



**Orina v Nutrition International Limited (Cause E894 of 2022)  
[2025] KEELRC 2289 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2289 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E894 OF 2022  
BOM MANANI, J  
JULY 31, 2025**

**BETWEEN**

**DICKSON ORINA ..... CLAIMANT**

**AND**

**NUTRITION INTERNATIONAL LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The dispute between the parties relates to whether the Respondent’s decision to terminate the Claimant’s contract of service is legitimate. Whilst the Claimant contends that the contract was terminated unfairly after he exposed conflict of interest dealings involving one of the Respondent’s senior employees, the latter avers that the contract was terminated because of poor performance on the part of the Claimant.

**Claimant’s Case**

2. The Claimant contends that he was hired as the Respondent’s Finance Officer, Africa at a salary of Ksh. 207,988.00 with effect from 19<sup>th</sup> February 2019. He avers that his salary gradually increased up to Ksh. 224,695/= when his contract of service was terminated.
3. The Claimant avers that after his appointment to the aforesaid position, he served the Respondent with dedication and diligence until 1<sup>st</sup> August 2022 when the latter terminated his contract of service. It is his case that the Respondent’s decision to terminate his employment was without valid reasons.
4. The Claimant avers that sometime in June 2021, there was staff movement in the Respondent organization which affected his department. He contends that the movement resulted in less manpower in the department forcing him to take up additional duties.



5. The Claimant avers that in mid-June 2022, he stumbled upon email correspondence which evidenced conflict of interest involving the Respondent's Finance Director, Africa. He asserts that the said officer had permitted her sister to supply cakes to the Respondent without disclosing the relationship between the two which, in his view, amounted to conflict of interest on her part.
6. The Claimant avers that he exposed the malpractice by reporting the matter to the Respondent's management via email. He contends that his decision to whistle blow the incident provoked the decision to terminate his services.
7. The Claimant contends that soon after he had reported the malpractice, the Respondent issued him with a letter of show cause on 19<sup>th</sup> July 2022. Subsequently on 28<sup>th</sup> July 2022, he contends that the Respondent verbally summoned him to a disciplinary hearing.
8. The Claimant asserts that during the disciplinary hearing, the Respondent raised new matters which had not been flagged in the letter of show cause. He contends that at the close of the disciplinary session, the Respondent asked him to either resign from employment or have his contract of service terminated.
9. The Claimant avers that on 1<sup>st</sup> August 2022, he informed the Respondent that he did not see the reason why he should resign from employment. As such, he opted not to resign. He contends that in response, the Respondent issued him with a letter of even date terminating his services.
10. The Claimant contends that despite the added workload that he had to assume after the Respondent failed to recruit more members of staff to his department, he continued to perform significantly well. As such, he contends that the allegation by the Respondent that his services were terminated because of poor performance is without basis.
11. To bolster this argument, the Claimant avers that during the currency of his service with the Respondent, his supervisor never notified him of any instances of poor performance. He contends that the supervisor did not convene any meeting to address the alleged poor performance and neither was he ever placed on a performance improvement plan. As such, he wonders where the allegations of poor performance stemmed from.
12. The Claimant contends that the decision to terminate his services violated the law and the Respondent's policies. He accuses the Respondent of not having supplied him with particulars of the accusations that were leveled against him. He further accuses the Respondent of having denied him a chance to be heard before the decision to terminate his services was made.
13. The Claimant contends that after the Respondent terminated his services, it deposited Ksh. 574,563.18 into his account without sharing with him the workings that resulted in the amount. He contends that this prompted him to instruct his advocates to write to the Respondent to demand compensation for unfair termination of his contract. However, the Respondent allegedly wrote back denying any wrong doing.
14. The Claimant further avers that during his term of service, he earned bonus pay which was however not released to him. He contends that despite the Respondent being aware of this entitlement, it has withheld it from him.

### **Respondent's Case**

15. The Respondent does not admit the claim. It has filed a Statement of Response and witness statements in support of the position it takes in the suit.



16. The Respondent confirms that the Claimant was its employee. It further affirms that he was employed in February 2019 to the position of Finance Officer, Africa.
17. The Respondent avers that the Claimant was assigned to serve the regional offices of Ethiopia and Senegal. It further contends that during the Covid pandemic, staff workload significantly dropped due to reduced travels and the fact that members of staff were working from home. It contends that this led to redistribution of work among members of staff.
18. The Respondent however denies that these changes resulted in increased workload for members of staff, including the Claimant. It avers that all that happened was reallocation and rotation of work based on workload.
19. Contrary to the Claimant's contention that he was supposed to serve a maximum of two regional units but had been allocated more, the Respondent avers that there is no policy which sets a ceiling on the number of units that an employee may be allocated. It contends that the number of units to be allocated is dictated by the prevailing workload.
20. The Respondent avers that it has an existing performance measurement policy which requires performance evaluation for employees to be consultative between the employees and their immediate supervisors. It contends that this is meant to ensure that the process is comprehensive and balanced.
21. The Respondent avers that the annual performance review process is undertaken in two phases: mid-year; and end-year. It avers that the mid-year review is meant to ensure that the employees are notified of their progress and kept on track in order to meet their targets. It contends that the end-year evaluation provides the employees with their final performance ratings.
22. The Respondent contends that the Claimant's performance evaluation for the years 2020, 2021 and 2022 scored him at 3.38, 3.87 and 2.87 respectively. It contends that this data demonstrates that the Claimant was consistently evaluated during the duration of his employment. It further avers that the data proves that the Claimant's immediate supervisor continuously held performance review discussions with him because it would be impractical to come up with the data without undertaking the consultative evaluation process.
23. The Respondent contends that the Claimant failed to perform his duties as per his Job Description. It contends that the Claimant did not discharge his duties optimally resulting in the decision to terminate his services. It contends that the Claimant's poor performance was documented all through from the year 2020 until his services were terminated.
24. The Respondent avers that throughout the aforesaid period, its officers held meetings with the Claimant in a bid to assist him to improve his performance but to no avail. As such, it contests the Claimant's assertion that he: had been a diligent performer; had not been notified of his poor performance; and had not been subjected to a performance improvement program.
25. The Respondent denies that it terminated the Claimant's contract because of his exposure of conflict of interest by its Finance Director. As a matter of fact, it denies that there was such conflict of interest.
26. The Respondent avers that it had valid reasons to terminate the Claimant's employment. It further avers that the decision was executed in accordance with the principles of fair procedure.
27. The Respondent avers that it does not owe the Claimant unpaid bonus. It contends that the purported bonus which the Claimant is demanding is premised on an error of communication which was subsequently clarified and the matter closed.



## Issues for Determination

28. After evaluating the pleadings, evidence and submissions by the parties, the following issues present for determination:-
- a. Whether the Respondent terminated the Claimant's contract of service unlawfully.
  - b. Whether the Claimant is entitled to the reliefs which he seeks through these proceedings.

## Analysis

29. The role of the court in adjudicating on termination of employment disputes is to examine the reasons for and the procedure which the employer followed in making the decision to terminate the contract with a view to ascertaining whether they (the reasons and procedure) are in consonance with the law and the principles of justice and equity. If the results of the examination demonstrate that the employer adhered to the law and the principles of justice and equity, the court must dismiss the employee's claim for unfair termination. Conversely, if the results of the evaluation demonstrate that the employer flouted the law and the principles of justice and equity, the decision must be declared as unlawful.
30. In undertaking this exercise, the court should consider whether the accusations which were leveled against the employee were established during the disciplinary process. It (the court) should also consider whether the employee was accorded a fair opportunity to ventilate his case.
31. In determining the propriety of the employer's decision, the court is not entitled to consider new and extraneous matters which were not presented before the Disciplinary Panel. To do otherwise would be tantamount to dislodging the employer's decision based on new and extraneous matters which were not considered by the Disciplinary Panel whilst making its decision. In effect, the court will have substituted the employer's decision with its own based on the new and extraneous matters which have been presented before it.
32. At the same time, whilst examining the propriety of the employer's decision, all that the court is required to do is to determine whether the impugned decision is one which a reasonable employer would have made based on the set of facts that were presented before the Disciplinary Panel. In doing so, the court must remain alive to the fact that in any one case scenario, there is a band of decisions that could reasonably be rendered. As such, for as long as the impugned decision falls within the band of what would appear to be reasonable, it (the court) must not upset it merely because it considers that if it was in the employer's position, it would probably have arrived at a different decision.
33. Speaking to this reality, the Court of Appeal in the case of *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR made the following observations:-

“...In adjudicating on the reasonableness of the employer's conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide whether it would have dismissed on those facts; it must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts. The basis of this approach (the range of reasonable responses test) is that in many cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable



employer might have adopted. If the dismissal falls within the band, the dismissal is fair; but if the dismissal falls outside the band, it is unfair.”

34. The essence of this proposition is to recognize the employer’s prerogative to manage the workplace. The prerogative requires court’s to exercise utmost restraint when invited to upset employers’ decisions at the workplace. They (the courts) should only interfere with the decisions if they (the decisions) are demonstrated to be contrary to the law or some internal rule or contract between the parties or the dictates of justice (see Irungu *v Kenya Pipeline Company Limited (Cause E950 of 2022)* [2023] KEELRC 459 (KLR) (23 February 2023) (Ruling)).
35. In the instant case, the circumstances which led to the decision to terminate the Claimant’s contract of service can be discerned from the Respondent’s letter to him dated 12<sup>th</sup> July 2022 (see page 59 of the Claimant’s trial bundle). In the letter, the Respondent accused the Claimant of the following:-
- a. Submission of documents with errors. The Respondent contended that the Claimant had been sending out documents with wrong codes. It further contended that many of the documents contained errors. The Respondent gave examples of the documents which had these discrepancies to include: a document sent out on 26<sup>th</sup> May 2022 with a wrong code; and a document that was sent out on 25<sup>th</sup> May 2022 before it had been signed. This latter document also had wrong entries.
  - b. Failure to read official emails. The Respondent pointed out that on many occasions, the Claimant had asked for information which was contained in emails which had already been sent to him suggesting that he did not read his emails. For instance, it accused him of asking Airtel to provide him with an invoice which had already been shared with him through email.
  - c. Disorganized documentation. The Respondent contended that some documents which the Claimant prepared bore different fonts within the same document. It further accused him of using unapproved document formats making it difficult for the management to follow his presentations.
36. The Claimant responded to these accusations through his letter dated 19<sup>th</sup> July 2022. In the response, he in part, commented as follows:-

I have noted with regret my submission of documents with errors. I have (sic) remorseful for the errors and could have impacted negatively on the organization. I have discussed the issues raised with my immediate supervisor Kevin Orora. I would like to confirm that I have shown remarkable improvement over the last almost 2 months.

On 25<sup>th</sup> May 2022, I did not send any SDF form for payment to the Regional Finance Director as indicated in the show cause letter. However, on 19<sup>th</sup> May 2022, I processed the wellness OPRs for 2 members of staff based on reimbursement amount in initial wellness threshold (CAD 250) not aware that the NI CEO had sent a[n] email on 8<sup>th</sup> May 2022 approving CAD 500 for wellness claim. The CEO’s email unfortunately went to other mails instead of my focused emails. This was unfortunate as this was (sic) marked the first time that I missed reading the CEO’s email on time. I have already addressed the challenge with the Regional IT Officer and ensured the CEO’s emails are part of my focused emails.....

... It is true that on 6<sup>th</sup> May 2022, I presented an OPR for an auditor not selected and that in some cases I had submitted OPRs with wrong codes. I am remorseful for this lapse. I have corrected this by paying utmost attention while coding documents.....



...I acknowledge that I asked for information already provided to me on 25<sup>th</sup> May 2022 from Airtel and Ticket Company. This was the first unfortunate lapse on such matter. I commit not (sic) be more diligent in my work. Besides, Richard's ER for AF4337 took almost a month before payment. This was not intentional and this error is highly regretted.....

.....I acknowledge that some template wording had font 11 and some font 12. This was brought into my attention by my supervisor and implemented immediately. Since then, all documents I have been sharing are well formatted.

.....The support and wise counsel I have been receiving from my immediate supervisor as well as the Finance Director Africa have greatly helped me improve my work and to support the countries assigned to me for documents review. I have at times fallen short of NI's expectations but my ultimate desire is to participate actively and diligently to improve the organization.....

....I commit to improve my performance and I request for your kind consideration to give me another chance to rectify my shortcomings and serve better as Finance Officer, Africa.”

37. It is noteworthy that in this response, the Claimant admitted most of the accusations which the Respondent had leveled against him in the notice to show cause. As the record shows, he pledged to improve his performance and requested for another chance to prove himself.
38. It is noteworthy that in the Claimant's response to the show cause letter, he did not suggest that his failure to measure up to the Respondent's expectations was due to a drop in the human resource capacity in his department or an increase in his workload. It is also noteworthy that the Claimant did not contend at that stage that the notice to show cause was issued to him in reaction to the alleged flagging of conflict of interest in the Respondent organization. He also did not raise these matters at the disciplinary hearing on 28<sup>th</sup> July 2022. Yet, he now invites this court to consider them as the reasons why the decision to terminate his contract of service should be set aside.
39. The court is of the view that it cannot be invited to consider matters which were not raised before the Disciplinary Panel at the time that the said Panel made its decision in order to upset that decision. As such, it is not open to the Claimant to ask the court to upset the impugned decision on the grounds that it (the decision) was motivated by the fact that he had exposed a conflict of interest dealing by the Respondent's Finance Director when this issue was not raised before the Disciplinary Panel. Similarly, the Claimant cannot invite the court to consider whether his failure to perform optimally was occasioned by the lack of sufficient staff in his department or an increase in his workload when he never raised this as a defense to the charges against him before the Disciplinary Panel. If the court was to rely on these new matters to upstage the Respondent's decision, it will in effect have replaced the employer's decision with its own decision based on new facts which the Disciplinary Panel did not have an opportunity to consider whilst crafting its decision.
40. Although the Claimant contends that the Respondent introduced new matters during the disciplinary hearing which had not been flagged in the letter of show cause, he did not point to the new matters which were allegedly introduced. Importantly, a perusal of the minutes of the disciplinary hearing does not disclose any new matters which, hitherto, had not been highlighted in the notice to show cause letter under reference. As such, the court finds that the Claimant's contention that the Respondent introduced new matters at the disciplinary trial is misplaced.
41. From the Claimant's response to the show cause letter, it is apparent that he admitted most of the charges which were leveled against him. This is the data which the Disciplinary Panel was confronted with when it sat to hear his case.



42. From the minutes of the disciplinary proceedings, it is apparent that the Claimant still largely admitted his shortcomings. This is clear from the following excerpts from the minutes:-

In his presentation, Orina accepted the mistake and apologized for all mistakes and under performance.....After refreshing his memory, Orina accepted that indeed the observation made from his PAR were correct and that they were discussed annually with his line manager and document[ed].”

43. After the Claimant was served with the Respondent’s pleadings including the list and bundle of documents which contains the minutes of the disciplinary hearing, he filed his reply to defense dated 20<sup>th</sup> July 2023. It is noteworthy that in the reply to defense, he did not contend that the minutes had been falsified. As such, the court takes it that he accepted the content of the minutes as a true reflection of the proceedings of the disciplinary session.

44. The Claimant contends that the Respondent had no right to terminate his services on account of erratic performance of his duties. Yet, he owned up to these deficiencies both in his response to the letter of show cause and during the disciplinary hearing. Further, the emails tendered in evidence by the defense point to a series of complaints regarding the Claimant’s erratic execution of various tasks (see pages 61 to 95 of the Respondent’s trial bundle).

45. What is the law regarding handling of challenges of underperformance by an employee before he can be released from employment? The guidelines on this matter are largely in case-law.

46. Generally, it is expected that before an employer can terminate the services of an employee on grounds of poor performance, he should have: set achievable performance targets in liaison with the employee; formulated a performance evaluation matrix against which the employee’s performance can be evaluated; undertaken the actual evaluation of the employee’s performance against the set targets; and given the employee an opportunity to improve under guidance if his performance was found unsatisfactory. The employer will only be entitled to release the employee from employment if he (the employee) does not improve despite these interventions (Jane Samba Mukala v Ol Tukai Lodge Limited [2013] eKLR). Further, such release must be preceded with a hearing.

47. Had the parties in the instant suit set performance targets and had the Respondent developed a performance evaluation matrix by which it was to assess the Claimant’s performance? The answer to this question is in the affirmative.

48. The evidence on record shows that the Respondent issued the Claimant with a position profile which set out its expectations from him. He was to: be responsible for processing weekly batch sheet and payments for assigned country offices; review and submit the mid-month and month end financial reports of the country offices to the Head Quarters; check account coding, verify entries and sign off vouchers; verify and process all financial reports including bank reconciliations, petty cash reconciliations received from country offices; manage cash flow for assigned country offices; process procurement and service bills of suppliers, consultants and other service providers; regularly scrutinize the general ledger for analysis and rectification; process travel expense reports/bills and other claims for country offices assigned; review and update fixed asset registers for all countries within Africa Region; review and provide travel MIS for all countries within Region; review annual financial statements in preparation for statutory audits; and undertake any other specific tasks assigned by his supervisor.

49. During cross examination of the Claimant, he confirmed that the parties used to set performance targets for the aforesaid expectations annually. He further confirmed that his performance was



measured against these targets. As such, it is apparent that the parties had put in place key performance indicators from which they used to set the Claimant's performance goals annually.

50. Although neither of the parties produced the Respondent's performance evaluation matrix for the court's scrutiny, it is apparent that one was in place. This is evident from the fact that the Claimant did not dispute the Respondent's contention in the Statement of Defense that it has an existing performance evaluation matrix. As a matter of fact, the Claimant impliedly affirmed this fact in paragraphs 8 & 11 of his Reply to Defense when he averred that his performance met the expectations of the Respondent's performance policy.
51. Further, during cross examination of the Claimant, he confirmed the existence of the performance evaluation matrix when he referred to the ratings in the instrument. For instance, he said that the matrix sets six (6) as the highest rating and two (2) as the lowest and that if one is rated two (2), it denotes that he has performed below average.
52. Having regard to this evidence, it is apparent that the Respondent had a performance assessment matrix which was known to the Claimant. As such, the court is satisfied that the Respondent had put in place a performance evaluation matrix by which it was to assess the Claimant's performance.
53. Is there evidence that the Claimant had performance challenges? The answer to this question is apparent from: the Claimant's response to the notice to show cause; the Claimant's response to questions that were put to him during cross examination; and the email exchanges between the parties which the Respondent tendered in evidence.
54. In the Claimant's response to the notice to show cause, he admitted that he had committed coding errors in some instances. He also admitted to committing some errors in processing staff wellness reimbursements for some members of staff.
55. The Claimant further admitted delaying processing of some payments. For instance he conceded that processing of AF4337 had delayed by close to a month in contravention of the Respondent's policies.
56. The Claimant ultimately stated as follows in his response to the show cause letter regarding his performance:-

I have at times fallen short of NI's expectations but my ultimate desire is to participate actively and diligently to improve the organization's work."
57. In the email trail which the Respondent tendered in evidence, it (the Respondent) points to a series of missteps by the Claimant (see pages 61 to 95 of the Respondent's trial bundle). For example, at page 95 of the bundle, the Claimant admitted to a coding error. At page 92 of the bundle is another email which points to an error by the Claimant relating to the amount of refund for wellness for one Adonisha. At page 86 of the bundle is yet another email through which the Claimant apologized for sending an unsigned wellness form for one Penina.
58. In the course of the trial, the Claimant admitted that he had on some occasions submitted documents with errors as had been asserted by the Respondent in the notice to show cause letter. He also conceded that he had occasionally sought information from some suppliers when the information had already been shared with him through email. He also admitted that he, at times, submitted to the Respondent's management documents prepared using different fonts.
59. Further, the Claimant confirmed during trial that the best performance score under the Respondent's performance matrix is six (6). Yet, he stated that his average score was three (3), which is half of what



would be the best rating. He further confirmed that a score of three (3) was the minimum of what would pass as “meeting expectation”.

60. At paragraph 8(d) of Kevin Orora’s written witness statement which was adopted as part of the Respondent’s evidence under oath, the said witness stated as follows about a score of three (3):-

(3/6) [a] performance meets expectations most of the time when the employee accomplished most of their goals. The goal might be 75% done or they may have completed the goal but not as per the measures that were agreed upon at the beginning of the year.”

61. Undoubtedly, the above evidence demonstrates that the Claimant had some performance challenges. As such, the court finds that the Respondent had legitimate grounds to assert that his performance was wanting.

62. Did the Respondent alert the Claimant about his deficient performance and did it engage him on the matter? The answer to this question is, again, in the affirmative.

63. In his response to the show cause letter, the Claimant admitted that his supervisor and other members of staff had held meetings with him regarding his performance and had even offered him assistance on how to improve. He expressed himself on the subject as follows:-

I have noted with regret, my submission of documents with errors. I have (sic) remorseful for the errors and could have impacted negatively on the organization. I have discussed the issues raised with my immediate supervisor Kevin Orora. I would like to confirm that I have shown remarkable improvement over the last 2 months...

.....On 26<sup>th</sup> May 2022, my supervisor helped me learn how to group all conversations on the same thread into one. I appreciate his input which has helped me overcome missing some important conversations....

....On 7<sup>th</sup> November 2020, Brenda (HQ Staff) wrote to me indicating that the template I was using was confusing and shared a revised template for use which I adopted.

.....The support and wise counsel I have been receiving from my supervisor as well as the Finance Director Africa helped me improve my work.....”

64. The above evidence demonstrates that the Respondent’s officers pointed out to the Claimant some of the deficiencies in his work. It further demonstrates that the officers took steps to assist him to navigate the challenges. In essence, this evidence goes to demonstrate that the Respondent’s officers sought to assist the Claimant to improve his performance by offering him support and guidance on a number of issues.

65. Did the Claimant fail to satisfy the Respondent that he had sufficiently improved despite the aforesaid efforts by the Respondent’s officers? The answer to the question can be found from the minutes of the meeting that was held on 25<sup>th</sup> July 2022 (see page 98 of Respondent’s bundle).

66. The minutes show that the Respondent’s committee indicated that despite efforts to assist the Claimant to improve in some areas, he had not. Hence the decision to subject him to a hearing on 28<sup>th</sup> July 2022.

67. From the foregoing, the court is satisfied that the Respondent substantially satisfied the requirements of assisting an employee with performance challenges to improve before it eventually subjected him to a hearing on 28<sup>th</sup> July 2022. As such, it (the court) rejects the Claimant’s contention that the Respondent did not live up to these requirements.



68. The court record shows that on 25<sup>th</sup> July 2022, the Respondent wrote to the Claimant inviting him to a hearing on Thursday (28<sup>th</sup> July 2022) at 11. AM (see page 99 of Respondent's bundle). This is contrary to the Claimant's assertion that the Respondent verbally invited him to the hearing on 28<sup>th</sup> July 2022.
69. The minutes of the session held on 28<sup>th</sup> July 2022 demonstrate that the Claimant was reminded of his right to be accompanied by a staff member of his choice. In response, the Claimant is quoted as having elected not to be accompanied by a member of staff.
70. The minutes show that the Claimant was allowed to make his representations before the decision to terminate his contract was made. It is also apparent from the minutes that the Claimant was informed of his right of appeal.
71. It appears that in an attempt to avoid slapping the Claimant with a letter of termination of his contract, the Disciplinary Committee asked him to consider resigning from employment. However, it informed him that if he was not going to take that option, it (the Committee) will terminate his contract. When the Claimant declined the offer to resign, the Respondent issued him the letter of termination of his employment.
72. The sequence of events in the case demonstrates that the Respondent abided by the strictures of both substantive and procedural fairness in terminating the Claimant's employment. In the court's view, the Respondent's impugned decision falls in a band of possible decisions which another reasonable employer, faced with the same set of facts, would have made. As such, it (the court) is not ready to upset it (the decision). It is so declared.
73. The Claimant has prayed for damages for compensation for alleged discrimination for whistle blowing. However and as has been demonstrated earlier, his contract of service was terminated for poor performance. The decision had nothing to do with the alleged whistle blowing.
74. As was stated by the Respondent's witnesses, the Respondent's whistle blowing policy provides for anonymous reporting of malpractices at the workplace in order to protect the whistle blowers. Further, RW2, the alleged conflicted employee, stated that the Claimant's email on the alleged whistle blowing was sent to the Respondent's Vice President and Chief Executive Officer around 20<sup>th</sup> June 2022 and that she only came to learn of it in November 2022 since it was neither addressed nor copied to her. In cross examination, the Claimant conceded that he could not tell whether the employee who was allegedly conflicted had seen the email before she instigated the disciplinary action against him.
75. In effect and for what it is worth, there is no evidence that the disciplinary action against the Claimant was triggered by the alleged whistle blowing. If the employee who is accused of having instigated the disciplinary process in purported retaliation against the Claimant for the alleged whistle blowing is demonstrated not to have been aware of the whistle blowing at the time the disciplinary process was commenced, how can it be contended that she (the employee) commenced the proceedings as a means of retaliating against the Claimant?
76. The above being the case, the court finds that the Claimant's contention that he was discriminated for whistle blowing is without basis. It is rejected.
77. The court having arrived at the findings set out earlier in this decision, it follows that the Claimant's prayers for: a declaration that his contract was unfairly terminated; 12 months' salary compensation for wrongful termination of his contract; salary in lieu of notice; compensation for the remainder of his contractual term; and compensation for discriminative termination of his contract of service are all unmerited. As such, they fail.



78. The Claimant has prayed for payment of a merit bonus which he contends he was awarded but not paid. In response, the Respondent denies that the Claimant is entitled to the bonus. It contends that the purported bonus arose out of an error in communication. It further contends that the Claimant was notified that he was not entitled to the bonus as it had been mistakenly awarded to him. The Respondent avers that the Claimant confirmed that he had understood that the bonus had been awarded in error and that it had been cancelled and the matter closed.
79. The email trail on the contested bonus appears at pages 56 to 59 of the Respondent's trial bundle. The content thereof is set out here-below:-

21<sup>st</sup> October 2021.

Hi Dickson,

I am please[d] to inform you the 2021 annual increase (merit and CPI) and bonus you have been awarded based on the PE budget ceiling provided.

The merit and bonus is in line with your performance last year.

I am available if you need any clarification on this.

Best Regards,

Dr. Richard Bakali Pendame

Regional Director, Africa.

25<sup>th</sup> October 2021 at 14.40

Hi Everlyne,

I was awarded merit bonus as per RD communication below.

However, this is not reflected in the October 2021 pay slip.

Kindly assist me in addressing this.

Regards,

Orina

25<sup>th</sup> October 2021 at 17.46

Dear Orina,

I am very sorry that I made a terrible mistake in my communication to you. The bonus amount indicated was for (sic) copied on to your table wrongly. The actual figure is 0.00 in line with the % bonus that was indicated in the email.

Any inconvenience caused by this error and the false expectation thereof is greatly regretted.

Regards,

Richard

26<sup>th</sup> October 2021

Dear Richard,

Thanks for the clarification and the information is clear to me.

Regards



Orina

80. With this correspondence, one would think that the parties were in agreement that the bonus award was made out of error and that it had been withdrawn and the matter closed. It is therefore surprising that the Claimant would attempt to re-introduce it as a valid claim through these proceedings. As such, it is rejected.
81. The Claimant has also prayed for ex-gratia payment of Ksh. 2,696,346.96. However, he did not provide evidence to demonstrate that he was entitled to earn this or a lesser or greater amount. Absent such evidence, the court cannot make such an award as that will be entirely speculative. Consequently, the prayer is declined.
82. Having failed in the suit, the Claimant is not entitled to costs of the case. As such, his prayer for costs is declined.
83. The court awards the Respondent costs of the case.

### **Summary of the Findings and Determination**

- a. After evaluating the evidence on record, the submissions by the parties and the applicable law, the court finds that the Claimant's suit is without merit.
- b. As such, it is dismissed.
- c. Costs of the case are granted to the Respondent.

**DATED, SIGNED AND DELIVERED ON THE 31<sup>ST</sup> DAY OF JULY, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

.....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**

