



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CIVIL SUIT NO. E 134 OF 2019**

**KENYA AIRLINE PILOTS ASSOCIATION (KALPA) .....PLAINTIFF**

**VERSUS**

**CO-OPERATIVE BANK OF KENYA LIMITED.....1ST DEFENDANT**

**KENYA AIRWAYS LIMITED.....2ND DEFENDANT**

**RULING**

1. By a plaint dated **13th May 2019**, the plaintiff prayed for various orders including: -

***“a) A declaration that the revised loan application form signed by the Plaintiff’s 100 members be rescinded/set aside for having been procured through undue influence, pressure and coercion of the beneficiaries by the Defendants;***

***b) An order that the loan balances due in respect of the Plaintiff’s 100 members be recomputed on the basis of the initial loan facility letter;***

***c) An order for re-imburement of all amounts paid contrary to terms of the initial loan facility letter”.***

2. The suit was defended by the defendants. When the parties appeared before me on 17/11/2020, they indicated that the plaintiff and the 2nd defendant had filed separate applications dated 18/11/2020 and 9/11/2020, respectively. The court gave directions that both applications be heard together after exchange of written submissions and reserved the ruling thereof for 20/01/2021.

3. **Ms. Kashindi**, Learned Counsel for the plaintiff applied that, pending the ruling, there be an order of status quo i.e that the 2nd defendant be restrained or do refrain in any way from making deductions of loans due from the salaries of the members of the plaintiff. This was straineously objected by **Mr Muchiri** and **Mr Obura**, Learned Counsels for the defendants, respectively.

4. The court therefore directed that Counsels do submit on the issue of status quo, which they did on 18/11/2020. Instead of limiting themselves to whether the status quo should be maintained or not, Counsels largely dwelt on the merits and demerits of the aforesaid applications. To my mind, this was unnecessary as that would be invading the purview of the ruling reserved for 20/01/2021.

5. **Blacks Law Dictionary, Butter Worths 9th Edn**, defines Status Quo as a Latin word which means **“the situation as it exists”**.

6. In **Msa Misc Appln. (JR) No. 26 of 2010 The Chairman Business Premises Tribunal at Mombasa Exparte Baobab Beach Resort (Mbsa) Ltd (UR)**, it was held: -

***“In my view, an order for status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof.***

***It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint. In its negative form, however, an injunction may have the same effect as an order for status quo”.***

7. In the case of Esso (K) Ltd Vs Makwata Okiya Civil Appeal No. 69 of 1991, the Court held: -

**“Injunction is not to be granted if the event meant to be restrained has taken place. The purpose of injunction is to maintain Status Quo”**

8. In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. See **TSS Spinning & Weaving; Company Ltd v Nic Bank Limited & another [2020] eKLR**. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.

10. By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the *status quo ante* cannot be restored thereby rendering nugatory its proposed decision.

11. **Mr Muchiri** and **Mr Obura**, Learned Counsels for the defendants, respectively submitted at length on the inappropriateness of the present proceedings (lack of jurisdiction). However, none of them told the court the prejudice that any of the defendants is to suffer if an order for *status quo* is or is not made. In my view, all that the court should strive to ensure is that, none of the parties is to be irreparably prejudiced if the state of affairs is not maintained and it turns out that the decision to be arrived at is in his/her favour.

12. In the present proceedings, it is alleged that the members of the plaintiff would face a grave situation after the 22/11/2020 if an order of status quo is not made. This is so because, it is alleged that whilst there has been a moratorium in place whereby loans due from them to the 1st defendant and guaranteed by the 2nd defendant, that arrangement is due to expire on 22/11/2020.

13. That on expiry, the 2nd defendant has indicated that it will proceed to deduct the loan amounts from their salaries and remit the same to the 1st defendant. According to them, this might wipe out whatever the majority of them are currently earning as salaries from the 2nd defendant.

14. It has been alleged that the foregoing state of affairs has been caused by the Covid-19 pandemic. That the pandemic had led to the plaintiff's members having to take massive cuts in their salaries. It is alleged that some are earning as little as 19% of the salaries they were previously earning. According to them, the proposed deduction will drive them to destitution.

15. The view this court takes is that, in the event the aforesaid deductions are implemented as proposed by the defendants and the plaintiffs members are driven into destitution, if the decision on the two pending applications were to be in their favour, they will have suffered irreparable damage.

16. On the other hand however, if the status quo is maintained and the ruling of 20/01/2021 is in favour of the defendants, the defendants would still recover the loans from the plaintiff's members without having suffered any irreparable loss and damage.

17. I propose to make no determination on the many issues raised by the Learned Counsels as they form the basis of the ruling of 20/01/2021.

18. **Mr Obura**, Learned Counsel for the 2nd defendant submitted that since his client contend that this court has no jurisdiction to entertain the suit, it cannot make an order for status quo. With due respect, the submission is misplaced. This is so because, before a court makes a determination whether or not it has jurisdiction in a matter, it has jurisdiction to entertain proceedings that lead to the determination of whether or not it has jurisdiction. This is the interpretation the Court gives to the decision in **The Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited [1989] KLR 1.**

17. As regards the submission that the court is *functus officio* having made directions on the subject application, that argument does not hold since the court had not yet ruled on the issue of whether to maintain the *status quo* or not.

18. Accordingly, this court directs that the status quo obtaining as of today, be maintained until 20/01/2021, when the court shall deliver its ruling. For the avoidance of any doubt, *status quo* means that the 2nd defendant is not to make any deductions from the salaries of plaintiff's members in respect of the impugned loans until the 20/01/2021.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>th</sup> day of NOVEMBER, 2020.**

**A. MABEYA, FCI Arb**

**JUDGE**

Before Justice A. Mabeya

C/A Sophie

For the Applicant

For the Respondent:

**ORDER**

This decision is hereby virtually delivered this 19<sup>th</sup> day of November, 2020.

A. MABEYA, FCI Arb

**JUDGE**