



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 674 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 20th December, 2018)

MERCY MURUGI NJAGI.....CLAIMANT

-VERSUS-

EQUITY BANK LIMITED.....RESPONDENT

JUDGEMENT

1. The Claimant herein filed this Claim on 13/5/2013 and subsequently an Amended Claim on 13.3.2015 alleging unfair dismissal of the Claimant by the Respondent and delinquency listing of the Claimant by the Respondent with the Credit Reference Bureau Africa Limited.
2. The Claimant's case is that she was employed by the Respondent on 18/8/2008 as a Personal Identification Number (PIN) officer and was later transferred to the Customer Service Department in January 2010. She avers that she earned a salary review and change of designation to a Relations Officer/Enquiries Desk at the time of dismissal on 1.1.2010 when she was earning a gross pay of 37,500/=.
3. The Claimant's case is that she was working as a PIN officer at the Respondent's Westlands Branch between August 2008 and December 2009 when she was charged with issuing PIN to ATM Card Holder. She avers that in the course of her duties, she was to confirm all the details of the applicant and thereafter issue the customer with the PIN which was contained in an envelope.
4. She avers that in January 2010, she was transferred to Customer Service Department and she handed over her work and PIN Register to one Argwings Onzalo who took over her duties. She aver that the Operations Manager, Paul Githinji who was her immediate supervisor signed the Handover Form and PIN envelopes were counted and verified.
5. She avers that in April 2010 the Respondent's Internal Security Personnel from the Head Office approaches her and made some inquiries on an ATM/Debit Card which bore the name of Jonny Mmboga, a customer of the Respondent. The said Security Personnel wanted to confirm whether the card in question had been received at the Claimant's branch and whether the card had been issued to the customer.
6. On perusing the records, the security team discovered that the ATM/Debit card had been received at the branch but there were no records indicating that it has been issued to the customer. The Claimant avers that she later found out that the said ATM/Debit card had been used to irregularly withdraw Kshs.6,060,050 from various ATM machines in Nairobi.
7. The Respondent reported to the police and on 14.7.2010 the Claimant was arrested and charged with the offence of stealing by servant contrary to Section 281 of Penal Code. The Claimant avers that her salary and allowance were immediately discontinued.
8. She avers that in April 2010 she had obtained a personal loan from the Respondents and was paying in equal instalments of 8,699/= at the time. She had not completed paying this loan and was unable to repay it after her salary was stopped. This prompted the Respondent to report the default to the Credit Reference Bureau Africa Limited.
9. The Claimant avers that the Credit Reference Bureau Africa Limited issued her with a report on delinquencies on 10.12.2012.
10. The Claimant's case was that in April 2011 (she was then 26 years old) she received a summary dismissal letter dismissing her from service and back dated to 14.7.2010 on allegation that she was involved in the loss of Kshs.6,060,050/=.
11. She avers that she went through the criminal trial and was acquitted under Section 210 of Penal Code on 19.9.2012. She contends that she incurred a total cost of Kshs.290,000 being legal fees paid to her advocates in defending the above mentioned criminal case against her.

12. She avers that she sought for a job in September 2010 with Archive Solution Limited a subsidiary of G4S Internal. She was interviewed and offered the job. She lost the job opportunity after the cross referencing with the Respondent and was in the circumstances left without any employment.

13. She avers that her summary dismissal was unlawful, unfair and without justification as she was not in any way to blame for the alleged loss of 6,060,050/=.

14. She therefore seeks the following orders:-

(a) A declaration that the Respondent's summary dismissal of the Claimant from employment is unlawful,

(b) An order for the Respondent to withdraw letter of summary dismissal in writing and suspension and clearly clarifying that she was not in any way involved in the alleged "Fraudulent Card Linkage" and that the Respondent has confidence in the Claimant and does not believe in any way that her integrity and credibility have been compromised,

(c) An order that the Claimant be reinstated back to work with full pay and benefits forthwith,

(d) An order that the Respondent do compensate the Claimant for all benefits she would have enjoyed if her employment had not been terminated as such e.g. salary increments, allowances e.t.c.,

(e) An order that the Respondent do pay to the Claimant her salary together with allowances in full from the date of her dismissal (14th July 2010) to the date of reinstatement,

(f) An order that the Respondent do credit the Claimant's loan account with a loan repayments as scheduled from the 14th July 2010 without incurring any penalties for non-servicing of that loan,

(g) An order lifting the Claimant's delinquency listing client with the Credit Reference Bureau Africa Limited,

(h) Payment of compensation equivalent to 36 months' salary for the breach of contract and wrongful suspension by the Respondent to the Claimant,

(i) Compensation of legal fees incurred by the Claimant of Kshs.290,000/= in defending the said criminal case,

(j) Damages for the loss of reputation/opportunities due to the Respondent's actions to subject her to unnecessary arrest in full view her peers at work and customers and criminal prosecution CRIMINAL CASE NO. 254 OF 2010 AT MILIMANI LAW COURTS,

(k) An order that the Respondent do return all the Claimant's personal effects including payslips, other documents and shoes which were in her drawer which the Respondent confiscated when the Claimant was arrested on the 14th July 2010, and

(l) Costs of this cause and interest on all monetary payments at court rates.

15. The Claimant gave her oral evidence in Court and in cross-examination indicated that Banking Fraud Union (BFU) had recommended she be investigated for the loss. She was however not issued with any suspension letter.

16. The Respondent filed their Memorandum of Response on 27.3.2015 and an Amended Response on 9.4.2015 through Mugambi Mungania & Company Advocates.

17. In the Response the Respondents contend that the Claimant was to ensure safe and proper custody and/or care of all PIN cards entrusted to her by the Respondent which she did not prompting loss of 6,060,050/= by the Respondent.

18. The Respondents deny instigating the criminal proceedings against the Claimant. They called one witness who gave oral evidence and in cross examination indicated that in April 2010, the Claimant had been transferred to a different role in Customer service and this was done after the issue of the PIN in 2009.

19. She stated that the investigation report at page 2 of the report shows that the PIN had not been collected. She confirmed that the key where the PINs were kept was not kept in a safe place. She also confirmed that the Claimant was on suspension pending investigation and was to be on ½ pay but that she was not issued with any suspension letter after allegations.

20. I have examined all the evidence and submissions of the parties. I note that from the evidence of both the Claimant and the Respondent, when Claimant was transferred to another department, this PIN had not been issued. This is evidence from the investigation report.

21. Indeed the Claimant had handed over the PIN Register and all PINs including the PIN in question and this is also confirmed from the Register. The events concerning this PIN occurred almost 6 months after the Claimant had already been moved to another department. There is absolutely no evidence that the Claimant was involved in the theft of the PIN in question which led to the loss of over 6 million by the Respondent.

22. The Respondent did not stick to the results of their investigation and proceeded to have the Claimant arrested and charged and also proceeded to dismiss her from service summarily without following due process. The Claimant was subsequently listed on the (CRB) Credit Reference Bureau.

23. In the evidence before me, there is no valid reason established that warranted the Respondent to dismiss the Claimant. No due process was also followed.

24. Section 45 of Employment Act states as follows:-

(2) *“A termination of employment by an employer is unfair if the employer fails to prove:*

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason:-

(i) related to the employee’s conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure..”.

25. It is therefore my finding that the Claimant’s summary dismissal was unfair and unjustified and I declare it so. I also make orders that:-

1. The Claimant be paid salary she was to paid after arrest and before dismissal when she was expected to be on suspension from April 2010 to July 2010 = $37,500 \times 4 = 150,000/=$

Other prayers granted are as follows:-

2. An order that the Respondent do credit the Claimant’s loans account with a loan repayment as scheduled from the 14th July 2010 without accruing any penalties from non-serving of that loan.

3. An order lifting the Claimant’s delinquency listing with the Credit Reference Bureau Africa Limited.

4. 12 months’ salary as compensation for the unlawful dismissal of the Claimant = $12 \times 37,500 = 450,000/=$

5. Compensation of Legal fees incurred by the Claimant of Kshs.290,000/= in defending the criminal case.

6. Claimant be paid all her service benefits at 15 days salary for each year worked = $15/30 \times 37,500 \times 2 = 37,500/=$.

TOTAL = 927,500/=

7. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 20th day of December, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Muyai for Claimant – Present

Ashiruma holding brief Gichagi for Respondent