



**Mwadime v Triggerise Kenya Limited (Cause E086 of 2023)
[2023] KEELRC 2831 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2831 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E086 OF 2023
M MBARÚ, J
NOVEMBER 9, 2023**

BETWEEN

JACKLINE SHALI MWADIME CLAIMANT

AND

TRIGGERISE KENYA LIMITED RESPONDENT

RULING

1. The ruling herein related to Notice of Preliminary Objections filed by the respondent, Triggerise Kenya Limited dated 6 September 2023 on the grounds that;

a. Clause 18 Applicable Laws

The Laws of the Republic of Kenya apply to this contract.

b. Clause 19 Disputes

Disputes any agreement or dispute arising out of or in connection with this contract shall be settled by mutual agreement, or, failing that, will be submitted for arbitration by a single arbitrator agreed to by both parties. If parties are unable to agree on a single arbitrator within 30 days of the request for arbitration, then each party shall proceed to appoint one arbitrator; and the two arbitrators thus appointed shall constitute final adjudication of the dispute. The place of arbitration shall be Nairobi and the procedure for arbitration shall be the [UNCITRAL Arbitration Rules](#). If a party fails to comply with an arbitral award rendered herein under, and the other party seeks enforcement of the award in court, the plaintiff in that proceeding, if it prevails, will be awarded costs and reasonable advocate fees.

...

The suit is therefore premature, remains a non-starter and ought to be struck out or stayed pending reference of the dispute to arbitration as contracted by the parties.



2. Parties attended and agreed to address the objections by way of written submissions.
3. The respondent submitted that it was a term of the contract that after separation, any dispute therefrom would go for arbitration and hence this claim is premature and should be struck out or stayed pending reference to arbitration. The arbitration clause remains binding on the parties and the court need not go into the merits of the case as this jurisdiction has already been taken away by the arbitration clause as held in *Peter Muigai v Joseph Ngaba Kuria & another; Lear Njeri Ndichu (Interested party)* [2022] eKLR that one a preliminary objection on a point of law has been raised, the court must address and in this case, the claim is premature and the court is without jurisdiction.
4. In response, the claimant submitted that the Arbitration Clause is not a pure matter of law that can be applied to terminate these proceedings as there is need for call of evidence to interpret the clause. Section 6 of the *Arbitration Act* requires that before a party can enter appearance, such provisions should be invoked and by acceding to the jurisdiction of the court, a party then is subject to the same. The alleged contract agreement is not produced to assist the court in analysing and interpreting the same and hence these are not pure points of law as held in *Meshack Kibunja Kaburi & 3 others v Kirubi Kamau & 5 others; Central Highlands Tea Company Limited (Interested party)* [2021] eKLR.

Determination

5. The claimant filed the claim herein on 9 August 2023 on the grounds that there was employment from August 1, 2022 until notice dated 12 May 2023 indicating that notice terming employment had issued on 24 February 2023. The claimant's case is that she was never issued with the notice and her terminal dues should be paid.
6. Under the *Arbitration Act*, parties are allowed to address any dispute through arbitration and section 10 thereof has limited the jurisdiction of the court to only such matters as were provided for by the *Act*. The section exemplified the recognition of the policy of party's autonomy which underlay the arbitration generally and in particular the *Act*. The necessity to curb the court's role in arbitration so as to give effect to alternative dispute resolution mechanism.
7. However, the *Act* or a contract of employment between parties cannot reasonably be construed as ousting the inherent power of the court specially to do justice in a matter regulated under the provisions of Article 162(2)(a) of the *Constitution* read together with Section 12 of the *Employment and Labour Relations Court Act*, 2011. Judicial interference can only be removed in very exceptional instances, particularly by mutual consent which requires a high degree of deference to arbitration.
8. Whereas the principle purpose of an arbitration clause in an employment contract is to seek specialised forum for dispute resolution, the court retains the original jurisdiction to hear and determine employment and labour relations disputes. A party, aggrieved by the decision of the employer, the court cannot decline jurisdiction. As held by the Supreme Court in *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch (Interested Party)* judicial interference can only be countenanced in exceptional instances where a party is seeking to enforce an arbitration clause.
9. In this case, the claimant as the right-holder cannot be denied justice before the forum with the original jurisdiction to hear and determine employment and labour relations claims.
10. Accordingly, objections dated 6 September 2023 are without merit and are hereby dismissed. Costs shall abide the outcome of the main cause.

DELIVERED IN OPEN COURT AT MOMBASA THIS 9TH DAY OF NOVEMBER 2023.



M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

