



**Tonui v DL Group of Companies Limited (Cause E524 of 2023)
[2024] KEELRC 2674 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2674 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E524 OF 2023
S RADIDO, J
OCTOBER 31, 2024**

BETWEEN

NICHOLAS K TONUUI CLAIMANT

AND

DL GROUP OF COMPANIES LIMITED RESPONDENT

RULING

1. Nicholas K. Tonui (the Claimant) sued DL Group of Companies Ltd (the Respondent) alleging breach of contract (withholding salaries).
2. Upon service, the Respondent raised a Preliminary Objection contending that:
 - i. The jurisdiction of this Honourable Court has been wrongly invoked in contravention of the express provisions of clause 16 of the employment contract which specifically designates the applicable and governing law to be the laws of Tanzania.
 - ii. The Claim as presented falls outside the territorial jurisdiction of the Honourable Court to the extent that the services and obligations forming the substratum of the subject employment were exclusively performed in Tanzania.
3. The Court directed the parties on 8 October 2024 to file and exchange submissions.
4. The Respondent filed its submissions on 15 October 2024. The Claimant filed his submissions on 23 October 2024.
5. In the view of the Respondent, since the contract in place had designated the governing law to be the laws of Tanzania, then the Court was bereft of territorial jurisdiction.
6. The Respondent found umbrage in *Raytheon Aircraft Credit Corporation & Ar v Air Al-Faraj Limited* (2005) eKLR and *James Finlay (Kenya) Limited v Elly Okongo Inganga, Lucas Onduso Omoke, Vitalis*



Otieno Muga, Rebecca Okenyuri Nyakondo, Joice Mongere Ochoi, Christopher Omwambia Chuma & Getunga Masela Indinga (2019) KEELRC 1452 (KLR), as well as other similar authorities.

7. In his submissions, the Claimant posited that the Notice of Preliminary Objection did not meet the standard of raising a pure point of law as the Court would be required to interrogate contested facts such as the existence of an employment relationship and where the contract was performed. The Claimant cited *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696 among other authorities.
8. The Claimant further contended that the Respondent had conflated the questions of jurisdiction (forum) and choice of law. To support the submission, the Court's attention was drawn to *Dorcas Kemunto Wainaina v IPA* (2018) eKLR.
9. The Court has considered the Preliminary Objection and submissions.
10. Clause 16 of the contract provided: Governing law
This Agreement shall be governed and construed in all respects in accordance with Tanzania laws.
11. The clause raises questions about conflict of laws principles. One of the principles is whether the Court or forum will apply its laws or the laws of another interested jurisdiction. In other words, choice of law and forum jurisdiction.
12. In the instant case, the Claimant and Respondent made a conscious determination that the contract would be governed and construed in line with the laws of Tanzania, that is the choice of laws. The choice of law is thus not in question herein.
13. However, the contract was silent as to the jurisdiction or forum to determine any arising disputes, that is choice of jurisdiction.
14. Parties to a contract may expressly agree on the choice of jurisdiction, or it may be imbedded or defined in a statute.
15. Some of the considerations in determining the jurisdiction or forum where there is no consent include domicile of the parties or where the contract was performed or breach occurred. These are factual questions which must be proved at trial.
16. Further, Part XI of the *Employment Act*, 2007 addresses the question of foreign contracts of service. Whether the contract in contention was a foreign contract of service will unravel during trial.
17. Considering that the contract only provided for the applicable or guiding law but did not provide for the forum in cases of disputes, the Court finds the Notice of Preliminary Objection without merit.

Orders

18. The Notice of Preliminary Objection is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 31ST DAY OF OCTOBER 2024.

RADIDO STEPHEN, MCIArb JUDGE

Appearances

For Claimant Okweh Achiando & Co.

Advocates



For Respondent G & A Advocates LLP Advocates

