



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 52 OF 2020

CHADWICK INGANGA SAFU.....CLAIMANT

v

LG ELECTRONICS AFRICA LOGISTICS FZE.....RESPONDENT

RULING

1. Chadwick Inganga Safu (Claimant) instituted these legal proceedings against LG Electronics Africa Logistics FZE (Respondent) on 31 January 2020 and he stated the Issue in Dispute as the Unlawful dismissal of Mr. Chadwick Inganga Safu.
2. When served, the Respondent filed a Chamber Summons dated 20 February 2020 seeking orders
 1. THIS Honourable Court be pleased to stay these proceedings in the suit pending referral, hearing and determination of the dispute herein through the dispute resolution mechanism under Clause 15 of the Termination and Settlement Agreement between the parties dated 12th June 2019.
 2. The costs of this application be provided for.
3. On 3 May 2020, the Court directed the Claimant to file and serve a replying affidavit before 28 August 2020 and thereafter the filing and exchange of submissions (the Claimant filed the replying affidavit on 25 September 2020).
4. The Respondent its submissions on 13 September 2020 while the Claimant filed his submissions on 25 September 2020.
5. The Court has considered the application and all the material placed before it.
6. The Claimant was notified of the intention to terminate his employment through a letter dated 12 June 2019. The termination was to be effective on 20 June 2019.
7. The Respondent thereafter issued the Claimant with a Termination and Settlement Agreement which the Claimant signed on a without prejudice basis on 12 June 2019.
8. Clause 15.2 of the Agreement provided that the Parties shall endeavour to resolve any dispute arising here amicably and in the event that the dispute cannot be resolved within thirty (30) days of the notification of the dispute by one party to the other, the dispute shall be referred to a single arbitrator to be appointed by the Parties and in the event of failure to agree upon the appointment, the arbitrator shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch) which appointment shall be binding on the Parties hereto. Such arbitration shall be carried out in accordance with and subject to the provisions of the Arbitration Act, 1995 of the Laws of Kenya (the "**Arbitration Act**") or any re-enactment or statutory modification thereof for the time being in force. The decision of the arbitrator shall be binding upon the Parties. The proceedings shall be held in Nairobi and the language shall be English.
9. The Respondent urged the Court to refer the parties to arbitration as agreed because the arbitration clause was operative.
10. Citing *Kenya Airports Parking Services Ltd & Ar v Municipal Council of Mombasa* (2010) eKLR, the Respondent submitted that any questions on the validity of the Agreement should at the first instance be placed before the Arbitrator.
11. The Claimant in the instant proceedings challenges the fairness of the termination of his employment but asserts that he signed the Agreement on a without prejudice basis and under duress as he was denied terminal benefits unless he signed the Agreement.
12. The Claimant submitted that rather than send the parties to arbitration, the Court should declare the Agreement null and void in terms of

section 6(1)(a) as read with section 10 of the Arbitration Act.

13. The Court endorses the legal proposition by the High Court in the *Kenya Airports Parking Services Ltd* decision that questions about the validity of an arbitration agreement ought to be placed before the Arbitrator in the first instance.

14. Being of that mind and in terms of the Agreement, the parties are bound to report a dispute and seek the appointment of an arbitrator. That is the process the parties agreed and bound themselves to.

15. If indeed the termination of employment was unfair as and/or discriminatory as alleged in paragraphs 5, 6, 8 and 10 of Statement of Claim, the Claimant also ought to present the complaints to an arbitrator in terms of the Agreement.

16. Even without an arbitration clause, section 15 of the Employment and Labour Relations Court Act empowers this Court to stay any suit and refer the parties to alternative dispute resolution on its motion.

17. On the basis of the Termination and Settlement Agreement and section 15 of this Court's constituting Act, the Court is satisfied that this is a fit case to stay the proceedings and refer the parties to the arbitration as agreed.

Conclusion and Orders

18. From the foregoing, the Court orders

(a) These proceedings are hereby stayed pending the referral, hearing and determination of the dispute herein through the dispute resolution mechanism under Clause 15 of the Termination and Settlement Agreement dated 12 June 2019 between the parties.

(b) Costs to abide the arbitration.

Delivered through Microsoft teams, dated and signed in Nairobi on this 16th day of October 2020.

Radido Stephen

Judge

Appearances

For Claimant Mr. Museve instructed by J.A. Guserwa & Co. Advocates

For Respondent Ms. Mulindi instructed by Coulson Harney LLP Advocates

Court Assistant Lindsey