



**Nderitu v Kenya Airways PLC (Cause E655 of 2022)  
[2025] KEELRC 1395 (KLR) (14 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1395 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E655 OF 2022**

**HS WASILWA, J  
MAY 14, 2025**

**BETWEEN**

**MICHAEL KARIUKI NDERITU ..... CLAIMANT**

**AND**

**KENYA AIRWAYS PLC ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide a Memorandum of Claim dated 25<sup>th</sup> August 2022 on grounds that the Respondent illegally and unfairly summarily dismissed his employment. He prays for judgment against the Respondent for: -
  - i. A declaration that the Summary Dismissal of the Claimant was substantively false, unproven and therefore illegal and unfair.
  - ii. A declaration that the Claimant is entitled to compensation for the illegal and unfair summary dismissal in terms of 12 months gross salary being Kshs. 240,000 x 12 = Kshs. 2,880,000/- considering the duration of 5 ½ years served diligently and without any previous disciplinary record.
  - iii. An order for payment of the Claimants due and earned terminal benefits being:
    - a. months' salary in lieu of notice at Kshs. 240,000 x 3 = Kshs. 720,000/-
    - b. Service gratuity as per the terms of employment being 27 days salary for every year or part thereof served  $27/30 \times 240,000 \times 5.5 = 1,188,000/-$
  - iv. The Respondent do pay interest on the awards above.
  - v. The Respondent do pay the costs of this case.



## **Claimant's Case**

2. The Claimant states that he was employed by the Respondent as a Procurement Officer in 2014 and rose through the ranks to being a Materials Planner, CSP Administration. He performed his duties diligently until he was summarily dismissed on 5<sup>th</sup> February 2020.
3. The Claimant states that he was served with a Notice to Show Cause letter (NTSC) dated 16<sup>th</sup> December 2019 alleging that he failed to discharge his duties by: failing to adequately review available information to determine correct data of parts receipt at the Transfer point, KLM stated date being different from POD date; failure to correctly use available information to assess applicable charges on late return fees applicable dates leading to KQ being charged twice for accessing the components as stipulated in the contract; and the negligence had led to the respondent company being overcharged in the sum of US Dollars 357,000.
4. The Claimant states that he responded to the NTSC and proved that the allegations were false and unsubstantiated as the material facts had not accompanied the charges to enable an accurate response or supporting documents provided; when the Claimant demanded to be furnished more information but none was provided.
5. The Claimant states that subsequently he was served with a summary dismissal letter on 5<sup>th</sup> February 2020 on grounds that he was found guilty of failing to diligently interpret the contract between Kenya Airways with KLM.
6. It is the Claimant's case that his dismissal was flawed as he was dismissed on a totally different cause from the one provided in the NTSC. Further, the charges laid were never proved as no documentation were produced to prove the allegations.
7. The Claimant states that the matters forming the basis of the allegations had been transacted in his absence as he received the NTSC on his return from leave.
8. The Claimant states that there had been no adverse audit findings confirming that the company had lost any money attributable to his negligence. Additionally, none of the companies involved Kenya Airways and KLM had ever confirmed that there had been any wrong tabulation of expenses and loss.
9. The Claimant states that he never dealt with invoices as the same were taken directly to Kenya Airways Finance Department and then to his seniors who approved the same and then forwarded direct to IATA for payment.
10. It is further the Claimant's case that he was dismissed on the backdrop of raising valid concerns on the contract including developing a system to track the exchange orders which system was killed by the acting technical director clearly showing his malice
11. The Claimant states that all his appeals were dismissed without accurate review of the matters raised pointing to a predetermined decision to dismiss him.

## **Respondent's Case**

12. In response to the claim, the Respondent filed its Memorandum of response dated 9<sup>th</sup> February 2023.
13. The Respondent avers that in response to its NTSC dated 16<sup>th</sup> December 2019, the Claimant responded on 18<sup>th</sup> December 2019 which was found unsatisfactorily. Consequently, vide a letter dated 15<sup>th</sup> January 2020, the Claimant was invited for a disciplinary hearing on 17<sup>th</sup> January 2020 and was notified of his right to bring along an employee of his choice and any documentary evidence.



14. The Respondent states that the Claimant attended the disciplinary hearing and was granted an opportunity to be heard and after due consideration, he was dismissed on 5<sup>th</sup> February 2020.
15. The Respondent states the Claimant appealed his dismissal vide a letter dated 10<sup>th</sup> February 2020 to the Chief Human Resources Officer and after review of the facts and the Claimant's presentations, his appeal was declined and dismissal upheld as communicated in the Respondent's letter dated 19<sup>th</sup> June 2020.
16. The Claimant filed a further appeal to the Respondent's Chief Executive Office vide a letter dated 2<sup>nd</sup> October 2020 on similar grounds as the first appeal and after due consideration, the summary dismissal was upheld vide a letter dated 16<sup>th</sup> November 2020.
17. The Respondent states that the Claimant was negligent in the conduct of his duties specifically how he dealt with KLM leading to unwarranted late charge fees being levied on the Respondent forming grounds for his dismissal.
18. The Respondent states that the Claimant was the liaison person with KLM tasked with verifying data shared by KLM for accuracy before authorizing KLM to raise invoices and was therefore expected to be diligent to avoid compromising the Respondent's interests in its dealings with KLM.
19. It's the Respondent's case that the incidents which were subject to the Claimant's negligence, were based on the Claimant's approvals and communications to KLM and not limited to periods when he was on leave.
20. It's the Respondent's case that it was overcharged late fees based on wrongfully verified formulas and the invoice raised by KLM were based on the data forwarded by the Claimant which exposed the Respondent's operation to lose a tune of US Dollars 357,000.
21. The Respondent avers that the Claimant's dismissal was for a justifiable reason after observance of due process and was carried out in accordance to his contract, the law and rules of natural justice. Further, the appeals were considered and the outcomes duly communicated to the Claimant.

### **Evidence in Court**

22. The Claimant (CW1) adopted his memorandum of claim and witness statement dated 22<sup>nd</sup> August 2022 as his evidence in chief and produced his list of documents dated 25<sup>th</sup> August 2022 and supplementary list of documents dated 22<sup>nd</sup> November 2023 as his exhibits 1-37 and 1-77.
23. During cross-examination, CW1 testified that late fees could be charged and accumulate up to 60 days. KLM used to send him some data which contained some information when the parts were released to him and when returned and on late fees. The Claimant was to verify the date only; the dates could not be divorced in amount charged but the figures were subjective because they had no detail of the prices of the parts.
24. CW1 testified that he was the first call in the verification process and he would then copy his suspension and KLM would then bill once he verified the data.
25. CW1 testified that late fees were billed irrespective of reason of delay. There could be waiver on reduction of fees depending on the reason.
26. CW1 testified that if there was a misinterpretation on the first 15 days they would not be charged as per the contract



27. During re-examination, CW1 testified that he was not presented any data to show he had not read the right dates and no documents showed his culpability.
28. CW1 testified that he was only to verify dates and possible penalties. He did not verify total amount charged because the value of the units was unknown to him. The actual cost was verified by another team dealing with annual price of the components and the invoices were sent to Finance.
29. The Respondents witness (RW1) Benson Ndirangu Kamau stated that he works for the Respondent as the Acting Head of Technical Materials and he adopted his witness statement dated 22<sup>nd</sup> September 2023 as his evidence in chief and produced his list of documents dated 15<sup>th</sup> November 2023 as his exhibits marked 1 - 17.
30. During cross examination, RW1 testified that the Respondent did not produce in Court the billed invoices including the November invoice which was billed incorrectly. Further, there is no comparative invoice generated by the Respondent to show what should have been the correct calculation.
31. RW1 testified that the Article 18.2 of the contract provides that any dispute arising from interpretation of the agreement would be subjected to ADR, however, the Respondent never declared the dispute.
32. The Respondent's technical department did not escalate the dispute to the legal department for a formal declaration of a dispute. RW1 testified that he does not know whether the Respondent filed a claim against KLM but he knows the amounts were recovered.
33. RW1 testified that the Claimant was verifying data whereas his supervisor approved the payment. They had a duty to counter check and confirm the correct amount being paid.
34. During re-examination, RW1 testified that if there was a problem with billing, the Claimant would have been the first one to raise it. If there was a late component on the 20<sup>th</sup> day, the charge would arise from day 16 to 20 at 0.1% of the prize of the component per day.
35. The Respondent's second witness (RW2), Patrick Rono stated that he works for the Respondent as the Manager, Employee Relations and adopted his witness statement dated 22<sup>nd</sup> November 2023 as his evidence in chief and list of documents dated 15<sup>th</sup> November 2023 as his exhibits 1-17.

### **Claimant's Submissions**

36. The Claimant submitted on three issues: what was the proper interpretation of the subject contract; whether the Claimant's termination was fair and lawful; and whether the Claimant is entitled to the reliefs sought.
37. On the first issue, the Claimant submitted that from 2014 to 2019, all the senior officers never saw any fault in the employee's data and contract interpretation until the working relationship between KQ and KLM started getting sour and KQ wanted to get out of the arrangement. The Claimant became the fall guy as the cause of action had to be manufactured.
38. The Claimant submitted that the Respondent's interpretation was brought to KLM after 5 years of operation of the contract whereas KLM maintained that the working interpretation was the right one. This was a dispute on contract interpretation, however, the Respondent never declared a dispute and never called for Arbitration despite the contract having a dispute resolution clause under Article 18 obligating parties to go to arbitration.
39. It is the Claimant's submission that the reason for his dismissal lacks substantive justification as the Respondent did not have any evidence to support its interpretation and neither did it declare the



dispute for arbitration nor provide any audit or financial statements supporting the loss of funds alleged. Further, the claim parties opted to settle the dispute in the cause of their working relationship is unsubstantiated as no settlement is shown and the statement is without basis.

40. On the second issue, the Claimant submitted that the reason for his termination was not fair as his interpretation of the contract was right. Assuming he was wrong, a genuine misinterpretation of a contract by an employee cannot amount to fair reason for dismissal, unless he has deliberately ignored laid down and clarified interpretation of the contract.
41. The Claimant submitted that his reason for termination was unfair and does not meet the threshold under Section 43 of the Employment Act. The Respondent failed to discharge the burden of proof as the evidence adduced was tabulated invoices which did not provide a comparative calculation to render his calculations incorrect. Further, the evidence must be considered inadmissible as no source was specified and the documents were not certified nor signed by any known person alleged to have been produced.

### **Respondent's Submissions**

42. The Respondent submitted on whether the Claimant's summary dismissal was substantively false, unproven and therefore illegal and unfair.
43. The Respondent submitted that the Claimant admitted that he was the liaison person and he agreed that verification was part of his role.
44. The Respondent submitted that KLM/KQ contract the time for billing of late return fees began on the 16<sup>th</sup> day from the date the component was 1<sup>st</sup> received and ran up to the 60<sup>th</sup> day. From day 16 to 28 billing was 0.1% and from day 29 to 60 billing was at 1%. The overcharge occurred because the Claimant incorporated the first 15 days when verifying the billed invoices instead of omitting them as this were covered by the maintenance fees charged leading to the overcharge.
45. The Respondent submitted that from his explanation, the Claimant did not read the entire contract for its import and meaning. The Claimant's erroneous interpretation persisted despite clarification of the correct factors by KLM in its email to the Claimant on 13<sup>th</sup> December 2017.
46. It is the Respondent's submission that as the liaison person tasked with verification of data that would be used to raise invoices to be paid by the Respondent; in the event of an overcharge, the Claimant was responsible staff member. The Respondent was justified to invite the Claimant to dispel the allegations and when he failed to do so and admitted to the overcharge, the Respondent was justified in dismissing him from employment.
47. The Respondent submitted that the Claimant's allegation that the show cause and dismissal letter contained different charges is untrue as only different words were used to convey the same meaning and not a change in the charges.
48. On whether the Claimant is entitled to the reliefs sought, the Respondent submitted that the prayer for compensation ought to be dismissed as the dismissal was justified, lawful and fair in the circumstances.
49. The Respondent submitted that should the court be minded otherwise an award of one-month salary would suffice as the Claimant contributed to his dismissal based on various admissions during the disciplinary hearing.
50. The Respondent submitted that the Claimant's gross monthly salary of Kshs. 200,000; the productivity allowance of Kshs. 39,514 is a benefit to encourage employee output and the Claimant is no longer an employee therefore it is inapplicable to him.



51. On the 3 months' salary in lieu of notice, the Respondent submitted that the separation was a dismissal, therefore, the Claimant forfeited any notice pay under his contract. Additionally, there is no justification for the 3 months claim as clause 3 of the Claimant's letter of appointment provides for termination by 1 months' notice.
52. The Respondent submitted that the Claimant did not lay a basis for the prayer for service gratuity of Kshs. 1,188,000; the same was not provided for in his letter of appointment and therefore was not a term of his contract.
53. I have examined all evidence and submissions of the parties herein. The Claimant as per evidence on record was dismissed for failing to diligently interpret the contract with KLM and the Respondent and thereby giving a wrong recommendation on invoices for payment of late fees for parts procured with KLM as a result of which the company was overcharged USD 358 982.17 during the period between January 2017 and December 2017.
54. The Claimant has in his evidence explained that he is the first call in the verification process and he would then copy his supervisor and KLM would then bill once he verified the date. He indicated that there was a misinterpretation on how the first 15 days were to be charged as per the contract.
55. He however indicated that he was only to verify the dates and possible penalties and not the total amount charged because the value of the units was unknown to him.
56. The RW1 confirmed that the billed invoices including those billed incorrectly were not produced in court. He also confirmed that there is no comparative invoice generated by the Respondent to show what should have been the correct calculation.
57. From the evidence of the parties, it emerges that the issue was on interpretation of a contract clause on when and how late fees on parts not returned was to be calculated.
58. It is also true that as per evidence of RW1, when there was a dispute among them on the interpretation of the agreement, the same would be subjected to ADR but that the Respondent never declared a dispute. It is true that the Respondent and KLM had different interpretation of the clause on late payment of parts return. The Respondent however expected the claimant to interpret the contract differently yet KLM also had a different interpretation.
59. The solution lay with escalating this disagreement to ADR as per Article 18.2 of the Contract which the Respondent's technical department didn't. RW1 confirmed that he didn't know whether the Respondent filed a claim against KLM but he confirmed that the amounts were recovered.
60. Given that the issue between KLM and the Respondent was on interpretation of a contract, it is then true that it cannot be said that the interpretation of the KLM was wrong and that of the Respondent right or vice versa. There is no evidence that the issue of the correct interpretation was subjected to ADR and the correct interpretation agreed upon by the parties. The Claimant cannot therefore be vilified for this disagreement which was even resolved by the parties as per the evidence of RW1.
61. The decision then leading to the Claimant's dismissal remain largely invalid as the issue was beyond his individual capacity. On the Respondent's employee. The Claimant interpreted the contract in his way assuming it was right and if there was a convergence in interpretation done in good faith, this cannot amount to a fair reason for his dismissal.
62. Section 43 of the *Employment Act* 2007 states as follows:
  - 43.



- (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45. (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.

Indeed, reason for dismissal must be valid to warrant a proper dismissal. The Respondent failed to demonstrate the validity of the reason bearing in mind that the contention or interpretation was between KLM and the Respondent and which issue should have been resolved through ADR.

63. It is therefore my finding that the dismissal of the Claimant was unfair in the circumstances as per Section 45 (2) of the [Employment Act](#) 2007 which states as follows:

- (2) A termination of employment by an employer is unfair if the employer fails to prove-
  - (a) that the reason for the termination is valid;
  - (b) that the reason for the termination is a fair reason-
    - (i) related to the employees conduct, capacity or compatibility; or
    - (ii) based on the operational requirements of the employer; and
  - (c) that the employment was terminated in accordance with fair procedure.

64. As concern remedies, I find for Claimant and accordingly award him as follows:

1. 1 month salary in lieu of notice - 240,000/=
2. 8 months salary as compensation for the unfair termination which cut short the Claimant's career -  $8 \times 240,000 = 1,840,000/=$   
Total = KShs.2,080,000/=  
Less statutory deductions.
3. The Respondent will pay cost of this suit plus interest at court rates with effect from the date of this judgement.

**READ, DELIVERED AND SIGNED THIS 14<sup>TH</sup> DAY OF MAY, 2025.**

**HELLEN WASILWA**

**JUDGE**

