



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1208 OF 2014**

**LIBERATO MANGA KIVANGA.....CLAIMANT**

**Versus**

**PRIME BANK LIMITED..... RESPONDENT**

**JUDGMENT ON COUNTER CLAIM**

1. Liberato Manga Kivanga (Claimant) instituted proceedings against Prime Bank Ltd (Respondent) on 18 July 2014 alleging unfair termination of employment and breach of contract.
2. On 9 October 2014, the Respondent filed a Memorandum of Response and Counterclaim.
3. When the Cause first came up for hearing on 8 November 2017, the Claimant sought and secured an adjournment. The reasons advanced were that the Claimant was not available while his advocate on record was before the High Court.
4. When the Cause next came up for hearing on 15 May 2018, the Claimant again sought an adjournment on the ground that the advocate on record was before the High Court. The Court declined to grant the adjournment.
5. When the advocate holding brief indicated that he had no further instructions, the Respondent applied that the Claimant's case be dismissed, and a date be given for the Counterclaim, an application the Court accepted by dismissing the Claimant's case and setting the Counterclaim for hearing on 22 October 2018.
6. Despite the date for hearing of the Counterclaim being set in the presence of the advocate holding brief for the Claimant, there was no representation/appearance at the hearing.
7. The Respondent called 2 witnesses and filed submissions on 2 November 2018.
8. The Court has given due consideration to the evidence and submissions.
9. The Respondent's case is rather straight forward.
10. The Claimant was employed as a Senior Officer in charge of among others human resources. He was also responsible for making payments and maintaining expenditure registers.
11. According to the Respondent's second witness and Head of Internal Audit, sometime in 2011, the General Manager alerted her about suspected fraudulent entries and instructed her to conduct investigations.

12. The witness testified that she conducted investigations and established that the Claimant and another employee would amend/alter genuinely approved expenditure(s) to show higher figures and upon payment, pocket the difference.

13. The investigations also established that the Claimant and another employee would raise fictitious vouchers and cause payment to themselves. The payments did not have requisite approvals.

14. And to lay the blame at the door of the Claimant, the witness produced the debit vouchers, expenditure reimbursement claim forms, expenditure registers prepared and authorised by the Claimant and another employee.

15. Also produced were the *Investigations Report* by the witness and a report by a Document Examiner from the Kenya Police demonstrating that he examined the handwriting and signatures in the vouchers and samples of the Claimant's signatures and handwriting and came to the opinion that they were made by the same person.

16. The *Investigations Report*, and the witness testified as much, established that the Claimant was responsible for the loss of Kshs 4,611,490/-, which was the amount counterclaimed.

17. The Court was further informed that the Claimant has a pending criminal case at the Magistrate's Court of *stealing by servant* and arising from the same fraudulent activities.

18. After considering the evidence on record, and the fact that the Claimant did not file a Reply to the Counterclaim, the Court finds that the Respondent has met the legal and evidential burden of proof to warrant grant of the relief sought.

19. The Court therefore enters judgment for the Respondent against the Claimant in the sum of Kshs 4,611,490/- together with costs and interest from today.

**Delivered, dated and signed in Nairobi on this 30<sup>th</sup> day of November 2018.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                      Mbugua Mureithi & Co. Advocates

For Respondent                      Mr. Kimani instructed by Macharia-Mwangi & Njeru Advocates

Court Assistant                      Lindsey



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