



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 2206 OF 2014

RIFT VALLEY RAILWAYS WORKERS UNION (K) CLAIMANT

VERSUS

RIFT VALLEY RAILWAYS (K) LTD 1ST RESPONDENT

RAILWAYS & ALLIED WORKERS

UNION (K) 2ND RESPONDENT

Mr. Munai for Claimant Union

Mr. Mwenesi for 1st Respondent

Mr. Selian for 2nd Respondent

RULING

1. In the Memorandum of Claim dated 11th December 2014, the Claimant / Applicant seeks the following Orders;

- a. That the Court issues a declaratory order that the purported retrenchment exercise as is being effected by the Respondents is contemptuous to the Court process hence null and void *ab initio*.
- b. That the said retrenchment process be stayed until the issues in the Application are heard and determined.

2. The Memorandum of Claim was filed simultaneously with an application that seeks inter alia similar orders as in (a) and (b) above.

No interim orders are sought pending the hearing and determination of the suit.

3. It is submitted by the 1st and 2nd Respondents that the Application and the memorandum of Claim as framed are defective in as far as the Applicant does not seek interim orders pending the hearing of the main suit.

4. Furthermore, in Cause **No. 587/2013**, the Claimant and the 2nd Respondent were directed to conduct a ballot at the work place of 1st Respondent to establish who between the two ought to be recognized

as the sole representative of the employees.

5. The 2nd Respondent has noted an Appeal against the ruling of Ndolo J. in Cause No. 587/2013 aforesaid and Interim Stay Orders are in place.

6. It was submitted that the Application before the Court ought to have been moved in Cause No. 587/2013 since it is alleged that the intended retrenchment is meant to defeat the recognition sought by the Claimant / Applicant herein.

7. The Court finds that it was unnecessary and an abuse of the Court process to commence a new suit on the same subject matter.

Furthermore, in the main suit herein, no final orders are sought which seems to confirm the submissions by counsel for the 1st Respondent that this Application is an abuse of the Court process.

Accordingly, the Application is dismissed with costs.

Dated and Delivered at Nairobi this 6th day of March, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE