



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1119 OF 2014

CAPTAIN (RTD) CHARLES K.W. MASINDE.....CLAIMANT

V

**INTERGOVERNMENTAL AUTHORITY ON
DEVELOPMENT.....RESPONDENT**

RULING

1. In its Memorandum of Response dated 24th July and filed in Court on 28th July 2014, the Respondent raises the following preliminary objection which is the subject of this ruling:

“The Respondent states the under Clause 11 of the Employment Service Contract the relationship between the claimant and the respondent was to be subject to the Law of the Republic of Djibouti and the services were to be performed in the Republic of Somalia and consequently an objection in limine shall be raised that the Industrial Court lacks jurisdiction to hear, and adjudicate the Claimant's claim.”

2. By its objection the Respondent states that this Court lacks jurisdiction to entertain the Claimant's claim and relies on Clause 11 of the Employment Service Contract which states:

“The contracting parties agree that this contract for consultancy service is subject to the law of Djibouti.”

3. The question then is whether this clause ousts the jurisdiction of this Court to entertain disputes arising from the said contract. In the submissions filed on behalf of the Claimant it is submitted that whereas Clause 11 provides that the applicable law to govern the contract would be the law of Djibouti this did not oust the jurisdiction of Kenyan Courts to determine disputes arising from the contract.

4. The Claimant further states that from the time he signed the contract with the Respondent in Nairobi in October 2010, he never set foot in Djibouti but discharged his duties from Nairobi while traveling occasionally to Mogadishu and Addis-Ababa as the Respondent had not facilitated his relocation to Mogadishu.

5. The contract in issue was evidently executed in Nairobi, Kenya and under it the Claimant was engaged as a Senior Liaison Officer, Mogadishu. The Claimant however states that he never set foot in Djibouti and that he only made occasional visits to Mogadishu. He adds that he performed most of his functions from Nairobi where the Respondent also has an office.

6. A preliminary objection as defined in the famous case of ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) E.A 696*** is one which raises a pure point of law and is argued on the basis that all the facts pleaded are uncontested.

7. In his submissions, the Claimant raises issues of fact whose determination will aid in constructing the intention of the parties to the employment contract forming the subject of the dispute now before the Court. In my view, this can only happen in a full hearing not *in limine*.

8. Consequently, and without overruling the objection at this stage, I direct that the main claim will proceed to hearing. The parties are at liberty to adduce evidence on the subject matter of the objection.

9. The costs of the objection will abide the outcome of the main claim.

10. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF JULY 2016

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JUDGE

Appearance:

Miss Guserwa for the Claimant

Mr. Amolo for the Respondent