

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**

**CAUSE NO. 704 OF 2019**

**DANIEL OKELLO.....**  
**.....CLAIMANT**

**VERSUS**

**KENYA AIRWAYS LIMITED.....**  
**.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before Court is the Claimant's Statement of Claim dated 23<sup>rd</sup> October, 2019 and filed on even date. The Claimant seeks the following reliefs as against the Respondent: -
  - a) An order that the failure to furnish the information requested pursuant to the letter dated 4<sup>th</sup> September 2019 was in violation of Article 35 of the Constitution of Kenya and Access to Information Act No. 31 of 2016 and contravened the Claimant's constitutional right to information.
  - b) THAT the Respondent violated the Constitutional and statutory rights of the Claimant to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.
  - c) THAT a declaration that the Respondent's action amounts to wrongful, unfair, unjustifiable, and illegal termination of employment.

- d) THAT the Claimant be paid Ksh.161,691,364.64 being the total entitlement to the Claimant as follows:
- i. Severance pay being 15 days for each of the 5 years worked from 15<sup>th</sup> September, 2014, to 22<sup>nd</sup> July, 2019, Kshs.1,125,000
  - ii. loss of earnings, being 22 years before retirement at 60 years, at Kshs.118,800,000.00
  - iii. Paternity leave days of 14 days at Kshs.286,363.64
  - iv. Damages for wrongful termination equivalent to 12 months' salary of Kshs.5,400,000/-
  - v. Employer pension contribution being 10% of the gross monthly salary for 22 years, amounting to Kshs. 11,880,000/-
  - vi. Loss of annual rebated tickets for 5 family members, equivalent to a return ticket valued at Kshs. 110,000 per person X 2 tickets per year X 22 years, amounting to Kshs.24,200,000
- e) THAT the Claimant be awarded the costs of the suit
- f) Interest on item (d)

2. The Respondent entered an appearance on 5<sup>th</sup> November, 2019, and subsequently filed a Memorandum of Response dated 26<sup>th</sup> February, 2020, in response to the Claimant's claim.

3. The Claimant's case was heard on 15<sup>th</sup> November, 2022, when the Claimant (CW1) testified in support of his case. He adopted his witness statement dated 23<sup>rd</sup> October, 2019, and produced his document as an exhibit in the matter.

4. The Claimant's application dated 11<sup>th</sup> November, 2024, seeking to amend his Statement of Claim, was declined, and the suit was fixed for hearing of the Respondent's case.
5. The Respondent's case was heard on 2<sup>nd</sup> December, 2025, with one Moses Ombok (RW1) testifying in support of the Respondent's case. He adopted his witness statement dated 16<sup>th</sup> August, 2024, as his evidence in chief, and produced the Respondent's list and bundle of documents as exhibits in the matter.
6. Submissions were received from both parties and have been duly considered.

### **The Claimant's case**

7. The Claimant's case is that he was initially employed by the Respondent as a Technical Coordinator from 1<sup>st</sup> November 2010 to 30<sup>th</sup> June 2013, and later re-employed on 15<sup>th</sup> September 2014 as a B787 Materials and Tools Support Manager in the Supply Chain Department.
8. The Claimant states that the re-employment was on permanent and pensionable terms, with a gross monthly salary of Ksh.450,000, and he was reporting to the Head of Supply Chain.
9. It is the Claimant's case that on 5<sup>th</sup> December 2017, the Respondent introduced a new Supply Chain Department organizational structure, under which the Claimant was demoted to report to the Direct Procurement Manager, who

in turn reported to the Head of Supply Chain. He avers that on 31<sup>st</sup> May 2019, one Irene Lempaka, who was the Manager, Logistics and Warehousing, and Acting Head of Supply Chain & Facilities, issued another revised organizational structure, appointing several acting managers across different roles within the department.

10. He contends that despite these changes, he continued to serve with dedication, competence, and strong performance, consistently receiving outstanding appraisals and making significant contributions to the Respondent.

11. The Claimant states that he played a key role in supporting the Respondent during periods of financial difficulty, helping the company remain operational despite significant revenue shortfalls. He states that he made notable contributions through numerous procurement cost-saving initiatives, enhancing efficiency and reducing expenses.

12. The Claimant states that he attended some of the Respondent sponsored training on Focused Improvement and also used personal resources and leave to attend professional development events, including AIME (Dubai, 2015 & 2017) and MRO Europe (London, 2017), but alleges he was discriminatorily denied promotion.

13. It is his case that throughout his employment, he underwent regular performance appraisals, consistently rated satisfactory, with the latest on 24<sup>th</sup> September 2018 showing he met expectations.

14. The Claimant avers that his responsibilities included preparing Requests for Proposals (RFPs) for procurement, particularly for aircraft engine maintenance, repair, and overhaul (MRO), including CFM56-7B engines, APUs, and related systems. He avers that he also prepared sourcing reports for procurement projects, including MRO for Boeing 737-700 and 737-800 aircraft.
15. The Claimant states that his issues with the Respondent began when Irene Lempaka instructed him to disregard the outcome of a concluded RFP process and stop engagement with Israel Aerospace Industries (IAI) Bedek, the top-ranked supplier, and KLM Engineering & Maintenance, the second-ranked supplier. He states that the said suppliers were recommended based on better pricing, contractual value, and favourable terms for the maintenance, repair, and overhaul (MRO) of CFM56-7B engines on Boeing 737-700/800 aircraft.
16. He avers that he was instead directed to engage MTU Aero Engines, a third-ranked supplier offering higher costs and less favourable contractual value. He states that he objected to this directive, arguing that it contravened the approved Sourcing Report (30<sup>th</sup> July 2018) and a Management Side Letter dated 20<sup>th</sup> February 2019.
17. The Claimant states that he further objected to the directive on the basis that it violated multiple frameworks, including the KQ Procurement Procedure Manual (2015), KQ Code of

Ethics, KISM Code of Ethics and Conduct, the Public Procurement and Disposal Act, and the Constitution of Kenya.

18. It is his case that following his objection, Irene Lempaka, the Acting Head of Supply Chain & Facilities, issued him with a Notice to Show Cause dated 17<sup>th</sup> June 2019, requiring a response by 20<sup>th</sup> May 2019, which was already past.
19. The Claimant states that the Notice to Show Cause outlined five allegations against him, including an accusation of insubordination and insolence on 26<sup>th</sup> May 2019 by challenging instructions from the Acting Head of Supply Chain & Facilities, that despite being instructed to halt the RFP process, he continued engaging internal teams on 31<sup>st</sup> May 2019 to progress the matter, that during a 28<sup>th</sup> May 2019 meeting, he shouted at colleagues and confronted Technical Managers, that on 13<sup>th</sup> June 2019, he acted insolently, stating that he did not report to Irene Lempaka, and for defying direct instructions to stop communication on the RFP matter and insisted on continuing, even suggesting escalation to HR.
20. The Claimant states that he responded to the Notice to Show Cause on 19<sup>th</sup> June 2019, defending his actions and challenging the instructions given by Irene Lempaka. He argued that the instructions contradicted KQ Procurement Policies, which require contracts to be awarded to the most competitive bidder following an RFP evaluation process.

21. The Claimant states that the directive lacked required supporting documentation, which he requested but was denied, being told to follow orders without question. He further stated that he had warned that complying with the directive would result in significant financial loss over the contract period. He further noted that implementing the directive would erode the company's value, especially given its well-known financial challenges.

22. The Claimant states that without notice or justification, Irene Lempaka instructed the IT department to disable his access to all company systems on 14<sup>th</sup> June 2019, effectively rendering him constructively dismissed.

23. He avers further that on 28<sup>th</sup> June 2019, the Respondent deemed the Claimant's response to the Show Cause unsatisfactory and invited him to a panel hearing scheduled for 4<sup>th</sup> July 2019, and that he attended the hearing and made both oral and written submissions, maintaining that his actions were intended to protect the company's financial interests by ensuring compliance with procurement policies and the law, and by resisting irregular or unlawful procurement decisions.

24. It is his case that the panel hearing proceedings were formally documented, and all attendees signed and initialed the record. He avers that on 5<sup>th</sup> July 2019, he requested witness statements from Bernard Mukundi and Hawkins Musili relating to allegations of misconduct, specifically, the claim that he shouted at colleagues.

25. He avers that the Respondent refused or failed to provide these statements, thereby limiting the Claimant's ability to prepare his defense in the disciplinary process. He further avers that during the panel hearing, Irene Lempaka, who had lodged the complaint, sat as a panelist, effectively acting as both complainant and judge in the same matter.

26. The Claimant avers that his employment was terminated in July 2019 based on two allegations, out of the original five, the first being defying instructions on 26<sup>th</sup> May 2019 by continuing engagement on the CFM56 engine RFP process and contacting internal teams, and secondly for allegedly disobeyed instructions on 13<sup>th</sup> June 2019, by continuing communications on the RFP, and maintaining an insolent attitude toward his superior.

27. The Claimant states that on 22<sup>nd</sup> July 2019, he attended an exit meeting, where he was required to immediately surrender company property and was thereafter escorted out of the premises. He states that although the termination letter did not inform him of his right to appeal, he filed an appeal on 29<sup>th</sup> July 2019 and requested a hearing to present his appeal, but the Respondent refused to grant him one.

28. It is his contention that on 21<sup>st</sup> August 2019, the Respondent's Group Managing Director & CEO upheld the decision to dismiss him, stating that there were no sufficient grounds to overturn the termination.

29. On cross-examination, the Claimant told the court that although he complained that the Respondent's new structure resulted in him being demoted, his salary did not change.

30. On the show cause requiring a response on a past date, the Claimant stated that the date was clarified to be an error. He further told the court that he was not advised of his right of appeal.

31. The Claimant confirmed that although he seeks severance pay, he was not declared redundant. He stated that he was informed at the last minute of the appeal process and that he appealed against the dismissal.

32. The Claimant further testified that he seeks paternity leave, but he says he was not able to exhibit his request since he could not access the computer that he used.

33. The Claimant prays that the court allow his claim.

### **The Respondent's Case**

34. The Respondent's case is that the Claimant was first employed as a Technical Coordinator on 1<sup>st</sup> November 2010, through a letter dated 27<sup>th</sup> September 2010, and later re-employed on 31<sup>st</sup> July 2014 as a B787 Materials and Tools Support Manager, effective 15<sup>th</sup> September 2014, with a duty to report to the Head of Supply Chain and other superiors.

35. The Respondent states that a new Supply Chain organizational structure introduced on 5<sup>th</sup> December 2017 did not change the Claimant's job grade (H13) or reduce his salary. It avers, however, that the restructuring created the role of Direct Procurement Manager, who was placed in a supervisory position over the Claimant, in line with his contractual obligation to report to designated superiors.

36. The Respondent avers that the Supply Chain structure, effective 5<sup>th</sup> December 2017, required the Claimant to support the Technical Department by ensuring the timely delivery of materials and spare parts, and to report to the Direct Procurement Manager and other superiors.

37. It states further that the Acting Head of Supply Chain was responsible for overall procurement, logistics performance, and cost efficiency. It states that around May 2019, the Managing Director/Chief Operating Officer directed that the RFP process with Israel Aerospace Industries (IAI) for engine maintenance be stopped, and following this directive, the Acting Head of Supply Chain instructed the Claimant to halt review and engagement with IAI.

38. The Respondent states that the Claimant defied these instructions, challenged authority, and continued engaging IAI, which the Respondent considers insubordination.

39. It avers that, consequently, a Notice to Show Cause was issued, citing breaches of the HR Policy Manual and requiring the Claimant to justify why disciplinary action

should not be taken. It avers that the Notice contained a typographical error in the response deadline, stating 20<sup>th</sup> May 2019 instead of 20<sup>th</sup> June 2019.

40. The Respondent states that the Claimant acknowledged and responded to the Notice to Show Cause in writing, and that after reviewing his response, it found it unsatisfactory and, by a letter dated 28<sup>th</sup> June 2019, it invited him to a disciplinary panel hearing on 4<sup>th</sup> July 2019.

41. It avers that the invitation informed the Claimant of his right to be accompanied by a colleague or union representative. It avers further that at the hearing, the Claimant was given an opportunity to present both oral and written submissions in response to the allegations.

42. It is the Respondent's case that following the disciplinary hearing, the panel decided to terminate the Claimant's employment, and this decision was communicated on 22<sup>nd</sup> July 2019, including reasons and notice of the right to appeal.

43. It states further that the Claimant appealed on 29<sup>th</sup> July 2019 to the CEO/Managing Director, as provided under the HR Manual, and that the CEO/MD reviewed the hearing records and, on 21<sup>st</sup> August 2019, upheld the termination, finding no sufficient grounds to overturn the decision.

44. The Respondent maintains that the termination was based on insubordination and asserts that the Claimant was given

due process, including a chance to defend himself and to appeal against the termination.

45. Consequently, the Respondent argues that the termination was fair and lawful and asks the court to dismiss the claim with costs.

46. On cross-examination, RW1 told the court that he was aware of email exchanges where the Claimant was instructed to stop dealing with IAI and that the RFP is related to the Claimant's dealings with IAI.

47. RW1 maintained that the instructions were lawful on the basis that Irene Lempaka was acting as the person supervising the Claimant. He avers that it is wrong not to take lawful instructions but that it is right to challenge, though it matters how the challenge is filtered.

48. It is RW1's testimony that the Claimant did not interact with RFP-CMF56 after instructions not to, except for one communication sent out to Robb on 13/6/2019. He avers that he could not tell whether the Claimant exhibited any insolent behaviour.

49. RW1 maintained that the Claimant was terminated based on his refusal to submit to authority and not for malice and rage.

50. In re-examination, RW1 told the court that the claimant was not supposed to send the letter out after receiving instructions not to from his supervisor.

51.It is the Respondent's case that the Claimant is not entitled to the reliefs sought in the Claim and urges the Court to dismiss it with costs.

### **Analysis and Determination**

52.From the pleadings, the rival submissions, and the evidence adduced, the Court frames the following issues for determination:-

- i. Whether the termination of the Claimant's employment was fair and lawful.
- ii. Whether the Claimant's Constitutional rights were violated
- iii. Whether the Claimant is entitled to the reliefs sought

### **Whether the termination of the Claimant's employment was fair and lawful**

53. Termination of employment is considered fair where the employer adheres to the twin tenets of procedural and substantive fairness provided under Sections 41, 43, 45, and 47 of the Employment Act, 2007.

54.Section 41 of the Employment Act states thus on procedural fairness:

***"41(1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee***

***understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation."***

55. It is not disputed that the Claimant was issued with a show cause letter, that he responded to the show cause, was invited for the disciplinary hearing and notified of his right to have a representative present, and upon termination, he was notified of his right of appeal, which right he exercised, albeit unsuccessfully.

56. The Claimant, however, contends that the termination of his employment was unfair on the premise that his supervisor also formed the disciplinary panel, and secondly for reason that he was not supplied with statements of his accusers at, before, or during the disciplinary hearing.

57. On the attendance of the Claimant's supervisor, it is not disputed that Irene Lempaka issued the Claimant with the instruction that resulted in the issuance of a show cause letter. It is also evident that the show cause letter was authored by the same Ms. Lempaka who, again, constituted the disciplinary hearing panel.

58. There is therefore no denying that the Claimant's supervisor fully participated in the decision making process that resulted in the Claimant's termination. This participation no

doubt creates a sense of bias and a possible conflict of interest (**See Ridge v. Baldwin, 1964 A.C 40**).

59. In my considered view, it is apparent that a likelihood of bias was portrayed considering the role and the level of participation by Ms. Lempaka in the disciplinary process.

60. Further, in as much as the Respondent appeared to have adhered to the demands of Section 41 of the employment, the participation of the Claimant's accuser is, in my view, fatal and impairs the fairness of the process.

61. On failure to supply the Claimant with witness statements, it is evident that the Claimant requested statements of key witnesses, and the Respondent led no evidence to show that the statements were supplied and has also not rebutted the Claimant's assertion, leading me to conclude that the statements were not supplied. In **Postal Corporation of Kenya v Tanui [2019] KECA 489 (KLR)**, it was held that fair hearing includes disclosure of evidence to enable adequate defence.

62. I conclude that the Respondent's failure to provide the Claimant the statements violated his right to a fair hearing.

63. In the upshot, I hold the Claimant's termination procedurally unfair and unlawful.

64. On the substantive justification test, Section 43 and 45 of the Employment Act, 2007, demand that the employer must prove valid and fair reasons for termination.

65.The Respondent's reason for the termination is insubordination, specifically, defying instructions to stop engagement with IAI, and continuing communication despite clear directives.

66.In ***Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] KECA 300 (KLR)***, the Court held that an employee is obligated to obey lawful and reasonable instructions from an employer. Similarly, in ***CMC Aviation Limited v Mohammed Noor [2015] KECA 775 (KLR)***, the court held that insubordination is a valid ground for dismissal where an employee deliberately refuses to obey lawful instructions.

67.It is undisputed that instructions were issued to the Claimant to halt the RFP process, and the Claimant admits challenging and continuing engagement, albeit on grounds of legality and financial prudence.

68.In my view, the Court must distinguish between wilful disobedience and legitimate refusal based on illegality or whistleblowing concerns, as it would be unfair to punish an employee for resisting unlawful directives.

69.Having said this, the Claimant has not provided any credible proof of the Respondent's alleged violation of procurement laws and potential financial losses, as he did not conclusively prove illegality. This leads me to the conclusion that the Respondent had a prima facie valid reason to terminate the Claimant's services.

70. I therefore find and hold that the Claimant's termination was substantively fair and lawful.

### **Whether the Claimant is entitled to the reliefs sought**

71. The court has found the termination of the Claimant's services unfair on account of the biased panel and denial of witness statements in violation of Section 41 of the Employment Act, and Articles 35 and 47 of the Constitution. This finding entitles the Claimant to compensation pursuant to Sections 49 and 50 of the Employment Act, 2007.

### **Compensation**

72. In ***Alphonse Maghanga Mwachanya v Operation 680 Limited [2013] eKLR***, the Court held that in determining an award of compensation, the court is to consider the 13 factors set out under section 49 (4) of the Employment Act. Further in ***Elizabeth Wakanyi Kibe v Telkom Kenya Ltd [2014] eKLR***, the Court cited the case of ***D.K. Marete v Teachers Service Commission Cause No. 379 of 2009***, for the holding that remedies are not aimed at facilitating the unjust enrichment of aggrieved employees, but are meant to redress economic injuries in a proportionate way.

73. The Court has found the Claimant's termination substantively fair for not having conclusively proved illegality or violation of the Respondent's procurement laws.

74. Considering the Claimant's long service and his evident contribution to his own termination, I deem an award of six

(6) months' salary sufficient compensation for the unfair termination.

### **Severance pay**

75. Severance pay is only available to employees terminated on account of redundancy. The Claimant confirmed that his termination was not based on redundancy.

76. The claim thus lacks merit and is dismissed.

### **Future earnings (22 years)**

77. This is a speculative claim that lacks legal justification and has largely been held to amount to unjust enrichment. In ***Ngokonyo & 2 others v Telkom Kenya Limited [2025] KESC 75 (KLR)***, the Supreme Court held that claims for anticipatory salaries or future earnings lack statutory or contractual foundation.

78. The claim fails and is **dismissed**.

### **Pension & flight benefits for 22 years**

79. Similar to the claim for future earnings, these claims are also lacking in legal basis, and to award them would amount to unjust enrichment. Employment contracts are inherently terminable, and courts award ascertainable and proven loss, and not hypothetical future income.

80. These claims equally lack merit, and they fail.

### **Paternity Leave**

81. This claim was not proven. It fails and is dismissed.

82. In whole, the Claimant's claim partly succeeds in terms of the following orders: -

- a) A declaration that the Claimant was unfairly terminated on account of procedure.
- b) That the Respondent shall pay the Claimant six (6) months' salary as compensation for the unfair termination at Kshs. 2,700,000/-
- c) The Respondent shall bear half the costs of the suit, the same having partly succeeded.

83. It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 23<sup>RD</sup> DAY OF APRIL, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Daniel Okello the Claimant present in person.

Mr. Munene present for the Respondent

Ms. Esther S- C/A