



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI
CAUSE NO. 29(N) OF 2010

ALICE NJOKI MIRINGU.....CLAIMANT

VERSUS

BARCLAYS BANK OF KENYA LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein seeks resolution of the dispute between her and her former employer Barclays Bank. She seeks special damages of Kshs. 2,070,722/-, general damages, an order directing the Respondent to unfreeze account No. 703493327 held at Enterprise Road as well as costs of the suit.
2. The Respondent is opposed and filed a Memorandum of Defence on 9th June 2010. In it, the Respondent averred that the loss of cash equivalent to 33,482,521.22 was due to procedural lapses on her part. Part of the lapses included failure to conduct weekly cashier till snaps, failure to secure the duplicate keys, failing to go through the operational risk assessment before increasing cashiers cash holding limit from 5 million to 30 million.
3. The Claimant testified before the predecessor of this Court on 2nd February 2011 and subsequently on 3rd May 2011 when she was cross examined. The Respondent had not called any witness by the time the parties decided to file submissions. The Claimant filed her submissions on 7th November 2013 and the Respondent filed submissions on 3rd December 2013. Both submissions filed by the parties are very comprehensive and detailed. Claimant reiterates that the loss took place when she was not on shift and learnt of the loss on Monday when she resumed duty. The Respondent reiterated that the Claimant failed to escalate the lapses she noted when she took over the Branch and thus failed in her duty. She was accused of failing to maintain proper checks and security measures relating to the cash checks and the access keys.
4. Investigations carried out revealed the loss to have been as a result of an inside job. The theft took place when the Claimant was not on duty and some of her colleagues were arraigned in Court for the theft. She was invited to a disciplinary hearing on 29th September 2009 vide a letter dated 18th September 2009. Florence Sagide wrote the letter setting out the agenda for the meeting on 29th September 2009. It was a very well written letter and advised the Claimant of her rights and the

consequences. The disciplinary meeting was held generating a detailed transcript of the deliberations. What emerged was that there were peculiar problems at the JKIA Branch of the Respondent which explained the lapses leading to the theft of the cash. The Respondent after considering the explanations given and the lapses noted decided to terminate her employment on 23rd November 2009.

5. The Claimant wrote a letter of appeal on 26th November 2009 after receipt of the termination letter. In her appeal she stated that her last working day before the incident was 18th August 2009 and that she handed over and when the money was lost she was not on duty. She was woken up on morning of 20th August 2009 and informed of the theft. She thus protested her dismissal as she was not personally involved in the loss and she did not know what bank procedure she had failed to undertake leading to the loss.
6. I have carefully considered the report and the measures put in place after it was established that there was exposure to risk at the branch. It would seem that after it was discovered there were lapses the Bank set in place new protocols regarding the keys and she adhered to them. She was not aware if other duplicates existed and it would well be that there were things that could have been done better. The alarms were not armed until later on the night in question leading to the inference that someone deliberately ensured the theft took place without the security alerts being active. I on my part would not blame the Claimant for the loss. It would have sufficed to punish her by way of disciplinary sanctions if it was felt that she had not handled the branch well. A demotion, withholding of increment or the like. A dismissal was not suitable as she had not played any part in the theft as revealed by the detailed Investigation Report headed **Basis Report Opvantage No. 067023/09 Report No. 148/09**.
7. The cases cited in some instances were off the mark. The case of **Peter Maina Kimani v. Mwalimu Co-op SACCO, Robert Shironko Shunet v. Kenya Post Office Savings Bank** were not on fours with this case. The case of **Anne Ndirangu v. NSSF** was also not on fours with the Claimant's case as it related to a retirement. The case of **Edward Munene v. Equity Bank**, was relevant but the case of **Beatrice Osir v. Board of Trustees Telposta Pension Scheme** related to dismissal without proper hearing. The case cited of **Jane Wairimu Machira v Mugo Waweru Associates** involved a termination on account of pregnancy which was discriminatory to say the least. That case too is not on all fours with the Claimant's case. The case of **Ivetta Mkala v Nation Media** also dealt with an issue that was not at play here – performance.
8. Leave is a right to each employee. Section 28 of the Employment Act is very clear. She was entitled to pro rata leave for 2009 in spite of the year not having ended as only one month remained to the end of the year, she was entitled to 21 working days (at the minimum). Having regard to all the matters examined above and the pleadings, submissions, evidence and authorities cited by the parties, I find that her termination was unfair given the circumstances and the Claimant is entitled to recover the dues as follows:-
 - a. Leave for 2009 – Kshs. 112,532/-
 - b. One month notice – Kshs. 112,532/-
 - c. Pension dues
 - d. Unpaid salary for days worked upto 23rd November 2009
 - e. 12 months compensation for the unfair termination Kshs. 1,350,384/-
 - f. Costs of the suit
9. The Claimant is also entitled to the lifting of the freeze on her account at Enterprise Road Branch. She is also obligated to make good her debts and liabilities to the Respondent. Under the provisions of Section 12 of the Industrial Court Act, this Court is empowered to grant any appropriate relief hence the order for payment of the dues enumerated in the dismissal letter.

It is so ordered.

Dated and delivered at Nairobi this 10th day of January 2014

Nzioki wa Makau

JUDGE