



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 868 OF 2014

JULIE KARIUKI.....CLAIMANT

v

DYER & BLAIR INVESTMENT BANK.....RESPONDENT

JUDGMENT

1. Julie Kariuki (Claimant) was offered employment as Head of Research through a letter dated 6 September 2012 by Dyer & Blair Investment Bank (Respondent).

2. On 31 March 2014, the Respondent wrote to the Claimant to notify her of summary dismissal. The reason given was that you were unable to give sufficient reason as to why you did not honour the appointment booked by the CEO and, To give sufficient reasons why you do not attend investor briefings.

Your actions above amount to gross misconduct.

3. Aggrieved, the Claimant moved the Court on 27 May 2014 and she stated the Issue in Dispute as Unfair termination of employment of Julie Kariuki.

4. The Respondent filed *Statement of Response and Counterclaim* on 9 March 2015.

5. On 22 October 2015, the Claimant filed an *Amended Statement of Claim* to introduce a head of claim for sexual harassment at the workplace.

6. The Cause was initially heard *ex-parte*, but the proceedings were set aside and hearing commenced afresh on 19 September 2019 and 3 December 2019.

7. The Claimant and the Respondent's Finance Director testified.

8. The Claimant did not file submissions as agreed (had earlier filed submissions before fresh hearing) while the Respondent filed its submissions on 26 February 2020.

9. The Court has considered the pleadings, evidence and the submissions on record.

Unfair termination of employment

Procedural fairness

10. The Claimant was summarily dismissed on 31 March 2014.

11. Prior to the dismissal, the Respondent's Chief Executive Officer had sent an email to the Claimant on 28 March 2014, asking her to respond to allegations of not honouring an appointment with Kenya Power & Lighting Co Ltd, and also not attending investor briefings.

12. The Claimant responded, but the Respondent's Chief Executive Officer informed her through an email of 31 March 2014 that he had found the explanations unsatisfactory, and that she would receive communications from the Human Resources department.

13. The Court is satisfied that the Respondent was in substantial compliance with the statutory procedural fairness requirements as envisaged

under section 41 of the Employment Act, 2007 by informing the Claimant of the allegations to confront and requesting her to make a response.

Substantive fairness

14. Pursuant to the dictates of sections 43 and 45 of the Employment Act, 2007, the Respondent had the burden of proving that the Claimant did not honour an appointment booked with Kenya Power & Lighting Co representative, and further that she did not attend investor briefings.

15. The Respondent had on 19 September 2019, when the hearing commenced indicated that it would call 2 witnesses but it ended up calling only 1 witness whose testimony did not relate to the question of unfair termination of employment.

16. The Respondent, therefore, did not discharge the burden placed on it to prove the reasons for the summary dismissal of the Claimant and that the reasons were valid and fair.

17. For whatever it is worth, the Court has looked at the emails filed in Court by both parties.

18. The Claimant had in her response to the allegation of not honouring an appointment with Kenya Power explained that attempts had been made to meet with representatives of Kenya Power, but there was no response to the requests by herself and another employee called Cynthia.

19. The Claimant had also indicated that after the failed attempts she involved the Chief Executive Officer and was waiting for his guidance.

20. On the allegation of not attending investor briefings, the Claimant had explained that she had not received invitations from Africa Practice.

21. To the Court, the explanations, without interrogation, appear plausible.

Compensation and pay in lieu of notice

22. The Claimant served the Respondent for about 2 years, and in consideration of the length of service, the Court is of the view that the equivalent of 2 months' gross salary would be fair (gross salary was Kshs 200,000/-).

23. In light of the finding that the summary dismissal was unfair, the Court will award the Claimant 1-month pay in lieu of notice.

Sexual harassment

24. Apart from advancing a claim for unfair termination of employment, the Claimant introduced a head of claim for sexual harassment by a named colleague but who was not made a party to the litigation.

25. The Claimant set out the particulars of sexual harassment which she testified happened over a period of time. The particulars included emails, phone calls and verbal comments.

26. The Claimant asserted that she made reports of the harassment to the Human Resources Manager but no action was taken.

27. The colleague who allegedly harassed the Claimant testified and he denied that he made any sexual advances/harassment at the Claimant. He also denied being aware of any complaints made to the Human Resources Manager.

28. The Court has looked at the screenshots/extracts of emails exchanged between the Claimant and the colleague. It is true that they are suggestive of more than a professional office relationship/camaraderie.

29. However, the tone of the emails shows mutuality of feelings from both parties though hesitant. Nowhere in the emails does the Claimant put across to the colleague that the advances and expressions of feelings were unwanted.

30. The Claimant asserted that she reported to the Human Resources Manager. Unlike the extracts of emails, she did not file in Court any evidence of a formal complaint made to the Human Resource Manager or any other senior manager.

31. The Claimant testified that she shared/(confided) some of the alleged sexual harassment episodes with a female colleague. The colleague was not called to corroborate the reports. The failure to call her was not explained.

32. The above, coupled with the fact that the sexual harassment allegations were only introduced through the *Amended Statement of Claim* makes it possible as posited by the Respondent that the allegations were an afterthought.

33. In the view of the Court, the Claimant did not prove the allegations of sexual harassment to the requisite standard.

Counterclaim

34. The Respondent counterclaimed against the Claimant for a sign-on bonus which was refundable if she left before the end of 3 years.

35. No evidence was led in support of the Counterclaim, and it is dismissed.

Conclusion and Orders

36. The Court finds and holds that the Respondent failed to prove that summary dismissal of the Claimant was for valid and fair reasons.

37. The Claimant is awarded

(a) Compensation Kshs 400,000/-

(b) Pay in lieu of notice Kshs 200,000/-

TOTAL Kshs 600,000/-

38. For clarity, the other claims were not proved and are dismissed.

39. The Claimant did not file/serve submissions within agreed timelines. She has partially succeeded. She is denied costs.

Delivered, dated and signed in Nairobi on this 28th day of February 2020.

Radido Stephen

Judge

Appearances

For Claimant Mr. Chege instructed by Miller & Co. Advocates

For Respondent Mr. Mbaluto instructed by Oraro & Co. Advocates

Court Assistants Lindsey/Judy Maina