



**ALS Limited v Imperial Bank Ltd (Under Receivership) & 2 others (Civil Suit E825 of 2021)
[2022] KEHC 14176 (KLR) (Commercial and Tax) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E825 OF 2021
A MABEYA, J
OCTOBER 21, 2022**

BETWEEN

ALS LIMITED PLAINTIFF

AND

IMPERIAL BANK LTD (UNDER RECEIVERSHIP) 1ST DEFENDANT

**PATRICK NJOROGE GOVERNOR, CENTRAL BANK OF
KENYA 2ND DEFENDANT**

KENYA DEPOSIT INSURANCE CORPORATION 3RD DEFENDANT

RULING

1. This is a ruling on the 2nd defendant's application dated November 9, 2021. It was brought under article 159 of the *Constitution*, section 3A, 6 of the *Civil Procedure Act*, and order 51 rule 1 of the *Civil Procedure Rules*.
2. The application sought orders to stay further proceedings in this matter pending the hearing and determination of HCCC Com E102 of 2021 ALS Ltd v Kenya Deposit Insurance Corporation and Imperial Bank Limited (In Receivership).
3. The grounds thereof were on the face of it and on the supporting affidavit sworn by Kennedy Kaunda Abuga on November 9, 2021. The grounds were that; save for the 2nd and 3rd defendants, the parties in this suit are similar to those in HCCC Com E102 of 2021 ALS Ltd v Kenya Deposit Insurance Corporation and Imperial Bank Limited (In Receivership) ("the said Suit"). That the remedies sought by the plaintiff in this sui involved the same subject matter in the said suit in terms of bank accounts and deposits being Kshs account No xxxx, USD account No xxxx and Euro account No xxxx.



4. It was further contended that the cause of action in the present suit is the same as in the said suit. That the parties, issues raised and remedies sought against the defendants were all the same in the present suit as in the said suit. That the plaintiff was aware of this situation as pleaded in paragraph 33 of their plaint. That the continuance of this suit was an abuse of judicial process as two similar suits would have been running concurrently. That in the premises, it was in the interest of justice that this suit be stayed.
5. The plaintiff opposed the application vide the replying affidavit sworn by Mohamed Aslam Khan on November 22, 2021. It was averred that the parties in the suit were not similar, the prayers sought were not similar and that the applicants were attempting to avoid subjecting their illegal actions to the law. That the application did not meet the ingredients for sub-judice as there were claims in this suit relating to the 1st defendant's receivership which were absent in the said suit.
6. The plaintiff filed its submissions dated November 8, 2021 whereas the applicant's were dated December 20, 2021. The court has considered those submissions together with the pleadings and evidence before it.
7. This application was brought under section 6 of the Civil Procedure Act which provides for the doctrine of *sub-judice*. The doctrine of *sub-judice* prohibits a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same in a previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it.
8. The provisions of section 6 of Civil Procedure Act defines this principles as follows;

“..... No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim litigating under the same title, where such suit or proceeding is pending in the same court or any other court having jurisdiction in Kenya to grant the relief claimed.”
9. This court has seen the plaint in HCCC Com E102 of 2021 ALS Ltd v Kenya Deposit Insurance Corporation and Imperial Bank Limited (In Receivership). The same is dated February 19, 2021. The Court has also seen the plaint in the instant suit and is dated September 2, 2021. The observations of this court are that, save for the 2nd and 3rd defendant, the plaintiff, the 1st and 4th defendant are parties in the said suit.
10. This court has also considered the nature of the claim in both matters. In the said suit, the plaintiff claim is against the 1st and 4th defendants herein. It is alleged that the plaintiff maintained three accounts with the 1st defendant which are; Kshs account No xxxx, USD account No xxxx and Euro account No xxxx.
11. That on the plaintiff's instructions, the 1st defendant transferred monies to fixed interest earning accounts. However, shortly thereafter, the 1st defendant was placed under receivership. That when the plaintiff became entitled to payment, the 1st defendant failed to make the payments to the plaintiff. The plaintiff's prayers in HCC COM E102 OF 2021 is therefore against the 1st and 4th defendant herein. The plaintiff sought payment of the authorized amounts with respect to the USD account and Euro Account.
12. In the present suit, the plaintiff challenges inter alia the legality of the placement under receivership of the 1st defendant by the 4th defendant. The plaintiff also challenges the continuance of the receivership on grounds that the period is in excess of the statutory provisions and also raises claims that several statutory provisions have been contravened in the course of the receivership.



13. The plaintiff thus seeks prayers against the defendants including that the 1st-4th defendants be ordered to render a detailed account of the 1st defendant and documentation supporting or justifying the decision to place the 1st defendant under receivership; injunctive orders restraining any dealings with the funds held by the 1st defendant, to deposit in court or a joint account the monies claimed by the plaintiff, declaration that the receivership was illegal, and a declaration that the receivership lapsed on April 13, 2018.
14. From the above, it is clear that all that the plaintiff has done in the present suit is to add two parties and make additional allegations and seek substantive reliefs. All this could be done in the previous suit through amendment. During the trial of both suits, there would be similar issues that will arise for determination.
15. In the premises, the application meets the requirements of *sub-judice*. Accordingly, the application is allowed as prayed.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

A MABEYA, FCI Arb

JUDGE

