



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 103 OF 2017

BETWEEN

JEREMIA MUTIA KIAO.....CLAIMANT

VERSUS

RAINTS KENYA LTD 1ST RESPONDENT

RA INTERNATIONAL2ND RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Oyugi Kitoo & Company Advocates for Claimant

Anne Babu & Company Advocates for Respondent

RULING

1. The Claimant filed his Statement of Claim on 8th February 2017. He seeks payment of notice pay of 1 month, salary for the remainder of his contract period, and compensation for unfair termination, all tabulated at Kshs. 3,000,000.
2. The Respondent filed an Application on 19th March 2017, asking for an order that the Cause filed herein is stayed, and the dispute referred to Arbitration, in accordance with the Employment Agreement dated 2nd June 2015.
3. The Respondent relies on the decision of this Court in *Carol Adhiambo Olela v. Asterisk Limited [2014] e-KLR*. The Court declined jurisdiction based on the existence of an Arbitration Agreement in the employment contract.

4. The Claimant filed a Replying Affidavit sworn on 30th March 2017. His position is that Court retains exclusive jurisdiction to consider and determine his dispute, under section 87 of the Employment Act 2007.

5. Parties agreed in Court on 19th June 2017, to have the Application considered and determined on the strength of their Affidavits and Submissions. They confirmed filing of submissions on 28th July 2017.

The Court Finds:-

6. Clause 17 of the Amended Employment Agreement between the Parties, made on 2nd June 2016, contains a valid dispute resolution clause.

7. The clause is not exclusively an Arbitration Agreement. It is rather a dispute resolution clause, granting Parties the possibility of being heard in Court, or heard by an Arbitrator.

8. Unlike in the decision cited by the Respondent, Parties have not positively rejected the jurisdiction of the Court. There is discretion in choice of forum.

9. The clause states the Respondent Company shall have the sole and absolute discretion to decide on the forum. The Respondent Company, may decide either to refer the dispute to Arbitration or to the Kenyan Courts.

10. The Claimant has no discretion in initiating the Claim in Court. He similarly cannot initiate the process of arbitration under his employment contract. All discretion is in the hands of the Respondent.

11. By its Application filed on 19th March 2017, the Respondent has expressed preference for Arbitration. The Claimant is bound by this expression. The Court cannot assume jurisdiction in disregard of the Respondent's preferred dispute resolution mechanism.

IT IS ORDERED:-

a) The Cause filed herein is stayed and the dispute referred to Arbitration in accordance with the Parties' Employment Agreement.

b) No order on the costs.

Dated and delivered at Mombasa this 23rd day of October 2017.

James Rika

Judge