



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mukeya v Credit Bank PLC (Cause E583 of 2023)  
[2024] KEELRC 587 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 587 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E583 OF 2023**

**J RIKA, J  
MARCH 15, 2024**

**BETWEEN**

**MICHAEL LUCHIVYA MUKEYA ..... CLAIMANT**

**AND**

**CREDIT BANK PLC ..... RESPONDENT**

**RULING**

1. The Claimant filed his Statement of Claim dated 3<sup>rd</sup> July 2023.
2. He states that he was employed by the Respondent Bank, as a Senior Relationship Manager in 2014.
3. His contract was terminated through notice, after a disciplinary hearing, with effect from 23<sup>rd</sup> May 2023.
4. He was alleged to have created an unhealthy working environment at his Westlands Branch, Nairobi, which included borrowing money from Respondent's customer.
5. He asks the Court to find that termination was unfair and unlawful and grant him a raft of remedies, including reinstatement.
6. He was offered staff mortgage loan facility by the Respondent on 12<sup>th</sup> January 2015. He accepted the offer executing the letter on 15<sup>th</sup> February 2015.
7. The mortgage facility was granted on preferential rate of interest, at 7% per annum. The Claimant was advised that in event of separation with the Respondent, the interest rate would be varied to the prevailing commercial interest rate, at the time, 18% per annum.
8. On 13<sup>th</sup> July 2023, the Respondent issued demand upon the Claimant, on arrears of the loan repayment, standing at Kshs. 173,713. He was notified to pay up within 14 days, failing which the Respondent would institute recovery process.



9. This notice prompted the Claimant to lodge an Application under Certificate of Urgency, seeking protection of the Court, through orders of temporary injunction.
10. The Application, dated 24<sup>th</sup> July 2023, is the subject matter of this Ruling. His prayers are: -
  - a. The Respondent is restrained from altering the preferential rate of interest, into a commercial rate.
  - b. The Respondent is restrained from selling or taking other adverse actions against the Claimant's property [security] Kajiado / Kitengela/39259 and Kajiado/ Kaputei-North /50036/.
  - c. The Respondent is restrained from harassing or victimising the Claimant, in particular, from listing the Claimant with Credit Reference Bureau with respect to the loan facility.
  - d. The Respondent to zero rate the loan facilities pending hearing and determination of the Claim.
  - e. The Respondent is restrained from giving feedback to Claimant's potential Employers, who might seek reference from Respondent.
11. The Application is based on the grounds stated in the face of the Notice of Motion, and on Affidavit of the Claimant, sworn on 24<sup>th</sup> July 2023.
12. It is opposed through the Replying Affidavit of Wainaina Francis Ngaruiya, Respondent's Head of Legal, Human Resources and Industrial Relations, sworn on 4<sup>th</sup> August 2023.
13. It is opposed further through the Grounds of Opposition filed by the Respondent, dated 4<sup>th</sup> August 2023.
14. The Respondent restates at length in these Grounds, the contents of the Statement of Response, underscoring that termination was founded on valid ground, and fairly executed.
15. It is explained that the Respondent has not issued the Claimant a statutory notice under the Land Act 2012; it only issued a demand calling on the Claimant to regularize his loan account.
16. The Respondent has the right to realize any securities it holds, in accordance with the security agreements and the Land Act 2012, in event there is default. The Respondent cannot be legally restrained, from exercising its right of sale. Where there is default, the Respondent has the right to list the Claimant with the Credit Reference Bureau. The Claimant authorized the Respondent to share his information with potential Employers, and with the Credit Reference Bureau, if need be.
17. The interest rate had not changed at the time of filing of the Application. The loan policy provided the Claimant with a moratorium of 6 months from the date of termination. He had adequate time to pay off the loan, before the interest rate could be altered.
18. Parties agreed to have the Application considered and determined, based on their Affidavits and Submissions, the latter which were confirmed to have been filed and exchanged at the last mention, on 7<sup>th</sup> December 2023.

**The Court Finds: -**

19. The only document the Claimant relies on, in support of his Application for the wide-ranging orders of temporary injunction, is the demand letter issued by the Respondent, dated 13<sup>th</sup> July 2023.



20. The demand letter does not mention conversion of the preferential interest rate, into a commercial one; it does not mention sale of the Claimant's Kajiado properties in recovery of loan arrears; and, there is no mention of the Respondent's intention to list the Claimant with the Credit Reference Bureau.
21. The other two orders are similarly sought in an evidential vacuum. There is no evidence that the Respondent has engaged any of the Claimant's potential Employers in any form of communication, regarding the Claimant's employment record. He has not named any potential Employer he was in contact with, who was likely to refrain from recruiting him, on account of adverse reference from the Respondent. The prayer on zero rating of the loan facilities, was not articulated by the Claimant. What does he mean by zero rating? Where is zero rating in his loan agreement?
22. Temporary injunctions are meant to preserve the status quo, pending hearing and determination of the main Claim. They must be shown, to be related to the final orders. It must be shown that if the temporary orders are not issued, the substratum of the dispute will be adversely affected, in a fundamental way. The Court is not persuaded that the Claimant has established linkage, between the provisional measures sought, and the final orders.
23. The final orders sought, are: declaration that termination was unfair and unlawful; reinstatement; severance pay; damages; certificate of service; costs; and interest. How is reference to the Credit Reference Bureau or zero rating, for instance, related to these substantive prayers? The Claimant appears to have disparate causes of action against the Respondent, which he has attempted to compress in his Notice of Motion, making it in the end very difficult, to establish a prima facie case, warranting orders of temporary injunction.

It is ordered: -

- a. The Application filed by the Claimant, dated 24<sup>th</sup> July 2023 is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 15<sup>TH</sup> DAY OF MARCH 2024.**

**JAMES RIKA**

**JUDGE**

