

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2289 OF 2015

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

VS

**KENYA RAILWAYS STAFF RETIREMENT BENEFITS SCHEME.....1ST
RESPONDENT**

KENYA RAILWAYS CORPORATION.....2ND RESPONDENT

CORPORATE TRUSTEES.....3RD RESPONDENT

AND

**RETIREMENT BENEFITS AUTHORITY.....1ST INTERESTED
PARTY**

**ETHICS & ANTI-CORRUPTION COMMISSION.....2ND INTERESTED
PARTY**

**RIFT VALLEY RAILWAYS (K) LIMITED.....3RD INTERESTED
PARTY**

ALEXANDER FORBES.....4TH INTERESTED PARTY

RULING

1. On 23rd December 2015 the Claimant filed a claim seeking the appointment of a caretaker committee to manage pensioners' assets currently under the management of the 1st Respondent as well as a forensic audit to be conducted by the 1st and 2nd Interested Parties.
2. Alongside the claim, the Claimant filed a Notice of Motion under certificate of urgency seeking similar orders plus empanelling of a three Judge Bench to hear the claim.
3. Subsequently, the 1st Respondent gave notice of a preliminary objection on 21st January 2016 stating the following grounds:
 - a) *That this Court lacks jurisdiction to hear and determine the claim;*
 - b) *That the issues raised in the claim and the application are res sub judice and res judicata;*
 - c) *That the claim is frivolous, vexatious and an abuse of the court process.*
4. The 2nd Respondent also gave notice of preliminary objection dated 12th February and filed on 15th February 2015 to the effect that this Court lacks original jurisdiction to hear and determine the issues raised by the Claimant.
5. On its part, the 3rd Interested Party filed grounds of objection on 29th January 2016 stating that it does not manage any retirement benefits scheme and is therefore unnecessarily joined in these

proceedings. In any event, there is no specific prayer sought against it.

6. Further, the 3rd Interested Party has no Recognition Agreement with the Claimant obliging it to disclose information on its employees who are not members of the Claimant.

7. On 18th January 2016, I gave directions to the parties to file submissions on the multiple preliminary objections raised.

8. The 1st Interested Party filed submissions on 11th March 2016 stating that being a regulator of Retirement Benefits Schemes it ought to maintain a neutral stand as regards the Claimant's claim.

9. The 1st Interested Party further submits that there is a similar matter involving the Kenya Railways Retirement Benefits Scheme pending in the High Court being **Azariah v CEO, Retirement Benefits Authority & 3 Others (HCCJR No 214 of 2015)**.

10. According to the 1st Interested Party, the issues raised in the Claimant's claim ought to be discussed in consultative meetings convened by the 1st Interested Party which the Claimant has failed to attend.

11. In its submissions filed on 1st March 2016, the 2nd Interested Party states that it is wrongly joined in these proceedings adding that the orders sought against it are an affront to its independence.

12. The 2nd Interested Party further states that the matters raised in the claim are capable of resolution through other lawful means with the engagement of the 1st Interested Party which has capacity to address the Claimant's grievances.

13. The 1st and 3rd Respondents as well as the 4th Interested Party filed joint submissions on 25th February 2016. The first issue raised in these submissions is one of jurisdiction and as stated by the Court of Appeal in the **Owners of MV Lillian 'S' v Caltex Oil Kenya Ltd (1989) KLR 1** the Court is obliged to determine an issue of jurisdiction as soon it is raised since without jurisdiction the Court has no power to carry on with the proceedings.

14. In addressing the issue of jurisdiction, the Supreme Court in **Samuel Kamau Macharia & another v Kenya Commercial Bank & 2 Others [2012] eKLR** stated as follows:

"A court's jurisdiction flows from the constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred by law."

15. The question on the jurisdiction of this Court to entertain the Claimant's claim stems from provisions of the Retirement Benefits Act. Section 46(1) of the Act provides that a member of a scheme who is aggrieved by a decision affecting the running of a scheme may apply for review to the Chief Executive Officer of the Authority.

16. Further, Section 47 establishes the Retirement Benefits Appeals Tribunal to which appeals from decisions of the Authority and the Chief Executive Officer lie.

17. Section 12 of the Employment and Labour Relations Court Act confers jurisdiction on this Court to hear and determine employment and labour relations matters. It is my view however that this provision must be read together with other statutes dealing with matters falling within the general jurisdiction of the Court.

18. The 1st and 3rd Respondents as well as the 4th Interested Party submit that this Court has no jurisdiction at all to deal with disputes arising from retirement benefits schemes. I do not agree with this particular view. This Court, being of equal status with the High Court has supervisory jurisdiction over tribunals dealing with employment and labour relations matters. The Retirement Benefits Appeals Tribunal would fall under this category. I do not think however that this entitles a party to come to this Court before exhausting the dispute resolution mechanisms provided under the Retirement Benefits Act.

19. As held by Mumbi Ngugi J in **Tom Kusienya & Others v Kenya Railways Staff Retirement Benefits Scheme (Petition No 353 of 2012)** and **Daniel Owuor Obop & 2 Others v Retirement Benefits Authority (Petition No 159 of 2012)** parties cannot circumvent the dispute resolution mechanisms established under the Retirement Benefits Act and come to court directly.

20. I have looked at the Claimant's pleadings in this light and have reached the conclusion that the dispute resolution mechanisms established under the Retirement Benefits Act have not been exhausted and the claim is therefore prematurely before the Court.

21. That being the case, the Court must decline to exercise jurisdiction and refer the matter for resolution under the Retirement Benefits Act.

22. In view of this finding I do not find it necessary to make a finding on the other issues raised in the preliminary objections.

23. Each party will bear their own costs.

24. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF AUGUST 2016

**LINNET
JUDGE**

NDOLO

Appearance:

Mr. Munayi for the Claimant

Messrs. Milimo & Walusala for the 1st & 3rd Respondents & 4th Interested Party Mr. Owiti for the 2nd Respondent

Mr. Kioko for the 1st Interested Party

Mr. Kagucha for the 2nd Interested Party

Mr. Mwenesi for the 3rd Interested Party