

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. 1542 OF 2018

SAMWEL WACHIRA WANJA.....
CLAIMANT

VERSUS

EAST AFRICA BREWERIES LIMITED.....RESPONDENT

JUDGMENT

The facts of this case are that the Claimant was employed by the Respondent under a fixed term contract dated 27th July 2006 which was subsequently extended until the Claimant was employed on permanent and pensionable terms by a letter dated 15/1/2010 as a Customer Relations Representative at a monthly salary of Kshs. 149,887.48. As at the time of exit, the Claimant earned Kshs. 288,235.00 per month.

The terms and conditions of employment were set out in the contract of employment which referenced the company's code of Business Conduct and Respondent's Disciplinary Policy.

The role of the Claimant mainly entailed implementation of the trade, marketing and distribution strategy in the area, to ensure effective and efficient utilization of the field resources and advice the Sales Departments performance appraisal cycle.

By a letter dated 8/3/2018, the Claimant was suspended from work and asked to show cause in writing why disciplinary action should not be taken against the Claimant in accordance with the provisions of the Employment Act, 2007, the Disciplinary Policy and Diageo Code of Business Conduct on allegations for: -

- (i) Extorting bribes from Respondent's prospective distributors;
- (ii) Conveying a bribe;
- (iii) Coaching prospective distributors;
- (iv) Setting up a fraudulent scheme with others to the detriment of the Respondent.
- (v) Breach of the code of Business Conduct; and
- (vi) Conspiracy to commit a felony and/or misdemeanor.

The Claimant (CW1) testified under oath and adopted a witness statement dated 20/11/2018 as his evidence in chief in which he adduced the aforesaid facts *inter alia*.

CW1 added that on or about 2/3/2018 he was called by phone by the Respondent's Sales Director one Mr. Andrew Kilonzo to the head office at Ruaraka where he found Mr. Kilonzo with one Mr. Pat Rich, the Compliance Department Director and one Mr. Kamau of the Security Department.

CW1 said the three (3) interrogated him over some money he had delivered to one Mr. Mungai of the Finance Department.

CW1 said that he admitted having delivered the said amount of money upon which Mr. Kilonzo left the room and CW1 was directed to record a statement on what had transpired which he proceeded to do.

CW1 stated that, he was then asked by Mr. Pat Rich to surrender his company laptop and vehicle as they undertook further investigation.

CW1 testified that he had prior to being summoned received a sum of Kshs. 300,000.00 from one Mr. Mungai of S. M. Kahiga Distributors, whom CW1 was acquainted to. That this happened at the social club. That Mr. Kahiga had asked CW1 to deliver the money to Mr. Mungai of the Finance Department as he went to the head office but the purpose of the said money was not disclosed to him. CW1 said this was the cause of his suspension and the issue of the notice to show cause dated 8/3/2018 issued to him.

CW1 stated that the charges found in the notice to show cause (NTSC) were not clear and did not give details of the allegations made against him to enable him to answer the charges in a specific and clear manner.

CW1 said these ambiguous charges violated the Respondent's disciplinary policy which provides at clause 3.3.1 that ***“the notice to show cause shall contain details about the alleged misconduct to enable the employee to prepare the answer.”***

CW1 states that he was not given fair opportunity to answer the charges therefore. CW1 said that he made effort to respond to the charges in writing

on 10/3/2018 and was thereafter sent a notice to attend a disciplinary hearing dated 22/5/2018. The notice stated that the hearing was in regard to the “Breach of code of Business Conduct.”

CW1 added that the charges lacked any particulars of breach of the code of Business Conduct as is required by clause 3.4.1(c) of the Respondent’s Disciplinary Policy.

CW1 added further that the hearing proceeded on 26/3/2018 and that the Respondent did not follow the procedure set out under clause 3.5.5 of the Disciplinary Policy in that: -

- (a) No summation of the Disciplinary Policy and law was made and no ground rules for the session were set;
- (b) Claimant was not notified of his rights;
- (c) No disciplinary issues raised by the management were read to the Claimant nor was a presentation of the Respondent’s case made to the Claimant before he was asked to explain. That the Claimant was simply asked to explain what had transpired and thereafter was asked to leave to await the Respondent’s decision.

CW1 stated that the summary dismissal by a letter dated 29/3/2018 was not for a valid reason because it was alleged:

- i. “...No complaint had been lodged against me by the Respondent with the police for the alleged criminal offence and no criminal charges had been preferred against me by the Director of Criminal Prosecution. No evidence had been adduced that I knew the sum I delivered to be a bribe and as such my action and conscience

- were totally innocent and had not been proven otherwise in a court of law or by any evidence adduced. This was also not an issue for the disciplinary hearing. In any case the distributor by the time he requested me to deliver the said sum had been awarded distributorship by the Respondent hence he did not require to give any bribe at that stage as he told me later
- ii. That I knew of ongoing coaching of prospective distributors (yet the persons doing the coaching or the prospective distributors being coached were not mentioned) Whereas the question had earlier been whether I had fraudulently coached prospective distributors. This question was not in issue in the disciplinary hearing. Moreover, I did not deal with appointing distributors.
 - iii. Whereas the questions earlier had been whether I conspired with Sarah and Francis to set up a fraudulent scheme, the Respondent found that I had been made aware by a distributor (identity undisclosed) that Sarah and Francis had set up such a scheme and in the event of my failure to report the scheme, that I was deemed to be part of the scheme. The said finding was based on conjecture and not evidence. Moreover, the said issue was not part of the disciplinary hearing.
 - iv. The Respondent wrongly found that I had breached the code of Business Conduct (no unidentified sections of the code were stated) which prescribes bribery and corruption purportedly because: -
 - a) I had failed to report ongoing bribery scheme (alleged schemes) yet no evidence of knowledge by myself of existence

of such schemes was adduced or existence of such schemes themselves proven.

b) That I had exposed the Respondent to third party claims which claims were unsubstantiated; and resultant reputation risk, which was mere allegations.”

CW1 denied the charges made against him and stated that his dismissal was not for a valid reason and that the Respondent did not follow a fair procedure in conducting the disciplinary hearing.

The Claimant prays for the following reliefs against the Respondent: -

- (i) Salary of up to 12 months in compensation for unfair termination at Kshs. 3,458,820.00.
- (ii) Interest at court rates
- (iii) Costs of the suit.
- (iv) Certificate of service.

The Claimant was subjected to a blistering cross-examination by Advocate Rabut for the Respondent in which the Claimant acknowledged, he had signed the minutes of the disciplinary hearing. Claimant said he had no reason to suspect that the money he was sent to give to his counterpart was a bribe and did not ask what it was for.

The Claimant said Mr. Mungai jokingly told him to take back the money. Claimant said he returned the money accordingly. Claimant said the head of Emergency Business was his supervisor. The Claimant said he gave a comprehensive response to the notice to show cause despite that its contents were not clear. Claimant admitted that his rights were stated in the letter inviting him to attend a disciplinary hearing including the right to call a

witness and to be accompanied by a colleague. The Claimant said he was paid his terminal benefits upon dismissal through the bank. The Claimant said two employees were dismissed regarding the allegations made including Mr. Wachira and Mr. Mbitu. The Claimant denied having conveyed a bribe and or having breached the code of Business Conduct in that he was only asked to convey a parcel by a personal friend to a colleague. The Claimant said he knew corruption was against the code of Business Conduct. The Claimant said the minutes are a true record of what transpired. The Claimant insisted the Notice to Show Cause was vague and unfair to him and only responded to avoid being told he admitted the allegations. The Claimant said Mr. Mungai was also dismissed from employment.

Response

The Respondent called RW1, Muthoni Njoroge a Senior Human Resource Business partner. RW1 adopted a witness statement dated 26/10/2022 as her evidence in chief and produced exhibits '1' to '12' in support of the Respondent's case. RW1 said the Claimant served the Respondent from the year 2008 upto 2018 and earned Kshs. 233,439.00 per month at the time of separation. RW1 said employees are aware of the Code of Business Conduct and Disciplinary Policy. RW1 said disciplinary process included investigation; notice to show cause; actual hearing; decision making; and appeal. RW1 said not all cases are investigated but, in this case, investigations were conducted. That the details of investigations were as per the notice to show cause. RW1 said they had no report of investigation in this matter. RW1 said the notice to show cause is dated 8/3/2018 and should contain details of allegations to help the employee to

prepare an answer. RW1 admitted that no dates when offences were committed are in the notice to show cause and that details of black mail and extortion are also not contained in the notice to show cause. RW1 also admitted that names of individuals blackmailed or extorted were not provided in the notice to show cause. RW1 also admitted, alleged prospective providers coached by the Claimant were not named in the notice to show cause. RW1 said though the Claimant denied the charges, his explanation was not sufficient hence he was called to a disciplinary hearing per clause 3.4 of the Disciplinary Policy. RW1 admitted that clauses 3.3 and 3.4 provided that details of the charge be provided in the notice to show cause. RW1 said if an employee failed to respond to notice to show cause, that constituted gross misconduct and a waiver of the right to be heard. RW1 said the notice to show cause had essential facts and evidence to be answered by the Claimant.

RW1 said the opening remarks by the chairperson of the Disciplinary Committee sums up the facts relied upon by the employer to charge the employee. RW1 said the meeting was held on 26/3/2018 and those who attended signed the minutes of the meeting. That the signatures were appended on 28/3/2018 once the minutes were typed.

That the letter of dismissal was on 29/3/2018. RW1 said the Claimant was acquitted of the charges of extortion and was found guilty of receiving and conveying bribes since he was given money by a distributor to take to an employee. RW1 said the money was returned. RW1 said that the Claimant knew that money conveyed was a bribe upon talking to one Francis. RW1 said the Claimant did not escalate the issue to his manager. RW1 said the investigation report dated 1/3/2018 was not produced before court. RW1

said the investigation found that the Claimant was aware of ongoing couching of prospective providers (distributors) but there was no evidence of coaching by the Claimant himself. RW1 said the Claimant was managing distributorship in the metro – area.

RW1 denied that that Claimant was replaced by one Victor Muli on 30/3/2018.

RW1 said appeal was filed within 5 working days and denied the Respondent replaced the Claimant before the 5 days period had expired. RW1 said appeal was made on 2/4/2018 and it upheld the decision of the Disciplinary Committee. RW1 said the Claimant was not notified of the decision by the appeal panel.

RW1 admitted that the letter of dismissal was signed by one Evans Mutai and the Claimant. RW1 admitted that Evans Mutai had no authority to dismiss the Claimant in terms of clause 6.4 of Disciplinary Policy which provided that only Human Resource Manager may dismiss an employee. RW1 admitted that Evans Mutai was not the chairperson of the Disciplinary Committee but was a member. RW1 admitted that the notice to show cause had 7 allegations and the letter of dismissal addressed 6 allegations. That the Claimant was found not guilty of fraud and extortion for lack of evidence. RW1 said that Claimant was guilty of receiving and conveying a bribe. RW1 said the Claimant was aware that the money was a bribe when he received it. RW1 however admitted no witness said that at the Disciplinary hearing. RW1 said there was also no evidence that the Claimant had a share of the money. RW1 added that Claimant was found to have been aware of the irregular couching by others for financial reward. RW1 admitted that there was no evidence that the Claimant couched prospective distributors for reward. RW1 also admitted that there is no

evidence that the Claimant participated in a fraudulent scheme. RW1 admitted that there were no particulars of the offences contained in the notice to show cause including for abuse of office and failure to raise concerns of a bribery scheme.

RW1 admitted that notice to show cause did not allege failure by Claimant to report. RW1 said the code of Business Conduct addressed the matters stated in the notice to show cause. RW1 said the Claimant was guilty of gross negligence in the performance of his work though RW1 admitted that the notice to show cause did not have such a charge.

RW1 concluded that the Claimant was aware that the Code of Business Conduct prohibited any exchange of cash between business partners and was therefore guilty of the two charges.

RW1 prayed that the suit be dismissed for lack of merit with costs.

DETERMINATION

The parties filed submissions which the court has considered together with the evidence by CW1 and RW1 and the issues for determination are: -

- (a) Whether the Respondent had a valid reason to dismiss the Claimant from work established following a fair procedure.
- (b) Whether the Claimant is entitled to the reliefs sought.

The court has carefully considered the evidence adduced by CW1 and RW1 and has come to one inevitable conclusion that charges 1, 3, 4, 5 and 7 set out in the notice to show cause dated 8/3/2018, were vague, ambiguous, lacked particulars and were indeed embarrassing to the

Claimant for lack of clarity and the Claimant could not be expected to fairly answer the said charges.

In the cross-examination by the Advocate for the Claimant M/s. Kavachi RW1 admitted to the lack of essential particulars as to when and how, the alleged offences were committed by the Claimant. RW1 admitted also that the Respondent did not call any witness to state the charges the Claimant was faced with at the hearing. RW1 said that the chairperson of the disciplinary panel only made opening remarks telling the Claimant the purpose of the meeting.

Indeed, the minutes indicate that no officer of the Respondent adduced any evidence at the hearing on 26th March 2018. The minutes largely contain a summary of the explanation given by the Claimant to the charges contained in the notice to show cause. RW1 admitted that the Claimant was not given the report of investigations and non was produced before court. With regard to charge 2 which read,

“2 you requested for, received and/or conveyed a bribe (5) contrary to section 6 of the Bribery Act No. 47 of 2016 while in the ordinary conduct of your employment” and charge 6 which read: -

“6 you have breached the COBC which prohibits bribery and corruption in any form,” the Claimant at the disciplinary hearing and in his sworn testimony before court admitted that he had received Kshs. 300,000/= from one Mr. Kahiga of S. M. Kahiga Distributors who had asked to be awarded distributorship for Nairobi Area and he had conveyed the said money to Mr. Francis Mungai, who was a senior officer of the Respondent involved in interviewing prospective distributors.

The Claimant admitted in his testimony that he had met one Moses, the son of S. M. Kahiga who had expressed interest in starting his own distributorship. The Claimant had also admitted that the said Moses had made the application and was called for an interview and Moses was offered the opportunity upon attending the interview.

The Claimant admitted that after being offered the distributorship, Moses met the Claimant at a local bar that the Claimant frequented and Moses enquired from the Claimant whether he would be going to the office the following day as he had a package for Mr. Francis Mungai the Respondent. The Claimant admitted that he was given Kshs. 300,000/= in an envelope to convey to Mr. Mungai.

The Claimant admitted that he had questioned Moses regarding the relationship he had with Mr. Mungai and Moses had explained that they were close friends. The Claimant admitted that the following day he conveyed the sum of Kshs. 300,000/- to Mungai at the office. The Claimant said he had delivered the said package to Mr. Samuel Mungai's car having called him to the parking. The Claimant told the court and the disciplinary panel that upon opening the package, Mr. Samuel Mungai was furious and rejected it by throwing it on the dash board and called it a fake.

The Claimant said that Mr. Mungai returned the money to him and the Claimant refunded the same to Mr. Moses later.

Under cross-examination by counsel for the Respondent, the Claimant admitted he did not report the matter to his manager or any of his superiors.

The court is satisfied that the Claimant had admitted having conveyed money to his superior, contrary to the Respondent's code of Business Conduct. The court is not satisfied with the explanation by the Claimant that he did not know that the Kshs. 300.000/= he had conveyed was indeed a bribe.

The conduct by the Claimant of calling Mr. Mungai to his car and not handing over the money at the office was suspicious and is indicative of the state of mind of the Claimant at the time. The Claimant was aware that he was involved in misconduct. This finding by the court is confirmed by the failure by the Claimant to report the matter to his superiors especially after Mr. Mungai made remarks that the boy was joking and threw the money at the dash board and asked the Claimant to return it to Moses.

Despite the flaws in the procedure followed by the respondent, given the admissions made by the Claimant, the Respondent had proved on a balance of probability that the Claimant was guilty of counts 2 and 6 contained in the notice to show cause. These two charges were clear and the Claimant had largely admitted the misconduct he was involved in contrary to the code of Business Conduct.

The court finds that the Respondent had a valid reason to dismiss the Claimant from employment and the admissions made by the claimant had absolved the respondent from the apparent flaws in the procedure it had followed in disciplining the Claimant with regard to counts 2 and 6 in the notice to show cause.

Accordingly, the court finds that the suit has no merit and dismisses the same in its entirety.

Dated at Nairobi this 9th day of February 2026



Mathews Nduma

JUDGE

Dated, signed and delivered in open court at Nairobi this 16th day of February 2026

J. W. KELI

JUDGE

In the presence of:

Mr. Githinji for Petitioner

Mr. Rabut for Respondent

Mr. Kemboi – Court Assistant