



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER E6524 OF 2020**

**BETWEEN**

**RIFT VALLEY RAILWAYS WORKERS UNION.....CLAIMANT**

**VERSUS**

**1. WORLD BANK COUNTRY DIRECTOR AFRICA REGION**

**2. KENYA RAILWAYS CORPORATION.....RESPONDENTS**

**AND**

**1. THE ATTORNEY-GENERAL**

**2. MINISTRY OF TRANSPORT AND COMMUNICATION**

**3. ETHICS AND ANTI-CORRUPTION COMMISSION**

**4. KENYA RAILWAYS STAFF BENEFITS SCHEME**

**5. ASSETS RECOVERY AGENCY.....INTERESTED PARTIES**

**RULING**

1. The Claimant Union has presented several actions before the Court, in relation to 2<sup>nd</sup> Respondent's staff rationalization program of 2006.
2. The Claimant avers that its members were not paid their retirement benefits, despite the World Bank having released to the Government of Kenya, Kshs. 5.4 billion for payment to the Claimant's retired members.
3. Among the actions initiated in pursuit of the benefits are H.C.C.C No. 35 of 2007, ELRC Cause No. 37 of 2013 and presently ELRC Cause No. E6524 of 2020.
4. On 4<sup>th</sup> December 2020, the Claimant sought to consolidate Cause No. 37 of 2013 with Cause No. E6524 of 2020.

5. The Court expressed the view that there were no proceedings and pleadings exhibited from Cause No. 37 of 2013, to enable the Court make an informed decision on whether, or how, the Claims are related.
6. The record still does not contain proceedings and pleadings from Cause No. 37 of 2013.
7. The record from the High Court, which the Claimant repeatedly refers to as Cause No. 35 of 2007, has not been exhibited in the present Claim.
8. The Court has not seen the order transferring the dispute from the High Court to the ELRC.
9. There is no explanation why the Claimant filed at the ELRC, Cause No. E6524 of 2020, while Cause No.37 of 2013 was subsisting.
10. A party cannot file 2 Claims, relating to the same subject matter, and seek to consolidate to cure abuse of the process.
11. The Claimant seeks 4 main orders in the Claim: -
  - a. The Court finds that monies as released by the 1<sup>st</sup> Respondent herein for payment of the workers and pensioners' terminal benefits were actually not paid the said staff, despite the position of the law regarding the payment of terminal benefits and despite the said 1<sup>st</sup> Respondent having released the said monies for the intended exercise.
  - b. The 1<sup>st</sup> Respondent be directed to release or pay the amounts as were released by the said Respondent amounting to Kshs. 5.4 billion from the said Respondent's Safety Net Benefits Program and not without interest compounded on the same amount for the eventual payment of the affected staff who were never paid the said monies despite the same having been released by the 1<sup>st</sup> Respondent.
  - c. The Court directs that the Claimant/ Applicant herein provides oversight in the release and eventual payment of affected staff that were never paid and for the purpose of rehabilitation of the pensioner's houses and dwelling places for value addition despite the funds having been released by the 1<sup>st</sup> Respondent.
  - d. The apparent un-procedural processes and manner of disposing and, or renting the pensioners' assets adopted by the impugned trustees and administrators of the scheme be permanently stayed until a credible and legitimate organ shall have been constituted to run the affairs of the pensioners' scheme.
12. The dispute as can be deduced from the prayers above, is a pension dispute, mainly concerning members and their scheme trustees and administrators. The prayers are not in clear language, but the Claim is about pension.
13. The Claim suffers several infirmities.
14. It has been observed that there are multiple Claims filed, without an explanation, and without disclosure of all the proceedings and pleadings involved.
15. The Supreme Court, in **Albert Chaurembo Mumba & 7 Others v. Maurice Munyao & 148 Others [ 2019] e-KLR** held that pension disputes, are not within the jurisdiction of the Courts. They are dealt with under the Retirement Benefits Authority disputes settlement mechanism. [See also **ELRC in Mwinji Haji Mwinzangu & 60 Others v. Kenya Ports Authority, [2020] e-KLR**].
16. Beyond these *suo moto* findings and observations of the Court, 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Interested Party have filed Preliminary Objection, which is the subject of today's rulings.
17. They state that there is no cause of action against 1<sup>st</sup> Respondent. He is not in a contractual relationship with the Claimant's members. He enjoys immunities and privileges under the Bretton Woods Agreements Act, Cap 464 of the Laws of Kenya. The

Claim is time-barred under Section 90 of the Employment Act, 2007. The Claim is further time-barred, under Section 87 [b] of the Kenya Railways Corporation Act.

18. The Claimant's answer to the Preliminary Objection is that the Objectors are required to establish Objection through adducing of evidence. The Objection cannot be sustained preliminarily. It is the position of the Claimant that the Claim is not time-barred, having been filed initially in November 2007.

19. The Court agrees with the Preliminary Objectors on all grounds.

20. As stated earlier, the Court does not have proceedings and pleadings from the High Court and the earlier Claim filed in the ELRC.

21. In a lone Amended Memorandum of Claim filed on 15<sup>th</sup> May 2015 [Cause No. 37 of 2013], it is disclosed that there was only one Respondent and one Interested Party. These were Kenya Railways Corporations as the Respondent and Rift Valley Railways [K] Limited as an Interested Party.

22. The cause of action arose way back in January 2006.

23. It is definitely time-barred, particularly with regard to the new Respondents and Interested Parties, the Claimant has arbitrarily opted to enjoin to the dispute through the fresh proceedings, 14 years after the cause of action arose. They were not Parties in the Claims filed in 2007 and 2013.

24. The 1<sup>st</sup> Respondent has nothing to do with the contractual obligations between the Employer and its Employees. If the 1<sup>st</sup> Respondent released certain monies for the pensioners as pleaded by Claimant, how is the Court to again order the 1<sup>st</sup> Respondent to release and/ or pay the amounts to Claimant's members" The Court does not have a supervisory role over the World Bank, on how its funding processes are implemented. The Court is persuaded that the 1<sup>st</sup> Respondent enjoys immunity from legal processes under Sections 3 and 5 of the Bretton Woods Agreements Act. This was restated in **ELC Petition No. 13 of 2018, Ngugi Mbugua v. Chairman National Land Commission & 10 others** and **Mohammed Barisa Dhidha & 8 Others v. Attorney-General & 3 Others [2012] e-KLR**.

25. The grounds on which the Preliminary Objection rests, are not matters that require to be established through a full trial. They are clear issues of the law, which cannot be affected by adducing of evidence.

26. Lastly, the Court fails to see which of the prayers pursued by the Claimant, is directed at the 3<sup>rd</sup> Interested Party. Where does the 3<sup>rd</sup> Interested Party come in, in this dispute"

27. On the whole, Preliminary Objection, is sustained. The Court has stated other grounds beyond the Preliminary Objection, why the Claim is unsustainable. These grounds all relate to temporal, personal, as well as subject-matter jurisdiction of the Court, to entertain and hear this dispute.

28. The Parties who were introduced by the Claimant to the dispute through this Cause, merit costs. Their joinder was ill-advised.

IT IS ORDERED: -


*[a] The Claim is declined on the strength of the Preliminary Objection, and other Grounds stated by the Court.*

*[b] Costs to be paid by the Claimant to the 1<sup>st</sup> Respondent, and all the Interested Parties.*

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 23RD DAY OF MARCH 2022.**

**JAMES RIKA**

**JUDGE**

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