



Rift Valley Railways Workers Union v Kenya Railways Staff Retirement Benefits Scheme (KRSRBS) & 3 others; General (Interested Party) (Miscellaneous Application E629 of 2023) [2025] KEHC 118 (KLR) (Civ) (16 January 2025) (Ruling)

Neutral citation: [2025] KEHC 118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E629 OF 2023
CW MEOLI, J
JANUARY 16, 2025**

BETWEEN

RIFT VALLEY RAILWAYS WORKERS UNION PLAINTIFF

AND

**KENYA RAILWAYS STAFF RETIREMENT BENEFITS SCHEME
(KRSRBS) 1ST DEFENDANT**

RETIREMENT BENEFITS AUTHORITY 2ND DEFENDANT

KENYA RAILWAYS CORPORATION 3RD DEFENDANT

THE GOVERNOR, COUNTY GOVERNMENT OF NAIROBI . 4TH DEFENDANT

AND

THE HON. ATTORNEY GENERAL INTERESTED PARTY

RULING

1. Rift Valley Railways Workers Union (hereafter the Plaintiff) instituted this cause by way of a plaint dated 9.08.2023 seeking orders for the removal from office of the purported Trustees of Kenya Railways Staff Retirement Benefits Scheme (KRSRBS) (hereafter the 1st Defendant) by operation of the law and that the said Trustees be recommended for arraignment in court to face criminal charges inter alia for usurping powers reserved for the Head of State in accordance with the *State Corporations Act*, and for executing trust documents without proper authorization and documentation; that the said Trustees be surcharged for any and all losses they have subjected the Pensioners' Trust to, and further to refund to the 1st Defendant any allowances advanced to them; and that the Retirement Benefits Authority



(hereafter the 2nd Defendant) be directed to implement the Senator Report 2020 through a controlled process, pursuant to Section 45 of the Retirement Benefits Authority Act.

2. The Plaintiff subsequently filed the Notice of Motion dated 20.11.2023 (the Motion) which is supported by the grounds set out on its body and the affidavit sworn by the Applicant's Secretary General, Munayi Opondo Isaac. The motion was seeking to stay the Notice issued in respect of the 1st Defendant's 10th Annual General Meeting (AGM) scheduled for 5.12.2023 at the All Saints Cathedral in Nairobi, pending the hearing and determination of the issues arising in the said Motion.
3. The 1st Defendant resisted the Motion by filing the notice of preliminary objection dated 28.08.2024 essentially challenging competency of the said Motion as follows:-
 1. The Applicant (Plaintiff) lacks the requisite locus standi to commence and maintain the application since there is no nexus whatsoever between the 1st Respondent (the 1st Defendant) and the Applicant (Plaintiff) as per Section 54(3) of the Labour Relations Act, 2007.
 2. The Claimant has not exhausted the dispute resolution mechanisms established under Section 46 of the Retirement Benefits Act.
 3. The application is an abuse of the court process and therefore should be struck out and dismissed with costs. (sic)
 4. When the parties attended court for hearing, directions were given for the preliminary objection to be heard first, and the parties were to file and exchange written submissions thereon. The respective counsels for the 2nd Defendant and the Governor-County Government of Nairobi (hereafter the 4th Defendant) indicated that they would be supporting the preliminary objection. Kenya Railways Corporation (hereafter the 3rd Defendant) and the Hon. Attorney General (hereafter the Interested Party) did not participate in the preliminary objection.
 5. In supporting the preliminary objection, counsel for the 1st Defendant anchored his submissions on the decisions rendered in *Law Society of Kenya v Commissioner of Lands & 2 others* [2001] KEHC 831 (KLR) and *Alfred Njau, Aluchio Liboi, Joseph Muya Mukabi, Peter Inyangala, Akhonya Analo and Jacob Gichigo v City Council of Nairobi* [1983] KECA 56 (KLR) on the principle of locus standi. In that regard, counsel contended that the Plaintiff herein lacks the legal standing to institute the suit and Motion by virtue of the fact that it is a trade union pursuant to Section 2 of the Labour Relations Act whose mandate is limited to the interests of employers and employees, and it therefore has no standing to represent the interests of retirees.
 6. Counsel further stating that a similar finding was arrived at by the Employment and Labour Relations Court (ELRC) in the case of *Rift Valley Railways Workers Union (K) v Kenya Railways Staff Retirement Benefits Scheme & Kenya Railways Corporation* [2017] KEELRC 613 (KLR) as well as in the case of *Rift Valley Railways Workers Union (K) v Kenya Railways Corporation, Trustees, Kenya Railways Staff Retirement Benefits Scheme & Rift Valley Railways (K) Limited; Kenya Power and Lighting Company (Interested Party)* [2020] KEELRC 145 (KLR). Counsel further argued that no recognition agreement exists between the Plaintiff and the 1st Defendant, pursuant to Section 54(3) of the Labour Relations Act, 2007.
 7. Regarding the second ground of objection, counsel asserted that the Plaintiff has not exhausted the dispute resolution mechanisms provided for under Clause 34 of the 1st Defendant's



Trust Deed and Rules which stipulates that any dispute arising between the Sponsor, Trustees, members or other persons shall in the first instance, be referred to arbitration. That, furthermore, Section 48(1) of the Retirement Benefits Act provides for the option of review of a questionable decision either by the Chief Executive Officer (CEO) or by the 2nd Defendant, followed by a right of appeal to the Retirement Benefits Authority Tribunal.

8. Asserting that the Plaintiff has not exhausted any of the above stated dispute resolution mechanisms before moving the court, counsel urged the court to strike out the Motion with costs. Reliance being placed on the decision in *Rift Valley Railways Workers Union (K) v Kenya Railways Staff Retirement Benefits Scheme, Kenya Railways Corporation Corporate Trustees, Retirement Benefits Authority, Ethics & Anti-Corruption Commission, Rift Valley Railways (K) Limited & Alexander Forbes [2016] KEELRC 775 (KLR)* where it was held that a party cannot circumvent the dispute resolution mechanisms provided for in the Retirement Benefits Act by directly lodging a claim in court.
9. In resisting the preliminary objection, counsel for the Plaintiff submitted that the court is functus officio in respect of the preliminary objection, by virtue of the ruling and directions previously by Onger, J. on 26.01.2024 in the present matter. That the issues being raised in the preliminary objection were earlier canvassed in the aforesaid ruling, which ruling has not been reviewed, varied and/or otherwise set aside to date.
10. Counsel further submitted that the preliminary objection is not only vexatious in nature and an abuse of the court process but is a mere attempt at delaying and derailing the matter and that the 1st Defendant does not have a right of audience before the court. Besides, Section 2 of the Labour Relations Act 2007 permits the Plaintiff's representatives to prosecute matters on its behalf. That an application similarly challenging the Plaintiff's locus standi was previously filed in a separate matter, namely ELRC Cause No. 2289 of 2015, was dismissed with costs to the Plaintiff.
11. The court has considered the grounds of the preliminary objection and the rival submissions. The court in the renowned case of *Mukisa Biscuit Company v West End Distributors Limited (1969) EA 696* defined a preliminary objection in the manner hereunder:

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised in any fact that has to be ascertained or if what is sought is the exercise of judicial discretion.”
12. The Supreme Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 others [2015] eKLR* while adopting the definition added that:

“ It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.”
13. While addressing the preliminary objection, the Plaintiff challenged the competency thereof, in essence raising its own preliminary objection in answer. Primarily on the ground that the issues arising in the said preliminary objection have already been determined vide the ruling delivered on 26.01.2024 in the present matter, and hence the court is functus officio. The Court of Appeal in the case of *Telkom Kenya limited v John Ochanda (suing on his own behalf and on*



behalf of 996 former employees of Telkom Kenya limited) [2014] eKLR upon considering the said doctrine, held as follows:

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon...

The general rule that final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal in *re-St Nazaire Co*, (1879), 12 Ch. D 88. The basis for it was that the power to rehear was transferred by the Judicature Acts of the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions...”

14. The Supreme Court decision in *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR further offered the following insights:

“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”

15. It is clear from the foregoing that the doctrine applies once a court has rendered its decision on a matter. A perusal of the record herein reveals that previously the 3rd Defendant herein filed a preliminary objection dated 18.08.2023 challenging the Plaintiff’s suit and application dated 9.08.2023 on various grounds inter alia, that the suit was sub judice by virtue of ELC Misc. Application No. E067 of 2023 involving the same parties and the same subject matter and that the Plaintiff was not recognized as a juridical person for purposes of instituting a claim in its own name. The 1st and 2nd Defendants, as well as the Interested Party herein, supported the preliminary objection. The 1st Defendant contending that the orders sought in the main suit and the aforesaid application related to the structure and governance of the 1st Defendant by dint of Clauses 11 and 34 of its Trust Deed as well as Section 48(1) of the [Retirement Benefits Act](#) and therefore fell outside the jurisdiction of the High Court.
16. The record shows that the preliminary objection was heard by Ongeru, J. who by her ruling delivered on 26.01.2024, determined inter alia, that the issues raised by the Plaintiff did not relate to the provisions of the Trust Deed and are further not anticipated in the Arbitration Clause in the Trust Deed. The Learned Judge further determined that the provision of an alternative dispute resolution mechanism in the Trust Deed would not necessarily oust the jurisdiction of the court. In the end, the Learned Judge upon considering the other aspects of the preliminary objection alongside the grounds cited hereinabove, dismissed the said preliminary objection.
17. Thus, ground 2 of the present preliminary objection which raises the question whether the Plaintiff exhausted the dispute resolution mechanisms established under the [Retirement Benefits Act](#), was among the issues previously canvassed before Ongeru, J. and conclusively determined. This court cannot therefore entertain the same issue again, as it is caught up by the doctrine of functus officio. In the circumstances, ground 2 of the preliminary objection automatically fails.



18. This leaves ground 1 of the preliminary objection which raises the issue whether the Plaintiff has locus standi to prosecute the cause and Motion by dint of Sections 2 and 54(3) of the *Labour Relations Act*. Section 2 is the interpretation section of the Act defining terms such as employee, employer, trade union, trade dispute, recognition agreement etc. The section does not prescribe the mandate of trade unions which is provided for elsewhere in the Act. Section 54(3) for its part provides that:
- “ An employer, a group of employers or an employer’s organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers’ organisation recognises a trade union.”
19. I understood the gist of the second ground of the objection to be as follows. The Plaintiff herein lacks the legal standing or locus standi to institute the suit and Motion by virtue of the fact that it is a trade union pursuant to Section 2 of the *Labour Relations Act* whose mandate is limited to the interests of employers and employees, and it therefore would have no standing to represent the interests of retirees, unless recognized by the 1st Defendant pursuant to section 54(3) of the Act. Not that, as seemingly understood by the Plaintiff the challenge related to the capacity of the representatives to sue on behalf of the Plaintiff. This ground clearly raises matters of evidence as to the true mandate and source of authority of the Plaintiff to bring the claim, the nature of claim presented and, on whose behalf, it is brought. Ex facie, the Plaintiffs’ pleadings which are not elegantly drawn, do not appear to invoke the provisions of section 54(3) of the Act while disclosing a claim before that is generally of a civil nature rather than employment and/or labour related claim. Ultimately, the court finds that the 1st Defendant has not demonstrated ground 1 of the preliminary objection.
20. Consequently, the court is of the view that the preliminary objection dated August 28, 2024 is not well taken. The same hereby dismissed, with costs to the Plaintiff.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 16TH DAY OF JANUARY 2025.

C. MEOLI

JUDGE

In the presence of

For the Applicant:

For the Respondent:

C/A: Erick

