



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 896 OF 2012**

**BANKING INSURANCE & FINANCE**

**UNION (KENYA).....CLAIMANT**

**VERSUS**

**KENYA COMMERCIAL BANK (K) LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed his suit on 10<sup>th</sup> August 2010 seeking resolution of a dispute he framed as wrongful termination of Mohamed Sanjir. The Claimant averred that the grievant Mohamed Sanjir was employed on 17<sup>th</sup> June 1996 in clerical grade and in 2007 was posted to Marsabit branch of the Respondent and was promoted on 2<sup>nd</sup> May 2007 to position of section head but continued to work as a teller/cashier. It was averred that on 10<sup>th</sup> July 2007 a customer by the name Ali Chute came to the bank and presented a cheque which has been dishonoured by his bank (Co-op Bank) due to the signatories differing. The grievant advised the customer to go to his bank and seek cancellation of the crossing stamp and the customer presented the cheque and the grievant advised him to either open an account with the bank or get the drawer (Kenya Red Cross) to cancel the payee and replace it with one of their signatories so that payment can be made over the counter. In August 2007 the grievant was asked to explain an alleged wrongful debit of the Red Cross Account and he gave his explanation on 27<sup>th</sup> August 2007. It was averred that the grievant received a letter of termination dated 17<sup>th</sup> October 2007 and appealed the decision without success. The Claimant averred that there was a conspiracy to fix the grievant. The Claimant averred that it reported a dispute with the Minister and the conciliation process was unresolved as per Section 69 of the Labour Relations Act. The Claimant averred that the grievant did what was expected of him as a cashier and followed the operational manual and the cashiers' manual when the customer came to the bank with a dishonoured cheque. The Claimant thus sought the reinstatement of the grievant to his employment with the Respondent and payment of all salaries, allowances and other employment benefits.

2. The Respondent filed a Memorandum of Defence on 1<sup>st</sup> November 2010 and in it averred that the grievant was initially based at Meru Branch and was later transferred to the Respondent's Marsabit branch on 26<sup>th</sup> May 2001 till termination of his services in 2007. It was averred that the grievant was dismissed for processing a dishonored cheque and debiting the account of the drawer even though the grievant did not pay the money to the payee. The Respondent averred that the grievant did not declare any cash overage after processing the cheque and not paying the payee and therefore violated the provisions of the Bank's Operating Manual. The Respondent averred that the drawer of the cheque noticed the debit of its cheque when it was in the process of issuing a replacement cheque to the payee. The Respondent averred that it wrote a show cause letter to the Claimant on 23<sup>rd</sup> August 2007 and the grievant responded on 24<sup>th</sup> August in a letter wherein he claimed to have acted lawfully and had paid the money in question to a signatory of the drawer. The Respondent averred that the explanation was wanting and thus expected him to show cause why disciplinary action should not be taken against him on grounds of gross misconduct. The Respondent averred it was not aware of any

bad blood between the grievant and the Respondent's retail manager at Marsabit branch. The Respondent averred that it lost confidence in the grievant and thus dismissed him from service. It was averred that the dismissal was fair, lawful and premised on sufficient grounds. The Respondent thus sought dismissal of the suit with costs.

3. The Claimant presented the grievant as a witness on 19<sup>th</sup> January 2015. The Respondent opted not to call any witness. The Claimant's witness testified that he was employed as a clerk and was promoted to position of Section Head at the Respondent. He testified that he was terminated on allegations that a cheque of 56,360/- from Kenya Red Cross was not paid out but according to the record he had paid the cheque. He testified that this was in the cash transaction vouchers for the day. He testified that the customer brought the cheque, he cross checked the cheque and as per procedure signed the cheque. He testified that he paid the cheque to Isacko Jirma. He testified he had asked the customer to change the name of the payee. He testified that the cheque had not been paid earlier as the signatories had not been posted. He stated that the cheque was paid and this was posted as shown by the cash transaction report. He stated that there was nothing to show he did not pay the cheque. He testified there was no indication of the payment by the Respondent of the bankers cheque issued in refund of the payment he had made to the customer of the drawer. He testified that he was not given any hearing before the termination. He thus sought reinstatement and damages for the defamation by the Respondent. He also sought payment of salary and allowances to date from the date of termination.

4. In cross examination he testified that he made the payment on 10<sup>th</sup> July 2007 in cash to Isacko Jirma who is a signatory of the drawer of the cheque - Kenya Red Cross. He testified that the debit was to be on the Kenya Red Cross account. He was shown the letter dated 28<sup>th</sup> August 2007 and he testified that the letter was written by the project accountant of Red Cross and it was a complaint on a wrong debit of the Red Cross account. He testified that he was the one who had advised that the cheque be altered and cash the cheque over the counter. He testified that he debited the Red Cross account and paid the client. He stated that the bank wrote back but to him there was no mistake and the Respondent gave a bankers cheque for wrongful debit. He did not agree with the bank that there was a wrong debit. He testified that he did not see the stamp showing receipt of the letter by the Respondent. He stated that the cheque was evidence of payment. He testified that he had never gone to claim his dues as he has a case in Court.

5. In re examination he testified that the evidence of payment is the cheque which is kept by the company. He stated that if there was no cheque he would not have debited the account and he would not have signed it. He testified that the memo came first before the complaint.

6. The Respondent having elected not call any evidence relied on the pleadings and documents attached to its Memorandum of Defence and the Respondent's List of Documents filed on 23<sup>rd</sup> January 2013.

7. The case before me is one relating to termination. It is clear there was termination of the grievant Mohamed Sanjir. The Respondent included a cash transaction report for 10<sup>th</sup> July 2007 and statements of the Kenya Red Cross Society account and copy for the cheque of Kshs. 56,360/-. Respondent enumerated in its pleadings previous infarctions by the Claimant and even attached the letters inviting him to show cause as well as warning letters issued.

8. The Grievant has indicated that he received the dishonoured cheque from the customer and advised the customer to have the cheque corrected. He thereafter paid the cheque to a signatory of the drawer. On the other hand, the Respondent asserts that the grievant did not pay out the cash properly as the customer was in the process of reissuing the cheque when it noted the debit from its account. The grievant to my mind went beyond his mandate as a banker and breached the regulations in place. How could he pay a dishonoured cheque after alterations to it? He states that he paid the cheque as indicated in the cash transaction report. The payment made to Isacko Jirma was therefore grounds for disciplinary action. Notice to show cause was given and after the explanation a fresh show cause was

given. If that was the case, the grievant was entitled to receive procedural fairness as per the Employment Act. This was woefully not done. In the claim before me he seeks reinstatement. Under the Industrial Court Act Section 12, I cannot order a reinstatement if the period of 3 years has lapsed. The grievant was dismissed in 2007 and clearly there is no way he could be reinstated or paid for the period he has been out of employment. His prayers for reinstatement and payment thus fall flat. In the manner of termination, he ought to have been given a better process of termination.

9. From the foregoing, the Claimant will be entitled to a judgment in favour of the grievant for 3 months compensation as well as the dues calculated by the Respondent but uncollected by the grievant. I will however make no order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this **6<sup>th</sup>** day of **March** 2015

**Nzioki wa Makau**

**JUDGE**