



**Ouma v Faulu Microfinance Bank Ltd (Cause E015 of 2022)
[2023] KEELRC 940 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 940 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE E015 OF 2022**

**JW KELI, J
APRIL 20, 2023**

BETWEEN

HAWKINS OUMA CLAIMANT

AND

FAULU MICROFINANCE BANK LTD RESPONDENT

RULING

1. The claimant/applicant upon termination of employment with the respondent filed suit in court *vide* statement of claim dated May 31, 2022 seeking damages for unlawful termination, unpaid salary service pay and related terminal benefits.
2. Together with the claim, the claimant filed notice of motion dated May 31, 2002 seeking the following reliefs:-
 - a. That this application be certified urgent and heard on priority basis.
 - b. That pending the hearing and determination of this application this honourable court do issue an order directing the respondent to suspend the loan repayment extended to the applicant and the attendant consequences including:-
 - i. Interest rate of the loan not to be changed.
 - ii. No penalty to accrue on non- repayment of the loan
 - iii. Classification of the claimant as a defaulter.
 - iv. Listing the claimant with the credit reference bureau.
 - c. That the respondent, their agents, servants, employees or any other person acting on their behalf be restrained from proclaiming, selling or repossessing motor vehicle registration No KCU 314 E pending hearing and determination of this application.



- d. That the respondent, their agents, servants, employees or any other person acting on their behalf be restrained from proclaiming, selling or repossessing the motor vehicle registration No KCU 314 E pending hearing and determination of this claim.
 - e. That the respondent, their agents, servants, employees or any other person acting on their behalf be restrained from proclaiming or selling land registration No S/Wanga/Ekero/3900 pending hearing and determination of this application.
 - f. That the respondent, their agents, servants, employees or any other person acting on their behalf be restrained from proclaiming or selling land registration No S/Wanga/Ekero/3900 pending hearing and determination of this claim.
3. The application was premised on grounds that the applicant had been employed by the respondent back in 2021 and worked diligently until he was offered promotion to center manager at Bondo branch earning salary of Kshs 143,519/- subject to standard cost of living adjustment of 6% only 1st April each year.
 4. That during employment the applicant was advanced loan of Kshs 2,000,000/- by the respondent and a further loan of Kshs 840,000.00. That he faithfully served the two loans through set monthly payments deducted from his salary. That until recently he was dismissed from employment by the respondent hence no source of income to service the loans. That if orders sought are not granted the actions of the respondent will negate the suit and occasion the applicant unreasonable loss, damages and hardship.
 5. The supporting affidavit by the claimant repeated the foregoing grounds.
 6. The application was opposed by the respondents *vide* replying affidavit of Maurine Kahiro dated February 9, 2023 and received in court on the February 7, 2023.
 7. The gist of the response was that the applicant had concealed material fact to the court that:- the applicant in October 2018 approached the bank for financial facility and after negotiation a letter of offer followed of October 30, 2018 to the borrower /applicant by the respondent for loan of Kshs 2 million on condition of applicant's security of property land registration No S/Wanga/Ekero/3900 in favour of the respondent/bank (MWK 2 (a) & (b) were copies of the letter of offer dated October 30, 2018 and certificate of title for S/Wanga/Ekero/3900 in the name of Hawkins Ouma and Pamela Nekesa Wanjala). That the legal charge was prepared between the parties with Pamela Wanjala issuing loan spouse consent (MWK 3 was the legal charge dated November 19, 2018).
 8. That the money as disbursed to the applicant for his utilization at interest rate of 9% per annum. That he defaulted and had loan arrears of Kshs 45, 589.22 as at June 14, 2022 leading to the 90 days statutory notice (MWK4). That the applicant was granted asset facility of Kshs 814,000.00 *vide* letter of offer dated September 5, 2019 to purchase motor vehicle KCU 314 E Toyota Porte and the motor vehicle registered jointly. He had defaulted in repayments.
 9. That there is no undertaking on damages on the application and only information is sought.

Written Submission

10. The court directed that the application be canvassed by way of written submission. The respondent's written submissions drawn by Chris Maganga Advocate instructed by LG Menezes were dated March 8, 2023. The applicant's written submissions drawn by Namatsi & Co Advocates were dated March 6, 2023.



The Applicant's Submissions In Summary

11. That the applicant upon dismissal had no source of income to repay the loans. That while employed he enjoyed loan facility staff rates and relied on decision in *Christopher Onyango & others Heritage Insurance Co Ltd* Cause No 781 of 2015 where the court held *inter alia*,:- “ Within such employment the claimant enjoyed benefits of various loans. Such cannot be generated to create a different set of rights outside the employment relationship”. In *Bifu v Consolidated Bank of Kenya Limited* Cause No 900 of 2012 where court held. ...”The loan agreement in the context of his dispute flowed from an employment relationship. The dispute over the charge created to secure the staff loan is a matter of employment”.
12. That the claimant should repay loan at staff rate. On issue of irreparable injury the applicant submitted the land is matrimonial property and they would be homeless if the sale proceeds . That the orders to be granted pending hearing and determination of the suit.

Respondent's Submissions

13. The respondent reiterated contents of the replying affidavit and evidence produced (supra) and submitted that the applicant had not produced evidence of full payment of the loans , submitted there was no proof of loss to be suffered if orders sought were not granted that cannot be compensated in damages relying on decision in *Kihara v Barclays Bank (K) Limited* (2001) 2 CA page 421 where Ringera J. held that “ to offer a property as security for a loan is to convert it into a commodity for sale and there was no commodity for sale whose loss cannot adequately be compensated by damages”.
14. That the balance of convenience tilted towards decline of injunctory order as the security continued to be eaten away by mounting interest as held in *Maithya v Housing Finance Company & Another* 2003 EA 133.
15. The respondent submits that it challenged the jurisdiction of the court to entertain the application for injunction arising out of commercial contracts as the employment contract was distinct from the loan agreements.

Decision

16. The orders sought of interim injunctions relate to loans between the parties and issued to the applicant while in employment albeit at staff loan rates. The loans were however secured by charge or of the applicant's property land registration No S/Wanga/Ekero/3900 and the motor vehicle jointly registered between the parties.
17. The court finds that this was one of those cases where it had to satisfy itself first that it has jurisdiction. Jurisdiction of this court flows from article 162 (2)(a) of the *Constitution* to be “ Employment and Labour Relations” which jurisdiction is then defined in detail by parliament under the *Employment and Labour Relations Act* No 20 of 2011 section 12 to wit:-⁴ 12. Jurisdiction of the court (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;
 - (b) disputes between an employer and a trade union;
 - (c) disputes between an employers' organisation and a trade unions organization;



- (d) disputes between trade unions;
 - (e) disputes between employer organizations;
 - (f) disputes between an employers' organisation and a trade union; (g) disputes between a trade union and a member thereof;
 - (h) disputes between an employer's organisation or a federation and a member thereof;
 - (i) disputes concerning the registration and election of trade union officials; and
 - (j) disputes relating to the registration and enforcement of collective agreements”
18. The applicant in the suit sought order related to remedies for unlawful dismissal and alleged defamation. There was no substantive order sought in relation to the orders of temporary injunction in relation to the said loans. The court finds that the loans amount to commercial contracts whose terms are under the loans agreements between the parties. The court has no jurisdiction over commercial contracts whether seen as staff loans or otherwise. There were charges on the alleged matrimonial property with a third party (spouse) who was not an employee before the court. This is clearly a matter outside the purview of Employment and Labour Relations Court under article 162 (2) (a) of the Constitution and section 12 of the Employment and Labour Relations Act(supra). The orders sought have no direct link to the claim/suit hence though versioned as interim are final in nature.
19. The court holds it had no jurisdiction to grant orders sought and the application was improper. The court is guided by the landmark decision on jurisdiction in Motor Vessels ‘Lilian S’ v Caltex Oil (Kenya) 1982 by Court of Appeal that on finding it has no jurisdiction the court must down its tools. Any order issued without jurisdiction is a nullity *ab initio*.
20. In the upshot the application dated May 31, 2022 is held as improper and outside jurisdiction of this court and dismissed with costs to the respondent.
21. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF APRIL 2023 AT BUNGOMA IN OPEN COURT.

JEMIMAH KELI,

JUDGE.

In the presence of :-

Court Assistant: Lucy Macheso

Respondent :Otieno Njoga

Applicant: Absent

