Njenga v DIB Bank Kenya Limited (Cause E400 of 2020) [2026] KEELRC 394 (KLR) (17 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 394 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E400 OF 2020

BOM MANANI, J

FEBRUARY 17, 2026

BETWEEN

IRENE NJERI NJENGA .... CLAIMANT

AND

DIB BANK KENYA LIMITED .... RESPONDENT

RULING

Background

1. Before the court is the application dated 29th January 2024 filed by the Claimant through which she seeks the following orders:-

   a. Spent.

   b. Spent.

   c. Spent.

   d. That the court be pleased to review and vary the orders which were issued by her Ladyship Justice Maureen Onyango on 23rd July 2021 by removing the condition placed upon her (the Claimant) to continue to service the loan facilities granted to her by the Respondent since she contends that they are illegal, null and void ab initio.

   e. That the court grants her (the Claimant) leave to further amend the Memorandum of Claim.

   f. That pending trial and determination of the case, an injunction be issued to restrain the Respondent from advertising, selling, transferring, taking possession of, leasing, letting or in any other manner dealing with her (the Claimant's) properties comprised in Nairobi Block 110/379 and LR 109/141 (Title No. 180834).

   g. That the court to issue any other order that is necessary in the interest of justice.

2. The application is supported by the grounds that appear on the face thereof and the affidavit of the Claimant dated 29th January 2024. The Claimant contends that the Respondent is licensed to offer Sharia compliant financial products. She avers that the Respondent granted her various facilities which she believed to be Sharia compliant.

3. However, she contends that it later turned out that the facilities were not Sharia compliant. As such, she argues that they (the facilities) are illegal, null and void and incapable of conferring any legal rights on the Respondent.

4. The Claimant contends that the fact that the facilities are infirm and illegal was confirmed by the Respondent in an affidavit it filed in HCC No. E171 of 2023 between the parties. However, she contends that the High Court directed that the matter be resolved by this court.

5. The Claimant avers that the intended amendment to the Memorandum of Claim is necessary in order to plead the aforesaid matters. She further contends that the orders of 23rd July 2021 ought to be reviewed so that the obligation to continue servicing the impugned facilities terminates. She also asserts that it is necessary for the court to issue an order of injunction to bar the Respondent from enforcing recovery of the impugned facilities through disposal of the properties which were offered as security for them.

6. The Respondent has opposed the application. It has filed a replying affidavit dated 12th February 2024 to anchor its objection to the motion.

7. The Respondent avers that the orders which the Claimant seeks are equitable in nature. It contends that she is undeserving of the said orders because she is guilty of abuse of the court process.

8. The Respondent avers that the court issued an order of injunction on 23rd July 2021 which restrained it from altering the preferential loan terms in the finance contracts between the parties. It contends that the order was conditional on the Claimant continuing to service the facilities at the agreed preferential rates failing which, it was to be at liberty to exercise its statutory powers of sale.

9. The Respondent contends that after the Claimant failed to service the facilities, it commenced the recovery process. However, it avers that the Claimant moved to the High Court to stop the process but the High Court declined the request noting that she was forum shopping.

10. The Respondent contends that after the Claimant's attempts to obtain injunctive orders from the High Court failed, she moved to this court to seek review of the order of 23rd July 2021 with a view to doing away with the conditions subject to which the order issued. It contends that the Claimant made this application notwithstanding that she was in breach of the aforesaid order of 23rd July 2021 since she was not servicing the facilities.

11. The Respondent contends that the court may only review its decision if there is: an error apparent on the face of the record; discovery of a new and important matter; or sufficient reason to review the decision. It contends that the Claimant has not satisfied any of these conditions.

12. The Respondent contends that contrary to the Claimant's assertions, it did not swear an affidavit to disown the facilities under consideration. On the contrary, it contends that the affidavit the Claimant refers to reiterates that the facilities in question were issued in compliance with Sharia law.

13. The Respondent contends that the Claimant's request to further amend the Memorandum of Claim seeks to introduce new issues after the trial has commenced. It posits that pleadings should not be amended: in order to introduce a new and inconsistent cause of action; if the request to amend is not presented timeously; and if the proposed amendment will take away an accrued right of the opponent.

14. The Respondent contends that although the Claimant is seeking to challenge the impugned facilities, she does not deny that she has drawn a benefit from but failed to service them. As such, it contends that she is seeking to eat her cake and have it at the same time.

Analysis

15. The first issue for determination in the application relates to whether the court should grant the Claimant leave to further amend the Memorandum of Claim. The law on amendment of pleadings is now well settled. The court enjoys wide discretion to grant requests to amend pleadings (Maranga v Mwangi & 2 others [2025] KEELC 340 (KLR)).

16. A litigant is entitled to amend his pleadings in order to reframe the issues in dispute for ease of determination by the court or to bring on board a matter which was omitted from the pleadings so that all the issues in controversy are resolved at once without the need for filing separate proceedings. Such amendments may be allowed at any stage of the proceedings including during appeal.

17. Notwithstanding the wide discretion which the court has in this respect, there are circumstances which disentitle it (the court) from entertaining such requests. These include when: the applicant seeks to introduce a new cause of action which is inconsistent with the already pleaded cause of action; the request for amendment is presented too late in the day with the consequence that allowing it will prejudice the opponent; and the proposed amendment will take away an accrued right of the opponent such as the defense of limitation of actions (Daykio Plantations Limited v Galba Mining Limited & 4 others [2025] KEHC 4504 (KLR) &Omboto & 3 others v Board of Trustees, National Social Security Fund & 6 others (Environment & Land Case 391 of 2019) [2024] KEELC 5283 (KLR) (11 July 2024) (Ruling)).

18. In the instant suit, the initial dispute between the parties centered on whether the Respondent's decision to terminate the Claimant's contract of service was fair and lawful. According to the Claimant, the decision was irregular. In addition, she contended that the Respondent terminated her services in a discriminatory manner.Consequently,she prayed for declarations in that regard.

19. The Claimant also contended that during the currency of the employment relationship between the parties, the Respondent advanced her financial accommodation on preferential terms. She thus prayed that the court issues an order of injunction to bar it (the Respondent) from: changing the preferential rates granted to her; levying penalties or interest for delayed payment of the facilities; and exercising the power of forced recovery of the facilities.

20. In the proposed amendment, the Claimant now seeks to introduce a claim to the effect that the aforesaid facilities are illegal, null and void and thus unenforceable since they were allegedly issued in contravention of Sharia law. As such, she proposes to request the court to issue orders declaring the facilities as illegal and unenforceable.

21. Notwithstanding the suggested additions to the Memorandum of Claim, the Claimant does not propose to drop her earlier request to enforce the impugned facilities based on the preferential terms agreed on between the parties. The decision to sustain the plea to enforce the facilities on the preferential terms agreed on between the parties essentially implies that the Claimant considers the facilities as enforceable but only on the agreed preferential terms.

22. From the foresaid, it is apparent that the proposed amendment seeks to introduce a new claim which is inconsistent with the earlier claim on the financial facilities. This is because whilst the earlier claim is premised on the assumption that the facilities were legitimate, the proposed claim is premised on the supposition that they (the facilities) are illegitimate.

23. The Claimant cannot simultaneously pursue the two inconsistent claims in the same action. She has to elect to either contend that the facilities are legitimate and enforceable on the agreed preferential terms or that they are illegal and not enforceable. It is not possible to pursue both claims concurrently in the same suit.

24. Secondly, the impugned facilities were advanced to the Claimant in 2017. This is apparent from paragraph six of her affidavit in support of the application under consideration.

25. The Respondent contends that if the Claimant wished to challenge the legality of the facilities, she should have done so within six years of their issuance since they are contract based. Therefore, it contends that the request to further amend the Memorandum of Claim to challenge the legality of the facilities, coming in January 2024, is time barred.

26. The Respondent relies on section 4 (1) (a) of the *Limitation of Actions Act* to advance this argument. Under the provision, suits based on contract must be filed within six years of accrual of the cause of action.

27. On the other hand, the Claimant contends that the cause of action accrued in May 2023 when she discovered the illegalities in the facilities. As such, she contends that the request to further amend the Statement of Claim to plead the said illegalities is not time barred.

28. Although the Claimant alleges that she only learned of the illegalities in May 2023, the evidence on record shows that she executed nearly all the documents which anchored the impugned transactions between November and December 2017. As such, it is inconceivable that she only learned of the alleged illegalities in May 2023. With a majority of the documents which relate to the transactions having been at her disposal as early as December 2017, she ought to have discovered the alleged illegalities earlier than the time she purports to have learned about them if she had exercised reasonable diligence.

29. The Respondent referred to the *Limitation of Actions Act* to contend that the request to further amend the Memorandum of Claim is time barred. However, the provision which determines the timelines for presenting claims to the Employment and Labour Relations Court is section 89 (formerly section 90) of the *Employment Act*. Under the provision, all claims which are based on a contract of employment ought to be presented to the court within three years of accrual of the cause of action or twelve months from the date of cessation of the injury complained of in the case of a continuing injury claim.

30. This provision specifically excludes reference to the *Limitation of Actions Act* when determining limitation of actions for claims which are based on a contract of employment (Attorney General & another v Andrew Maina Githinji & another [2016] KECA 817 (KLR)). Further, unlike the *Limitation of Actions Act*, there is no provision under the *Employment Act* which permits the court to enlarge the time that is prescribed under section 89 of the Act for purposes of lodging a claim out of time. As such, the court has no jurisdiction to enlarge time under the Act (Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another [2016] KECA 213 (KLR)).

31. Since the parties to the action opted to tie the dispute on the impugned financial facilities to the employment dispute between them, the Claimant ought to have filed her claim to challenge the legality of the facilities within three years from the date of their grant (December 2017) or within one year from the date of termination of her contract (July 2020) if her case was premised on the continuing injury principle. However, the instant request to introduce the claim was presented to court in January 2024 well outside the aforesaid timelines. As such, it is statute barred.

32. Consequently, the proposed further amendment to the Memorandum of Claim not only seeks to introduce a claim which is inconsistent with the subsisting claim with respect to the impugned financial facilities but one which is also statute barred. As such, it cannot be granted.

33. Critically, the proposed amendment seeks to introduce a claim which challenges the legality of the financial facilities. Although the High Court expressed the view that this court should handle the finance dispute between the parties (see Njenga & another v DIB Bank Kenya Limited [2023] KEHC 21772 (KLR)), it is this court's view that its jurisdiction over the finance contracts is circumscribed.

34. Whilst the court undoubtedly enjoys jurisdiction over mortgage disputes which emanate from employer-employee relationships, this jurisdiction is not general. It is limited to interrogating disputes which touch on the terms in the contracts which are intricately tied to the employment relationship.

35. In particular, the court has in mind the terms which entitled the Claimant to enjoy preferential interest rates on account of the employment relationship between the parties. It is only in this respect that the court is entitled to pronounce itself (see for example in Evans Oliver Olwali v Standard Chartered Bank Limited [2018] KEELRC 1710 (KLR)).

36. The court is not entitled to ride on this limited window to purport to adjudicate on disputes which touch on the legality of the impugned facilities generally. Applying the dominant jurisdiction test, it is apparent that the dispute relating to the legality of the facilities for which the Claimant pledged her pieces of land as security falls within the jurisdictional purview of the Environment and Land Court (see Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & another [2018] eKLR & Elias Maundu Makau v I&M Bank Limited [2021] KEELRC 80 (KLR)). As such, it is not helpful to amend the pleadings to introduce it in this acton.

37. Save for the proposal to amend the Memorandum of Claim to bring on board the claim that the impugned facilities are illegal, the Claimant also proposes other amendments as per the draft further amended Memorandum of Claim. These include the proposal to expand the Memorandum of Claim to include a claim that the Respondent subjected her to differential treatment by failing to remunerate her based on the principle of equal pay for work of equal value.

38. However, unlike the proposed claim which alleges illegality of the impugned facilities, the Claimant does not explain why she did not plead these other claims at the time of filing the suit. Similarly, she does not explain why it has become necessary to introduce the further claims after trial of her case has begun. Absent this explanation, the court cannot grant the aforesaid request to introduce the additional claims particularly after trial of the suit has begun.

39. The next question for determination is whether the court is entitled to review the order which was issued by her Ladyship Justice Maureen Onyango on 23rd July 2021. The Claimant prays for the order to be reviewed to remove the condition which requires her to continue to service the impugned loan facilities because she believes that they are illegal, null and void.

40. The law on review of court decisions is now settled. A court may review its orders if it is demonstrated that: there is an error apparent on the face of the record; there is discovery of a new and important matter which was not within the applicant's knowledge at the time the decision sought to be reviewed was made despite the exercise of due diligence; or there is sufficient reason to warrant the request for review (Waithaka v Bashaeki & 2 others (Civil Appeal 91 of 2018) [2024] KEHC 12791 (KLR) (17 October 2024) (Ruling)).

41. In the instant case, the Claimant contends that after she reviewed the impugned facilities and following subsequent admissions by the Respondent, it occurred to her that they (the facilities) were issued in

contravention of Sharia law. As such, she contends that it is necessary to review the order requiring her to continue servicing them.

42. The Claimant alleges that she learned of the illegalities in the impugned facilities after an objective review of the facilities after the court ruling of 23rd July 2021. However and as was pointed out earlier, it is apparent that she had interacted with most of the documentation which anchored the impugned facilities before the aforesaid ruling.

43. This reality is self-evident from the fact that she executed these documents, including: the Letters of Offer; the Promise to Lease; the Title Nominee Declaration; the Lease Agreement; the Service Agency Agreement; the Purchase Undertaking; the Legal Charge among others in 2017. As such, the court is unpersuaded that she only came to learn of the alleged illegalities in the facilities after 23rdJuly 2021.

44. Importantly, it is apparent from this decision that the court has already declined the request to further amend the Memorandum of Claim to introduce the claim to challenge the legality of the impugned facilities because it (the request) is, inter alia, time barred. As is apparent from the application, this (the proposal to amend the pleadings to contend that the facilities are illegal) was the basis for the request for review of the impugned order. That being the case, this latter request must also necessarily fail.

45. Finally, the law obligates a party who seeks to review a court decision to file the application for review without unreasonable delay (In re Estate of Richard Kiplangat Tanui (Deceased) [2020] KEHC 3726 (KLR)). The instant application was filed in January 2024 more than eight months after the Claimant interacted with the Respondent's affidavit in Nairobi HCC E171 of 2023 through which she allegedly learned of the illegalities in the facilities (see 65 of her supplementary submissions).

46. The Claimant has not accounted for the inordinate delay in presenting the request for review after she allegedly learned of the Respondent's fraud in May 2023. This works against grant of the order sought.

47. The other issue for determination is whether the court should issue an order of interim injunction to restrain the Respondentfrom advertising, selling, transferring, leasing and letting or in any other manner dealing with the Claimant's properties comprised in Nairobi Block 110/379 and LR 109/141 (Title No. 180834). This prayer is anchored on the Claimant's contention that the said properties were improperly used to secure illegitimate facilities. Thus, she contends that the properties should not be tied to the impugned facilities.

48. The claim that the impugned facilities are illegal was the substratum for the application for interim injunction. Since the aforesaid claim has been found to be, inter alia, statute barred, it is apparent that the substratum for the request for interim injunction has been lost.

49. This being the case, it is apparent that the Claimant has not surmounted the prerequisite of demonstrating that she has a prima facie case to entitle her to the injunctive order sought. In the premises, the request for interim injunction cannot issue.

50. Further, the court is alive to the fact that the Claimant was granted an order of interim injunction on 23rd July 2021 to bar the Respondent from varying the terms of the loan contracts between the parties on condition that she continues to service the impugned facilities on the agreed preferential terms. The court is also aware that the Respondent has since made claims that the Claimant did not continue to service the facilities are ordered. As a matter of fact, the court declined an earlier request for interim injunctive orders in the cause on the ground that the Claimant had not demonstrated that she had satisfied the conditions for the grant of the earlier order of interim injunction (see the ruling dated 13th February 2024).

51. An order of injunction is an equitable remedy which obligates the party seeking it to approach the court with clean hands and to demonstrate his readiness to do equity (Fahrenheit Energy Limited v Boit & another [2025] KEELC 8188 (KLR)). As such, the Claimant ought to have provided evidence to demonstrate that she has complied with the conditions which accompanied the order dated 23rd July 2021 which required her to continue servicing the financial facilities in her favour on the terms which the parties had agreed on.

52. Regrettably, she has not provided this evidence. As such, the court is not entitled to grant her the instant request in any event.

Determination

53. The upshot is that the court finds that the application dated 29th January 2024 is unmerited.

54. As such, it is disallowed.

55. Costs of the application shall abide the results of the suit.

DATED, SIGNED AND DELIVERED ON THE 17TH DAY OF FEBRUARY, 2026

B. O. M. MANANI

JUDGE

In the presence of:

................for the Claimant

................for the Respondent

Order

In light of the directions issued on 12th 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.