



REPUBLIC OF KENYA



KENYA LAW
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**Rift Valley Railways Workers Union (K) v Kenya Railways Corporation
& another (Employment and Labour Relations Cause 37 of 2013)
[2023] KEELRC 2875 (KLR) (10 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2875 (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 10, 2023**

BETWEEN

RIFT VALLEY RAILWAYS WORKERS UNION (K) CLAIMANT

AND

KENYA RAILWAYS CORPORATION 1ST RESPONDENT

RIFT VALLEY RAILWAYS (KENYA) LIMITED 2ND RESPONDENT

RULING

1. On 7th February 2022, the 1st Respondent lodged an application seeking the dismissal of this suit for want of prosecution on grounds that this matter was last in court on 19th February 2020 when the Claimant was given time to file a formal application for my recusal after he raised objection to my handling of the suit. It is averred in the instant application that the Claimant has since then not taken any steps to have the application which it filed on 7th February 2022 prosecuted.
2. The 1st Respondent avers that the Claimant has lost interest in this suit and now hopes to keep it in court merely for purposes of buying time and clogging the court's diary and registry. According to the 1st Respondent, this claim was filed in 2007 when the Claimants were challenging the transfer of the union's members services from the 1st Respondent to the 2nd Respondent pursuant to a concession agreement which, according to the 1st Respondent, the Claimant was party to by virtue of the Collective Bargaining Agreement negotiated by the Claimant.
3. It is averred that the Claimant's claim in the entire suit stems from the argument that the transfer from the 1st Respondent to the 2nd Respondent was a termination as opposed to a transfer. That vide an order of the High Court dated 31st July 2017, in Milimani Commercial HCC No. 136 of 2017, Rift Valley Railways(K)Ltd vs Kenya Railways Corporation & Another, the said concession agreement was terminated and all the 1st Respondent's employees who had been transferred to the 2nd Respondent



were transferred back to the 1st Respondent to continue serving their employment. That as of now, arising from the transfer back to the 1st Respondent, the Claimants are employees of the 1st Respondent and the claims herein have been overtaken by events and rendered nugatory.

4. It is the 1st Respondent's contention that the present suit is untenable and its continued subsistence before this court is a severe injustice to the 1st Respondent and a thorough waste of judicial time. Further, the 1st Respondent is at a severe disadvantage being unfairly dragged to the seat of justice and incurring expenses of defending a suit where there is no longer a subsisting cause of action.
5. When the matter came up for mention for directions on 19th July 2022, Counsel Thuo for the 2nd Respondent informed the court that he was not opposed to the application for dismissal having also filed a similar application dated 31st May 2018 which was not prosecuted after the parties got into negotiations.
6. Mr. Munayi for the Claimant on the other hand opposed the application and maintained that the Claimant is desirous of prosecuting this suit.
7. On 31st October 2022, when the matter was before this court for hearing of the instant application, it emerged from the oral submissions of the parties, that the only pending matter in this suit is the issue of costs.
8. Although the issue before me is the determination of the application dated 7th February 2020, it is clear that the bone of contention in this matter is the issue of costs, as the claim herein has without a doubt been overtaken by events.
9. It is therefore my considered view that although this matter has been in court for almost 17 years, it is not a matter that can be dismissed for want of prosecution as there is obviously no cause of action to prosecute. A matter pending for determination of costs cannot be dismissed for want of prosecution.
10. Further, the last directions in the file was for parties to agree on costs following the dissipation of the cause of action herein vide the decision in Milimani Commercial HCC No. 136 of 2017, Rift Valley Railways(K)Ltd vs Kenya Railways Corporation & Another.
11. Mr. Munayi in his oral submissions before court on 31st October 2022 intimated that following the court's directions to have the issue of costs compromised the Respondent offered Kshs 400,000 which amount according to the Claimant was too low considering that the matter has been in court since 2007.
12. Section 27 of the *Civil Procedure Act* provides: -

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- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers; provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.



13. Further, section 12(4) of the *Employment and Labour Relations Court Act* provides: -

In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.

14. Rule 29 of Employment and Labour Relations Court (Procedure) Rules 2016 further provide: -

29.

- (1) The Court shall be guided by section 12(4) of the *Employment and Labour Relations Court Act* and the Advocates (Remuneration) Order in awarding costs.
- (2) The Court may order reasonable reimbursements of money spent by litigants in the course of litigation.
- (3) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, it may, in addition to that order, direct that interest be paid on the liquidated amount awarded at Court rates.

15. In the case of in Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review application no 6 of 2014 the court held as follows: -

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

16. 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.

17. Parties will take a mention date at the time of delivery of this ruling.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 10TH DAY OF NOVEMBER, 2023.

M. ONYANGO

JUDGE

