



**Mulusa v Cooperative Bank Kenya Ltd (Cause E706 of 2022)
[2023] KEELRC 1632 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1632 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E706 OF 2022
AN MWAURE, J
JULY 6, 2023**

BETWEEN

SYLVIA KADENYEKA MULUSA CLAIMANT

AND

THE COOPERATIVE BANK KENYA LTD RESPONDENT

RULING

1. The claimant filed an application dated August 5, 2022. She seeks the following prayers:
 1. This motion be certified as urgent and be heard *ex parte* in the first instance. spent
 2. The honourable court be pleased to grant an order of temporary injunction restraining the respondent from reviewing, revising, converting or changing the staff loan rates of 8% presently enjoyed by the claimant to the prevailing commercial rates of 13% or in any way interfering with the interest rates chargeable on the loan facilities held by the claimant with the respondent pending the hearing and determination of this claim.
 3. The honourable court be pleased to issue an order directing the respondent to revert back the interest rate to 8% from the current 13% rate being charged on the said loan after the claimant reviewed, reverted, converted and/or changed the claimant's staff interest rate on the loan facility held by the claimant with the respondent pending hearing and determination of this application.
 4. The honourable court be pleased to issue an order directing the respondent to revert back the interest rate to 8% from the current 13% rate being charged on the said loan after the claimant reviewed, reverted converted and or changed



the claimant's staff interest rate on the loan facility held by the claimant with the respondent pending hearing and determination of this claim.

2. The claimant deponed she was terminated by the respondent by a letter dated April 22, 2022 on grounds of gross misconduct.
3. She says that during the period of her employment she had obtained a staff loan at a rate of interest of 8% to purchase a plot L.R. Kajiado/Kitengela/107016.
4. She says she was servicing the loan faithfully until the respondent changed the rate of interest from 8% to 13% which is the current prevailing rates. The new rates of interest are oppressive and especially as she is no longer in the respondent's employment.
5. She says the interest rate suggested by the respondent will push her to default and she will suffer irreparable injury.
6. The respondent in his replying affidavit says that the prayer for claimant's loan to be maintained at staff rate is not merited since she is no longer employed by the respondent.
7. He says the claimant has not prayed for reinstatement and furthermore has not faulted the loan agreement that provided that the loan would translate into a commercial loan once the employment is terminated.
8. The respondent depones that the claimant was terminated summarily by the respondent bank for colluding with a land Valuer Musti Investment Ltd to overvalue her land for her benefit and causing an exposure of loss of Kshs 1,550,000/- to the respondent.
9. The respondent avers that the claimant was aware that upon termination of the claimant's employment the respondent had a right to vary the contractual obligation from preferential to commercial rates. The respondent beseech the court to dismiss the claimant's application.
10. The court considered the claimants' submissions dated February 14, 2023 as well as the respondent's submissions as well dated March 3, 2023.

Analysis and determination

11. The claimant had obtained facility with the bank at a preferential rate of interest of 8%. This privilege was due to the fact that she was an employee of the bank. That kind of preferential treatment was not accorded to everybody except the employees of the bank.
12. One of the conditions of the contract between her and the bank before being given the loan as per the agreement signed by the respective parties and dated February 18, 2021 was that:

“Upon leaving the bank's service for any reason other than retirement a commercial rate of interest will be charged.”

The claimant assented to the terms thereto and appended her signature.



13. Time and again authority upon authority courts have held that the same courts cannot rewrite contracts well executed between parties. The role of the courts is to merely enforce contracts but not rewrite them. The case of *Five Forty Aviation Limited v Erwan Lande* [2019] eKLR the court stated:-

“We are alive to the hallowed legal maxim that it is not the business of courts to rewrite contracts between parties. They are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.”
14. The claimant signed this contract to obtain a loan and she did obtain the loan. She bound herself to the terms of her contract. The court would find no reason to decide otherwise whereas the claimant had consented to the charge of rate of interest if her employment was terminated.
15. The court in giving the prayed orders would be confirming had decided a case before the trial. And even then such prayer would only apply if the claimant was reinstated to her former employment which in any case is not part of her prayers in her claim. Anyhow we have not reached there since the suit has not been heard and determined.
16. As it is, the court is of the view the respondent is within his contractual right to vary the claimant’s rate of interest since the claimant is no longer an employee of the bank and there is no justification for an outsider to get preferential treatment as though she was a staff of the respondent.
17. Time and again the court has ruled loans are serious commitments and before anybody takes a loan he or she must as it were really count the cost. If borrowers argued they will not pay loans because they have faced difficulties one way or the other then lenders would be in big trouble.
18. The authorities cited by the claimant and in particular cause 743 of 2013 *John Kinyanjui Gateru vs The family bank Limited* and case No 57 of 2017 Chris Kiire Chepkioit vs National Bank of Kenya Ltd clearly arose from findings where the court had found the claimants termination was unlawful and unprocedural. That is different from the case before this court which is yet to be heard and detrimental. In any event the respondent has not pleaded for orders pertaining to the varying of rates of interest in her claim.
19. Flowing from the pleadings and submissions of the respective parties the court finds no merits in the claimant’s application vide her application dated August 5, 2022 and dismiss it forthwith. The costs will be in the cause. The main suit to be set down for hearing within 30 days so that the whole matter can be brought to its logical conclusion

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 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 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

