



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 761 OF 2016**

**SAMUEL MUIRURI MUHIA.....CLAIMANT**

**VS**

**SIDIAN BANK (formerly known as**

**K-REP BANK LTD).....RESPONDENT**

**RULING**

1. The Claimant's application dated 26<sup>th</sup> April 2016 and filed in Court on 5<sup>th</sup> May 2016 seeks a temporary injunction restraining the Respondent from demanding loan repayment pending the hearing and determination of the suit.
2. The application is grounded on the Claimant's assertion that the termination of his employment was unlawful and unfair.
3. In its grounds of opposition filed on 18<sup>th</sup> May 2016, the Respondent states that:
  - a) The application is incompetent as it does not conform to Rule 16(3) of the Rules of this Court;
  - b) The Court has no jurisdiction to grant the interlocutory injunction sought in the application since the Claimant has not prayed for a permanent injunction in the main claim;
  - c) Grant of the orders of injunction sought would be untenable since the prayers of injunction lack the requisite substratum to survive. Granting the injunction would therefore be in vain;
  - d) The principles for grant of injunction have not been satisfied. The Claimant has not established a *prima facie* case with a probability of success neither has he demonstrated that he will suffer irreparable harm which cannot be compensated by way of damages and in any event, the totality of facts tilt the balance of convenience towards not granting the order of injunction sought.
4. The single issue for determination in this application is whether the Claimant has made out a case for grant of injunctive orders barring the Respondent from demanding loan repayment from him.
5. The Claimant is a former employee of the Respondent Bank who was granted loan facilities by the Bank. The facilities were secured by a charge over title number Ruiru/Ruiru West 3/1252.
6. At the time of leaving employment, the Claimant owed the Bank Kshs. 7,580,270.56 made up of principal amounts plus interest. The Respondent states that interest has been maintained at staff rate.

7. In the submissions filed on behalf of the Respondent, the jurisdiction of this Court to entertain the Claimant's application has been questioned on the basis that the loan agreement did not give rise to an employment relationship.

8. Jurisprudence emerging from this Court on this issue is to the effect that disputes arising from loan facilities granted by banks to their employees are employment matters falling within the judicial province of the Court (see ***Banking Insurance & Finance Union (Kenya) v Consolidated Bank of Kenya Limited (Cause No 900 of 2012)*** and ***Abraham Nyambane Asiago v Barclays Bank of Kenya Limited [2015] eKLR***).

9. I will therefore proceed to determine the Claimant's application on merit.

The conditions upon which an interlocutory injunctive order may be granted were established in ***Giella v Cassman Brown & Co Limited [1973] EA 358*** as follows:

- a) That the Applicant has a *prima facie* case with a probability of success;
- b) That if the order sought is not granted, the Applicant will suffer irreparable injury that cannot be adequately compensated by an award of damages;
- c) That the balance of convenience tilts in favour of the Applicant.

10. The Claimant's case is that because the Respondent unlawfully terminated his employment, then he is unable to service his loan facilities with the Respondent. The Claimant's claim on the termination is pending before the Court and it is difficult to foresee how the Court will rule.

11. The question then is what happens to the Claimant's loan obligations in the intervening period. In his application, the Claimant asks the Court to stop the Respondent from demanding any loan repayment from him.

12. Faced with a similar application in ***Alfred Muthomi Mutiria & 2 Others v National Bank of Kenya Limited [2015] eKLR*** this Court stated the following:

***“Commercial banks such as the Respondent operate in a regulated environment with strict parameters. While staff borrowers may enjoy preferential loan terms, this does not place them outside the prudential guidelines issued by the Central Bank of Kenya which is the regulator of commercial banks. More importantly a non performing loan portfolio impacts negatively not only on the lending bank but also on the banking industry and by extension, the economy of the country. It is certainly not in the public interest to have a non performing loan in any bank.”***

13. I have no reason to depart from this position. The only thing I will add is that a party seeking an injunctive order must show steps taken towards ameliorating the situation. The Court did not see any such effort on the part of the Claimant and in light of the foregoing I find the Claimant's application to be without merit and proceed to dismiss it. The interim orders granted on 14<sup>th</sup> June 2016 are hereby vacated.

14. The costs of this application will be in the cause.

15. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19<sup>TH</sup> DAY OF AUGUST 2016**

**LINNET NDOLO**

## **JUDGE**

### Appearance:

Mr. Kurauka the Claimant

Mr. Okuta for the Respondent