



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 826 OF 2014**

**(Before Hon. Justice Hellen S. Wasilwa on 20<sup>th</sup> March, 2018)**

**BEATRICE NAKHUNGU MUKOLWE.....CLAIMANT**

**VERSUS**

**TELKOM KENYA LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The Claimant filed suit through the firm of Koceyo & Company Advocates claiming damages for unfair termination and payment of terminal dues arising out of an employment relationship with the Respondent.
2. She avers that she was employed by the Respondent in 1983 as a Clerical officer and by the time she was dismissed she was earning a salary of Kshs. 27,344/=. She contends that on 31.3.2006 she received a dismissal letter from the Respondent on grounds that while working at Ngong road telephone Accounts section on diverse dates between 26.6.2003 and 16.4.2004 she fraudulently credited adjustments amounting of Kshs. 3,038,050/=.
3. That on 20.1.2005, she received a suspension letter on the grounds of suspected fraudulent credit adjustments and would be receiving half salary until finalization of the case. She contends that during the suspension period on 10.3.2005, she received another letter terminating her services on grounds that she had vacated her office and that she had refused to assist the Fraud Management Unit in the ongoing case she had been implicated in.
4. It is the Claimants contention that that on various dates upon being summoned by the investigating committee of the Respondent, they man-handled and mistreated her and sometimes refused to see her and let her plead her case.
5. The Claimant avers that upon dismissal she pursued the dispute resolution mechanism under the then prevailing law which resulted in the Ministry of Labour directive to the Respondent dated 18.3.2009 to reinstate the Claimant which the Respondent declined thus necessitating this action.
6. Further, the Claimant contends that since the Respondent did not challenge the Ministers directive in Court, the same still remains valid.
7. That as a result of the Respondent's actions the Claimant suffered loss and damage and therefore seeks for the Claim to be allowed.
8. The Respondent filed a Replying Memorandum wherein they admit the employment relationship and the terms of suspension and termination. They however deny that the termination was irregular, unlawful, and or that the same was in breach of the employment contract.
9. They aver that the Claimant was informed of the reason for termination and she was given 48 hours to prepare for her defence. They contend that the Claimant did not make a satisfactory explanation for the charges leveled against her. By a letter dated 10.3.2005, she was terminated. It is their contention that the said procedures were minuted and the same have been availed to Court.
10. The Respondent further avers that the Claimant was suspended and during the suspension period she was paid half salary until 9.3.2005 when the investigations were concluded. That upon termination she was paid all her dues. They pray for the Claim to be dismissed.

**Evidence**

11. The Claimant led evidence as per the pleadings and cross examined accordingly. The Respondent on the other hand did not put up any witnesses.

### **Submissions**

12. It is submitted on behalf of the Claimant that the Respondent did not have sufficient reason to terminate the Claimant as she was initially accused of fraudulent credit adjustment and sent on suspension. That while on suspension, the Respondent changed the reason to absconding duty. That to date no proof of the fraud has been tabled. That upon suspension in January 2005, she had to vacate office to pave way for investigations and could as such not perform any duties and she never absconded duty as alleged.

13. Counsel submitted that the Claimant was not given an opportunity to be heard contrary to article 47(1) and also cited the case of **David Wanjau Muhoro vs Ol Pajeta Ranching Limited (2014)eKLR** where the Court found by failing to accord the Claimant an opportunity to be heard the termination was unlawful.

14. In lieu of the above counsel submits that the Claim be allowed and the Court award damages in lieu of the unfair termination and order payment of salary in lieu of notice.

15. The Respondent's counsel submits that the reasons leading to the Claimant's termination were that:-

- a) fraudulently sneaked in the excess credit adjustment list schedule bills in arrears of customers of Tel No.s 882881 and 88456.*
- b) that on or about 28.12.2012, the Claimant fraudulently rewrote an excess credit adjustment schedule list in respect nine telephone lines which included irregular telephone numbers and faked the authorizing signatures of her superiors.*
- c) that the Claimant irregularly rewrote credit adjustments schedules for batch Number 778 and 959 with additional numbers while it had been initially been prepared as batch no. 777 and 958 and faked the authorizing signatures.*
- d) That the Claimant irregularly and fraudulently prepared credit adjustments without authority for telephone line numbers 884, 859, 778, 874 and 857 amounting to Kshs. 3,088,050.00.*

16. In his submission, he states that there was sufficient reason to warrant termination of the Claimant and the procedure envisaged under Section 44 of the Employment Act followed to the letter. He prays for the Claim to be dismissed with costs.

17. I have considered the evidence and submissions of both parties. I note that the Claimant was dismissed by the Respondent and when the matter went through conciliation the Conciliator recommended that the Claimant be reinstated. This in essence means that the Conciliator did not find valid reasons for the dismissal. Indeed the allegations against the Claimant had been dismissed apparently for vacating office.

18. The Claimant told Court that during the period she was said to have vacated office, she was on suspension and so she could not be expected in office. The reasons for the dismissal were accordingly not valid.

19. Under the Respondent's Human Resource Policy Manual paragraph (4) the Claimant could be dismissed only in case of gross misconduct, gross insubordination, unauthorized absence from duty, negligence of duty, sleeping on duty, malingering, intoxication, indebtedness, passengers in official vehicles.

20. Paragraph 5 of the Human Resource Manual also lists incidences of summary dismissal the Claimant never committed any of these breaches. I therefore find that the Claimant's dismissal was unfair and unjustified.

21. Having found the dismissal unfair and unjustified, I will convert the dismissal into a normal termination. This enables the Claimant to be entitled to the payment of all her terminal dues, which I award as follows:-

*1. 1 months' salary in lieu of notice = 27,344/=*

*2. Unpaid salary during the suspension period – February 2005 to March 2006 at Kshs.8,545 = 111,085/=*

*3. I also award Claimant damages for the unfair termination being 500,000/= .*

**Total – 638,429/=**

*4. The Claimant is also entitled to all the terminal benefits due under the contract if any plus costs of this suit and interest at Court rates with effect from the date of this Judgement.*

**Read in open Court this 20<sup>th</sup> day of March, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Claimant present in person

No appearance for Respondent