



**Wamwati v Equity Bank (Kenya) Limited (Cause E050 of 2025)
[2025] KEELRC 1247 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1247 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E050 OF 2025
BOM MANANI, J
APRIL 30, 2025**

BETWEEN

GEORGE WAMWATI CLAIMANT

AND

EQUITY BANK (KENYA) LIMITED RESPONDENT

RULING

Background

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 the position of General Manager, Internal Audits as from 2nd May 2018. He further contends that on 30th October 2024, the Respondent informed him that his services had been terminated. 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 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 for 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. He has furnished the court with his bank statements to demonstrate that the loan instalments were drawn from his salary. It is his 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 a sum of Ksh. 310,667.00 as the aggregate monthly instalment for servicing the two loans. He however avers that after the Respondent terminated his contract of service, it adjusted this amount upwards. It is noteworthy that the Claimant acknowledges that the Respondent has already adjusted the rates from preferential to commercial.
5. The Claimant contends that his letter of appointment provided that the staff interest rates were to migrate to commercial rates only if the contract of service between them was legitimately terminated. He contends that since the validity of the decision to terminate his employment 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 his reinstatement to 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 contends that if the Respondent is allowed to charge commercial interest rates on the facilities, this will strain him financially. He contends that this will result in him defaulting on the facilities with the possibility of foreclosure.
8. 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 listing on account of the dismissal.
9. 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.
10. 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.
11. 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.
12. The Respondent contends that the letters of offer which were issued to the Claimant for the two facilities explicitly set out the conditions under which the facilities were granted. It further contends that the Claimant appended his signature on the instruments to signify that he accepted the terms and conditions in them.
13. The Respondent contends that in compliance with the terms in the letters of offer for the two facilities, it issued the Claimant with a letter dated 26th November 2024 varying the interest rates on his facilities from preferential to commercial. It contends that this variation has already taken effect. As such, it



contends that if the court issues the orders sought, it will in effect have reinstated to the Claimant, a non-employee, a benefit which is only available to employees.

14. The Respondent further contends that the contractual right to vary the interest rates that are applicable to the facilities was conferred by agreement of the parties. As such, it is not open to the court to interfere with it. It is the Respondent's position that any such interference will be tantamount to re-writing the contracts between the parties.
15. The Respondent contends that the loan contracts between the parties comprise commercial transactions. As such, the Employment and Labour Relations Court (the ELRC) is not entitled to entertain disputes stemming from it.
16. Whilst conceding that the loan repayment instalments were deductible from the Claimant's salary through check-off, the Respondent contends that this does not change the fact that the loan transactions were distinct from the employment relation between the parties. As such, it contends that the Claimant is obligated to continue servicing the loans beyond the employment relation in accordance with the mutually agreed terms as set out in the loan contracts.
17. 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

18. 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

19. 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.
20. The Respondent further argues that the transaction to convert the interest rates on the Claimant's facilities occurred after the employment relation between them had come to a close. As such, the dispute in respect of the conversion is typically commercial matter between a creditor and a debtor and the ELRC has no jurisdiction to delve into it.
21. To support its argument, 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. It is noteworthy that the disputants in the suit had no previous or subsisting employment relationship. As such, their case clearly lay outside the purview of the ELRC.
22. 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.”

23. 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.....”

24. 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.
25. 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.
26. 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 (the court) 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.
27. 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.”

28. 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.
29. 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 clause 6.7 in the Claimant’s letter of appointment dated 12th April 2018 and clauses 4 and 14 of the letter of offer dated 19th April 2024 between the parties.
30. 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.
31. 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.
32. The Respondent contends that since the conversion of the interest rates from preferential to commercial happened at the post employment stage, this removed the matter from the jurisdictional remit of the ELRC. I do not agree.
33. Conversion of interest rates on the loans did not amount to a new transaction between the parties. The Respondent was merely implementing a term in subsisting loan agreements which were entered into during the currency of the employment relationship between the parties.
34. 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).
35. 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.
36. 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.
37. Clause 6.7 in the letter of appointment of the Claimant provides in part as follows:-

“The Bank may assist you to develop through the provision of loans at preferential rates. Please be advised however that the preferential rates will cease to be applicable immediately in the event that you leave employment and commercial rates will apply.”



38. Clause 4(c) of the letter of offer dated 19th April 2024 provides as follows:-

“Should the borrower’s employment with the Lender be terminated for whatever reason, interest will be charged at the then prevailing commercial rates for this category of loans for the remaining period of the loan.”

39. The Claimant signed the two letters signifying his covenant to be bound by them. The letters are explicit that the preferential interest rates that were accorded to the Claimant were to apply during the subsistence of the employment relation between the parties. They (the letters) are also explicit that should the employment relation between the parties come to a close, the Respondent was at liberty to adjust the interest rates on the facilities to the prevailing commercial rates.
40. There is nothing in the letters to suggest that the Respondent’s contractual right to migrate the interest rates from preferential to commercial would 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.
41. There is no suggestion that the Respondent coerced or exerted undue influence on the Claimant to execute the aforesaid letters. As such and absent evidence to the contrary, the court must take it that the intention of the parties was that in the event the employment relation between them was to come to a close, they will apply the prevailing commercial interest rates on the outstanding loan facilities.
42. This arrangement is binding on the parties. Neither of them is entitled to unilaterally walk out of it unless it is demonstrated that it was procured through fraud, misrepresentation, mistake, undue influence or coercion.
43. 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, that will be tantamount to re-writing 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*).
44. 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.
45. I have combed through the two contracts and have not seen any such agreement. As averred by the Respondent, the fact that the loan instalments were being paid through check-off did not mean that settlement of the loan obligations was tied to the employment contract.
46. Indeed, the parties contemplated servicing of the loans beyond the employment relation by providing for conversion of the applicable interest rates from preferential to commercial in the event that the employment relation between them came to a close. 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.
47. Importantly, the Claimant contends that the Respondent issued him with a letter dated 26th November 2024 through which it notified him of its intention to convert the interest rates on the impugned facilities from preferential to commercial. The Claimant further contends that after the Respondent issued him with the aforesaid notice, it went ahead to effectuate the conversion. In the Respondent’s



replying affidavit, it affirms the Claimant's contention that indeed the conversion has already been effected.

48. The evidence on record shows that the Respondent informed the Claimant of the proposed conversion through its letter of 26th November 2024. It informed the Claimant that the effective date of the conversion was to be 30th November 2024. The Claimant received the said letter on 2nd December 2024.
49. The Claimant's prayer is for an order of interim prohibitory injunction to prevent the Respondent from converting the interest rates from preferential to commercial. The question that arises is whether the court can issue an order to stop an event which has already happened.
50. The general position in law, as I understand it, is that an order to restrain execution of an act can only issue if the act sought to be prevented has not happened. The court cannot issue an order to prevent or stop that which has already happened (*Joseph Kipkorir Biwott v Kenya Railways Corporation* [2021] eKLR).
51. In this case and according to the Respondent's letter of 26th November 2024, the conversion of the interest rates on the Claimant's facilities from preferential to commercial crystalized on 30th November 2024. At paragraph 23 (a) in the Statement of Claim, the Claimant confirms this fact when he says that he has experienced hardship servicing the loan facilities after the interest rate applicable to them was converted from preferential to commercial. That being the case, the court cannot issue an order to stop the already crystalized the conversion.
52. 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.
53. With respect to credit references, the court notes that vide clause 12 in the letter of offer dated 19th April 2024, the Claimant granted the Respondent a free hand to provide personal and credit information about him to licensed credit reference bureaus. Similar authority was donated vide clause 17 in the Loan Agreement between the parties dated 23rd October 2018. By the Claimant signing these two instruments, he freely consented to the Respondent sharing his credit information in respect of his facilities with it (the Respondent) with licensed credit reference bureaus.
54. 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 contracts 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 under obligation to share adverse credit information on him in line with the aforesaid clauses in the two loan instruments (*Beatrice Wangui Mwiha v Barclays Bank of Kenya* [2019] eKLR).
55. 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 notify the general public about his creditworthiness.
56. 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.



57. 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 a specific clause in the letter of appointment 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. The clause does not suggest that this contractual right that was granted to the Respondent was conditional on the Claimant not challenging the validity of the decision to terminate his employment. 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.
58. The foregoing makes it abundantly clear that the Claimant has not presented a prima facie case to demonstrate that the loan 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

59. 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 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.
 - d. 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).
 - e. 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

