



REPUBLIC OF KENYA



KENYA LAW

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**Lumumba v Kenya Commercial Bank Ltd (Cause E008 of 2026)
[2026] KEELRC 497 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 497 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E008 OF 2026
JK GAKERI, J
FEBRUARY 25, 2026**

BETWEEN

ISAAC NDISI LUMUMBA CLAIMANT

AND

KENYA COMMERCIAL BANK LTD RESPONDENT

RULING

1. Before the court for determination is the claimant/Applicant's Notice of Motion dated 29th January 2026 filed under Certificate of Urgency seeking Orders that:-
 1. Spent.
 2. Spent.
 3. Temporary injunction to restrain the respondent, its servants, agents, proxies or other persons from auctioning the claimant's house registered as NORTH SAKWA/NYAWITA/6393 and/or interfering with his quiet possession of the premises subject of the mortgage loan pending hearing of the main claim.
 4. Spent.
 5. The respondent do revert the interest of claimant mortgage loan Account Number AA1xxxxxxxxx to staff rates pending the hearing of the main suit
 6. Spent.
 7. The court be pleased to issue a temporary injunction restraining the Respondent, its servants, agents, employees, proxies or other persons from converting to public terms the claimant's staff mortgage loan with the respondent of account number AA2xxxxxxxxx and/or interfere



with his quiet possession of premises subject of the mortgage pending inter partes hearing of the claim.

8. The Honourable Court to make such Orders as may appear fit to meet the ends of justice.
9. The costs of the application be provided for.
2. The Notice of Motion was expressed under Section 3A and 63(c) of the *Civil Procedure Act*, Order 50 Rules 1 and 3, Order 40 Rules 1, 2, 3 and 9 and Order 51 Rule of the Civil Procedure Rules and was based on the grounds enumerated on its face and the Supporting Affidavit of the applicant sworn on 29th January 2026.
3. The applicant's case against the respondent is that by the time the respondent terminated his employment on 3rd July 2024, the letter indicated that the loans he held with the respondent bank would be converted to public and the same was done on 8th November 2024 on the two loans he had under Account Number AA2xxxxxxxx current balance Kshs.34,636.35 and staff Mortgage Loan Account Number AA1xxxxxxxx with a balance of Kshs.3,884,725.20 and a statutory notice was issued vide letter dated 3rd March 2025 by registered post giving the applicant 3 months to clear the balance but he only accessed the letter in September 2025.
4. The applicant deponed that he had made attempts to repay the loans at Kshs.10,000.00 per month from September 2025 and had been on treatment resulting from complications from COVID-19 in 2021 and believed that termination of employment was unfair.
5. Finally, the applicant deponed that his employment was the singular source of his livelihood and used the want to acquire a family home and it was in imminent danger of being auctioned.

Respondent's case

6. By a Replying Affidavit sworn by Mr. Ben Mwaura Ndegwa on 11th February 2026, the affiant deponed that amount advanced to the claimant Kshs.4,414,500 was repayable at monthly instalments of Kshs.28,273 inclusive of interest at the rate of 5.5% and in the event of termination of employment, commercial rate of interest was chargeable.
7. The affiant, further deponed that the continued employment of the claimant by the respondent was a condition precedent of the loan facility and the respondent could recall for repayment if the employment relationship ceased.
8. That after the claimant's employment was terminated vide letter dated 3rd July 2024 and the appeal was unsuccessful, the respondent issued the claimant with a Notice of Conversion of the loan to public terms via letter dated 8th November 2024 and commercial rate of interest was chargeable.
9. The affiant further deponed that the statutory notice was served through the address the claimant had provided, to inform him the nature and extent of the default and a Statutory Demand Notice was issued in February 2026.
10. The affiant stated that the claimant paid Kshs.10,000 on 12th January 2026 and both loans were in arrears and the respondent had the rights to recover the amount due to it.
11. That the claimant's Supporting Affidavit contained admissions of indebtedness and the collateral the claimant provided was a commodity capable of being sold.



Applicant's submissions

12. On the court's jurisdiction to hear and determine the instant applicant, reliance was placed on the persuasive authority of *Esther Mbinya Musale V National Bank of Kenya* (no citation) to urge that the staff rate of interest was an employment benefit and the respondent's decisions to convert the same to commercial and issue a statutory notice was a direct consequence of the alleged unfair termination of the employment.
13. Counsel submitted that applying the principles in *Giella V Cassman Brown Co. Ltd* [1973] EA 358, the applicant had established a prima facie case because the applicant's default was traceable to the unfair termination of employment.
14. According to counsel, loss of a family home cannot be adequately compensated by monies counted.
15. Reliance was placed on the decision in *Beatrice Wangui Mwhia V Barclays Bank of Kenya* (no citation).
16. Counsel submitted that if the property was sold, the substratum of the suit will have been lost and the remedy of reinstating the loan to staff rates would be rendered an academic exercise.
17. On the balance of convenience, counsel submitted that it was overwhelmingly tilted in favour of granting the injunction.
18. According to the advocate, the sudden escalation of interest from 5.5% to 17.5% rendered the loan unserviceable, it was unconscionable and the applicant stood to suffer financial prejudice.

Respondent's submissions

19. On jurisdiction of the court to hear and determine the instant application, counsel cited the decisions in *Republic V Karisa Chengo & 2 others* [2017] eKLR, *Samuel Kamau Macharia & Another V Kenya Commercial Bank & 2 Others* [2012] eKLR, *Francis Makorani Ddaiddo V Bank of India (K) Ltd Civil Appeal E082/2021*, *Ouma V Faulu Microfinance Bank Ltd* [2023] KEELRC 940 (KLR) and *Zamzam V Gulf Africa Ltd* [2022] KEELRC 1618 (KLR) to submit that the court lacked jurisdiction to entertain the application.
20. On the interest applicable to the claimant's mortgage, counsel submitted that the terms of the facility were clear that after termination of employment commercial rates of interest would apply.
21. Reliance was placed on *National Bank of Kenya Ltd V Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, to urge that the granting of the facility under preferential terms was conditional upon the claimant remaining in employment.
22. That staff loans were distinct contractual arrangements as held in *Peter Mutisya Musembi & Another V National Bank of Kenya ELRC No. 1777 of 2014* and *Alfred Muthomi Mutiria & another V National Bank of Kenya ELRC No. 1139 of 2014* that the claimant was seeking suspension of express terms of a contract.
23. Finally, counsel submitted that costs of this application should follow the event and the same ought to be awarded to the successful party as held in *Sonko V Clerk County Assembly of Nairobi City & 12 Others* [2022] KESC 17 (KLR).

Analysis and determination

24. The only issue for determination is whether the applicant has made a case for the grant of the Order of injunction to restrain the respondent from selling his property registered as NORTH SAKWA/



- NYAWITA/6393 and from converting to public terms of the applicant's staff mortgage loan with the respondent.
25. Significantly, the applicant's employment was terminated on 3rd July 2024 and the loans were converted to public effective 8th November 2024 and since then, the applicant has been depositing Kshs.10,000 per month towards repayment of the loans.
 26. Intriguingly, the applicant did not challenge the termination of employment until he filed in the instant application on 30th January 2026.
 27. Admittedly, the respondent dispatched a statutory notice dated 3rd March 2025 which showed the total amount outstanding on the two loans to be Kshs.4,068,428.50 and interest was accruing at 17.3%.
 28. For unexplained reasons, the applicant did not avail copies of the two loan agreements for the court's perusal.
 29. Strangely, neither the Notice of Motion dated 29th January 2026 nor the applicant's Supporting Affidavit sworn on even date revealed or indicated the rate of interest on the loans the applicant was paying prior to and after the rates of interest changed.
 30. Finally, the claimant attached a letter stamped on 26th January 2026, under the letterhead of K'otekra Medical Clinic Bondo indicating that he had been treated there on account of effects of COVID-19 since 2024.
 31. No other document of the indisposition or treatment was availed.
 32. On jurisdiction, it is trite that the Employment and Labour Relations Court (ELRC) derives its jurisdiction to hear and determine all disputes relating to employment and labour and connected purposes by dint of the provisions of Article 162(2)(a) of *the Constitution* of Kenya and Section 12 of the *Employment and Labour Relations Court Act* consistent with the holding of the Supreme Court of Kenya in Samuel Kamau Macharia & Another V Kenya Commercial Bank & 2 Others (supra) that a court's jurisdiction emanates from *the Constitution* or legislation or both.
 33. The jurisdiction of the ELRC has been addressed in a catena of decisions. The most notable are Republic V Karisa Chengo & 2 Others (supra) and the National Social Security Fund Board of Trustees V Kenya Tea Growers Association & 14 Others.
 34. In the latter, the court held that:

"The intention of parliament is clear both from the preamble and Section 12(1)(a) – (f). The ELRC Act was enacted to resolve employer employee dispute as provided by Article 162 of *the Constitution*. That is the purpose and context which cannot be ignored in interpreting provisions of the act...

The germane issue framed by the court did not arise in an employer-employee dispute nor does it fall under Section 12(1)(a) – (f)".
 35. In *Ddaiddo V Bank of India (K) Ltd* [2024] KECA 749 (KLR) the Court of Appeal held:

"The foregoing Constitutional and statutory provisions lend clarity to the jurisdictional remit of the ELRC. Its jurisdiction does not extend to disputes over mortgage debts, which do not fall within the scope of the employer/employee disputes contemplated in Section 12 of the ELRC Act. In effect, the ELRC had no jurisdiction to entertain the respondents



counter-claim or pronounce itself on the issue as to whether or not it was barred by the statute of limitation”.

36. In the instant suit, it is discernible that the applicant moved the court substantially because he feared that the respondent bank would exercise its statutory power of sale of the collateral he had given for the facility.
37. This is noticeable because termination of employment took place on 3rd July 2024 almost 11/2 years ago.
38. Thus, in the court’s view, the mortgage dispute is the dominant dispute between the parties as opposed to the termination of employment, a cause of action whose accrual date was in July 2024.
39. Evidently, all the orders sought by the Notice of Motion relate to the mortgage facility.
40. Similarly and as correctly submitted by the respondent, a mortgage facility is a distinct contractual engagement an employee voluntarily enters into and is bound by its terms and conditions.
41. In *Pius Kimaiyo Langat V Co-operative Bank of Kenya Ltd* [2017] eKLR the court held:

“We are alive to the hallowed legal maxim that it is not the business of courts to rewrite contracts between parties. They are bound by the terms of their contracts unless coercion, fraud or undue influence are pleaded and proved”.
42. Although the claimant/Applicant secured the facilities on preferential terms by virtue of his employment, he executed the necessary documentation, whose terms he agreed to abide by and was seeking the court’s intervention for failing to honour his part of the bargain.
43. Guided by the sentiments of the Court of Appeal in *Ddaiddo V Bank of India (K) Ltd* (Supra), the court is persuaded that it has no jurisdiction to grant the orders sought in this instance.
44. I will now proceed to determine whether the application would have been successful but for the finding above.
45. The principles that govern the grant of the Order of temporary injunction are well settled.
46. First, the Order of injunction is an equitable and discretionary remedy and is ordinarily given to protect and maintain the status quo. In making the determination, the court is enjoined to balance the convenience of the parties and possible injuries (see *Charterhouse Investments Ltd V Simon K Sang & Others* Civil Appeal No. 315 of 2004.
47. The guiding principles were enunciated in *Giella V Cassman Brown co. Ltd* [1973] EA 358 where the Court of Appeal stated:

“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 be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience (*EA Industries V Trufoods* [1972] EA 420)”.



48. In *Yellow Horse Inns Ltd V Ndauchi Co. Ltd & 2 Others* [2017] KECA 167 (KLR) the Court of Appeal held:
- "The court in *Giella* identified three pillars on which rests the foundation of any Order of injunction, interlocutory or permanent".
49. It is trite law that the three conditions are distinct of each other and must be demonstrated by the applicant sequentially.
50. Concerning prima facie case, the sentiments of the court in *Mrao Ltd V First American Bank of Kenya & 2 Others* [2003] KLR 125 are worth restating, thus:
- "I would say that in civil cases, it is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter".
51. In the instant case, the applicant is challenging a termination of employment by the respondent, which occurred on 3rd July 2024 and more specifically, the performance rating by the respondent.
52. He is also claiming terminal dues though the specific dues remain undisclosed almost 1^{1/2} years after termination of employment.
53. Based on the documentation filed in court, the court is satisfied that the applicant has demonstrated a prima facie with a probability of success.
54. Second irreparable loss means loss that cannot be remedied in monies counted.
56. In *Yellow Horse Inns Ltd V Ndauchi Co. Ltd & 2 Others* (supra), the Court of Appeal observed:
- "... The court must further be satisfied that the injury the applicant will suffer if an injunction is not granted will be irreparable. Therefore, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no Order of injunction should normally be granted, however strong the applicants claim may appear at that stage..."
57. In the instant case although the applicant is seeking the Order of injunction to restrain the respondent from selling his house on the basis of the outstanding loan, the only evidence of an intended sale is the statutory notice dated 3rd March 2025, which accorded the applicant three (3) months to pay the sum of Kshs.198,144.00 and Kshs.4,068,468.50 for the two loans. The applicant neither indicated how he planned or proposed to pay the amount outstanding nor aver that he had consulted the respondent on how to proceed.
58. Relatedly, the important issue of his indisposition since 2021 on account of having contracted COVID-19 was only evidenced by a single letter from a clinic in Bondo town.
59. The letter made reference to no visitations to the clinic and when they took place and what transpired.
60. Additional documentation on the indisposition of the applicant would have fortified his case, that his health played a key role in his inability to pay the instalments as he had contracted and continued repaying even after the rates changed in November 2024.
61. In the court's view, the applicant failed to demonstrate that the loss or injury he is likely to suffer if the Order of injunction was not granted would be irreparable. The assertion that he would suffer grave irreversible consequences, if an injunction was not granted was not demonstrated evidentiary. It is compensable in damages and the respondent had the wherewithal to pay.



62. It is unclear to the court what led to the instant suit bearing in mind that the statutory Notice was dated 3rd March 2025 and even if the applicant received it in September 2025, the instant suit was filed more than four (4) months later and there is no demonstrable evidence to show that the respondent had initiated enforcement of its notice.
63. Even assuming that the applicant has been grappling with health challenges occasioned by COVID-19, the court is at a loss as to why the applicant provided no evidence of having approached the respondent on the two loans for an amicable solution and comes to court months after accepting the commercial rates of interest more than one year ago. His conduct estops him from contesting the interest rates or any term of the facilities he took.
64. Finally, having failed to show that the loss or injury he would suffer would be irreparable in monetary damages, and taking into consideration that the instant suit was filed more than one and half years after termination of employment and more than 13 months after the rates of interest changed to commercial, the court is not satisfied that the balance of convenience is tilted in favour of the applicant.
65. The court is not persuaded that the applicant's Notice of Motion meets the threshold for the grant of the Order of injunction.
66. Similarly, the prayer that the respondent reverts the interest rates on the Mortgage Loan Account No.AAA1xxxxxxxx pending the hearing and determination of the main suit lacked relevant particulars, including the rates to revert to or from the contract itself. The prayers are unmerited at this stage.
67. It is trite that equitable remedies ought to be applied for at the earliest possible instance to enable the court exercise its discretion.
68. However, in this case, the applicant is guilty of laches and as held by the Court of Appeal in Trade Bank Ltd (In Liquidation) V LZ Engineering Construction Ltd & Another Civil Application No. 282 of 1998.

"...We think it is now well settled that where there is such a long delay or inaction or whatever else it may be called, there ought to be some kind of explanation or material to enable the Judge to exercise the discretion given... As we have said the discretion can only be exercised upon reason not sympathy. On this aspect of the matter, the applicants placed before the learned single Judge no material upon which he could exercise his discretion".

69. These sentiments apply on all fours to the facts of the instant case.
70. The upshot of the foregoing is that the applicant's Notice of Motion dated 29th January 2026 is for dismissal and it is accordingly dismissed with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 25TH DAY OF FEBRUARY 2026.

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

