



**Menon (Vijay Krishna Vazhvelil) v Windsor Golf Hotel and Country Club  
(Cause E041 of 2023) [2023] KEELRC 2431 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2431 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E041 OF 2023  
SC RUTTO, J  
OCTOBER 6, 2023**

**BETWEEN  
VIJAY KRISHNA V MENON (VIJAY KRISHNA VAZHVELIL) ..... CLAIMANT  
AND  
WINDSOR GOLF HOTEL AND COUNTRY CLUB ..... RESPONDENT**

**RULING**

1. What comes up for determination is the Respondent's Preliminary Objection dated February 28, 2023, which is premised on the following grounds:
  1. The Claimant and Respondent are both parties to an Arbitration Agreement as stipulated in the letter of offer of employment dated August 17, 2017, which requires that all disputes between them be referred to arbitration.
  2. Section 6 of the *Arbitration Act* empowers a Court before which proceedings are brought in a matter which is subject to an Arbitration Agreement to strike out and/or stay proceedings and refer parties to arbitration.
  3. This Honourable Court lacks jurisdiction to hear and determine the Claim against the Respondent.
  4. Jurisdiction is everything and a court without jurisdiction must down its tools.
2. The Claimant responded to the Preliminary Objection by filing a Replying Affidavit sworn on March 12, 2023. The Claimant deposes that in the instant case, the amount claimed involves terminal dues that were already mutually agreed upon by the parties. That the said mutual agreement of terminal dues cannot be subjected to arbitration owing to the fact that it does not give rise to any dispute by virtue of the fact that there was a mutual agreement documented dated February 18, 2021 and executed



by both parties. The Claimant further avers that paragraph 3 of the letter of offer exempts the amounts claimed herein from reference to arbitration in the event of breach by any party.

### Submissions

3. On July 26, 2023, the Court directed that the Objection be canvassed by way of written submissions. Both parties complied and the Court has considered their respective submissions. The Respondent has argued that the suit should be referred to arbitration as both parties are bound by the Arbitration Agreement stipulated in the letter of offer of employment dated August 7, 2017. It is the Respondent's further submission that the prayers sought fall within the scope of the disputes contemplated under the arbitration clause.
4. In further submission, the Respondent has urged that both parties by mutual agreement forwent their right in law to have their dispute adjudicated in the courts/public forum and gave contractual authority to the arbitral tribunal to adjudicate the disputes and bind the parties. In support of the Respondent's submission, reliance was placed on the case of *County Government of Kirinyaga vs African Banking Corporation Ltd, Heritage Consultants Ltd vs Permanent Secretary, Ministry of Regional Development and National Bank of Kenya vs Pipeplastic Samkolit (K) & another*.
5. The Respondent further argued that the Arbitration Agreement entered into by the parties fall under the jurisdiction of the *Arbitration Act* hence Courts should refrain from intervening in matters governed by the Act.
6. On the part of the Claimant, it has been submitted that it is clear from the arbitration clause that matters to be referred to arbitration are those not agreed upon. That the Claimant's terminal dues do not fall under matters not agreed upon but rather had already been agreed upon and an agreement executed by both parties to that effect.

### Analysis and Determination

7. Flowing from the pleadings and submissions on record, it is evident that the main issue for determination is whether the Respondent's Preliminary Objection is merited. In other words, should the dispute herein be referred to arbitration?
8. The Respondent's Objection is anchored on clause 24 of the letter of offer of employment. According to the Respondent, the arbitration clause is clear that any future disputes, questions or claims for compensation between the parties will be resolved through arbitration.
9. On the other hand, the Claimant maintains that there is no dispute herein worthy of being determined by way of arbitration as parties had already agreed on the specific amount to be paid.
10. I have carefully considered the Preliminary Objection, the Response by the Claimant, the rival submissions and more importantly, the nature of the Claim before Court.
11. The gist of the Claimant's case is that the Respondent has remained adamant and refused and/or neglected to pay him USD 62,418.90 being his terminal dues pursuant to an agreement dated February 18, 2022.
12. The Claimant avers in the Statement of Claim that his position as the General Manager of the Respondent was declared redundant and vide an agreement dated February 18, 2021, his dues were calculated and agreed upon by both parties as amounting to USD 67,418.90. That the Respondent made partial payment of USD 5,000 leaving the sum of USD 62,418.90 unpaid. It is that amount that the Claimant is now seeking to recover from the Respondent.



13. In support of his Claim, the Claimant annexed a copy of a letter dated February 18, 2021 which reads in part:

“RE: FINAL DUES PAYABLE ON TERMINATION OF EMPLOYMENT

Further to your recent discussions with us on the above subject, we confirm below our agreement on your final dues. The company will pay you the following separation package and does so without prejudice and in accordance with the terms of your employment contract, company policies and applicable employment legislation.

Your emoluments upto and including 23<sup>rd</sup> July, July, 2020 which was your last working day....

Your net payable amount is therefore \$67,418.90....”

14. The Claimant appended his signature at the foot of the letter acknowledging that the final dues as computed, was acceptable to him.
15. In light of the foregoing agreement, the pertinent question is whether this dispute ought to be referred to arbitration as per the arbitration clause in the Claimant’s letter of offer of employment. For purposes of context, the said arbitration clause is couched as follows:

“Save as hereinbefore otherwise specifically provided all questions hereafter in dispute between the parties hereto and all claims for compensation or otherwise not mutually settled and agreed between the parties shall be referred to arbitration in accordance with the provisions of the Arbitration Act or any statutory enactment in that behalf for the time being in force.”

16. My interpretation of the above clause is that matters to be referred to arbitration are all questions in disputes arising thereafter and all claims for compensation not mutually settled and agreed between the parties.
17. Therefore, the clear intention of the parties was not to refer all issues in dispute to arbitration. Indeed, the arbitration clause is specific that it is only those issues that are not settled and agreed upon by the parties that were to go to arbitration.
18. As stated herein, the only issue in dispute is payment of the Claimant’s terminal dues pursuant to their agreement dated February 18, 2018, which I have reproduced herein.
19. In this case, I agree with the Claimant that the compensation payable to him following termination of his employment was a matter that both parties had mutually agreed on as evidenced by the letter dated February 18, 2021.
20. To this end, in my view, the subject matter constituting the dispute before Court is not covered by the arbitration clause in the Claimant’s letter of offer of employment. In essence, it falls outside the meaning of the term “dispute” as contemplated under the arbitration clause. Put another way, there is no dispute to be referred to arbitration within the arbitration clause in the letter of offer of employment.
21. In light of the above, I am inclined to decline the Respondent’s Preliminary Objection dated February 28, 2023.
22. Costs shall be in the cause.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF OCTOBER, 2023.

.....

**STELLA RUTTO**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Stella Rutto

Judge

