



**Mohamed v Wazito Football Club (Cause 814 of 2019)  
[2023] KEELRC 389 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 389 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 814 OF 2019  
MN NDUMA, J  
FEBRUARY 9, 2023**

**BETWEEN**

**HUSSEIN MOHAMED ..... CLAIMANT**

**AND**

**WAZITO FOOTBALL CLUB ..... RESPONDENT**

**RULING**

1. The claimant filed suit on 2<sup>nd</sup> December, 2019. In terms of paragraph 2 of the Memorandum of Claim, the claimant was on 2<sup>nd</sup> November, 2018 employed by the respondent, Wazito Football Club as a Coach. The claimant duly executed the contract of employment. The claimant's employment was terminated by a letter received on 7<sup>th</sup> March, 2019. The claimant filed this suit alleging that the termination of his employment was unlawful and unfair and seeks compensation in respect thereof and payment of terminal benefits set out in the Statement of Claim.
2. The claimant alleges that he invited the respondent to negotiations in terms of the provisions of the employment contract dated 2<sup>nd</sup> November, 2018 to resolve the dispute. That the respondent did not respond to the invitation for negotiations vide the letter dated 8<sup>th</sup> April, 2019 hence the suit was filed.
3. The respondent filed a substantive Memorandum of response to the suit dated 20<sup>th</sup> February, 2020. The claimant filed a response to the Statement of Claim dated 31<sup>st</sup> August, 2021. The pleadings thus closed and matter was ready for pre-trial directions.
4. The respondent filed a notice of preliminary objection dated 16<sup>th</sup> May, 2022 to wit that the claim filed herein is in contravention of the mandatory provisions of Article 69 and 70 of the Football Kenya Federation Constitution, 2017 and thus the Court lacks jurisdiction to entertain the suit.
5. The parties filed written submissions on the Preliminary Objection.



6. The respondent submitted that Article 70(2) of the Football Kenya Federation Constitution, 2017 provides:-

“Football Kenya Federation shall have jurisdiction on internal national disputes i.e disputes between parties belonging to Football Kenya Federation”

7. The respondent submits that the proper forum for resolving this dispute is the status committee established under Article 56 of Football Kenya Federation Constitution, 2017 as follows:-

“56(1) Players’ status disputes involving FKF, its Members, Players, Officials and Players’ Agents shall be settled in the last instance by CAS in accordance with this Constitution and subject to any applicable national law.”

8. That the last forum for resolution of these disputes is Court of Arbitration for Sports.

9. That the claimant is an official in terms of Football Kenya Federation Constitution which defines “official” as follows:-

“Official” means every board member, committee member, referee and assistant referee, coach ,trainer, and any other person (except Players) responsible for technical, medical and administrative matters in FIFA, a Confederation, an Association, a League or a Club as well as other persons obliged to comply with the FIFA Statutes.

10. That under Article 8, the officials are obliged as follows:-

The bodies and officials of FKF must observe the Statutes, regulations, directives, decisions and the Code of Ethics of FIFA, of CAF and of FKF in their activities

11. The respondent submits that the claimant being a technical member and official of Football Kenya Federation is obliged to comply with the rules and regulations of Football Kenya Federation and FIFA.

12. That this suit be struck out for being incompetent and the Court finds that it has no jurisdiction to hear and determine it.

13. The claimant filed submissions opposing the preliminary objection stating that Article 69(1) of Football Kenya Federation Constitution creates an exception to the general rule on jurisdiction as follows”-

“Disputes in the Association or disputes affecting Leagues, members of Leagues, Clubs, members of Clubs, Players, Officials and other Association Officials shall not be submitted to Ordinary Courts, unless the FIFA regulations, this Constitution or binding legal provisions specifically provide for or stipulate recourse to Ordinary Courts.”

14. In this respect, the claimant and respondent entered into a contract of employment dated 2<sup>nd</sup> November, 2018 in which clause 11 provides as follows:-

“Dispute Resolution

11. The parties shall attempt to resolve any dispute arising out of or relating to this
- 1.2. contract through negotiations between representatives of the parties who have authority to settle the same.



11. If the matter is not resolved by negotiation within 30 days of receipt of a written invitation to negotiate, the aggrieved party may use any other legal remedy to settle the dispute.”
- 1.3.
15. The claimant submits that the above is a binding legal provision between the parties which creates an exception to the application of Article 56(1) of the Football Kenya Federation Constitution.
16. That the claimant invoked clause 11 above by writing a letter dated 8<sup>th</sup> April, 2019 to the respondent inviting them to negotiate to resolve the dispute between the parties. In the same letter, the claimant informed the respondent of their right to institute legal proceedings against them seeking appropriate remedies should the negotiations fail.
17. The parties were unable to reach consensus and consequently, upon the lapse of the required thirty (30) days under Clause 11 of the Agreement, the claimant filed this suit.
18. In the case of *Kenya Chemical and Allied Workers Union v Bamburi Cement Limited* [2017] eKLR, the Court of Appeal held that:-

“Since in Kenya, employment is governed by the general law of contract, now contained in various statutes, it must follow that employment is essentially an individual relationship negotiated by the employee and the employer in accordance with their respective needs”
19. It is the considered finding by this Court that the parties herein with the knowledge of the provisions of Football Kenya Federation Constitution, 2017 on dispute resolution, purposively, opted out of those provisions as is permitted under Article 69(1) of the Football Kenya Federation Constitution, 2017 and determined their own dispute resolution mechanism under Clause 11 of the Employment Agreement between the parties dated 2<sup>nd</sup> November, 2018.
20. Accordingly, the Preliminary Objection lacks merit and is dismissed. The suit to proceed to hearing on the merit.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI ( THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

Appearances

Mr. Odhiambo for Respondent/Objector

M/s Adhiambo for claimant

Mr. Ekale – Court Assistant

