



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISC APPLICATION NO. 197 OF 2017
RIFT VALLEY RAILWAYS WORKERS UNION.....CLAIMANT

v

KENYA RAILWAYS STAFF RETIREMENT
BENEFITS SCHEME.....1ST RESPONDENT
KENYA RAILWAYS CORPORATION....2ND RESPONDENT
CORPORATE TRUSTEES..... 3RD RESPONDENT

RULING

1. The Rift Valley Railways Workers Union (K) (the Union) filed a Notice of Motion under certificate of urgency against the Respondents on 29 December 2017 seeking

1.

2. ...

3. **THAT** *the process of selling the Pensioners Property LN 209/6507 measuring 3.24 acres Matumbato Road Upper Hill area Nairobi County, LN 209/378/5 Measuring 0.48 acres located along Woodlands Lane off Jabavu Road/Argwings Kodhek Road Hurlingham Estate Nairobi, and LN 1/423 Measuring 0.71 acres Ngong Road of Nairobi County be tentatively stayed until issues in this application are heard and determined.*

4. **THAT** the application be heard during the vacation period and or be consolidated with Cause 2289 coming up for mention on the **8th day of February 2017.**

2. The motion was placed before Mbaru J and she directed that the application be served for further directions before the Duty Judge on 16 January 2018. The Judge also directed that Cause No. 2289 of 2015 be also placed before the Duty Judge together with the application.

3. The application was served and the 1st Respondent filed a Notice of Preliminary Objection and a replying affidavit sworn by its Chief Executive Officer in opposition to the application on 15 January

2018.

4. The 3rd Respondent on its part filed Grounds of Opposition and Notice of Preliminary Objection to the application on the same day.

5. When the application was placed before me on 16 January 2018, Mr. Munayi, Secretary General of the Union sought for 7 days to respond to the Notices of Preliminary Objection which had been served on him on 15 January 2018.

6. Ms. Kavangi for the 2nd Respondent on her part sought for more time to file grounds of opposition to the Union's motion.

7. The Court allowed the requests and directed the 2nd Respondent to file and serve its grounds of opposition/replying affidavits on or before 18 January 2018 (Grounds of Opposition were however filed on 26 January 2018).

8. The Union was on its part directed to file and serve a further affidavit on or before 26 January 2018, and its application was scheduled for *inter partes* hearing on 29 January 2018 (the further affidavit was not filed).

9. At the same time, the Court directed that Cause No. 2289 of 2015 be placed before Court (directive was not complied with by the Registry).

10. When the Union's application was called out for hearing as scheduled, the parties informed the Court that they were ready to proceed and the Court indicated that it would hear the parties after going through the cause list call over.

11. For unknown reasons, when the application was called out again at 9.53 am. Mr. Munayi was not present. Because he had not informed the Court that he would leaving the courtroom, the Court directed that the application be urged.

12. After hearing the Respondents and giving a ruling date, Mr. Munayi appeared in Court and attempted to explain away his absence. He followed up later with a letter of complaint to the Principal Judge, but the Court will not delve into the contents of the said complaint save to state that it is a distortion of what transpired in Court.

13. The Court has perused the material placed before it including the oral submissions and come to the conclusion that the instant application lacks merit for the following reasons.

14. One, the application was not anchored on a substantive Statement of Claim/Memorandum of Claim.

15. The Rules of this Court provide for the manner of commencing legal proceedings and the Union did not move Court as contemplated by the Rules.

16. The application is therefore in *vacuo* and drawing from the holding by Ringera J in *Kihara v Barclays Bank (K) Ltd* (2001) 2 EA 420 in dismissing as incompetent an application for injunction when no such injunction was sought in the Plaint (situation here is worse as there is no Statement of Claim/Memorandum of Claim), I would conclude that on that single ground, the application is unmerited.

17. Two, there is material before Court that the Union in Cause No. 783 of 2017, *Rift Valley Railways Workers Union (K) v Kenya Railways Staff Retirement Benefits Scheme & Ar.* had moved Court seeking

1. ...

2.

3. **THAT** the Respondent's intended process of Sale of the Pensioners Asset Number LR/Number 209/6507 measuring 3.4 acres Matumbato Road Upper Hill area of Nairobi County be stayed until the issues as brought out in this application are heard and determined.

4. ...

18. In the very same file, the Union filed a Misc Application No. 99 of 2017 seeking

1. ...

2. ...

3. **THAT** the intended sale of the pensioners asset LN 209/378/5 measuring 0.48 acres located along woodland lane off Jabavu road Argwings Kodhek Road Hurlingham Estate Nairobi be stayed until the issues as are brought out in this application are heard and determined.

19. The applications were heard and in a ruling delivered by Abuodha J on 13 October 2017, the Judge held that the Union did not have *locus standi* to prosecute a claim over the properties in contention.

20. A Court of concurrent jurisdiction having determined that the Union could not litigate in respect of the named property(ies), this Court cannot by the stretch of our liberal Constitution admit a re-litigation over the same property(ies).

21. Three, Ndolo J had in a ruling delivered on 19 August 2016 in Cause No. 2289 of 2015, *Rift Valley Railways Workers Union (K) v Kenya Railways Staff Retirement Benefits Scheme* found and held that the parties had not exhausted the dispute resolution mechanisms established under the Retirement Benefits Act and thus declined jurisdiction and directed the parties to exhaust the mechanisms under that Act (the Union has legal representation in the Cause).

22. Despite the ruling, the Union went ahead to file another application in the Cause on 29 October 2017 seeking similar injunctive relief.

23. It appears from the record that the Union filed an Appeal being *Retirement Benefits Authority Tribunal Civil Appeal No. 5 of 2016* which is still pending.

24. The Union might have genuine grievances but the route it is taking is prone with legal risks which may have unintended consequences on its capacity and ability to prosecute the complaints.

25. Considering that it has legal representation in one of the Causes, it should seriously take legal advice on how to conduct the pending litigation, both in this Court and before the *Retirements Benefits Authority Tribunal*.

26. As for the present application, the Court finds that it not only lacks merit but borders on abuse of the Court process. It could as well be vexatious.

27. The application dated 29 December 2017 is thus dismissed with costs to the Respondents.

Delivered, dated and signed in Nairobi on this 16th day of February 2018.

Radido Stephen

Judge

Appearances

For Union

Mr. Munayi, Secretary General

For 1 st - 3 rd Respondents	Mr. Sainyi instructed by Milimo, Muthomi & Co. Advocates
For 2 nd Respondent	Ms. Kavangi instructed by Oraro & Co. Advocates
Court Assistant	Lindsey