



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1455 OF 2018

LEAH NYAGA.....CLAIMANT

v

BARCLAYS BANK OF KENYA LTD.....RESPONDENT

RULING

1. For determination is a motion dated 29 March 2019 by Barclays Bank of Kenya Ltd (Respondent) seeking orders

1. The Claimant's Statement of Claim dated 10th July 2018 be struck out and/or otherwise dismissed.

2. The costs of this application and the suit be borne by the Claimant.

2. Leah Nyaga (Claimant) filed Grounds of Opposition to the application on 4 July 2019 and on 2 October 2019, the Respondent filed its *List of Authorities*.

3. The Court took oral submissions from the parties on 16 October 2019 (the Court declined to allow the parties to file written submissions because the motion had been pending since March 2019).

The Statement of Claim

4. The Claimant moved the Court on 3 August 2018 and she stated the Issues in Dispute as

(i) Failure to enforce a duly signed contract.

(ii) Discrimination.

5. On 13 August 2013, the Respondent offered the Claimant the position of Credit Manager after going through an interview.

6. The Claimant accepted the offer on 15 August 2013.

7. Two months later, the Claimant and some of her seniors got into discussions on the Credit Manager position and on 25 October 2013, the Respondent's Human Resources Director wrote to the Claimant to notify her that the letter of appointment as Credit Manager was issued in error and was being withdrawn.

8. Around 11 July 2017, the Claimant accepted to separate with the Respondent under a Voluntary Exit Scheme.

9. On 3 August 2018, the Claimant instituted these legal proceedings against the Respondent alleging breach of contract in that the Respondent had failed to implement the terms and conditions of the contract offering her the position of Credit Manager.

10. The Claimant admitted in her pleadings that the Respondent recalled or withdrew the offer appointing her to the position of Credit Manager.

Respondent's arguments

11. The Respondent in seeking the striking out of the Statement of Claim contended that the cause of action advanced by the Claimant was caught up by the law of limitation (section 90 of the Employment Act, 2007) because the cause of action accrued on 25 October 2013 when the Claimant was informed that her appointment as a Credit Manager was in error, and was being withdrawn.

12. According to the Respondent, the Claimant was also a party to Nairobi Cause No. 1122 of 2018, *Nazarene Nyaga & Ors v Barclays Bank of Kenya Ltd* where the Issues herein could have been raised/addressed and therefore the instant proceedings were an abuse of the court process.

Claimant's response

13. The Claimant in response took the position that because she performed the roles and duties of a Credit Manager until when she separated with the Respondent on account of redundancy around 11 July 2017, that is the date the cause of action accrued.

14. To fortify her position, the Claimant directed the attention of the Court to the *Certificate of Service* issued by the Respondent in 2017 which indicated that at the time of exit, she was a Credit Manager.

15. In this respect, the Claimant submitted that the Respondent was estopped from pleading limitation.

16. As a parting shot, the Claimant contended that the *Issues in Dispute* in the present Cause were different from the Issues arising in Nairobi Cause No. 1122 of 2018, and therefore the question of abuse of court process did not arise.

Evaluation

17. The Court has looked at the pleadings in Nairobi Cause No. 1122 of 2018. The facts and legal questions raised therein pertain to a *redundancy* scheme in 2017 and 2018. The cause of action in these proceedings however relate to *breach of contract*.

18. In the view of the Court, the 2 Causes raise different causes of action, and therefore instant Cause cannot be found to be an abuse of the court process.

19. On the main issue of cause of action, it cannot be disputed that the Respondent purported to withdraw an offer it had made to the Claimant appointing her to the position of Credit Manager.

20. The Claimant contends that despite the withdrawal of the offer for the position of Credit Manager, she performed the roles and responsibilities of that position and was therefore entitled to the terms and conditions attached to the position.

21. In her pleadings, the remedies sought by the Claimant turn on the failure by the Respondent to offer her the remuneration and benefits she would have enjoyed had the Respondent not purported to withdraw from the offer of 13 August 2013.

22. The real question, according to the Court is whether the Claimant performed the role and duties of Credit Manager up to date of separation without enjoying the terms and conditions of that position, and whether that constituted breach of contract.

23. Therefore, in the view of the Court, the cause of action advanced by the Claimant is not caught up by the law of limitation or, *sub judice*.

Conclusion and Orders

24. From the foregoing, the Court finds no merit in the application and orders it dismissed.

25. Costs in the cause.

Delivered, dated and signed in Nairobi on this 22nd day of November 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kiprop instructed by Kiprop & Kiprop Advocates

For Respondent Mr. Angwenyi instructed by Mohammed Muigai LLP Advocates

Court Assistant Lindsey