



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE 864 OF 2014**

**BANKING INSURANCE AND FINANCE UNION (K).....CLAIMANT**

**VERSUS**

**CO-OPERATIVE BANK OF KENYA LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant union pleaded that the grievant Ms Jackie Wanjiku Chege was employed by the respondent as a graduate clerk on 17<sup>th</sup> January, 2011. She worked in various department culminating in her appointment as executive teller. The grievant was on 14<sup>th</sup> June, 2013 issued with a show cause letter containing accusations of irregular debiting of A/C[xxxx].
2. The grievant explained the circumstances that made her do the withdrawal from the account and according to her gave convincing reasons why that happened. She was later invited to appear before a staff disciplinary committee on 21<sup>st</sup> June, 2013. According to the Union, the letter denied her a chance to be represented by a union official as per section 41(1) of the Employment Act. The grievant was subsequently dismissed from employment on 28<sup>th</sup> June, 2013.
3. The respondent on its part pleaded that according to the terms and conditions of employment the grievant was required to comply and adhere to the respondent's staff manual, operations manual for tells and policy guidelines. On or about the 14<sup>th</sup> June, 2013 the respondent's security department conducted an internal investigation in regard to an irregular debit of Mums Pharmaceutical Account No [xxxx] which investigation revealed that the employer had failed to follow the correct procedure when carrying out a withdrawal transaction of Kshs 1,000,000/= from the customer account. This according to the respondent exposed it to a potential loss of the sum contrary to clause 9.1.5 of the Operations Manual for Tellers.
4. The grievant was consequently on 14<sup>th</sup> June, 2013 issued with a notice to show cause letter to which she responded admitting to the breach of security. According to the respondent the grievant admitted to debiting the customer account on 7<sup>th</sup> June, 2013 notwithstanding the fact that the owner had not issued any express written authorization to do so. She failed to reverse the transaction even though the respondent branch manager had advised her to do so.
5. The grievant was thereafter on 19<sup>th</sup> June, 2013 requested to appeal before the disciplinary committee of the respondent for a disciplinary hearing. The grievant was afforded the opportunity to tender all the discriminatory evidence in her favour and to have another staff member present at the hearing. She appeared before the committee accompanied by one Anthony Kimani who was her colleague.
6. During the hearing the grievant stated that she debited the customer's account after the customer had called the Branch Manager earlier and informed him that he would collect the money in the evening. When asked why she did not post the money back to the customer's account, she stated that she sought authority from the Manager to do so but was advised by the Manager to wait which is why she kept the money in the strong room.
7. In her oral evidence the grievant stated that on 7<sup>th</sup> June, 2013 she was conducting normal teller duties when an customer Alfred Oyugi did a debit in one of his accounts and said he will return to withdraw money from his other accounts. She knew Alfred well. At around 5:30 pm the Branch Manager called her and said Alfred would be late and that she should debit his account with Kshs 1,000,000/= and take the slip to him to authorize. She waited for Kibet to come and kept contact with the Branch manager. At around 6.30 pm section heads were counting money and she asked the Branch Manager but was told to hold on.
8. When the section heads came, she told them about the money and that her accounts balanced despite the debit. At around 7 pm end of the day transactions were being done so she asked the Branch manager if she could reverse the transaction and he agreed. She ran the reversal but the Operations Manager did not pick the on-line reversal. The Branch Manager told her, he would physically tell the Operations manager.

9. She then gave the money to the Operations Manager and the custodian to keep in the vault. The next day Alfred came for the money and when she asked for it the Manager dilly dallied a bit. She continued serving other customers but later was called to the vault where she found two compliance officers who asked her about the transaction and she told them what happened. She was thereafter given the money and she gave it to Alfred who signed for it. The Branch Manager signed the withdrawal slip.

10. In cross-examination she stated that she was aware of KYC and that it concerned understanding your customer and the account. She further stated that before she debits the account she must be sure the customer has authorized it. She further stated that the manual talked of unusual transactions and that she was required to consult her senior over unusual transactions which she did. She further stated that she was aware that it could be some sort of insubordination if she did not heed the Branch Manager request in the transaction.

11. The respondents 1<sup>st</sup> witness Mr Samuel Osoro stated he was the respondent's Investigations Manager testified that cash was withdrawn on 7<sup>th</sup> June 2013 at around 6.00 p.m. He did not formally request for the production of the teller transaction list but he saw the transaction log. According to him, the bank closes at 4.00 p.m. however the executive branch closes at 5.00 p.m. He stated that he did not know when the last customer was served but he was sure the owner of the account was not there. It was his evidence that the teller debited the account and kept the money hoping the customer would show up.

12. According to him the grievant had no obligation to withdraw the money and keep it. The procedure manual does not allow such transactions. He further stated that the manager instructed her to debit the account and that the manager never denied doing so. He further stated that the manager was senior to the grievant and was supposed to guide her. According to him the grievant had all the reason to refuse unlawful instructions. Mr Osoro further stated that the claimant did not declare the money. She did not return the money to the account. The transaction could have been referred to the Manager or Operations Manager. It was also his evidence that the Branch Manager said the Operations Manager refused to reverse the transaction but according to him the transaction could have been reversed without authorization of the manager.

13. The grievant could initiate the reversal in the system but if refused by the Operations Manager she could refer to any other Officer. He admitted the money was kept in the safe but not declared. The vault where the money was kept was safe enough. It was further his evidence that the customer came for this money the next day and that he never raised any complaint against the withdrawal. Mr Simon Maina, the second respondent's witness stated that he was the Employee Relations Manager for the respondent. It was his evidence that the claimant was instructed by the manager to debit the account and that the manager never denied giving the instructions.

14. It was further his evidence that the customer came for the money the next day and never complained. He further confirmed that the money was kept in the vault overnight and that it was safe there. It was removed from the vault when the customer came for it. In re-examination he stated that a teller could defy a manager when a request is contrary to procedure's manual.

15. Termination of employment contract is a normal stage in employment circle and the court would usually have no reason to second guess the termination if the same is done for good reasons and procedure followed is in accordance with law, human resource procedures governing the contract and rules of natural justice generally. As far as the court is concerned, the procedure followed in terminating the grievant contract was by and large in accordance with the principles envisaged under the Employment Act. She was issued with a show cause letter to which she responded. She was thereafter summoned to a disciplinary hearing which she attended with a colleague and stated her defence to the accusations. This far the court is satisfied that the procedure followed was fair.

16. The court however does not seem to be convinced that there existed a valid reason for the termination of the grievant's service. The letter by the grievant's manager Mr John Paul Wanjala attached to the claimant's bundle of documents as appendix 10 comprehensively sets out the circumstances of the transaction that resulted in the termination of the grievant's service. It is clear from the letter that the instructions to debit the account in issue came from the customer through the Branch Manager Mr Wanjala. This fact has not been denied by the respondent's witnesses. The grievant in her testimony in court comprehensively stated the circumstances of the transaction which have not been denied by the respondent.

17. She is however faulted for breaching the Banks Operations Manual for tellers yet the witnesses before court did not show in what way she breached the procedure. Both witnesses conceded that the grievant could have been guilty of insubordination if she disobeyed instructions from the Branch Manager. They however contended that the grievant was under no obligation to obey unlawful instructions but failed to demonstrate what was unlawful about the transaction.

18. The grievant was an executive teller and the court is aware that in order to shore up competition, banks have created privileged or preferential services to attract customers with large and multiple transactions. Such outfits are usually operated on personal and long relationship with target customers. The grievant in her testimony which has been corroborated by the Manager's letter (appendix 10) stated that the Manager Mr Wanjala informed him that Mr Alfred Oyugi had issued instructions that his account be debited with Kshs 1,000,000 which he would collect later.

19. It was her evidence that Manager authorized withdrawals but never withdrew the actual cash from customer's account. This was the work of tellers hence as an executive teller where Mr Oyugi's account. The grievant was the one to execute the transaction which she did but the customer did not collect the money in time before the closure of the bank for the day. The grievant did what was expected of her and reasonable in the circumstances. She sought authorization from the Branch Manager to reverse the transaction when the customer did not show up which she was given but she could not succeed because the Operations Manager did not authorize the reversal. She therefore handed the money to the vault custodian for keeping in the banks vault as the matter is resolved.

20. The following day Mr Oyugi turned up at the bank and took his money without any complaints. What risk of loss was the bank exposed to? In any event the respondent's own witnesses said the vault where the money was kept was safe. Furthermore no allegation of impropriety or intention to appropriate the money was made against the grievant and her manager. It is therefore the courts view that their existed no valid reason for the termination of the grievant's service and the court finds and holds that the termination of her service was harsh and unreasonable in the circumstances hence unfair.

21. The court therefore enters judgement in favour of the grievant against the respondent as follows:

Kshs

- a. One month's salary in lieu of notice      70,044
- b. Ten month's salary as compensation for  
unfair termination of service                      700,440

**770,484**

c. Items (a) and (b) to attract interest at court rates from date of judgement but subject to taxes and statutory deductions.

22. It is ordered.

**Dated at Nairobi this 28<sup>th</sup> day of June, 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 28<sup>th</sup> day of June, 2019**

**Hellen Wasilwa**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.