



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT BUNGOMA
CAUSE NO. 95 OF 2017
DOREEN ATYANG EKISA.....CLAIMANT
VERSUS
EQUITY BANK OF KENYA LIMITED.....RESPONDENT

J U D G M E N T

The suit was filed on 23.10.2017 seeking a declaration that the summary dismissal of the Claimant was unlawful and unfair and that an order of compensation equivalent to 12 months salary in respect thereof be granted.

The Claimant further seeks an order of removal from CRB and a Certificate of Service, costs and interests.

The Claimant was employed by the Respondent as Financial Literacy Trainer on contractual basis on 14.5.2012. The Claimant earned Kshs 57,000 per month upon being posted to Malaba branch as a relationship Officer.

The Claimant as a relationship officer provided advice and guidance to various groups for purposes of micro-lending by the bank. The main objective was to grow the financial base of the Respondent by about Kshs 12 million.

The Claimant visited the groups, trained them on financial matters, processed loan forms, monitored loan repayment, recovery of the given loans in case of default and growing the clientele base.

The Claimant did the work well for five (5 years) and as at 2016 the Claimant was in charge of more than 30 groups. The expansion and promotion of her partner to Credit Administrator spread the work of the Claimant then and she was unable to fully follow up the loan repayment and as at November 2016, the loan repayment was not good.

On 10.1.2017, the Claimant received a show cause letter accused of irregular and unprocedural dealings with group loans leading to personal appropriation to herself of Kshs 80,000.

That the Claimant had also secured proxy loans through 19 customers belonging to various groups with a total outstanding balances of Kshs 1,766,049.

The Claimant responded to the show cause letter denying the allegations. The Claimant was by a letter dated 23.1.2017 invited to attend a disciplinary hearing where she explained her case. She demanded to be supplied with the names of the alleged customers and transfer slips indicating that they had obtained loans on her behalf. She also demanded transfer slip of Kshs 80,000 allegedly cashed by the Claimant.

The Claimant was summarily dismissed on 27.2.2017 and she alleges that the Respondent disregarded her defence completely and the purported customers were not identified.

Claimant denies any wrong doing and pray for compensation, payment in lieu of one month notice and in lieu of leave days not taken.

The Claimant testified under oath and produced documents in support of her narrative as CW1. The Claimant called CW2 Justus Ino Opechi who testified that he was a business person and a member of a group under the supervision of the Claimant. He testified that the Claimant was a trustworthy person and helped members to grow their loan portfolio. He said that they could also assist the Claimant because she was good to them. CW2 denied that he took a loan on behalf of the Claimant as alleged or at all. He also denied that other people took loans for the Claimant.

RW1 Leah Jepkoech, testified that she was Assistant Manager Human Resource and Employee Relations from 2014. That she sent a notice

to show cause to the Claimant on 16.1.2017 and conducted a disciplinary hearing against the Claimant.

RW1 stated that the Claimant was found guilty of misconduct as charged in the notice to show cause. The disciplinary hearing took place on 25.1.2017 and the Claimant got opportunity to respond to the allegations made against her.

The Respondent was not satisfied by the explanation made by the Claimant regarding proxy loans in the sum of Kshs 1,766,049 and Kshs 80,000 cash payment to herself. The Claimant was then summarily dismissed for gross misconduct.

That the Claimant had been pardoned severally for underperformance in the past. That the Respondent had a valid reason to dismiss the Claimant from employment and that fair procedure was followed in arriving at the decision to dismiss the Claimant.

RW1 pray that the suit be dismissed with costs.

Determination:

The issues for determination are:-

- a. Whether the summary dismissal of the Claimant was for a valid reason and in terms of a fair procedure?
- b. Whether the Claimant is entitled to the reliefs sought?

Issue 1.

The show cause letter dated 16.1.2017 raised two issues against the Claimant. That she had obtained proxy loans from 19 customers in the sum of Kshs 1,788,049 contrary to Respondent's policy and that she had irregularly transferred two (2) Group accounts at the Branch in the total sum of Kshs 80,000 and appropriated it to her own use.

The Claimant explained the allegations in her written response stating that 'I have never taken a proxy loan' and that she did not know the 19 customers claimed to have taken money on her own behalf. She demanded the list of the customers but the same was not given to her.

The Claimant denied the 2nd charge stating that she was not the officer in charge of funds transfer in the branch. She was the Credit Administrator and Clearing Officer. That each and every transfer form has the content of the customer and it was the duty of the officer in charge to call the customers.

She said that she has served the Respondent diligently for five (5) years and thanked the bank for the opportunity.

Disciplinary hearing was held on 25.1.2017 and the minutes produced as exhibit wherein she denied the two charges. She denied having borrowed money from any member in her groups.

The Respondent did not adduce evidence from any of the alleged 19 customers. The proceedings did not cover the 2nd charge at all regarding the alleged transfer of Kshs 80,000.

That notwithstanding the committee simply observed " she is not truthful in her statement. She does not have respect for her seniors. Has a bad attitude and was arrogant. Concealed a lot of information from the panel and knows all the 19 customers as mention in the report. Verdict- summarily dismissed and surcharged."

The Human Resource Manager then wrote a letter of summary dismissal to the Claimant dated 27.2.2017. "On account of securing proxy loans thus exposing the Bank to a loss of Kshs 1,766,049 contrary to the Banks policies and procedures, code of conduct and core values."

It is the court's considered decision upon evaluation of the evidence before court that no tangible evidence was provided at the disciplinary hearing to substantiate the alleged offence.

Indeed the panel did not make a finding on this matter at all but instead relied on other extraneous reasons stated above for the summary dismissal of the Claimant.

The second count was not canvassed at all and was not used to justify the dismissal.

It is the court's considered view that the Claimant did not receive a fair hearing and was dismissed for a reason that was not proved at the disciplinary hearing.

The summary dismissal violated Articles 41, 43 and 45 of the Employment Act.

The Claimant has proved on a balance of probabilities that her dismissal was unlawful and unfair as it was not for a valid reason and was not made at following a fair procedure.

A disciplinary hearing should not be a mockery of justice but should be substantively and procedurally fair and seen to be fair especially

from the records of the proceedings which the 3rd parties including the court rely upon to evaluate what actually took place. The Respondent has failed this test in the present case as stated in **Mombasa ELRC case No. 146 of 2012, Alphonse Maganga Mwachanye -vs- Operation 680 Ltd.**

The Respondent in the present case did not consider the explanations by the employee and relied on findings not supported by the record of proceedings to summarily dismiss the Claimant.

The Claimant had served diligently a period of five (5) years. She had achieved tremendous growth in group lending by the Bank.

The good that she did overshadowed greatly, the unsupported allegations made against her. She suffered loss and damage, was not compensated for the loss of job and income. The court further relies on the case of **Walle Ogal Auuro -vs- Teachers Service Commission (2013) EKLK** to award the Claimant the equivalent of 8 months salary in compensation for the unlawful and unfair summary dismissal in the sum of Kshs 456,000.

In addition the Claimant is awarded one month salary in lieu of notice in the sum of Kshs 57,000 and Kshs 57,000 in lieu of annual leave not taken.

In the final analysis judgment is entered in favour of the Claimant as against the Respondent as follows:

a. Kshs 456,800 compensation.

b. Kshs 57,100 in lieu of notice.

c. Kshs 57,100 in lieu of leave.

Total award Kshs 571,000

d. Interest at court rates from date of Judgment in respect of (a) above and from date of filing suit in respect of (b) & (c) above till payment in full.

e. Costs of the suit.

DATED, SIGNED and DELIVERED at BUNGOMA this 29TH day of MARCH, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearances:

Mr. Wamalwa for Claimant

M/s Wakoli for Respondent

Chrispo: Court Assistant.