



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1092 OF 2013

SIMON G. MURIUKI.....CLAIMANT

VERSUS

BARCLAYS BANK OF KENYA LIMITED.....RESPONDENT

JUDGMENT

1. The claimant in this suit was employed by the respondent on 12th March, 2007 as a clerk at a salary of Kshs.374,760 per year and an annual house allowance of Kshs.33,420/=. According to the claimant he served the respondent with diligence and faithfulness and never had any cases of indiscipline during the period he worked. He further averred that he was familiar with the respondent's policy on medication of employees. That is to say an employee would seek medication and present receipts to AON-Minet Insurance for verification and reimbursement.

2. The claimant on several occasions sought medication at Marie Stopes and later presented the receipts to AON-Minet for verification and refund. On 19th October, 2012 the claimant received a letter from the respondent suspending him from duty pending disciplinary investigations on allegations that he presented fraudulent medical claims. He was subsequently on 27th October, 2012 called to attend Disciplinary Committee hearing at Sirikwa Hotel. On 6th November, 2012 he received a termination letter from the respondent. According to the claimant, he was unfairly terminated since the allegations of fraud were manufactured by the respondent for ill intentions. The claimant therefore sought judgment against the respondent for payment of damages for unfair termination and reinstatement. He further sought costs of the suit.

3. The respondent refuted the claimant's averments and stated in its defence that a whistle blower informed the respondent and AON-Minet over the high amounts of money being reimbursed on medical claims which appeared to be higher compared to accredited service providers in the region. The claimant was consequently suspended to pave way for investigations. According to the respondent, a Mr. Peter Ng'ang'a conducted investigations into the matter and investigations revealed that the claimant submitted claims relating to Marie Stopes Kenya however Marie Stopes denied that the claimant had been treated at the hospital on the alleged days by the claimant.

4. The claimant was consequently summoned to a disciplinary hearing on 27th October, 2012 where he stated he was treated at Marie Stopes and issued with receipts. He further stated that he used to pick his claim forms later after treatment and never used to confirm whether the documents were genuine or not. The panel finished the disciplinary hearing and made recommendations the basis upon which the respondent terminated the claimant's services and

informed him of his right of appeal. By a letter dated 14th November, 2012 the claimant appealed stating that the punishment handed was too harsh considering he had been a loyal employee and sought a lesser punishment.

5. According to the respondent at the hearing of the appeal the claimant stated that there was a cleaner who introduced other staff members to a lab technician who would assist the staff of the respondent in procuring fake receipts at a commission of Kshs.700. The appeal was dismissed and the termination was upheld. The respondent therefore contended that the claimant was fairly terminated and following the legal provisions set out in the Employment Act, 2007. The respondent therefore prayed that the claimant's suit be dismissed.

6. In his evidence before Court the claimant reiterated the averments in his memorandum of claim stating that on 9th January, 2012 and 26th June, 2012 he was treated at Marie Stopes Kitale and paid the doctor. He left the claim form to be filled by the doctor and later submitted the claim for refund. According to him the claim was verified and refund made to him. It was his evidence that the Branch Manager never raised any concern over the claim when he submitted it. Regarding disciplinary hearing he stated that he knew what was to take place at the disciplinary hearing but all along he knew he was innocent. He did not attend the hearing with a representative but an official of his Union was present. It was his evidence that he was given a chance to speak and indeed spoke at the disciplinary hearing.

7. In cross-examination, he denied ever seeing the alleged fraudulent documents. He further denied ever going to Neema Medical Centre. He admitted that he had no document to show he was treated at Marie Stopes Clinic and that he never went to Marie Stopes to get documents for his treatment. He denied ever saying at the appeal that there was a cleaner who could help in making fraudulent claims. The respondent did not call any witnesses. Mr. Molenje instead informed the Court that the respondent would be relying entirely on its memorandum of response and the documents filed in opposition to the claimant's claim and further that he will file his final submissions.

8. The Court has reviewed the pleadings, supporting documents, and oral testimony by the claimant as well as submissions by both sides and it would seem that there is no serious dispute over the procedure adopted in terminating the claimant's services. He was suspended and later called for disciplinary hearings where he was given a chance to defend himself. The suspension letter was elaborate and clear on the reasons for which he was being suspended. After the disciplinary hearing, his services were terminated but was reminded of his right of appeal which he exercised but the appeal was found without merit and termination upheld. To this extent, it cannot be said that the dismissal was unfair in terms of procedure adopted in executing it. What seems to be disputed is the reason for termination.

9. According to the claimant he was innocent. He denied making any fraudulent medical reimbursement claims. According to him, he attended Marie Stopes Clinic in Kitale for treatment on two occasions, paid the doctor but was to collect his claim form later which he did and submitted his claim to his Branch Manager for verification and transmission to AON- Minet for further verifications and refund. It was his evidence that neither the Branch Manager nor AON- Minet questioned these documents when he submitted them and that he was duly reimbursed. The claimant however did not produce any document to show he attended Marie Stopes Clinic for treatment. The respondent on the other hand produced a letter dated 15th October, 2012 from Marie Stopes Kitale disowning the claim by the claimant that he was treated there. This letter was not reacted to by the claimant.

10. Section 47(5) of the employment Act places the burden of proof that a termination of employment was unfair or dismissal wrongful on the employee while the burden of justifying the grounds for termination or dismissal rests on the employer. Whereas the respondent has sufficiently shown that it had justifiable reason to dismiss the claimant, which is that he submitted fraudulent medical reimbursements claim, the claimant has not sufficiently shown that these

accusations against him were false.

11. The Court therefore finds the claim unmerited and dismisses the same with costs.

12. It is so ordered.

Dated at Nairobi this 6th day of November 2015

Abuodha J. N.

Judge

Delivered this 6th day of November 2015

In the presence of:-

.....**for the Claimant**

and

.....**for the Respondent.**

Abuodha J. N.

Judge