



Kirubi v E-Bima Limited (Cause 48 of 2020)
[2022] KEELRC 12976 (KLR) (28 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 12976 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 48 OF 2020
J RIKA, J
OCTOBER 28, 2022

BETWEEN

SERAH KIRUBI CLAIMANT

AND

E-BIMA LIMITED RESPONDENT

JUDGMENT

1. The claimant filed her statement of claim on January 29, 2020.
2. She states that she was employed by the respondent through a contract dated June 17, 2019, as a Technical Accounts Manager, at a monthly gross salary of Kshs 300,000. The contract was for 2 years.
3. She resigned on November 18, 2019, after the respondent failed to pay her salary, which by the time of resignation, had accumulated to Kshs 512,242.
4. She prays for this amount; 12 months' salary in damages for unfair, unlawful and constructive dismissal at Kshs 3,600,000; statements showing remittance of all statutory deductions; certificate of service; costs; and interest.
5. The respondent did not enter appearance or file a statement of response, and the claim was heard by way of formal proof, on June 14, 2022. The claimant adopted her pleadings, witness statement and documents. The documents include her contract of employment. Hearing closed on the same date, and the claim was last mentioned on July 6, 2022, when the claimant confirmed the filing of her submissions.

The Court Finds:-

6. The claimant said nothing about clause 19 of her contract of employment, in her pleadings, evidence and submissions.



7. The clause binds the parties to resolve disputes arising from their contract through good faith; negotiation; and failing these mechanisms, by arbitration of a single arbitrator, appointed in accordance with the provisions of the *Arbitration Act* 1995, or Acts amending or replacing the same.
8. The parties ousted the jurisdiction of the court, under clause 19 of their contract. They positively rejected the authority of this court. The claimant ought to have taken her claim, before the forum chosen by the parties.
9. It is therefore the finding of the court that it does not have jurisdiction in this claim.

It is Ordered: -

- a. The claim is declined for want of jurisdiction.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28TH DAY OF OCTOBER 2022.

James Rika

Judge

