**East African Community v Railway African Union (Kenya) and others (No. 2)**

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 7 October 1974

**Case Number:** 41/1974 (115/74)

**Before:** Spry Ag P, Mustafa and Musoke JTA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Kenya – Sir James Wicks, C.J. and Chanan Singh,

J

*[1] Master and Servant – Trade dispute – Employees of Community – Industrial Court must apply laws*

*of partner states.*

*[2] Master and servant – Trade dispute – Railways Corporation – Major alterations of terms of*

*employment may only be made by Communications Council – Council a proper party to proceedings*

*before Industrial Court – East African Railways Corporation Act* (*Cap.* 18), *s.* 13.

*[3] Prerogative Orders – Certiorari – Necessity for order must be shown.*

**Editor’s Summary**

The appellant applied in the High Court for an order of certiorari to quash a decision of the East African

Industrial Court sitting in Kenya. The facts are set out in the judgment of Spry, Ag. P.

On appeal to the Court of Appeal, the appellant argued that the Uganda and Tanzanian Unions could not be parties to the dispute and that no award could be made affecting workers residing and working in those countries, that the Industrial Court purported to make an award embodying a report not approved by the Communication Council.

**Held –**

(i) the East African Industrial Court has to apply the separate laws of the partner states and in a

dispute under Kenya law has no jurisdiction to make an award affecting employees in Uganda or

Tanzania;

( ii) acquiescence cannot create jurisdiction, nor can the unworkability of a law;

(iii) there was only an excess of jurisdiction as regards Uganda and Tanzania;

(iv) the “agreement” was no more than agreed recommendations to the Communications Council which

is the only body which can take decisions on major alterations of wages or salaries;

(v) it was beyond the power of the Corporation or the Director-General to implement the “agreement”;

(vi) the Industrial Court must give the Communications Council an opportunity of being heard before

considering a dispute involving major alterations to wages or salaries;

( vii) a case for the discretionary order of certiorari had not been made out since it was possible that the

order would have no practical consequences and the order was therefore not shown to be

necessary.

Appeal dismissed.

**Cases referred to Judgment:**

(1) *R. v. Lord Newborough* (1869), L.R. 4 Q.B. 585.

(2) *East African Community v. Railway African Union* (*Kenya*), [1973] E.A. 529