



Ochieng v Consolidated Bank of Kenya (Employment and Labour Relations Cause E170 of 2025) [2025] KEELRC 2128 (KLR) (21 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2128 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E170 OF 2025**

BOM MANANI, J

JULY 21, 2025

BETWEEN

FESTUS WANYONYI OCHIENG CLAIMANT

AND

CONSOLIDATED BANK OF KENYA RESPONDENT

RULING

Background

1. The Claimant has instituted the instant proceedings to challenge the Respondent's decision to terminate his contract of service. He contends that the decision was irregular and ought to be annulled.
2. Accompanying the suit is the application dated 14th May 2025 filed under certificate of urgency. In the application, the Claimant seeks the following reliefs:-
 - a. That the Respondent be compelled to restore the interest rate on his loan facilities to the original staff interest rate of 6% and to halt application of the current commercial interest rate of 18.5% pending hearing and determination of the application and the suit.
 - b. That the Respondent be restrained from issuing him with the 40 day statutory notice pending hearing and determination of the application and the suit.
 - c. That the Respondent and or its agents be restrained from transferring or offering for sale by public auction or private treaty or alienating his properties registered as Kajiado/Kitengela/39237 and N/Wanga Khalaba/1520 pending hearing and determination of the application and the suit.
 - d. That costs of the application be granted to him.



3. The application is anchored on the grounds appearing on the face thereof and on the affidavit dated 14th May 2025 sworn by the Claimant. In the affidavit, the Claimant avers that he was in the Respondent's employment until October 2024 when the Respondent unlawfully terminated the relationship. It is his case that he has since filed the instant proceedings to challenge the decision to terminate his contract of service.
4. The Claimant contends that during the currency of his employment to the Respondent, he took a number of loans at staff rates which allowed him to pay interest of 6% on the facilities. However, he contends that when the Respondent terminated his employment, it altered the interest rate to 18.5%.
5. The Claimant contends that the sudden change in the interest rate has affected his ability to continue servicing the loans resulting in default by him in repayment of the facilities from October 2024. He fears that the Respondent will move to realize the securities he offered for the loans due to the aforesaid default. As such, he prays that the Respondent be ordered to revert the loan interest rate to 6% to enable him to continue servicing the loans without falling into arrears.
6. The Respondent has opposed the application. It contends that the parties entered into several loan agreements to anchor the facilities that were advanced to the Claimant which (the agreements) are clear that the Claimant was to enjoy the staff interest rate of 6% whilst in the Respondent's employment. The Respondent avers that the agreements stipulated that should the employment relationship between the parties be terminated, the interest rate on the Claimant's facilities was to shift to the prevailing commercial interest rate which was 18.5% as at October 2024.
7. The Respondent argues that the shift in the interest rate on the Claimant's facilities from 6% to 18.5% was informed by the agreement between the parties. As such, it contends that the change was not unlawful. In the premises, the Respondent prays that the application be disallowed.

Analysis

8. A court of law is not entitled to rewrite a contract between parties. The court's role is limited to interpreting and enforcing the terms of the contract.
9. It is also a settled principle of law that a court of law is not entitled to nullify a contract between parties unless it is vitiated by fraud, undue influence, mistake, misrepresentation or coercion. Absent these vitiating elements, a court should give meaning to a contract as per the terms of the contract.
10. These principles were restated by the Court of Appeal in the case of Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] eKLR, when it observed as follows:-

“We are alive to the hallowed legal maxim that it is not the business of the courts to rewrite contracts between parties. They are bound by terms of their contract, unless coercion, fraud or undue influence is pleaded and proved.”
11. In the instant case, the parties are in agreement that the loan transactions between them are anchored on various loan contracts that were executed by them. Pursuant to these contracts, the Claimant offered the Respondent the properties mentioned earlier in the decision as securities for repayment of the funds which were made available to him. Indeed, the Claimant acknowledges existence of the loan contracts by contending that the agreements entitle him to service the loans in question at an interest rate of 6%.
12. In the replying affidavit sworn by the Respondent, it has furnished the court with letters of offer dated 14th November 2013, 27th June 2016, 7th September 2016 and 9th June 2020 which were issued to the



Claimant with respect to the series of loans that were advanced him. The common denominator in the letters is that the parties agreed that the interest rate on the Claimant's facilities was to migrate from staff to commercial rates if the employment relationship between them came to a close through dismissal of the Claimant.

13. The record shows that the parties executed the above letters to signify their acceptance of and intention to be bound by the terms in the instruments. Neither of the parties asserts that their signature on the letters was procured through duress, mistake, or undue influence. As such, they are bound by the terms of the said letters.
14. The Respondent has also provided copies of charge documents which secured the above facilities against land parcels numbers Kajiado/Kitengela/39237 and N/Wanga Khalaba/1520. The charge instruments show that the Claimant acceded to the Respondent's proposal to reserve the right to vary the interest rate on his facilities from 6% to such other rate or rates as the Respondent may in its sole discretion decide.
15. The Claimant contends that since he is challenging the validity of the Respondent's decision to terminate his contract of service, the court should order the Respondent to maintain the staff loan rate for his facilities. He further contends that the court should bar the Respondent from realizing the charged securities if he falls in default.
16. The instruments referred to above provide for termination of employment as the only condition precedent to migration of the loan interest rate from staff to commercial rates. As such, when the employment relation between the parties was terminated, the Respondent became entitled to migrate the interest rate as it did.
17. The fact that the Claimant has challenged the validity of the decision to terminate his contract is not a ground for insisting that he continues to service the loans at staff rates. The fact of the matter is that the contract of service between them has, for the moment, been terminated thus entitling the Respondent to change the applicable interest rate on the facilities.
18. Should the court eventually find that the decision to terminate the Claimant's employment was unfair, appropriate orders regarding reversion of the interest rate will issue at that time. For now, the court is bound to respect the terms of the finance contracts between the parties by letting the Respondent apply the prevailing commercial rates on the Claimant's facilities.
19. If the court is to order the Respondent to allow the Claimant to continue servicing the facilities at staff interest rates notwithstanding that the employment relation between them is, for the moment, terminated, it will in effect have rewritten the contract between the parties. This will be contrary to the established legal principles that were referred to earlier in the decision.
20. Further, before a court can issue an order for interim injunction, it ought to be satisfied that the applicant meets the conditions for grant of this relief as established in the celebrated case of *Giella v Cassman Brown* [1973] EA 358. The applicant must demonstrate that: he has a prima facie case with a probability of success; the injury he is likely to suffer if the order is not issued will not be capable of reparation through an award of damages; and that if the court is in doubt as to the first two conditions, it should decide the application on a balance of convenience.
21. The Claimant contends that the circumstances that led to termination of his contract of service were unfair. In the Statement of Claim, he contends that he was essentially victimized by the Respondent because the irregular approval of the loan transaction which led to his dismissal from employment was not by him.



22. The Claimant, inter alia, contends that the Respondent's loan processing guidelines do not entitle him to disburse loans whose value is above Ksh. 15,000,000.00. He further contends that such loans can only be approved by senior management of the Respondent. The Claimant thus contends that he was not directly involved in the approval process for the impugned loan whose value was Ksh. 85,000,000.00.
23. Although the Claimant made the above averment, he did not present documentary material such as the Respondent's loan approval guidelines to anchor this contention. As such, it is not possible for the court to authenticate the position expressed by him at this preliminary stage of the case.
24. At the same time, at the point that the court retired to write this ruling, the Respondent was yet to file a response to the suit. As such, having regard to the preliminary material placed before the court, it is not possible to determine at this moment whether the Claimant has a prima facie case with a probability of success.
25. The Claimant contends that he will be rendered destitute if the order of injunction does not issue to prevent the Respondent from selling his properties. It is his case that the properties provide him shelter and if they are sold, his family will be rendered homeless.
26. In a series of decisions by the High Court, it has been emphasized that a borrower who offers his property as security for a loan is deemed to appreciate that the property could be sold if he defaults in servicing the loan. Put differently, by offering the property as security, the owner of the property converts it into a commodity whose value is capable of quantification to enable its disposal by way of sale. As such, he is not entitled to allege that sale of such property will occasion him irreparable harm which cannot be compensated by an award of damages (see *Muthoni v Capital Sacco Limited; Viewline Auctioneers Limited (Interested Party) (Commercial Case E001 of 2024)* [2024] KEHC 1062 (KLR) (6 February 2024) (Ruling)). I am persuaded by the position expressed by the High Court on the matter.
27. The Claimant voluntarily offered the suit parcels as security for the loans he took from the Respondent. He further agreed to the conversion of the interest rate on the facilities from staff to commercial rates in the event that the contract of employment between them was to come to a close. As such, he is deemed to have appreciated the fact that should he fail to service the loans, the Respondent will be entitled to realize the securities. It is therefore inconceivable that he should turn around to contend that sell of the properties following default by him to service the loans will occasion him irreparable harm.
28. The evidence alluded to earlier in the ruling shows that the parties agreed to vary the interest rates on the Claimant's facilities if the employment relation between them came to a close. This is what guided the Respondent's action. As such, the balance of convenience tilts in favour of upholding the agreement between the parties on the subject.
29. Finally, the Claimant concedes that the Respondent has already converted the interest rate on his facilities from staff to commercial rates. He suggests that this migration occurred in October 2024. Therefore, he seeks a mandatory injunction to revert the rates to staff rates.
30. The general position in law is that a mandatory injunction will not normally issue at the interlocutory stage of proceedings except for exceptional reasons and in the clearest of cases. It is generally desirable that such order issues at the tail end of the trial after evaluating the merits of a case (*Scania Credit Solutions (Pty) Limited v Hodan Wholesale Limited (Commercial Civil Case 583 of 2021)* [2021] KEHC 11 (KLR) (Commercial and Tax) (8 September 2021) (Ruling)).
31. At the moment, it is not possible to determine whether the Respondent's decision to terminate the Claimant's employment will be reversed after full trial. As such, to order it (the Respondent) to



revert the Claimant's loan facilities to staff rates at this point in time will be tantamount to engaging in speculation regarding the propriety of its (the Respondent's) impugned decision to sever the employment relation between the parties without the benefit of sufficient material at the moment. Consequently, the decision regarding whether the Claimant should continue benefiting from the staff interest rates ought to await the court's final decision on the legitimacy of the Respondent's decision to terminate the contract between them.

Determination

32. The upshot is that the court finds that the Claimant has not established a case for grant of the interim reliefs which he seeks through the application dated 14th May 2025.
33. As such, the application is declined.
34. Costs of the application shall abide the outcome of the case.

DATED, SIGNED AND DELIVERED ON THE 21ST JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

..... 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

