



**Mwangi v Equity Bank (Kenya) Limited (Cause E051 of 2025)
[2025] KEELRC 1270 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1270 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E051 OF 2025
BOM MANANI, J
APRIL 30, 2025**

BETWEEN

MOSES MWANGI CLAIMANT

AND

EQUITY BANK (KENYA) LIMITED RESPONDENT

RULING

1. The Claimant has sued the Respondent alleging that the two had an employment relationship which the Respondent terminated irregularly. He contends that the Respondent employed him in May 2023 in the position of Head of Finance, Kenya. He further contends that on 31st October 2024, the Respondent issued him with a letter dated 30th October 2024 terminating the aforesaid contract. He has thus instituted this action to challenge the validity of the Respondent's aforesaid decision.
2. Together with the Statement of Claim, the Claimant filed the application dated 31st January 2025. In the application, he seeks various orders including the following:-
 - a. An order of interim injunction to restrain the Respondent from varying, continuing to charge commercial interest and or adjusting or in any other manner withdrawing the preferential interest rates on the facilities he has with the Respondent pending the hearing and determination of the suit.
 - b. An order of interim injunction to restrain the Respondent from adversely giving reference regarding and or concerning him with regard to the summary dismissal that is now pending before court for determination of its validity on account of the sub-judice rule.
 - c. An order regarding who bears the costs of the application.
3. The gist of the application is that based on the employment relationship between the parties, the Claimant applied for and was granted by the Respondent two financial facilities at staff interest rates



of 6% and 8% respectively. The Claimant contends that the facilities were to be serviced using his salary. It is his further case that at the time the Respondent terminated his contract of service, these facilities were still outstanding.

4. The Claimant contends that under the preferential loan agreement terms, he was to remit monthly instalments of Ksh. 125,202.00 and Ksh. 88,449.70 towards servicing the loans. However, after his contract of service was terminated, the Respondent adjusted these rates to Ksh. 200,597.00 and Ksh.96,530.00 respectively.
5. The Claimant contends that under the finance contracts, the Respondent was entitled to vary the staff interest rates to commercial rates only if the contract of service between them was legitimately terminated. He contends that since the validity of termination of the contract is the subject of litigation, the Respondent should not be allowed to vary the interest rates from staff to commercial until the case is determined.
6. The Claimant avers that he has a valid case against the Respondent. As such, he believes that the court will order reinstatement of his employment with the Respondent. In the premises, he prays that the court orders the Respondent to maintain the staff interest rates on the two facilities until the dispute between them is resolved.
7. The Claimant further avers that his career will be adversely affected if the Respondent makes adverse disclosures about him based on the impugned summary dismissal from employment. As such, he prays that the Respondent be restrained from making any adverse credit disclosures against him on account of the dismissal.
8. The Claimant avers that he is ready to continue servicing the facilities at the agreed staff rates. As such, he contends that the Respondent should let the arrangement remain in place.
9. The Respondent has opposed the application. It contends that the staff interest rates are granted to members of staff at its (the Respondent's) absolute discretion. It further contends that it has the liberty to vary these rates without consulting the affected employees.
10. The Respondent further avers that the preferential rates were accorded to the Claimant on the understanding that they were to be applied during the currency of the employment relation. It contends that the parties agreed that the rates would revert to commercial rates should the employment relation be terminated.
11. The Respondent further contends that after the Claimant left employment, he requested for variation of re-payment of his loan facilities. The Respondent avers that it acceded to this request and granted the Claimant a moratorium for six months which lapses in July 2025. It contends that the Claimant is thereafter to continue repaying the loans by agreed monthly instalments of Ksh. 201,766.00 and Ksh. 97,059.00 respectively until the loans are fully re-paid.
12. The Respondent contends that the parties executed variation instruments dated 19th December 2024 to evidence the aforesaid agreement. As such, it (the Respondent) contends that it is not open to the Claimant to walk away from this arrangement. And neither is it open to the court to intervene in the matter as this would be tantamount to re-writing the finance contracts between the parties.
13. The Respondent contends that the variation instruments were entered into at a time when there was no subsisting employment relation between the parties. As such, the new rates agreed on by them constitute commercial matters which lie outside the purview of the employment relation which they had. Consequently, the Respondent asserts that the Employment and Labour Relations Court (ELRC) is bereft of jurisdiction over the matter.



14. Regarding the plea to bar it from making adverse references on the Claimant, the Respondent contends that this is an attempt by the Claimant to stifle its freedom to freely give references on him whenever it is called upon to do so. As such, it prays that the order should not issue.

Issues for Determination

15. From the affidavit evidence on record, it is apparent that the court is called upon to determine the following two issues:-
- a. Whether the court is seized of jurisdiction to entertain the application.
 - b. Whether the Claimant is entitled to the orders sought in the application.

Analysis

16. The Respondent contends that the court has no jurisdiction to entertain the instant application. It is the Respondent's case that the matters raised in the application relate to loan transactions between the parties. In its (the Respondent's) view, the foregoing being the case, the dispute falls outside the jurisdiction of the ELRC to determine.
17. The Respondent further argues that the loan variation agreements between the parties were entered into after the employment relation between them had come to a close. As such, the agreements are typically commercial in nature and the ELRC has no jurisdiction to delve into them.
18. To support this contention, the Respondent relies on the case of *Local Authorities Fund Board v County Government of Kilifi & another (Employment and Labour Relations Claim 2 of 2022)* [2022] KEELRC 3962 (KLR) (22 September 2022) (Ruling). However, that case is distinguishable from the instant case because it involved a dispute between a sponsor of a pension fund and a trustee over non-remittance of pension funds. There was no previous or subsisting employment relationship between the disputants. As such, their case was clearly outside the purview of the ELRC.
19. The Respondent further relies on the Court of Appeal decision of *Ddaiddo v Bank of India (K) Ltd (Civil Appeal E082 of 2021)* [2024] KECA 749 (KLR) (21 June 2024) (Judgment) to contend that the ELRC cannot determine mortgage disputes. In that case, the court, after setting out article 162 (2) & (3) of *the Constitution* and section 12 of the *Employment and Labour Relations Court Act*, expressed itself on the matter as follows:-

“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 respondent's counterclaim or pronounce itself on the issue as to whether or not it was barred by the statute of limitation.”

20. However, this is not the only decision in which the Court of Appeal has spoken to the ELRC's jurisdiction over disputes arising from loan agreements founded on employment relations. In *Gisemba v Tausi Assurance Company (Civil Appeal 405 of 2018)* [2022] KECA 380 (KLR) (4 March 2022) (Judgment), the court (differently constituted) observed as follows regarding the jurisdictional remit of the ELRC over such matters:-

“The appellant during tenure of his employment took a mortgage predicated on his relationship with the respondent. The trial court, therefore, had the jurisdiction to



determine that which arose out of his employment.....The trial court was right when it stated that there was a close nexus between employment and the employment benefits, and the mortgage was one of the benefits the appellant received through financing. The transaction cannot therefore be said to have been a commercial transaction per se, but one that could not be extricated from the parties' employer/employee relationship. The issue fell squarely within the trial court's jurisdiction. We find that the court had jurisdiction to deal with the matter.....”

21. If the two cases are anything to go by, it is apparent that there is no consensus in the Court of Appeal on the matter. Whilst some members of the court hold the view that the ELRC has jurisdiction over mortgage disputes that have their origins in employment relations, others do not.
22. Section 12 of the *Employment and Labour Relations Court Act* confers jurisdiction on the ELRC in respect of, inter alia, disputes relating to or arising out of employment between an employer and an employee. In my view, this provision is wide enough to cover any dispute that has its origins in an employment relation including disputes which stem from staff loans granted by employers to employees.
23. As such and on my part, I think that in determining whether a particular dispute falls within the scope of the ELRC's jurisdiction, one should not merely consider whether the matter comprises one of the matters that are explicitly enumerated under section 12 of the *Employment and Labour Relations Court Act* but whether it (the matter), when properly contextualized, has its foundation in an employment relation. This appears to be the position that was adopted by the Court of Appeal in the aforesaid case of *Gisemba v Tausi Assurance Company* (supra) when it arrived at the conclusion that a mortgage dispute that emanates from a loan agreement entered into on the basis of an employment relation falls within the jurisdiction of the ELRC to determine.
24. In articulating a similar view, Ndolo J in *Mulinge v Cooperative Bank of Kenya Limited (Employment and Labour Relations Cause E200 of 2022)* [2023] KEELRC 847 (KLR) (13 April 2023) (Ruling) expressed herself on the matter as follows:-

“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 in this Court.”
25. Having regard to the foregoing, I am persuaded by the position expressed by the Court of Appeal in the case of *Gisemba v Tausi Assurance Company* (supra) on the matter. As such, I elect to go by this position.
26. I have no doubt that the preferential loan interest rates which the Respondent granted the Claimant were founded on the subsisting employment relation between them. This is self-evident from clauses 4 (d) and 14 of the letter of offer dated 10th August 2023 and clause 4 (e) of the letter of offer dated 6th March 2024 between the parties.
27. The two letters acknowledge that the Respondent extended the preferential interest rates to the Claimant on account of the subsisting employment relation between them. They further specify that this privilege was to be lost in the event of the relation coming to a close.
28. Consequently, I find as did the Court of Appeal in the case of *Gisemba v Tausi Assurance Company* (supra), that the aforesaid loan contracts were inextricably tied to the employment relation between the parties. As a result, any dispute arising from them falls within the purview of the ELRC to determine.



29. The Respondent contends that since the loan variation agreements were entered into by the parties at the post employment stage, they fall outside the jurisdictional remit of the ELRC. I do not agree.
30. In my view, the variation agreements are supplemental to the loan agreements which the parties had entered into during the currency of their employment relationship. As such, they (the variation contracts) stem from transactions which occurred when there was an employer-employee relation between the parties.
31. The second issue for determination is whether the orders which the Claimant seeks should be granted. The starting point in this discourse is the acknowledgment that a contract which is freely entered into by parties should be respected by the court. Such contract is binding on the parties unless it is demonstrated that it has been vitiated by fraud or mistake or undue influence or coercion or misrepresentation (*National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] eKLR).
32. It appears to me that the parties to this dispute freely entered into the two finance agreements. The Claimant does not contend that the agreements were procured through fraud, mistake, coercion, misrepresentation or undue influence.
33. The Claimant's grievance appears to be that he was to repay the loans in question through his salary. However, since the contract of service between the parties has been terminated, he contends that he will have difficulties in meeting his obligations under the said agreements particularly if the Respondent is allowed to adjust the interest rates from preferential to commercial.
34. The letters of offer which the Claimant signed and which constitute the finance contracts between the parties are explicit that the preferential interest rates were to apply during the subsistence of the employment relation between the parties. The letters are also explicit that should the employment relation between the parties come to a close for whatever reasons, the Respondent will be at liberty to adjust the interest rates on the facilities to the prevailing commercial rates.
35. There is nothing in the letters to suggest that the Respondent's right to migrate the interest rates from preferential to commercial was to be suspended if the Claimant challenged the validity of the decision to terminate his employment. The only trigger for the shift was the fact of termination of the employment relationship between the parties irrespective of whether it was validly undertaken.
36. The Claimant signed the letters of offer for the two loan facilities and expressed himself in the documents as follows:-
- “I Moses Mwangi referred to in the letter of which the foregoing is a copy accept the offer thereby on the terms and conditions.”
37. This clause affirms the fact that the Claimant freely accepted all the terms of the loan agreements including the one which granted the Respondent the power to migrate the interest rates from preferential to commercial if the employment relation between the parties came to a close. There is no suggestion that the Respondent coerced the Claimant into accepting the aforesaid terms.
38. There is evidence that after the Respondent terminated the employment relation between the parties, the two entered into further agreements dated 19th December 2024 through which they varied the



repayment terms for the two loans. Again, whilst signing the variation instruments, the Claimant expressed himself in the instruments as follows:-

“I Moses Mwangi confirm that I have read, understood and accepted the offer contained in this letter subject to the above terms and conditions.”

39. There is no suggestion that the Respondent coerced the Claimant into executing the variation instruments. Importantly, these latter instruments were signed after the contract of service between the parties had terminated and the Respondent’s right to adjust the interest rates from preferential to commercial had accrued. As such and absent evidence to the contrary, the court must take it that the intention of the parties was that after the employment relation between them had come to a close, they will continue to engage in respect of the outstanding loan facilities as per the variation instruments.
40. This arrangement is binding on the parties. Neither of them is entitled to unilaterally walk out of it unless it is demonstrated that the variations were procured through fraud, misrepresentation, mistake, undue influence or coercion.
41. Absent evidence establishing any one or more of the above vitiating elements, the court is not entitled to adjust the terms of engagement between the parties. If it (the court) were to do otherwise, it will have re-written the finance contracts between the parties, a matter which the law frowns at (*Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* [2017] eKLR).
42. The Claimant’s quest to maintain the preferential interest rates appears to be anchored on the supposition that the Respondent’s decision to terminate his contract of service has taken away the source of the revenue he was to apply towards servicing the loans. This supposition implies that the parties had an agreement that the source of funds to service the loans in question was to principally be the Claimant’s salary from the Respondent.
43. I have combed through the two contracts and have not seen any such agreement. As such, the court is not entitled to interfere with the contracts in question merely on account of termination of the employment relationship between the parties.
44. The Claimant has also prayed that the Respondent be prohibited from making adverse references on him until this case is determined. I would like to consider this plea from two prisms: credit references; and general references.
45. With respect to credit references, the court notes that vide clause 12 in the letter of offer dated 10th August 2023, the Claimant granted the Respondent a free hand to provide personal and credit information about him to licensed credit reference bureaus. Whilst the letter of offer dated 6th March 2024 does not contain a similar provision, the Respondent is still entitled to apply clause 12 in the letter of 10th August 2023 to the facility granted under the letter dated 6th March 2024 if it invokes its right under clause 15 of the letter of offer dated 10th August 2023 to consolidate the two loan accounts. As such, I take it that by the Claimant signing the letter of offer dated 10th August 2023, he freely consented to the Respondent sharing his credit information in respect of any of his facilities with it (the Respondent) with licensed credit reference bureaus.
46. The Respondent’s duty not to disclose adverse credit references on the Claimant is conditional on the Claimant servicing his loans in accordance with the variation agreements between the parties. As long as the Claimant keeps his part of the bargain, the Respondent will have nothing adverse to report on him. However, should he fail to service the loans as aforesaid, the Respondent will be at liberty and indeed obligated to share adverse credit information on him in line with clause 12 of the letter of offer dated 10th August 2023 (*Beatrice Wangui Mwihi v Barclays Bank of Kenya* [2019] eKLR).



47. The court takes cognizance of the fact that sharing of such information is not intended to injure the party whom the information relates to. Rather, it is meant to inform the general public about his creditworthiness.
48. With regard to general references, I am persuaded that since there is an ongoing dispute between the parties regarding the validity of the Respondent's decision to terminate the Claimant's contract, it will be prejudicial for the Respondent to make general references against the Claimant in respect of the impugned decision. As such, I issue an injunction to restrain the Respondent from making general references to third parties on the circumstances under which the two separated until this case is determined.
49. As I pen off, I note that the Claimant has cited a plethora of decisions by this court (differently constituted) to anchor his case for grant of the interim reliefs. However, it is noteworthy that unlike in all the cases cited by the Claimant, the parties in the instant case had specific clauses in the loan agreements which allowed the Respondent to impose the prevailing commercial interest rates on the Claimant's facilities the moment the employment relationship between them was terminated irrespective of the manner or reasons for the termination. As such, it is clear to me that the Respondent's contractual right to apply the prevailing commercial interest rates on the Claimant's facilities was to accrue on termination of the employment relation between them irrespective of the legality of the termination process.
50. Secondly, unlike in all the cases which the Claimant has cited, the parties in the instant suit entered into variation agreements after the Claimant's contract of employment had been terminated agreeing on new terms of engagement in respect of the outstanding loans. By this action, the Claimant waived any claim to the previous preferential interest rates that he had been enjoying. Once he signed the variation instruments, he became obligated to repay the facilities as per the varied terms in the instruments and is estopped from renegeing on this new arrangement and seeking to revert to the initial preferential loan terms.
51. The foregoing makes it abundantly clear that the Claimant has not presented a prima facie case to demonstrate that the agreements between him and the Respondent entitle him to continue enjoying the preferential loan interest rates whilst he is out of employment irrespective of whether he has a strong case for reinstatement. As such, the court cannot issue an order of interim injunction in his favour to compel the Respondent to revert to the aforesaid preferential terms.

Determination

52. The upshot is that the court issues the following orders:-
- a. The court finds that it has jurisdiction to adjudicate on loan disputes which have their origins in an employer-employee relationship.
 - b. The court declines to issue an order of interim injunction to restrain the Respondent from varying, continuing to charge commercial interest and or adjusting or in any other manner withdrawing the preferential interest rates on the facilities which the Claimant has with the Respondent pending the hearing and determination of the suit.
 - c. The court directs that the Claimant continues to service his loan obligations with the Respondent in accordance with the instruments of variation executed between the parties on 19th December 2024.



- d. The court declines to issue an order of interim injunction to restrain the Respondent from making adverse credit references regarding and or concerning the Claimant pending determination of the case.
- e. However, until this case is heard and determined, the court hereby issues an order of interim injunction to restrain the Respondent from giving general references regarding and or concerning the summary dismissal of the Claimant from employment whilst the validity of the impugned decision is still the subject of inquiry before it (the court).
- f. Costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF APRIL, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant/Applicant

.....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.

B. O. M MANANI

