



Soy Developers Limited & 9 others & 2 others v Jirongo (Miscellaneous Application E302 of 2022) [2023] KEHC 1420 (KLR) (Commercial and Tax) (6 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

MISCELLANEOUS APPLICATION E302 OF 2022

JWW MONG'ARE, J

MARCH 6, 2023

BETWEEN

SOY DEVELOPERS LIMITED & 9 OTHERS 1ST APPLICANT

SAMMY BOIT ARAP KOGO 2ND APPLICANT

ANTOINETTE BOIT 3RD APPLICANT

AND

CYRUS SHAKHALAGA JIRONGO RESPONDENT

RULING

1. Before the court is the notice of motion dated February 23, 2023 brought *inter alia* under order 21 rule 12 and order 52 rule 7 of the [Civil Procedure Rules](#) 2010. The applicants jointly sought to stay the proclamation, attachment or execution against their assets by way of warrants of attachment or otherwise and an order to reinstate and/or issue *status quo* orders pending determination of this application and the application dated April 20, 2022.
2. The application is borne out a decision of the Supreme Court in Petition No 38 of 2019 was concluded on July 16, 2021 in which the applicants herein were jointly and severally condemned to pay costs to the respondent.
3. Pursuant to the dictates of section 26 of the [Supreme Court Act](#), 2011 a bill costs was filed and the same was taxed at Kshs 1,791,702.40. It is against this background that the applicants moved to this court by way of notice of motion dated April 20, 2022 seeking among others an order staying the enforcement of certificate of taxation dated April 11, 2022 and also making proposals to pay the taxed costs by way of instalments.



4. On April 26, 2022 this court ordered that the application be canvassed by way of written submissions which were to be filed and exchanged by or before the June 13, 2022. At the same time, the court also directed that *status quo* be maintained.
5. the said application is still pending before this court and is yet to be dispensed off. Subsequently, the respondents have made attempts to proceed with the enforcement of the taxation orders and it is this action that has necessitated the filing of the notice of motion dated February 23, 2023, seeking among other orders, a reinstatement of the order of status quo pending the hearing and determination of this application.
6. The matter having been certified urgent was canvassed by way of oral submissions on the February 28, 2023. It is the applicants submission that the order of status quo by the honourable court on April 26, 2022 is still in force since it had no timelines set by the court and therefore the purported enforcement activities of the respondent of the taxation orders is an illegality and a violation of the said court order.
7. On their part, the respondents argue that there is nothing stopping the enforcement of the taxation order as the order *status quo* lapsed on the next court appearance by the parties as the same was not on the said date expressly extended by the court.
8. Blacks Law Dictionary, Butter Worths 9th Edn, defines *status quo* as a Latin word which means “the situation as it exists”. In addition to this, the courts have in the matter of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR on issue of status quo held 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.”
9. While I agree that the court on April 26, 2022 did not expressly set a timeline as to how long the order on *status quo* was to be maintained, it is clear in mind that this was not to ad infinitum. The court in its orders directed the parties to canvass their applications by way of written submissions and gave a definite mention date on June 13, 2022 by when the same was to have been achieved.
10. A perusal of the court file reveals that up to date, almost 12 months since the order was issued, the applicant is yet to file submissions to their application of April 20, 2022 pursuant to the said court order. Instead, the applicants have elected to file yet another notice of motion to obtain orders similar to those sought in the first yet to be canvassed notice of motion.
11. The application of February 23, 2023 is without merit and is hereby dismissed with costs to the respondent. As ordered by the court on April 26, 2022, the application shall be canvassed by way of written submissions which are to be filed before the next mention date. Noting the same has not been complied with, the court directs that parties do file their written submissions within the next seven days from the date of this order.
12. The court order that *status quo* be maintained issued on April 26, 2022 is hereby vacated and set aside. This court will hear the application dated April 20, 2022 on March 13, 2023. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF MARCH 2023

J. W. W. MONGARE



JUDGE

In the presence of: -

Ms Wanjihia holding brief for Dr. Kiplagat for the respondent.

Mr. Kimeto holding brief for Mr. Munyua for the applicant.

Court Assistant: - Sylvia

