



Ondiek v Afya Cooperative Savings and Credit Society Limited (Cause E342 of 2025) [2025] KEELRC 1565 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1565 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E342 OF 2025**

**S RADIDO, J
MAY 29, 2025**

BETWEEN

JAMES OMONDI ONDIEK CLAIMANT

AND

**AFYA COOPERATIVE SAVINGS AND CREDIT SOCIETY
LIMITED RESPONDENT**

RULING

1. For determination is a Motion dated 17 April 2025 by James Omondi Ondiek (the Claimant) seeking orders:
 - i. ...
 - ii. The Respondent's staff loan default notice dated 14 April 2025 be stayed pending the hearing and determination of this suit.
 - iii. The costs of this application be in the main suit.
2. The main grounds in support of the Motion were that the Claimant was an employee of the Respondent until termination of employment on 18 December 2024; that the Claimant had challenged the termination of employment as being unfair; that during the course of employment, the Respondent advanced the Claimant staff loans at staff rates; that the Respondent had issued a default notice on 14 April 2025 demanding immediate payment of the outstanding balances; the Claimant could not service the loans because he had not secured any alternative employment; that the Claimant was desirous of renegotiating the repayment terms for the loans; the default notice was unfair and prejudicial and that the Claimant stood to suffer irreparable harm if the orders sought were not granted.
3. The Court gave directions on the Motion on 5 May 2025.



4. Afya Cooperative Savings & Credit Society Ltd (the Respondent) filed a replying affidavit sworn by its acting Chief Executive Officer on 12 May 2025.
5. In the affidavit, the Chief Executive Officer deponed that the Respondent had extended to the Claimant loans and there were outstanding balances; the Claimant had taken 3 staff loans beyond the maximum 2 and thus abused his position; default notices were issued to the Claimant because of default in repayment of the loans and that the termination of the Claimant's employment was lawful.
6. The Claimant filed a further affidavit on 19 May 2025, asserting that he only took 2 staff loans which were duly approved; that the termination of employment was unlawful; the attempt to recover the loans from the guarantors was oppressive and unfair and he was always ready and willing to repay the loans on fair terms.
7. The Claimant filed his submissions on 26 May 2025 (should have been filed and served before 19 May 2025).
8. In the submissions, the Claimant contended that he had met the threshold as set out in *Nguruman Ltd v Jan Bonde Nielsen & 2 Ors* (2014) eKLR and *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR for the grant of the orders prayed for.
9. The Respondent's submissions were not on record by the agreed timeline, perhaps because of the late filing of the Claimant's submissions.
10. The Court has considered the Motion, affidavits and submissions and concludes that the Motion is without merit for the following reasons.
11. One, both in the initial Statement of Claim and amended Statement of Claim, the Claimant has not attempted to challenge the validity of the default notice sought to be stayed. In other words, the Motion sought orders in vacuo.
12. Two, the Claimant did not exhibit copies of the loan documents setting out the terms upon which the Respondent granted him the loan facilities to enable the Court to determine whether the default notice was contractually grounded or not.
13. Lastly, the Claimant has not disclosed why he has not approached the Respondent to renegotiate the loan terms before invoking the jurisdiction of the Court.

Orders

14. The Court finds the Motion dated 17th day of April 2025 is without merit and is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 29TH DAY OF MAY 2025.

RADIDO STEPHEN

JUDGE

Appearances

For Claimant Otieno, Wambui & Amondi Advocates

For Respondent Kibanya & Kamau Associates Advocates

Court Assistant Wangu

