



**Loise v Murang'a University of Technology (Cause E032 of 2024)
[2025] KEELRC 2192 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2192 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E032 OF 2024
ON MAKAU, J
JULY 23, 2025**

BETWEEN

JAMES IRUNGU LOISE CLAIMANT

AND

MURANG'A UNIVERSITY OF TECHNOLOGY RESPONDENT

JUDGMENT

Introduction

1. This suit raises a fundamental question whether a public officer, can be dismissed from service for off-duty conduct. The claimant was employed by the respondent on 24th May 2011 as Accounts Clerk and was dismissed on 21st November 2023 for misconduct against the Murang'a University SACCO (MUSACCO) while serving there as the treasurer and later as the chairman.
2. By a Memorandum of Claim dated 24th July 2024, the claimant prayed for: -
 - a. A declaration that his termination from employment was unfair, wrongful and unlawful.
 - b. An order that he be forthwith reinstated as an employee of the respondent.
 - c. Payment of salary from the date of suspension until reinstatement.
 - d. Payment of CBA arrears of Kshs.127,435
 - e. In the alternative and without prejudice to the foregoing, an order for the payment of salary and benefits calculated on the basis of his monthly salary at the time of dismissal.
 - f. General damages
 - g. Exemplary damages
 - h. Cost of the suit and interest.



- i. Any other relief that this court may deem just and fit to grant.
3. The respondent filed Response to the claim denying liability and averred that the claimant violated Chapter 6 of the Constitution as read together with the Leadership and Integrity Act, Public Officer Ethics Act, and the Respondents' HR Policy on Staff Codes of Conduct and Ethics, by failing to uphold integrity as a public officer while serving in MUSACCO as an official. It averred that the said misconduct by claimant rendered him unfit to serve in a public office and he was dismissed upon following a fair procedure. Therefore, the respondent prayed for the suit to be dismissed with costs.

Factual background

4. The claimant's case was that he was employed on 24th May 2011 as an Accounts Clerk and on 31st March 2014 he was confirmed as Assistant Accountant on permanent and pensionable terms. Initially, the Respondent was Murang'a College of Technology before becoming a University.
5. He worked until he was issued with a show cause letter dated 13th July 2023 charging him with the following allegations;
 - a. Taking excess loan from Murang'a University Sacco (MUSACCO) against the 2/3 rule and failed to service the loan, which as at 31st July 2023 stood at Kshs.3,327,336.
 - b. Failure to exercise prudence and diligence while serving as the treasurer from 2012-2017 and as the chairman from 2018-2021.
 - c. Jointly with other officials, failed to recover loans and accrued interest from the following exiting staff and even cleared them yet they had loans which they had stopped servicing.
 - i. Eustace Muriithi PF No.139.....Kshs.884,867
 - ii. Veronica Kariuki PF No.140.....Kshs.422,578
 - iii. John Mwangi PF No.256.....Kshs.129,055
 - iv. Naomi Wanjiku PF No.138.....Kshs.474,779
 - v. Josephine Wanjiru PF No.....Kshs.150,514

Total Kshs.2,061,793
6. The show cause letter cautioned the claimant that as a public officer his misconduct as Sacco official contravened the Public Officers Ethics Act, Leadership and Integrity Act, and the University HR Policy and gave him 7 days to show cause why disciplinary action should not be taken against him. He responded vide the letter dated 18th July 2023 admitting that he had challenges in servicing his loan but denied all the other allegations. His explanation was not satisfactory and as such he was suspended vide letter dated 15th August 2023 pending investigation into the said allegation, as they amounted to gross misconduct, lack of integrity, and abuse of office.
7. The said conduct was deemed to be in contravention of;
 - i. Section 44(c) of the Employment Act.
 - ii. Section 10(a) (b) (c) (d), 11 (a) (c) (d), 12(1) and 13(a) (b) (c) (d) (e) (f) of the Leadership and Integrity Act.
 - iii. Section 9(a) (c) (g), 11(1), and 20(3) of Public Officer Ethics Act.



- iv. HR policy Schedule 3 on Staff Code of Conduct and Ethics specifically section 3.24 clause 1(a) (c) (e) and (g), section 3.3(1) (4) (5) and (6), and section 3.7(1) (a) and (d).
8. The claimant averred that the said allegations emanated from his membership in the SACCO which is a completely separate entity from the respondent and not even a subsidiary or affiliate of the respondent. He admitted that he served as the treasurer of the SACCO from 2012-2016 and as the chairman from 2017-May 2021 but averred that no accusations or allegation, were ever brought against him by the SACCO or Cooperatives Office except the aforesaid allegations by the respondent who sought in depth audit on the SACCO financial affairs.
9. He further averred that a report prepared by Department of Cooperatives Development Murang'a County found that the SACCO autonomy had been compromised by the respondent. He contended that during his tenure as the treasurer and chairman of the SACCO, the respondent kept interfering with the SACCO hence the bad blood between him and the respondent which culminated in his dismissal on 21st November 2023.
10. He contended that as at the time of his dismissal, his salary was Kshs.107,239 gross, and he had CBA arrears of Kshs.127,435 which is still owing.
11. The respondent's case was that it employed the claimant as an Assistant Accountant. He was also a member of MUSACCO where he served as Treasurer from 2012-2016 and as chairman from 2017-2021. He was also a member and official of KUSU (Union). The membership of the MUSACCO is drawn from the staff of the respondent and therefore the SACCO members have instructed it to remit their contributions to the SACCO.
12. It was further respondent's case that it received distress complaints from its employees who are members of the SACCO threatening to stop remittances to the SACCO due to blatant mismanagement of the SACCO. As a stakeholder/agent of the MUSACCO, it reported the matter with SACCO Society Regulatory Authority (SASRA) and the Department of Cooperative Development Murang'a County Government to investigate the allegations.
13. In June 2023, the respondent received a detailed Inspection Report from the Department of Cooperative Development, Murang'a County which was presented by the Auditor to the SACCO AGM. The Report highlighted various issues in the SACCO: -
 - a. The Sacco loan application forms not properly filled as required with vital information missing.
 - b. The Sacco did not have the minimum monthly saving thus denying the Sacco funds to grant more loans to its members. An example is the claimant who as at 31st December 2021 had 140,160 shares/savings and noting the 3-multiplier rule on savings to qualify for a loan, he was only entitled to a loan approval of Kshs.412,800 but he received a loan of Kshs.2,283,289.77 against the two third rule from the Sacco leaving an over loan amount of Kshs.1,861,489.77 to the detriment of the Sacco members.
 - c. The management committee did not take any action to ensure repayment of loans in time.
 - d. The management committee granted loans to some members without consideration of the members ability to pay as the Committee did not liaise with the Respondent's HR on issuance of loan to confirm the two third rule thus exposing member's funds. An example was given of the claimant and 3 other officials.



- e. The Sacco loans for some members were not effected on the pay slips and the management committee did not consider the two third rule while issuing loans to members and this applies to members of the management.
 - f. Withdrawal of members from the Sacco was not following the right procedure of cessation. Some members were cleared while they had guaranteed some members who had not cleared their loans.
 - g. Management committee used funds received from loans to pay interest on members' deposit instead of using it to loan the members as the agreement.
 - h. Members were granted loans whether they defaulted, had irregular loan repayment of existing loans.
 - i. Management committee did not update individual members statements.
 - j. Some members received Sacco clearance letters addressed to bank to stop orders issued to payroll on their favour while the member still owed the Sacco huge loans balances.
 - k. The management committee agrees to the malpractice of falsification of records for members to qualify for higher loans.
 - l. Some members would take loans on behalf of other members; example a loan taken by one Jane Njambi of Kshs.175,150/= for the claimant herein. When interviewed Jane Njambi she said she knew the claimant could not qualify for a loan due to the two third rule and their verbal agreement was that the claimant would repay the loan through direct deposit of which he did not honour.
 - m. Management committee were not conversant with the Cooperative Society Act and this prompted them not to put measures required by law when loaning members and prolonged irregular loan repayment period.
 - n. The management committee granted themselves more loans than they qualified and repaying them irregularly.
 - o. 27 members were over loaned and they were not serving their loans regularly putting members funds at great risk and this is where the Sacco downfall originated as Kshs.3,186,457 was irregularly issued.
 - p. Management interviewed why they took loans from the financial institutions and yet the employer was remitting members deductions on monthly basis and on time, they responded that members were over loaned and they were not paying the loans.
 - q. Murang'a University is a critical stakeholder in the Sacco, being the employer of the members of the Sacco.
 - r. Some members who wanted to leave the Sacco and they had no loan balances or dues to the Sacco had not received their refunds and management said that it would be done upon availability of funds and no specific date given and this prompted members to seek support from the employer.
 - s. The Sacco lacks good corporate governance, as abuse of office by the office bearers is evident.
14. The Inspection report passed several recommendations including, that the entire committee of 9 officials be barred from serving as officials of the SACCO since they had failed to exercise their mandate



- diligently and prudently. The claimant and the SACCO committee were found to have abused office, and misappropriated, mismanaged and wasted SACCO funds leaving the SACCO with no funds to pay dividends or refunds to retiring members. The said actions amounted to gross misconduct under the *Employment Act* as it was contrary to the *Public Officer Ethics Act* and *Leadership and Integrity Act*, University HR Policy on Staff Codes of Conduct and Ethics, and Chapter 6 of *the Constitution*.
15. The respondent averred that the claimant was served with a show cause letter dated 13th July 2023 and he responded vide letter dated 18th July 2023. He was then suspended on 18th August 2023, and by letter dated 19th October 2023 he was invited to a hearing before the respondent's Staff Disciplinary Committee on 7th November 2023 and he attended with union officials.
 16. During the disciplinary hearing, the chairman of the SACCO gave evidence but the claimant declined to take plea and defend himself and stated that the SACCO and the University were two separate entities and insisted that SACCO issues should not be discussed by the University. In the end, the Disciplinary Committee considered the evidence adduced and found the claimant guilty of the offences levelled against him and recommended for his dismissal from service. A dismissal letter dated 21st November 2023 was then addressed to the claimant.
 17. The claimant was dissatisfied and appealed to the Staff Appeals Committee vide letter dated 30th January 2024. The appeal was heard and by letter dated 8th February 2024 the dismissal was upheld by the Appeals Committee. The respondent maintained that the dismissal was lawful and fair as the claimant had grossly misconducted himself by violating *the Constitution*, statutes and even the University HR Policy on Staff Code of Conduct and Ethics through financial mismanagement of the SACCO and abuse of office which caused the respondent to lose trust in him as its Assistant Accountant. The respondent admitted that it owes the claimant CBA arrears of Kshs.167,049.72 and contended that it is ready to release the funds as soon as the claimant completes clearance. It averred that reinstatement cannot issue because the claimant has since been paid his full pension and terminal dues after his dismissal.

Evidence

18. The claimant testified as CW1 and adopted his written statement dated 24th July 2024 as his evidence and produced a bundle of 29 documents as exhibits. In brief, he reiterated that he was dismissed for accusations not related to his employer. He contended that he was not running the SACCO alone and that all the decisions were taken collectively by 7 officials of the Management Committee.
19. He contended that he took the loans from the SACCO because he was a member and that he qualified for the first loan he took. He admitted that he was not qualified for the second loan but contended that the executive officials accepted his request for the excess loan. He maintained that he never took any money without loan approval.
20. He admitted that his loan was being deducted from the payroll but clarified that he also paid some money through the bank. He further admitted that in 2020, he defaulted in his loan repayment due to interest rate but contended that from 2020 till the date of dismissal he continued repaying the SACCO loan. In addition, he contended that upon his suspension, the respondent was given recovery schedule by the SACCO to recover from his salary. The respondent also stopped all his loan remittances to KCB and diverted all of it to payment of the SACCO loan.
21. As regards the alleged failure to recover loans from Sacco members, he contended that he was not solely to blame since he was not running the SACCO alone. Therefore, he prayed for reinstatement to his employment.



22. On cross-examination, he admitted that he was an Assistant Accountant and later rose the ranks to become Senior Accounts Assistant. His role included overseeing finances of the University. He further admitted that he was a public officer and he was required to uphold integrity under Chapter 6 of *the Constitution*. He admitted that he never ceased being a public officer even when servicing in the Sacco or Union.
23. He also admitted that he fell within Job Grade 9-10 and therefore the Terms of service at the University filed applied to him. He contended that although the HR Policy applied to him, it was never availed to him as he was only issued with the Terms of Service.
24. He admitted that he was served with charges before attending the disciplinary hearing and they indicated the laws he was accused of violating and the particulars of the offence. The charges were three including taking excess loan which was indicated in the charge. He admitted that he never submitted any payslips to the SACCO for verification of his loan repayment. He admitted that he took excess loan contrary to the 2/3 rule which bars loan deductions beyond 2/3 of salary in the payslip.
25. He further admitted that he took the loans when he was serving as Treasurer, and also chairman of the SACCO. He contended that the SACCO By-Laws allow loan payment to be apportioned between payslip deductions and direct bank payment from his account. He further admitted that he had not finished paying his SACCO loan which was running simultaneously with KCB Loan.
26. He admitted that he never took plea in his disciplinary hearing, and that the SACCO officials attended the hearing. He admitted that he appealed against the dismissal and he attended the hearing but he was not allowed to explain his case. He appealed further to the University Council and he was heard, but the appeal was also dismissed.
27. He admitted that the Inspection Report by Murang'a Cooperative Development, was read to the SACCO AGM in his presence. He confirmed that Recommendation No.3 in the Report was that the officials including himself should not be allowed to hold office. He admitted that the report on page 7 indicated that Jane Florence Njambi Mbuthia took a loan of Kshs.175,150 on his behalf but he contended that the loan belonged to her only that she gave him the money. He further stated that he has been repaying her the money not the SACCO.
28. He further admitted that the report also recommended that the committee repays Kshs.683,149.02 but that he never challenged the Inspection Report anywhere. As regards his pension, he clarified that he was given only 50 percent of his pension because he was not yet 55 years old.
29. In re-examination, he contended that the Finance Officer is the one in charge of the University finances. He maintained that all the charges against him were related to the Sacco, and non-related to breach of his Terms of service or the HR Policy.
30. He denied owing the Sacco the sum indicated in the charge sheet and contended that the SACCO By-Laws never mentioned the 2/3 rule. He further contended that over 90 percent of the SACCO members had taken loan in excess of the 2/3 rule. He stated that he would have paid the loans by other means not just the payroll deduction, and averred that he was never issued with any notice calling him to pay any default loans.
31. He contended that page 125 of his bundle of documents indicated that the Sacco autonomy was compromised by the employer without any legal framework. He reiterated that the Sacco was an independent legal body from the respondent.
32. He admitted that the Kshs.683,149 was the amount the SACCO was likely to lose due to the malpractices and abuse of office by the officials but the SACCO has not laid any claim against him.



33. CW2, Hezron Juma Opore adopted his written statement as his evidence. He was the former chairman of KUSU Murang'a sub-branch and also member of supervisory committee of MUSACCO. He stated that he knew the claimant for 11 years since he joined the respondent and they are close friends. He admitted that Public officers are bound by Chapter 6 of the Constitution, Public Officer Ethics Act, Leadership and Integrity Act, Employment Act and the HR Policy Manual of the Employer.
34. He confirmed that he was not present when the Inspection Report was presented to the SACCO AGM by Murang'a County Cooperative Department but he saw a copy. He admitted that the report mentioned him adversely for abuse of office and it further recommended that he and other officials be barred from holding any office in the SACCO. It also recommended that they should refund Kshs.680,000 but he admitted that he never challenged the inspection report in court. He confirmed that on 13th July 2023 the Respondent served him with show cause letter.
35. He denied being one of the officials who were approving loans contending that he was not a member of the Management Committee. However, he admitted that claimant had mandate to approve loans. He confirmed that a member cannot withdraw membership before clearing SACCO loans and contended that he resigned then cleared his loans.
36. He admitted that there was disciplinary process against the claimant but he termed it unlawful process. He confirmed that the claimant was represented by National officials of their union and as such he (CW2) never attended the hearing.
37. He contended that the Inspection Report also mentioned the respondent adversely for interfering with the autonomy of the SACCO. The report never recommended that the respondent should recover loans or fire employees. He contended that the respondent had no legal mandate to deal with SACCO matters against the claimant.
38. The respondent called its Registrar Administration and HR, DR.Peace Agufana who testified as RW1. He adopted his written statement dated 24th September 2024 and produced 29 documents as exhibits. He stated that the claimant was formerly employed by the respondent in the Finance Department and rose through the ranks to Senior Accounts Assistant. He was dismissed following complaints from employees who were members of MUSACCO. The employees were threatening to go on strike because they were not getting loans as required.
39. The respondent then requested Murang'a County Cooperative Department to intervene. Inspection Report was done and report was given to the respondent to assist the SACCO to recover money. The report implicated the claimant and other officials of abuse of office and recommended that they be barred from holding Sacco office. There were also recommendation for recovery of the lost money.
40. The respondent served the claimant with show cause letter and he responded. Thereafter, he was suspended from duty and summoned to a hearing but he declined to take plea stating that the University was separate entity from the SACCO. The disciplinary committee found him guilty and recommended for his dismissal. He was then served with a dismissal letter and he appealed to the Staff Appeals Committee. He was told to take plea but he again declined and the appeal was dismissed. He further appealed to the University Council but the appeal was dismissed for insisting that the University was separate entity from the SACCO therefore could not discipline him for SACCO matters.
41. RW1, stated that the respondent was a stakeholder in the SACCO because all the members of the SACCO were employees of the University. He contended that the claimant being a public officer was



bound by Chapter 6 of *the Constitution, Leadership and Integrity Act*, Public Officers Ethics Act and the HR Policy and hence the decision to dismiss him.

42. He stated that the dismissal was fair because the claimant violated Chapter 6 of *the Constitution*, statutes and HR policy through the said breaches. He further stated that fair procedure was followed. He further stated that the prayer for reinstatement is not warranted because the claimant was fairly dismissed and he has since received all his pension.
43. On cross examination, RW1 admitted that all the three charges against the claimant related to SACCO loans taken from MUSACCO. He admitted being unaware what By-laws were used when the loans were taken and also admitted that the SACCO is a separate entity from the respondent.
44. He confirmed that the charges emanated from the Inspection Report which also observed that the respondent had interfered with the SACCO autonomy by auditing the SACCO Finances. He admitted that the Inspection Report recommended for removal of the officials from SACCO office but not termination of employment. He contended that the respondent interpreted the recommendation that the claimant was not fit to hold SACCO office to mean that he was also not fit to hold public office.
45. He contended that the claimant took excess loan because he had Kshs.140,000 shares and took a loan of Kshs.2,283,000. He contended that the claimant was only allowed to borrow three (3) times his shares and not to breach the 2/3 rule.
46. He contended that all the SACCO officials implicated by the Inspection Report were subjected to disciplinary process but some had left the service while CW2 was cleared because he was not a member of the Management Committee. He contended that during the disciplinary hearing, members of the SACCO were called as witnesses.
47. He contended that the claimant's loan applications were not brought to the attention of the respondent and that it only received instructions to deduct Kshs.1,000 without indication of the amount of loan taken. He maintained that the claimant breached the terms of his employment under the HR Policy, Chapter 6 of *the Constitution, Public Officer Ethics Act* and *Leadership and Integrity Act*.
48. RW2, was Emma Aoko Aluoch, respondent's Administrative Assistant and the current chairperson MUSACCO. She adopted her written statement dated 25th September 2024 as her evidence. She then confirmed that the claimant was former treasurer and chairman of the SACCO and that he was also the Secretary General of KUSU.
49. She was elected chairperson of the SACCO during a Special General meeting convened by the Commissioner for Cooperatives on 12th November 2021. The election followed the dissolution of the previous committee due to mismanagement of the SACCO. The officials were required to do handing over to the Commissioner but the claimant handed over a laptop, seal and SACCO certificate to the new treasurer directly. The former treasurer handed over some documents to the Commissioner in the presence of the new committee but some documents were missing including counter cheques, one payment voucher, and loan application forms for some members including his own.
50. The new officials were also given letters to change signatories in 3 accounts but they could not access one account in UNITEAS BANK. In another account the statement was from 2018 to 2021 and they were told the system had collapsed for the previous years. The Cooperative bank account had a balance of Kshs.26,000 but Kshs.2.2 million had been borrowed.
51. There were also huge unserviced loans some taken by the claimant, Jane Njambi, Hezron Oporo (CW2), and Fredrick Katunyi. Some loanees had exited before repaying the loans yet they had been cleared to exit or to get loans from other banks. Also, some officials took loans through other members.



52. After noting the abuse of office and mismanagement, the new committee lodged complaint to EACC who referred them to SASRA. After investigations, some loans were recovered but more are still pending. The Commissioner presented an Inspection Report during General meeting of the SACCO and it was read by the Auditor. The report was adopted unanimously and it raised queries touching on the claimant and former officials.
53. She further stated that the claimant was taken through disciplinary process by the respondent and he was dismissed for violating Employment Act, Leadership and Integrity Act, Public Officer Ethics Act, the University HR Policy on Staff Codes of Conduct and Ethics, and Chapter 6 of the Constitution, while serving as an official of MUSACCO.
54. She contended that the Inspection Report was undertaken by an Independent Public body under the Cooperative Societies Act Cap 490 Laws of Kenya, and the claimant never challenged it. The Inspection Report revealed that the claimant was not fit to hold public office because he failed to uphold integrity while serving as chairman or treasurer of the SACCO and instead grossly mismanaged its resources. She further confirmed that the claimant was accorded disciplinary hearing and she attended.
55. She maintained that the claimant took excess loans which he could not pay. He was supposed to pay instalments of Kshs.40,000 but he was only paying Kshs,1,000 and he is yet to clear his loans.
56. RW3, was Linus Waweru Kimani, Clerk of the respondent's School of Education and the current treasurer of MUSACCO. He adopted his written statement dated 25th September 2024 as his evidence.
57. On cross examination, he admitted that the claimant was dismissed for reasons related to the SACCO including taking excess loan which stood at Kshs.2.3 million as at June 2023. By November 2021, the loan was Kshs.2.1 million. The loans were to be serviced through check off in the payroll but when he took over he found that the claimant was paying Kshs.1,000 per month. He did not clear his loan as at the time of his dismissal.
58. He contended that the claimant committed offences against the SACCO when he was treasurer and chairman of the SACCO despite being a public officer. He contended that the chairman was the lead person in managing the SACCO and he was also the last signatory to approve SACCO loan. He contended further that the chairman handed over an empty laptop without any records while the loan application forms and approval records were also not handed over. He maintained that the dismissal was justified and fair procedure was followed by being taken through disciplinary process.

Issues for determination and analysis

59. After the hearing, both sides filed written submissions. Having carefully considered the pleadings, evidence and the submissions, there is no dispute that the claimant was employed by the respondent until 21st November 2023 when he was dismissed. There is no dispute that the claimant was dismissed for matters related to his conduct while serving as the treasurer and chairman of MUSACCO. Section 45 (1) & (2) of the Employment Act provides that:

- “(1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—



- i. related to the employee's conduct, capacity and compatibility; or
- (ii) based on the operational requirements of the employer; and
- (c) that the employment was terminated in accordance with fair procedure.”

60. Accordingly, the issues for determination in this case are: -

- a. Whether the termination was grounded on a valid and fair reason.
- b. Whether fair procedure was followed.
- c. Whether the reliefs sought are merited.

Reason for the dismissal

61. The reasons for the dismissal were communicated vide the dismissal letter dated 21st November 2023 as follows: -

“Mr. James Irungu Loise

Murang'a University of Technology

Box 75-10200

Murang'a

Dear Mr. Irungu

RE: Dismissal From Employment

You appeared before the Staff Disciplinary Committee on Tuesday, 7th November 2023 in the Senate Boardroom, where you were accorded an opportunity to defend yourself against the charges of gross misconduct as enumerated below:

- i. *Employment Act* Cap 226 No.11 (2007), section 44(4) (c)
- ii. *Leadership and Integrity Act*, No.19 of 2012, sections 10 (a), (b), (c) and (d); 11(a), (c), (d), 12(1); and 13 (a), (b), (c), (d), (e) and (f)
- iii. *Public Officer Ethics Act* No.4 of 2003, sections 9(a), (c) (g); 11(1); and 20(3)
- iv. Human Resource Policy Schedule 3 on Staff Code of Conduct and Ethics:
 - a. Section 3.24 clause 1(a), (c) (e) and (g)
 - b. Section 3.3 (1), (4) (5) and (6)
 - c. Section 3.7(1) (a) and (d)

You declined to have the charges read to you and also refused to take a plea to the charges, as per the charge sheet sent to you in preparation for your defence.

The Committee considered the evidence adduced against you, your response and found you GUILTY of the said offence, which amounted to gross misconduct. It was, therefore, decided that you be, and are hereby, dismissed from the service of the University with effect from the date of this letter. You have fourteen (14) days to appeal against the decision.”



62. According to the respondent, it learned about the conduct of the claimant from other employees who are members of MUSACCO, received Forensic Audit Report conducted on the SACCO finances and an Inspection Report from the Commissioner of Cooperatives. The reports implicated the claimant as the treasurer (2012-2017) and Chairman (2017-2021) of the SACCO ,for abuse of office, financial mismanagement, fraud, taking excess loan and running down the Sacco to the brink of collapsing. The respondent also investigated and confirmed the allegations.
63. The respondent further contended that the said conduct by the claimant and fellow officials of the SACCO ruined their relationship with other members of the SACCO who are all employees of the University. As a result, they threatened to go on strike if the University did not intervene in the affairs of the SACCO. The respondent maintained that the claimant was a public officer and he was bound to uphold integrity whether on duty or off duty as required by Chapter 6 of *the Constitution, Leadership and Integrity Act, Public Officer Ethics Act*, and the University HR Policy on Staff Codes of Conduct and Ethics.
64. However, the claimant took a hard line stand that the SACCO and the respondent are separate and independent legal entities and therefore whatever he did as an official of the SACCO was none of the respondent’s business. He maintained that his conduct as official of the SACCO was only subject to action by the SACCO under its By-laws and the University cannot exercise disciplinary control over him in matters relating to the SACCO.
65. A public Officer, Public office and Public Service are defined under Article 260 of *the Constitution* as:
- “Public Officer means-
- a. Any State officer; or
- b. Any person, other than a State officer, who holds a public office.”
- “Public office means an office in the National Government, a County Government or a Public Service, if the remuneration and benefits of the office are payable directly from the consolidated fund or directly out of money provided by Parliament.”
- “Public Service means the collectivity of all individuals other than State officers, performing a function within a state organ.”
66. On the other hand, section 52 of the *Leadership and Integrity Act* provides that: -
- “Pursuant to Article 80(c) of *the Constitution*, the provisions of Chapter six of *the Constitution* and part II of this Act, except section 18, shall apply to all public officers as if they were state officers.”
67. Article 75 of *the Constitution* provides that: -
1. “A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—
- a. any conflict between personal interests and public or official duties;
- b. compromising any public or official interest in favour of a personal interest; or
- c. demeaning the office the officer holds.



2. A person who contravenes clause (1), or Article 76, 77 or 78(2)-
 - a. shall be subject to the applicable disciplinary procedure for the relevant office; and
 - b. may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.
 3. A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.” (emphasis added)
68. The foregoing provisions clearly demonstrates that a public officer is not immune from disciplinary action by the employer for unethical conduct or breach of integrity while off duty. A public officer is bound by the above constitutional command to uphold ethics and integrity whether in his official capacity or in private spaces.
69. The foregoing view is fortified by the Schedule 3 of the respondent’s HR Policy titled STAFF CODE OF CONDUCT AND ETHICS which provides: -
- “ 3. A member of staff shall conduct his/her private affairs in a way that maintains public confidence in the integrity of his office.
 - (5) 3. A member of staff shall not neglect his/her financial obligation or neglect to settle them so as to avoid causing himself/herself pecuniary embarrassment and ridicule to the University.”
 - (6)
70. The above provision in the respondent’s HR Policy Manual forms part of the claimant’s employment contract and thereby brings his conduct, whether on duty or off duty, under the telescope and the whip of his employer. AND this constitutional reality must begin to dawn upon every public officer in whatever rank of the public service, that they cannot be the devil in their private life and an angel while on public duty. Such duality in the character of public officer demeans the public office they hold, and expose to the state organ they serve to ridicule.
71. In the instant case, the claimant was accused by his colleagues of abuse of office, mismanagement of the staff SACCO, and failure to service SACCO loans among other unethical conduct. There is no dispute that public entities investigated the allegations against the claimant and other officials of the SACCO and found them to be true. The Inspection Report by the Commissioner of Cooperatives was presented to the AGM of the SACCO in presence of the claimant and it was unanimously adopted. The report recommended that he should not hold any office in the SACCO because he had abused office, mismanaged finances and run down the SACCO.
72. The claimant never challenged the Inspection report as provided by the law. Consequently, I find that the respondent has demonstrated that it had the mandate to take disciplinary action against the claimant for violating Chapter 6 of *the Constitution, Leadership and Integrity Act* and Schedule 3 of the University HR Policy Manual.
73. The off duty unethical conduct by the claimant while serving as treasurer and chairman of the University Staff SACCO amounted to violation of the provisions of *the Constitution*, statutes and the University HR policy Manual, which amounted to valid and fair reason for terminating his employment contract at the University.



Procedure

74. Section 41 of the *Employment Act* provides that: -

- “(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”

75. The above provision is couched in a mandatory term that an employer must act fairly whenever he desires to terminate the employment of an employee. Fairness includes taking steps to ascertain the validity of the allegations made against the employee by undertaking investigations, serving the employee with a show cause letter and according him/her a fair hearing in presence of a fellow employee or union official.

76. Such process is intended to uphold the employee’s right to dignity, fair labour practices and fair administrative action. Failure to follow the said mandatory statutory procedure renders the termination unfair.

77. In this case, there is no denial that the claimant was served with a show cause letter and responded in writing. It is also a fact that he was invited to a disciplinary hearing and he was informed of the charges he was facing. He attended with union officials but he declined to take plea contending that the employer had no jurisdiction to discipline him for matters related to the SACCO.

78. However, the staff disciplinary committee considered the evidence presented by witnesses and recommended for his dismissal. The claimant appealed to the Staff Appeals Committee and his appeal was heard and dismissed. He further appealed to the University Council and the appeal was heard but again it was dismissed. In the circumstance, I find that the dismissal of the claimant was done in accordance with a fair procedure as required by the law.

Reliefs

79. In view of the finding above that the respondent has demonstrated that the dismissal of the claimant was grounded on valid reasons and that fair procedure was followed, I must hold that the dismissal was not unfair and unlawful within the meaning of section 45 of the *Employment Act*. I gather support from *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR, where the court held that:

- “14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers’ human resource manual or as set out in the *Employment Act* or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted



by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee's guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made."

80. Having found that the dismissal was lawful, I must add that the claimant is now disqualified by Article 75(3) of *the Constitution* from holding any other public office leave alone being reinstated to the one he was holding. Article 75(3) provides that:

"A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office."

81. In view of the foregoing, the claimant's primary prayers must collapse save for the claim for CBA arrears of Kshs.127,435 which was admitted by the RW1 during the hearing. Consequently, I grant the said prayer for Kshs.127,435 plus interest at court rates from the date of filing the suit. The said sum shall be paid upon the claimant completing clearance as required by section 6.8 of the respondent's Terms of service for Administrative Staff in the Senior Administrative, Catering, Clerical, Hospital, Library and Technical Categories Grades 5/6 -15 which states that: -

"Clearance certificate

Members of staff are required to produce a clearance certificate to the Director Finance before payment of final dues."

82. The claimant made an alternative prayer of payment of salary and benefits but no basis for the same was laid before the court. The prayer also lacked particulars and supporting evidence and it is therefore vague.

83. The prayer for General damages and exemplary damages are also not well founded since I have already found that the dismissal was within the four corners of the law.

Conclusion

84. I have found that the off duty unethical conduct by the claimant violated *the Constitution, Leadership and Integrity Act*, and the University HR Policy on Staff Code of Conduct and Ethics. I have also found that the said violations amounted to valid reason for dismissing the claimant from the University employment. Finally, I have found that the dismissal was done in accordance with a fair procedure and therefore the suit herein must fail except the prayer for CBA arrears of Kshs.127,435. Consequently, I enter judgment for the claimant in the sum of Kshs.127,435 plus interest as indicated above. Since the suit has substantially failed, each party shall bear own costs of the suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 23RD DAY OF JULY, 2025.

ONESMUS N MAKAU

JUDGE

Order



This judgment has been delivered to the parties via Teams video conferencing with their consent, 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.

