

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

**ELRC CAUSE NO E701 OF 2021**

**DUNCAN ODHIAMBO**  
**OBUDHO.....CLAIMANT**

**VERSUS**

**ALLIANCE FOR A GREEN REVOLUTION IN AFIRCA.....**  
**..... RESPONDENT**

**JUDGMENT**

**Background**

1. The Claimant instituted these proceedings to challenge the Respondent's decision to terminate his contract of service. It is his case that the decision was unlawful.
2. The Claimant avers that the Respondent hired his services as a driver and office assistant with effect from 1<sup>st</sup> May 2010. He contends that he was later promoted to the position of Protocol and Liaison Assistant.
3. The Claimant asserts that he performed his duties diligently until 4<sup>th</sup> July 2019 when the Respondent unlawfully terminated his services. It is his case that termination of his contract was without justification and did not adhere to fair procedure.
4. The Claimant contends that the transaction which informed the decision to terminate his services was a private matter

between him and his workmate. He avers that when the transaction failed, the colleague maliciously reported the matter to the Respondent who accused him of gross misconduct.

5. The Claimant contends that the Respondent should not have terminated his services on the basis of the private transaction which did not relate to his employment. He avers that the transaction did not violate the Respondent's Staff Code of Conduct. In the premises, he contends that the Respondent acted unlawfully.
6. The Claimant further contends that the Respondent did not in any event prove the accusations which were leveled against him. He also avers that the Respondent denied him a fair hearing by refusing to allow him to be accompanied by a colleague during the hearing of the disciplinary case against him.
7. The Claimant further contends that his accuser was not made party to the disciplinary case. In his view, this vitiated the process.
8. The Claimant also contends that the Respondent did not pay him his terminal benefits to wit accrued leave for 45.5 days and salary for November and December 2019. As such, he claims for these benefits. In addition, he claims for: payment for the balance of his contractual term; compensation for unfair termination of his contract; exemplary damages for breach of contract; and issuance of a Certificate of Service.

9. Although there are no averments regarding violation of the Claimant's constitutional rights in the body of the Statement of Claim, he makes a claim in this respect in the prayer section of the Statement of Claim. He asks the court to find that the Respondent violated his constitutional rights under articles 23 (3) (e), 41 and 50 of *the Constitution*. As such, he prays for compensation for violation of these rights.
10. The Respondent has opposed the claim. It contends that the Claimant's services were terminated for valid reasons and in accordance with the requirements of fair procedure.
11. The Respondent avers that the Claimant was initially employed as a driver and office assistant before he was promoted to the position of Protocol and Liaison Assistant. It contends that in 2019, it received a complaint from one Cynthia Mugo (the Complainant), one of its employees, alleging that the Claimant had defrauded her in a transaction involving purchase of a motor vehicle.
12. The Respondent avers that according to the complaint, the Complainant had approached the Claimant to assist her to purchase a vehicle because of his knowledge and expertise in the field and by virtue of his position as a protocol person in the organization. It contends that the Claimant acted as an intermediary between the Complainant and the vendor of the vehicle in the transaction.
13. The Respondent avers that the Claimant sent the Complainant a Sale Agreement for the vehicle which showed

that it was to cost Ksh. 3,190,000.00 and that the Complainant was to make a down payment of Ksh. 2,500,000.00. It contends that although the Complainant wired the down payment to the vendor's account, there was delay in crediting the vendor's account resulting in the vehicle which the Complainant had identified being sold to a third party.

14. The Respondent avers that despite this, the Claimant assured the Complainant that another vehicle would be procured for her. As such, he allegedly discouraged the Complainant from seeking refund of the down payment.
15. The Respondent avers that when the Complainant conducted the vendor directly regarding the matter, she learned that the actual price of the vehicle was meant to have been Ksh. 2,500,000.00. The Respondent contends that the vendor told the Complainant that the Claimant had informed him that the Complainant had asked for the price to be inflated in order for her to benefit from the excess amount. The Respondent further contends that the vendor disclosed to the Complainant that he had paid the Claimant and a former colleague of his Ksh. 400,000.00 as a kickback for the transaction.
16. The Respondent avers that it formed the opinion that the complaint against the Claimant raised serious allegations of fraud and breach of the Staff Code of Conduct. It further

contends that the allegations were not consistent with the Claimant's role as a protocol officer in the establishment.

17. In view of the foregoing, the Respondent avers that it issued the Claimant with a notice to show cause letter dated 25<sup>th</sup> April 2019. It contends that the letter set out the particulars of the accusations against the Claimant and the provisions of the Code of Conduct which he had breached.
18. The Respondent avers that it suspended the Claimant from duty and subsequently invited him for a disciplinary hearing through its letter dated 9<sup>th</sup> May 2019. It contends that it provided the Claimant with all the materials that were essential for preparation of his defense. It further avers that it informed the Claimant of his right to attend the disciplinary hearing in the company of a workmate of his choice.
19. The Respondent avers that the disciplinary hearing was conducted as scheduled and that it considered the evidence by the Claimant against the complaint by the Complainant and the vendor's statement before it rendered its decision. The Respondent contends that from the trial, it was satisfied that the Claimant's conduct had violated the Staff Code of Conduct. It contends that the actions by the Claimant were likely to injure its reputation. As such, it contends that it summarily terminated his services on 4<sup>th</sup> July 2019 on account of gross misconduct.
20. The Respondent contends that it nevertheless informed the Claimant of his right of appeal. It contends that the Claimant

lodged the appeal through his letter dated 11<sup>th</sup> July 2019. It further contends that an Appeals Panel was set up and heard the appeal. It avers that the Panel rejected the appeal and sustained the earlier decision by the Disciplinary Committee to terminate the Claimant's services. It contends that the Claimant was notified of this development through its letter dated 16<sup>th</sup> December 2019.

21. The Respondent contends that it followed the procedure in its Human Resource Manual in processing the Claimant's case. It further contends that the proceedings established that the Claimant's conduct flouted the Staff Code of Conduct and that the conduct amounted to gross misconduct as defined under section 44 of *the Employment Act* for which it was entitled to terminate his services.
22. The Respondent contends that at the time the Claimant's contract was terminated, he was entitled to 45.5 leave days. It avers that he was paid Ksh. 361,904.00 for the accrued leave days computed at Ksh. 7,935.03 per day.
23. The Respondent avers that because the Claimant's employment was terminated on 4<sup>th</sup> July 2019, he was not entitled to salary for November and December 2019. Similarly, it denies all other reliefs sought by him.

### **Issues for Determination**

24. After evaluating the pleadings, evidence and submissions by the parties, the following issues arise for determination:-

- a) Whether the contract of service between the parties was unlawfully terminated.
- b) Whether the Claimant is entitled to the reliefs which he seeks in the proceedings.

### **Analysis**

25. The Claimant was hired by the Respondent through the Respondent's letter dated 4<sup>th</sup> May 2010. Clause five (5) of the letter incorporated the Respondent's Human Resources Policies and Procedures Manual into the contract between the parties. In addition, clause four (4) of the letter allowed the Respondent to terminate the contract of service between the parties if the Claimant's conduct threatened to cause it (the Respondent) disrepute.
26. The Human Resources Policies and Procedures Manual makes reference to the Respondent's Code of Conduct for members of staff. It provides that the Code, which requires employees to maintain good conduct, binds all members of staff. The Manual further obligates all employees to acknowledge the Code upon appointment into employment.
27. The Code of Conduct provides in part as follows:-  

*“The remit of this Code of Conduct encompasses not only professional work and related activities undertaken during working hours but also interactions outside of working hours where those have the potential to bring AGRA into disrepute or to harm AGRA's image in any way.”*

28. From the wording of the Code, it is clear that it binds members of the Respondent's staff both whilst at and away from work. Wherever the members of staff may be, they must be mindful that their behavior should not breach the Code if the consequence of such breach is likely to impact negatively on the image of the Respondent. As such and contrary to the Claimant's assertion, the Code bound him wherever he was.
29. The Code outlaws any form of dishonorable conduct by employees of the Respondent. These include: stealing, lying, misrepresenting facts, falsifying records, making unauthorized personal use of the Respondent's property or doing unauthorized private work during work time. Further, the Code states that the Respondent maintains a zero tolerance policy for all forms of corrupt practices.
30. During cross examination of the Claimant, he confirmed that he had signed the Code. As such, it was binding on him during the course of his employment with the Respondent. Further and as noted earlier, the Code bound the Claimant to be of good conduct and to avoid corrupt practices both whilst at and away from work if the impugned conduct was likely to injure the image of the Respondent.
31. The Respondent accuses the Claimant of dishonest conduct against his colleague. It contends that the Claimant acted dishonorably whilst assisting the colleague to purchase a motor vehicle.

32. According to the Respondent, the Claimant's colleague requested him to assist her to procure a vehicle for purchase. The Claimant is said to have colluded with the car dealer and some other third parties to misrepresent the true value of the vehicle to his colleague with the intent of defrauding her. It is indicated that the Claimant inflated the purchase price and as well received a kickback from the dealer for the transaction.
33. The Claimant has denied this accusation. He contends that he only introduced the colleague to the car dealer. He denies that he inflated the invoice containing information on the purchase price of the vehicle. He further denies that he received any kickback from the transaction.
34. The Claimant further avers that the transaction was in any event private and not work related. As such, he contends that the Respondent should not have punished him for it.
35. On the other hand, the Respondent relies on the complaint that was filed by the Claimant's colleague to anchor its case. The complaint, which was tendered in evidence, speaks to the fact that the Claimant's colleague initiated a car purchase transaction through the Claimant whereupon she released some money to the car dealer. However, the transaction failed and she asked for a refund. It is during her attempts to secure the refund from the car dealer that she was informed by him that part of the money she had paid him as deposit (Ksh. 400,000.00) had been paid to the

Claimant and other parties as a kickback. It transpired that the Claimant received Ksh. 170,000.00 from the aforesaid amount.

36. During cross examination, the Claimant admitted that he indeed received Ksh. 170,000.00 from a third party in respect of the transaction. However, he alleged that he was only to hold the cash as security pending finalization of the transaction.
37. What is curious is that the Claimant never disclosed to the colleague who was buying the car that a sum of Ksh. 170,000.00 in respect of the transaction had been given to him for whatever purpose until she found out about this from the car dealer after the transaction collapsed. The Claimant's conduct was thus suspect.
38. The fact that the Claimant was paid Ksh. 170,000.00 during the transaction (irrespective of the reason for the payout) was confirmed by him during the disciplinary hearing. As such, the Disciplinary Committee was entitled to require him to provide cogent justification for the receipt. From the record of the disciplinary hearing, the Committee was not convinced with the explanation which the Claimant gave. And hence its verdict.
39. As noted earlier, the Respondent's Code of Conduct for staff which the Claimant admitted he had acknowledged bound him to conduct himself in an honourable manner both whilst on duty and away from duty. As such, he was expected to

uphold honesty whilst overseeing the impugned car purchase transaction on behalf of his colleague.

40. Jurisprudence from the court affirms the reality that an employer can take disciplinary action against an employee for misconduct out of the workplace if the misconduct negatively impacts the employer's work and if the employer is able to demonstrate the nexus between the impugned conduct and his (the employer's) interest (***Washington Odera Sireka v Scania East Africa Limited [2020] KEELRC 1830 (KLR) & Kuria v Cooperative Bank of Kenya Limited [2025] KEELRC 470 (KLR)***). As such, the Claimant's contention that the Respondent could not take disciplinary action against him on the basis of the transaction between him and his colleagues is incorrect.
41. The assertion that the Claimant inflated the car price in order to receive a kickback and the fact that he was indeed paid Ksh. 170,000.00 from the funds which had been remitted as part of the purchase price for the car provided a reasonable basis for the Respondent to find him culpable for misconduct. Under section 43(2) of *the Employment Act*, all that an employer requires to terminate an employee's services is the presence of reasonable grounds to justify a genuine belief that the employee has committed an infraction (***Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR***). In this case, the conduct of the Claimant in respect of the impugned

transaction provided the Respondent with reasonable basis to entertain a genuine belief that the Claimant had engaged in dishonest conduct.

42. As pointed out earlier, the Respondent maintains a zero tolerance policy for all forms of dishonest and corrupt practices. As such, the Claimant's impugned conduct was a threat to the Respondent's professed stand against corrupt and dishonest conduct. Such conduct was likely to bring the Respondent's image into disrepute. As such, the court finds that the Respondent had justifiable grounds to consider terminating the Claimant's employment.
43. The evidence on record shows that the Respondent issued the Claimant with a notice to show cause letter dated 25<sup>th</sup> April 2019 through which it informed him of the accusations against him. There is also evidence that the Respondent subsequently invited the Claimant for a disciplinary hearing through its letter to him dated 9<sup>th</sup> May 2019.
44. Although the letter dated 25<sup>th</sup> April 2019 had asked the Claimant not to conduct co-employees during the period of his suspension from work, the letter of 9<sup>th</sup> May 2019 notified him of the right to attend the disciplinary trial with a co-employee of his choice. As such, it is clear from the correspondence that the Claimant was allowed the right to attend the hearing with a witness from among his colleagues at work.

45. The Claimant avers that it was not clear to him whether he was entitled to have a co-employee accompanying him for the hearing in view of the content of the letter dated 25<sup>th</sup> April 2019. However, this argument cannot fly because the letter of 9<sup>th</sup> May 2019 which informed him of the right to be accompanied superseded the earlier letter of 25<sup>th</sup> April 2019 which had asked him not to conduct his colleagues during the investigation process.
46. In any event, if the Claimant was unsure of whether he was entitled to be accompanied by a colleague as was intimated in the letter of 9<sup>th</sup> May 2019, he should have sought clarification on the matter from the Respondent before the date of the disciplinary hearing on 14<sup>th</sup> May 2019. However and as the record shows, he did not do so. He only alluded to the matter during the disciplinary session when the Disciplinary Committee clarified that he was free to come in with a colleague. However, the record does not show that he sought to adjourn the hearing to get a colleague to attend the session. As such, he cannot justify his failure to be accompanied by a colleague by reference to the Respondent's directive in its letter of 25<sup>th</sup> April 2019.
47. The evidence on record shows that the Claimant attended the disciplinary hearing that was held on 14<sup>th</sup> May 2019. Minutes of the session were tendered in evidence.
48. The minutes show that the Claimant was given a chance to ventilate his case. Although he contends that his accuser did

not attend the session to be cross examined, the minutes do not suggest that he asked for the colleague who had raised the complaint to be availed.

49. In any case, the complaint against the Claimant was about him having violated the Respondent's Code of Conduct through his conduct in the impugned transaction. As such and for all purposes, the complainant in the case was the individual whose Code of Conduct was violated: the employer.
50. The record further shows that the Claimant was granted the right of appeal which he utilized by filing an appeal against the decision to terminate his services. The appeal was heard and declined.
51. From this evidence, it is apparent that the Claimant's case was substantially handled in accordance with the dictates of fair procedure. It is so declared.

### **Determination**

52. Having regard to the evidence on record, it is apparent that the Respondent had justifiable grounds to consider terminating the Claimant's services. Further, it is apparent that the Respondent processed the Claimant's release from service in accordance with fair procedure. As such, the court finds that the Respondent's decision to sever the employment relationship between the parties was processed lawfully.

53. The Claimant has prayed for an order that the Respondent be ordered to pay him salary for November and December 2019. Yet, the evidence on record shows that his contract of service was terminated on 4<sup>th</sup> July 2019.
54. The Claimant ceased to be an employee of the Respondent when his services were terminated on the aforesaid date. As such, he was not entitled to continue drawing salary after that date. Consequently, his claim for salary for November and December 2019 fails.
55. The Claimant has claimed for accrued leave pay for 45.5 days. In response, the Respondent whilst conceding that the Claimant was entitled to the aforesaid leave days, contends that it paid him the equivalent of salary for two months to cover the aforesaid claim.
56. The parties tendered in evidence what appeared to be pay slips for August, September and October 2019 suggesting that the Claimant received these payments. Yet, there is evidence that his contract was terminated in July 2019. As such, he cannot legitimately claim that the amounts that were paid as salary for the three months were for work done.
57. The Respondent's position is that these amounts covered pay for the Claimant's outstanding leave days. The court believes this explanation as a contrary view will be untenable. It will be absurd for the court to hold that the amounts were for salary in the face of the evidence that the Claimant ceased to be the Respondent's employee on 4<sup>th</sup> July

2019. As such, the court finds that the Respondent settled the claim for accrued leave days.

58. At paragraph 14 of the Statement of Claim, the Claimant prays for a Certificate of Service. However, during cross examination, he confirmed that the Respondent had issued him with this certificate. The Respondent having discharged this obligation, the court cannot require it to issue the Claimant a second Certificate of Service. In the premises, this prayer is declined.
59. The Claimant's contract of service having been lawfully terminated, his prayers for: payment of damages for violation of his constitutional rights; payment of exemplary damages for breach of his contract; payment for the residual contractual term; and compensation for unlawful termination of his contract cannot issue. As such, they all fail.
60. The upshot is that the suit herein is dismissed for want of merit.
61. Each party to bear own costs of the suit.

**Dated, signed and delivered on the 19<sup>th</sup> day of February, 2026**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

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.....for the Claimant

.....for the Respondent

**ORDER**

**In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**B. O. M MANANI**