



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO.E763 OF 2021

BANKING, INSURANCE AND FINANCE UNION (KENYA) ... CLAIMANT

VERSUS

ACCESS BANK (KENYA) PLC.....RESPONDENT

RULING

The claimant trade union filed application dated 27th October, 2021 and seeking for orders that the respondent bank be compelled to pay the 7 grievants and employees subject of the cause herein their salary and allowances for the month of October, 2021 in line with the court Orders on 28th October, 2021.

The application is supported by the Supporting Affidavit of Tom O’Odero and on the grounds that on 15th September, 2021 the claimant moved the court seeking to restrain the respondent from terminating the employment of the 7 grievants and interim orders were issued pending hearing and ruling which application was heard on 28th September, 2021 and ruling scheduled for 4th November, 2021. The court directed parties to maintain the *status quo* pending the ruling.

On 2nd October, 2021 when all the other employees of the respondent were paid their salaries, the 7 grievants were left out and have not been paid since.

There is violation of the interim orders directing the respondent to retain the grievants in employment until determination of the pending application.

In reply, the respondent filed Grounds of Opposition and that the application by the claimant is premature as the grievants’ employment has not been terminated and re in employment performing their duties. The grievants are on term contracts terminable by notice or lapse on their own terms. The respondent is under no obligation to renew any employment contract which has lapsed.

Both parties attended court 15th November, 2021 and made oral submissions and there are draft written submission.

On 15th September, 2021 the claimant filed application dated equal date which was addressed by the court and on 17th September, 2021 the court directed that;

1. *Application is hereby certified urgent;*
2. *Serve the respondent with application;*
3. *Attend court on 28th September, 2021 for hearing directions.*

On 28th September, 2021 both parties attended and made brief submission on the urgency of the application and the court directed and issued the following orders;

In the circumstances, the respondent shall serve the claimant by close of business today.

The claimant shall reply through a Supplementary Affidavit;

Parties shall maintain the status quo as of today pending service and hearing of the claimant’s application on priority basis on 7th October, 2021.

On the due date, 7th October, 2021 the court heard the parties and directed hearing of the application on 18th October, 2021 and those parties shall status quo.

The court heard the parties on 7th October, 2021 and reserved ruling for the 4th of November, 2021 and directed that *for completeness parties shall maintain the status quo.*

When the claimant approached the court, the grievants were in the employment of the respondent. Such employment was preserved to allow the parties to attend court and for the hearing of the pending application on the merits. For such reasons, parties were at all attendances directed to *maintain the status quo.*

In the case of **Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR** the court held that a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. That;

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.

And in the case of **The Chairman Business Premises Tribunal at Mombasa Exparte Baobab Beach Resort (Mombasa) Ltd (UR) JR No.26 of 2010** the court held that;

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

Therefore, for good reasons, the court on 17th September, 2021 preserved the substratum of the suit to allow the parties to exchange pleadings and for the hearing of the application by the claimant already certified urgent. Indeed the scheduled ruling has since been delivered.

On the orders sought herein, the respondent admission that the employment of the grievants was not terminated, the orders to maintain status quo in force, the grievants are entitled to their salaries/wages for October, 2021 similar to the salaries/wages paid to other employees. To separate the grievants for any other reasons save as directed by the court is an act of contempt and contrary to section 46 of the Employment Act, 2007.

Further, the respondent is guided under section 18(2) and (3) of the Employment Act, 2007 that;

(2) Subject to subsection (1), wages or salaries shall be deemed to be due—

(a) in the case of a casual employee, at the end of the day;

(b) in the case of an employee employed for a period of more than a day but not exceeding one month, at the end of that period;

(c) in the case of an employee employed for a period exceeding one month, at the end of each month or part thereof;

(d) in the case of an employee employed for an indefinite period or on a journey, at the expiration of each month or of such period, whichever date is the earlier, and on the completion of the journey, respectively.

(3) The provisions of this section shall not affect an order, judgment or award of the Industrial Court or an agreement between an employee and his employer the relevant terms of which are more favorable to the employee than the provisions of this section.

With subsisting orders herein from 15th September, 2021 and pending ruling that was scheduled for 4th November, 2021 the respondent was directed to ensure the payment of the grievants whose employment had been preserved. To interpret such orders and directions otherwise is in contempt of court.

The application seeking to compel the respondent to pay the salaries/wages due to the grievants for October, 2021 is found to be with good foundation and is responsible and is hence allowed.

Accordingly, the respondent shall pay the grievants salary and allowances for the month of October, 2021 and all/any other dues outstanding and unpaid forthwith; such dues unpaid to date shall be paid with interests at court rates from the date due and until paid in full. The claimant is awarded costs of the application.

DELIVERED AT NAIROBI IN OPEN COURT THIS 18TH DAY OF NOVEMBER, 2021.

M. MBARU

JUDGE