



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1464 of 2012

ENGINEER STEPHEN

GICHUKICLAIMANT/APPLICANT

VERSUS

**THE KENYA AIRPORTS AUTHORITY.....
.....RESPONDENT**

Mr. C.N. Njenga for the Claimant/Applicant

No appearance for the Respondent

RULING

The Applicant is the Managing Director of the Respondent as per the letter of appointment dated 23rd April, 2010 Ref. No. KAA/CM/GM/2010. By a resolution passed on 26th July, 2012, the Respondent directed the Applicant as its Managing Director to issue a letter to the firm of An Hui Construction Engineering Group Ltd (ECEG) and China Aero-Technology International Engineering Corporation (CATIC) joint venture informing them of the termination of the process and subsequent award with respect to the design and construction of the Greenfield Terminal Complex and Associated Works. The Applicant was directed to issue the letter by Friday, July 27th, 2012.

The Attorney General's letter Ref. No. AG/CONF/2/23 Vol.II dated 16th April, 2012, found that investigations conducted by the Ethics and Anti Corruption Commission did not disclose any irregularity in the instant procurement process so as to warrant delay in implementing the project. The Attorney General therefore, in that letter, rendered an opinion that the project should be implemented as tendered. Further, the Attorney General advised that terminating the procurement proceedings after award would amount to termination of contract since a binding legal relationship already existed between the parties. Accordingly such termination would entitle the successful bidder to enforce its rights under the contract in claim for damages and specific performance.

It is the Applicant's case that his failure to implement the Respondent's directive to communicate the termination of the procurement process and subsequent award and in compliance with the Attorney General's advise is the ground for his subsequent compulsory leave communicated by the Respondent in the letter dated 23rd August, 2012, Ref. No. KAA/P1/1415. Among other reasons, the Applicant claims that he has been sent on a compulsory leave following an irregular meeting by the Respondent at which the offending decision was made. He further claims that he was entitled to be heard before such adverse decision was made against him.

The Court has considered the grounds raised in the application and the supporting affidavits as well as heard Counsel for the Applicant. It is notable that Article 236 of the Constitution provides for protection of Public Officers. The Article prescribes that no Public Officer should be victimized or discriminated against for having performed the functions of office in accordance with the Constitution or any other law. It also declares that no Public Officer should be dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law. The Court has also considered the provisions of Section 46(h) of the Employment Act, 2007 which entitles an employee to initiate or propose initiation of a complaint or other legal proceedings against the employer provided the complaint is reasonable. The Court finds that a complaint by a Public Officer against the employer relating to legality and propriety of a decision the Public Officer is directed to implement would be a reasonable complaint enjoying the favour of section 46 (h) of the Employment Act, 2007. Such a complaint if proved to exist would not constitute a fair reason for dismissal or disciplinary action or other adverse decision against a Public Officer.

In the circumstances of this case, the Court orders that:-

- (a) The Applicant amends and files the amended application to accord with the jurisdiction of the court as conferred under the Industrial Court Act, 2011 by citing the relevant provisions of the law;
- (b) The application is certified urgent and admitted for hearing during this vacation;
- (c) The Applicant to serve the amended order on or before close of 28.08.2012;
- (d) The issuance of a notice under Section 34(a) of the Kenya Airports Authority Act Cap.395 of the Laws of Kenya is dispensed with as far as institution of this cause is concerned;
- (e) Pending the *inter-partes* hearing of the application dated 24th August, 2012 or further orders by the court, there shall be a stay of the decision of the Respondent made on 24th August, 2012 sending the Respondent on compulsory leave;
- (f) Inter-partes hearing on 31.08.2012 at 9.00 a.m., and
- (g) Costs in the cause.

DATED and **DELIVERED** at Nairobi this 27th day of August, 2012.

BYRAM ONGAYA

JUDGE