



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO.658 OF 2008

AFRICA HAUL LIMITED **PLAINTIFF**

VERSUS

CMC AVIATION LIMITED **DEFENDANT**

RULING

1. On 11th December, 2012, the parties consented to comply with Order 11 of the Civil Procedure Rules within 60 days. Thereafter, the matter came up severally for pre-trials but they failed to agree on the issues. Consequently, each party filed its own issues whereby the parties called upon the Court to determine the same.
2. Having considered the pleadings, bundle of documents, witness statements and individual statement of issues filed by the respective parties these then are the issues for determination;
 - a) Whether the Plaintiff was the lawful owner of aircraft registration number 5Y-NYS?
 - b) Whether was there a valid maintenance agreement for the aircraft known as CESSNA 402B 5Y-NYS between the Plaintiff and the Defendant.
 - c) Who delivered aircraft registration 5Y -NYS to the Defendants' workshop and on what terms?
 - d) Did the Plaintiff offer to supply some spare parts required including fuel tanks and alternators in the repair of 5Y-NYS and were the same delivered to the Defendants? Were the spare parts merchantable and good for the purpose supplied for?
 - e) Whether the Plaintiff borrowed and supplied spare parts form 3rd parties?
 - f) Whether there were delays in the repairs and maintenance works of the aircraft 5Y – NYS aforesaid.
 - g) Whether the Defendant repaired the aircraft 5Y-NYS to acceptable condition or airworthiness as at 28th of August, 2007.
 - h) Was the aircraft 5Y-NYS ever certified by the Plaintiff's pilot as satisfactory?
 - i) Who caused the loss of the fuel tank and fuel selectors?

- j) Whether the Defendant is entitled to recover costs of the repair of the aircraft 5Y-NYS from the Plaintiff and if so how much?
- k) Whether the Plaintiff has suffered any loss as alleged and is the Defendant liable for any of those losses?
- l) Whether the Defendant is entitled to judgment upon its counter-claim.
- m) Whether the Plaintiff is entitled to the reliefs sought in the suit.
- n) Who is to bear the costs of the suit?

Dated and Signed at Bungoma this 14th day of February, 2014.

A. MABEYA

JUDGE

Dated and Delivered at Nairobi this4th day ofMarch..... 2014.

J. B. HAVELOCK

JUDGE