



**Kenya Aviation Workers Union v Kenya Airways Limited (Cause 1448 of 2015) [2022] KEELRC 4086 (KLR) (10 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4086 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1448 OF 2015**

**J RIKA, J**

**JUNE 10, 2022**

**RIKA J**

**COURT ASSISTANT: EMMANUEL KIPRONO**

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**KYALO & ASSOCIATES ADVOCATES, FOR THE CLAIMANT  
OBURA MBECHÉ & COMPANY ADVOCATES FOR THE RESPONDENT**

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**BETWEEN**

**KENYA AVIATION WORKERS UNION ..... CLAIMANT**

**AND**

**KENYA AIRWAYS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed its amended statement of claim, on October 30, 2015.
2. The claim is brought on behalf of WM, a member of the claimant union and formerly a flight purser, working for the respondent airline.
3. M, [hereinafter, the grievant] was employed on a succession of various term –limited contracts as an inflight attendant, commencing in 2004.
4. She was placed on a 3-month contract on May 1, 2004; A 2-year contract, which was said to have been effective from March 1, 2004; and a 5-year contract, commencing March 1, 2006.



5. On March 21, 2007, she was advised by the respondent that her existing limited-term contract, had been converted into open-ended contract [ generally referred to as permanent employment] with effect from April 1, 2007.
6. She was appointed to the position of senior inflight attendant, on October 24, 2008. She became a Flight Purser, on February 25, 2013. She was lastly paid a monthly basic salary of Kshs 106,000, housing allowance of Kshs 50,000, and Kshs 99,000 layover allowance, among other benefits. She states that her last gross monthly salary was Kshs 252,765.
7. On October 9, 2014, the grievant was on duty in flight KQ 203 from Mumbai to Nairobi. On arrival at Nairobi, the grievant was participating in a debriefing session with the other Crew, when 2 Security Officers, Masai and Muga interrupted the session, alleging that a Passenger had complained that one of the Crew was drunk.
8. The grievant asked the officers for details of the passenger who lodged the complaint, but none was supplied. The crew were asked to accompany the officers to the security office for random checks. They complied.
9. Muga shouted at the grievant, claiming that she was drunk. He told the grievant that she was protecting crew who had stolen respondent's property. He pulled her by the hand while at the security office, and told her that she had good looking boobs and sterling lips, and further that she had to give him a date, if she wished to save her job. She understood this to mean that she had to sleep with Muga to save her job. She was sexually harassed. She reported this in the Official Company Security Search Form.
10. The Security Officers were joined by the grievant's Controlling Manager Nicholas Korir. Korir asked the grievant to accompany him and the Security Officers to the Respondent's clinic for alcohol test. She questioned why she was being singled out for this test. She requested to be allowed to pick her bag from the baggage hall. Muga declined her request. She asked Korir to intervene. He too declined her request, insisting that she proceeds to the clinic. She felt humiliated and treated like a criminal. Muga asked for reinforcement from another Officer, Kong'ani. Korir insisted that the grievant proceeds to the clinic. This was done in the full view of other Crew, drivers and passersby who were not privy to the incident. The grievant felt treated like a criminal who was suspected of a heinous crime.
11. She was issued a letter to show cause why she should not be disciplined, dated October 21, 2014. The accusation was that she declined an alcohol test. She replied on October 28, 2014. She was heard by a disciplinary panel on November 19, 2014, and her contract terminated with effect from December 4, 2014.
12. She states, she was not given a fair hearing. She had served for 15 years. She was willing and ready to continue working until retired at the age of 60 years. She was not accorded due process. She was sexually harassed by Respondent's Officers. She was unfairly discriminated. She had credit facilities guaranteed by the Respondent, which fell into arrears upon termination.
13. The disciplinary panel disregarded handwritten statements made by the grievant's fellow crew. One statement by Gloria Rabuko was altogether omitted. The claimant asked before the grievant was heard, to be supplied with passenger's complaint, written statement, name and seat number. None of these was supplied. The crew and the captain were not called to give evidence. Only the security officers, who were not in the flight, gave evidence.
14. The captain or the first officer, were not required to record statements. The panel did not take into account the grievant's complaint about her sexual harassment by Muga. Victorine Madaga, the female security officer responsible for frisking ladies, recorded a statement, saying she did not



notice the grievant staggering, or reeking of alcohol as alleged by the respondent. There was no complaint by the rest of the crew against the grievant, to suggest that she was drunk on the flight from Mumbai to Nairobi. The claimant states that the grievant was treated maliciously. Her rights not to be discriminated against and not be sexually harassed, granted by Articles 28, 29 and 31 of the Constitution, and Section 5 of the Employment Act, were impaired.

15. The claimant pleads that the grievant suffered special loss and damage, including: -
  - a. Service pay at Kshs 2,187,394.
  - b. Lost future earnings.
  - c. 3 months' salary *in lieu of* notice at Kshs 252,765.
  - d. Lost accrued 80 leave days at Kshs 20,221,248.
  - e. Lost credit facility at staff rate.
  - f. Lost layover allowances at Kshs 88,605 monthly.
  - g. Reputational risk as an alcoholic and non-performer.
  - h. Rebate tickets.
  - i. Aggravated damages consisting mental distress, inconvenience, and psychological injury.
  - j. Exemplary damages for sexual harassment and discrimination at Kshs 8 million each- total Kshs 16 million.
  
16. The claimant's prayers are: -
  - a. Declaration that the grievant suffered unfair and wrongful termination in the first instance.
  - b. Declaration that the Respondent intentionally breached the provision of Section 5 of the Employment Act 2007, Articles 10, 27, 28, 29, 31,47 and 50 of the Constitution, 2010.
  - c. Reinstatement without loss of benefit and/or seniority and continuity of service.  
Alternatively, and without prejudice to the foregoing –
  - d. Payment of actual pecuniary loss suffered since her date of termination including payment of salary / wages as would have been earned, housing allowance, and all accruing allowances.
  - e. Maximum compensation for loss of employment at Kshs 3,033,187.
  - f. 3 months' salary *in lieu of* notice at Kshs 758,296.
  - g. Service pay.
  - h. Accrued leave of 80 days.
  - i. Rebate tickets for life.
  - j. Aggravated and exemplary damages for unfair discrimination and sexual harassment at Kshs 16 million.
  - k. Any other suitable relief.
  - l. Costs.
  - m. Interest.



17. The respondent filed its statement of response on September 1, 2015. It is conceded that the grievant was employed by the respondent. Her contract was terminated by the respondent with effect from December 4, 2014. Her record was not clean. She was warned on November 24, 2012, for failing to remit USD 30, being the proceeds of duty free sales, made during a scheduled flight.
18. She operated Flight KQ 203 on October 9, 2014. Upon landing at Nairobi from Mumbai, a guest in the flight was overheard by Security Officers Masai and Muga, on hand to receive Flight KQ 203, saying that a Crew Member in the Flight was intoxicated. The Security Officers decided to board the craft. They found the grievant debriefing the rest of the Crew. She appeared intoxicated and unable of coordinating her speech. She was inaudible and her breath smelt of alcohol.
19. All Crew were invited for search at the Security Office. It was only the grievant who behaved as if she was intoxicated. She was asked to avail herself at the clinic for alcohol test. She went half-way to the arrival hall. She started crying and behaving hysterically, shouting that she would not subject herself to any alcohol test. The Security Officers called her Manager Korir. He tried to prevail upon her to go to the clinic. She declined and grew more hysterical, storming out of the arrival hall while shouting incoherently and staggering.
20. Regulation 93 of [\*Civil Aviation \[Air Operator Certification and Administration\] Regulations 2013\*](#), which applied to the grievant, permitted the respondent to test the grievant for alcohol and to dismiss the grievant from employment for failure to take the test. Regulation 62 of the [\*Civil Aviation \[Operation of Aircraft\] Regulation, 2013\*](#) bars Crew Members from discharging their roles while intoxicated. Regulation 192 of the Civil Aviation [Personal Licensing] Regulations, 2013, allows for testing of Crew for alcohol. A person who declines to be tested, may have her licence issued under the Regulations revoked.
21. The subsidiary legislations above are supplemented by cabin crew member manual and the human resource code of conduct and ethics, which was part of the grievant's contract. The grievant was, under the manual and the code expected to demonstrate professionalism, and not discharge role while under the influence of drugs and /or alcohol. The respondent had every right to ask the grievant to submit to alcohol test.
22. She declined, setting in motion the disciplinary process. She was issued show cause letter. She replied. She was invited to a disciplinary hearing. She was represented fully by the claimant. The claimant even filed written submissions. The submissions and minutes of the hearing are exhibited by the respondent. The panel determined that the grievant's contract is terminated, which was done, through the letter dated December 4, 2014.
23. The claimant appealed against the decision. The appeal was heard, and a decision made on February 12, 2015, to uphold the initial decision. The claimant made further Appeal on March 13, 2015 to the group managing director, which was similarly declined.
24. It was not necessary to identify the passenger who complained about the grievant's intoxication. The grievant ought to have submitted to the alcohol test, to absolve herself. She was not sexually harassed or unfairly discriminated. She was handled professionally, amidst her hysterics. Her colleagues had no reason to be tested. There was no allegation that they were intoxicated. The grievant was solely to blame for termination of her contract, after 15 years of service. She could not reasonably and legitimately expect to continue in service, while she had refused to be tested. The Respondent did not violate grievant's rights under the [\*Constitution\*](#) and the [\*Employment Act\*](#). She does not merit any form or damages or compensation. Her refusal to be tested could only be construed as an admission of the suspicion that she was intoxicated. She was not intimidated by the security officers, and even if she was,



- there was no reason not to subject herself to the medical test. Allegations of sexual harassment were never raised at the disciplinary hearing. The Respondent prays for dismissal of the claim with costs.
25. The grievant gave evidence, and rested the claim on February 18, 2021. Security Officer Peter Ochieng' Muga and his colleague Victorine Madaga, gave evidence for the respondent on October 7, 2021, closing the hearing. The claim was last mentioned in Court on February 23, 2022, when the parties confirmed filing and exchange of their closing submissions.
  26. The grievant restated that she was a flight purser, working for the respondent. She was in charge of security service in the first class. Flying from Mumbai to Nairobi in October 2014, a passenger said he was feeling unwell. The grievant informed the Captain. It was during the time of Ebola. The Crew did not take a chance. The grievant debriefed her colleagues on landing. It was alleged that she was intoxicated inflight.
  27. The crew asked their captain what exactly was said by the passenger. There was no answer. Security Officers searched the Crew. Nothing was found. Muga pulled the grievant aside, and said she must give him a date. She was issued notice to show cause. She replied and was invited to a disciplinary hearing. She was represented by her Union, the claimant herein. The respondent did not produce evidence from those in the flight, but produced evidence from only the security officers. Her contract was terminated. She appealed unsuccessfully.
  28. The respondent had guaranteed the grievant mortgage facility. She lost this on termination. She lost her medical cover and rebated tickets. The grievant adopted as her evidence, her witness statement and documents filed by the claimant.
  29. Cross-examined, she told the court that she was a flight purser. She was told by security officers that a passenger had complained that a flight attendant was intoxicated inflight. The crew were requested to go for a search. They were all searched. Nothing was found. The grievant was asked to go to the clinic for an alcohol test. Muga said she appeared drunk. She was asked to take an alcohol test. She declined.
  30. She had worked for 15 years. Crew were certified under Aviation Regulations to fly. They could be subjected to alcohol test any time. Manager Korir requested the grievant to take the test. He was the Duty Manager. He asked her to write a statement while at the Security Office. She did not write one. The statement at page 43 of the claimant's Documents, was not written by her. It bore her name and personnel number. It is not true, that she wrote the statement while intoxicated. She conceded she handwrote the statements at her pages 49 and 51, on October 11, 2014. She did not write the first statement while intoxicated, or at all.
  31. There were 8 Crew Members. 7 of them signed the Crew Form. The grievant did not. She said Muga should be, 'more polite and professional.' She did not say that he had sexually harassed her. She did not say anywhere in her statements that Muga sexually harassed her. She did not say that Muga told her he admired her boobs.
  32. The accusation against the grievant at the panel, was not that she was intoxicated; it was that she failed to take the alcohol test. The claimant represented her at the hearing. The law prohibits intoxication while on duty. She told Korir, her controlling manager, that she would not be tested. All crew suspected of intoxication must be tested. The grievant denied that she was staggering down the aeroplane's staircase, shouting and stinking of alcohol. She was not hysterical and insulting everyone. She mentioned sexual harassment at the disciplinary hearing. The notice period was 30 days. This was offered by the respondent.



33. Redirected, the grievant told the court that she declined the test because she was harassed. Her statement of October 11, 2014 mentioned sexual harassment. Gloria's statement disappeared. All Crew should have been compelled to take the alcohol test.
34. Muga told the Court he presently works as a Security Officer for Astro Aviation. Previously, he worked for the Respondent in the same role. He knew the grievant. He did not sexually harass her. There were other Crew Members present. Muga did not say that he liked the grievant's boobs, or that he wished to date her. She behaved in a manner suggesting she was drunk.
35. Cross-examined, Muga told the Court that the Security Officers acted in accordance with Aviation Protocols. He was not the Investigator. The Respondent was the Investigator. He reported the issue as it was. He reported to the Head of Security, Calistus. Details of the complaining passenger were not necessary. The passenger did not point out which Crew was intoxicated. The Operations Manual has a procedure for handling complaints. The passenger reported the incident. He was not complaining. The incident was not about the passenger. He may have transited to another country. There was no cause to follow him.
36. Muga did not know if the grievant worked in first class or economy class. He did not know which class the passenger flew. He stated the passenger approached him, while his Senior Calistus stated that the Muga overheard the passenger complain. There was no contradiction between Muga's statement and the report by Calistus. Muga did not talk to the Captain. The Captain has his Manager. He did not examine the cockpit video recording. Muga did not record statements from other Crew, to corroborate his position that the grievant was incoherent during debriefing. The statements of the Crew exhibited by the claimant, all state that the grievant was not noticeably intoxicated. These were the Witnesses who were present in the flight from Mumbai. The letter to show cause states, without mentioning the grievant, that a member of the Crew was drunk. It was not mentioned that the grievant acted hysterically at the baggage area. There is a voyager report, filled by every Crew after flight. It was not available before the Court.
37. Redirected, Muga told the Court that the grievant's services were not terminated because she was drunk; it was because she refused to be tested. There were grounds to suspect that she was drunk. She was uncoordinated in her speech and gait. Her Manager Korir confirmed this. The Doctor said she could not be compelled to take the test, once she declined.
38. Madaga worked as a Security Officer for the Respondent, since March 2005. She conducted search on the grievant. She was in the company of Muga. He conducted search on the Males. Muga did not utter words of a sexual nature directed at the grievant. He did not harass her. The grievant was talkative, staggering and aggressive. She was near Madaga, and she smelt of alcohol. She boarded the van to go to the clinic for testing. Midway, at the baggage area, she said she could not be tested. She said she would rather resign.
39. Cross-examined, Madaga told the court that her witness statement did not say that the grievant smelt of alcohol. This was an oversight. Madaga did not tell the disciplinary panel that the grievant smelt of alcohol. The question was not posed to her. The bone of contention was that she declined testing. Other allegations were not in issue. Madaga saw the grievant stagger but did not think it was important to state this, in her Witness Statement. Security was involved whenever there was report of suspicious activity. Madaga knew the grievant before. She was a bit talkative, but on the material day, was very aggressive. It was not necessary to capture this in Madaga's Witness Statement.



40. The issues as understood by the court, are whether the grievant's contract was terminated for valid reason; whether she was accorded a fair procedure; whether she suffered violations under Statute and the Constitution; and whether she merits the remedies pleaded.

#### **The Court Finds:**

41. It is not contested that the grievant was employed by the respondent, as an inflight attendant, on May 1, 2004. She was initially on a 3-month contract, which terminated on July 31, 2004. The contract was subsequently renewed for 2 years and 5 years respectively. On March 21, 2007, her limited-term contract was converted into indefinite-term contract. On February 25, 2013, she was promoted to the position of Flight Purser. Her contract was terminated by the Respondent, with effect from December 4, 2014. She worked for 15 years.
42. Validity of reason. She worked on Flight KQ 203 from Mumbai to Nairobi, on October 9, 2014. Upon arrival in Nairobi, it is said that a passenger complained, or was heard to complain, by the respondent's security officers on hand to receive the flight, that one of the crew was drunk inflight.
43. There were 8 crew members in the flight. Security officers got on board, made enquiries and required the crew to be searched. The male crew were searched by a male security officer, Ochieng' Muga. There was a female security officer, Victorine Madaga, who searched female crew, including the grievant. Both officers testified for the respondent.
44. The grievant states that she was manhandled by Muga, and that she was sexually harassed. She states that Muga told her that he admired her boobs, and that she had sterling lips. He told her to grant him a sexual favour, to save her job.
45. The Court has not seen evidence of sexual harassment. The grievant alleged that she was subjected to quid pro quo sexual harassment by Muga. She did not however establish that Muga, at any time, subjected her to unwanted sexual advances, to help her retain her job. The grievant was searched by a lady, Madaga. The Court does not think the atmosphere was such as would allow Muga to express his admiration for the grievant's boobs and sterling lips. It was an atmosphere of push and pool, with the grievant alleged to have been very agitated, if nothing else. It is highly unlikely that Muga, would have, in the presence of other Officers, expressed such an outrage. The grievant did not make an early report anywhere on the record, of sexual harassment. On cross-examination, she told the Court: -We had 8 Crew.7 Crew signed the Crew Form.I did not sign the Form.I said on the Form, that Muga should be 'more polite and professional while handling ladies.'I did not say that he sexually harassed me.I did not say anywhere that Muga admired my boobs.
46. The belated assertion that the grievant was sexually harassed, appears to the Court diversionary, meant to cloud the real issue that led to termination of the grievant's contract. There are statements of the grievant's colleagues who were present when the events of October 9, 2014 unfolded. None mentions any words or acts from Muga, directed at the grievant, which would amount to sexual harassment. The grievant herself, does not allude to sexual harassment in any of her initial recollections of the events of October 9, 2014. Sexual harassment at the workplace, is forbidden by the Constitution and the *Employment Act*, and it is not something any Court will gloss over. However, a litigant claiming to have been sexually harassed must present before the court credible evidence of sexual harassment, and not invoke sexual harassment, to incite the mind of the court against her employer, or to arouse the sympathy of the court, in the hope of expanding the frontiers of possible workplace violations and remedies.



47. The security officers had the impression that the grievant was inebriated. They state in their evidence that she was unusually aggressive, loud, staggering and smelt of alcohol. Madaga who came into close contact with the grievant told the Court that the grievant was smelling of alcohol.
48. She was asked to accompany the officers to the respondent's clinic for alcohol testing. They boarded the van, but when they were midway to the clinic, the grievant protested that she could not be tested, and she would rather resign.
49. The court does not think that being singled out for an alcohol test, amounted to discrimination against the grievant. There was no reason to test her colleagues. They were not suspected of being drunk. They did not display signs of intoxication. There was a cloud of suspicion hovering over the grievant, and an alcohol test would have absolved her, if indeed as she told the court, she was sober on the material day.
50. There was reasonable suspicion that the grievant was drunk. At page 43 of her own bundle of documents, there is statement which bears similar handwriting to her own, at page 49 and 50. She denied writing the statement at page 43. It is her own document. She did not suggest to the court, who wrote the statement, and provided it to her, for use as an exhibit.
51. The statement is incoherent, and does not seem to have been authored by a person who was in full control of her, or his, cognitive ability. It is indicated to have been authored and signed by the grievant. It has obvious misspellings and untidy erasures, characteristic of an unsteady hand. The author writes, "upno Landing," instead of "upon Landing." Further, that "Guest on no. 39 E informed SFA Magut That He Feels Liking Vomoting And Fainting..."
52. The same message is captured coherently in statements made by the grievant later, on October 11, 2014, at her page 49 and 50. The statements by the grievant's colleagues avoided disclosing much about the grievant, while confirming that there was a passenger who complained of feeling unwell on-board. They all confirm about the search, and some state that the grievant was asked to proceed to the clinic. Mercy Muchiri, at page 44 of the claimant's Bundle, states that she noticed that the Purser [ grievant] was talking loudly, explaining however, rather unconvincingly, that this was normal after the flight "coz of the engines & also its her nature."
53. The court would conclude that whereas there no determinative evidence that the grievant was drunk, there was reasonable suspicion that she was drunk, which necessitated the respondent to propose the next course of action.
54. She was asked to submit to an alcohol test at the clinic.
55. The request for an alcohol test, was founded on *Civil Aviation [Air Operator Certification and Administration] Regulations, 2013*; *Civil Aviation [Operation of Aircraft] Regulation, 2013*; and Civil Aviation [Personnel Licensing] Regulations, 2013. These Regulations authorize the Respondent to carry out tests, on any of its Crew suspected to be under the influence of alcohol or other drugs while performing their functions for which aviation licences issued; they require Crew to submit to such tests; and authorize the Respondent to dismiss Crew who decline such tests.
56. The respondent's right, to require the grievant to undergo alcohol test, was further justified through the cabin crew member manual and the human resource code of conduct and ethics.
57. The presence of multiple regulations governing the subject of intoxication in the skies by airline employees, suggests to the court that there is high premium placed in the industry, on ensuring those entrusted the task of flying passengers and cargo, remain alcohol and drug – free, while on duty.



58. The grievant declined to be tested, contrary to her obligation under these instruments. It is noted that her controlling manager Korir was called in, and implored her to be tested. She declined his instructions, saying she would rather resign. Korir prepared a report to the director, flight operations paul mwangi, dated October 9, 2014. Korir states that he observed the grievant's speech was slurred and her movement uncoordinated. He interviewed the grievant, and could smell alcohol oozing from her breath. He requested her to sign the consent form, to facilitate the test. She became hysterical, and was let leave by her Controlling Manager. There was strong suspicion that the grievant was intoxicated, and it was necessary for her to undergo testing.
59. The letter of termination does not state that the grievant's contract was terminated on account of her being drunk, while on duty; it explains that the grievant was dismissed on account of violating company policy, as detailed in the letter to show cause. The letter to show cause of October 21, 2014, states that the grievant declined to take an alcohol test. The accusation was not that the grievant was drunk; it was that she declined the alcohol test. Focus was not on what took place inflight, but rather, about the grievant's conduct after landing.
60. In the respectful view of the court, the grievant was engaged in insubordination, which is an act of gross misconduct, warranting summary dismissal under section 44[4] [e] of the *Employment Act*. She was not confirmed to have been intoxicated and unwilling or incapable of performing her duties, under Section 44 [4] [b] of the *Employment Act*. She was dismissed primarily for insubordination. She declined the instructions of her direct superior Korir, which were issued lawfully. The court is satisfied that termination was based on valid reason. The Respondent discharged its obligation under Sections 43, 45 and 47 [5] of the *Employment Act*.
61. Procedural fairness. The grievant concedes that the allegations against her were investigated from the outset. There was a preliminary investigation made by head of security Calistus Kong'ani, and a report prepared by grievant's Manager Korir. These documents are on record. The claimant however questions why details of the guest who complained, were not disclosed.
62. The court is satisfied that this was not necessary, and did not prejudice her. The respondent explained that the inquiry was about the grievant, and her colleagues, and not about the passenger who complained.
63. The passenger was akin to a whistleblower. Institutions receiving whistleblower information have obligation to investigate such information, without necessarily disclosing the identity of the whistleblower, or calling upon the whistleblower to provide evidence. In this dispute, the passenger may in fact have been a transit passenger, and it would not to be expected that the respondent would track down such a passenger, to present him in a disciplinary inquiry. The dispute focused on an employee and her employer. The source of the information leading to the inquiry could as well have been anonymous.
64. Having declined the test, the grievant was issued a show cause letter, dated October 21, 2014. The accusation was clearly stated. Various policy documents alleged to have been violated by the grievant, were listed in the letter. She was advised to respond within 2 days.
65. She replied 6 days later, on October 28, 2014. She explained that she had agreed to be tested, but changed her mind because of the way she was handled by her Manager Korir, and Muga. While she made a multiplicity of accusations in the proceedings herein against Muga, which include grave accusations of sexual harassment, she did not particularize how she was mishandled by Korir.
66. The grievant was heard by a panel convened by the respondent, on November 19, 2014. She was represented by her Union, the claimant herein, led by Jimi Masege. Witnesses, mainly Security



Officers gave evidence and were cross-examined by the claimant's Representatives. The proceedings of the disciplinary hearing are exhibited. Proceedings took the form of a court trial, complete with Submissions at the end of the hearing. It was a comprehensive process, where procedural rights of the grievant, under section 41 and 45 of the Employment Act, were carefully protected.

67. The Panel recommended that the grievant is dismissed, in their findings of December 1, 2014.
  68. The claimant's contract was terminated on December 4, 2014.
  69. She made an Appeal through the claimant, on December 16, 2014. The Appeal was heard on January 22, 2015. The grievant was present, and represented by the same Representatives from her Union. The appellate panel affirmed that the grievant declined to take an alcohol test, and termination was therefore on valid reason.
  70. Further appeal was made by the claimant to the group managing director on May 7, 2015. The appeal was considered and declined. The decision was communicated to the claimant, on May 27, 2015.
  71. The claimant did not establish in what way, failure to have grievant's colleague Gloria Rabuko testify, or have her witness statement produced, prejudiced the grievant. On appeal, the claimant submitted that Gloria's statement was crucial, without suggesting what made it crucial. It was open to the claimant to call Gloria, who was said to be on duty in Mumbai, to give evidence for the grievant. The Court has not seen a record of any application made by the claimant, to have Gloria give evidence for the grievant, if her evidence was crucial. The Court does not think that any of the statements by the grievant's colleagues who were on the Flight, would have in any event, absolved the grievant of the accusation for which her contract was terminated – refusal to take an alcohol test. Statements by other colleagues are on record, and do not absolve the grievant, of the charge that she refused to take an alcohol test. The grievant herself conceded that she declined to take the test, because she was mistreated by Muga. There is no doubt that the grievant refused to be tested, for whatever reason.
  72. Procedure was fair.
  73. The grievant was offered upon termination, salary and all applicable allowances, up to and including December 4, 2014; pro-rata leave days as of December 4, 2014; 2 months' salary *in lieu of* notice; and provident funds subject to applicable rules.
  74. She has not demonstrated that she suffered special loss and damage; unfair discrimination and sexual harassment; and, failed to support her allegations of malicious and humiliating treatment. She was simply asked to submit to an alcohol test, which would have absolved her, if she was sober. She instead became agitated, for whatever reason, declining the counsel of everyone, including that of her Manager, Korir. She then came to Court and bloated the dispute, invoking the Constitution, with allegations of sexual harassment and discrimination at the workplace.
  75. The claim has no merit.
- It is ordered:-
- a. The claim is declined.
  - b. Costs to be paid by the claimant union, to the respondent.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 10<sup>TH</sup> DAY OF JUNE 2022.**

James Rika



Judge

