



**Kombo v SBM Bank Kenya Ltd (Employment and Labour Relations Cause E739 of 2022) [2023] KEELRC 1678 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1678 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E739 OF 2022**

**AN MWAURE, J**

**JULY 6, 2023**

**BETWEEN**

**JOSEPHAT KOMBO ..... CLAIMANT**

**AND**

**SBM BANK KENYA LTD ..... RESPONDENT**

**RULING**

1. The applicant filed a notice of motion vide the application dated October 12, 2022 and made the following prayers:-
  1. That this application be certified as urgent and be heard ex parte and service be dispensed with in the first instance.
  2. That this honourable court be pleased to grant an interim order to freeze the claimant/ applicants loan with the respondent pending the hearing and determination of this suit or until the claimant/applicant gets another stable source of income, whichever comes early.
  3. That this honourable court be pleased to grant an order in interim restraining the respondent or its servants from converting the claimant/applicant's loan to market rate.
  4. That this honourable court be pleased to grant an order to restrain the respondent or its servants from initiating any recovery of the loan in issue pending the hearing and determination of this suit or until the claimant/respondent gets another job or stable source of income, whoever comes early.
  5. That this honourable court be pleased to grant an order to restrain the respondent or its servant from negatively listing the claimant/respondent with credit reference bureau.
  6. That the costs of this application be provided for by the respondent.



2. The claimant in his supporting affidavit states he was a former employee of the respondent and he had taken a loan from the respondent of Kshs 1,853,309/15.
3. He says he was faithfully servicing his loan until the time of termination via a flawed redundancy exercise.
4. He says that he was also to be cushioned by credit life insurance who were to repay his loan for 9 months after termination but the respondent never addressed that issue and neither communicated to him about the same.
5. The claimant says the respondent has been recovering the loan from his terminal benefits which are now depleted. He said further that he is always ready to service the loan but is only that he has not found a job or means of livelihood.
6. The claimant says the redundancy is connected to his loan and so the loan should be frozen pending the hearing and determination of this suit.
7. Respondent's replying affidavit dated February 3, 2023 was deponed by Simon Muriithi Maina who said he was the Head of Employee Relations of the respondent.
8. The deponent affirms they had employed the claimant as a senior officer with effect from August 18, 2018 and the respondent then acquired Chase Bank and Fidelity Bank. The bank had to restructure its employees and so issued notice of intended redundancy. He says they informed the labour office of the said intention and the governor of Central Bank and Chief Executive Officer of Kenya bankers Association.
9. The claimant received communication of the intended redundancy and by the time of termination he had a pending loan of Kshs 1,834,620/-. The following features were part of the letter of offer of the loan and that the same would be repaid within 5 years and rate of interest was 7% subject to the employees employment with the bank. The letter further provided that upon termination the bank would adjust the interest rate.
10. The deponent says the claimant made a written commitment at the exit to keep servicing the loan but he did not do so.
11. The respondent also says the claimant had cushioned the facility with credit life insurance and so claimant is entitled to collect any moneys payable from the insurance company and remit to the respondent.
12. The respondent says a total of 177 employees were affected by the respondent's bank restructuring with 80 taking voluntary leave and so it was not only the claimant who was affected.
13. Further the deponent says they gave claimant 5 days fully paid leave to deal with the news and was taken through a training. He was fully advised of his terminal dues and was paid Kshs 906, 685/40.
14. The respondent deponent says that for court to order the loan not to be converted to a commercial loan is rewriting the contract. They further say the claimant should collect the insurance money and pay the respondent.
15. The court has considered the claimant's submissions and the respondent's submissions dated February 23, 2023. The supplementary affidavit deponed by the claimant dated February 15, 2023 was also considered by the honourable court.



## Determination

16. The claimant was declared redundant on December 6, 2021 and at the time he owed a loan of Kshs 1,853,309/15 to the respondent. The claimant avers that the respondent has been deducting money from the account from the terminal dues and any other money that would be banked in the account.
17. The respondent avers that claimant was to be paying Kshs 45,954/45 every month. The respondent also says claimant was given a three month's moratorium where he never repaid the loan and at no interest charge at all.
18. It is the respondent's averment that the claimant received Kshs 906,685/40 as his terminal dues and did not make effort to repay the loan. He was to be paying about Kshs 45,000 per month.
19. The court noted that claimant claimed the respondent continued to deduct money from his account. He however did not reveal how much was deducted and it is noteworthy that on August 11, 2022 the respondent wrote a letter demanding arrears of Kshs 137,714/40 from the claimant.
20. The court would observe that the respondent has given a soft landing to the claimant because they even gave him 5 years window to repay the loan at the prevailing staff rate. The claimant has not demonstrated what efforts he has made to repay the outstanding loan despite receiving his terminal benefits. Loans are usually serious commitment and a borrower must make every effort to repay a loan owes.
21. The good book says that a borrower is a slave of the lender. In other words once you take a loan you are duty bound to repay it come rain or shine.
22. The case of *Michael Alwema Kilumbi vs Barclays Bank of Kenya Ltd (2018) eKLR* Court held 'the only reason advanced by the claimant in support of the application is that his employment was terminated unfairly and that the respondent converted the loan of terms to commercial rates. These are not valid grounds as the issue whether or not determinant of the claimant's employment was unfair is the subject for determination in his claim. No finding has been made that the termination of employment was unfair.
23. The claimant was declared redundant in December 2021 and filed this application on October 12, 2022. The maxim of equity that 'equity does not aid an indolent' must be invoked by this court. The claimant does not seem to have done anything to reduce his loan for about one year despite being granted a moratorium of 3 months and allowed to pay interest at staff rates for five years.
24. This is an unmerited application and so the said application dated October 12, 2022 is rejected and the costs will be in the cause pending the hearing of the main suit.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF JULY, 2023.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

