

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

ELRC CAUSE E523 OF 2022

(Before D. K. N. Marete)

KEN TIPAPA KORIATA.....CLAIMANT

AND

JET LITE AIR LIMITED.....RESPONDENT

JUDGMENT

This matter originated by way of a Statement of Claim dated 25th July, 2022. It does not disclose any issue in dispute on its face.

The Respondent in a Memorandum of Response dated 23rd February, 2024 denies the claim and prays that it be dismissed with costs.

The Claimant in a Reply to the Memorandum of response dated 11th March, 2024 rubbishes the response and reiterates his case.

The Claimant's case is that he was employed by the Respondent as a pilot vide a letter dated 3rd September, 2019 and referenced HR No. SAS428. The Claimant accepted the said offer and formally acknowledged the terms and conditions of service by signing and returning a copy of the letter of appointment on 6th September, 2019. The Claimant's avers that under the terms of the contract, the employment was deemed to have commenced on 1st September, 2019 and was for a three (3) year fixed term contract lapsing on the 31st August, 2022.

The Claimant's further case is that pursuant to Clause 5 of the letter of appointment, he was entitled to a monthly salary of United States Dollars Three Thousand (USD 3,000), subject to statutory deductions, with the relevant taxes payable by the Respondent and that the salary was to be paid not later than the 6th day of each month.

The Claimant's other case is that on or about 19th September 2020, while on duty as a lawful crew member aboard the Respondent's aircraft, a Fokker 50 Freighter Serial No. 20171, Registration No. 5Y-MHT flying from Aden Abdulle International Airport to Beletwen in Somalia, the aircraft developed a mechanical problem in the nature of hydraulic failure, which caused the aircraft to suddenly crash. It is their case that he is an experienced pilot and that he did not in any way contribute to the failure of the aircraft's hydraulic system and that at all material times he flew the aircraft with due regard to all aviation regulations.

This being the case, the Claimant avers that he sustained serious multiple injuries of a permanent and lasting nature, namely a closed fracture of the mid-shaft of the right femur, a closed fracture of the right tibia and a closed fracture of the left tibia. Following the accident, he was evacuated to The Nairobi Hospital where he underwent surgery on 20th September, 2020 and again on 20th March, 2021 to fix the fractures through intramedullary nail fixation, procedures which were carried out by Dr. Johnson Lisamula Murila, a Consultant Orthopedic Surgeon.

The Claimant further avers that after the said surgeries, he developed persistent pain in the right thigh and a limping gait due to delayed bone union. On 28th April, 2022 he underwent a further corrective surgery under the care of Col. (Dr.) George Adari, an Orthopedic Surgeon to facilitate bone union and eliminate the persistent pain. According to a medical report dated 17th May,

2022 prepared by Col. (Dr.) Adari G.S, Consultant Orthopedic Surgeon, the Claimant was advised not to resume his regular duties until after three (3) months from the date of the corrective surgery. All this time, the Claimant held a medical cover provided by the Respondent as part of his employment benefits which paid for the surgical procedures he underwent. This notwithstanding, he continued to diligently serve his term of employment by attending refresher courses and trainings as instructed by the Respondent.

It is the Claimant's other case that he received his salary regularly from the commencement of his employment until January, 2022. However, the Respondent, without notice, explanation, lawful cause or justification unilaterally withheld his monthly salary from February 2022 and has persisted in such refusal to date. This unlawful action by the Respondent has adversely affected him despite remaining in the Respondent's continuous employment. He has not been furnished with any written or verbal reasons for the withholding of his salary.

The Claimant states that vide a letter dated 5th April, 2022 addressed to the Respondent through its Human Resource Department, he formally inquired into the reasons for the non-remittance of his monthly salary. He further sent a follow-up email on 13th April 2022 to the Human Resource Manager, Ms. Patricia Matu-Chege, seeking clarification on the status of his employment and the remittance of his salary. According to the Claimant, the said correspondence was duly received by the Respondent, but no response was ever given and the Respondent has persisted in refusing to provide any information relating to the decision to withhold his salary. This amounted to a breach of his contract of employment, in particular Clause 5.

The Claimant asserts that due to the serious injuries sustained during the aircraft accident in the course of his employment, his life has drastically changed and that he will be constrained to continually seek medical care and physical therapy, thereby incurring substantial future medical expenses. The Respondent is and remains fully aware of the aircraft accident and the nature of the injuries sustained, having been duly notified and furnished with copies of all medical reports detailing the extent of the injuries.

The Claimant further states that the Respondent owed him a duty to maintain its aircraft in a safe and working condition but failed to do so, thereby exposing him to loss and injury. The Respondent is liable for injuries sustained by crew members on board its aircraft and therefore, he is entitled to recover compensatory damages for injuries suffered while on duty. In particular, the Claimant attributes negligence to the Respondent for failing to maintain the aircraft in a good state of repair, failing to ensure compliance with airworthiness requirements of the Kenya Civil Aviation Authority, and failing to ensure the safety of crew members by placing them on a poorly maintained aircraft.

It is the Claimant's other case that the Respondent's aircraft was insured through Fred Black Insurance Brokers Limited and that following the accident, the Respondent lodged an insurance claim and received, on or about 21st April 2021, a sum of USD 75,532.50 as compensation for crew personal accident injury. This was only an instalment and the Respondent has received additional sums, which it has withheld thereby leaving him uncompensated despite the insurer having released the compensation for his benefit.

The Claimant avers that the Respondent's actions amount to unfair discrimination and violate his right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair under Article 47(1) and his right to fair labour practices under Article 41 of the Constitution. Further, there has been no previous suit between the parties touching on the same subject matter.

Despite demand being made for reinstatement of payment of his monthly salary and payment of salary arrears for the months of February, March, April, May, June, July and August 2022, the Claimant states that the Respondent has failed and neglected to comply and continues in such refusal. His contract of employment was never terminated and he had a legitimate expectation to receive his full salary and compensation for his injuries.

The Claimant in the penultimate avers that he is entitled to general damages for breach of contract, violation of constitutional rights, unfair labour practices, pain and suffering arising from the aviation accident, and for compensation received by the Respondent but not transmitted to him.

He prays thus:

- a. A declaration that the Claimant's fundamental right to fair labour practices under Article 27, 28, 41 and 47 of the Constitution of Republic of Kenya, 2010 has been violated and or infringed by the Respondent.*
- b. A declaration that the Respondent unlawfully and without reasonable justification withheld the Claimant's Monthly Salary for the months of February, 2022 up to August, 2022 and that such withholding was unfair, unjustifiable and unlawful.*

- c. *A declaration that the Respondent is lawfully entitled to compensatory damages payable from the proceeds of the insurance payment received by the Respondent on 21 April, 2021 from Fred Black Group Limited being compensation for crew personal accident injury related to the aircraft accident of 19th September, 2020.*
- d. *An Order that the Respondent pays the Claimant's monthly salary from the month of February, 2022 until the expiry of the Claimant's contract of employment with the Respondent.*
- e. *An order directing the Respondent to pay the Claimant his terminal benefits in accordance with the prevailing labour guidelines and regulations.*
- f. *An Order that the Respondent should pay the Claimant his fair share of compensation received by the Respondent from the proceeds of the insurance payment received by the Respondent on 21st April, 2021 from Fred Black Group Limited being compensation for crew personal accident injury related to the aircraft accident of 19th September, 2020.*
- g. *An award of general damages.*
- h. *Costs of the suit and interest thereon.*
- i. *Any other further relief that this Honourable Court shall deem fit and just to grant.*

The Respondent's case is an admission that it employed the Claimant as a Pilot in the position of First Officer vide a Letter of Appointment dated 3rd September, 2019. This was duly executed by the Claimant. The employment was for a period of three years set to lapse on 31st August 2022.

The Respondent's further case comes out thus;

- i) That the final investigations into the cause of the aircraft accident have not been officially released by the Civil Aviation authorities of Somalia but admits that the Claimant sustained injuries.
- ii) That the Claimant, together with other crew members were rushed to The Nairobi Hospital, where they were attended to. The Respondent fully catered for all the Claimant's medical expenses as well as those of his colleagues.
- iii) That the Claimant's Letter of Appointment expressly stipulated that the responsibility to source a suitable medical cover lay with the employee.
- iv) That it committed to and continued paying the Claimant's salary, as well as that of the other crew members, in full for the entire period they were out of work. However, all other crew members officially resumed full flight duties on diverse dates between January 2021 and February 2022, save for the Claimant.
- v) That the Claimant's Letter of Employment expressly provided that where illness, injury or other incapacity prevents an employee from properly performing duties for a total of 30 days or more, whether consecutive or not, in any 12 consecutive months, the Company may, by notice, suspend or further reduce payment of salary.
- vi) The terms of employment further provided that should absence due to illness or accident continue for 60 consecutive days or an aggregate of 90 days in any

52 consecutive weeks, the Company would be entitled to terminate the contract, which it did not do.

- vii) That notwithstanding these contractual provisions, it diligently paid the Claimant's salary for 17 consecutive months. Throughout this period, it remained fully supportive of the Claimant, providing him with necessary support and encouragement and paid for several physiotherapy sessions between 2020 and 2021 until the Claimant himself advised that he no longer required further physiotherapy.
- viii) That the Claimant presented two letters from his Orthopedic Surgeon, Dr. Johnson L. Murila, dated 19th August 2021 and 20th August 2021, confirming that he was healing well, could resume flying duties and would be reviewed again in November 2021. Despite this clearance, the Claimant did not resume duty.
- ix) That in October 2021, the Claimant submitted a SPL Medical Certificate Class One issued by the Kenya Civil Aviation Authority, valid from 7th October 2021 to 6th October 2022, which cleared him to be scheduled for simulator training.
- x) The Claimant also submitted a renewed Pilot's Licence No. YK-8073-CL valid from 7th October 2021 to 6th October 2023. At this time, the Claimant was walking well without crutches or assisted mobility aids, yet declined to resume work.

- xi) That the Claimant's claim that he sustained serious injuries that requires continuous medical care is contrary to numerous progress reports from the Claimant's attending physicians regarding his recovery.
- xii) Additionally, a pilot cannot renew a pilot's licence without undergoing a medical examination conducted by an approved aviation medical practitioner authorized by the Kenya Civil Aviation Authority. Therefore, had the Claimant been unfit to resume flying duties, the same would have been detected during the medical examination.
- xiii) The Respondent stated that based on medical forms prepared by medical experts, the Claimant had healed fully.
- xiv) It is the Respondent's case that it duly paid all the Claimant's medical expenses and further reimbursed him for his iPhone and iPad that were damaged during the aircraft accident.
- xv) That prior to the aircraft accident, the Fokker 50 Registration No. 5Y-MHT held a valid Certificate of Airworthiness issued by the Kenya Civil Aviation Authority and was fully compliant with all regulatory airworthiness requirements.
- xvi) Additionally, the Claimant was fully aware of the mandatory pre-flight checks conducted before the commencement of each flight.

The matter came to Court variously until the 18th November, 2024 when it was heard *inter parties*. This was by a reiteration of the respective cases. The Claimant (CW1) reiterated the contents of his witness statement in the examination in chief while the Respondent's witness (RW1) adopted her witness statement and bundle of documents in evidence.

The issues for determination therefore are;

1. Whether the Claimant was an employee of the Respondent and if so, for what duration.
2. Whether the Claimant absconded duty, or at all.
3. Whether the Respondent withheld the Claimant salary for February to August 2022.
4. Whether the Respondent infringed the Claimant's constitutional rights under Articles 27, 28, 41 and 47 of the Constitution.
5. Whether the Claimant is entitled to compensatory damages arising out of insurance proceeds in respect of the crew personal accident relating to the air craft accident of 19th September, 2020.

The 1st issue for determination is whether the Claimant was an employee of the Respondent and if so, for what duration. The Claimant on this submits that the existence of an employment contract *inter parties* is not in dispute. This was based on the letter of appointment dated 3rd September, 2019 establishing a three-year fixed term contract with effect from 1st September, 2019 to 31st August, 2022.

The Claimant's further case and submission is that the contract allowed the Respondent to terminate employment where absence occasioned by illness or accident exceeded 60 consecutive days or an aggregate of 90 days within a 52-week period. However, Clause 8.4 of the Letter of Appointment imposed mandatory procedural obligations on the Respondent, including issuance of written notice specifying the effective date of termination and directing the employee to submit to medical examination where incapacity was alleged.

The Claimant further submits that no such notice was ever issued, no directive for medical examination was made, and no termination letter was served. On the contrary, the Respondent was fully aware of the accident, facilitated his treatment, paid for his surgeries, and received regular medical reports detailing his condition. In the absence of any evidence of termination, suspension, or lawful invocation of Clause 8.4, then his contract ran its full course and lawfully subsisted until 31st August 2022.

The Respondent did not address this in the written submissions. Instead, they chose to rely on the difference of absconding duty which shall be dealt with next. This court finds that on the evidence and respective cases of the parties, the Claimant was an employee of the Respondent through out the contract period. This was effective 1st September, 2019 to 31st August, 2022, the aircraft accident and all incidentals notwithstanding.

The 2nd issue for determination is whether the Claimant absconded duty, or at all. On this, the Claimant submits that the allegation of abscondment is an afterthought designed to cleanse the Respondent's unlawful withholding of salary. The allegation thus collapses when weighed against the uncontroverted medical evidence placed before court.

The Claimant further submits that he has produced medical reports authored by his treating surgeons from September 2020 through May 2022, all of which were admitted into evidence without objection and relied upon by both parties. These reports consistently demonstrate that he was, for prolonged periods, non-weight bearing, under strict medical review and at times expressly advised not to resume flying duties.

The Claimant submitted that the final medical report dated 17th May 2022 by Col. (Dr.) George Adari, Consultant Orthopedic Surgeon, gave him medical leave for 3 months following surgery on 28th April 2022, thereby excusing him from duty until 28th July 2022. By that date, the Claimant's contract had barely one month remaining, therefore, he cannot be blamed for absconding duty.

It is the Claimant's other submission that between April, 2021 and March, 2022, when medically fit, he attended duty and training, including simulator training in Malaysia. Further, there is a clear paper trail from his medical reports showing that from the date of his accident on 19th September, 2020 until July 2022, as he was under regular medical review, thus, he cannot be faulted for obeying medical advice arising from injuries sustained in the course of employment.

The Claimant further submitted that the Respondent failed to produce any evidence demonstrating he absconded duty, any documentation or communication showing that the Respondent informed the Claimant of such allegations or called him for a disciplinary hearing to

address the same and or any proof that the Claimant was dismissed from employment due to the alleged abscondment. Therefore, the allegation remains unsupported and legally untenable.

The Respondent submits that it is undisputed that the Claimant was involved in an accident on 19th September 2020, while on duty as a lawful crew member aboard the Respondent's aircraft and as a result of the accident, he sustained serious multiple injuries. However, issues arise in that towards the end of 2021, doctor's reports dated 19th and 20th August 2021 expressed that the Claimant was recovering well and was fit to resume his duties. Additionally, the Claimant was issued with SPL-Medical Certificate Class from the Kenya Civil Aviation Authority on 7th October 2021, which confirms one is medically fit to safely and properly exercise privileges in accordance with Civil Aviation (Personnel Licensing) Regulations.

The Respondent further submission is that the Claimant's failure to discharge flight duties because non-submission of his radio license suffices as absconding from work. In addition, the Claimant's failure to show up for Line Training in December 2021 and missing 7 of his training sessions in November 2021 are further grounds of abscondment of his duty.

The Respondent sought to buttress their case by relying on the authority of ***Banking, Insurance & Finance Union (Kenya) v Barclays Bank of Kenya Ltd [2014] KEELRC 1145 (KLR)*** the court discussed absconding duty and provided thus:

“The aspect of being ill is not a wrong in itself. What is wrong is not bringing the same to the attention of the employer and further being away from work without authorisation or sharing information as to where the employee was. This amounts to absconding duty and a serious labour sanction follows as this is tantamount to negation of a contract of

*employment. An employee is taken to have abandoned his contract of service without notice to the employer. in the South Africa Labour Court in **SACWU v Dyasi [2001] 7 BLLR 731 (LAC)** the Court held that desertion amounts to repudiation of the contract of employment which the employer is entitled to accept or reject. The acceptance of repudiation amounts to dismissal if employee fails to render service. Failing to contact the respondent constitutes unexplained absence for the period the grievant was away and he cannot compute his sick off days and consolidate them and state he had 51 days that he was entitled to out of the total due of 120 days as these sick off days were to be authorised and or approved by an officer of the respondent. if the grievant needed to utilise his sick off days up to a maximum of 51 days, he had the choice of making an application in compliance with the respondent’s operational requirements and failure to do so and continued absence establish the fact of desertion. Absence from work without a justifiable reason or permission and or authorization and notice to the employer is a subject for summary dismissal under section 44 of the Act.”*

Again, in **Okode v Tejani [2025] KEELRC 280 (KLR)** the Court observed as follows:

*“It is also clear that the Respondent did not write to the Claimant as he did the labour office in an effort to find out why she had not reported to work, and whether she intended to do so, and nor did he issue her with a termination notice indicating abscondment of duty as the reason for the termination. In **Joseph Nzioka v Smart Coatings Limited [2017] eKLR** the court observed that: - “Dismissal on account of absconding must be preceded by evidence showing that reasonable attempt was made to contact the employee concerned and that a show cause letter was issued to such employee calling upon such*

employee to show cause why his services should not be terminated on account of absconding duties.”

I thus return that simply writing to the labour office, was in my opinion not sufficient to show that the Claimant/employee absconded duty. I in the premise, find and hold that the Claimant’s termination is unfair.”

The Respondent’s witness testified that they did not take disciplinary action against the Claimant for non-attendance of training and that the Respondent stopped paying the Claimant’s salary from January 2022 on the ground that he failed to operate his licence.

Against this background, the Claimant’s action did not amount to absconding duties as he clearly testified that he attended trainings and was fit to fly, he even took his pilot license in October 2021. However, he denies being in the Respondent’s roster.

Therefore, the Respondent may have had a valid reason to terminate his contract. However, the Respondent failed to follow due procedure before halting payment of the Claimant’s salary in January 2022. No evidence was produced in court showing that the Respondent issued the Claimant a notice to show cause or subjected him to any disciplinary proceeding before stopping his pay. I therefore find that the termination of employment of the Claimant by the Respondent was wrongful, unfair and unlawful. I therefore find that the Claimant did not abscond duty as accused by the Respondent.

The 3rd issue for determination is whether the Respondent withheld the Claimant salary for February to August 2022. Here, the Claimant submits that the Respondent withheld his salary for seven (7) months between February and August 2022. This was without notice, explanation or

due process. It was also despite several inquiries to the Respondent's Human Resource Manager which went unanswered and no reason(s) was communicated either verbally or in writing.

The Claimant submitted that the Respondent did not provide evidence to controvert his version of events and their evidence tendered at trial in support of his case sufficiently establishes the fact that his salary was withheld by the Respondent for 7 Months. It is the Claimant's case and submission that there is nothing to suggest that other than asserting that he absconded duty. The Respondent provided no evidence and or valid reason to support its decision to withhold payment of the Claimant's salary for 7 months. It is also evident that the Respondent did not subject the Claimant to any disciplinary process and or issue the Claimant with a warning or written notice before withholding his salary and therefore the Respondent's decision to withhold his salary was unlawful.

The Claimant submitted that there is no evidence to suggest that the Respondent informed the Claimant of the reason for its decision and there is no evidence that the Claimant's inquiry was responded to neither was the Claimant accorded a chance to explain himself before his salary was withheld.

It is the Claimant's submission that Sections 41, 43 and 45 of the Employment Act, 2007 requires an employer to terminate an employee's services only for valid reasons and in accordance with fair procedure. The law requires the employer to notify the employee of the reason for his decision, which could either be: poor performance; physical incapacity;

misconduct by the employee; or the operational requirements of the employer. He cited *Galgalo Jarso Jillo v Agricultural Finance Corporation [2021] KEELRC 323 (KLR)*.

Conclusively, the Claimant submitted that in the present suit, the Respondent neither justified the withholding of salary nor subjected him to any disciplinary process. The withholding of salary, in the absence of termination, suspension, or disciplinary sanction, is therefore unlawful.

The Respondent did not address this issue in their written submissions. I therefore find that the Respondent unlawfully withheld the Claimant's salary for the seven (7) months of February to August 2022.

The 4th issue for determination is whether the Respondent infringed the Claimant's constitutional rights under Articles 27, 28, 41 and 47 of the Constitution. On this, the Claimant submits that the Respondent's conduct violated his rights under Articles 27, 28, 41 and 47 of the Constitution.

It is their case that the Claimant diligently served the Respondent until the aircraft crash of 19th September 2020 that irreversibly altered the trajectory of his life. The accident, occasioned by mechanical failure, exposed him to profound physical pain, emotional trauma and long-term impairment.

The Claimant further submits that he sustained multiple significant injuries, including a closed fracture of the mid-shaft right femur, a closed fracture of the right tibia, and a closed fracture of the left tibia. These injuries necessitated several surgical procedures which were conducted on 20th September 2020, 20th March 2021, and 28th April 2022. Throughout his recovery process,

the Claimant consistently updated the Respondent Company regarding his medical progress and the surgeries he underwent. The Respondent covered the associated medical expenses, demonstrating awareness of the gravity of the Claimant's injuries.

Despite his injuries, the Claimant attended trainings when medically fit, and continued to engage with the Respondent. However, the Respondent frustrated his return to full duties by failing to schedule or deliberately cancelling training. This is corroborated by the November/December 2021 Flight Roster, included in the Claimant's Further List and Bundle of Documents dated 11th March 2024, where the notation "ROFF" appears against the Claimant's name on numerous days, indicating that no training was scheduled. Furthermore, during his testimony, he confirmed that the trainings marked "CHK" on the roster, although scheduled did not occur due to the Respondent's actions and or inactions, an assertion that was not refuted by the Respondent during the hearing.

Other acts of constitutional breach on the part of the Respondent include but are not limited to;

- i) That the Respondent's repeated failure to schedule him for training or deliberate cancellation of scheduled trainings amounted to an intentional effort to frustrate his ability to perform his duties as an employee. This unreasonable conduct further worsens the Respondent's breach of its obligations under the employment relationship.
- ii) The non-payment of salary violated Section 17 of the Employment Act 2007 and amounted to degrading and inhuman treatment contrary to Articles 28 and 30 of the Constitution. He contends that while other crew members continued to receive

salaries, his remuneration was withheld, thereby constituting discrimination. This is spelt out in the authority of Jonathan Spangler v Centre for African Family Studies (CAFS) [2017] eKLR where such action is held as slavery or servitude.

- iii) That being compelled to continue working without pay amounts to forced labour and violates the right to fair remuneration and human dignity under Article 41 of the Constitution.
- iv) The claim for constitutional violations is not proven on a balance of probabilities. The Claimant's evidence does not meet the threshold for proof of discrimination in accordance with Articles 27 and 28 of the Constitution of Kenya, 2010. A case of breach of employment contract suffices in the circumstances. I therefore find no case of Constitutional breaches or violations as alleged and claimed.

The 5th issue for determination is whether the Claimant is entitled to compensatory damages arising out of insurance proceeds in respect of the crew personal accident relating to the air craft accident of 19th September, 2020.

The Claimant on this submits as follows;

- i) That the Respondent's aircraft, Fokker 50 Freighter with Serial No. 20171 and Registration No. 5Y-MHT, was insured under a comprehensive policy issued by Fred Black Insurance Brokers Limited, which was valid at the time of the accident. The policy expressly provided for Personal Accident cover of USD 250,000 per pilot, in addition to medical expenses capped at USD 50,000.
- ii) That his injuries rendered him temporarily totally disabled within the meaning of the policy, entitling him to compensation at the rate of 1% per week for up to 104 weeks.

Even on a conservative computation limited to the remaining contract period, the Claimant submits that he would be entitled to not less than USD 60,000.

- iii) That no evidence was led by the Respondent to show that the Claimant was not temporarily totally disabled and that he was therefore not entitled to the Personal Accident coverage whose details appear on the schedule in the insurance policy.
- iv) That the Respondent's bank statements confirm receipt of USD 75,532.50 on 21st April 2021 narrated as compensation for crew personal accident injury. This amount appears to be a partial payment of the full insurance proceeds received by the Respondent under the policy, as evidenced by the insurance documentation. The Respondent did not deny that it operates the said Bank Account. It did not deny the authenticity of the Bank Statement neither did it call evidence from Fred Black Insurance Brokers to clarify that the said payment was not for Crew Personal Accident Injury as marked in the Bank Statement. The Claimant thus asserts that in the absence of evidence to the contrary, this Court must hold that the Respondent received the said sum designated as compensation for compensation for crew personal accident injury and withheld the said benefit from the Claimant.
- v) That the amount of USD 75, 532.50 received on 21st April, 2021 is exclusive of any medical expenses, which are separately covered under the policy. Specifically, the policy provides for an additional sum of USD 50,000 per person to cater to medical expenses arising from an accident. This distinction is clearly outlined in the same provision of the insurance policy and underscores the Respondent's dual coverage obligations.

- vi) That the Respondent's witness in her testimony stated that the Personal Accident coverage applied as per the Schedule on page 12 of the insurance policy was allocated as per the schedule of benefits, yet they failed to take into account the Claimant was temporarily disabled from the injuries sustained during the aircraft crash and was therefore entitled to temporary total disablement at a rate of 1% per week as per the said schedule.
- vii) That the Respondent mismanaged and withheld insurance proceeds meant for him and urges the Court to compel a full account and remittance of the sums due.
- viii) That the Respondent acted unfairly, unlawfully, and discriminatorily by withholding the Claimant's salary for seven months and denying him insurance compensation while treating other crew members differently.

The Respondent in rebuttal submissions comes out as follows;

- i) That the Claimant did not suffer any injury falling within the defined categories of permanent or temporary total disablement. Medical reports and progress notes relied upon by the Respondent demonstrate that while the Claimant sustained injuries, he was not disabled within the meaning of the policy. Ms. Matu testified that only medical expenses were reimbursed by the insurer and that no compensation sums were paid to the Respondent.
- ii) Again, the Claimant tendered no evidence demonstrating that he suffered temporary total disablement from the time of the accident until he absconded duty in early 2022. On the contrary, the Respondent produced extensive medical documentation and correspondence evidencing payment of medical expenses only.

- iii) The Respondent submits that the burden of proof lay with the Claimant and was not discharged. The Respondent further contends that courts are not at liberty to rewrite contracts freely entered into by parties and that the Claimant is bound by the express terms of his Letter of Appointment.
- iv) The Respondent submitted that the chronological sequence of events demonstrates that the Claimant was medically fit to resume duty from late 2021 but deliberately failed to do so. The Claimant absconded duty, failed to maintain mandatory licences, and frustrated the Respondent's efforts to reintegrate him into flight operations.
- v) It is the Respondent's submission that the aircraft accident was not attributable to any fault on its part and that the Claimant's medical expenses were duly addressed.

This renders the claim on compensation for damages arising out from the insurance policy issued through Fred Black Insurance Brokers Limited unsustainable. I agree. The Claimant has failed to establish a case of compensation arising out of his injuries in the aircraft accident. Like is submitted by the Respondent, the injuries sustained by the Claimant did not subject him to the cover under the insurance policy.

The offshoot of this cause is that the Respondent went out of their way to frustrate the Claimant's enjoyment of the fruits of their employment and requisite salaries. Beyond this, the Claimant's case on the other claims is not sustainable. I therefore find that the salaries for the claimant's were unduly and unlawfully withheld for the months of February to August 2022 and hold as such.

I am therefore inclined to allow the claim and award relief as follows;

- i) Salaries for the months of February to August, 2022...USD3000 x 7 months
USD21000
- ii) The costs of the claim shall be borne by the Respondent.
- iii) Interest at Court rates from the date of this judgment of court till payment in full.

Delivered, dated and signed this 25th day of February
2026.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Kariuki instructed by Bowry & Company Advocates for the Claimant
2. Miss Korir instructed by Conrad Law Advocates LLP for the Respondent