



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT BUNGOMA

CAUSE NO. 41 OF 2017

[Formerly Kisumu E&LRC NO. 20 of 2016]

EVANS OTIENO OPONDO.....CLAIMANT

VERSUS

CHAIRMAN BUMALA FINANCIAL SERVICES ASSOCIATION.....1ST RESPONDENT

THE SECRETARY BUMALA FINANCIAL SERVICES ASSOCIATION.....2ND RESPONDENT

THE TREASURER BUMALA FINANCIAL SERVICES ASSOCIATION.....3RD RESPONDENT

BOARD OF DIRECTORS BUMALA FINANCIAL SERVICES ASSOCIATION...4TH RESPONDENT

JUDGMENT

1. The suit was filed on 4th February 2016 against the officials of the respondent as the 1st, 2nd and 3rd respondents and the Board of Directors as the 4th respondent.

2. The claimant was employed by Bumala Financial Services Association a registered financial institution on 1st June 2014 on a two year contract terminable upon the employer giving one month notice to the claimant. The claimant worked continuously until 31st July 2015, when he was summarily dismissed from employment. The claimant had served for a period of one year and one month at the time and was due to serve eleven (11) months to the end of the fixed terms contract which was due to end on 1st June 2016.

3. The claimant states that the summary dismissal was unlawful and unfair and prays for:

(a) Payment of the remaining term of the contract in the sum of Kshs. 168,000 since he earned a monthly salary of Kshs. 14,000.

(b) Payment in lieu of notice.

(c) Costs and interest.

4. The claimant failed to prosecute the claim and the suit by the claimant was on 28th March 2019 dismissed for want of prosecution upon application by Mr. Fwaya, Advocate for the respondent.

5. The respondent proceeded to prosecute the counter claim filed by the respondents in which the respondents claim Kshs. 125,059, being the balance due and owing from the respondents of a sum of money advanced by the respondents to the claimant in the sum of Kshs. 140,000.

6. RW1 Didicus Oyula testified that he was he Chairman of the 4th respondent. That the claimant was an employee of the respondent in the position of loans officer. That the claimant's employment was terminated on 31st July 2015. That the respondent had given the claimant a loan upon application by the claimant in the sum of Kshs. 140,000. That at the time of termination of employment, the claimant still owed the respondent a balance of Kshs. 125,059. That the claimant had not re-paid the loan to date. RW1 was cross examined by Mr. Wamalwa Advocate for the claimant. RW1 stated that the loan was given for purchase of a motorbike. RW1 stated that the respondent still held the logbook of the motorbike which will be given to him upon full repayment of the loan balance. That the loan was guaranteed by the colleagues of the claimant who had not repaid the loan. RW1 stated that the guarantors still worked for the respondent. RW1 stated that they

did not move to recover the loan from the guarantors. RW1 stated that they sent staff to the claimant's home to recover the motor bike. RW1 stated that the guarantors were bound by the loan agreement to repay the loan upon default by the claimant.

7. RW1 stated that the claimant was paid final dues upon dismissal and this was offset against the loan.

8. The court finds that the testimony by RW1 is not controverted and has proved on a balance of probabilities that the claimant owes the 4th respondent a sum of Kshs. 125,059 being the balance of a loan given to the claimant by the respondent to purchase a motorbike.

9. Judgment is entered in favour of the 4th respondent as against the claimant in the sum of Kshs. 125,059. The 4th respondent to surrender the logbook of the motorbike to the claimant upon full recovery of the loan balance.

10. The amount is payable with interest set in the loan agreement until payment in full. The claimant to pay the costs of the suit.

11. For the avoidance of doubt, the claimant's case was dismissed wholly for want of prosecution.

Judgment Dated, Signed and delivered this 29th day of January, 2020

Mathews N. Nduma

Judge

BUNGOMA

Appearances

Mr. Ashioya for Claimant.

Mr. Twaya for Respondents.

Chrispo – Court clerk.