



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NUMBER E6475 OF 2020

BETWEEN

RIFT VALLEY RAILWAY WORKERS UNION [K]CLAIMANT

VERSUS

- 1. KENYA RAILWAYS CORPORATION**
- 2. THE KENYA PORTS AUTHORITY**
- 3. CABINET SECRETARY MINISTRY OF TRANSPORT
AND INFRASTRUCTURE**

- 4. THE NATIONAL TRANSPORT AND SAFETY**

AUTHORITY.....RESPONDENTS

AND

- 1. THE ATTORNEY-GENERAL**
- 2. THE CLERK, NATIONAL ASSEMBLY**
- 3. THE CLERK, SENATE ASSEMBLY**
- 4. THE WORLD BANK COUNTRY DIRECTOR**
- 5. RETIREMENT BENEFITS AUTHORITY**
- 6. KENYA RAILWAYS RETIREMENT BENEFITS AUTHORITY [SCHEME]**
- 7. ASSETS RECOVERY AGENCYINTERESTED PARTIES**

RULING

1. The Claimant seeks various orders in the Claim and Application filed herein, dated 19th November 2020.
2. The orders sought include that: -
 - a. The tabling and enactment of Kenya Railways Act 2019, be stayed until the issues as are brought out in this Application are heard and determined.
 - b. The Court declares that the Rift Valley Railways Workers Union is a stakeholder in the process and is lawfully representing the Railway Workers Union and Kenya Railways Retirees.

c. The 3rd Respondent's Report and Proposals dated 11th August 2020, pertaining to the assets of over 8,600 members, of the irrevocable member's Trust, the KRSRBS to the Senate Committee of Labour, be stayed until issues in this Application are heard and determined.

d. The Respondents to publish new dates for commencement of the process.

e. The custody and management of assets in question be assumed and tentatively run by the 5th Interested Party through the oversight of the Claimant for a period of 12 months.

f. Vesting Order Number 22 of 2012 that purported to have repealed critical provisions of the Railways Act, Cap 397 the Laws of Kenya, transferring or vesting the assets of Kenya Railways and Marine Services to other Governmental Agencies without public participation and consultation of other interested groups, be declared null and void.

3. The 1st Interested Party has raised Preliminary Objection on the jurisdiction of the E&LRC. Its position is that the matter falls outside the ambit of the E&LRC as delineated by Article 162 [2][a] of the Constitution of Kenya and Section 12 [1] of the E&LRC Act, 2011.

4. The Claimant's grievance is against the exercise of legislative and executive prerogative in formulation of the Draft Railway Bill 2019. This is not a matter arising from an employer-employee relationship. It is a constitutional dispute, to be contested at the Constitutional Division of the High Court. The 1st Respondent cites the well-known decisions on jurisdiction, Supreme Court of Kenya, in **Samuel Kamau Macharia v. Kenya Commercial Bank Limited & 2 others [2012] e-KLR** and **E&LRC, in United States University International [U.S.I.U] & 3 Others v. Attorney-General & 13 Others [2016] e-KLR**.

5. A majority of the other Parties fully associate themselves, with the position of the 1st Interested Party. Parties agreed that the Preliminary Objection is heard and determined on the basis of Written Submissions, which have been confirmed to be on the record.

6. The Claimant submits that the E&LRC Act and the Constitution, confers this Court with unlimited, original and appellate jurisdiction, on matters relating to employment and labour relations. The matters in dispute relate to employment and labour relations. The matters include transfer of Employees from the old regime to the new regime; recruitment of new members by the Claimant; public participation of the Claimant; and the welfare of Claimant's members. The Claim is intended to ensure that the legislative process is carried out legally and with the full participation of the Claimant Union.

The Court Finds: -

7. The Railways Bill 2019, is not confined to employment and labour relations. It deals with other matters, such as establishment of the Kenya Railways Corporation; management of the Corporation; financial governance; requirements for construction of railway lines; Railway safety; licensing of train operators; access to railway network; carriage of passenger and goods; accidents; and establishment of training institute. The Bill is aimed at reforming the Kenya Railways in its totality, rather than reform its employment and labour relations.

8. The Bill is not a Labour Bill, calling in the jurisdiction of the E&LRC. It covers a majority of subjects, clearly out of the purview of the E&LRC. While the Court does not agree with the 1st Interested Party and a majority of the Respondents, that violation of constitutional rights is remediable solely by the High Court, it is of the considered view that the E&LRC, could assume jurisdiction, if the Bill under review, is preponderantly a Labour Bill. It must be cautioned however, that the Supreme Court of Kenya in **Justus Kariuki Mate & Another v. Martin Nyaga Wambora & Another [2017] e-KLR**, held that each arm of Government is under duty to refrain from directing another arm on how to exercise its mandate. What the Claimant is asking the Court to restrain, is the performance of legislative and executive functions by other arms of Government which are acting within their constitutional mandates. The Claimant Union, even as it moves to another forum, should read and understand this decision of the Supreme Court of Kenya. It is doubtful whether, even the High Court, Constitutional Division, would issue orders restraining the Respondents from having the Bill tabled and debated in Parliament.

9. The aspect touching on Labour in the Bill, is minimal. The Court with the closest connecting factors, to this dispute, is definitely the High Court of Kenya, not the E&LRC. The Claimant needs to read the whole Bill, to understand why the E&LRC is not the appropriate forum.

10. Relying of the 2 decisions cited at paragraph 4 of this Ruling, the E&LRC must decline jurisdiction and direct that the file is forwarded to the High Court at Nairobi for hearing and determination.

IT IS ORDERED: -

a. The Preliminary Objection on jurisdiction is upheld.

b. The matter shall be forwarded to the Constitutional Division, High of Kenya at Nairobi, for hearing and determination.

c. No order on the costs.

Dated and signed at Chaka, Nyeri County under Ministry of Health and Judiciary Covid-19 Guidelines, this 8th day of April 2021.

James Rika

Judge