



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 1864 of 2000**

**GODFREY A. OKUMU.....PLAINTIFF**

**VERSUS**

**KENYA AIRPORT AUTHORITY.....DEFENDANT**

**JUDGMENT**

The Plaintiff is a holder of BSC in Civil Engineering and MA in Transport Planning and Economics.

He was first employed in the Ministry of Works in 1971 until 1979 when he was transferred to Aerodromes Department. At that time he had gained promotions and he was at the rank of a Senior Superintended Engineer Roads. He worked with the Aerodromes until 1993. He had again gained promotion and he was Chief Aerodromes Engineer. In 1993 a job of General Manager was advertised by the Kenya Airports Authority. He applied and successfully attended the interview for the job. On 14<sup>th</sup> July 1993 he was given a letter of appointment (Pex.1).

The letter of offer read as follows:-

Mr. G.A. Okumu,

P.O. Box 19001

NAIROBI.

Dear Sir,

**OFFER OF APPOINTMENT**

I am pleased to inform you that your application for the post of General Manager (Engineering Services) in the Kenya Airports Authority has been successful. The salary attached to this post is in Grade XIV at the rate of K?8628x261 – 8889 x 291 – 10,053 per annum. Your incremental date will be determined by the date you report for duty.

The appointment is, however subject to medical fitness and you will be required to appear for a medical examination in a Government Hospital once you accept this appointment. You will be subject to all rules and regulations for officers of the Kenya Airports Authority which are in force or may be promulgated from time to time.

Once you accept this appointment you will be required to report for duty by the 1<sup>st</sup> July 1993. In case you find this reporting period too short for your necessary arrangements, please notify the undersigned at the earliest.

Yours faithfully,

B.A. Omuse

Managing Director

The Plaintiff on receipt of this letter of appointment wrote back on 21<sup>st</sup> June 1999 accepting the appointment. On 22<sup>nd</sup> June 1993 the Managing Director wrote the Plaintiff as follows:-

Mr. G.A. Okumu

P.O. Box 19901

NAIROBI.

Dear Sir,

**BRIEFING SESSION**

I believe by now you have received my letter Ref. No. KAA.A1/10/VOL.3 dated 14<sup>th</sup> June 1993 conveying this office's offer of employment to you as General Manager (Engineering Services) and in which I requested you to report to duty here by 1<sup>st</sup> July 1993.

A programme has been drawn to familiarize those of you who are new to this organization, to take place from 8 a.m. on 1<sup>st</sup> July 1993. Opportunity will be taken to introduce the new officers to various offices and facilities at the Headquarters and the Jomo Kenyatta International Airport. From 2 p.m. in the afternoon there will be a briefing session in the conference room on 5<sup>th</sup> Floor of this Headquarters' building .....

I hope that those of you who are new to the aviation world will find the briefing session useful in inducting you to the industry. Please make an effort to attend.

For the new officers please report to the undersigned personally for the necessary action. It is pertinent to reproduce the above letter verbatim in order to appreciate the new development.

On 23<sup>rd</sup> May 1994 barely less than a year, the Managing Director wrote the Plaintiff the following letter.

Mr. G.A. Okumu

General Manager

Engineering Services

Kenya Airports Authority

NAIROBI.

Dear Godfrey,

**RE: POSTINGS**

1. Engineer Godfrey A. Okumu
2. Engineer Edward Mwasi

It has been decided that the following postings be effect immediately.

1. Engineer Edward Mwasi (Chief Engineer (Roads Ministry of Public Works takes over as the General Manager, Engineering Services Kenya Airports Authority on secondment.
2. Engineer Godfrey A. Okumu General Manager, Kenya Airports Authority hands over the duties and responsibilities of General Manager Kenya Airports Authority and reports to the Permanent Secretary, Ministry of Public Works for further instructions.

You are accordingly released to report to the Permanent Secretary, Ministry of Works after proper handing over to your successor Engineer Edward Mwasi.

Yours sincerely

B.A. Omuse

Managing Director

CC

Mr. Wick Kimalat

Permanent Secretary

Provincial Administration and Internal Security

Office of the President

**NAIROBI.**

The Permanent Secretary

Ministry of Public Works

NAIROBI.

Curiously enough Engineer Edward Mwasi did not attend any interview like Engineer Okumu. He was just on secondment.

Strangely when Engineer Okumu reported back to the Ministry of Public Works, his case was referred to the Public Service Commission but he was rejected and there he was without a job and without salary. When the Plaintiff inquired about his salary from the Authority he received the following reply:

Eng. G.A. Okumu

P.O. Box 61231

**NAIROBI.**

**RE: SALARY FROM FEBRUARY 1995**

As a result of your transfer from the Authority to the Ministry of Works on 20<sup>th</sup> May 1994, the Authority is not in a position to pay you the salary you are claiming nor is the Authority in a position to deal with your retirement as requested in your letter.

Please sort out your case with the parent Ministry or Ministry of Works as you deem necessary.

Yours faithfully,

A.A. Nyamwanda

For: Managing Director

When he reported back to the Ministry he was rejected on the ground that when he was offered and accepted appointment as General Manager (engineering Services) in the Kenya Airports Authority with effect from 1<sup>st</sup> July 1993 he ceased to be a civil servant.

According to the Plaintiff, he ceased to be a civil servant when he successfully attended the interview with the Kenya Airports Authority and accepted the appointment and collected his pension for the period he was in the civil service. He had ceased to be a civil servant. That is the position. An officer who is on secondment does not apply for the job and does not attend any interview.

The authority was therefore not right to purport to deploy the Plaintiff back to the Civil Service. The procedure for the secondment was properly followed in respect of Engineer Edward Mwasi who replaced the Plaintiff at the Kenya Airports Authority. But whatever the position and be it as it may, where a person is employed and one of his terms of employment include a period of termination of that employment, the damages suffered are wages for the period during which his normal notice would have been correct.

To pay the Plaintiff his full salary and other emoluments until he attains the age of 55, as he claims would on proper analysis be tantamount to his being reinstated to his employment to which he is not entitled.

Either the employer or the employee was at liberty according to the terms and conditions of employment to terminate the contract of service in accordance to those terms and the terms were payment of three months salary in lieu of Notice. The Plaintiff is entitled to three months salary in lieu of notice in addition to other terminal dues i.e. leave due and unutilized, unpaid salary up to the last day of service with the authority and pension contributions as applicable upto and including the last day of duty. The above figures to be calculated by the parties and each party be at liberty to apply.

Accordingly there shall be judgment for the Plaintiff and against the defendant in terms as stated above. The Plaintiff is entitled to the costs and interest and it is so ordered.

Dated and delivered at Nairobi this 19<sup>th</sup> day of July 2007.

**J.L.A. OSIEMO**

**JUDGE**