



**Nyolo v Kenya Railways Corporation & another (Cause 50 of 2019)  
[2023] KEELRC 1812 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1812 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 50 OF 2019  
CN BAARI, J  
JULY 27, 2023**

**BETWEEN**

**JOSEPH OTIENO NYOLO ..... CLAIMANT**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before Court is the Claimant's Amended Memorandum of Claim dated July 9, 2019, seeking a declaratory order to compel the Respondents to settle the decree arising from a judgment delivered on May 23, 2014 in Nakuru ELRC Cause No 161 of 2013.
2. The 1<sup>st</sup> Respondent entered appearance on November 3, 2022, and 2<sup>nd</sup> Respondent equally filed their memorandum of appearance on November 18, 2022. The Respondents then proceeded to lodge their respective responses to the statement of claim within the same month.
3. A Notice of Preliminary Objection dated November 21, 2022, seeking to strike out the suit was dismissed vide a ruling rendered on February 16, 2023.
4. Both the Claimant's and the Respondents' cases were heard on April 24, 2023. The Claimant adopted his witness statement and produced documents filed in support of his case. Similarly, one Richard Kosgei testified on behalf of the 1<sup>st</sup> Respondent. He adopted his witness statement and produced documents filed in support of the Respondent's case.
5. The Claimant and the 1<sup>st</sup> Respondent filed submissions in the matter. The 2<sup>nd</sup> Respondent did not.



### **The Claimant's Case**

6. The Claimant's case is that he was an employee of the Rift Valley Railways (now defunct) and that judgment was entered in his favour in Nakuru ELRC Cause No 161 of 2013, on May 23, 2014.
7. It is his case that vide the judgment referred to above, he was awarded a sum of Kshs 1,093,029.34, and that the Court further ordered that failure to pay the amount would attract interest until payment in full.
8. He avers that the Rift Valley Railways appealed against the judgment, and which appeal was dismissed on November 1, 2017 for non-attendance of the Appellant.
9. The Claimant states that the Rift Valley Railways(RVR) was liquidated and taken over by Kenya Railways Corporation (KRC). It is his further case that he is in Court to seek orders to compel the Respondents to pay him his dues, as the amount has since not been settled in the pretext that the 1<sup>st</sup> Respondent is not liable for the liabilities of the Rift Valley Railways.
10. The Claimant states that vide a concession agreement entered between his former employer (Rift Valley Railways) and the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent is responsible to honour the judgment of the Court.
11. It is his prayer that the Court allows his claim as prayed.

### **The 1<sup>st</sup> Respondent's Case.**

12. The 1<sup>st</sup> Respondent's case is that the Claimant was employed by the now defunct Rift Valley Railways. It is the 1<sup>st</sup> Respondent's further case that it was not a party to the suit giving rise to the judgment subject of this suit.
13. It is the Respondent's further case that though the Claimant sued the Rift Valley Railways when the concession agreement was still in force, the agreement carried a provision to the effect that the Rift Valley Railways was to meet all liabilities, and which agreement was not varied at any point as to shift the liability to it.
14. The Respondent avers that it did not participate in the Claimant's disciplinary case, and neither was it a party to the suit giving rise to the decree subject of this case.
15. On cross examination, Mr Richard Kosgei (RW1), testifying for the 1<sup>st</sup> Respondent told Court that the 1<sup>st</sup> Respondent was not liable to settle any liabilities upon expiry of the concession agreement. It is his further position that the 1<sup>st</sup> Respondent did not inherit any liabilities from the defunct Rift Valley Railways, but that it only inherited assets.
16. RW1 further told Court that there was no other agreement between Rift Valley Railways and the 1<sup>st</sup> Respondent, other than the concession agreement which terminated in July, 2017. It is his further assertion that the appeal was determined after the expiry of the concession agreement.
17. It is its prayer that the suit be dismissed with costs.

### **The Claimant's Submissions**

18. It is submitted for the Claimant that the suit herein is not one for execution for reason that the 1<sup>st</sup> Respondent has denied liability, and hence the Court has to try the issue on whether the Respondents are liable to pay. It is the Claimant's submission that the suit herein is not defective only by reason that he did file a declaratory suit, and not judicial review proceedings.



19. It is submitted that the 1<sup>st</sup> Respondent was at the center of the concession agreement and cannot now be allowed to run away from it.
20. The Claimant further submitted that the 1<sup>st</sup> Respondent signed the concession agreement on behalf of the Kenyan Government, and that the Court already ruled in Rift Valley Railways Workers Union Vs Rift Valley Railways K Limited (2018)eKLR that Kenya Railways Corporation having signed the concession agreement, bears the responsibility to pay the workers of Rift Valley Railways.
21. It is submitted that the 1<sup>st</sup> Respondent presented itself to the public as having taken over the assets and liabilities of the defunct Rift Valley Railways and therefore has a duty to pay for any debts that arise in the course of their dealings, and that it is estopped from denying this position.

### **The 1<sup>st</sup> Respondents Submissions**

22. It is submitted for the 1<sup>st</sup> Respondent that it was not involved in any employment issues regarding the Claimant owing to the terms established in the concession agreement.
23. It is the 1<sup>st</sup> Respondent's submission that it is not obligated to settle the decretal sum as sought by the Claimant on the premise that clause D2 of the concession agreement, stipulated that the 1<sup>st</sup> Respondent shall not incur liability for any employment related payment involving RVR staff.
24. It is the 1<sup>st</sup> Respondent's submission that the language of the judgment was clear on the settlement of the decretal sum, and that in the absence of further orders reviewing the payment timelines from July, 2014, the expiry date cannot be in 2017.
25. It is the Respondent's submission that it was neither party to the disciplinary proceedings nor the suit resulting in the award subject of this suit.
26. The 1<sup>st</sup> Respondent submits that the Claimant is inviting this Court to reopen the judgment rendered in Nakuru ELRC No 161 of 2013, when the Court is already functus officio on the matter. It placed reliance in Geoffrey M Asanyo & 3 Others v. Attorney General (2020) eKLR to support this position, and invites the court to find that it is not contractually bound to settle the decretal sum herein.
27. The 1<sup>st</sup> Respondent prays that the Claimant's claim be dismissed with costs.

### **Analysis and Determination**

28. I have considered the pleadings herein, the witnesses' oral testimonies and the rival submissions. The singular issue for determination is whether the Respondents are bound to settle the decretal sum of Kshs 1,093,029.34/- awarded in Nakuru Industrial Cause No 161 of 2013, together with the accruing interests and costs.
29. It is not disputed that the Claimant was an employee of the Rift Valley Railways (RVR). It is equally agreed that the issues subject of his dismissal arose while in the service of the RVR, was taken through disciplinary process by the RVR, terminated and was party to Nakuru ELRC No 161 of 2013 with the RVR and not the 1st Respondent.
30. The record confirms that there was indeed a concession agreement entered between the 1<sup>st</sup> Respondent and the Rift Valley Railways.
31. The provisions of the concession agreement relevant to this claim are clauses D2, M9(10), which state thus:

“D2 Maintaining Concessionaire Employees



Other than arrangements to share the cost of retrenchment packages of transferred employees in certain circumstances stipulated in Section D.4.2 the concessionaire shall be fully responsible for paying the emoluments of all employees and for expenses associated therewith and KRC shall not incur any liability for any such employee related payment or occurrence.”

M9 Expiry Date

On the expiry date the transfer and/or disposal of property, contracts and obligations, debts and responsibility of KRC and the concessionaire shall be as follows: -

(f) employee contracts entered into by the concessionaire shall be the responsibility of the concessionaire.”

32. The Concession Agreement referred to herein, was terminated on July 21, 2017. The judgment and subsequent decree subject of this suit was pronounced on May 23, 2014, and the appeal filed by RVR against the judgment, was dismissed for non-attendance on November 1, 2017.
33. The 1<sup>st</sup> Respondent objection to settling the decretal sum is premised on the assertion that the judgment was delivered in 2014, and which judgment expressly indicated that RVR was to pay the amount of the decree by July 1, 2014. The 1<sup>st</sup> Respondent further opposed the claim on the premise that all liabilities were a responsibility of the RVR/Concessionaire.
34. There can certainly not be a wrong without a remedy. The Claimant holds a decree in his favour, and which I believe someone somewhere must be held responsible to make good. The Attorney General, though enjoined as a party to this suit, failed, neglected and/or declined to defend the suit on behalf of the Government of Kenya.
35. The same office must have been at the center of the dissolution of the RVR which was a public entity. For this reason, the participation of the Attorney General in the suit, would have assisted this court unravel where to place such liability when parties by design had resolved to take it away from the successor of the RVR, and not providing for how or where such debts/liabilities should lie.
36. There is no indication that the judgment/decreed herein, was stayed during the pendency of the appeal before the Court of Appeal. It thus follows that the amount of the decree was a liability available for settlement even during the life of the concession agreement.
37. Further, the 1<sup>st</sup> Respondent has not led any evidence to show that it issued notice to creditors of the RVR before the termination of the Concession agreement, and nor was the concession agreement published for the information of persons affected or claiming as against the RVR.
38. In the premise, I find and hold that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are jointly and severally liable to settle the decree in Nakuru Industrial Cause No 161 of 2013.
39. The Respondents shall likewise jointly and severally bear the costs of this suit.
40. Judgment of the court.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 27<sup>TH</sup> DAY OF JULY, 2023.**

**C. N. BAARI**

**JUDGE**



Appearance:

Mr. Omondi T present for the Claimant

Ms. Moraa Present for the 1<sup>st</sup> Respondent

N/A for the 2<sup>nd</sup> Respondent

