



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

**CAUSE NUMBER 373 OF 2018**

**RUTH NGINA.....CLAIMANT**

**VERSUS**

**EQUITY BANK LIMITED.....RESPONDENT**

**RULING**

1. By a motion dated 21<sup>st</sup> March, 2018 the claimant sought orders among others that the court issues an order of injunction restraining the respondent from interfering with the claimant's quiet possession of property known as Title No. Laikipia/Nyahururu 8954 given as security for a staff plot purchase loan pending the hearing and determination of the present suit.
2. The application was based on the ground that the respondent in total disregard of the reasons for unfair termination from employment leading to failure of the claimant to keep up with the repayment of the loan, the respondent was now illegally and irregularly trying to sell the property to recover the outstanding loan.
3. The respondent in its replying affidavit sworn by one Leah Jepkoskei stated that the claimant was found culpable and as a result issued with a cautionary letter and further surcharged for the loss incurred in the sum of Kshs 79,250/-. The claimant subsequently absconded duty between 30<sup>th</sup> November, 2016 and the date of dismissal on 19<sup>th</sup> December, 2016. According to the respondent, the claimant was issued with a showcause letter dated 7<sup>th</sup> December, 2016, she made written representation on 11<sup>th</sup> May, 2016 and was invited to a disciplinary hearing on 14<sup>th</sup> December, 2016. After deliberations, a recommendation was made that the claimant be summarily dismissed.
4. Concerning the suit property Ms Jepkoech stated that the claimant in the course of her employment was issued with a staff loan facility of Kshs 500,000/= which was secured by a charge over land parcel no Laikipia/Nyahururu/8954. The loan was to be repaid through monthly instalment of Kshs 6,067/= and was to attract interest at 8% per annum and that the interest rate would change to commercial rate in the event that the employee leaves the employment of the Bank. According to the deponent the claimant failed to satisfy the loan amount since December, 2017 hence the respondent was entitled to sell the suit property to recover the loan.
5. The applicant was dismissed from employment on account of absconding duty. According to her the failure to report to work was occasioned by the financial difficulties she was going through following the decision by the respondent to surcharge her for the amount that was lost by the bank following fraudulent payment of a cheque that was processed by her. Failure by the claimant to service the loan was obviously occasioned by her dismissal from work. However, the loan being a liability connected but not co-terminus with employment has to be repaid by the claimant. The contestation over the lawfulness or otherwise of the termination cannot be reason to fail to honour the contractual obligations in the loan document. Default in the repayment would therefore entitle the respondent to enforce the terms of the loan agreement which included sale of the property used to secure the loan.
6. In the circumstance the court would decline to issue the orders sought in the application but direct that the claimant continues to service the loan as per staff rates in default the respondent shall have the liberty to enforce the terms of the loan agreement.
7. It is so ordered.

**Dated at Nairobi this 24<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 24<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.