



Fwamba v Equity Bank Kenya Limited & another (Cause E1032 of 2024) [2025] KEELRC 2063 (KLR) (11 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2063 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1032 OF 2024**

**AK NZEI, J
JULY 11, 2025**

BETWEEN

BILDARD KHAEMBA FWAMBA CLAIMANT

AND

EQUITY BANK KENYA LIMITED 1ST RESPONDENT

EQUITY GROUP HOLDINGS PLC 2ND RESPONDENT

RULING

1. The Claimant/Applicant sued the Respondents vide a Memorandum of Claim dated 5th December, 2024 and sought the following reliefs:-
 - a. Reinstatement to previous position without loss of benefits whatsoever.
 - b. A permanent injunction restraining the Respondents whether by themselves, officers, directors, servants and/or agents or whomsoever acting on its behalf from increasing the Claimant's staff mortgage rate from 6% and Staff Equity Release from 8% to 13% vide [the] letter dated 27th November, 2024 or in any other manner whatsoever.
 - c. Costs of the suit.
 - d. Any other relief as the Court may deem fit and just to grant in the circumstances.Alternatively, the Claimant/Applicant prayed for:-
 - a. Kshs.31,772,080/= comprised of 12 months' [salary being compensation] for unfair loss of employment, Employers Pension Contribution and damages for defamation, psychological and mental torture and unfair labour practices; and interest thereon.
 - b. A permanent injunction restraining the Respondents whether by themselves, officers, directors, servants and/or agents or whomsoever acting on its behalf from increasing the



Claimant's Staff Mortgage interest rate from 6% p.a and Staff Equity Release from 8% p.a to 13% vide [a] letter dated 27th November, 2024 or in any other manner whatsoever.

- c. Costs of the suit.
2. The suit was filed contemporaneously with an urgent Notice of Motion application dated 5th December, 2024 whereby the Claimant/Applicant sought Orders:-
 - a. That the application be certified urgent and be heard ex-parte in the first instance.
 - b. That a temporary injunction be issued restraining the Respondents whether by themselves, officers, directors, servants and/or agents or by whomsoever acting from increasing the Claimant's Staff Mortgage rate from 6% p.a. and Staff Equity Release from 8% p.a. to 13% vide [a] letter dated 27th November, 2024 or in any other manner whatsoever pending hearing and determination of the application.
 - c. That a temporary injunction be issued restraining the Respondents whether by themselves, officers, directors, servants and/or agents or by whomsoever acting from increasing the Claimant's Staff Mortgage rate from 6% p.a. and Staff Equity Release from 8% p.a. to 13% vide [a] letter dated 27th November, 2024 or in any other manner howsoever pending hearing and determination of the claim herein.
 - d. That costs be borne by the Respondents.
 3. The application, expressed to be brought under Rule 45(5) of the Employment and Labour Relations Court Procedure (Rules) and Order 40 Rule 2 of the Civil Procedure Rules among other cited provisions of the law, sets out on its face the grounds on which it is brought, and is anchored on the Claimant/Applicant's supporting affidavit sworn on 5th December, 2024. It is deponed in the said affidavit, inter-alia:-
 - a. that the Respondent purported to unlawfully terminate the Claimant/Applicant's services on 29th October, 2024; which termination the Claimant has since challenged vide the suit herein.
 - b. that one of the benefits accruing to the Claimant/Applicant while in employment was entitlement to staff Mortgage loans at the [interest] rate of 6% and Equity Release at 8%.
 - c. that on 27th November, 2024, the Respondents threatened to revise upwards and to increase the rates from 6% and 8% respectively to 13%.
 - d. That should the Claimant be unable to pay the increased interest rates but ultimately win the case, the loss of the properties would be irreparable, and that the balance of convenience tilts in maintaining the status quo.
 - e. that the Claimant has a prima facie case with a high probability of success, hence current rates of the Mortgage and Equity Release should be retained pending hearing of the suit. That no prejudice will be suffered by the Respondents as they still hold title documents, and that the security, being landed property, may not be put out of reach.
 - f. that to safeguard the interest of the parties, it is just that the status quo be maintained, and the Claimant continues paying the contracted interest



rates as termination of the Claimant's employment is still subject of Court determination

- g. that the Claimant was employed by the 1st Respondent on 15th December, 2001 at a time the 1st Respondent was called Equity Building Society as a Compliance Manager and rose through the ranks to the position of Group Chief Internal Auditor for the 2nd Respondent, until termination on 29th October, 2024. That at the time of termination, the Claimant was serving under the Group as Head of Internal Audit.
- h. that during his service with the Respondent, the Claimant was severally transferred, promoted, seconded and designated within the Bank as well as within the Group in various positions.
- i. that it is a requirement in law that the Claimant's employment could only be terminated for valid reasons and upon following fair procedure equitably.
- j. that on 15th August, 2024, the Claimant/Applicant received a suspension letter from the 2nd Respondent stating the ground for suspension as follows:-

“Equity Bank Kenya Limited has opened investigation in the matter of fraudulent RTGS transactions on salary processing suspense GLS leading to a potential loss of substantial amounts. A number of omissions and/or commissions, failure or negligence which are linked to your role and responsibilities in the Audit Function are being examined as part of the root causes for the above-mentioned incident.”

- k. that the allegations made in the suspension letter were vague and generalised in nature as to the specificity of the alleged negligent acts; and that the Claimant/Applicant later learnt that the loss attributed herein was in respect of loss of Kshs.1.5 Billion from the salary processing department via suspense account.
- l. that on 16th September, 2024, the Claimant was served with an evenly dated show cause letter which did not refer to the investigation alleged in the suspension letter; but referred to fraud that started occurring at the Kenyan Unit Equity Bank Kenya Limited at a time when the Claimant was not domiciled within the unit but was engaged at the Group level. That the Claimant had only been seconded to the Kenyan Unit from 15th February, 2024 upto 15th April, 2024, for a period of 2 months (less 12 days during which the Claimant was on annual leave). That the Claimant's primary focus during the 2 months' period that he served at the Kenyan Unit was on preparation of the Board Audit Committee Meeting which was to be held on 5th March, 2024 and other strategy preparations.
- m. that the Claimant responded to the show cause letter in writing vide a letter dated 9th October, 2024 and attended a disciplinary hearing that was held on 23rd October, 2024 based on the allegations contained in the show cause letter.
- n. That termination of the Claimant's employment was not based on valid reasons.



4. Documents annexed to the supporting affidavit include copies of the Claimant/Applicant's termination letter dated 29th October, 2024, notice of variation of interest rates dated 27th November, 2024, a letter of appointment dated 24th November, 2004, letter of transfer and change of designation dated 1st October, 2011, letters of promotion and salary review, a letter dated 31st January, 2024 appointing the Claimant to the position of Director Internal Audit for Equity Bank Kenya Limited (EBKL) with effect from 15th February, 2024 and a letter dated 15th April, 2024 revoking the Claimant's secondment from Equity Group Holdings to Equity Bank Kenya Limited as Director, Internal Audit and directing him to report to the Group Director (Human Resource) for further guidance. Also annexed are copies of charges, among other documents.
5. The application is opposed by the Respondents vide a replying affidavit of Ben Ndegwa sworn on 28th January, 2025. It is deponed in the said affidavit, inter-alia:-
 - a. that the Claimant was employed by the 1st Respondent (at the time known as Equity Building Society) on 15th December, 2004; and was over the years transferred to various positions, eventually becoming a General Manager-Internal Audit effective 1st October, 2011.
 - b. that effective 1st January, 2015, the Claimant's employment was transferred to Equity Bank (K) Limited, and was appointed Chief Group Auditor effective 1st June, 2016.
 - c. that effective 15th February, 2024, the Claimant was reassigned to Equity Bank Kenya Limited as the Director Internal Audit; and was responsible for appraising adequacy of Internal Controls through review of information system controls and other control mechanisms, and to periodically report to the Board Audit Committee on significant issues related to the Bank's risk management, control and governance processes as well as resultant management action plans.
 - d. that as an employee of the Respondents, the Claimant was entitled to rebated interest rates at the discretion of the employer, and which interest rates could be reviewed by the employer at any time without consultation with the Claimant.
 - e. that by a charge dated 7th December, 2010 over all that property known as Land Reference Number 2259/624, the Claimant provided the said property as security to the 1st Respondent in respect of a loan to him in the sum of Kshs.13,500,000/=.
 - f. that by a Third Further Charge dated 20th February, 2014, the Claimant provided all that property known as Land Reference Number 2259/624 as a security to the 1st Respondent in respect of a loan of Kshs.8 million.
 - g. that by a Fourth Further Charge dated 5th July, 2018, the Claimant charged as security in favour of the 1st Respondent all the property known as Land Reference Number 13324/62 in respect of a loan of Kshs.14,500,000/=.
 - h. that by a Charge dated 16th January, 2017 over all that property known as Land Reference Number 13324/62, the Claimant offered the said property as security for a loan of Kshs.14 million.



- i. that by a letter of offer dated 12th June, 2023, the 1st Respondent approved the Claimant's application for a credit facility of Kshs.33 million.
 - j. that the sums advanced by the 1st Respondent have not been denied as having been received, and are each bound by a separate contract and legal charge distinct from the Claimant's employment contract with the Respondents; and are not tied to the employment.
 - k. that termination of the Claimant's employment was done in accordance with the law, due process was followed, and there were valid grounds for the termination. That unless and until this Court hears and determines the Claimant's employment on merit, the Claimant's employment remains terminated; and the Claimant is not entitled to rebated interest rates which are fringe benefits only applicable to those in employment by virtue of the services they offer.
 - l. that granting an injunction as sought would in essence amount to reinstatement of benefits that are only due to employees.
 - m. that the Claimant has not proved that he is not able to pay interest at commercial rates or has any difficulties in paying the interest at such rates, which he is obligated to pay and has been paying.
 - n. that the mortgage offer letter dated 13th February, 2014 from the 1st Respondent and accepted by the Claimant on even date entitles the 1st Respondent (in Clause 4 thereof) to vary interest rates on the mortgage facility from 8% to commercial rates should the borrower's (the Claimant's) employment with the Respondents be terminated for whatever reason.
 - o. that the Equity Release Offer letter dated 12th June, 2023 from the 1st Respondent and accepted by the Claimant on even date entitles the 1st Respondent (in Clause 4(d) thereof) to charge interest on the loan facility at commercial rates should the borrower's (the Claimant's) employment with the Respondents be terminated for whatever reason.
6. Both parties filed written submissions for and against the application pursuant to the Court's directions in that regard.
 7. Issues that fall for determination, in my view, are as follows:-
 - a. Whether the issue of interest chargeable on loans advanced to the Claimant by the 1st Respondent are/were in any way tied to the Claimant's employment; and whether this Court is seized of jurisdiction to entertain and to determine the application.
 - b. Whether the orders sought are merited.
 8. On the first issue, it is clear from the material presented before this Court that one of the benefits accruing to the Claimant by virtue of his employment was entitlement to staff mortgage loans at rebated interest rate of 6% p/a and Equity Release loan facility also at rebated interest rate of 8% p/a. The Claimant was granted the said loan facilities at the aforesaid interest rates during the period of



his employment. Upon termination of the Claimant's employment on 29th October, 2024, however, the Respondents wrote to the Claimant on 27th November, 2024 and stated as follows:-

“ . . . Please note that following the termination of your employment contract with the Bank dated 31/10/2024, Notice is hereby given for the variation of interest rate from the preferential staff rate of 6% p/a for Staff Mortgage and 8% p/a for Staff Equity Release, to the commercial rate of 13% per annum pursuant to Clause 4(d) of offer letters dated 13th February, 2014 for Staff Mortgage for and 12th June, 2023 for Staff Equity Release Loan, effective 30 days from the last date of service as indicated on your employee clearance form, that is, 01/12/2024 . . . ”

9. Further, it is stated as follows in the Respondents' replying affidavit referred to in paragraph 5 of this Ruling:-

“ . . . as an employee of the Respondents the Claimant was entitled to rebated interest rates . . . ”

10. It is evident from the foregoing that whereas the advanced sums/loans were bound by separate contracts and/or charges that were distinct from the Claimant's contract of employment, though informed by the employment contract, the rebated interest rates, whose variation and/or threatened variation form part of the dispute in the suit and application herein, were fully based on the employer/employee relationship between the Claimant and the Respondents. Any dispute arising from the said employer/employee relationship, including the said interest rates whose rate was based on the employer/employee relationship, fall squarely within this Court's Jurisdiction.

11. The legality and/or validity of the Respondents' act of terminating the Claimant's employment is disputed. Variation and/or threatened variation of the rebated interest rates in issue based on the disputed termination is also disputed. Both disputes, which stem from the employer/employee relationship between the Claimant and the Respondents, are before this Court for adjudication. Unless and until the legality or otherwise of the termination of the Claimant's employment is determined by this Court, any act based on the disputed termination can be validly presented before this Court for adjudication. This Court's Jurisdiction is circumscribed in Section 12 of the *Employment and Labour Relations Court Act*, which provides as follows:-

“(1) The Court shall have exclusive original and appellate Jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including –

a. Disputes relating to or arising out of employment between an employer and an employee; . . . “

12. Jurisprudence flowing from this Court is replete with decisions re-stating the afore-stated position. The Court stated as follows in Abraham Nyambane Asiago – vs – Barclays Bank of Kenya Limited [2013] eKLR:-

“ 16. The question then is what constitutes a dispute relating to or arising out of employment between an employer and an employee. Is it confined to issues that are ordinarily found in employment contracts or does it extend to all matters emanating from the employment relationship? Counsel for



the Respondent asked the Court to down its tools in this matter because the subject matter is land and not employment. With much respect to the learned Counsel, that is a very narrow interpretation of what constitutes an employment and labour relations matter and the consequential Jurisdiction of the Industrial Court.

17. By its nature, the employment relationship generates a multiplicity of rights and obligations, some of which are not to be found in the express provisions of the employment contract. In my view, all these fall under employment and labour relations as intended by the law makers. To rule otherwise would be to create a situation where an employer or an employee traverses different Courts to enforce different rights arising from the same employment relationship. That in my view could not have been the intention of the legislators. . . .

19. In the case before me, it is not in contest that the Claimant was granted a staff housing loan because he was an employee of the Respondent. It is also factual that the reason why the Respondent has recalled the loan is that the Claimant's employment has been terminated, which termination is contested by the Claimant. It cannot therefore be that the Employment and Labour Relations Court has no jurisdiction to adjudicate on a matter arising from the staff housing loan. Consequently, I find that the Claimant's Notice of Motion is properly before this Court and I will now proceed to deal with it on its merit."

13. In the case of Mulinge – vs – [Co-operative Bank of Kenya Limited \(ELRC Cause No. E200 of 2022\)](#) [2023] KEELRC 847 (KLR) (13 April 2023) Ruling, the Court stated as follows:-

"19. 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 on this Court."

14. I refuse to make a finding that this Court lacks jurisdiction to determine the Claimant's application herein. Article 162(2)(a) & (3) of [the Constitution](#) of Kenya 2010 establishes a Superior Court, this Court, to hear and determine Employment and Labour Relations matters, and obligated Parliament to legislate a law determining the Jurisdiction and functions of the Court. That law is the [Employment and Labour Relations Court Act](#). As already stated in this Ruling, Section 12 of the Act clothes this Court with jurisdiction to determine disputes arising from employer/employee relationships. Such disputes include the dispute forming the basis of the application herein.

15. As stated by the Supreme Court in the case of Samuel Kamau Macharia & another – vs – Kenya Commercial Bank Limited & 2 others, which the Respondent cited in their submissions herein;

"A Court's Jurisdiction flows from either [the constitution](#) or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by [the Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law . . ."

16. In determining the Claimant's application herein, this Court is perfectly within the jurisdiction conferred upon it by [the Constitution](#) and written law.



17. On the second issue, the order sought by the Claimant/Applicant is injunctive in nature.
18. According to Keer On Injunctions (6th Edition) Chapter X (Section 2), a Court of equity has jurisdiction to issue an injunction pending suit. Whether or not the jurisdiction will be exercised depends on the special circumstances of each case. If there are undisputed facts advanced by the Applicant, an injunction will issue. But if the facts of the case are disputed, unclear or in the case of a contract, the validity of the contract is open to doubt, the question of whether or not an injunction will issue pending suit becomes a question of comparative convenience or inconvenience. If greater inconvenience would arise to the plaintiff from withholding the injunction than to the defendant from granting it, an injunction will issue.
19. If, on the other hand, greater inconvenience would arise to the defendant from granting the injunction than to the plaintiff from withholding it, an injunction will not be granted.
20. The foregoing are the principles enunciated in the case of *Giella – vs – Cassman Brown & Co. Ltd* [1973] EA 35 where it was stated that an applicant for orders of injunction must demonstrate a prima facie case with a probability of success, potential irreparable harm and where there is doubt, to establish that the balance of convenience tilts in their favour.
21. It is undisputed that there existed an employment contract between the Claimant and the Respondents which the Respondents terminated, and that a dispute on the legality of that termination is pending determination in this Court. It is also undisputed that Staff Mortgage loans and a staff loan (Equity Release Staff Loan) were advanced to the Claimant by the Respondents during the period of his employment, and that rebated interest rates on those loans were the Claimant's entitlement based on his employment; and that on the basis of the disputed termination of employment, upwards variation of the interest rates has been threatened; from 6% p/a and 8% p/a respectively to commercial rates of 13% per annum.
22. Has the Claimant demonstrated that he has a prima facie case with a possibility of success? It is an undisputed fact that during the period of his employment, the Claimant was severally transferred, promoted, seconded and designated within the 1st Respondent Bank and the 2nd Respondent Group. The Claimant has deponed that the alleged fraud that led to termination of his employment was alleged to have occurred in the 1st Respondent Bank at a time when the Claimant was on secondment to the 2nd Respondent Group. In this regard, the Claimant has exhibited copies of letters of transfer and change of designation dated 1st October, 2011 (transferring him from the 1st Respondent to the 2nd Respondent), a letter dated 31st January, 2024 re-assigning the Claimant to the 1st Respondent Bank and yet another letter dated 15th April, 2024 revoking the Claimant's secondment/re-assignment; among several other letters.
23. The Court has not been told, and neither was it demonstrated, what the Claimant's job description was both at the 1st Respondent Bank and the 2nd Respondent Group; and whether he (the Claimant) could be held liable for lapses and/or fraud occurring in the 1st Respondent Bank while he worked at the 2nd Respondent Group (at the Group level). Are the 1st and 2nd Respondents two separate legal entities with different boards of directors? In my view, the Claimant has demonstrated that he has a prima facie case, an arguable case deserving a day in Court; and one with a substantial possibility of success.
24. On the issue of whether the Claimant stands to suffer irreparable loss if the order sought is not granted, I find valid the Claimant's argument that he stands to suffer irreparably if the charged properties are lost/sold if there is inability on his part to pay the increased interest rates. That on the other hand, the 1st Respondent will not be prejudiced as it holds titles to the charged properties; and the Claimant



continues to repay the advanced loans and interest at the contracted rebated interest rates. It has not been alleged that the Claimant has defaulted in payment. It is to be noted that one of the reliefs sought by the Claimant in the suit herein is reinstatement. In my view, the Claimant has satisfactorily demonstrated that he stands to suffer irreparable loss if the order sought is not granted.

25. On balance of convenience, it is my view that in view of all the foregoing, greater inconvenience would arise to the Claimant from withholding the injunction sought than to the Respondent from granting it.
26. In sum, and having considered written submissions filed on behalf of all the parties herein, I allow the Notice of Motion dated 5th December, 2024 in the following terms:-
 - a. A temporary order of injunction is hereby issued restraining the Respondents, whether by themselves, their officers, directors, servants and/or agents or by whomsoever acting on their behalf, from increasing the Claimant's staff mortgage interest rates from 6% p.a. and Staff Equity Release loan from 8% p.a. to 13%, either vide the letter dated 27th November, 2024 or in any other manner whatsoever pending the hearing and determination of the suit herein.
 - b. The suit herein shall be fast-tracked, and shall be set down for hearing.
 - c. Costs of the application shall be in the suit.
27. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS

11TH DAY OF JULY 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Miss Atieno holding brief for Mr. Koceyo for the Claimant/Applicant

Mrs. Oduor for 1st and 2nd Respondents

