



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 430 of 2008

SAMUEL NYAKURI LUSWETI..... PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LTD 1ST DEFENDANT

J.N. NJAGI..... 2ND DEFENDANT

RULING

The Plaintiff's Chamber Summons dated 23rd September 2008 is brought under order XXXIX Rules 1 and 3 of the Civil Procedure Rules and prays for orders against the 1st Defendant

“THAT pending the hearing and determination of this suit, the first defendant be restrained from charging the Plaintiff any other rate of interest other than 5% per annum on monthly installments due on a mortgage taken on LR NO. ELDORET MUNICIPALITY/BLOCK 9/1366.”

Briefly from what has been brought to my attention during the hearing of the said chamber summons, at all material times the Plaintiff was an employee of the 1st Defendant as a bank clerk at the 1st Defendant's Harambee Avenue Branch, Nairobi, where the 2nd Defendant was employed as the 1st Defendant's Chief Branch Manager. By a letter dated 19th January 2008, the 1st Defendant terminated the Plaintiff's employment pursuant to clause A5 (d) of

“The collection Agreement Covering Section Heads, Clerks, Technical and Subordinate Staff”.

That letter spelled out to the Plaintiff the effect of termination of his employment upon his liabilities to the 1st Plaintiff clearly stating that such liabilities, if any, would

“attract a commercial rate of interest with effect from the date of”

the letter of termination.

The Plaintiff as the 1st Defendant's clerk, had been granted a house loan of Kshs.2,150,000/= which he was paying at an interest rate of 5% under terms and conditions which included the following:

“This facility is available to you in accordance with the special conditions for loans to members of staff

issued by Head Office which states inter-alia:-

That upon leaving the Bank's service for any reason the loan will become repayable at the sole discretion of the Bank.

That upon leaving the banks service for any reason a normal commercial interest will be charged."

The Chamber Summons is based on eight grounds found on the face of the same application supported by the Plaintiff's affidavit dated 23rd September 2008. The said Chamber Summons is opposed by the Defendants on the basis of their Replying Affidavit dated 20th November 2008.

I do note that during the hearing Mr. Wati, the learned counsel for the Plaintiff, relied on provisions of the current constitution of Kenya to try and establish, for example, ground number 7, that the termination of the Plaintiff's employment amounted to a contravention of the Constitution and that therefore the revision of the rate of interest on the mortgage is equally a nullity in law.

To my mind that is a very contentious issue which has to be established during the hearing of the main suit in this private employer-employee or mortgagor-mortgagee relationship. I further note that no provisions of the Constitution are cited as the basis of bringing this Chamber Summons.

On the whole therefore, and to be brief, I am not seeing a prima facie case established before me by the Plaintiff. In any case, I think the balance of convenience tilts in favour of the Defendants in terms of commercial interest and ability to adequately compensate the Plaintiff if need be, and may be that is why the Plaintiff has not been able to show that he will suffer irreparable loss.

It follows that I should reject and I do hereby dismiss this Chamber Summons with costs to the Defendants.

Dated this 3rd day of August 2009.

J.M. KHAMONI

JUDGE