



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Busolo v AFC Leopards Sports Club (Cause 786 of 2018)
[2024] KEELRC 687 (KLR) (28 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 687 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 786 OF 2018**

J RIKA, J

MARCH 28, 2024

BETWEEN

JOHN BUSOLO CLAIMANT

AND

AFC LEOPARDS SPORTS CLUB RESPONDENT

JUDGMENT

1. In its heydays, the Respondent herein, AFC Leopards Sports Club, was a high-flying football team, which sent shivers down the spines of its competitors in Kenya, East Africa and Africa.
2. In recent years, it appears to have become an average football team, and more of a prominent litigant, in claims brought in this Court by its ex-Employees, former footballers, who were part of its glorious past. The claims are on failure by the Respondent, to meet its contractual obligations, to its illustrious footballers.
3. John Busolo, is one such former footballer, employed by the Respondent. He was once a prominent goalkeeper. He was later, contracted by the Respondent on or about 4th January 2016, as a Goalkeeper Trainer.
4. He was earning a monthly salary of Kshs 100,000 and Kshs 10,000 in bonus, for every match won by the Respondent.
5. Immediately he was employed, the Respondent defaulted in payment of his salary.
6. In January 2016, he was not paid his salary. Subsequently, he was paid less that had been agreed.
7. On 4th April 2016, barely 4 months into the contract, the Head Coach, a Mr. Minnaert, told the Claimant that he was not going to continue working with him. The Coach hired his own Goalkeeper Trainer. The Claimant was relegated to training of the Youth Team, contrary to his contract.



8. On 8th July 2016, his salary had not been deposited in his bank account. He called the Respondent's Secretary-General, who informed him, that his contract had been terminated. He was advised to visit the Respondent's Head Office, and collect his termination letter.
9. He did so severally, but was not issued a letter of termination. The Claimant considered the Respondent to have terminated his contract unfairly and unlawfully, and filed this Claim on 23rd May 2018, seeking the following orders: -
 - a. Declaration that termination was unfair.
 - b. 2 months' salary in lieu of notice at Kshs 200,000.
 - c. Arrears of salary from January 2016 to June 2016 at Kshs 360,000.
 - d. House allowance, January 2016 to July 2016 at Kshs 90,000.
 - e. Unpaid win bonus at Kshs 60,000.
 - f. Anticipatory salary for remainder of the contract at Kshs 1,800,000.
 - g. 12 months' salary in compensation for unfair termination at Kshs 1,200,000.
Total... Kshs 3,710,000.
 - h. Certificate of Service.
 - i. Costs.
 - j. Interest.
10. The Respondent filed a Statement of Response on 20th June 2019. Its position is that the Court lacks jurisdiction, and the Claim is incompetent. Jurisdiction is challenged under the Sports Act 2013. It is denied that the Claimant was appointed as Goalkeeper Trainer. In the alternative, it is stated that the Claimant deserted work. The Respondent states that it would raise these objections preliminarily, but there is no record of any preliminary objection argued by the Respondent. The Respondent prays the Court to dismiss the Claim with costs.
11. The Claim was referred to mediation vide a Notice of Referral signed by the Mediation Deputy Registrar, dated 8th November 2021.
12. Mediation was not successful and Parties reverted to Court, as shown on the Mediator's Report, dated 27th April 2022.
13. The Respondent's Advocates applied for leave to cease acting for the Respondent, which order was granted by the Court on 20th September 2022. It is regrettable that AFC Leopards, the Respondent herein, could not retain its Advocates, to the conclusion of the Claim.
14. Hearing was scheduled for 9th November 2023. The Respondent was served personally, but did not attend Court, when the Claimant gave evidence and rested his case. The Claim was last mentioned on 5th December 2023, when the Claimant confirmed filing of his Closing Submissions.
15. The Claimant told the Court that he is currently, a Coach and Goalkeeper, residing in the United Kingdom. He relied on his Witness Statement and Documents [1-4], in his evidence.



The Court Finds: -

16. There is no doubt that the Claimant and the Respondent executed a contract of employment dated 4th January 2015. The effective date was 4th January 2016.
17. The Claimant was employed as a Goalkeeper Trainer. The contract was for 2 years. The term was renewable.
18. The net salary was Kshs 100,000 monthly. The Respondent undertook not to delay payment of the Claimant's salary, beyond 10th day of each month. The contract provided for payment of bonus to the Claimant, at Kshs 10,000 for every win secured by the Respondent Club.
19. Either Party could terminate the contract, through a written notice of 2 months, or payment of 2 months' salary in lieu of notice.
20. These terms are clearly drawn, in black and white.
21. But there is also another clause, clause K, drawn in black and white, which the Claimant did not testify about. Clause K, makes provision for dispute resolution. It states: -
 - a. All disputes relating to this contract shall be raised with the Management, and all efforts put into trying to resolve the matter at club level, in a reasonable time.
 - b. If the dispute is not resolved in [a] above, the matter will be referred to FKF [Football Kenya Federation] for arbitration.
 - c. Any dispute that is not resolved under [a] or [b] above, shall be settled by Arbitration, in accordance with the *Arbitration Act* 1995, Laws of Kenya, or any statutory modification or re-enactment thereof for the time being in force, or in accordance with FIFA Regulations.
22. The Claimant has shown through his pleadings, documents and evidence, that he has genuine grievances against the Respondent, but has applied for redress, before the wrong dispute settlement forum.
23. Clause K of his contract is a valid dispute resolution agreement. It is a three-step dispute resolution mechanism. It does not include the Court: not at the beginning; during resolution; or at the end. The mechanism completely, and positively, rejects the jurisdiction of the Court.
24. The Claimant did not explain to the Court why, in light of his rejection of the mandate of the Court through his contract of employment, he brought this Claim before the Court. The Court does not have jurisdiction to adjudicate, or mediate through its annexed mediation, as it purported to do.
25. The Respondent challenged jurisdiction of the Court, but cited the *Sports Act* 2013, rather than the much closer and indisputable clause K of the contract of employment. The challenge was never followed through preliminary proceedings. There is nothing in the *Sports Act* 2013, which takes this employment dispute out of the jurisdiction of the Court. Clause K of the contract however, does clearly, place the dispute outside the jurisdiction of this Court. In the end, the result is the same. The Court does not have jurisdiction.
26. The Claimant ought to place his Claim, before the agreed dispute resolution forum.

It is ordered: -

- a. The claim is declined for want of jurisdiction.



b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT
PRACTICE DIRECTIONS, 2020, THIS 28TH DAY OF MARCH 2024.**

JAMES RIKA

JUDGE

