

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER E6476 OF 2020

BETWEEN

NARAYARAN KRISHNAMURTHY.....CLAIMANT

VERSUS

THE NAIROBI WEST HOSPITAL.....RESPONDENT

RULING

1. The Claimant initiated this Claim on 20th November 2020. He states that he was employed by the Respondent, as Group Chief Executive Officer and Managing Director, on a fixed term contract of 2 years. He executed the contract on 1st July 2020.
2. He was issued by the Respondent a notice of redundancy dated 16th October 2020. He had served for about 4 months, and states, he was prepared to see out his contract in full. He claims that termination was actuated by malice, was unfair and unlawful. He prays for anticipatory salaries for the remainder of the contract, compensation for unfair termination, damages and an assortment of terminal benefits.
3. He simultaneously filed an Application, under Certificate of Urgency, asking the Court to restrain the Respondent, through an order of temporary injunction, from terminating his contract.
4. The Respondent objects to the entire Claim, and filed a notice of preliminary objection, based on clause 6.2 of the contract of employment executed between the Parties, subject matter of the Claim. The clause states:

“ If any dispute arises out of this contract of employment, the Employer and the Employee [each ‘a party’ and jointly ‘parties’] will first attempt to settle by mediation. If the dispute is not settled by mediation, is shall be referred to arbitration by a single arbitrator, appointed jointly by the parties. The making of an arbitration award shall be a condition precedent to any right of action by one party against the other on the matter so arbitrated.”

The Court Finds: -

5. The Parties have positively rejected the jurisdiction of this Court, as they are entitled to do in law, through their mediation/arbitration clause above. They have selected their own forum. The clause is unambiguous. The dispute herein is at the wrong forum. The preliminary objection has merit.

IT IS ORDERED: -

- a. **The Claim is struck out with no order on the costs.**
- b. **Parties shall pursue their dispute under clause 6.2 of the contract of employment.**

Dated and delivered at Nairobi this 25th day of February, 2021

James Rika

Judge