



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 46 OF 2015

BANKING, INSURANCE & FINANCE UNION (KENYA).....CLAIMANT

VERSUS

CAPITAL SACCO SOCIETY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 25th September, 2015)

JUDGMENT

The claimant union filed the suit on behalf of its member Joy Dina Mukiri, the grievant. The memorandum of claim was filed on 13.03.2015. The claimant prayed for judgment against the respondent for:

- a. A declaration that the grievant's dismissal from employment was substantively and procedurally wrongful and unfair.
- b. The grievant be reinstated back to her employment and position without loss of any benefits or break in service.
- c. The grievant is paid all salaries from the date of dismissal to the date of this judgment.
- d. The grievant is paid 12 months compensation for unfair dismissal.
- e. The court to order any other relief as may deem fit.
- f. The court to order Kshs. 3,000,000.00 for loss of gains after dismissal in exemplary damages.

The respondent filed a defence on 17.04.2015 through Mwenda Mwarania, Akwalu & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

It is not in dispute that the parties were at all material time in recognition and collective agreements. Thus the claimant had standing to file the suit on behalf of its member.

The grievant was employed by the respondent as a clerical officer with effect from 1.09.2006. She was deployed to serve at Kiangua, Mitunguu and Gatimbi branches. By the letter dated 4.02.2014 it was alleged that the grievant issued a loan fraudulently, being Kshs. 30,000.00 account no. 1793240 for one Purity Ntinyari Gituma. It was said that the loan was fraudulent because of the following reasons:

- a. There was no relevant loan form.
- b. The customer's account lacked good cash flow to justify the loan.
- c. No assessment was done to justify the loan.
- d. The customer's shares were not matured as per the customer's account.
- e. The grievant captured and posted the loan against the procedures.

The circumstances of the loan in issue as per the evidence on record are as follows:

- a. The grievant met Purity at Mount Kenya University when Purity informed the grievant that Purity was not sitting for her exams due to failure to pay college fees. The grievant then promised to assist Purity as a sister.
- b. The grievant called Purity to go to respondent's Mitunguu branch where the grievant was then deployed to serve as the clerk for loans verification and the grievant assisted Purity to open an account.
- c. Purity did not buy any shares in opening the account meaning that the grievant bought the shares for Purity so as to open the account.
- d. Purity only signed for a savings accounts account and no loan application form.
- e. The grievant gave Purity a loan of Kshs. 30,000.00 delivering to Purity only Kshs.9, 000.00 and keeping for herself the balance of the loan cash.
- f. The claimant irregularly and solely processed the loan signing all the deposit vouchers.
- g. Purity failed to repay the loan and the grievant never repaid the loan except Kshs. 2000.00 which the grievant posted on the account as a repayment.

The grievant was taken through a notice and a hearing as envisaged in section 41 of the Employment Act, 2007. The respondent's board found the grievant's explanations unsatisfactory and terminated the grievant's employment with effect from 11.04.2014.

The only and main issue for determination is whether the grievant was terminated from employment upon a valid ground.

In self exculpation the grievant wrote to the respondent that the loan was processed in circumstances whereby Purity's shares were not mature and the relevant bank statement was missing. In her evidence to the court the grievant testified that Purity did not receive any loan form. She also testified thus:

“I admit the mistake of issuing loan without a good cash flow and un-matured shares. I agree I breached policy to assist Purity to do her exams. The supervisor approved the irregularity so Purity would be assisted to do her exams....I posted Purity's loan before she signed the loan form. She walked away without signing loan form. At the time I posted Purity's loan she had not signed the form.”

The court has considered that evidence and finds that at the time of termination the respondent had a valid and genuine reason to terminate the grievant's employment as envisaged in section 43 of the Employment Act, 2007.

The court finds that the termination was not unfair. Upon the grievant's own admission of misconduct as levelled against her, the court finds that the suit will fail.

In conclusion, judgment is entered for the respondent against the claimant and the suit is dismissed with costs.

Signed, dated and delivered in court at Nyeri this Friday, 25th September, 2015.

BYRAM ONGAYA

JUDGE