



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI
CAUSE NO 1179 OF 2013

ELVIRA AKINYI MIGWA.....CLAIMANT

VERSUS

BARCLAYS BANK OF KENYA LIMITED.....RESPONDENT

JUDGEMENT

1. By a memorandum of claim filed on 26th July, 2013 the claimant averred among others that she was employed by the respondent at Westgate Branch from 17th March, 2007 until 10th May, 2013 when the respondent unlawfully terminated her services.
2. The respondent on its part pleaded that the claimant was employed on 28th February, 2007 as telesales agent at Barclay Card at a salary of Kshs 374,760 per annum and a housing allowance of 33,420 p.a. In December, 2012 a customer by the name Isaac Mwangi complained that four transactions of over the counter withdrawals and three M-pesa transactions that appeared in the account were not transacted by the customer. According to the customer the transactions were fraudulent and he came to know about them after receiving his statement of account where a total of Kshs 5,235,000/= had been transacted using his account without his knowledge.
3. According to the respondent investigations revealed that the transactions were carried out between 20th December, 2012 ad 24th December, 2012 when the customer was out of the country. A search in the bank's system revealed that premier life account had been opened on 22nd November, 2012 using national identification similar to the customer's however the passport size photographs attached to the account opening documents were of a different person.
4. The respondent pleaded that the claimant who was in putter of the account opening documents including aide memoir attached to the application was to ascertain if the information was correct. By a letter dated 19th April, 2013 the claimant was invited to appear before the disciplinary committee on 26th April, 2013 and was informed of the place, time and the panelists who were to be at the meeting. She was further informed of her right to be accompanied by a fellow colleague or union representative.
5. The claimant attended the disciplinary hearing alone and indicated she was conversant with the reason for the meeting and she participated fully and defended herself. She signed the minutes as a true copy of what transpired during the disciplinary hearing. By a letter dated 10th May 2013 the claimant's services were terminated for using a counterfeit identification card and photograph to open a fraudulent account in the name of a customer. She was found to have been negligent and flouting of laid down bank procedures on account opening.
6. The claimant appealed against the dismissal, the appeal was heard and the appeals committee notified her that it did not find any reason to overturn the decision of the disciplinary committee as no knew facts or evidence was presented during the appeal hearing.
7. In her oral evidence the claimant additionally stated that her exit salary was 107,859 per month. She further stated that she never received any adverse letter during her employment. According to her, it was not her duty to check identity cards. This was the duty of the sales person and the aide memoir was done by the compliance officer. It was her evidence that she was to input the account after authorization.
8. In cross-examination she stated that her responsibility was to receive customers and direct them on queries they had. She further stated that as a retail support she used to manage information and that Isaac was not a new customer and that his identity card was already in the system. According to her sales person handles original documents including identity cards and that she received only photocopies after they had been cross-checked.
9. The respondent's witness Mr. Odhiambo Ooko stated that the claimant's responsibility was to input data and pass account opening documents to KCC department who would make necessary amendments to the account. According to him, when identity card number is entered a message will pop up whether the account is new or existing. If the aide memoir says the account was never yet it was existing the claimant was to return the documents to the authorizer. The claimant did not do this in Isaac's case. Mr Ooko further stated that the claimant

was not the only one terminated over the fraud. He further stated that the claimant was registered for NSSF and that there were no underpayments.

10. Termination of employment contract is a prerogative of an employer or employee. Either party may bring the relationship to an end for good cause. In the case of an employer, under section 43(2) the reason or reasons termination of a contract are matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee. The claimant herein was accused of negligence in the performance of her work leading to loss of funds belonging to a customer by the respondent.

11. The claimant's responsibility was to input customer details for new accounts. It was tendered in evidence which was not disputed by the claimant that the system would automatically alert if an account being created as new already exists. At this point the documents ought to be returned to the authorizer. The claimant did not do this in this particular case.

12. Under Section 44(4) (b) of the Employment Act an employee who wilfully neglects to perform any work which was his duty to perform or who carelessly and improperly performs any work which from its nature was his duty under his contract to have performed carefully and properly may be summarily dismissed.

13. From the pleading and evidence there existed valid and justified reasons for terminating the claimants services. Concerning the procedure for termination it was common ground that the claimant was notified of the disciplinary hearing and the charges against her stated in the letter of invitation. She attended the disciplinary hearing and defended herself. At conclusion of the hearing she signed the minutes as a true reflection of what transpired.

14. The respondent subsequently terminated her services. She exercised her right of appeal but the appeal was disallowed for lack of any new evidence or facts to warrant interfering with the decision to terminate her service. From the foregoing the court is persuaded that the procedure followed in terminating the claimant's service was fair.

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

16. It is so ordered.

Dated at Nairobi this 30th day of November, 2018

Abuodha Jorum Nelson

Judge

Delivered this 30th day of November, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.