



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

PETITION NO. 75 OF 2020

IN THE MATTER OF

INTERPRETATION OF AND ENFORCEMENT OF

ARTICLES 22(1), 23(3), 25(a), 41, 50(1) and 258(1) OF THE CONSTITUTION

AND

IN THE MATTER OF

CONTRAVENTION F ARTICLES 22(1), 41(1), 47, 50(1) AND 258(1) OF

THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF

SECTION 3(6), 41, 45 AND 87 OF THE EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF

THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF

RULE 7(1) OF THE EMPLOYMENT AND LABOUR RELATIONS COURT

(PROCEDURE) RULES, 2016

AND

IN THE MATTER OF

THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL

FREEDOMS AND (PROCEDURE) RULES, 2013

GODFREY ETTAH.....CLAIMANT

VERSUS

RULING

1. Serving before Court is a notice of motion dated 25th June, 2020 in which the respondent prays for an order that:-
 - (1) The agreement dated 30th January, 2020 is valid in law and in fact;
 - (2) The agreement dated 30th January, 2020 is final and binding;
 - (3) The petition dated the 30th April, 2020 be dismissed and costs of the suit.
2. The application is premised on grounds set out on the face of the notice of motion and buttressed in the supporting affidavit of Nelly Mutula, the Human Resource Manager of the applicant.
3. The gravamen of the application is that the applicant entered into a mutual settlement and Release Agreement (***“the agreement”***) with the respondent on 30/1/2020. That the said agreement followed lengthy negotiations by the parties through their respective counsel. That the agreement was duly executed by each party in the presence of their counsel. That upon execution of the agreement, the applicant fully performed its obligations under the contract without delay and without fault.
4. That in terms of the agreement, the respondent completely released, and or discharged the applicant from any further obligations or demand and so matters raised in the petition were fully compromised under the agreement.
5. That the suit therefore lacks any basis and it be summarily dismissed for want of any cause of action.
6. The respondent filed grounds of opposition dated 12/4/2021 that the Court lacks jurisdiction to deal with the application at interlocutory stage since the matters raised may only be determined upon hearing of the petition on the merits.
7. That in terms of the decision in **Mbaraka Issa Kombo –vs- Independent Electoral and Boundaries Commission & 3 others [2017] eKLR**, the Court cannot dismiss a suit at interlocutory stage but may strike out the pleadings unremitting of a hearing.
8. That ***“dismissal of a suit only follows scrutiny of the merits of the dispute as articulated and after consideration of the facts and evidence grounding the cause.”***
9. The Court has considered the application, grounds of opposition and submissions by both parties and is of the finding that the dispute of fact raised in the petition may only be determined by the Court upon hearing and determination of the petition on the merits.
10. The application lacks merit therefore and is dismissed with costs in the cause.
11. The respondent to respond to the petition to allow determination of the same on merits.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 14TH DAY OF OCTOBER, 2021.

MATHEWS N. NDUMA

JUDGE

Appearances

Achoki for the Respondent/Applicant

Omollo for Petitioner/Respondent

Ekale – Court clerk.