



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NUMBER 830 OF 2019

BETWEEN

RIFT VALLEY RAILWAY WORKERS UNION.....CLAIMANT

VERSUS

KENYA RAILWAYS CORPORATION.....RESPONDENT

RULING

1. The Claimant filed this Claim on behalf of its Member/ Grievant, Francis Oduor Odera, on 13th December 2019.
2. Odera was employed by the Respondent as a Locomotive Driver in 1990, and dismissed on 21st October 2014.
3. The Claimant seeks to have Odera reinstated, or paid compensation and terminal benefits.
4. The Respondent filed a Notice of Preliminary Objection on 19th February 2020, challenging the jurisdiction of the Court. It is the position of the Respondent that all issues raised by the Claimant, are directly in issue in previously instituted suits, being: **Nairobi E&LRC Petition No. 76 of 2017 Elijah Mokaya & Others v. Kenya Railways Corporation; E&LRC Cause No. 37 of 2013 Rift Valley Railway Workers Union v. Kenya Railways Corporation; and Rift Valley Railways [Kenya] Limited v. Kenya Railways Corporation & The Government of Kenya.**
5. Parties recorded consent to have the Preliminary Objection considered and determined on the strength of their Pleadings and Submissions. They confirmed filing of the Submissions on 17th December 2020.

The Court Finds: -

6. The Claimant acknowledges the presence of other suits listed at paragraph 4 of this Ruling, involving the similar issues. In its Pleadings, the Claimant refers to Consent Order recorded in *“Commercial Suit Number 136 of 2017, whose import was to terminate the existence of one of the Parties therein, the Respondent herein, courtesy of the said order and other subsequent orders as recorded in Petition Number 76 of 2017, obligates the Respondent herein to assume every liability accrued to the Grievant herein.”*
7. Why file a fresh Claim, if there are other Claims filed in Court, where orders have issued, obligating the Respondent to assume every liability accrued to the Grievant herein? Enforcement should be through the existing Claims, where liability was found to have accrued.
8. In its Application dated 13th October 2019, the Claimant seeks an order, in rather unclear language, that:

“the Hon. Court directs, that in light of the Consent Orders as have been presented in Court by the Applicant herein, in Commercial Suit Number 136 of 2017 and Petition 76 of 2017, the Respondent herein be fully obligated in the likely event that the Court ascertains liability.”

9. The present Claim therefore assumes the character of an enforcement mechanism, over orders issued in other litigation. It is based on orders arising from other litigation. This is in abuse of the court process. The Claimant ought to pursue remedy under the existing suits, not open up new, confusing frontiers.
10. Looking at the Claim from another perspective, the Claimant was dismissed on 21st October 2014. He filed this Claim on 13th December

2019, 5 years later. The Claim offends Section 90 of the Employment Act.

11. The Court lacks jurisdiction on account of the presence of other suits involving the same Parties and issues; and, on account of Section 90 of the Employment Act.

IT IS ORDERED: -

a. The Claim is declined for want of jurisdiction.

b. No order on the costs.

Dated and delivered at Nairobi this 18th day of February, 2021.

James Rika

JUDGE