

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. E1030 OF 2021

KENNEDY KANG'ETHE MWANIKI.....CLAIMANT

VERSUS

**SAFARICOM INVESTMENT
COOPERATIVE SOCIETY LIMITED.....RESPONDENT**

JUDGMENT

The Claimant was employed by the Respondent as a Legal Officer on 4/5/2017 and earned Kshs. 210,821.00 as at the time of separation. The Claimant testified under oath as CW1 and adopted a witness statement dated 8/12/2022 as his evidence in chief. The Claimant further produced exhibits '1' to '2' in support of his case. The Claimant stated that since separation with the Respondent he had not secured another job despite trying especially because the Respondent published his photograph in two widely circulated newspapers stating that the Claimant was no longer an employee of the Respondent and no one should transact with the Claimant on behalf of the Respondent.

CW1 stated that the Claimant could no longer work on behalf of the Respondent and the publication served no other purpose but to tarnish the reputation of the Claimant. That the same was malicious and was meant to diminish any chances of the Claimant to get alternative employment.

The Claimant prays to be granted the reliefs set out in the Memorandum of Claim filed on 9/12/2021 as follows: -

- a) A declaration that the termination of the Claimant's employment by the Respondent was unlawful, un-procedural and unfair in the circumstances, un-procedural, wrongful and unjust.
- b) A declaration that the suspension, disciplinary proceedings and ultimate dismissal of the Claimant were a sham, unfair.
- c) Two (2) months' salary in lieu of notice; Kshs. 421,642.00
- d) Days worked up to 8th December 2020; Kshs. 56,218.00
- e) Leave days as at the time of suspension 17 days; Kshs. 119,456.00.
- f) LSK CPD for 2020 Kshs. 7,500.00
- g) 2021 LSK Practicing Certificate Kshs. 21,360.00
- h) Gratuity/Severance Kshs. $210,821 \times 20 \times 4/30 =$ Kshs. 562,189.00
- i) An order for the Respondent to pay the Claimant all his terminal dues and compensatory damages.
- j) 12 months compensation for wrongful termination of employment Kshs. $210,821 \times 12$ months = Kshs2,529,852.00
- k) Shares from October 2017 to March 2021 Kshs. 120,000.00.
- l) 10% salary (pension scheme) deductions from September 2017 $10/100 \times 210,821 =$ Kshs. 21,082.00 Kshs 21,082 $\times 41$ months = Kshs. 864,362.00
- m) Costs of the suit plus interests therein.

CW1 testified that the Respondent did not have a legal department and all its legal work was done by external lawyers. That he only did internal legal assignments set out under paragraph 3 of the witness statement.

That from October 2017, despite protestations by the Claimant the Respondent deducted from his salary Kshs. 3,000.00 per month towards buying shares in Safaricom Investment Cooperative Society Limited (SIC).

That he served diligently and in January 2018, an assistant legal officer was employed to assist him.

That between July and August 2018, the Claimant served as Acting CEO while the then Acting CEO one Mercy Gakonyo went on leave. That this was necessitated by the suspension at the time of other managers being Finance Manager (Josephat Munene), and the Sales and Marketing Manager (Stanley Mutiso) following the termination of the substantive CEO (Ronald Musundi).

That on 6/9/2018, the Claimant voluntarily proceeded to the DCI office of Kiambu Road to report loss of parcels Malili/Malili/2287 Lencheni and Kanyonyoni. The Claimant also reported the matter to the Advocates Complaints Commission but progress was slow.

That the Claimant learnt that he had endangered his life by those reports since one Nicholas Sangale was a gun holder. That Claimant skipped work due to fear.

In March 2019, after a job evaluation exercise the CEO changed the title of the Claimant from legal officer to Legal Affairs Manager.

Ms. Gakonyo objected to the changes hence it was not communicated to all staff.

On 1st April 2020, upon disagreements on his appraisals, the CEO was sacked and one John Otieno Owuor and the Claimant were appointed co-Acting CEO for a period of 3 months from 2/4/2020 until a new CEO was appointed. That the Acting capacity was severally renewed until October 2020.

Meanwhile, the Claimant was served with a notice to show cause (NTSC) for misconduct dated 8/12/2020 in respect of alleged irregular transfer of four Kantafu Housing Units. The Claimant was also suspended from work in accordance with the company's staff disciplinary procedure. Suspension was pending investigations and the Claimant was to keep off work premises during the period of suspension.

By a letter of same date, the Claimant was asked to show cause with regard to six alleged offences set out in the letter.

a) "Failure to adhere to SIC Sales Level Agreement for executing the contract.

You participated in the execution of the above sale agreement which was done in disregard to SIC laid down procedures as outlined below:

- The booking forms were not issued to the purchaser (Mr. Leonard Njogu Njau) before sale agreement was drafted and signed. As a result, data of personal details of the purchaser and other important details were not captured by SIC sales and Finance Departments.

- There was no offer letter signed between the two parties. You therefore did not confirm prior to the execution of this contract whether any deposit had been paid by the purchaser as required.
- You failed to confirm the receipt of KES 11,600,000/= being the purchase price in respect of the four houses into SIC bank account as per the sale agreement which was executed by you.

Despite all the above gaps you went ahead and executed the sale agreements thereby overriding SIC processes.

b) Failure to involve sales and finance departments in executing the contract.

You intentionally failed to involve both the sales and finance departments in execution of this sales agreement despite numerous efforts from the team. The transaction was done exclusively by legal department.

c) Gaps in sale agreement

Sales agreement in respect of the four houses which was executed by you had the following gaps.

- The document lacked coloured SIC seal and there was no SIC watermark.
 - The agreement was not signed/initialized on each of the pages as per SIC practices.
 - There were missing purchaser ID details in the sale agreement.
- Failure to adhere to the above basic controls on the document exposed SIC to risk of fraud and contract manipulation

d) Abuse of office

You abused the office by granting excessive discounts below the cost of the housing units without any due approvals. The housing

units were sold at KES 2.9 million each against the agreed discounted rate of KES 3.3 million. The discount was approved unilaterally by you without involvement of finance department as per SIC practices.

e) Illegal instructions to Kantafu Serene Homes caretaker.

You overrode the housing units handover procedure and controls that may be used to prevent fraudulent asset transfer by instructing the caretaker on phone to release the four houses without availing clearance letter as per the guidelines. The clearance letter would have been a confirmation that the purchaser had met necessary conditions to enable his occupation of the house.

f) Unconfirmed allegations on housing units transfer

You executed this agreement knowing very well that there was no cash receipt amounting to KES 11,600,000.00 being the purchase price that had been received by SIC in the bank account as per the clause 3 of the sale agreement. Further, there was no evidence that the CMC/Board approved the “Exchange for debt” transfer of the four Kantafu units to the purchaser (Mr. Leonard Njogu Njau) as alleged by you. No corresponding entries had been made in the books of SIC to reduce the alleged debt.

The Claimant responded to the notice to show cause by undated letter explaining the genesis and details of the impugned transaction. The Claimant denied that he was guilty of any wrong doing in respect of that housing transaction including alleged failure to adhere to SIC sales level agreement in executing the contract; failure to involve sales and finance departments; alleged gaps in the agreements; alleged abuse of office;

alleged illegal instruction to Kantafu Serene Homes Caretaker and alleged unconfirmed allocations on housing units transfer.

The response was under protest, having not been furnished with documents the claimant had requested to be given including copy of the reports and minutes of CMCRE and Executive Committee between the month of April and June 2020 in order for him to prepare and respond adequately. That the denial violated his right to fair administrative action under Article 47 of the constitution read with section 4, 5 and 6 of the Fair Administrative Action Act 2015 and section 4 of the Employment Act, 2007.

The Claimant was suspended from duty on 8/12/2020 upon being served with the notice to show cause and could no longer access any documents at work.

On 22/12/2020, the Complainant was invited to attend a disciplinary hearing without being served with the investigation report on 25/12/2020 to prepare for the hearing and the panel was irregularly constituted in violation of the Human Policy Manual and the Charter.

That the hearing was on short notice and hurriedly conducted in a biased manner with malicious allegations.

That on 25/1/2021, the Claimant was served with a letter titled "intention to summarily dismiss" and the Claimant was again required to respond to the charges raised in the notice to show cause. The charges were based on an investigation report, not yet availed to the Claimant. The response was to be in 48 hours.

The Claimant received a letter of dismissal dated 1/2/2021 and the reason for dismissal was that “the Claimant failed to adhere to SIC Level Agreement and Practices in executing the Sale Agreement between SIC and Njogu Njau.”

The Claimant states that there was no such document in existence

The Claimant states that he was denied access to email correspondence through which the transaction was initiated and concluded since his laptop had been taken away from him and was out of the office.

The second reason for summary dismissal was fraud by failing to protect and secure SIC’s financial positioning. That no criminal proceedings were ever commenced against him.

Thirdly, the reason for dismissal was involvement in irregular instructions to Kantafu Serene House caretaker.

The Claimant states that the instruction to the caretaker to give vacant possession of the houses to Njogu Njau was neither here nor there for the caretaker had no authority to do that. That possession was granted as licensee at a fee pending conclusion of the transaction.

The fourth reason for the summary dismissal was that the Claimant abused office by granting excessive discounts below the cost of housing units without any due approvals. Claimant states that there was no evidence of what constituted excessive discounts.

The Claimant states that the procedure provided for 1st, 2nd and final warnings and he was not given the benefit of the same as per the disciplinary policy of the Respondent.

Finally, the Claimant states that the reasons for dismissal did not correspond to the charges in the notice to show cause.

At the hearing, the Claimant said that no evidence was led to support the charges and the Claimant was not given opportunity to explain the reasons set out in the letter of dismissal. That the complainant was also the prosecutor and he kept giving directives to the chairperson of the panel despite objections by the Claimant. The Claimant was not allowed to cross-examine the representatives of the Respondent and witnesses. The Claimant did not get any reasoned decision on the facts of the case.

That the process violated Articles 25(a) and (c); 27(1) and (2) and 47(1) of the Constitution of Kenya 2010.

The Claimant prays for the reliefs set out in the Memorandum of Claim.

The letters referred to were produced by the Claimant as exhibits in this matter.

The Claimant was closely cross-examined by Advocate Arunga for the Respondent and he consistently responded as herein set out before stating that he was unfairly asked to respond to same charge twice in 48 hours which he proceeded to do despite failure by Respondent to

provide him with documents. That the process was biased, rushed and stage managed with malicious charges devoid of any supporting evidence.

The Claimant added that transfer of houses to Mr. Njogu was a debt swap since the Respondent owed money to Mr. Njogu and there was nothing wrong with the transaction. Claimant said that he did not prepare that agreement but same was done by Kibatya and Co. Advocates and witnessed by Aggrey Bukechi the Legal Officer. That at the time the Claimant was the Legal Manager and acting CEO. That the Board was aware of the transaction. The Claimant said that the agreement did not expressly refer to debt swap. Claimant said the CMC – which stands for Central Management Committee of the Respondent approved the transaction and that is why the agreement was signed.

The Claimant said that the records had not been adjusted to reflect the reduced debt owed to Mr. Njogu by CIC. The Claimant denied having given irregular instruction to the caretaker at Kantafu houses. The Claimant said he was not given opportunity to explain the alleged high discounts. Claimant stated that he stood by all his claims and added that the newspaper advert was very prejudicial to him and he could not get a new job easily as a result. Claimant said he was not allowed to bring a colleague to the hearing. The suspension letter instructed the Claimant not to contact any staff member. That the Chairman and the Auditor were the complainant. Claimant was not allowed to testify at the hearing.

That Claimant was only allowed to make a copy of the auditor's report on 22/12/2021 the day of the hearing and had no time to prepare. The

Claimant said he was not aware of the decision by the Board but only got a letter of summary dismissal. Claimant said he never received a copy of minutes of the disciplinary hearing. Claimant said he never executed the agreement in respect of Mr. Njogu and was not present when the signing was done yet no action was taken against the Chairman, Treasurer and Secretary of the Board.

Defence

The Respondent called Jared Odhiambo (RW1) in defence of the case. RW1 adopted a witness statement dated 31/8/2022 as his evidence in chief and produced documents dated 8/2/2022 marked bundle 'J' and the 2nd bundle dated 31/8/2022 marked '2' while the bundle dated 31/5/2023 was marked bundle '3' in support of the defence.

RW1 said he was the Internal Auditor and was in-charge of the internal audit at the Respondent. That he conducted investigations on the matter and prepared a report dated November 2020 before court. That the scope of investigations was in respect of transfer of four (4), housing units at Kantafu housing. That investigations zeroed on the validity of sale agreement between one Leonard Njogu and the Respondent. That the sale agreement was dated 25/8/2020. That there was also a receipt of the Ksh. 11.6 million alleged to have been transferred to Respondent's bank account as per clause 3(c) of that sale agreement which money was not deposited on the basis of alleged debt swap between the Respondent and Leonard Njogu to cover the said money.

That at the time of the transaction, the Claimant held dual position of Legal Manager and Acting CEO of the Respondent. That the Claimant had made the proposal to Mr. Leonard Njogu. That the price of the housing units was highly discounted by the Claimant without approval of the Board. That RW1 interviewed the Claimant severally on these matters firstly on 1/12/2020 particularly on the issue of the debt swap and discounts. That the Claimant had stated that the sale agreement was approved.

RW1 said the Agreement was not properly documented in that it was not initiated, had no seal of the company; had no national identity card number identifying the buyer. That the Agreement was questionable and there was no receipt of Kshs. 11.6 million, hence no consideration for the sale of the four (4) housing units. That the Agreement wrongly acknowledged receipt of the Ksh.11.6 Million therefore. That the Sale Agreement and debt swap was not approved by the Board as alleged by the Claimant.

That the transaction should have been cleared by a letter signed by four (4) parties including external advocate; the CEO; Legal Manager and Financial Manager to confirm money was paid. The clearance letter was a control tool to ensure that the process was above board. That the Sale Agreement was not properly executed, especially because the finance and sales departments were not involved. That only the Claimant was involved and the discounts given in the transaction were not approved. That the Respondent lost money since four (4) housing units were irregularly transferred.

That disciplinary action leading to the summary dismissal was properly done. That the Claimant was given opportunity to answer to the charges in writing in response to the notice to show cause and verbally at the disciplinary hearing and during investigation by RW1. That the debt swap required approval of the board which approval was not secured by the Claimant as the legal manger and acting CEO. That the Board approval is critical the Respondent being a cooperative society with members.

RW1 said he conducted further investigations following allegations made at the disciplinary hearing by the Claimant and prepared a further report dated 31/12/2020. That this was a further review report in which RW1 established that the various steps were not followed including involvement of the Finance and Sales department. That the Sale Agreement was final contrary to explanations by the Claimant because it led to transfer of four (4) housing units without any payment of sale price by Mr. Njogu and alleged discounts not approved by the Board.

RW1 said the Claimant received a further letter of intention to summarily dismiss him following the further investigation and the Claimant responded to the same and was summarily dismissed two weeks later on 2/7/2021.

That the books of accounts did not reflect any debt reduction upon the alleged debt swap. Mr. Njogu offered legal services to the Respondent and his legal fees should have gone down following the alleged swap which was not the case.

RW1 added that the society sought arbitration in the dispute in which the Respondent claimed back the four (4) housing units. The arbitration found that there was no debt swap and the Agreement was void for lack of consideration. That there is an appeal pending against that award of the arbitration. That the Claimant had committed a gross misconduct and the conduct was not a minor offence that could have attracted a warning as alleged by the Claimant.

RW1 was cross-examined extensively by Ms. Kwamboka, Advocate for the Claimant during which session, RW1 said that the Claimant was availed the investigation report before the disciplinary hearing and the minutes of the hearing reflect that. RW1 said Respondent did not report the matter to the police. RW1 reiterated that the purchaser did not pay Kshs. 11.6 million as consideration for acquisition of four (4) housing units from the Respondent. RW1 added that the transaction was not approved by the Board. That the CEO had oversight over all departments of the Respondent and the buck stopped with him. RW1 said that at the disciplinary hearing, the Claimant confirmed that he had received all documents requested before the disciplinary hearing and the Claimant signed the minutes which reflected that.

RW1 added that the Sale Agreement was signed by the Chairman, the Treasurer and Secretary of the concerned committee, yet the same did not reflect the truth about receipt of Kshs. 11.6 million consideration for the sale.

RW2, Consolata Omedo the Human Resource Lead of the Respondent also testified in defence of the suit and adopted a witness statement

dated 24/1/2025 as her evidence in chief. RW2 also relied on documents produced by RW1. RW2 testified that the Claimant while serving in the position of acting co-CEO was summarily dismissed on 2/2/2021 on account of gross misconduct which constituted gross violation of the Respondent's Sales Level Agreement Practice and guidelines as well as his terms and conditions of employment.

That initially the Claimant was suspended from employment in terms of clause 15.2.6.1 of the Respondent's Staff Disciplinary Procedures by a letter dated 8/12/2020 pending investigations of the matter. The Claimant was during the period of suspension placed on half salary and benefits but the Claimant was prohibited from transacting any business on behalf of the Respondent during the time to pave way for investigations. The Claimant was also prevented from accessing the Respondent's offices.

On 18/12/2020, the Claimant was issued with a show cause letter with various charges to which he responded by undated letter denying the allegations. That the Respondent considered the Claimant's response and found it unsatisfactory. By a letter dated 22/12/2020 the Respondent invited the Claimant to a disciplinary hearing to consider the allegations of misconduct and afford the Claimant an opportunity to be heard by giving his representation. The Claimant was also informed of his rights to be accompanied at that hearing by a colleague of his choice and was provided with a copy of the preliminary investigation report.

On 23/12/2020, the Claimant attended the hearing un-accompanied. The Claimant was informed of his right to explain himself orally. The Claimant

confirmed that he had been served with all the documents he had requested as seen at page 132 of the Respondent's bundle being minutes of the disciplinary hearing which are at pages 132-139. The committee considered the written responses and oral representation by the Claimant and found the same to be unsatisfactory with regard to the charges levelled against the Claimant including:

- a. Whether powers given to the Claimant as acting co-CEO were to be exercised without oversight from the Board as claimed by the Claimant.
- b. Whether there was any other client who got the discount of Kshs. 2.9 million like Mr. Leonard Njau.
- c. Whether in the negotiation process with the purchaser there were other staff members involved; why it had not been clearly indicated in the contract as a dept swap? How did the contract pass through the Claimant without rectifying errors: (see email correspondence between the Claimant and Mr. Jared Odhiambo on 1/12/2020 at 9:33 a.m. – pages 127 -131 of the Respondent's bundle).
- d. Who had given instructions to the external lawyers for the contract to be drawn? Whether the documents they required to complete that process were issued to them.
- e. Whether the Claimant as a legal affairs manager, was under an obligation to fix any gaps that existed on the sale agreement, if any;
- f. Whether the Board's decision not to use the tenancy purchase model was taken into consideration when drafting the sale agreement;
- g. The Claimant had indicated that the matter was still under discussion and on draft stage. When did the Claimant expect the

matter to be finalized and concluded considering that they were in December 2020?

- h. Whether it was in order for the client to take possession before securing ownership;
- i. Whether there was a rent agreement between the Respondent and the client for the period of occupation of the houses;
- j. Whether rent due for the months in question were received in the Respondent's bank accounts.

That after considering the Claimant's oral and written representations, as well as the internal audit's report of 31/12/2020, the Respondent gave the Claimant the opportunity to make written representations by a letter dated 25/1/2021 and in particular with regard to:

- a. The Claimant's failure to adhere to the Respondent's Sales Level Agreement (SLA) and practices (pages 151 – 196 of the Respondent's bundle) in executing the Sale Agreement with Mr. Leonard Njogu Njau;
- b. Fraud by failing to protect and secure the Respondent's financial position;
- c. Irregular instructions to Kantafu Serene Homes Caretaker and
- d. Abuse of office

The Claimant made his written representation which was considered and found unsatisfactory resulting in summary dismissal of the Claimant by a letter dated 2/2/2021 on account of gross misconduct. The letter provides the reasons for the termination consistent with all the charges preferred against the Claimant contrary to his testimony on the matter.

The Claimant appealed the decision to terminate his employment by a letter dated 19/2/2021. The Claimant filed an appeal received on 22/2/2021. The appeal was considered and by a letter dated 24/3/2011, the appeal was rejected on account of it having been submitted long after the stipulated 10 days period in clause 15.2.6.4 of the HR Manual.

That the Claimant is to be paid terminal dues upon clearance. The Claimant's last salary was paid in the sum of Kshs. 210,821.00 which included basic pay; telephone allowance, car allowance and Acting allowance.

That the termination was for a valid reason and the Respondent followed a fair procedure and the suit be dismissed with costs.

RW2 was cross-examined extensively by M/s. Kwamboka for the Claimant and she reiterated her evidence consistently with her testimony in chief and denied the allegations by the Claimant regarding malicious accusations, hurried and biased disciplinary action and stated that the termination of the Claimant's employment was for a valid reason following a fair procedure.

RW2 said that investigations were done, a report tabled at the disciplinary hearing and the same was availed to the Claimant prior to the hearing. RW2 said that the transfer of the four (4) housing units was executed by the CEO and approved by the Chairman as per the report. RW1 said that the Auditor attended the hearing and presented his findings. That the SACCO was the complainant. That the Claimant signed the minutes of the hearing to confirm that he received the

requested documents. RW2 said that the Chairman was in the disciplinary panel and had not approved the discounts given by the Claimant though he had executed the sale agreement. RW2 added that matter was handled internally and there was no report to the police.

That the Claimant's signature of the minutes was at page 138 of the Respondent's bundle. RW2 said that the auditor was an independent officer and there was no skewed evidence against the Claimant. That the auditor reports directly to the Board. RW2 stated further the composition of the Disciplinary Committee depended on the officer being disciplined. In this case, since the acting CEO was the culprit, then the Chairman had to sit in the panel. RW2 said that the auditor testified at the hearing and the Claimant was given opportunity to challenge his evidence before the Claimant was given a chance to explain himself.

RW2 added that the Claimant was given a second chance to explain himself in writing to clarify issues that came from the Auditor. RW1 admitted that the newspaper notice was published on 8/3/2021 after the Claimant was dismissed on 2/2/2020. That the dismissal was followed by an appeal dated 19/2/2021 which appeal was also dismissed. That the panel comprised of Peter Gichangi, Chairman; Tom Wakiaga Vice Chairman, Rebecca Bisaju Hon. Secretary, Vincent Opiyo, Treasurer and Saida, Human Resource.

That the Internal Auditor, Jare Odhiambo and the Claimant participated in the hearing. RW2 concluded that the dismissal was lawful and fair and the suit be dismissed with costs.

DETERMINATION

The parties filed submissions which the court has carefully considered together with the evidence adduced by CW1, RW1 and RW2. The issues for determination are: -

- (a) Whether the dismissal of the Claimant was for a valid reason, following a fair procedure.
- (b) Whether the Claimant is entitled to the reliefs sought.

The Claimant testified that he was an excellent performer but had many adversaries at the work place who undermined his growth and work. That this formed the background of the eventual suspension, disciplinary process and unlawful and unfair dismissal from employment.

The Claimant states that his dismissal was not for a valid reason and the procedure followed was skewed, biased and the allegations made against him were unfounded and instigated maliciously. The Claimant relied on the case of **Ogal Auma versus Teacher Service Commission (2013) eKLR** where the court held: -

“For termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”

The Claimant denied that he failed to execute the SIC Agreement, failed to involve Sales and Finance Departments, in concluding the swap of 4 housing units at Kantafu at a value of Kshs. 11.6 million.

The Claimant emphasized that the swap was legally sound based on a debt swap with Mr. Njogu to whom the Respondent owed legal fees. The Claimant emphasized that the notices to respond to the charges were short and had not been given documents to help him defend himself. That he had not received the investigation/Audit report as at the time he was responding to the notice to show cause. That involvement in the matter by the chairman who had executed the sales made the composition of the disciplinary panel irregular and biased in violation of clause 15.2.2 of the Respondent's disciplinary handbook which provides that in dealing with discipline the Respondent shall: -
"carry-out preliminary investigation and consultation as to the circumstances surrounding the act of misconduct."

Having considered the testimony by the Claimant vis a vis that by RW1 and RW2 it is clear that the Claimant in his capacity as a Manager Legal and co-Acting CEO, had participated fully in processing and authorizing the swap of four (4) housing units at Kantafu belonging to the Respondent with alleged debt in the sum of Kshs. 11.6 million, Mr. Leonard Njogu who was owed by the Respondent. It is clear that there was no letter or documents from the Board of the Respondent authorizing the sale of the 4 units to be based on a debt swap arrangement. The court is also satisfied that the sale agreement was not executed by the Claimant himself but the Claimant was overall in charge to oversee the preparation and execution of the sale agreement. The court is satisfied that the Sales and Finance departments were not involved to ensure proper valuation and worth of the four (4) units transferred to Mr. Leonard Njogu. The court is also satisfied that the

books of accounts did not reflect the reduction of debt the Respondent owed to Mr. Njogu upon transfer of the four (4) units to him.

The court is also satisfied that the Chairman of the Board signed the sale agreement at the behest of the Claimant and there was no official approval of the swap transaction by the Board, tabled before court by either the Claimant or the Respondents.

The court is further satisfied that the Claimant authorized the vacant possession of the four (4) units vide the caretaker to Mr. Njogu. The court is therefore of the finding that the Sale Agreement lacked valid consideration and this state of affairs was wholly caused by the Claimant with no authority from the Sales and Finance departments and more importantly from the Board of Directors.

The Claimant faced clear charges contained in the notice to show cause. The Claimant was suspended on half pay and was given opportunity to answer the charges in writing and at the disciplinary hearing. The court is satisfied that by the time the Claimant attended the disciplinary hearing he had been provided with the Audit Report that comprised preliminary investigations. The court is further satisfied that the Claimant was given further opportunity to clarify in writing matters that arose during the disciplinary hearing. That the Claimant was aware that he could bring a colleague to the disciplinary hearing but chose not to do so.

The minutes of the disciplinary hearing signed by the Claimant confirm that the Claimant was given opportunity to explain himself and had

confirmed that he was in receipt of all the documents he had requested to prepare his defence.

The credibility of the claimant with regard to the manner the sale was introduced, negotiated, discounted, executed and transfer done was wanting and the court found the evidence by RW1 and RW2 more credible and therefore believable. Furthermore, the minutes of the hearing contradict the testimony by the claimant that he was not availed documentation requested on time and that he was not given opportunity to explain himself and interrogate the evidence presented by the Auditor in his report and at the hearing.

Accordingly, the court is satisfied that the Respondent had satisfied the requirements of section 41 and 43(1) and (2) of the Employment Act, 2007 in that it had proved that the Claimant was guilty of gross misconduct by irregularly causing a swap of four (4) housing units at Kantafu belonging to the Respondent and without proper consideration were transferred to one Leonard Njogu a Legal service provider to the Respondent.

The court finds that this was a valid reason for the Respondent to dismiss the Claimant from employment as the Manager Legal and co-Acting CEO.

The court further finds that the procedure followed in disciplining the Claimant as explained by RW1 and RW2 and in many respects confirmed by the Claimant constituted a fair process which comprised of a notice to show cause; response in writing and opportunity to be heard

at a disciplinary hearing. The court finds that the disciplinary panel was properly constituted and the Claimant failed to discharge the onus placed upon him under section 47(5) of the Employment Act to demonstrate that the dismissal from employment was wrongful.

In the final analysis, the Respondent has discharged the onus placed on it under section 45(1) and (2) of the Employment Act and has demonstrated that the dismissal of the Claimant from employment, was for a valid reason and the Respondent followed a fair procedure to make that decision.

The court is fortified in this regard by the decision of the Court of Appeal in the case of ***Onderi versus National Hospital insurance Fund [2025] KECA 687 (KLR)*** where it was held that it is not the business of the court to “substitute the thoughts of an employer, where the employer has a valid reason to terminate employment and where the process has been followed.”

The court also relies on the decision by Rika J in ***Thomas Sila Nzivo versus Bamburi cement limited [2014] eKLR*** where the court held: -

“The Respondent had reasonable and sufficient grounds to suspect the Claimant of having acted to the substantial detriment of the Respondent and its property and was justified in summarily dismissing the Claimant under section 44(4)(g) of the Employment Act 2007. The employer was not required to have conclusive proof of the Claimant’s involvement; it was only expected to have reasonable and

sufficient grounds...All gave the Respondent reasonable and sufficient grounds to act against the Claimant.”

The court finds that the claimant has not proved that any of his constitutional rights under Articles 41 and 47 of the constitution of Kenya 2010 were violated. In deed the statutory provisions under the Employment Act 2007 suffice to dispose of this matter.

In the final analysis the suit with regard to the dismissal of the Claimant lack merit and is dismissed. The separation was a summary dismissal and so the Claimant is not entitled to payment in lieu of two months' notice.

Judgment is entered in favour of the claimant against the respondent in respect of unpaid terminal benefits as follows: -

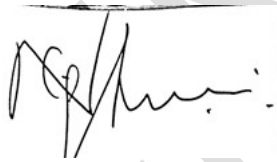
- (a)Kshs. 119,450.00 in lieu of leave days not taken as at the time of suspension.**
- (b)LSK CPD for 2020 Kshs. 7,500.00**
- (c)2021 LSK Practicing Certificate Kshs. 21,360.00**
- (d)Shares for October 2017 to March 2021 Kshs. 120,000.00**
- (e)10% salary pension scheme, deductions from September 2017
 $10/100 \times 210,821.00 = 21,082 \times 41$ months Kshs. 864,362.**
- (f) Provision of certificate of service**
- (g)Any other terminal benefits due to the Claimant upon clearance which the Respondent stated were not yet paid because the Claimant had not cleared.**

Accordingly, the Respondent is to compute all terminal benefits due and owing to the Claimant and pay the same to the Claimant within 30 days of this judgment.

Since the failure to pay final dues was due to non-clearance by the Claimant, no interest will be payable on the terminal benefits awarded provided the same are paid within the said 30 days period from date of judgment.

Any delayed payment will attract interest at court rates till payment in full. Each party to meet their own costs of the suit.

Dated at Nairobi this 10th day of March 2026



Mathews Nduma
JUDGE

Dated, signed and delivered in open court at Nairobi this 11th day of March 2026

J.W KELI
JUDGE

In presence of:

M/s. Kwamboka for Claimant

Mr. Arunga for Respondent

Mr. Kemboi – Court Assistant

ORIGINAL