



**Odour v Trade Winds Aviation Services Limited (Cause 454 of 2018)
[2025] KEELRC 472 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 472 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 454 OF 2018
K OCHARO, J
FEBRUARY 20, 2025**

BETWEEN

BENARD OCHIENG ODOUR CLAIMANT

AND

TRADE WINDS AVIATION SERVICES LIMITED RESPONDENT

JUDGMENT

1. Contending that at all material times he was an employee of the Respondent whose employment the latter unfairly terminated on or about 26th September 2017, the Claimant sued them seeking; a compensatory relief for the unfair termination; unpaid salary from March 2017 to 26th September 2017; compensation for leave days earned but to utilized; one month's salary in lieu of notice; and severance pay.
2. Upon being served with the summons to enter appearance, the Respondent filed a memorandum of appearance on 11th April 2018, and A Response to the Statement of Claim on 26th April 2018. It denied the Claimant's cause of action against it, and his entitlement to the reliefs sought.
3. At the hearing, the Claimant and the Respondent's witness, adopted their respective witness statements filed herein as their evidence in chief and tendered as documentary evidence the documents filed under their list of documents.

The Claimant's Case

4. The Claimant stated that he first came into the employment of the Respondent on 12th December 2012, as a Ramp Agent.
5. He further stated that on 5th March 2017, an incident occurred during his duties. He was accused of stealing three [3] mobile phones belonging to Kenya Airways customers. As a result, he was arrested, arraigned in court and charged with the criminal offence of stealing contrary to section 268[1] as



read with section 275 of the [Penal Code](#), in the Senior Principal Magistrates Court Jomo Kenyatta International Airport, Criminal Case No. 72 of 2017.

6. Pending the conclusion of the criminal proceedings, the Respondent excluded him from the workplace.
7. The criminal matter was heard and determined. The Court adjudged him not guilty and acquitted him on 26th July 2017. This notwithstanding, through their letter dated 26th September 2017, the Respondent terminated his employment on account of the alleged theft that was the subject matter of the criminal proceedings.
8. The Respondent went further to allege that the termination followed the decision by Kenya Airways Ltd not to allow the Claimant in any of its flights and all its areas of operation which were being serviced by the Respondent, as its agent.
9. Considering that the termination was based on the alleged offence, of which he had been acquitted by a court of law, the termination was unlawful, wrongful and illegal. As a result of the termination he suffered loss and damage, thus; unpaid salary from 10th March 2017 to 26th September 2017, KShs. 161,084; and twelve [12] months' gross salary, compensation for the unlawful termination of employment, KShs. 276,144.
10. Upon terminating his employment, the Respondent paid him Kshs. 43, 900 as his full benefits to cover days worked up to 10th March 2017, sixteen [16] leave days earned but not utilized; one [1] month's salary in lieu of notice; and severance pay. According to him, the total dues payable under these heads were supposed to total to KShs. 111,991. Therefore, in addition to the amounts above[para.9], the Respondent should pay him KShs. 68,091.
11. In his evidence under cross-examination, the Claimant testified that he was employed as a loading agent. He was stationed at the airport. Access passes thereto could be given from time to time by the Kenya Airports Authority. When he was arrested on 5th March 2017, they confiscated his pass.
12. His employer, the Respondent were involved in his arrest as they are the ones who handed him over to the police.
13. At the time of his arrest under a 2 years fixed-term contract, with the Respondent. According to the termination letter, the termination was effective on 10th March 2017.
14. Following gross misconduct on his part, or on being blacklisted by the Kenya Airports Authority, the Respondent had the right to terminate his employment without notice.
15. The suspension was through a phone call. The Respondent didn't issue him with any suspension letter.
16. At the separation his terminal dues were settled partially. In the termination letter, the Respondent did set out his terminal dues including severance pay for the period 2012-April 2015. He was not a member of any pension scheme.

The Respondent Case

17. The Respondent presented one witness, Samuel O. Obondo to testify on its behalf. The witness stated that on 12th December 2012, the Respondent employed the Claimant as a loading agent, a position in which he served up to 2017.



18. On 5th March 2017, while working within the premises of Kenya Airways Limited, he was found with mobile phones belonging to Kenya Airways Limited, by security personnel. As a result, he was arrested, arraigned in court, and charged with a criminal offence together with other persons.
19. The Respondent was eventually acquitted in the criminal proceedings. However, Kenya Airways declined to allow him access to its premises. As his contract was tied to that between the Respondent and Kenya Airways, the Respondent didn't have an option other than to terminate the Claimant's employment.
20. The Claimant was all along aware that his services were outsourced to the Kenya Airways Respondent and that Kenya Airways had declined to allow him back.
21. The termination of the Claimant's employment was lawful. He was paid all his terminal dues. As such, the reliefs sought cannot be availed to him.
22. Cross-examined by Mr. Sumba, Counsel for the Claimant, the witness testified that throughout the currency of the criminal proceedings, the Respondent could be briefed of the status thereof. The proceedings were concluded within three months. The Claimant was acquitted.
23. The reason that was set out in the termination letter for the dismissal of the Claimant from employment was that its client Kenya Airways had blacklisted him.
24. Immediately he was arrested, the Respondent suspended him pending the conclusion of the criminal case.
25. As at the time of termination of his employment, he was earning a salary of KShs. 20,811.
26. The Claimant was paid terminal dues of KShs. 53, 454, less statutory deductions.

Analysis and Determination

27. I have carefully considered the pleadings by the parties, their evidence, and their Counsels' submissions. The following issues emerge for determination;
 - i. Whether the Claimant's employment was unfairly terminated.
 - ii. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant's employment was unfairly terminated.

28. There is no dispute that on or about 5th March 2017, the Claimant was arrested, arraigned in court and charged with a criminal offence. Further, pending the conclusion of the criminal proceedings, the Respondent excluded him from the workplace. I have noted that when all this was happening, the Claimant was in the service of the Respondent under a contract dated 17th June 2015, which was in nature a fixed-term one, with a lifespan running from 1st June 2015 to 31st May 2017. It is clear, therefore, that he was being arrested, charged, and suspended from work, one and two-third months to the appointed lapse date of the contract.
29. I have no doubt in my mind that as at the time the, criminal proceedings were being concluded, and the Respondent was purporting to issue a termination letter, the contract of employment had come to an end by effluxion of time. In my view, therefore, there was not contract of employment to be terminated when the Respondent was issuing the termination letter. The letter was superfluous.
30. As such, there was no termination of employment by the Respondent as alleged by the Claimant. The employment contract came to an end due to an effluxion of time. After a contract of employment



has ended by effluxion of time, no liabilities or rights subsist that can be a basis for a claim for unfair termination. The Claimant's claim for unfair termination is therefore misplaced.

Whether the Claimant is entitled to the reliefs sought.

31. Having found the Claimant's claim for unfair termination lacking in basis, and merit, therefore, those reliefs tightly linked to it, cannot be availed to him. For this reason, the relief sought for compensation for unfair termination under the provisions of section 49[1][c] of the *Employment Act*, is declined. I could have declined the relief on notice pay, but note that the Respondent readily committed itself, through its "termination letter" to pay the same.
32. The Respondent in the above-stated letter committed to pay the Claimant, severance, pay which in my view shouldn't be confused with service pay under section 35 of the Act and therefore making payment to the NSSF, a non-consideration; earned but unutilized leave days; unpaid salary for the days worked in March 2017; and the notice pay.
33. The Claimant pleaded specifically what he was entitled to under the above-stated benefits thus;
 - i. Days worked up to and including 10th March 2017..... KShs. 7,671
 - ii. 16 leave days earned but not taken by 10th March 2017.....KShs. 12, 272.
 - iii. One [1] month's salary in lieu of notice.....KShs. 23,012.
 - iv. Severance pay for each year worked from December 2012 to April 2015 [3 years] KShs. 69,039.
34. The Respondent did not challenge this amount through their pleadings or witness's evidence. I award the Claimant, the same. However, that isn't to say that I have lost sight of the fact that the Respondent contended and the Claimant admitted that some payments were made.
35. Considering that the Claimant had the months of March, April, and May 2017, to work before the lapse of the contract and that his evidence that he was not paid any salary during the suspension period, I award him salary for these months. The salary for June to September 2017, sought cannot be granted to him, as it would relate to a period after the lapse of the contract and when the Claimant didn't render any service to the Respondent. This Court is very unwilling to, unjustly enrich the Claimant.
36. In the upshot, Judgment is hereby entered for the Claimant in the following terms;
 - i. Compensation for leave days
earned but not utilised..... 12, 272
 - ii. Severance Pay.....KShs. 69,036
 - iii. One month's salary in lieu of noticeKShs. 23, 012
 - iv. Salary for March, April and
May 2017..... KShs. 69, 036
 - v. Interest on the awarded sums above, at court rates from the date of filing this suit till full payment.
 - vi. Costs of this suit, are to be computed based on the amount awarded above as the subject matter of this suit.
 - vii. The amount awarded above, is to be lessened by KShs. 43, 900 already paid to the Claimant.



DATED, SIGNED AND DELIVERED THIS 20TH DAY OF FEBRUARY 2025.

OCHARO KEBIRA

JUDGE

