



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 424 OF 2017

(Before Hon. Justice Mathews N. Nduma)

FREDRICK O. KOMBIJACLAIMANT

VERSUS

NATIONAL BANK OF KENYA LIMITED.....RESPONDENT

RULING

1. The Claimant/Applicant filed suit alleging unlawful termination of employment by the Claimant and seeks compensation and payment of terminal benefits set out in the Memorandum of Claim. The Claimant also seeks an order restraining the Respondent from increasing the Claimants bank loan interest rate from 4% to 14%.

2. In a Notice of Notice Application filed on 5th December, 2017 the Claimant/Applicant sought interim orders to stop the Respondent from increasing the bank loan interest from the favourable, employee rate of 4% to commercial rate of 14% pending the hearing and determination of the suit. Interim orders pending the determination of this application are in place.

3. The application is opposed vide a replying affidavit of the Regional Branch Manager, Nyanza Region Mr. Stephen Oyigo who acknowledges that the Claimant/Applicant was given a staff loan for Kshs.4,300,000 and Kshs.135,000 being staff house loan and unsecured loan respectively while he was in the employment of the Respondent. The Claimant/Applicant enjoyed the staff interest rate of 4% and 7% throughout the duration of his employment.

4. That the employment of the Claimant/Applicant was terminated on 14th March, 2017. That the application to stop converting the loan terms to commercial rates is misconceived as this was a form of loan agreement and the application be dismissed with costs.

Determination

5. The issue in dispute in this application is not novel and has been decided by Employment & Labour Relation court time and again.

6. The crux of the matter is that the lawfulness or otherwise of the termination is in dispute. There is no allegation that the Claimant/Applicant is in default of payment of the loan. The Claimant/Applicant has a case with probability of success and his ability to repay the loan, especially having lost his job is in great jeopardy pending the hearing and determination of the suit.

7. It is just and convenient to accord the Claimant the favourable terms of his staff loans pending the hearing and determination of the suit. The Respondent will not suffer any loss provided the Claimant continues to repay the loan pending determination of the employment status of the Claimant/Applicant. The case of **Mrao v First American Bank Limited & 2 others [2003] eKLR** is on point here.

8. In particular, the case of **Boniface Lum Amunga Biko v National Bank of Kenya Limited [2017] eKLR** is on fours with this matter.

9. In a ruling delivered on 3rd March, 2017 Justice Mbaru stated-

“Before the court can determine the suit before it, the same relating to a case of termination of employment of the Claimant to allow the Respondent to apply high or higher interest rates on the loan facilitates advanced to the Claimant while in employment would be to strip him the dignity of man and subject him to adverse circumstances.”

10. With that the Judge granted injunctive orders to stop application of commercial rates, on the staff loan pending the hearing and determination of the suit. See also **Peter Musembi Muthama v National Bank of Kenya Limited [2018]eKLR** in which O. N. Makau granted similar conservatory orders.

11. This is ground breaking ELRC jurisprudence which has been applied across the board and is consistent with the right to accord persons equal protection of the law before a fair and impartial tribunal. The interim orders serve to preserve that right pending determination of the disputed issues before court.

12. The application has merit and is granted. The court makes the following orders –

(a) The Respondent is restrained from increasing the Claimant's bank loan interest rate from 4% and 7% to any higher rate on the staff house loan and unsecured loan respectively until the hearing and determination of the suit.

(b) Costs in the Cause.

Dated and Signed in Kisumu this 20th day of September, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Odeny for the Claimant/Applicant

Otieno Yogo & co. Advocates for Respondent

Chrispo – Court Clerk