



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1543 OF 2018**

**DR. VINCENT K.H. OGADA.....CLAIMANT**

v

**AAR HEALTHCARE HOLDINGS LTD.....RESPONDENT**

**RULING**

1. Dr. Vincent Ogada (Claimant) was offered employment as General Manager – AAR Healthcare Uganda Ltd on 15 December 2015 by AAR Healthcare Holdings Ltd (Respondent).
2. On 31 October 2018, the Respondent summarily dismissed the Claimant prompting the Claimant to institute these legal proceedings alleging wrongful and unlawful dismissal.
3. The Respondent filed its *Response to the Statement of Claim* on 13 December 2018, and a *Notice of Preliminary Objection* on 18 October 2019 contending

1. **THAT** the Court has no jurisdiction to hear and determine this case for the reasons that:

a. Clause 16 of the Appointment letter between the Claimant and the Respondent dated 15<sup>th</sup> December 2015 and signed on 20<sup>th</sup> January 2016 provided that any dispute between the Claimant and the Respondent ought to be referred to arbitration before a single arbitrator in accordance with the Arbitration and Conciliation Act Cap 4 Laws of Uganda (revised edition).

b. The cause of action arose in Uganda outside the jurisdiction of this Court.

c. The appointment letter dated 15<sup>th</sup> December 2015 and signed on 20<sup>th</sup> January 2016 between the Claimant and the Respondent was subject to application of statutory requirements under the NSSF and PAYE in Uganda.

d. The Claimant's employment was exclusively performed in Uganda.

2. **THAT** in view of the foregoing, the suit is incompetent, defective and bad in law and should be struck out and/or dismissed with costs to the Respondent.

4. The Claimant filed a replying affidavit in opposition to the *Preliminary Objection* on 13 November 2019 and the Court took oral arguments on 27 November 2019.
5. The Court has given due consideration to the *Preliminary Objection*, the affidavit in opposition and the oral submissions.
6. The copy of the appointment letter filed in Court by the Claimant did not have clause 16. Whether it was due to a mistake or design, the Court cannot tell.
7. The copy of the contract filed by the Respondent had 17 clauses.
8. Clause 16 thereof provided as follows

16. Arbitration

Any dispute arising as a result of any party failing to perform its obligations under the contract or as a result of any breach of the terms thereof, then such dispute shall first be referred to Arbitration before a single Arbitrator and such arbitration shall be conducted in accordance with the provision of the Arbitration and Conciliation Act, Cap 4 Laws of Uganda (revised edition).

9. The clause, in the view of the Court, is clear and does not lend itself to any conflicting interpretations. This may have informed the failure by the Claimant to challenge the interpretation and/or application of the *arbitration clause*, but rather to deny that the contract had an arbitration clause.

10. The Court has keenly perused the copy of the *contract* filed in Court by the Respondent, and the 2 copies filed by the Claimant, and has come to the inevitable conclusion that the Claimant deliberately omitted to file the page of the contract with clauses 12 to 17 (page 8 of the contract).

11. Indeed, the contents at the top of the last page of the copy of contract filed by the Claimant are hanging, as it does not have any logical nexus with clause 11 in the previous page.

12. The Claimant filed an incomplete copy of the contract.

13. It is not the business of the Court to re-write a contract for the parties more so when it was mutually entered into.

14. The dispute herein implicates both (choice of) *jurisdiction* and *choice of law*, which are different concepts though closely interlinked (see discussion in *Dorcas Kemunto v IPAS* (2018) eKLR. But at this stage, the Court is not called upon to make that determination on jurisdiction or choice of law.

15. The mere fact that parties have decided that their contract be governed by foreign law does not by itself divest a domestic Court of jurisdiction (see *Nairobi Cause No. 832 of 2013, Mwiya Mutinda v Kenya Commercial Bank Ltd*). Domestic Courts are often called upon to interpret and apply foreign law.

16. However, in the instant case, the parties opted to provide that any disputes under the contract should be referred to arbitration under the Arbitration and Conciliation Act, Uganda.

17. The Claimant, in the circumstances cannot be allowed to institute these legal proceedings before invoking the arbitration clause and letting the arbitration process run its course.

18. The Court therefore upholds the Preliminary Objection and strikes out the Cause.

**Delivered, dated and signed in Nairobi on this 31<sup>st</sup> day of January 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                    J.A. Guserwa & Co. Advocates

For Respondent                Mboya Wang'ong'u & Waiyaki Advocates

Court Assistant                Judy Maina