



**Kyalo v National Bank of Kenya Limited (Cause E669 of 2023)  
[2024] KEELRC 119 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 119 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E669 OF 2023  
J RIKA, J  
FEBRUARY 2, 2024**

**BETWEEN**

**JOHN PAUL KYALO ..... CLAIMANT**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant filed his Statement of Claim on 10<sup>th</sup> August 2023.
2. He states that he was employed by the Respondent Bank, as a Networks Manager.
3. His contract was terminated by the Respondent on 11<sup>th</sup> July 2023, in circumstances he submits, amounted to unfair and unlawful termination.
4. His prayers, include a prayer that the Court grants a permanent injunction against the Respondent, restraining the Respondent from varying the Claimant's loan interest rate, from the preferential staff rate to commercial rate.
5. He filed an Application under Certificate of Urgency dated 15<sup>th</sup> August 2023, asking the Court to issue the restraining orders temporarily, pending hearing and determination of the Claim.
6. The Application is founded on his Affidavit, sworn on 15<sup>th</sup> August 2023. He explains that as an Employee, he had secured two mortgage facilities with the Respondent Bank, at a staff interest rate of 4.5% per annum. He has not finished repayment. Upon termination, the Respondent informed him that a commercial interest rate of 13.5% per annum would apply to both facilities.
7. The effect of adopting commercial interest rate would be that the Claimant, is compelled to pay the total loan monthly instalments at Kshs. 236,795, instead of Kshs. 128,589.



8. He submits that he has established a prima facie case, that termination was unfair, and he expects the Court to grant him the remedy of reinstatement or compensation. He is apprehensive that pending hearing, application of the commercial interest rate would render him unable to redress his loan, leading to destitution.
9. The Respondent relies on the Replying Affidavit sworn on 13<sup>th</sup> October 2023 by its Human Resource Business Partner, Leonard M. Kesekwa.
10. The loan agreement signed between the Claimant and the Respondent states that, “upon leaving the Bank’s service, for any reason, the Bank will charge the current / normal commercial rate upon giving a notice of 30 days.”
11. The preferential rate of interest only applies to existing staff of the Respondent.
12. The Claimant was advised that any outstanding loan would be recovered at commercial rate, upon expiry of 90 days, from 14<sup>th</sup> March 2023.
13. There is no prima facie case established by the Claimant, showing that termination of his contract was unfair and unlawful. The Claimant was taken through a fair disciplinary hearing as shown in the documents filed by the Respondent.
14. Parties agreed to have the Application considered and determined based on their Affidavits and Submissions. They confirmed filing and exchange of Submissions at the last mention, on 16<sup>th</sup> November 2023.

**The Court Finds: -**

15. There is a real danger of the Claimant falling into default on his loan repayment, if the proposed change from staff interest rate to commercial interest rate, is implemented.
16. What the Respondent Bank is demanding, is that the Claimant pays a monthly instalment of Kshs. 236,795 instead of Kshs. 128,589.
17. It is not in the interest of either Party, to place the Claimant in a position where he is likely to default on loan repayment.
18. The loans were conceived, and granted, as an employment benefit. They were never commercial loans. There is no justification in their conversion to commercial loans. They were payable through the Claimant’s salary check-off, on a monthly basis. The Claimant lost his job; his regular salary is no longer available; and he is not known to have secured another source of income. How is he expected to redress additional loan obligation, arising from a commercial interest rate, without an income? He was punished through dismissal from employment; he must not be punished twice, by imposition of a commercial interest rate on his employment loan obligations.
19. The loans are secured against the Claimant’s properties in Syokimau. The securities have not been affected by termination of the Claimant’s contract of employment, and the Court does not see what purpose is served, perhaps other than usury, by adopting a commercial rate of interest, which is only likely to push the Claimant into default, disrupting his ability to prosecute the litigation before the Court, and to sustain himself and his family.
20. The interest of the Respondent is secured, and in event the Claimant is found to be owed any amount by the Respondent, at the end of the hearing, in terminal dues, back- salaries or compensation for unfair termination, the loan balance can be set off against such an award.



21. The Court made an order for retention of the status quo, that is to say, the staff interest rate to continue applying, and is persuaded that this order should apply until the Claim is heard and determined.
22. The clause in the loan agreements on application of commercial interest rate, is predicated on the assumption that the contract of employment is beyond restoration, and that there is no possibility of the Claimant returning to employment. Its effect is to treat the Claimant like a total stranger to the Respondent, an entrepreneur, who took out a loan with a mind to profiteering. He remains an ex-Employee with a Claim against his former Employer before the Court, which may result in restoration of the employer-employee relationship, or in a monetary award which can be set off against the Respondent's monetary claims.
23. The balance of convenience persuades the Court to grant the application.

**It is Ordered: -**

24.

- a. Pending hearing and determination of the Claim, the Respondent shall continue to apply the preferential staff interest rate at 4.5% per annum, to both of the Claimant's mortgage facilities.
- b. The Respondent is restrained from application of commercial interest rate at 13.5 % per annum or any other commercial interest rate, above the existing staff interest rate.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 2<sup>ND</sup> DAY OF FEBRUARY 2024.**

**JAMES RIKA**

**JUDGE**

