



**Candy Kenya Limited v Shantau & another (Cause E702 of 2023)
[2023] KEELRC 3234 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3234 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E702 OF 2023
J RIKA, J
DECEMBER 8, 2023**

BETWEEN

CANDY KENYA LIMITED CLAIMANT

AND

PANDA SHANTAU 1ST RESPONDENT

KENYA SWEETS LIMITED 2ND RESPONDENT

RULING

1. The Claimant is a Limited Liability Company registered in Kenya. It manufactures sweets and candies.
2. It employed the 1st Respondent as a Production Manager, in its Production Department on 20th September 2021.
3. The 2nd Respondent is an industrial competitor to the Claimant.
4. The Claimant states that the contract between the Claimant and the 1st Respondent, bound the 1st Respondent, from seeking employment with the Claimant’s business competitors, for a period of 5 years, within Kenya and East Africa.
5. The Claimant avers that the 1st Respondent secretly left its employment, and engaged with the 2nd Respondent, Claimant’s business competitor, where he is likely to leak confidential business information to the 2nd Respondent.
6. There 2 Applications filed by the Parties, against this background, subject matter of today’s Ruling.
7. The first, is dated 29th August 2023. Based on the Affidavit of Manager Prashiv Shah, sworn on 29th August 2023, the Claimant seeks orders that: the Respondents are restrained from engaging in an employment or consultancy relationship; the 2nd Respondent is restrained from use of any business information belonging to the Claimant, passed onto the 2nd Respondent by the 1st Respondent;



the 1st Respondent is compelled to honour his contractual obligations with the Claimant; the 1st Respondent, who is of Indian nationality, deposits security of Kshs. 500,000 for costs, in Court; and the 1st Respondent is barred from entering Kenya or other member states of the East Africa Community, for the next 5 years.

8. The second Application is filed by the Respondents, dated 19th September 2023. It is founded on the Affidavit of Neeval Shah. The 1st Respondent, states his position through an Affidavit sworn in India, on 18th September 2023. The Respondents pray that: the 2nd Respondent is struck out from the proceedings; or in alternative, prayers 1-5 of the Statement of Claim, are struck out against the 2nd Respondent. They state that there is no nexus between the Claimant and the 2nd Respondent. The Claimant employed the 1st Respondent as an Engineer and Maintenance Head. The contract was for a fixed-term of 2 years, beginning 20th September 2021, ending 19th September 2023. The 1st Respondent ceased employment with the Claimant in December 2022, and went back to his native India. He came back to Kenya over 6 months later, and was offered a job by the 2nd Respondent, subject to grant of a work permit. The Respondents submit that, there is no employer-employee relationship, subsisting between the Claimant and the 2nd Respondent. The Court does not have jurisdiction to hear and determine the dispute between the Claimant and the 2nd Respondent, on intellectual property and trade secrets. The 1st Respondent denies that he holds any confidential business information, property of the Claimant, or that he has offered, or is likely to offer, such information to the 2nd Respondent.
9. Parties agreed that the 2 Applications are considered and determined simultaneously, on the strength of their respective Affidavits, Documents and Submissions on record. They confirmed the filing and exchange of Submissions at the last mention before the Court, on 24th October 2023.

The Court Finds

10. The contract concluded between the Claimant and the 1st Respondent, is dated 20th September 2021. The 1st Respondent was to work as a Production Manager for a fixed term of 2 years. The contract was to expire on 20th September 2023.
11. The 1st Respondent states, he left the Claimant around December 2022, before his contract expired, due to various challenges, including payment of his salary.
12. The contract between the Claimant and the 1st Respondent contains an arbitration agreement. Parties did not highlight this, in their respective Applications. The agreement, indicates that in event there is a dispute between them [principals], the Parties have agreed to submit to binding arbitration, to resolve the dispute.
13. They define the subject matter of arbitration to include all claims and controversies, that either may have against each other, relating to, resulting from, or in any way arising out of the contract. They unequivocally, waived their right to litigate these issues in Court. They opted for arbitration and positively rejected the jurisdiction of the Court. The validity of the arbitration agreement is not in doubt. The Court is therefore totally divested of jurisdiction by the Parties.
14. Whether the 1st Respondent should be restrained from working for the 2nd Respondent; whether he holds trade secrets, intellectual and business property of the Claimant, which he should be restrained from sharing with the 2nd Respondent; and whether the 2nd Respondent is a necessary party to the dispute between the Claimant and the 1st Respondent, are claims and controversies contemplated by the arbitration agreement. The upshot is that the Claim and the Applications filed by the Parties, are in the wrong jurisdiction.



15. The Court cannot assume jurisdiction on other contractual claims and controversies, while ignoring the arbitration agreement, which is an integral part of the contract, concluded by the Parties.

It Is Ordered

- a. The Claim filed by the Claimant, on August 30, 2023 is declined for want of jurisdiction.
- 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 8TH DAY OF DECEMBER 2023.

JAMES RIKA

JUDGE

