



**Toroitich v Equity Bank (K) Ltd (Cause 177 of 2017)
[2022] KEELRC 18 (KLR) (9 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 18 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 177 OF 2017
NJ ABUODHA, J
MAY 9, 2022**

BETWEEN

LEAH JEMUTAI TOROITICH CLAIMANT

AND

EQUITY BANK (K) LTD DEFENDANT

JUDGMENT

1. By a memorandum of claim filed on July 20, 2017 the claimant pleaded that she was employed by the respondent as a relationship officer-operations department on July 15, 2013 on permanent and pensionable terms. She worked until 15th September, 2014 when according to her, the respondent unfairly and unprocedurally terminated her service. According to the claimant, the respondent's act was unprocedural and unfair since it caused her to be locked in police remand for 51 days an act which injured her ego and reputation. Further that her services were terminated over allegations of stealing which allegations were not proved before a Court of Law and she was acquitted of the same under section 210 of the *Criminal Procedure Code*.
2. The claimant further averred that upon termination, the respondent never paid her terminal dues which she claimed from the respondent. The claimant further alleged that the termination contravened the provisions of the *Employment Act*.
3. The respondent on the other hand filed a memorandum of response on October 16, 2017 in which it pleaded among others that the claimant was summarily dismissed on 5th September, 2014 and that the dismissal was lawful and rightfully done as the claimant was arrested committing a cognizable offence to the substantial detriment and loss to the respondent.
4. According to the respondent, the claimant was guilty of among others fraudulent debiting of customers' accounts without their consent, and incurring cash shortages which she never declared to the respondent. As a result of these, the respondent lost money. According to the respondent the



- claimant admitted these fraudulent omissions and even wrote letters of admission of the defrauded sums and proposed mode of repayment.
5. Regarding the procedure for the dismissal, the respondent stated that the claimant was dismissed after the respondent procedurally undertook relevant disciplinary proceedings against her misconduct and found her culpable. The respondent further stated that upon termination the claimant was paid all her terminal dues which she acknowledged.
 6. Regarding the claimant's prosecution, the respondent stated it lodged a complaint with the police concerning the claimant's fraudulent omissions and the police carried out relevant investigations and decided to apprehend and charge the claimant. The criminal case in question was however not heard on merit since the case was closed because the prosecution never availed witnesses hence the claimant was acquitted under section 210 of the *criminal Procedure Code*. According to the respondent, the acquittal never meant the claimant was not guilty and that the criminal case was never heard and determined in the claimant's favour.
 7. In her oral evidence the claimant stated that she recorded a statement on 14th July, 2017 which she adopted as her evidence in chief. According to her, she was employed on 15th July, 2017 and posted to Eldoret Branch where she reported and was received by Branch Manager, introduced to staff and shown her work station where she was to work as a teller. She was introduced to procedures to follow on day to day basis.
 8. It was her evidence that she used to report to work at 7.00am, clean her workstation and the request for her cash for the day. She would fill the cash request form depending on the amount needed to retain her float of Ksh. 1.million. at the close of the business each cashier would balance his or her account. That is to say they balance the cash box and the amount in the system. The physical cash was counted and compared with the system to see if they balance, if the balances was in excess of the limit (Ksh. 1.million) she filed the forms and the amount was repatriated by the cash officer. In the event of a shortage the supervisor would verify and declare the same to the cash officer. The shortfall became her responsibility payable upfront or through deduction from salary. Payment could also be through loan or external sources. She denied experiencing any shortfall during the period she worked. She further denied siphoning money from clients' accounts.
 9. The claimant further stated that she was arrested and charged as a consequence of the allegations in Eldoret Criminal case Number 4264/2014 where she was accused of theft by servant. She was at the conclusion of the case acquitted under section 210 of the CPC. It was her evidence that she was issued with several show cause letters and responded twice to them.
 10. Upon her arrest, she was kept in custody for 52 days and when released she was called to head office and forced to sign a document binding her to refund the money allegedly lost.
 11. In cross- examination she conceded that a disciplinary meeting was held and during which she was chased out twice. She could not recall signing any minutes and denied admitting that she never followed bank procedures. She further denied saying the customer gave her the slip because he was in hurry. The slip was for Ksh.1,000,050 and such amount had to be approved by the operations manager or cash officer. For her, she could only transact Ksh.100,000/= it was her evidence that the operations manager could not approve any amount without verifying the signature. The client in question Richard Sigei followed the correct procedure in the transaction before it was actioned. She further stated that Mr. Sigei never complained and that it was the Bank that complained. She denied serving Sigei and Tum at the same time and stated that she only served one customer at a time unless they were sharing same account.



12. Concerning the duress in signing the letter of admission, she stated she complained to her advocate about it during the criminal case. She further stated that she had nothing to show she bought shares in the Bank and that she had never demanded a refund of the shares bought.
13. Concerning her terminal dues, she stated that she was only paid her salary for the month of may and that she never collected any money from the Bank.
14. The respondent's first witness Ms. Judith Cheronu Meto stated that she worked for the respondent as Operation Manager. She recorded her witness statement on 28th April, 2021 which she sought to adopt as her evidence in chief. As operations Manager, her work was to ensure Branch Operations were conducted according to rules and procedures and that cash in the vaults balance.
15. On 23rd June, 2014 a customer called Richard Sigei wanted to make a withdrawal and was not satisfied with the balance. He therefore asked for his statement and when was given, denied some of the transactions. The actual transactions were retrieved and he denied them. The claimant who was the cashier/teller in charge was asked and she confirmed it was not Sigei who did the transactions. The claimant's till was thus verified and it was found it had deficit of Ksh.270,217. Previous transactions were checked and it was found the claimant used to debit customers' accounts to cover for the deficits she was having in her till. Several deposits to accounts was also found. The matter was reported to security who in turn handed the issue to the police.
16. It was her evidence that the claimant was never forced to admit anything.
17. In cross-examination she stated that they found several receipts in the dust bin used by the claimant and that on 21st June, 2014 the claimant's till was in order. According to her the claimant used to balance her till by debiting customers' accounts. She would debit in the evening and credit in the morning. She further stated that Sigei stated that his signature had been forged and that the claimant admitted she was the one who forged the signatures.
18. She admitted she was aware of the criminal case and that the claimant was acquitted for lack of merit.
19. Concerning terminal dues, she stated that the claimant was paid her terminal dues.
20. The respondents second witness Ms. Winfred Kyalo stated that she recorded her statement on 21st April, 2021 which she adopted as her evidence in chief. She stated that her position at the respondent was Senior Relationship Officer – Human Resource.
21. It was her evidence that she had the claimant's file which contained her appointment letter and exit documents. She also had the security report and all the documents listed by the respondent. She produced them as exhibits in the case.
22. According to her, once they received a complaint against a staff the same is forwarded to security team. In this particular case the matter was raised by the Branch to the Security who forwarded the same to the police. The Branch then proceeded with internal investigations and compiled a report. The recommendation was that the complaint was genuine and that disciplinary action be taken against the claimant. The claimant was issued with a show cause letter and taken through disciplinary hearing. She was eventually terminated, her dues calculated and paid into her account. The claimant's shares were further refunded. The funds were used to offset the claimant's loans.
23. In cross-examinations she stated that the claimant cleared and was paid her final dues. The summary dismissal letter asked the claimant to clear and be paid her dues.



24. Contrary to allegations of procedural unfairness, it would seem from the documents filed by the respondent and not disputed by the claimant and further from the claimant's own evidence, that the respondent issued the claimant with a show cause letter dated 25th August, 2014 to which she responded on 15th September, 2014. The respondent thereafter on 10th September, 2014 invited the claimant to a disciplinary hearing slated for 15th September, 2014 which she attended, was heard in her defence and at the conclusion thereof the respondent took the decision to summarily dismiss the claimant.
25. The summary dismissal was on the same grounds as were in the show cause letter which led to respondent to conclude that the Bank had lost confidence in the claimant as an employee.
26. From the foregoing it would seem that the claimant was taken through a fair procedure in accordance with the *Employment Act* before she was summarily dismissed.
27. What seems to be contested by the claimant was that the reasons for her dismissal were either invalid and or insufficient. The claimant seems to anchor this contention on the facts that concurrent with the disciplinary proceedings the respondent also made a complaint to the police as a result of which prosecution for the offence of stealing was commenced against her. The prosecution however was terminated by acquittal under section 210 of the *Criminal Procedure Code*.
28. The claimant was accused of among others, with unauthorized debits and credits to customers accounts to make for shortages in her till. The claimant by her letter dated 15th September, 2014 offered to settle the amount of Ksh.820,917/= which was found missing as a result of the unauthorized activities she was found to have been involved in. The claimant claimed that she made the offer under duress however it is noteworthy that by 15th September 2014 the claimant had already been charged in Court and was represented by Counsel. Nothing in the circumstances prevented her from refusing to concede to the respondent's demands if at all they were exerted on her.
29. Further whereas the claimant alleged that Mr. Sigei never complained about her, from the criminal trial proceedings which were attached with the claimant's bundle of documents, it would appear to be contrary. At page 11-12 of the proceedings, Mr. Sigei is the one who triggered the complaint against the claimant when on 4th June, 2014 after he had been advised by one Chepkonga advocate that a sum of Ksh.1,500,000/= had been paid in his account on account of sale of land, he went to the bank to withdraw some money but prior to that enquired about his account balance which surprised him as he did not expect the same. This prompted him to see the Operations Manager who investigated the account and established that there were withdrawals and deposits in his account which were not authorized by him. When the claimant who was handling the account at time was called, she acknowledged that the signatures on the suspicious slips were different from Mr. Sigei's.
30. The criminal case was concluded on technically after the prosecution failed to procure the attendance of its witnesses and after the Court had granted several adjournments. It was not an acquittal on merit. Nevertheless, an acquittal based on merit or not is not a bar to an employer exercising its managerial discretion, from taking an employee through a disciplinary hearing and eventually terminating the services of such employee on the same facts. The standard of proof in a criminal case is beyond reasonable doubt while in civil cases it is on a balance of probabilities. The standard is even lower in management hearings. Reasonable suspicion may be enough to dismiss an employee depending on the nature of the establishment, such employee works in. In this particular case, the claimant was employed in a Bank handling customers' money. The claimant was accused of handling money contrary to procedures laid down by the respondent.



31. This was a very serious accusation against an employee working in such a sensitive establishment. From the record and as set out above, the Court is persuaded that the accusations against the claimant and the prima facie evidence against her eroded her credibility as a Bank employee hence the respondent was justified in terminating her service.
32. The claimant though pleaded never led any evidence in supporting her allegation on malicious prosecution. In any event the respondent herein made a complaint to the police and the decision to prosecute lay entirely with the police. The claimant never led any evidence to show the respondent actively participated and were overbearing on the police to prosecute her. This claim is therefore not proved.
33. In conclusion the Court finds the entire claim without merit and the same is hereby dismissed with costs.
34. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF MAY, 2022

ABUODHA NELSON JORUM

JUDGE ELRC

