



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Anyembe v National Bank of Kenya Limited (Cause E446 of 2025)  
[2026] KEELRC 461 (KLR) (20 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 461 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E446 OF 2025  
AK NZEI, J  
FEBRUARY 20, 2026**

**BETWEEN**

**GRACE KADENGE ANYEMBE ..... CLAIMANT**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant/Applicant herein sued the Respondent vide a Statement of Claim dated 20<sup>th</sup> May, 2025 and sought the following reliefs:-
  - a. That an injunction be issued restraining the Respondent whether by itself, agents, servants, employees or otherwise from selling or in any way disposing of the suit properties herein:-
    - i. L.R. No. Kisumu/Kanyawegi/10616
    - ii. Nairobi Block 82/4700
    - iii. Motor vehicle registration number KDB 834Z.
  - b. That the Respondent does furnish the Plaintiff with certified copies of statements for the respective mortgage accounts.
2. The suit was filed contemporaneously with an evenly dated Notice of Motion whereby the Claimant/Applicant sought the following Orders:-
  - a. That the application be certified urgent, and interim Orders be granted in terms of prayer (sic) herein.
  - b. An injunction be issued restraining the Respondent whether by itself, agents, servants, employees or otherwise howsoever from selling or in any way disposing the following properties:-



- i. L.R. No. Kisumu/Kanyawegi/10616
  - ii. NAIROBI BLOCK 82/4700
  - iii. Motor vehicle registration number KDB 834Z pending hearing and determination of the application.
- c. An injunction be issued restraining the Respondent whether by itself, agents, servants, employees or otherwise howsoever from selling or in any way disposing the following properties:-
- SUBPARA iv.  
L.R. NO. Kisumu/Kanyawegi/10616
- SUBPARA v.  
NAIROBI BLOCK 82/4700
- SUBPARA vi.  
Motor vehicle registration number KDB 834Z pending hearing and determination of the suit.
- d. That the Defendant/Respondent does furnish the Claimant with certified copies of Statements for Mortgage accounts held and maintained in the name of the Claimant/Applicant.
- e. Costs.
3. The application sets out on its face the grounds on which it is brought, which are substantially replicated in the Claimant/Applicant's affidavit sworn on 20<sup>th</sup> May, 2025 in support of the application. It is deponed in the said supporting affidavit:-
- a. that the Claimant was an employee of the Respondent until February 2022, during which period she was subject to privileges, financial subsidies, incentives and benefits that included loans at staff rates.
  - b. that by a charge dated 25<sup>th</sup> July, 2022, the Claimant/Applicant charged the property known as NAIROBI/BLOCK 82/4700 for a consideration of Kshs.7,192,860/= on terms described in the said charge.
  - c. that by a further charge dated 21<sup>st</sup> April, 2015, the Claimant/Applicant charged the 1<sup>st</sup> suit property to the Respondent for a consideration of Kshs.700,000/=.
  - d. that by a further charge dated 25<sup>th</sup> April, 2017, the Claimant/Applicant charged the 1<sup>st</sup> suit property to the Respondent for a consideration of Kshs.298,000/=.
  - e. that by a further charge dated 16<sup>th</sup> May, 2018, the Claimant/Applicant charged the 1<sup>st</sup> suit property to the Respondent for a consideration of Kshs.2,309,140/=.
  - f. that by a fourth further charge, the Claimant/Applicant charged the 1<sup>st</sup> suit property to the Respondent for a consideration of Kshs.1,500,000/=.
  - g. that by a charge dated 5<sup>th</sup> January, 2022, the Claimant/Applicant charged the property described as Kisumu/Kanyawegi/10616 to the Respondent for Kshs.2,500,000/=; and also charged motor vehicle registration number KDB 834Z to the Respondent.



- h. that the Respondent has proceeded and advertised for sale the 1<sup>st</sup> and 2<sup>nd</sup> suit properties (Kisumu/Kanyawegi/10616 and NAIROBI/BLOCK 82/4700) without a statutory notice being served on the Claimant/Applicant.
  - i. that it was only upon inquiry to the Respondent that the Claimant/Applicant was served with a statutory notice that did not comply with timelines and other requirements.
  - j. that the interest rate changed from staff rates to commercial rates without any notification to the Claimant/Applicant.
  - k. that review of interest rates was conducted without following the staff manual, since the Claimant/Applicant had served the Respondent for over ten years.
4. The application is opposed by the Respondent vide a replying affidavit of Nelius N. Wangechi sworn on 18<sup>th</sup> July, 2025. It is deponed in the said replying affidavit, inter-alia:-
- a. that vide a letter of appointment, the Claimant was appointed as a Branch Manager for the Respondent's Bungoma Branch, where she earned a gross salary of Kshs.340,000/=.
  - b. that as a member of staff, the Claimant was eligible to access loan facilities at an employee's subsidized rates from the Respondent.
  - c. that by a charge dated 25<sup>th</sup> July, 2014 and a further charge dated 21<sup>st</sup> April, 2015, 25<sup>th</sup> April, 2017, 16<sup>th</sup> May, 2018 and 4<sup>th</sup> November, 2021, the Claimant/Applicant charged her property known as L.R NO. NAIROBI/ BLOCK 82/4700 and by a charge dated 5<sup>th</sup> January, 2022, she charged her property known as L.R. NO. Kisumu/Kanyawegi/10616 to secure a maximum principal amount of Kshs.12,000,000/= and Kshs.2,500,000/= respectively, together with interest costs, charges and other expenses.
  - d. that the Claimant/Applicant was extended the said loan facilities at subsidized rates as she was an employee of the Respondent.
  - e. that on 30<sup>th</sup> November, 2022, the Applicant voluntarily resigned as an employee of the Respondent, and immediately ceased enjoying the benefits extended to staff members of the Respondent.
  - f. that the dispute between the Claimant/Applicant and the Respondent is purely a commercial dispute and therefore this Court lacks jurisdiction to hear and determine the same as the Applicant and the Respondent ceased to have an employer-employee relationship on 30<sup>th</sup> November, 2022 when the Applicant resigned from employment with the Respondent.
5. The application was first placed before me under a Certificate of Urgency on 21<sup>st</sup> May, 2025, and I gave the following Orders:-
- “(1) I find no urgency in the application.
  - (2) The application shall be served forthwith, and an affidavit of service shall be filed.
  - (3) The matter will, however, be mentioned on 23<sup>rd</sup> May, 2025 for the Claimant/Applicant to address the Court on:-
    - (i) Whether the suit herein is an ELRC suit/an employment suit.



(ii) Urgency of the application.”

6. In the morning of 22<sup>nd</sup> May, 2025 (the following day), however, Mr. Ochich, learned Counsel for the Claimant/Applicant, appeared before the Court virtually just as the Court was starting its morning virtual session, and pleaded with the Court to allow him to address it on the matter herein as there was a sale scheduled for that day at 11.00 a.m. That there had been a termination of employment and that interest on the charge ought to be as per the employee manual. Counsel prayed for an interim order in terms of prayer (b) in the application.
7. Cognizant of each litigant’s inherent right to be heard on disputes filed in Court and not to be condemned and or prejudiced unheard, I agreed to recall the order scheduling the matter for mention on 23<sup>rd</sup> May, 2025, issued an interim restraining order, and gave directions on service of the application and filing of response thereto.
8. For record purposes, Section 12(3)(viii) of the *Employment and Labour Relations Court Act* allows this Court to give appropriate reliefs as it may deem appropriate to give.
9. The application is now before the Court for determination. Prayers (a) and (b) in the application are already spent, in view of the foregoing. Prayers (c), (d) and (e) are for determination at this stage. The Respondent has objected to this Court’s Jurisdiction over the suit herein. Issues that fall for determination, in my view, are as follows:-
  - a. Whether this Court has jurisdiction to hear and to determine the application herein.
  - b. Whether the Orders sought by the Claimant/Applicant can issue.
10. On the first issue, by dint of Article 162(2)(a) of *the Constitution* of Kenya 2010, this Court is endowed with Jurisdiction to hear and determine disputes relating to employment and labour relations. The operative words here, in my view, are “relating to”. Article 162(3) mandated Parliament to determine this Court’s Jurisdiction and functions; which mandate Parliament executed by enacting the *Employment and Labour Relations Court Act*.
11. The preamble to the *Employment and Labour Relations Court Act* states as follows:-

“An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes.”
12. Any dispute relating to or connected to an employment relationship between an employer and employee falls within the purview of this Court’s Jurisdiction. The words “for connected purposes” as used in the aforesaid preamble widens this Court’s Jurisdiction beyond the existence of an employer-employee relationship. That is why, for example, the Court will hear and determine disputes arising from and connected to an employment contract long after the employment contract is terminated. The *Employment Act* is called in aid in this regard.
13. Section 12(1)(a) of the *Employment and Labour Relations Court Act* provides as follows:-
  - “(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.”

14. Again, the catch words in the foregoing statutory provision, in my view, are “relating to or arising out of”. It was stated as follows in the case of *Abraham Nyambane Asiago v Barclays Bank of Kenya Limited* [2013] eKLR:-

“16. 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? Counsel for the Respondent asked the Court to down its tools in this matter because the subject matter is land and not employment. With much respect to the learned Counsel, that is a very narrow interpretation of what constitutes an employment and labour relations matter and the consequential Jurisdiction of the Industrial Court.

17. 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 fall 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 same employment relationship. That in my view could not have been the intention of the legislators. . . .

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. . . .”

15. Further, it was stated as follows in the case of *Mulinge v Co-operative Bank of Kenya Limited* (ELRC Cause No. E200 of 2022) [2023] KEELRC 847 (KLR):-

“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 rates, resides on this Court.”

16. As stated in the *Mulinge Case* (Supra), staff loan facilities and staff mortgage facilities are usually inextricably tied to the staff’s employment contract; so much so that if an employment contract is terminated, tremors from the termination will permeate into the staff loan/staff mortgage facility terms, with the former employer, in most cases, moving to convert/change the interest rates charged on the staff loan/staff mortgage from staff rates to commercial rates. This position is articulately stated in the Respondent’s replying affidavit set out in paragraph 4 of this Ruling.



17. In cases where the legality, validity and fairness of termination of an employee's employment is contested, or where termination of employment is found to have been unfair, this Court will intervene, and has previously intervened and restrained former employers from converting staff interest rates to commercial rates based on manifestly unfair termination of employment.

18. I recently stated as follows in the case of *Samson Yatich Kelwon v Kenya Commercial Bank Limited* [2026] KLR (Judgment):-

“39. On the prayer for reversal of loans to staff rates, it is apparent from the pleadings filed by both parties and the evidence adduced that both the loans advanced by the Respondent to the Claimant during his employment and the staff interest rates charged thereon were anchored in the Claimant's employment by the Respondent. Any change in the interest rates chargeable on the said loans based on a dismissal or termination of employment which the Court has already found did not meet the fairness test must attract the Court's intervention. Upward review of loan interest rates against an unfairly dismissed employee (the Claimant) will only aggravate the unfairness already visited on the Claimant, and will amount to double jeopardy on the part of the Claimant.”

19. The instant case is distinguishable from those in which the Court has previously intervened and exercised jurisdiction under Section 12(1)(a) of the *Employment and Labour Relations Court Act*. The Claimant/Applicant herein has neither pleaded nor demonstrated unfair termination of her employment contract or unfair dismissal pursuant to the *Employment Act*. It is deponed on behalf of the Respondent that the Claimant/Applicant “voluntarily resigned as an employee of the Respondent on 30<sup>th</sup> November, 2022”. This has not been disputed. Having voluntarily resigned from her employment with the Respondent, the Claimant/Applicant voluntarily gave up and relinquished whatever privileges, financial incentives, subsidies and benefits that ordinarily and contractually flow from the Respondent to its employees.

20. Further, the suit herein is pleaded as a commercial suit/dispute. The Claimant/Applicant's statement of claim filed herein does not set out any employment dispute. Failure by a chargor to issue the requisite statutory notice before advertising the charged properties for sale or failing to furnish the chargee with statements of account is purely a commercial dispute that ought not to have found its way into the Employment and Labour Relations Court in the first place. Parties will forever be bound by their pleadings.

21. The dispute herein, as pleaded, does not fall within the purview of Section 12 of the *Employment and Labour Relations Court Act*; and this Court is without Jurisdiction to hear and to determine the application herein, which is founded on the suit. Having made that finding, this Court must down its tools at this point. It cannot proceed and determine the second issue.

22. The Court of Appeal (Nyarangi, JA) stated as follows in the case of *Owners of Motor Vessel “Lilian S” v Caltex Oil (Kenya) Limited* [1989] KECA 48:-

“... I think it is reasonably plain that a question of Jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obligated to decide the issue straight away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a Court has no Jurisdiction, there would be no basis for a continuation of the proceedings pending other evidence. A court of law down



tools in respect of the matter before it the moment it holds the opinion that it is without Jurisdiction.”

23. The Supreme Court of Kenya stated as follows in the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR:-

“ . . . A Court’s Jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise Jurisdiction as conferred by *the Constitution* or other written law, and cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law . . . whether a court of law has jurisdiction to entertain a matter before it . . . goes to the very heart of the matter, for without Jurisdiction, the Court cannot entertain any proceedings.”

24. In sum, and having considered written submissions filed on behalf of both parties herein, the Claimant/Applicant’s Notice of Motion dated 20<sup>th</sup> May, 2025 is hereby dismissed with costs.

25. Had the Court been moved to strike off the entire suit, I would have done it vide this Ruling. Parties may move the Court appropriately regarding the main suit.

26. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY 2026.**

**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. Ochich for the Claimant

Mr. Simiyu for the Respondent

**DRAFT**

