



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO 272 OF 2013**

**JOB OKONG'O OYUGI.....CLAIMANT**

**VERSUS**

**KENYA AIRPORTS AUTHORITY.....RESPONDENT**

**JUDGMENT**

1. The claimant pleaded that he was employed by the respondent on 2<sup>nd</sup> February, 2004 as a security trainee and later promoted to security warden on 19<sup>th</sup> January, 2009 earning a basic salary of Kshs.19,873/= and house allowance of Kshs.14,018/=.
2. On 29<sup>th</sup> August, 2011 he was issued with a show cause letter and suspension letter suspending him from employment on the ground that he had been arrested and charged in court with a criminal offence of conspiring with another person to traffic in narcotic drugs. He instructed his advocate to respond to the show cause letter. On 9<sup>th</sup> September, 2011 the respondent terminated his employment on the ground that the claimant had been arrested and charged with the offence mentioned and detained in police custody for more than ten days contrary to section 36.2 of the CBA.
3. The claimant further pleaded that being dissatisfied with the decision to terminate his service, he appealed for the review of the decision but the appeal was unsuccessful.
4. The respondent in response pleaded that the claimant was dismissed for assisting a lady by the name phoebe Walker Mbugua alias Phoebe Withera Mbugua at Jomo Kenyatta International Airport to clear her luggage containing narcotic drugs by leaving his area of work unattended.
5. The respondent averred that the after investigations, the claimant together with his colleague Mr. Paul Nduati Gachie were arrested on 12<sup>th</sup> August, 2011 and charged in court in that respect. The respondent further averred that in his appeal letter the claimant admitted to having assisted a lady by the name phoebe Waljer Mbugua to clear at the Immigration without following the laid down procedure. The respondent averred that the claimant's acts or omissions amounted to gross misconduct and was terminated pursuant to the provisions of section 44 (4)(c)(e)(f) and (g) of the Employment Act.
6. Regarding procedure for termination, the respondent averred that the claimant was summarily dismissed after replying for a show cause letter through his advocate admitting to having conspired to traffic narcotic drugs but declined to answer to the charges in the show cause letter claiming they were *sub judica*.
7. According to the respondent, the failure to respond to the show cause letter was irregular, un-procedural and misleading. According to the respondent, the claimant's advocate's letter showed clearly that the claimant declined to undergo any internal disciplinary action thus the claimant had waived his right to a fair hearing and the respondent was left with no alternative but to proceed and make a decision on the claimant's acts.
8. At the hearing the claimant repeated the averments in the claim and additionally stated that on the material day he received a call at around 9.30 p.m. from his supervisor to go to his office. When he arrived he found two police officers and he was informed by his supervisor that he had instructions to have the claimant arrested. When he asked why he was told it was about an incident in 2011 over which he had been previously questioned. The incident concerned receipt of his supervisor's guest. There was difficulty receiving the guest. According to him he asked for the details of the guest so that he could ask a custom officer to assist. He passed the details to the customs officer to deal with the issue. He then asked for a short permission to buy airtime. After two days he learnt that the person he was called to assist was arrested by anti-narcotics police. Six months later he was arrested and charged in court.
9. He admitted receiving the show cause letter and asking his lawyer to respond on his behalf. The following week he received a

termination letter.

10. In cross-examination he stated that he re-appealed the decision to dismiss him and was called for a hearing.

11. The respondent's witness Ms Risper Omondi stated that she was the respondent's Manager-Training and previously she was Manager Employee relations. According to her the claimant was issued with a show cause letter and was required to respond within 7 days. The claimant's lawyer instead wrote and said the issue was *sub judica*.

12. Under section 43 (2) of the Employment Act, the reason for which an employer terminates a contract of employment are matters that at the time of termination of the contract the employer genuinely believed to exist and which caused the termination of the contract.

13. It is common ground that the claimant was implicated in an incident at his work place where a passenger arriving at Jomo Kenyatta International Airport attempted to pass narcotic drugs through customs. The claimant on his own admits that he was involved in trying to assist the passenger who he claims was his supervisor's guest. According to him he got the details of the passenger and passed them over to a customs official to assist. Then he asked for permission to be away from his desk to buy airtime. He neither named who this supervisor was or why he could not handle the guest himself nor did he name the custom officer who he asked to assist.

14. The reasons for termination of employment are those reasons which any reasonable employer would consider dismissal as the most appropriate action to take.

15. The allegations against the claimant were serious and justified the dismissal. The respondent in the court's view has discharged this legal burden. On the second limits of procedure followed, the claimant was issued with a show cause letter but refused to answer to the charges claiming they were *sub judica*. Further he appealed against the termination but was unsuccessful. Refusal by the claimant to answer to the show cause letter for reasons of *sub judica* was not wise. The fact that an employee is facing criminal charges does not stop an employer from subjecting such employee to internal disciplinary process on the same facts.

16. The conclusion the court finds and holds that there existed valid reasons for terminating the claimant's contract of service and that the procedure followed was a fair procedure as contemplated in the employment Act. The claim is therefore found without merit and is hereby dismissed with costs.

17. It is so ordered.

Dated at Nairobi this 24<sup>th</sup> day of May, 2019

**Abuodha J. N.**

**Judge**

Delivered this 24<sup>th</sup> day of May, 2019

**Abuodha J. N.**

**Judge**

**In the presence of:-**

..... for the Claimant and

..... for the Respondent