



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 613 OF 2013
MOHAMED FAWZAN CHAUDHRI.....CLAIMANT
VERSUS
CFC STANFIC BANK.....RESPONDENT

JUDGEMENT

1. By a memorandum of claim filed on 2nd May, 2013 the claimant averred that he was employed by the respondent on 12th September, 2010 as a Relationship Manager. Prior to joining the respondent, the claimant worked in the United Kingdom. He averred that he had excellent working relationship with the respondent and his performance was very good and brought significant amount of business to the respondent.
2. As a result of his good work, the claimant received recognition award known as the True Blue Award. On 21st March, 2013, the claimant was issued with a letter of redeployment and possible redundancy asking him to find an alternative role within the bank within two months and on failure commence a redundancy process effective 22nd May, 2013 since his role there as Relationship Manager-Corporate Banking had fallen off. Through various letters and emails to his immediate boss and Human Resource Department, the claimant sought to know the specific reasons why his portfolio within the diversified section had fallen off despite the good returns that it was bringing in.
3. The claimant further requested for the criteria for the redundancy process in the company in line with the tenets of the Employment Act. Through an email dated 19th April, 2013, the claimant's immediate boss asked the claimant to hand over his portfolio to another colleague and on 26th April, 2013 he was issued with a termination letter on account of redundancy.
4. He was in the letter informed that his employment ceased with effect from 1st May, 2013. This was in total disregard to the earlier letter dated 21st March, 2013 which had indicated that in failing to secure redeployment, the claimant would serve one month redundancy notice. According to the claimant, the action by the respondent to terminate his services on grounds of redundancy were unreasonable and procedurally unfair.
5. The respondent refuted the claimant's averments and stated in the main that the claimant did not bring in any significant new business in the year 2012. His target and area of focus was on business acquisition and diversification by bringing in clients who would give the bank an annual revenue of USD 250,000 in 2012. This was not met as the revenues realized under the claimant's portfolio were for existing clients.

In addition, the diversification of the income streams from the net interest income to non funded income was not met.

6. The respondent further averred that the claimant did not work on his stated accounts by himself, rather it was a concerted team effort. Further the True Blue honours was not a general award for the overall performance of an employee. The respondent further averred that the incomes alleged were from existing business while the claimant was required to bring in new acquisitions.

7. On the issue of restructuring the respondent averred that there was communication through the Group CIB to relevant in-country heads concerning restructuring of the corporate banking business. The communication was shared out and discussions held with the claimant through the Human Resource Partner and the claimant's line manager.

8. The respondent further pleaded that the claimant was offered a transfer to another department within the business of the respondent bank which he rejected in breach of clause 2.1 of his contract of employment. According to the respondent, the grounds for redundancy were reasonable procedurally fair, carried out objectively with consultation and due regard and proper consideration to the position of the claimant.

9. In his oral evidence in court the claimant stated that he was keen on taking up the position of Relations Manager but the position was offered to one Susan Njuguna. He was informed the position was lower than one he held. He denied being aware of the restructuring. He further stated that the Labour Office was told by the respondent that there would be restructuring with no loss of jobs. In cross-examination he stated that he discussed migration to another department with his boss Mr Loonet. He further stated he was offered an interview but he declined because it was a lower job in Business Banking.

10. According to the claimant, he expected to remain in employment even after he declined the interview. He admitted being paid terminal benefits upon termination of his services. The respondent on its part called a witness, one Joanne Muraya who stated that she was the Human Resource Partner at the respondent. According to her the respondent reserved the right to transfer the claimant to any branch or department. She stated that the respondent at some point restructured its operations.

11. The claimant was required to move to Business Banking but he declined to do so. His remuneration was not to reduce owing to the transfer. She denied that the claimant's redundancy and exit was preplanned. There were other staff affected by the restructuring and the redundancy complied with the law. She further stated that the claimant was declared redundant before communication to the Labour Office. It was her evidence that termination prior to the expiry of the notice was not normal.

12. The issue to be determined by this court seems to me to be whether the claimant was supposed to be declared redundant or reassigned new role in the reorganization of the respondent. Second, if the claimant was declared redundant whether such redundancy was in compliance with the Employment Act.

13. Through a letter dated 21st March, 2013, annexed as Fc4 in the claimant's bundle of documents he was advised as follows:-

Dear Fawzan

RE: ADVICE REGARDING REDEPLOYMENT AND POSSIBLE REDUNDANCY NOTICE

We refer to your discussion with you manager today 21st March, 2013 during which you were formally advised that you current role of Relationship Manager – Corporate Banking, Diversified clients has fallen off as a result of the ongoing Corporate Banking restructuring exercise. You were further advised that the Bank will be seeking to redeploy you subject to availability of an alternative role and your acceptance of the role, in this regard, you will be placed in the redeployment pool for two (2) months with effect from 21st March, 2013.

During the redeployment period you are advised to look for any suitable alternative role within the Bank. You were further advised that should you or the Bank fail to find an alternative suitable role for you within the two month redeployment period, you will be placed on a one month redundancy notice with effect from 22nd May 2013.

This letter serves to advise you of each step in the process going forward.

14. In reaction to this letter the claimant through an email dated 25th March, 2013 he wrote to Joanne as follows:

Hi Joanne,

As per our meeting earlier today I just wanted to confirm:

1) As per the meeting on 21st March 2013, I wanted to know the specific reasons why my portfolio within the diversified sector has fallen off. The letter makes reference to a corporate restructuring exercise, however, there had been no communication and I had no knowledge before the meeting held on the 21st March. Only 2-3 small names have dropped off my portfolio and most of my major accounts will remain in corporate.

2) Is my portfolio the only one that has been dropped off as a result of the corporate restructuring?

3) I am interested in the RM role for IDG and would like to be considered for it. I would like to propose that I maintain the existing names I manage and take on added responsibility of new names. This maybe a junior role however, my current boss is on an expatriate contract and has been doing an RM job for the last 15 months.

4) I am happy to chat to Ben with an open mind, however, it is important to note the job in BB albeit at the same grade is still a downgrade.

5) My outstanding EPM grievance and comments below. This needs to be addressed as it will affect any new job I taken internally. This has been outstanding for a while now

6) If redundancy is the end result, what will my reference look like?

7) What is the redundancy process in CFC Stanbic?

As a matter of principal the above points are extremely important to me. I do not want to be viewed as a troublemaker or being difficult. I really am whole heartedly disappointed and upset at the way I have been treated in all of this considering I left my job overseas and moved my young family to Kenya to work for CFC Stanbic. I am also conscious that there may be significant defamation and character assassination going on in the background to justify the actions the bank is taking against me.

I would like if we keep the communication on record to avoid any confusion or misunderstanding.

Kindest regards

FAWZAN

15. Further by an email dated 11th March, 2013 the claimant made the following remarks:

Dear Mo,

Following our meeting today, I just wanted to reiterate that I do not wish to move to BB. I have

clarified this on a number of occasions before. I was hired to work in CIB and am very passionate about my job. I finished the year well (top 5 highest portfolios) and with a strong pipeline for this year. The main part of my KRA was to achieve USD 3m which I did.

I am still unclear why I am being severely pressured to take the role in BB against my wishes. There are only a handful of clients moving from CIB to BB. Specifically what is the reason why I am being forced to move?

During the meeting I requested clarification on what my options are and you stated that should I wish to remain in CIB I should approach the other CIB heads to find a job as you are unwilling to do so on my behalf.

Considering I have a job, I like my job and want to keep my current job I do not want to 'shop' around within the departments. Furthermore, I don't think it is my responsibility nor do I wish to spend my working hours trying to secure an alternative position. You went ahead and spoke to Andrew Robertson about moving me there despite my continued resistance and have pushed me a number of times to follow up with him.

In regard to my other options you then stated that if I don't take BB then I will probably be made redundant. You advised me to start looking for another job as it would be easier for me to find one whilst currently employed as opposed to once I am made redundant and unemployed.

From our meeting today I come away with the following options:

1-move to BB against my will. I moved from London to Kenya for a job in CIB. I have no desire to move to BB

2-face redundancy

3-look for alternative employment to avoid being made redundant.

None of the above options are suitable for me. My desire is to remain in my current role. I* hope we can come to a mutually agreeable solution soon as this situation has been dragging on for months and is really affecting me.

16. By a letter dated 26th April, 2013, the respondent terminated the claimant's services on account of redundancy. The termination letter read as follows:

26th April, 2013

Dear Fawzan,

RE: TERMINATION OF SERVICE ON ACCOUNT OF REDUNDANCY

Further to the engagements of 21st March 2013 in which you were given two months period to seek for other opportunities within the outside the Bank, I regret to inform you that your employment with us will cease with effect from 1st May, 2013, on account of redundancy.

The terms of your redundancy have taken into account the Kenya Labour Laws as well as our internal group policies and are as follows:

- You will be paid your salary upto to 30th May 2013
- Any leave days that are accrued to you will be paid in cash
- You will be paid one month's salary in lieu of notice
- 15 days severance pay for each completed year of service.

- You are entitled to your retirement benefit 100% employee contributions plus 50% employer's contribution (This shall be processed through the normal pension withdrawal channel)

Please make arrangements to handover any Bank assets under your charge to your Manager or to any other person as your Manager may instruct. You are also advised to make arrangements to clear your liabilities, if any, with the bank or appropriate repayment arrangements made with the Head of credit. Please also get in touch with Human Resources regarding completion of exit clearance forms.

17. From the correspondence reproduced above, it would seem that the respondent gave the claimant two alternative scenarios. One, he was to be redeployed in another department failure to which he would be declared redundant. The letter or termination spelt out the claimant's terminal benefits upon being declared redundant. The termination letter appear to have been constructed along the provisions of section 40 of the Employment Act.

18. In the case of **Aviation and Allied Workers Union Vs Kenya Airways Ltd & 3 Others Rika J** held that employers have the prerogative to determine the structures of their business and therefore make positions redundant. The learned Judge further stated that so long as the decision is reasonable, and exercised in good faith, the court is not encouraged to intervene.

19. Businesses are run for purposes of profit making. Further the environment in which businesses operate is competitive and constantly call for strategies and innovations to fight off the competition. This more often entails market repositioning and internal reorganization which include reassignment and sometimes reduction of human capital. The decision making process is therefore solely by the shareholders and investors and employees views are most times not a limiting factor once the decision to be made is deemed to be in the best interest of the business.

20. The court has carefully considered the claimants' claim and the defences thereto put forward by the respondent in the above context and is persuaded that the claimant was reasonably appraised of the reason for the redundancy and his notice was brought to the process and how it was likely to affect him. He was eventually terminated on account of redundancy and paid his dues in accordance with the law. The court therefore finds no merit in the claim and the same is hereby dismissed with no orders as to costs.

21. It is so ordered.

Dated at Nairobi this 17th day of February, 2017

Abuodha J. N.

Judge

Delivered this 17th day of February, 2017

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge