



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO 166 OF 2013**

**SAMSON KIPROP MALUEL.....CLAIMANT**

**VERSUS**

**KENYA COMMERCIAL BANK LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that he was on 18<sup>th</sup> February, 1992 employed by the respondent as a clerk and was later on promoted to Operations Manager in October, 2009. In April 2008 the claimant was assigned duties as a Section Head in the respondent's Juba office.
2. On 10<sup>th</sup> June 2010 the respondent unlawfully and without reasonable cause terminated his service. According to the claimant, the transaction which was the alleged cause of the termination was clear that he played no role in it and was not expected or required to play any role. According to the claimant he was wrongfully punished for actions of other officers and that the respondent's officers were not willing to hear his side of the story. The claimant complained that the respondent did not follow the necessary procedure as set out in its own policy manual on dealing with the claimant's complaints.
3. The respondent on its part pleaded that the claimants contract terminated on 1<sup>st</sup> September, 2009 and was simultaneously employed by KCB Sudan Limited. According to the respondent, KCB Sudan was a separate and distinct legal entity hence the respondent could not at law be held liable for the termination of the claimant' employment.
4. The respondent averred that as the claimant was employed by KCB- Sudan Limited a company incorporated under Southern Sudanese Laws and his employment contract being governed by Sudanese laws the court had no jurisdiction to ear and determine the claim.
5. In the alternative the respondent averred that the claimant's service was terminated on grounds of gross misconduct. The claimant conducted his assigned duties with gross negligence and callous regard to employer's interest thereby occasions pecuniary losses. The respondent averred that the claimant was accorded an opportunity to showcause why employment should not be terminated and that the termination was carried out following lawful procedure.
6. The claimant in oral evidence stated that in 2008 there was internal advert for Section Head at KCB South Sudan. He successfully applied and was issued with an appointment letter. He worked in the position for about one year up to October, 2009. There was another internal advert for manager which again he successfully applied for and worked for 8 months when his services got terminated.
7. It was his evidence that there was a transaction in the bank which he handled and was accused of negligence. According to him the transaction was in good faith. There was instruction to transfer funds from the respondent's customer's account to another account at Citibank. According to him he did not handle the transaction alone. They received instructions and verified the same manually. The documents were processed by the swift department. He denied knowledge of password for the system.
8. According to him the transaction was done by clerical officers and there was nothing irregular about it. However when the swift printout came out irregularity was detected and he was asked to explain which he did through a letter dated 24<sup>th</sup> May 2010. The internal security team recorded a statement from him and on 2<sup>nd</sup> May 2010 a Mr Amimo sent him an email to explain the incident online which he did. He was thereafter issued with a termination letter on 10<sup>th</sup> June, 2010. He appealed against the dismissal but got no response. In cross-examination he stated that he was the operations manager and that he verified the cheque manually. The cheque was attached to a statement which showed the funds were available. He stated that he had no access to the system and that only the Branch Manager and swift Manager had access. He denied seeing any discrepancy in the account.
9. The respondent witness Mr Roddy Ngoje stated that he was the Senior Employee Relations Manager for the respondent. According to him, in March 2010 the claimant irregularly handled a transaction of 1,274,000/= Sudanese pounds and another for 89,000/=. The claimant

was asked to explain in writing. It was his evidence that the claimant was in charge of general control of the Branch and that the claimant's explanations were found unsatisfactory.

10. According to him the account had restrictions and that the claimant was able to see the restrictions. Account history would reveal restriction and details and it was possible to bypass the restrictions. The manager could initiate an override on a restricted account however the restriction would still pop-up during inputting.

11. It was his evidence that the claimant was found negligent over the transaction. The reason for which employment is terminated are those reasons which the employer genuinely believed to exist and which caused the employer to terminate the services of an employee. The test is usually that, would a reasonable employer confronted with similar situation consider termination as the most appropriate way to deal with it? If the answer is in the affirmative the court would not interfere.

12. Further, it is not the role of the court to over-analyze the reason for termination of service and substitute its own views of what constitutes reasonable grounds for dismissal or termination of service. The claimant herein was accused of negligently performing work which was his duty to perform as a consequence of which some 1,274,000/= and 89,000/= Sudanese Pounds were transferred from a customer's account despite the fact that there was restrictions that funds should not be transferred from the said account.

13. Accordingly the respondent, transfer of funds from restricted account would be detected immediately as the restriction would pop-up during inputting. , it was only the Branch Manager who could overwrite a restriction. The respondent stated that transfer of funds from a restricted account would attract penalties from authorities and that the respondent had to return the funds remitted to Citibank as a result.

14. The claimant does not deny that the funds were transferred. All he said was that he verified the cheque and the accompanying statement manually and was convinced there were sufficient funds. The claimant in his statement recorded on 25<sup>th</sup> March, 2010 stated that as an Operations Manager his role included verification of instructions against mandate held. In this particular case the claimant stated in his statement that he reviewed the e-statement and concluded that since the account was relatively new and funds were available he considered the transaction regular. It is however odd that in the verification process the claimant failed to detect the restriction on the account.

15. From the foregoing the court is persuaded that the reason for which the claimant's service was terminated were justifiable. Concerning the procedure followed the claimant was issued with a show cause letter which he admits responding to. He stated that he recorded a statement with the security team and responded to the notice to show cause on-line. These responses were adequate and an oral hearing was therefore not necessary in the circumstances.

16. In conclusion the court finds the claim without merit and is hereby dismissed with costs.

17. It is so ordered.

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

**Abuodha J. N.**

**Judge**

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

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**