



**Family Bank Limited v Njue (Cause E889 of 2023)  
[2024] KEELRC 1767 (KLR) (8 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1767 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E889 OF 2023  
BOM MANANI, J  
JULY 8, 2024**

**BETWEEN**

**FAMILY BANK LIMITED ..... CLAIMANT**

**AND**

**ELIAS KINYUA NJUE ..... RESPONDENT**

**RULING**

1. This dispute revolves around the suspected fraud in respect of a sum of Kenya Shillings Sixty Six Million Nine Hundred and Three Thousand Two Hundred and Fourty Two and Ninety Five Cents (Ksh. 66,903,242.95). The Claimant, who is the Respondent’s employer, contends that the latter attempted to defraud it of these funds which had come into his possession by reason of the employment relationship between them.
2. The Claimant avers that it runs a salary account for the County Government of Kiambu. That on diverse dates between October 2022 and May 2023, it processed staff salaries for the said County on credit amounting to Ksh. 66,912,723.00. It is the Claimant’s contention that the County Government of Kiambu was to reimburse the money once it was put in funds.
3. The Claimant contends that in August 2023, its management noticed that the County Government of Kiambu had not reimbursed the aforesaid funds. This allegedly prompted the Claimant’s officers to inquire from the said County why the funds had not been paid. According to the Claimant, the County intimated that it had reimbursed the funds on 10<sup>th</sup> July 2023.
4. The Claimant contends that this revelation prompted an investigation into the matter to verify if indeed the funds had been remitted to it. According to the Claimant, the investigations revealed that on 10<sup>th</sup> July 2023, the County Government of Kiambu remitted to it (the Claimant) Ksh. 93,721,358.00 through the County’s Central Bank account. That of this amount, Ksh. 78,850,359.00 had been credited on the County’s Suspense Salary Account.



5. The Claimant learned that on the same day (10<sup>th</sup> July 2023) the Respondent was notified of the aforesaid transaction and the fact that the County Government of Kiambu had reimbursed the amount it had received from the Claimant on account of staff salaries. The Claimant has provided communication marked as WD5 to support its contention.
6. The Claimant avers that on 13<sup>th</sup> July 2023, the Respondent transferred the sum of Ksh. 66,911,403.00 from the salary account of the County Government of Kiambu to account number 071000043212 at the Claimant's Kitengela branch. This latter account is said to be in the names of several persons including the Respondent. The Claimant provided copies of the account opening forms for the aforesaid account and the Respondent's Identity Card to support its contention.
7. The Claimant contends that subsequently on 2<sup>nd</sup> August 2023, the Respondent initiated a reversal of the impugned transfer of funds back to the account of the County Government of Kiambu. Again, it has provided documentary evidence to back its assertions.
8. The Claimant contends that on 3<sup>rd</sup> August 2023, the Respondent once again initiated transfer of the said funds from the County Government's account into several third party accounts. It has provided a copy of an internal investigation report to back its assertions.
9. It is the Claimant's case that these transfers were an orchestrated scheme by the Respondent to fraudulently convert the funds in question to his own use. As a result, the process ought to be reversed to enable it (the Claimant) recover the money.
10. In response, the Respondent denies that the Claimant has demonstrated that the funds in question belong to it. Further, he denies that the Claimant has demonstrated that the funds were transferred to third party accounts as contended by it.
11. In effect, the Respondent contends that the Claimant has not satisfied the conditions for grant of orders of interim injunction. These include: demonstrating the presence of a prima facie case with a probability of success; demonstrating the likelihood of irreparable loss should the orders sought not be granted; and showing that the balance of convenience tilts in its favour.

## **Analysis**

12. I have considered the affidavit evidence on the contested issues together with the submissions by the parties. At this stage, the court is not expected to make conclusive findings on the contested matters. All that it is required to do is to satisfy itself that the preliminary material placed before it establish a prima facie case with a probability of success.
13. In addition, the court is required to consider whether refusal to grant the orders sought will likely result in substantial loss to the applicant. If the court is in doubt, it should decide the application on the balance of convenience.
14. The preliminary evidence before the court shows that substantial funds were transferred by the Central Bank of Kenya into accounts held by the County Government of Kiambu which are housed at the Claimant bank. From the record, it appears that the transfers happened on 10<sup>th</sup> July 2023.
15. There is also preliminary evidence suggesting that on 10<sup>th</sup> July 2023, the Respondent made inquiries about funds which were to settle the salary account for the County Government of Kiambu. The preliminary record shows that this inquiry was responded to by an individual who presumably is an employee of the County Government confirming that the money had been credited on the County's salaries suspense account.



16. The Claimant has provided further preliminary evidence showing that on 13<sup>th</sup> July 2023, funds were moved from the account of the County Government of Kiambu into account number 071000043212 to which the Respondent is a signatory. There is also preliminary evidence to suggest that upon the Respondent's request, the aforesaid transfer was reversed on 2<sup>nd</sup> August 2023 and the funds credited back onto the account of the County Government of Kiambu.
17. Preliminary records before the court demonstrate that the Claimant instituted an investigation into the impugned transactions and an audit report was issued. The report which has been availed to the court shows that the Respondent caused the funds which had reverted to the account of the County Government of Kiambu to be wired to various third party accounts. According to the report, the movement of the funds to the third party accounts was initiated using the Respondent's user account.
18. The Respondent argues that because the Claimant has not provided bank statements to evidence the funds movement, the application should fail. I do not agree.
19. As indicated earlier, at this level of the litigation, the Claimant is not required or indeed expected to lay before the court a watertight case of fraud. All that is required of it is to demonstrate the presence of a prima facie case with probability for success.
20. The preliminary record provided by the Claimant including the internal audit report points to suspicious movement of funds from accounts housed by it into accounts held by third parties. There is preliminary evidence to suggest that this cash movement may have been initiated by the Respondent.
21. There is preliminary evidence to suggest that the money in question had been credited on the account of the County Government of Kiambu in order to be applied to settle staff salaries. The Claimant avers that it had already settled these salaries under an arrangement it had with the County Government of Kiambu and that the funds were meant to have been applied to reimburse it. Thus and in my view, there is preliminary evidence that the funds in dispute belonged to the Claimant.
22. In my view, this evidence meets the threshold of establishing a prima facie case with a probability of success. The evidence demonstrates that the Respondent may have attempted to meddle with funds that belonged to the Claimant. This constitutes a threat to the Claimant's right to property which deserves further interrogation at a full trial. As such, I am satisfied that the Claimant has met the threshold of establishing a prima facie case for the grant of the relief of interim injunction.
23. I have also considered the amounts in dispute. They are by no means inconsequential. As such, if the Claimant was to lose them owing to the failure by the court to issue the interim reliefs sought, it will certainly suffer substantial loss. As such, it (the Claimant) has met the second limb for the grant of the interim reliefs sought.

### **Determination**

24. The upshot is that I am satisfied that the Claimant has made a case for the grant of orders for interim injunction pending trial as sought in the application.
25. Consequently, the court hereby confirms the orders of interim injunction which were issued against the Respondent on 6<sup>th</sup> November 2023 pending the hearing and determination of the suit.
26. As a result, the Respondent, either by himself or through his agents or other persons, is hereby prohibited by an order of interim injunction from transacting, withdrawing, transferring, using or in any other way dealing with the impugned funds in the sum of Kenya Shillings Sixty Six Million Nine Hundred and Three Thousand Two Hundred and Fourty Two and Ninety Five Cents (Ksh.



66,903,242.95) deposited on the accounts here-below pending the hearing and determination of this suit, that is to say:-

- a. KCB Bank (K) Ltd A/C No. 1314518585 Ksh. 6,926,839.70.
- b. ABSA Bank (K) Ltd A/C No. 2048732375 Ksh. 7,730,426.10
- c. NCBA Bank (K) Ltd A/C No. 6334720018 Ksh. 3,963,844.25.
- d. Kingdom Bank (K) Ltd A/C No. 11932322002 Ksh. 3,902,388.95.
- e. Equity Bank Ltd A/C No. 0300195816359 Ksh. 7,836,441.50.
- f. I & M Bank Ltd A/C No. 00403970786150 Ksh. 4,936,701.55.
- g. NCBA Bank (K) Ltd A/C No. 440001419714 Ksh. 4,952,870.85.
- h. Diamond Trust Bank (K) Ltd A/C No. 0695932832001 Ksh. 2,959,142.25.
- i. Equity Bank Ltd A/C No. 0710193858758 Ksh. 6,902,063.25.
- j. Co-operative Bank of Kenya Ltd A/C No. 01125183770100 Ksh. 6,922,045.45.
- k. National Bank of Kenya Ltd A/C No. 01502259714600 Ksh. 6,905,127.15.
- l. Consolidated Bank of Kenya Ltd A/C No. 10011206003662 Ksh. 2,965,351.95.

27. Costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED ON THE 8<sup>TH</sup> DAY OF JULY, 2024.**

**B. O. M. MANANI**

**JUDGE**

**In the presence of:**

..... for the Claimant

..... for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

**JUDGE**

