



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 37 OF 2013**

MUNAYI ISAAC OPONDO ..... 1<sup>ST</sup> CLAIMANT  
PETER MWANGI ..... 2<sup>ND</sup> CLAIMANT  
WALTER ONYIMBO ..... 3<sup>RD</sup> CLAIMANT  
THOMAS GETANGIA ..... 4<sup>TH</sup> CLAIMANT  
DENNIS K. CHERUIYOT ..... 5<sup>TH</sup> CLAIMANT  
JULIUS K. JOIKA ..... 6<sup>TH</sup> CLAIMANT  
MAURICE OLAGO ..... 7<sup>TH</sup> CLAIMANT

(Suing on their own behalf and on behalf of all employees whose Authority to Act has been annexed / filed herein).

VERSUS

KENYA RAILWAYS CORPORATION ..... RESPONDENT

RIFT VALLEY RAILWAYS (K) ..... INTERESTED PARTY

**RULING**

1. The Interested Party herein has noted a preliminary objection which objection is supported by the Defendant to wit;

**“This claim is bad in law as no orders of the Court have been sought or obtained to institute a representative suit on behalf of the Claimants referred to.”**

2. The Interested Party notes that there is no written and signed authority by each of the alleged Claimants on whose behalf this claim has purportedly been instituted.

This claim is therefore bad in law and ought to be dismissed.

3. This matter was filed in the High Court of Kenya at Nairobi being **Civil Case No. 35 of**

2007.

Numerous applications were canvassed at the High Court and decisions made thereof.

It is clear that the seven (7) Claimants came to Court in their personal capacity and on behalf of all other employees whose authority is annexed to the Plaint.

4. In the Ruling of the High Court by **Ruth Nekoye Sitati J.** dated 13<sup>th</sup> May 2011, one of the issues for determination as raised by the 1<sup>st</sup> Respondent was;

**“the suit as filed is incompetent and totally defective for want of any and / or proper authority and a verifying affidavit.”**

The learned Judge referred to an earlier ruling in the same matter by **Mr. Justice Waweru** on 6<sup>th</sup> July 2007 and stated as follows;

**“the issue of authority was also exhaustively dealt with by Mr. Justice Waweru in his ruling delivered on 6<sup>th</sup> July 2007. The learned Judge said that such authority is not required in a representative suit but only applies;**

**“where there are more plaintiffs or defendants than one who have sued or been sued in their individual (not representative) capacity.”**

**With that finding I agree. I therefore find that this issue of authority is res judicata as far as this application is concerned”**

5. I agree with the finding by the two Justices of the High Court and proceed to chastise the Interested Party as supported by the Respondent herein for raising this issue for the third time in this suit.

This conduct has the effect of consuming valuable Court’s time, delaying the suit unnecessarily and escalating the costs of litigation.

I therefore dismiss this application with costs to the Claimants on the highest scale.

**Dated and Delivered at Nairobi this 19<sup>th</sup> day of Sept. 2014**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**