



REPUBLIC OF KENYA



**Mwangangi v Sidian Bank Limited (Cause E597 of 2024)
[2025] KEELRC 1986 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1986 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E597 OF 2024**

CN BAARI, J

JULY 4, 2025

BETWEEN

JOSEPH MWAIWA MWANGANGI CLAIMANT

AND

SIDIAN BANK LIMITED RESPONDENT

RULING

1. Before Court is the Claimant/Applicant's Motion application dated 19th July, 2024 brought pursuant to Order 51 Rule I and Order 40 Rule 2 of the Civil Procedure Rules, wherein the Applicant seeks the following reliefs:
 - i. Spent
 - ii. The Respondent herein be restrained from making demands for further instalments from the Claimant/ Applicant herein until the hearing and determination of this suit.
 - iii. The Respondent herein be compelled to not sell, charge, repossess or otherwise deal with the properties of the Applicant/Claimant being Ngong/Ngong/86629 and Kajiado/ Kaputiei. NoRTH/ 32214 until the hearing and determination of this suit.
 - iv. That the Respondent herein be restrained from listing the Applicant/Claimant herein negatively or at all in any Credit Reference Bureaus (CRBs) within the Republic of Kenya.
 - v. The Honourable Court herein do issue Orders for the Respondent to correct the Applicant/ Claimant's account which it had overdrawn with valuation fees without notifying him to make any payments or negotiating the fees charged for re-evaluations, which act if allowed, will cause his account to post monthly debit interest charges and negatively list him.
 - vi. Any order that the court may deem fit to grant in the circumstance



- vii. The costs of this application be provided for
2. The Motion is supported by the grounds on the face and the supporting affidavit of the Applicant sworn on 17th July, 2024 and a further affidavit sworn on 6th February, 2025. The crux of the application is that the Applicant was an employee of the Respondent conducting his employment duties as a Bank Manager until the 9th January, 2024 when the said Respondent summarily dismissed him from their service.
 3. The Applicant avers that he had taken out various loans with the Respondent which he was capable of and was servicing until he was wrongfully dismissed, and which act caused him to lose earnings which would have enabled him offset the loan.
 4. It is his case that in applying for the said loan, he listed as security two of his properties namely; Ngong/ Ngong/86629 and Kajiado/ Kaputiei NoRT H/ 32214.
 5. He avers that the Respondent has continued demanding for payment to service the loan disregarding the fact that he does not currently have any income as a result of the dismissal. He avers further that if the Respondent is not restrained, there is a chance that he will be listed negatively with the credit reference bureau.
 6. The Applicant avers that the Respondent herein, has overdrawn his account with valuation fees without notifying him to make any payments or negotiate the fees, charged for re-evaluations, which act will cause his account to post monthly debit interest charges further inconveniencing him.
 7. The Applicant states that he has not defaulted his loan repayments out of his own wish, but due to lack of employment, unpaid final dues by the bank and unpaid leave days by the bank and the reason for the suit pending hearing and determination.
 8. The Applicant contests receipt of the 90 days Statutory Notice to sell and further argues that the Respondent is not abiding by the law in issuing the statutory notices and that it is their intention to sell his properties without adherence to the law.
 9. The Applicant avers that it is in the interest of justice that the orders sought herein be granted.
 10. The Respondent opposed the application vide a replying affidavit sworn on 24th November, 2024 by one Jackline Ndung'u. The Respondent avers that at the request of the Claimant, the Bank, during the pendency of the Claimant's employment, agreed to advance to the Claimant various loan facilities ranging from personal loans, development loans and mortgage.
 11. The Respondent states that as covenanted with the Applicant, a Charge in its favour dated 22.01.2015 securing the principal amount the sum of Kenya Shillings 1,100,000.00 plus interest and other charges as covenanted was created and registered against the title of the said property on 22.01.2015 vide entry No. I in the Encumbrance section of the register for the property.
 12. The Respondent states that it was a term of the loan policy that a former employee who lacks exceptional approval for concessionary rate would have their loans converted to commercial rates. It avers further, that consequent to the Applicant's dismissal, it by a Supplemental letter of Offer dated 25th January, 2024, varied the terms of the loan facilities advanced to the Claimant inter alia, the interest rate was converted from preferential staff rate at 6% to commercial rate at 10%.
 13. The Respondent further states that the Claimant defaulted on his obligation to repay the said facilities to the Bank as covenanted, and that arising from this default, the Claimant's staff loan account fell into



arrears to the tune of Kenya Shillings Two Hundred and Ninety-One Thousand Seven Hundred and Seventy-Six [Kshs. 291,776.99].

14. It is the Respondent's case that as a consequence of the default, it elected to enforce the Charge security by issuing a demand dated 20th March, 2024 for the payment of the total outstanding loan arrears. It avers further that the Claimant's default continued to persist beyond the period stated in the demand for repayment.
15. It is the Respondent's case that it served the Claimant/Applicant with the 90 days statutory notice dated 19th September, 2024 requiring him to remedy the default, but his default persisted.
16. The Respondent states that it derives her right to exercise her statutory power of sale from the Offer Letter, the Charge Instrument and the provisions of the applicable laws, and that by executing the security documents, the Claimant/Applicant understood that the suit property would become a commodity for sale in the event of default in honouring the terms of the loan repayment.
17. It is the Respondent's case that whatever loss the Claimant may suffer is quantifiable as the value of the suit property is without a doubt quantifiable and determinable.
18. The Respondent avers that it was a term of the Staff Loan Policy that a former employee of the Bank is required to continue making loan repayments through their staff accounts which would be converted to customer accounts. It avers further that the Claimant remains under a contractual obligation to repay the outstanding loan facility.
19. Parties urged the application by way of written submissions, and which have been duly considered.

Determination

20. The issue for determination is whether the Claimant/Applicant merits the orders sought.
21. For starters, the role of this Court is to interpret the contract between the parties herein, in respect of the loan facilities granted to the Applicant by virtue of being an employee of the Respondent.
22. The first prayer that the Applicant seeks is that this Court restrains the Respondent from making demands for further instalment payments of the loan facilities advanced to him, until the hearing and determination of the suit herein.
23. The Respondent's position is that it was a term of the loan policy that a former employee who lacks exceptional approval for concessionary rate, would have their loans converted to commercial rates. It argues further that the Claimant/Applicant was well aware, when he charged the properties to the Bank, that the said properties would promptly become a commodity for sale in the event of default.
24. The Applicant has not denied owing the Respondent on account of various loan facilities advanced to him during his employ with the Respondent. For this reason, the Applicant undeniably has an obligation to service his loan whether or not he is in the employ of the Respondent. It is also not disputed that the Applicant entered into various covenants with the Respondent in respect of the loan facilities separate from his employment contract.
25. In the case of Peter Mutisya Musembi & another v National Bank of Kenya Limited [2015] eKLR the Court, faced with a similar situation stated as follows:

“.....That the 1st Claimant/Applicant is contractually bound by the charge which is governed by the Land Act, 2012. That the 1st Claimant is contractually bound to service his loan



facility whether he is in employment or not and the Respondent has a right to realize the securities if the 1st Claimant is in default in respect of the loan.”

26. In *Banking Insurance and Finance Union v National Bank of Kenya Limited* [2016] eKLR the Court buttressed this position in the following words:

“... this does not shield the employee who has outrightly defaulted from payment of the outstanding loan all together. Were the court to grant injunctive relief to stop employees who have pending disputes with the employer to be cushioned from repaying such loans, the employers in the sector would stop advancing their employees such preferential loans altogether. This is not a reasonable proposition therefore to constitute prima facie case to warrant stoppage of the loan repayment altogether.”

27. Further, although the Applicant has not raised issue with the variation of the interest rates applicable to his loan facilities, the Respondent confirmed that it varied the terms of the loan facilities advanced to the Claimant from a preferential staff rate of 6% to commercial rate of 10%.

28. Premised on the variation of interest rates, and on the pending determination of whether or not the Respondent wrongfully dismissed the Claimant/Applicant, I do hereby order that the Claimant/Applicant continues to service his loan on the terms and conditions that applied while he worked for the Respondent (staff rates) until the suit herein is heard and determined.

29. On whether or not the Respondent can be compelled not to sell or repossess the Applicant’s properties listed as security for the loan facilities, depends entirely on whether or not the Applicant continues to service the loan without default. It is also evident that granting of such an order is not a matter within the jurisdiction of this Court and the Applicant can only move the relevant Court for this relief.

30. Similarly, this Court lacks jurisdiction to restrain the Respondent from listing the Applicant/Claimant negatively or at all, in any Credit Reference Bureaus (CRBs) within the Republic of Kenya as sought in the instant motion. This prayer thus equally fails.

31. In whole, the only relief that the Claimant/Applicant can get at this juncture is an order that he continues to service his loan on the terms and conditions that applied while he worked for the Respondent (staff rates) until the suit herein is heard and determined.

32. The other prayers fail on the foregone grounds.

33. Costs shall abide the cause.

34. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4TH DAY OF JULY, 2025.

C. N. BAARI

JUDGE

Appearance:

Ms. Simaloi present for the Claimant/Applicant

Ms. Caroline Mwai present for the Respondent

Ms. Wali -CA.

