



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. E071 OF 2020**

**PAUL REGE.....PETITIONER/APPLICANT**

**VERSUS**

**BRITAM LIFEASSURANCE COMPANY (KENYA) LIMITED.....RESPONDENT**

**RULING**

1. The Petitioner/Applicant was employed by the respondent on 18<sup>th</sup> December, 2013 as the Manager, Pension Administration and earned KShs.622,860,00 and other benefits including mortgage loan at a start pegged rate of 6%.
2. The applicant on 25<sup>th</sup> June, 2020 received a letter of termination following a disciplinary process alleged by the petitioner to be unfair.
3. The claimant states that his employment was terminated unlawfully and unfairly.
4. Meanwhile the mortgage given to the claimant at 6% staff rates was escalated to commercial rates at 14%.
5. The claimant filed application dated 37<sup>th</sup> November, 2020 seeking *inter alia* the Court to:-
  - (a) Issue a conservatory order restraining the respondent from altering the repayment terms of the mortgage from 6% to 14% pending the hearing and determination of the suit.
  - (b) That pending the hearing and determination of the suit the Court compels the Respondent to pay withheld bonus as to the claimant and
  - (c) Issue directions necessary towards ensuring that expeditious disposal of this suit by way of video conferencing during the COVID- 19 interruption period.
6. The application is grounded on reasons set out on the face of the Notice of Motion and in the supporting affidavit of the applicant sworn to on 27<sup>th</sup> October, 2020 in which the applicant restates the facts summarized above.
7. The application is opposed vide a replying affidavit of Dennis Mworira, the Chief Operating Officer who deposes *inter alia* that it is common cause that the claimant was an employee of the respondent whose employment has been terminated. That by a loan agreement dated 25/5/2017, between the claimant and the Respondent, it was agreed that in the event the employment of the claimant is terminated, the loan facility at staff terms of 6% would revert to commercial rates which agreement was implemented upon termination of employment of the claimant.
8. That the issue of withheld bonuses is also pegged on the determination of the lawfulness or otherwise of the termination of the claimant's employment and must await determination of the suit.
9. That parties are bound by the terms of their contract and the application therefore lacks merit and it be dismissed with costs.
10. The applicant traversed the contents of the replying affidavit and joined issues with the respondent in a further affidavit sworn to by the claimant on 23/2/2021. The claimant reiterates the facts set out in the claim and in the application and prays same be granted pending the hearing and determination of the suit.

**Determination**

11. The applicant seeking conservatory orders must establish a *prima facie* case with a probability of success. That an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages; and if the Court is in doubt, it will decide an application on a balance of convenience. See the case of **Centre for Rights Education and Awareness (CREAW) –vs- Attorney General (2011) eKLR per Musinga, J., ELR, Cause No. 846 of 2014- Banking Insurance and Finance Union –vs- National Bank of Kenya Limited** and **Court of Appeal decision in Mnao –vs- American Bank of Kenya Limited and 20 Others [2003] eKLR.**

12. In the present case, the applicant in the petition itself, seeks a declaration that the termination of his employment was unlawful and unfair and that he be paid damages equivalent to 12 months' salary in compensation and that the respondent be compelled to pay the Petitioner, withheld bonus and service pay.

13. All these reliefs sought are dependent on a determination of the lawfulness or otherwise of the termination, which issue cannot be determined at the interlocutory stage. However, the Applicant has demonstrated that he would suffer damages that may not be remedied by an order for damages if the interlocutory relief is not issued with regard to the issue of interest on the loan facility.

14. Accordingly, the justice of the case at the interlocutory stage is to issue temporary relief in respect of an order that the respondent is restrained from altering the repayment terms of the loan facility granted to the applicant by the respondent at staff rates of 6% to commercial rates of 14% pending the hearing and determination of the suit.

15. It is so ordered.

**Dated and delivered at Nairobi this 15<sup>th</sup> day of July, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of 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, this Ruling has been delivered to the parties online with their consent. 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 18 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.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Omayio for Petitioner/Applicant

Musyoka for Respondent

Ekale – Court Assistant