



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 944 OF 2015

KENNEDY KIOKO WAMBUA.....CLAIMANT

VERSUS

CONSOLIDATED BANK OF KENYA.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

JUDGMENT

The claimant filed a memorandum of claim on 03.06.2015 through Antony M. Mulekyo Advocates. The claimant prayed for judgment against the respondent for:

- a) General damages for unlawful termination and violation of the claimant's constitutional rights.
- b) Exemplary damages.
- c) Costs of the suit.
- d) Interest on a, b, and c above.
- e) Any other or further relief the Honourable Court might deem fit.

The statement of response to the claim was filed on 27.07.2015. The respondent prayed that the claimant's suit is dismissed with costs.

There is no dispute that the respondent employed the claimant initially as a Sales Representative on 19.04.2007. The claimant rose through the ranks of Direct Sales Representative, clerk and as at termination he was a Credit Assistant deployed at the respondent's Embu Branch.

There is no dispute that the claimant was summarily dismissed from employment by the letter dated 31.12.2013 and effective the same date. The reason for dismissal was stated in the letter as follows:

- a) The claimant purported to know one Marvine Kiarie Gathu for one year when he introduced him to open an account yet the claimant did not know him. Thus the claimant lied to the bank and facilitated the customer to open an account into which the funds which had been fraudulently obtained were disbursed.
- b) The claimant failed to follow the Credit KYC policy and did not do a customer visit to establish where the customer operated from.
- c) The claimant failed in his responsibility to the vendor of ensuring that the loan proceeds were paid to him as you facilitated disbursement of the funds to the borrower, Marvine Kiarie Gathu instead of the vendor Abraham Nkanata.
- d) The claimant used his discretion to take on a customer from another branch yet the policy required that there be formal approval between the concerned branch managers.

He was to be paid salary up to 31.12.2013 and 11 pending leave days. He was paid accordingly. He became dissatisfied and filed the present suit.

The Court finds that the termination was not unfair in terms of sections 43, and 45 of the Employment Act, 2007. The claimant by his own evidence confirmed that he was at Embu Branch but upon resuming duty from leave he processed the loan facility in issue but which had

emanated from the respondent's Meru Branch. The claimant did not exhibit any authority to do so without his Branch Manager's authority. The claimant offered no evidence to show that his Branch Manager authorised his undertakings in that regard. Further he confirmed by his own evidence that the loan was disbursed and later on the customer defaulted in the repayment and could not be traced. He testified in Court, **"I did not know the customer."** Further he confirmed that he was aware of the KYC Policy about staff knowing the customer. He then testified (despite that he did not know the customer except by the loan facility document) that he recommended the customer to open an account at the Embu Branch. The amount the respondent lost in the process was Kshs.4, 600, 000.00. At the disciplinary hearing the claimant confirmed that he had introduced the customer to open an account at Embu Branch on the strength of a telephone call by Dennis Muthee of Meru Branch. The transactions were in September 2012 and the claimant informed his Branch Manager in April 2013 after he was unable to trace the customer. The Court finds that the reason for termination has been established in terms of sections 43, 45 and 47(5) of the Act.

The claimant lamented that he had not been given a show cause notice. However, the evidence is that he attended the disciplinary hearing, he knew the particulars of the allegations that were levelled, he fully replied and his replies show that he was culpable on the misconduct as conveyed in the letter of summary dismissal. Thus even if the termination was unfair for want of service of the show-cause notice, the Court returns that the claimant fully contributed to his dismissal in view of the established reason for dismissal. Thus he is undeserving of any award under section 49 of the Act and his alleged violation of his constitutional rights was unfounded.

In conclusion judgment is hereby entered for the respondent against the claimant for dismissal of the suit with costs.

Signed, dated and delivered in court at Nairobi this Friday, 1st November, 2019.

BYRAM ONGAYA

JUDGE