



**Juma v Consolidated Bank of Kenya Limited (Cause E036 of 2025)
[2025] KEELRC 2546 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2546 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E036 OF 2025
M MBARŪ, J
SEPTEMBER 25, 2025**

BETWEEN

EMMANUEL WAMBUA JUMA CLAIMANT

AND

CONSOLIDATED BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

1. The respondent bank employed the claimant as a graduate clerk from 16 July 2018. He worked as the business development officer until 18 October 2024, when his employment was unfairly terminated.
2. The claim is that, before termination of employment, the head of human resources issued the claimant with letter dated 20 August 2024 inviting him to show cause why disciplinary action should not be taken against him for contravening the credit policy and procedures with respect to a loan facility advanced to Jowak Agencies Limited and David Mureithi Kanyi and his related account, African Budget & Executive Homes Company Limited. The show cause letter noted that the claimant had contravened the bank credit policy by;
 - a. Credit advanced to Jowak Agencies Limited by supporting and recommending to the respondent for approval of the equity release loan of Ksh. 26 million instead of recommending an asset finance or letter of credit facility to procure the construction machinery.
 - b. Recommending for approval a term loan of Ksh. 1.5 million, yet the customer loan was in arrears, thereby exposing the respondent to potential loss.
 - c. Credit facility advanced to David Murithi Kanyi, appraising and recommending to the credit department for approval of a loan of Ksh. 75 million without undertaking due diligence, including a site visit, thereby exposing the respondent to potential loss.



3. The claimant was issued with the notice to show cause on 21 August 2014 and was required to respond before 28 August 2024. His official bank email address, internet access, and profile were suspended. He submitted a response on 27 August 2024 and noted that, due to the suspension of his email account, he sought access to defend himself. His request was not granted.
4. The claimant was called to a disciplinary hearing on 16 September 2024. His employment was terminated on 17 October 2024 because he had violated the credit policy and procedures, thereby exposing the bank to an imminent loss.
5. The claimant filed an appeal against the decision to terminate his employment on 4 November 2024, which was rejected.
6. The claim is that there were no valid reasons for the termination of employment. He conducted due diligence when assessing the loan facility for Jowak Agencies Limited, David Mureithi Kanyi, and his related account, African Budget & Executive Homes Company Limited. As the business development officer, he only recommended approval of the loan facility and was not the decision-maker. The loan was analysed and approved by the credit department, the management credit committee, and the credit and finance committees of the Board of Directors. The claimant acted diligently and adhered to the credit policy of the respondent.
7. His claim was that the respondent denied him access to vital evidence and material when his email account was suspended. He was unable to access records to support his case, resulting in an unfair termination of his employment.

The claimant is claiming the following;

- a. Damages for loss of employment at 12 months gross salary Ksh. 144,270 x 12 Ksh. 1,731,240.
 - b. Loss of prospective future earnings for 19 years Ksh. 32,893,560.
 - c. Loss of the employer's pension contribution for 19 years.
 - d. Loss of medical benefits under the respondent's medical cover for 19 years.
 - e. Loss as a result of paying the mortgage loan at the current commercial rate of 16% as opposed to the bank staff rate of 6%.
 - f. Costs of the suit.
8. The claimant testified that he worked for the respondent for 12 years with a clean record until he was issued with the show cause notice dated 21 August 2024. He was accused of breaching the credit policy, which was not true. Despite the show cause notice, the email and records access were suspended. He could not use the evidence from the emails to defend himself.
 9. The claimant testified that regarding the credit facilities he recommended for David Mureithi Kanyi, the respondent had a duty to approve or reject them based on the credit policy, which was managed by a separate department. The respondent obtained a Credit Reference Bureau (CRB) statement and noted that the customer had three years of arrears. However, the CRB report that the claimant was able to access did not indicate any loan arrears; what was reported had already been declared. The officer's letter indicated that Ksh. 21 million was to be paid by the vendor, and at the branch, the loan facility was only to be paid upon approval by the credit department. All disbursements were to be made through the advocates via a different account, as outlined in the offer letter. The vendor's advocate stated the balance on the property, and this was sent to the respondent for approval through the credit department. The claimant's role was solely to recommend the loan facility.



10. The claimant testified that he was accused of not visiting the site before recommending the loan facility. However, the credit department was guided by the valuer's report, which was secured from expert reports sourced independently of his role. Upon the approval of the loan, the credit department appointed a valuer to carry out the valuation. The department conducted an analysis for him to apply in the assessment. He is not an expert in valuations, and the respondent relied on the panel of valuers, with the credit department then approving the valuation report.
11. The valuer indicated that the security provided required an environmental analysis that was omitted. Excavation analysis was required, but the claimant is not an expert in this regard. The respondent proceeded to approve the offer letter, which went to the credit department. The alleged fraud was not for the branch to investigate but the credit department.
12. The claimant testified that he was not the only employee subjected to disciplinary proceedings. Others from the credit department were invited to the hearing. They received warnings, and he was dismissed from his employment despite undertaking his duties diligently.
13. In reply, the response is that through letter dated 5 November 2012, the claimant was employed as a graduate clerk and last worked as the business development officer.
14. On 5 June 2024, the respondent, through the chief executive officer (CEO), received an internal memorandum from the acting head of credit, forwarding an investigation report on the loan facility that had been advanced to one of its clients. It was suspected that the facilities granted to the customer may not have been above board and that various terms and conditions required for the approved facilities may not have been adhered to.
15. There was a recommendation from the investigations that the matters arising be placed with the internal audit department for review and the established procedures on disbursement and waiver of approval of loan conditions. Upon review, the COE received a detailed report dated 5 August 2024 and the recommendations were that;
 - a. To ascertain if there were breaches of the bank's policies and procedures in granting credit facilities,
 - b. Determine whether due diligence was observed by all bank staff in the appraisal, approval, disbursement, monitoring and follow-up on the facilities granted.
 - c. Determine whether any waivers were granted to the customer in breach of the approved conditions.
 - d. Recommend improvements in internal controls that may be weak,
 - e. Determine the total exposure to the bank in relation to the facilities granted to the customer.
16. The investment engagement procedures included a review of account opening documents, a review of branch operations, and discussions with staff from both head office and branch.
17. From the audit review, it emerged that the process of granting the client and his related accounts loans amounting to Ksh. 75 million was flawed from the branch to the credit department at head office. The audit noted glaring inadequacies in the customer applications, which should have been identified at the branch and credit department, and the loan application should have been declined.
18. Due to the noted shortcomings, the bank was exposed to an imminent loss of Ksh. 176,292,725. The claimant's actions and omissions that resulted in the exposure included the following;



- a. Appraising and recommending to the credit department for approval the initial loan application from Ksh.75 million despite shortcomings that the customer assertion that he was collecting the rental income,
 - b. failed to confirm the authenticity of bank statements provided by the customer from other banks,
 - c. disregarding the recommendation that the bank take the title of the property that was to be purchased as additional security,
 - d. initiating and signing a voucher for debiting the client's account, thus creating an overdrawn account that the credit department did not authorise, and
 - e. Recommending an additional facility while the client had provided false information on the modalities of payments.
19. The claimant was issued a show-cause notice for contravening the credit policy and procedures. To avoid interference with the evidence and pending a disciplinary hearing, given his position in the branch, the claimant was suspended. He was invited to the disciplinary hearing but failed to give a satisfactory response. His employment was terminated for a justified cause, noting that the loan facilities being requested by the client while in arrears should have undergone due diligence. The claimant should have authenticated the various documents, including bank statements from other banks and the sale agreement provided by the client when applying for a loan facility. Due to the imminent exposure to a loss of Ksh. 176,292,725, the termination of employment was justified.
20. The claimant has since been paid his terminal dues, including;
- a. half salary up to 17 October 2024,
 - b. notice pay,
 - c. 9 accrued leave days.
21. The respondent called Jacqueline Thagichu, the credit administration manager. She testified that after investigations, it was established that the claimant recommended a loan facility without an onsite inspection report on the security for the facility to be financed through the loan. The valuation report indicated that there were existing excavations on the property; this should have been returned to the credit department for review.
22. The investigations also revealed that the amounts to be financed for the purchase of the properties were supposed to be sent directly to the advocates' account. However, some of the disbursements were made to the client account. No approval was sighted or amendment to these conditions.
23. The respondent further found that there is an ownership dispute over all 9 titles provided as security, yet the initial research did not identify any such encumbrances.
24. Thagichu also testified that the customer made an application for Ksh. 10 million, which was allegedly repaid from the sales of the properties, but instead, part of the loan proceeds issued to a separate entity was used, together with interest, to settle it. The investigation revealed that the facilities granted to the customer were not above board. The claimant failed to follow the laid-down procedures, exposing the bank to loss, leading to his dismissal from employment.



25. Hillary Godana, the security manager, testified that following a report to the CEO on the loan facility, an internal audit was conducted. Various discrepancies were noted, and the claimant was called to show cause why disciplinary action should not be taken against him.
26. Rose Mukoba, the acting head of human resources, testified that the claimant was issued a show-cause notice. He was invited to a disciplinary hearing but failed to provide satisfactory responses, resulting in the termination of his employment. He has since been paid his terminal dues in full. He was allowed the right of appeal, which was dismissed.
27. Upon cross-examination, Mukoba testified that the claimant was invited to attend at the office to access the necessary records for his response. A telephone call was made to him to participate at the branch, but he still proceeded and replied to the show cause notice without access. The emails were suspended as part of the investigation process.
28. Six other employees were subjected to a disciplinary hearing. They were part of the loan facility through approvals or disbursements, and anomalies were noted. The claimant and the branch manager were suspended, and their email accounts were barred, as they carried the highest responsibilities in the matter. The claimant initiated the loan application form and should have believed that this was good business for the head office and the credit department to proceed with and approve. The respondent relied on the claimant's recommendation and risk assessment.
29. The claimant submitted that his termination lacked substantive justification and procedural fairness, which constituted a violation of his rights under Articles 41 and 47 of *the Constitution* of Kenya, 2010, and the *Employment Act*, No. 11 of 2017. He contended that Section 45(2) of the *Employment Act*, 2007, mandates that an employer must provide a valid and fair reason for termination and demonstrate adherence to a fair procedure. In the case of *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR, which outlines the legal obligations of employers, including the requirement to prove that the reasons for termination are valid and fair. The case also establishes that the burden of proving unfair termination rests on the employee, while the burden of justifying the grounds rests on the employer.
30. The claimant argues that the reasons for his termination were invalid because he conducted proper due diligence and, as a Business Development Officer, he only recommended, but did not approve, loan facilities. The Credit Department and other committees approved the loans.
31. during cross-examination, the respondent's witnesses failed to justify the termination. The Security Manager admitted that the claimant's role was to recommend business and that the investigations revealed the claimant submitted the required Business Call Reports and Credit Application Summaries. He acknowledged that the claimant physically inspected the properties and that the loan application process was flawed at both the branch and head office levels. On that basis, the claimant suggests that he was the scapegoat in a broader fraudulent scheme and was selectively targeted while other culpable individuals were not.
32. Regarding the procedure for termination, he argued that he was denied a fair hearing. In the case of *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR, which outlines the minimum standards for a fair procedure under Section 41 of the *Employment Act*, including an explanation of grounds for termination, the reason for considering termination, and the opportunity for a hearing. The claimant maintains that the bank denied him access to his email and other systems, which hindered his defense. He also states that the disciplinary hearing was a sham intended to validate a premeditated decision to dismiss him.



33. The claimant outlined the specific reliefs he is seeking, guided by Section 49 of the *Employment Act* and Section 12 of the *Employment and Labour Relations Court Act*, 2011. He prayed for compensation equivalent to 12 months' gross salary, amounting to Kshs. 1,731,240, under Section 49(1)(c) of the *Employment Act*. He also prayed for the payment of all terminal dues, including notice pay and accrued leave days, which he claims were not paid as required under Section 18(4) of the *Employment Act*.
34. the claimant sought damages for the violation of his rights under Articles 41 and 47 of *the Constitution*, arguing that the process lacked transparency and due process. He sought an award for the loss of future earnings or earning capacity, given his expectation of continued employment and the negative impact of his dismissal on his career. he asked for the compensation and reinstatement of his staff mortgage loan interest rate to the concessional rate of 6%, rather than the punitive commercial rate of 16%. In support of this, he cited the case of *Chris Kisire Chepkoi v National Bank of Kenya Limited* [2017] KEELRC 1982 (KLR), in which the court stated that employment benefits should not be converted into commercial loans upon termination. the court to order the respondent to issue him with a certificate of service, which is a statutory entitlement under Section 51 of the *Employment Act*. He also requested that the respondent be directed to remit the employer's pension contributions up to the date of termination, and is seeking a remedy for the denial of medical coverage.
35. The respondent's submissions are based on Section 43(1) and Section 45(1) and (2) of the *Employment Act*, which require an employer to prove a valid and fair reason for termination related to an employee's conduct and that a fair procedure was followed. The Respondent cites the case of *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR, which emphasises that a termination must have a valid reason and follow a fair procedure, including notifying the employee of the charges and providing an opportunity to respond.
36. The respondent asserts that the termination was substantively fair, as the claimant was dismissed for violating the bank's credit policy and failing to perform his duties properly, which exposed the bank to a significant loss. It was highlighted that the claimant, as the proposer and seconder of the business, held primary responsibility for ensuring the loans were a reasonable credit risk. Specific breaches were stated to include: failing to conduct proper due diligence, failing to provide a site visit report, supporting the diversion of funds, and signing a voucher to create an unauthorised overdrawn account position.
37. The respondent also maintains that the termination procedure was fair and adhered to the minimum requirements of Section 41 of the *Employment Act*. It is elaborated that the claimant was issued a show-cause letter, suspended from work to prevent him from interfering with documentation, responded to the letter, attended a disciplinary hearing, was notified of the termination decision, and his appeal was unsuccessful. The respondent also claims that all other colleagues involved were subjected to a similar disciplinary process without discrimination.
38. Regarding the prayers sought, the respondent urges the court to dismiss the claimant's prayers, arguing that the termination was both substantively and procedurally fair. Regarding the prayer for terminal dues, the Respondent submitted that the claimant had received all his terminal dues, a fact confirmed by the claimant's own testimony. On compensation sought for alleged breach of his constitutional rights, it was submitted that the claimant's allegations of unfair labour practices and unfair administrative action are a blanket allegation without evidence, citing *Jaji v Kenya Ports Authority* [2023] KEELRC 3028 (KLR).
39. Regarding the loss of prospective future earnings, the respondent contests this prayer, citing *Amos Sasine Kitaika v Maasai Mara University* [2015] KEELRC 1137 (KLR), which raises questions about the availability of such compensation in cases of unfair termination. Reference was also made to the case of *Maria Kagai Ligaga v. Coca Cola East and Central Africa Limited*, Cause 611 of 2009, which



stated that compensation is not meant to enrich unjustly aggrieved employees. In the case of Industrial case Number 1722 of 2011, David Mwangi Gioko and 51 others v. Nairobi City Water and Sewerage Company, to support the view that employees should mitigate their losses and not expect to be paid for work not rendered.

40. Regarding Mortgage loan interest and medical benefits, the respondent cites *Erick v J Makokha & 4 others -versus- Lawrence Sagini & 2 others* (1994) eKLR to support the position that fringe benefits, such as subsidized housing, end with the termination of employment. Furthermore, the bank's Human Resource Manual explicitly states that staff leaving on disciplinary grounds will have their loans reverted to commercial rates immediately upon departure, and the claimant's termination was indeed on disciplinary grounds. In the absence of an employment relationship and any supporting documentation to support any agreement between the parties that would allow for continuance of such fringe benefits, post-termination, this Court should be guided by the Court of Appeal case of *Erick v J Makokha & 4 others -versus- Lawrence Sagini & 2 others* and dismiss this prayer.

Determination

41. The issues to be determined in this case are whether there was an unfair termination of employment and whether the reliefs sought by the claimant should be granted.
42. Through a notice dated 17 October 2024, the respondent terminated the claimant's employment because he had flouted the credit policy and procedures and negligently performed his duties, exposing the bank to a potential loss of Ksh. 176. Under section 44(c) of the *Employment Act*, termination of employment was permitted.
43. The particulars of negligence were outlined as failing to undertake proper due diligence when appraising the loan request for David Mureithi Kanyi and African Budget & Executive Homes Company Ltd. The claimant was accused of not taking a detailed site visit report to support the loan application, thereby exposing the bank to loss. The claimant was also accused of diverting funds on behalf of African Budget & Executive Homes Ltd. when he signed the data input form, which allowed the loan proceeds to be credited to the customer's account. It was stated that he supported the diversion of funds by Jowak Agencies Ltd and claimed that, in the case of equity release facilities, it does not matter whether the customer utilizes the funds for the intended purpose as per the approval granted or not, as long as they service the loan, which was not the case.
44. The respondent accused the claimant of the manner in which he handled the loan facility, which raised questions about his credibility.
45. Indeed, the respondent, as a banking institution regulated under the *Banking Act* and the Central Bank, is sensitive to issues of negligence and the integrity of its operations. Great care and attention are required of its employees.
46. Certain positions previously held come with greater responsibilities. Handling funds belonging to an entity is one such duty, as demonstrated in *Kisavi alias Douglas Mutinda Kisavi v Uchongaji Sacco Limited* [2025] KEELRC 756 (KLR). In the case of *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] KEELRC 323 (KLR), the employee was dismissed for recklessness in the manner he handled accounts. By his actions, the employee failed to ensure financial probity at the branch by



not properly managing the imprest account. In *Gatundu v First Assurance Company Limited* [2024] KEELRC 2518 (KLR), the court held that;

Certain positions attract a high calling of integrity and financial probity. Once held, great responsibility and accountability is called for. As the CFO, the claimant had bigger accountability beyond what he held while employed as the accountant. ...

47. However, when addressing such a matter, the employer is obliged, under the provisions of sections 41, 43, and 45 of the *Employment Act*, to ensure that the employee is given a fair chance to defend themselves and present their representations.
48. Once an employee is suspended from duty, he is removed from the shop floor to facilitate investigations. This prevents the employee from accessing key records and documents needed to prepare his representations as required under section 41 of the Act.
49. Upon suspension, which is a management prerogative, the employee should be recalled and given a fair opportunity to present their case. To suspend the employee and then invite him to a disciplinary hearing, despite his request to access key records, is to deny the employee a benefit and right that is mandatory under Section 41 of the Act. In the case of *Mutisya v Co-operative Society Limited* [2022] KEELRC 12721 (KLR), the court held that even in a case involving a sensitive financial institution, where the employee is suspended and thus removed from the shop floor, before a disciplinary hearing can lawfully be conducted, the employee should be granted access to key records necessary for his representations. This can be regulated to avoid interference with evidence.
50. The claimant was suspended on August 21, 2024, and his work credentials, including his email address, were also suspended. He had no access to any work records. He was able to file a response that lacked the evidence necessary for his defence. He was not allowed back on the shop floor but was instead taken to a disciplinary hearing, which resulted in his dismissal on 17 October 2024.
51. The lapses in due process under section 41 of the Act led to unfair employment termination. There is no justification for the procedural lapse.
52. Regarding the allegations made against the claimant, Ms Thagichu testified that following audit investigations, it was found that no site inspection report was prepared by the branch regarding the security for the facility that was to be financed through the loan.
53. The claimant was the Business Development Officer through a letter dated 10 July 2018. The court takes it that by 2024, he was well-versed in the job and knew what to do when an application for a loan facility was submitted.
54. However, the job description for the position was not provided by the employer, the respondent. The requirement to undertake a site visit, a fundamental prerequisite for allocating a loan facility in terms of credible security, was necessary. Nevertheless, as the business development officer, it was not clarified, through a job description or under the credit policy, whether this crucial role fell under the claimant or the credit department.
55. In any event, the respondent had a department dedicated to credit. A simple site visit by an untrained layperson unfamiliar with legal technicalities and property valuations might not have been beneficial. To address this, the respondent's credit department enlisted the services of valuers. There was a legal team, a credit department headed by Ms Thagichu.
56. To require the claimant to visit the site to appreciate the security that was to be financed through the loan was to expect too much from him. He was neither a valuer nor a legal technical expert capable of



discerning that the title was good through a mere visit. The fact that there were ongoing court cases relating to the nine title deeds presented by the client, who applied for the loan facility, cannot be discerned from a site visit.

57. Ms Thagichu also testified that the money being financed for the purchase of the properties was supposed to be sent directly to the advocates' account. However, they were made to the client's account without prior approval.
58. The claimant testified that he only recommended the loan application made by the client. The funds disbursements were managed by the credit department at the head office. Funds disbursement in a banking institution is a serious matter. It should not be left to the discretion of a business development manager, if at all. To claim that the claimant controlled the funds disbursements and diverted them from the advocate's account to the customer's account is an exaggeration. The respondent bank has systems in place, including the credit department and the business development team. There must be checks and balances to ensure that a loan recommender, such as the claimant and the loan approver from the credit department, is involved.

Indeed, from the records filed by the respondent, it was noted that;

The committee noted that Elizabeth Koech, Credit manager, was the first person to recommend the loan for African Budget & Executive Homes Company Ltd, and as such, she carries heavier responsibility. Her position is critical, and she needs to be more diligent in undertaking her duties.

She was not diligent enough while undertaking her duties since she recommended the loan for African Budget & Executive Homes Company Ltd, yet the customers' loans with other institutions were in arrears and he was listed at the Credit Reference Bureau, which was a red flag.

59. Despite these far-reaching findings, the respondent recommended that this employee be served with a warning letter.
60. The other employee involved in the same transaction was Festus Wanyonyi, credit administration manager. It was noted that he single-handedly approved the loan facility for Jowak Agencies Ltd and waived the conditions indicated in the letter of offer, which stated that the funds should be paid directly to Tengde Equipment Company Limited, the vendors of the machinery. He breached the credit policy. The committee recommends termination of employment.
61. Bernard Gitau, a project analyst, was noted to have asked for additional information on the client, David Mureithi Kanyi, and African Budget & Executive Homes Company Ltd. This allowed him to appraise the applications, and he personally visited the site at Shanzu, where he established that the properties were occupied and that the customer was collecting rent of Ksh. 1.2 million per month. The committee noted that Bernard should not have recommended the loan facility of Ksh. 75 million for the client, as this permitted the sole director to borrow up to the limit of Ksh. 150 million, which was a red flag. Bernard was issued a caution letter.
62. For the claimant, he was accused of diversion of funds on account of African Budget & Executive Homes Ltd, as he signed data forms allowing the loan proceeds to be disbursed to the customer's account contrary to the approval conditions indicated in the offer letter.
63. The records and particulars of the claimant's diversion of funds in relation to African Budget & Executive Homes Ltd, as evidenced by his signing data forms permitting the disbursement of loan facility proceeds to the customer's account, are not only criminal but also contrary to basic banking



- policy. The evidence supporting such an assertion has not been filed. The investigations conducted by the respondent included audit and security investigations. It would have assisted the court and these proceedings to support these assertions.
64. To allege that the claimant single-handedly diverted funds from a client account and permitted disbursements from the advocate's account to the client account constitutes fraud and should have involved other agencies. The respondent chose the easy way out by terminating employment despite the flimsy finding, which lacked material evidence.
 65. Termination of employment was substantively flawed. The court finds employment terminated unfairly, contrary to sections 41 and 45 of the *Employment Act*.
 66. The claimant is seeking payment of damages and 12 months' compensation.
 67. The claimant had worked diligently without a record for 12 years. He was in the prime of his career in the banking sector, having achieved a managerial position. He had hoped to work for 19 more years and retire at the job. He was denied a fair chance to earn an honest living due to the unfair termination of his employment.
 68. The court takes into account the provisions of section 45(5) of the Act and the fact that other employees who carried higher liability were sanctioned with a warning or caution letter. This practice undermined the entire disciplinary process. The fact that the claimant was paid his terminal dues cannot sanitise the procedural and substantive lapses in this case.
 69. A compensation of 6 months' gross salary of Ksh. 144,270, totalling Ksh. 865,620, is hereby deemed appropriate.
 70. Regarding the claim for loss of prospective future earnings over 19 years, loss of the employer's pension, and medical benefits for 19 years, the claimant is expected to mitigate the loss at the end of employment. The unfair termination of employment is addressed and redressed.
 71. On the claim for loss resulting from paying the mortgage loan at commercial rates of 16% instead of staff rate at 6% due to the loss of employment, had the respondent allowed the claimant a fair chance to offer his labour, he would have continued to service his mortgage facility at a preferential staff rate of 6%. However, due to the unfair labour practice and loss of employment, the claimant is denied this benefit.
 72. In the case of *Abraham Nyambane Atsiago v Barclays Bank of Kenya* [2013] eKLR, the court held that when substantive questions regarding the legality of employment termination are raised, the employer's right to vary preferential interest rates is postponed. See *Kunga v Credit Bank PLC* [2023] KEELRC 2814 (KLR).
 73. The mortgage facility was allocated to the claimant by virtue of his employment. The employment and the mortgage facility are intricately interconnected. Termination of employment unfairly affected that benefit. In *Mulinge v Cooperative Bank of Kenya Limited (Employment and Labour Relations Cause E200 of 2022)* [2023] KEELRC the court held that;

... the loan agreement by which he was granted the loan facilities that are the subject of this application, was inextricably tied to his employment contract. For this reason, I find and hold that the jurisdiction to adjudicate on the terms of the loan agreement, including the applicable interest rates resides in this Court.



74. This position is reiterated in *Gisemba v Tausi Assurance Company* (Civil Appeal 405 of 2018) [2022] KECA, the court held that;

The appellant during tenure of his employment took a mortgage predicated on his relationship with the respondent. The trial court, therefore, had the jurisdiction to determine that which arose out of his employment.....The trial court was right when it stated that there was a close nexus between employment and the employment benefits, and the mortgage was one of the benefits the appellant received through financing. The transaction cannot therefore be said to have been a commercial transaction per se, but one that could not be extricated from the parties' employer/employee relationship. The issue fell squarely within the trial court's jurisdiction. We find that the court had jurisdiction to deal with the matter. ...

75. There is no evidence that the mortgage facility secured by the claimant had insurance to protect the employee in the event of job loss due to circumstances beyond their control. However, for the unfair termination of employment, the claimant should be permitted to process and repay the mortgage at the staff rate of 6% until full payment is made, unless he opts to pay it upfront. In this regard, the mortgage facility should be documented, and the claimant's repayments should be reassessed based on the 6% staff rate until the mortgage is fully paid. Once the facility is repaid, the documentation will reflect that accordingly.

76. On costs, the claim is successful, the claimant is awarded their costs.

77. Accordingly, judgment is entered for the claimant against the respondent in the following terms;

- a. Employment terminated unfairly;
- b. Compensation Ksh. 865,620;
- c. The mortgage facility to be repaid at the staff rate of 6%. The respondent to tabulate the mortgage facility accordingly and allow the claimant to offset the same at the staff rate. If repaid, the tabulation will be applied and offset accordingly.
- d. The claimant is awarded costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF SEPTEMBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

