



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 716 OF 2013**

**MOSES KIBET KEMEL.....CLAIMANT**

**- VERSUS -**

**ECO BANK KENYA LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 14<sup>th</sup> December, 2018)

**JUDGMENT**

The claimant filed a memorandum of claim on 17.05.2013 through Ongegu & Company Advocates. He prayed for judgement against the respondent for:

- a) Such sum as will be adduced and particularised in paragraph 6 of the claim.
- b) Interest in (a).
- c) Any other relief as the Court may deem fit and just.

The memorandum of reply was filed on 10.06.2013 through Muri Mwaniki & Wamiti Advocates.

There is no dispute that the parties were in a contract of service. The respondent employed the claimant by the letter dated 18.12.2008 on 6 months' probation effective 22.01.2008. The claimant served on probation successfully and was confirmed in the permanent service of the respondent.

The respondent summarily dismissed the claimant by the letter dated 11.12.2011 upon grounds stated in the letter thus, **“Following audit investigations carried out regarding the conversion of cheque No. 507658 amounting to Kshs. 77, 425.00 from Crystal Valuers Ltd and your subsequent summons to the Disciplinary Committee on 14<sup>th</sup> December, 2011 it was established that you fraudulently endorsed the aforementioned cheque to yourself thus converting the full amount which led to your arrest.”**

The main issue for determination in the case is whether the reason for termination was valid as envisaged in section 43 of the Employment Act, 2007, and as at the time of the termination.

The claimant testified that his job entailed ensuring that valuation reports for securities on loans were properly processed. In the instant case Crystal Valuers Ltd had been contracted by the respondent to carry out a valuation of some property. The claimant testified that Crystal Valuers Ltd drew a cheque in the name of the respondent and endorsed at the back that it was in the claimant's personal favour because a director for crystal was paying the claimant some monies under a private arrangement and transaction between the director and the claimant. The trouble emerged when Crystal Valuers Ltd disputed the bank charges in processing the cheque because no charges were due if the cheque was in favour of the bank as initially drawn. The charges were levied because the cheque had been endorsed in favour of the claimant. The claimant testified that his explanation that the cheque had been endorsed in his favour was not acceptable and he was arrested and subsequently dismissed after a disciplinary hearing – because the director for Crystal Valuers Ltd denied that he was in a private transaction with the claimant. The claimant confirmed at the hearing before Court that throughout the disciplinary process the director for Crystal Valuers Ltd one Timothy Njihia never exonerated the claimant. Further he stated that he had never called Njihia to exonerate him during the disciplinary proceedings or at the trial in the Court. He confirmed in Court that Njihia must have denied having any private dealing with him.

The respondent's witness was Christine Kitche (RW) the human resources services manager. RW testified that an applicant for a mortgage facility where Crystal Valuers Ltd had been contracted by the respondent to undertake valuation declined to go on with the facility. The respondent was therefore compelled to pay a fee note of Kshs. 94, 540.00 less VAT and other tax making Kshs. 77, 425.00 to Crystal Valuers Ltd. They got the cheque and started following up for VAT certificate. The claimant discussed the issue with Crystal Valuers Ltd and it was agreed that the cheque be returned and cheque for Kshs. 94, 540.00 reissued in full payment. Thus Crystal Valuers Ltd were given a cheque of Kshs. 94, 540.00 and they drew a cheque of Kshs. 77, 425.00 and the claimant received the cheque at the branch and requested it be banked in an account opened in his name in circumstances whereby the cheque had been addressed to the respondent. The cheque was endorsed at the back that a banker's cheque is issued in favour of the claimant and a bank charge of Kshs. 150.00 was imposed and upon learning of the charge Crystal Valuers Ltd disputed the whole transaction because the cheque being in favour of the bank, the bank charge was not expected.

The Court has considered the evidence. The respondent by its evidence and by the claimant's own evidence has established that as at the time of termination there was a valid reason to terminate the employment as envisaged in section 43 of the Act. Further the Court finds that the claimant was accorded due process of a notice and a hearing as envisaged in section 41 of the Act. The Court returns that the termination was not unfair.

In conclusion judgment is hereby entered for the respondent against the claimant for the dismissal of the memorandum of claim with costs.

**Signed, dated and delivered in court at Nairobi this Friday 14<sup>th</sup> December, 2018.**

**BYRAM ONGAYA**

**JUDGE**