



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE 451 OF 2017

PATRICK KAMUNYA WAMBUI.....CLAIMANT

VERSUS

WANANCHI SACCO SOCIETY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant sued to recover for his alleged wrongful dismissal by the Respondent. He was employed on 6th February 2000 and rose from his initial position as a messenger to assistant marketing manager as at the time of dismissal on 2nd June 2017. He averred that he was working as a loan officer of the Respondent at Gakindu branch at the material time bringing rise to the dismissal. Regarding the issue of misconduct highlighted in the letters of 6th and 14th September 2016 which detailed the allegations made against him while at Gakindu branch, he stated that he recalled the farmer who took the forms and would obtain the required approvals before submitting the forms to the Claimant to process the loan which was approved by the line manager. He averred that the irregularities the Respondent highlighted occurred in 2013/2014 and if at all there was credibility to those allegations, the Respondent would have taken disciplinary measures against the Claimant immediately these irregularities are noted as an audit is conducted quarterly. He replied to the Respondent's letters and gave proposals on how the defaulted loans could be recovered but his proposal was not considered. He sought the salary he would have earned for 16 years which was the balance of his term to retirement at 60 years. He also sought costs of the suit, and lost salary of Kshs. 13,871,664/-.

2. The Respondent filed a defence and counterclaim in which it averred that the Claimant's salary at the time of the Claimant's exit was Kshs. 68,248.25. The counterclaim was for the difference between the terminal dues for the Claimant and the sums due to the Respondent on account of loan dues. The Respondent averred that the Claimant was not entitled to any of the relief sought and prayed for the dismissal of the Claimant's case and entry of judgment in its favour.

3. The Claimant and the Respondent's witnesses Watson Maina Njogu and Simon Mwangi Maina testified. The Claimant testified that he was suspended on 23rd February 2017 on allegations that he had issued coffee loans irregularly and failure to recover the sums. He said that he sought the report prepared by the Respondent regarding the irregularities but none was availed. He testified that he was dismissed without following the proper procedure. He stated that the Respondent took the risk to issue loans whereas there was a decline in coffee production, spike in coffee hawking, costly farm inputs all contributing to the decline and non-performing loans. He was cross examined and admitted owing the Respondent some money for a loan he had taken. He agreed that part of his role as a loans officer was to ensure that the loan appraisals were done effectively. He was to ensure loan recovery and that he recommended the granting of the grant of the loans in dispute. He testified that when he faced the board he expected to be given a warning but not to be bombarded with questions.

4. The Respondent's witnesses testified that there was basis for the dismissal as the Respondent established that the loans given to some of the customers when the Claimant was the loans officer at the Respondent's Gakindu branch were given without adherence to the laid down loans procedures of the Respondent.

5. The parties filed submissions and in his submissions, the claimant submitted that he was dismissed without a resolution of the board and that he was not given a fair hearing prior to dismissal. He submitted that there was no proof of illegality against him for the loan disbursements. He submitted that the letter to the Respondent regarding the loan did not undertake to pay Kshs. 266,790.70 by December 2017. He submitted that there was uncertainty as to the sum he owed the Respondent. He sought the grant of his prayers and the defence and counterclaim be dismissed with costs.

6. The Respondent submitted that the issues for determination were

i. whether the termination of the Claimant's employ was wrongful

ii. whether the Claimant owes the Respondent the sum of Kshs.266,790.70

iii. whether the reliefs sought by the Claimant are capable of being granted

iv. what are the appropriate orders in the circumstances

The Respondent submitted that wrongful termination action, also known as wrongful discharge is defined in **Black's Law Dictionary** as *a lawsuit brought by an ex-employee against the former employer, alleging that the termination of employment violated a contract or was illegal.*

The Respondent submitted that the Claimant was dismissed summarily and the reasons were explained to the Claimant. Prior to the dismissal the Claimant was heard and given an opportunity to respond. The case of **Naftali Ayot Okaja v Rai Plywood Kenya Limited [2017] eKLR** was cited in support of the proposition that the Claimant's case was unproved. The Respondent submitted that the reliefs sought for payment of lost salary cannot lie and cited the case of **Mary Mutanu Mwendwa v Ayuda Ninos De Africa Kenya (Anidan K) [2013] eKLR** and that of **CMC Aviation Limited v Mohammed Noor [2015] eKLR**. The Respondent urged the grant of the Respondent's counterclaim and dismissal of the Claimant's claim.

7. The Claimant was dismissed after irregularities were noted on loans at Gakindu branch. The Claimant had responded to the letters and subsequently was heard by the board of the Respondent and thereafter dismissed. The letter from the board was dated 3rd June 2017. It acknowledged the Claimant defended himself and even appealed against the dismissal. The Respondent was to pay 3 month's salary in lieu of notice plus any other dues the Claimant was entitled to. The Claimant was to clear with the Respondent. The dismissal from all accounts accords with Section 41 of the Employment Act as the Claimant was heard prior to dismissal – both orally and in writing. The Respondent was however to pay certain obligations it had toward the Claimant and the Claimant was to pay the money owed to the Respondent. In the claim, the Claimant sought unpaid salaries until his retirement age at 60 years. This is not a remedy a court can give as there is ample authority for the decline to grant such a remedy – see **D. K. Njagi Marete v Teachers Service Commission [2013] eKLR**. In the counterclaim, the Respondent seeks recovery of loan amounts said to be owed to it by the Claimant. As the SACCO and Claimant each owe the other, I will grant them two weeks to determine the liabilities on either side as my own calculations could be erroneous. If parties are unable to agree I will give my determination based on the documents they availed after the mention in 2 weeks.

It is so ordered.

Dated and delivered at Nyeri this 27th day of February 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar