



REUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 621 OF 2014

BETWEEN

JOB OMAMBIA MARIARIA.....CLAIMANT

VERSUS

CONSOLIDATED BANK OF KENYA LIMITED.....RESPONDENT

RULING

1. Judgment was delivered on 17th June 2021.
2. It was declared that termination procedure was flawed, and termination unfair to that extent.
3. It was the finding of the Court that the Respondent had valid reason, to justify termination.
4. The Court did not grant compensation to the Claimant.
5. There was no order on the costs.
6. The Claimant filed an Application for Review, dated 17th June 2021. He submits that the Court, having concluded that procedure was flawed, ought to have awarded compensation. He submits that the Court held he would ordinarily be entitled to minimal compensation.
7. The Application is opposed through the Affidavit of Respondent's Human Resource Manager, Rose Mukoba, sworn on 22nd July 2021. She states that there is no ground to warrant review of Judgment.
8. Parties agreed to have the Application considered and determined on the strength of their written submissions, which they confirmed to have filed and exchanged, at the last appearance in Court on 16th December 2021.

The Court Finds: -

9. The Claimant has not met the requirements of Rule 33 of this Court's Procedural Rules, 2016, to warrant review of Judgment on record.
10. An award of compensation for unfair termination, is a discretionary remedy. Not every finding of procedural flaws in termination, results in a monetary award.

11. The Court considered that the Claimant's Cause was largely a failure, and that he could have been rightly, ordered to meet the costs of the Claim.

12. There was no useful purpose served by granting him a minimal amount of compensation, only for such amount to be lost in costs awarded to the Respondent.

13. The Court exercised its discretion in declining to issue orders of monetary compensation and costs. Parties' interests were carefully weighed. Minor procedural flaws in termination, while amounting to unfair termination, do not always warrant monetary compensation. A declaratory order suffices, in particular where the Employee has been saved from meeting his Employer's costs of the Claim.

14. The Claimant ought to be contented with the declaratory order he was granted, and with the order on the costs.

IT IS ORDERED: -

a. The Application filed by the Claimant dated 17th June 2021 is rejected.

b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT MOMBASA, THIS 4TH DAY OF MARCH 2022.

JAMES RIKA

JUDGE