



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NUMBER 948 OF 2014

MOSES THUO MWITHIGA.....CLAIMANT

VERSUS

AIRKENYA EXPRESS LIMITED.....RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent and his contract governed by the Employment Act.
2. On or about 30th April, 2009 the defendant wrongfully, unlawfully and maliciously terminated his services without any notice or reasonable cause.
3. According to the claimant, he diligently, effectively and efficiently worked for the defendant from 22nd January, 1998 until 30th April, 2009 when his service was terminated.
4. The respondent in its defence pleaded that it was incorporated in 2005 and thereafter the plaintiff was employed on 4th May, 2006. The respondent further denied that the claimant's service was wrongfully, unlawfully and maliciously terminated and averred that his contract of employment dated 4th May, 2006 which was for a period of three years lapsed and the same was never renewed.
5. On 17th September, 2018 when the matter came up for hearing Counsel for both parties agreed to dispense with oral hearing and asked the court to consider the witness statements on record and supporting documents as well as submissions in deciding the dispute.
6. By a letter of appointment dated 22nd January, 1988, the claimant was employed by Air Kenya Aviation Limited as a licensed engineer. The contract was to be continuous from date of commencement until such time as it is terminated by either party.
7. On 30th November, 2005 Airkenya Aviation was put under receivership and claimant and his colleagues informed through a letter of the same date that effective that date they would be employees of the receiver manager on the same terms and conditions as are detailed in their contracts of employment, with all leave entitlements and benefits included.
8. By a memorandum dated 10th April, 2006 addressed to all staff members of Airkenya Aviation Limited, they were informed that from that date (10th April, 2006) they ceased to be employees of Airkenya Aviation Limited henceforth their contract was to be with Airkenya Express Limited and that their employment contract would be on the same terms as laid down by the contracts with Airkenya Aviation Limited.
9. Further by a letter dated 11th April, 2006 the receiver manager formally terminated the services of the employees of Airkenya Aviation Limited and confirmed that their accrued leave and any terminal benefits which had accrued since the original employment with Airkenya would be transferred to Airkenya Express which would be issuing new contracts of employment in due course.
10. On 4th May, 2006 the claimant was issued with a new contract by Airkenya Express for a period of three years with effect from 4th May, 2006. This implied the contract would expire on 4th May, 2009.
11. On 30th April, 2009 the claimant received a cheque for Kshs.274,259.60 as his final dues against a declaration that it was his final payment. He further declared that he would not make any other claim against Airkenya Express or related company of director or employee.
12. In the claim before the court, the claimant avers that the respondent maliciously, wrongfully and unlawfully terminated his service. This cannot be true because as observed above the claimant received the sum of Kshs.274,259.60 as his final dues against a declaration that it was

in full and final settlement against the respondent and further declared that he would not make any other claim against the respondent. The claimant was fairly senior and cannot claim to have been coerced or misled into signing the declaration. In any event he did not claim to have been misled or coerced in his pleadings or statement.

13. There was however representation to the claimant and other staff of Airkenya Aviation that moved to Airkenya Express the respondent herein that their accrued leave and terminal benefits would be moved and become payable by Airkenya Express. Nothing came upon this dispute concerning this aspect hence the court can safely assume they were paid.

14. In conclusion the court is of the view that the claimant's claim is without merit and the same is disallowed with no orders as to costs.

15. It is so ordered.

Dated at Nairobi this 25th day of January, 2019

Abuodha Jorum Nelson

Judge

Delivered this 25th day of January, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge