



**Agamu v Kenya Civil Aviation Authority (KCCA) (Civil Appeal E009 of 2023)  
[2024] KEHC 13590 (KLR) (Civ) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13590 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E009 OF 2023**

**TW OUYA, J**

**OCTOBER 31, 2024**

**BETWEEN**

**HUMPHREY BULIMU AGAMU ..... APPELLANT**

**AND**

**KENYA CIVIL AVIATION AUTHORITY (KCCA) ..... RESPONDENT**

*(Being an appeal from the Judgement of the National Civil Aviation Administrative Review Tribunal delivered on 6th December 2022 in Tribunal Appeal No. E004 of 2022)*

**JUDGMENT**

**Background**

1. This matter is an appeal arising from a decision of the National Civil Aviation Administrative Review Tribunal delivered on 6<sup>th</sup> December 2022 in Tribunal Appeal No. E004 of 2022) The Appellant herein had lodged a complaint against the Respondent, with prayers that this Tribunal orders that the Respondent issues him with a renewal of his Aircraft Maintenance Engineers License No. YK-C763 and in addition, a ratings endorsement of Class A & C Turbine Engine Rotorcraft Licence. His complaint letter is dated 15<sup>th</sup> March 2022. The complaint was responded to by way of Replying Affidavit sworn by Nicholas Muhoya Ngatia, dated 3<sup>rd</sup> August 2022.
2. The Appellant is an Aeronautical Engineer and is a holder of an Aircraft Maintenance Engineers Licence No. YK-C763, which from time to time and upon successful completion of both written and oral examinations in various categories of Aircraft can be renewed
3. The Respondent Authority is the Regulatory and Oversight body within the industry that the Appellant operates in, and it is also the licensing Authority within the industry and issues licenses to



parties and also conducts both oral and written examinations for the rating endorsement such as the one the Appellant sought from them.

4. The Tribunal having analyzed the matter, found that:
  - i. That the process of applying for examinations, setting date and releasing of the results be undertaken within sixty (60) days from the date of this judgement and the Respondent to facilitate the same.
  - ii. That the Respondent as matter of urgency fully operationalize the civil Aviation (Personnel Licensing) Regulations 2018.
  - iii. That the prayer for damages and or compensation is dismissed.
  - iv. That each party to bear its own costs.
  - v. That a copy of the judgement be served upon the Director General of the Respondent for Implementation of Order 2 above.
5. The Appellant herein being dissatisfied with the whole of the judgement and Decree of the Tribunal, filed this appeal on the following grounds:
  - a. The learned Tribunal erred in law and fact by failing to hold that the Appellant's Aircraft Maintenance Engineer Licence (AMEL) Category A & C Turbine Engine Rotocraft be reissued in compliance with the Civil Aviation Personnel Licencing Regulations 2018 instead of Civil Aviation Personnel Licencing Regulations 2013 which have since been repealed.
  - b. The learned Tribunal erred in law and fact by failing to order the Respondent to endorse the correct Ratings since the Appellant was invited for Category A and C Gas Turbines Engines Rotocraft (WTR) instead of category A and C Turbine Engines Rotocraft which the Appellant had applied for.
  - c. The learned Tribunal erred in law and fact by failing to order the Respondent to endorse the Appellant's Licence with the required Licence B1.3 Helicopters and type Ratings achieved while working for the Respondent during the six Years period.
  - d. The learned Tribunal erred in law and fact by failing to order the Respondent to pay compensation by way of damages for the nine-year period between 2013-2022 when it found that the Respondent had failed to plan, conduct oral and skill test on the Appellant in blatant disregard of the civil aviation personnel Licensing Regulations 2018.
6. The Appellant prays that:
  - a. This Appeal be allowed.
  - b. Judgement and Decree thereof of the Tribunal dated 6<sup>th</sup> December, 2022 be set aside and judgement be entered in favour of the Appellant.
  - c. Costs of the Appeal.

### **Submissions**

7. The matter was canvassed by way of submissions by both parties pursuant to the directions given on the 31/10/2023 by the Deputy Registrar. The Appellant submits that he had previously been a senior Airworthiness Inspector with the Respondent for a period of six (6) years and has a very good grasp of the terrain the Respondent plays and/or operates in, as his career is very unique to civil aviation



organizations and in particular civil aviation organizations and in particular civil aviation authorities equivalent to the Respondent establishment, it being a monopoly within the Country. He states that maintenance contains various endorsements of aircraft specialty and expertise, which have a direct association with what such an Engineer can attract in terms of remuneration.

8. The Appellant's first complaint is that he applied for category A&C Turbine Engines Rotorcraft examinations with a view to getting the A&C Turbine Engine Rotorcraft License Endorsement on his License No. YK-C763. These examinations are two-fold, a written examination which the Appellant sat on the 28<sup>th</sup> June 2023 and passed, upon which one is then recommended for oral examination which ensues so soon thereafter. (Kindly refer to page 6 of the Record of Appeal). He maintains that save for the written examination which the Appellant passed on the 28<sup>th</sup> June 2023 as evidenced by the examination result slip appearing in the record of appeal with the category A&C Turbine Engine Rotorcraft), all the ensuing oral examinations were differently categorized as listed below:
- i. The examination results notification of 12<sup>th</sup> September 2013 appearing at page 7 indicates the category as A&C Turbine Engine Rotorcraft (WTR);
  - ii. The examination categorization at page 10 of the Record of Appeal dated 28<sup>th</sup> November 2021 is A&C Turbine Engine Rotorcraft (WTR)
  - iii. The oral examinations comment sheet at page 11 of the Record of Appeal dated 24<sup>th</sup> July, 2014 refers to the category as A&C Gas Turbine Engine Rotorcraft (WTR) whereas the examination results notification of the same oral examination at page 12 of the Record of Appeal bearing the same date i.e 24<sup>th</sup> July 2014 refers to the category as A&C Turbine Engine Rotorcraft (WTR) with the word Gas missing.
  - iv. The oral examination comment sheet dated 18<sup>th</sup> September 2014 which appears at page 13 of the Record of Appeal refers to the category as C Gas Turbine Engine Rotorcraft (WTR) whereas the examination results notification dated 18<sup>th</sup> September 2014 appearing at page 14 of the Record of Appeal refer to the category as A&C- Gas Turbine Engine Rotorcraft (WTR); and
  - v. The examination categorization at page 15 of the Record of Appeal dated 15<sup>th</sup> December 2014 is indicated as CAT "A & C" Gas Turbine Engines Rotorcraft (WTR).

The Appellant's contention therefore is that he was wrongly invited for oral examinations under a different category other than the one he had duly applied for.

9. The Appellant further complained about anomalies in the oral examinations and the periods thereof. He reasoned that a period of 13 months had lapsed from the first oral examinations of the year 2013 to 2014. That the Authority was in breach of Regulations 124 (1) and (2) of the Civil Aviation Personnel Regulations 2013. He points out that in its judgement, the Tribunal appreciated that the respondent fell short of seamlessly setting and administering examinations and releasing results in a timely manner but failed to award damages for the said lapse.
10. The Appellant challenged the qualifications of the examiners and contends that the issue was scantily addressed in the judgement. He points out that the Authority was in breach of The Kenya Civil Aviation Authority Airworthiness Inspections Manual, Part B- Technical Guidance, October 2008 sections 2.25 and 2.3.4 which provided that an applicant shall be informed in writing why he is not successful. In his case, his recommendation sheet was endorsed Not Recommended without giving reasons.



11. That section 2.4.2 of the technical guidance provides that a minimum of two inspectors shall be assigned to invigilate written examinations but, in his case, only one inspector, Mr. Choge Kibiego Kibitok was assigned even towards his various resists in the absence of any other independent Inspector. He also challenged the qualifications of the said Inspector Choge. He faults the explanation offered by the Authority during the trial, by one Nicholas Muhoya Ngatia that the Tribunal failed to address the issue which was pertinent.
12. The Appellant also raised an issue with the ratings endorsement on license by virtue of 6years service completed with the Respondent. He maintains that the Guidelines provide that Airworthiness Inspectors who are actively in service with the Authority, endorsement shall be processed immediately on successful meeting of requirement set out in part iii(d) and for those retiring or leaving KCAA employment on their own volition, endorsement will be processed for those who will have served satisfactorily for a minimum of six years as an Airworthiness Inspector. That by virtue of the guidelines and his having served for six years, he was entitled to Ratings endorsements on his license. The Tribunal therefore erred by failing to order the respondent to endorse the Appellants Licence with the required licence B1.3 Helicopters and Type rating achieved during the six-year working period.
13. The other complaint concerned the Civil Aviation Personnel Licensing Regulations 2013 and Civil Aviation Personnel Licensing Regulations 2018. The Appellant faulted the Tribunal for failing to hold that the Appellant's Aircraft Engineer Licence (AMEL) category A& C Turbine Engined Rotocraft be reissued in compliance with the Civil aviation personnel Regulations 2018 instead of Regulations 2013 which have been repealed. He pointed out that the Tribunal faulted the Respondent for not setting in motion the process of renewal of licenses under the new Regulations (2018). He argues that the 2013 Regulations were repealed and are obsolete and has dire consequences on his employment prospects within the aviation industry.
14. He pointed out further that the concerning the renewal of the AMEL YKC-763 license was that the same had since been renewed effective 13<sup>th</sup> July 2022. The appellant's complaint is that the license was indeed renewed to run up to 19<sup>th</sup> September 2024 but is of no assistance to him because it was renewed under the Regulations 2013 instead of Regulations 2018.
15. Lastly, the Appellant prays for damages and compensation for the lost 9 years period from 28<sup>th</sup> June 2013 to the time of this appeal. He blames the Respondent for the delays in the endorsement process submits that the Tribunal ought to have sought clarifications from the Appellant on the quantifiable damages he was seeking in order to arrive at a conclusive determination. He sought for damages in the sum of Kshs.10,800,000 based on the argument that he was losing earnings of Kshs. 100,000 per month for nine years from the date of 28<sup>th</sup> June 2013 owing to the delayed endorsements.

### **Respondent Submissions**

16. In response to the Appellants complaints the before the Tribunal, the Respondent submits by giving chronology of events regarding the Appellant's application for examinations:
  - i. Appellant applied for extension of his Aircraft Maintenance Engineer License (AMEL)and in line with the laid down laws and processes, he was required to under undertake both written and oral exams before issuance of such license by the Respondent. That he undertook written exam on 28<sup>th</sup> June 2013 and was successful. His result notification was sent out to him on 12<sup>th</sup> September 2013.
  - ii. The Appellant was then required to sit for oral exams. He applied for and undertook oral exam on 10<sup>th</sup> September 2013. An invitation for the same was sent to him on 28th November 2013.



That he took the oral exam on 24<sup>th</sup> July 2014 but was not successful. Upon notification, he re-applied for a second oral exam on 25<sup>th</sup> August 2014.

- iii. The Appellant undertook second oral exam on 18<sup>th</sup> September 2024 but was not successful. That both 1<sup>st</sup> and second oral exams were administered by Mr. Choge as the Chief examiner and Mr. Makori and Kakai as observers.
  - iv. The Appellant applied for a 3<sup>rd</sup> oral exam on 27<sup>th</sup> November 2014 but failed to book for the oral exam which was scheduled for February 2014 as was advised by the Respondent vide letter dated 15<sup>th</sup> December 2014.
  - v. In February 2019 and May 2021 upon repeal of 2013 Regulations to 2018 the Appellant applied to continue with the pending exam but again failed to book for or sit for the same oral exams scheduled for 14<sup>th</sup> February 2019 and 7<sup>th</sup> May 2021 respectively.
  - vi. After applications by the Appellant for the 3<sup>rd</sup> oral exam, he failed to make any application for renewal of his AMEL before it expired neither did he satisfy the requirements set forth for exams by the Authority in terms of practical maintenance skills to be issued with Category A&C Turbine Engined Rotocraft license Without Ratings(WTR). He also did not make application for endorsement of the various aircraft type ratings.
17. The Respondent raises issues based on the above narration of chronology of events which It submits upon.

**a. Whether the Appellant Applied for and Sat for Exam Under Regulations 2013 or 2018.**

18. It is the Respondent's contention that the Appellant did not apply for neither did he pass any examinations on 28<sup>th</sup> June 2023 and that the Results Slips alluded to by the Appellant relate to written examination on 28<sup>th</sup> June 2013. The Respondent relies on the case of *Adetown Oladgi vs. Nigeria Breweries PLC* 91 of 2002 and urges that the Appellant should stick to his pleadings based on his original complaint.
19. The Respondent submits further that the Appellant sat for written and Oral exams in the period 2013-2014 as provided under Civil Aviation (Personnel Licensing) Regulation 2013 and thus his claim for endorsement under Civil Aviation (Personnel Licensing) 2018 are a clear departure from his original complaint at the Tribunal and must be disregarded.
20. That Regulations 2018 provides that an airworthiness inspector must demonstrate a level of knowledge relevant to the privileges the inspector seeks to be granted and that is appropriate to the responsibilities of Aircraft Maintenance License holder through sitting and passing examination as administered by the Authority; Or completed training from an organization approved by the authority and/or passed examinations administered by CAA of a contracting state of equivalent or higher system of personnel Licensing as per ICAO rating.
21. That the Appellant despite seeking to continue with his exams under the 2018 Regulations and despite approval by the Respondent vide letter dated 15<sup>th</sup> December 2014 to him to commence the practical skill test as requested, he did not and has not booked for the said exams neither did he apply for endorsement of the various Aircraft type ratings.
22. That in his grievances at the NCAART the Appellant has failed to specify the endorsement he seeks by virtue of provision of service for a period exceeding 6 years.



23. That it is or was a requirement for Applicants to apply to the Authority for issuance of Without Type Rating (WTR) for Aircraft Maintenance Engineer Licence which the Appellant failed to do under various categories which the Authority would have issued upon completion of Knowledge or skill and experience part of testing.
24. That it is the Appellant's duty to apply to the authority for extension to either Licence category WTR upon meeting such requirements. To date, the Appellant is yet to complete the process of licence extension to include or be endorsed with the relevant category WTR as he may seek.

**b. Whether the Appellant was Examined for the Category Applied for**

25. The Respondent submits that Appellant applied for category 'A' and 'C' Turbine Engined Rotorcraft and was examined on the same. That the inclusion of the word 'Gas' was erroneous as Regulation 2013 5(i) & (v) does not provide for category 'A' and 'C' Gas Turbine Rotorcraft as alluded to by the Appellant but under category 'A' and 'C' it only provides for Turbine Engined Rotorcraft. That the said error did not cause any prejudice to the Appellant.

**c. Whether the Examiners were Qualified to Conduct Oral Exams**

26. The Respondent outsourced its examiners and in this particular instance, Mr. Choge was contracted as the chief examiner while Mr. Makori and Mr. Kaikai were Contracted as Observers: The Respondent has demonstrated that all the examiners and observers were qualified in their field by availing their credentials. The Appellant did not adduce any evidence to support his allegations that the examiner was incompetent.

**d) Whether the Tribunal was Seized With Power To Provide the Remedy as Sought by the Appellant**

27. The Respondent confirmed that the Appellant's License was renewed without ratings endorsements on 26<sup>th</sup> July 2022.
28. That this court sits as an appellate court to determine matters of law and facts to re-evaluate pleading before the Tribunal.
29. Both parties are bound and Appellant cannot introduce a new claim.

**Determination and Disposition**

30. This court has considered original pleadings, record of appeal and the submissions by the rival parties plus the authorities cited. The duty of this court as a first appellate court is to re-evaluate the evidence and draw its own conclusions, but always bearing in mind that it did not have the opportunity to see or hear the witnesses testify. See *Peters v Sunday Post Limited* (1958) EA 424; *Selle and Another v Associated Motor Boat Co. Limited and Others* (1968) EA 123 and *Williams Diamonds Limited v Brown* (1970) EA 1.
31. The Court of Appeal in *Ephantus Mwangi and Another v Duncan Mwangi Wambugu* (1982) – 88) 1 KAR 278 stated that:  

“A court of appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did.”
32. Concerning liability, the legal position is that the burden of proof in civil cases rests with the plaintiff at all material times, while the standard of proof is held on a balance of probabilities. In *Wareham t/*



*a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank* [2004] 2 KLR 91, the Court of Appeal stated in this regard that:

“We have carefully considered the judgment of the superior court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings pursuant to the provisions of Order XIV of the *Civil Procedure Rules*. And the burden of proof is on the Plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail.” (Emphasis added).

33. It was therefore incumbent upon the Appellant to prove his allegations and claims against the Respondent beyond a balance of probabilities. From the foregoing, this court identifies the following to be the issues for determination;
  - i. Whether the Appellant was qualified for the endorsement of A&C turbine engine Rotocraft on his license No. YK-C763
  - ii. Whether the Appellant sat for the right exam he applied for
  - iii. Whether the Examiners were qualified
  - iv. Whether the Appellant was entitled to damages
34. In determining whether the Appellant was qualified for the endorsement he had applied for, this court takes note the Respondent’s submission that to qualify for endorsement of A&C turbine engine Rotocraft on his license, the Appellant was required to sit both written and oral examinations. It is demonstrated by the Respondent’s chronology of events that the Appellant applied and sat for written and oral exams in the period 2013 and for 2014. That he passed written exams but was required to undertake a further oral exam which he applied and sat for on the 25<sup>th</sup> August 2014 and September 2014. That he was not successful on the two occasions. Subsequently, he failed to book and sit for any other oral exam. To the extent of not meeting the exam requirements, the Appellant did not qualify for such endorsement.
35. The Respondent contends that the Appellant did not apply for, sit or pass any oral examinations on 28<sup>th</sup> June 2023 as alluded to in his submissions.
36. The Appellant raised the issue that the exam that what he was examined is not what he applied for. It is noted that the Appellant applied for A&C Turbine Engine Rotocraft examinations. His complaint was that the exam notifications on some occasions described the exam as A&C Turbine Engine Rotocraft (WTR) while on others it was described as Gas A&C Turbine Engine Rotocraft and in others the word gas was missing. The Respondent submits that Appellant applied for category ‘A’ and ‘C’ Turbine Engined Rotorcraft and was examined on the same. That the inclusion of the word ‘Gas’ was erroneous as Regulation 2013 5(i) & (v) does not provide for category ‘A’ and ‘C’ Gas Turbine Rotorcraft as alluded to by the Appellant but under category ‘A’ and ‘C’ it only provides for Turbine Engined Rotorcraft. While this court finds the explanation satisfactory, the Appellant has not demonstrated that he suffered any prejudice out of such anomaly.



37. The Appellant challenged the qualifications of the Respondent examiners who administered the oral examinations. The Appellant did not give any particulars for this allegation but the Respondent has demonstrated that Choge is a qualified Rotocraft engineer and a chief instructor with his certificates and testimonials attached. Choge Kibiego Kibitok was a contracted examiner while Mr. Makori was a KCAA Observer. The Respondent also stated that they were forced to outsource examiners because there was shortage.
38. On the issue of Ratings Endorsement license by virtue of six years' service, the Appellant contends that having worked with the Respondent for a period in excess of six years, he was entitled to such endorsement. He relies on policy guidelines of Regulations 2013 part of which he has attached in the record of appeal. Upon perusal of the same, this court observes that Part IV and V provides for privileges among them being endorsement Ratings and conditions thereto. Whereas the Appellant may have met the 6 years' condition under clause (b) this privilege is not automatic as it is curtailed under Part VI by the discretion of the KCAA Director General.
39. The appellant then raised issue with the Civil Aviation Personnel Licensing Regulations 2013 vis a vis the Civil Aviation Personnel Licensing Regulations 2018. The Appellant argued that the Tribunal ought to have held that the Appellant's Aircraft Engineer Licence (AMEL) category A&C Turbine Engined Rotocraft be reissued in compliance with the Civil aviation personnel Regulations 2018 instead of Regulations 2013 which have been repealed. He pointed out that the Tribunal in its judgement had faulted the Respondent for not setting in motion the process of renewal of licenses under the new Regulations (2018). He argues that the 2013 Regulations were repealed and are obsolete and has dire consequences on his employment prospects within the aviation industry.
40. This court takes cognizance that the Appellant's licensee was renewed albeit without ratings endorsement on the 26<sup>th</sup> July 2022. On the issue of delay, the court also reiterates that it was the duty of the Appellant at all times to make the necessary applications for renewal of his licenses and to apply for and book for the necessary examinations in order to meet the required qualifications.
41. That the Appellant and the Respondent were both at fault leading to the delays complained of herein. The Respondent failed to operationalize the 2018 Regulations and operated on the previous Regulations which led to the delay and misgivings by the Appellant.
42. The Appellant also failed to act on his part by making the necessary applications to qualify and meet the standards that were in operation at that time. It is now time for the Authority to take urgent measures to operationalize the Regulations 2018. This will fastrack the process of applying for examinations, setting date and releasing of the results be undertaken.

### **Damages**

43. The Appellant, in his formal letter of complaint, mentioned that he wanted to be compensated for the lost nine years that the Respondent had delayed to issue him with the license. The Appellant was in other words praying for damages and this is faulted for reasons:
  - i. The Appellant partially contributed to the delay by failing to make the necessary applications at the right time. He failed to book for oral exams and failed to apply for renewal of his license until it expired.
  - ii. The Appellant for compensation but failed to make a specific prayer or quantification for damages during the trial at the Board and the same cannot be raised on appeal



- iii. Loss of earnings are special damages which ought to be specifically pleaded and proved. It cannot be raised at submissions on appeal. It was not quantified at trial before the Tribunal and cannot be raised at this juncture. It therefore fails.
44. This court reiterates the Appellants description of the Respondent at the introduction of his submissions. That the Respondent Authority is the ‘Regulatory and Oversight body within the industry that the Appellant operates and it is also the licensing Authority within the industry and issues licenses to parties and also conducts both oral and written examinations for the rating endorsement....’ As such, the Respondent understands well the environment that it operates. It is therefore best to be left to carry on its Regulatory role without undue interference. Courts should be the last resort. Likewise, the specialized Tribunal(NCAART) is in place to settle disputes arising from this sector.
45. The Court of Appeal in *Ephantus Mwangi and Another v Duncan Mwangi Wambugu* (1982) – 88) 1 KAR 278 stated that:
46. “A court of appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did.”
47. This court finds no reason to interfere with the trial court findings and therefore upholds the judgement of the National Civil Aviation Appeal No. E004 of 2022 delivered on 6<sup>th</sup> December, 2022 in Tribunal Appeal No E004 of 2022.

#### **Further Orders**

- i. The Respondent as matter of urgency fully operationalize the Civil Aviation (Personnel Licensing) Regulations 2018.
- ii. That the prayer for damages and/or compensation is dismissed.
- iii. That each party to bear its own costs.
- iv. That a copy of the Judgement be served upon the director General of the Respondent for Implementation of Order 2 above.
28. Appeal dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31<sup>st</sup> DAY OF October 2024**

ROA 14 days.

**HON. T. W. OUYA**

**JUDGE**

For Appellant..... Mtange

For Respondent...N/A

Court Assistant...Matin

