



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 575 OF 2019

*(Before Hon. Lady Justice Maureen Onyango)*

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

VERSUS

KENYA RAILWAYS CORPORATION.....1<sup>ST</sup> RESPONDENT

THE TRUSTEES, KENYA RAILWAYS

STAFF RETIREMENT BENEFITS SCHEME.....2<sup>ND</sup> RESPONDENT

RIFT VALLEY RAILWAYS (K) LIMITED.....3<sup>RD</sup> RESPONDENT

AND

KENYA POWER AND LIGHTING COMPANY.....INTERESTED PARTY

**RULING**

The 2<sup>nd</sup> Respondent, Kenya Railways Staff Retirement Benefits Scheme filed a Notice of Preliminary Objection dated 23<sup>rd</sup> September 2019 seeking to strike out with costs the Claimant's Application dated 30<sup>th</sup> August 2019 together with the entire claim on the following grounds:

1. That this Court lacks the jurisdiction to hear and determine the suit and application as filed against the 2<sup>nd</sup> Respondent.
2. That the application as filed and the entire claim herein against the 2<sup>nd</sup> Respondent are both *res judicata* and *subjudice*.
3. That the application and claim as against the 2<sup>nd</sup> Respondent are frivolous, vexatious, baseless and scandalous.
4. That the Claimant has no *locus standi* to bring this claim against the 2<sup>nd</sup> Respondent and it has no nexus whatsoever with the 2<sup>nd</sup> Respondent and its (Claimant's) claims are thus non justiciable.
5. That the claim and application as filed herein against the 2<sup>nd</sup> Respondent are an abuse of the process of the Court, are fatally defective, incompetent, a monumental legal nullity and inconsequential.

The Interested Party, Kenya Power and Lighting Company also filed its Grounds of Opposition dated 3<sup>rd</sup> September 2020 stating that the Claimant's Notice of Motion dated 30<sup>th</sup> August 2019 is misconceived and incurably defective. That the orders sought are repugnant to good practice and administration of justice. It further states that the Claimant does not seek any Orders against the Interested Party and there is also no nexus between the Claimant's prayers and the Interested Party. That the Claimant has provided no legal basis for including the Interested Party in the Suit/Application other than with the sole intention of defeating the administration of justice since the power bill in contention is outstanding. Further, that the Claimant's Application and the entire suit ought to be dismissed as against the Interested Party.

#### **2<sup>nd</sup> Respondent/Applicant's Submissions**

The 2<sup>nd</sup> Respondent submits that Munayi Isaac Opondo is the one aggrieved by the alleged evictions from Ngara Railways Quarters Block 22D yet the suit herein has been brought by the Rift Valley Railways Workers Union (K), an artificial entity that did not let the said house. That the Claimant is thus non-suited and non-justiciable in so far as this claim is concerned and further, the Claimant as an entity has not

sought for any reliefs to protect its interests. It submits that Munayi Isaac Opondo cannot be allowed to file a proxy Claim using the Claimant as a sword and be allowed to get away with it. To support this position the 2<sup>nd</sup> Respondent cites **Nakuru HCCC No. 260 of 204; The Attorney General v Kenya Commercial Bank & 3 Others**.

It is the 2<sup>nd</sup> Respondent's submission that the Claim as pleaded evidently relates to breach of landlord and tenant agreements and non-conformity with pension obligations and seeks commission for debt collection, damages for unlawful eviction, for tort and for damage to personal property. That jurisdiction of this Court is provided for under **section 12(1) of the Labour Institutions Act No 12 of 2010** and **Section 12 of the Employment and Labour Relations Court Act** and that it is clear that the issues before this Court are not related to employment and are not justiciable as per the foregoing provisions.

Further, that the Claimant union has no relationship whatsoever with the 2<sup>nd</sup> Respondent in terms of employment of its members and neither was there a Recognition or Collective Bargaining Agreement between the Claimant and the 2<sup>nd</sup> Respondent so as to bestow jurisdiction on this Court. That in any case the Courts have consistently held that the Claimant has not exhausted the dispute resolution mechanisms provided for under the Retirement Benefits Authority Act. Further, that the Claimant lacks *locus standi* to agitate such a dispute, if any. It refers the Court to the determinations in the annexure bundle marked "NKI" in the Replying Affidavit of Nicholas Kikui sworn on 28<sup>th</sup> January, 2020.

The 2<sup>nd</sup> Respondent submits that from the Memorandum of Claim, the various causes of action herein occurred between 2006 and 2012 and which causes of action as highlighted are not employment related. That however in the unlikely event this Court holds that it has jurisdiction in the matter, it is the 2<sup>nd</sup> Respondent's submission that the claim as filed is statute barred and contravenes the provisions of **Section 90 of the Employment Act** which provides that the Court cannot entertain a dispute after three years.

It further submits that it is apparent there have been previous concluded cases between the parties over the same issues and others are still pending before various Courts, which fact the Claimant has confirmed in relevant parts of the Memorandum of Claim. That it is trite a party cannot have parallel proceedings in different courts with the attendant risk of conflicting decisions over the same matter. That such conduct contradicts the oxygen principle where Courts are called upon to deliver justice in an economical, just and proportionate manner. That therefore the Claimant's disclosed conduct is a foul the *res judicata* or *subjudice* rule and is an abuse of the Court process.

#### **Claimant's Submissions**

On the issue of Jurisdiction, the Claimant submits that **Article 162(2)(a) of the Constitution** created the Employment and Labour Relations Court to litigate matters bordering on employment and labour relations as are embodied in the application dated 30<sup>th</sup> August 2019 and the claim herein. That this Court has also made a clear pronouncement and determination on the issue of jurisdiction in **Cause 2289 of 2015** in a **Ruling dated 17<sup>th</sup> August 2019**. It submits that this Court is therefore seized of the requisite jurisdiction to hear **this matter as filed by the Claimant union**.

On the issue of *locus standi*, the Claimant submits that it is a Registered Trade Union with a **Certificate of Registration Number TU/165**, duly registered to articulate issues in respect of its members and can thus sue and to be sued in that capacity. That **section 2 of the Labour Relation Act 2007** and **Order 9 Sub-Rule 2 of the Civil Procedures Rules** further accords it the locus to prosecute the matter. That this Court established on 17<sup>th</sup> August 2019 in **Cause 2289 of 2015** that the Claimant herein has a nexus with the 2<sup>nd</sup> Respondent and the right to thus engage the said Respondent on matters as raised herein.

It is submitted by the Claimant that the 2<sup>nd</sup> Respondent has further not demonstrated to the court the nature and extent of the alleged *sub-judice* and in which matter the issues herein may have been litigated or are being litigated in court. It denies that the issues raised in the application dated 30<sup>th</sup> August 2019 are in any way *res judicata* or *sub-judice* and submits that this Court cannot therefore be hoodwinked by the unsubstantiated allegation of sub judice by the Respondent.

It is the Claimant's submission that the application dated 30<sup>th</sup> August 2019 was filed in good faith and bereft of malice on its part. That **Article 50 of the Constitution of Kenya 2010** affirms its rights to be heard in court so that it is not vexatious at all for a litigant to invoke the court's jurisdiction in a matter that may require adjudication. It urges the Court not to depart from its custom of determining matters predicated on similar previous matters in respect to the issues as have been raised therein. That the Court should not allow the Respondent's preliminary objection herein as it is an abuse of the process of the court.

#### **Analysis and Determination**

**Section 12 of the Employment and Labour Relations Court Act** provides for the jurisdiction of this court as follows:

**(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—**

**(a) disputes relating to or arising out of employment between an employer and an employee;**

**(b) disputes between an employer and a trade union;**

**(c) disputes between an employers' organisation and a trade union's organisation;**

- (d) disputes between trade unions;
- (e) disputes between employer organisations;
- (f) disputes between an employers' organisation and a trade union;
- (g) disputes between a trade union and a member thereof;
- (h) disputes between an employer's organisation or a federation and a member thereof;
- (i) disputes concerning the registration and election of trade union officials; and
- (j) disputes relating to the registration and enforcement of collective agreements.

Jurisdiction is everything and without it, the court has no power to make one more step as was stated by the late Nyarangi J. in the case of **Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited (1989) KLR 1**. Further, in the High Court case of **Joyce Cherop Kaspondoy & 609 others v Kenya Power and Lighting Company [2019] eKLR**, Mativo J. held that:

*"24. A court has no inherent jurisdiction to decline to entertain a matter within its jurisdiction. Jurisdiction is determined on the basis of pleadings and not the substantive merits of the case. The South African Constitutional Court (In the matter between **Vuyile Jackson Gcaba v Minister for Safety and Security First & Others Case CCT 64/08 [2009] ZACC 26**) had this to say:-*

*"... In the event of the court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognizable only in another court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim ..., one that is to be determined exclusively by..... {another court}, the High Court would lack jurisdiction..."*

In the Memorandum of Claim and the Claimant's Notice of Motion both dated 30<sup>th</sup> August 2019, the Claimant Union's Secretary General Munayi Isaac Opondo is the one aggrieved by the alleged evictions from Ngara Railways Quarters. The Claimant is also raising a pension dispute against the 2<sup>nd</sup> Respondent in the Claim. In the Notice of Motion, the Applicant is seeking orders that the 2<sup>nd</sup> Respondent regularises Mr. Munayi's account with the Interested Party. Consequently, the legal basis of the claim is pension and eviction of Mr. Munayi from staff quarters while the application seeks a regularisation of the electricity account that was previously under the name of Mr. Munayi as well as retention of the house he was allegedly evicted from.

On the basis of the pleadings filed by the Claimant in the suit, I find that this Court has no jurisdiction to determine the issues which include an accrued electricity bill, a tenancy dispute and a pension dispute. This Court has previously determined that a pension is not within the realm of the Employment and Labour Relations Court. The issues of a power bill and a tenancy dispute do not fall within the jurisdiction of this Court as they do not relate to an employment and labour relations dispute under **Section 12 of the Employment and Labour Relations Court Act**. Neither the 2<sup>nd</sup> Respondent nor the Interested Party have any employment or labour relationship with the Claimant to warrant the suit herein to be filed in this Court. In **Samuel Kamau Macharia v Kenya Commercial Bank Limited & 2 others [2012] eKLR**, the Supreme Court of Kenya stated thus:-

*"A Court's jurisdiction flows from either the constitution, or legislation or both. Thus a Court of law can only exercise jurisdiction as conferred on it by law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law... where the constitution exhaustively provides for the jurisdiction of a Court of law, it must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation..."*

Having concluded that this Court has no jurisdiction in the matter herein, it is not necessary to make a finding on the other issues raised in the preliminary objections.

As was held in Owners of Motor Vessel "Lillian S" v Caltex Oil Limited, a court must down its tools once it makes a finding that it has no jurisdiction. I thus allow the preliminary objection on grounds that the issues raised in both the suit herein and the application are not within the jurisdiction of this court. **The result is that the suit is struck out. There shall be no orders for costs.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4<sup>TH</sup> DAY OF DECEMBER 2020**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered

through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**