



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 176 OF 2013

MOSES KAUNDA

VERNONCLAIMANT
T

-VERSUS-

**SIMA CO-OPERATIVE SAVINGS & CREDIT SOCIETY
LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 26th July, 2013)

JUDGMENT

The claimant **Moses Kaunda Vernon** was employed by the respondent Sima Co-Operative Savings and Credit Society Limited as the Manager on 28.06.2003. On 26.07.2012, he was suspended on account of misappropriating Kshs.178,200/= being the respondent's money. The claimant rendered a written explanation to the allegations by his letter dated 16.07.2012.

The disciplinary committee heard the case on 4.08.2012 and found that the money had not been lost as the respondent had applied it to proper benefit of the respondent only that in applying the funds the claimant had contravened some procedural aspects. The committee recommended that the claimant be warned in view of the findings. At the hearing, it was not disputed by the respondent that the allegations as leveled against the claimant had been resolved as per the committee's findings and the respondent's case was that the subsequent dismissal was not on account of the those allegations involving the Kshs.178,200/=.

The claimant was served the show cause letter dated 5.05.2013 at folio 53 of the memorandum of claim. The letter referred to the recommendations of the disciplinary committee and invited the claimant to the management committee meeting on 11.05.2013 with a view of showing cause why he should not be dismissed on account of fraud against the respondent, contravention of the loaning policy by approving his loans beyond three times his shares and taking loans for himself and other persons from the respondent without ensuring proper security had been provided.

The parties disputed the genuine record of the minutes of the proceedings of 11.05.2013 and in particular whether the management committee approved that the claimant's employment was to be terminated by the letter dated 11.05.2013 at folio 57 on the memorandum of claim. The claimant attended the meeting of 11.05.2013 and there is no doubt that he was heard on the allegations as leveled against him in the show cause letter. The claimant's employment, as per the termination letter, was terminated on account of breaching the loaning policy.

At the hearing, it was established that the claimant took for himself a loan of Kshs.700,000/= without proper security; and for himself and the then respondent's chairman Kshs.950,000/= also without proper

security. It was also established that under the respondent's loan policies, it was the responsibility of the claimant as the manager to assist and advise the respondent's Management Committee on proper securities for the loans advanced. The evidence on record showed that in advancing himself the stated loans, the claimant not only failed to perform that crucial duty but also engaged in obvious conflict of interest or unjustified and irregular benefit from the respondent.

In view of the termination, the claimant filed the memorandum of claim on 13.06.2013 through Kiplenge & Kurgut Advocates. The claimant prayed for orders as follows:

- a. A finding that the termination was unfair.
- b. The respondent to reinstate the claimant to his position without loss of benefits.
- c. The respondent be restrained from acting on the termination letter of 11.05.2013 in any manner howsoever until the cause is fully heard and determined.
- d. In alternative, the claimant be paid all his benefits as well as compensation for unfair termination.
- e. The respondent to pay costs of the case.

The claimant also filed the application dated 13.06.2013 under certificate of urgency alongside filing the memorandum of claim. The parties agreed to hear the substantive suit.

The respondent filed the memorandum of defence on 3.07.2013 through Peter M. Kinyanjui Advocate. The case was heard on 22.07.2013 when the claimant gave evidence to support his case. The respondent's witness was its current chairman of the Management Committee William Kurere. The facts of the case are as set out earlier in this judgment.

The court has considered the pleadings, evidence and submissions and makes the following findings on the issues in dispute:

1. The first issue for determination is whether the termination was unfair. The claimant by his evidence confirmed that he breached the respondent's loaning policy and the court finds that the reason for termination was valid as it was true. There is no doubt that the claimant was given notice of the misconduct and was accorded a hearing in self exculpation. The court finds that the respondent upheld due process and the rules of natural justice in dismissing the claimant.
2. The next issue for determination is whether the claimant is entitled to the remedies as prayed for. The claimant was suspended on 26.7.2012 to 5.05.2013 (when the show cause letter leading to termination was issued) on account of misappropriating Kshs.178,200.00 for which he was exculpated. The court finds that the claimant is entitled to be paid the withheld salary from 26.7.2012 to 5.05.2013 because he was found innocent with respect to the reason for which he had been suspended. Further, since the court has found that the claimant was fairly dismissed, he is not entitled to any other remedy as prayed for. In the circumstances of this case, the court finds that the respondent ought to have leveled the allegations wholesomely and no good reasons have been advanced to justify the long time that lapsed before punishing the claimant. The court finds that each party shall bear own costs of the case.

In conclusion, the court enters judgment for:

1. The respondent, subject to recovering the liabilities owed by the claimant, to pay the claimant the withheld salary from 26.7.2012 to 5.05.2013.
2. Each party to bear own costs of the case.

Signed, dated and delivered in court at Nakuru this **Friday, 26th July, 2013.**

BYRAM ONGAYA

JUDGE

