Riftvalley Railways Workers Union (K) v Kenya Railways Corporation & another (Employment and Labour Relations Cause E1041 of 2021) [2025] KEELRC 292 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 292 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS CAUSE E1041 OF 2021

MN NDUMA, J

FEBRUARY 6, 2025

BETWEEN

RIFTVALLEY RAILWAYS WORKERS UNION (K) ..... CLAIMANT

AND

KENYA RAILWAYS CORPORATION ..... 1ST RESPONDENT

AFRICA STAR COMPANY LIMITED ..... 2ND RESPONDENT

RULING

1. The court delivered a judgment dated 13th in which it found the suit by the Claimant to be without merit and dismissed the suit with no order as to costs.

2. In the said judgment, the court made a decision of mixed fact and law crystalized at page 10 of the judgment as follows:

> " The facts of this case demonstrate that the suit by the Claimant lack merit. The Claimant has failed to prove on a balance of probability that it has recruited any employee of the 1st and 2nd Respondents as its members to warrant the two companies to grant recognition in terms of section 54 of LRA and to warrant the two companies to deduct and remit union dues to the Claimant in terms of section 48 of LRA."

3. The Claimant/Applicant dissatisfied with that decision of the court has brought an application for review of the judgment on the basis that "there was an error on the face of the said judgment and which error, the trial court inadvertently or otherwise may have relied upon to establish its impugned findings."

4. The error of fact alleged to have been made by the court is said to be the findings by the court that "Rift valley Railways Workers Union and the Claimant Union, the Meter and Standard Guage Railway

Workers and Pensioners Union are rival unions. The Applicant alleges that the Claimant union and the Rift Valley Railways Workers Union (K) were one and the same thing, and are not two separate entities neither are they rival Trade Unions."

5. It is apparent from this bold assertion by the Applicant that this application for review is an appeal of the judgment of the court on a matter of fact disguised as a review application.

6. The court made a considered decision on this matter of fact and became functus officio. This is not an error apparent on the face of record reviewable in terms of rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules 2016, now rule 74(1) (b) of ELRC (procedure) Rules 2024 which reads: -

> A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling-
>
> a. ----------
>
> b. On account of some mistake or error apparent on the face of record;"

7. The court finds that this is a decision of fact that is amenable to appeal by the Claimant/Applicant to the Court of Appeal and the Claimant/Applicant retains the right to file an appeal to the Court of Appeal if aggrieved by the decision of this court.

8. An application for review is heard by the Judge who made the decision unless that Judge is not available to hear and determine the application for review for reasons beyond his/her control. This is not the situation in this matter. The application to have this matter heard by a bench of three Judges is misconceived and is not supported by any law or rule of procedure known to the court.

9. In the case of National Bank of Kenya Limited versus Ndungu Njau [1997] eKLR, the Court of Appeal stated: -

> A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.
>
> In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the Respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise, we agree that the learned Judge would be sitting in appeal of his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it." [underlining ours].

10. The circumstances depicted in this decision of the Court of Appeal mirror the situation in the present matter. The court made a conscious, considered decision of fact and considered the law applicable and found the suit by the Claimant/Applicant to be without merit. The only option the Claimant/Applicant has is to appeal the decision of the trial court.

11. Accordingly, the application lack merit and is dismissed with the parties to bear their own costs of the application.

DATED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Mumma for Claimant/Applicant

Ms. Mbilo for 2nd Respondent

Mr. Kemboi – Court Assistant