



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1096 of 2010

WILLIAM LONANA SHENA.....CLAIMANT

VERSUS

HJE MEDICAL RESEARCH INTERNATIONAL INC.....RESPONDENT

RULING

The Respondent has filed a chamber summons dated 11th November, 2010 seeking to stay of proceedings herein and referring the dispute for arbitration as per the Employment Contract. The application is brought under Section 6(1) of the Arbitration Act and Rule 2 of the Arbitration Rules.

The Respondent filed the claim herein based on the Employment Contract dated 19-8-2008 between himself and the Applicant. The Contract under Clause 17 provided that in the event of a dispute whatsoever arising under it, the same shall be referred for arbitration under the Arbitration Act Number 4 of 1995. A copy of the Contract is annexed as 'AJW 1', to the supporting affidavit. The Applicant has relied on civil appeal No.253 of 2003 and HCC 157 of 2008.

The authorities are in support of the Act that the Court should abide if a party seeks arbitration in time.

That Section 58 (1) of the Labour Relations Act provides for Arbitration. The Claimant has vehemently opposed the application on grounds that the Applicant has already entered appearance and as such submitted herself to the court's jurisdiction. That the court has unfettered jurisdiction to hear matters of employment. That the application is against public policy and meant to delay conclusion of the dispute.

I have perused the pleadings and the application and considered that the submissions and the judicial precedents cited by the parties. The issue for determination is whether there is a valid arbitration agreement between the parties herein to refer all disputes concerning their employment contract dated 19-8-2008.

The answer to this issue lies in the Employment Contract annexed to the Supporting Affidavit marked 'AJW 1'. The document is signed by the two parties to the Contract who are also the parties to this dispute. Clause 17 of the Contract contains the arbitration agreement in details. The Claimant has not challenged it in any manner howsoever. I am, therefore, satisfied that there is a valid arbitration clause which this court will not hesitate to uphold.

The arguments raised by the Claimant in opposition to the application are not good enough to defeat the arbitration clause. The fact that the court has unlimited jurisdiction does not defeat arbitration process which is also grounded on statute law.

I, therefore, grant the prayers 1, 2, & 4 as sought in the application. I also direct the parties to commence the arbitration process forthwith.

Costs of the application will abide the outcome of the arbitration process.

Orders accordingly.

DATED and DELIVERED at Nairobi this 16th day of November, 2012.

Onesmus Makau
JUDGE