



**Gachara v Co-operative Bank of Kenya Limited (Cause 441 of 2019)
[2024] KEELRC 13197 (KLR) (22 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13197 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 441 OF 2019
SC RUTTO, J
NOVEMBER 22, 2024**

BETWEEN

SAMUEL KAMURU GACHARA CLAIMANT

AND

CO-OPERATIVE BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

1. What comes up for determination is the Respondent's Counterclaim dated 29th January 2020.
2. Perhaps I should start by tracing the genesis of this matter. The Claimant herein moved this Court vide a Memorandum of Claim in which he cited the Respondent for unfair termination of his employment. He averred that he was employed by the Respondent as a Clerk. He was later confirmed upon completion of his six months' probation period and was absorbed into the Respondent's permanent and pensionable terms of employment with effect from 2nd April 2009.
3. The Claimant averred that he was issued with a show cause letter dated 15th March 2018, indicating that investigations had revealed that he had allegedly engaged in behaviour which was in conflict with his position at the Respondent Bank. This was to mark the beginning of the end of the employment relationship seeing that the Claimant was terminated from employment on 14th May 2018. It is that termination that triggered the dispute between the Claimant and the Respondent.
4. According to the Claimant, his termination from employment was unlawful. To that end, he sought the sum of Kshs 59,074,367.00 against the Respondent. This constituted notice pay, compensation for wrongful dismissal, service pay, and full pay for the remainder of his employment contract conspiring 25 years.
5. In response to the Memorandum of Claim, the Respondent filed a Memorandum of Reply together with a Counterclaim in which it asked the Court to dismiss the Claim and allow the Counterclaim against the Claimant for the sum of Kshs 2,318,068.97.



6. In the Counterclaim, the Respondent avers that during the course of the Claimant's employment at the Bank, he applied for and was advanced various staff loans which he had not cleared as of the date of his termination from employment on 14th May 2018.
7. That according to the Staff Manual, the Bank has discretion to recall payment of the staff loans advanced to the Claimant upon him ceasing to be an employee of the Respondent.
8. The Respondent further avers that the terms of the letter of dismissal from employment and the Staff Manual, clearly stipulate that facilities accorded to the Claimant by virtue of their status as a staff member would commence attracting interest at prevailing commercial interest rates upon termination of employment.
9. It is the Respondent's contention that the Claimant is liable for the outstanding liability of Kshs 2,318,068.97 in unpaid loans plus interest at the prevailing commercial bank interest rates until payment in full.
10. That further, despite demand and notice of intention to sue being given, the Claimant has failed to make good the Respondent's claim.
11. When the main suit came up for hearing on 25th October 2023, the Claimant was not present in Court and there being no plausible reason for his failure to attend Court, his Claim was dismissed.
12. Following dismissal of the Claimant's Claim, the Respondent moved to prosecute its Counterclaim which is now the subject of this Judgment.
13. The Counterclaim proceeded for hearing on 15th October 2024 during which the Respondent called oral evidence through Ms. Leah Kerich, who identified herself as the Respondent's Head of Employee Relations.
14. It is worth pointing out that neither the Claimant nor his Advocate was present in Court during the hearing. This was despite being duly notified of the day's hearing. Subsequently, the Counterclaim proceeded for hearing, the Claimant's absence notwithstanding.
15. Ms. Kerich adopted her witness statement to constitute her evidence in chief. She went ahead to produce the documents filed on behalf of the Respondent as exhibits before Court.
16. Ms. Kerich asked the Court to allow the Counterclaim as prayed.
17. Subsequently, the Respondent filed written submissions as per the directions of the Court.

Submissions

18. It was submitted on the part of the Respondent that the Counterclaim is premised on the contractual obligations of the Claimant under the employment agreement and the applicable staff loans. Referencing the case of Abraham Nyambane Asiago v Barclays Bank of Kenya Limited (2013) KEERLR 230 (KLR), the Respondent posited that it has the right to recall the loan facility upon the Claimant's termination from employment.
19. The Respondent further argued that the Claimant has a contractual obligation to repay the loan facility. To buttress this position, the Court was invited to consider the cases of National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another (2001) KECA 362 (KLR) and Jopa Villas v Overseas Private Investment & 2 others (2009) KEHC 2724 (KLR).



Analysis and Determination

20. The singular issue that stands out for determination is whether the Respondent's Counterclaim is merited.
21. The gist of the Respondent's Counterclaim is that during his employment, the Claimant was advanced various staff loans which he had not cleared as of the date he was terminated from employment. According to the Respondent, the Claimant's alleged liability stood at Kshs 2,318,068.97 plus interest at the prevailing commercial bank interest rate.
22. As stated herein, the Claimant did not file a Defence to the Counterclaim. As such, the Counterclaim was unopposed.
23. In support of its case, the Respondent exhibited copies of the Claimant's loan statements which show his outstanding loan liability as Kshs 2,318,068.97.
24. As the Claimant did not oppose the Counterclaim, this means that the Respondent's claim against him was not controverted.
25. Over and above, there is no evidence proving that the Claimant has settled the outstanding loan amount hence there is no doubt that he owes the Respondent the sum of Kshs 2,318,068.97 in outstanding loan, as claimed.
26. In light of the foregoing, the Court finds that the Respondent has proved its case to the requisite standard and is entitled to the sum of Kshs 2,318,068.97 as prayed in the Counterclaim.

Order

27. In the end, I allow the Counterclaim and enter Judgment in favour of the Respondent against the Claimant for the sum of Kshs 2,318,068.97 being outstanding loan liabilities. This amount shall be subject to interest at the prevailing bank rates.
28. The Claimant shall bear the costs of the Counterclaim.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER, 2024.

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant No appearance

For the Respondent/Counterclaimant Mr. Oloo

Court Assistant Millicent

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of



Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

