



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1154 OF 2015

MARY WAIRIMU MOTURI.....CLAIMANT

VS

THE EMIRATES GROUP.....RESPONDENT

RULING

Introduction

1. This ruling proceeds from the preliminary objection raised by the Respondent by notice dated 16th November 2015. The substance of the objection is that this Court has no jurisdiction to hear and determine this case because according to the terms and conditions of the contract of employment dated 5th February 2012, only the courts of Dubai have capacity to resolve disputes arising from the contract.
2. When the parties appeared before me on 19th November 2015, they agreed to urge the preliminary objection by way of written submissions.

The Respondent's Submissions

3. In the Respondent's submissions filed on 1st December 2015, it is submitted that the employment contract dated 25th May 2012 and accepted by the Claimant on 27th May 2012 expressly ousts jurisdiction from this Court.
4. The Respondent submits that although the Claimant's interview was conducted in Nairobi, the contract of employment was executed by the Claimant in Dubai. The contract was to be performed wholly and fully in Dubai and the Claimant commenced her duties on 25th May 2015.
5. The Respondent goes on to submit that the Respondent is a foreign company with its principle place of business in Dubai, United Arab Emirates. The applicable law is therefore the law of a foreign country which differs from Kenyan law in material respects.

The Claimant's Submissions

6. In her submissions filed on 7th December 2015, the Claimant states that her contract of employment was not to be performed exclusively in Dubai as she was required to fly to various countries in the world in her capacity as Security Coordinator. The Claimant adds that she performed part of her duties in Kenya and her employment is not therefore excluded from the provisions of Kenyan employment law.
7. The Claimant made reference to Section 89 of the Employment Act, 2007 which provides for enforcement of contracts made outside Kenya. The Claimant further submits that the contract of

employment produced by the Respondent does not qualify as a foreign contract as it is not drawn in accordance with Section 83 of the Employment Act, 2007. The Claimant also states that by filing its Memorandum of Appearance without protest on 17th July 2015, the Respondent submitted itself to the jurisdiction of this Court and is therefore precluded from raising an objection at this stage.

Determination

8. The single issue for determination in this application is whether this Court has jurisdiction to entertain the Claimant's claim. The Respondent's case is that the Claimant's contract of employment expressly states that the applicable law is the law of Dubai, United Arab Emirates and exclusive jurisdiction is conferred on the courts in Dubai. The Claimant on the other hand states that her employment contract though made in Dubai was not to be performed exclusively in Dubai.

9. My reading of the Claimant's employment contract is that it is neither a foreign contract nor a contract made abroad as defined in the Employment Act, 2007. In ruling on this objection, the Court must therefore be guided by the employment contract itself. Under the said contract at page 6, a clause titled '*other conditions*' states as follows:

"This Employment Agreement shall be construed in all aspects under the laws of Dubai, United Arab Emirates (U.A.E) and the Courts of Dubai shall have exclusive jurisdiction in all matters relating thereto."

10. In my view, the intention of the parties on applicable law and jurisdiction of the courts is clear and unequivocal and the Court finds no room for interference. I must therefore rule that this Court lacks jurisdiction to hear and determine the Claimant's claim.

11. The preliminary objection raised by the Respondent is therefore upheld and the Claimant's claim is struck out with no order for costs.

12. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF DECEMBER 2015

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JUDGE

Appearance:

Mr. Koceyo for the Claimant

Mr. Chaudhri for the Respondent