



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2289 OF 2015**

***(Before Hon. Lady Justice Maureen Onyango)***

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

**VERSUS**

**THE TRUSTEES, KENYA RAILWAYS**

**STAFF RETIREMENT BENEFIT SCHEME.....1<sup>ST</sup> RESPONDENT**

**KENYA RAILWAYS CORPORATION.....2<sup>ND</sup> RESPONDENT**

**CORPORATE TRUSTEES.....3<sup>RD</sup> RESPONDENT**

**AND**

**RETIREMENT BENEFITS AUTHORITY...1<sup>ST</sup> INTERESTED PARTY**

**ETHICS AND**

**ANTI CORRUPTION COMMISSION.....2<sup>ND</sup> INTERESTED PARTY**

**RIFT VALLEY RAILWAYS (K) LIMITED...3<sup>RD</sup> INTERESTED PARTY**

**ALEXANDER FORBES.....4<sup>TH</sup> INTERESTED PARTY**

**RULING**

The Preliminary objections before the court for determination are filed by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents and the 4<sup>th</sup> Interested Party all dated 30<sup>th</sup> October, 2018, based on the grounds that:

1. That the Court is *functus officio* and has no jurisdiction to entertain this application in view of its ruling delivered on the 19<sup>th</sup> August, 2016, the judgment of the High Court in Petition 468 of 2016 and the most celebrated recent ruling of this Court delivered on 26<sup>th</sup> October, 2018, this instant application being *subjudice*, it is res judicata and an abuse of the Court process.
2. The issues raised in the application are res judicata in view of the Court's ruling delivered by Abuodha J. on the 13<sup>th</sup> October 2017 in ELRC No. 783 of 2017; Rift Valley Railways Workers Union (K) Versus Kenya Railways Staff Retirement Benefits Schemes & Anor where similar issues had been raised and determined.
3. The Application as drawn is fatally defective and incompetent as it is not predicated upon any pending suit and is aimed at achieving ulterior motives to the detriment of the 1<sup>st</sup> Respondent.
4. The Claimant has no locus standi to bring this claim as it has no nexus whatsoever with the 1<sup>st</sup> Respondent and its claims are thus non justiciable.

5. The current application as filed is an unmitigated abuse of the Court process disguised as an application when in effect it is an appeal against this Courts ruling delivered on the 19<sup>th</sup> August, 2016, and 26<sup>th</sup> October, 2018 and the ruling of Abuodha J. delivered on the 13<sup>th</sup> October, 2017, in ELRC No. 783 of 2017 and the ruling of Radido J. in ELRC No. Misc Application No. 197 of 2017; Rift Valley Railways Workers Union (K) Vs Kenya Railways Staff Retirement Benefits Scheme in Petition No. 468 of 2016.

6. The instant application is frivolous, vexatious, baseless and scandalous.

The Claimant in response to the Preliminary Objection states that the Court is not *functus officio* as the Ruling delivered by Ndolo J on 19<sup>th</sup> August, 2016, did not dismiss the matter but only referred the matter to the Retirement Benefits Authority Tribunal for purposes of attempting to explore the initial dispute resolution mechanisms as provided for the Act before the parties could be at liberty to invite the Court to address itself to the issues in the matter.

That the Claimants were unable to proceed before the Tribunal due to lack of sitting members and in any event the Court has jurisdiction by virtue of section 12 of the Employment Act and Article 162 of the Constitution.

The Claimant submits that it has locus standi to represent its members best interest and therefore the allegation that it is non-suited is baseless. They pray of the Preliminary objection to be dismissed.

On *res judicata* the Claimant avers that the issues may have been litigated in this Court in the referenced matters in the respective parties Preliminary Objections which matters are now subject to appeal proceedings in the Court of Appeal and scheduled for hearing in the month of November 2018.

That the application is based on the instant claim which is yet to be disposed of and thus the application cannot be defective.

That the Court has already pronounced itself on the issue of *locus standi* in the instant claim and therefore the preliminary objection is unmerited and should be dismissed with costs.

The Respondents submit that the Court lacks jurisdiction as the dispute before the court relates to members of a pension scheme, trustees, sponsors and the regulator. That the Court lacks jurisdiction to deal with matters of pension.

That this Court is not the proper forum to raise the issues in the application dated 11<sup>th</sup> October 2018, of the claim as section 46 of the Retirement Benefits Act is clear as to how such issues should be dealt with. That the Claimants have come to Court directly which is in contravention of the law.

That the Claimants are forum shopping as the prayer of stay ought to be brought in the court appealed to or in the Court where the orders were made none of which is the case herein.

### **Determination**

In the ruling respect of this applicant's application dated 19<sup>th</sup> October 2017, I found that the applicant had filed several suits which are broadly in respect of the same subject matter being –

1. Misc. Application No. 197 of 2017
2. Nairobi petition No. 468 of 2016.
3. Misc. Application No. 84 of 2016,
4. Misc. Application No. 76 of 2015,
5. Misc. Application No. 59 of 2016,
6. Misc. Application No. 10 of 2018
7. and this claim No. 2289 of 2015

In the said application one of the prayers was for –

*“That in the meantime, a permanent order be issued restraining the respondents herein and or their agents from selling any of the properties listed in the Legal Notice Number 169 of 2006 until the issues brought out in the matter are heard and determined.”*

Prayer 2 in the instant application seeks orders that –

*“That there be a tentative stay on the execution by the Auctioneer of the claimants' assets as have bee proclaimed by the respondent through his Auctioneer, pending the determination of this application.”*

In the ruling, the court stated that the application was *res judicata* and that the applicant herein has suffocated the respondents with suits on similar grounds.

The same fate must befall the present application. **The application herein is clearly *res judicata* and I accordingly strike it out.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12<sup>TH</sup> DAY OF JULY 2019**

**MAUREEN ONYANGO**

**JUDGE**