



REPUBLIC OF KENYA



**Narok Star Shuttle Sacco Services Ltd v County Government of Narok (Constitutional Petition E001 of 2023) [2023] KEHC 2066 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2066 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CONSTITUTIONAL PETITION E001 OF 2023**

**F GIKONYO, J**

**MARCH 16, 2023**

**BETWEEN**

**NAROK STAR SHUTTLE SACCO SERVICES LTD ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF NAROK ..... RESPONDENT**

**RULING**

1. On 13/3/2023, Mr. Tuya stated that he had filed two applications under a certificate of urgency. He argued that if prayer 3 is not allowed, they will be condemned unheard. They need to respond to their application. He argued that orders of the status quo are also opposed as their application does not seek orders for interim orders. So, they are not entitled to interim orders.
2. He further stated that the matter is of public interest. At the time of order, the Petitioners were at the bus terminus. They attempted to go back to the Shell after the order. They started ticketing from the bus terminus and shell which prompted protests from the other matatu owners. They, however, were back to the terminus and are operating from there.
3. Mr. Tuya added that the petitioner is guilty of material non-disclosure. He urged the court to see the pictures of the petitioner's chair attending meetings. Further, the petitioner is a stranger as the certificate of incorporation belongs to another person. He urged this court to look at the respondent's replying affidavit. The registered company is Narok Star Shuttle Sacco Society Limited.
4. He argued further that: Matatu business is characterized by stiff competition which may result in chaos and disorder. It is necessary for the petitioner to operate from the bus park. They consented to the move. They did not disclose all the factors.
5. In response, Mr. Kambo addresses the issue of the name of the petitioner. He argued that they were not served with the respondent's application. He requested to be given time. He argued that they came to court with clean hands. That they are not refusing to move to the terminus. That their lease expires



sometime next year. Therefore, they need time. That the respondent should have given them sufficient notice.

6. That the status quo is that their office was open and receiving documents and clients. That petitioner's Nairobi route cannot be housed at the bus terminus. They are merely bullying them to go to the bus terminus. The court can visit the terminus and its squeezed. It is too small.
7. In a rejoinder, Mr. Tuya stated that he had filed an affidavit of service. He confirms he served the petitioners. He urged the court to look at the petitioner the stamped process papers. Also, the court is to look at the affidavit of service filed in respect of the application herein. The respondent's application is unopposed. The petitioner has not filed any replying affidavits. He urged the court to grant their prayers. He argued that the respondent issued a public notice (annexture 1) of the development of the bus park. They are also minutes. A feasibility study was done. He urged the court to look at the report. It gives a scientific design of the bus park. Annexture no. 21 is a report for allocation. Petitioner was given 3 first spacious prime spaces for Nairobi's matatu, and Nakuru route, and three waiting areas for their matatus. They consented to the same. They applied for a booking office (annexture 23). They also applied for a Nairobi booking office after surveying the area themselves. They knew what they wanted (annexture 25 and 26) for a lease of the Nairobi booking office. They signed the lease (annexture 27) for allocation of the spaces applied for. They then took out and occupied them (annexture 27 of their vehicle).
8. Kambo responded that he confirms they were served with the application without direction on the filing of responses or hearing thereof.

#### **Directions of the court**

9. This court noted that this matter is hotly contested and Mr. Kambo confirmed that he was served with the application by the respondent. Further, the issue of material non-disclosure was raised by the respondent. Therefore, this court will rule on the interim orders.

#### **Analysis and determination**

10. This court upon consideration of the application dated 17/2/2023 ordered inter alia on 20/2/2023 that the status quo as at the time of this order be maintained pending inter partes hearing of the application. The said orders have been in force to date.
11. I have considered the oral submissions by both counsels in this matter. The central issue for determination then is whether the status quo orders should be vacated.
12. First, the Black's Law Dictionary, Butter Worths 9<sup>th</sup> Edition, defines Status Quo as a Latin word that means "the situation as it exists".
13. And the essence of staus quo order was explained in *TSS Spinning & Weaving; Company Ltd vs Nic Bank Limited & another* [2020] eKLR, as follows:

“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. 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.”



14. In *Kenya Airline Pilots Association (KALPA) vs Co-operative Bank of Kenya Limited & another* [2020] eKLR, the purpose of a status quo order was explained as follows:
- “..... 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.”
15. Apart from preserving the substratum of the subject matter, courts have found an order of status quo to be an apt case management strategy, to prevent prejudice between the parties to a matter pending the hearing and determination of the main suit. See *Texaco Ltd vs Mulberry Ltd* [1972] 1 WLR 814, and *Mugab vs Kunga* [1988] KLR 748,
16. The respondent has argued that the status quo is not as at the time of the issuance of the orders was that the petitioners had already moved into the bus terminus and were operating from therein. They blamed the petitioner for material non-disclosure and attempting to use the status quo order to go back to shell petrol station.
17. The petitioner on the other hand states that the status quo is that they are operating from their office in shell issuing receipts and receiving documents and clients for the Nairobi route. They said that they are also operating in the bus terminus.
18. In essence, the petitioner admits to be operating partly from the bus park and partly from the shell petrol station. But, this position was vehemently opposed by the respondent. Whereas the respondents have adduced evidence- documentary- to show the petitioners were operating from the bus terminus at the time of the order of status quo, the petitioners engaged in mere statements from the bar of their side of the story.
19. It is not clear the status quo at the time of the order was as stated by the petitioners. A status quo should be defined clearly. It is not possible here. Therefore, the order is untenable.

#### **Of Non-disclosure of material facts**

20. Non-disclosure of material facts especially where proceedings are ex parte unravels any order issued on thereto. It amounts to coming to court with unclean hands; and equity will always fold its hands and deny you remedy.
21. See the case of *Tate Access Floor vs Boswell* (1990) 3 All ER 303, on full disclosure at page 316 thus: -
- “No rule is better established and far more important than the rule (the golden rule) that a Plaintiff applying for ex parte relief must disclose to the court all matters relevant to the exercise of the court’s discretion whether or not to grant relief before giving the defendant an opportunity to be heard. If that duty is not observed by the Plaintiff, the court will discharge the ex parte order and may mark its displeasure, refuse the Plaintiff further inter-partes relief even though the circumstances would otherwise justify the grant of such relief.”
22. It was further held in the case of *Republic v Kenya Medical Training College & another Ex-Parte Kenya Universities and Colleges Central Placement Service* [2015] 1 eKLR (Onguto J.) at paragraph 21 that:
- “Before summarizing the relevant legal principles and safeguards relevant to the instant issues, I must state and emphasize the high duty of candour fixed upon any applicant to court, appearing ex parte. A party appearing before the court without notice to the other (ex parte)



must exhibit a high quality and degree of sincerity and honesty. He must be guileless. He must be frank. He must be open. He must keep nothing that touches on the matter away from the court. He must act in utmost good faith. If he does not so act, he does so at his own risk."

23. This emphasizes the need for parties to come to court with honesty and integrity.
24. I have considered annexures 21,23,25,26 and 27 referred to by the respondent. The storyline of the respondent is more believable than that of the petitioner as to what the status was at the time the order was issued. I come to the conclusion that material facts were not disclosed to this court.
25. I find the Petitioner to be complicit and guilty of non-disclosure of material facts.

**Conclusion and orders**

26. In the upshot, the order of status quo granted on 20<sup>th</sup> February 2023 was procured on the basis of non-disclosure of material facts. It is untenable and is hereby set aside.
27. This matter should therefore be heard on a priority basis due to its nature.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 16<sup>TH</sup> DAY OF MARCH, 2023.**

.....

**F. GIKONYO M.**  
**JUDGE**

