



**Ringo v Kenya Railways Corporation (Cause 1585 of 2013)
[2024] KEELRC 1931 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1931 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1585 OF 2013**

**J RIKA, J
JULY 26, 2024**

BETWEEN

JOSEPH SEBASTIAN RINGO CLAIMANT

AND

KENYA RAILWAYS CORPORATION RESPONDENT

JUDGMENT

1. The Claimant filed an Amended Statement of Claim, on 23rd April 2019.
2. He states that by a letter dated 30th October 2006, the Respondent, without the necessary conclusion of a pending disciplinary matter against the Claimant, transferred the service of the Claimant to Rift Valley Railways. This was under a Concession Agreement, in which the Rift Valley Railways, was to take over the operations of the Respondent.
3. He was consequently appointed as a Principal Accountant by the Rift Valley Railways Limited, through a letter dated 25th October 2006. The effective date was 1st November 2006. His gross monthly salary was Kshs. 95,000.
4. He states that the Respondent ought to have interdicted him, instead of transferring his service, pursuant to the Respondent's Personnel Regulations.
5. He was arraigned in Court on 1st December 2006, over the same matter subject of the disciplinary proceedings.
6. On 15th December 2006, Rift Valley Railways wrongfully terminated the Claimant's employment, upon learning of the criminal case.
7. He was acquitted. He states that upon termination by Rift Valley Railways, he was reverted to the Respondent for retrenchment and payment of terminal dues.



8. He states that the balance of his retrenchment dues, which the Respondent computed at Kshs. 896,657 has not been fully paid. He states that because of this default, he continues to be an Employee of the Respondent.
9. He prays for terminal benefits and retirement dues, based on the salary and benefits applicable to his grade, as of the date he amended his Statement of Claim.
10. He prays for: -
 - a. Salary arrears for the period of suspension from 15th December 2006 to the date of filing of the Amended Statement of Claim, at Kshs. 8,293,314.
 - b. House allowance over the same period at Kshs. 2,883,600.
 - c. Other allowances, including commuter, at Kshs. 1,927,800.
 - d. Service pay at Kshs. 1,740,572.
 - e. Golden handshake at Kshs. 120,000.
 - f. Transport allowance at Kshs. 10,000.
 - g. 1-month salary at Kshs. 10,000.
 - h. Pension at Kshs. 2,649,253.
11. In total the Claimant prays for a sum of Kshs. 17,567,537.
12. The Respondent relies on the Amended Statement of Response, amended on 1st July 2021.
13. It is admitted that the Respondent entered into a Concession Agreement with Rift Valley Railways Limited, which was to take effect on 1st November 2006.
14. The Concession Agreement led to transfer of the Respondent's freight and passenger services, its operations assets, and a total of 3,296 Employees, out of 8,686 of its Employees.
15. The Kenya Railways Amendment Act, 2005 which regulated the Concession, took into account the terms and conditions of employment of the transferred Employees.
16. The Claimant was among the transferred Employees.
17. The Employees were represented by their Trade Union, in the transaction.
18. The Trade Union was agreeable to the terms of transfer, the Concession Agreement and the retrenchment package to those who were leaving service.
19. The Claimant's contract with the Respondent terminated following the Claimant's acceptance of offer of employment by Rift Valley Railways.
20. The Claimant concedes that he was appointed as Principal Accountant, by the Rift Valley Railways, effective 1st November 2006.
21. The Respondent was not privy to the terms and conditions of employment, between him and Rift Valley Railways.
22. His contract as admitted in his Pleadings, was terminated by the Concessionaire, Rift Valley Railways.



23. His decision to accept employment offer by Rift Valley Railways, precluded him, from seeking benefits due to those who opted for retrenchment under the transaction.
24. Some Employees who were retained by Rift Valley Railways, were aggrieved by the fact that they did not receive golden handshake and severance, on leaving the Respondent.
25. An Inter-Ministerial Committee recommended that all the Employees who exited, within 3 years of the Concession Agreement [between 1st November 2006 and 31st October 2009], are paid retrenchment packages.
26. Payment was to be made, irrespective of the reasons for their exit.
27. The Claimant was paid retrenchment package, based on his 10 years of service, running from 15th April 1996 to 31st October 2006, when he voluntarily transferred to Rift Valley Railways.
28. His final payment was made on 23rd October 2015.
29. The Respondent does not owe the Claimant the amounts claimed.
30. He was paid monthly pension at Kshs. 5,712 from 1st February 2009. He was entitled to a sum of Kshs. 493,557 by the time he exited, which he was paid, and acknowledged receipt.
31. The Respondent states that the Claim was filed hopelessly out of time.
32. The Claim was dismissed in a Ruling of the Court dated 25th November 2015, on the ground that it was filed outside the period of 6 years, at the time prescribed under the *Limitation of Actions Act*.
33. In a Judgment of the Court of Appeal in Civil Appeal No. 129 of 2017 filed by the Claimant against the Respondent, delivered on 31st July 2018, it was held that the Trial Court erred by not taking into account the terms of the Concession Agreement, and that the Trial Court relied on abstract jurisprudence.
34. The Court of Appeal ordered that the issue of limitation of time, be determined by a different Judge on trial.
35. The Judgment does not state that the Claimant moved the Trial Court, within time.
36. Hearing came up on 24th March 2023. The Claimant gave evidence partly, before the Court directed that the facts were largely uncontested, and the dispute could be considered and determined on the strength of documentation, under Rule 21 of the Court's Procedural Rules. The Court also took into account, in so directing, that the Claim was filed 11 years ago.
37. Parties confirmed filing and exchange of Submissions, at the last mention before the Court, on 4th April 2024.
38. The issues are: whether the Claim is time-barred; whether the Claimant's contract with the Respondent was terminated upon transfer of his service to Rift Valley Railways; whether he was reverted to the Respondent after transfer of service; and whether he is owed salary and allowances, retrenchment, and pension benefits by the Respondent.

The Court Finds

39. The Claimant was an existing Employee of the Respondent, Kenya Railways Corporation, as of 23rd January 2006, when the Respondent, the Government of Kenya, and Rift Valley Railways [Kenya] Limited, executed a Concession Agreement.



40. The Concession involved the Respondent's freight and passenger services.
41. Section D of the Concession Agreement regulated human resources.
42. The Respondent would provide Rift Valley Railways, with a list of all its Employees, as at the date of concession.
43. Rift Valley Railways would recruit its Employees from the list, depending on their skills, merit and experience.
44. The Claimant was among the Employees listed by the Respondent, who were recruited to work for Rift Valley Railways.
45. Clause 5 of Section D of the Concession Agreement provided that, Rift Valley Railways, would provide transferred Employees with letters of employment, and place them at terms and conditions of employment, no less favourable, than those enjoyed, while working for the Respondent.
46. The transferred Employees' period of employment with the Rift Valley Railways, would be deemed to have begun, with the date of commencement of service with the Rift Valley Railways.
47. Rift Valley Railways would continue to regularly deposit mandatory pension contributions with the Kenya Railways Staff Retirement Benefits Scheme.
48. The Concession Agreement allowed the Rift Valley Railways, to retrench transferred Employees, in a manner consistent with the terms and conditions of service, the Concession Agreement and the Laws of Kenya.
49. The Claimant was informed through a letter dated 30th October 2006, from the Respondent's General Manager, that his service had been transferred to Rift Valley Railways, pursuant to Section D of the Concession Agreement.
50. The Claimant was appointed effective 1st November 2006, as Rift Valley Railways' Principal Accountant Grade RG. 5.
51. He therefore became an Employee of Rift Valley Railways, and ceased to be an Employee of the Respondent, with the transfer of service.
52. Limitation of time: On the same date of transfer, 30th October 2006, the Claimant was arrested alongside 2 other Employees. He was arraigned in Court on 1st December 2006.
53. He was at the time, on probation with the Concessionaire, Rift Valley Railways.
54. On learning about his criminal misadventure, Rift Valley Railways terminated his probationary contract on 15th December 2006.
55. The Claimant's relationship with Rift Valley Railways ended as soon as it started, way back in December 2006.
56. It is not clear when and if, the Claimant reverted to his previous Employer, the Respondent herein. The Concession Agreement did not provide for such reversion.
57. It similarly did not provide for Employees with pending disciplinary issues at the point of transfer of service, to be interdicted, instead of having their service transferred. The Employees were transferred, and subjected to the terms and conditions of service, issued by Rift Valley Railways.



58. If the Claimant was under suspension by the Respondent, at the time of transfer of service, that suspension, would have been rendered moot, and disciplinary proceedings initiated by the Respondent rendered ineffectual, through termination of his service with the Respondent.
59. Section 87 [b] of the [Kenya Railways Corporation Act](#), states that action or legal proceedings shall not lie, or be instituted, unless it is commenced within 12 months next after the act, neglect or default complained of, or in case of continuing injury or damage, within 6 months next after cessation thereof.
60. If the Claimant had any grievance against the Respondent concerning his suspension, he ought to have taken action within 12 months from the date suspension ended. If he had any other claims arising from his transfer of service, against the Respondent, they ought to have been made within the time prescribed under Section 87 of the [Kenya Railways Corporation Act](#). Even assuming the Court is wrong on its interpretation and application of Section 87 of the [Kenya Railways Corporation Act](#), there was no room for litigating a contractual dispute, outside the 6-year period, prescribed by the [Limitation of Actions Act](#). As his employment with the Respondent ceased on transfer of service, he would not be on suspension by the Respondent, while he was no longer an Employee of the Respondent. The Claimant did not institute his Claim against the Respondent until 2013, 7 years after he ceased to be an Employee of the Respondent.
61. The Court would agree with the initial Ruling of the Court that the Claim was time-barred, under Section 87 of the [Railways Corporation Act](#). It was clearly time-barred also, under the limitation law applicable at the time, the [Limitation of Actions Act](#), which provided for 6 years on claims based on contract.
62. This is not abstract jurisprudence.
63. His averment that he was not paid his full retrenchment benefits, and therefore continued to be an Employee of the Respondent, is illogical. Termination of his contract of employment with the Respondent took effect on 30th October 2006. Delay or non-payment of terminal benefits would not result in reinstatement of the contract of employment.
64. Termination & transfer: As discussed above, the Claimant's transfer of service simply meant that his employment with the Respondent was terminated. He moved on, with the successor Employer, Rift Valley Railways, on a tabula rasa. The new Employer defined fresh terms and conditions of employment.
65. And as captured above, the new employment came to a screeching halt, while the Claimant was still under probation, on 15th December 2006.
66. Curiously, the Claimant wrote to the Human Resource Manager, Rift Valley Railways, on 28th April 2014, asking to be given reasons, why his contract was terminated while on probation, 8 years back, on 15th December 2006. The Claimant bent backwards in his letter, to reassure Rift Valley Railways, that the information sought, was not intended to be used by the Claimant, to institute any legal action.
67. It was probably because deep down in his mind, he was aware that the Claim was stale under statute, that he reassured the Concessionaire, that he did not intend to bring a Claim 8 years after his sacking.
68. Reversion upon termination: Under the Concession Agreement, there was no provision for return of transferred Employees. Once the Claimant's contract was terminated while under probation, he ceased to be an Employee of Rift Valley Railways.
69. There was no provision for his reversion to the Respondent, if his contract was terminated by Rift Valley Railways for whatever reason. He had not been seconded to Rift Valley Railways; he was



- transferred to Rift Valley Railways, on fresh terms and conditions of service, drawn and implemented by Rift Valley Railways.
70. The Ministry of Transport set up an Inter-Ministerial Committee comprising representatives of the Ministry, Ministry of Finance, Inspectorate of State Corporations, Civil Service Reforms Secretariat, and Directorate of Personnel Management among others, to look into various grievances received from the former Employees of the Respondent, who exited employment under the Concession Agreement.
 71. The Committee was set up on 26th September 2006. The issues were wide-ranging, including refund from Reli Sacco, pension increases, adjustment of salaries, implementation of salary reviews, tax exemption on retrenchment benefits, unpaid dues, underpayment of benefits, locomotive drivers' claims, discipline matters, and alleged wrongful dismissal.
 72. The Committee recommended that retrenchment package is made available to all staff, who exited the Rift Valley Railways, within 3 years of the commencement of the Concession Agreement [1st November 2006 to 31st October 2009].
 73. The Committee Report was clear that retrenchment package was available to all staff, covered under the period, irrespective of the reasons for their exit.
 74. The Claimant exited Rift Valley Railways, when his probationary contract was terminated on 15th December 2006, and he was therefore a beneficiary, under the recommendations from the Inter-Ministerial Committee.
 75. The Court has not seen evidence anywhere on the record, that the Claimant was reverted to the Respondent, as an Employee of the Respondent, after termination of his probationary contract by the Rift Valley Railways.
 76. The Inter-Ministerial Committee was an extra-legal mechanism, which was set up to deal with a collective grievance arising from the ashes of the Concession Agreement. It was not a mechanism founded on the Concession Agreement, or in the *Employment Act*, but an extra-legal mechanism crafted by the Government and stakeholders, in quelling the discontent of Employees who were disaffected with the Concession Agreement. What was offered under the Inter-Ministerial Committee did not breathe new life into any claims the Claimant might have harboured against the Respondent, and the Rift Valley Railways, when his respective contracts of employment with these Employers were terminated.
 77. He appears to have misapprehended the recommendations of the Inter-Ministerial Committee, for extension of retrenchment benefits across the board, regardless of the Employee's manner of exit, to have amounted to his reversion to the Respondent, as its Employee.
 78. Extension of retrenchment package was a collective benefit, extended to a class of Employees, regardless of how they left employment. It was a remedy for collective grievances, arising from the Concession Agreement. The Government came up with a collective solution- payment of retrenchment package, even to Employees whose contracts had been terminated for other reasons, other than retrenchment. The Claimant happened to be a lucky beneficiary of this decision.
 79. Salary, allowances, retrenchment and pension benefits. The prayer for salaries and allowances in arrears from the date of suspension, to the date of filing the Claim, is clearly time-barred and misplaced.
 80. The Claimant was no longer an Employee of the Respondent after his transfer of service. Any suspension or disciplinary enquiry imposed or instituted by the Respondent, became moot after



transfer of service. The Claimant was not an Employee of the Respondent, so as to claim arrears of salary for the period he claims he was under suspension.

81. His computation of pension is equally misplaced. The Court of Appeal advised the Parties, in its Judgment involving the Parties, dated 31st July 2018, that “The Retirement Benefits Schemes are regulated by the Retirements Benefits Authority, established under the Retirement Benefits Act. If the Kenya Railways Staff Retirement Benefits Scheme is registered under the Retirement Benefits Act, and is applicable to the Appellant, then liability to compute and pay the pension, or arrears of pension, to the Appellant, rests with the Trustees of the Scheme, and not with the Respondent...”
82. Clause D.3 of the Concession Agreement placed liability for computation and payment of pension on the Kenya Railways Staff Retirement Benefits Scheme, which is in line with the advice of the Court of Appeal above.
83. The Supreme Court of Kenya, in Albert Chaurembo Mumba & 7 Others [Trustees of KPA Pensions Scheme] v. Maurice Munyao & 148 Others [2019] e-KLR, underscored that pension disputes are not employer-employee disputes, to be resolved by the E&LRC. They are disputes between Trustees and Beneficiaries of a Pension Scheme. The Claimant should have pursued his dispute on pension, under the Retirement Benefits Act.
84. The Pension dispute should have been directed at the relevant Pension Scheme Trustees, not at the Respondent, and presented to the right adjudicatory forum, under the Retirement Benefits Act, not this Court.
85. The Claimant was paid terminal benefits totalling Kshs. 310, 891 in 2009 as captured in the letter of the Respondent’s Finance Manager, dated 7th September 2018. On 15th August 2015, while the Claim was pending in Court, he was paid another sum of Kshs. 431,886. This included severance based on 10 years of service at Kshs. 283,100, golden handshake at Kshs. 120,000 and transport allowance at Kshs. 10,000. He was advised to collect a sum of Kshs. 100,000 comprising refundable retainer, once he had completed and returned clearance forms. He did not comply.
86. The Court is satisfied that the Claim is time-barred; the Court is deprived of temporal and material jurisdiction on certain aspects of the Claim; and the Claim is otherwise without merit.

It Is Ordered

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 26TH DAY OF JULY 2024.

JAMES RIKA
JUDGE

