

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NO. 807 OF 2016

FRANCIS NUTTALL.....CLAIMANT

VERSUS

GOR MAHIA FOOTBALL CLUB.....RESPONDENT

RULING

1. The respondent by a motion dated 14th June, 2016 sought that the suit herein be stayed pending reference to arbitration. The application was on the main ground that there is a valid and enforceable arbitration clause in the Employment contract which provided that in case of any dispute between the parties, the same shall be referred to an arbitrator appointed by the Kenya Premier League Limited and such arbitration shall be in accordance with Arbitration Act, 1995.
2. The respondent refuted the application contending that the said article 7 of the employment Act which is subject of the dispute was based on a contract which had not been executed by the parties and to that extend null and void and incapable of being performed.
3. The contract of employment dated 5th February, 2015 entered into between the parties herein annexed as appendix 1 to the claimant's memorandum of claim, provides at clause 7 that in case of a dispute between the parties the same will be referred to arbitration by an arbitrator appointed by the Kenya Premier League Limited in accordance with Arbitration Act, 1995 and FIFA statutes.
4. Where parties have voluntarily entered into an agreement governing the conduct of their affairs the courts cannot intervene and rewrite the contract for the parties. The court's interference is limited to the instances where the contract is illegal, immoral or contrary to public policy. None of these have been alleged by the claimant.
5. The court is aware that it is the only court with exclusive jurisdiction to hear and determine employment and labour relations disputes and connected matters but such jurisdiction will only be exercised over matters voluntarily and in absence of any other validity and recognized alternative method of dispute resolution preferred by the parties. Further article 159(2) (c) the court in exercising its judicial authority shall promote alternative forms of dispute resolution.
6. In the circumstances and in clear provisions of article 7 of the employment contract between the parties, the court hereby grants the application dated 14th June, 2015 with the consequence that the suit herein is hereby stayed pending reference to arbitration.
7. It is so ordered.

Dated at Nairobi this 29th day of September, 2017

Abuodha J. N.

Judge

Delivered this 29th day of September, 2017

Abuodha J. N.

Judge