



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NYERI**  
**CAUSE NO. 6 OF 2014**  
**(Formerly HCCC No. 6 of 2006 at Embu)**

**PATRICK MURIITHI.....PLAINTIFF**

**-VERSUS-**

**KENYA COMMERCIAL BANK LIMITED.....DEFENDANT**

**(Before Hon. Justice Byram Ongaya on Friday 24<sup>th</sup> March, 2017)**

**JUDGMENT**

The plaintiff filed the plaint on 18.01.2006 through Morris Njage & Company Advocates. The defence was filed on 14.02.2006 through Oraro & Company Advocates.

The amended plaint was filed on 19.02.2016. The plaintiff prayed for judgment against the defendant for:

- a. An order that the defendant to pay the plaintiff a sum of Kshs.11, 914, 288.00 being the terminal dues on wrongful termination.
- b. Interest thereon at bank rate from 24.01.2005 to the date of payment.
- c. Costs of the suit.
- d. Such further or other relief.

The amended defence was filed on 15.03.2016. The defendant prayed that the suit be dismissed with costs.

It is not in dispute that the plaintiff was employed by the defendant as a clerical staff with effect from 21.12.1992 and by the letter dated 09.12.1992 setting out the terms and conditions of service. The plaintiff's employment was terminated by the letter dated 24.01.2005. The termination letter was on the subject, thus, **"Fraudulent Cash Withdrawal of Kshs. 200, 000.00, Account Wanjiku Samuel, Termination of Employment"**. The letter stated that after due investigation, the defendant's senior retail manager was satisfied that between 25.08.2004 and 17.09.2004 the plaintiff committed serious irregularities that are injurious to the plaintiff's interest, details of which were known to the plaintiff. It was stated that the plaintiff was in serious breach of his obligation to conducting himself in a manner calculated or likely to damage the relationship of mutual trust and confidence which was an implied term

in every contract of employment. As a consequence, the letter stated that the defendant had lost confidence in the plaintiff as the contract of employment had been frustrated and was accordingly terminated with effect from 14.01.2005 per clause 5(d) of the collective agreement covering section heads, check clerks, clerical, technical and subordinate staff. The letter stated that all monies due to the plaintiff including one month's salary in lieu of notice would be paid to the plaintiff in due course.

The plaintiff appealed against the termination by his letter dated 25.01.2005 and a further letter on the appeal dated 30.01.2005. The plaintiff's ground of appeal was that the reason for the termination was not valid. The plaintiff stated that on 25.08.2004, the defendant's senior retail manager at Embu Branch had summoned the plaintiff to his office and introduced to the plaintiff a lady the manager said had to be assisted to withdraw some Kshs. 200,000.00 from the account held by the lady's mother at the bank. The plaintiff's case was that he did not know the lady at that time of introduction and the manager explained that the lady's mother was sick and the lady had to be assisted to withdraw the cash so as to transfer the same to her mother at the hospital. The plaintiff advised that the withdrawal voucher had to bear the sick mother's thumb print affixed in presence of her medical doctor and the doctor had to stamp and further write to the bank quoting his or her telephone number. The plaintiff's case was that at that time of introduction the lady did not have the requirements and she left and came back with all requirements. The plaintiff referred the documents including the withdrawal voucher to the in charge, savings, for verification and countersigning. Later, investigations into the issue commenced and the plaintiff received a show-cause notice to explain the issue and on 24.01.2005 at 6.15pm he received the termination letter. The lady had received the cash from the paying cashier and not the plaintiff and later the brothers to the lady who had been paid complained that someone in the bank had irregularly helped the lady to access their mother's money. The plaintiff lamented that he was the only one punished for no reason. The plaintiff requested to be reinstated.

The defendant's decision on the appeal was conveyed by the letter dated 28.06.2005. The termination of the plaintiff's employment was upheld.

The plaintiff's advocates issued the demand letter dated 31.05.2005 stating that there was no good reason for the termination of the plaintiff's employment. The same was replied to by the defendant's letter dated 14.06.2005 which stated that the matter was under investigation and the defendant would revert shortly thereafter. Nevertheless the defendant failed to communicate further and the plaintiff filed the present suit. The plaintiff confirmed that he was paid pension and one month pay in lieu of the termination notice.

The **1<sup>st</sup> issue** for determination is whether the reason for terminating the plaintiff's employment was valid. RW testified that where an account holder was unwell, then a procedure involving the account holder's doctor confirming such ill health would apply. The court finds that the plaintiff complied with that requirement and the plaintiff's evidence that his duty was limited to confirming that the documents were in order was not rebutted. The defendant has failed to rebut the plaintiff's case that the plaintiff's supervisor approved the payment and that it was the duty of the plaintiff's supervisor to verify the truthfulness of the documentation before such approval. The defendant's senior retail manager at Embu Branch at the material time was not called to testify and the plaintiff's account of the check list given by the manager and the instructions on the manner the plaintiff was to process the withdrawal remained unchallenged. Thus, the court returns that the defendant has failed to show that the plaintiff was fraudulently involved in the withdrawal of the Kshs. 200,000.00 as was levelled against the plaintiff by the defendant.

The **2<sup>nd</sup> issue** for determination is whether the plaintiff is entitled to the remedies as prayed for. It was submitted for the plaintiff that he be awarded Kshs. 11, 914, 288.00 as terminal dues. The plaint as amended and the submissions do not provide the break down and the justification for the claim and prayer. The submissions mention sections 45, 50 and 43 of the Employment Act, 2007 but which Act, in the findings of the court, does not apply to the present case because the same was not in operation at the time of the cause of action. As submitted for the defendant the applicable law was the Employment Act, Cap.226 (now repealed). As the prayer has not been justified, the same will fail.

The court considers that as the reason for termination was invalid but the pecuniary prayer has failed and

as such, each party shall bear own costs of the suit.

In conclusion the plaintiff's suit is hereby dismissed with orders that each party shall bear own costs of the suit.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 24<sup>th</sup> March, 2017**.

**BYRAM ONGAYA**

**JUDGE**