



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 240 OF 2014

JACKSON AUKO OPONDO.....CLAIMANT

v

TEACHERS SERVICE COMMISSION.....1st RESPONDENT

KENYA COMMERCIAL BANK LTD.....2nd RESPONDENT

JUDGMENT

1. Jackson Auko Opondo (the Claimant) sued the Teachers Service Commission (the Commission) and the Kenya Commercial Bank Ltd (the Bank) alleging breach of contract and fraud.

2. The Claimant sought:

(a) An order of permanent injunction restraining the 1st and 2nd Respondents, their agents, their employees, their servants, their proxies and/or any other person acting under their authority from making any deductions from the Claimant's salary ostensibly on account of the sum of Kshs 1,272,022/50 purportedly advanced to the Claimant as a loan.

(b) General damages on account of inconveniences and embarrassments.

(c) Costs of this suit.

(d) Any other relief that this Honourable Court may deem fit.

3. The Commission and the Bank filed their Responses on 27 October 2014 and the Cause was heard on 4 March 2021 and 30 November 2021.

4. The Claimant, a Deputy Director with the Commission and an employee of the Bank testified.

5. The Claimant filed his submissions on 5 January 2021, the Commission on 31 January 2022 and the Bank's submissions were not on record by this morning.

6. The Court has considered the pleadings, evidence and submissions and will adopt the Issues as raised by the parties in their submissions.

Whether there was fraud?

7. The Claimant asserted that the Respondents had without his knowledge deducted Kshs 6,422/70 monthly from his salary starting March 2014 towards payment of a loan of Kshs 1,272,022/50 which he stated he was not privy to.

8. The Claimant denied having applied for a loan or engaging into any contractual relationship with the Bank. The Claimant alleged fraud on the part of the Respondents.

9. The Commission however denied fraud and contended that the Claimant was advanced a development loan of Kshs 700,000/- by the Co-Operative Bank of Kenya Ltd in November 2012.

10. According to the Commission, the Bank bought off the loan from the Co-Operative Bank of Kenya Ltd sometime in December 2013, as a result of which the Co-Operative Bank of Kenya Ltd wrote to the Claimant on 3 December 2013 advising him that the loan had been fully

settled (with Co-Operative Bank of Kenya Ltd). At the same time, the Co-operative Bank of Kenya Ltd issued to it a stop deduction order.

11. The Commission further asserted that in January 2014, it received instructions from the Bank to effect deductions of Kshs 18,113/- from the Claimant's salary as payments towards the refinancing of the loan and that in March 2014, the bank issued further instructions asking it to effect monthly deductions of Kshs 6,422/70 from the salary.

12. The Commission's witness further testified that when the Claimant complained about the deductions, the same were stopped around August 2014.

13. The Commission attributed the deductions to systems weakness on the part of the bank which led to the feeding of fictitious data.

14. The Commission also shifted blame from itself by asserting that at the material time, 3rd parties such as the bank had credentials to enable them feed loan particulars into its (Commission's) system.

15. The Bank on its part pleaded that the Claimant had given it a standing order to deduct monies from his salary towards repayment of a loan he had been advanced.

16. The Bank produced a loan application form allegedly signed by the Claimant on 7 November 2013, seeking a loan of Kshs 800,000/-.

17. The Bank contended that the Claimant had authorised the Commission to make monthly deductions from the Claimant's salary, and that the deductions commenced in February 2014 and that around April 2014, it realised the deductions were wrong and the Commission was asked to stop the deductions.

18. The Court has looked at the loan application form allegedly signed by the Claimant. It indicates that the Claimant applied for the loan on 7 November 2013.

19. However, the form also shows that the Claimant's Head Teacher witnessed the Claimant's signature on 4 November 2013.

20. The form also indicates that an employee of the Commission purportedly confirmed on 11 November 2013, that the Claimant was its employee, and the Bank approved the application on 13 November 2013.

21. The Respondents and more so the Bank did not explain how the Claimant's signature was witnessed on 4 November 2013 before he had signed the loan application form.

22. The Bank did not disclose how it physically established or verified the identity of the person who made and presented the loan application form.

23. It is in the public domain that banks require persons transacting with it to produce some form of identity and that banks do take or make copies of such identity documents.

24. A copy of the identity document of the person who presented the loan application form was not produced in Court.

25. The bank did not call as a witness the staff who verified and or approved the loan application. The loan application purportedly signed by the Claimant had obvious inconsistencies which could have easily been flagged by the Respondents.

26. The Court is satisfied that the Claimant has established that the Respondents unlawfully made deductions from his salary without his authority or knowledge, fraudulently and in breach of contract.

Appropriate remedies

27. The monies which were unlawfully deducted from the Claimant were fully refunded. However, during the 6-months the deductions were made, he must have suffered financially since he did not earn his full pay.

28. The Court finds he suffered loss which merits an award of general damages.

Conclusion and Orders

29. From the foregoing, judgment is entered for the Claimant against the Respondents jointly and severally.

30. The Claimant is awarded general damages of Kshs 100,000/-.

31. The award to attract interest at court rates from date of judgment.

32. The Claimant to have costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 9TH DAY OF MARCH 2022.

Radido Stephen

Judge

Appearances

For Claimant Nyauke & Co. Advocates

For 1st Respondent Faith Kaluai, Legal Officer

For 2nd Respondent Mr Ragot instructed by Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura