



**Bett & others v Kenya Post Office Savings Bank (Cause E433, E434, E437 & E438 of 2020 (Consolidated)) [2024] KEELRC 1526 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1526 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E433, E434, E437 & E438 OF 2020 (CONSOLIDATED)**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN**

**THOMAS K BETT & OTHERS ..... CLAIMANT**

**AND**

**KENYA POST OFFICE SAVINGS BANK ..... RESPONDENT**

**RULING**

1. The Court stayed its proceedings on 26<sup>th</sup> November 2021, to allow the Parties seek resolution of the dispute through arbitration, as contemplated under clause 19.2 of the respective contracts of employment.
2. The Claims, Cause Numbers E434 of 2020, E437 of 2020 and E438 of 2020, are consolidated.
3. The Parties returned to Court on 17<sup>th</sup> April 2023, when the Claimants submitted that the Court should proceed with the hearing, because the arbitrator was too expensive. The Respondent submitted that the Claimants refused to participate in arbitration, and arbitration was concluded, and an award made on 8<sup>th</sup> February 2023.
4. The Court declined jurisdiction, explaining that it could not assume jurisdiction on the ground proffered by the Claimants - that the arbitrator was too expensive.
5. The order for stay of proceedings was replaced with an order striking out the consolidated Claims, with no order on the costs. The Court effectively closed its file, and became functus officio.
6. The Claimants have made an application dated 24<sup>th</sup> April 2023, asking the Court to review the orders striking out the consolidated Claims, and to assume jurisdiction and hear the Claims.
7. The application, supported by the affidavit of the Claimants' Counsel Ms. Judith Guserwa, restates that arbitration proceedings could not take place, because the Claimants were not financially able to meet their cost of arbitration. They submit that the Court erred in striking out the Claims.



8. The application is opposed, through the affidavit of the Respondent's Managing Director Raphael Lekool. He states that both Parties appointed their arbitrators, who agreed on the chair to the arbitral tribunal. The chair wrote to the Parties accepting appointment. The chair convened a meeting where preliminary issues, including the arbitrators' fees, were to be agreed.
9. The Claimants' Counsel wrote to the tribunal, stating that the Claimants were not able to attend arbitration. The tribunal directed the Claimants to file their Statements of Claim, in default of which the proceedings would be terminated.
10. As at 28<sup>th</sup> February 2023, the Claimants had not filed their Statements of Claim, and the arbitration proceedings terminated.
11. The Respondent submits that the Court did not have jurisdiction to hear the dispute, and does not have jurisdiction to entertain the current application.

**The Court Finds: -**

12. Clause 19.2 of the contracts of employment executed by the Claimants, clearly stipulates that any dispute, or question arising between the Parties touching on meaning, effect or construction of the contracts of employment, shall be determined through arbitration.
13. The mode of appointment of the arbitrator/s is provided for, under the clause.
14. The Claimants appear to have failed to subject themselves fully to the arbitration proceedings, citing the high costs of arbitration.
15. The Court does not have jurisdiction to hear and determine the dispute. It does not have jurisdiction to reinstate and try the consolidated Claims.
16. The Claimants' inability to meet the costs of arbitration has no bearing on the jurisdiction of the Court.
17. They opted for a private dispute settlement mechanism, depriving the Court of jurisdiction. Arbitration is not supervised by the Court. It is not annexed to the Court. The Claimants ought to have foreseen the cost implication, in choosing arbitration over litigation.

**It Is Ordered: -**

- a. The Court does not have jurisdiction to hear the claims and the application filed by the Claimants.
- b. The application is declined with no order or the costs.
- c. The file is closed.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

