



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE 469 OF 2014

ANDREW MUCHIRI.....CLAIMANT

VERSUS

KENYA AIRWAYS LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant averred that he was employed by the respondent in 1986 as an accountant and later appointed as the respondent's station accountant in Lagos on 1st May, 2004. As part of the station accountant package the claimant was given transport expense allowance. He was declared redundant on 4th September, 2012 but the termination letter did not include a refund of the aforesaid travel expenses.
2. The claimant raised concern and according to him the respondent agreed to refund the said travel expenses. The respondent then requested the claimant to sign a discharge voucher for the terminal dues in full and final settlement of all claims. The said discharge voucher did not include the amount for travel expenses and for that reason he declined to sign the voucher. Consequently the claimant has not been paid.
3. The respondent on its part pleaded that the claimant was not entitled to the transport expense allowance as alleged. According to the respondent, the claimant was not in the category of the employees entitled to such benefits.
4. At the trial the claimant further stated that he was terminated in September 2012 because the respondent was downsizing and he was identified for the process. He was to be paid 3.7 million. The claimant further stated that he was based in Lagos where he worked for eight years. According to him he was entitled to transport allowance which was paid to the respondent's staff outside the country who were not provided with a car. He made the request for the payment but none was received.
5. In cross-examination he stated that transport expenses were to pass through the country manager and that rate per day was what he used to spend from home to his place of work. Further that payment was based on the cost of the taxi in the country where one was serving. He also stated that taxi charges were not just for going to work and back but included personal errands.
6. The respondent's witness Ms Lucy Muhiu stated that she was working in the respondent's HR department. It was her evidence that the respondent did not dispute paying the claimant his redundancy dues but he needed to clear. It was however his evidence that the respondent denied liability to pay travel expenses. According to her the claimant's letter of appointment does not include travel expenses.
7. Further, that the claimant did not fall into the category of those employees entitled to travel allowance and car expenses. It was further her evidence that the expenses had to be approved by HR on recommendation by the area manager. If approved the expenses would be included in an amendment to the contract of employment. It was her testimony that that the claimant was never issued with a letter of approval.
8. In cross-examination she stated that an email would not allow payroll to pay. The formalization was through a letter to the employee from HR. Ms Muhiu further stated that Nigeria did not qualify for transport allowance since movement was easier.
9. The claimant herein claimed some Kshs 5,736,250/= as travelling expenses. His claim was based on an email communication from the country manager Ghana, one Daniel Maundu in which he says that he had consulted on the matter and obtained approval from the HR Director on payment of transport allowance to the claimant for the period he was in Lagos. The email further asks for guidance on the appropriate amount which should be paid to the claimant noting that it would set precedent for future similar cases.
10. The respondent's witness Ms Lucy Muhiu however informed the court that the claimant did not qualify for payment of transport allowance. Further such payment ought to have been proposed on behalf of the claimant by the station manager to the Head Office and if

approved would be incorporated in an amended contract of employment. Further a document called "Review of terms for expatriates staff in Outstation" at clause "c" thereof provided in paraphrase that in order to align and guide company car provision the body type of the car would be dictated upon by what was most appropriate for the station and that the engine capacity would be limited to a maximum of 2000cc for Area manager and 1800cc for both station and country managers.

11. The claimant was neither an area manager nor a station manager. He was a station accountant. It is therefore less wonder that in the email referred to earlier in the judgement, the writer observed that if transport allowance was to be paid to the claimant it would set precedent for future similar cases. Implying it has never been paid to employees of the claimant's cadre.

12. However, assuming the claimant incurred these expenses in form of taxi charges as he stated in his oral evidence in court and in view of the fact that it was not clear if he was entitled to transport allowance, it would have been worth consideration if the claimant filed supporting documents to show that indeed he incurred such expenses on taxi transport. It is further curious to note that the taxi charges were quoted in Kenya shillings yet the claimant was based in Nigeria.

13. In conclusion, the court finds this part of the claim not proved and is hereby dismissed with no order as to costs. The respondent will however pay the claimant his redundancy dues as computed if not paid already.

14. It is so ordered.

Dated at Nairobi this 1st day of March, 2019

Abuodha Jorum Nelson

Judge

Delivered this 1st day of March, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.