



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 209 OF 2011**

**(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 26<sup>TH</sup> FEBRUARY, 2015)**

**STEPHEN MAKOKHA WERE .....CLAIMANT**

**VERSUS**

**BANK OF BARODA (K) LIMITED .....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant herein filed his Memorandum of Claim before this court on 18/2/2011 through the firm of Namada & Co. Advocates. After a few preliminary issues the case was set down and proceeded for hearing on 3/2/2015.

**The Claimant's case**

2. It is the Claimant's case that he was employed by the Respondent from 1993 to 2007 as a clerk but had risen through the ranks to become an Officer Grade I.

On 16<sup>th</sup> July 2007, the Claimant gave a 30 day resignation notice to the Respondents. The Claimant further avers that upon his tendering of the resignation the Respondents Manager advised him that as per an alleged Human Resource Policy Manual, the regulations notice period was to be not less than 3 months or payment of 3 months salary in lieu of notice.

3. The Claimant further aver that the Respondent proceeded to deduct the sum of Kshs.175,592/= on account of salary in lieu of notice which deduction he avers was unlawful and unjustified as there was no such term in any policy manual governing his employment and which deduction he now claims refund in this claim. The Claimant further aver that even if there existed any such policy it was never made part of his contract of employment and neither was it known to the Claimant. It is the refund of this amount that the Claimant now seeks.

**Respondents case**

4. The Respondents filed their Memorandum on 4/3/2011 through the firm of M/s Riunga Raiji & Co. Advocates. It is the Respondents case that the notice period of one month applied to the Claimant before promotion to management level but this period increased to three months as per Para 1.3.8 of the Human Resource Manual that governed the relationship between the Claimant and Respondent. They also aver that this Manual was circulated to the Respondent including the Thika Branch where the Claimant was working with a directive that the same be circulated and be brought to the knowledge of all staff members.

5. The Respondents therefore contend that they were justified in deducting the two months salary in lieu of notice from the Claimant's dues and therefore want the Claimant's claim dismissed with costs.

**Issues for determination**

6. Upon hearing the parties herein, there is only one issue for court to determine and that is whether the notice period in relation to the Claimant was 1 month or 3 months and if 3 months, if the same was brought to the Claimant's attention.
7. On issue of notice Para (4) of Claimant's letter of Appointment Annex 4 states as follows:

***“At any time after confirmation, your employment may be terminated by either party at the expiration of one months notice in writing or by the payment of one month salary in lieu of notice”***

The Respondents contends that this position changed when a new HR Policy was brought in force in January 2004 (Appendix 1). It is true there is a document called Human Resource Police Manual Annexure 1 dated January 2004. This document has only 2 pages/listed and is not signed anywhere. Its authenticity comes in question. It is also an incomplete document and cannot be read out of context. Whether the said document was served on Claimant or not is also an issue the Respondents have not been able to prove. The Claimant's position is that it was never brought to his notice. It is therefore a document that his court cannot reliably rely on.

8. In the circumstances it is this court's finding that the notice period exhibited in court is the 1 months notice as per Claimant's letter of appointment which is signed by both parties and by virtue of that letter the Respondents could not impose a 3 months notice on Claimant which period was unknown to the Claimant priory. In the circumstances I find for Claimant in the sum wrongly deducted from his terminal dues being Kshs.175,592/= plus interest. The Respondent will also pay costs of this suit.

**Read in open Court this 26<sup>th</sup> day of February, 2015**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kiora for Respondent – present

Sifuna holding brief Namanda for Claimant – present