



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE 250 OF 2015**

(Before Hon. Lady Justice Hellen S. Wasilwa on 28<sup>th</sup> May, 2019)

**AIR KENYA EXPRESS LIMITED.....CLAIMANT**

**VERSUS**

**LEONARD ODHIAMBO.....RESPONDENT**

**JUDGMENT**

1. The Claimant originally instituted a suit in the Chief Magistrate's Court vide the Complaint dated 24<sup>th</sup> September 2008. However, the same was later transferred to this Court pursuant to the Order issued by the High Court on 3<sup>rd</sup> February 2014. The Claimant is suing the Respondent for breach of contract and seeks the following orders:-

**a. Special damages in the sum of KShs. 385,714.00 computed as follows:**

**30/21 x 270,000.00 being 3 months' salary in lieu of notice less 33 leave days due.**

**b. Interest on (a) above plus costs of this suit and interest until payment in full.**

2. The Claimant avers that the Claimant summarily terminated their employment contract without the issuance of the requisite notice. As result, the Respondent occasioned loss and damages to the Claimant.

3. In her witness statement dated 9<sup>th</sup> February 2018, Joan Wanja Githinji testified that the Claimant and Respondent entered into an employment relationship vide the contract dated 17<sup>th</sup> September 2004. His contract was amended vide the Addendum dated 21<sup>st</sup> March 2005, where he was confirmed as an Airworthiness/Quality Auditor earning a salary of KShs. 130,000.00. He was later promoted to a Quality Manager vide the contract dated 10<sup>th</sup> August 2006.

4. She further testifies that either the Claimant or Respondent had the obligation of issuing a 3 months' notice, which the Respondent failed to issue to the Claimant before he resigned. It is also her testimony that at the time of breach, the Claimant was earning a salary of KShs. 270,000.00.

5. The Respondent vide his Defence and Counterclaim dated 5<sup>th</sup> November 2008, contended that he left his employment because the Claimant frustrated him and failed to pay his rightful dues. That on 21<sup>st</sup> February 2006 he was elevated to the post of corporate quality manager on the terms that there would be an upward review of his salary. However, the Claimant failed to honour the terms and he was forced to work at a salary not commensurate to his position. The Respondent prays that the Claimant's suit be dismissed with costs and judgment be entered on the counter-claim as follows:-

**a. Unpaid salary balance for the months of February and March 2008.**

**b. Differential salary on the level of corporate quality manager from 21<sup>st</sup> February 2006 to 30<sup>th</sup> June 2008.**

**c. Costs of the suit together with interest and any other further relief this Honourable Court may deem fit to grant.**

6. The Claimant filed its rejoinder on 13<sup>th</sup> November 2008, denying the averments made in the Defence and Counterclaim and prayed for the same to be dismissed with costs and judgment entered as prayed in the plaint.

7. The cause proceeded *ex parte* after the Respondent failed to attend despite service of hearing notice to him. CW1, Joan Wanja Githinji, sought to adopt her sworn statement as her evidence in chief and to rely on the Bundle of Documents filed on 9<sup>th</sup> February 2018. Thereafter, the Claimant closed its case.

8. In the absence of the Respondent submitting any evidence before this Court, the Claimant's case remained uncontroverted.

9. The main prayer by the Claimant is for payment of 3 months notice in lieu of notice as per the Clause 13 of the contract signed on 10/5/2006.

10. I do agree that this contract could only be terminated upon either Party giving 3 months' notice, which the Respondent failed to do.

11. I therefore find for the Claimant and award 3 months' salary as notice pay=  $270,000 \times 3 = 810,000$  – less 33 days leave acknowledged by the Claimant =  $33/21 \times 270,000 = 424,286$

**TOTAL = 810,000 - 424,286 = 385,714**

Less statutory deductions

12. The Respondent will also pay costs and interest at Court rates with effect from the date of this judgement.

**Dated and delivered in open Court this 28<sup>th</sup> day of May, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Parties