

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

SUIT NO. 414 OF 2017

JANE WANGARI WANJERU.....CLAIMANT

VERSUS

ORIENT SACCO SOCIETY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent for wrongful and unfair termination of her services and failure to pay her terminal benefits. She worked as an accountant from 25th April 2013 till 13th March 2017 earning a basic salary of Kshs. 60,000/- when she started and this rose to Kshs. 83,000/- subsequently. In December 2016, she was appointed acting Chief Executive Officer and reviewed her salary to Kshs. 126,000/- per month. The Respondent however failed to honour the new terms and continued to pay her Kshs. 83,000/-. She averred that she was falsely accused of misappropriating Kshs. 1,000,000/- and closing the office temporarily on 11th March 2017 and without the benefit of proper investigations or fair hearing, the Respondent dismissed the Claimant. The Respondent did not pay her terminal benefits being 1 month notice – Kshs. 126,000/-, underpayment of Kshs. 43,000/- a month from December 2016 till March 2017 Kshs. 172,000/-, house allowance Kshs. 907,200/-, service pay for 4 years at the rate of 15 days for each year worked – Kshs. 75,600/-, compensation for unlawful dismissal of employment Kshs. 1,512,000/-, accrued annual leave Kshs. 126,000/-, a certificate of service and costs of the suit plus interest at court rates on all the foregoing sums.

2. The Respondent filed a defence in which it averred that the Claimant while being a member of the clerical/accounting department of the Respondent between diverse dates from 12th February 2015 and 4th November 2016 purportedly withdrew Kshs. 2,339,424/- for disbursement to the Respondent's members but failed to disburse the sums. The Respondent averred that the Claimant was careless and negligent leading to losses to the Respondent and upon being asked to account for the loss, she became rude, uncooperative and hostile to the Respondent's Board of Management. The Respondent questioned the jurisdiction of the court to hear and determine the matter and indicated it would raise a preliminary objection at the earliest opportunity that the matter should be heard by the Co-operative Dispute Tribunal. The Respondent denied that the Claimant was entitled to the prayers in the claim and urged the dismissal of the suit with costs to her.

3. The Claimant testified while the Respondent did not appear at the hearing despite being duly served. The Claimant stated that she was falsely accused by the Respondent for the loss of Kshs. 1,000,000/- while she was in charge and the closure of the office on 11th March 2017 when the special general meeting was held. She said that the special general meeting is held when there is a conflict and that it was anticipated there would be no security thus the office was closed with authority from the SACCO Society Regulating Authority (SASRA). She stated that as acting CEO she was underpaid and not given a house allowance. She testified that she was not allowed to defend herself and was dismissed on 13th March 2017 when the new management took over after elections. She therefore sought her terminal dues as prayed for.

4. The Claimant filed submissions in which she stated that contrary to the provisions of Section 41 of the Employment Act and the case of **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR** on procedural and substantive fairness, the Respondent had abridged her rights to a hearing prior to dismissal. She relied on the case of **Linus Nganga Kiongo & 3 Others v Town Council of Kikuyu [2012] eKLR** in support of her contention that the Respondent had not offered any defence and her testimony and evidence was therefore uncontroverted. She urged the court to grant her the prayers as sought in the claim.

5. The Claimant was dismissed summarily after a special general meeting of the Respondent. The Claimant had been accused of loss of funds. The Respondent in the forensic investigation attached to the defence only managed to show that the Claimant had borrowed a sum in excess of the ratio her shares permitted and that she was responsible for the loss in the mobile banking platform where money was withdrawn in cash to be deposited at CBA Bank instead of being wired to the bank clearly indicating a scheme to defraud the Respondent. There was no proof of the fraudulent withdrawal on part of the Claimant. She was stated to have taken a loan in excess of her shares but no evidence was attached. The payslips the Claimant exhibited clearly indicated that she was not paid house allowance. She however is limited in her recovery of this unpaid sum for 3 years as the law of limitation applies to the period 3 years before the institution of the suit. The Claimant did not attach any letter or evidence to support the contention that she was entitled to Kshs. 126,000/- as acting CEO. She was not able to prove the payment sought. In the premises she is only successful in recovery of the unpaid house allowance for 3 years on the salary of Kshs. 83,000/- plus costs of the suit.

- a. Kshs. 448,200/- being house allowance for 3 years @15% of basic pay of Kshs. 83,000/-
- b. Costs of the suit
- c. Certificate of service

d. Interest at court rates on the sum in a) above from date of filing suit till payment in full.

It is so ordered.

Dated and delivered at Nyeri this 21st day of November 2018

Nzioki wa Makau

JUDGE