



**Muhamed v Deltar M.N. Properties Limited (Cause E1018 of 2023)  
[2025] KEELRC 1692 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1692 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1018 OF 2023  
S RADIDO, J  
JUNE 12, 2025**

**BETWEEN**

**HANAN ZAILI MUHAMED ..... CLAIMANT**

**AND**

**DELTAR M.N. PROPERTIES LIMITED ..... RESPONDENT**

**RULING**

1. For determination is a Chamber Summons dated 18 January 2024, by Deltar M.N. Properties Ltd (the Respondent) seeking orders:
  - i. That this Honourable Court be pleased to grant an order directing that this matter be referred to an Arbitrator for settlement of the dispute between the parties as per the terms of the Agreement entered into between the parties.
  - ii. That this Honourable Court be pleased to stay the proceedings in this suit pending reference to arbitration in compliance with the Arbitration Agreement between the parties.
  - iii. That the costs of this application be awarded to the Respondent.
2. The grounds in support of the Summons were that clause 21 of the contract of service between the parties provided that whenever the parties could not amicably resolve a dispute, it would be referred to arbitration; the Claimant had disregarded the arbitration clause and moved the Court directly; the Claimant had failed to disclose the existence of the arbitration clause; that the Court should stay the proceedings pending arbitration and that the Claimant would not be prejudiced.
3. Hanan Zaili Muhamed (the Claimant) filed Grounds of Opposition to the Summons on 4 March 2024, contending that the matters raised in the Cause were outside the coverage of the arbitration clause; the arbitration clause concerned disputes during the existence of an employment relationship;



- arbitration was not mandatory; arbitration was not suitable in termination of employment disputes and that the arbitration clause could not be enforced because it was unconscionable.
4. On 3 July 2024, the Claimant filed a replying affidavit deponing that the dispute could not be referred to arbitration because it was an employment dispute and not a commercial dispute; she did not participate in the drafting of the contract of service and she had no option but to sign it because of power imbalance; she could not afford the cost of arbitration; the Respondent was not interested in mutual negotiations, and that the interests of justice favoured the dismissal of the Summons.
  5. The Respondent filed its submissions on 24 May 2024, and the Claimant on 3 July 2024.
  6. The Court has considered the Statement of Claim, Summons, Affidavit in support, Grounds of Opposition and submissions.
  7. The Claimant was a Personal Assistant to the Respondent's Managing Director, and she was issued with and signed a contract of service providing at clause 21:
    - 21.1 Should any dispute arise between the parties with regard to the interpretation, rights, obligations and/or implementation of any one or more of the provisions of this Agreement, the parties shall in the first instance attempt to resolve such dispute by amicable negotiation.
    - 21.2 Should such negotiations fail to achieve a resolution within fourteen (14) days, either party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to arbitration under the following terms:
      - (a) Such arbitration shall be resolved under the provisions of the Kenyan [Arbitration Act \(Act No. 4 of 1995\)](#) (as amended from time to time):
      - (b) ....
      - (c) ...
      - (d) ...
      - (e) ...
  8. The arbitration clause the parties agreed to required that disputes regarding the interpretation, rights, obligations and/or implementation of the terms of the contract would be sent to arbitration.
  9. The question is therefore whether the present action revolves around the interpretation, rights, obligations and or implementation of any of the terms of the contract of service.
  10. The gravamen of the Claimant's action is unfair termination of employment and violation of the rights to fair labour practices in terms of the [Constitution](#) and [Employment Act](#).
  11. Clause 10 of the contract made provision for the termination of the contract on notice or pay in lieu of notice, but the action and assertions raised by the Claimant extend beyond the interpretation of the rights and obligations under the contract and require an examination of legal breaches.
  12. In the context of the contract of service, the Court finds that the Claimant did not breach the arbitration clause when she moved the Court.
  13. The Court must, however, note that it is always desirable to attempt alternative dispute resolution avenues in place before invoking the Court's jurisdiction.
  14. The Court can even, on its own motion, refer a dispute before it to alternative dispute resolution fora.



**Orders**

15. The Summons dated 18 January 2024 is dismissed with costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**RADIDO STEPHEN**

**JUDGE**

Appearances

For Claimant Hussein & Omar Advocates LLP

For Respondent Ummi Bashir & Co. Advocates

Court Assistant Wangu

