



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT

AT NAIROBI

CAUSE NUMBER E709 OF 2021

BETWEEN

PATRICK NTHENGA KIMILU..... CLAIMANT

VERSUS

GLOBE FLIGHT KENYA RESPONDENT

RULING

1. The Claimant filed his Statement of Claim on 24th August 2021. He states that he was employed by the Respondent in 2015 as a Clearing and Forwarding Officer. He was summarily dismissed on 6th May 2020. He holds that dismissal was unfair and unlawful, and seeks compensations and terminal benefits.

2. The Respondent filed an Application dated 30th November 2021, asking the Court to stay the proceedings and refer the matter to Arbitration. The Respondent points to the letter of employment dated 2nd March 2015, which contains an arbitration clause, worded as follows:

‘ All disputes arising from our appointment vide the contract shall be referred to arbitration before one sole arbitrator to be appointed by the chairman for the time being of the Chartered Institute of Arbitrators and such arbitration shall be conducted under the Arbitration Act 1995. The Arbitrator’s decision shall be final and conclusive.’

3. The Application is opposed through the Affidavit of the Claimant sworn on 24th January 2022. His main line of response is that while the employment contract indeed contains an arbitration clause, the clause only covers disputes arising from his appointment, and not matters arising from the general course of his employment, including termination.

4. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions, confirmed to have been filed and exchanged, at the last appearance before the Court, on 10th February 2022.

5. The Ruling was scheduled for 6th April 2022, which unfortunately coincided with the Judges’ Annual Conference.

The Court Finds: -

6. There is an arbitration clause in the Claimant’s contract of employment.

7. Contrary to the Claimant’s position, the clause covers all matters including termination.

8. Termination is one of the terms and conditions of employment, contained in the contract.

9. The dispute herein is about termination; whether it was unfair and unlawful; and whether compensation and terminal dues under the contract and the Employment Act, are payable to the Claimant.

10. There is no need for hair-splitting about matters arising out of the letter of appointment, and matters arising from the general course of

employment. All matters included in the specific contract of employment are arbitrable.

11. The Parties have positively rejected the jurisdiction of the Court, in favour of Arbitration.

12. The Court cannot stay proceedings where Parties have rejected its jurisdiction. Stay of proceedings pending what? The most appropriate order in the circumstances, is striking out of the Claim. Stay of proceedings presupposes that the Parties could still approach the Court and litigate the dispute at some point, after Arbitration. The clause itself states that the Arbitrator's decision shall be final and conclusive. Parties have positively rejected the jurisdiction of the Court, agreed that the award of the Arbitrator shall be final and conclusive, and the matter therefore, must be wholly removed from the Court.

13. The clause does not contemplate that reference to Arbitration is done by the Court. The Parties themselves are mandated to make reference. Reference by the Court would be against the arbitration clause, and taint Arbitration with illegality from the outset. The Court has no jurisdiction in making reference on behalf of the Parties.

IT IS ORDERED: -

a. The Court has no jurisdiction in this Claim.

b. The Claim is struck out with no order on the costs.

Dated, signed and released to the Parties electronically, at Chaka, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 22nd day of April 2022.

James Rika

Judge