



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 137 OF 2018

ABEL SAMORA MONGATTE.....APPLICANT

VERSUS

AFRICAN BANKING CORPORATION LIMITED.....RESPONDENT

R U L I N G

1. By a Motion dated 5th September, 2018 the Claimant applicant sought orders among others that the suit filed by the respondent against him being CMCC No 5645 of 2017 in the Chief Magistrates' Court be transferred therefrom to this Court and that the same be consolidated and heard together with the present cause.
2. The application was based on the ground that the applicant was employed by the respondent on 6th March 2010 as a personal banker and later promoted to the position of Customer Service Officer.
3. On 19th October, 2011. His contract was terminated on 9th February, 2015 and being aggrieved with the termination he filed the present suit where he seeks a total of Kshs. 1,207,050 as salary in lieu of notice and compensation for unfair dismissal.
4. While in employment the Claimant/applicant took a staff loan with the respondent which facility was taken and in the light of the employment relationship between the Claimant and the respondent. The respondent has since instituted the suit sought to be transferred seeking arrears from the Claimant. The Claimant has however questioned the applicability of the 14% interest rate instead of 8% staff rate under which the loan was taken.
5. The respondent opposed the application arguing that an order for consolidation can only issue in respect of matters already before the Court for determination.
6. On the issue of transfer, Counsel submitted that in exercising this discretion the Court should consider such factors as the motive and character of the proceedings in nature of the relief sought, interests of the litigants and more convenient administration of justice among others.
7. According to Counsel, the proceedings before the subordinate Court are between the bank, the borrower and guarantors of the loan. Whereas the Claimant argues the existence of an employer -employee relationship with the respondent he overlocked the relationship prevailing between the Bank and the guarantors. The discretion to transfer would have only been exercised if the claim was between the Claimant and the respondent only.
8. The power to transfer and consolidate suits as much as discretionary, is guided by the overriding objective that suits or claims should be disposed of in a timeous and costs effective manner. Cases that have common parties and arise out of same or similar factual circumstances ought to be tried together in order to save costs to the parties and judicial time.
9. The claim before the subordinate Court that is CMCC No 5645 of 2017 is clearly connected with the claim before this Court such that the other two defendants sued as guarantors do not come into play without the primary relationship between the Claimant and the respondent which was employer-employee relationship. The guarantor's liability to respondent crystallized when the Claimant's services got terminated and he fell into arrears of his loan. He is challenging the termination as well as the levying of interest at 14% instead of 8% staff rate.
10. These are matters that are so intertwined with the employment contract hence it would not be economical use of judicial time to try the two suits separately.
11. The application is therefore allowed and an order hereby issued that CMCC No 5645 be consolidated with this suit (ELRC 137 of 2018)

for hearing and disposal. The claim by the respondent Bank before the Chief Magistrates' Court is hereby treated as part of response and counterclaim in the present suit and the Claimants' defence as reply to counterclaim.

12. It is so ordered.

Dated at Nairobi this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

Delivered this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge