



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1207 OF 2011

ELIZABETH NZANGA KISIO..... CLAIMANT

VERSUS

EQUITY BANK LTD..... RESPONDENT

Claimant in person

Ms Ndirangu for Respondent

JUDGEMENT

1. The suit was commenced by way of a Memorandum of Claim dated 15th July, 2011.
2. The Claimant seeks maximum compensation equivalent to twelve months' salary for alleged unlawful and unfair dismissal.
3. In the alternative the Claimant seeks reinstatement to her position without loss of any benefits.
4. The Claimant also seeks to be given a certificate of service, costs of the suit and interest on the award.

Facts in support of the claim

5. The Claimant was employed by the Respondent on 11th March, 2009 as a Marketing Officer and placed on probation for six (6) months.
6. The initial salary was Kshs 75,000 per month. Termination was by either party giving one month notice or payment in lieu of notice.
7. A letter of appointment was produced and marked exhibit 'A'. The Respondent's operations manual was incorporated as part of the contract detailing policies, processes, procedures and rules to be followed.
8. On 11th September 2009 the Claimant completed probation and was confirmed and deployed to the post of Relationship Officer, Marketing. A letter of confirmation was produced as exhibit 'B'.
9. The Claimant's salary was raised to Kshs 80,000 per month effective 1st April, 2010 pursuant to an appraisal of performance.

10. In August, 2010 the Claimant was transferred from Mombasa Road Branch to Mombasa Moi Avenue Branch of the Respondent. The letter of transfer was produced as exhibit 'C'.
11. She was to report to the Business Growth and Development Manager- Mombasa Moi Avenue.
12. In December 2010, the Respondent appreciated the services of the Claimant and paid her a bonus for exemplary services.
13. By a letter dated 6th May 2011, the Claimant's salary was increased to Kshs 83,200 following appraisal of her job performance in the year 2010.
14. In addition, the Claimant was given opportunity to own a piece of the Bank by opening up the sale of Employees Share Ownership Plan (ESOP) beginning end of April, 2011.
15. The letter appealed to the Claimant to trust in the collective wisdom of the bank and take up ownership by investing in ESOP shares equivalent to the Claimant's three (3) months basic salary at a discounted price of Kshs 15 per unit.
16. The letter ended thus "we wish to thank you for your dedication to the business in year 2010 and congratulate you for this well-deserved promotion. We look forward to you delivering on your promise to the business in year 2011".
17. The letter was written and signed by Hildah Mugo, Director Operations and Gerald Warui, Director Human Resource and Customer Experience.
18. The Claimant was however not keen on taking up the shares. The Respondent's officers thereafter began to put a lot of pressure on the Claimant to take up the shares with verbal threats that failure to do so would lead to her dismissal from employment.
19. The Operations Manager even demanded that Claimant furnishes him with the bank account details for purpose of deductions and payment for the shares but the Claimant still declined.
20. On 26th May, 2011 the Respondent summoned the Claimant to the Head Office in Nairobi the following day.
21. On 27th May 2011, the Claimant attended the Respondent's Head office in Nairobi where she was handed a letter of summary dismissal from employment on grounds that had not arisen at all.
22. The letter of summary dismissal was produced as exhibit 'F'. In terms of the letter, the summary dismissal was for;
 - i. Poor performance and attitude towards work as evidenced by poor ratings during the recent branch peer review and annual appraisal.
 - ii. That efforts by various supervisors to coach and mentor the Claimant had failed.
 - iii. The Bank had lost confidence in the Claimant.
23. The Claimant avers that the summary dismissal was wrongful and based on malice. That the Respondent did not act in accordance with justice and equity.

Reply to the Memorandum of claim

24. The Respondent admits the particulars of employment set out in paragraphs 1 and 2 of the memorandum of claim.
25. The Respondent also admits the contents of paragraphs 4 and 6 of the Claim. In paragraph 6 the

- Claimant states that she was appraised in early April, 2011 and given a salary raise.
- 26.The appraisal in December 2010 and payment of bonus is also not brought in issue.
- 27.The Respondent however denies that the Claimant was hounded out of her employment upon refusing to take up ESOP.
- 28.The Respondent further states that on 5th May 2011, the Claimant signed the declaration and acceptance terms of ESOP indicating willingness to take up the shares. The signed terms dated 5.5.2011 were produced by the Respondent and marked exhibit 'EBL5'. That the Claimant had taken up one thousand units while she had been allocated sixteen thousand six hundred and forty (16,640) units and agreed that the mode of payment would be through a cheque or electronic funds transfer (EFT) and the same was payable by 31st May 2011.
- 29.The Respondent admits that it summarily dismissed the Claimant from employment on 27th May 2011 per the letter of dismissal marked 'EBL6'.
- 30.That the summary dismissal was lawful since the Claimants performance was wanting as seen from internal memo dated 23rd march 2010 and a letter dated 10th August 2009.
- 31.That the supervisors of the claimant were not satisfied by her performance as evidenced by email marked 'EBL8'.
- 32.The Claimant's performance review were wanting which constituted breach of obligation in the contract of service hence the summary dismissal.

Issues for determination

- I. What was the true cause for the summary dismissal of the claimant from employment?
- II. Did the Respondent follow a fair procedure in summarily dismissing the Claimant from employment?

Issue I

- 33.It is common cause that the Respondent did not give the Claimant a letter to showcause why her employment should not be terminated.
- 34.It is also evident that the Claimant was not charged with any offence or misconduct prior to the summary dismissal.
- 35.It is also clear that when the Claimant was summoned from Mombasa to the head office in Nairobi on 26th May, 2011, she had no idea the purpose of the summon.
- 36.Conclusive evidence before court clearly shows that upon arrival at the Head Office in Nairobi in the evening of 27th May 2011, the Claimant was not subjected to any due process but was simply handed a letter of summary dismissal and was made to clear from the employment of the Respondent.
- 37.It is the court's considered view that the confirmation to permanent terms upon serving 6 months probation, salary raise in April 2010 following an appraisal followed by payment of bonus in December 2010 is evidence indicative of an employee who was performing well at work.
- 38.The subsequent appraisal in April 2010 followed by a salary raise backdated to January 2011 and promotion to Relationship Officer – Marketing with effect from 1st January 2011 vide the letter dated 6th May, 2011 is further indication of the confidence the Respondent had in the performance

of the Claimant.

39. In fact, it is ironical that the Respondent profusely praised the performance of the Claimant in the letter of 6th May, 2011 as follows;

“We are glad to advise that on the basis of your performance appraisal and in view of your contribution during the period under review your salary has been reviewed to Kshs 83,200 and your designation has been changed to Relationship Officer – marketing with effect from 1st January 2011”.

40. This cannot be empty rhetoric coming from Director Operations and Director Human Resource and Customer Experience.

41. The Respondent has not produced any correspondence between 6th May, 2011 and 27th May, 2011, the date of the summary dismissal indicative of poor performance by the claimant all of a sudden.

42. In fact, production by the Respondent of old letters, one dated 23rd March, 2010 regarding lateness and absenteeism from Branch meetings and a 1st warning dated 10th August, 2009 on attitude and performance by the Claimant during her probationary period, rather than boost the Respondent's case is indicative of untoward conduct which the Claimant describes as malicious.

43. This is because the Respondent afterwards confirmed the Claimant out of the probation period and subsequently poured praise on her good performance at work.

44. The praise was not empty but was followed with salary raise, bonus payment and promotion.

45. The email dated 25th May 2011, from Hilda Mugo, Director of Operations regarding poor attitude and performance by the claimant looked at in the context of the following appraisal given by the same officer, a promotion and salary raise on 16th May 2011 confirms the evidence by the Claimant that she immediately fell out of favour with the Respondent as soon as she showed reluctance to buy shares from the Bank.

46. This is the only logical explanation of the sudden fall from grace by the Claimant leading to a rushed exit from the Respondent's employment.

Issue 2

47. The Respondent did not follow any due process whatsoever in effecting the summary dismissal of the Claimant.

48. The allegation of under performance by the Claimant even if it was true did not warrant such a rushed exit from the employment of the Respondent. She was treated more or less like a fraudster. No notice to show cause; no chance to explain herself either verbally or in writing and no charges were formally levelled against her. The Claimant came to know the reason for the summary dismissal after it had taken place.

49. This is not how an employer of such great repute treats a young manager it had recruited from a rival bank with a promise of career advancement and personal growth.

50. Section 41 of the employment Act, 2007 is mandatory. An employer intent to summarily dismissing an employee under section 44(3) or (4) of the Act, must first hear and consider any representations which the employee may have on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee makes.

51. The Court finds that the Respondent did not have a valid reason to summarily dismiss the

Claimant from employment. The Claimant has on a balance of probability demonstrated that the summary dismissal was wrongful and unfair contrary to section 45 (1) (c) as read with 45(2) (a) and (c) of the Act.

52.The Claimant in entitled to compensation in terms of section 49(1) as read with section 49 (4) of the Act. The Claimant had served the Respondent for only two years. The Claimant was not given a certificate of service to allow her look for other employment. She told this court she was not even paid for the days worked in the month of May 2011. The Claimant was not given notice at all to prepare herself for this eventuality and suffered loss and damage as a result.

53.She wishes to be reinstated to her previous work and in the alternative be paid compensation.

54.The claimant emphasized that she was victimized for failure to buy shares from her employer. That she was in financial difficulties and that is the only reason she was unable to buy shares.

55.The evidence by RW1 Irene Jemutai Cherwon before court denying that this was not the case was not convincing to the court at all.

56.The Claimant's career prospects and growth were wrongfully and unfairly diminished.

57.The court awards the Claimant ten (10) months' salary as compensation for the unlawful and unfair summary dismissal from work.

58.The Claimant is also entitled to provision of a certificate of service.

59.The Claimant did not pray for one month's salary in lieu of notice in the memorandum of claim though from her testimony and the letter of appointment she is entitled to one month's salary in lieu of notice. The Claimant is also entitled to payment of salary for the days worked in the month of May 2011. The Court will not make any award in respect thereof since the Claimant did not pray for the same in the statement of claim.

60.Accordingly, the Court makes the following final orders;

- I. The Respondent is to pay the Claimant Kshs 832,000 being 10 months' salary for the unlawful and unfair summary dismissal.
- II. The award is payable with interest at court rates from the date of this Judgement till payment in full.
- III.Respondent is to provide the Claimant with a certificate of service within 14 days from date of this Judgement.
- IV.The Respondent is to pay the costs of the suit.

Dated and Delivered at Nairobi this 10th Day of July 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE