

was no valid justification for his termination. Accordingly, the Claimant seeks a slew of reliefs.

4. In response to the Claim, the Respondent avers that, although the Claimant initially discharged his duties diligently, he subsequently engaged in conduct that materially undermined the Respondent's legal interests, thereby exposing the institution to significant legal risks and substantial financial losses. According to the Respondent, this conduct culminated in the lawful termination of the Claimant's employment on 17th January 2025.
5. The Respondent avers that the termination of the Claimant's employment was lawful, justified, and carried out in accordance with proper procedures. It maintains that the disciplinary measures implemented were necessary to safeguard its integrity and ensure operational efficiency.
6. The Respondent contends that the Claimant's suit lacks merit and constitutes an attempt to misrepresent the facts before this Court. Accordingly, the Respondent urges the Court to dismiss the suit in its entirety, asserting that the Claimant has failed to establish any violation of his constitutional or statutory rights. The Respondent further seeks a declaration that the termination of the Claimant's employment was lawful and procedurally proper, as well as an order for costs.

7. The matter proceeded for hearing on 4th June 2025, during which both parties called oral evidence in support of their respective cases.

Claimant's Case

8. The Claimant testified in support of his case as CW1. At the outset, he sought to adopt his witness statement to constitute his evidence in chief. He further produced the initial and supplementary lists and bundles of documents as exhibits before the Court.

9. The Claimant described himself as well-educated, adding that his services to the Respondent were professional and of high quality.

10. The Claimant further stated that, leveraging his education, skills, and expertise across various fields, he worked diligently and delivered favourable judgments that saved the Respondent over Kshs 3.5 billion in direct costs.

11. He maintained that, given his performance, he legitimately expected promotion. Instead, the Respondent allegedly showed contempt by routinely hiring new staff with minimal experience. Citing examples, the Claimant averred that in 2021, the Respondent appointed a Manager, Legal Services, with barely one year of post-

admission experience; that in 2023, it recruited a Senior Legal Officer possessing only three years of post-admission experience; and that in 2024, it further appointed a Chief Manager, Legal Services and Corporation Secretary, notwithstanding a recent similar appointment and questionable qualifications.

12. The Claimant averred that, as a result, he ended up performing substantial work with lower pay while the less experienced staff enjoyed substantial perks with reduced responsibilities.

13. It was the Claimant's further testimony that he proceeded on leave around 3rd September 2024, and upon returning, he was removed from all committees on which he had served. In the Claimant's view, his removal from the committees was part of a long-standing plan to dismiss him from office.

14. He further stated that a loan application he submitted to renovate his house, in accordance with the Respondent's Staff Manual and Regulation Policy, was rejected despite meeting all stipulated requirements.

15. The Claimant recalled that on 2nd December 2024, he reported to work and logged into a virtual court session for a matter he was handling. Upon returning

from a brief absence, he discovered that his desk, laptop, and files had been removed without notice or explanation.

16. Shortly thereafter, he received a call from the Managing Director's Office instructing him to collect a letter. Upon arrival, the secretary handed him a suspension letter directing him to leave the premises immediately.

17. The suspension letter raised five allegations which the Claimant described as false. He responded to the allegations, providing evidence to support his position.

18. The Claimant further contended that the Respondent ignored his evidence, having already resolved to terminate his employment irrespective of the facts.

19. The Claimant further stated that the Respondent, by a letter dated 19th December 2024, scheduled a disciplinary meeting for 31st December 2024.

20. He expressed concern that the Respondent did not provide the primary document underpinning the accusations, prepared by the Chief Manager Legal Services/Corporation Secretary on 25th November 2024. He formally requested access to the documents to prepare for the hearing. Despite the request, no

documents were provided, nor was any communication given indicating acceptance or refusal.

21.The Claimant averred that the same documents were nonetheless in the possession of the Respondent during the hearing and were repeatedly referenced by committee members.

22.The Claimant contended that the disciplinary hearing proceeded despite his protest, denying him a fair opportunity to be heard in accordance with the principles of natural justice.

23.He further stated that he was shocked when the committee only provided the main document during closing remarks. According to the Claimant, this was a mockery, as it was of no practical assistance.

24.The Claimant averred that he had requested the Respondent to avail the witnesses he had identified for purposes of cross-examination. To his surprise, the same individuals were instead appointed as members of the disciplinary committee who proceeded to interrogate him.

25. He contended that the Respondent breached the Staff Policy and Regulation Manual by *failing to conduct investigations into the alleged offences; engage him in discussions to establish the reasons for his conduct; involve the Human Resource Department; appropriately liaise with the Managing Director; constitute an independent and impartial disciplinary committee; and avail the requested witnesses for purposes of cross-examination.*

26. The Claimant further contended that the disciplinary committee lacked the legal capacity to deliberate and render a valid decision under the Staff Policy and Regulation Manual. It was his assertion that the decision to dismiss him was unlawful due to lack of jurisdiction.

27. The Claimant added that he was subjected to differential treatment, and that all administrative actions taken against him were irregular and disheartening.

28. It was his contention that the Respondent deliberately and maliciously failed to comply with the provisions of the Employment Act, the Staff Policy and Regulation Manual, and the principles of fair administrative action, thereby subjecting him to an unfair and unlawful process.

Respondent's Case

29. The Respondent called oral evidence through **Trizah Maina, Lydia Mutembete,** and **James Wachira,** who testified as RW1, RW2, and RW3, respectively. Ms. Maina, who was the first to go, identified herself as the Respondent's Chief Legal Officer. She adopted her witness statement as her evidence in chief and produced the Respondent's list and bundle of documents, as exhibits before the Court.

30. It was RW1's evidence that while in active employment with the Corporation, the Claimant registered a private law firm known as Mabonga & Company Advocates on 15th July 2020, which he actively managed. She stated that this amounted to a serious conflict of interest and a breach of his fiduciary obligations as a public officer.

31. RW1 further testified that upon the Claimant's suspension, an examination of his official computer revealed draft letters originating from the law firm of Mugenya & Associates Advocates, including one containing a professional undertaking to the Respondent in respect of a Kshs. 7,500,000 facility. She asserted that it was reasonable to infer that the Claimant, then an employee of the Respondent, had drafted the said letter on behalf of the external firm, thereby engaging in a clear conflict of interest by trading with his employer.

32. According to RW1, membership in internal committees was not an entitlement, and the Claimant's removal from such committees had no bearing on his termination. She maintained that his dismissal was lawfully effected following legitimate grievances.

33. She further stated that the Claimant's application for an additional loan was properly declined, and the reasons for the decision were duly communicated to him.

34. RW1 testified that upon discovering the Claimant's alleged malfeasance, the Respondent promptly and prudently retrieved its laptop from him to preserve evidence and safeguard corporate property. A review of the device yielded crucial documents.

35. RW1 was emphatic that the Claimant's termination followed due process and was a lawful consequence of his misconduct.

36. RW1 further stated that, as the Claimant's immediate supervisor, she had raised the allegations of misconduct with him, but he failed to take any remedial action. Consequently, by an internal memorandum dated 29th November 2024, she escalated the complaint to the Managing Director, who, being satisfied as to the

veracity and gravity of the allegations, issued the Claimant with a Notice to Show Cause on the same date. The Claimant responded on 5th December 2024.

37.RW1 testified that subsequent investigations established that the Claimant had engaged in professional negligence and misconduct.

38.She added that the investigations further revealed acts of forgery and unauthorized approvals.

39.According to RW1, the Claimant's serious acts of professional negligence stemmed from his operation of a law firm while still employed by the Respondent, in contravention of the Public Officer Ethics Act, which expressly prohibits public officers from engaging in private business that conflicts with their official duties.

40.She added that investigations revealed the Claimant had exploited his official position to facilitate external legal transactions outside the scope of his employment, in clear violation of employment policies and his fiduciary duty to the Respondent.

41.It was RW1's further evidence that an analysis of the Claimant's confiscated work laptop uncovered unauthorized professional undertakings prepared for third parties, including those relating to loan facilities. In her view, this was a gross abuse of the Claimant's office.

42.RW1 further testified that the same laptop contained another unauthorized professional undertaking involving a land transaction between Peter Ngomi Wageche and Benson Nyaga Mbugua valued at Kshs. 5,850,000/=, issued to the Corporation by S & K Advocates, a firm with which the Claimant routinely dealt and for which he had signed multiple documents.

43.RW1 asserted that, as the Respondent's Legal Officer, it was the Claimant's duty to scrutinize, assess, and either approve or reject such undertakings. However, he had compromised that responsibility by personally engaging in unauthorized transactions.

44.The Respondent's second witness, **Ms. Lydia Mutembete (RW2)**, identified herself as the Acting Head of Human Capital and Training. Likewise, she adopted her witness statement to constitute her evidence in chief.

45.RW2 testified that her role entails ensuring compliance with employment policies, overseeing disciplinary processes, and maintaining professional and ethical standards within the Respondent Corporation.

46.She stated that the Claimant was bound by the provisions of the Respondent's Staff Policies and Regulations Manual, which governs employee responsibilities, ethical conduct, and disciplinary procedures.

47.RW2 averred that the Claimant's misconduct and negligence warranted formal disciplinary action.

48.It was her testimony that the Claimant's immediate supervisor had raised concerns regarding his persistent failure to discharge his duties diligently, which had caused financial loss and reputational harm to the Respondent.

49.Consequently, on 29th November 2024, the Claimant was issued with a Notice to Show Cause detailing the allegations against him and requiring his response, in line with the Respondent's disciplinary procedures and the principles of due process.

50. RW2 stated that following the Claimant's response, the matter was escalated for further investigation, after which a detailed report was submitted to the Managing Director outlining the findings and recommending appropriate action.

51. Based on the investigative findings, the Claimant was invited to a disciplinary hearing scheduled for 3rd January 2025, where he was accorded an adequate opportunity to defend himself and respond to the allegations.

52. In RW2's view, the disciplinary hearing was conducted fairly, transparently, and in full compliance with statutory and contractual obligations. She maintained that the Claimant was granted a full opportunity to present his defense before the Disciplinary Committee.

53. It was RW2's further evidence that the Claimant was found to have engaged in gross negligence, misrepresentation, and professional misconduct, all of which contravened the Respondent's Staff Policies and Regulations Manual and amounted to a fundamental breach of his contractual obligations.

54. Consequently, the Respondent terminated the Claimant's employment on 17th January 2025.

55. According to RW2, the decision was based on credible evidence and was neither malicious nor made in bad faith.

56. She added that in the termination letter dated 17th January 2025, the Claimant was informed of his right to appeal the decision to the Board of Directors pursuant to the Staff Manual. However, instead of pursuing this internal remedy, the Claimant opted to file the present claim before this Court.

57. The Respondent's third witness, **Mr. James Mwangi Wachira (RW3)**, identified himself as a Senior IT Officer in the Respondent Corporation. Similarly, he adopted his witness statement to constitute his evidence in chief.

58. RW3 testified that on 2nd December 2024, he received the Respondent's laptop, make *HP*, serial number *CND0111N92*, previously assigned to the Claimant, for purposes of examining its contents.

59. RW3 averred that upon accessing the "*Documents*" folder, he discovered a draft letter dated 25th November 2024 from Mugenya & Associates Advocates providing a professional undertaking to the Corporation for Kshs. 7,500,000/=, as well as a document relating to a land transaction between Peter Ngomi Wageche

and Benson Nyaga Mbugua valued at Kshs. 5,850,000/= issued by S & K Advocates.

60. RW3 told the Court that he printed the documents using the Respondent's printer, make *TASKalfa2553ci*, serial number *RFM0428451*, and handed them over to the Chief Legal Officer, who was present throughout the entire exercise.

Submissions

61. On the Claimant's part, it was submitted that the disciplinary committee was invalid in all respects. In this regard, the Claimant argued that the decision of the disciplinary committee lacked legality and authority, and therefore, any recommendation emanating from it could not be deemed valid.

62. The Claimant further submitted that the Respondent breached its own policies and violated the principles of procedural fairness. In the same vein, the Claimant stated that he requested documents relating to the charges through his letters dated 5th December 2024 and 20th December 2024, but the Respondent failed to provide them. Citing the decision in **David Wanjau Muhoro v Ol Pejeta Ranching Limited [2014]** and **Njuguna v VFS (Kenya) Limited [2023] KEELRC 2860 (KLR)**, the Claimant posited that the Respondent's failure to

provide the documents he had requested infringed upon his right to documentation.

63.Regarding procedural fairness, the Claimant asserted that he was denied all the tenets of natural justice during and after the disciplinary process. To support this position, he relied on the case of **Otieno v Unilever Kenya Limited (Cause 1730 of 2017) [2023] KEELRC 303 (KLR) (2 February 2023) (Judgment)**.

64.According to the Claimant, the entire disciplinary process was marred by irregularities, unfairness, and deliberate violations of the Constitution, the Employment Act, and the Respondent's Staff Policies and Regulations Manual. Consequently, he argued that there was substantive and procedural unfairness.

65.It was the Claimant's position that the reasons for his termination were not valid, asserting that each ground advanced by the Respondent lacked factual or legal basis. In his view, the Respondent failed to discharge the burden of justification under Section 45 of the Employment Act.

66.On the other hand, the Respondent submitted that it had demonstrated valid and justifiable grounds for terminating the Claimant's employment. In support of this

position, reliance was placed on the case **Kenya Power & Lighting Co. Ltd v Aggrey Lukorito Wasike [2017] eKLR.**

67. It was the Respondent's contention that the Claimant's actions amounted to willful misconduct and constituted a breach of the fundamental principles of trust, accountability, and ethical conduct expected of a legal officer.

68. It was further argued that the Claimant's conduct was in direct contravention of both statutory law and its internal policies, thereby warranting disciplinary action. To buttress this argument, the Respondent cited the case of **Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 Others [2019] eKLR.**

69. Referring to the decision in **CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona [2015] eKLR,** the Respondent submitted that it applied the reasonable person test in reaching the decision to terminate the Claimant's employment.

70. The Respondent maintained that it acted in full compliance with its internal policy framework as set out in its Human Resource Manual.

71. It was further submitted by the Respondent that the Claimant was accorded adequate notice, furnished with the charges as detailed in the show cause letter, granted an opportunity to respond, and heard in a disciplinary session held on 3rd January 2025. In the Respondent's view, these steps satisfied the constitutional threshold of fairness under Article 47 of the Constitution and the provisions of the Fair Administrative Action Act, 2015.

72. The Respondent further maintained that the disciplinary committee was properly constituted in accordance with its Human Resource Manual and applicable policy. On this score, the Respondent was emphatic that the Claimant's supervisor (RW1) did not participate in the disciplinary proceedings.

73. According to the Respondent, it complied with the two ingredients for termination, adding that it had valid reasons to terminate the Claimant and followed fair procedure.

Analysis and Determination

74. Flowing from the pleadings by both parties, the evidentiary material on record, together with the rival submissions, the Court has isolated the following issues for determination: -

- i. Whether the Respondent has demonstrated that there existed a valid and fair reason to terminate the Claimant's employment;**
- ii. Whether the Claimant was accorded procedural fairness prior to termination from employment; and**
- iii. Whether the Claimant is entitled to the reliefs sought.**

Valid and fair reason for termination?

75. The record bears that the Claimant was terminated on grounds that he demonstrated a pattern of wilful negligence and failing to uphold his professional duties. Specifically, it was alleged that the Claimant was; *guilty of professional negligence leading to financial loss in case No. 371 of 2012, resulting in unnecessary payment totaling Kshs 316,515/=; negligent handling of the case of David Kamau Kariuki v AFC (MCC/004/2024), resulting in court-ordered costs of Kshs 30,000/=; failure to prosecute multiple debt recovery cases (SCOMM No. E6365 of 2023 and SCOMM E6363 of 2023), compromising the Respondent's ability to recover Kshs 807,041/=; and professional misconduct through unauthorized signing of documents and misrepresentation by signing official communication for other members of staff without their knowledge or authority.*

76. Pursuant to **Section 43(1) of the Employment Act**, an employer bears the burden of proving the reason or reasons for the termination of an employee's employment. Where the employer fails to discharge this burden, such termination is deemed unfair within the meaning of Section 45 of the Employment Act.

77. Turning to **Section 45(2)(a) and (b) of the Employment Act**, a termination of employment is considered unfair where the employer fails to prove that the reason for termination was valid and fair, and that it related to the employee's conduct, capacity, or compatibility, or was based on its operational requirements.

78. Flowing from the foregoing statutory provisions, the Respondent herein was required to demonstrate that it had a valid and fair reason to terminate the Claimant's employment, and that such reason related to his conduct.

79. It is therefore imperative for the Court to examine the reasons advanced by the Respondent in justification of the Claimant's termination from employment, to determine whether they meet the threshold of validity and fairness contemplated under **Section 45(2)(a) and (b) of the Employment Act**.

80. Before delving into the reasons for termination, it is worth pointing out that in its Defence, testimony, and submissions, the Respondent extensively referenced the

Claimant's alleged conflict of interest. In this regard, it was contended that, while in employment, the Claimant registered a law firm under the name ***Mabonga & Company Advocates*** on 15th July 2020, to which he allegedly devoted time and attention.

81. It is, however, notable that this allegation did not form part of the stated grounds for the Claimant's termination from employment. According to the Respondent, this discovery arose at the time the Claimant was placed on suspension. It therefore remains unclear why the Respondent did not amend the charges against the Claimant to reflect this allegation.

82. As the issue of conflict of interest was not one of the reasons that contributed to the termination of the Claimant's employment, the Court will not interrogate it under this head.

83. With that being said, the Court will now proceed to evaluate the stated reasons for termination, in no particular order.

84. One of the reasons cited for the termination of the Claimant from employment was that he allegedly engaged in acts of forgery and unauthorized approvals. In particular, it was alleged that in ***ELRC E013 of 2024; Godfrey Wafula Fwamba***

v. *AFC*, the Claimant filed a memorandum of appearance and grounds of opposition by signing his own name while falsely indicating that he was signing on behalf of Ms. Nancy Kinoti, without her knowledge or authorization.

85. In response to this allegation, the Claimant stated that it was standard practice within the Respondent Corporation for legal officers to sign for one another, provided the signing was indicated with “*for.*” He further contended that he was being unfairly vilified, citing that another Advocate, John Kithinji, had signed submissions on behalf of Nancy Kinoti in the same matter. In support of his position, the Claimant produced a copy of the said submissions signed on behalf of Ms. Kinoti. Notably, the Respondent did not dispute the Claimant’s position.

86. Coupled with the foregoing, there was no evidence from Ms. Kinoti to indicate that the Claimant lacked authority to sign the said pleadings on her behalf.

87. It was further alleged that on 27th November 2024, the Claimant signed multiple memoranda on behalf of RW1 without her knowledge or authorization, despite RW1 being present in the office throughout the day. The memoranda were said to approve irregular or non-existent professional undertakings related to staff loan disbursements that were not brought to her attention.

88. On this aspect, the Claimant denied knowledge of a document referred to as the “official memorandum.” He, however, admitted that on 27th November 2024, he approved loans for both internal and external clients. He explained that the document prepared by the legal department is called Authority to Incur Expenditure (AIE), and that in this instance, he was acting on behalf of John Kithinji of the conveyancing unit. He further stated that he had never seen the Manager Legal Services/Corporation Secretary sign the said document.

89. The document signed by the Claimant on 27th November 2024 was exhibited in Court, and it is noteworthy that he signed in his own name. There is no evidence to suggest that he forged RW1’s signature or impersonated her in executing the document.

90. Further, the Claimant’s assertion that he had consistently signed the said documents since he was employed by the Respondent was not challenged. What’s more, the Respondent did not dispute that the loans signed by the Claimant were duly approved and subsequently disbursed.

91. For the foregoing reasons, the Court is not persuaded that this allegation constituted a valid and fair reason for the termination of the Claimant’s employment.

92. Another reason that was advanced for the termination of the Claimant's employment was his alleged negligence in the conduct of a court matter, **MCC E004 of 2024; *David Kamau Kariuki v David Ochanda & AFC***. In this regard, the Respondent averred that the Claimant's gross negligence and procedural indifference exposed it to unnecessary legal risk and financial loss. It was alleged that although he had been duly served with summons, he failed to enter appearance as required.

93. Further, when he appeared before the Court on 13th May 2024, he undertook to file a defence together with all pre-trial documents but failed to do so. It was further alleged that the Claimant did not attend the pre-trial conference scheduled for 27th May 2024, resulting in an interlocutory judgment being entered against the Respondent, which was consequently ordered to pay Kshs 30,000/= as throwaway costs.

94. In his response to the Notice to Show Cause, the Claimant denied that any interlocutory judgment had been entered against the Respondent in the said matter. He explained that he was unable to log into the Court session on 13th May 2024 as the Respondent's system was down. With respect to the delay in filing

the defence, he attributed the lapse to technical challenges encountered while uploading pleadings on the Judiciary's e-filing portal.

95. The Court has considered the Ruling dated 23rd August 2024, in which the Respondent was granted leave to file a defence upon payment of throwaway costs. In that Ruling, the trial Court acknowledged that there had been technological hitches but noted that the same had been resolved nearly three months prior. The Court further observed that, although the matter was fixed for mention on 10th June 2024, there was once again no appearance on the part of the Defendants. It was on that basis that the matter was thereafter set down for hearing on 24th June 2024.

96. While the Claimant may have failed to attend Court on 13th May 2024 due to technical difficulties, he did not offer any explanation for his failure to attend Court on 10th June 2024.

97. It is also worth noting that in its Ruling dated 23rd August 2024, the Court further observed that the Defendants had handled the matter in a casual manner.

98. In view of the foregoing reasons, this Court is not persuaded that the lapses on the part of the Claimant were entirely attributable to circumstances beyond his

control. Indeed, the observations made in the Ruling dated 23rd August 2024 point to a lack of diligence on the part of the Claimant in handling the court matter.

99. The Claimant was further cited for negligence in the handling of **SCOMM Nos. E6365 of 2023 and E6363 of 2023**. In this regard, it was alleged that the Claimant failed to take any meaningful steps to advance the matters, which were consequently dismissed for want of prosecution, thereby occasioning substantial financial loss to the Respondent. According to the Respondent, the cumulative loss arising from the Claimant's alleged negligence amounted to **Kshs 1,153,556/=**.

100. In his response to the Notice to Show Cause, the Claimant denied that SCOMM No. E6365 of 2023 was dismissed for want of prosecution. He asserted that in that matter, the Respondent (Wangui Mwaniki) had filed a Notice of Preliminary Objection on grounds that the claim was time-barred.

101. The record indeed contains a Preliminary Objection dated 6th February 2024. However, despite the Claimant's assertion that the matter was heard and determined on the basis of that Objection, there is no evidence on record to confirm as much.

102. The Claimant's assertion is further discounted by subsequent proceedings in the matter. Specifically, one of the Respondent's officers (Nancy Kinoti) filed an application dated 27th September 2024, seeking to set aside orders made on 22nd April 2024 and to reinstate the claim. In the Supporting Affidavit sworn by the said officer she deposed that the matter had not been attended to on 22nd April 2024 when it came up for mention, adding that the advocate on record proceeded on leave without surrendering the court file to her for reallocation.
103. From the foregoing, it can reasonably be inferred that, despite the filing of the Preliminary Objection, the matter was eventually dismissed for nonattendance on 22nd April 2024. This is contrary to the Claimant's assertion that the matter was heard and determined on the basis of the Objection.
104. With regard to SCOMM No. E6363 of 2023, the Claimant conceded that the matter was dismissed for want of prosecution but explained that he had been unable to trace the Respondent (Elfas Otima Otieno) in that case for purposes of service. He stated that he attempted to contact the Respondent using a number provided by one Mike Ojwando, which was unreachable.

105. The Claimant further stated that one Eunice, an employee at the Oyugis branch who knew the Respondent, also attempted to assist in tracing him, but the contact numbers remained unresponsive. In view of the Claimant's explanation, it is not clear why he did not seek leave of the Court to effect service through substituted means.

106. The record further shows that the Claimant filed an application dated 10th November 2023 seeking to set aside or vary the order dismissing the matter for want of prosecution. In the supporting affidavit annexed to the application, it was deposed that the matter had been mentioned on three occasions but was not attended to due to lack of information.

107. What can be drawn from the foregoing is that the two matters at the Small Claims Court were dismissed for want of prosecution. In the circumstances, the Court finds that the Claimant did not act with utmost diligence in handling the said matters.

108. Another reason advanced for the Claimant's termination from employment was his alleged failure to address a salary overpayment dispute in a timely manner, thereby allowing a material error concerning a former employee's salary to go uncorrected. With respect to this, it was alleged by the Respondent that the

judgment erroneously reflected the employee's salary as Kshs.130,140/= instead of Kshs. 42,492/=. Upon discovery of this error, the Claimant allegedly neglected to pursue a review and only acted nine months later, on 16th July 2024, when he filed an application under a Certificate of Urgency. However, he failed to take steps to have the application heard, compelling the Respondent to pay Kshs. 316,515/= upon service of a proclamation notice to avert an auction.

109. In response to the Notice to Show Cause, the Claimant contended that he was dissatisfied with the judgment and had informed the department that the Respondent should appeal the entire decision. Consequently, he lodged a Notice of Appeal dated 24th October 2023 and, on the same date, requested for typed proceedings from the Court.

110. The Claimant further stated that on 16th July 2024, he filed an application under a Certificate of Urgency seeking review of the judgment and stay of execution.

111. In as much as the Claimant promptly filed a Notice of Appeal following delivery of the judgment, it remains unclear why he failed to take appropriate measures to forestall execution, such as filing an application for stay of execution

pending appeal. If indeed the Claimant intended to pursue the appeal, it was reasonably expected that he would act diligently to prevent execution while the appellate process was underway.

112. This is bearing in mind that the Claimant was fully aware that taxation proceedings were ongoing and, as a seasoned Advocate, ought to have anticipated that execution would inevitably follow upon conclusion of taxation.

113. It is also notable that the Claimant filed the application for review and stay of execution on 16th July 2024, after the Decree-Holder's Advocate had demanded payment of the decretal sum and costs vide a letter dated 3rd July 2024.

114. This leads me to further question why the Claimant failed to detect, at the earliest opportunity, that the judgment had erroneously computed the employee's compensation based on a salary higher than the actual amount payable. Evidently, the Claimant only became aware of the error when execution was already imminent thus, the realization came too late in the day.

115. As such, the Court is persuaded that the Claimant's conduct in the matter in question was less than diligent.

116. It is also noteworthy that, despite the Claimant's contention that the matter had been handled by five officers of the Respondent, he assumed responsibility when he filed the Notice of Appeal and requested for typed proceedings. He further stated that he attended Court on several occasions for purposes of taxation. These facts imply that he was the Advocate on record and bore responsibility for safeguarding the Respondent's interests in the matter.

117. Considered individually, the manner in which the Claimant handled each of the court matters in question, namely, **ELRC No. E013 of 2024, MCC No. E004 of 2024, SCOMM Nos. E6365 and E6363 of 2023** may not, on their own, amount to gross negligence or meet the threshold of reasonableness to justify termination.

118. However, when assessed cumulatively, and taking into account the overall effect of the Claimant's omissions, the Court is satisfied that the Respondent was justified in concluding that there existed a justifiable cause for terminating the Claimant's employment.

119. Applying the applicable standard of proof to the case herein, the Court finds that the Respondent has established that there existed valid and fair reasons to cause termination of the Claimant's employment.

Procedural fairness?

120. Pursuant to **Section 45(2)(c) of the Employment Act**, an employer bears the burden of proving that the termination of employment was carried out in accordance with a fair procedure. The specific requirements of a fair procedure are set out under **Section 41 of the Employment Act**. In this regard, an employer is obliged to notify an employee of the intended termination in a language that the employee understands. The employee must also be given an opportunity to respond to the allegations against them, either in the presence of a fellow employee of their choice or a union representative.

121. In the present case, the Claimant has impugned the process he was subjected to on a number of reasons.

122. One of the key issues raised relates to the composition of the disciplinary committee. The Claimant contends that some of the committee members were directly involved in the investigations and that this invalidates the Committee in totality. To this end, the Claimant has singled out RW1 and RW3.

123. With regards to RW1, the minutes of the disciplinary hearing produced in court confirm that she was in attendance. Under *Minute 1/01/2025*, it is recorded that RW1 had been invited to provide information concerning the Claimant,

given that she was the complainant and immediate supervisor. It is therefore evident that RW1 acted in a prosecutorial role.

124. Of concern to the Court, however, is the participation of RW3 as a panel member. Having extracted information from the Claimant's official computer, RW3 was effectively an investigator and a potential witness. RW2 confirmed in cross-examination that RW3 participated in the investigations, while RW3 himself admitted that he sat on the panel and questioned the Claimant. Having played an investigative role, RW3 ought not to have participated in adjudicating the matter. His participation as a panel member was in clear violation of Clause 12.2.6 of the Respondent's Human Resource Manual, which expressly provides that members of the disciplinary committee shall not include persons who participated in the investigations.

125. The Claimant also faulted the process on the ground that he was denied access to documents necessary for his defence. In his response to the Notice to Show Cause and in a letter dated 20th December 2024, the Claimant requested access to certain documents and material to enable him to respond to the allegations effectively. There is no evidence any of the documents requested by the Claimant were availed. This is corroborated by the Claimant's letter dated 31st January 2025, in which he protested that none of the documents he had requested had been provided.

126. Cross-examined on this issue, RW2 confirmed that the Claimant was only served with the investigation report on the date of the hearing and that he received it under protest. No other document was availed.
127. The Respondent offered no plausible justification for its failure to provide the Claimant with the requested documents ahead of the disciplinary hearing.
128. In **Ol Pejeta Ranching Limited v David Wanjau Muhoro [2017] eKLR**, the Court of Appeal addressed a similar situation where an employer attempted to supply an employee with an audit report on the hearing date. The Court rightly found that the audit report would have made no impact as there was no time for the employee to amply prepare and that it was merely tendered as a technical formality. In that case, the Court further reckoned that there was no reason given as to why the employee could not have been supplied with a copy of the audit report much earlier and in good time.
129. The circumstances in the present case are analogous. The Respondent's decision to furnish the Claimant with the investigation report at the hearing was of no practical value. The Claimant could not reasonably review and respond to its contents within the limited time available.

130. In sum, the Court is satisfied that the Claimant's ability to prepare for the hearing was materially impaired by the Respondent's failure to avail him with crucial evidence in its possession.

131. It bears to note that the issuance of a Notice to Show Cause, the invitation to respond, and attendance at a disciplinary hearing does not in itself amount to a fair hearing.

132. A disciplinary process is not a mere procedural formality for ticking boxes. It must embody the fundamental elements of fairness, including the right of the employee to access the information, materials, and evidence relied upon by the employer in reaching its decision. This was lacking in the present case.

133. All things considered, the Court finds that the Respondent did not act in accordance with justice and equity in terminating the Claimant's employment and failed to uphold the principles of a fair hearing as contemplated under Section 41 of the Employment Act.

134. Accordingly, I find that the disciplinary process was procedurally flawed and the Claimant's termination was therefore unlawful.

Reliefs?

135. Whereas the Court is satisfied that the Respondent demonstrated that there existed a valid and fair reason for terminating the Claimant's employment, it nonetheless failed to observe the procedural fairness requirements contemplated under Section 41 of the Employment Act. Accordingly, the Court awards the Claimant compensatory damages equivalent to three (3) months' salary. In issuing this award, the Court has taken into account the length of the employment relationship between the parties and the Claimant's own contribution to the termination of his employment.

136. The Claimant seeks payment of leave allowance for the years 2020, 2021, 2022, 2023, and 2024 at the rate of Kshs 7,000/= per year. Clause 10.10.15 of the Respondent's Human Resource Manual provides for the payment of leave allowance to employees at prescribed rates. Notably, the Respondent did not dispute the Claimant's assertion that he was not paid the allowance for the stated years. Accordingly, the Claimant is entitled to the same.

137. The Claimant further seeks payment of Kshs 10,000/= as long service award. It is undisputed that at the time of his termination, the Claimant had served the

Respondent for approximately 12 years. Accordingly, he is entitled to the long service award in accordance with the Respondent's Human Resource Manual.

138. The Court also finds merit in the claim for accrued leave, as the Respondent failed to produce the Claimant's leave records, notwithstanding its statutory obligation under **Section 74(1)(f) of the Employment Act.**

139. The claim for two (2) months' salary in lieu of notice and salary for January 2025 is declined, as the letter of termination expressly indicated that these sums would be settled as part of the Claimant's terminal dues. There is no evidence or assertion by the Claimant that the said payments were not made.

140. The Respondent has conceded to the Claimant's claim for Non-Practise Allowance, save that the same should only cover the period 23rd December 2013 to 15th July 2020 when the Claimant had not registered a law firm.

141. Non-Practice Allowance in the public service is payable to specific professionals who relinquish the right to engage in private practice in order to serve exclusively within the public sector. Therefore, the payment of non-practice allowance is made on the express understanding that the employee will serve the employer exclusively and refrain from engaging in any form of private practice.

142. In the present case, the Respondent contends that the Claimant engaged in private practice while still in its employment. In support of this assertion, the Respondent produced a certificate of registration together with a law firm profile relating to Mabonga & Co. Advocates.

143. The Claimant admitted to having registered the said law firm but maintained that this fact was not concealed and, in fact, worked to the Respondent's benefit. He asserted that all matters filed under the firm were on behalf of the Respondent. However, the Claimant did not produce any pleadings filed for the Respondent through the firm of Mabonga & Co. Advocates. Even if such filings existed, it is unclear how filing the pleadings under the firm of Mabonga & Co. Advocates was beneficial to the Respondent, seeing that there is no indication nor even a suggestion that the Respondent was unable to file pleadings in its own name.

144. What's more, the Claimant's assertion that the firm of Mabonga & Co. Advocates was not a profit-making entity is unsubstantiated. The mere act of registering the firm gives rise to a presumption that it was established for the purpose of engaging in legal practice.

145. In light of the foregoing, the Court finds that the Claimant is entitled to payment of the Non-Practice Allowance only up to the time of registration of the firm of Mabonga & Co. Advocates.

146. The claim for Kshs. 1,776,000/= being the alleged difference between the Claimant's salary and that of the Head of Department at entry point is disallowed, as there is no factual or legal basis for the same. The Claimant was not designated as Head of Department, nor is there evidence that he performed the functions of that position.

147. The claim for meal allowance also fails, as the Claimant did not demonstrate that he applied for the allowance upon attending court out of station, and that the Respondent declined to pay him accordingly.

Orders

148. In the final analysis, the Court enters Judgment in favour of the Claimant against the Respondent in the following manner: -

- (a) A declaration that the termination of the Claimant from employment was procedurally flawed and unlawful.**

- (b) The Claimant is awarded the sum of Kshs 431,829.00 being compensatory damages equivalent to three (3) months of his last gross salary.**
- (c) The Claimant is awarded the sum of Kshs 215,914.50 being payment for accrued leave days for a period of 45 days.**
- (d) The Claimant is awarded the sum of Kshs 10,000.00 being long service award.**
- (e) The Claimant is awarded the sum of Kshs. 35,000.00 being unpaid leave allowance for the years 2020, 2021, 2022, 2023, and 2024, calculated at the rate of Kshs. 7,000.00 per year.**
- (f) The Claimant is awarded the sum of Kshs. 2,640,000.00, representing payment of the non-practice allowance for 88 months (April 2013 to July 2020) at the rate of Kshs. 30,000.00 per month.**
- (g) The total award is Kshs 3,332,743.50.**
- (h) Interest on the amount in (g) at court rates from the date of Judgment until payment in full.**
- (i) The Claimant shall also have the costs of the suit.**

DATED, SIGNED and DELIVERED at NAIROBI this 21st day of October 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Kogweno instructed by Mr. Mabonga for the Claimant

Mr. Kibiti instructed by Mr. Wanyama for the Respondent

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the

court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL