



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1708 OF 2016

BETWEEN

1. HENRY KENOZWA OMUMIA 1ST.....CLAIMANT/RESPONDENT

2. DAVID NYORORO GATAWA 2ND..... CLAIMANT/RESPONDENT

VS.

KENYA POST OFFICE SAVINGS

BANKRESPONDENT/APPLICANT

RULING

The Respondent herein by a Notice of Preliminary objection filed on 2nd September 2016 averred that the dispute should be referred to arbitration based on **clause 19.2** of the Employment Contract. As a consequence the Court did not have jurisdiction to determine the matter based on **section 10** of the Arbitration Act which limits court's interference with matters governed by the Act.

It is indeed clear from the contract signed by the parties herein that under **clause 19.2** thereof, any dispute, difference or question that shall arise between the parties shall be referred to a single arbitrator or if the parties shall not agree to a single arbitrator, the dispute shall be referred to two arbitrators appointed by each party in accordance with the **Arbitration Act**. The Court has considered the prayers sought in the claimant's Memorandum of Claim and is of the view that they are claims grounded on the Claimants contract of employment which requires any dispute arising therefrom to be referred to arbitration. There are averments of violation of Labour rights protected by the Constitution but such averment alone does not make the dispute a constitutional matter. Constitutional questions in employment and Labour relations over which the Court has exclusive jurisdiction usually revolve around claims for discrimination, dehumanizing and degrading treatment and violations envisaged under the Bill of Rights which take place in the context of employer-employee relationship. Every violation or breach of a term of contract of employment can be interpreted as constitutional question but if that were to be the route taken the Court would be inundated by constitutional petitions.

The Court is therefore of the view that the objection was well taken by the respondent and hereby upholds the objection with the consequence that the suit herein is hereby stayed pending referral to arbitration as required by **clause 19.2** of the contract of employment signed by the parties.

It is so ordered.

Dated at Nairobi this 3rd day of February 2017

Abuodha Jorum Nelson

Judge

Delivered this 3rd day of February 2017

In the presence of:

..... **for the Claimant and**

..... **for the Respondent**

Abuodha Jorum Nelson

Judge