



Kuria v Airbus Southern Africa [PTY] Ltd Kenya Branch (Cause E044 of 2022) [2022] KEELRC 1157 (KLR) (27 May 2022) (Ruling)

Neutral citation: [2022] KEELRC 1157 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E044 OF 2022**

J RIKA, J

MAY 27, 2022

BETWEEN

MOSES KURIA CLAIMANT

AND

AIRBUS SOUTHERN AFRICA [PTY] LTD KENYA BRANCH ... RESPONDENT

RULING

1. The Claimant has applied for orders that: -
 - a. The Respondent is compelled to deposit the claim amount as stated in the Statement of Claim, in an escrow interest earning account, pending hearing and determination of this Application and the entire Claim.
 - b. The Respondent is compelled to deposit the costs of the entire Claim in an escrow account pending hearing and determination of the Application and the entire Claim.
2. The Application dated 3rd February 2022, is founded on the Affidavit of the Claimant, sworn on even date.
3. He explains that he was employed by the Respondent as an Aircraft Maintenance Engineer, on 12th September 2020.
4. His contract was terminated on retrenchment, through a letter titled ‘termination of employment due to retrenchment,’ dated 19th January 2022.
5. He was offered technical trainings specifically for Airbus Helicopters EC130. It was this offer that enticed the Claimant into executing the contract of employment.



6. The Respondent then issued the retrenchment letter, informing the Claimant and others staff that it was winding up its business in Kenya. The Claimant's concern is that trainings were key component in his contract of employment, a benefit he stood to lose through the Respondent's closure.
7. The Respondent is transferring its assets out of the Country. It is a South African Company, and the Claimant would not be able to satisfy any decree that may be issued in his favour, while the Respondent is out of the jurisdiction of the Court.
8. The Respondent is opposed to the Application. It relies on Grounds of Opposition dated 22nd February 2022, and Replying Affidavit, sworn by its Executive Human Resource Manager Zakieya Parker, on 22nd February 2022.
9. It is the position of the Respondent that the Application is not merited; it is based on a misunderstanding of the Claimant's terms and conditions of employment; the contract of employment contained the entire terms and conditions of employment; and the Application is founded on ulterior motive.
10. The Claimant is no longer an Employee of the Respondent, his position having been declared redundant. The Claimant and all staff were notified of closure of business by the Respondent in Kenya. However, the Respondent is not insolvent. It is a registered company with known address. The Claimant was paid all his dues. Any offer of training made to the Claimant was to enable him perform his role. It was not part of his remuneration. The Respondent was investing in the Claimant's development. Upon declaration of redundancy, it would not be feasible to continue with any training of the Claimant.
11. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions, the latter which were confirmed to have been filed and exchanged at the last mention on 22nd March 2022.

The Court Finds: -

12. The training offered to the Claimant was not an enforceable benefit, under the terms and conditions contained in his contract of employment, concluded on 22nd September 2020.
13. His position was declared redundant. The Respondent paid to the Claimant redundancy benefits under the law. The Claimant does not claim that redundancy was unfair or unlawful. He does not claim any compensation or benefit under Sections 40, 41, 43 and 45 of the *Employment Act*. His prayers are confined to technical trainings which had been offered by the Respondent, as part of his professional development.
14. His main Claim is for declaratory orders, and for a sum of Kshs. 24,000 Euros, which the Claimant alleges to be the cost of the training, transportation, food, and upkeep allowances. It is this sum, together with unknown costs of the Claim, that the Claimant wishes to be deposited in an escrow account, as security.
15. The Court does not think that the Claimant's Application is well – founded in law and fact. It is not based on breach of the *Employment Act* or breach of any clause in the Claimant's contract. The contract of employment was terminated fairly and lawfully and the Claimant was paid his dues, under the contract and the law.
16. What he is pursuing, is a benefit that was offered at the discretion of the Respondent, and which could not be enforced while the position in which the Claimant worked, had been declared redundant. The



understanding of the Court is that the Claimant was being trained, so long as he was an Employee of the Respondent. Once he was no longer an Employee, the Respondent did not have an obligation to train the Claimant, or offer him compensation for lack of training. No such obligation can be read from the Claimant's contract of employment, or any other contract regulating the technical training of the Claimant.

It is Ordered: -

- a. The Application dated 3rd February 2022 filed by the Claimant is declined.
- b. Costs to the Respondent.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH
DAY OF MAY, 2022.**

JAMES RIKA

JUDGE

