



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NO 472 OF 2017**

**CHRISTOPHER MWIRIGI KINOTI.....CLAIMANT**

**VERSUS**

**LAW SOCIETY OF KENYA SACCO LIMITED.....1<sup>ST</sup> RESPONDENT**

**LAW SOCIETY OF KENYA HOUSING**

**CO-OP SOCIETY.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. By an amended Notice of Motion dated 23<sup>rd</sup> March, 2017 the claimant applicant sought orders among others that:

*i. This Honourable court do issue an order directing the 1<sup>st</sup> respondent to suspend the accrual of interest and penalties on the study loan extended to the applicant and the attendant consequences including:*

*a) Classification of the claimant as a defaulter*

*b) Listing the claimant with the credit reference bureau within 30 days of the notice dated 16<sup>th</sup> February 2017 and the resultant consequences.*

*c) Tabling the claimant as a defaulter during the 1<sup>st</sup> respondent's annual general meeting slated for 18<sup>th</sup> March 2017 and the resultant consequences.*

*d) Off-setting the loan repayment against the claimant's contributions and/or his guarantors in the 1<sup>st</sup> respondent.*

*With effect from 31<sup>st</sup> August, 2016 pending the hearing and determination of this application and claim filed herewith.*

*ii this honourable court do issue an order directing the 1<sup>st</sup> respondent to issue the applicant with a certificate of service.*

*iii This honourable court do issue an order directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to issue the applicant with a tax deduction card (Form P9) for the year 2016.*

2. The application was supported on grounds among others that:

*i. The applicant was employed by the 1<sup>st</sup> respondent by a letter of offer dated 6<sup>th</sup> January, 2014 and was also deployed to the 2<sup>nd</sup> respondent from time to time.*

*ii. During the course of his employment, the 1<sup>st</sup> respondent caused the claimant to undertake further studies and extended a study loan of Kshs 600,000/= to the applicant for the purpose of undertaking studies in Certified Credit Professional.*

*iii. The study loan was repayable over 36 months with the 1<sup>st</sup> repayment due in June 2016 and at a preferential interest rate of 1% per month on a reducing balance basis.*

iv. The terms of the study loan were contingent upon the applicant's employment with the respondents, which employment was terminated on 31<sup>st</sup> August, 2016.

v. The claimant has filed a claim against the respondents inter alia seeking orders that he was constructively/wrongfully terminated owing to the circumstances of termination of the claimant's employment.

vi. Having no meaningful employment it has been difficult for the applicant to repay the loan and interest on the study loan as and when they fall due though the claimant has tried to the best of his ability to repay the loan as his repayment capacity entirely depended on the claimants employment.

vii. The 1<sup>st</sup> respondent has now issued a 30 day notice dated 16<sup>th</sup> February 2017 of negatively listing the applicant's details with the credit reference bureau.

viii. The 1<sup>st</sup> respondent has also issued notice of its annual general meeting scheduled for 18<sup>th</sup> March 2017 in which as part of its agenda a note and list of defaulters likely to incorporate the applicant will be discussed.

ix. Through its response to the claimants' demand letter vide a letter dated 20<sup>th</sup> February, 2017 and received by the claimant's advocates on 16<sup>th</sup> March, 2017 the 1<sup>st</sup> respondent admits to its liability in respect of commissions due to the claimant for plots sold in Stoni Athi 1 and Stoni Athi 2 projects, to the tune of Kshs 50,000/=

x. Despite this admission, the respondents have refused and/or failed to offset the loan arrears of Kshs 52,409/= against the sum owed to the claimant and have further proceeded to table the claimant as a defaulter during the 1<sup>st</sup> respondent's annual general meeting held on 18<sup>th</sup> March, 2017.

xi. The 1<sup>st</sup> respondent has further refused to issue the applicant with a certificate of service and tax deduction card, making it difficult for the applicant to secure employment elsewhere, hence his inability to repay the loan and interest as and when they fall due.

3. The 1<sup>st</sup> respondent filed a replying affidavit through one Michael Ng'ang'a who deponed on the main that:

i. That I am the acting General Manager of the 1<sup>st</sup> respondent with authority from the 2<sup>nd</sup> respondent to swear this affidavit in response and opposition to the claimant's notice of motion dated 23<sup>rd</sup> March, 2017.

ii. That the respondents deny the contents of paragraph 3 of the said application to the extent that it did not advance the claimant a study loan but rather a development loan of Kshs 600,000 ostensibly to purchase a parcel of land.

iii. That further the prayer for waiver of interests and penalties from the loan is unmerited as there are no provisions in the loan disbursement that provides for the same and neither was the loan a study loan.

iv. That prayer 3 (a) to (d) is unmerited for the following reasons:

a) The claimant has since cleared loan repayment arrears and is no longer a defaulter.

b) Pursuant to (a) above, the claimant is no longer at peril of being listed with the credit reference bureau and a fresh notice has to be issued in case of a fresh default.

c) The general meeting of 18<sup>th</sup> March 2017 is already post and the prayer no longer lies in respect to the same.

d) Pursuant to condition (g) and (h) of the members' loan application form loan repayment agreement and guarantee between the claimant and the 1<sup>st</sup> respondent any amounts in default are liable to be offset from the claimant's shares and those of his guarantors.

4. Mr Mukururi for the claimant submitted on the main that it was not disputed that there was a pending loan to the applicant. However, according to him the respondent has failed to address the circumstances of the applicant's prayers including consequences listed in the prayers 3(a) to (d). According to counsel, the basis of the application is not on the loan agreement but rather on the respondent's conduct towards the applicant relating to the employment. According to Mr Mukururi, it was within the respondent's knowledge that the applicant's employment was his sole source of income and that the applicant channelled his basic salary towards repayment of the loan. It was equally within the respondent's knowledge that the applicant's employment was brought to an end by the respondent's unwarranted ill treatment towards the applicant and constant frustration which made working conditions unbearable.

5. Mr Kairaria for the respondents on the other hand submitted that the applicant in the course of his employment with 1<sup>st</sup> respondent took out a loan. The loan was ostensibly to purchase land and not to finance the applicant's further education. The loan according to counsel was advanced to the applicant strictly in accordance with terms and conditions specified in the loan application form and loan repayment agreement and guarantee form.

6. Mr Kairaria therefore submitted that the parties were bound by clear terms of the contract. In this regard, the court should aim at upholding

the terms of the contract as long as it is an enforceable contract. The court cannot be invited to redraw and include new terms to a contract between two consenting parties.

7. The 1<sup>st</sup> respondent in its replying affidavit filed through Michael Wang'ang'a at paragraph 4 thereof deponed that the claimant has since cleared loan arrears and not a defaulter anymore. The claimant was therefore no longer at the risk of being listed with Credit Reference Bureau and that the meeting of 18<sup>th</sup> March, 2017 where he feared his name could be tabled as a defaulter has since passed. The applicant also in his submissions stated that on 6<sup>th</sup> April, 2017 the 2<sup>nd</sup> respondent paid 1<sup>st</sup> respondent Kshs 31,000/= on account of the applicant's repayment.

8. When the matter came before me on 27<sup>th</sup> April, 2017 I advised the parties to attempt amicable settlement of the dispute which seemed to me then resolvable without courts' intervention. The orders sought by the applicant in the amended motion dated 23<sup>rd</sup> March, 2017 have in essence been conceded to by the 2<sup>nd</sup> respondent in paragraph 4 of Mr Wang'ang'a's replying affidavit. The application as it were has been overtaken by events and there would be no need for the court to make any orders thereon in light of concessions in Mr Wang'ang'a's affidavit. The court can only make orders on a new application raising new concerns or fears.

9. The complaints by the applicant including the circumstances and reasons for which he left employment are matters for the main trial.

10. In conclusion, the court declares the application herein is spent and makes no orders thereon.

11. It is ordered.

**Dated at Nairobi this 6<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 6<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant

.....for the Respondent