



- c. An order of Certiorari be and is hereby issued to quash the Respondent's letter purportedly dated 23<sup>rd</sup> October, 2024 and delivered to the Petitioner on 27<sup>th</sup> October, 2025, purporting that the Respondent had opted not to renew the Petitioner's employment contract that expires on 2<sup>nd</sup> November, 2025.
- d. A Mandatory injunction be and is hereby issued to compel the Respondent to forthwith renew the Petitioner's contract with effect from 3<sup>rd</sup> November, 2025, for a term of 5 years to any appropriate position, with prevailing terms and conditions of his rightful in accordance with Section C.12 of the Respondent's HR Manual which provides for a contract of 5 years for a subsequent contract thereof.
- e. Order of mandamus to compel the Respondent, Kenya Civil Aviation Authority to issue the Petitioner with a valid contract to continue executing his duties in Strategy and Knowledge Management (DSK).
- f. Order of certiorari be granted to quash the redeployment decision that was predicated with malice and illegalities and to reinstate the Petitioner to the position of Director East African School of Aviation (DEASA) should the above position not be feasible thereof.
- g. In the alternative to above, an order of mandamus be granted to compel the Authority to deploy the Petitioner as a director to one of the newly created directorates consistent with his professional standing, experience and contract level.

- h. A Mandatory injunction be and is hereby issued to compel the Respondent to forthwith pay the Petitioner dues and benefits; 14 unutilized leave days; unpaid allowances and gratuity as per clause 23 of the contract the expires on 2<sup>nd</sup> November, 2025.*
- i. An order for compensation of the Petitioner's equivalent to his 12 months' pay thereof.*
- j. And other or further orders that this Honorable Court may deem fit to grant hereof.*
- k. The Respondent to pay the petitioner the costs of this Petition.*

### **Petitioner's Case**

- 2 The Petitioner avers that the Respondent recruited him as Director, East African School of Aviation (DEASA) on a three-year contract effective from 1<sup>st</sup> November 2014, following competitive interviews held on 14<sup>th</sup> September 2014.
- 3 He avers that his contract was subsequently renewed on 15<sup>th</sup> November 2017 for a further three years and again on 2<sup>nd</sup> November 2020 for four years following consistently favourable performance appraisals.
- 4 The Petitioner avers that upon the appointment of Mr. Emile Arao as Director General on 22<sup>nd</sup> April 2022, he was subjected to sustained hostility, victimisation, and discriminatory administrative actions. He states that

shortly after the Director General assumed office, he was accused of having instigated litigation challenging the Director General's appointment and the Director General explicitly threatened to remove the Petitioner from the Authority. From that moment, he has subjected the petitioner to sustained acts of hostility, discrimination, and administrative victimization.

5 The Petitioner avers that on 14<sup>th</sup> June 2022, the Director General removed his name from the Respondent's delegation to the ICAO Global Implementation Support Symposium in Istanbul, despite having been invited as a panel speaker and scheduled to receive international awards. The Petitioner states that this caused personal humiliation and institutional embarrassment because he had already confirmed participation.

6 He avers that despite raising the issue with the Respondent's Director General on 2<sup>nd</sup> June 2022 and 28<sup>th</sup> July 2022, he was denied payment of his performance bonus for several months after other staff had been paid.

7 The Petitioner avers that on 19<sup>th</sup> July 2022, he received a show cause letter on allegations he terms flimsy and unsubstantiated. He responded on 25<sup>th</sup> July 2022, but no action was taken for over ten (10) months.

8 Thereafter, on 22<sup>nd</sup> May 2023, the Director General unlawfully interdicted him without adherence to the

Respondent's Human Resource Manual. The interdiction remained unresolved beyond the prescribed three (3) months, after which it was lifted and the Petitioner was instead placed on compulsory leave for 30 days, contrary to the HR Manual which limits such leave to four days.

- 9 The Petitioner avers that in August 2022, the Respondent's Director General refused to approve his nomination to attend the 41<sup>st</sup> ICAO Assembly, and instead approved his junior officer to attend, despite the assembly being a high-level engagement.
- 10 The Petitioner further avers that on 19<sup>th</sup> October 2022, following a senior management meeting, the Director General acted aggressively towards him during a telephone call on an agenda matter concerning project concept notes and abruptly terminated it. On 20<sup>th</sup> October 2022, during a regional event in Mombasa, the Director General publicly declined to shake his hand in the presence of staff, a Board member, and international delegates, conduct which the Petitioner describes as humiliating and demeaning.
- 11 It is the Petitioner's case that on 28<sup>th</sup> April 2023, during a senior management meeting, the Director General was overly hostile towards him and an external consultant presenting the recast EASA Strategic Plan. Although a subsequent Board investigation engineered by the Director General did not result in disciplinary findings

against the Petitioner, it was used as a basis to irregularly transfer him from his substantive position as Director EASA to a newly created position of Director, Strategy and Knowledge Management (DSK) with effect from 1<sup>st</sup> July 2023, without consultation or his consent.

- 12 The Petitioner avers that although the Directorate of Strategy and Knowledge Management was approved under the SCAC 2022 organisational structure, consisting of five departments, the Director General deliberately dismantled it by removing key functions, refusing to transfer approved departments, and denying it resources. The Petitioner states that he was repeatedly moved between offices and was not provided with facilities commensurate with his rank.
- 13 The Petitioner avers that following a ruling in favour of the Public Service Commission (PSC) validating the SCAC structures, the Director General unilaterally reverted the Respondent from the SCAC 2022 structure to the SCAC 2011 structure, which did not contain the position of Director, Strategy and Knowledge Management. The Petitioner contends that this reversion was calculated to render his position non-existent and amounted to constructive dismissal.
- 14 During subsequent restructuring, although the Board-approved structure maintained his Directorate as a Level 2 function headed by Director, the PSC-approved version

downgraded it to Level 3, subordinate to a Deputy Director. The Board Chairman later admonished Mr. Arao and the PSC team for holding a private meeting in Karen, reportedly funded by Mr Arao, where this alteration was orchestrated thereof.

- 15 The Petitioner avers that on 22<sup>nd</sup> April 2025, the Director General reconstituted the Executive Management Committee (EXCOM) without consulting the Board and excluded the Petitioner. The Petitioner formally protested this exclusion on 23<sup>rd</sup> April 2025 and further protested his exclusion from the Human Capital Management Advisory Committee (HCMAC) on 2<sup>nd</sup> May 2025. No response was received to either protest.
- 16 On 6<sup>th</sup> May 2025, a paper presented to the 96<sup>th</sup> Board Meeting deliberately omitted the Petitioner from transition arrangements to the new organisational structure, contrary to PSC guidelines which required existing staff to be transitioned or accordingly or retooled through training
- 17 The Petitioner avers that on 1<sup>st</sup> July 2023, without consultation or his consent, he was irregularly transferred from his substantive position as Director EASA to the newly created position of Director, Strategy and Knowledge Management (DSK).
- 18 He avers that instead of being issued a new contract for his new role, his existing contract was merely varied to

allow him to serve the remainder of its term in the new role. A substantive Director EASA was later appointed in February 2024, resulting in two officers holding contracts linked to the same directorship; clear illegality that appears designed to facilitate constructive dismissal.

- 19 Pursuant to the renewal clause in his contract, the Petitioner applied for renewal on 19<sup>th</sup> July 2024. However, instead of processing the renewal, the Respondent offered him a one-year appointment to the position of Coordinator, Strategy and Knowledge Management, a position not provided for in the approved organisational structure. The Petitioner objected but avers that he accepted the offer under duress after being denied salary in November 2024 and facing the risk of missing December 2024 salary, and considering his correspondences were unanswered.
- 20 On 30<sup>th</sup> July 2025, the Petitioner applied for renewal or extension of the one-year contract. The Director General declined to forward the application to the Board and returned it with a handwritten note indicating that the position had been declared redundant.
- 21 The Petitioner avers that being unaware of any redundancy process initiated or approved by the Board, he appealed directly to the Board Chairman, and the matter was scheduled for consideration at a Board meeting on 6<sup>th</sup> November 2025 after the expiry of his contract on 2<sup>nd</sup> November 2025.

- 22 However, by a letter dated 23<sup>rd</sup> October 2024, and served on 27<sup>th</sup> October 2025, the Director General notified the Petitioner that his contract would not be renewed upon expiry on 2<sup>nd</sup> November 2025 and directed him to hand over his duties by 31<sup>st</sup> October 2025. The Director General's action is ultra vires because it purports to usurp the powers and mandate of the Respondent's Board of Directors to renew contracts of Level 2 Directors such as the Petitioner.
- 23 The Petitioner further avers that despite the purported non-renewal, the Respondent continued to assign him critical duties up to 31<sup>st</sup> October 2025, thereby creating an implied contract and reinforcing his legitimate expectation of renewal.
- 24 The Petitioner avers that he was granted an organization backed 10-year mortgage of Kshs. 13 million under the KCB/KCAA loan scheme from 2021 to 2031, which is being recovered directly from his salary. He states that he will be unable to afford the outstanding balance of Kshs. 6,478,884, when out of his current employment as he had dedicated all his time to the Respondent and has no other source of income.
- 25 It is the Petitioner's case that the Respondent's action of guaranteeing this facility created a legitimate expectation

of contract renewal until 2031 when the facility is fully repaid thereof.

- 26 The Petitioner avers that the Respondent did not inform him of its intention not to renew his contract within a reasonable period prior to expiry though he gave the Respondent sufficient notice of his willingness to renew the contract. The purported 4 days' notice by the Respondent's Director General was unreasonable because it was too short.
- 27 The Petitioner contends that the Respondent's actions were *ultra vires*, irrational, discriminatory, procedurally unfair, and unconstitutional, and violated his rights under Articles 27, 41 and 47 of the Constitution, the Employment Act, the Fair Administrative Action Act, Mwongozo, and the Respondent's Human Resource Manual. He maintains that he has suffered financial loss, reputational harm, and psychological distress.
- 28 It is the Petitioner's case that the Respondent has infringed his right under Article 41 of the Constitution, which provides that every employee has a right to fair labour practices and fair remuneration. The Respondent continued assigned of duties to the Petitioner after expiry of the contract amounted to renewal of the contract and created an implied contract of employment and legitimate expectation by the Petitioner.

### **Respondent's Case**

- 29 In opposition, the Respondent filed a replying affidavit dated 17<sup>th</sup> November 2025, sworn by its Director General, Emile N. Arao.
- 30 The Respondent contends that the petition is misconceived, devoid of merit, and does not disclose any violation of the Constitution, statute, or the Petitioner's contractual rights.
- 31 The Respondent confirms that the Petitioner was employed on 15<sup>th</sup> November 2014 as Director, East African School of Aviation (DEASA) on a fixed-term contract following a competitive recruitment process. The contract was renewed on 15<sup>th</sup> November 2017 and again on 2<sup>nd</sup> November 2020 for a further four-year term.
- 32 The Respondent avers that during the tenure of his 3<sup>rd</sup> contract, the Petitioner was re-deployed as the Director, Strategy and Knowledge Management with effect from 1<sup>st</sup> July, 2023. The Respondent then renewed the Petitioner's contract for one year from 3<sup>rd</sup> November 2024 until 2<sup>nd</sup> November 2025.
- 33 The Respondent avers that each contract expressly stipulated its duration, renewal terms, and expiry date, and that renewal was discretionary and subject to organizational requirements.
- 34 The Respondent states that the Petitioner's last substantive contract was due to lapse on 2<sup>nd</sup> November

2025 and that there was no automatic right to renewal. Thus, the contract expired by effluxion of time and the issue of constructive dismissal does not arise as purported.

35 The Respondent avers that its Director General acted lawfully, fairly, reasonably and procedurally in handling the Petitioner's contract of employment. The letter dated 23<sup>rd</sup> October, 2025 was issued to the Petitioner as part of his administrative responsibilities to ensure smooth handing over of his responsibilities upon the expiry of his contract, a logical sequence given that his contract was coming to an end.

36 The Respondent confirms that Mr. Emile Arao assumed office as Director General on 22<sup>nd</sup> April 2022, following the lifting of conservatory orders that had temporarily suspended his appointment. It denies allegations that the Director General acted with malice or personal animosity towards the Petitioner, and maintains that all subsequent decisions were institutional and undertaken in the best interests of the Authority.

37 The Respondent avers that the Petitioner's decision to appeal to the Board of Directors for contract renewal/extension was exercised within his discretion and as at 2<sup>nd</sup> November, 2025 when his contract expired. To date the Board of Directors has not communicated on the Petitioner's contract.

- 38 The Respondent avers that the Petitioner was issued with a show cause letter dated 19<sup>th</sup> July 2022, to which he responded on 25<sup>th</sup> July 2022. The matter was escalated to management and the Board of Directors in line with internal procedures. It further confirms that the Petitioner was interdicted on 22<sup>nd</sup> May 2023, pending investigations, and that the matter was subsequently placed before the Board. The interdiction was later lifted after the Board did not find sufficient grounds to sustain disciplinary action.
- 39 The Respondent avers that in the intervening period, it was undertaking review of its human resource instruments of 2011 and, had received an approval of its revised human resource instruments from the State Corporations Advisory Committee (SCAC) in 2022.
- 40 It avers that these instruments provided for the post of Director, Strategy and Knowledge Management that the Petitioner was re-deployed to in July 2023.
- 41 The Respondent avers that vide PSC advisory dated 8<sup>th</sup> August 2023, it was advised that PSC had the sole mandate of approving human resource instruments for state corporations. Consequently, the Respondent's human resource instruments as approved by SCAC were presented to PSC for review and further guidance.
- 42 The Respondent avers that this meant that the Respondent had to revert to its 2011 human resource instruments for use as it awaited the PSC's review and

guidance. Notably, the 2011 instruments did not provide for the position of Director, Strategy and Knowledge Management that the Petitioner held.

43 The Respondent avers that in order not to disadvantage staff, the Respondent made the decision to maintain the *status quo* on the changes that had already been made to run their course and the Petitioner was among those affected. The *status quo* allowed the Petitioner to retain his role of Director Strategy and Knowledge Management during the contract period.

44 The Respondent avers that as it awaited the PSC's consideration and approval of the Human resource instruments, it noted that the Petitioner's contract of employment was due to expire on 2<sup>nd</sup> November 2024. The Petitioner had also applied for an extension. It thus resolved to offer a one year fixed term contract from 3<sup>rd</sup> November 2024 to 2<sup>nd</sup> November 2025 to the Petitioner to coordinate the Respondent's Strategy & Knowledge Management matters.

45 It is the Respondent's case that at all times it ensured that the Petitioner was not adversely affected or disadvantaged by the developments and thus retained the Petitioner as a Director, Job Grade 2.

46 The Respondent states that vide letter dated 9<sup>th</sup> January 2025, the PSC approved its human resource instruments. Unfortunately, the position of Director, Strategy &

Knowledge Management that the Petitioner held was not approved.

- 47 The Respondent avers that it raised a number of issues with its parent Ministry and the PSC over inadequacies of the approved organization structure and human resource instruments. However, PSC and the Ministry guided it to strictly implement the structure as approved and, raise any challenges later for review.
- 48 Based on this guidance, the Respondent commenced the process of implementing the PSC approved structure by developing a road map. The Respondent also began transitioning staff to the new organization structure as guided by the Board of Directors and this process is ongoing.
- 49 It is the Respondent's case that considering the position the Petitioner held was not provided for in the PSC approved organization structure, the Respondent did not include him in the transition process. In the meantime, his contract of employment was due to expire on 2<sup>nd</sup> November 2025 and as a matter of good practice, the Director General wrote to him vide letter dated 23<sup>rd</sup> October 2025 advising him on the handover procedures for ease of transition.
- 50 The Respondent further avers that it is within the Director General's responsibility as the Respondent's accounting officer to coordinate administrative roles, including

assigning responsibilities to officers. The decision to approve or not to approve nomination of officers is based on many considerations including exigencies of duty.

- 51 The Respondent avers that the Petitioner had not submitted his self-appraisal report for the 2020/21 financial year to the Manager, Human Resource & Administration as required. As a result, he was initially left out of the list of officers recommended for bonus payment, but the Director General approved his bonus payment upon the Petitioner presenting the duly filled appraisal form.
- 52 The Respondent avers that the Petitioner was taken through a disciplinary process that led to issuance of a warning letter and a re-deployment, but he did not appeal against the decision.
- 53 The Respondent avers that like any other Director, the Petitioner was allocated adequate working space, facilitated with the necessary working tools and budget and was supported by an administrative officer. Thus, it is not true that the Petitioner was not provided with office facilities commensurate to his rank.
- 54 The Respondent states that the Board had approved horizontal transition of staff to the new positions. Considering that there was no position of Director, Strategy and Knowledge Management, the Petitioner could not be transitioned horizontally.

- 55 It is the Respondent's case that it acted in good faith, fairly, lawfully, rationally and in a just manner as it did all the best to safeguard the Petitioner's rights until the end of his contract.
- 56 The Respondent avers that the grant of a mortgage to the Petitioner was done under the staff mortgage scheme, a scheme with rules that are independent of the Petitioner's employment contract.
- 57 The Petitioner contends that a staff mortgage cannot create a legitimate expectation since a mortgage is a financial product that remains as a civil debt and does not entitle an employee to continued employment. Conversely, employment decisions are based on other parameters, including performance and operational needs. Accordingly, having been under a fixed term contract, the approval of mortgage did not grant the Petitioner a right to the renewal of his contract.
- 58 The Respondent avers that the Petitioner ceased being its employee of the Respondent with effect from 2<sup>nd</sup> November 2025 and has not been assigned any duties. The duties undertaken by the Petitioner between 28<sup>th</sup> and 31<sup>st</sup> October 2025 in Naivasha were within the contract period.
- 59 The Respondent avers that the applicable manual then (before the pronouncement by PSC) was the KCAA Human

Resource Policy & Procedures Manual, 2022 that allowed issuance of one-year contracts. The 2011 Manual that the Respondent reverted to also allowed for one-year contracts.

60 The Respondent avers that the Petition herein does not raise any constitutional issues and the mere citation of constitutional provisions in Part D, E & F of the Petition does not elevate the petition to a matter of constitutional interpretation.

61 It is the Respondent's case that an action premised on Article 27 must demonstrate that the Petitioner was treated differently from other persons who were in similar positions and this has not been substantiated by the Petitioner.

62 The Respondent avers that the subject matter of the Petition is the Petitioner's fixed term contract of employment that has since expired by effluxion of time. Besides that, the position that the Petitioner held does not exist in the PSC approved organization structure that the Respondent is currently implementing. Accordingly, this court should uphold the principle of effluxion of time and restrain from enforcing employment terms on parties.

### **Petitioner's Submissions**

63 The Petitioner submitted that the Respondent did not renew the Petitioner's contract, instead he was offered

employment of one year for a position that was non-existent. No contract was signed at all. The Petitioner duly protested the offer of one-year contract for apposition that was not in existent and only signed the offer letter under duress when he missed November 2024 salary and was at risk of missing the December 2024 salary. The Employment Act was not applied equitably to him as there are instances of discrimination and unfair treatment. He contends that the purported redeployment is not one of the sanctions provided for in the KCAA's HR Manual.

64 The Petitioner submitted that he was issued a show cause letter and after 10 months, which is in violation of the prescribed 3 months in the Respondent's HR Manual, he was interdicted without an opportunity to be heard. The interdiction letter was later withdrawn and he was sent on 30 days compulsory leave instead of four days as provided for in the HR manual to allow for investigation. Additionally, after the investigation by a Committee of the Board, he was not charged before the Board for misconduct, instead he was issued with a warning letter which also deployed me to head a new Directorate of Strategy and Knowledge Management.

65 It is the Petitioner's submission that the investigating committee morphed into police, the prosecutor, judge and the executioner denying me fair hearing. If indeed he had a case of misconduct to answer, he should have been put on defense after investigations.

66 The Petitioner submitted that he was not charged with misconduct after investigation, therefore, he chose to work in peace since he was competent to serve in the new roles he was deployed to. This should not be taken to mean that he accepted the injustices that were meted on me. Further, there was no disciplinary process to challenge because investigations conducted by the Board did not lead to a disciplinary process as prescribed in the Respondent's HR manual.

67 It is the Petitioner's submission that while serving the remainder of my DEASA contract a new Director for EASA was appointed on February 2024 such that both of us served the same contract. This act was illegal and was intended to lead to his constructive dismissal because it meant that he could not apply for renewal of the expert job that he had been employed to do. Further, his supervisor knew that he would revert the Authority to the 2011 structure that did not provide for the position of Director Strategy and Knowledge Management which he had illegally redeployed him to leading to his constructive dismissal.

68 The Petitioner submitted that as at 3<sup>rd</sup> November 2024 the HR instruments that were in effect at KCAA, were those of SCAC 2022 and SCAC 2011 and as such he ought to have been renewed for his contract under those 2022 instruments which provided the terms of employment for level 2 directors as five years. However, because the

Respondent's Director General had already weaponized the Respondents system to render him jobless through constructive dismissal by illegally reverting the Authority to 2011 structure, he was illegally offered a one-year employment term for a position of a Coordinator Strategy and Knowledge Management that was neither in the KCAA 2011 structure nor in KCAA 2022 structure.

69 The Petitioner submitted that PSC guided that in implementing the structure there should be fairness and even where individuals do not possess the required qualifications they should be retrained and reassigned. The PSC and the Ministry of Roads and Transport did not guide that he should be rendered jobless.

70 The Petitioner submitted that Respondent has a code of office requirements for every cadre of staff, he was not accorded the office requirements for a Director.

71 The Petitioner submitted that the PSC HR instruments approval process requires that after submission of the instruments to the respective public agency, the said agency is given time to appeal. Even though the Management and Board raised issues regarding the Respondent's HR instruments including downgrading of the Directorate of Strategy and Knowledge Management, these issues were not processed. He pointed out that other agencies within the Ministry of Roads and Transport and indeed across public agencies in Kenya, Strategy, Risk Management, Innovation and Research functions for

agencies of the Respondent's calibre are in level 2 because they execute two of the seven *Mwongozo* Board functions, that is, Strategy and Risk Management. In the Respondent's case, the Directorate was downgraded through machinations of his supervisor to render me jobless through constructive dismissal for malicious reasons

- 72 The Petitioner submitted that the Respondent was obligated to communicate the intention of non-renewal of the contract at least three (3) months to its expiry. Failure to do so and the previous practice of renewal of previous contracts created a legitimate expectation in his favour.
- 73 The Petitioner submitted that he yet to attain 60 years, which is the retirement age for public servants. As held by this court, the Respondent should not treat public offices and opportunities like private entities. They should have renewed the Petitioner's contract because he had no disciplinary issues and his appraisal was excellent; he is in good health, ready and willing to continue serving the Government of Kenya.
- 74 The Petitioner submitted that the Respondent had no cogent, valid and or reasonable ground to deny her the renewal of his contract. He is well trained, qualified, diligent, hardworking, honest and he wishes to continue in the service of the Respondent and the public.

75 It is the Petitioner's submission that despite the discretionary power to renew, the circumstances of this case should evolve a legitimate expectation that the petitioner's contract is renewed. The Respondent had secured a long-term mortgage for the Petitioner.

### **Respondent's Submissions**

76 The Respondent submitted on four issue; whether the Respondent was obligated to renew the Petitioner's fixed term contract; whether the Respondent's decision not to renew the Petitioner's contract amounted to constructive dismissal; whether the mortgage granted to the Petitioner under the Respondent's Staff Mortgage Scheme created a legitimate expectation of continued employment; and whether the Respondent violated the Petitioners rights under Article 27, 41 and 47 of the Constitution.

77 On the first issue, the Respondent submitted that it is not in dispute that the Petitioner's employment contract was a fixed term contract that expired on 2<sup>nd</sup> November 2025. Being a fixed term contract, it did not carry a right of renewal and any renewal would be done at the discretion of the Respondent.

78 It placed reliance in ***Transparency International - Kenya v Omondi (Civil Appeal 81 of 2018) [2023] KECA 174 (KLR)***, where the Court of Appeal stated: *"There is no dispute that the respondent was employed by*

*the appellant on a two- year fixed term contract from October 1, 2010 to September 30, 2012. It is trite law that a fixed-term contract of employment is a lawful mode of employment with a start and end date...*

*We dare say that an automatically renewable fixed-term contract is a contradiction in terms, as it would subject the parties to an indeterminate employment contract. The respondent was under a fixed-term contract with a definite commencement date and termination date. There was no ambiguity created to create an expectation of contract renewal by the appellant's issuance of a fixed-term contract. The contract terminated automatically when the termination date arrived. Whether a contract with a renewal clause will be extended or not, is an issue that is at the discretion of the employer and it cannot create a legal right under the doctrine of legitimate expectation"*

79 The Respondent submitted that the general principle is that the court shall not interfere in the employer's entitlement to perform internal human resources functions such as recruitment, appointment, promotion, transfer disciplinary control, redundancy or any other human resource function and, interference by the court shall be exercised very sparingly.

80 On the second issue, the Respondent submitted that the question of dismissal in any form does not arise in this matter, considering that the employer-employee

relationship was based on fixed term contract that has since expired. None of the parties terminated the contract of employment, but the same expired by effluxion of time.

- 81 The Respondent submitted that constructive dismissal takes place where repudiatory breach of contract occurs through conduct of the employer and the burden of proof lies on the employee. Thus, it requires the employee to terminate his/her employment out of frustrations caused by the employer.
- 82 The Respondent placed reliance on the definition of constructive dismissal as expounded in **Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd [2013] KEELRC 920 (KLR)** as follows: *“Constructive dismissal has been defined in Pretoria Society for the Care of the Retarded v Loots [1997] 6 BLLR 721 as a situation in the workplace, which has been created by the employer, and which renders the continuation of the employment relationship intolerable for the employee - to such an extent that the employee has no other option available but to resign. Constructive dismissal has its roots in the law of contract under the doctrine of ‘discharge by breach’. Under this doctrine, an employee was entitled to treat himself as discharged from further performance of his obligations where the employers conduct was a significant breach going to the root of the contract. The termination would be due to the employer’s conduct. Such*

*conduct may include unilateral reduction in pay or failure to pay the employee.”*

- 83 It is the Respondent’s submission that the question of constructive dismissal did not present itself in this case since the Respondent’s conduct was not the cause of the Petitioner’s separation, but rather expiry of contract.
- 84 On the third issue, the Respondent submitted that the mortgage granted to the Petitioner under the Staff Mortgage Scheme did not, in any manner, create a legitimate expectation of continued employment. The Petitioner’s employment relationship with the Respondent was governed solely by the terms of the fixed-term contract, which lapsed on 2<sup>nd</sup> November 2025.
- 85 The Respondent submitted that the Staff Mortgage Scheme is a distinct employee benefit governed by its own rules and eligibility conditions. While the Petitioner qualified for the facility by virtue of being an employee at the time of application, the existence of the mortgage cannot override or alter the express terms of the employment contract or convert a fixed-term contract into permanent or renewable employment.
- 86 The Respondent cited ***Judicial Service Commission v Mayieka & 22 others (Civil Appeal 58 of 2019) [2025] KECA 1220 (KLR) (11 July 2025) (Judgment)***, wherein the court defined legitimate expectation as follows: *“The concept of legitimate expectation is now well*

settled in our jurisdiction. In, **Ngetich & 3 others v County Service Board Bomet & another [2022] KECA 575 (KLR)** this Court, constituted differently enunciated itself as follows: “The term “legitimate expectation” is a technical term of profound doctrinal basis. It is not the expression of wishful thinking or desire capable of translation into a legal right. Arvind Thapliyal enunciates the doctrine of legitimate expectation in 2006 (8) SCJ p.721 thus: “What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. The term 'established practice' refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established.”

- 87 The Respondent submitted that having been granted a mortgage under staff mortgage scheme, the Petitioner continued to service the mortgage under the conditions of the rules thereof, but did not carry with it an expectation

of renewal of contract. The staff mortgage is a benefit, not a promise or a guarantee of employment. Assuming the Petitioner had exercised his right to terminate the contract of employment before the expiry date, he would still be subject to the rules of the mortgage scheme to fully service the mortgage.

- 88 On the fourth issue, the Respondent submitted that the Supreme Court in ***Gichuru v Package Insurance Brokers Ltd (Petition 36 of 2019) [2021] KESC 12 (KLR)***, held that: *“Discrimination could be said to have occurred where a person was treated differently from other persons who were in similar positions on the basis of one of the prohibited grounds like race, sex disability or due to unfair practice and without any objective and reasonable justification.”*
- 89 The Respondent submitted that the Petitioner has not demonstrated how he has been treated differently from other Respondent’s officers since the transition of staff was based on the PSC approved structure and pursuant to the firm instructions by the Respondent’s parent Ministry to implement the new organization structure as approved.
- 90 The Respondent submitted that it is not only the Petitioner’s position that was affected in the approved organization structure. As per the extracts of the 2011 structure and the 2025 new structure, other positions were affected that included the position of Director Corporate

Services, which was scrapped in the new approved structure.

- 91 The Respondent submitted that the alleged discrimination on account of non-renewal of contract cannot be upheld since as hereinabove submitted, the Petitioner served in a fixed term contract that expired by effluxion of time. The Petitioner has not presented evidence demonstrating how persons in similar positions, that other employees whose contracts were expiring under the same circumstances were renewed to his exclusion.
- 92 It is the Respondent's submission that it is yet to fill the newly created positions of Director Aviation Security, Director Air Transport, Director Human Resource Management and Director Finance & Administration since these positions are not subject to horizontal transition, but require competitive filing. The Petitioner is at liberty to apply for such positions once advertised and will be considered then
- 93 The Respondents submitted that the Petitioner has not demonstrated how the Respondent violated his right to fair labour practices under Article 41 of the Constitution. To succeed in his claim, the Petitioner ought to demonstrate how he has been denied each of those rights, particularly right to fair remuneration and reasonable working conditions. Throughout his engagement with the Respondent, the Petitioner remained as a Director, level 2,

was remunerated at that level and enjoyed the benefits of a Director. The Petitioner did not work beyond his contract period and any claim of remuneration beyond 2<sup>nd</sup> November 2025 has not been substantiated.

94 In respect to the alleged violation of the Petitioner's right to fair administrative action and fair hearing under Articles 47 and 50 of the Constitution, the Respondent submitted that the process the Petitioner was taken through accorded him an opportunity to be heard that was preceded by serving him with the grounds of accusation, an opportunity to respond, consideration of his submissions by an Ad-Hoc Committee of the Board, and an opportunity to appear before the Respondent's full Board of Directors to orally give his representations. The Petitioner appeared before the Respondent's Board of Directors on 30<sup>th</sup> June 2023, where he was heard.

95 The Respondent submitted that the process culminated in the issuance of a written reprimand, clearly outlining the reasons for the action taken with the decision to re-deploy the Petitioner to another Directorate. The re-deployment was meant to provide a change of environment to the Petitioner and allow fresh blood to lead the EASA department. Thus, it was not punitive since the Petitioner retained his position of a Director and enjoyed the attendant benefits and privileges. The Respondent contends that it duly complied with the fair hearing provisions under Article 47 & 50 of the Constitution.

96 It is the Respondents' submission that the Petitioner has not substantiated his claims of the alleged violations and the mere citation of constitutional provisions and principles does not amount to a violation.

97 I have examined all the averments and submissions of the parties herein. The petitioner contends that he was recruited by the respondent as Director, East Africa School of aviation on a 3 years contract with effect from 1<sup>st</sup> November 2014 and which he served and completed and the contract was renewed again for 3 years on 15/11/2017 for a further 3 years and again on 2/11/2020 for 4 years which he served though with difficulties which he has explained in the proceedings herein. He avers that in 2023 1<sup>st</sup> July he was irregularly transferred from his substantive position to a position of Director Strategy and Knowledge management (DSK). He was issued with a valid contract allowing him to serve to the new role till the end of his contract.

98 In July 2024, the petitioner now applied for renewal of his contract and was issued with a one year appointment to the position of coordinator strategy and knowledge management a post that was not in the approved organization structure. This contract ended on 2/11/25 and was never renewed.

99 It is in respect of this contract that the petitioner filed this petition seeking the prayers herein and contending that

the action of the director general was ultra vires because it purported to usurp the powers of the board of directors of the respondent who were his employers and responsible to renew contracts of level 2 directors such as the petitioner.

100 The petitioner contends that he had a legitimate expectation that his contract could be renewed the respondents having allowed him to take a loan under the KCB/KCAA LOAN scheme from 2021 to 2031 which was being recovered from his salary. He has averred breach of his constitutional rights under articles 27, 41 and 47 of the Constitution, the Fair Administrative Action act and the law.

101 The respondents have averred that they employed the petitioner as averred but that the contract expired due to effluxion of time. In submissions, the petitioners has indicated that he was offered a one year contract for a non existent contract which he signed as he risked earning no salary in 2024 November and December.

102 From the documents on record, the petitioner was offered one year contract vide the letter of 4/11/24 and which he signed on 20/12/24 accepting the offer. There is no indication that he signed it under coercion. He however raised complaints about it later which then seems an after thought. That notwithstanding, it is also evident that the position the petitioner occupied initially was approved for in the transition but split into 4. The petitioner was caught

up in the transition and restructuring. The petitioner however was offered some contract which he signed and accepted. At the time, the petitioner's initial 4 year contract was altered midstream and he was given a one year contract in another capacity which he did not object. He signed this one year contract and served under it. The petitioner did not take issue with the termination of his 4 year contract but accepted to work on the 1 year remainder period in another capacity.

103 Under the law, parties are generally bound by the terms they have agreed upon. For this reason, the petitioner cannot renege on the fact that he signed the one year contract and served on it accordingly.

104 The petitioner has however raised a pertinent issue on the fact that though the 1 year contract ended, he had applied for extension of the same. That the Director General instead of forwarding his application to the Board as required for level 2 executives who are Board employees, the CEO of the respondent is said to have returned the petitioner's appointment with a hand written comment stating that the position had been declared redundant.

105 I have looked at the contract of service between the petitioner and the respondent dated 9<sup>th</sup> April 2021. This contract at clause 21 indicated as follows:

*" not more than 6 and not less than 3 calendar months before the expiry date of his agreement the*

*employee wishing to have his contract renewed shall apply in writing to the Director General for renewal and the KCAA Board shall have the sole discretion to decline such renewal, approve the application subject to such amendments as to the terms thereof or upon such conditions as may be deemed necessary or approve the application on the same terms thereof or upon such conditions as may be deemed necessary or approve the application on the same terms as in the previous agreement. Failure to apply as above shall be deemed to indicate the employee is not interested in any further employment by the authority”.*

106 This agreement was renewed on 6/11/2023 with all other terms of the principal agreement remaining the same. On 19/7/2024, the petitioner wrote to the respondent seeking renewal of his contract in line with clause 20 of the contract dated 9/3/21. The respondents responded by offering him a job as Director Strategy and Knowledge on a one year contract with effect from 3/11/24 to 2/11/25. The petitioner accepted this one year contract vide his letter of 4/12/24. He also acknowledges challenges that would come with the one year contract which he hoped the respondent would address.

107 In the contract no clause on renewal was included. There is also no indication that the respondent’s board was obligated to consider any renewal as in the previous

contract. Out of courtesy the respondent's Director General informed the respondent that the contract was expiring and would not be considered for renewal. The petitioner's averment that the respondent's board was to consider the renewal does not therefore hold as the contract expired by effluxion of time.

108 Having considered all these facts and submissions, it is my finding that the petition cannot therefore hold and is therefore dismissed accordingly. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi this 14<sup>th</sup> Day of January, 2026.**

**HELLEN WASILWA  
JUDGE**