



Rift Valley Railways (Kenya) Limited v Kenya Railways Corporation & another; Rift Valley Railways Workers Union (Intended Interested Party) (Civil Suit 136 of 2017) [2022] KEHC 13274 (KLR) (Commercial and Tax) (23 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 136 OF 2017
A MSHILA, J
SEPTEMBER 23, 2022**

BETWEEN

RIFT VALLEY RAILWAYS (KENYA) LIMITED PLAINTIFF

AND

KENYA RAILWAYS CORPORATION 1ST DEFENDANT

GOVERNMENT OF KENYA 2ND DEFENDANT

AND

RIFT VALLEY RAILWAYS WORKERS UNION INTENDED INTERESTED PARTY

RULING

1. In the notice of motion dated September 29, 2020 the intended interested party seeks a review of the ruling dated January 27, 2020 and prays for orders;
 - a. Spent
 - b. Spent
 - c. That the court stays confirmation of the order issued on the July 31, 2017 pending the review of the instant application herein
 - d. That the court reviews, its earlier decision in the matter, in order to conform to the findings of the review and or



- e. That the court quashes its earlier decision in the matter and directs that the matter be heard de-novo
 - f. That costs be in the suit.
2. The application is supported by the affidavit Munayi Opondo Isaac the secretary general of the plaintiff, where he stated that the Advocates Act that was relied on remains irrelevant as it only applies to the advocates of the High Court and persons who are acting as advocates and addressing the court as advocates and not all the recognised agents in the strict sense. That order 9 rule 2 of the Civil Procedure Rules grants him the right to draw documents, file the said documents in court and represent the said corporation and/or its interests thereon in any suit in a court of law. He indicated the Labour Relations Act 2007 section 2 describes who authorised persons/representatives are and begins by listing the secretary general of a trade union as being among the persons who are authorised representatives.
 3. He argued that the trial court misapplied the law in dispensing justice and restated that he is not an advocate of the High Court as alleged neither did he sign any documents as were filed in the matter herein as an advocate nor did he represent himself as an advocate of the High Court while addressing the court.
 4. This court considered in its ruling dated January 27, 2020 the application dated April 5, 2019 by the plaintiff which sought orders that Mr Munayi Isaac Opondo be declared unqualified to act for the intended interested party, all documents and pleadings filed by the said Mr Munayi be expunged from the court record. In its ruling this court found that Mr Munayi was not an advocate of the High Court of Kenya as provided under section 9 of the Advocates Act which provides;

' (9) Subject to this act, no person shall be qualified to act as an advocate unless—
 - (a) he has been admitted as an advocate; and
 - (b) his name is for the time being on the roll; and
 - (c) he has in force a practicing certificate;
 - (d) deleted by act No 9 of 2000, s 57 and for the purpose of this act, a practicing certificate shall be deemed not to be in force at any time while he is suspended by virtue of section 27 or by an order under section 60(4)'.
 5. This court additionally found that the said Mr Munayi did not produce any authority granted to him by the intended interested party and as such this court was unable to appreciate the scope and/or its existence. In the end this court found that the said Mr Munayi did not qualify as an advocate under the provisions of section 31 of the Advocates Act and/or qualify to enjoy the exception under section 83 of the Advocates Act and as a result granted the prayers sought.
 6. At the time of this ruling there was no replying affidavit on record.

Analysis

7. Having carefully considered the application this court has framed only one issue for determination;
 - i. Whether the application herein meets the threshold for review?



Analysis

8. Whereas the High Court has power to review its own decisions, it must be emphasized that such power must be exercised within the framework of section 80 of *Civil Procedure Act* and order 45 rule 1 of the Civil Procedure Rules
9. Section 80 of the *Civil Procedure Act*[14] provides: -
 80. Any person who considers himself aggrieved-
 - (a) by a decree or order from which an appeal is allowed by this act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this act,
May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
10. Order 45 rule 1 of the *Civil Procedure Rules, 2010* provides as follows: -
 - 45 rule 1 (1) Any person considering himself aggrieved-
 - (a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.'
11. It cannot be denied that the review is the creation of the statute. The power of review is not an inherent power. It must be conferred by law or by necessary implication. An appraisal of the above provisions confirms that section 80 prescribes the power of review while order 45 stipulates the rules. However, the rules limit the grounds for evaluating requests for review. Simply put, there are definite limits to the exercise of power of review. The rules prescribe the jurisdiction and scope of review. They limit review to the following grounds:
 - a) Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
 - b) On account of some mistake or error apparent on the face of the record, or
 - c) For any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.
12. On examination of the application herein the applicant has not presented any new and important evidence rather he reiterated his earlier arguments on the raised issues. He did not point out any mistake or error on the face of the record and did not raise any sufficient reason as to why he should be granted a review.
13. This court is satisfied that the application does not meet the threshold for review.



Findings and determination

14. In light of the above this court finds the following findings and determination;

- i. The application dated September 29, 2020 is found to be lacking in merit and it is hereby dismissed with costs.
- ii. Munayi Opondo Isaac is personally liable for the costs of this application.
- iii. Mention on October 19, 2022 before the deputy registrar for case management –pre trial conference

Orders accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY THIS 23RD DAY OF SEPTEMBER, 2022.

HON A MSHILA

JUDGE

In the presence of;

Agwara for Kenya Railways Corporation

Mwangi for the Applicant

Lucy.....Court Assistant

