



**Rift Valley Railways Workers Union (K) v N.O.Sumba and Co. Advocates;  
Law Society of Kenya & another (Interested Parties) (Civil Case E576 of 2021)  
[2024] KEHC 10256 (KLR) (Commercial and Tax) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10256 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E576 OF 2021  
PM MULWA, J  
AUGUST 15, 2024**

**BETWEEN**

**RIFT VALLEY RAILWAYS WORKERS UNION (K) ..... PLAINTIFF**

**AND**

**N.O.SUMBA AND CO. ADVOCATES ..... DEFENDANT**

**AND**

**THE LAW SOCIETY OF KENYA ..... INTERESTED PARTY**

**NEXTGEN AUCTIONEERS ..... INTERESTED PARTY**

**RULING**

1. There are two applications for determination before the court. The first one is dated 27<sup>th</sup> May 2021 and was filed by the plaintiff and the second one is dated 8<sup>th</sup> June 2021 and was filed by the defendant.
2. In the first application, the plaintiff sought an order to direct the interested party to release its laptop. The grounds were that the plaintiff's laptop was taken away contrary to the proclamation which required the auctioneer to have given the plaintiff seven days from the date of proclamation.
3. The defendant opposed the application through a replying affidavit sworn on 6<sup>th</sup> July 2021 by Nicholas Odera Sumba and a preliminary objection of even date.



4. The court will consider the preliminary objection (PO) first as it raises points of law. In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) E.A 696 it was held:

“...a ‘preliminary objection’ consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which, argued as a preliminary point may dispose of the suit.”
5. In the PO, the defendant asserted that the instant suit ought to be struck out with costs on the grounds that the first prayer sought in the suit is the same as the fifth prayer sought in the plaintiff’s application dated 24<sup>th</sup> December 2020 in ELRC Cause No. of 2015 which was heard and dismissed with costs by Lady Justice Monica Mbaru in her ruling delivered on 4<sup>th</sup> March 2021.
6. Further that the first prayer sought in this suit was the subject of a complaint letter dated 11<sup>th</sup> August 2020 lodged by the claimants in the said ELRC Cause No.1705 of 2015 to the Law Society of Kenya (LSK) which complaint was dismissed by LSK vide its letter dated 2<sup>nd</sup> October 2020.
7. The defendant pointed out that the suit does not disclose any reasonable cause of action as there is no evidence to suggest that the defendant is in receipt of any decretal sum paid to the claimants in Nairobi ELRC Cause No.1705 of 2015 which needs to be remitted to them; that this court lacks the jurisdiction to entertain any complaints against advocates at the first instance and that the plaintiff has no locus standi as there is no advocate/client relationship between itself and the defendant.
8. The plaintiff instituted this suit vide a memorandum of claim dated 11<sup>th</sup> May 2021, an oddity in civil commercial suits which are ordinarily instituted vide a plaint.
9. In the statement of claim, the plaintiff asserted that the defendant was paid money in a matter that he conducted on behalf of certain grievants. However, it refused to release the said monies to them in satisfaction of the court award in ELRC Cause No.1705 of 2015. The plaintiff therefore prayed for an order to have the defendant release to the said grievants through the plaintiff the amounts totalling Kshs.3,735,633/- plus interest, the same having been released to it in satisfaction of a court award issued on 13<sup>th</sup> June 2018.
10. The plaintiff had earlier filed an application dated 24<sup>th</sup> December 2020 in ELRC Cause No. 1705 of 2015 whereby he sought the following prayer:

“The said 2nd respondent be directed to release to the grievants herein through the interested party the amounts totalling to Kshs.3,735,633/= and interests there upon accrued, owed to the said grievants by the said party, same amounts having been released by the respondent in the matter in accordance to the directives of the court for the eventual satisfaction of the court award and or directives in respect to the judgment issued on the 13<sup>th</sup> day of June 2018.”
11. Upon considering the application, Mbaru, J. dismissed the application terming it an abuse of the court process due to the fact that the plaintiff, did not have the locus to file such an application before the court as it was not a claimant in the suit and further the court did not have the jurisdiction to address complaints made against an advocate .
12. From the foregoing, it is clear that the prayers sought in the application before the court in ELRC Cause No.1705 of 2015 are similar to the prayers sought in this suit by the plaintiff and between the same parties. The issues raised by the plaintiff have already been conclusively determined by a court of equal status.



13. The entire suit before this court violates the principle of res judicata as per the provisions of Section 7 of the Civil Procedure Act which states:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

14. This court cannot pronounce itself on an issue that has substantially been in issue in a former suit between the same parties. The present suit is blatantly flawed and the plaintiff herein is guilty of forum shopping and abusing the court process.

15. On this ground alone, I find merit in the preliminary objection and dismiss the plaintiff's suit and the applications filed thereto. Costs are awarded to the defendant.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF AUGUST 2024.**

.....

**P. MULWA**

**JUDGE**

In the presence of:

Plaintiff (in person) - Mr. Munayi

Mr. Sumba for Defendant

Court Assistant: Lilian

