



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 31 OF 2019

VELMA APONDI ODIWUOR.....CLAIMANT

v

TWIGA FOODS LIMITED.....RESPONDENT

RULING

1. On 10 July 2019, the Court referred the parties herein to arbitration, in terms of clause 13 of the employment contract.
2. The clause provides

Any dispute or claim arising out of or relating to the agreement arising from your acceptance of this offer letter and any subsequent terms of your employment and/or breach thereof shall be determined by a single arbitrator to be appointed by agreement between you and the company or in default of such agreement within 14 (14) days of the notification of such dispute by either party to the other upon application by either party to the chairman of the Chartered Institute of Arbitrators who shall appoint a single arbitrator to determine the dispute....
3. Despite the clear and express order by the Court, the Claimant filed a motion on 2 August 2019 seeking the review of the referral order on the ground that the Court erroneously made a *Ruling* instead of confirming whether parties had filed/exchanged submissions.
4. The Claimant failed to attend Court on 8 October 2019 to prosecute the motion, and the Court dismissed it prompting the Claimant to file another motion on 14 November 2019 seeking the setting aside of the dismissal order.
5. The reason advanced for failing to attend Court to prosecute the dismissed application was misdiarisation.
6. Alternative dispute resolution is now a constitutional norm.
7. The Employment and Labour Relations Court Act also clothes the Court with the power to stay a dispute and refer it to alternative dispute resolution even at its own motion. Any practitioner who has examined the Constitution and this Court's establishing Act should be aware of the demand.
8. The contract between the parties herein expressly provided for arbitration. Arbitration is expeditious and cheap for the parties. It is possible that had the parties heeded the Court's order, this dispute would have been long resolved.
9. Considering all the surrounding circumstances of the dispute herein, the Court rejects as unmerited the application by the Claimant seeking an order setting aside the dismissal of the earlier application.
10. Alternative dispute resolution is not only faster but less costly but also lessens an already burdened judiciary and parties should be quick to accept that route.
11. The Court, in the circumstances, orders the parties to proceed in terms of clause 13 of the contract of employment which requires arbitration.
12. The parties will hereinafter agree on a mention date to update the Court on the progress of the arbitration proceedings.
13. Costs of the application to the Respondent.

Delivered, dated and signed in Nairobi on this 24th day of January 2020.

Radido Stephen

Judge

Appearances

For Claimant Ms. Ochieng instructed by E. A. Ochieng & Co. Advocates

For Respondent Mr. Otieno instructed by COL Advocates

Court Assistant Judy Maina