



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO 2068 OF 2015**

**LEONARD MUKIRI NJUGUNA.....CLAIMANT**

**VERSUS**

**NATIONAL BANK OF KENYA LIMITED.....RESPONDENT**

**J U D G M E N T**

1. By Memorandum of claim dated 29<sup>th</sup> October,2015, the Claimant pleaded that he was employed by the respondent on 1<sup>st</sup> November,2010 as a clerical staff at a monthly salary of Kshs. 46,169/= and housing allowance of Kshs. 4,775/=. At the time of termination, the Claimant was earning a gross salary of Kshs. 89,504 per month.
2. On or about 4<sup>th</sup> August,2015 the Claimant averred that the respondent's Human Resource Director dismissed him without any reasonable cause. The respondent, contrary to established practice filed a replying affidavit instead of a memorandum of response to the claim. In the replying affidavit sworn by one Linet Anyika the respondent stated that on 24<sup>th</sup> February,2015 and 7<sup>th</sup> March 2015 there were fraudulent withdrawals of Kshs. 100,000/= and Kshs. 40,000/= from Lena Joel's account (a customer). Both withdrawals were paid out by the Claimant occasioning the respondent substantial loss.
3. According to the respondent there were several complaints raised by the genuine owner of the account since the original owner had not made any withdrawals on the account.
4. The respondent further pleaded that had the Claimant adhered to customer service standards, cashier guide and other Bank policies in place he would have not paid out any funds out of the stated account.
5. The respondent conducted a thorough probe into the matter and the Claimant was summoned to appear before the investigators which he did and was questioned and given a chance to explain his side of the story. The Claimant was subsequently invited for disciplinary hearing to show cause why action should not be taken against him for his blatant contravention of the bank rules, guides and policies.
6. On 17<sup>th</sup> June,2015 the disciplinary hearing was held and the Claimant was in attendance and was interrogated on the incident and asked to tell his side of the story and his representation on the investigation findings.
7. The respondent disciplinary Committee carefully considered his representation on the incident and found him liable for willful neglect to perform his duties, ignoring the bank's policy and guidelines that resulted in loss of Kshs. 140,000/=. The Claimant was consequently dismissed from work.
8. In his recorded statement, the Claimant stated that on 21<sup>st</sup> February,2015 a customer withdrew Kshs. 650,000/= from new Green Spam account and found him as the teller who was in. The customer filled a cash cheque and signed at the back. She presented her original identification documents which he compared with the photo and the customer in front of him and confirmed it was the same person. Since the amount was more than the teller limit, he gave the Cash Team Leader the customer's cheque and the identification documents to confirm which she did and asked him to proceed.
9. The same customer came on 24<sup>th</sup> February,2015 to do a transfer of Kshs. 100,000/= from Kitui Account to Green spam Account. He once again checked the photo in he system and the customer in front of him and found them same. He also compared her signature in the system and one she signed on the customer transaction voucher and found they were the same. According to him the customer was now known to him because of her previous transactions. On 7<sup>th</sup> March,2015 the same customer came back and withdrew Kshs. 40,000/= from the Kitui Account. He repeated the identification process and paid the customer.

10. In cross-examination he said that he was trained on appointment. Further that verification of customer details was done before transacting and he did so in this case.
11. The respondent's witness Mr. Stephen Opiyo Obonyo stated that investigation revealed that the staff who had been trained paid the wrong person without following the laid down procedure. According to him, the person to be paid must have positive identification documents and in this case, the person paid was not the owner of the account which was an act of negligence.
12. In cross-examination he stated that he did not follow up who opened the account. He further stated that he did not have the details of the persons who dealt with the account apart from the Claimant. He further stated that there were other people who were accused of the fraud and further that there were no previous complaints against the Claimant.
13. The Claimant herein was dismissed for negligence in that he transacted with the wrong person, affairs of a genuine customer. That is to say he passed cash transfers and withdrawals from a genuine customers account on instructions of a person who was not the owner of the account leading loss of some Kshs. 140,000/=.
14. It was common ground that before a transaction is carried out the bank official concerned must verify and ensure the person transacting is the owner of the account. This is done by verifying the photo on the identification document presented and the person physically present before the bank official. Further the signature on the transaction requisition should be similar to the one captured on the system.
15. The Claimant stated that he did exactly this. The respondent did not allege he did not. All the respondent stated was that he was negligent in the process. The respondent however did not say or demonstrate in what way he was negligent. That is to say, which aspect of the verification process the Claimant omitted to adhere to.
16. The respondent talked of an investigation report which revealed that the Claimant failed to follow procedure required when processing a customer's account however the report or aspect thereof were not produced before Court to show in what way or to what extent the Claimant failed to follow the procedure.
17. Nothing was produced to show that the procedure as narrated by the Claimant was not the procedure required or he omitted a step in the process.
18. Under section 43(1) of the Employment Act, the burden of proof of reasons for termination of employment is on the employer. In this particular case, the respondent failed to discharge the burden. It is unfortunate that the respondent lost customer's money paid to a wrong person but the respondent failed to demonstrate the Claimant either wrongly followed or totally ignored the set procedure.
19. The case according to the Court presents itself as one of a weak or faulty customer verification system which is a case of system failure for which the Claimant ought not to have been blamed for after following what was available at the time.
20. In conclusion the Court finds that the termination of the Claimant service was unfair and hereby awards him five months, salary as compensation for unfair termination of service. That is to say Kshs. 447,520/=. The Claimant shall further have costs of the suit. The decretal sum shall be subject to taxes and statutory deduction but shall attract interest at Court rates from date of judgement until paid in full.
21. It is so ordered.

**Dated at Nairobi this 20<sup>th</sup> day of September, 2019**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 20<sup>th</sup> day of September, 2019**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**