



**Karubi v E-Bima Limited (Cause 48 of 2020)
[2023] KEELRC 697 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 697 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 48 OF 2020**

J RIKA, J

MARCH 24, 2023

BETWEEN

SERAH KARUBI CLAIMANT

AND

E-BIMA LIMITED RESPONDENT

RULING

1. This Claim was declined by the court, in a Judgment dated October 28, 2022. The court based its Judgment on clause 19 of the claimant’s contract of employment, which bound the Parties to resolve disputes arising from their contract through good faith; negotiation; and, failing these mechanisms, by arbitration of a single Arbitrator appointed in accordance with the provisions of the Arbitration Act 1995, or Acts amending or replacing the Arbitration Act 1995. The court concluded that it did not have jurisdiction in light of the arbitration clause.
2. The claimant has filed an Application dated January 19, 2023, asking the Court to review its Judgment, and find that it has jurisdiction to hear and determine the dispute; that there is no dispute capable of referral to arbitration owing to respondent’s admission of indebtedness; and the claimant be at liberty to apply for further orders. The claimant relies on her affidavit sworn on January 19, 2023. She states that the respondent did not file any response to the claim; that the respondent admitted being indebted to the claimant through emails dated November 11, 2019 and December 16, 2019; that it was irrefutable no dispute arose between the Parties, capable of arbitration; and that if the court had taken into account admission of debt made by the Respondent, it would have arrived at a different conclusion.

The Court Finds: -

3. Clause 19 of the Parties’ contract of employment deprives the court of jurisdiction to deal with disputes arising under the contract, between the Parties. The court does not understand why the claimant takes



the position that there was admission of indebtedness, and therefore no dispute capable of going for arbitration. If there is a dispute capable of being brought before the court, it would appear to this court there is a dispute, capable of being taken to the Arbitrator. The arbitration clause does not contain matters, that are identified not to be arbitrable. It does not extend any form of jurisdiction to the court.

4. The claimant in her Claim, sought declaration that termination of her contract by the respondent amounted to constructive dismissal; payment of withheld salaries; damages for unfair and unlawful constructive dismissal at Kshs. 3.6 million; statement showing all statutory deductions have been remitted to the relevant statutory bodies; Certificate of Service to issue; costs; and interest.
5. How is it then that there is no dispute between the Parties capable of arbitration?
6. The fact that the respondent did not file a Statement of Response, and that the Claimant was heard on formal proof, does not have any effect on clause 19 on arbitration. Failure by the Respondent to respond to the Claim, does not confer jurisdiction on the court. The claimant appears to feel that it would be reasonable of the court, and perhaps even a more expeditious way for her, to obtain an outcome to the dispute through this uncontested litigation, but clause 19 of her contract of employment is a jurisdictional clause, completely placing the entire dispute beyond the competence of the court. Whether the respondent admitted liability or not, is a matter that should be resolved by the Arbitrator. Parties positively ousted the jurisdiction of this court, as concluded in the Judgment of the court, and the claimant must abide by clause 19 of her contract of employment.

It Is Ordered: -

- a. The Application for Review filed by the claimant, dated January 19, 2023 is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 24TH DAY OF MARCH 2023.

JAMES RIKA

JUDGE

