



REPUBLIC OF KENYA



KENYA LAW
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**Muriuki v Bank of Africa Kenya Limited (Cause E564 of 2025)
[2025] KEELRC 3410 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3410 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E564 OF 2025
AK NZEI, J
NOVEMBER 28, 2025**

BETWEEN

EVELYNE MURIUKI CLAIMANT

AND

BANK OF AFRICA KENYA LIMITED RESPONDENT

RULING

1. The Claimant/Applicant sued the Respondent Bank vide a Memorandum of Claim dated 13th June, 2025 and sought the following reliefs:-
 - a. That the Respondent reinstates the Claimant to her employment with immediate effect and with full benefits.
 - b. That in the alternative, the Court awards the Claimant the equivalent of twelve months' gross salary as punitive damages being Kshs.6,459,737.28/=.
 - c. That the Respondent be compelled to remit the Claimant's terminal dues of Kshs.483,354.67/ =.
 - d. That the Claimant be awarded Kshs.538,311.44/= being the unpaid half of her monthly remuneration for the sixty days of her purported suspension.
 - e. That the Respondent be restrained from altering or revising the interest rate on the Claimant's loan account with the Respondent beyond the staff rate of 5% until the full settlement of the loan.
 - f. Exemplary and/or punitive damages for malice.
 - g. Costs of the suit.
 - h. Interest on (b), (c), (d), (f) and (g) at court rates.



- i. Any other relief this Court might deem fit and just to grant.
2. The suit was filed contemporaneously with an urgent Notice of Motion dated 13th June, 2025 and expressed to be brought under Section 12(3) of the *Employment and Labour Relations Court Act*, Rule 45 of the Courts (Procedure) Rules and all other enabling provisions of the law. The Claimant seeks the following Orders, at this stage:-
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the Court issue an order restraining the Respondent, whether acting by its servants, agents or any other person acting under its authority, from varying or applying interest at a rate higher than the 5% staff interest rate on the loan account and facility between the Claimant and the Respondent pending hearing and determination of the subject suit.
 - e. That the Court be pleased to grant such other or further reliefs as it may deem fit.
 - f. That costs of the application be provided for.
3. The application sets out on its face, in detail, the grounds on which it is founded, which grounds are substantially replicated in the Claimant's supporting affidavit sworn on 13th June, 2025 in support of the application. It is deponed in the said affidavit, inter-alia:-
 - a. that the Claimant/Applicant was first employed by the Respondent as a Branch Manager vide a contract dated 12th May, 2015, and was gradually promoted by the Respondent, culminating in her appointment as the Respondent's Head of Portfolio Quality Management on 30th April, 2021.
 - b. that the Claimant served the Respondent for 9 years while wielding 21 years' experience in the banking industry with hitherto stellar and pristine record.
 - c. that until a suspension on 11th December, 2024, the Claimant had never been warned, cited or summoned for any disciplinary issue or lapses in her service, as her meticulousness and reliability were unimpeachable over the course of her employment.
 - d. that the suspension letter referred to concerns raised "allegations of gross misconduct" against the Claimant, for which she was to be suspended for 30 days with effect from the date of the letter, at half pay, pending investigations; and to report to the office on 10th January, 2025.
 - e. that on 9th January, 2025, the Claimant was served with a letter of Extension of Suspension of Duty for a further 30 days from the date of the letter.
 - f. that the purported Extension of Suspension of Duty violated the Respondent's Human Resource Policy 2019 Edition; particularly Clause 30.4 (1.3) thereof which states that at any stage of disciplinary process, the Bank shall be entitled to place an employee under suspension for such a period as may be necessary, not exceeding 30 days.
 - g. that further, in breach of Clause 30.4(1.1), the Respondent did not notify the Claimant in writing of the discovery of any offence immediately such offence was discovered, and did not require her to respond to any allegations in writing.



- h. that on 10th January, 2025, the Claimant attended a PQM Investigation Presentation led by the Respondent's Head of Audit, who took the Claimant and her colleagues through a draft internal report, and that it became apparent that the Bank's employee by the name Judy Maina had, from December 2023, periodically diverted funds totalling Kshs.7,600,000/= from the Respondent's clients paymasters' and check-off accounts into her Kids accounts and into a third party's account.
- i. that the Claimant was not a beneficiary of, nor complicit in any part of the fraud, which begun in December 2023 while the Claimant was on compassionate and annual leave; having lost her father who had been ailing.
- j. that the Respondent issued a show cause letter on 24th January, 2025, which the Claimant responded to vide a letter dated 30th January, 2025.
- k. that in the late afternoon of Wednesday 7th February, 2025, the Claimant was issued with a Notice of Hearing informing her of a Disciplinary Hearing on Monday 10th February, 2025, essentially giving her 2 working days to respond and to prepare.
- l. that Constitution of the Disciplinary Panel was irregular and blatantly violated the Respondent's Human Resource Policy 2019 Edition (HR Policy) in that, whereas Clause 30.3(e) of the said HR Policy specifically stipulates that "the Committee shall have a minimum of 3 members and no more than 5 members", the panel that faced the Claimant consisted of 7 officers/individuals as ascertained by the minutes of the hearing furnished by the Respondent itself.
- m. that the Head of Audit who had acted as the investigating officer attended the hearing as "an observer".
- n. that the allegations related to a process involving the Operations Department.
- o. that vide a letter of 11th February, 2025, the Claimant was summarily dismissed, despite a myriad of failings in the disciplinary process.
- p. that the Respondent Bank lost money because another employee, who was arrested and charged, deliberately altered documentation to divert funds into other accounts to her benefit, but the Respondent decided to throw the entire PQM department under the bus irrespective of fault, in order to cover up its systemic failures. That no PQM staff member survived, implying that the disciplinary hearings were covers for a witch-hunt rather than genuine inquiries.
- q. that it was clear that the Kshs.7.6 million was misappropriated between December 2023 and November 2024. That although the Claimant was on leave in December 2023, the Claimant's assistant in charge of PQM in the Claimant's absence was not dismissed on account of the loss.
- r. that the Claimant appealed the decision on 17th February, 2025, and that whereas hearing of the appeal was on 28th February, 2025, the Claimant was only notified of the outcome vide a letter dated 27th March, 2025. That the appeal was not fairly considered, as the dismissal letter was merely reiterated.
- s. that minutes of the disciplinary hearing furnished to the Claimant omitted information in a manner that prejudiced the Claimant.



- t. that the Respondent stated in the Claimant's dismissal letter that her terminal dues were Kshs.483,354.67, which have not been remitted.
 - u. that on 2nd December, 2016, the Respondent advanced the Claimant a loan of Kshs.9,908,681.00 at staff rates of five (5%); and that as at 11th February, 2025, the loan stood at Kshs.9,250,360.97.
 - v. that on 28th March, 2025, the Claimant wrote to the Respondent seeking to retain her mortgage at loan interest rate at the staff rate of 5%, especially as Clause 28.1.16 of the Respondent's HR Policy allows an employee who had been employed for 10 years or more and serviced a loan for more than 5 years to retain the staff rate until the loan facility's maturity even if they left the bank.
 - w. that the Respondent declined the request, and vide a letter dated 22nd April, 2025 informed the Claimant that the loan facility would cease to be charged interest at staff rates rate with effect from 12th May, 2025, and would be calculated at prevailing market rate (most likely 22.5%); with the threat that the Bank would take necessary steps to ensure recovery of all amounts owing together with interest accruing thereon.
 - x. that the Claimant will be compelled to pay higher interest rates when the loan was taken solely on the premise of low loan interest rate, despite the Claimant's sole source of income having been taken away from her.
 - y. that the Respondent has dealt erratically with the Claimant's loan account since her dismissal; and the Claimant's terminal dues have not been remitted to her; with record showing that the Respondent Bank credited the terminal dues funds on 24th February, 2025 and then strangely reversed the transaction on the same day.
 - z. that on 10th June, 2025, the Claimant was called by the Bank's Recoveries Department, and informed that the file had been handed over to them for arrears, despite the Bank's non-payment of terminal dues. That on 13th June, 2025, the Claimant was served with a First Demand for arrears and a Credit Reference Bureau Regulations 2013 Pre-listing Notification.
 - aa. that unless the Court freezes the interest rate on the Claimant's loan, the Claimant's wellbeing and that of her family shall be immediately and irreparably damaged.
 - ab. that the Claimant's dismissal was unfair, unlawful and malicious in all circumstances, and the ensuing consequences are a conscious threat to her future, financially and mentally.
4. Documents annexed to the supporting affidavit include copies of the Claimant's employment contract, correspondence on the disciplinary process, letter of dismissal, Respondent's letter dated 22nd April, 2025 on variation of interest rates and a First Demand Letter, among others.
 5. The application was placed before the Court (Baari, J) on 17th June, 2025, and interim orders were issued in terms of prayers (a), (b) and (e) in the application.
 6. The foregoing is the application before me for determination, and is opposed by the Respondent vide a replying affidavit of Christopher Kuria sworn on 27th June, 2025. It is deposited in the said replying affidavit:-
 - a. that the application is misconstrued, baseless and lacks merit; as the Claimant has not satisfied any of the established requirements for grant of an injunction.



- b. that by a contract dated 15th May, 2015 and signed by the Claimant on 20th May, 2015, the Claimant was employed by the Respondent as a Branch Manager and was, by a letter of appointment dated 30th April, 2021, redeployed to the position of Head of the Portfolio Quality Management (PQM Department) with effect from 1st May, 2021.
- c. that the Respondent's HR Manual provided for application of preferential interest rates to loans advanced by the Respondent to its employees. That such preferential rates only applied as long as the borrower remained an employee, and were subject to a separate loan agreement between the borrower/employee and the Respondent.
- d. That by a facility letter dated 30th August, 2023, the Respondent agreed to advance a loan of Kshs.9,908,681/= to the Claimant who was at the time an employee of the Respondent, whose terms the Claimant accepted and signed. That the loan facility had the following express terms:-
 - i. that interest on the facility shall be charged at the variable rate of 5% per annum being the Applicable Staff Rate of interest for mortgage facilities, which is subject to change from time to time (Clause 3.1).
 - ii. that the 5% interest rate is only applicable as long as the borrower is in the employment of the Bank, and that the Bank reserves the right to determine and change the applicable rate or rates of interest and methods of calculating the interest applicable from time to time; and that the Bank shall be required to furnish the borrower with a 30-day notice in writing prior to any change in the applicable rate of interest and method of calculating the interest payable.
- e. that the facility is a binding agreement between the Claimant and the Respondent that the Claimant willingly entered into and accepted the terms thereof, and cannot ask the Court to vary terms of a valid agreement as she is attempting to do through the application herein.
- f. that by a letter dated 11th February, 2025, the Claimant was summarily dismissed from employment for failing to properly carry out her duties, leading to losses suffered by the Respondent, pursuant to Section 44(4)(c) of the Employment Act.
- g. that sometimes in December 2024, the Respondent discovered an anomaly in some of the accounts/transactions that formed part of the Portfolio managed by the Claimant, as a result of which the Claimant was on 11th December, 2024 suspended from duty in accordance with the Respondent's HR Policy on Disciplinary Process to allow the Respondent to carry out investigations.
- h. that the Respondent's Audit Department carried out a comprehensive investigation into the matter and a Special Audit Report was prepared; and the Claimant was subsequently invited to a meeting held on 10th January, 2025 where the Report was presented to the Claimant. That the Claimant confirmed receipt by signing the minutes of that meeting.
- i. that the Report revealed that the Claimant had failed to properly carry out her duties, leading to loss of funds by the Respondent, and indirectly allowed fraudulent transactions to take place.
- j. that the Claimant was issued with a show cause letter dated 24th January, 2025, to which she responded vide a letter dated 31st January, 2025; and that having found the response unsatisfactory, the Claimant was, by a letter dated 7th February, 2025, invited to a disciplinary hearing scheduled for 10th February, 2025. That the invitation letter informed the Claimant that she was entitled to be accompanied by a representative/employee/witness of her choice.



- k. that the Respondent considered the representations made by the Claimant at the disciplinary hearing in addition to the response to the notice to show cause, and made a decision to dismiss the Claimant from employment for failing to properly perform her duties which led to losses to the Respondent in accordance with Section 44(4)(c) of the *Employment Act*; which decision was communicated to the Claimant vide a letter of dismissal dated 11th February, 2025.
 - l. that by a letter dated 17th February, 2025, the Claimant lodged an appeal against the decision to dismiss her, and was subsequently invited to an appeal hearing scheduled 28th February, 2025, and was once again informed of her right to be accompanied to the appeal hearing by another employee/representative/witness of her choice.
 - m. that the appeal committee considered the representations made by the Claimant and found that the Claimant did not present any new information or documentation that had not already been considered by the disciplinary committee as set out in the dismissal letter; and upheld the disciplinary committee's decision. That the appeals committee's decision was communicated to the Claimant vide a letter dated 27th March, 2025.
 - n. that the Claimant was fairly and lawfully dismissed from employment after a fair process was carried out, and the Claimant was given a fair opportunity to be heard.
 - o. that the dismissal letter provided the status of the loan taken out by the Claimant, and as the Claimant's employment with the Respondent had come to an end, the preferential rate of 5% was no longer applicable to the Claimant. That the Claimant was therefore required to clear the full outstanding amount as at the date of termination, or to enter into a new facility agreement with the Respondent on commercial terms.
 - p. that it was clear from the outset that the loan was only subject to preferential interest rate of 5% on the condition that the Claimant was an employee of the Respondent.
 - q. that there is nothing in the documents filed by the Claimant challenging the validity of the facility or disputing that the Claimant indeed received a loan from the Respondent; which was on a business/commercial contract between the Claimant and the Respondent, with the Claimant receiving a preferential rate by virtue of a parallel employment contract between the parties.
 - r. that the Court cannot re-write the terms of a contract between the parties, as sought by the Claimant vide the present application.
 - s. that the Claimant has not demonstrated that she has a prima facie case as far as the terms of the facility are concerned, or that she will suffer irreparable loss that cannot be compensated by way of damages if the injunctive orders sought are not granted. That the application largely contains allegations of unfair termination of employment.
7. Having considered the application, the replying affidavit and all the material presented before me, issues that fall for determination, in my view, are as follows:-
- a. Whether the mortgage loan advanced to the Claimant and the interest rate charged thereon was contractually tied to the Claimant's employment by the Respondent.
 - b. Whether the injunctive order sought by the Claimant/Applicant can issue.



8. On the first issue, it is a common ground that the Claimant was, vide an employment contract dated 12th May, 2015 and duly signed by the Claimant on 20th May, 2015, employed by the Respondent as a Branch Manager. Clause 8 of the said employment contract states as follows:-

“ 8. Loan(s)

1. Subject to the general and special conditions of the Staff Loan Scheme, the Employee will be entitled to the various loan facilities as per the scheme currently in force upon confirmation of employment.”

9. Clause 28 of the Respondent’s Human Resource Policy (2019 Edition) lists the types of loans available to the Respondent’s employees, while Clause 3 of the Banking Facility puts the interest rate chargeable on Mortgage loans advanced to the Respondent’s employees at 5% per annum. The banking facility (loan) agreement dated 30th August, 2023 and signed by both parties herein in September 2023 indicates that the Kshs.9,908,681/= loan advanced to the Claimant by the Respondent was a Mortgage Loan. This loan, according to the documents filed by both parties herein, was a Staff Loan given under the Respondent’s Staff Loan Scheme; and to which the Claimant was contractually entitled, as an employee. Both the loan and the interest rates chargeable thereon were tied to the Claimant’s employment. Any change in the loan interest rates based on a termination of employment which, prima facie, does not meet the fairness test will attract the Court’s intervention at an interlocutory stage, pending full adjudication of the suit.

10. The legality and/or validity of the Respondent’s act of terminating the Claimant’s employment is disputed. Variation of staff loan preferential interest rates based on the disputed termination of employment is also disputed. Both disputes stem from the employer/employee relationship between the parties herein. The two disputes are co-joined at the hip, and concurrent determination of the same cannot be likened to re-writing of a contract by the Court.

11. It was stated as follows in the case of *Mulinge – vs – Co-operative Bank of Kenya limited* [2023] KEELRC 847 (KLR) 13 April 2023):-

“ 19. In the present case, I agree with the Claimant 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 rate, resides in this Court.”

12. Further, it was stated as follows in *Abraham Nyambane Asiago – vs – Barclays Bank of Kenya Limited* [2013] eKLR:-

“ 19. In the case before me, it is not in contest that the Claimant was granted a staff housing loan because he was an employee of the Respondent. It is also factual that the reason why the Respondent has recalled the loan is that the Claimant’s employment has been terminated, which termination is contested by the Claimant. It cannot therefore be that the Employment and Labour Relations Court has no jurisdiction to adjudicate on a matter arising from the staff housing loan. . . .”



13. On the second issue, it is an undisputed fact that on 28th May, 2025, the Respondent wrote to the Claimant stating as follows:-

“RE: Notice Of Change Of Interest Rate For Mortgage Loan Banking Facility Dated 30Th August 2023

You are hereby notified that the Bank will adjust the applicable interest rate with respect to your facility as conditioned in the Letter of Offer for your banking facility dated 30th August, 2023. Interest on your facility shall cease to be at staff rate with effect from June 28th 2025 and shall be calculated on a variable interest at a percentage rate per annum . . . totalling to 18.59% p.a . . .”

14. It is the foregoing notice that appears to have triggered the filing of the present application.
15. The Claimant/Applicant seeks an injunctive order. According to KEER On INJUNCTIONS (6TH EDITION) Chapter X (Section 2), a Court of equity has jurisdiction to issue an injunction pending suit. Whether or not the Jurisdiction will be exercised depends on the special circumstances of each case. If there are undisputed facts advanced by the Applicant, an injunction will issue. But if the facts of the case are disputed, unclear or in the case of a contract, the validity of the contract is open to doubt, the question of whether or not an injunction will issue pending suit becomes a question of comparative convenience or inconvenience. If greater inconvenience would arise to the plaintiff from withholding the injunction than to the defendant from granting it, an injunction will issue.
16. If, on the other hand, greater inconvenience would arise to the defendant from granting the injunction than to the plaintiff from withholding it, an injunction will not be granted.
17. The foregoing are the principles enunciated in the celebrated case of *Giella – vs – Cassman Brown & Co. Ltd* [1973] EA 35 where it was stated that an applicant seeking interlocutory orders of injunction must demonstrate that he has a prima facie case with a probability of success, that he stands to suffer irreparable harm that cannot be remedied by damages, and that where the Court is in doubt, the case will be decided on the balance of convenience.
18. In the present case, the facts giving rise to the dispute herein are clear and are not disputed. What is in dispute is the legality/fairness of termination of the Claimant’s employment and the ensuing threat by the Respondent to vary interest rates on the staff loan advanced to the Claimant earlier, based on the disputed termination.
19. Has the Claimant/Applicant demonstrated that she has a prima facie case with a probability of success.” Under Section 10(2)(c) of the *Employment Act*, a contract of employment must state the job description of an employee. In the present case, however, whereas the Claimant’s initial contract of employment date 12th May, 2015 incorporates a job description elaborately outlining the Claimant’s duties and responsibilities as a Branch Manager, her subsequent appointment to the position of Head of Portfolio Quality Management (dated 30th April, 2021) is not shown to have included a job description for the new position. It is worthy noting that the Claimant was summarily dismissed and that her dismissal was anchored on Section 44(4)(c) of the *Employment Act*.
20. The Claimant has denied wrong doing. The Claimant is not shown to have participated in the alleged fraud or to have benefited from it, and her pleading/deposition that the entire staff in the PQM Department where she worked was dismissed has not been controverted. Further, the Claimant’s assertion that the loss in issue was as a result of weakness in the Respondent’s systems was not controverted. The Claimant’s pleading that the fraud in issue was found to have started at a time when she was away on leave, both annual and compassionate, was not controverted. All these issue go to the



validity of the reasons informing the Claimant's dismissal, and cannot be said to be frivolous. They are substantive issues which can only be determined upon trial.

21. The Claimant has made allegations of procedural unfairness which have not been controverted. These include suspension for a period longer than that provided in the Respondent's HR Policy, a short disciplinary hearing notice, a disciplinary panel comprising more persons than those provided in the Respondent's HR Policy (one of whom had acted as an Internal Investigator/auditor), and that some information was omitted from the minutes of the disciplinary proceedings.
22. I have looked at the recorded minutes of both the disciplinary committee (dated 10th February, 2025) and those taken on appeal (dated 24th February, 2025). The minutes are taken in reported speech; and do not contain presentations as presented by the parties and/or their witnesses.
23. In my view, the Claimant has demonstrated that she has a prima facie case, an arguable case which cannot be said to be devoid of some possibility of success.
24. On whether the Claimant stands to suffer irreparably if the injunctive order sought is not granted, I have noted that the mortgage loan in issue is secured by securities which include land title Sigona/1599. I have also noted that interest on the outstanding loan sum is due to be varied from 5% to 18.59% as notified by the Respondent vide its notice dated 28th May, 2025. If the Order sought is not granted, the higher interest rate will take effect, with irreparable damage on the Claimant as deposed by her. The Court has not been told that there has been default in servicing of the loan at the contracted rate of 5%. In view of all the foregoing, the balance of convenience tilts in favour of the Claimant/Applicant; as greater inconvenience would arise to her from withholding the injunction sought than to the Respondent from granting it.
25. In the upshot, and upon considering the submissions filed, the Notice of Motion dated 13th June, 2025 is hereby allowed in the following terms:-
 - a. An order is hereby granted restraining the Respondent, whether acting by its servants, agents or any other person acting under its authority, from varying or applying interest at a rate higher than 5% staff interest rate on the loan account and facility between the Claimant and the Respondent pending hearing and determination of the suit herein.
 - b. The suit shall be fast-tracked, and shall be fixed for hearing.
 - c. Costs of the application shall be in the suit.
26. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Odhiambo for the Claimant/Applicant



Miss Sirawa for the Respondent

