

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. 263 OF 2018

VICTORIA IPOMAI.....

CLAIMANT

VERSUS

SANLAM

KENYA

PLC.....

.....**RESPONDENT**

JUDGMENT

Introduction

1. The Claimant initially lodged this claim vide a Statement of Claim dated 5th March, 2018, but which was amended with the leave of the Court, and an amended Statement of Claim dated 7th December, 2022, was filed. Under the Amended Statement of Claim, the Claimant seeks the following reliefs as against the Respondent: -

(a) A declaration that the irregular and unlawful underpayment of the Claimant by the Respondent, as well as the unlawful withholding of part of the Claimant's salary, was in contravention of Section 19 of the Employment Act, 2007, and the same amounted to discrimination contrary to Article 27 of the Constitution of Kenya, 2010

(b) General damages for discrimination in the workplace, as well as for infringement of the Claimant's Constitutional rights

- (c) The sum of Kshs.32,760,000.00 being the Claimant's outstanding and illegally withheld back pay from the months of June 2016 to August 2018 when she was underpaid.
- (d) Damages for unfair termination being Twelve (12) months' salary calculated in accordance with the rightful and applicable salary for the Claimant's Job grade ten (10) in the sum of Kes.2,500,000.00 per month for unfair termination.
- (e) Three (3) months' salary in lieu of notice.
- (f) Pension contribution at the rate of 12.5% of the Claimant's recommended and approved salary of Ksh.2,500,000.00 per month.
- (g) A refund on and of the return on all investments made by the Respondent on behalf of the Claimant with respect to the Respondent's Long Term Retention Scheme fund.
- (h) Computation of the Claimant's accumulated leave days and liquidation thereof.
- (i) Costs of the suit
- (j) Interests on (e), (f), (g), (h), (i), (k), (l), (m) herein above
- (k) The Claimant's certificate of service;

2. The Respondent filed a Memorandum of Defence in response to the Amended Statement of Claim dated 29th June, 2023, denying the Claimant's claim.

3. The Claimant's case was heard on 14th November, 2024, when the Claimant testified in support of her case. She adopted her witness statement and produced her list and bundle of documents dated 5th March, 2018, except a draft legal opinion of Daly & Inamdar Advocates, which the court, in a ruling of 14th June, 2018, declined. The Claimant also produced her further list and bundle of documents dated 4th February 2023.
4. The Respondent's case was heard on 20th February, 2025. The Respondent presented two witnesses, namely Dennis Kirigwi, who adopted his witness statement and produced the Respondent's list and bundle of documents dated 29th June, 2023, and one Susan Kethai, who equally adopted her witness statement dated 27th November, 2023, as evidence in support of the Respondent's case.
5. Submissions were received from both parties and have been duly considered.

The Claimant's case

6. The Claimant states that she was appointed as the Respondent's Group Chief Finance Officer (GCFO) on 11th January 2016, where she diligently oversaw major restructuring and other responsibilities. It is her case that due to her strong performance and expertise, she was additionally appointed as Acting Principal Officer of the Respondent's subsidiary, Sanlam Life Insurance Limited, on 3rd October 2016, a role she held concurrently with her GCFO position.

7. It is the Claimant's case that although the acting appointment was meant to last six months, the Respondent unilaterally extended it for another six months without consulting her, contrary to constitutional and statutory provisions. She avers that despite this, she continued to serve, receiving only a modest acting allowance of KES 172,500, significantly below the compensation of a substantive CEO, thus saving the Respondent money.
8. The Claimant states that she managed both roles for nine months until a substantive CEO was appointed on 27th June 2017. She avers that the Respondent acknowledged her exceptional performance and heavy workload in a letter dated 23rd June 2017.
9. It is the Claimant's further case that after a companywide job evaluation in 2016, her GCFO role was graded at Job Grade 10, with a recommended salary range of Kshs.1.7M - 3.1M, but despite this recommendation, her salary remained at Kshs.1,150,000, which amount was below the entry level for her grade, and lower than what some junior roles earned. She avers that despite repeated written and oral requests for harmonization, her salary was never adjusted, which omission the Claimant views as unfair discrimination and a violation of Section 5 of the Employment Act.
10. The Claimant states that on 17th November 2017, the Respondent initiated investigations against her and several

other senior officials concerning the authorization and payment of an ex gratia amount to a client in June 2017, which the Respondent alleged was negligent. She states that the investigation was outsourced to Price Water house Coopers (PWC), which was appointed by Sanlam Emerging Markets, the Respondent's majority shareholder.

11. The Claimant states that she learned of the planned forensic investigation verbally, during a meeting with Dr. John Simba at his office at Nairobi Hospital on Saturday, 10 November 2017, at 7:00 a.m. She states that following the initiation of investigations, Dr. John Simba issued a staff wide letter on 13th November 2017, instructing employees to preserve data, while the invitation to participate in the investigation was issued by Mr. Niel Joubert, an employee of Sanlam Emerging Markets.
12. It is her case that as part of the process, she was required to surrender her phone and passwords, giving PWC investigators full access to her personal and private information. She avers that despite this extensive intrusion, no report or feedback from the forensic investigation was ever provided to her. The Claimant further states that on 1st February 2018, Dr. Simba, Mr. Julius Magabe, and Mr. Joubert informed her that the Respondent had decided to pursue a Mutual Termination Agreement, allegedly based on adverse findings from the forensic investigation, findings that were never disclosed.

13. The Claimant states that the Respondent engaged PWC only after its own internal investigations failed to find the Claimant culpable. She avers that although PWC produced a separate report from the internal audit memorandum, the Claimant has never been given access to it.
14. It is her case that the alleged negligent act under investigation occurred in June 2017, when the Claimant was simultaneously performing the duties of Group Chief Finance Officer and Acting Principal Officer, despite the Respondent having extended her acting role without her express consent.
15. The Claimant states that throughout her tenure, including the period when she was handling both roles, her repeated attempts to hire support staff for the Group Finance function were not approved, despite the approved Group Structure recommending at least three additional staff for the GCFO office. She avers that the Respondent therefore left her severely understaffed, while expecting her to manage an expanded workload.
16. The Claimant states that despite carrying a heavy workload during the Respondent's organizational restructuring, she proactively reviewed all business acquired by Sanlam Life Insurance Ltd as of January 2017, including the Safaricom PLC account, which was linked to the allegation of negligent approval. She avers that she shared her findings with senior leadership, including the Group CEO

and Board Member Theuns Botha, but received no support in streamlining the Corporate Business (CB) division.

17. It is her case that, in addition to the review, she conducted significant financial, governance, procedural, and operational health checks aimed at strengthening risk management, improving controls, and safeguarding the Respondent's financial position, including a tax health check, review of a loan facility offered by a South African subsidiary, and an acquisition review.
18. It is her case that, given this record, she could not reasonably be considered negligent regarding the Kshs. 11.3 million Safaricom ex gratia payment. She maintains that approving the ex gratia payment fell squarely within her mandate under the Respondent's approval framework, a position later confirmed during her disciplinary hearing on 3rd August 2018, as reflected in the signed minutes.
19. The Claimant states that the need for the ex gratia payment arose because other employees had already committed to it seven months earlier, and the Respondent risked consequences if it reneged. She states further that she was also the person who voluntarily disclosed the authorization to the Respondent's Board and sought ratification.
20. It is her case that at a meeting on 1st February 2018, she was informed by Dr. John Simba (Board Chair), Julius Magabe, and Niel Joubert that PWC's alleged investigation

had found her culpable of unacceptable conduct and gross negligence, but they refused to share the report, denied her request to view it, and to date no report or adverse findings have ever been provided to her. She further states that during the meeting, the Respondent's representatives presented her with a Mutual Termination Agreement, already signed by the Board Chairman, and pressured her to accept it within two hours, describing it as a favour rather than outright termination. The Claimant asserts that because the Board Chair signed and presented the agreement, this reflected a final decision by the Board.

21. The Claimant states that the discussions brought up the long standing issue of her underpayment, and in a letter dated 5th February 2018, her advocates indicated that she was willing to consider mutual separation, but only if she was first paid Ksh.61,000,000, representing her accrued back-pay and other benefits. She avers that she had no objection to separating from the Respondent and that the only unresolved issue was the terms of separation, specifically the Respondent's obligation to pay her long outstanding back pay and benefits.
22. It is her case that upon receipt of her advocate's letter, the Respondent, instead of continuing negotiations, issued her a Notice of Disciplinary Hearing on 13th February 2018, even though she had already agreed to a mutual separation and they had been negotiating its terms.

23. The Claimant contends that this was a tactic to intimidate her, deny her justice, and push her out on unfair grounds while avoiding payment of her lawful dues. She argues that the Respondent began manufacturing allegations to justify a summary dismissal, thereby harming her career and reputation in the insurance industry.
24. The Claimant avers that the disciplinary letter forced her onto mandatory leave, which she states was unlawful and violated the Respondent's own HR policies. It is her case that the leave was indefinite, unjustified, and damaging to her professional standing, especially during the crucial year end financial reporting.
25. She states that additional actions of the Respondent reinforced the perception of a predetermined plan to remove her, such as the Board Chair publicly announcing the resignation of the GCEO involved in the same ex gratia issue, but made no mention of the Claimant, causing staff and the public to assume she had also exited, and name being omitted from the published 2017 financial statements despite serving as GCFO during the reporting period, contrary to longstanding practice.
26. It is her case that the disciplinary hearing was scheduled in Cape Town, South Africa, outside her country of employment and away from the jurisdiction of Kenyan law, despite her already having agreed to mutual separation.

27. The Claimant states that despite repeatedly asking for it, she was never given the PWC investigation report, meaning she could not reasonably defend herself against the allegations. She avers that the disciplinary hearing was to be chaired by Hennie Bredenkamp and Julius Magabe, both of whom had been directly involved in negotiating her proposed mutual separation, while Magabe had pressured her on 1st February 2018 to sign a termination agreement within two hours. The Claimant therefore argues that the disciplinary panel was biased, predetermined in outcome, and intended to justify her removal.
28. She further asserts that the Respondent persisted with disciplinary action even though she had already agreed to part ways voluntarily, showing that the process was a witch hunt designed to deter her from pursuing her constitutional and labour rights and to damage her reputation.
29. It is her case that the involvement of Niel Joubert, who was neither an officer nor a director of the Respondent, in the PWC investigation, the mutual separation process, and earlier in a 360-degree employee survey conducted in April 2017, is cited as further evidence of a coordinated scheme to discredit her.
30. Overall, the Claimant argues that the Respondent engaged in a procedurally unfair, biased, and unlawful process, violating internal HR procedures, administrative justice, and her rights, all with the intention of forcing her out on unfavourable terms.

31. The Claimant states that the allegations against her did not meet the threshold of gross misconduct; hence, the decision to convene a disciplinary hearing was predetermined, biased, and in violation of principles of natural justice. She contends that the hearing violated her constitutional rights to a fair hearing, fair administrative action, and fair labour practices.

32. She states that on 13th August 2018, the HR Committee found her guilty of unacceptable behaviour and gross misconduct regarding the Safaricom ex gratia payment. She states that she demonstrated that there was no formal approval framework for such decisions and that her actions were a normal judgment call, but the Committee ignored this and terminated her employment with one month's pay in lieu of notice.

33. The Claimant states that she appealed on 16th August 2018, but the Appeals Committee was biased, including members of the original disciplinary panel. She avers that she was given less than 48 hours' notice for the appeal hearing, making it impossible to adequately prepare, and that she did not attend due to the insufficient notice and biased panel composition.

34. She states that on 4th September 2018, the Appeal Committee dismissed her appeal without providing any

substantive rationale, but simply upholding the earlier decision.

35. On cross-examination, the Claimant told the court that she has no letter from recruiters, nor did she indicate in her witness statement that the reason she has been unable to secure employment since termination is due to how she left the service of the Respondent. She further testified that she had not submitted any employment application letter nor provided the names of prospective employers.

36. The Claimant also confirmed on cross-examination that the letter of acting appointment referred to an acting allowance, and that she was paid the acting allowance for the entire acting period. She told the court that she accepted the acting appointment for 6 months, and for such other period.

37. It is her evidence that she received payment of Kshs. 862,500/- as part of appreciation for acting in the position, and that the acting appointment ended when the substantive officer holder was appointed.

38. The Claimant further confirmed that a new structure and job grading system was put in place, but that she was not promised a new salary. She told the court that, as the Respondent's Chief Finance Officer, she was privy to employees' salaries; that no employee was promised a different salary; and that she did not notice any salary change after job grading.

39. The Claimant states that there was discrimination in pay, but that she had not, in her pleadings, referred to anyone else being given a better salary, much as she was privy to the Respondent's employees' wages.
40. The Claimant told the court that, though she produced an alleged PWC report, she does not confirm the existence of the report. It is her further testimony that, although there were discussions of a mutual separation, the parties did not agree on the terms.
41. The Claimant confirmed being aware of the issue subject to the disciplinary action, and further confirmed that documents relating to the issue were shared with her before the disciplinary hearing.
42. The Claimant confirmed on cross that she approved the payment of an ex gratia to Safaricom vide a letter dated 22nd June, 2016, and further confirmed that the pension paid was not covered and the Respondent had no obligation to the person, and that the amount paid is Kshs. 11.36M. She again confirmed that she was dismissed for approving the payment.
43. The Claimant told the court that the Respondent's authorization structure was known to her before the disciplinary hearing.

44. The Claimant further told this court on cross-examination that she complained about every person who handled her case.

45. On re-examination, the Claimant told the court that the HR Manual does not provide for the extension of an acting appointment. She further stated that she was paid for the period the acting appointment was extended.

46. The Claimant prays that the court allow her claim.

The Respondent's Case

47. The Respondent states that the Claimant was appointed as its Group Chief Finance Officer (CFO) effective 11th January 2016 and, as a senior manager, she served on the Executive Committee (EXCO). It avers that her employment terms were set out in an appointment letter dated 16th November, 2015 and further governed by the 2016 Sanlam Human Resources Policy and Procedures Manual.

48. The Respondent denies that the Claimant was involved in company restructuring, stating instead that her duties were limited to overseeing financial strategy and operations, managing the finance function, and ensuring proper financial reporting to the CEO, Board, and external stakeholders. The Respondent further states that the Group Chief Executive Officer was responsible for restructuring.

49. The Respondent admits that, through a letter dated 3rd October 2016, the Claimant was appointed Acting Principal

Officer of its subsidiary, Sanlam Life, and that this appointment was initially set for six months or any other period to be later advised, and that she expressly agreed to these terms. The Respondent denies the Claimant's assertion that the appointment was limited to a maximum of six months.

50. The Respondent states that though it began recruiting a substantive Principal Officer immediately, the process was not completed within the initial six months, necessitating the extension of the Claimant's acting appointment, and which was done through a letter dated 3rd October 2016. It avers that the Claimant's tenure was extended to 30th September 2017, which she accepted by signing the letter.

51. The Respondent states that the Claimant had the option to accept or reject the extension, and she chose to accept it. It denies that the extension was unilateral or in violation of Article 41 of the Constitution of Kenya or Section 5 of the Employment Act.

52. It is the Respondent's case that upon her appointment as Acting Principal Officer of Sanlam Life, the Claimant became entitled to a monthly acting allowance of 15% of her gross consolidated pay, in accordance with the HR Manual. It states that it consistently paid this allowance throughout the Claimant's tenure, and that in addition, it made a one-off ex gratia payment to the Claimant in November 2016, for her role.

53. The Respondent denies the Claimant's claims that the extension of her appointment was intended to save money or that it entitled her to any payments beyond her contractual remuneration.

54. The Respondent states that the Claimant's tenure as Acting Principal Officer of Sanlam Life ended on 27th June 2017 following the substantive appointment of the Chief Executive Officer, who also assumed the role of Principal Officer. It avers that towards the end of her acting appointment, the Respondent acknowledged and thanked the Claimant for her work and contributions.

55. It is the Respondent's case that the Claimant's remuneration was governed solely by her appointment letter and the HR Manual, with no other agreements on compensation. It avers that in 2016, the Respondent conducted a job evaluation, including a market survey of comparable insurance companies in Kenya, leading to a new job grading structure to be implemented incrementally over five years, considering market conditions, affordability, and business performance. It states that as part of this exercise, the Claimant's role was re-assessed and placed at Job Grade 10.

56. The Respondent states that it intended that the recommended pay adjustments would be applied gradually and were not an immediate obligation. It denies the Claimant's allegations that she was underpaid relative to her

entitlement or compared to lower-graded employees, or that she experienced discrimination in contravention of Section 5 of the Employment Act. It denies underpaying the Claimant.

57. The Respondent states that in June 2017, the Claimant, along with colleagues, approved an ex gratia payment of Ksh.11,300,000 to Safaricom Limited, which exceeded her approval limit under the Respondent's Approval Framework. It states that its internal audit in August-September 2017 found that the Claimant acted beyond her authority and failed to seek Board approval, breaching internal policies.

58. The Respondent further states that the audit reviewed claim documents, emails, memoranda, the organizational structure, and interviewed key staff, and that subsequently, PWC was engaged in November 2017 to conduct a broader compliance audit unrelated to the ex-gratia payment. The Respondent denies the Claimant's claims that the PWC audit was linked to the payment, that her approval was within mandate, that she was blameless, or that the Board ratified any negligence.

59. The Respondent further rejects the Claimant's assertions that juggling her dual roles, being overloaded, underpaid, or denied staff support justified any alleged negligence. The Respondent states that the Claimant had adequate support, including approval of managerial and risk staff requests.

60. It is the Respondent's case that the Claimant's description of her work portrays her as misleading, as the sole protector of the company's interests, disregarding the role of other officers and employees, and that the matters she highlights are confidential and irrelevant to the dispute.

61. It is the Respondent's case that on 1st February 2018, the Claimant met the Respondent's representatives to discuss allegations regarding the June 2017 ex gratia payment to Safaricom Limited. It avers that during the meeting, it was mutually agreed on a without-prejudice basis to explore ending the employment relationship through a Mutual Termination Agreement, and that the Claimant was given a draft agreement for review and asked to respond by 2nd February 2018.

62. The Respondent states that the Claimant submitted comments, some of which were incorporated into a revised draft sent on 5th February 2018. The Respondent denies the Claimant's allegations that the meeting involved disclosure of adverse PWC findings, Board decisions to terminate her, or pressure to accept the agreement within two hours.

63. The Respondent clarifies that all actions regarding the draft agreement were mutually agreed, with no requirement for immediate concession.

64. The Respondent states that instead of responding directly to the revised draft, the Claimant had her lawyers issue a demand letter on 5th February 2018 requesting certain

benefits and payments as of right, including a recommendation letter. It avers that the Claimant's demand letter, sent through her lawyers, requested several benefits, including payment of Ksh.25,200,000 as backpay and related pension payments, Ksh.35,250,000 as compensation, retention of her subsidized loan facility and Continued participation in the Respondent's medical scheme.

65. The Respondent states that the letter threatened legal action against the Respondent and its officers if the demands were not met. The Respondent states that, through its lawyers, it responded on 13th February 2018, denying all allegations and refusing to comply with the demands.

66. The Respondent also states that, due to the Claimant's perceived bad faith in attempting to pressure it into agreement, it notified her that it would not engage in further negotiations with her, and withdrew all without prejudice offers previously made to the Claimant through the Draft Agreement and its revised version.

67. The Respondent avers that for the reason that the ex gratia payment to Safaricom Limited in June 2017 involved unresolved allegations of gross misconduct, the Respondent initiated a disciplinary process. It states that on 14th February, 2018, through its Acting CEO, the Respondent issued the Claimant a Notice of Disciplinary Hearing dated 13th February 2018. It avers that the Claimant was invited to a disciplinary hearing scheduled for 5th March 2018 at

Sanlam's Head Office in Cape Town, and was formally notified in writing of the allegations against her.

68. The Respondent further states that the allegations against the Claimant were unacceptable conduct and negligence as Group Chief Finance Officer in authorizing the unapproved ex gratia payment to Safaricom in June 2017, and breach of the Respondent's Values, Ethical Code, and Corporate Governance.

69. It avers that the Claimant was advised of the relevant HR Manual provisions, informed that the allegations constituted gross misconduct potentially warranting summary dismissal, and briefed on her rights, hearing attendees, and logistics. The Respondent states that the Claimant was further instructed to proceed on fully paid leave pending the hearing.

70. The Respondent states that its 2017 Annual Report and Financial Statements, published in April 2018 for presentation at the May 2018 AGM, were prepared in strict compliance with IFRS, the Kenyan Companies Act, 2015, and Capital Markets Authority regulations. It avers that these laws require specific disclosures intended to inform shareholders about the company's performance and regulatory compliance, and not to recognize individual employees.

71. The Respondent states that annual reports are legally regulated documents, not employment records, and

therefore do not disclose or comment on employees' employment status. It states further that while the Respondent has occasionally included photos of some senior managers to illustrate its management structure, this has never been a comprehensive list, and explains that in the 2017 report, only six senior managers appeared, while at least ten others did not, consistent with this practice.

72. The Respondent states that the Claimant had no statutory, contractual, or other right to have her name or photograph included in the 2017 Annual Report, and that publishing images or names of all managers would be impractical, costly, and unnecessary.

73. The Respondent states that it complied with Section 4 of the HR Manual on disciplinary procedures and notes that the Manual allows flexibility depending on the nature of the case. It states that, since the allegations against the Claimant constituted gross misconduct, the applicable procedures were those under Clause 4.1.3, not those for ordinary misconduct.

74. The Respondent asserts that no rule, either in the HR Manual or Kenyan law, requires disciplinary hearings to be held in a specific location or through a particular medium, only that the employee must be given a fair hearing and allowed representation.

75. That the appointed chair of the disciplinary hearing, Mr. Hennie Bredenkamp, was independent and unconnected to

the Respondent. It avers that the hearing was scheduled to take place in Cape Town, a location the Claimant had frequently visited for work and held a long term South African visa issued for employment related travel.

76. The Respondent states that the Claimant had the right to present her case and demonstrate her innocence during the hearing, but she never contacted the Respondent to raise any concerns about the location or the appointed chair, which, if she had, such concerns would have been addressed.

77. It is the Respondent's case that on 5th March 2018, the Claimant instituted proceedings seeking, inter alia, an order staying the disciplinary hearing that had been scheduled for 8th March 2018, and that the Court, on the same day, issued an ex parte interim order staying the said disciplinary hearing pending the interpartes hearing of the application.

78. The Respondent states that on 21st May 2018, the Court delivered its ruling where it held amongst other that the composition of the intended disciplinary panel was not compliant with the HR Manual, that the Board Human Resources Committee was the body authorised under the HR Manual to hear and determine the disciplinary charges against the Claimant, that Mr. Hennie Bredenkamp could not preside over the hearing as he had not been shown to be a member of the Board Human Resources Committee and that it would be unfair to conduct the disciplinary hearing in

South Africa, the Claimant being Kenyan and her employment being based in Kenya.

79. That consequently, the Court restrained the Respondent from proceeding with the disciplinary hearing scheduled for 8 March 2018 or on any other date in South Africa, while clarifying that the order did not preclude the Respondent from lawfully convening and conducting a disciplinary hearing in Kenya.

80. It is the Respondent's further case that on 11th June 2018, it issued the Claimant with a new Notice of Disciplinary Hearing evenly dated by which she was, inter alia, invited to attend a disciplinary hearing scheduled for 21st June 2018 at 8:00 a.m. at the Sankara Hotel, Westlands, Nairobi, advised afresh of the allegations levelled against her, advised of the provisions of the HR Manual relevant to the allegations, informed that the allegations constituted serious matters amounting to gross misconduct warranting summary dismissal, advised of her rights in relation to the disciplinary hearing, notified that the disciplinary hearing would be conducted by the Human Resources Committee of the Respondent's Board of Directors and that she would remain on paid leave pending the outcome of the disciplinary process.

81. It states that on 19th June 2018, the Claimant filed a Notice of Motion Application seeking, inter alia, orders to stay the disciplinary hearing scheduled for 21st June 2018, and that although the court temporarily stayed the disciplinary

proceedings on an interim basis, the court upon hearing of the application rendered a ruling dismissing the application for lack of merit and for being an abuse of the process of the Court.

82. The Respondent states that on 17th July 2018, the Respondent issued the Claimant with a new Notice of Disciplinary Hearing by which the Claimant was, invited to attend a disciplinary hearing scheduled for 3rd August 2018 at 8:30 a.m. at Sankara Hotel, Westlands, Nairobi and advised afresh in writing of the allegations made against her, advised of the provisions of the HR Manual relevant to the allegations, informed that the allegations constituted serious matters amounting to gross misconduct warranting summary dismissal, advised of her rights in relation to the disciplinary hearing, notified that the disciplinary hearing would be conducted by the Human Resources Committee of the Respondent's Board of Directors and that she would remain on paid leave pending the outcome of the disciplinary process.

83. The Respondent states that on 17th July 2018, it issued the Claimant with yet another letter of even date, through which it supplied her with copies of the documents it intended to rely on at the disciplinary hearing scheduled for 3rd August 2018. It states that the disciplinary hearing took place on 3rd August 2018 and was handled by the Human Resources Committee of the Respondent's Board of Directors.

84. It is the Respondent's case that by a letter dated 9th August 2018, the disciplinary hearing was reconvened. The reconvened session was also handled by the Human Resources Committee of the Respondent's Board of Directors, and after considering all the relevant material, the Committee resolved to terminate the Claimant's employment by payment of one month's salary in lieu of notice. It states that the Claimant was notified of this decision through a termination letter dated 13th August 2018.

85. The Respondent states that in the Termination Letter, it informed the Claimant of her right to appeal the decision by lodging an appeal within three (3) days from the date of the Termination Letter.

86. The Respondent denies that the Claimant demonstrated to the Human Resources Committee or that the Committee appreciated that no approval framework existed within the Respondent's governance structures for the decision in question. The Respondent reiterates that an applicable and clearly articulated approval framework did at all material times exist.

87. It states that it is true that on 16th August 2018, the Claimant lodged an appeal against the decision made on 13th August 2018 by the Human Resources Committee of the Respondent's Board of Directors, and that the principal ground relied upon by the Claimant in her appeal was the

allegation that the members of the Human Resources Committee lacked impartiality.

88. It avers that in accordance with the HR Manual, and following the lodging of the aforesaid appeal, the Chairman of the Respondent's Board of Directors (Dr. John Simba) issued to the Claimant a letter dated 22nd August 2018 advising her that he had constituted an Appeal Committee, that the Appeal Committee had convened an appeal hearing scheduled for 24th August 2018 at 9:30 a.m. at the Beker Room, Stanley Hotel, Kenyatta Avenue, Nairobi, that the Respondent had provided the Appeal Committee with a record of appeal consisting of the documents itemised in the letter; and that the rules and procedures governing the appeal would apply, including the rule that failure by the Claimant to attend the appeal hearing would result in dismissal of her appeal.

89. It states that on 23rd August 2023, the Claimant sent a letter dated 23rd August 2023 to the Respondent in which she complained about the date of the appeal hearing, objected to the composition of the Appeals Committee, and demanded that the Chairman of the Respondent's Board constitutes another Appeals Committee to adjudicate the matter; and such Appeals Committee be superior to the Respondent's Board and empowered to overturn any decision of the Respondent's Board.

90. It avers that due to the sudden unavailability of Amb. Ken Osinde, the Chairman of the Respondent's Board

reconstituted the Appeals Committee by replacing him with Ms. Christine Ng'ang'a, and that the Claimant was notified of this reconstitution through a letter dated 23rd August 2018, which expressly stated that all other details relating to the appeal hearing, including the date, time, venue, procedure, and the documents to be relied upon, remained unchanged.

91. The Respondent states that the appeal hearing was duly convened on 24th August 2018 at 9:30 a.m. at the Beker Room, Stanley Hotel, Kenyatta Avenue, Nairobi, and that although all members of the Appeals Committee were present, the Claimant failed to attend. It avers that the Appeals Committee resolved to consider the Claimant's Appeal Letter dated 16th August 2018 and to render a decision thereon.
92. It states that by a letter dated 4th September 2018, the Respondent informed the Claimant of the outcome of her appeal, which was that the appeal lacked merit and was therefore unsuccessful, and that the decision of the Human Resources Committee of the Respondent's Board made on 13th August 2018 was upheld.
93. The Respondent avers that on 17th September 2018, the Claimant filed a Notice of Motion Application seeking an injunction restraining the Respondent from headhunting, advertising, conducting interviews, recruiting, and/or employing a Group Finance Officer to replace her. It avers further that on 20th September 2018, this Honourable Court granted an interim injunction restraining the Respondent

from undertaking any of the aforesaid recruitment activities pending the hearing and determination of the Claimant's application, but which orders were eventually discharged.

94. The Respondent states that the Claimant ultimately complied with the Respondent's clearance and exit requirements at the end of November 2018, and that it also complied with its post termination obligations by paying the Claimant her final dues being a net amount of Kshs.1,377,085/= paid on 7th December 2018 and issued her with a Certificate of Service dated 5th December 2018, in accordance with the law.

95. The Respondent states that the Claimant later approached it and proposed without prejudice settlement negotiations, which, although the Respondent acceded to the Claimant's request, the ensuing without-prejudice negotiations were ultimately unsuccessful.

96. On cross-examination, Dennis Kirigwi (RW1) told the court that the authorization Framework produced in evidence applies to all employees of Sanlam Life and Sanlam Kenya.

97. RW1 told the court that the claim in issue is not before the court, similar to the audit queries, the policy document, and the minutes of the discussion.

98. RW2, Susan Kathai, the Respondent's Human Resources Manager, told court that the Respondent did not enter into any agreement to change salaries based on the evaluation. It

is her further testimony that the Claimant accepted the extended acting appointment, and that the letter explained why the extension was necessary.

99. On cross-examination, RW2 told the court that a job evaluation was indeed initiated and that in the evaluation, the Claimant's position was placed at job group 10 from job group 2. She further told the court that what was in the Claimant's letter is the previous job group and that the Respondent approved the Claimant's change of grade.

100. She confirmed that a letter was sent to the Claimant on the changes, but that the said letter was not filed in court. It is her position that the implementation outcome was to be done in 5 years, and that, being CFO of the company, the Claimant would be aware of the implementation.

101. It is RW2's testimony that the Board minutes regarding the approval and strategic plan are not before the court, and that no Board member is a witness in the case.

102. RW2 told this court that the reason the Claimant was dismissed was for payment of ex gratia without seeking the Board's approval. She confirmed that there was no separate approval framework for San Lam Life. She confirmed further that there was an exclusion of what can be referred to as discretionary expenditure, and denied that the Claimant was expressly excluded from seeking approval on debt claims.

103. She further told the court that the PWC audit was general in nature and did not address the issue before the court. It is her case that the Claimant was not issued with a notice to show cause, but rather with a notice of disciplinary hearing outlining the charges against her.

104. In re-examination, RW2 told the court that the job evaluation did not change the Claimant's job description and that no employee was given a revised remuneration.

105. RW2 confirmed that the Claimant accepted and signed the letter extending her acting appointment.

106. It is RW2's evidence that the Claimant approved payment of ex gratia when she had no role in the approval.

107. It is the Respondent's prayer that the Claimant's claim be dismissed with costs.

Analysis and Determination

108. Upon careful consideration of the pleadings, the witnesses' testimonies, the evidence adduced, and the rival submissions, the issues that emerge for determination are:-

- i. Whether the Claimant's acting appointment was irregular or whether it entitled her to additional compensation
- ii. Whether the Claimant's dismissal was fair.
- iii. Whether the Claimant was discriminated against
- iv. Whether she is entitled to the reliefs sought.

Whether the Claimant's acting appointment was irregular or whether it entitled her to additional compensation

109. The Claimant was appointed as Acting Principal Officer of the Respondent's subsidiary, Sanlam Life Insurance Limited, on 3rd October 2016, which role she held concurrently with her substantive position of Group Chief Finance Officer.

110. It is the Claimant's case that although the acting appointment was meant to last six months, the Respondent unilaterally extended it for another six months without consulting her, and despite the two roles, she received only a modest acting allowance of Ksh.172,500, significantly below the compensation of a substantive CEO.

111. The Respondent states that though it began recruiting a substantive Principal Officer immediately, the process was not completed within the initial six months, necessitating the extension of the Claimant's acting appointment, and which was done through a letter dated 3rd October 2016. It avers that the Claimant's tenure was extended to 30th September 2017, which she accepted by signing the letter.

112. That the Claimant served as Acting Principal Officer of Sanlam Life is not disputed. It is however evident from the court record that her appointment letter permitted acting for six months or such other period as may be advised.

113. The Claimant on cross-examination, confirmed signing and accepting the extended acting appointment and continued

receiving the prescribed 15% acting allowance monthly. She further told the court that an ex gratia appreciation payment of Kshs.862,500 was paid to her at the end of the acting period and further admitted on cross-examination that she was fully paid all acting allowances.

114. In my considered view, there was nothing irregular about the Claimant's extended acting, having confirmed accepting and signing the letter extending her acting role, and for reason that she continued receiving an acting allowance and an ex gratia pay on account of the acting appointment.

115. This in my view, is confirmation that she fully accepted both the role and the attached payments, and to belatedly purport that the appointment irregular, is a little dishonest on her part.

Whether the Claimant's dismissal was fair.

116. A termination/dismissal from service is considered unfair where the employer fails to adhere to the twin tenets of fair procedure and substantive justification for the termination/dismissal espoused in Sections 41, 43, 45, and 47(5) of the Employment Act, 2007.

117. Section 41 requires that before terminating an employment contract on the grounds of misconduct, poor performance, or physical incapacity, the employer must grant the employee an opportunity to make representations

in the presence of a colleague or representative of a trade union.

118. The Claimant's position is that she was denied the PWC report which she contends was the basis of the disciplinary action. She further argued that the Respondent engaged in a procedurally unfair, biased, and unlawful process, violating internal HR procedures, administrative justice, and her rights, all with the intention of forcing her out on unfavourable terms.

119. In her oral testimony, RW2 explained that the PWC audit was general in nature and did not form the grounds for the disciplinary action against the Claimant, nor was the report relied upon in the disciplinary charges levelled against the Claimant. The record further confirms that the charges were based on internal audit findings, email correspondences, and the approval framework of the Respondent.

120. The Respondent initially invited the Claimant to a disciplinary hearing scheduled to be held in Cape Town, South Africa, but the hearing was halted by this court in a ruling rendered on 21st May 2018 for non-compliance with the Respondent's HR Manual. It is not disputed that a fresh notice was issued convening the hearing in Kenya, to be chaired by the Board's Human Resources Committee, in accordance with said manual.

121. It is evident from the court record that the second hearing, communicated by a notice dated 11th June 2018, did not proceed as scheduled owing to a court order issued in favour of the Claimant, which, yet again, halted the disciplinary hearing.

122. The record further confirms that the Respondent issued the Claimant a third notice of disciplinary hearing dated 17th July 2018. By this notice the Claimant was invited to attend the disciplinary hearing scheduled for 3rd August 2018 at 8:30 a.m. at Sankara Hotel, Westlands, Nairobi, and further advised her afresh of the allegations made against her, the provisions of the HR Manual relevant to the allegations, informed her that the allegations constituted serious matters amounting to gross misconduct warranting summary dismissal, advised of her rights in relation to the disciplinary hearing, notified that the disciplinary hearing would be conducted by the Human Resources Committee of the Respondent's Board of Directors and that she would remain on paid leave pending the outcome of the disciplinary process.

123. It is also not disputed that the Claimant was issued a letter on 17th July, 2018, through which she was supplied with copies of the documents that the Respondent intended to rely on at the disciplinary hearing scheduled for 3rd August 2018.

124. The Claimant confirmed on cross-examination that she was aware of the issue subject to disciplinary action and

that documents relating to the hearing were shared with her before the disciplinary hearing.

125. In ***Postal Corporation of Kenya -vs- Andrew K. Tanui [2019] eKLR***, the Court of Appeal set the minimum standards of a fair hearing as follows:-

“Section 41 of the Employment Act, provides the minimum standards of a fair procedure that an employer ought to comply with. The Section provides for notification and hearing before termination on grounds of misconduct.

The court stated that four elements must be discernible for the procedure to pass muster: -

- a. an explanation of the grounds of termination in a language understood by the employee;***
- b. the reason for which the employer is considering termination;***
- c. entitlement of an employee to the presence of another employer of his choice when the explanation of the grounds of termination is made; and***
- d. hearing and considering any representation by the employee and the person chosen by the employee.”***

126. The notice dated 17th July, 2018, which was the third notice being issued to the Claimant in relation to the disciplinary proceedings, and produced in evidence before this court, clearly spells out the charges against the Claimant, and further notified her of her right to attend the hearing accompanied by a fellow employee of her choice.

127. Parties also confirmed that the disciplinary hearing was held on 3rd August 2018 as scheduled; the Claimant attended the hearing and defended herself against the charges; and was informed of her right of appeal, which she exercised, but failed to attend the appeal hearing despite being notified of the time and date. Further, evidence before the court shows that the Appeals Committee considered her written grounds and upheld the dismissal.

128. The Claimant has also not demonstrated bad faith or procedural impropriety in the appeal process.

129. In ***Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd [2013] eKLR***, the Court stated thus:-

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee.

Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible.

Thirdly, if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

130. In my considered view, the chronology of events leading to the Claimant's dismissal clearly shows that the Respondent corrected earlier defects in respect of the hearing, and ultimately complied with Section 41 of the Employment Act and its HR Manual. The Claimant also told this court on cross-examination, that she complained about every person who handled her case.

131. In the circumstances, I find the Claimant's dismissal procedurally fair.

132. The second limb in determining the fairness of a termination/dismissal is whether the employer met the substantive justification test demanded under Sections 43, 45(2), and 47(5) of the Employment Act. Under these

provisions, the law requires the employer proves that the reasons for termination are fair, valid, and justified.

133. It is not disputed that in June 2017, the Claimant approved an ex gratia payment of Kshs.11,300,000 to Safaricom Limited. The Claimant's position was that the Respondent did not have an approval framework in place and that it was within her role to approve the payment.

134. On cross-examination, the Claimant conceded that she indeed approved the payment; she further confirmed that the beneficiary was not entitled to the pension benefits, that the Respondent did not contractually owe the amount paid, and finally that no Board approval was sought on the subject payment.

135. RW1 and RW2 testified that the Respondent had a clear Approval Framework applicable to both Sanlam Kenya and Sanlam Life, and that the Claimant had no authority to approve such discretionary expenditure.

136. In ***British American Tobacco (K) Ltd v Kenyan Union of Commercial Food and Allied Workers (Kucfaw) [2019] eKLR*** which quoted with approval the decision in ***Anthony Mulaki V Addax Kenya Limited, Cause No. 822 of 2012*** the Court held as follows: -"***In examining validity of reasons, the court was correctly directed by the Respondent to the case of BRITISH HOME STORES LTD v BURCHELL (1980) LC.R. 303 E.A.T. where it was held that for the***

court to uphold the decision by the employer as being fair, it must be shown that:-

- (a) The employer must believe at the time of termination, that the employee is guilty of the allegations against him/her***
- (b) The employer had reasonable grounds upon which to sustain that belief; and***
- (c) The employer carried out as much investigation as reasonable in the circumstances the employer need only be satisfied on the balance of probability."***

137. The Claimant confirmed that she was dismissed for approving the payment to Safaricom and further stated that the Respondent's authorization structure was known to her before the disciplinary hearing.

138. Section 44(4)(c) and (g) of the Employment Act classifies neglect of duty, breach of lawful company policy, and acts inconsistent with the employee's obligations as grounds for summary dismissal.

139. In my considered view, as Chief Finance Officer, the Claimant was entrusted with the financial stewardship of the Respondent's company, and authorising a payment exceeding Kshs.11 million without authority no doubt constituted a serious breach of fiduciary and financial controls.

140. In light of the foregoing, I find and hold that the Respondent had valid and fair reasons to terminate the Claimant's employment; hence, the termination was substantively fair.

141. In whole, I find and hold that the termination of the Claimant's contract was fair and lawful.

Whether the Claimant was discriminated against

142. The Claimant's position is that following a 2016 job evaluation exercise, her role was graded at Job Grade 10 with a recommended salary range of KShs.1.7-3.1 million. She further contends that, despite repeated requests, the Respondent failed to adjust her salary from Kshs.1,150,000, amounting to discrimination contrary to Article 27 of the Constitution and Section 5 of the Employment Act.

143. On cross-examination, however, the Claimant acknowledged that no employee of the Respondent received a salary increment following the job evaluation, and further that she did not produce any comparator earning more than her while performing a similar role.

144. The Respondent, through the testimony of RW2, told the court that the job evaluation outcomes were to be implemented gradually over a five-year period and that, contrary to the Claimant's assertion, no employee received immediate salary adjustments.

145. To prove discrimination under Section 5 of the Employment Act, a party must demonstrate differential treatment compared to others in similar circumstances. The Claimant did not lead evidence in this respect. It is also evident from the record that the job evaluation report did not constitute a contractual revision of salary, and nothing shows that the Claimant was promised a revised salary different from that in her employment contract.

146. Accordingly, I find and hold that the Claimant has failed to establish any unlawful underpayment and/or discrimination.

Whether the Claimant is entitled to the reliefs sought

147. The first prayer that the Claimant seeks is a declaration that she was irregularly and unlawfully underpaid by the Respondent, and that the unlawful withholding of part of her salary was in contravention of Section 19 of the Employment Act, 2007, and the same amounted to discrimination contrary to Article 27 of the Constitution of Kenya, 2010.

148. The issue of whether the Claimant was discriminated against and/or underpaid has been dealt with herein, and the finding of the court is that she has not proved a case of either discrimination or underpayment. This prayer, therefore, fails and is dismissed.

149. Similarly, the prayers for general damages for discrimination in the workplace, as well as for infringement of the Claimant's Constitutional rights, and payment of Kshs.32,760,000.00 as the outstanding and illegally withheld back-pay from the months of June 2016 to August 2018 when she was underpaid, fail for the same reasons espoused in paragraph 147 above.

150. On the claim for damages for unfair termination, compensation for unfair termination is only tenable where the court finds that the employee was unfairly terminated or wrongfully dismissed. The court has held the Claimant's termination fair and lawful; hence, the prayer for compensation/damages for unfair termination is unavailable to the Claimant. It equally fails.

151. In respect of the claim for three (3) months' salary in lieu of notice, the Claimant's letter of appointment/employment contract dated 16th November, 2016, provides a one-month notice period. Further, the Claimant confirmed to this court that she was paid one month's salary in lieu of notice at the time of termination. The claim, therefore, lacks merit and is dismissed.

152. On the claim for pension contribution, the Supreme Court of Kenya in ***Albert Chaurembo Mumba & 7 Others v. Maurice M/ Munyao & 148 Others Petition No. 3 Of 2016*** held that this court does not have jurisdiction to hear and determine disputes between pensioners and the trustees of a pension

scheme/employer on the premise that once a member of a pension scheme leaves employment, the employer/employee relationship ends.

153. The Claimant can therefore only claim her pension and any related or accruing interest through the Chief Executive Officer of the Retirement Benefits Authority and not through this court.

154. The Claimant also confirmed that she was paid her final dues which included accumulated leave days. The claim for leave not taken, also fails on this account.

155. The Claimant confirmed to the court that she was already issued with a certificate of service.

156. In the final analysis, the Claimant's claim is found totally lacking in merit and is dismissed its entirety with costs to the Respondent.

157. Judgment of the court.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 27TH DAY OF NOVEMBER, 2025.

**C. N. BAARI
JUDGE**

Appearance:

Ms. Mutuku h/b for Ms. Milimu for the Claimant

Mr. Omondi present for the Respondent

Ms. Esther S- C/A

ORIGINAL