



**Migwi v Ollin Sacco Society Limited (Cause E003 of 2025)
[2025] KEELRC 2971 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2971 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E003 OF 2025
L NDOLO, J
OCTOBER 30, 2025**

BETWEEN

NANCY K. MIGWI CLAIMANT

AND

OLLIN SACCO SOCIETY LIMITED RESPONDENT

RULING

1. This ruling determines the Notice of Motion dated 21st July 2025, by which the Claimant seeks an order of injunction restraining the Respondent from altering the terms of the Claimant's loan repayment, as set out in its letter dated 9th July 2025, pending the hearing and determination of the main claim.
2. The Claimant also asks for leave to file a further list of documents and admission of the documents dated 14th July 2025 as duly filed.
3. The application is supported by the Claimant's own affidavit and is premised on the following grounds:
 - a. That the Claimant was issued with a notice of summary dismissal dated 21st December 2024, after having worked for the Respondent from 30th September 1997;
 - b. That the summary dismissal was unlawful and malicious and was evidently a spiteful response to the Claimant's complaints of harassment and reduction of her salary without notice or her consent, vide a letter dated 20th December 2024;
 - c. That the summary dismissal came a day after the response and her complaints were not addressed in the said letter;



- d. That the prayers in the Statement of Claim include a declaration that the Claimant is entitled to continue repaying her loans with the Respondent under the same terms and conditions that obtained before her summary dismissal;
 - e. That the Claimant continued servicing her loans even after the summary dismissal;
 - f. On 5th April 2025, about 4 months after the summary dismissal and when the instant case had already been filed, the Respondent wrote to the Claimant reiterating the loan repayment terms;
 - g. That the Claimant continued repaying the loan in accordance with the terms in the letter dated 5th April 2025, which were in force even before the summary dismissal;
 - h. That the Claimant was shocked to be served with a letter dated 9th July 2025, communicating variation of the loan repayment terms;
 - i. That the Claimant was aggrieved and dissatisfied with the new loan repayment terms;
 - j. That the Claimant therefore wrote a letter dated 14th July 2025 raising objection;
 - k. That the Claimant also filed and served a further list of documents dated 14th July 2025 so as to avail the Respondent's letters dated 5th April 2025 and 9th July 2025 as well as the Claimant's letter dated 14th July 2025, which letters could not have been filed earlier as they had not been issued;
 - l. That it is in the interest of justice that the Court admits the said documents as properly filed, as no prejudice will be occasioned to the Respondent;
 - m. That it is in the interest of justice that the Court grants an injunction to restrain the Respondent from varying the loan repayment terms.
4. The Respondent opposes the application by a replying affidavit sworn by its Chief Executive Officer and Secretary to the Board of Directors, John Mwangi Gathige, on 28th July 2025.
 5. Gathige depones that the Claimant was employed by the Respondent from 6th October 1997 until 21st December 2024, when she was summarily dismissed on account of persistent acts of gross misconduct.
 6. He asserts that the Claimant was treated well and supported in her pursuit of academic and professional growth. Regarding the Claimant's claim that her salary had been reduced, Gathige states that the salary was merely adjusted to remove a responsibility allowance to which the Claimant was no longer entitled.
 7. It is deponed that the Staff Self Development Facility (Staff FOSA Loan) is extended to the Respondent's employees in accordance with Section 12.3 of the Ollin Sacco Human Resource Policy, at an exceptionally low interest rate of 2% as part of the Respondent's commitment to the welfare of its staff.
 8. According to Gathige, the subsidised interest rate is a privilege reserved for employees only, and it does not survive cessation of the employment relationship. He states it is expressly provided that in case of cessation of the employment relationship, the applicable interest rate automatically reverts to the market rate of 12% per annum.
 9. Gathige challenges the jurisdiction of this Court to deal with the current application, stating that any dispute regarding the loan would be purely commercial in nature.
 10. He further states that the 2% interest rate is not specified in the charge or in the loan agreement, as the issue of interest was strictly subject to Section 12.3 of the Human Resource Policy.



11. Gathige takes issue with the further documents filed by the Claimant, stating that they were filed out of time and without leave of the Court.
12. The Respondent contends that the Claimant will not suffer any prejudice if the injunction sought is not granted.
13. The gist of the Respondent's opposition to the Claimant's application, is that this Court lacks the jurisdiction to entertain the application.
14. The jurisdiction of the Employment and Labour Relations Court is anchored in Article 162(2)(a) of *the Constitution* which provides as follows:

162(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

- a. employment and labour relations and
- b. ...;

15. Pursuant to this constitutional provision, Section 12(1) (a) of the *Employment and Labour Relations Court Act* provides:

12(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including-

- a. disputes relating to or arising out of employment between an employer and an employee;
- b. ...;

16. In its decision in *Abraham Nyambane Atsiago v Barclays Bank of Kenya* [2013] eKLR this Court confronted the question as to what constitutes a dispute 'relating to or arising out of employment between an employer and an employee' and rendered itself thus:

“The question then is what constitutes a dispute relating to or arising out of employment between an employer and an employee. Is it confined to issues that are ordinarily found in employment contracts or does it extend to all matters emanating from the employment relationship?

By its nature, the employment relationship generates a multiplicity of rights and obligations, some of which are not to be found in the express provisions of the employment contract. In my view, all these falls under employment and labour relations as intended by the law makers. To rule otherwise would be to create a situation where an employer or an employee traverses different courts to enforce different rights arising from the employment relationship. That in my view could not have been the intention of the legislators.”

17. In an earlier decision in *Banking Insurance & Finance Union (Kenya) v Consolidated Bank of Kenya Limited* (Cause No 900 of 2012) Rika J held as follows:

“The loan agreement in the context of this dispute flowed from an employment relationship. The dispute over the charge created to secure the staff loan, is a matter of employment. The Environment and Land Court is not entirely divested of jurisdiction, but would in the view



of this Court not be the appropriate forum...to determine the final issues that may arise out of this dispute.”

18. In its decision in *Maiyo v Kenya Commercial Bank & 2 others* [2022] eKLR this Court stated the following:

“This Court is fully aware that loans advanced by banks to their employees are regulated at the macro-economic level. However, the terms under which these loans are granted are controlled by the existence of an employment relationship between the parties.

It is on this basis that employees enjoy preferential interest rates, as an employment benefit. It cannot therefore be said that the rights and obligations arising from these arrangements are beyond the jurisdiction of this Court.”

19. The Claimant’s plea is that the Respondent be restrained from altering the terms of her loan facility, advanced to her as an employee, pending determination of her claim for wrongful dismissal.

20. In her submissions in support of the application, the Claimant cites the decision in *Fwamba v Equity Bank Kenya Limited & another* [2025] KEELRC 2063 (KLR) where my sister Nzei J reached the conclusion that a dispute arising from rebated loan interest rates, availed pursuant to an employment contract, whose termination is disputed, falls within the jurisdiction of this Court. The Judge went further to hold that denial of interim injunctive relief would cause irreparable harm to the employee.

21. On its part, the Respondent relies on the Court of Appeal decision in *Ddaiddo v Bank of India (K) Ltd* [2024] eKLR where it was held that disputes over mortgage debts do not fall within the jurisdiction of this Court. In my respectful view, the *Ddaiddo* Case (*supra*) which dealt with mortgage debts generally, is distinguishable from the present case, which deals with the narrow issue of variation of loan terms on account of termination of employment, which is disputed.

22. That said, I will now proceed to consider the application on merit. The relief sought falls within the province of injunctions and the conditions upon which such an order may be granted were settled in *Giella v Cassman Brown & Co Ltd* (1973) EA, 358 as follows:

- a. That the applicant has a prima facie case with a probability of success;
- b. That the applicant has demonstrated that if the order sought is not granted, they will suffer irreparable damage that cannot be compensated by an award of damages;
- c. That in case of doubt, the balance of convenience tilts in favour of the applicant.

23. A prima facie case was defined by the Court of Appeal in *Mrao v First American Bank of Kenya Limited & 2 others* (2003) KLR 125 in the following terms:

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case.’ It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”



24. The Claimant presents an arguable claim of wrongful dismissal, which is pending determination by this Court; and without going into its merits at this stage, I am satisfied that the first condition in *Giella v Cassman Brown* (supra) has been satisfied.
25. The issue of irreparable harm is straightforward; with enhanced interest rates, the monthly repayment instalment goes up and default leading to loss of collateral is in the horizon. The Claimant has continued to service her loan facility and no default has been reported. Therefore, unlike the Claimant, the Respondent is not exposed to any prejudice. For this reason, the balance of convenience tilts in favour of the Claimant.
26. For the foregoing reasons, I am persuaded to grant an interlocutory injunction in the following terms:
- a. The Respondent be and is hereby restrained from varying the terms applicable to the Claimant's loan facility pending the hearing and determination of the main claim;
 - b. The Claimant shall continue servicing the said loan facility at obtaining terms until further orders of the Court.
 - c. The costs of the application will be in the cause.
27. Orders accordingly.

DELIVERED VIRTUALLY THIS 30TH DAY OCTOBER 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Magee for the Claimant

Dr. Odhiambo for the Respondent

