



REPUBLIC OF KENYA
INDUSTRIAL COURT OF KENYA

CAUSE 2567 OF 2012

RIFT VALLEY RAILWAYS WORKERS UNION.....CLAIMANT

VERSUS

RIFT VALLEY RAILWAYS COMPANY LIMITED.....1ST RESPONDENT

RAILWAYS AND ALLIED WORKERS UNION.....2ND RESPONDENT

RULING

On 27th December 2012 the Claimant herein **RIFT VALLEY RAILWAYS WORKERS UNION** filed a memorandum of Claim dated 24th December 2012 in which it seeks the following orders against the Respondents **RIFT VALLEY RAILWAYS COMPANY LTD** and **RAILWAYS AND ALLIED WORKERS UNION**:

1. **THAT** this Application be certified as urgent and be heard ex-parte in the first instance.
2. **THAT** the Second Respondent had no prerogative and right to purport to negotiate on behalf of the employees of the First Respondent who were not and are not members of the Second Respondent.
3. **THAT** the retrenchment program intended to be effected on the workers of this country by the First Respondent be stayed until this matter is heard and determined.
4. **THAT** the Respondent(s) engage the claimant in proper and structured negotiations that will culminate in the respondents' workers, the members of the claimant union and the workers of this country working the railways sector getting their rightful dues in the intended program.
5. **THAT** the respondent be served forthwith the Memorandum of Claim.
6. **THAT** the cost of this application be in the suit.

Simultaneously with the memorandum of claim the Claimant filed a Notice of Motion under Certificate of Urgency in which it seeks the orders that:-

1. **THAT** the application be certified as urgent and be heard ex-parte in the first instance,
2. **THAT** the retrenchment exercise earmarked for the 31st of December 2012 be stayed until this matter is heard and determined.
3. **THAT** the 1st Respondent consider representations from the claimant on behalf of the claimants members whose representations were not taken into consideration whole arriving at the

- retrenchment package to be availed to the claimants members.
4. **THAT** the cost of this suit be included in the suit.
 5. Any other orders as the court may consider fit.

The application was heard ex parte by Hon. Justice Marete on 27th December 2012. He certified the application urgent and directed that the application be served upon the Respondents forthwith and not later than 1200 hours on 28th December 2012. He further ordered that the application be heard on 31st December 2012 at 9.00 am.

The parties appeared before me on 31st December 2012 when **MR. ISAAC OPONDO MUNAI** appeared for the Claimant and **MR. S. M. MWENESI** for RIFT VALLEY RAILWAYS COMPANY LTD sued as the 1st Respondent. There was no appearance for the 2nd Respondent RAILWAYS AND ALLIED WORKERS UNION who had not been served.

Mr. Munayi urged the court to grant orders staying retrenchment program to be effected on the workers within the railways sector beginning the 31st 2012 until this matter is heard and determined and that the Respondent engages the Claimant in proper and structured negotiations that will culminate in the Respondents workers getting their rightful dues in the intended program. He submitted that the retrenchment package was negotiated between the 1st and 2nd Respondents and imposed on the workers of the 1st Respondent who are not the 2nd Respondents members, that this would be unlawful as the representatives of the workers were not invited to the negotiations, that the package imposed on the employees is one that was negotiated in 1997 and cannot be applicable in the present circumstances. He further submitted that the exercise is to be effected from 31st December 2012, and if not stopped by the Court, has the potential to severely imperil and jeopardize the livelihood of the workers to be affected and would infringe on the workers constitutional and employment rights.

In reply Mr. Mwenesi for the 1st Respondent relied on the Memorandum of Reply to the claim and affidavit of Hellen Njambi Mbugua sworn on 31st December 2012 in reply to the application, both filed in Court on 31st December 2012. Mr. Mwenesi raised the following objections:-

First, that the party served is Rift Valley Railways (K) Ltd while the 1st Respondent is Rift Valley Company Ltd. Section 17 of the Companies Act provides that a limited liability company is to be sued in the name in which it is registered, that the Claimant was free to carry out a search to get the correct name of the 1st Respondent.

Secondly, the Memorandum of Claim named the Claimant as **RAILWAYS AND ALLIED WORKERS UNION** who is also the 2nd Respondent. The Memorandum of Claim further states at paragraph 1 that the said Claimant acquired legal personality on 21st December, 2012. Mr. Mwenesi submitted that Railways and Allied Workers Union has been in existence prior to 21st December 2012. He posed the question whether the Claimant is complaining against itself.

Thirdly, he raised objection that the individuals whose rights the Claimant alleges are being violated have not been identified.

Fourthly, that the 2nd Respondent who is alleged to have negotiated for the workers of the 1st Respondent without authority has not been served and it would be against its rights under Article 47 and 50 of the Constitution for the Court to make any orders against the 2nd Respondent without a hearing.

Fifth, the documents filed in Court by the Claimant are unsigned.

Sixth, that there is no prima facie case as the documents relied upon that is the package of 1998 and the retrenchment package are not attached. The letter attached as Appendix RVRWU which is the notice of retrenchment is not addressed to anybody yet it is the subject matter of the claim.

Seventh, that even if the 1st Respondent is taken to be Rift Valley Railways (K) Ltd, the process of retrenchment has already taken place as the letters have been dispatched and the retrenches have undergone training. There is further no undertaking from the Claimant that it will underwrite the expenses involved in the exercise, that the application is a vexatious exercise that must be discouraged by the Court.

Eighth, that the application is supported by the affidavit of Mr. Munai who states that he represents Rift Valley Workers Union (K) but does not disclose the capacity he holds in the union, that he is neither an employee nor the Secretary General of the Union. Further, the Claimant cannot represent the workers of Rift Valley Railways Workers Union if there is no recognition agreement. Such recognition agreement could not have been signed between the 21st when the union acquired legal personality and 27th December 2012, when it filed the claim.

Mr. Mwenesi urged the Court to strike out the case as the Claimant has not shown that there is a prima facie case.

In reply Mr. Munai pointed out that the application has already been certified as urgent because of the substantive issues raised in the application. He further stated that a recognition agreement is only necessary for purposes of signing a collective agreement. He further stated that Article 22 and 258 of the Constitution give the Claimant the right to institute proceedings on behalf of the 1st Respondents' workers. Mr. Munai sought leave of the Court to file a further supporting affidavit that would attest to the fact that the 1st Respondent is about to commit an industrial injustice on its workers, a list of 100 staff to be affected, a certificate of incorporation of the Claimant union and a list of the Respondents workers who have subscribed to the Claimant Union. Mr. Munai further sought leave of the Court to file the collective bargaining agreement in which 1998 package was negotiated to show why it is not applicable in the present circumstances, and also to file extracts of the concessioning agreement.

In response to questions by the Court about the name of the Claimant and 1st Respondent on the lack of signature of the pleadings which he did not address in his reply, Mr. Munai said these were mistakes which he regretted and asked the Court for leave to correct the same.

After hearing the parties and considering the documents both in support and in opposition of the application and the preliminary objection, the Court notes that the Claimant does not contest the following facts:-

- i. That the Claimants pleadings are not signed.
- ii. That crucial evidence has not been attached to the pleadings. These are certificate of incorporation of the Claimant union, the list of employees on whose behalf the claim is made, list of workers who have subscribed to the Claimant union, the 1998 package and extracts of the concessioning agreement.
- iii. That there is a mistake in the names of the parties, specifically the Claimant and the 1st Respondent.
- iv. That the 2nd Respondent has not been served. The interim Court orders granted on the 27th December 2012 required both the 1st and 2nd Respondents to be served by 1200 hours on Friday 28th December, 2012.

The Claimant has admitted these facts and has sought leave to make the corrections on the names of the parties and to file additional documents containing the omitted evidence. The admissions are proof that the Claimant has not submitted sufficient evidence in support of its application. By its own admissions, the Claimant has not shown that it has a prima facie case to be entitled to the prayers sought in the notice of motion dated 24th December 2012 and filed in Court on the 27th December 2012. I therefore decline to

grant the orders.

The 1st Respondent has raised objection over the names of both the Claimant and the 1st Respondent, which are not correct. I believe that these can be rectified by amendment of the pleadings without causing any prejudice to the 1st Respondent.

The last issue for determination is the effect of unsigned pleadings. Rule 6 of the Industrial Court (Procedure) Rules, 2010 provides that the statement of claim “***shall be signed by the authorized representative of the party referring the trade dispute to the Court***”

The Claimant has not shown that Mr. Munai has authority to sign pleadings on its behalf and the said pleadings are unsigned.. The subject of unsigned pleadings has been the subject of several decisions of both the High Court and the Court of Appeal.

In **Regina Kavenya Mutuku & 3 Others vs. United Insurance Company Limited Nairobi (Milimani) HCCC No. 1994 of 2000 [2002] 1 KLR 250** Ringera, J(as he then was) held that:

“An unsigned pleading has no validity in law as it is the signature of the appropriate person on the pleading which authenticates the same and an unauthenticated document is not a pleading of anybody. It is a nullity”. See also Onyango Otieno J’s decisions (as he then was) in **National Industrial Credit Bank Limited vs. Albert Gacheru Kiarie Nairobi (Milimani) HCCC No. 1863 of 1999** and **Jane W Kamau vs. Kenya Ports Authority Nairobi (Milimani) HCCC No. 1575 of 1999.**

In **Atulkumar Maganlal Shah vs. Investment & Mortgages Bank Limited & 2 Others Civil Appeal No. 13 of 2001** consolidated with **Vipin Maganlal Shah Vs. Investment & Mortgages Bank Limited & 2 Others Civil Appeal No. 19 of 2001 [2001] 1 EA 274; [2001] KLR 190** the Court of Appeal was of the following view:

“Where a pleading is not signed the same would be struck out rather than being dismissed...A pleading must be signed either by the advocate or the party himself where he sues or defends in person or by his recognized agent and this is meant to be a voucher that the case is not a mere fiction...The object of the legislature in requiring that a plaint be signed by either the counsel or the party suing is to make the party suing or filing any other pleading take ownership and responsibility for the contents of the plaint or the pleading...In Kenya a party who files an unsigned plaint runs a very grave risk of having that plaint struck out as not complying with the law”.

The same fate must befall the memorandum of claim and the Notice of Motion herein which I hereby strike out with costs to the 1st Respondent.

Orders accordingly.

Ruling read and delivered in open Court this 3rd day of January 2013.

HON. LADY JUSTICE MAUREEN ONYANGO.

JUDGE

In the Presence of:-----

For Claimant

----- For 1st Respondent

----- For 2nd Respondent