



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 651 OF 2015

JUDITH SHIKANDA.....CLAIMANT

v

JAMII BORA BANK LTD.....RESPONDENT

JUDGMENT

1. Judith Shikanda (Claimant) was offered employment by Jamii Bora Bank Ltd (Respondent) on 17 January 2011 as an *Assistant Human Resource Officer*. The contract was to run until 16 January 2013.
2. On 10 January 2013, the Respondent promoted and appointed the Claimant as *Human Resource Manager*.
3. A year later, on 23 January 2014, the Claimant was transferred from the human resource department to the administration department as *Administration Manager*, for a 6 month period.
4. The very next day, 24 January 2014, the Respondent wrote to the Claimant to inform her of her summary dismissal, and the reason given was *receiving EXCO minutes without authority*.
5. The Claimant was dissatisfied and she moved the Court on 21 April 2015 alleging *breach of contract* and *unfair termination of employment*.
6. The Respondent filed a *Defence to the Memorandum of Claim* on 3 June 2015 and the Cause was heard on 2 April 2019. The Claimant and the Respondent's Chief Manager, Human Resource testified.
7. The witnesses also adopted their filed witness statements as part of their evidence and produced bundles of exhibits.
8. The Claimant filed her submissions on 3 May 2019 while the Respondent filed its submissions on 10 June 2019.
9. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

10. It is not disputed the Claimant was summarily dismissed and therefore a *written notice of termination of employment* envisaged under section 35(1)(c) of the Employment Act, 2007 was not applicable/required.
11. However, pursuant to section 41(2) of the Act, the Respondent was under a mandatory obligation to hear and consider any representations from the Claimant on the allegation of *receiving EXCO minutes without authority*.
12. The Claimant testified that on 24 January 2014 she was called at the end of business day and handed over the *summary dismissal* letter by the Head of Human Resources.
13. The Respondent's witness statement indicated that the Claimant was afforded an opportunity before a Disciplinary Committee, and that her defence was found wanting.
14. Under cross examination, the witness admitted that there was no *show cause notice* or records of any disciplinary hearing.
15. In lieu of the records/minutes, the witness did not disclose who heard the representations by the Claimant, when or where the hearing (if any) took place.

16. The Court is satisfied that the Respondent did not comply with the peremptory requirements outlined in section 41(2) of the Employment Act, 2007.

17. The summary dismissal was unfair.

18. For the unfair summary dismissal, the Court concludes that the Claimant is entitled to the equivalent of 1 month salary in lieu of notice of Kshs 160,000/-, and compensation equivalent to 4 months gross salary.

19. The compensation has been assessed based on the Claimant's 3 or so years of service.

Breach of contract

Leave

20. The Claimant sought Kshs 80,000/- on account of accrued leave at time of dismissal.

21. The Respondent's witness stated that the Claimant had accrued leave of 12 days, but there was no interrogation of the pleaded sum.

22. In its submissions, the Respondent admitted that the Claimant had accrued leave which it computed as amounting to Kshs 67,500/-.

23. The Court will allow the head of claim as admitted.

Unpaid acting allowance

24. The Claimant asserted that from 23 March 2011 to 5 March 2013 she acted as *Human Resource & Administration Manager*, and was paid an acting allowance at the rate of 15% of salary instead of the recommended 20%, and that from 25 May 2012 to 6 May 2013 she acted as *Head of Human Resources* without being paid acting allowance.

25. For the acting appointment, the Claimant sought Kshs 912,000/-.

26. To demonstrate that she had been previously paid acting allowance, the Claimant produced a letter dated 16 March 2012 in which the Chief Executive Officer had directed that the Claimant be paid Kshs 330,000/- as acting allowance for the time she served as acting Human Resource & Administration Manager.

27. The Claimant also produced an extract of a copy of the Respondent's *Remuneration and Allowances Policy* which at clause 1.8 provided for payment of an acting allowance at the rate of 20% of the gross salary for senior managers (15% for middle level managers).

28. In disputing the head of claim, the Respondent contended that there was no written instruction asking the Claimant to act outside her job requirements/description, and therefore she was not entitled to any acting allowance.

29. Clause 1.8 of the *Remuneration and Allowances Policy* provided for appointment to act in a higher position.

30. The Claimant did not produce any letter appointing her to act as *Head of Human Resources*, and the Court finds that this head of claim was not proved to the required standard.

31. The Court will consider the payment of Kshs 330,000/- as having been sanctioned on special request/approval.

Conclusion and Orders

32. The Court finds no breach of contract, but declares that the summary dismissal of the Claimant was unfair and awards her

(a) Pay in lieu of notice Kshs 160,000/-

(b) Compensation Kshs 640,000/-

(c) Leave Kshs 67,500/-

TOTAL **Kshs 867,500/-**

33. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 12th day of July 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Namada instructed by Namada & Co. Advocates

For Respondent Mr. Gachoka instructed by Mwaniki Gachoka & Co. Advocates

Court Assistant Lindsey