



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 167 OF 2016

(Before D. K. N. Marete)

MERINDA LYNDAH AJIAMBO.....CLAIMANT

VERSUS

SMEP MICROFINANCE BANK LIMITEDRESPONDENT

RULING

This is an application dated 5th December 2016 and seeks the following orders of court;

1. *THAT service of this application be dispensed with in the first instance.*
2. *THAT the respondent be restrained by an injunction from filing in the claimant's position as a Business Development Officer at its Kisumu Branch Pending the hearing and determination of this application in the first instance and thereafter pending the hearing and determination of the claim.*
3. *THAT the claimant be reinstated to employment as a Business Development Officer pending the hearing and determination of this claim.*
4. *THAT the respondent does pay the full withheld salary and allowances of the claimant for the months of September, 2016, October, 2016 and November, 2016 and continues to pay salaries on a monthly basis in full pending the hearing and determination of this application in the first instance and thereafter pending the hearing and determination of the claim.*
5. *THAT the respondent be restrained by way of an injunction from unlawfully and unfairly termination the claimant's employment or withholding any payments of salaries and allowances and employment benefits pending the hearing and determination of the claim.*
6. *THAT the costs of this application be sourced by the respondent.*

The Respondent denies the application and prays that it be dismissed with costs.

Supplementary Affidavit to the Replying Affidavit sworn on 20th February, 2017

The Respondent in her Replying Affidavit sworn on 20th February, 2017 supports a case of dismissal of the application on grounds that the claimant was suspended on legitimate grounds of gross misconduct involving fraud of a criminal nature where the respondent lost Kshs.2,390,513.00 out of which the

claimant benefited by Kshs.1,940,885.00. This scheme involves fraudulent machination of loans without involvement and approval of group members and other accounting malpractices.

The Respondent in her Draft Respondents Submissions to the application faults the Claimant/Applicant for coming to equity with unclean hands. Again, the application is tainted with material non disclosure and concealment of facts therefore rendering it undeserving of the equitable relief sought.

Again, the claim and allegations of unfair suspension and dismissal is unfounded in that the Respondent duly and fully pursued the requirements of the Employment Act, 2007 in so doing.

The Claimant/Applicant's case falters on a balance probabilities. The case of the respondent in defence of the application falls in place and takes the day. I am therefore inclined to dismiss the application with costs to the respondent.

Delivered, dated and signed this 26th day of April 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Mugambi instructed by Wambua Kigamwa & Company Advocates for the Claimant/Applicant.
2. Miss.Kimani instructed by Gitonga Kamiti, Kairaria & Company Advocates for the Respondent.