REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

PETITION NO. 22B OF 2016

IN THE MATTER OF ARTICLES 19, 20 & 41 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF THE KENYA RAILWAYS CORPORATION (PENSIONS) (INCREASE) (AMENDMENT) REGULATIONS 1988

IN THE MATTER OF THE KENYA RAILWAYS CORPORATION (PENSIONS) REGULATIONS

IN THE MATTER OF THE KENYA RAILWAYS STAFF AND GENERAL NOTICE NO. 3 OF 2002

BETWEEN

AGGREY AJWANG JUMA PETITIONER

V

KENYA RAILWAY CORPORATION RESPONDENT

RULING

1. In a motion filed in Court on 12 August 2016, the Respondent seeks to have the Petition herein dismissed summarily on the ground of *res judicata.*

2. The Petitioner filed grounds of opposition to the motion on 14 September 2016, while the application was urged on 10 October 2016.

3. The Court has perused the Amended Plaint filed before the subordinate Court in Nakuru CMCC No. 2685 of 2003, *Aggrey Ajwang Juma v Kenya Railways Corporation*, where the cause of action arose from alleged unlawful interdiction and unlawful dismissal (after Petitioner had resigned), and seeking payment of full retirement benefits *(lump sum payment, pension arrears, wages withheld during interdiction, leave allowance and travelling allowance).*

4. In a judgment delivered on 12 June 2013, after hearing witnesses, the Court dismissed the suit on the basis that it was incompetent, having been commenced outside the 12 months allowed under section 87 of the Kenya Railways Corporation Act.

5. In the present Petition, the gravamen of the Petitioner's case is violation of the rights to fair labour practices and fair administrative action, and failure to pay pension and retirement benefits.

6. In the Court's considered view, the issues raised by the Petitioner herein are the same issues he

presented before the subordinate Court for determination, but repackaged as constitutional issues.

7. The present Cause is therefore *res judicata*. The Petitioner ought to have appealed against the judgment of the subordinate Court rather than to constitutionalise his cause of action, which is and was primarily a question of statutory application of entitlement to pensions and retirement benefits in case of resignation or dismissal under the Kenya Railways Corporation Act.

8. The Court in effect allows the motion and strikes out the Petition with no order as to costs.

Delivered, dated and signed in Nakuru on this 18th day of November 2016.

Radido Stephen

Judge

Appearances

For Petitioner Ms. Mugweru instructed by Mugweru & Co. Advocates

For Respondent Mr. Tombe instructed by Mukite Musangi & Co. Advocates

Court Assistant Nixon/Daisy