

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI
ELRC PETITION NO. E075 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

DR. NEBART OGUDA
AVUTSWA.....PETITIONER

VS

UNITED NATIONS SAVINGS AND CREDIT
COOPERATIVE SOCIETY LIMITED.....
.....RESPONDENT

JUDGMENT

- 1 By an Amended Petition dated 3rd October 2025, the Petitioner sought for the following orders; -
- a. *A declaration that the Respondent's statements contained in the letter dated 18th December 2024 addressed to the Sacco Societies Regulatory Authority (SASRA) were defamatory and hence damaging and/or injurious to the Petitioner's Reputation*
 - b. *An order for the retraction of all defamatory statements and an unconditional apology in a full page of a leading newspaper of nationwide circulation.*
 - c. *A permanent injunction restraining the Respondent and/or its agents or persons acting under its instructions from publishing and/or writing any defamatory statements regarding the Petitioner.*
 - d. *12 Months Compensation for breach of contract.*
 - e. *General damages for libel.*
 - f. *Exemplary damages for defamation.*
 - g. *Aggravated damages for emotional suffering, stress and anguish caused by the Respondent's actions.*
 - h. *Costs of the Petition.*

- i. Interests on (d), (e), (f), (g), (h) from the date of filing the suit until payment in full.*

Petitioner's Case

- 2 The Petitioner avers that he was employed by the Respondent as its Chief Executive Officer vide a letter of appointment dated 9th November 2021, effective 1st December 2021, on a three (3) year fixed-term contract running until 30th November 2024, renewable subject to satisfactory performance.
- 3 He avers that the contract placed him on a six-month probation period which he successfully completed, and upon confirmation he attained a performance score of 98% for the period 1st December 2021 to 31st May 2022.
- 4 The Petitioner avers that as per the Letter of Appointment, he was availed with a schedule of key deliverables which formed an integral part of his contract. His contract required that the deliverables be reviewed periodically in tandem with evolving business needs. Further, the Board of directors would appraise his performance regularly and reserved the right to renew or not to renew his contract based on the performance outputs.
- 5 He avers that the renewal clause created a legitimate and reasonable expectation that his contract would be renewed or that he would be considered to retain his position ahead of any other person, provided his performance was satisfactory.
- 6 The Petitioner avers that upon assuming office, he resigned from his private practice, Oguda & Associates, vide a letter addressed to the Chairman, Registration and Quality Assurance Committee of ICPAK, effective 1st January 2022, and requested the immediate removal of

his name from the ICPAK website. He nominated CPA Erick Omondi Otieno to take over the activities of his firm.

- 7 The Petitioner avers that during the three years of his contract, he performed his duties with professionalism as required under his contract of employment as read together with the list of deliverables availed to him containing short term deliverables (within the first 6 months), medium term deliverables (within the first 12 months) and the long-term deliverables (within the first 3 years).
- 8 He avers that he was never issued with any warning letter, notice to show cause, or invited to any disciplinary hearing. Further, he was awarded a score of 98% for the first six months period and 84% for the first 12-month period, thereby, the Board confirmed his satisfactory performance.
- 9 The Petitioner avers that for the period between 1st January 2023 to 31st December 2023, he was awarded a score of 50%, which he disputed. He self-appraised himself at 83% for the period January 2024. He contends that the appraisal to award 2.48/5 was incomplete, no signed appraisal as the board was in a hurry to get him out.
- 10 The Petitioner avers that on the third year of his contract, the Board failed to sign off his Key Performance Indicators at the beginning of the year as required, and that the KPIs were only signed on 21st August 2024, eight months into the year. Despite this delay, the Board convened a Special Board Meeting vide a notice dated 19th August 2024, scheduled for 24th August 2024, whose sole agenda was to consider his performance and decide on the extension of his contract.
- 11 The Petitioner avers that on 24th August 2024, he appeared before the Board, made a presentation on his performance, and submitted a self-evaluation scoring 4.14 out of 5 (83%), reflecting that he had

exceeded expectations. Notwithstanding this, the Board awarded him a score of 2.48 out of 5 (50%), which he contends was unfair, malicious and predetermined.

- 12 It is the Petitioner's case that having signed his KPIs on 21st August 2024, eight (8) months into the year and evaluated on 24th August 2024, the evaluation was conducted barely two days after signing the KPIs, rendering it impossible to fairly assess his performance for the year, and that he still had four months remaining to achieve the set targets. This was malicious, and constituted an unfair labour practice contrary to Article 41 of the Constitution.
- 13 He avers that his BSC performance evaluations score card was amended on the date of the appraisal by altering the weightings without the Petitioner's prior knowledge. The effect of the malicious changes which were not communicated to him prior to the evaluation exercise was to skew the results to show that he had not performed satisfactorily for the purpose of the predetermined decision of the Board of directors not to renew his Contract.
- 14 It is the Petitioner's case that the Board's action to alter his evaluation criteria without his knowledge was malicious and discriminatory and was purposely meant to lower his performance aggregates; this contravened Article 27 of the Constitution and the Employment Act.
- 15 The Petitioner avers that he sought audience with the Board severally in writing to discuss the evaluation exercise which had serious lapses. None of his requests for a meeting to discuss the appraisal and the poor results granted to him were dignified by a positive response from the board, as an employee deserving a fair administrative action.
- 16 He avers that out of nine Directors, 4 dissented and refused to support the decision of the rest of the directors not to renew the

contract and submitted their reasons why they thought the Board should give the Petitioner another chance considering he had achieved success in his previous years. They recommended to the Board that the Petitioner's term be extended and he be put on a performance improvement plan. However, the majority of the directors decided not to renew the Petitioner's contract

- 17 The Petitioner avers that following the meeting, he was forced to proceed on leave, denied access to the Respondent's systems, and compelled to sign the appraisal while recording his reservations, which were never addressed.
- 18 The Petitioner avers that vide a letter dated 29th August 2024, the Respondent informed him that his contract would not be renewed upon expiry on 30th November 2024, citing alleged unsatisfactory performance and making several allegations against him, including non-compliance with the Sacco Societies Regulations; failure to disclose material conflict of interest; lapses in compliance with the laws, regulations, guidelines, policies and directives relevant to the sacco; failure to carry out duties diligently and in a prudent manner; failure to report material errors and misstatements in the books of accounts; and increased cases of fraud and presumptive fraud
- 19 The Petitioner avers that these allegations were never raised during his tenure, were unsupported by any disciplinary process, and that he was condemned unheard.
- 20 It is the Petitioner's case that he has always been aware that his contract was a fixed term contract and he had a legitimate and/or reasonable expectation that the contract would be renewed where his performance is satisfactory.
- 21 The Petitioner avers that he was constructively dismissed and that vide a letter dated 17th October 2024, he lodged a complaint with

SASRA concerning harassment, denial of access to systems, and the sham appraisal process.

- 22 He avers that contents of the letter dated 29th August 2024 were maliciously published to the Sacco Societies Regulatory Authority (SASRA), a third party, vide a letter dated 18th December 2024, thereby injuring his professional reputation built over many years and has lowered him and continues to lower him in the estimation of right-thinking members of the society.
- 23 The Petitioner avers that as a result of the defamatory publication, he has been unable to secure employment despite applying for CEO positions advertised in February and March 2025, and that his inquiries to the Cooperative Consultancy vide a letter dated 14th April 2025 were ignored.
- 24 He avers that there was no real and /or perceived conflict in the performance of his duties as Chief Executive Officer. He reiterates that he resigned from his practice in February 2022 and has not been in active practice since then.
- 25 The Petitioner avers that the Respondent did not specifically indicate which specific clauses or provisions of the laws, regulations, guidelines, policies and/or directives he breached, violated and /or contravened which were relevant to the Sacco exposing the Sacco to punitive penalties and regulatory action.
- 26 The Petitioner avers that he was not directly responsible on financial matters and /or book keeping. The Respondent has employed competent head of the finance department and/or officers who are directly responsible for book keeping and certainly, any lapses in the books, whose functions are subject to the internal and external auditors.

- 27 The Petitioner avers that he has not personally been engaged in or been a party to any fraud. Furthermore, fraud is a criminal offence which ought to be investigated by the relevant investigative agencies. He confirmed that he was invited to record a statement on this issue and he did. Other persons such as the Chairperson of the Board also recorded their statements and there has not been any indication that the matter has proceeded any further.
- 28 The Petitioner avers that during his employment with the Respondent he complied with the code of conduct, policies, regulations and laws relevant to his position. The Respondent did not specifically indicate which clause or clauses the Petitioner breached, violated or contravened.
- 29 It is the Petitioner's case that at no time during his employment was he served with a warning letter, notice to show cause why disciplinary action should not be taken against him, and indeed no allegation was made against him in respect to any of the allegations, that would justify any of the allegations against him by the Respondent.
- 30 The Petitioner avers that the allegations have and continue to cause him mental anguish, stress, emotional pain and suffering. The manner in which the Petitioner was treated was in breach of his right to inherent dignity especially as Chief executive Officer of the Respondent, the most senior officer in the Sacco. He deserved to be treated with respect and dignity.
- 31 The Petitioner avers that during his tenure, the Respondent registered significant growth, as evidenced in the 47th AGM Minutes of 9th March 2023 and the 2024 Annual Report, including growth in revenue, deposits, loan book, assets, dividends, and subsidiary performance. He spearheaded key institutional reforms, acquisition of office property, ERP implementation, policy revisions, strategic planning, and turnaround of the Respondent's investment arm.

- 32 The Petitioner avers that despite these achievements, the Respondent maliciously portrayed his performance as unsatisfactory to justify a predetermined decision not to renew his contract.
- 33 The Petitioner avers that through his advocates, a demand letter dated 21st March 2025 was issued, which was denied vide a response dated 27th March 2025, wherein the Respondent reiterated allegations of transgressions and threatened a counterclaim.
- 34 The Petitioner avers that the Respondent's actions violated his constitutional rights under Articles 27, 28, 41, 47 and 50, breached the Employment Act and the Fair Administrative Action Act, and subjected him to defamation, humiliation and reputational harm.

Respondent's Case

- 35 In opposition, the Respondent filed an Amended Statement of Response to the Amended Petition dated 26th November 2025.
- 36 The Respondent avers that the Petitioner was employed as its Chief Executive Officer vide a letter of appointment dated 9th November 2021, for a fixed term of three (3) years commencing 1st December 2021 and expiring on 30th November 2024, and that the contract expressly provided that renewal was not automatic but subject to satisfactory performance as assessed by the Board of Directors after considering the Petitioner's adherence to other equally mandatory requirements under the employment contract in addition to the Petitioner's performance assessed on the basis of the scheduled key deliverables.
- 37 It is the Respondent's case that the clause on contract renewal did not require the Sacco to assign reason(s) to the Petitioner in the event that his performance was found to be unsatisfactory.

- 38 The Respondent avers that during his tenure, the Petitioner not only worked for other organizations without written permission of the Sacco's Board of Directors but he also acted with total lack of integrity by knowingly withholding material facts from the Sacco's Board and/or knowingly deliberately misrepresenting material facts to the Board with the intent to mislead for his own personal benefit/gain.
- 39 The Respondent avers that on 1st December 2021, the Petitioner executed a Secrecy Bond, countersigned by the Chairman of the Board, Mr. Bernard Koech, which bond bound the Petitioner during and after employment not to disclose confidential Sacco information, internal correspondence, or Board documents without authority or a court order.
- 40 The Respondent avers that in flagrant disregard for his Secrecy Bond, the Petitioner filed in this court some of the Sacco's confidential documents addressed to only the Hon. Secretary of the Sacco for and on behalf of the Sacco's Board of Directors; these include the letters of dissent written by Philomena Makena Mathiu, Rael Odhiambo, Christine Wanjala, and Stanley Alwodi. The Petitioner has used these confidential documents for his own benefit contrary to the Bond of Secrecy that he executed.
- 41 It is the Respondent's case that the Petitioner accepted the terms of employment, assumed office on 1st December 2021, and was at all material times bound by the Sacco By-laws, Human Resource Policies, the Code of Conduct, and all governance instruments applicable to the office of Chief Executive Officer.
- 42 The Respondent avers that the undated letter of dissent signed by Director Rael Odhiambo made the disclosure that she was absent during the Petitioner's 2023 evaluation session; and that she did not challenge ratings awarded to the Petitioner, her only concern was that the Petitioner ought to have been put on a Performance

Improvement Plan (PIP) for one year. This was reiterated in the letters of dissent by directors Dr. Christine Wanjala and Stanley Alwodi, who also advocated for the Petitioner to have been on a Performance Improvement Plan which the Petitioner was amenable to.

- 43 It is the Respondent's case that the letters show that the Petitioner's Performance was not satisfactory, and far from excellent performance as the Petitioner alleges. It would have been undesirable that the Petitioner be put on a PIP when he was the one expected to be the team leader of the Management and give the appropriate guidance.
- 44 The Respondent avers that during its Board's special meeting on 24/8/2024, only one director, Philomena Makena Mathiu, dissented and indicated that she would be sharing a written dissent. The other three Rael Odhiambo, Dr. Christine Wanjala and Stanley Alwodi submitted their dissenting views via email on 9/4/2024 outside the formal meeting. As such and in line with Standard Governance Procedures and the Board Standing Orders these emails communications were not recognized as valid since they were not expressed and recorded during the official deliberations of the Board.
- 45 The Respondent contends that Board's decisions remain final and binding. Thus, the decisions taken during its special meeting reflect the official position of the Sacco regardless of subsequent or external expressions of dissent.
- 46 The Respondent further avers that the Petitioner's contract had no built in provision for PIP and that he failed, neglected and/or refused to ensure that the Human Resource Procedure Manuals providing specific guidelines on the rebuttal process arising out of performance evaluation were in place for implementation. In this

case the fixed contract had ran its course and due compensation paid to the Petitioner by the Sacco.

- 47 The Respondent avers that the Board resolution was formally communicated to the Petitioner by a letter dated 29th August 2024, authored by the Hon. Secretary, Ms. Salome Wanjohi, informing him that his contract would not be renewed following a performance review.
- 48 The Respondent asserts that the said letter did not defame the Petitioner but informed him of some of the areas that the Board considered and found the Petitioner's performance unsatisfactory. That information was not only truthful, and, justiciable in the circumstances but was meant only for the Petitioner's consumption.
- 49 The Respondent avers that on 17th October 2024, the Petitioner wrote to the Sacco Societies Regulatory Authority (SASRA) lodging a complaint and enclosing the letter dated 29th August 2024, prompting SASRA to write to the Respondent on 9th December 2024 requiring an explanation within seven (7) days.
- 50 The Respondent avers that it responded to SASRA by a letter dated 18th December 2024, reiterating the reasons for non-renewal and stating that the issues raised were not exhaustive, which response was made pursuant to a statutory obligation, and SASRA did not pursue the matter further.
- 51 It is the Respondent's case that its letter to SASRA was written at the behest of the Petitioner after he lodged a complaint complaining about its decision not to renew his employment contract amongst other grievances and requested for SASRA's intervention. It asserts that there was no falsehood in the letter and it did not publish the said letter to a 3rd Party, as the letter was written to the regulator in the exercise of their statutory mandate.

- 52 It further avers that it did not put an advertisement in any of the leading daily newspapers regarding the Petitioner, therefore, his prayer for a public apology in a newspaper of nation-wide circulation is without basis.
- 53 The Respondent avers that the Petitioner's performance for the year 2023 was evaluated using the Balanced Score Card (BSC) framework, which required the Petitioner, as Chief Executive Officer, to set annual targets aligned with institutional objectives and submit them within the first quarter of the year.
- 54 The Respondent avers that the Petitioner failed to submit his BSC targets within the first quarter of 2023, contrary to policy and practice, thereby delaying the commencement of structured performance monitoring for the year.
- 55 The Respondent avers that despite repeated engagement, reminders, and correspondence from his Supervisor, Mr. Bernard Koech, the Petitioner failed to sign off the completed 2023 BSC from February 2024, only appending his signature on 16th July 2024, several months after the close of the performance cycle.
- 56 The Respondent avers that during the appraisal process, the Petitioner engaged in prolonged correspondence disputing performance scores, demanding revisions, and introducing altered weightings which the Board found to be misleading and intended to inflate his overall performance rating.
- 57 It avers that the Board reviewed the disputed BSC, identified inconsistencies and misrepresentations in the weightings, corrected the same, and maintained that the evaluation be conducted strictly in accordance with approved policy and governance standards.
- 58 It is the Respondent's case that the Board is responsible for ensuring a Strategic Plan is in place while it is the role of a Chief Executive

Officer to implement the Strategic plan through the BSC. Targets backed by weightings are the basis of this implementation exercise. Employee weightings are between the Chief Executive Officer and Staff, the Board is not involved.

- 59 Additionally, the alleged impugned evaluation exercise was properly carried out after the Board adjusted the weightings that the Petitioner himself had deliberately misstated by awarding himself marks out of 135% with 4 Sections excluded the effect of which if it had not been corrected was to increase his score automatically.
- 60 The Respondent avers that the Petitioner lodged a formal dispute over the 2023 BSC but formally recalled the dispute by email dated 16th March 2024, and after receiving his annual bonus, he attempted to resurrect the same dispute, conduct the Board found to be opportunistic and lacking in integrity.
- 61 The Respondent avers that despite being responsible for institutional policy development, the Petitioner failed to operationalise performance rebuttal and escalation mechanisms within the Human Resource framework, leaving no effective manuals or procedures upon his exit.
- 62 The Respondent avers that during his tenure, the Petitioner committed multiple breaches of his contractual, fiduciary, and governance obligations, which breaches informed the Board's decision not to renew his contract.
- 63 The Respondent avers that the Petitioner breached its Code of Conduct and bylaw no. 51 by failing to disclose conflicts of interest, including engaging in transactions and decisions in which he had an interest without Board disclosure or approval. The Petitioner never disclosed to the Sacco's Board or the relevant Management Investment Committee that he consulted or rendered services for gain to SASRA, KUSCCO Banki Kuu, and KCA University.

- 64 It avers that its the Sacco's by-laws 51 made it mandatory for every Board member and employee of the Sacco taking part in any business transaction which Sacco was about to discuss or initiate to disclose any personal interest in the matter and not take part in any discussion or vote upon the item of business. It also required that such a board member or employee shall physically absent himself/herself from the discussion unless it is determined that the individual has relevant information to provide, and significantly that failure to divulge such information would result in removal from office or termination of employment.
- 65 The Respondent avers that the Petitioner breached by-law no. 52 which provides for confidentiality by officers of the society, and the Secrecy Bond dated 1st December 2021 by unlawfully obtaining, retaining, and filing confidential Board correspondence, including dissent letters he produced in this court, which were internal Board records not authorised for disclosure.
- 66 The Respondent avers that the authors of the said dissent letters later clarified that the documents were meant strictly for internal Board use and were never supplied to the Petitioner, rendering his possession and use thereof a breach of confidentiality obligations.
- 67 The Respondent avers that the Petitioner breached by-law no. 48 on legal standards of care by misusing Sacco staff, official email addresses, and institutional resources for personal interests and disputes.
- 68 The Respondent avers that the Petitioner breached his duty of good faith and fidelity by attending overlapping committee meetings and drawing allowances for concurrent meetings, thereby unjustly enriching himself at the expense of the Respondent.

- 69 The Respondent avers that the Petitioner failed to delegate duties despite having deputies, insisting on personal attendance at meetings to draw allowances, contrary to good corporate governance and prudent management.
- 70 The Respondent avers that the Petitioner acted *ultra vires* his authority by signing a Guarantee and Indemnity Instrument on behalf of Wanamataifa Investment Company Limited, an act reserved exclusively for the Board of Directors.
- 71 The Respondent avers that the Petitioner failed to operationalise key policies and manuals which he was specifically hired to develop, including performance management and rebuttal procedures, leaving the Respondent without institutional frameworks upon his exit.
- 72 The Respondent avers that the Petitioner demonstrated poor oversight and managerial incompetence in the implementation of the Enterprise Resource Planning (ERP) system, which implementation took over three (3) years instead of the anticipated three (3) months, with critical site visits omitted and institutional inefficiencies persisting.
- 73 The Respondent avers that during the Petitioner's tenure, its financial performance declined, dividends reduced, insurance rebates ceased, and the Sacco performed below its previous national ranking, in contrast to the period preceding the Petitioner's appointment.
- 74 It is the Respondent's case that it issued the Petitioner with a Certificate of Service. The certificate is usually requested by a 3rd party seeking to hire the Petitioner to be shown as proof that he indeed worked for the Respondent. It contends that as an employer, it is not bound to give an employee a testimonial, reference or

certificate relating to the character or performance of that employee.

- 75 The Respondent avers that no rights under Articles 25, 27, 28, 35, 41, or 47 of the Constitution were violated, that the Petitioner served the full contractual term, that all terminal dues were paid, and that the decision not to renew the contract was lawful, reasonable, and procedurally fair.
- 76 The Respondent avers that the Petition falls short of the **Anarita Karimi Njeru v Republic [1979]eKLR** threshold on constitutional petitions, and seeks to rewrite a fixed-term contract, improperly invites the Court to interfere with Board discretion, and ought to be dismissed with costs.

Petitioner's Submissions

- 77 The Petitioner submitted on six issues:- Whether the Petitioner's performance evaluation was done procedurally, fairly and lawfully in compliance with the Respondent's Human Resource's Policy and the Law; Whether the Petitioner's performance was satisfactory; Whether the satisfactory performance clause in the Petitioner's employment contract created a legitimate and/or reasonable expectation for renewal and whether the Respondent breached and/or violated the legitimate and/or reasonable expectation by failing to renew; Whether the Respondent's letter dated 18th December 2024 was defamatory and consequently injurious to the Petitioner's reputation; Whether the Petitioner is entitled to the remedies sought; Costs.
- 78 On the first issue, the Petitioner submitted that no secrecy bond, signed between an employer and an employee precludes an employee who is aggrieved by the conduct of the employer from instituting action against them or for filing the documents in support

of his case in order for judicial scrutiny by an employment court such as this. An employee whose constitutional rights and/or statutory rights have been violated, infringed and/or denied has every right to file documents in court to prove that fact.

- 79 It is the Petitioner's submission that the filing of the "*confidential information*" was necessitated by the Respondent's allegations of fraud, poor performance, failure to follow due process and violation of company policies which were unfairly, and unlawfully made against the Petitioner.
- 80 The Petitioner submitted that the performance evaluation process adopted by the Respondent was fundamentally flawed, unlawful, and unconstitutional.
- 81 He submitted that Clause 2.2 and Clause 2.2.1 of the Respondent's Human Resource Policy (2021) expressly required that the Chief Executive Officer be subjected to two performance appraisals annually, namely a mid-year review and an end-year review, and that underperforming staff be placed on a documented Performance Improvement Plan. Contrary to this mandatory framework, the Respondent failed to conduct mid-year appraisals for 2023 and 2024, and failed to conclude the appraisal process for 2023 despite his written objections and request to be heard.
- 82 The Respondent submitted that failure by an employer to follow its own internal policies renders any decision arising therefrom procedurally unfair, relying on the principle that an employer is bound by its own policy instruments once adopted.
- 83 The Petitioner submitted that the evaluation process for 2023 which the Petitioner believes and submits was a sham, and maliciously skewed in order to justify a false narrative that he failed to perform

satisfactorily. The Petitioner's numerous requests to be heard were declined and ignored and therefore he was condemned unheard.

84 It was submitted that no action was taken on the Petitioner's reservations and so there was never closure of that issue. The Respondent has not provided any evidence prove otherwise. The fact that the Petitioner was never heard can also be found in the dissenting opinions of the four board directors.

85 It is the Petitioner's submission that the Respondent did not caution him in writing for poor performance and/or put him on a documented PIP immediately after the evaluation. Clause 2.2.1 (d) of the Respondent's Policy requires underperforming staff to be put under a PIP, thus, the Petitioner did not in fact perform poorly and that he was just targeted maliciously.

86 He further submitted that under Clause 2.2.1 (c) of the Respondent's Human Resources Policy, good performance is recognised by payment of performance bonuses. The Petitioner individually was paid his bonuses throughout the period of his employment

87 37. The Petitioner submitted that the Respondent's actions violated Article 41(1) of the Constitution, which guarantees fair labour practices, and section 45(2)(c) of the Employment Act, which requires that termination-related decisions be made in accordance with fair procedure.

88 He further submitted that the conduct of the Respondent amounted to breach of Article 47(1) of the Constitution and section 4 of the Fair Administrative Action Act, imposes a mandatory obligation on the administrator to accord the person against whom administrative action is taken an opportunity to attend proceedings, in person or in the company of an expert of his choice, be heard, cross-examine persons who give adverse evidence against him; and request for an

adjournment of the proceedings, where necessary to ensure a fair hearing.

89 It is the Petitioner's submission that he the Petitioner complained that his weightings had been altered on the last day, without prior notice or explanation and/or consultation with him. We reiterate that the meetings requested by the Petitioner to address this issue should have shed light on the process and he should have been given written reasons as to how the Board arrived at that decision. The fact that his requests for a hearing on this issue was not addressed demonstrates that the actions taken by the Respondent throughout in the course of his evaluation were done arbitrarily and maliciously and cannot be justified by law.

90 The Petitioner relied on ***Albert Gitari Luka t/a Hakim Commercial Agencies v Chairperson, Tharaka Nithi Alcoholic Drinks Control Board & 2 others [2023] KEHC 872 (KLR)*** where the Court held that administrative decisions affecting rights must be lawful, reasonable, procedurally fair, and accompanied by reasons.

91 On the second issue, the Petitioner submitted that his performance throughout his tenure was satisfactory and, in many respects, exemplary. He scored 98% upon completion of probation and 84% at the end of his first year, and these scores were never challenged by the Respondent.

92 The Petitioner submitted that he consistently received performance bonuses, which under the Respondent's Human Resource Policy were payable only upon good performance, thereby affirming satisfactory performance.

93 He submitted that no show cause letter, warning, disciplinary notice, or Performance Improvement Plan was ever issued to him, which

was inconsistent with allegations of poor performance. He cited *Kenfreight (E.A.) Limited v Benson K. Nguti* [2016] eKLR, the court held that poor performance must be demonstrated through a fair, objective, and documented process.

94 He further submitted that during his tenure, the Respondent recorded significant growth in revenue, deposits, assets, and loan book, acquired the UN Sacco Centre and rolled out key systems. This is articulated under Agenda 03/09/03/2024; Report of Minutes of the Respondent's 47th Annual General Meeting held on 9th March 2024 virtually with physical attendance at Safari Park Hotel, Nairobi, which outlined numerous achievements that had been realised by the Sacco between 1st January 2023 to 31st December 2023.

95 The Petitioner submitted that On 12th July 2025, during the 103rd annual Ushirika Day held at KICC, various saccos were awarded certificates and trophies in recognition of their exemplary performance in the year 2024. The Respondent scooped the top awards, in various categories as follows: best managed Sacco countrywide; best Sacco in technology optimization; best DT Sacco in deposit management; and best Performing DT Sacco. Additionally, on 24th July 2025, the Respondent posted and/or caused to be posted on its website an article in recognition for its outstanding performance titled "UN SACCO BRINGS HOME THE BEST MANAGED SACCO AWARD!". This award was for the year 2024 when again the Petitioner was the CEO of the Respondent.

96 The Petitioner submitted that an employer cannot lawfully celebrate institutional success under an employee's leadership and later label the same employee a poor performer without violating logic and fairness.

97 On the third issue, the Petitioner placed reliance in ***Margaret A Ochieng v National Water Conservation & Pipeline***

Corporation [2014] KEELRC 573 (KLR) wherein it was held: “The general principle is that fixed-term contracts carry no expectation of renewal. Exceptions to this general principle are limited. The expiring contract may contain a clause giving expectancy of renewal as discussed by Hon. Justice Byram Ongaya in Industrial Court Case between **Ruth Gathoni Ngotho- Kariuki v. the Presbytery Church of East Africa & Anor, [2012] e-KLR.** In this case the Employer was obliged to give the Employee notice, 3 months before the expiry of her fixed-term contract, indicating whether her contract would be renewed or not. It was the Employer, unlike the present dispute, who would express the intention on the renewal. The Employer failed to do so, and the Court found that the Employee was justified in legitimately expecting there would be renewal. This Court similarly expressed the view in the case of Bernard Wanjohi Muriuki that an outgoing contract may impose the expectancy of renewal. in the **United Nations Appeals Tribunal [Tribunal D’ Appel Des Nations Unies] UNAT, Case No. 2010 - 125 between Frenchon v. The Secretary- General of the United Nations,** the Tribunal found that the decision of an Employer not to renew a fixed-term contract may be challenged on limited grounds. These include where the actions of the Employer give rise to legitimate expectation on the part of the Employee, that there would be renewal; and two, where the decision not to renew is based on improper motives or there are countervailing circumstances.”

- 98 The Petitioner submitted that his employment contract provided as follows; “The appointment is on a three (3) year fixed term contract renewable subject to satisfactory performance.” the clause established a mandatory obligation on the part of the Respondent that it would renew the Petitioner’s Contract if his performance was satisfactory.

- 99 It is the Petitioner's submission that the contract did not say that it would be renewable subject to excellent performance, rather it said the contract would be renewable subject to satisfactory performance. Which means that the test of what amounts to satisfactory performance is objective and therefore all the Petitioner is required to prove on a balance of probabilities is that his performance was in fact reasonably satisfactory.
- 100 It was submitted that having convinced the court on a balance of probabilities that the fixed term employment contract created a legitimate and/or reasonable expectation on the part of the Petitioner that the contract would be renewed subject to satisfactory performance. And having demonstrated by documentary evidence that the Respondent performed extremely well, during the fixed term of the Petitioner's employment; the Respondent breached and/or violated express terms of the employment contract by failing to renew his contract, between the Petitioner and itself.
- 101 On the fourth issue, the Petitioner submitted that the Respondent admitted in his response to the petition that he was not issued with a show cause letter or a warning and further that no disciplinary action was taken against him but this of itself is not evidence that the Petitioner did not have shortcomings. This meant that the Respondent's allegations in its letter dated 18th December 2024 were all "shortcomings" which did not necessitate a show cause letter, warning letter and/or a disciplinary process for which the Petitioner would be called upon to make his representations and defend himself.
- 102 It is the Petitioner's submission that all those allegations are not mere shortcomings of an employee but allegations which are serious and bear far reaching consequences as far as the professional reputation of the Petitioner especially at the level of CEO is concerned and his employability after the fact as held in

Naqvi Syed Qmar v Paramount Bank Limited & another [2015] KEELRC 114 (KLR).

- 103 The Petitioner submitted that the letter dated 18th December 2024 was in fact published to a 3rd Party, the Sacco Societies Regulatory Authority, SASRA, though it is not your usual third party, as it is the regulator for all the deposit taking saccos.
- 104 It is the Petitioner's submission that even if the court were to accept the Respondent's claim that SASRA was entitled to a response as the regulator, the Respondent's duty of care to the Petitioner existed and the Petitioner did not at any time either by implication and/or expressly waive it. The Respondent therefore had the duty to tell the truth if at all, and not to lie about the circumstances of the Petitioner's employment.
- 105 The Petitioner submitted that after the Respondent had published the false, malicious and defamatory statements about him, his reputation suffered serious damage and /or injury. The false statements published to SASRA have not only defamed and stigmatised him, but also damaged his employability, diminished his attractiveness to potential employers and generally dipped his stock in the employment market. To date, the Petitioner has not been able to secure employment again.
- 106 On the fifth issue, it was submitted that in considering what to award the Petitioner, this Court be guided by the gravity of the defamation, the seriousness of the defamatory statements which in this case include allegations of fraud and criminal conduct for which the Petitioner had been investigated and cleared, the Petitioner's social standing, being a PhD holder and a senior administrator in the Sacco space, the extent of the publication, in this case the publication was made to SASRA, the regulator of Societies which completely hurt the Petitioner's reputation. Further, the arbitrariness

and and malice with which the Respondent published the defamatory statements be considered. He cited ***Nzibo v Nation Media Group Limited & another [2024] KEHC 12720 (KLR)*** and ***Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR***.

Respondent's Submissions

- 107 The Respondent submitted on four issues: Once a fixed term contract comes to an end can it be termed as an unfair termination and/or breach of contract; Can the non-renewal of the contract of employment create a legitimate expectation that is capable of enforcement through an award of damages; Did the Sacco defame the Petitioner and if so in what manner and what damages are payable if at all; Has this case met the threshold of a Constitutional Petition.
- 108 On the first issue, the Respondent submitted that the Petitioner's performance was evaluated annually using the Balanced Score Card (BSC) framework in accordance with the Respondent's Human Resource Policy. The Petitioner participated fully in the appraisal process and undertook self-evaluations for the relevant periods.
- 109 The Respondent submitted that for the year 2023, the Petitioner disputed the outcome of the evaluation, declined to sign off the BSC, and demanded a review of the scores. It was the Petitioner who stalled the finalization of the evaluation process, and he cannot now rely on a process he impeded to allege procedural unfairness.
- 110 The Respondent submitted that the Petitioner was informed that the 2023 evaluation could not be altered as it was a consolidated score by Board members, some of whom had since exited the Board. Notwithstanding this, the Respondent engaged the Petitioner

through numerous correspondence and discussions in good faith resulting in the Petitioner finally signing the BSC.

- 111 It is the Respondent's submission that the Petitioner, he withdrew the dispute so as to ensure that he got his bonus and after getting the bonus he resurrected the dispute. By withdrawing the dispute and the Sacco acting on his withdrawal by paying him a bonus estopped him from resurrecting the issue of his BSC scores.
- 112 The Respondent submitted that although it gave reasons for its decision not to renew the Petitioner's employment contract in its letter dated 29th August 2024, it was not obligated to do that as held in the Court of Appeal in ***Transparency International - Kenya v Omondi [2023] KECA 174 (KLR)***. It contends that it need not have given the reasons as it was not provided for in the contract of employment. Nevertheless, for accountability and so that it would not appear that it acted whimsically, the Respondent gave reasons why it was not renewing the Petitioner's employment contract.
- 113 The Respondent submitted that the Petitioner's performance/evaluation was done procedurally, fairly and lawfully. Purported non-compliance with the Sacco's Human Resource Policy does not arise as there was no manual in place to implement the policy the omission of which the Sacco blamed the Petitioner for failing to act timeously on the same vide Sacco's Special Meeting Minute 02/24/08/2024. The Petitioner was heard by the 9 Board Members before a decision was made on whether to renew the Petitioner's contract or not.
- 114 It is the Respondent's submission that the Petitioner should not be allowed to benefit from his own omission by attempting to blame the Board for want of compliance with its Human Resource Policy while knowing that he had not operationalized the relevant manual as captured in Sacco's Minute. 02/24/08/2021 that read as follows: -

“16. Human resource procedure manuals including disciplinary procedures: despite being expressly required by the Human Resources Policy, no approved human resources procedure manuals has been put in place. Despite disciplinary cases having been reported it was noted that a disciplinary committee had not been established as required in policy exposing the Sacco to possible labor related disputes.”

115 It was submitted that the Sacco’s performance is not a one-man show but a team effort and therefore claiming that the Sacco’s outstanding performance in 2024 was because of the Petitioner’s good leadership is completely inaccurate. The Petitioner has not demonstrated to this court that the Sacco’s 2024 performance is attributable to him alone and that no other person contributed to that performance.

116 The Respondent submitted that the Petitioner’s conduct did not inspire confidence in the Board. His integrity was called into question, yet of significance for the sustenance of the contract was the requirement for verification and continuity of such confidence. Performance alone cannot be satisfactory when confidence has faded.

117 It is the Respondent’s submission that the Petitioner failed to respond to its evidence that the Petitioner was engaged in consulting for other entities including KUSCCO which he concealed. He was conflicted when matters touching on KUSCCO were being discussed especially by the Investment Committee which he chaired. As the Chair of the Investment Committee he oversaw the Sacco investing over 500 million with KUSCCO which monies the Sacco has not been able to recover to-date in spite of recalling the funds.

118 The Respondent submitted that it did not take any steps to mislead the Petitioner that his contract would be renewed, particularly, the

end date of the employment contract was emphasized and highlighted vide its letter dated 28th February 2023. The Respondent's Board's exercise of its discretion not to renew the Petitioner's Contract of employment was therefore lawful and proper. It placed reliance in ***Transparency International - Kenya v Omondi [2023] KECA 174 (KLR)***.

- 119 On the third issue, the Respondent submitted that the Petitioner himself initiated correspondence with SASRA by writing to them his letter dated 17th October 2024 enclosing the Respondent's letter addressed to him dated 29th August 2024. Therefore, it was the Petitioner who caused the publication of that letter from the onset.
- 120 The Respondent submitted that the Petitioner's complaint to SASRA led to the Regulator writing a letter dated 9th December 2024 to the Respondent informing it of the complaint and seeking a response. The Respondent was directed by SASRA to respond to the allegations and to support their response with clear supporting evidence on each and every allegation within seven (7) days of the date of that letter.
- 121 It is the Respondent's submission that its letter in response to the Regulator was not actuated by malice or recklessness on its part. Its response was required as a result of the Petitioner's complaint sent to the Regulator in the first instance. In fact, the Respondent made it clear to the Regulator that the response was being made in good faith and in compliance with information the Regulator was seeking in executing its mandate. The Sacco was therefore giving information to an entity seeking the same under lawful authority.
- 122 The Respondent submitted that it gave their version explaining in detail their reasons for the contents of their letter to the Petitioner dated 29th August 2024; and that its reasons were truthful and not false to qualify even slightly for a claim for defamation.

- 123 It is the Respondent's submission under Sections 48, 50, 53 and 54 of the Sacco Societies Act, Cap. 490B, Laws of Kenya, defamation arising when a deposit taking Sacco is responding to the SASRA's request/directions is outlawed. The request/direction has a statutory underpinning and so non-compliance cannot be brooked and would lead to severe sanctions.
- 124 The Respondent submitted that Section 54(6) of the Sacco Societies Act absolves it from any breaches when disclosing information to SASRA, this absolves the Respondent of the claim of defamation. Defamation clearly cannot lie when the Sacco is acting within the confines and dictates of the Sacco Societies Act.
- 125 The Respondent submitted that to hold that a Sacco that responds to the Regulator in a matter the Sacco is required to respond to by the Regulator amounts to defamation, would have a debilitating effect in regulating Saccos. Saccos would then give themselves reasons to defy the Regulator in giving information under the guise that by doing so they would risk being penalized in defamatory suits.
- 126 The Respondent placed reliance in the definition of defamation in ***J Kudwoli & another v Eureka Educational and Training Consultants & 2 others [1993] eKLR*** wherein Kuloba J. (as he then was) held: *"That for a defendant to be tortiously liable in a suit for defamation the plaintiff must prove on a balance of probability that the matter complained of (a) is defamatory (b) refers to him (c) was intentionally, recklessly or negligently published of and concerning him (d) was so published by the defendant, and (e) was published without lawful justification on an unprivileged occasion.That it is for the court, and not what the witnesses say, to determine whether a matter is reasonably capable of a particular interpretation, and in determining this point the court considers all the relevant factual position and circumstances before*

it; it is not right to consider the very matter of which the plaintiff complains only; it is necessary to take into account the context of the matter as a whole; nothing should be considered in isolation of the whole; and where they are present, the bane and antidote must be taken together..... That in order to hold a defendant tortiously liable, it must be proved that he communicated the defamatory matter to someone other than the plaintiff or the originator of the matter complained of, and that the matter was intelligible to its recipient.”

127

128 The Respondent submitted that genesis of it being required to write that letter was the Petitioner himself who wrote to SASRA more than once requesting for their intervention regarding its Board’s decision not to renew his contract. The Sacco did not write that letter out of its own volition but in compliance with the dictates of a statutory obligation.

129 It is the Respondent’s submission that the Petitioner waived his rights to any privacy and/or privilege when he complained to SASRA and pushed SASRA to demand on his behalf a written response to the 4 specified allegations within 7 days supported by evidence.

130 On the final issue, the Respondent submitted that there was no publication by itself in any leading newspaper of nationwide circulation regarding the Petitioner. Thus, the issue of retraction and an apology do not arise. By any stretch of imagination retraction can only mean that it retracts the letter to SASRA, therefore, the prayer should be disallowed.

131 The Respondent submitted that prayer no. c is a very broad prayer seeking to stop actions which have not happened and of which no basis has been laid that such actions will happen in future. The import of granting the permanent injunction is to restrain the Respondent from responding to any queries that SASRA may have in

regard to the issue of the Petitioner. In effect, the Court is being asked to interfere with the statutory mandate of SASRA, therefore, the prayer ought to be disallowed.

- 132 The Respondent submitted that the Petitioner knew that his contract was fixed for 3 years. He should therefore not feign suffering, stress and anguish as if he expected the renewal of his contract to be automatic. From the onset, the Petitioner negotiated for a fixed term contract which came to an end by effluxion of time.
- 133 The Respondent submitted that the Petitioner has not sought any Constitutional reliefs in his prayers rendering this claim purely on employment matter. It cited [Kurui v Aquila Development Company Ltd \[2024\] KEELRC 658 \(KLR\)](#), the Court addressed its mind on the doctrine of constitutional avoidance that where it is possible to decide any case, civil or criminal without raising a constitutional issue that is the course which must be followed.
- 134 The Respondent submitted that its refusal to renew the Petitioner's fixed term contract does not amount to treating the Petitioner without dignity. Further, after the Petitioner was notified that his contract would not be renewed vide a letter dated 29th August 2024, he continued with all his duties as usual including even when he was on leave he would be apprised of what was happening in the office.
- 135 It submitted that the Petitioner has not disclosed what information he required from the Respondent which he was denied contrary to Article 35 of the Constitution. In any case, the Petitioner can move a Court of law anytime to compel the Respondent to produce any document in Court which he deems necessary for the prosecution of his case. The Petitioner has not made such an application before this Court.
- 136 On breach of Article 47, the Respondent submitted that the Petitioner participated in all proceedings that touched on him and

when he wrote to the Respondent officially he was answered. He was given a hearing before a decision was taken.

137 The Respondent further submitted that it is the Petitioner who upon receiving his evaluation report for the year 2023 in February, 2024 or thereabout refused to accept the evaluation outcome and kept a back and forth on the issue up to July, 2024 thereby stalling the extraction of the Key Performance Index for the year 2024 and now blames the Respondent for failing to provide him with the Key Performance Index (KPI) in good time.

138 It is the Respondent's submission that the Petitioner has not specifically pleaded and proved his claim for damages under the head of Article 41 of the Constitution, if any, under the Constitution as regards labour relations.

139 The Respondent submitted that the issue of Evaluation weightings as contained in the Balance Score Card (BSC) a tool which the Sacco uses to implement a strategic plan. The Board is responsible for ensuring a Strategic Plan is in place while it is the role of a Chief Executive Officer to implement the Strategic plan through the BSC. Targets backed by weightings are the basis of this implementation exercise. Employee weightings are between the Chief Executive Officer and Staff; Board is not involved. Additionally, the alleged impugned evaluation exercise was properly carried out after the Board adjusted the weightings that the Petitioner himself had deliberately misstated by awarding himself marks out of 135% with 4 Sections excluded the effect of which if it had not been corrected was to increase his score automatically.

140 I have examined all the averments and submissions of the parties herein. There are 3 issues for this courts determination.

1 Whether the respondents acted ultra vires the norm in failing to renew the petitioner's contract.

- 2 Whether the petitioners rights under the constitution were breached in any way.
- 3 Whether the petitioner is entitled to the remedies sought.

ISSUE NO 1

- 141 The petitioner has submitted before court that he was employed by the respondent on a 3 year contract renewable subject to satisfactory performance. He submitted that under clause 2.21(b) of the respondent's HR manual, appraisal was to be done twice. The good performance was also to be recognized with bonus payment.
- 142 It is the petitioner's position that in 2023 the respondents did an appraisal of the petitioner's performance which he disputed as per his email of 24/4/2024 (page 231 of his documents) but which he avers were never addressed by the board. He avers that the issues raised by the board against him i.e fraud, non compliance with polices and code of conduct, conflict of interest incompetence were never also addressed by the board.
- 143 The petitioner contends that his contract was never renewed because appraisals were never done. The respondents on their part submitted that the issue in court does not have any constitutional breaches. That as it may be, the respondent also submitted that the petitioner was serving on a fixed term contract. It was at the respondent's discretion to determine what satisfactory performance was. They referred court to transparency international case (supra) where the Court of Appeal held that for there to be legitimate expectation for renewal, a positive step must have been taken to lead an employee believe that the contract will be renewed. It is true that the petitioner was on a fixed term contract. The contract was for 3 years renewal subject to performance.
- 144 From the submissions of the respondent, the petitioner's performance was evaluated using the balanced scorecard (BSC) which the petitioner fully participated in undisputed. From the

correspondence in the pleadings, the petitioner was indeed assessed by the respondents board. He disputed the results but the respondents were not obligated to agree with him given that the respondent was the assessor.

145 The respondents also never led the petitioner into believing that his contract was to be renewed and the issue then of legitimate expectation does not arise. An employer is generally not obligated to renew a fixed term contract. Under the law, such a contract ends automatically on this specified date without requiring notice or a reason for non renewal. The respondents on their part outlined reasons for non renewal based on their own assessment which they were also not obligated to disclose.

146 It is my finding from this analysis that the petitioner's contract was fixed term and he was assessed by his employer who opted to renew the same and the respondent retained their sole discretion to renew or not to renew and therefore cannot be compelled to accept the petitioner back in employment.

ISSUE NO 2

147 The petitioner also averred that the respondents breached his constitutional rights under the constitution by not renewing his contract and were thus in breach of his labour rights under article 41 of the constitution. As analyzed above, the petitioner was serving on a fixed term contract which expired by effluxion of time. The respondent had no obligation to renew the said contract and failure to renew the same without creating an atmosphere for legitimate expectation is not a breach of the petitioner's labour rights under article 41 of the constitution.

148 The petitioner also averred that the respondents defamed him by publishing defamatory material with 3rd parties. To this, the respondent averred that it was the petitioner who first wrote to Sasra complaining about the way the respondent had treated him

by declining to renew his contract. The respondent averred that it was in response to this complaint that they wrote to Sasra explaining the circumstances under which the petitioner's contract was not renewed.

- 149 It is true that the petitioner was the 1st to write to the regulator Sasra complaining about the respondent. The respondent were asked to respond accordingly and they indeed responded explaining why they had decided not to renew the petitioner's contract. This was the reasonable way to respond and this information was never relayed to other people save for Sasra who the petitioner had chosen to communicate with. It is my finding that the contention by the petitioner that he was defamed by the respondent is not viable and is thus disregarded.

ISSUE NO 3

- 150 Having found as above, it is my finding that the entire petition lacks merit. It is thus dismissed accordingly. There shall be no order of costs.

Dated, Signed and Delivered Virtually at Nairobi this 14th Day of January, 2026.

**HELLEN WASILWA
JUDGE**