



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

ELRC CAUSE NO. 11 OF 2019

(Before Hon. Justice Mathews N. Nduma)

NAQEEB IMTIAZ KARA.....CLAIMANT

VERSUS

MEDANTA AFRICARE LIMITED.....RESPONDENT

RULING

1. The respondent raises a preliminary objection against the suit filed vide a memorandum of claim on 6th February 2019. The suit is for unpaid salaries from December 2017 to November 2018 in the sum of Kshs. 2,400,000; Severance pay in the sum of Kshs. 200,000; One month salary in lieu of notice Kshs. 200,000 and maximum compensation for unlawful and unfair dismissal.
2. The preliminary objection is on the basis that the contract establishing the relationship between the parties herein contain an Arbitration clause. That the parties are bound to resort to Arbitration and not approach court for redress.
3. The court has examined the pleadings before court and is satisfied that the cause of action arises from an Employer and Employee Relationship.
4. *Section 12 of the Employment Court Act, 2011* as amended provides that Employment and Labour Relations Court has ‘*exclusive original and appellate jurisdiction*’ over disputes relating to Employment and Labour relations.
5. The *Employment Act, at Section 87(2)* also provides that disputes arising out of Employment relationship shall be heard and determined by this court.
6. Further, *Section 75 of the Labour Relations Act, 2007* excludes the operation of the Arbitration Act, in resolution of Employment and Labour disputes in Kenya as follows:

“*The Arbitration Act (No. 4 of 1995) shall not apply to any proceedings before the industrial court*”
7. Furthermore, the objector has not presented to court a duly executed Agreement of employment by both parties that purports to oust the jurisdiction of this court from hearing and determining Employment dispute between the claimant and the respondent.
8. The preliminary objection lacks merit and is dismissed.

Ruling Dated, Signed and delivered this 4th day of November, 2019

Mathews N. Nduma

Judge

Appearances

Ruiru Njoroge and Associates for the Respondent/Objector

M/S Nyanga and Company Advocates for the Claimant/Respondent

