



**King'ori v Absa Bank Kenya PLC (Cause E647 of 2021)
[2022] KEELRC 1262 (KLR) (6 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1262 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E647 OF 2021
MA ONYANGO, J
JULY 6, 2022**

BETWEEN

AUGUSTINE NDEMANGE KING'ORI APPLICANT

AND

ABSA BANK KENYA PLC RESPONDENT

RULING

1. The Applicant's employment with the Respondent was terminated on 10th May 2021.
2. During his employment with the Respondent, the Applicant was advanced a house loan of Kshs.6,000,000/= (Kshs.6 million) at a preferential staff interest rate of 6% per annum. He was further advanced an unsecured staff loan of Kshs.1,800,000/= at a preferential staff interest rate of 9% per annum.
3. It is the Applicant's case that upon termination of his employment, the Respondent unilaterally and without granting the Applicant a period to give an alternative repayment method, converted Applicant's preferential interest rates (available to Bank staff for loans and cards) on the Claimant's/ Applicant's loan to ABR (currently at 7.5) plus a margin of 7.0% and the interest rates on the home loan to ABR (currently at 7.5%) to a margin of 5.5%, instead of staff terms.
4. The Applicant avers that the Respondent has since effected the commercial lending rates and he is at the verge of losing his matrimonial home which was charged to the Respondent as security. That he has a prima facie case with probability of success and should the Respondent sell his house, he will suffer irreparable harm.
5. In his application dated 6th August 2021, he seeks the following orders –
 - a. Spent.



- b. That this Honourable Court be pleased to issue a temporary injunction restraining the Respondent either by themselves, employees, servants and/or agents from changing and/or applying the interest rates of the Claimant's/Applicant's loan facilities from 6% (on the home loan facility) and 9% (on the Unsecured staff loan) to 13% and 14.5% respectively or any other interest rate pending the hearing and determination of this application.
- c. That this Honourable Court be pleased to issue a temporary injunction restraining the Respondent either by themselves, employees, servants and/or agents from changing and/or applying interest rates of the Claimant's/Applicant's loan facilities from 6%(on the Home loan facility) and 9%(on the Unsecured staff loan) to 13% and 14.5% respectively or any other interest rate pending the hearing and determination of the suit.
- d. That this Honourable Court be pleased to issue an order restraining the Respondent, its employees, servants and/or agents from listing the Applicant with any credit reference bureau on account of the non-performing financial facilities that the Applicant had been extended to by the Respondent as an employee of the Respondent pending the hearing and determination of this application.
- e. That this Honourable Court be pleased to issue an order restraining the Respondent, its employees, servants and/or agents from listing the Applicant with any credit reference bureau on account of the non-performing financial facilities that the Applicant had been extended to by the Respondent as an employee of the Respondent pending the hearing and determination of the suit.
- f. That pending hearing and determination of the application and suit, this Honourable Court do order the Respondent to refund Kenya Shillings Eighty Eight Thousand, Six Hundred and Fourteen (Kshs.88,614) to the Claimant/Applicant herein being the excess amount so erroneously charged due to the market (commercial) rates of interests being imposed from date of unfair termination of employment to date on the outstanding loans. In the alternative, the Respondent be ordered to credit the respective accounts of the Applicant with the funds paid as a consequence of the enhanced interest.
- g. That the Claimant/Applicant do continue servicing the loans in accordance with the initial terms {six per cent (6%) and nine per cent (9%) rates} of the loan agreement pending hearing and determination of this Application.
- h. That the Claimant/Applicant do continue servicing the loans in accordance with the initial terms {six per cent (6%) and nine per cent (9%) rates} of the loan agreement pending hearing and determination of this suit.
- i. That the Respondent is directed to issue the Applicant with a certificate of service in terms of the provisions of Section 51 of the *Employment Act, 2007*.
- j. That the Respondent be and is hereby restrained from selling the property known as Kajiado/kaputiei north/26811 (Original No. 25685) used to secure the loan pending hearing and determination of this suit.
- k. That this Honourable do issue any other order that it deems fit in order to meet the ends of justice in the circumstances herein.
- i. That cost of this application be provided for.



6. The Respondent opposed the application through the replying affidavit of Vaslas Odhiambo, its Head of Employee Relations and Wellness who deposes that the Claimant undertook to pay the loan in full or at commercial interest rates on termination of employment as is captured in the loan agreement.
7. He deposes that in the Claimant's termination letter, he was informed of his credit liabilities to the Respondent and that the interest rates applicable to the loan facility would revert to commercial rates. That the Claimant was further informed that his terminal dues would be earmarked to facilitate the completion of exit process.
8. Mr. Vaslas Odhiambo deposes that at the time of exit the Claimant owed the Respondent Kshs.5,325,819.50 on the home loan and Kshs.1,775,099.25 on the unsupported guarantee loan. That by virtue of his employment, the Claimant was enjoying staff interest rates on these loans which automatically ceased upon termination of his employment.
9. He deposes that it is the Respondent's policy that upon leaving the service of the respondent, any loan taken by an employee would be converted to commercial rates. The Respondent has an Ex-staff Loan Repayment Proposal Form through which the Claimant would have given his proposal for repayment of the loan under the new terms. That the Claimant did not give any proposal for the repayment of the loan after his termination.
10. The affiant further deposes that the Claimant's application for injunction against the Respondent from selling the property known as Kajiado/kaputeinorth/26811 (Original No. 25685) is premature as there is no imminent threat from the Respondent to sell the property. That the Claimant has not defaulted and the Respondent has not issued a notice threatening to sell the property. That in any event, if this was to happen, that would be a commercial dispute arising from the loan agreement as opposed to a labour dispute.
11. The Respondent avers that the Claimant's application is devoid of merit and should be dismissed with costs.

Claimant's Submissions

12. In the submissions in support of the application, the Claimant states that the issue in dispute is the unlawful and unfair termination of the Claimant, failure to follow the laid down procedure by the Respondent, the violation of the Claimant's constitutional right to fair administrative action, fair labour practices and freedom from discrimination and the conversion of the loan facilities into commercial rates. The Claimant contends that by the suit herein he is challenging the process of termination of his employment which led to the mess of his loan obligations.
13. The Claimant submits that the matters herein stem from an employment relationship between the Claimant and the Respondent whereby the Respondent's chief argument is that the loans should be converted to commercial rates as the Claimant has ceased working for the Respondent. That this should not be the case, as was held in the case of *Esther Mbinya Musau v National Bank of Kenya Limited* [2015] eKLR where the court observed that: -

“The matters herein stem from an employment relationship between the parties and cannot be separated so as to have the issues with regard to the issues in dispute heard by separate court. I find the Claimant while in the employment of the Respondent was advanced various loan facilities as an employee and claims continued preferential interest rates on that basis. Such cannot be separated from the suit herein as the determination of one affects the other. Without going into the merits of the issues in dispute, I find the court has jurisdiction



over the dispute based on the foundational relationship between the parties herein was employment and labour relations.”

14. That the Court in that case further held that: -

“Unlike in ordinary contracts, an employment contract is founded on special circumstances that are regulated by statute unlike the ordinary law of contract. An employment contract has its foundational basis under the provisions of article 41 of *the constitution* and where an employee cites the violation of their rights, such rights must be ascertained under the applicable law as well as under *the constitution*. To thus cite an unfair practice; a wrongful termination of an employment contract; or the illegal termination of an employment contract, special attention must be given into the allegations and circumstances of such stated wrongful action...”

15. The Claimant submits that he was offered a home loan by the Respondent under the terms applicable. That these are benefits he is entitled to despite having been unlawfully terminated. That these sentiments were captured in the case of *Beatrice Wangui Mwihia v Barclays Bank of Kenya* [2019] eKLR where the Court held that: -

“In this regard therefore, the concept of employment and labour relations is wide and not restricted to the contract of service. With employment, there come other relations at play such as the work benefits that require formation of relations such as the one leading to facilities such as loans, mortgage, and car and buying of agricultural land. Such relations cannot be divorced from the core employment relationship of the employer and employee. To do so would be to lose the context within which labour relations find meaning.”

16. That in the case of ELRC No. 781 of 2015 *Christopher Onyango & 23 others v Heritage Insurance Company Limited* the Court explained the rationale on preferential rates as follows:

“... On the loans due, the Respondent has recalled all of them. However, the employment relationship generates rights and obligations. Such are to be found in the employment contract, human resource policy, and the law. The common denominator is employment. Within such employment, the Claimant enjoyed benefits of various loans. Such cannot be separated to create a different set of rights outside the employment relationship.”

17. The Claimant further relies on the case of *Chris Kisire Chepkoiit v National Bank of Kenya Limited* [2017] eKLR where the Court held that: -

“The court is therefore required to interrogate the claims and address as to whether there is any element of proof of the matters set out in dispute. The requirement that all contracts of employment be terminated within the law is mandatory pursuant to the provisions of sections 41, 43, 45 and 47 of the *Employment Act*, 2007. Until there is a determination of the same, to make the claimant lose a benefit that was available within his employment which has now been terminated and the same alleged to be unfair would be to deny him a fair hearing before this court, such would remove the claimant from his employment with the respondent and deny him work benefits that were denied of him upon the termination of such employment.”



18. The Claimant submits that the Respondent splits legal hairs when it argues that the Applicant had not made any prayer for reinstatement. That the Claimant's final prayer is "That this Honourable do issue any other order that it deems fit in order to meet the ends of justice in the circumstances herein" which prayer enables the court to issue any prayer so as to achieve justice in the circumstances.
19. The Claimant submits that under Section 12(3) and 49(3) and (4) of the *Employment Act*, it is provided that the prayer for reinstatement is discretionary. He relies on the *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2015] eKLR where the court observed that: -
- "The remedy of reinstatement is discretionary. However, the Industrial Court is required to be guided by factors stipulated in section 49(4) of the EA which includes the practicability of reinstatement or re-engagement and the common law principle that specific performance in a contract for employment should not be ordered except in very exceptional circumstances. The court should also balance the interest of the employees with the interest of the employer."
20. The Claimant further submits that in the case of *Esther Mbinya Musau v National Bank of Kenya Limited* (supra) where the Claimant had not sought for an order of reinstatement, the Court held that:
- "All considered and in the interests of justice especially where the Claimant is not seeking reinstatement, the Respondent shall comply with section 51 of the *Employment Act* forthwith and issue the Claimant with a Certificate of Service within seven (7) days."
21. The Claimant submits that he has made out a prima facie case with a probability of success as espoused in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, where the Court of Appeal held that;
- "... [A prima facie case] is it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."
22. The Claimant submits that he will suffer irreparable harm that cannot be compensated by way of damages if the facilities are converted into commercial rates. Since he has a home loan, his home will be sold and he would be rendered homeless. He will have no dignity and will hang his head in shame. That no damages would compensate a man whose home has been sold and with no dignity.
23. To buttress the above point, the Claimant relies on the case of *Beatrice Wangui Mwihia v Barclays Bank of Kenya* (supra) where the Court stated that: -
- "The court is yet to hear and determine the Applicant's petition in the instant case and so whether or not the Respondent can vary the interest rates is also dependent on whether or not the termination of employment was lawful and fair. As the applicant has submitted, she risks losing her family home if the orders sought are not granted. It is my opinion that she has satisfied that she is likely to suffer loss



that cannot be compensated by way of damages should the orders sought not be granted.”

24. It is the Claimant’s submissions that to convert the loan facility and increase the interest rate and the sale of property through an illegal process would deprive the Claimant his right to own property and lead to irreparable loss or damage as was observed in the case of *Victor K. Mutisya v First Community Bank Limited* [2018] eKLR where the Court held that: -

“Indeed, the Applicant if it is found was unfairly terminated, he would have suffered double damage where he would have been terminated unfairly and also be enforced to repay his loans at commercial rates.”

25. The Claimant also relied on the case of *Boniface Lum Amunga Biko v National Bank of Kenya Limited* [2017] eKLR where this Court held that: -

“ Before the court can determine the suit before it, the same relating to a case of unfair termination of employment of the claimant, to allow the Respondent to apply high or higher interest rates on the loan facilities advanced to the Claimant while in employment would be to strip him the dignity of man and subject him to adverse circumstances...”

26. The Claimant further submits that the Respondent has not denied the Claimant’s avowals that the Respondent can list the Claimant with the Credit Reference Bureau should the loans be converted to commercial rates and the Claimant defaults to pay.

27. The Claimant submits that he is relying on his pension to repay the loans. Reliance is made on the case of *Eliud Kimaile v Cooperative Bank of Kenya Limited* [2017] eKLR where the Court held that: -

“ On the question whether the Claimant might suffer injury that may not be remedied by an award in damages, I have this to say; there is a world of difference between the special interest rates enjoyed by the Claimant and the market rates applicable to ordinary borrowers. In accessing the loan facilities, the Claimant anticipated to remain in employment in the foreseeable future. When he lost his job his steady source of income came to an abrupt end. To allow the Respondent to convert these loans to commercial rates at this stage would be the last nail on the coffin. The ensuing injury including loss of collateral and credit default listing cannot in my view, be adequately compensated by an award of damages.”

28. That in any event that the Court makes a finding that indeed the Respondent was justified in terminating his employment, the due loan facilities can be recalled with all applicable and appropriate interest rates from the date of termination.

29. The Claimant submits that the balance of convenience falls in his favour and thus the application should be allowed. That if he loses his home or the rates are converted to commercial rates, he will be in a hardship and inconvenienced too.

Respondent’s Submissions

30. The Respondent submits that the interlocutory application before this Court relates to a fringe benefit of employment - preferential staff interest rates. That the employer - employee relationship has ceased to exist and in fact, the likelihood of that relationship being rekindled are almost nil - given that the



Claimant has not prayed for reinstatement. The terms and conditions of the loan agreements, gave the Respondent discretion to charge a preferential interest rate and compelled the Respondent to cease doing so immediately the Claimant's employment was terminated for whatever reason.

31. That the Claimant ought not be granted an injunction pending the hearing of the claim because; the Claimant has not met the threshold for grant of injunctive relief; the adjustment of the interest rate applicable to the loan facilities of the Claimant are on account of operation of a contractual term; and the outcome of the suit before this Honourable Court shall not have an effect on the fact that the employer-employee relationship is no longer in existence and that relationship is the basis upon which the fringe benefit arose from; in essence, the preferential interest rate and the employment are conjoined and the fringe benefit cannot survive the termination of employment.
32. That on the matter of threshold for the grant of injunction, the conditions upon which an injunctive order may be granted are well established in *Giella v Cassman Brown & Co Ltd* (1973) E.A as follows:
 - i. That the applicant has a prima facie case with a probability of success;
 - ii. That an interlocutory injunction will not normally issue unless the applicant might suffer irreparable injury which would not adequately be compensated by an award of damages; and
 - iii. If the court is in doubt, it will decide the application on the balance of convenience.
33. It is the submission of the Respondent that the Claimant has not made a prima facie case with a probability of success warranting issuance of such prejudicial prayers as are sought in the application relying on, the Court of Appeal definition of a prima facie case in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 155 as follows: -

“I would say that in Civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite parti/ as to call for an explanation or rebuttal from the latter.”
34. That the Claimant is yet to prove that the dissolution of the employment relationship as it occurred was tainted by illegality, unfairness or was otherwise unlawful. That the claims made by the Claimant remain mere allegations to be considered after the interrogation of facts during trial. That on their part, the Respondent has produced documents that demonstrate that procedure was followed prior to the termination of the Claimant. That the Respondent has also adduced a written contract - loan agreement terms signed by the Claimant in respect of the loan from which the present dispute on interest rates arises.
35. That all the loan agreements between the Respondent and the Claimant incorporated the Staff Loan and Conditions. Clause 2 of the Staff Loan and Conditions expressly provided that:

“The Bank may charge preferential rate of interest on the Borrower's Loan while the Borrower remains in the employment of the Bank, but such preferential rate shall cease to apply immediately the Borrower's employment with the Bank is terminated for whatever reason, unless the Bank otherwise agrees in writing.”
36. The Respondent submits that the Claimant had full knowledge of these terms when he entered into the loan agreements and was aware that upon termination of the employment relationship for whatever reason, the Respondent was under the obligation to vary the interest rate from the preferential rate



applicable only to employees of the Respondent. That this Court in *Joseph Njagi Mwita & 4 others v Barclays Bank Limited* [2019] eKLR held that: -

“I would agree with the respondent’s contention that fire decision to apply commercial interest rates on the claimants’ loans was within her discretion and in line with the agreed terms of the loan agreements between her and the respective claimant. Clause 2 (c) of the Staff loan terms and conditions provided as follows:

“The Bank may charge preferential rate of interest on the Borrower’s Loan while the Borrower remains in the employment of the Bank, but such preferential rate shall cease to apply immediately the borrower’s employment with the bank is terminated for whatever reason, unless the bank otherwise agrees in writing.”

37. That the preferential rates were dependent on the existence of the employment relationship; at the moment and during the pendency of the suit the employment relationship does not exist. That it is unlikely that it shall exist again because the Claimant does not seek to be reinstated. The Respondent relies on the decision of the Court of Appeal in *Eric V. J. Makokha & 4 others v Lawrence Sagini & 2 others* [1994] eKLR as applied in *Fadhil Juma Kisua & another v Kenya Ports Authority* [2015] eKLR where the Court held that:

“The contract of employment having gone, the fringe benefits of subsidized housing went with it.” In the present case there was no dispute that the preferential staff interest rates subsisted on account of the employment relationship. There was no dispute that the contract of employment between the parties had been terminated. The Court considers that the fringe benefit of preferential staff interest rates would resurrect only upon reinstatement or such other lawful justification after the full hearing of the suit.”

38. It is further submitted for the Respondent that the loan agreements signed between the Claimant and the Respondent authorize the Bank to vary interest rates at any time and upon termination with its only obligation being to inform the Claimant accordingly. That issuing the orders sought by the Claimant would be contrary to the terms of the contracts between the parties. It would be the equivalent of rewriting the terms of the agreements executed by the parties. The Respondent beseeched the Court not to do so and relies on the decision in *Lilian Rhoda Adhiambo v Barclays Bank of Kenya* [2021] eKLR: -

“Clause (e) of the Staff Housing Loan Terms and Conditions also provided that the Bank is to charge a preferential rate of interest while the borrower remained in the employment of the Bank. From these clauses, an employee would only enjoy the staff preferential rates during the existence of the employment relationship. It is trite law that the court’s mandate with regard to contracts is to enforce and give effect to the terms agreed between the parties to the contract. The court has no jurisdiction to rewrite the contract for the parties.

To fortify the foregoing view, I rely on *National Bank of Kenya Limited v Hamida Bana & 103 Others* [2017] eKLR where the Court of Appeal cited with approval *Damondar Jibabhai & Co Ltd & ano v Eustace Sisal Estates Ltd (1967) EA 153* at page 156 where Sir Newbold P held that:

“The function of the Court is to enforce and give effect to the intention of the parties as expressed in their agreement.”



Having found that the applicant has not sought reinstatement to her job and that she has not proved that the respondent has introduced the new interest rate unlawfully and in breach of the loan agreements, it is my holding that she has not established a prima facie case with probability of success. In the absence of a prima facie case, like in this case, the application loses meaning and the court need not consider irreparable injury and/or balance of convenience."

39. That in the event that the Court is inclined to delve into the other two limbs, the Respondent submits that the Claimant does not stand to suffer irreparable injury which the Respondent, being a bank with regional presence and considerable stature, cannot compensate by way of damages. That on his part, the Claimant has professed. That he is in doubtful financial standing. That in the circumstances, it shall be difficult for the Respondent to pursue the interest in the event of success. At the time of filing the suit and application, the Claimant was repaying the loan at the adjusted interest rate and there is no imminent threat of recovery proceedings because the Claimant has not defaulted. The Respondent relies on the case of *Elijah Kipng'eno Arap Bii v Kenya Commercial Bank Limited* [2001] eKLR, where the Court addressed the issue of probable loss as follows:

"Is the applicant's probable injury capable of being adequately compensated in damages? I have no doubt that it is. The applicant has known all along that the securities he offered for his charge debt would be realized if default was made in the repayment. As I have said severally, once property is offered as security it by that very fact becomes a commodity for sale. And there is no commodity for sale whose loss cannot be compensated adequately in damages. So although Mr. Wandabwa's eloquence nearly induced in me tears of sympathy for the applicant, I am on a rational consideration of the matter impelled to conclude that the applicant's loss is perfectly compensable by an award of damages and that the bank is capable of meeting any such award. The application fails on this ground too."

40. That unlike the Respondent which shall be prejudiced and have little or no recourse if the claim fails, the prayers in the statement of claim guarantee the Claimant a recourse in the event that he proves his case. The Respondent submits that any loss that may be incurred is compensable by way of monetary damages. On a balance of probabilities, the scales tip in favour of the Respondent. Reliance is placed on the decision in *Evans Oliver Olwali v Standard Chartered Bank Limited* [2018] eKLR where similar issues of preferential interest rates post-termination were canvassed and the Court held that:

"The Court has considered the prayers in the statement of claim and returns that as submitted for the respondent, if the temporary injunction is not granted, the claimant would not thereby suffer irreparable harm beyond compensation by damages because the difference in the interest rates could be compensated by way of a monetary award."

41. It is submitted that the cases relied on by the Claimant in support of the application are distinguishable from his case based on the facts and the terms of the loan agreements.

Analysis and Determination

42. Having considered the application, the affidavits in support and in opposition to the application as well as the rival submissions of the parties, the issue arising for determination is whether the Claimant meets the threshold for grant of the orders sought.
43. The threshold for grant of injunctive orders was set out in the celebrated case of *Giella v Cassman Brown & Co Ltd* (1973) E.A as follows:



- i. That the applicant has a prima facie case with a probability of success;
 - ii. That an interlocutory injunction will not normally issue unless the applicant might suffer irreparable injury which would not adequately be compensated by an award of damages; and
 - iii. If the court is in doubt, it will decide the application on the balance of convenience.
44. Prima facie case was defined in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 155 as follows: -
- “I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
45. The Claimant has made several averments against the Respondent which would require this Court to interrogate and which call for rebuttal by the Respondent. The claims against the Respondent are not frivolous. I thus find that the Claimant has established a prima facie case with probability of success.
46. The second limb is irreparable loss. The Claimant avers that he will suffer irreparable loss that is not capable of being remedied by monetary damages as he is likely to be rendered homeless and be subjected to loss of dignity and shame. This is unlike the Respondent who in any event will still hold the house as security and who can still charge commercial interest should the Claimant’s case be dismissed.
47. I therefore find that the Claimant has satisfied that he would suffer irreparable loss.
48. On the final determinant of balance of convenience, as already stated above, the Respondent has the security of the Claimant’s property and can always revert to commercial interest rates while the Claimant who has lost his source of income is likely to be put to great strain to meet the higher repayment amounts that accrue from commercial interest rates. I thus find that the balance of convenience falls in favour of the Claimant.
49. For the foregoing reasons I make the following orders:
- i. That the Respondent be and is hereby restrained from paying interest rates on the Claimant’s loan facilities that is higher than that charged on similar facilities advanced to the Respondent’s employees pending the hearing and determination of the claim herein.
 - ii. That order (i) above will be subject to the Claimant at all times being current in the repayment of the facilities as per the agreements in respect of the same.
 - iii. The prayers in respect of restraining the Respondent from referring the Claimant to the Credit Reference Bureau in the event of default is declined in view of the orders in (ii) above.
 - iv. The order for refund of Kshs.88,614/- to the Claimant is also declined as it is the Claimant who owes the Respondent the sums advanced to him. The Respondent is however directed to give credit to the Claimant in respect of nay monies paid over and above the instalments due based on the preferential staff interest rates.
 - v. The Respondent is further restrained from selling the property known as Kajiado/kaputiei North/26811 (original M125685) provided that the Claimant is up to date with the repayment of the instalments due based on the preferential staff interest rates.



- vi. That the parties will during the hearing of this case address the Court on whether or not the Claimant is to continue to enjoy the staff preferential interest rates after the determination of this case.
1. The costs of this application will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 6TH DAY OF JULY 2022

MAUREEN ONYANGO

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 *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.

MAUREEN ONYANGO

JUDGE

