



Salmin v Taz Technologies Ltd (Employment and Labour Relations Cause E738 of 2022) [2023] KEELRC 3281 (KLR) (8 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3281 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E738 OF 2022
AN MWAURE, J
DECEMBER 8, 2023**

BETWEEN

ALI OMAR SALMIN CLAIMANT

AND

TAZ TECHNOLOGIES LTD RESPONDENT

RULING

1. The respondent filed a preliminary objection application dated 19th June 2023 on the ground that the court lacks jurisdiction pursuant to paragraph 15 of the Independent Contractors Agreement dated 7th June 2021.
2. The court has considered the respondent's submissions in support of the preliminary objection dated 3rd July 2023 and claimant's submissions are dated 14th August 2023.

Analysis And Determination

3. The respondent refers to paragraph 15 of the Independent Contractors Agreement dated 7th June 2021 provides as follows:

Settlement by arbitration: any claim or controversy that arises out of or relates to this agreement or the breach of it, shall be settled by arbitration. Judgment upon the award rendered may be entered in any court with jurisdiction.
4. The case which is on point in relation to preliminary objection is Mukhisa Biscuit manufacturers Ltd vs Westend distributors Ltd (1969) E.A. 696 page 700 where the court observed as follows:-

“so far as I am aware, a preliminary objection consist of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction



of the court, or a plea of limitation, or a submissions that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.”

5. Where a contract has provided for arbitration it is assumed rightly that the parties have bound themselves to comply with the content of their contract in all ways. The courts would not be seen to be trying to rewrite a contract between the parties. All the courts are expected to do is to enforce the contract duly signed voluntarily and freely by the respective parties.
6. The parties must exhaust the provision of arbitration as provided in their contract. The exhaustion doctrine expect where so provided in the contracts must be pursued by the parties and must be exhausted.
7. Section 10 of the arbitration act provides as follows:

except as provided in this court no court shall intervene in matters governed by this act so the jurisdiction of the court is limited to only such matters as are provided for by the act.

So this gives prominence to party’s autonomy and minimising of courts intervention.

8. The case before us has an independent contract that provides for arbitration in cases of conflicts. The case of Geoffrey Muthiga Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others [2015] eKLR the court states:

It is imperative that where a dispute resolution mechanism exist outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews..... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement or judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. The ex parte applicants argue that this accords with article 159 of the Constitution which commands courts to encourage alternative means of dispute resolution.

9. The case herein is a clear case where there was an arbitration clause. The court would be guided by article 159(2)(c) of the Constitution of Kenya 2010 which provides for promotion of alternative dispute resolution mechanism.
10. The court is convinced the claimant needs to exhaust the arbitration process instead of filing the suit in court as a post of first calling.
11. Indeed the court finds the respondent’s preliminary objection has merits and is allowed accordingly.
12. The parties should urgently agree on the way forward as far as the arbitration process is concerned and proceed accordingly.
13. For purposes of this application each party will meet the costs of their suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 8TH DAY OF DECEMBER, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of [the Constitution](#) which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of [the Constitution](#) and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

