



**Singei v Kenya Airports Authority (Cause 1312 of 2018)
[2024] KEELRC 511 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 511 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1312 OF 2018
B ONGAYA, J
MARCH 7, 2024**

BETWEEN

DOUGLAS SINGEI CLAIMANT

AND

KENYA AIRPORTS AUTHORITY RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim on 10.08.2018 through Ondieki & Ondieki Advocates. The claimant prayed for judgment against the respondent for:
 - a. Judgement against the respondent for unlawful dismissal of the claimant from his employment or contract of service.
 - b. Permanent injunction restraining the respondent from replacing, interdicting or dismissing the claimant until the claim is heard and determined inter-partes.
 - c. In the alternative to a & b above, unconditional reinstatement to his position or compensation for the damage suffered.
 - d. Interest at court rates be borne by the respondent.
 - e. That the respondent pays costs and incidentals to this cause.
2. The claimant’s case was that he was the Acting Operations and Safety Manager mandated with Airline operation at the respondent’s airport for 16 years.
3. That on or about 27.01.2017 he was arraigned in Court upon suspicion of theft by servant in the Senior Principal Magistrate’s Court at JKIA Criminal Case No.24 of 2017.
4. That the case was heard and determined and the claimant acquitted of the allegations under section 210 of the Criminal Procedure Code (CAP 75) on 22nd December 2017.



5. That before determination of the case, the Respondent dismissed the claimant without hearing him as required in Article 25 (c), (1), (2) and 50 (1) (2) of *the Constitution* of Kenya. That because of his dismissal, several other Articles were violated including Article 47 (1) (2) on fair administrative action, reasonableness and procedural fairness; Article 27(1) on full benefit of the law; and legitimate expectation contemplated in Article 10(1) (2) of *the Constitution* on values and principles of rule of law, due process, human rights and justice.
6. That he has never violated any of the provisions of the *Employment Act*, 2007.
7. He contended that his dismissal was unfair and unlawful. In particular sections 40,41, 49 and 87 of the *Employment Act* 2007 were violated and the dismissal decision violated the *Fair Administrative Action Act*.
8. He filed a witness statement dated 3rd June 2019 in which he reiterated his statement of claim.
9. He stated in his statement that his prosecution before dismissal was because of being coerced to admit the authoring of a letter that caused an aircraft to be released for dismantling.
10. The respondent filed the memorandum of defence dated 8th May 2019 through the Federation of Kenya Employers.
11. In the response, it was confirmed that the claimant was employed effective 17th May 1999 having joined as a Marshalled Trainee where he rose in ranks over the years until the time of separation. As at termination he was earning a monthly basic salary of Kshs. 123,122.43/= and House allowance of Kshs. 25,000/=.
12. The respondent pleaded that Wilson Airport was an unplanned custodian of several junk or unserviceable aircrafts and in efforts to dispose-off the aircrafts, they were bonded through a Gazette Notice no. 2694 dated 17th April 2014 and per exhibit 1.
13. That on 4th January 2017 the Respondent's Ground Flight Safety team on their daily surveillance duty reported a bonded aircraft type BE55 BARON of registration number 5Y AUS missing from Wilson Airport airside.
14. Further, the claimant wrote a letter dated 30th December 2017 releasing the bonded Aircraft to an organisation known as River Cross Aviation Limited authorising the dismantling and removal of the said aircraft without instruction and being on a day he was not on duty. That the claimant issued passes without authorization to some junior staff for the dismantling and removal of the aircraft. The exhibits in that regard included the passes, application for passes and KAA occurrence book as exhibits 3(a), 3(b) and 3(c) respectively.
15. That the aircraft had an accumulated debt of US\$ 10,903 as at 12th January 2017 and was among the aircrafts listed in Gazette Notice 2694 of 17th April 2014.
16. The respondents outlined all other circumstances and facts that led to the dismissal of the claimant. In particular investigations were undertaken and witness statements obtained.
17. That the criminal case no. 24 of 2017 against the claimant was of stealing whereas the disciplinary action taken against him was based on the offence of abuse of office and gross misconduct hence, the criminal case had no bearing on the outcome of the internal disciplinary process.
18. The particulars of the allegations against the claimant were pleaded as follows:
 - a. There was no formal request made by the claimant for the aircraft.



- b. The acting airport manager at the time was not consulted
 - c. The finance department and the assistant manager security who were all in office at the time were not informed.
 - d. Impact of the network of staff who were used by the claimant or complied with the irregular and unlawful instructions to remove the aircraft.
 - e. The said aircraft had an outstanding bill of US Dollars 10,093.
 - f. The fact that the aircraft had been formally and publicly gazetted for the response of its owners.
 - g. The actual ownership of the aircraft was yet to be established as the respondent's records showed different organizations listed as its owners.
 - h. The extent of negative exposure, risk of liability and the negative impact to the respondent with the Airport Community, National Security Advisory Committee Members, Ministry of Transport, and others.
19. The respondent pleaded that full procedure for summary dismissal was followed according to the law and the respondent's HR manual and security guidelines.
 20. Further, in reaching the decision to terminate the claimant's services, the claimant was involved in the investigations, invited for a disciplinary hearing and afforded the opportunity to make representations accompanied by a fellow colleague or representative.
 21. That he was also invited for an appeal hearing and was informed his rights.
 22. The respondent pleaded that the claimant was not entitled to any of the prayers sought and that the court should find the summary dismissal was lawful and in accordance with fair procedure and to disallow the claimant's claim with costs to the respondent.
 23. The parties filed their respective submissions. The court has considered the parties' respective cases and material on record. The Court returns as follows.
 24. To answer the 1st issue, the Court finds that parties were in a contract of service.
 25. To answer the 2nd issue, the Court finds that the employment was terminated by the letter of summary dismissal dated 05.07.2017. The reason for dismissal was that following the respondent's letters dated 20.01.2017, 20.04.2017, the claimant's reply of 24.01.2017, the disciplinary committee meeting of 03.05.2017, it had been noted that the claimant had unprocedurally authorised the dismantling and removal of a bonded aircraft from Wilson Airport on 30.12.2016.
 26. To answer the 3rd issue, the Court finds that the respondent accorded the claimant due procedure of a notice and a hearing per section 41 of the *employment Act*. The claimant received the letter to show-cause, he replied, he attended the disciplinary hearing, he received the letter of summary dismissal, he he appealed by his letter dated 25.07.2017 , he attended hearing of the appeal but by letter dated 25.09.2017 the summary dismissal was upheld.
 27. To answer the 4th issue the Court returns that the respondent has established that the reasons for the summary dismissal were genuine per section 43 of the *Employment Act* as existing at time of dismissal and, were fair, as they related to the claimant's conduct and the respondent's operational requirements per section 45 of the same Act. In particular, the aircraft in issue was traced and located at Happy Times Schools in Gatundu, Kiambu County. The proprietor of the school one Charles Kang'ethe stated that he had bought the aircraft from Wilson Airport and to show the same he presented a copy of a letter



from the respondent signed by the claimant authorizing dismantling and removal of the aircraft. At the disciplinary hearing, the claimant stated that he had taken responsibility of authoring the letter even without seeing it and stated, "I took the trust and working relationship and owned the letter without seeing it." He also stated at the disciplinary hearing that he had never asked to see the letter. He further stated that he did not recall if the investigators showed him the letter. While denying he had authored the letter, he stated that he took responsibility because he had no reason to doubt his boss. He also told the disciplinary committee that he had seen the letter in court and the signature on the letter resembled his signature. The disciplinary committee record shows the claimant owned his statement to the investigator. The statement is dated 13.01.2017. He confirms in that statement that on 30.12.2016 he authorised the dismantling and removal of the aircraft in issue. In his response to the show-cause, he stated categorically that his boss the Airport Manager one Charles Owino informed him that he had written a letter to authorise an aircraft to be removed and having authored many letters, he admitted authoring the letter. The claimant cannot be trusted in his testimony in cross-examination denying writing the letter admitting he had told his boss that he had authored the letter to dismantle and get the aircraft removed. He confirmed he had not been forced to write any statement. With that claimant's evidence and account, the Court finds that the termination was upon genuine and fair reason.

28. The Court returns that the summary dismissal was separate from the criminal proceedings and the claimant has failed to establish his claims and prayers.

29. The suit is liable to dismissal with costs.

In conclusion, judgment is hereby entered for the respondent against the claimant for the dismissal of the suit with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH MARCH 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

