



**Rift Valley Railways Workers Union (K) v Kenya Railways Corporation
& another (Employment and Labour Relations Cause 37 of 2013)
[2024] KEELRC 13205 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13205 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 37 OF 2013
MA ONYANGO, J
NOVEMBER 21, 2024**

BETWEEN

RIFT VALLEY RAILWAYS WORKERS UNION (K) CLAIMANT

AND

KENYA RAILWAYS CORPORATION 1ST RESPONDENT

RIFT VALLEY RAILWAYS(KENYA) LIMITED 2ND RESPONDENT

RULING

1. On 10th November, 2023 this court delivered a ruling in this matter in which it stated as follows:
 17. The application dated 7th February 2022 is therefore without merit and is dismissed. The application dated 12th February 2021 is also in my view, redundant by virtue of the fact that the only issue pending in this suit is costs. I will give parties another opportunity to discuss and agree on costs failing which this court will be compelled to assess the same, taking into account the fact the suit was not prosecuted by an advocate and can therefore not be subjected to taxation under the Advocates (Remuneration) Order.
 18. Parties will take a mention date at the time of delivery of this ruling.
2. The parties were unable to agree on costs. They were directed to file submissions in respect thereof. The Claimant filed submissions dated 29th April while the Respondent's submissions are dated 16th May, 2024.
3. There is no doubt that the Claimant is entitle to costs. The Claimant submitted that during their discussions the Respondent offered to pay Kshs. 400,000 while the Claimant insisted on payment of Kshs. 4.6 million as costs. The Claimant submitted that during their out of court discussions it was



able to adduce receipts and other documents justifying the payment of the costs demanded by the Claimant.

4. The Claimant submitted that while the Respondent was not and is clearly not averse to making some reparations in consideration and or in satiating the directives of the court so far in place with respect to the said issue, and in accordance to the offer of a Kshs 400,000.00 as can be attested to by the proceedings on record, it is the variance in the amounts that the said Respondent appears to be averse to which then necessitates the Hon Court to give directions on the issue in accordance to the directives of the Court of 10th November 2023.
5. The Claimant submitted that it is aware that the Respondent, subsequent to being served with the documentations with respect to the costs by the Claimant during the parties informal talks as was directed by the court, instituted investigations geared to lead to criminal prosecution of the Claimant on allegations that the Claimant forged the receipts supporting the claim of costs as was presented.
6. That the Respondent in furtherance of the above, sent investigators to the firms of Mr. Rhumba Kinuthia and Co. Advocates and Mrs. Gladys Ndeda and Co. Advocates located in Nairobi and Nakuru respectively and who were the advocates instructed to conduct the matter and established that the said receipts were genuine and authentic. That this was besides other investigative procedures with respect to the number of times the matter has been appearing in court up to date.
7. That it is on the basis of the said documentation that the Claimant seeks to be reimbursed costs as claimed or a sum as the Hon Court shall consider fit, to be reasonable costs as may have been incurred by the Claimant in prosecuting the matter herein.
8. For the Respondent it is submitted that the subject matter in the suit herein has been rendered moot following the transfer of the Claimants to the Respondent vide court order in Cause No. 136 of 2016: Rift Valley Railways Kenya Ltd v Kenya Railways Corporation & Another as well as consent orders entered before this Honourable Court in Nairobi ELRC Petition 76 of 2017: Elijah Mokaya & Others v Kenya Railways Corporation.
9. The Respondent submits that this suit questioned the transfer of services of the Claimants to Rift Valley Railways but the issue was resolved by the termination of the Concession Agreement to Rift Valley Railways which led to the employees being taken back to the employment of Kenya Railways and thus compromising the cause of action herein.
10. According to the Respondent it was agreed that the suits be marked as settled with no orders for costs. That the Claimant's representative declined the agreement.
11. The Respondent denies that it made any proposal to pay the Claimants' costs. It further submits that if any offer was made, it was withdrawn upon the rejection of the same by the Claimants.
12. There is no doubt that parties entered into negotiations and that pursuant thereto an agreement was reached to compromise the suit herein. There is further no doubt that the Respondent offered to pay the Claimants' costs as the suit had terminated in favour of the Claimants. The Respondent can not now refer to having withdrawn the offer as this is in bad faith.
13. The issue for determination is therefore how much is payable in the circumstances as there is no scale for payment of such costs which are supposed to be assessed by the court.
14. The Claimant has proposed to be paid Kshs. 4.6 million but has not given a basis for that specific amount. All the receipts attached by the Claimant predate the claim herein which was filed in 2013 while the receipts are for payments in 2006 and 2007.



15. The Respondent offered Kshs. 400,000 also without giving any basis for the same.
16. It is my view that the sum of Kshs. 600,000 would be reasonable under the circumstances of the suit herein.
17. In arriving at the figure I have taken into account the cost of preparing proceedings, coordinating the Claimants, disbursements and all other expenses that would reasonably be incurred in prosecuting a suit.
18. I have further taken into account the fact that it is the Claimant who was the successful party. The averment by the Respondent that it was the successful party is not borne by the wording of the Concession Agreement which at paragraph D.1.5 reads:

The Concessionaire shall on the Commencement Date employ the selected Employees and shall provide employment letters to each Transferred Employee notifying such employee of the terms and conditions of employment. The terms and conditions of employment shall be no less favorable than those which applied immediately prior to the Commencement Date.

19. The implication of the said paragraph is that the transferred employees were issued with fresh contracts by the Rift Valley Railways and their contracts were transferred to the said Rift Valley Railways so that they became employees of the said entity to the exclusion of Kenya Railways Corporation their former employer.
20. The Respondent is directed to pay the same within 60 days failing which the Claimant will be at liberty to execute for the same.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 21ST DAY OF NOVEMBER 2024.

M. ONYANGO

JUDGE

