



**Changwony v Liberty Life Assurance Kenya Limited (Cause
1036 of 2021) [2023] KEELRC 361 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 361 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1036 OF 2021
BOM MANANI, J
FEBRUARY 16, 2023**

BETWEEN

AUDREY JEMUTAI CHANGWONY CLAIMANT

AND

LIBERTY LIFE ASSURANCE KENYA LIMITED RESPONDENT

RULING

1. This is a claim for unfair termination. The Claimant asserts that on December 11, 2018, the Respondent unfairly relieved her of her employment. She thus, inter alia, seeks compensation for unfair termination.
2. The case is resisted by the Respondent. It is the Respondent's case that it had legitimate reason to terminate the Claimant's contract of service and that the contract was terminated in accordance with due process.

Preliminary Objection

3. Upon entering appearance in the cause, the Respondent filed a Notice of preliminary objection dated February 10, 2022. In the notice the Respondent has objected to the court's jurisdiction to hear the case on a number of grounds summarized as follows:-
 - a. That the dispute between the parties ought to have been remitted to arbitration in terms of the arbitration clause in the letter of employment.
 - b. That the cause offends the provisions of article 159 of *the Constitution* and sections 3(1) and 15(1) of the *Employment and Labour Relations Court Act* which entrench alternative modes of dispute resolution.
 - c. That the cause offends the exhaustion principle in so far as it was filed in disregard of the internal dispute resolution mechanisms contemplated in the contract of employment.



4. On the basis of the foregoing, the Respondent asks that I find that the court is not seized of the requisite jurisdiction to hear the case. Consequently, the court should dismiss the cause with costs to the Respondent.
5. The Claimant has resisted the objection. Through her advocates, she filed grounds of opposition dated March 28, 2022.
6. I have carefully considered the preliminary objection. The foundation of the objection is the arbitration clause in the contract of employment. The clause is founded on the Arbitration Act, 1995.
7. Section 6 of the Act requires the court to stay proceedings in respect of which the parties have an arbitration agreement if one of the parties so applies. The law does not contemplate the dismissal or striking out of the cause as one of the remedies available to the party pleading that the cause ought to have been referred to arbitration (see Local Authorities Fund Board v County Government of Kilifi & another (Employment and Labour Relations Claim 2 of 2022) [2022] KEELRC 3962 (KLR)). I am therefore reluctant to order for the dismissal of the suit as prayed by the Respondent.
8. Whilst I disagree with the Respondent's request that the suit be dismissed, I am inclined to invoke the powers granted to the court under section 15 of the Employment and Labour Relations Court Act to refer the cause to arbitration in terms of the agreement between the parties. Consequently, I order that the proceedings in the cause be stayed pending resolution of the dispute through arbitration.

Disposition

- a. The dispute between the parties is referred to an arbitrator to be appointed by the parties in terms of the arbitration clause in the contract of employment.
- b. The parties have 30 days from the date of this order to agree on and appoint an arbitrator.
- c. Meanwhile, the cause is stayed pending the decision of the arbitrator to be appointed by the parties.
- d. Upon the arbitrator rendering his verdict, the same shall be filed in this cause for adoption as the court's judgment.
- e. Costs of the preliminary objection shall be in the cause.
- f. The parties shall fix periodic mention dates to report on the progress of the arbitration process.

DATED, SIGNED AND DELIVERED ON THE 16TH DAY OF FEBRUARY, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

