



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 5 OF 2018**

*(Before Hon. Justice Mathews N. Nduma)*

**ROBERT OGUTU MUDIBO.....CLAIMANT**

**VERSUS**

**THE CHAIRMAN, BUNYALA**

**FINANCIAL SERVICES ASSOCIATION.....1<sup>ST</sup> RESPONDENT**

**THE SECRETARY, BUNYALA FINANCIAL**

**SERVICES ASSOCIATION.....2<sup>ND</sup> RESPONDENT**

**THE TREASURER, BUNYALA FINANCIAL**

**SERVICES ASSOCIATION.....3<sup>RD</sup> RESPONDENT**

**THE BOARD OF DIRECTORS, BUNYALA**

**FINANCIAL SERVICES ASSOCIATION.....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The claimant seeks reinstatement and in the alternative maximum compensation for unlawful and unfair dismissal and payment of three months salary in lieu of notice, costs and interest.
2. The claimant was employed as a loans officer from 5<sup>th</sup> September 2010 to 22<sup>nd</sup> May 2013 when he was summarily dismissed.
3. The respondent admits the particulars of employment and states that the claimant was summarily dismissed for gross misconduct.
4. The issues for determination are whether the summary dismissal was for a valid reason and done in terms of a fair procedure and whether the respondent followed a fair procedure in summarily dismissing the claimant.
5. The claimant testified under oath and denied the allegations made against her including insubordination to authority, lack of respect to authority and violence at the workplace particulars of which are set out in the letter of summary dismissal produced before court and marked '7'.
6. The claimant earned Kshs 15,000 gross salary per month. The claimant was not paid in lieu of notice upon summary dismissal. She claims three months salary in lieu of notice and he be paid compensation equivalent to salary he would have earned until reaching the retirement age of 60 years. The claimant also claims costs and interest.
7. The respondent did not call any witness in defence of the case. The hearing was scheduled on 27<sup>th</sup> September 2018. The date was taken by counsel for the claimant and hearing notice served on M/S Onsongo Advocate for the Respondent.
8. The respondent failed to attend court without explanation. The court deemed the defence case closed and directions were given for the parties to file written submissions.

9. The claimant filed submissions on 9<sup>th</sup> October 2018 and the respondents filed on 27<sup>th</sup> November 2018.

10. The claimant adduced unchallenged testimony that the allegations made against him were untrue. That he was not given show cause letter nor did he appear before any disciplinary committee before he was summarily dismissed. The claimant termed the summary dismissal to be unlawful and unfair in the circumstances of the case.

11. The claimant relied on the **Industrial Cause NO. 186 of 2013, Dr. Ezekiel Nyangoye Okemwa vs Kenya Marine & Fisheries Research Institute** in which Rika J. declared the summary dismissal of the claimant unfair and unlawful and awarded Kshs. 30 Million in damages for the unfair and unlawful dismissal, including diminished employability, loss of income, stigma and trauma suffered as a result of the unfair treatment meted on him. The judge said:

*“The claimant suffered loss of employment, his career progression was impaired, and his employability was lowered”*

12. This appears to be the case for the claimant herein. The claimant was a budding loans officer and was summarily dismissed for what he refers to as malice at a very early age and had many years to serve and even progress his career and earnings.

13. The court finds that the respondent violated sections 41, 43 and 45 of the Employment Act, for summarily dismissing the claimant for no valid reasons(s) and without following a fair procedure.

14. The claimant is entitled to compensation in terms of Section 49 (1) (c) and (4) of the Employment Act. There being no evidence to contradict the testimony by the claimant, the claimant was victimized maliciously, he did not contribute to the dismissal; he was not paid terminal benefits upon dismissal. The claimant’s employability was diminished especially in the sensitive financial sector and he suffered loss and damage.

15. The court finds that the remedy of reinstatement was not specifically pleaded in the final prayers by the claimant and deems the remedy unsuitable in the circumstances of this case.

16. The court grants the claimant the equivalent of ten (10) month’s salary in compensation for the unlawful and unfair dismissal in the sum of Kshs. 150,000.

17. The claimant is awarded one (1) month salary in lieu of notice in the sum of Kshs. 15,000 since the letter of appointment is silent on the period of termination notice applicable.

18. In the final analysis judgment is entered in favour of the claimant as against the respondent as follows:

(a) Kshs. 150,000 in compensation.

(b) Kshs. 15,000 in lieu of notice.

Total award Kshs. 165,000.

(c) Interest at court rates from date of judgment till payment in full.

(d) Costs of the suit.

**Judgment Dated, Signed and delivered this 7<sup>th</sup> day of May, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Ashioya for Claimant

Mr. Onsongo for Respondent

Chrispo – Court Clerk