



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

**CAUSE NO 2215 OF 2015**

**THOMSON MATANO.....CLAIMANT**

**VERSUS**

**TRADEWINDS AVIATION SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed his claim on 14<sup>th</sup> December 2015 and by the time he appeared before me on 10<sup>th</sup> January 2017, the Respondent had not filed a Reply. At the Claimant's request, I gave directions that he files final submissions within fourteen (14) days and set the matter for mention on 7<sup>th</sup> February 2017.
2. After the court appearance on 10<sup>th</sup> January 2017, the Respondent filed a Response and final submissions on 6<sup>th</sup> February 2017 which the Court has decided to take into account in this judgment.

**The Claimant's Case**

3. The Claimant was employed by the Respondent on 9<sup>th</sup> September 2014 in the position of Ramp Agent. On 2<sup>nd</sup> July 2015, he was sent on compulsory leave and on 3<sup>rd</sup> August 2015 his contract was terminated.
4. The Claimant states that the charges leveled against him were not only false, unfair and malicious but were also incapable of eliciting a response on account of their vagueness.
5. The Claimant's claim against the Respondent is as follows:
  - a) General damages for wrongful termination
  - b) Terminal benefits
  - c) Costs

**The Respondent's Case**

6. In its Response filed on 6<sup>th</sup> February 2017, the Respondent states that the Claimant's employment was terminated after he was blacklisted for pilferage by Kenya Airways Security Team.
7. The Respondent further states that the Claimant was invited to a disciplinary hearing on 22<sup>nd</sup> July 2015

which he chose not to attend without giving any justifiable cause. The Claimant was subsequently given a termination notice and was paid all his dues.

8. It is the Respondent's case that due process was followed in the termination of the Claimant's employment.

### **Findings and Determination**

9. There are two (2) issues for determination in this case:

- a) Whether the termination of the Claimant's employment was lawful and fair;
- b) Whether the Claimant is entitled to the remedies sought.

### **The Termination**

10. The Claimant's termination letter dated 3<sup>rd</sup> August 2015 states as follows:

*"Dear Thomson,*

***RE: Termination of Contract***

*We refer to your recent blacklisting by KQ Security department as a result of integrity issues on your performance. As a result of this blacklisting, we hereby inform you that we do not have any other position where we can deploy you.*

*Consequently, your contract with us has been terminated with effect from 03<sup>rd</sup> August 2015. Your last working day will be 03<sup>rd</sup> August, 2015 up to which date your terminal dues will be paid as follows:*

- *Days worked up to and including 03<sup>rd</sup> August 2015.*
- *One month pay in lieu of notice.*

*Your terminal dues net of statutory taxes and any monies you maybe owing the company shall be processed upon clearance. In order to facilitate quick processing, you are requested to complete the attached clearance form and handover to the Human resource Manager.*

*On behalf of management we wish to thank you for your services rendered to the Company and wish you well in your future endeavours.*

*Yours sincerely,*

***FOR TRADEWINDS AVIATION SERVICES***

*Samwel O. Obondo*

***HUMAN RESOURCES MANAGER***"

11. This letter though unsigned tallied with the Respondent's averments in its Response that the Claimant's employment was terminated after he was blacklisted by Kenya Airways on allegations of pilferage. The Respondent had been contracted by Kenya Airways to provide baggage conveyance services. Concerns raised by Kenya Airways were therefore expected to be taken seriously. This did not however release the Respondent from its obligations to the Claimant as its employee.

12. In this regard, the Respondent was under an obligation to not only demonstrate a valid reason for the

termination but also to give the Claimant an opportunity to respond to the allegations made against him. As held by this Court in *Milkah Khakayi Kulati v Sandstorm (Africa) Limited [2014] eKLR* an employer who decides to initiate disciplinary action against an employee must take full responsibility for its outcome.

13. According to the documents filed by the Respondent the Claimant was invited to attend a disciplinary hearing on 22<sup>nd</sup> July 2015 but failed to show up. A notice of disciplinary enquiry dated 4<sup>th</sup> July 2015 filed in Court did not carry the Claimant's signature and no evidence was adduced to prove that the notice was ever served on the Claimant.

14. What is evident is that the Claimant did not participate in any disciplinary proceedings and the charges against him were therefore not tested. For this reason the Court finds that the Respondent failed to establish a valid reason for the termination as required under Section 43 of the Employment Act. Additionally, the Respondent failed to adhere to the mandatory procedural fairness requirements set out under Section 41 of the Act.

### **Remedies**

15. Overall, the Court finds the termination of the Claimant's employment substantively and procedurally unfair and awards him three (3) months' salary in compensation. In making this award I have taken into account the Claimant's length of service and the Respondent's conduct in the termination transaction.

16. I therefore enter judgment in favour of the Claimant in the sum of Kshs. 44,859 being three (3) months' salary in compensation for unfair termination. This amount will attract interest at court rates from the date of judgment until payment in full.

17. The Claimant will have the costs of this case.

18. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kitheka for the Claimant

Mr. Onduso for the Respondent