08.2016 the claimant failed to revise a quote rate that she had issued to one Achieng Butler 2 days earlier at the buying rate of 25,500 Euros that Achieng Butler was selling to the respondent. The rate of Kshs 112.5 had been issued to Achieng Butler on 02.08.2016 when it was applicable but when the exchange happened 2 days later on 04.08.2016, the purchasing rate of Kshs 112.5 was no longer applicable but the claimant neither stopped the exchange nor applied the revised rate of Kshs 108/= applicable on 04.08.2016.
21. That the respondent's dealers realized this anomaly and applied the correct buying rate of Kshs 108/= much to the chagrin of an aggrieved Achieng Butler who insisted that the respondent buy her euros at the earlier rate of Kshs 112.5.
22. The respondent unsuccessfully explained to Achieng Butler why the lesser rate of Kshs 108/= had been used and the respondent stood to suffer yet another loss of approximately Kshs 134,775/= emanating from the claimant's omissions.
23. The respondent states that investigations were carried out which established that the claimant had been negligent in the performance of her work and had thereby breached clause 13 of her contract which required diligence when conducting her work to the respondent's best interest.
24. The claimant was invited to a disciplinary hearing vide a letter dated 14.02.2017 in which she was notified of the charges levelled against her, she was supplied with documents in support of the charges and was notified of the composition of the disciplinary panel and she was notified of her right to be accompanied by a fellow employee to the disciplinary hearing.
25. The respondent states that it conducted the disciplinary hearing and found the claimant's representations at the hearing to be wanting and given that the claimant was well trained in the performance of her job, the negligence was inexcusable and warranted termination of her employment and in this regard, she was issued with a termination letter dated 10.04.2017.
26. The respondent admits that the claimant appealed the termination decision, and the delay in determining the appeal is captured in the email correspondence attached to the claim. That the respondent convened appeal meetings which did not take off for one reason or another.
27. The respondent maintains that the claimant was well aware of the policy on reversion of staff loans from staff rates to commercial rates upon termination.
28. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
29. To answer the 1st issue, there is no dispute that the parties were in a contract of service.
30. To answer the 2nd issue, there is no dispute that the contract of service was terminated by the letter of termination dated 10.04.2017. The reasons for termination stated in the letter were as follows:
 - a. A priority client called Dr. Lian on 16.08.2016 the claimant issued the client with a Euro buying rate of 111.50 rather than a selling rate of 115. The claimant failed to confirm what currency the customer was selling resulting in an operational loss of Kshs 10,500.00 because the customer's account was debited with a higher amount.
 - b. Another priority client Achieng Butler on 04.08.2016 the claimant issued the client a Euro selling rate of 112.5 deal no NEMQD1H but the rate applied was 108. The claimant gave the deal number without citing the funds which confirmed the booking. Hence the client acted on the instructions only to incur a loss. The claimant incurred a near miss Kshs 134,775.00.



- c. The actions amounted to negligence of duty and the claimant was dismissed from duty with immediate effect. He was to be paid salary up to 10.04.2017; one-month salary in lieu of notice; and any leave days earned but not taken.
 - d. The claimant had a right of appeal.
31. The 3rd issue is whether the termination was unfair. On substantive justice or merits of the sudden termination, the respondent's witness (RW) testified that in Dr. Liam's case, the claimant had failed to confirm currency the client was selling and the bank made a loss. The claimant's account at disciplinary hearing was that the client was impatient and did not listen or want clarification. The Court finds that there is no reason to doubt the claimant's account and, in any event, at the disciplinary hearing or termination letter there was no mention of claimant's failure to confirm the currency as per RW's account. The client was impatient leading to the mix-up. That reason for termination is found not valid per section 43 of the [Employment Act](#) and was not a fair reason per section 45 of the Act as it was not about the claimant's compatibility, conduct or respondent's operational system. RW in confirming the client's impatience testified thus, "For Dr. Liam he relied on claimant's representation and refused to accept error or mistake." For the second reason for termination, the disciplinary hearing shows that the claimant explained to the customer the exchange rate that had been applied. The customer understood and the matter rested. The claimant told the panel she had sufficient capacity or training on quoting forex exchange. She stated that in the case of Dr. Liam it was an issue of communication and in the case of Butler her role was to advise the client and upon realizing a gap she took upon herself to correct. For the 2nd reason for termination, the Court considers that the claimant had not failed to perform her duty properly or she had not performed negligently. It is that in the process of performance the client misunderstood that the counter rate would apply and not a rate offered in a negotiation sometimes back. How then can it be returned that the claimant failed in her duties whereas she fully explained and the customer understood? The Court finds that though with bumpiness, the claimant had discharged her duty to serve Butler. That second reason is found not to have been valid or fair per sections 43 and 45 of the Act.
32. On procedural fairness, whereas the claimant was given a notice of allegations and heard per section 41 of the [Employment Act](#), it is not in dispute that the claimant was entitled to appeal per the contractual appeal procedure. The claimant appealed but for unexplained reason the respondent failed to determine the appeal. That was unfair and to that extent the respondent had failed to invoke a fair termination process.
33. The 4th issue is on remedies. The Court returns as follows:
 - a. The claimant confirmed receiving some money on her bank salary account of about a month. The Court returns that the one-month salary in lieu of termination notice has been paid as was promised in the termination letter. Similarly, 10-days worked in April 2017 and accrued leave are found paid for on a balance of probability.
 - b. The Court has considered factors in section 49 of the [Employment Act](#) on award of compensation. The Court has considered that the claimant did not have a clean record of service per warning letter on record. The claimant confirmed at disciplinary hearing that after the case of Butler, while she had successfully resolved it, she admitted a gap and apologized adding, she had taken upon herself to go for further training. Further, she informed the disciplinary panel that in Dr. Liam's case she would have involved the RM from the outset. The Court finds that in that consideration the claimant had contributed to her termination. The Court has considered the unfair termination and the failure by the respondent to decide the appeal per contractual provisions. The Court has also considered the length of service. The



court returns that an award of 5 months' gross salaries being 5 x 165, 375.00 =Kshs 826,875.00 less PAYE will meet ends of justice.

- c. As submitted for the respondent the credit reference bureau listed the claimant in view that he had failed to repay the outstanding loans and the respondent had no hand in the listing. The prayer will fail.
 - d. No submissions were made for the claimant on the prayer for reinstatement and the same is deemed abandoned as it was not available in view of the lapsed 3 years of limitation attached to the remedy under section 12 of the *Employment and Labour Relations Court Act*.
 - e. The contractual basis and evidence for overtime, refund for 34 months and housing allowance have not been shown and are declined. The respondent's submissions are upheld in that regard.
 - f. The claimant has substantially succeeded and the respondent will pay costs.
34. In conclusion judgment is hereby entered for the claimant against the respondent for:
- a. Payment of Kshs 826,875.00 less PAYE by 01.02.2024 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
 - b. The respondent to pay costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

