



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 190 OF 2015

WALTER ONYANGO ODHIAMBOCLAIMANT

V

KHETIA DRAPERS LIMITED.....RESPONDENT

RULING

1. Walter Onyango Odhiambo (Claimant) sued Khetia Drapers Ltd (Respondent) on 2 July 2015 alleging unlawful/illegal termination of employment.
2. The Memorandum of Claim was served upon the Respondent and instead of filing a Response, it filed a motion on 20 July 2015 seeking

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2. THAT this Honourable Court be pleased to issue an order staying further proceedings in this cause pending the hearing and determination of the application herein.

3. THAT the dispute herein be referred to arbitration for resolution.

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3. On the same day, the Court directed that the motion be served for *inter partes* hearing and the Claimant filed grounds of opposition on 24 July 2015.
4. The motion was taken on 21 October 2015.
5. The Court has considered the grounds in support of the motion, the supporting affidavit and the grounds of opposition.
6. The relationship between the Claimant and the Respondent was reduced into writing and the Respondent annexed to the motion copies of the appointment letters, and Memorandum and Employment Contract.
7. Clause 19 of the Memorandum and Employment Contract provided to wit,

In case of any disputes between the company and myself, I accept that the matter be referred (in preferred order) to the Manager, Senior Management or District Labour Office. In the event that the former are unable to resolve, the matter be referred to an agreed arbitrator and in default of the agreement, the current chairman of the Chartered Institute of Arbitrators (Kenya Branch) shall be appointed as such an arbitrator.

8. The terms and scope of the clause leave no doubt in my mind that disputes concerning the termination of the Claimant's employment are included in the disputes to be referred to arbitration.
9. In the circumstances, I find merit in the motion to stay the proceedings pending arbitration.

10. However, because the dispute refers to alleged unlawful act by the Respondent, it would not be fair to refer the dispute to its Managers for resolution. An independent and neutral person should hold that mantle.
11. Arbitration by the Chairman of the Chartered Institute of Arbitrators is a default and may attract expenses, and the only office which may carry out the arbitration without any direct expense to the parties in the first instance is the County Labour Officer (District Labour Officer at time of execution of the agreement).
12. I would therefore grant prayers 2 and 3 of the motion with the rider that the parties submit to the County Labour Officer, KITALE for arbitration.
13. The stay of proceedings will be in force for 90 days to enable the County Labour Officer arbitrate and file a report with Court before the expiry of the 90 days.
14. This Cause will therefore be mentioned on 18 March 2016 to confirm the results of the arbitration.
15. Costs of the motion shall be in the cause.

Delivered, dated and signed in Nakuru on this 18th day of December 2015.

Radido Stephen

Judge

Appearances

For Claimant Ms. Kerubo instructed by Sargo & Ngetich Advocates

For Respondent Mr. Tombe instructed by Kidiavai & Co. Advocates

Court Assistant Kosgei