



REPUBLIC OF KENYA



Josim Instantaneous Consortium v Equity Bank Kenya Limited (Civil Case 001 of 2025) [2025] KEHC 6871 (KLR) (20 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE 001 OF 2025
RN NYAKUNDI, J
MAY 20, 2025**

BETWEEN

JOSIM INSTANTANEOUS CONSORTIUM PLAINTIFF

AND

EQUITY BANK KENYA LIMITED DEFENDANT

RULING

1. Before this court is an application dated 5th day of January 2025 seeking the following orders:
 - i. That a temporary injunction do issue to restrain and prevent the Respondent by themselves and/or their agents, servants, employee, assigns or otherwise howsoever charging interests and/or recovering any amount/utilizing and/or selling any security related to the account from the applicant's account number [particulars withheld] pending the hearing and determination of this application interparty
 - ii. That a temporary injunction do issue to restrain and prevent the Respondent by themselves and/or agents, servants, employees, assigns or otherwise howsoever charging interest and or/ recovering any amount/utilizing and/or selling any security related to the account from the applicant's account number [particulars withheld] pending the hearing and determination of the main suit.

WHICH APPLCIAITON is based on the ground state hereunder and upon the annexed affidavit of Isiah Sifuna Walubengo and upon such other or further grounds to be adduced at the hearing hereof:

1. That the applicant applied loan which was approved and granted vice a letter of offer dated 15.6.2022 at Kshs 48,000,000 consisting of Kshs 44,000,000 facility and Kes 4,000,000 overdraft respectively. Despite this approval, the respondent (Equity Bank



Ltd) imposed significant charges, including a making limiting charge processing fees, LACE fees and stamp duty.

2. That the said charges were as follows Making limits charges 3% of the loan amount Processing Fees 3% of the loan amount Lace Fees 2% of the loan amount Stamp Deputy 20% (though stamp duty is usually a set fees based on the nature of the loan, it seems this was a flat percentage applied to the loan amount
 3. That upon noticing the said charges and discrepancy, the applicant went ahead to have a look at the contract between them and noted that the said amounts were not captured in the agreement but the respondent went ahead to deduct the amount from the loan
 4. That the said charges are nowhere in the facility letter but the applicant is paying for the same
 5. That since August 2024 the Applicant has made payment totaling Kshs 4.8 million, However, this has left and an un reconciled balance of Ksh 7.1 million which consists of both an overdraft and long-term loan.. The Applicant has requested a detailed reconciliation of the amount to clarify the outstanding balance to no avail
 6. That Further, the terms surrounding the LSO financing, specifically the abnormal interest rates applied, have placed an undue burden on the applicant interest was drawn at rates of 3% and 2% at each drawn-down or every three month period, which is excessive and unreasonably high despite the same being nowhere in the letter of offer.
 7. That the applicant has made several attempts to have a sit down with the respondents management but they have turned a blind eye to the applicant despite continuously deducting funds from the applicant's account case in point Kshs 1,884, 257.00 was deducted on 3rd January, 2025
 8. That the Applicant stands to suffer substantial loss and irreparable damage if the interim orders sought are not granted
 9. That the Respondent will not suffer any prejudice if the orders sought are issued and
 10. That unless this Application is heard urgently and orders sought thereof granted, the Applicant is doomed to suffer irreparable loss and damage and the entire Application herein rendered nugatory
2. In the instant case, this application for injunction, no doubt arises out of allegations of breach of the loan contract regarding the alleged imposed charges, including a making Limit Charge, processing fees, LACE fees and stamp duty. These charges were applied before the loan disbursement, meaning they were deducted from the loan amount before they could access the funds. The question of significance is whether if the Respondent should be allowed to load the tariffs as pleaded by the Applicant it will suffer irremediable prejudice or substantial loss if the grant of injunction is withheld by this court. I bear in mind the Application of the governing principle which ordains the court that in interpreting Order 40 Rule 1 & 2 of the *Civil Procedure Rules* it is incumbent upon the court to adopt a course that will cause the list prejudice. Therefore, among the matters which are highlighted in the affidavit evidence comprise of the prejudice likely to be suffered on account of the charges being imposed by the



respondent which in essence would in the long run impact the loan account. In the case of *Nottingham Building Society v Eurodynamics System* (1993) FSR 468 at P. 474. Chadwick J Sated:

“In my view the principles to be applied are these. First, this being an interlocutory matter, the overriding consideration is which course is likely to involve the least risk of injustice if it turns out to be wrong’ in the sense described by Hoffmann J. Secondly, in considering whether to grant a mandatory injunction, the court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage, may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action, thereby preserving the status quo. Thirdly, it is legitimate, where a mandatory injunction is sought, to consider whether the court does feel a high degree of assurance that the plaintiff will be able to establish this right at a trial. That is because the greater the degree of assurance the plaintiff will ultimately establish his right, the less will be the risk of injustice if the injunction is granted. But, finally, even where the court is unable to feel any high degree of assurance that the plaintiff will establish his right, there may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage. Those circumstances will exist where the risk of injustice if this injunction is refused sufficiently outweigh the risk of injustice if it is granted.”

3. These principles are replicated in our domestic jurisprudence in the Case of *Giella v Cassman Brown* (1973) in which the court set out the principles for injunctions that:

“The conditions for grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience”.

In the same context the House of Lords case of *American Cyanamid Co v Ethicon Ltd* (1975)

“It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant’s freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant’s freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted”

4. It appears from the outset that the issues being raised are not frivolous or vexatious to be just wished away as a party to the contract who is vexing the Respondent on the terms of the contract already agreed upon at the time of signing and executing the instrument. Therefore, in exercising discretion



the purpose of it is to improve the chances of this court to do justice to the pending suit which ought to be determined on the merits. In a nutshell, a temporary injunction be and is hereby issued in the following terms: That the Respondents by themselves and/or their agents, servants, employees, assigns or otherwise howsoever charging interests and or recovering any amount utilizing and or selling any security relied to the account from the applicants account number [particulars withheld] pending the hearing and determination of the main suit.

5. In conclusion therefore, the Respondent is granted leave to file the defence and any other evidential disclosures to expedite the hearing and determination. The pre-trial conference to be held on 30.5.2025. Costs of this application be in the cause.

**GIVEN UNDER MY HAND AND THE SEAL OF THE COURT THIS 20TH DAY OF MAY 2025
VIA CTS AND EMAIL**

R. NYAKUNDI

JUDGE

