



**Kenya Engineering Workers Union v Rift Valley Engineering Workers Ltd  
(Cause 240 of 2018) [2023] KEELRC 2653 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2653 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 240 OF 2018  
DN NDERITU, J  
OCTOBER 26, 2023**

**BETWEEN**  
**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**  
**AND**  
**RIFT VALLEY ENGINEERING WORKERS LTD ..... RESPONDENT**

**RULING**

**I. Introduction**

1. The claimant instituted this cause vide a memorandum of claim dated 6<sup>th</sup> September, 2018 seeking for review of the terms of a collective bargaining agreement (CBA) which was duly negotiated, signed in court on 26<sup>th</sup> June, 2015 and registered.
2. The terms sought to be reviewed include leave travelling allowance, house allowance, general wage increment, basic minimum wage, redundancy, death of an employee, safari allowance, probationary period, sick leave, and the effective date.
3. Negotiations between the parties failed as it is alleged that the respondent refused to cooperate.
4. The dispute was referred to a conciliator, but the respondent declined to appear at the meeting and failed to forward its signed memorandum. This prompted the conciliator to issue the certificate for non-compliance, resulting in the filing of this cause.
5. The respondent entered appearance on 11<sup>th</sup> September 2018 through the firm of Githiru & Co. Advocates and opposed the claim through a memorandum of response dated 12<sup>th</sup> November, 2018 and filed in court on 13<sup>th</sup> November, 2018.
6. In summary, the respondent avers that the suit is premature as it offends the mandatory provision of Section 57 of the *Labour Relations Act*, 2007. The respondent avers that it was neither invited to any negotiation meeting(s) nor was it served with the proposed collective bargaining agreement. In



addition, the respondent asserts that the claimant's members deserted duty on 20<sup>th</sup> November, 2017 and prays that the suit be dismissed with costs.

7. On 14<sup>th</sup> November, 2022, counsel for the respondent filed a notice of preliminary objection (P.O) stating as follows:
  - a. The purported respondent sued as Rift Valley Engineering Limited is non-existent and lacks the capacity to be sued and the suit papers herein were served upon Rift Valley Engineering Workers Limited which is well within the Claimant Union's knowledge.
  - b. The Claimant Union lacks the capacity to file and prosecute this suit ostensibly as the legal representative or advocate for its alleged members.
  - c. Following the Honourable Court's ruling in Nakuru HC ELRC Cause No. E011 of 2020, Kenya Engineering Workers Union vs Rift Valley Engineering Limited delivered on 29<sup>th</sup> September, 2022(a matter between the same 2 parties), the Court struck out a similar cause on the very grounds that there is no legal entity known as Rift Valley Engineering Limited, as sued herein and further held that the claimant union cannot file a cause in the status of a qualified advocate representing parties in Courts, this case ought to be struck out on the same grounds.
  - d. This suit is a gross abuse of the Court process and thus ought to be struck out at this stage with costs to the respondent.
8. On 15<sup>th</sup> December, 2022, the court gave directions that the P.O by the respondent be heard first and that the same be canvassed by way of written submissions.
9. Counsel for the respondent filed his submissions on 13<sup>th</sup> February, 2023 while counsel for the claimant filed on 28<sup>th</sup> February, 2023.
10. This ruling therefore is in regard to the said P.O.

## **II. Submissions By Counsel For The Respondent**

11. The respondent's counsel submits that the claimant filed a cause against a non-existent entity named Rift Valley Engineering Limited. The respondent makes reference to Nakuru ELRC Cause No. E011 of 2020, wherein a ruling was delivered on 29<sup>th</sup> September, 2022 holding that there is no legal entity by the name Rift Valley Engineering Limited.

## **III. Submissions By Counsel For The Claimant**

12. The claimant submits that it has a right to represent its members in court as provided for under Section 22 of the Employment and *Labour Relations Act* which provides that a trade union can act in person, through its elected officials, or authorized officers. The claimant submits that the P.O lacks merits.

## **IV. Issues For Determination**

13. The court has considered the P.O together with the written submissions by counsel for both parties and there is only one main issue for determination - Is the P.O as filed and presented by the respondent meritorious?



## V. Analysis And Determination

14. In *Mukhisa Biscuit Manufacturing Co. Ltd. V West End Distributors Limited* (1969) EA 696, a preliminary objection is defined as follows: -

“.....a “Preliminary Objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a Preliminary Objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a Preliminary Objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence...”

15. For a party to succeed in raising a P.O the same should be pleaded, be a matter of law which is capable of disposing of the suit; must not be blurred by factual details calling for evidence and must not call upon the court to exercise discretion.
16. In this case, there is the argument that the purported respondent Rift Valley Engineering Limited is a non-existing entity and lacks the capacity to be sued. The court has perused the pleadings and noted that the correct and legal name is Rift Valley Engineering Works Limited as per the certificate of incorporation.
17. On 19<sup>th</sup> October, 2021, the court directed that parties file their amended pleadings but that notwithstanding the claimant referred to the respondent as Rift Valley Engineering Workers Ltd which description does not reflect the legal name as stated above.
18. The respondent's proper and registered name is Rift Valley Engineering Works Limited as per the certificate of incorporation C. 19491. The said certificate of incorporation is concrete evidence showing that the respondent is legally known as Rift Valley Engineering Works Limited and not in any other name.
19. Similarly, in Nakuru ELRC Cause No. E011 of 2020, the court held that there was no proper suit between the claimant and Rift Valley Engineering Works Limited and the cause could not be salvaged under Order 1 Rule 9 of the [Civil Procedure Rules](#). The court struck out that cause on that ground.
20. In the current cause, the court finds that the respondent is not a known legal entity and the respondent has provided evidence in support of its assertion that there is no legal entity by that name and if there was, the same is not the one that has been brought to court.
21. On the issue of the capacity of the claimant's union to file and prosecute this cause, the same issue was addressed in Nakuru ELRC Cause No. E011 of 2020, where the court quoted section 22 of the Employment and Labour Relations Court. In the said ruling the court stated that Section 22 of the [Employment and Labour Relations Court](#) provides that an officer or official only appears in court on behalf of the trade union, since a juristic person cannot act in person in legal proceedings. The court further stated that such an officer or official of a trade union or employer organisation does not and cannot enjoy the same rights and privileges available to a duly qualified advocate admitted under the [Advocates Act](#) (Cap 16) Laws of Kenya and as such what such an officer or official can or cannot do shall be determined on case to case basis and as raised in the proceedings before the court.



22. The PO succeeds on the ground that the respondent is not a known legal entity and the claimant has failed or neglected to amend its pleadings even after being granted an opportunity to do so.
23. Therefore, this cause is hereby struck out with no order as to costs.

**DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 26<sup>TH</sup> DAY OF OCTOBER, 2023.**

.....

**DAVID NDERITU**  
**JUDGE**

