



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

CAUSE NO. 269 OF 2016

STEPHEN KIVANDI KAMULA

CLAIMANT

v

BARCLAYS BANK OF KENYA LIMITED RESPONDENT

RULING NO. 2

1. Before the Court is an application dated 11 April 2018 by Stephen Kavinda Kamula (applicant) seeking orders

1. ...

2. ...

3. That pending the hearing and determination of the Claim the Respondent whether by itself, or its servants or agents, advocates or any other person acting for and or on their behalf be restrained by an order of injunction from charging interest rate on the mortgage loan facility at 10% plus a margin of 4.00% or any other rate of interest save the allowed charges for staff accounts and the interest staff rate of 6% and further restrained from issuing threats of listing the Petitioner with the Credit Reference Bureau and further repossessing, offering for sale, selling, transferring, disposing or in any other way alienating or encumbering his family home which is LR No. 18111/281 in Nairobi County.

4. That this Honourable Court do issue orders compelling the Respondent to compute and refund already overcharged interests on the applicant's loan by the time of filing this application or this Honourable Court directs that the amount that was erroneously overcharged be utilized to settle the applicant's staff loans.

5. That the applicant be at liberty to apply for such further or other orders and/or directions as this Honourable Court would deem fit and just to grant.

6. That costs occasioned by this application be borne by the Respondent.

2. On 27 April 2018, the applicant filed submissions and authorities to buttress the application while the Respondent filed a replying affidavit sworn by its Human Resource and Employee Relations Manager in opposition to the application on 29 April 2018. It filed submissions on 7 May 2018.

3. When the application came up for hearing on 21 May 2018, the parties indicated that they would rely on the material already placed on record.

Background

4. The applicant was an employee of the Respondent until around September 2017 when he was dismissed from employment.

5. The dismissal aggrieved the applicant and he instituted legal proceedings against the Respondent alleging unfair termination of employment and breach of contract.

6. Hearing of the main Cause commenced before Mbaru J on 31 August 2016, and on 18 July 2017, the Respondent indicated that it would close its case without leading any witnesses.

7. After close of hearing, the applicant sought to file an amended Memorandum of Claim, and he was directed to file an appropriate application, which he did on 20 July 2017.

8. The parties proposed, and the Court agreed that the application be canvassed by way of written submissions and on 20 December 2017, the applicant was directed to file an Amended Memorandum of Claim within 14 days.

9. An *Amended Memorandum of Claim* was filed on 27 December 2017 and it introduced the head of claim in respect of the *interest rate*.

10. In regard to the present application it is worth noting that while in employment, the applicant had taken a loan facility from the Respondent at preferential rates.

11. Upon the dismissal, the Respondent purportedly reverted the rate of interest on the loan to market/commercial rates.

12. The applicant became apprehensive that the Respondent might dispose of the security he had given if he did not make repayments at the revised/increased interest rate, considering he is out of employment and thus the instant application.

Jurisdiction

13. The Respondent in opposing the application cited lack of jurisdiction on the part of the Court over disputes relating to mortgages/land; failure to satisfy the test for grant of injunctive orders and an intent by the applicant to delay determination of the main suit.

14. On the question of jurisdiction, this Court differently constituted has held that the Court has jurisdiction where a loan facility was extended within the sphere of an employer/employee relationship (see *Boniface Lum Amunga Biko v National Bank of Kenya Ltd* (2017) eKLR; *Banking Insurance & Finance Union (K) v National Bank of Kenya* (2016) eKLR and Nairobi Cause No. 437 of 2017, *Timothy John Sitati v Barclays Bank of Kenya Ltd*).

15. On the material placed before the Court, the Court finds no reason why it should depart from the conclusions of law in the cited cases to oust its jurisdiction.

Injunction on interest rates and alienation of charged property

16. The applicant and the Respondent had an agreement on the rate of interest. It appears that the Respondent has adjusted the rate of interest.

17. Unfortunately, none of the parties disclosed whether the adjustment was pursuant to contractual agreement or had any legal anchor.

18. Without the Respondent drawing the attention of the Court to the relevant provision of contract or law on adjustment and or variation of the *interest rate*, the Court is satisfied that the applicant has made a case to restrain the variation of the *interest rest* until the parties are heard fully on the issue.

19. On the question of the secured property, the Court notes that the applicant did not disclose/directly set out the property which had been used to secure the loan in the pleadings, and which he now wants the Court to injunct the Respondent from disposing off.

20. The applicant has also not demonstrated that the Respondent has threatened to invoke its contractual or statutory powers over the property.

21. The Court is therefore unable to make any order in respect to the property.

22. On proposed order 4, the Court is of the view that the order as sought is final in nature and it would not be prudent to allow it when the substance of the parties cases have not been presented on the merits.

23. Considering what has been stated in paragraphs 16 to 18 above, the Court will allow proposed order 3, but in an amended form to wit

(a) That pending the hearing and determination of the Claim the Respondent whether by itself, or its servants or agents, advocates or any other person acting for and or on their behalf are restrained by an order of injunction from charging interest rate on the mortgage loan facility at 10% plus a margin of 4.00% or any other rate of interest save the allowed charges for staff accounts and the interest staff rate of 6%.

(b) The Cause be determined within 180 days failure to which the orders herein lapse automatically.

24. The Court is concerned that the parties have not been keen to have the main Cause heard and determined on the merit and therefore orders that each party bear own costs.

Delivered, dated and signed in Nairobi on this 13th day of July 2018.

Radido Stephen

Judge

Appearances

Muma & Kanjama, Advocates for applicant

Federation of Kenya Employers for Respondent

Court Assistant Salome