

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E658 OF 2025

EMILY **SILANTOI**
PARKION.....CLAIMANT/APPLICANT

VERSUS

SIDIAN **BANK**
.....RESPONDENT **LIMITED.**

RULING

1. What is before this Court for determination is a Notice of Motion dated 14th July 2025, through which the Claimant/Applicant seeks the following orders;

1. That pending the hearing and determination of this suit, the defendant by itself, its servants and/or agents, be restrained by a temporary injunction from alienating, Transferring, Revaluation, Visiting, selling, advertising or in any other way dealing with my property known as Title deed Number KAJIADO/DALALEKUTUK/15878 until the hearing and determination of this suit.

2. *THAT the Existing Mortgage Loan facilities Interest rate be maintained at the Same staff rate of 6% per annum until the matter is heard and Determined noting the bank malicious recovery process intended to raise the loan balances to huge amounts without following due process.*
 3. *THAT the Existing staff loan facilities are stopped from accruing any penalties and Monthly interests as it would be unfair to have the loan continue attracting interest plus penalties ad infinitum. With the shrunken economy, scarce employment opportunities, the monthly fines would eventually make the amount irrecoverable.*
 4. *THAT the Respondent herein ordered to issue a correct Certificate of Service.*
 5. *THAT cost of this application be provided for.*
2. The Application is premised on the grounds appearing on the face of the Motion and is supported by the accompanying affidavit. The Claimant avers that she was employed by the Respondent as a Service Delivery Officer until 22nd January 2024, when she was allegedly coerced into resigning under subtle pressure and threats based on unfounded and unsubstantiated allegations.

3. The Claimant states that she had obtained a mortgage facility from the Respondent, which she was regularly servicing until her coerced resignation. She contends that the forced separation has deprived her of earnings and employment opportunities that would have enabled her to continue repaying the said loan.
4. She further avers that she secured the loan using her property, Title Number KAJIADO/DALALEKUTUK/15878, as collateral, and that she has already repaid a substantial portion of the facility.
5. The Claimant asserts that the Respondent has issued her with a 45-day redemption notice, yet she has not been served with any demand or statutory notices as required by law. She claims that her property has been listed for advertisement and sale even before this suit has been heard and determined.
6. She adds that the staff loan facilities were repayable through a salary check-off system and that she currently has no alternative source of income. Although she is actively seeking new employment, she contends that the certificate of service issued to her is false, contradictory, and misleading, thereby frustrating her efforts to secure a new job.

7. The Claimant maintains that the property in question is her family residence and not an income-generating asset. She asserts that the Respondent's actions in attempting to issue but not serve the required notices are unlawful and intended to cause her emotional distress and hardship by forcing her family out of their home as punishment for filing this suit for unfair dismissal.
8. It is her contention that the property is prime and has been maliciously targeted by the Respondent for sale.
9. She argues that she stands to suffer great prejudice and irreparable loss if the Court does not issue a temporary injunction restraining the Respondent, whether by itself, its servants, or agents, from alienating, transferring, revaluing, visiting, selling, advertising, or in any other manner dealing with her property known as Title Number KAJIADO/DALALEKUTUK/15878.
10. The Claimant further avers that the Respondent has failed to fulfill its obligation to pay her final dues, including unpaid leave days, and has also neglected to correct the errors contained in her certificate of service.
11. The Application is opposed through a Replying Affidavit sworn on 26th August 2025 by **Jackline Ndung'u**, who describes herself as a Senior Legal Officer at the Respondent Bank. Ms. Ndung'u deposes that, based on the advice of the

Bank's Advocate on record, which she believes to be true, it is not within the jurisdiction of this Honourable Court to interfere with commercial contracts voluntarily entered into by parties, as doing so would effectively assist one party in evading its contractual obligations.

12. Ms. Ndung'u confirms that the Claimant was an employee of the Respondent until 22nd January 2024, when she tendered her resignation, thereby terminating her employment relationship with the Bank.

13. She adds that prior to the resignation, the Claimant had been subjected to a disciplinary process following investigations into allegations of non-compliance with the Bank's Cash Management Policy. The disciplinary committee found that the Claimant had indeed breached the policy.

14. Following the committee's findings, it was recommended that the Claimant be issued with a warning letter and reassigned to duties that did not involve handling cash. Consequently, the Bank redeployed her to the position of Relationship Manager at its Kitui Branch.

15. According to Ms. Ndung'u, it was after this redeployment that the Claimant chose to resign of her own volition, contrary to the impression she now seeks to create. She adds that even if her allegations were true, the Employment Act

provides specific remedies for such situations, and the Claimant cannot use this as a basis to evade her obligations under a separate commercial contract.

16. Ms. Ndung'u further avers that the Claimant's resignation did not in any way affect the banker-customer relationship between the parties or the obligations arising from the loan agreements, which must be determined strictly in accordance with those contracts.

17. She states that during her employment, the Claimant applied for and was granted various loan facilities, each governed by its respective facility letter setting out distinct terms and conditions separate from her employment contract.

18. That the initial facility was granted in December 2020 for Kshs. 675,000, secured by a legal charge over property title number KAJIADO/DALALEKUTUK/15878.

19. Ms. Ndung'u adds that in September 2021, the Claimant obtained a second facility of Kshs. 3,300,000 to finance the construction of a residential house on the same property. The facility was secured by the existing legal charge and a further charge over the same property registered in the Claimant's name.

20. She avers that the loan agreement expressly provided that the Respondent would charge interest at 6%, which was subject to review in line with changes in the Central Bank Rate (CBR) or upon the Claimant's exit from employment. As an employee, the Claimant enjoyed a discretionary staff rebate on interest rates, which the Bank could vary at any time without reference to her.
21. It was also an express term of the agreement that in the event of default, arrears would attract an additional interest rate of 10%, and the entire outstanding amount would become immediately due and payable.
22. Further, it was an express and implied condition that the Claimant would repay the facility through monthly instalments as scheduled, failing which the Bank would be entitled to realize the securities to recover the outstanding sums.
23. Ms. Ndung'u contends that the Claimant defaulted in repayment, thereby breaching the terms of the loan agreement. As a result, her account fell into arrears, a fact she has admitted in her own pleadings. Following the default, the Respondent issued a demand letter requiring full payment, but the Claimant failed, refused, or neglected to comply. That the lack of response prompted the Bank to issue a 90-day statutory notice, in compliance with the law.

24. Upon expiry of the 90 days without payment, the Respondent issued a further 40-day statutory notice.
25. Ms. Ndung'u states that, as advised by the Bank's Advocates, the law requires that such notices be served upon the chargor by registered post at the last known address. She confirms that the requisite notices were duly served upon the Claimant at P.O. Box 310-00242, Kitengela — the postal address appearing on the charge documents and the pleadings filed by the Claimant.
26. Ms. Ndung'u avers that despite service, the Claimant failed to comply, prompting the Bank to instruct Antique Auctions Agencies on 6th June 2025 to issue redemption notices and commence the realization process, including advertising the property for sale.
27. That the auctioneers duly served the Claimant with both the 45-day Redemption Notice and the Notification of Sale. The Bank also ensured that a valuation of the property was conducted in compliance with Section 97 of the Land Act.
28. She avers that the Claimant remains in default, having failed to make any payments for over one and a half years, and as at 29th August 2025, her outstanding balance stood at **Kshs. 3,617,887.68**, which continues to accrue interest at the agreed contractual rates until settlement in full.

29. Ms. Ndung'u contends that the Claimant's plea for reinstatement of staff interest rates at 6% per annum is untenable since she is no longer an employee and therefore not entitled to the concessional staff benefits.

30. She asserts that granting the orders sought would effectively reinstate employment-related benefits to a non-employee, which the law does not permit.

31. Ms. Ndung'u further states that the Claimant was fully aware when offering her property as security that it would be subject to sale in the event of default. The property, therefore, became a realizable asset unless and until the charge was discharged. She cannot now claim that the property is her family home or that the Bank's actions amount to punishment.

32. She maintains that the Respondent is lawfully entitled to exercise its statutory power of sale to recover the sums due under the loan agreements.

33. Ms. Ndung'u further posits that the Claimant has approached the Court with unclean hands, having made false and misleading statements, and is therefore undeserving of any equitable relief.

Submissions

34.The Application was canvassed by way of written submissions. Only the Respondent filed written submissions, which the Court has considered.

Analysis and Determination

35.To my mind, the singular issue for determination at this stage is whether the Claimant has established a case warranting the grant of an injunctive order in relation to the applicable loan interest rates. Differently expressed, the question is whether the Court should restrain the Respondent from varying or applying an interest rate higher than the 6% staff rate on the loan facility between the Claimant and the Respondent pending the hearing and determination of the main suit.

36.The Respondent contends that this Court lacks jurisdiction to adjudicate matters of a commercial nature, particularly those arising from loan facilities or related agreements.

37.The Respondent maintains that the financing arrangement through which the Claimant obtained the loan facilities constitutes a distinct contract and legal charge, separate and independent from her employment relationship. It is further argued that the mortgage facility was extended to the Claimant in her capacity as a customer of the Respondent Bank, not as an employee.

38. It is the Respondent's view that since the Claimant is no longer in its employment, she is not entitled to the concessional staff interest rates, which are fringe benefits exclusive to current employees. In this regard, the Respondent argues that granting the orders sought would effectively reinstate employment benefits to a non-employee.

39. This Court takes the respectful view that while the loan facilities are governed by a separate contractual arrangement from the employment contract, the two are nonetheless closely intertwined, as the facilities were extended within the framework of the employment relationship.

40. This position is informed by the fact that the Claimant's case is founded on allegations of constructive dismissal, an issue that is yet to be determined. According to the Statement of Claim, the Claimant asserts that she was coerced into resigning following an unfair disciplinary process, which stemmed from unsubstantiated allegations and a transfer effected in contravention of the Respondent's internal policy. Evidently, had the Claimant remained in employment (whether or not her resignation was voluntary), she would have continued servicing the facility at the preferential staff interest rates.

41. On this issue, the Court adopts the reasoning in the case of **Chris Kisire Chepkoi v National Bank of Kenya Limited [2017] eKLR**, where it was held that:

“The requirement that all contracts of employment be terminated within the law is mandatory pursuant to the provisions of section 41, 43, 45 and 47 of the Employment Act, 2007. Until there is a determination of the same, to make the claimant lose a benefit that was available within his employment which has now been terminated and the same alleged to be unfair would be to deny him a fair hearing before this court, such would remove the claimant from his employment with the respondent and deny him work benefits that were denied of him upon the termination of such employment.”

42. And further, in the case of **Beatrice Wangui Mwhia v Barclays Bank of Kenya (supra) [2019] eKLR**, the Court stated that:

“The court is yet to hear and determine the Applicant’s petition in the instant case and so whether or not the Respondent can vary the interest rates is also dependent on whether or not the termination of employment was lawful and fair.”

43. With that being said, I now turn to consider whether the Application is merited.

44. At this stage, the Claimant seeks an injunctive order to restrain the Respondent from varying or applying an interest rate higher than the 6% staff rate on the loan facility between the parties, pending the hearing and determination of the main claim.

45. Upon perusal of the Notice of Motion dated 14th July 2025 and the Statement of Claim, it is evident that the reliefs sought in the Motion are materially distinct from those pleaded in the main suit. Notably, the Claimant's Statement of Claim does not contain any prayer relating to the variation or application of an interest rate higher than the 6% staff rate on the loan facility between the parties.

46. It is a settled principle that an applicant seeking a temporary injunction as interim relief must have pleaded a substantive prayer for a permanent injunction or a similar remedy in the main suit. In this regard, **Order 2 Rule 6(1) of the Civil Procedure Rules, 2010** provides that:

“No party may in any pleading make an allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his in the same suit.”

47. This procedural imperative was clearly articulated by **Emukule J.** (as he then was) in the case of *John Kubai M’eringa v Fredrick Ntongai M’eringa* [2009] eKLR, where the Court stated that:

“Considering those words in the case of WINSTONE VS WINSTONE [1959]3 ALL ER 580 Winn J. said:

“in my view these words are to be construed and understood as limited to the granting of an injunction ancillary to and comprised within the scope of the substantive relief sought in the proceedings in which the application for injunction is made.”

Simpson on J as he then was adopted the same reasoning in Shah vs Shah [1981] K.L.R 374.

In this case, as shown above, there is no relationship between the prayer in the Chamber Summons (the interlocutory pleading) and the Complaint (the principal pleading). The summons breaches both Order VI rule 6 (1) and Order XXXIX Rule 1 of the Civil Procedure Rules. It is incurably defective. It has no basis.”

48. In the present case, as already observed, there is no nexus between the reliefs sought in the Notice of Motion and those pleaded in the Statement of Claim. Consequently, the interlocutory prayer by the Claimant seeking to restrain the

Respondent from varying or applying an interest rate higher than the 6% staff rate on the loan facility is untenable. This constitutes a clear departure from the Claimant's substantive claim and is therefore prohibited under **Order 2 Rule 6(1) of the Civil Procedure Rules, 2010.**

49. In view of the foregoing, the Court finds that the Application dated 14th July 2025 is incompetent and accordingly strikes it out with no orders as to costs.

DATED, SIGNED and DELIVERED at **NAIROBI** this **14th** day of **November** 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant/Applicant	In person
For the Respondent	Ms. Akiso
Court Assistant	Elijoy

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the

Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE