



**Candy Kenya Limited v Shantatu & another (Cause E702 of 2023)  
[2024] KEELRC 1527 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1527 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E702 OF 2023**

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

**BETWEEN**

**CANDY KENYA LIMITED ..... CLAIMANT**

**AND**

**PANDA SHANTATU ..... 1<sup>ST</sup> RESPONDENT**

**KENYA SWEETS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Court made a ruling dated 8<sup>th</sup> December 2023, finding that it does not have jurisdiction, in view of the existence of an arbitration clause, in the contract of employment subject matter of the Claim.
2. The Claimant filed an application dated 22<sup>nd</sup> December 2023, asking the Court to grant orders of injunction against the Respondents from engaging in any employment contract, pending arbitration, or appeal against the ruling of the Court.
3. The Claimant relies on Section 7[1] & [2] of the Arbitration Act, and Rule 2 of the Arbitration Rules, which it submits, confer jurisdiction on the Court to grant interim reliefs such as injunctions, pending arbitration.
4. The Respondent relies on grounds of opposition dated 20<sup>th</sup> February 2024. Its position is that the application is in abuse of the process. The Court made a ruling that it does not have jurisdiction. It is *functus officio*. The Claimant is asking the Court to sit on appeal on its own decision. The Claimant is approbating and reprobating.
5. It was agreed by the Parties that the application is considered and determined on the strength of written submissions. These were confirmed to have been filed and exchanged at the last mention before the Court, on 19<sup>th</sup> March 2024.



**The Court Finds: -**

6. The Court has no jurisdiction to entertain the current application. It ruled that it does not have jurisdiction. It is *functus officio*. Nothing has changed to confer jurisdiction on the Court, since the ruling was made.
7. An order of temporary injunction is granted on the basis that there is before the Court, a Claim with *prima facie* probability of success. The Court cannot grant an order of injunction when it does not have jurisdiction, and when there is no Claim pending before it, ascertained to have a probability of success.
8. An order of injunction pending appeal? This again is not in the mandate of this Court to grant, having found that it does not have jurisdiction.
9. What the Claimant is seeking, is the assistance of the Court, in obtaining orders against the Respondents, through alternative means, after the Court found it did not have jurisdiction to entertain the Claim.
10. Some of the interim orders desired by the Claimant, can be pursued before the arbitrator. There is no reason why the Court should aid the arbitrator, in grant of orders in respect of a matter covered under the arbitration clause. The arbitration clause covers all claims and controversies, which should extend jurisdiction to the arbitrator, on the substantive as well as interlocutory disputes. The clause on the other hand, deprives the Court of jurisdiction, on the substantive, as well as interlocutory aspects of the dispute.
11. The Court thinks Sections 7[1] and [2] of the [Arbitration Act](#) and Rule 2 of the [Arbitration Rules](#), invoked by the Claimant, would only apply if the arbitration clause allows the Court to render assistance to the arbitrator, on preliminary or provisional matters, such as relate to appointment of Arbitrators or temporary injunctions. There would have to be provision for the intervention of the Court, in granting assistive orders pending arbitration, in the arbitration clause itself. The arbitration clause completely and positively ousts the jurisdiction of the Court.
12. If the Claimant is pursuing an appeal, the endeavour is not rendered nugatory by the Court's declaration that it does not have jurisdiction. If the appeal is successful, it will simply correct the view of this Court that it does not have jurisdiction. The Court does not have to grant the Claimant positive orders, for the intended appeal to be sustainable.

**It Is Ordered: -**

- a. The application is declined.
- b. No order on the costs.
- c. The file shall be marked as 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**

