



**Ochieng v Jambojet Limited (Cause 555 of 2018)  
[2023] KEELRC 1806 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1806 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 555 OF 2018**

**L NDOLO, J  
JULY 27, 2023**

**BETWEEN**

**WALTER OMONDI OCHIENG ..... CLAIMANT**

**AND**

**JAMBOJET LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant in this case, Walter Omondi Ochieng is a Flight Maintenance Engineer by profession. At the time of seeking employment with the Respondent, Jambojet Limited, he was employed by ALS Limited.
2. The Respondent issued the Claimant with a letter of appointment dated June 22, 2017 and the following day on June 23, 2017, he resigned from his job at ALS Limited. The Respondent did not however deploy the Claimant and consequently, he did not take up his new appointment. It is this botched recruitment that is the subject of this dispute.
3. The Claimant states his case in a Memorandum of Claim dated April 6, 2018 and filed in court on April 17, 2018. The Respondent filed a Memorandum of Reply on June 26, 2018.
4. At the trial, the Claimant testified on his own behalf and the Respondent called Caroline Muchekhehu and Victor Okello. The parties also filed written submissions.

**The Claimant's Case**

5. The Claimant states that he participated in a competitive recruitment exercise carried out by the Respondent, upon which he was issued with a letter of appointment dated June 22, 2017 by which he was employed in the position of A&P Engineer at a starting salary of Kshs 423,000.



6. On June 23, 2017, the Claimant served a resignation notice on his then employer, ALS Limited. He proceeded to serve his notice period until July 15, 2017 and on July 19, 2017, he reported at the Respondent's offices for deployment as stipulated in his letter of appointment.
7. The Claimant states that he was not assigned duties but was instead kept waiting at the Respondent's offices and was later told by the Human Resource Manager to wait to be contacted. He adds that he did not receive any further communication from the Respondent.
8. The Claimant deems himself to have been constructively dismissed and accuses the Respondent of frustrating him by failing to assign him work.
9. In response to two demand letters from the Claimant, the Respondent wrote letters dated January 10, 2018 and January 26, 2018 stating that the Claimant was not deployed because of 'failure to successfully complete security clearance process.'
10. The Claimant seeks the following remedies:
  - a. A declaration that the Respondent's failure to assign him duties and to pay his salary amount to constructive dismissal;
  - b. A declaration that the said dismissal was unlawful and unfair;
  - c. An order directing the Respondent to pay to the Claimant 12 months' salary in compensation for unfair termination;
  - d. An order directing the Respondent to pay damages to the Claimant for breach contract;
  - e. An order directing the Respondent to pay the Claimant his monthly salary from the date of appointment;
  - f. An order directing the Respondent to pay the Claimant two months' salary in lieu of notice;
  - g. An order directing the Respondent to pay the Claimant his unpaid leave days;
  - h. Costs plus interest.

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

11. In its Memorandum of Reply dated June 18, 2018 and filed in court on June 26, 2018, the Respondent describes itself as a wholly owned subsidiary of Kenya Airways PLC.
12. The Respondent states that the Claimant was issued with a conditional letter of appointment dated June 22, 2017 but contests that this letter was the sole reason for the Claimant's resignation from his previous employment. The Respondent goes further to cast aspersions on the authenticity of the Claimant's resignation letter dated June 23, 2017.
13. The Respondent's case is that the Claimant failed to meet the conditions set in the letter of appointment and the employment did not crystallise. The Respondent maintains that the Claimant was not yet its employee at the time of rescission and/or withdrawal of the letter of appointment.
14. The Respondent claims that the reasons for the withdrawal of the Claimant's letter of appointment were communicated to him verbally when he visited the Respondent's offices to inquire about his employment. The Respondent states that the Claimant was asked to collect the letter of withdrawal but he failed to do so.



15. The Respondent accuses the Claimant of withholding crucial information about his employment record with Kenya Airways PLC. The Respondent avers that the Claimant's employment was terminated by Kenya Airways on allegations of theft in an aircraft. The Claimant then sued for unlawful termination in Industrial Court Cause No 157 of 2012 but his claim was dismissed.
16. The Respondent states that the Claimant knowingly withheld this information because he understood that a person with questionable integrity could not be granted clearance to have access to sensitive areas and aircrafts.

### **Findings and Determination**

17. There are two (2) issues for determination in this case:
  - a. The effect of the Respondent's action to rescind the Claimant's employment;
  - b. Whether the Claimant is entitled to the remedies sought.

### **Effect of Rescission of Claimant's Employment**

18. The Respondent's line of defence is that there was no employment relationship between itself and the Claimant.
19. On June 22, 2017, the Respondent wrote to the Claimant as follows:

“Dear Mr. Ochieng,

Letter Of Appointment – A&P Engineer

I am pleased to offer you a letter of appointment for the position of A&P Engineer. The following specific terms and conditions will apply:

Employer: Your employer will be Jambojet Limited (“Jambojet”), herein

after referred to as the Company on the terms set out in this letter, currently situated at Jambojet Head Office, at Kenya Airways Base, Airport North Road, Embakasi in Nairobi.

Position: You are appointed to the position of A&P Engineer, reporting to the Head of Maintenance. The responsibilities for this position are contained in the attached job description. The content of the job description may change from time to time and you will be advised accordingly of any such changes.

Condition of

Employment: This offer is conditional upon the following conditions precedent being satisfied:

- a. Confirmation that you are either a Kenyan citizen (please provide a copy of your ID/Passport) or hold a Work Permit for Kenya. (In the case of the latter it is your responsibility to obtain and pay for the costs of obtaining such Work Permit);
- b. Successful completion of Jambojet's security clearance process;
- c. Confirmation from a medical practitioner that you are fit and healthy to work;
- d. Provision of all certificates for all your formal education and professional qualifications;
- e. Copies of Personal Identification Number (PIN), NHIF and NSSF cards;



- f. Confirmation that you are free from any contractual restrictions preventing you from accepting this offer, and subject to item b) above, starting work on the date mentioned below.

Start Date: Subject to the above conditions being satisfied, we wish you to take up your appointment on July 19, 2017.

#### Responsibilities

and

Performance: You will adhere to all Company rules and regulations and practices which may be amended from time to time, and to directions as may be given to you from time to time by your Manager, as they form part of your responsibilities and the performance standards expected of you. The key responsibilities and performance indicators of your position are set out in the job description accompanying this letter. Annual performance targets will be defined and documented in keeping with the performance management cycle. Your contract with Jambojet will only continue based on your ability to continuously and consistently fulfil your responsibilities and achieve your performance targets to expected standards.

#### Location of

Work: You will be based at the Maintenance Office located at Airport North Road, but due to the nature of your position you shall be expected to travel from time to time.

#### Hours of

Work: The standard work week is 45 hours a week. You may be required to work different or additional hours if business requirements make this necessary, while taking into account existing relevant laws and agreements.

Salary: Your consolidated salary shall be structured as below:

Basic Pay 300,000 Kshs per month

Engineering Allowance 123,000 Kshs per month

Your salary will be paid to you by the last day of each calendar month, and will be subject to applicable taxes.

#### Maintenance

of

Licence: As a requirement of this position, you will ensure that your Licence is valid. This means that you will at all times achieve the requirements as stipulated by the Regulator.

Training: Jambojet shall provide you with the training required to obtain Q400 rating on your licence.

#### Benefits: Medical Insurance

You and your dependants will be entitled to join the Company's medical scheme upon joining Jambojet Limited. Details of the current scheme are available from the Human Resource department.



### Group Life Insurance Scheme

You will be entitled to join the Company's Group Life Insurance scheme upon joining the Company. Details of the current scheme are available from the Human Resource department.

### Pension Scheme

You will be entitled to join the Company's pension scheme upon confirmation. Details of the current scheme are available from the Human Resource department.

### Rebate Travel

You will be entitled to join the Company's Staff Rebate Scheme upon Confirmation subject to Jambojet Staff Travels Rules. Details of the current scheme are available from the Human Resource department.

Leave: You will be entitled to 25 working days annual leave.

All other leave entitlements (sick leave, maternity or paternity leave) are documented in the Staff Handbook and shall form part of the terms of your employment.

Probation: You will be placed on three (3) months' probation. You will be confirmed in the role subject to meeting the following conditions:

1. Receipt of 3 satisfactory references, one of which must be from your former employer;
2. Confirmation from a medical practitioner that you are fit and healthy to work;
3. Successful completion of Security and Safety Training Program;
4. A satisfactory evaluation of your performance over the three-month probation period. The probation may be extended if the above requirements are not met.

### Devotion to Company

Business: You shall (unless prevented by ill health) devote the whole of your time, attention and ability during business hours to your duties as specified, and shall use your best endeavours to promote the welfare and interest of the company and shall not without the consent of the Company engage or be engaged directly or indirectly in any other business or occupation other than that of your employment with Jambojet Limited. Conflict of Interest: Except with the written consent of the Company, you may not engage or participate directly (other than as a normal shareholder for investment purposes only) either alone or in partnership with or a manager, employee or agent for any other person or otherwise howsoever in any trade or business other than that of the Company during the duration of your employment hereunder.



You will be required to disclose to the Company all interests in any ventures, contracts or arrangement which may conflict with those of the Company or with the performance of your duties; such disclosure to be in writing to the Group Managing Director & CEO.

Other than as is required by the course of your duties and without the written consent of the Company, in no circumstances may you disclose to any person whatsoever any of the secrets, concerns, affairs, figures or account of the Company or any of its participants, subsidiaries or associated companies during your employment or after its termination for any reason. Furthermore, you may not communicate with any newspaper or other form of news media with regard to the affairs of the Company except with the prior express approval in writing of the Company.

Confidentiality: During your employment and after your employment has terminated, you shall not directly or indirectly use or disclose to third parties other than in the proper performance of your duties for the Company, any of the secrets and confidential information of the Company or any other associated company. Confidential information shall extend to all information of a confidential nature or in the nature concerning the organization, business, finance, databases, research projects, products, processes, customers or clients and/or affairs of the Company or any associated company. Funds of the Company: You are not empowered to pledge the credit of the Company in any way, or to incur expenses of a capital nature except as delegated in writing to you.

Resignation: Should you wish to resign from Jambojet Limited, you shall serve two (2) months' notice or pay the Company two (2) months' salary in lieu of such notice.

Termination: Jambojet shall be entitled to terminate this agreement without notice where you as the Employee commits any act or omission or engages in any conduct which constitutes grounds for summary dismissal under the *Employment Act* under the Laws of Kenya and any other matters, which constitute justifiable or lawful grounds for such dismissal under common law.

Termination of this agreement shall be without prejudice to accrued rights hereunder.

Upon termination of this agreement, you shall immediately surrender and return to Jambojet all property belonging to the Company which shall be in your possession on the date of such termination. Other Governing Policies: A copy of our Human Resource Policy Manual shall be provided for your review and you should read it carefully before accepting this offer.

It forms part of the terms of your employment.

The Company reserves the right, at its sole discretion, to change the conditions of your employment, including location within Kenya, and the terms of the Human Resource Policy Manual from time to time by giving you written notice of any such changes.

Governing Law: The agreement arising from your acceptance of this offer letter and terms and conditions stated in the preceding paragraphs above shall be governed by and construed in accordance with the Laws of Kenya.

If you are in agreement with the foregoing terms and conditions and accept this offer, please sign and return one of the attached copies of this letter before end of business Tuesday, June 27 2017 as evidence of your acceptance.

Yours sincerely,



For and on behalf of Jambojet Limited

(signed)

Willem Hondius

Managing Director and Chief Executive Officer”

20. The Claimant accepted this offer on June 23, 2017. The Respondent however argues that the letter of offer was rescinded before the Claimant could take up the appointment. In its further list of documents dated September 28, 2022, the Respondent included a letter dated July 19, 2017 rescinding the letter of appointment.
21. There is however no record of acknowledgement of receipt of the rescission letter by the Claimant. The Claimant denied receiving such a letter and none of the Respondent’s witnesses could confirm that the letter was served on the Claimant.
22. As held in the South African case of *Greyvestein v Iliso Consulting Engineers* (2004 BALR 330) a valid employment contract takes effect once the employee accepts the letter of offer.
23. Treading on the same trajectory, the Labour Appeal Court of South Africa in its decision in *Wyeth SA (Pty) Ltd v Mangele & others* (2005) 6 BLLR 523 held that a contract of employment which is duly signed and executed creates an employment relationship capable of enforcement. The Court further held that the definition of an employee includes a person who has signed a contract of employment with an employer whether or not the employee is actually deployed.
24. In its decision in [\*Tom Omondi Ngoko v Bank of Africa\*](#) [2015] eKLR this Court held as follows:

“For an employee, employment is not only a source of livelihood but also part of their essence and purpose in life. It follows therefore that once one is offered a job, they of necessity make certain adjustments in their life in order to take up the appointment; the most obvious being resignation from their current employment, relocation and financial adjustment. These adjustments cannot just be wished away on the basis of change of mind by a prospective employer.”
25. According to the letter dated July 19, 2017, the decision to rescind the Claimant’s appointment was informed by what was referred to as ‘failure to successfully complete the security clearance process.’ In the course of the trial, it emerged that the Respondent’s decision was based on an objection by the security team at Kenya Airways, where the Claimant had previously worked.
26. The Respondent’s 1<sup>st</sup> witness, Caroline Muchekehu, who at the material time was the Respondent’s Head of Human Resources, confirmed that best practice dictates that a letter of appointment is issued after all background check processes are completed. This was also confirmed by RW2, Victor Okello.
27. By its own admission therefore, the Respondent circumvented established best practice in processing the Claimant’s employment and the consequences of this failure must remain at the Respondent’s doorstep.
28. What is more, there was no evidence that the Claimant failed to disclose any material fact relating to his employment with Kenya Airways or the termination of that employment. The allegation of ‘failure to successfully complete the security clearance process’ was therefore an unsubstantiated statement that could not be objectively verified.



29. Moreover, even assuming that the Respondent had genuine concerns regarding the Claimant's relationship with Kenya Airways, these concerns ought to have been formally placed before the Claimant for his response. I say so because the parties had already executed an employment contract which could not be terminated whimsically by one party.
30. In the circumstances of this case, I find and hold that in rescinding the Claimant's employment, the Respondent breached the requirements of fair procedure and the rescission amounted to unfair termination of employment as defined in Section 45 of the Employment Act.

### **Remedies**

31. I therefore award the Claimant three (3) months' salary in compensation. In arriving at this award, I have taken into account the Respondent's unlawful conduct mitigated by the fact that the Claimant was able to find alternative employment within a reasonable time.
32. I further award the Claimant two (2) months' salary in lieu of notice.
33. The rest of the claims were not proved and are dismissed.
34. In the end, I enter judgment in favour of the Claimant as follows:
  - a. 3 months' salary in compensation.....Kshs. 1,269,000
  - b. 2 months' salary in lieu of notice.....846,000
  - Total.....2,115,000
35. This amount will attract interest at court rates from the date of judgment until payment in full.
36. The Claimant will have the costs of the case.
37. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY 2023**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Change for the Claimant

Miss Aluoch for the Respondent

