



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2239 OF 2017**  
**DR. HASSAN MOHAMMED ALI.....CLAIMANT**  
**V**  
**PROVIDE INTERNATIONAL HOSPITAL.....RESPONDENT**

**RULING**

1. Dr. Hassan Mohammed Ali (Claimant) instituted legal proceedings against Provide International Hospital (Respondent) on 13 November 2017 and he stated the issue in dispute as *Employers/Contractors, exploitation of the Claimant by refusal to honour terms of consultancy contract/agreement to pay for services rendered thus making the Claimant's life intolerable.*

2. Upon service of Notice of Summons, the Respondent filed a motion seeking orders

1. THAT this Honourable Court has no jurisdiction to try and determine the dispute presented to this Honourable Court.

In the alternative

2. THAT this Honourable Court be pleased to stay these proceedings pending reference of the dispute between the parties hereof to arbitration.

3. In opposition to the motion, the Claimant filed a replying affidavit on 18 January 2018, and arguments were taken on 23 January 2018.

4. The Court has considered the material placed before it and the submissions made.

5. The Respondent raised objections to the competency of the Cause on 2 broad grounds, one that there was an arbitration clause in the contract and two, that there was no employer/employee relationship between the parties.

Arbitration clause

6. The Claimant and the Respondent entered into a written contract providing at clause 9 that any dispute arising out of or in connection with the contract which could not be mutually settled be referred to arbitration.

7. The Claimant did not utilise that mutually agreed route.

8. In the view of the Court, it is imperative that the parties exhaust the dispute resolution avenue they mutually and willingly agreed to.

#### Employment relationship

9. Because of the conclusion reached above, the Court therefore would take a cautious approach to determining the objection based on the question whether there was an employer/employee relationship between the parties, as such exercise would require the Court to delve deeply into questions of disputed facts.

10. However, just as a passing observation, the Court notes that the question of who is an employee has a long pedigree and it has been addressed in authorities such as *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* (1968) 2QB 497.

11. The contract signed between the parties herein indicated at clause 4 that the Claimant had the status of an independent service provider.

12. The Court will in effect allow the order seeking stay of the proceedings as proposed in order 2 of the motion.

13. Costs to abide the arbitration.

**Delivered, dated and signed in Nairobi on this 9<sup>th</sup> day of February 2018.**

**Radido Stephen**

**Judge**

#### **Appearances**

For Claimant Mr. Kithinji instructed Kithinji Thurania & Co. Advocates

For Respondent Mr. Adere instructed by Adere & Co. Advocates

Court Assistant Lindsey