



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 373 OF 2016

BETWEEN

JOSELINE MARANGU.....CLAIMANT

VERSUS

- 1. CHASE BANK [KENYA] LIMITED [in receivership]**
- 2. SBM BANK [KENYA] LIMITED**
- 3. KENYA DEPOSIT INSURANCE CORPORATION... RESPONDENTS**

Rika J

Court Assistant: Emmanuel Kiprono

Oruenjo Kibet & Khalid Advocates, for the Claimant

Ounda Muriuki & Company Advocates for the 1st & 3rd Respondents

JUDGMENT

1. This Claim was filed on 10th March 2016, and was heard and hearing closed, on 4th December 2020. It was last mentioned in Court on 4th February 2021, when Parties confirmed filing and service of their Submissions.

2. The Claimant was initially employed by the collapsed Chase Bank [Kenya] Limited. The 1st, 2nd and 3rd Respondents were joined to the proceedings, through an Application for amendment of the Claim, filed on 17th September 2019. The 2nd Respondent was discharged consensually from the proceedings, on the date of the hearing. The Claim is therefore against the 1st and 3rd Respondent.

3. The Claimant states she was employed by Chase Bank [Kenya] Limited as a Relationship Officer- Chase Woman, between 10th August 2013 to 2nd December 2015. Her last salary was Kshs. 105,000 monthly. Her job description included oversight of a team of Relationship Officers.

4. She was invited through e-mail to a meeting by Human Resource Officer, Paul Kuria, on 2nd December 2015. She had applied for an internal vacancy, and thought the meeting was in relation to her application. She found Senior Officer Talent and Organizer Karanja, and Regional Manager Waruinge, at the meeting. They were the same Officers who ordinarily, conducted internal interviews. They told her blatantly, that she had been dismissed from employment, because of her poor health.

5. She pleaded with the Respondent Bank to reconsider this position, explaining that the longest she had been away continuously on sick off, was for a period of 21 days. She was admitted in hospital. She had relieved a colleague who was on maternity leave for 4 months. She did not have warnings. Her performance was never faulted. Her last performance was rated at a high of 80%.

6. Her contract was terminated on redundancy. She was not aware of any restructuring process. Other Employees had their contracts terminated on illegal redundancy. The Claimant states that her ambition in applying for fresh opening within the bank, might have contributed to the decision to terminate her contract. Her position was immediately filled. She was informed about redundancy the same date

she received the letter of termination, 2nd December 2015. She was denied bonus for the year 2015, equivalent of 1- month salary at Kshs. 105,000.

7. She prays for Judgment against the Respondents for: -

- a. Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 1,260,000.
- b. 1-month salary in lieu of notice at Kshs. 105,000.
- c. Salary for 2 days worked in December 2015 at Kshs. 7,000.
- d. Severance pay at Kshs. 154,500.
- e. 30 days of pending leave at Kshs. 105,000.
- f. Benefit at Kshs. 118,150.
- g. Bonus at Kshs. 105,000.

Total...Kshs. 1,749,650

Less paid....Kshs. 340,000.

Total due...Kshs. 1,514,650.

h. Costs and Interest.

8. The original Respondent filed its Statement of Response on 7th February 2017. There is no amendment to this Statement on record. The same Advocates for the 1st and 3rd Respondents appeared for the original Respondent. It is presumed that the position stated in response, by the original Respondent, is the position of the remaining Respondents.

9. It is conceded that the Claimant was employed by the original Respondent. It is denied that her contract was terminated on account of illness. Her contract was terminated on account of redundancy. The Respondent was undergoing difficult financial period, compelling it to consolidate operations and align its structures. The Claimant's role was done away with, to achieve organizational efficiency. Termination was not on account of illness, poor performance or indiscipline; the Claimant's role was considered surplus.

10. The Claimant was given reasons for termination. She was notified that her position had become redundant. She was informed she would be paid, and was paid, her redundancy dues which included: 1-month salary in lieu of notice; 30 days of pending annual leave; days worked up to 2nd December 2015; and severance pay, all computed at Kshs. 340,000. Bonus was paid at the discretion of the Employer. In view of the financial difficulty, payment of bonus for the specific period was not viable. Her salary was Kshs. 100,000 monthly and no more. The Respondents pray the Court to dismiss the Claim with costs.

11. The Claimant gave evidence on 4th December 2020, as did John Masila, an Officer of the 3rd Respondent.

12. The Claimant restated that she was employed by Chase Bank [Kenya] Limited on 10th June 2013 to 2nd December 2015. She applied for an internal position [Bank Manager] with the Bank. She went for interview on 2nd December 2015, and was surprised to receive termination letter, instead of being interviewed. The Bank told her it had been lenient with her, because she had been persistently sick. The letter referred to redundancy. She was treated like a thief, she told the Court. There was no notice. She was paid 1-month salary in lieu of notice. She received Kshs. 339,000 on termination. She had received bonus for the previous year.

13. Cross-examined, the Claimant told the Court that she was not sure if commencement date was 10th June 2013 or 10th August 2013. Termination was on account of her ill-health. The Respondent did not tell her so. She had applied for the position of Branch Manager. She did not exhibit her job application before the Court. The letter of termination states, termination was on account of redundancy. The Bank alleged it was having financial difficulties. Other Employees lost their jobs around the same time. She was not the only one affected. The Bank is presently under receivership. It was placed under receivership around April 2016. She was paid notice. She received token, telephone allowance and severance. The contract did not provide for token. She suffered mental anguish. She brought business to the bank. Redirected, the Claimant told the Court she met Management Officials before termination. They discussed her poor health. She was shocked to receive the letter of termination. Her e-mail account was disabled.

14. John Masila told the Court that the 3rd Respondent is a State Corporation mandated to undertake deposit insurance. It's a receiver of the 1st Respondent, appointed by the Central Bank of Kenya. Masila confirmed that the Claimant was an Employee of Chase Bank. Her contract was terminated through the letter dated 2nd December 2015. Positions at the Bank were rendered redundant. She received terminal benefits totalling Kshs. 339,066. She was paid a token of appreciation which was not a benefit, conferred under contract. Chase Bank was placed under receivership in 2016. It experienced difficult financial period.

15. On cross-examination, Masila told the Court he is an Employee of the 3rd Respondent. The 1st Respondent does not have Employees. He did not know about discussions held between the Claimant and Management Officers, at the time Claimant's contract was terminated. Termination was on account of redundancy. He could not confirm if the process was in accordance with Section 40 of the Employment Act. There was no notice of redundancy. The Claimant worked for 2 years and some months. Severance was Kshs. 103,562- approximately 1-month salary. There was no document showing the Claimant exhausted her leave days. There was no document on sick leave. Receivership was involuntary. Redirected, the Witness stated that the Bank was struggling financially.

16. The issues are: whether termination was based on valid ground; whether it was carried out fairly; and whether the Claimant merits the remedies sought. The relevant provisions of the law are Sections 40, 43, and 45 of the Employment Act.

The Court Finds: -

17. The Claimant was employed by the defunct Chase Bank [Kenya] Limited. Her position was Relationship Officer-Chase Woman. The commencement date is indicated in the contract as 10th August 2013, not 10th June 2013. She worked up to 2nd December 2015- a period of 2 years and about 4 months. Her monthly salary, shown in her pay slip of November 2015, was Kshs. 105,000, comprising basic of Kshs. 103,000 and telephone allowance of Kshs. 2,000.

18. Her letter of termination is dated 2nd December 2015. She was advised that her position had been declared redundant. The Bank experienced a difficult financial period, compelling it to restructure, to attain organizational efficiency. She was paid salary for 2 days worked in December 2015; 30 days of pending leave; 1-month salary in lieu of notice; and severance.

19. The Claimant and nearly everyone concerned, cannot doubt that Chase Bank [Kenya] Limited experienced financial difficulties around the time of termination of the Claimant's contract- 2015. By 2016, a receiver was appointed by the Central Bank of Kenya, to oversee the affairs of Chase Bank. Central Bank does not intervene unless a Bank has given a red alert. It is common evidence that the Bank could not manage its own business. It was placed under receivership by the Regulator, Central Bank of Kenya. It before receivership, had terminated the contracts of several Employees, including that of the Claimant, on account of redundancy. The Claimant concedes that she was not the only Employee, whose contract was terminated on the same ground given to her by the Bank-redundancy.

20. There is no evidence to show that redundancy was a disguised reason for termination. The Claimant states that the actual reason was her persistent illness. She also alluded to victimization on account of her application for the position of Branch Manager. There is no evidence that these were the reasons, for the decision to terminate her contract. She could not be Branch Manager of a fallen bank. There were real financial difficulties, which lead to employment positions becoming redundant, and eventually, to the collapse of the Employer. The Court is satisfied that there was a genuine redundancy situation, leading to termination of the Claimant's contract. Redundancy was not a colourable exercise.

21. Was it based on fair procedure? The Bank issued the letter of termination to the Claimant, on the very day it informed her, about redundancy, 2nd December 2015. There was no notice about the intended redundancy in terms of Section 40 [1] [b] of the Employment Act, issued to the Claimant personally in writing, and issued to the Labour Officer.

22. Notice, which the Bank paid 1- month salary in lieu of, was under Section 40 [1][f].

23. There was no consultation between the Bank, the Claimant and the Labour Office. The Respondent Bank simply communicated a decision to declare redundancy. It did not make an attempt to justify selection of the Claimant, on the basis of seniority in time, skill, ability and reliability. The Claimant was called on 2nd December 2015. She expected the meeting was about her job application. She did not have any information about redundancy. She was told abruptly that the Respondent Bank had declared her position redundant, and handed a letter of termination. She testified without much challenge from the Respondents, that another Employee was immediately assigned her role.

24. She was advised that her benefits would be paid at a future date.

25. The Court has, in previous redundancy Claims held the view that redundancy payments must be made on the date termination becomes effective. Section 40 states that an Employer shall not terminate a contract of service on account of redundancy unless the Employer complies with the conditions set under Section 40. These include payment of redundancy dues. Termination is not effective until the benefits have been paid. An Employer cannot give an undertaking to pay notice, at a future date. Termination becomes effective when notice has been paid, and received by the Employee or Employer or when the notice period has lapsed.

26. There were defects in the procedure adopted by the Respondent Bank, which may be summarized as follows: there was no notice of intended redundancy; redundancy benefits, including notice were promissory; and there was no consultation of any form. The Claimant was confronted with termination decision already made by the Respondent Bank, and slammed with a letter communicating that decision, on the same date. Nothing prepared her for redundancy.

27. The Court is satisfied that termination was based on valid redundancy reason, but was executed contrary to fair procedure. The Claimant had worked for 2 years, 4 months. She was paid other statutory benefits after termination. Her employment record was clean. Her performance was impressive, having scored 80% in her last appraisal. Her career was looking up. She desired to be a Branch Manager. She had taken active steps to ascend to this position. Unfortunately, her contract was terminated on account of redundancy, and the Bank placed under receivership, shortly thereafter. **She is granted 2 ½ months' gross salary in compensation for unfair termination at Kshs. 262,500.**

28. Bonus was not shown to have been an invariable benefit under any policy, law or contract. The Claimant had received bonus for the previous year. It was at the discretion of the Respondent, based on good financial performance. It is illogical to expect bonus from a Bank which was on its deathbed, in the year 2015. The prayer is rejected.

29. No order on the costs and interest.

IN SUM IT IS ORDERED: -

a. Termination was based on valid ground, but flawed on procedure.

b. The Respondents shall pay to the Claimant compensation for unfair termination equivalent of 2.5 months' salary at Kshs. 262,500.

c. No order on the costs and interest.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH, 2021

JAMES RIKA

JUDGE