



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 563 of 2006**

**VIRGINIA E. WAMBUI OTIENO-MBUGUA.....  
PLAINTIFF**

**VERSUS**

**AFRICA AIR RESCUE HEALTH SERVICES (K) LTD.....  
.....DEFENDANT**

**RULING**

The plaintiff has been a member of the Defendant Africa Air Rescue (K) Ltd since the year 1989. She has remained a diligent member all along since she joined the membership of the defendant. On 17<sup>th</sup> March 2006 the defendant wrote her alerting her of the date when her membership was due for renewal which was 28<sup>th</sup> May 2006.

It is one of the conditions that before renewal a member has to avail oneself to the defendant's medical team for check up which she did. But to her surprise the defendant wrote her that they were not going to renew her membership citing contractual age limit. She is a Gold Card Member whose age limit is 75 years and she is 69 years and 11 months so that she is within the age bracket.

She filed this suit by way of a Plaint against the defendant seeking:

- (a) An order by way of specific performance of the contract between the plaintiff and the Defendant
- (b) Damages in lieu of or additional to specific performance
- (c) Damages for breach of contract and
- (d) Cost of the suit plus interest.

The defendant on being served with summons filed this Chamber Summons expressed to be brought under Section 6 of the Arbitration Act 1995, Rule 2 of the Arbitration Rules 1997 and the inherent jurisdiction of the court seeking orders that the proceedings herein be stayed and the dispute between the parties be referred to arbitration in accordance with the terms and conditions of the contract between them.

The applicant specifically referred to Clause 18 of the said contract between the parties which provides that disputes between the parties are to be resolved by way of arbitration. The application is opposed.

I think that once an application under Section 6(1) of the Arbitration Act, has been made it is incumbent upon the Judge seized of the matter to deal with it as a whole, to discover whether any of the legal impediments set out in the section exist as to disentitle the applicant of a stay.

In order to appreciate the issues raised in this matter it is necessary I would like to reproduce Clause 18 of the Contract upon which the applicant is relying in this application.

It provides:

Clause "18" These terms and conditions shall be governed by the Law of Kenya. The Courts of Kenya shall have exclusive jurisdiction in any dispute arising between AAR and a member, touching on the construction or effect of these terms and conditions or on the rights or liabilities of the parties hereunder or any matter arising out fo the same or connected therewith shall be referred to a single arbitrator to be agreed between the parties or in default of agreement to be nominated by the Chairman of the Law Society of Kenya upon the application of either party. Such arbitration shall be conducted in Kenya under the Arbitration Act (Cap 49) Laws of Kenya, or any amendment or replacement thereof. The making of an arbitration award shall be a condition precedent to any right of action against or liability of AAR."

The clause makes reference to a dispute between AAR and a member. The plaintiff's membership was due for renewal on 28<sup>th</sup> May 2006. She received a letter alerting her of the renewal date on 17<sup>th</sup> March 2006 and she initiated the process for renewal by filling the renewal forms and availing herself to the defendant's doctors for a check up which was done. But on 25<sup>th</sup> May 2006 she received a letter informing her that her membership was not going to be renewed citing contractual age limit which going by the defendant's own documents was not correct, the plaintiff being 69 years and 11 months and being a Gold Card Holder the age limit being 75 years.

This suit was filed on 29<sup>th</sup> May 2006.

By the time the plaintiff filed this suit she had ceased to be a member of the defendant, her membership having expired on 28<sup>th</sup> May 2006 and for that reason the provisions of Clause 18 cited above cannot apply and for that reason the defendant's application is dismissed with costs.

Dated and delivered at Nairobi this 12<sup>th</sup> day of September 2006.

**J.L.A. OSIEMO**

**JUDGE**