



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1392 OF 2017

SIMON WAMBUA NTHIWA.....CLAIMANT

VERSUS

JUBILEE INSURANCE COMPANY OF KENYA LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant alleged that she was employed by the respondent on 30th January 1995 where she served in various positions and later to the position of check-off coordinator. His monthly salary at the time of termination was Kshs
2. On 25th May, 2017 the respondent unlawfully terminated the claimant's service on allegations that the claimant had altered premium figures received from customers. The claimant further alleged that the disciplinary process leading to his termination was strenuous and malicious. It was devoid of the attendant legal procedure as provided in the Employment Act and respondent's human resource policy manual. The claimant further contended that the initial allegations of fraud which formed the basis of his suspension from employment had no means with reasons spelt out by the respondent in the termination letter dated 25th May, 2017.
3. According to the claimant, the respondent failed to appreciate the responsibility of submitting and collection of premiums was not carried out by the claimant alone and that the respondent failed to appreciate his response to the show cause letter and refused to furnish the claimant with evidence.
4. The respondent on its part pleaded that the claimant did not serve the respondent with diligence and dedication as alleged. On the contrary the claimant ultimately engaged in fraud and gross misconduct in his role as the Life Premium Collection Assistant which conducts prejudice the respondent's interests and ultimately led to the loss of the premium and harm to the respondent. The respondent thus devised that the recommendation of the claimant's employment was unlawful and/or unfair.
5. The respondent further pleaded that sometimes in January 2017 it undertook investigation into activities of the Life Department following suspicion of fraudulent dealings in respect of certain schemes in which premiums were misallocated or altered. The claimant was one of the employees in the department and his termination was malicious but was conducted in accordance with employment act and the respondent's Human Resource Policy and Procedure Manual. The respondent further stated that the investigations into the activities of the life department which was responsible for the processing of the premiums allocation was indicated in the suspension letter and solely formed the basis of the claimant's termination.
6. According to the respondent it was noted that the claimant was responsible for collecting the hard copy of member schedules and premiums supplied by the employer/customer which schedule indicated the employees and their premium contributions. The claimant was thereafter required to verify that members schedule equated to the contributions by members. The claimant was further responsible for forwarding members schedules to Life Premium Allocation Assistant who would place the information in the ISF system. Hence the loading of this information in the ISF system was dependent on the information supplied by the claimant. The claimant was unable to produce hard copies of the member schedules he submitted to Life Premium Allocation Assistant. The result was that members were either not employees or not part of the schemes but benefited from the various insurance policies as well as renewal of lapse policies without payment of premiums.
7. The respondent denied it did not comply with provisions of Employment Act and its Human Resource Manual. The claimant was sent on compulsory leave on 13th January to allow for investigations. The respondent issued a notice to show cause on 15th March, 2017 sufficiently informing the claimant of the allegations and revelations from concluded investigations and inviting the claimant to disciplinary hearing with a witness. The claimant responded to the said letter on 17th March, 2017 and attended disciplinary hearing on 20th March, 2017.
8. Hey were given a hearing before a committee and he gave his views abut never got a chance to see the outcome of the investigations. According to him three were implicated but only two of them were terminated. It was his evidence that posting of premiums was not his responsibility. According to him collection was on soft and heard copy and that the postings were in pdf format and could not be altered. He stated that he never had a chance to write any response to the allegations.

9. In cross-examination he stated that his job entailed collection and scheduling of premiums. He denied knowledge of anything going wrong with his work. He heard about the fraud in his department and further stated that he was not the only one going out to meet clients.
10. It was further his evidence that they were suspended on 12th January 2017 and given a show cause letter after 3 months. Concerning schedules he stated that some were in excel and word format which could be changed.
11. The respondent's witness Ms Sarah Njeriri informed the court that she worked for the respondent as Human Resource Business Partner. She adopted her statement recorded on 8th August 2018 as her evidence in chief.
12. It was her evidence that the claimant's role was to collect premiums and schedules. The schedules would state the policy holders and premiums paid. She further stated that there were irregularities in the claimant's department with the amounts showing in the account and what was recovered from the clients were not tallying. The claimant was suspended for 2 months to allow for investigations. He was thereafter issued with a show cause letter to which he responded and later called for a disciplinary hearing. He was dismissed thereafter. His dues were computed but he never collected them.
13. In cross-examination she stated that she was not there when the claimant was terminated. She further stated that she could not confirm if the claimant benefited from the fraud.
14. The respondent's second witness Mr Andrew Lomosi Bundambashe stated that he worked for the respondent as Forensic Fraud Investigator. In January 2017 while on proactive investigations the respondent stumbled on a client statement where the client was receiving premiums from different corporate clients on a monthly basis. They decided to go deeper and discovered other clients of similar nature.
15. The tried to understand how that happened. Thefound was reviewed and a discrepancy was found in the allocation of collected premiums where schedules were manipulated before being posted. For instance there was a client who was not a member of TSC, she was an individual client. The TSC schedule was pulled out and the clients name was not there. They found some other 28 clients who benefited from misallocation totaling to about Kshs 9m.
16. The effect was that the individual client from the concerned Corporations missed on the allocation. It was found that the claimant played a significant role on the misallocations. According to him the claimant's role was beyond mere collection of premiums and schedules. He was required to verify premiums and schedules collected were for the respondent's client. He interviewed the claimant severally but he could not provide hard copies of schedules. The matter was consequently reported to the police.
17. In cross-examination he stated that he did not have the investigation report in court. According to him the data to be keyed in was provided by the claimant. It was his responsibility to verify that the premium being posted was the one collected.
18. The claimant alleged that he was unlawfully terminated from employment by the respondent. The burden of proof that unlawful or unfair termination took place therefore rested with him. The reason he considered his termination unfair was because according to him he never altered the premium figures received from customers and further that the process of the disciplinary hearing was strenuous and malicious. The claimant further alleged that his dismissal letter did not give reasons for the termination.
19. The respondent in defence and or justification for the termination stated among others that the claimant was responsible for collection of hard copy schedules and Premium Allocation Assistant who would place the information in the ISF system. Hence the loading of the information in the ISF system was dependent on information supplied by the claimant. According to the respondent when the fraud was detected in the department the claimant worked, he was unable to produce the hard copies of the member's schedules which he submitted to Life Premium Allocation Assistant. The result was that the members alleged were neither employees of the client nor part of the scheme yet benefitted from various insurance policies as well as renewal of lapse policies without payment of premiums.
20. During the disciplinary hearing, the claimant was asked to explain the procedure for receiving schedules which he did and further stated that he printed the schedules, counterchecked to confirm that monies tally with the schedule and if there were any changes in policy like new members, he would point that out and then handed out the hard copy schedule with remarks to the person allocating.
21. The showcause letter dated 15th March 2017 informed the claimant that investigations revealed that member schedules collected from various schemes were not tallying with the date in the ISF system. This, the claimant was informed, amounted to gross misconduct as per the respondent's Code of Conduct and Employment Act.
22. In response to this accusations the claimant in his letter dated 17th March, 2017 stated among others that the schedules he submitted for premium postings always tallied with premium paid. Concerning schedules not tallying with the amount in the ISF system he denied knowledge of such cases. According to him he role ended after bringing in the premiums and submitting the schedules for allocation. This response, the court noted did not rhyme with the claimant's statement before the disciplinary committee when he was asked to explain the procedure for receiving schedules and stated that he printed schedules and counterchecked them to confirm that the monies tallied with the schedules and where there were any changes in policy such as new members, he would point out and hand over the schedule with remarks to the person allocating.
23. The claimant was asked to produce the hard copies of the schedules concerned but could not do so despite saying that he retained a folder of the schedule submitted for premium allocation. The claimant was terminated from employment for the above reasons which the respondent considered against the claimant's conduct and code of ethics.
24. A reason for dismissal and or termination of employment must be reasons, facts or circumstances which existed at the time of dismissal or termination and which the employer reasonably believed warranted a dismissal or termination from employment.

25. The respondent is in insurance business hence the collection and use of premiums for the purpose and benefit of those from whom they were collected when the risk insured occurs, is at the core of the respondent's business. Anything that interferes, distorts or causes loss of such premiums obviously is a matter of serious concern and any person or employee found responsible cannot be said to be unfairly or wrongly treated if the respondent took remedial steps including dismissal where such a person is an employee of the respondent.

26. The allegations against the claimant could have been easily cleared if he produced the original schedules concerned to enable the respondent see if indeed he verified the same to see if they tallied with the premiums collected. Failure on his part to do so raised reasonable suspicion that he either did not perform his duties as required or was guilty of suppressing information which was advanced to him.

27. In conclusion, the court finds and holds that the termination of employment was for valid reasons and the procedure followed in doing so was fair.

28. The claim will therefore be dismissed with costs however the respondent will pay the claimant his terminal benefits as stated in his termination letter dated 25th May, 2017 if not paid already.

29. It is ordered.

Dated at Nairobi this 14th day of May, 2020

Abuodha Jorum Nelson

Judge

Delivered this 14th day of May, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge