



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE 1957 OF 2013**

**KEPHA MORENO BOSIRE.....CLAIMANT**

**VERSUS**

**TITUS NAIKUNI.....1<sup>ST</sup> RESPONDENT**

**KENYA AIRWAYS LIMITED.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that he was employed by the 2<sup>nd</sup> respondent as its Manager Corporate Communications under a 2 year renewable contract. His monthly salary was Kshs 600,000/= per month.
2. On or about 5<sup>th</sup> October, 2013 the claimant and the 1<sup>st</sup> respondent were in attendance of a marathon event held at Lemek Conservancy. The event ran smoothly between 10.00 am and 5.30 pm when those in attendance left at their pleasure. According to the claimant, he discharged the duties assigned to him at the event before excusing himself to his room to freshen up.
3. Later on while the claimant was having his leisure time on the dance floor within an entertainment spot at the Lemek Conservancy, he alleged that at around 9.30 pm without any colour of right, the 1<sup>st</sup> respondent brutally descended upon him, violating his person and esteem by stripping his clothes. That is to say the 1<sup>st</sup> respondent forcefully removed his blazer and forcibly stripped him of his T-shirt rendering him nude above his waistline. The 1<sup>st</sup> respondent went away with the claimant's T-shirt which he recovered days after at Embakasi Nairobi.
4. The claimant further pleaded that on or around 6<sup>th</sup> November, 2013 in breach of the express provisions of the written contract of employment dated 19<sup>th</sup> February, 2013 the respondent arbitrarily terminated or caused to be terminate the claimant's employment without following due process. That is to say, the respondent prepared a purported resignation letter and coerced the claimant to sign the same. As a result of the breaches alleged, the claimant averred that he suffered financial and emotional as well as reputational loss.
5. The respondent on its part averred that the event referred to by the claimant was the Kenya Airways Maasai Mara Marathon, an annual event organized by the 2<sup>nd</sup> respondent. The evening event referred to by the claimant was a dinner dance hosted by the 2<sup>nd</sup> respondent for the athletes who had attended the marathon as well as 2<sup>nd</sup> respondent's corporate clients and other business partners. According to the respondent, the claimant is the 2<sup>nd</sup> respondent's Corporate Communications Manager was expected to take the lead in displaying and promoting the 2<sup>nd</sup> respondent brand at the said event.
6. The 1<sup>st</sup> respondent further averred that upon noticing a gentleman wearing a T-shirt bearing the logo "Flu Emirates" he approached him and calmly requested him that he either changes his attire or exit the premises because that was an event organized by the 2<sup>nd</sup> respondent for its corporate clients and other stakeholders and stranger's attire was inappropriate. In response to this action, the stranger indicated to the 1<sup>st</sup> respondent that he was not the only one wearing a shirt with foreign branding and that in fact the 2<sup>nd</sup> respondent's own employees were branded in the same way. As he said this he gestured to the claimant. The 1<sup>st</sup> respondent pleaded that he walked over to the claimant with intent of having a similar conversation with him only to find that the claimant was attempting to conceal the writing on his T-shirt.
7. According to the 1<sup>st</sup> respondent the event in issue being one organized by the 2<sup>nd</sup> respondent, it was very offensive for the claimant who was employed by the 2<sup>nd</sup> respondent as Communications Manager to be dressed in an attire promoting the 2<sup>nd</sup> respondents competitors. The 1<sup>st</sup> respondent communicated to the claimant that his T-shirt was provocative and he ought to change it.
8. According to the respondent the claimant elected to remove his jacket on the dance floor and further proceeded to remove his T-shirt as

well. The 1<sup>st</sup> respondent admits that he walked away with the claimant's T-shirt which the claimant handed to him voluntarily. The respondent denied the claimant had to seek aid from good Samaritans in a bid to stay clothed. The 1<sup>st</sup> respondent averred that he was the one who assisted the claimant to stay warm after he voluntarily stripped himself of the T-shirt by handing him a maasai shuka from a lady who was seated nearby.

9. Concerning resignation, the respondent stated that the claimant elected to resign from the 2<sup>nd</sup> respondent on his own volition and tendered such resignation on 7<sup>th</sup> October, 2013 hence no allegation of unlawful or unfair termination can be sustained. The respondent further pleaded that the claimant having tendered his resignation there was no requirement for a letter to show cause and neither was the 2<sup>nd</sup> respondent obliged to avail the claimant a right or opportunity to be heard.

10. In his oral testimony the claimant further stated that the 1<sup>st</sup> respondent pulled him by his blazer and at first he thought it was a joke. He removed his blazer and held on to his T-shirt and pulled it off. The 1<sup>st</sup> respondent then handed back his blazer but walked away with his T-shirt. The T-shirt according to him was Arsenal T-shirt and that he was an Arsenal fan. It was his evidence that the 1<sup>st</sup> respondent never told him why he did what he did. He denied voluntarily removing his T-shirt since he had no reason to and that night was cold. The incident took place around 10.30 pm and according to him he had finished his official duties and that was his private time.

11. Regarding resignation he stated that he was offered a resignation letter in his name to sign which he did but was not given a copy of the letter. He was then given a clearance letter which he was asked to sign in blank and leave with the HR Director to clear on his behalf to save him trouble. Ordinarily he would have done the clearance himself. He further stated that the HR Director asked him to write down that neither party owed each other payment in lieu of notice. By the time he resigned he had worked for eight months.

12. In cross-examination he stated that he was employed by the respondent as Corporate Communications Manager and that the event at Lemek was a Kenya Airways (2<sup>nd</sup> respondent's) event and that the 2<sup>nd</sup> respondent was the sponsor. He further stated that the evening party was part of the program. It was his evidence that at the breast part of the Arsenal T-shirt was written "Fly Emirates". He understood Emirates was also an airline like Kenya Airways but disagreed that the adorning of the Arsenal T-shirt was inappropriate since it was after work. It was his evidence that he returned to his room at 2.00 a.m. before then he was at the tent with his colleagues.

13. When recalled, the claimant further testified that the marathon and presentations ended around 4.30 pm and that during the function he wore Kenya Airways T-shirt. In further cross-examination he stated that he was Corporate Communication Manager and that communication can be visual. He further stated that he was at the mara on duty and that the dinner was made available by the respondent. He admitted that he was not attending an Arsenal Match event. The claimant's witness Ms Stella Wekesa informed the court that she used to work for the respondent as events and corporate sponsorship executive.

14. It was her evidence that the 1<sup>st</sup> respondent was present and usually gave awards at the end of the marathon she stated that the 1<sup>st</sup> respondent approached the claimant and after a short interaction he saw the claimant's hands up and his T-shirt off. She did not know what transpired to cause that. When she saw this happen she moved away from the scene. She stated that she never saw the part where the claimant started to remove his clothes on his own.

15. In cross-examination she stated that the claimant had interaction with members of the public but he was not alone. He was part of a team. He however used to communicate on behalf of the company. It was her evidence that she never saw when the claimant removed his coat and that the music was loud and never heard the conversation between the 1<sup>st</sup> respondent and the claimant. According to her there was no dress-code for the event and everyone was dressed in what they felt comfortable in.

16. The 1<sup>st</sup> respondent in his evidence stated that he was the 2<sup>nd</sup> respondent's CEO at the material time and that he adopted as evidence in chief of his witness statement on record. In cross-examination he stated that the dinner was part of the program and that as a communication the Manager claimant was assigned duties throughout the whole program. It was his evidence that the evening function was not optional all KQ staff were out there for it. There was no dress code but he had a Kenya Airways T-shirt throughout. He denied removing the claimant's T-shirt.

17. The T-shirt read prominently "Fly Emirates" but the claimant insisted it was an Arsenal T-shirt. Mr Naikuni denied undressing the claimant and further stated that the claimant tried to conceal the T-shirt with the jacket when he noticed he (Naikuni) was looking at him. It was further his evidence that he took the T-shirt because he needed evidence from the claimant as a KQ staff and that he took the T-shirt to HR for normal disciplinary hearing. He handed the T-shirt to HR Director and before he could issue the show cause letter the claimant resigned.

18. The respondent's second witness Ms Sheila Naino Sempele Malonkel stated that she used to work for the respondent in Marketing Department doing Brand Marketing. It was her evidence that in October, 2013 they went to Masai Mara for a marathon and that they were all asked to wear KQ T-shirts and caps. According to her the marathon ended around 3 pm and everyone was free to go to their hotel rooms to get ready for dinner in the evening. At the dinner there were KQ customers and that no other airline co-sponsored the event.

19. According to her they finished their dinner and later went to the dance floor to dance. Mr Naikuni came from behind and started dancing in front of them. He saw him talk to the claimant and later saw Mr Naikuni hold the claimant's jacket. He then saw the claimant remove his T-shirt and wear his jacket back without the T-shirt. In cross-examination she stated that she never saw how the claimant's jacket was removed but, she saw him remove his T-shirt. Respondent's 3<sup>rd</sup> witness Mr Charles Kipkorir stated that he worked for the respondent as a Security Officer. On the material day at around 11.00 pm he was radioed by a colleague that he saw the claimant being told to remove a red T-shirt. He walked towards the podium and bumped into the claimant who covered himself with a Maasai shuka.

20. It is common ground that the claimant was employed by the respondent on a two year renewable contract with effect from 1<sup>st</sup> March,



**10,000,000**

e. Costs of the suit

f. Items (a) and (b) shall be subject to taxes and statutory deductions

g. Interest on decretal sum from date of judgement until payment in full

31. It is ordered.

**Dated at Nairobi this 28<sup>th</sup> day of June, 2019**

**Abuodha J. N.**

Judge

**Delivered this 28<sup>th</sup> day of June, 2019**

**Hellen Wasilwa**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.