REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. E071 OF 2025

(Before Hon. Justice Dr. Jacob Gakeri)

FREDRICK OKOTH OKEYO..

……CLAIMANT

VERSUS

KCB BANK KENYA LIMITED……..RESPONDENT

RULING

Before the court for determination is the applicant's/Claimant's Notice of Motion dated 24th July, 2025 filed under Certificate of urgency seeking Orders that:-

1. *Spent.*
2. *Spent.*
3. *Pending the hearing and determination of the main suit, this court be pleased to issue an Order of injunction restraining the respondent from increasing the claimant's interest rate from 9.5% per annum to 16.2% per annum for the unsecured loan and from*

5.5% per annum to 16.3% per annum for the mortgage facility.

4. *Costs of this application be provided for.*

The Notice of Motion is expressed under Rule 45 and 68 of the Employment and Labour Relations Court (Procedure) Rules 2024 and is based on the grounds set out on its face and the Supporting Affidavit of the applicant.

The applicant's case is that he joined the respondents as a Graduate Trainee in 2008 and rose to the position of Manager Service Quality and Compliance Level C at Kshs.283,558.00 and his employment was unfairly terminated on 19th March 2025 and during the pendency of employment he had taken a staff unsecured personal loan of Kshs.5,197,540.00 and a mortgage of Kshs.3,000,000.00 to be serviced on special rates for staff at 5.5% and 9.5% respectively, which the respondent had raised to 16.3% and 16.2% respectively after the termination of employment, effective 22nd April 2025 which had made the claimants position extremely difficult and could lead to default as the claimant was unemployed and was ready to service the loans under the

agreed favourable terms and the Orders sought would not prejudice the respondent.

Respondent's case

By a Replying Affidavit sworn by Benard Ogutu on 20th November 2025, the affiant deposed that the parties had agreed that on termination of employment the applicable interest rates would be commercial as charged by the bank from time to time and the conversion of rates to commercial took place as envisioned by the agreement vide letter dated 22nd April 2025 and the termination of employment was lawful.

The affiant further deposed that the two contracts entered into by the parties were distinct and separate from the employment contract and subject to their own terms.

That the respondent was financially stable and had capacity to compensate the claimant if it was established that termination of employment was unfair and the loans ought not to have been subjected to commercial interest rates and the application herein had no merit.

Applicant's submissions

On whether the application had met the threshold for a temporary injunction, reliance was placed on the sentiments of the court **in Giella V Cassman Brown & Co. Ltd** [1973] EA 358 on the three conditions namely; *prima facie* case with probability of success, irreparable injury and balance of convenience.

Reliance was also placed on the sentiments of the Court of Appeal in **Ngurman Ltd V Jan Bonde Nelson & 2 others** [2014] eKLR to buttress the submission and the need to establish all the three elements.

On *prima facie,* case reliance was placed on **Mrao V First American Bank of Kenya Ltd & 2 Others** [2003] eKLR to submit that the application met the first pillar and the claimant had sought reinstatement as a relief.

Concerning irreparable injury, reliance was placed on paragraph 739 Halsbury's Laws of England at page 352 to urge that the commercial interest rate coupled with the harsh economic climate would be burdensome to the claimant and may default payment and could render his family homeless.

Reliance was also placed on the decision in **Abraham Nyambane Asagu V Barclays Bank of Kenya Ltd** [2013] KEELRC 230 (KLR) to submit that if the commercial rates were to apply, it would occasion grave and irreversible injustice to the claimant.

On balance of convenience, reliance was placed on the sentiments of the court in **Paul Gitonga Wanjau V Gathuthi Tea Factory Co. Ltd & 2 others** [2016] eKLR and **Bryan Chebii Kipkokech V Barnabas Tuitoek Bargoria & another** [2018] eKLR to submit that if the Orders sought was not granted the claimant stood to loose more and the balance of convenience was in his favour.

Respondent's submissions

Concerning *prima facie* case, counsel relied on the two borrowing contracts the claimant had entered into during employment and his current status of having lost employment, to submit that the respondent had the right to convert the interest rates as the claimant was no longer a member of staff and had no basis of insisting that he ought to pay interest at staff rates.

According to counsel, the claimant's lack of gainful employment and the contracts he signed with the respondent were distinct and he was bound by their terms as he entered into the arrangements voluntarily.

Reliance was also placed on the decision in **Lilian Rhoda Adhiambo V Barclays Bank of Kenya Ltd** [2021] eKLR to urge that the claimant was bound by the terms of the loan agreements he entered into.

Also cited were the sentiments of the court in **Ochieng V Consolidated Bank of Kenya** E170 of 2025 and **Pius Kimaiyo Langat V Co-operative Bank of Kenya Ltd** [2017] eKLR to urge that the duty of courts was to enforce contracts as opposed to rewriting them.

On irreparable injury, counsel submitted that the applicant's loss was quantified and compensatable in damages and had not indicated that the loss likely to arise would be irreparable.

Finally, counsel submitted that respondent was in a position to compensate the claimant for the loss, if any as deponed in its Replying Affidavit.

Analysis and determination

The only issue for determination is whether the applicant's Notice of Motion dated 24th July 2025 was merited.

While the applicant averred and counsel submitted that the instant application was meritorious, the respondent on the other hand maintained that it was not in that irreparable injury or harm had not been demonstrated as the loss if any suffered by the claimant was compensatable by monies counted.

The applicant/claimant seeks the Order of injunction to restrain the respondent from charging commercial interest rates on his mortgage facility and unsecured personal loan which he secured during his employment with the respondent.

While the applicant urged that the commercial interest rates would be burdensome upon him and may default and loose his home, the respondent maintained that the claimant was bound by the contracts he willingly entered into and in any event any loss likely to occur if the injunction was not granted would be compensable, if the

termination of employment was found to have been unfair.

The grant or refusal of a temporary injunction involves the exercise of judicial discretion as held in **Abel Salim & others V Okong'o & others** [1976] KLR 42 at 48.

The principles that govern the same are well settled as enunciated by the Court of Appeal in **Giella V Cassman Brown & Co. Ltd** (supra) as follows:

"First an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately compensated by an award of damages.

*Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (**EAI Industries Ltd V Trufoods** [1972] EA 420)".*

On *prima facie* case, the sentiments of the Court of Appeal in **Mrao Ltd V First American Bank of Kenya Ltd & 2 Others** (supra) merit rehashing:

"A prima facie case in a civil application includes but not confined to "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 exist a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter".

The pith and substance of the claimant's case is that the termination of employment by the respondent was unfair both substantively and procedurally and as a consequence, before that determination is made, the respondent should be restrained from charging commercial interest rates on the two facilities.

From the documents filed in this matter the court is satisfied that the claimant has demonstrated that he has a *prima facie* case with probability of success, as it need to be one that will succeed as long as the case is genuine and arguable.
Probability of success was explained in **Habib Bank AG Zurich V Eugene Marion Yakob** CA No. 43 of 1982.

See also **Nguruman Ltd V Jan Bonde Nielsen** (supra).

As regards irreparable injury, the court is guided by the sentiments of the Court of Appeal in **Nguruman Ltd V Jan Bonde Nielsen & 2 others** (supra) thus:

"On the second factor that the applicant must establish that he "might otherwise" suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold required the burden is on the applicant to demonstrate prima facie the and extent of the injury".

According to Halsbury's Laws of England 3rd Edition Vol.21 Paragraph 739 at 352,

"...By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not which cannot possibly be repaired...

In order to show irreparable harm, the moving party most demonstrate that it is a harm that cannot be quantified in monetary terms or which cannot be cured..."

However, judicial pronouncements are also emphatic that a party should not be allowed to gain an advantage or benefit by acting unlawfully just because it is in a position to pay for it. See **Alkman V Muchoki** [1984] KLR 353.

Although the claimant/Applicant contended that the loss likely to occur would be irreversible and grave, particulars of the said loss were not demonstrated or that the loss cannot adequately compensated monetarily.

Finally, the principle of balance of convenience is grounded on a comparison on who is likely to suffer more if the Orders sought are granted or not granted.

In **Byran Chebii Kipkoech V Barnabas Tuitoek Bargoria** (supra), the court stated as follows:
"The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted and the suit is decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if the injunction is granted but the suit is ultimately dismissed. In other words the plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withdrawing the injunction will be greater than which is likely to arise from granting it".

In this case, the claimant contended that if the Order sought was not granted he would most likely loose his house for non-payment of mortgage instalments, if the

case is decided in his favour and if the Order was granted, the value of the property will have appreciated and the respondent would suffer less inconvenience.

Significantly, the claimant/Applicant maintained that he was still willing to repay the loans as agreed.

In determining whether or not to grant the Order sought, the court is guided by judicial pronouncements in similar cases.

In **Boniface Lum Amuga Biko V National Bank of Kenya Ltd** [2017] eKLR, cited by the applicant, Mbaru J. expressed the view that it would be prejudicial to the employee to allow the employer to charge a higher interest rate on loan facilities advanced during employment prior to determination of the lawfulness or otherwise of the termination of employment and the finding thereof determined the date from which such higher rate of interest was payable by the former employee.

Similarly, in **Abraham Nyambane Asiago V Barclays Bank of Kenya Ltd** (supra) Ndolo J stated:

"...However, there is a basic assumption in all such cases that the employment relationship terminates within the law. If there is a whift of unlawfulness in the termination of employment, then the employer's right to withdraw the special facility advanced to the employee is withheld".

Granted that the claimant/applicant was challenging the termination of employment and the employer was insisting that obligations entered into during employment ought to be honoured, the court is of the considered view that pending the hearing and determination of the main suit the interest rates payable by the claimant for the unsecured personal loan and the mortgage facility be retained at the level they were during the employment relationship and if a determination that termination of employment was fair was made, the respondent would be entitled in law to recover the difference.

This reasoning is fortified by the fact that the loans in question were secured at the favourable rates of interest because the claimant was an employee of the respondent.

It would be inequitable for the respondent to charge the higher interest rates bearing in mind that the foundation of the adjustment of interest rates is being questioned.

In the court's view, the amount of money the respondent will forgo and which is recoverable depending on the final determination of the suit, the difference between the favourable interest rates and commercial rates pending determination of the suit is comparatively small.

In the upshot the court is satisfied that the claimant's Notice of Motion dated 24th July 2025 is merited and the respondent is restrained from adjusting the interest rates on the unsecured personal loan from 9.5% per annum to 16.2% per annum and from 5.5% per annum to 16.3% per annum for the mortgage facility pending the hearing and determination of the main suit.

Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 11TH DAY OF DECEMBER 2025.

DR. JACOB GAKERI

JUDGE

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 has 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.

DR. JACOB GAKERI

JUDGE