



Kenya Airline Pilots Association v Co-operative Bank Kenya Limited & another (Cause 78 of 2021) [2022] KEELRC 1761 (KLR) (1 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1761 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 78 OF 2021**

**J RIKA, J
JULY 1, 2022**

BETWEEN

KENYA AIRLINE PILOTS ASSOCIATION CLAIMANT

AND

CO-OPERATIVE BANK KENYA LIMITED 1ST RESPONDENT

KENYA AIRWAYS LIMITED 2ND RESPONDENT

RULING

1. On March 19, 2021, the court made a ruling on an application filed by the claimant, dated November 9, 2020.
2. The orders issued were: -
 - a. The orders of status quo made at the High Court on November 19, 2020, and affirmed on January 20, 2021, are extended for a period of 45 working days, from the date of this ruling.
 - b. Within that period, the parties shall engage at their own level and settle the application dated November 9, 2020.
 - c. If there is no settlement, the application stands dismissed and the orders of status quo discharged.
 - d. Within the same period, parties to explore settlement of the full claim.
 - e. Costs in the cause.
3. Parties do not appear to have settled the application, or the claim as proposed by the court.
4. The claimant filed an application about a month after the ruling, dated April 26, 2021, asking the court to review its ruling of March 19, 2021, ostensibly on the ground that the application of November



- 9, 2020, contained a prayer for leave to amend the claim, which was not considered in the ruling of March 19, 2021.
5. The 2nd respondent does not oppose the application.
 6. The 1st respondent opposes the application through the Replying Affidavit of its director, corporate and institutional banking, Jacquelyne Waithaka sworn on November 2, 2021. Contestants on review, agreed to have the application determined on the strength of their affidavits and submissions.
 7. The 1st respondent's main submission is that the orders of the court of March 19, 2021, applied to the claimant's application of November 9, 2020, in its entirety. Parties were directed to negotiate on all prayers in that application, which would include the prayer for leave to amend the Plaint. Because they did not come up with voluntary settlement within the prescribed 45 days, the application stood dismissed in its entirety, including the prayer for leave to amend.

The court finds: -

8. It is true that the court did not take into account the prayer for amendment of the claimant's pleadings. The court was carried away by the other prayers, which had attractive submissions, and which touched on the substance of the dispute.
9. It is noted that the dispute originated from the High Court. Given that the dispute was initially filed at the High Court, under a different procedural regime, it would be necessary for the claimant to amend its pleadings, to among other things, bring them in line with the [E&LRC \[Procedure\] Rules, 2016](#).
10. Rule 14 [6] of the [E&LRC \[Procedure\] Rules, 2016](#) allows parties to amend their pleadings before service or before the close of pleadings. After the close of pleadings, parties may only amend pleadings with the leave of the court on oral or formal application. The other party has corresponding right to amend its pleadings.
11. There is no good reason therefore, to deny the claimant leave to amend its pleadings. The orders of March 19, 2021, must be understood to have been focused on the other prayers, not the prayer for amendment of pleadings. Amendment of pleadings is a matter that need not have been referred to the parties for voluntary settlement.
12. It is noted that the 1st respondent filed an Amended Statement of Defence dated September, 10 2019. The 1st respondent should not stand in the way of the claimant amending its own.

It is ordered: -

- a. The application for review dated April 26, 2021 is allowed.
- b. Orders made by this court on March 19, 2021 are varied, to exclude the application of order [c] of the ruling, to the claimant's prayer for leave to amend its pleadings.
- c. The claimant is granted leave of 15 days from the date of this ruling to file and serve amended pleadings in conformity with the E&LRC [Procedure] Rules, 2016.
- d. The respondents have corresponding leave of 15 days from the date of service, to file and serve amended pleadings.
- e. Mention on September 29, 2022.
- f. Costs in the cause.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT CHAKA,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS ST
DAY OF JULY 2022.

JAMES RIKA

JUDGE

