

Steven Kalua v Standard Bank PLC

Judgment

Court:	Industrial Relations Court
Bench:	Hon. V. Nyimba, Deputy Chairperson
Cause Number:	IRC 631 of 2021
Date of Judgment:	May 03, 2024
Bar:	Luwa, Counsel for the Applicant Thengolose, Counsel for the Respondent

1.0. INTRODUCTION

1.1 On 28th September 2021, the Applicant commenced legal action for unfair and unlawful dismissal against the respondent.

1.2 The respondent vehemently opposes the action and argues that the dismissal of the Applicant was fair. There were valid reasons for the dismissal and due process was followed before the Applicant was dismissed.

2.0. THE FACTS IN BRIEF

2.1. In summary, the Applicant was working for the Respondent as Head of Service Centre at its City Service in Lilongwe. The Bank had received a complaint from one of its customers. Assemblies of God Care (AG Care) in which they disputed some cheque payments and funds transfers on their bank account amounting to MK320 Million. The payments were suspected to have been fraudulently carried out and the matter was duly investigated by the Respondent's Investigations and Fraud Risk (IFR) team. From the said investigations, the following issues were established:

- a) That the Applicant herein had authorized payment on some cheque bearing forged signatures without confirming with the signatory whose signature appeared different from the specimen signature held by the Bank.
- b) That the Applicant had not provided proper supervision to his team at the Services Centre such that cashed cheques were not scanned and physical cheques were not properly kept and dispatched to the archives timely.

2.2. The Applicant was hence subjected to due disciplinary process. After the proceed the Applicant was eventually dismissed as the matter as were established against him. The Applicant lodged an appeal against the verdict but the same was dismissed after due consideration.

3.0. ISSUES

The following matters are subjected to the court's determination:

3.1 Whether or not the Applicant's dismissal was unfair.

3.2 Whether or not the Applicant is entitled to the reliefs as prayed for the IRC Form 1.

4.0. ANALYSIS OF THE EVIDENCE AND APPLICATION OF THE LAW

We shall consider each of the Applicant's heads of claim and analyses the evidence and draw the conclusions therefrom.

4.1. Whose responsibility was it to verify cheque presented or encashment? was the Applicant unfairly taken to task?

4.1.1. The process of cheque encashment was duly explained through the witness statement of Agnes Chipatala, and she amplified the same through her oral testimony. From this, it was clear that a teller's limit was K2,000,000.00 for customer's own cheques and K500,000.00 for third party cheques.

4.1 .2. The teller was supposed refer any cheque to their leader for authorization where the amount on the instrument was above their limit, or where cheques were presented for encashment by third parties whose amounts are above a specified amount or where the teller is in doubt whether any transaction is within their limit or not.

4.1.3. In all this, it was the leaders; role to re-scrutinize all instruments and to apply due diligence before authorizing to pay. In the matter at hand, no teller would make a payment where a team leader had decided otherwise upon his findings.

4.1.4. It is key to point out that the above statements went uncontroverted by the Applicant through the trial of this case. In fact, these statements were duly supported by the Applicant's own exhibits marked SKK 1 and SKK2. These exhibits clearly indicated the various scenarios and how the cheques involved would have to be handled.

4.1.5. During cross-examination, the Applicant admitted having authorized payment on fifteen cheques that were referred to him for review by tellers. These were cheques exhibited as TK 1 to the witness statement of Thomas Khumuwa (marked as D2qa, D2b, D2c, D2d, D2e, D21, D2g, D2h, D2k, D2i, D2n and D2o during trial). He had appended his signature on the cheque to signify his approval for payment. The applicant concedes that the customer signatures on these were different from those maintained in the Bank's system and he should have taken more time to scrutinize them before approval. He blamed his actions

on the nature of his job where at times he would 'become overwhelmed with other management and operational work' (see exhibit D3 - attached to witness of Thomas Khumuwa).

4.1.6. Clearly from the above, it is not correct to suggest that cheque encashment process was the sole responsibility of tellers.

4.1.7. The applicant herein was negligent in how he authorized payment on the cheque in question. He admitted not to have applied his skill to the entire process, and this led to loss of money on the account of the customer, AG Care.

4.1.8. It is our further view and argument that the Applicant acted not only negligently but also recklessly in how he proceeded to confirm the cheques for payment. In the case of Electoral Commission. Malawi Savings Bank and Airtel Malawi Ltd Commercial Case No. 7 4 of 2013 (unreported), the Malawi Supreme Court of Appeal went to town to condemn the respondent bank for being reckless when its officers chose to override their system when it had rejected some cheque payments. This is similar to what the Applicant did in the matter at hand. The Applicant simply chose not to adhere to process and follow the due requirements before giving approval for the cheques to be paid. There were clear red flags that called him to exercise his professional skill in handling the cheques for the customer in question. One such red flag is that he was allowed to continue paying as long as the cheques were presented by the customer's Finance and Administration Officer. He fell for this forgetting what his role required of him in those circumstances. He was merely reckless. The Applicant in

the matter at hand became too comfortable with the process thereby giving room to fraud. He never protected his customer's funds. The Bank therefore had enough reasons to call the Applicant for a disciplinary process on the issues above.

4.2. As a supervisor, did the Applicant do what every supervisor in his position would have reasonably done or expected to do?

One of the charges laid against the Applicant during the disciplinary hearing was that of Poor supervision which was contrary to schedule of Offence and Corresponding Disciplinary Action Guide, Section 12. In supporting this charge, the Bank had established that the Applicant as Head of Service Centre had failed to ensure that his team members were following necessary procedure in respect of ensuring that cashed cheques were scanned, and physical cheques were properly kept and dispatched to the archives timely, This was a record keeping issue which is very critical in banking services. Banking are supposed to keep transaction records for minimum of 7 years upon completion of a transaction. This is in line with the Financial Services (Information Management Requirements for Banks) Directive 2018.

During hearing of this matter in court, the bank's investigations manager (Thomas Khumuwa) provided evidence when he went to investigate the matter, he found that the cheques that were under dispute could not be found at the archives, and neither were they properly scanned as required by procedure, The Applicant did not dispute this fact but merely indicated that the officers

responsible for that task were the ones who should have been taken to task. This, in our view, cemented the fact that the Applicant's approach to his job was negligent. As Head of the Service Centre, he was the overall in charge and hence, he needed to make sure that his team was performing according to standards. Any reasonable supervisor would not have such a laissez-faire approach to work.

4.3. Was the Applicant discriminated against?

The Applicant alleged through his witness statement that he was discriminated against in that he was dismissed on a matter that involved other branches whose officers were spared. He mentioned that the Heads of the following service centres were not dismissed: Capital City, Lilongwe, Chichiri, Operations Processing Centre and Gateway Mall.

In cross-examination, the Applicant confirmed that several officers from these service centres underwent disciplinary hearings emanating from the AG Care transactions, but he was not aware of the specific charges that were laid against each one of those individuals. The Applicant mentioned the following individuals to have been subjected to disciplinary process: Andrew Mmamiwa, Sarah Zugah and Bizwick Kazonga but could not tell the outcome for each individual's disciplinary hearing. He proceeded on a voyage of speculation.

It should be mentioned when the Bank's third witness (Alinane Chalamba - Tembo) appeared, she indicated that officers that were called for a disciplinary process on the matter had different charges laid against them depending on the role that each one played in the AG Care transactions. This resulted in different sanctions for those that were found 'guilty' after each disciplinary hearing. She confirmed that some officers were dismissed, and others were given written warnings. The testimony of Alinane Chalamba - Tembo went unopposed throughout the trial. I must be noted that, from the evidence given in court, the Applicant was not answering the same charges as the others. The employees were at different levels of authority and had different roles in the Bank and their involvement in the AG Care transactions were different. Just to repeat, the Applicant was Head of a Service Centre while the other individual's that he mentioned in court were not. For instance, Sarah Zugah was a member of the Applicant's staff at City Mall Service Centre as a mere Custodian. She could therefore not be charged with 'poor supervision' just like Applicants herein when her role did require her to supervise anyone. She was the one being supervised by the Applicant.

4.4. Was the Applicant properly given the right to be heard before his dismissal?

4.4.1. Throughout the Applicant's witness statement and throughout the hearing of this matter, the Applicant did not raise any issues with the Notice for the disciplinary hearing as well as the complaint Form. He was given the notice on the 081h October, 2020 for the hearing which was held on 191h October, 2020. This was adequate notice for the hearing herein. The Court would also notice that during the hearing of the matter herein, the Applicant admitted that he was

given adequate notice of disciplinary hearing prior to the disciplinary hearing and that the said notice of hearing contained the charges that the Applicant was to answer during the hearing and provided the particulars for the said charges.

4.4.2. The said notice (Exhibit D3b) further provided for the date and the place of the hearing and clearly informed the Applicant of his rights during the hearing i.e. right to be helped to present the case by another employee or shop steward, the right to call witnesses, and the right to challenged evidence against him.

4.4.3. The court will note that the Applicant exercised his right to confront or cross examined the Bank's witness during the disciplinary hearing. It is on record that the applicant was allowed to exercise this right personally as well as through support from his representative, Mr. Henderson Chatuwa (refers to Exhibit D3c to the witness statement of Alinafe Chalamba -Tembo).

4.4.4. Finally, it is clear that the Applicant was accorded a right to respond to the matters during the disciplinary hearing. The Applicant provided his side of the story during the hearing. As such the Applicant was accorded a fair hearing.

4.5. Was the punishment of summary dismissal just too harsh and disproportionate to the offence committed?

4.5.1. In the case of Moyo vs. National Bank of Malawi (MSCA Civil Appeal 19 of 2009) [2010], the Supreme Court had occasion to deal with the question of fairness, justice and equity in labour matters. It is key to note that the Supreme Court's view is that fairness of a punishment is dependent on the facts obtaining in each case.

4.5.2. Hence, in the matter at hand, two facts are very important to note and viz:

a) The actions of the Applicant were clearly against the Bank's requirements on cash encashment. As discussed above, the Applicant was purely negligent reckless in how he handled the cheques in question.

b) The Applicant left the supervision of his team members to the wind. He did not care on how and what his team was doing and this led to chaotic filing and record keeping at the Service Centre.

5.0. Was the Applicant's dismissal fair after all?

In view of the above analysis, the court finds that the Respondent had justifiable grounds upon which to dismiss the Applicant and the Court would have no basis upon which to substitute that decision with its own. The respondent also followed the required procedure before dismissing the Applicant. There was no discrimination against the Applicant. The facts on his case were not the same as for the other members that were summoned to disciplinary hearings.

6.0. CONCLUSION

The Respondent has proved that they followed both the procedural and substantive justice in dismissing the Applicant and that the Applicant's dismissal was fair. The matter be dismissed.

7.0. APPEAL

Any party dissatisfied with the judgment has the right to appeal to the High Court as per section 65(2) of the Industrial Relations Court.

Dated this 3rd May, 2024 at Industrial Relations Court Lilongwe.