



**Ogolla v National Bank Ltd (Cause E020 of 2021)
[2022] KEELRC 13225 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13225 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E020 OF 2021
S RADIDO, J
NOVEMBER 16, 2022**

BETWEEN

TABITHA SARAH ATIENO OGOLLA CLAIMANT

AND

NATIONAL BANK LTD RESPONDENT

RULING

1. In a judgment delivered on 15 June 2022, the Court found no merit in the Cause and dismissed it with costs.
2. Tabitha Sarah Atieno Ogolla (the applicant) was dissatisfied, and she lodged a Notice of Appeal on 23 June 2022.
3. On 28 July 2022, the applicant filed a Motion seeking orders:
 - (1) ...
 - (2) ...
 - (3) This Honourable Court be pleased to grant orders restraining the Respondent from unlawfully increasing the applicant's bank loan interest rate from 4.5% per annum to 14% per annum pending the hearing and determination of the intended appeal.
 - (4) The costs of this application be provided for.
4. When served, the National Bank Ltd (the Respondent) filed a Notice of Preliminary Objection contending that:

The Notice of Motion is misconceived and unfounded in law, fatally defective, a blatant abuse of the process of this Honourable Court and does not lie in law and is therefore for dismissal in limine with costs, given the clear and undisputed facts and circumstances of this matter.



5. On 29 September 2022, the Court directed the parties to file and exchange submissions.
6. The applicant filed her submissions on 30 September 2022, and the Respondent on 13 October 2022.
7. The applicant urged the Court to grant the orders sought because she had preferred an appeal to the Court of Appeal, and the appeal was arguable and would thus be rendered nugatory if the Court did not intervene.
8. The Respondent, however, contended that since there were no orders capable of being stayed, the instant application was an abuse of the court process.
9. It was also submitted that the Court was functus officio.
10. The Court has considered the Motion, affidavit in support, the Objection and submissions and concludes that the Motion is without merit for the following reasons.
11. One, the Court became functus officio upon the delivery of judgment on 15 June 2022.
12. Two, the question of interest rate or contract upon which the Respondent advanced the loan to the applicant was not pleaded in the Statement of Claim. In other words, the case pleaded by the applicant was with respect to unfair termination of employment.
13. Three, the Motion and orders sought are made in vacuo as there is no pending cause before the Court for determination.
14. Lastly, the judgment delivered by the Court dismissed the applicant's case, and thus, a negative order was issued.
15. The Court cannot now rewind the legal wheels (of justice) and grant injunctive orders.

Conclusion and Orders

16. The Motion is dismissed with costs to the Respondent.

DELIVERED VIRTUALLY FROM LAMU, DATED, AND SIGNED ON THIS 16TH DAY OF NOVEMBER 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Applicant Bruce Odeny & Co. Advocates

For Respondent Ochieng Ochieng Advocates

Court Assistant Chrispo Aura

