



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 739 OF 2019**

**BETWEEN**

**RONALD LUSSIER .....CLAIMANT**

**VERSUS**

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

Rika J

Court Assistant: Emmanuel Kiprono

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Munyao, Muthama & Kashindi, Advocates for the Claimant

Mohammed Muigai LLP, Advocates for the Respondent

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**JUDGMENT**

**Pleadings**

1. The Claimant filed his Statement of Claim on 4<sup>th</sup> November 2019.
2. He was employed by the Respondent, through a letter of appointment dated 28<sup>th</sup> February 2017, as Head of Technical Materials, on a gross monthly salary of Kshs. 1,700,000.
3. The contract was effective from 1<sup>st</sup> June 2017. He had previously worked for other Airlines in different corners of the world, the last Employer before switching to the Respondent, being Qatar Airways.
4. He avers, he worked diligently, until 19<sup>th</sup> September 2019, when the Respondent unlawfully and unfairly summarily dismissed him.
5. He avers, he was not availed notice of the charges; he was not invited to show cause why he should not be dismissed; he was not given a hearing; and was not given valid reason or reasons for dismissal.
6. He was denied salary for September 2019, and had unpaid leave of 10 days. He was rendered destitute upon dismissal. He was compelled to sell his household goods and motor vehicle to make ends meet. He was unable to pay school fees for his daughter. He expected to serve out his contract to May, 2020.
7. Dismissal affected his career progression.
8. He prays for Judgment against the Respondent for: -

- a. Reinstatement without loss of rank, salary and benefits.
- b. Unpaid salary for September 2019 at Kshs. 1,700,000; 10 days' leave at Kshs. 1,164,383; and 12 months' salary in compensation for unfair termination [alternative to reinstatement] at Kshs. 20,400,000 – total Kshs. 23,264,383.
- c. Declaration that termination was unfair, wrongful and unlawful.
- d. Declaration that refusal to pay the Claimant his full terminal dues and/ or salary arrears is unfair and unlawful.
- e. Declaration that the Respondent breached and violated Articles 28, 41 and 47 of the Constitution.
- f. Damages for breach of these Articles.
- g. Damages for breach of reasonable and legitimate expectation.
- h. A permanent injunction restraining the Respondent from cancelling the Claimant's work permit. In event the work permit has been cancelled at the point of issuing the order, the Respondent be compelled to reinstate the permit.
- i. The Honourable Court do issue such orders, and give such directions, as it may deem fit to meet the ends of justice.
- j. The Respondent to pay the costs of the Claim.
- k. Interest on the above monetary claims at court rates.

9. The Respondent filed its Statement of Response on 11<sup>th</sup> December 2019. It is accepted that the Claimant was employed by the Respondent as Head of Technical Materials, on a fixed-term contract, which was to lapse on 30<sup>th</sup> May 2020. On or about 5<sup>th</sup> September 2019, the Claimant absconded his workstation, contrary to his terms of employment and contrary to Section 44[4][a] of the Employment Act, 2007.

10. On or about 10<sup>th</sup> September 2019, he was asked to give an explanation for his absence, but was unable to give a satisfactory explanation. He was informed of the reason, why the Respondent was contemplating termination of his contract – absconding. He was informed through a letter dated 19<sup>th</sup> September 2019, that he would be paid salary up to and including 5<sup>th</sup> September 2019; accrued annual leave up to 5<sup>th</sup> September 2019 and his Provident Fund contributions. He would receive these upon clearing with the Respondent.

11. The Respondent was entitled to deduct wages for each day the Claimant was absent, in accordance with Section 19[1][c] of the Employment Act. He was absent from 5<sup>th</sup> September 2019 to the date of termination.

12. Termination conformed to fair and lawful standards under the Employment Act and the contract of employment. He was aware of the terms of his contract and the consequences of absconding.

13. On work permit, it is the position of the Respondent that it was under obligation to notify the Immigration Authorities, under the Kenya Immigration and Citizenship Act, that the Claimant's contract had been terminated.

14. It is denied that the Claimant merits the reliefs sought. The Respondent prays the Court to dismiss the Claim with costs.

### **Hearing**

15. The Claimant gave evidence, and rested his case, on 10<sup>th</sup> December 2020. Respondent's Director Technical, Evans Kamau Kihara, and Human Resource Manager Eric Mogire, both gave evidence for the Respondent on 11<sup>th</sup> June 2021, closing the hearing. The Claim was last mentioned in Court on 7<sup>th</sup> October 2021, when Parties confirmed the filing and service of the Closing Submissions.

16. The Claimant told the Court that he is 58 years old, and has served in the aviation industry, from 1990. He worked with Qatar, Cathay Pacific and Swiss Air, among other airlines.

17. He was employed by the Respondent on 3 –year contract as Head of Technical Materials. Commencement date was 1<sup>st</sup> June 2017, running to 30<sup>th</sup> May 2020. He told the Court that Parties were in discussion over renewal. He left Qatar Airways to further his career with Kenya Airways, the Respondent herein.

18. On 5<sup>th</sup> September 2019, he reported for work in the morning. He felt unwell and sought medical attention, at Respondent's clinic in the afternoon. He asked to be seen by a rheumatologist. He had a pre-existing condition. He did not see one. He went home.

19. Next morning his condition got progressively worse. He informed Evans Kihara, the Technical Director that he was unwell, and would leave early for home.

20. He exhibits e-mails at page 11 to 17 of his bundle of documents, involving himself, Evans Kihara, and Respondent's Human Resource Department, relating to his absence. He was still unwell on 6<sup>th</sup> September 2019. This was acknowledged by the Respondent, who wished him

quick recovery. The Claimant was being seen by Dr. Charles Okumu, who advised the Claimant goes for review after 14 days. He saw Dr. Okumu on 13<sup>th</sup> September 2019 and sought further review on 20<sup>th</sup> September 2019.

21. He was then asked by Evans Kihara to justify his absence. This was out of character, because the Respondent was aware about the Claimant's condition. He was issued a letter dated 19<sup>th</sup> September 2019 titled, 'Forfeiture of Appointment.' He was told that he had been away from duty without leave or lawful cause, with effect from 5<sup>th</sup> September 2019, and that his whereabouts, remained unknown. He was alleged to have been away without valid sick leave, as required in Respondent's Human Resource Manual. He was advised that he was being treated '*as having forfeited your appointment with Kenya Airways PLC.*'

22. He maintains that he was at work on 5<sup>th</sup> September 2019, and only left in the afternoon, to seek medical attention. He was in communication with the Respondent throughout, via e-mail, over the period of absence. The Respondent did not at any time, contact him through e-mail or phone, complaining that his whereabouts was unknown.

23. His work permit had just been renewed for 2 years. He was paid salary for August 2019, and nothing more. He had 3 young Children at Hillcrest School. He lived with his family at the high end Karen, where he paid monthly rent of over Kshs. 200,000. He was compelled to sell his vehicle, to finance one of his Children's school fees. He sold household goods. He went into destitution. He exhibits receipts on school fees and inventory with regard to his household goods.

24. He was not able to secure alternative employment. His work permit was attached to the Respondent. After schools closed in December 2019, the Claimant and his family flew out to Canada, where he is resident.

25. He confirmed that he earned a gross monthly salary of Kshs. 1.7 million. He wrote demand letter attaching sick-off sheet, in October 2019. The Respondent did not reinstate him.

26. He prays the Court to allow the Claim.

27. Cross-examined, he told the Court his contract was a fixed-term contract. The parties were involved in good-faith discussions, over its renewal. The visa was extended for 2 years. Communication was verbal. There was no clause on renewal, in the contract. There were 8 months left to end of the contract.

28. He was conversant with the Human Resource Manual. He wrote e-mail on 6<sup>th</sup> September 2019 saying he was unwell. He had gout and shoulder surgery in 2018. The Manual has a provision for sick leave for local staff, not expatriates. Page 7 of Respondent's documents, clause 8.6.1 provides for sick leave, for staff working in Kenya. 8.6.2 states, sick leave would be validated by Respondent's doctor. The Claimant's sick leave was not validated by Respondent's doctor. He was aware of the Human Resource Manual. He told Evans Kihara, in one of the e-mails, that he would only validate his sick leave, if his future with the Respondent was discussed.

29. The letter of forfeiture of appointment, gave conditions for payment of final dues. School fees was not a benefit payable under the Claimant's contract. Redirected, the Claimant told the Court that his permit was extended for 2 years. He had been sick in 2018 to January 2019. The Respondent did not raise issues at the time. He was not asked to validate sick leave. He had not been cleared by his doctor in September/ October, 2019 to return to work.

30. Evans Kamau Kihara told the Court, he is Respondent's Director Technical. The Claimant was Head of Materials Management, on a 3-year contract. Renewal was subject to performance review and work permit. Parties did not commence review, but had forward-looking discussion. It was not a formal discussion involving Respondent's Board.

31. The Respondent used to facilitate the Claimant's work permit. It applied for Claimant's work permit. The initial one for 2017 lapsed in 2019. The new application for a work permit of 2 years, instead of 6 months, was made because 2 years' permit was convenient to the Parties.

32. The Claimant wrote to the Respondent saying he was unwell. He did not apply for sick-off. He was supposed to seek medical attention, and within 48 hours, inform the Respondent for validation. He did not follow this procedure. On 10<sup>th</sup> September 2019, Kihara wrote to the Claimant, informing him that the Respondent was not aware why the Claimant was not at work. The Claimant was asked to supply medical records. He did not respond to Kihara's e-mail. On 16<sup>th</sup> September 2019, the Claimant wrote saying he wanted to have discussions with the Chief Human Resource Office. He said only after such discussions, would he normalize his sick-off. He acknowledged he had been away on irregular sick-off.

33. His absence hindered suppliers from getting paid. He left without delegating, to ensure that work was not interrupted. All communication continued to be addressed to him without response.

34. He did not clear after he left employment. Kihara was one of the signatories to the clearance form. He did not sign any such form. The Respondent was to notify Immigration Department that the Claimant had left employment. It is a requirement of the law.

35. Cross-examined, Kihara confirmed that the Claimant was on a 3-year contract. Termination occurred before expiry. Discussions on renewal were ongoing. Renewal was subject to performance. The contract did not refer to renewal appraisal.

36. Kihara was aware that the Claimant was a foreign national who worked for Qatar Airways before joining the Respondent. The Respondent did not induce him into joining the Respondent. The position was advertised. There were several candidates. The letter of termination is titled 'forfeiture of appointment.' Kihara is not a human resource management expert, to know what this is. It is dated 19<sup>th</sup>

September 2019, and took effect retrospectively, on 5<sup>th</sup> September 2019.

37. There was communication between the Parties, in the period 5<sup>th</sup> to 19<sup>th</sup> September 2019. The e-mail of 16<sup>th</sup> September 2019, is on sick leave. It is from the Claimant to Kihara. He also wrote to the Human Resource Officer on 6<sup>th</sup> September 2019, who wished the Claimant quick recovery. Kihara wrote on 10<sup>th</sup> September 2019 and the Claimant replied on 16<sup>th</sup> September 2019. It is not disputed that he was at work, on 5<sup>th</sup> September 2019.

38. It was not the first time he was unwell. He should have delegated. The letter of termination does not mention delegation or business continuity. If he had given the Respondent notice within 48 hours, the Respondent would have organized its business continuity.

39. His Doctor, Okumu stated that the Claimant suffered severe food poisoning. He was to go for review on 20<sup>th</sup> September 2019. Termination letter issued a day earlier, on 19<sup>th</sup> September 2019.

40. It is true that his Advocates submitted his medical records, after termination. The Respondent did not reverse its decision. It held the position that sick-off must be validated. It must be authenticated by Respondent's own Doctor. The Claimant had been sick and away earlier. The Respondent did not at the time, take action against the Claimant. The Respondent had his personal details and attempted to contact the Claimant. It is not true that the Respondent did not give the Claimant an opportunity to explain himself. There was no letter to show cause why disciplinary action should not be taken. He had a valid work permit of 2 years, effective 7<sup>th</sup> August 2019. The work permit was independent from his contract. Parties were discussing the Claimant's future, not the renewal of his contract. Kihara was not aware of the challenges encountered by the Claimant, after termination. He was not aware if the Claimant owes the Respondent anything.

41. Human Resource Manager, Eric Mogire, corroborated the evidence of Kihara. He confirmed that the Claimant was employed by the Respondent as stated in Claimant's evidence. He left employment after he was found to have taken sick-off days, between 6<sup>th</sup> September 2019 and 19<sup>th</sup> September 2019 without validation.

42. Cross-examined, Mogire told the Court that the Claimant was absent from 6<sup>th</sup> September 2019. Termination was on 19<sup>th</sup> September 2019.

43. He was not heard. Parties only engaged in e-mail communication. Termination was not unfair. He forfeited appointment. He did not avail sick-off sheet. Mogire was not in employment at the time. The Claimant was not issued letter to show cause why he should not face disciplinary action. The Respondent had his contacts. His absence affected the Respondent's ability to issue him letter to show cause.

44. Redirected, Mogire told the Court that the Claimant wrote, saying he wished to see the Chief Human Resource Officer. Forfeiture means, the staff is absent without explanation.

45. The issues as traditionally is, in disputes of unfair termination, are whether termination was procedurally fair; whether it was substantively justifiable; and *whether the remedies sought are merited*.

**The Court Finds: -**

46. Ronald Lussier, the Claimant herein, was employed by the Respondent Airline, as Head of Technical Materials, for a limited term of 3 years. The period commenced on 1<sup>st</sup> June 2017, and was to expire on 30<sup>th</sup> May 2020.

47. He was to receive a gross monthly salary of Kshs. 1,700,000.

48. The contract, which was executed by the Claimant on 5<sup>th</sup> March 2017, did not have a clause on renewal.

49. The contract alleges, that the Claimant was engaged on 'consultancy basis.' The rest of the terms and conditions in the contract however, leave no doubt that the Claimant was simply an expatriate, employed by the Respondent Airline on a limited- term contract. He was not a consultant.

50. He did not serve through his contract to 30<sup>th</sup> May 2020.

51. On 5<sup>th</sup> September 2019, the Claimant states he felt unwell, and sought the attention of a rheumatologist. He states he first went to the Respondent's clinic. This was in the afternoon of 5<sup>th</sup> September 2019. He had a pre-existing condition. He did not see anyone at Respondent's clinic. He did not explain clearly in his evidence, why there was no one to attend to him at the Respondent's clinic. He therefore went home.

52. On 6<sup>th</sup> September 2019, he states, he felt progressively worse. He sought the attention of his own Doctor Charles Okumu.

53. The trail of medical papers show that the Claimant was treated by Doctor Okumu, on 6<sup>th</sup> September 2019. He was treated for severe food poisoning, not rheumatism.

54. He was given antibiotics, and placed on off-duty for 7 days. He was due for review on 13<sup>th</sup> September 2019. He was reviewed on 13<sup>th</sup> September 2019. Doctor Okumu indicates that the Claimant complained that his symptoms had become worse. He was given a different

antibiotic and placed on another off-duty of 7 days. He was to be reviewed on 20<sup>th</sup> September 2019.

55. On 19<sup>th</sup> September 2019, the Respondent issued him a letter, which was termed as ‘forfeiture of appointment,’ which in common employment parlance, is a letter of termination of employment. The contract, which was to lapse on 30<sup>th</sup> May 2020 was brought to a premature end, with effect from 5<sup>th</sup> September 2020. This was 8 months to the expiry date.

56. The Respondent justified its decision on the ground that “ *you have absented yourself from duty with effect from 5<sup>th</sup> September 2019 without lawful cause and to-date, your whereabouts remain unknown. As you are aware, an Employee is only allowed to be away from duty if on approved leave or on a valid sick leave in accordance with the company’s HR Manual... you are therefore being treated as having forfeited your appointment with Kenya Airways PLC.*”

57. The Claimant states that the Respondent was aware of his whereabouts, had his contacts and that in fact, Kihara knew where the Claimant lived, having attended a house warming party at the Claimant’s residence.

58. The Court does not think that the availability of the Claimant’s contacts to the Respondent, or Kihara’s familiarity with the Claimant’s home, was a free pass for the Claimant to be away from duty, without following the procedure prescribed by the Human Resource Manual.

59. The Claimant appears to have misread the Human Resource Manual. He initially told the Court on cross-examination that the Human Resource Manual “ *has provision on sick leave for local staff.*” It was only after relentless cross-examination by Counsel for the Respondent, that the Claimant acknowledged clause 8.6.1 of the Manual, which reads “ *Sick leave below [ 8.6.1 and 8.6.5] is applicable to staff working in Kenya.*” The Claimant is not a local, but fell squarely, in the category of staff working in Kenya. The clause applies to locals and expatriates.

60. Clause 8.6.2 states, “ *Any sick leave will only be recognized where granted by an approved medical practitioner and must be validated by the company doctor within 48 hours.*”

61. The Claimant did not seek validation of Doctor Okumu’s sick-off authorisation, with Respondent’s Doctor, within 48 days, or at all. He ought to have availed the sick-off sheet for endorsement by Respondent’s Doctor, within 48 hours, which would be on 8<sup>th</sup> September 2019. He did not seek validation of the first sick-off of 6<sup>th</sup> September 2019, or the second, of 13<sup>th</sup> September 2019. He was familiar with the Respondent’s medical facilities, having attended Respondent’s Clinic in the afternoon of 5<sup>th</sup> September 2019.

62. The Claimant was in top management, and ought to have demonstrated familiarity with, and fidelity to, the Human Resource Manual. The Court does not think it was important that the Respondent had his contacts, or knew where he lived. It was not for the Respondent to seek out the Claimant, and impress on him about his obligations, under clause 8.6 of the Manual.

63. The e-mail exchanges between the Claimant and concerned Managers, did not absolve the Claimant of his responsibility under clause 8.6 of the Manual. While they show that the Managers, may have had an idea about the Claimant’s illness, they do not show that the Claimant acted in accordance with the mandatory sick-off procedure under Clause 8.6.

64. The e-mails show that the Respondent emphasized the need, for the Claimant to submit himself to the Human Resource Manual. On 10<sup>th</sup> September 2019, the Respondent acknowledged the Claimant’s absence on 6<sup>th</sup> September 2019, on account of sickness- [which the Respondent believed, would be supported by an official KQ clinic authorized sick-off].

65. The Respondent writes that the absence on 9<sup>th</sup> September 2019 and 10<sup>th</sup> September 2019, was unpronounced absence.

66. There is another e-mail from Evans Kihara to the Claimant, advising the Claimant that there was no procedure for retroactive leave approval, and that Kihara did not intend to sanitize unapproved absence.

67. Tellingly, the Claimant wrote to among others Evans Kihara, on 16<sup>th</sup> September 2019 on the subject of sick leave. He states, “ *I have requested meeting with the CHRO to discuss my future with KQ [Respondent]. After that meeting, I will normalize my leave and ensure I meet all company procedures.*”

68. This was a very unfortunate communication from an Employee to an Employer. Lussier was demanding to meet the CHRO, to advance his pursuit of a contract renewal, and misguidedly tied down his sick leave validation, to being granted audience by the CHRO. The Court does not understand why an Employee who had defaulted in obtaining sick leave, should place any condition on the Employer, before the Employee could address his own default. Lussier appears to have been operating outside the realm of the Human Resource Manual and the Employment Act, on regulation of sick leave.

69. Section 30 of the Employment Act requires an Employee to notify, or cause to be notified as soon as is reasonably practicable, his Employer of his absence and reasons for it. A reasonable time under the Manual is 48 hours. The channels of communication were open throughout, as the Claimant himself acknowledges. Why did he not go back to Respondent’s Clinic to validate sick-off granted by Dr. Okumu, or forward the sick-off sheets to Respondent’s Doctor and the Human Resource Office via e-mail? Why tie down potential contract negotiations to his sickness? The Claimant did not comply with the law or the Human Resource Manual, instead opting to tie down his compliance, to being granted audience by the CHRO, where his future could be discussed.

70. In the end the Respondent was justified in concluding that the Claimant was away without leave or other lawful cause, an employment offence under Section 44[1] [a] of the Employment Act, warranting summary dismissal.

71. Termination was based on valid reason, under Section 43 and 44 of the Employment Act.

72. Procedure was glaringly deficient. Eric Mogire was categorical that the Claimant was not heard. The Parties only exchanged e-mail communication on the subject of sick leave. There was no letter to show cause issued to the Claimant. He was not availed specific charges, and summoned before a disciplinary panel, in the manner prescribed under Section 41 of the Employment Act. Mogire conceded that it would have been correct to issue letter to show cause, but that the Claimant's absence, made it difficult to issue the letter to show cause. How is this, yet the Parties were on e-mail communication, and the personal details of the Claimant known to the Respondent? Evans Kihara also conceded, there were procedural infirmities, stating that, "We did not give him an opportunity to explain. We do not have a letter to show cause." This evidence from the Respondent is sufficient, to conclude that fair procedure was lacking. There is no plausible reason for not taking the Claimant through a disciplinary process, before termination.

73. Termination was procedurally unfair, having failed to meet the minimum statutory standards of fairness under Section 43 and 45 of the Employment Act.

74. The Court does not think anything turns on the Respondent's report to Immigration, that the Claimant was no longer its Employee. The work permit was tied down to the Claimant's service with the Respondent. The Respondent was under legal obligation to report to Immigration Authorities, that the Claimant had ceased to be its Employee, and seek cancellation of the work permit.

75. The family problems encountered by the Claimant after termination, were outside the contemplation of the terms and conditions of employment concluded by the Parties. There was no provision for school fees benefit in the contract. The Claimant was paid a gross monthly salary of Kshs. 1,700,000 which is indicated to be *inclusive of all utilities*. How did he fall into destitution within 2 months of termination? The Respondent was not obliged to continue meeting the Claimant's utilities after termination, and cannot be blamed if the Claimant had challenges in meeting his utilities, or if the Claimant fell into destitution, after termination.

76. He was an Employee of the Respondent until 19<sup>th</sup> September 2019, when he was advised that his contract had been terminated. The Effective Date of Termination [EDT] cannot be retrospective as indicated in the letter of termination. Termination takes effect on the date the Employee is made aware about termination, not at some date in the past, unilaterally fixed by the Employer. The Court has concluded however, that the Claimant was absent without leave of the Respondent or other lawful cause, from 6<sup>th</sup> September 2019 to 19<sup>th</sup> September 2019. The Respondent was justified in retaining the Claimant's salary for the period between 6<sup>th</sup> September 2019 and 19<sup>th</sup> September 2019, under Section 19 [1] [c] of the Employment Act. ***The Claimant merits and is allowed salary for 5 days worked in September 2019, at Kshs. 329,923.***

77. The letter of termination indicates that the Claimant would be paid accrued leave days. The Respondent does not specify the number of days, but the Claimant states he was owed 10 days. ***The Court allows the Claim for pending leave of 10 days at Kshs. 653,846.***

78. The Court does not think an order for reinstatement is practicable or reasonable. The Claimant's contract was to expire on 30<sup>th</sup> May 2020. The EDT under contract is well in the past. Reinstatement restores the terms and conditions of employment, including the EDT. The Court cannot reinstate the contract, without interfering with the date of expiry. This would result in the Court rewriting the terms of the limited-term contract, altering the EDT, or creating a new contract with a different EDT, a role which is not exercised by the Court. Secondly there was a substantive ground in termination of the Claimant's contract. Thirdly, he has since returned to his native land, and the Parties have moved on. It would not be reasonable to recall the Claimant from Canada and impose the relationship he had with the Respondent 2 years ago.

79. This is not a constitutional dispute, and there are no Articles of the Constitution shown to have been violated. There is a solid statute, governing every aspect of the dispute, and there is no reason to seek damages under the Constitution. The dispute implicates, and has been litigated entirely under, the Employment Act. There are no deficiencies in the Employment Act, in addressing and redressing the dispute, which would necessitate resort to the Constitution of Kenya. The violations and remedies claimed, fall within the purview of the Employment Act. The prayers hinging on constitutional violations are declined.

80. There was nothing in the contract or in the conduct of the Parties, to make the Claimant have reasonable and legitimate expectation of contract renewal. There was no clause on renewal. Nothing in the contract suggests that the contract could be renewed upon satisfactory performance. The work permit was renewed because the initial 2 years had lapsed, and it was convenient to renew for another 2 years, to cover the remaining months in the contract. Discussions about the future of the Claimant had not been formalized, or reached the Board. The Claimant was agitating to have audience with the CHRO about contract renewal. Such agitation did not translate into reasonable and legitimate expectation of renewal. The prayer for damages based on breach of legitimate expectation of renewal, is without merit and is declined.

81. Cancellation of the work permit was a requirement of the law, once the Claimant was no longer working for the Respondent. The Immigration Act requires that Employers notify Immigration Authorities within 15 days, once a contract of employment of an alien Employee, has come to an end, for cancellation of the work permit / visa. The rationale is that aliens should not be roaming the Country, doing nothing, once they are no longer in gainful employment in the host Country. It would be against the law therefore, for the Court to issue an injunction against cancellation of the permit, or issue an order compelling its reinstatement. The Court does not injunct that which is done under the command of the law. The Claimant is no longer working for the Respondent, or resident in Kenya, to require a work permit.

82. The prayer for compensation is merited, on the ground that fair procedure was not observed. The Claimant was on a fixed-term contract of 3 years. He had about 8 months left, to the end of the contract. He contributed in no small measure, to the decision made by the Respondent to terminate his contract, by his refusal to abide by the Human Resource Manual on sick leave. Either Party could terminate the contract on notice or notice pay of 3 months, under clause 21 of the contract. The clause also allowed the Respondent to terminate the contract summarily for misconduct. The Respondent however, completely omitted to hear the Claimant, and disregarded his procedural protections and guarantees. The Claimant is granted 4 months' gross salary at Kshs. 6,800,000, in compensation for unfair termination.

83. No order on the costs.

84. Interest granted, at court rates from the date of Judgment.

**IN SUM, IT IS ORDERED:** -

**a. It is declared that termination was based on valid reason, but unfair on procedure.**

**b. The Respondent shall pay to the Claimant, 5 days' salary for September 2019 at Kshs. 326,923; 10 pending annual leave days at Kshs. 653,846; and equivalent of 4 months' gross salary, in compensation for unfair termination, at Kshs. 6,800,000 – total Kshs. 7,780,769.**

**c. No order on the costs.**

**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 DECEMBER, 2021**

**JAMES RIKA**

**JUDGE**