



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT

AT NAIROBI

CAUSE NUMBER 1091 OF 2013

BETWEEN

COSMUS MWANIKI KIPINGAZI.....CLAIMANT

VERSUS

BARCLAYS BANK OF KENYA LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Achach & Company Advocates for the Claimant

Federation of Kenya Employers for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 15th June 2013. He states he was employed on 7th March 2010 by the Respondent Bank, as a Customer Advisor, stationed at Eldoret Branch, earning an annual salary of Kshs. 374,760. He was later made a Cashier, with an annual salary of Kshs. 751,236, and occupier allowance of Kshs. 56,400 annually. He was alleged to have presented fraudulent medical claims, and was suspended by the Respondent, through a letter dated 19th October 2012. He was taken through a disciplinary hearing on 27th October 2012 at Sirikwa Hotel. He received a letter of termination on 6th November 2012. Termination was on the ground that the Claimant was involved in fraud. The Claimant denied such involvement. The medical service provider AON-Minet had verified all receipts submitted by the Claimant before payment to the Claimant. The Claimant prays the Court to find termination was unfair, and grant him Judgment against the Respondent for:-

- [a] Damages for unfair termination.
- [b] Reinstatement to work.
- [c] Costs of the Claim.
- [d] Any other relief the Court deems fits to grant.

2. The Respondent filed its Statement of Response on 28th August 2013. Its position is that the Claimant was employed by the Respondent, as stated in the Statement of Claim. By the time of termination, he held the position of Branch Operations Officer earning an annual consolidated salary of Kshs. 1,187,004. The Respondent noted an unusual upsurge in volumes and value of medical claims around December 2008. AON-Minet, the medical scheme administrator also noted the upsurge. An investigation followed. The Claimant among other Employees was suspended. It was found out that the Claimant submitted false claims alleging he was treated at Marie Stopes Kenya. Dr. Muiruri of Marie Stopes, who was alleged to have attended to the Claimant, denied ever treating the Claimant. The Claimant was suspended and taken through a disciplinary hearing. He was heard in the presence of his Trade Union Representative. A decision was made to terminate Claimant's contract of employment. He appealed, and was given a date to attend hearing. He did not turn up on the date scheduled to be heard on appeal. The Respondent prays the Court to reject the Claim with costs

3. The Claimant was heard way back on 7th April 2014. The Respondent's Witness, Vaslas Odhiambo Agola, who serves as Respondent's Head of Control Relations, gave evidence more than 4 years later, during the Court's service week on 15th October 2018, when the hearing closed.

The Court Finds:-

4. The Claim herein is similar to ***Industrial Court at Nairobi, Cause Number 1616 of 2013, between Daniel Omache Ogato v Barclays Bank of Kenya Limited***. The facts and issues of law involved are similar. The Parties' Representatives are the same. It is not clear why the Parties' Representatives did not apply to consolidate the related disputes, and have them disposed of at once. Hearing of similar disputes, on separate occasions, strains judicial resources. The evidence is similar in both files. The findings of the Court ought to be the same.

5. The Court was convinced in the previous Claim, as well as in the present Claim, that the Respondent carried investigations on the allegation of fraudulent medical claims by Employees, at depth. Maries Stopes denied attending to the Employees. Specific Doctors alleged to have attended to the Employees, denied they ever treated these Employees. Receipts relied upon by the Employees in lodging their respective claims were found to have been fraudulent. The Court concluded then, as it does today, that the Respondent had solid justification in terminating Claimant's contract of employment as required under Section 43 and 45 of the Employment Act 2007.

6. The Court was, and is, convinced procedure was fair. Decision was preceded by thorough investigations. The Employees were suspended. They were asked to respond to specific allegations. They were notified of disciplinary hearing to be done at Sirikwa Hotel. They were heard in the company of their Trade Union Representatives. A decision was made to terminate their contracts of employment. The Claimant lodged an Appeal. He was given a date for hearing of the Appeal. He did not turn up to prosecute his Appeal. The decision to terminate his contract was upheld. Procedure was fair under Section 41 and 45 of the Employment Act.

7. In conclusion, the Court stated in ***Daniel Omache Ogato v. Barclays Bank Limited*** that the Employee acted in complete breach of trust and confidence. These are core elements in the banking industry, and the cornerstones of the relationship between the Banks and their Employees. The Claimant does not merit compensation for unfair termination, little less reinstatement to an industry where trust and confidence are given high premium.

IT IS ORDERED:-

[a] The Claim is rejected in its entirety.

[b] No order on the costs.

Dated and delivered at Nairobi this 19th day of October 2018.

James Rika

Judge