



**Mohamed v Wazito Football Club (Sued through the Chief Executive Officer)
(Cause 813 of 2019) [2022] KEELRC 12730 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12730 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 813 OF 2019
J RIKA, J
SEPTEMBER 29, 2022**

BETWEEN

AHMED MOHAMED CLAIMANT

AND

**WAZITO FOOTBALL CLUB (SUED THROUGH THE CHIEF EXECUTIVE
OFFICER) RESPONDENT**

RULING

1. The Claimant is a former Head Coach of Wazito Football Club.
2. He filed this Claim seeking redress for unfair termination, and non-payment of terminal benefits.
3. The Respondent has challenged the jurisdiction of the Court, through a Notice of Preliminary Objection, dated 16th May 2022. There are 3 Grounds stated in the Notice: -
 - I. The Court lacks jurisdiction to hear or continue to entertain the Claim. which has been filed in contravention of Article 69[1] of the Football Kenya Federation Constitution 2017, which specifically states that disputes between the Parties belonging to the Football Kenya Federation, shall not be referred to Courts.
 - II. The Claim herein was filed in contravention of Article 56[4] of the Football Kenya Federation Constitution, 2017, which states that such disputes shall be settled in the first instance by CAS in accordance with this Constitution and subject to any applicable national law.
 - III. The Claim as filed, is incurably bad and defective and should be struck out in limine with costs to the Respondent.
4. Parties agreed to have the Objection considered on the strength of their Submissions.



The Court Finds: -

5. The Claim is brought pursuant to the Employment Act, 2007 and a contract of employment executed by the Parties, dated 2nd November 2018.
6. The Parties consent to the exclusive jurisdiction of the Courts in the Republic of Kenya, under clause 9 of the contract.
7. Clause 11 requires Parties to attempt dispute resolution through negotiations between authorised representatives. The Claimant states at paragraph 9 of his Affidavit, that his Advocates invited the Respondent for negotiations before coming to Court, through a letter dated 2nd November 2018.
8. The Respondent's Advocates wrote back, proposing that negotiations be held in June 2019.
9. Clause 11 requires that if a dispute is not resolved within 30 days after receipt of the invitation to negotiate, the aggrieved Party is at liberty to use any other legal remedy to settle.
10. Negotiation in June 2019 as proposed by the Respondent was out of the timelines prescribed in the contract of employment.
11. Once the Respondent defaulted, the Claimant was at liberty to seek any other legal remedy.
12. The contract allows the Claimant to invoke the exclusive jurisdiction of this Court. It would be in violation of the Claimant's right to access justice under Article 48 of *the Constitution*, by subjecting him to file his Claim at the Court of Arbitration for Sports [CAS], which is located in Lausanne Switzerland, as proposed by the Respondent.
13. His contract proposes a home remedy, based on the Employment Act, in the Kenyan Courts.
14. The alternative to the jurisdiction of this Court would be the Sports Disputes Tribunal, established under Section 55 of the *Sports Act*, 2013. Section 58 [b] however, requires all Parties to the dispute to agree to refer their dispute to the Tribunal, and also requires the Tribunal to agree to hear them. The Tribunal does not have automatic jurisdiction in sports disputes. Parties must accept its jurisdiction, and the Tribunal must accept to hear them. The Parties have not expressed their wish to be heard by the Tribunal in their contract.
15. Having exhausted the negotiation route under the contract, the Court is persuaded that it is the only dispute resolution mechanism, open to the Claimant under clause 9 and 11 of the contract.

It is ordered: -

- a. The Preliminary Objection is declined.
- b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF SEPTEMBER 2022.

JAMES RIKA

JUDGE

