



Rift Valley Railway Workers Union (K) v Kenya Railways Staff Retirement Benefits Scheme; Attorney General & 5 others (Interested Parties) (Civil Application Nai No. E494 of 2023) [2025] KECA 361 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KECA 361 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION NAI NO. E494 OF 2023
DK MUSINGA, F TUIYOTT & GV ODUNGA, JJA
FEBRUARY 28, 2025**

BETWEEN

RIFT VALLEY RAILWAY WORKERS UNION (K) APPLICANT

AND

KENYA RAILWAYS STAFF RETIREMENT BENEFITS SCHEME RESPONDENT

AND

THE ATTORNEY GENERAL INTERESTED PARTY

KENYA NATIONAL LANDS COMMISSION INTERESTED PARTY

COUNTY GOVERNMENT OF NAIROBI INTERESTED PARTY

THE RETIREMENT BENEFITS AUTHORITY INTERESTED PARTY

MINISTRY OF TRANSPORT INFRASTRUCTURE, URBAN DEVELOPMENT AND PUBLIC WORKS INTERESTED PARTY

MINISTRY OF FINANCE INTERESTED PARTY

(Being an application for stay of execution of the ruling and/or injunction of the orders of the Environment and Land Court at Nairobi (J. Mogeni, J.) delivered on 19th and 20th September 2023 in ELC Case No. E067 of 2023)



RULING

1. Before us in a home-made Notice of Motion application, drawn by the applicant in person, dated 23rd October 2023, and expressed to be brought under rule 5(2)(b), 47 and 49 of the *Rules of this Court*. In the Motion, the applicant seeks the following orders:
 1. That the application be certified urgent and that the same be heard urgently and ex parte in the first instance, and with subsequent directions in respect to service of the application.
 2. That the execution of the orders or directives as were issued by the lower court on the 19th and 20th September 2023 sitting under the Hon. Justice J. Mogeni, be and is hereby stayed pending the lodging, hearing and determination of the intended appeal from the ruling and orders of the High Court of Kenya at Nairobi by Justice J. Mogeni delivered on the 19th and 20th of September 2023, at the Environment and Land Court in Nairobi Civil Suit Number E067 of 2023.
 3. That the Hon Court issues directions with respect to proceedings in this matter in light of the Civil Suit Number E629 of 2023 in the lower court with respect to the respondents respective locusses that hinge as well on the proceedings in this matter.
 4. That costs of the application be provided for.”
2. As indicated, the application is brought under rule 5(2)(b), 47 and 49 of the *Rules of this Court*. Rule 5(2)(b) provides for applications for stay of execution, injunction or stay of further proceedings. Rule 47 provides that applications are to be lodged in the right registry, while rule 49 provides for urgent applications. Clearly, none of the rules cited donate to this Court the powers to deal with prayer 3 of the application. We accordingly decline to deal with it.
3. That only leaves prayer 2 as the substantive prayer. The ruling of 19th September 2023 arose from an application dated 11th July 2023 brought by the party named as the applicant herein, who was the 4th interested party in the court below. We deliberately use the phrase “the party named” for the reasons that there is lack of clarity as to whether the application is brought by the applicant or by its General Secretary, Isaac Munayi. It sought, inter alia, an order staying the proposed Annual General Meeting of the members of Respondent, scheduled for 25th July 2023, pending the hearing and determination of the application. The grounds set out in the application revolved around issues of the meeting, which, according to the applicant, were instigated by the trustees. It also highlighted the differences between the members, the trustees of the applicant and the Kenya Railways Board of Directors. It was contended that the trustees of the applicant intended to hold an annual general meeting of the applicant without the requisite authority to do so since none of them had a deed of appointment from the regulator, the Retirement Benefits Authority.
4. From the affidavit in support of the application, it seems that the grievances of Mr Munayi revolved around the appointment of Mr John Agoro Nyerere and Eng. Martin Mogwanja as directors of Kenya Railways Corporation, yet the said persons were employees of state corporations.



5. In response to the application, a preliminary objection was taken, rather curiously, by the applicant dated 20th July 2023 on the ground that the drawer of the application, Mr Munayi Opondo Isaac, was neither an advocate nor a party and as such had no legal capacity to represent the applicant. As noted by the learned Judge, the proceedings before the court, just like before us, were confusing as the applicant in the application alleged to be the Secretary General of the applicant herein, yet the Applicant was the one raising the preliminary objections to the application by a firm of advocates.
6. After hearing the application, the learned Judge found that Mr Munayi neither qualified as an advocate under the provisions of section 31 of the *Advocates Act* nor under the exception under section 83 of the same *Act*. The learned Judge allowed the preliminary objection and dismissed the application with costs.
7. It was that decision that provoked Mr Munayi, in the name of the applicant, to make this application. Mr Munayi's complaint was that the learned Judge wrongly applied the provisions of the *Advocates Act* in denying him the right of audience without considering the serious issues that he was raising. It is his position that unless the orders sought in this application are granted, the respondents and their agents will proceed to act in a manner that will prejudice the rights and interests of the members of the applicant.
8. We heard the application on the Court's virtual platform on 12th February, 2025 at which Mr Isaac Munayi, the applicant, appeared in person, learned counsel, Ms Ndirangu appeared with Mr Gitau for the respondent, learned counsel, Ms Kerubo appeared for the 1st and 5th interested parties, Mr Collins Omondi Otieno represented Makongeni Residents Association and Mr Omagwa represented for the 3rd interested party.
9. Mr Munayi relied on his written submissions and reiterated that the learned Judge relied on *Advocates Act*, which was an irrelevant law in dismissing his application and that in so doing the learned Judge acted contrary to Article 50 of the *Constitution*. He prayed that the Court should order stay of execution of the ruling and to have the matter referred back to the trial court since, in his view, unless the stay is granted, it is likely to lead to waste of judicial resources. Mr Otieno informed us that he was supporting the application for remitting the matter back to the trial court. Ms Ndirangu opposed the application on the basis of a replying affidavit and grounds of opposition filed on 4th April 2024. She also relied on the submissions dated 5th April, 2024. According to her, since the order sought to be stayed was a negative order, this Court has no jurisdiction to grant the orders sought herein. Both Miss Kemboi and Mr Omagwa relied on their written submissions in opposing the application, while Mr Otieno made brief oral submissions.
10. We have considered the application, the affidavits in support of and in opposition to the application as well as the submissions made.
11. Although the application as expressed seeks stay of the ruling and directions dated 19th and 20th September 2023, the only decision availed to us in the record is the ruling delivered on 19th September 2023. In the said ruling, as we have stated above, the learned Judge dismissed the application dated 11th July 2023. That order, on the face of it, is not capable of being executed. It merely rejected and dismissed the applicant's application. It was a negative order and this Court has said, time without number, that an order of stay of execution cannot issue directed at a negative order since it is incapable of being executed. See for instance, *Western College of Arts and Applied Sciences v Oranga & Others* [1976] KLR 63 and *Oliver Collins Wanyama v Engineers Board of Kenya* [2019] eKLR.
12. We therefore are bereft of jurisdiction to issue a stay of execution in the manner sought. The other prayers not being substantive, the motion dated 23rd October 2023 fails and is dismissed but with no



order as to costs, considering the relationship between the parties in this matter as that of trade union and the employer.

13. Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025.

D. K. MUSINGA (PRESIDENT)

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

F. V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

signed

DEPUTY REGISTRAR

