



**Dahiya v Medecins Sans Frontieres (MSF) (Cause E569 of 2024)
[2025] KEELRC 1801 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1801 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E569 OF 2024**

**S RADIDO, J
JUNE 19, 2025**

BETWEEN

ISSACK YUSSUF DAHIYE CLAIMANT

AND

MEDECINS SANS FRONTIERES (MSF) RESPONDENT

RULING

1. Issack Yussuf Dahiye (the Claimant) sued Médecins Sans Frontières (MSF) (the Respondent) on 25 July 2024, and he stated the Issues in Dispute as:
 - i. Damages for unfair and wrongful termination.
 - ii. Damages for violation of international and domestic labour rights and practices, including the freedom from discrimination, the right to human dignity, the right to fair labour practices, the right to fair administrative action and the right to fair hearing.
 - iii. Formal retraction of scandalous reports, reviews and information.
 - iv. Issuance of a proper Certificate of Service.
 - v. Costs and interests of the Claim.
2. Upon service, the Respondent filed a Notice of Preliminary Objection on 26 September 2024, contending that:
 - i. This Honourable Court lacks the jurisdiction to determine and grant reliefs sought by the Claimant in the Statement of Claim dated 24th July 2024.
 - ii. The Employment Contract between the parties ousts the jurisdiction of this Honourable Court as it provides that the employment relationship is governed by French law and



exclusively vests jurisdiction in the French Employment Tribunal to hear and determine any disputes arising.

- iii. The Employment Contract was executed and performed outside Kenya, and the exclusive jurisdiction clause should, therefore, be enforced as agreed between the parties.
3. The Claimant filed Grounds of Opposition on 2 April 2025, contending that:
 - i. This Honourable Court has jurisdiction to hear and determine this matter.
 - ii. The Preliminary Objection does not constitute a proper Preliminary Objection in substance that can dispose the suit in limine as it is intertwined in factual aspects calling for proof, authentication and ascertainment, particularly on the interpretation of the clause on jurisdiction, its vagueness, ambiguity and unconscionability.
 4. The Court gave directions on the Preliminary Objection on 17 February 2025 and 3 April 2025.
 5. The Respondent filed its submissions on 3 March 2025, and the Claimant on 2 April 2025.
 6. The Respondent urged in its submissions that the employment relationship between it and the Claimant was governed by French law, and the forum the parties had settled on in case of any dispute was the French Employment Tribunal.
 7. According to the Respondent, the parties' intention was set out in Articles 1 and 13 of the employment contract dated 13 September 2022.
 8. The Respondent cited *Dorcas Kemunto Wainaina v IPAS (2018) KEELRC 2065 (KLR)*, *Raython Aircraft Credit Corporation & Ar v Air Al-Faraj Ltd (2005) eKLR*, *Kamurasi v Absa Bank Kenya PLC & Ar (2023) KEELRC 3229 (KLR)* and *Dede Esi Annie Amanor-Wilks v Action Aid International (2014) KEELRC 439 (KLR)* among other authorities.
 9. The Claimant took the position that the Court had jurisdiction because Articles 1 and 13 of the employment contract were vague on the question of jurisdictional forum and the Articles could not therefore oust the jurisdiction of the Court.
 10. To support the arguments on vagueness, the Claimant asserted that the contract referred to an Employment Tribunal, and not the French Employment Tribunal and relying on the principle of *contra proferentem* rule, the Court should interpret the question of jurisdiction in his favour.
 11. The Claimant relied on *Captain (Rtd) Charles K.W. Masinde v Intergovernmental Authority on Development (2018) eKLR* to posit that the jurisdictional forum suggested by the Respondent was too far away from his country of residence and that the Court should consider that the Respondent had an office within the jurisdiction of this Court.
 12. The Claimant further contended that the Preliminary Objection did not meet the legal threshold for what constitutes a Preliminary Objection because it involved an evaluation and authentication of facts to ascertain whether the contract was unconscionable, vague and ambiguous. The Claimant cited *Kenya Breweries Ltd & Ar v Keroche Breweries Ltd (2020) eKLR*.
 13. The Court has considered the Statement of Claim, Notice of Preliminary Objection, Grounds of Opposition and submissions.
 14. The Respondent and the Claimant entered into a contract on or around 13 September 2022.



15. When the contract lapsed, the Respondent sent an email to the Claimant informing him that he was being offered a contract as Head of Mission, Nigeria, from 12 September 2022 to 12 September 2023. The email was explicit that the other terms and conditions of service remained the same.
16. On 31 August 2024, the Respondent notified the Claimant of the termination of his contract, prompting the Cause presented before the Court.
17. Article 13 of the contract provided:

This contract of employment is subject to French law and the jurisdiction of the employment tribunal.
18. It is plain that the parties settled on French law as the law applicable to the contract.
19. On the ambit of choice of forum, the contract simply mentioned the Employment Tribunal. Kenya does not have an Employment Tribunal. It has the Employment and Labour Relations Court, which is a superior Court of record with the status of the High Court.
20. The contract in contention was not executed in Kenya. Its performance was in Nigeria. The relevant portion of the contract did not mention Nigeria as the jurisdictional forum. It did not list Nigerian law as applicable.
21. The residence detail of the Respondent in the contract is given as Paris, and there is no reference to the Kenyan office. The contract indicates that the Respondent is established under French law.
22. The Employment and Labour Relations Court cannot, therefore, be the tribunal settled on by the parties.
23. Taking all these factors into consideration, the Court has no hesitation in finding that the jurisdictional forum agreed on by the parties was the Employment Tribunal under French law, and that it is not within the province of this Court to re-write the parties' contract and clothe itself with jurisdiction.
24. If the Claimant believed that the contract or portions of it were unconscionable, he should have engaged with the Respondent while the sun was still shining.

Orders

25. In light of the above, the Court upholds the Notice of Preliminary Objection, declines jurisdiction and strikes out the Statement of Claim filed in Court on 25 July 2024.
26. No order on costs considering that the Cause has been struck out even before the taking of pre-trial directions.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 19TH DAY OF JUNE 2025.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant F.M. Muteti & Co. Advocates

For Respondent Anne Babu & Co. Advocates

Court Assistant Wangu

