



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1430 OF 2015

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 6TH APRIL, 2016)

MICHAEL MURIUKI NGARI.....1ST CLAIMANT/EMPLOYEE

JIM KENNEDY KIROO NJERU.....2ND CLAIMANT/EMPLOYEE

ERIC KAMAU KIHARA3RD CLAIMANT/EMPLOYEE

MILKA KARIMI4TH CLAIMANT/EMPLOYEE

ANDREW CHRIS KIRATHE KAMONDE5TH CLAIMANT/EMPLOYEE

SOSPETER KIMANI WANJOHI NYAMBURA ..6TH CLAIMANT/EMPLOYEE

REUBEN MUNENE NYAGA.....7TH CLAIMANT/EMPLOYEE

MICAH ONTIRI OMBONGI.....8TH CLAIMANT/EMPLOYEE

MEOLI LEMUTA MOLIBASH.....9TH CLAIMANT/EMPLOYEE

MICHAEL KIHAMBILU LUGWILI.....10TH CLAIMANT/EMPLOYEE

VERSUS

EQUITY BANK OF (KENYA) LIMITEDRESPONDENT

RULING

1. The Application before Court is the one dated 13.8.2015 filed under Certificate of Urgency where the Applicants contend that the Application is urgent because the Respondents have unlawfully and wrongfully terminated the employment of the 7th Claimant and summarily dismissed 1st - 6th and 8th to 10th Claimants from employment. That as a result of the Respondents actions, the Claimants existing staff loans which had been granted at friendly staff rates are being converted to commercial rates without any notice or reasonable opportunity for the Applicants to seek alternative means of payment before the conversion.
2. The Applicants aver that they risk being referred to the CRBs owing to their non-performing loans because their benefits have been blocked and they no longer have salaries to service the said loans

on a monthly basis.

3. They aver that they cannot access their savings at Equity Bank Sacco because the Respondent is tying their access to the said savings for clearance by the Respondent.
4. The Applicants seeks orders as follows:
 1. *That this application be certified as urgent and the same be heard ex-parte in the first instance during this Honourable Court's vacation for directions and interim orders,*
 2. *That pending the hearing and determination of this application this Honourable Court be pleased to issue an order restraining the Respondent, its employees, servants and or agents from listing the Applicants/Employees/Claimants before any credit reference bureaus on account of non-performing staff loans and other financial facilities that the Applicants/Employees/Claimants had been extended to by the Respondent on account of being employees of the Respondent.*
 3. *That pending the hearing and determination of this application this Honourable Court be pleased to issue an order restraining the Respondent, its employees, servants and or agents from interfering with the Applicants/Employees/Claimants' free, unhindered and voluntary operation of their individual savings and other accounts held at Equity Bank Sacco Limited.*
 4. *That pending the hearing and determination of this application this Honourable Court be pleased to order that all the Applicants'/Employees'/Claimants' terminal and other benefits currently held by the Respondent be released and deposited into a joint interest earning account in a mutually agreed bank of financial institution to be opened in the names of the Advocates on record for the parties.*
 5. *That this Honourable Court be pleased to issue any further orders it deems just and expedient for expeditious hearing and final determination of this claim.*
5. The Application is grounded on the following grounds:
 - a. *That the Respondent has wrongfully and unlawfully summarily dismissed from its employment the 1st – 6th, 8th – 10th Applicants/Employees/Claimants and Applicant/Employee/Claimant.*
 - b. *That the Respondent has unilaterally and without any lawful basis and without affording the Applicants/Employees/Claimants any opportunity to show cause made it a condition precedent that the Applicants/Employees/Claimants must sign a form giving the Respondent authority to appropriate the Applicants/Employees'/Claimants' benefits to settle existing staff loans and other financial facilities in order to be cleared by the Respondent's respective departments which financial facilities the Applicants/Employees/Claimants had been enjoying by virtue of their employment and the Applicants fear that their dues and other lawful dues will be unreasonably held by the Respondent.*
 - c. *That the Respondent has similarly made it a condition precedent that for the Applicants/Employees/Claimants to access their savings and other facilities held at Equity Bank Sacco they the Applicants/Employees/Claimants must first be cleared by the Respondent whereby their said savings will be appropriated by the Respondent towards outstanding staff loans and other financial facilities held by the Applicants/Employees/Claimants with the Respondent and which are totally unrelated to the Sacco and the Applicants/Employees/Claimants fear that given the Respondent's conduct in dismissing them such 'clearance' will neither be fair nor just but will be an opportunity to further humiliate and punish them.*
 - d. *That the Respondent is unilaterally and without giving the Applicants/Employees/Claimants any notice and/or opportunity to clear the same or make alternative repayment method, converting*

the Applicants/Employees/Claimants staff loans to market interest rates, instead of staff terms and rates just when the Applicants/Employees/claimants have lost their source of income as a result of the wrongful and illegal dismissals and termination.

- e. *That the Applicants/Employees/Claimants now risk being referred to credit reference bureaus by the Respondent as a result of their non-performing loans yet it is the Employer/Respondent who has brought about the entire scenario by its wrongful and illegal action and summary dismissal and termination and without having given the Applicants/Employees/claimants any or any reasonable period to settle their respective loans and other advances.*
 - f. *That the Employer/Respondent has breached cardinal principles of natural justice, has treated the Applicants in cruel and inhuman manner, has denied them their right to livelihood and dignity and reduced them to a life of servitude by its action which flies in the face of their constitutionally guaranteed rights to equal treatment, due process and dignity.*
6. The Application is also supported by the supporting affidavit of Michael Muriuki Ngari dated 13.8.2015.
 7. The Applicants aver that there is a fundamental violation of stipulated procedure in termination of the Applicants' employments as they were terminated/summarily dismissed. They contend that they were dismissed summarily following a process investigating a collusion involving employees and valuers intending to defraud the Respondent.
 8. That the investigations were largely unilateral in that they were instituted by Respondent, the evidence was gathered by the Respondent and later they purported to summon Applicants for a hearing process which the Applicants contend was flawed.
 9. The Applicants attended the hearings but they aver that their submissions were not given any credence by the Respondents who were intending on summarily dismissing the Applicants.
 10. The Applicants aver that they were not found by Banking Fraud Unit to have been involved in any fraud and that the Respondents subverted justice by writing that only employees of Respondents be their witness.
 11. The Applicants aver that no evidence was rendered to show they received commission from vendors and that allegations against them were fabricated to send them on summary dismissal/termination. They rely on **Mrao Limited vs. First American Bank of Kenya** and state they have established a prima facie case and that his case can be decided on a balance of convenience.
 12. They want their benefits held by the Respondent released and kept in a joint Account to secure their interests. They aver that they will suffer irreparable damage if the application is not allowed.
 13. The Respondents opposed this application. They rely on their reply on file dated 15/9/2015. They aver that there is nothing the Applicants seek to safeguard. The Respondents also contend that the statement of claim lodged in Court on 14/8/2015 paragraph 31 refers to prayers sought by Respondent.
 14. The Respondents further aver that the application is underpriced in any form on manner of the claim itself.
 15. Secondly, the Respondents aver that all primary prayers are for damages in one form or another and there is no suggestion that the Respondent which is a Bank will not in event of Claimants success meet the award of those amounts.

16. The Respondents aver that submissions made by Applicants that the events are irreversible and cannot be compensated has no foundation to the claim itself.
17. They also aver that the Claimants rights have not been violated and that proper disciplinary proceedings were taken for each and every Claimant.
18. The Respondents contend that in disciplinary proceedings, there is no provision for requiring attendance of an advocate but that an employee can have a representative in terms of Section 41 of the Employment Act and that on 29.6.2016 during the disciplinary hearing, the deponent was asked if he had a witness and he said no.
19. The Respondents aver that the Applicants committed acts of gross misconduct and were summarily dismissed according to the law.
20. On issue of CRB, the Respondents aver that they have a duty under the law to report any nonperforming loan or if there is any default. The Respondents aver that there is no possibility of the Claimants succeeding in their case.
21. The Applicants insist that the prayers sought are warranted as they are valid.
22. Having considered the evidence on record, I find that the issues raised by the Applicants are pertinent and they touch on the manner of their dismissal/interdiction whose rightful decision will be after hearing their claim in its entirety.
23. However on a balance of convenience, it would be pertinent for this Court to preserve the loan they are currently servicing because they stand to suffer immensely if they are converted to commercial rates at the moment.
24. If in any event the Court finds otherwise, then the Respondents will still be able to recover their dues as they are still holding onto the Applicants terminal dues. On operation of Applicants individual account the Respondents have submitted that the same can be operated if found to be holding funds.
25. This is in effect as admission that the prayer No. 3 can be allowed. That being the case I allow the application in terms of prayers 2 and 3 which orders will remain in force until the trial determination of this suit.

Read in open Court this 6th day of April, 2016

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Njoroge for Applicants – Present

Miss Mwika holding brief for Mr. Ohaga for Respondent – Present