



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1625 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 31st May, 2018)

RIFT VALLEY RAILWAYS

WORKERS UNION (K).....CLAIMANT

VERSUS

KENYA RAILWAYS STAFF

RETIREMENT BENEFITS SCHEME.....1ST RESPONDENT

KENYA RAILWAYS CORPORATION.....2ND RESPONDENT

THE CORPORATE TRUSTEES.....3RD RESPONDENT

RETIREMENT BENEFITS AUTHORITY.....INTERESTED PARTY

RULING

1. Before this Court is an Application dated 21st August 2017 brought under the Constitution of Kenya 2010, the Kenya Railways Benefits Scheme Trust Deed & Rules, the Employment and Labour Relations Court Procedure and Rules 2016, the Kenya Co-operation Act Cap 397 and other Enabling Legislation and Judicial precedents of similar nature seeking orders:

- a. That the matter be certified as urgent and be heard ex-parte in the first instance.*
- b. That service of the same be effected upon the parties and an earlier inter-parties hearing date be set.*
- c. That the matter be heard during the vacation.*
- d. That the Honourable Court tentatively adopts the arrangement as annexed in the Supporting Affidavit pending the ratification of a subsequent one as shall be the product of negotiated and or directives of the Honourable Court.*
- e. That costs be included to bide the claim.*

2. This application as supported by the Affidavit one Munayi Isaac Opondo is premised on grounds:

- 1. That there are millions of shillings being generated from the pensions asset LN/209/6502 every month and which amounts have for the past seven years been misdirected by individuals and cartels to individual and private accounts.*
- 2. That these individuals and cartels have ensured that the Pension Scheme is denied revenue that would alleviate pressures on its obligation on pension payments.*
- 3. That the said pensions have been paying rent to individuals & cartels for the past seven years with an understanding that their security and stay therein was guaranteed.*

4. That the said persons through a tentative/committee formed by themselves have been appraised of a structure(s) way to guarantee their security and or humane engagement in the event of the pensioners through their scheme electing to apply their property for the benefit of the general membership.

5. That the above arrangement initiated by the claimant has already began bearing fruits by generating revenue for the pension Scheme amounting to hundreds of thousands per month, that was otherwise ending into individual and cartels.

6. That without prejudice to any order(s) of the court that may have been issued in respect to the Pension Assets LN209/6502, none of the said orders was issued in respect to tenants being allowed to pay rent to individuals and cartels and not the Landlord/Scheme.

7. That the disinterest exhibited by the current Co-operate Trustees and the Administrators of the Scheme points toward a collaboration of the same with these cartels to deny the scheme its rightful revenue.

8. That despite the willingness by the residents therein to pay their respective rents in a structured and legal way, certain individuals and cartels have disenfranchised the process by forcing these residents to pay them for their continued stay therein thereby denying the scheme the much needed revenue to meet its recurrent financial obligations.

9. That it is only just and in order that the parcel of land LN 209/6502 among the other 22 prime assets be secured and its ownership regularized to accord to the 9 of 2006 and for the benefit of pensions.

3. The 2nd Respondent filed their Grounds of Opposition where they averred that the application was incompetent and lacked merit as the issues complained of fell well within the powers of the Trustees as per Clause 19 of the Trust Deed and Rules made on May, 2006. That the allegations made in the application by the Claimant were very general in nature, baseless and unsupported by the cogent evidence as the Claimants have no *locus standi* to bring the application in the manner that they did and that there was no authority signed by the residents of LN/209/6502 authorizing the Claimant to bring the claim on their behalf.

4. The 1st and 3rd Respondent filed their Replying Affidavit where they averred that the 1st Respondent is the owner of property LR209/5602, commonly known as Muthurwa Estate and that the residents living on the subject property have been intimidated and coerced into paying money to individuals and cartels is grossly misleading as asserted by the Claimant in his supporting Affidavit.

5. They further aver that the 1st Respondent having obtained the go ahead from Court to evict the tenants on its Muthurwa Estate, which includes some of the pensioners, is not desirous to allow any unauthorized individuals to collect rent from its premises which may lead to the creation of monthly tenancy hence complicating its intention for evicting every single person from the parcel of land.

Submissions

6. The 2nd Respondent filed their submissions where they submit that the Claimant has no authority whatsoever to collect the rents or any other monies from the residents in the subject property and humbly submit that the Applicant's application cannot be sustained as the claimant seeks to only benefit himself from an illegality by collecting rent without authority and consultations with the Respondents. A party cannot benefit from an illegality.

7. The 1st and 3rd Respondent filed their submissions where they submit that the application is incompetent due to its vagueness as no arrangement has been annexed to the Claimants supporting affidavit as alleged, the application is ambiguous, general and lacking in specificity and they urge the court to decline the invitation to interfere with the management, operations and decision making of the 1st and 3rd Respondents.

8. The Claimant filed his submissions where he submitted that the above matter is one among the many issues that are being litigated on in the Cause 2289 of 2015 now coming up for mention on 24th April 2018 and pursuant to the directions of the Court, the Claimant herein filed Appeal 5 of 2016 and followed same with a further affidavit and following 12 months of waiting and consistent reminders, the clerk was able to address them in a letter that sought to clarify why the hearing of the appeal could not commence and therefore it would be misleading on the part of the Respondent to allege in their responses and or their submissions that the procedures as are outlined in the Retirement Benefits Authority Act 199 may not have been exhausted and that on the basis of the said allegations seek to urge and or arm-twist the court to have the said matter referred to the said tribunal, being lawfully aware of the dysfunctionality of the said tribunal as was confirmed by the clerk of the said Court.

9. They further submit that their essence is to ensure that individuals and cartels who appear to have been un-procedurally and unlawfully contracted by the Administrators and Trustees of the Scheme to unlawfully collect Millions of shillings from the subject property and monies belonging to the Pensioners which is meant to be deposited in the pension account but end up being deposited in these individuals and cartels are all defaced from the structure of the scheme and for the benefit of the Pensioners.

10. I have considered the averments and submissions of both parties. The issues for determination before this Court is whether the Claimant/Applicants have locus to file this suit and proceed with this claim. The Applicant has not explained his relationship with the pensioners on behalf of whom he brings this claim for. No pensioner has sworn any affidavit to verify the issues alleged. The members of the union that he represents are also not known.

11. The application as it stands lacks merit, is disjointed and an abuse of the Court process. I dismiss it accordingly for lack of locus.

12. Costs in the cause.

Dated and delivered in open Court this **31st day of May, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Munai Isaac for Claimant – Present

Respondent – Absent