



**Musango v Kenya Airways Plc (Cause E705 of 2024)
[2025] KEELRC 3503 (KLR) (5 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3503 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E705 OF 2024
AK NZEI, J
DECEMBER 5, 2025**

BETWEEN

FREDRCK MAINGI MUSANGO CLAIMANT

AND

KENYA AIRWAYS PLC RESPONDENT

RULING

Background

1. The Claimant/Applicant sued the Respondent herein vide a Memorandum of Claim dated 20th August, 2024 seeking the following reliefs:-
 - a. A declaration that the Claimant's dismissal from employment was wrongful, unprocedural and unlawful ab initio and in violation of the Claimant's rights to fair labour practices.
 - b. An order directing the Respondent to reinstate the Claimant to his position together with all the benefits appurtenant thereto.
 - c. In the alternative to prayer (b), an order that the Respondent pays the Claimant his terminal dues as set out in paragraph 21 herein totalling Kshs.5,624,000.64/=.
 - d. That the Respondent do pay the Claimant such general damages as shall be assessed by the Court for violation of the Claimant's rights to fair labour practices, breach of contract and discrimination.
 - e. Cost of the claim.
 - f. Interest on the liquidated award at Court rates from the date of filing suit until payment in full.
 - g. Such other better relief as the Court may deem fit.



2. The Claimant pleaded, inter-alia:-
 - a. that he (the Claimant) had worked for the Respondent for 23 years, having been employed by the Respondent in the year 2001 as Employee No. 00Cxxx, and was in June 2023 appointed to the role of a Turnaround Coordinator WB-Passenger Ramp Services; and his monthly salary reviewed to Kshs.89,982.20/= and a house allowance of Kshs.41,073/=.
 - b. that the Claimant worked with due diligence and commitment, and was on 20th June, 2024 summarily dismissed from employment without notice or payment in lieu thereof.
 - c. that on 14/5/2024, the Respondent issued the Claimant with a notice to show cause, to which the Claimant reasonably responded on 22nd May, 2024; and denied the allegations levelled against him.
 - d. that the Claimant was invited for a disciplinary hearing on 7th June, 2024, aimed at cementing an already made decision to terminate the Claimant's employment.
 - e. that procedural requirements were flawed during the disciplinary hearing, that the Claimant was not afforded an opportunity to respond to the charges against him, and that the suspects whom he was allegedly involved with were not availed for cross-examination by the Claimant.
 - f. that the Claimant did not breach the Respondent's Buddy Pass Program Rules and Regulations which he was alleged to have breached, and that according to the Rules and Regulations, the consequence of contravention thereof is suspension, denial or cancellation of travel privileges, and not dismissal.
 - g. that the Claimant's summary dismissal did not qualify any of the grounds for summary dismissal; and that the Claimant was condemned unheard and without being subjected to a fair disciplinary process as by law provided.
 - h. that the Respondent's decision was against the Rules of Natural Justice, Fair Administration Actions Act, the Employment Act 2007 and the Constitution of Kenya.
3. The Claimant's foregoing claim herein was filed contemporaneously with an evenly dated interlocutory application.

The Notice of Motion dated 20th August, 2024

4. This is the application before me for determination; and in it the Claimant/Applicant seeks the following Orders:-
 - a. Spent.
 - b. That the Court be pleased to issue a temporary injunction restraining the Respondent from advertising, shortlisting, interviewing, recruiting or in any other manner filling a prospective applicant for the position of a Turnaround Coordinator WB-Passenger Ramp Services pending the hearing and determination of the application, and subsequently pending hearing and determination of the main suit.
 - c. That the Court be pleased to issue a mandatory injunction compelling the Respondent to reinstate the Applicant to his position of a Turnaround Coordinator WB-Passenger Ramp Services pending the hearing and determination of the instant application and subsequently pending the hearing and determination of the main suit.



- d. That costs of the application be in the cause, and
 - e. Any other and/or further orders that the Court may deem fit and just to grant.
5. The application sets out on its face the grounds on which it is brought, and is anchored on the Claimant's supporting affidavit sworn on 20th August, 2024; which re-states and amplifies the averments set out in the statement of claim, which I have preceded to set out in this Ruling. One of the documents annexed to the supporting affidavit is the Claimant's summary dismissal letter dated 20th June, 2024.
6. The reason for the Claimant's summary dismissal is set out in the said letter as follows:-
- “It was confirmed that you surrendered all your five (5) buddy pass entitlements in 2023 and 2024 respectively to another staff by the name Japheth – staff number 00Cxxx, where you registered persons not known to you for him in both years as your buddies on your I Safari/Pride account and thereby enabling them to access the company's rebated air tickets. It was also confirmed that Japheth send you Kshs.10,000/= on 18th January, 2024 as a reward for having surrendered your buddy slots to him, which contravenes the Buddy Pass rules which prohibit transfer or commercialization of the buddy rebated ticket privileges.
- In view thereof, I regret to notify you of the management's decision to summarily dismiss you from employment effective from 21st June, 2024 on account of gross misconduct. . . .”
7. The application is opposed by the Respondent vide a replying affidavit of Moses Ombokoh sworn on 11th March, 2025. It is deponed in the said replying affidavit, inter-alia:-
- a. that up and until his termination, the Claimant was an employee of the Respondent, which enabled him to enjoy the Buddy Pass Programme.
 - b. that Buddy Pass Programme is a privilege that allows employees of the Respondent to have rebated air tickets for themselves and five approved nominees of the employee. That the perks, terms and conditions of the programme are outlined in the Staff Rebated Ticket Rules under the Respondent's Human Resource Policy Manual (Version 7) and the Buddy Pass Programme Guidelines.
 - c. that the Claimant breached various clauses of the Respondent's Human Resource Policy Manual (Version 7), including Clause 10.3.2 which provides that “staff rebate travel privileges are of a personal nature and cannot be transferred”, Clause 10.3.3 which provides that “staff rebate concessions shall not be pooled or transferred to another person whether staff or dependant, or used for business undertakings”, and Clause 10.3.4 which provides that “staff rebates are not for sale”.
 - d. that the Claimant agreed to transfer 5 buddy slots to his then colleague, Japheth Katungo, an employee of the Respondent who was, upon investigation, found guilty of soliciting and registering 30 buddies under the buddy pass programme; and that on 18th January, 2024, the Claimant received Kshs.10,000/= payment on his mobile phone from the said Japheth Katungo as payment for giving the 5 buddy slots.
 - e. that transfer of the 5 slots happened on 19th January, 2024. That the Claimant thus irregularly transferred, commercialised and sold his privilege as an employee of the Respondent to enable the registration of unauthorised persons as his buddies in the programme.



- f. that the Claimant’s contract dated 25th April, 2007 provided for summary dismissal over any matter that brings the company to disrepute, and matters that constitute misconduct; and that by transferring Buddy Pass Slots and gaining financial benefit from the slots, the Claimant set himself for a summary dismissal.
 - g. that there was a valid and justified reason for the Respondent to summarily dismiss the Claimant.
 - h. that the Respondent has already filled the vacancy of Turnaround Coordinator WB-Passenger Ramp Services following the Claimant’s termination; the position being a crucial one in the management of the Respondent’s every day operations.
 - i. that Section 49 of the *Employment Act* does not provide for reinstatement as an interlocutory remedy, but as a remedy upon determination of a matter.
 - j. that the position previously held by the Claimant is one based on trust, which trust the Claimant broke when he violated the Respondent’s policies and gained financial benefits from trading in the privilege of buddy slots.
8. Both parties filed written submissions on the application pursuant to the Court’s directions in that regard.
 9. Having considered the application, the affidavit sworn in response thereto and all the documents filed herein, issues that fall for determination, in my view, are as follows:-
 - a. Whether the Respondent should be restrained from advertising and recruiting for the position of Turnaround Coordinator WB-Passenger Ramp Services pending hearing and determination of the suit herein.
 - b. Whether a mandatory injunction should issue compelling the Respondent to reinstate the Claimant to his position pending hearing and determination of the suit herein.
 10. On the first issue, it has been deponed on behalf of the Respondent that the position left vacant by the Claimant upon termination of employment has already been filled as it is a crucial one in the management of the Respondent’s everyday operations. The Claimant/Applicant has not controverted this deposition. Court orders cannot be issued in vain.
 11. Further the Court will be reluctant to issue Orders whose effect will be to injunct an employer (the Respondent) from undertaking key human resource functions of recruitment and selection of necessary staff, appointment and promotion; unless this is extremely necessary. The general principle is that the Court will not, without good reason, interfere with an employer’s right and entitlement to undertake those functions.
 12. The Court stated as follows in *Olive Wahura Thiong’o – vs – World Fund for Nature (Regional Office for Africa)* [2016] eKLR:-
 - “ 16. In *Wilson K.C. Shollei – vs – Independent Electoral Boundaries Commission* [2014] eKLR, Onyango, J held that stopping the recruitment of a replacement for the Petitioner would be to interfere with the discharge of the mandate of the IEBC. I think an order barring an employer from carrying out a management mandate such as recruitment should be given after much reflection and with circumspection.”



13. I will not belabour the point, the prayer to restrain the Respondent from advertising, shortlisting, interviewing and recruiting for the position of Turnaround Coordinator WB-Passenger Ramp Services pending hearing and determination of the suit cannot issue, in view of the circumstances of the case herein.
14. On the second issue, the Claimant seeks a mandatory injunction compelling the Respondent to reinstate him to the position of Turnaround Coordinator WB-Passenger Ramp Services, the position that he held before termination of his employment, and the same position that the Respondent told the Court has since been filled. According to Kerr on Injunction (6th Edition) P. 40, a Court's jurisdiction to grant a mandatory injunction ought to be exercised with caution, and is strictly confined to cases where the remedy by damages is inadequate for the purposes of justice, and the restoring of things to their former condition is the only remedy which will meet the requirements of the case. (Colls – vs – Home and Colonial Stores [1904] A.C. 193).
15. A mandatory injunction is not, as a rule, granted before hearing, unless the case is clear and free from doubt, and the act required to be done involves no serious outlay or considerable alteration in the existing state of things.
16. An order of mandatory injunction will not issue where there is a dispute and/or question as to whether the defendant's act is lawful.
17. In the present case, the Claimant's employment is already terminated on account of alleged misconduct. The Claimant disputes the validity of the allegations on the basis of which his employment was terminated. The Claimant has further pleaded that pursuant to the Respondent's Human Resource Policy Manual, the charges levelled against him could only lead to suspension or cancellation of his travel privileges. The legality or otherwise of the Respondent's act of terminating the Claimant's employment is shrouded in dispute, and this Court will have to take evidence from the parties and/or their witnesses before it can determine the legality or otherwise of the Respondent's act of terminating the Claimant's employment, and whether or not the Claimant ought to be reinstated to his employment. Reinstatement of an employee is a substantive remedy.
18. The Court of Appeal stated as follows in Kenya Tea Growers Association & Unilever Tea Limited – vs Kenya Plantation & Agricultural Workers Union [2018] eKLR:-

“ We agree entirely with the statement by Rika, J in Alfred Nyungu Kimungii – vs – Bomas of Kenya [2013] eKLR that “ordinarily, reinstatement of an employee is a substantive remedy, not a temporary relief. The law does not contemplate that reinstatement issues (sic) is a provisional measure. It is a remedy that should normally be granted upon the full hearing of the employer and the employee.”
19. It was stated as follows in Anthony Omari Ongera – vs – Teachers Service Commission [2017] eKLR:-

“ 17. The rationale is that the order of reinstatement is final in nature and should only issue in exceptional cases which warrant specific performance. In the case of Ahmed Aden Hire – vs – Natif Jama and County Government of Garissa, Petition No. 121 of 2016, the Court in analysing the provisions of Section 49 of the *Employment Act* and Rule 17(10) of the Court's rules with regard to the Orders of reinstatement held that;

The rationale [of not reinstating at the interlocutory stage] is that the order of reinstatement is a specific performance order with finality. To issue such



an order in the interim is essentially to deny the other party a chance to their defence unless there are exceptional circumstances that the Court is appraised of to warrant the grant of the same in the interim . . .

The *Employment Act* 2007 places the burden of justifying termination decision, and showing the fairness of procedure, on the employer. In rare cases where interim reinstatement may be granted, the termination must be shown to have been patently unfair, that even the ultimate remedies of compensation or reinstatement with back wages, would not have addressed the injury suffered by the employee in the pendency of the full hearing. Certain forms of termination grounds, the kind that result in automatically unfair termination such as pregnancy, race, gender or religious discrimination, may warrant the rare exercise of the Court’s discretion in issue of interim reinstatement. This is more so particularly under the new liberal Constitution of Kenya, which frees the hands of the Court in administration of Justice. [Emphasis added].”

20. According to Kerr on Injunctions (6th Edition), the Court will not interfere by way of a mandatory injunction without taking into consideration the comparable convenience which granting or withholding the injunction would cause to the parties. Where the injury done is capable of being fully and abundantly compensated by a pecuniary sum, while the inconvenience to the other party from granting it would be serious, the Court will not interpose by way of a mandatory injunction, but will award damages by way of compensation for the injury. But where the injury is of a serious character that restoring things to the former condition is the only remedy which will meet the requirements of the case, or where the defendant has been guilty of sharp practice, or unfair conduct, has shown desire to steal a march upon the plaintiff or to evade jurisdiction of the Court, the injunction will issue; notwithstanding the amount of inconvenience to the other party.
21. In the present case, the Claimant/Applicant has not demonstrated that he has suffered or stands to suffer an injury that cannot be remedied by an award of damages or compensation upon trial. Indeed, the Claimant/Applicant has prayed for payment of damages/compensation upon trial, as is evident in the reliefs sought in the suit herein, which I preceded to set out at paragraph 1 of this Ruling. The Notice of Motion dated 20th August, 2024 is devoid of merit, and is hereby dismissed. Costs of the application shall be in the suit.
22. The suit herein shall be fast-tracked, and shall be set down for hearing on priority basis.
23. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF DECEMBER 2025

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:



Mr. Wakiaga for the Claimant

Mr. Wanjohi for the Respondent

