



**Kanyi v Kenya Airports Authority (Cause 1498 of 2018)
[2023] KEELRC 3217 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3217 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1498 OF 2018
B ONGAYA, J
DECEMBER 7, 2023**

BETWEEN

ROBINSON KANYI CLAIMANT

AND

KENYA AIRPORTS AUTHORITY RESPONDENT

JUDGMENT

1. The claimant filed the Statement of claim on 06.11.2018 through Ombongi Kiptoo & Associates Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the respondent's dismissal of the claimant from his employment was unlawful, unfair and hence null and void.
 - b. A declaration that the claimant's termination was in violation of his constitutional rights to fair labour practices as set out in Constitution of Kenya.
 - c. The reinstatement to the former employment position of the claimant.
 - d. In the alternative;
 - e. An appeal on the respondents disciplinary committee decision to terminate the services of the claimant be allowed and the process to be just and fair.
 - f. Costs of this suit
 - g. Such other or further relief as this honourable court may deem just to grant.
2. The respondent's statement of defence was filed on 19.06.2019 and through Federation of Kenya Employers. The respondent prayed that the claim be dismissed with costs.



3. The claimant's case was that he was employed by the respondent around October, 2000 and his last assignment with the respondent was as an apron controller at Wilson Airport.
4. On Friday, 22.12.2017 two aircrafts registration numbers ZP-PPL and ZS-NXH arrived at Wilson airport around 17:00 hrs and parked at customs area. The crew went through the security and customs clearance after which they started refuelling the aircrafts.
5. The claimant states that at around the same time flights from Malindi, Kisumu, Mombasa, Ukunda and Eldoret had landed almost the same time but could not park at the customs area because of limited space.
6. The claimant states that he advised the pilots to reposition the aircrafts to apron 4 for overnight parking so as to decongest the apron and ease traffic flow. The pilots declined and said they will night park at the same position.
7. The claimant called the tower and requested that all flights queuing for parking at the customs be allowed to disembark passengers on taxiways as they sort out the parking issue with the crew of the two aircrafts.
8. The claimant advised the two pilots together with an officer from Tradewinds Handling Company to assist the pilots to tow the aircrafts but he informed him that he did not have equipment for towing.
9. The claimant advised them that it would not be safe to manoeuvre to apron 4 with running engines due to parked engines.
10. The pilots consulted with their ground handler and agreed to taxi both to apron 4. The claimant led them using the security van and they finally parked on apron 4 helipad and the claimant returned to the office and left them with the Tradewind Handler.
11. On 23.12.2017 while the claimant was on duty, two aircrafts repositioned from apron 4 to customs for their departure around 100hrs. Due to unavailability of parking space at the customs area, they requested the tower to allow them to park on the helipad on apron 2 which was granted and they proceeded to park.
12. The claimant states that an officer of the respondent came to his office and informed him that the manager wanted to talk to him and that he should call him, which he did.
13. The manager, Mr. Machio asked the claimant what the problem was with the two aircrafts to which the claimant explained about the happenings of the previous day, as regards repositioning the aircrafts to apron 4 and failure to submit general declaration for arrival previous day by their handler.
14. The manager asked the claimant to pardon them and let them go with a verbal warning. After about 20 minutes, Mr. Kuyanda the acting officer in charge called the claimant to inquire why the crew of the two aircrafts were being detained at the airport.
15. The claimant states that he informed him that he had not detained anyone and had already communicated with the manager.
16. On 24.12.2017 a Justine Heine wrote to the respondent and complained about corruption and harassment at the airport and alleged that the claimant was involved in soliciting for over USD2000 in which they ended up giving USD 300.



17. The respondent instituted investigations and submitted its report to the manager security services on 19.01.2018. The claimant was issued a notice to show cause and a disciplinary committee hearing held on the 01.03.2018 resulting in the termination of the claimant's services on the 24.04.2018.
18. The claimant appealed the decision but was informed that the appeal was dismissed.
19. On the part of the respondents it is stated that the claimant was terminated on account of gross misconduct for the offence of failing to comply with a lawful order and also for soliciting and accepting a bribe contrary to section N4(a) and (r) of the 2011 Human Resource Policy Manual. On 24.12.2017 a customer by the name Justine Heine wrote to the respondent complaining how he was harassed and intimidated and then forced to pay a bribe of USD 300 by a police officer and a KAA employee in charge of the apron before being allowed to board and proceed with his journey from Wilson Airport.
20. The respondent states that the matter was investigated and later discovered that on the material day the customer complained, the claimant was on duty and 2 aircrafts registration number ZS-PLL and ZS-NXH belonging to Vanilla Sky Aviation Company landed at Wilson Airport at around 17 hours with a total of 4 crew members.
21. That the two aircrafts landed at Wilson and parked at customs area for clearance and security checks. They were to carry passengers from Wilson Airport to Pemba Mozambique the following day but were advised by the claimant not to park at the spot and that is when the claimant demanded USD 100 per aircraft as towing charges as they could not start the engine.
22. The matter was taken up by the security manager of Tradewinds who reported the matter to the airport manager who then directed the claimant to release the aircrafts unconditionally.
23. The claimant refused to obey the lawful command and instead sought the help of a police officer to intimidate the crew by demanding a bribe of USD 2000 or else be jailed. The crew raised USD 300 and was later allowed by the claimant to depart. At this point the claimant was found to have contravened the regulations of the human resource manual and disciplinary process was commenced against him by being issued with a show cause to give explanation as to why disciplinary action should not be taken against him.
24. On 06.03.2018 the claimant was invited to appear before a disciplinary committee for a hearing of the allegations that he was facing and after hearing the claimant, the respondent states that it was clear that the claimant was fully aware of his actions and had contravened the policies at the workplace intentionally by disregarding the supervisor's directives.
25. The claimant was issued with a termination letter stating the reasons for his termination. He appealed against the termination as per the internal mechanism and the appeal committee found that the claimant was guilty of disobeying the supervisor directives.
26. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
27. To answer the 1st issue, the Court returns that the parties were in a contract of service as pleaded and there is no dispute on that issue.
28. To answer the 2nd issue the Court returns that the contract of service was terminated by the letter dated 23.04.2018 on account of gross misconduct after the letter to show cause dated 12.02.2018, the claimant's response dated 19.02.2018, and, the disciplinary committee meeting held on 13.03.2018.



29. The 3rd issue is whether the termination was unfair. The record of the disciplinary hearing dated 13.03.2018 show that the claimant was give an instruction by his supervisor to release the two aircrafts but the claimant confirms that the captain, crew members and the aircrafts remained detained at the Airport from 11am to 1pm, He failed to check and confirm compliance with his verbal release order because he was busy with other assignments. Despite his supervisor calling him to deal with the situation, he appears to have feigned to the supervisor that the situation was being sorted out. The Court finds that on a balance of probability, the claimant failed to implement a lawful order that the aircrafts be released. Further, the unjustified 2failure to implement the supervisors' instructions considered together with the letter written about the bribery allegations of USD 300 point to dishonesty. The Court returns that the respondent's submissions that the reasons for termination were valid and fair per sections 43 and 45 of the *Employment Act* are upheld. On procedural fairness the claimant confirmed in his testimony that he was taken through full disciplinary hearing prior to dismissal. The Court finds that he was accorded due procedure of a notice and a hearing per section 41 of the *Employment Act*.
30. The respondent has succeeded but in view that the captain and the crew members of the two aircrafts had committed a mistake by starting the aircraft engine at apron and not passing through the arrival exit point, and which mistake the claimant said he was trying to correct, but in the process the misconduct transpired, each party to bear own costs of the suit. The reliefs prayed for are found not established as they are unjustified.

In conclusion the suit is hereby dismissed with orders each party to bear own costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

