

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2563 OF 2016

ARTHUR KAWINO.....CLAIMANT

VERSUS

POPULATION SERVICES INTERNATIONAL (PSI).....RESPONDENT

RULING

1. This ruling is generated by a preliminary objection raised by the Respondent by notice dated 31st March 2017. The objection is based on the following grounds:

- a) That this Court lacks the jurisdiction to hear and determine this matter in view of the express provisions of clause 13 (c) of the employment contract dated 20th January 2016, entered into between the Claimant and the Respondent, which provides that the contract shall be governed by the laws of the District of Columbia;
- b) That in the alternative and without prejudice to the foregoing, the Court lacks the jurisdiction to hear and determine this matter as the contract was wholly performed in the Republic of South Sudan, which is outside the jurisdiction of this Court;
- c) That the Court has no jurisdiction to hear and determine the issues raised in this claim as the parties, in exercising their freedom to contract, elected to be bound by the applicable US Laws;
- d) That accordingly, the claim filed herein is incompetent, misconceived and bad in law.

2. The Claimant filed an affidavit in response to the preliminary objection on 18th September 2017. He states that the Respondent is an International Non-Governmental Organization with its head office in Washington DC, but with a regional office in Nairobi and operating in many other countries.

3. The Claimant depones that his interview for the position of Business Operations Technical Advisor took place in Nairobi where he signed the offer and contract. He took up the position in the Republic of South Sudan on 22nd January 2016. He was however relocated to Nairobi on 9th July 2016 due to security concerns in South Sudan. He worked in the Respondent's Regional Office in Nairobi from 11th July 2016 until 27th July 2016, when he proceeded on rest and recuperation break.

4. The subject matter of the preliminary objection raised by the Respondent is clause 13 (C) of the Claimant's contract of employment which states the following:

"This agreement will be governed by the laws of the District of Columbia, without regard to its choice of laws principles."

5. The Respondent maintains that the parties are bound by their agreement on the governing law as expressed in the aforesaid clause. The Claimant on the other hand states that it is more convenient to have the dispute handled by Kenyan courts.

6. The Court was referred to the decision in ***United India Insurance Co Ltd & 2 others v East African Underwriters (Kenya) Ltd [1985] KLR*** where it was held that parties who have agreed to the exclusive jurisdiction of a foreign court should be held to their bargain, except in exceptional circumstances.

7. Further in the more recent case of ***Universal Pharmacy (K) Limited v Pacific International Lines (PTE) Limited & another [2015] eKLR*** it was held that parties are bound by the terms of their contracts, except where there is manifest fraud, coercion or undue influence.

8. In the instant case, the Court found no reason to interfere with the express term on governing law as contained in the Claimant's employment contract, which effectively ousts the jurisdiction of this Court. The result is that this Court lacks jurisdiction to entertain the Claimant's claim which is consequently struck out.

9. Each party will bear their own costs.

10. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH DAY OF NOVEMBER 2017

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NDOLO

JUDGE

Appearance:

Mr. Deya for the Claimant

Miss Ogula for the Respondent