



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.393 OF 2017

BRAMUEL JACKSON SIMIYU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

AND

NATIONAL HOSPITAL INSURANCE FUND.....COMPLAINANT

RULING

The Applicant, Bramuel Jackson Simiyu is a director of a company by the name Arrow Web Hospital Limited. According to the Applicant, the company entered into a contract for provision of medical services for members of National Hospital Insurance Fund, the complainant in the case that he is facing before the trial court *i.e.* **Milimani Chief Magistrate's Court Criminal Case No.1689 of 2017**. In that case, the Applicant is facing charges of fraudulently obtaining payment benefits from the complainant. Pending trial, the members allegedly belonging to the complainant who were presented by the Applicant were struck off the list of eligible persons to benefit from the medical insurance. It was this striking out of the list of members presented by the Applicant to the complainant that provoked the Applicant to make an application under **Section 41** of the **National Hospital Insurance Fund Act** and **Article 50(2)** of the **Constitution** seeking to compel the complainant to reinstate the struck out members. The Application is supported by the grounds stated on the face of the application and the affidavits sworn by the Applicant. The application is opposed. The complainant, National Hospital Insurance Fund filed grounds in opposition to the application. Ruth Makallah, the Acting Head of Legal Services and Corporation Secretary of the Fund swore a replying affidavit in opposition to the application.

During the hearing of the application, this court heard oral rival submission made by Mr. Benji for the Applicant, Mr. Walubengo for the complainant and Ms. Sigei for the State. This court has carefully considered the facts of this case and the arguments made before it. For brevity, it was clear to this court that the issue regarding the jurisdiction of this court to hear the dispute was germane to determination of the application. It was clear from the application and the submission made that the basis of the Applicant's application was a contract for provision of outpatient medical care and treatment services to Civil Servants between the Applicant and the complainant. The agreement was executed on 1<sup>st</sup> July 2016. Under **Clause 17.2** of the agreement, any dispute arising as to the giving effect of the agreement would be resolved by mediation, and if unsuccessful, by arbitration under the **Arbitration Act**. The Clause is elaborate on the measures to be taken by either party should there arise a dispute. It was evident to this court that the matter that the Applicant seeks to litigate before this court is an issue which falls squarely under Clause 17.2 of the contract. This court has no jurisdiction to address the matter in dispute. It appeared to the court that the Applicant was seeking to tie the charges brought against him before the trial court with the contract. That cannot be. The contract and its ramifications can only be dealt with in the manner envisaged under Clause 17.2 of the contract or in case of further dispute, by the Commercial Division of the High Court in Nairobi.

In the circumstances therefore, this court agrees with the complainant and the State that the Applicant's application before this court is misplaced because it has been filed before a court which, in the first instance, has no jurisdiction to hear and determine the dispute. The criminal charges facing the Applicant before the trial court are completely separate and delinked from the enforcement of the contract that the Applicant entered with the complainant. The application therefore lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER 2018

L. KIMARU

JUDGE