



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1409 OF 2016

RIFT VALLEY RAILWAYS WORKERS UNION (K).....CLAIMANT

-VERSUS-

RIFT VALLEY RAILWAYS (KENYA) LIMITED.....RESPONDENT

-AND-

KENYA RAILWAYS CORPORATION.....1ST PROPOSED INTERESTED PARTY

CHINA ROADS BRIDGES CORPORATION...2ND PROPOSED INTERESTED PARTY

(Before Hon. Justice Byram Ongaya on Thursday 30th July, 2020)

RULING

On 01.07.2020 the Court ordered parties to file and serve submissions on the preliminary objection and on the application of 11.10.2019 and there be directions on the application dated 04.06.2020 after ruling on the preliminary objection and application of 11.10.2019. The parties have filed their respective submissions. There is no dispute that the respondent is no longer in existence.

The claimant filed a notice of motion on 11.10.2020 through its Secretary General Munayi Isaac Opondo. The application was under the Constitution of Kenya, 2010, the Labour Laws 2007, the Employment and Labour Relations Court (Procedure) Rules, and other enabling legislations and judicial precedents of similar nature. The applicant prayed for several orders and the pending prayers for purposes of this ruling are for orders:

- 1) That the 1st and 2nd intended interested parties be admitted in the matter as interested parties.
- 2) That the 1st interested party be directed with immediate effect to rescind his unprocedural, unilateral decision to refuse to deduct and remit union dues from over three hundred and ninety (390) in number of claimant's members and forthwith have them remitted to the claimant herein,
- 3) That the 2nd interested party be directed with immediate effect to rescind his unprocedural, unilateral decision to refuse to deduct and remit union dues from over two hundred and thirty (230) in number of claimant's members and to begin with immediate effect to deduct same and to forthwith have them remitted to the claimant herein.
- 4) That both interested parties be directed to remit, from their own coffers, and in arrears, all the union dues they were obligated to have remitted from the day they were instructed to commence the said deductions to date.
- 5) That the 1st interested party herein be directed to forthwith arrange to sign a recognition agreement with the claimant herein, the same having recruited over 80% of the said 1st interested party's employees.
- 6) That the 2nd interested party be directed to withdraw his letter addressed to all the workers who had subscribed to join the union requiring them to confirm their authorization, and, forthwith commence deducting and remitting the said union dues as shall be directed by the union.

The application was based on the attached supporting affidavit of Munayi Isaac Opondo and upon the grounds to the following effect:

- a) Following petition 76 of 2017 the 1st proposed interested party be directed by the Court to act as prayed for because in that

petition the 1st proposed interested party has consented to absorb all employees formerly being employees of the respondent herein and members of the applicant herein.

- b) Relevant check off forms for deducting union dues have been served upon the 1st proposed interested party.
- c) Despite being served relevant check off forms for deducting union dues, the 2nd proposed interested party has served the employees a letter requiring them to confirm if they are members of the applicant union.
- d) The applicant has recruited 930 employees of the 1st proposed interested party being over 80% of the employees and therefore satisfied the requirements for recognition under section 54 of the Labour Relations Act, 2007.
- e) Articles 36 and 41 of the Constitution entitles employees to join trade union and to participate in union activities. International Labour Organization Conventions No. 87 and 98 guarantee workers such rights.
- f) Demarcation dispute as to employees in unionisable and managerial cadres would be decided in appropriate conciliation proceedings.

The 1st proposed interested party appointed Nyaanga & Mugisha Advocates to act while the 2nd proposed interested party appointed Kimondo Gachoka & Company Advocates. The 1st interested party filed grounds of opposition on 28.10.2019 urging that the application lacks merit, no cause has been shown to warrant orders prayed for and the application is misconceived, fatally defective, incompetent, bad in law, mischievous, frivolous and vexatious. For 1st and 2nd proposed interested parties, respective notices of preliminary objection were filed thus:

- a) The claimant has no requisite *locus standi* to institute and prosecute the present application.
- b) There is no recognition agreement between the proposed interested parties and the applicant as per section 54 (3) of the Labour Relations Act, 2007. Accordingly, the proposed interested parties aver that the claimant lacks *locus standi* to commence or maintain the application or any cause for that matter and shall at the earliest opportunity apply to have the suit struck out.
- c) The application is an abuse of court process and there is no competent suit before the Court.

Submissions were filed for the parties. The Court has considered the material on record and makes findings as follows:

- 1) The proposed interested parties urge that the claimant lack jurisdiction for want of *locus standi* but in circumstances whereby there is no suit between the applicant and the proposed interested parties. The application is first, for joinder of the interested parties. To that extent, the preliminary objections will fail.
- 2) The proposed interested parties urge that there is no proper suit before the Court. There was no dispute between the applicant and the proposed interested parties that the respondent named in the suit has since ceased to exist. To that extent the Court finds that there exists no suit upon which the proposed interested parties may be enjoined. The Court upholds that preliminary objection and returns that the prayer for joinder and therefore the entire application will fail.
- 3) The applicant appears to seek prayers for recognition and deduction and remission of union dues against the proposed interested parties. It is the Court's findings that the applicant should be at liberty to invoke relevant provisions in the Labour Relations Act, 2007 including conciliation and appropriate legal proceedings as may become necessary. The Court considers such to be autonomous causes of action independent of the instant suit.
- 4) In any event the application seeks final orders which may be considered only in a properly instituted suit and after the full hearing therein.
- 5) The Court has considered all circumstances of the application and preliminary objections including that the respondent no longer exists and consider that each party to bear own costs of the suit.

In conclusion the application and the preliminary objections are determined with orders:

- 1) The application is dismissed.
- 2) The preliminary objection that there exists no proper suit to anchor the joinder is upheld.
- 3) As the respondent does not exist and there exist no proper suit, the claimant to consider filing a notice of withdrawal of the suit as may be appropriate.
- 4) Each party to bear own costs of the application and preliminary objections.

Signed, dated and delivered by the court at Nairobi by video link this Thursday, 30th July, 2020.

BYRAM ONGAYA

JUDGE