



**Washika v Judicial Service Commission (Cause 1080 of 2018)
[2023] KEELRC 797 (KLR) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 797 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1080 OF 2018
M MBARÚ, J
MARCH 28, 2023**

BETWEEN

RONALDINE MOCHO WASHIKA CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The claimant is an adult female. The respondent is a constitutional body established pursuant to Article 171 of *the Constitution*.
2. In a letter dated 21st April, 2009 the respondent appointed the claimant as a Resident Magistrate with a salary under scaled M4/R2: at Kshs. 35,275 with future increments to be determined in accordance with Section G.8 of the Judicial Service Staff Regulations. The position had the benefits and allowances for house allowance, responsibility allowance, transport allowance, non-practice and leave allowances. A medical cover was given covering self, spouse and children below 25 years. the claimant was also to join the Group Personal Accident Cover.
3. In a letter dated 18th November, 2011 the respondent promoted the claimant to the position of Senior Resident Magistrate with effect from 9th November, 2011.
4. In a letter dated 14th November, 2012 the respondent notified the claimant to take up duties of a Principal Magistrate with a Special Duty Allowance at 10% of her basic salary with effect from 7th November, 2012 and which would be paid for 12 months renewable subject to satisfactory performance.
5. In a letter dated 9th December, 2013 the claimant was transferred to Lodwar Law Courts with effect from 12th January, 2014.



6. On 3rd November, 2014 the respondent extended the appointment of the claimant to ensure the conclusion of the then on-going interviews for Magistrates and the continuity of service.
7. In a letter dated 15th August, 2016 the respondent notified the claimant that there were various irregularities in daily subsistence allowances (DSA) paid to her amounting to Ksh.745,280 which was noted during the audit exercise and specifically that;
 - a. The claimant had been paid from the court station Ksh.47,000 as DSA to attend the Judicial Staff Superannuation Scheme meeting from 17th October, 2014 and another amount of Ksh.60,000 to attend the same meeting from 4th and 8th June, 2014; whereas the Judicial Staff Superannuation Scheme (JSSS) is a separate legal entity and therefore charging expenses to the Judiciary was irregular and misuse of government resources and this amounted to gross misconduct;
 - b. That between August, 2014 to May, 2015 the claimant irregularly paid Kshs. 587,280 through DSA on overlapping dates thereby resulting into overpayments; and
 - c. That the claimant was paid Kshs. 51,000 for attending KMJA meeting contrary to the CRJ memo dated 5th February, 2015 prohibiting use of government resources.
8. The respondent notified the claimant that the allegations made were found to be an attempt of fraudulent misappropriation of Judiciary funds and amounted to gross misconduct and she would be subjected to disciplinary action. The claimant was then interdicted from duty and directed to hand over her duties and to file a report with the Registrar, Magistrates Court and copied to the CRJ.
9. In a letter dated 15th August, 2016 the claimant was notified of the charges she was being accused of that;
 - a. She was paid Kshs. 47,000 DSA for attending the JSSS a separate entity from the Judiciary hence irregular and misuse of government resources;
 - b. Between August, 2014 to May, 2015 the claimant was irregularly paid DSA amounting to Kshs. 587,280; and
 - c. The claimant was irregularly paid ksh.51, 000 for attending KMJA meeting against the CJR memo of 5th February, 2015 prohibiting use of government resources.
10. Upon receipt of the above letters, the claimant handed over her duties and on 20th November, 2015 the CRJ called Hon. Hannah Ndung'u the Head of Station Busia Law Courts asking her to allow the claimant to attend at her officer at the Supreme Court building.
11. On 23rd November, 2016 the claimant attended before the CRJ with the auditor present and who told the her that the auditor had raised audit queries and the only way to get out of it was to pay the monies. the claimant opted to take a loan to pay the money so as to resolve the issue. She went to the auditor's office three times to organise for the payments as agreed with the CRJ but the auditor insisted that a written communication had to issue before she could make the payment. The CRJ on the other hand directed the claimant to do a deposit of a banker's cheque and the claimant complied.
12. On 3rd August, 2016 the claimant appeared before the Judicial Service Commission (JSC) Human Resource Management Committee Comprising Hon. Justice Muchelule and Hon. Justice Warsame for a promotion interview for Principal Magistrate. The issue of the audit query arose and despite the claimant explaining the matter, two weeks later she was interdicted on 16th August, 2016 and also missed out on the promotion.



13. On 24th January, 2017 During the hearing of her appeal before the JSC, the claimant appeared before the same Commissioners that is Hon. Justice Muchelule and Hon. Justice Warsame and the same matters as had been addressed at the interview arose and the claimant defended herself.
14. The claim is that there was no fair hearing since the claimant appeared before the same panel twice and explained her case again yet they had already formed their minds against her. before the hearing, on 23rd January, 2017 the claimant had received a call directing her to attend before the JSC the next day with her representative. During the hearing, the CRJ and the auditor were never called and the chair of the panel told the claimant that they wanted to hear from her since they had already taken the complaint against her and as the employer, the claimant had no basis to challenge or question the directions issued by her superiors but noted that there was a violation of the rule of natural justice , lack of due process, the call for hearing was too short and the claimant was not allowed the opportunity to examine the complainant or any witness called by the panel.
15. The claimant also noted that the auditor's report dated 2nd December, 20115 had a recommendation that the claimant should pay the monies. Some clerks from Lodwar Law Courts who were under the claimant had similar issues and were asked to pay and got reinstated back to employment but the claimant was dismissed from service. Being the officer in charge, the claimant had taken responsibility and paid the money.
16. The respondent then dismissed the claimant from employment on grounds of gross misconduct and the reasons that she committed an irregularity by drawing funds from the Judiciary so as to attend KMJA and JSSS meetings which are entities outside the Judiciary and despite being advised by the CRJ not to do so. The respondent had also found 7 instances when the claimant had received overlapping DSA which was in misappropriation of funds and hence pursuant to Article 172(1) (c) of [the Constitution](#) and Section 25(11), Part IV Third Schedule of the [Judicial Service Act](#), the respondent had resolved to dismiss the claimant from the service through letter dated 22nd February, 2017.
17. The claim is that the summary dismissal was with malice on the grounds that the claimant was denied the chance to be accompanied by her representative at the disciplinary hearing, there was no evidence served before the hearing, the documents relied upon were never issued, no witnesses were called or the claimant allowed the opportunity to hear the complaint made against her. this is despite the fact that the claimant had already been surcharged and paid the monies that were being claimed upon instructions from the CRJ and per the auditor recommendations. The 7 chares referenced in the letter of summary dismissal relating to overlapping DSA were never outlined to allow the claimant the opportunity to respond and the examinations she gave during the hearing were never taken into account.
18. The decision leading to summary dismissal was bad for procedural impropriety and contrary to Section 24(5) of the Third Schedule to the [Judicial Service Act](#). this has led to loss and damage and the claimant is seeking the following;
 - a. A declaration that the respondent unfairly terminated the claimant's employment;
 - b. A declaration that the respondent dismissed the claimant unlawfully, unfairly and is inhumane;
 - c. An order of reinstatement with promotion to Principal magistrate as the claimant was at the verge of promotion;
 - d. 12 months' compensation for wrongful termination of employment;



- e. General damages for contravention of fundamental rights and freedoms as guaranteed in the Constitution; and
 - f. Costs of the suit.
19. The claimant testified in support of her claim that while serving at Lodwar Law Courts as the acting Principal Magistrate where she was entrusted with higher duties and performed very well but through letter dated 15th August, 2015 the respondent notified the claimant of various alleged irregularities in the payment of DSA amounting to Ksh.745, 280 to which the claimant addressed with her boss the CRJ and the auditor and repaid. On 23rd January, 2017 the claimant was called on the phone to attend disciplinary hearing on 24th January, 2017 the next day which she did despite the short notice and where she was asked to give her explanation but there was no witness or complaint or witness called for her to cross-examine. The records relied upon by the respondent were not produced and the various officers at the Lodwar Law Court involved in the matter were reinstated but the claimant was dismissed from the service.
20. That the CRJ called the claimant to her officer and also invited the auditor Mr Wanyama to take her through the audit and the questions which had arisen following alleged overlapping payments of DSA on various dates and then the CRJ advised the claimant to pay back the monies which she did taking into account this was her boss and could not challenge the same. The claimant testified that she had at this time applied for a loan which she used to pay the sum of ksh.745, 280 and wrote a letter forwarding the payment and was issued with a receipt. She was then surprised to see the same matter being opened up at the interview for promotion and again forming the cause for disciplinary hearing and eventually used for summary dismissal without taking into account that she had paid the monies.
21. The claimant also testified that when she attended an interview for promotion as a Principal Magistrate on 3rd August, 2016 the same panel hearing her disciplinary matter was the same and hence had already made an opinion on her case and the disciplinary hearing lacked any due process and led to unfair summary dismissal and the orders sought should issue.

Response

22. In response, the respondent's case is that the claimant was first employed as a Senior Resident magistrate on 1st July, 2009. The claimant served in an acting capacity as a Principal Magistrate from 14th November, 2012 until her interdiction and subsequent dismissal following a case of gross misconduct where she was found culpable of financial impropriety. Such a case imputes her integrity as a judicial officer.
23. The claimant was interdicted in accordance with Regulation 15, part IV of the Third Schedule to the Judicial Service Act which delegates to the Chief Justice the power to interdict, suspend and administer a severe reprimand to a judicial officer.
24. Upon the notice to show cause why disciplinary action should not be taken through charge dated 15th August 2016 the claimant failed to reply as directed but instead wrote letter dated 24th September, 2016 attaching a government receipt No.9331201 dated 31st September, 2016 as evidence of a refund of ksh. 745,280 from her account.
25. The charges facing the claimant were presented to her as required under the law and JSC Regulations and on the noted misconduct, the sanction of summary dismissal was justified. The power to discipline an officer is vested with the respondent and the claimant's good performance while at Lodwar law Court cannot absolve her for the gross misconduct on a case of financial impropriety.



26. The promotional interview where the claimant attended and the disciplinary hearings are two independent processes and the fact that the claimant was questioned during the interview did not preclude the respondent from commencing disciplinary proceedings and questioning her on the issues raised in the audit report. The issue of double jeopardy does not arise because the promotional interview was for a given purpose whereas the disciplinary process was addressed on the started charges which had been brought to the attention of the claimant. The two processes were independent of each other.
27. Upon the interdiction of the claimant, the charges made against her were outlined for more than 8 months but she failed to give a response. Before the hearing, the claimant was called and a letter of invitation sent to her. the claimant had been supplied with the audit report and was allowed to comment on it and the auditor's role at the disciplinary hearing was to table the report. The CRJ was not a complainant or a witness in the case so as to be called at the hearing since the matter arose out of audit findings which revealed financial impropriety. Before hearing the claimant had been presented with the draft audit findings, she made her responses and input before the same were incorporated in the final audit report.
28. The letter terminating employment gave reasons and the appeal lodged was dismissed and the decision communicated to the claimant. The respondent adhered to the provisions of Article 173 of *the Constitution* and Part IV of the Third Schedule to the *Judicial Service Act* by according the claimant a fair hearing, there was an admission of the charges made with a refund of the monies irregularly paid, and the claimant made her oral submissions and the allegations made were never challenged. The respondent, being the body allowed to discipline judicial officers had issued the claimant with charges 8 months prior to the disciplinary hearing, there was no response and the fact of the claimant having attended a KMJA meeting and used DSA against the directions of the CRJ was not contested, the 7 charges of taking DSA on overlapping events was not contested and that the claimant attended JSSS meetings and took DSA which was not a judiciary activity. These facts were not contested.
29. The claimant, as head of station was expected to reconcile accounts periodically since the misappropriation issue happened over a period of 1 year, she was aware of her conduct. Such conduct went contrary to what was expected of the claimant in her rank and responsibility as required under Article 73 and 232 of *the Constitution* which conduct was devoid of personal integrity, transparency and accountability. The admission of receiving the allowances and confirmation by the auditor that the payment of allowances was irregular is proof of the charges made against the claimant. With sufficient diligence, the claimant ought to have known that KMJA and JSSS are entities outside the Judiciary and should not have funded her attendance by use of DSA from the Judiciary. Despite the memo from the CRJ not to use Judiciary funds for such attendance, the claimant went ahead and used the same contrary to policy and code of conduct and ethics.
- The claims made should be dismissed with costs.
30. In evidence, the respondent called Ronald Wafula Wanyama in the Judiciary Audit Department a division of Risk and Management who testified that he is in charge of audit and reviews transactions with a view to give advice on compliance and controls as prescribed. With regard to the claimant, on 21st and 25th October, 2015 he did the audit of Lodwar Law Courts and in his findings he found that the claimant had made irregular payments to herself to attend KMJA meeting which the CRJ had issued a memo against such expenditure, there were overlapping DSA payments to the claimant over meetings which resulted in double payments and when the matter came to the attention of the CRJ the claimant was called and taken through these payments, the draft audit report was discussed with



- her. the claimant also held a meeting with the auditor in his office and the same matters addressed with her. All relevant documents were shared with her with the vouchers on the overlapping payments.
31. Mr Wanyama also testified that the claimant offered to refund these irregularly paid monies and since the Judiciary does not receive funds without a purpose, the claimant was sent to the CRJ for directions and later she made a payment through Bankers Cheque in refund.
 32. Later Mr Wanyama was invited to the JSC to submit his report and findings. The claimant was not present nor was he cross-examined.
 33. the respondent also called Hon. Winfrida Mokaya the Registrar, JSC who testified that she is conversant with the matter and has authority from the respondent to testify that the claimant joined the judiciary on 1st July, 2009 and her last position was Senior Resident Magistrate serving at Busia Law Courts. In the year 2015, while the claimant was serving in Lodwar Law Court as the acting Principal Magistrate, an internal audit was carried on Revenue, Deposits and Expenditure Management by the Judiciary Audit and Risk Management Department and which revealed irregularities in the payment of DSA to the claimant. In line with the audit report and the mandate of the respondent, charges were served upon the claimant through letter dated 15th August, 2016 on the grounds that;
 - a. She was paid ksh. 107,000 to attend a JSSS meeting on two occasions yet the JSSS is a separate legal entity and therefore charging the Judiciary was irregular;
 - b. Between August, 2014 to May, 2015 the claimant irregularly paid Kshs. 587,000 as DSA on overlapping days resulting in overpayments; and
 - c. The claimant received Ksh.51, 000 for attending KMJA meeting contrary to CRJ memo dated 5th February, 2015 prohibiting use of government resources for such function.
 34. Hon. Mokaya testified that the claimant failed to respond to the charges made against her and in her letter dated 2nd September, 2016 she only attached receipt No.9331201 dated 31st August, 2016 of Ksh.745, 280 on account of payment of the monies she had received irregularly as pointed out in the audit report.
 35. Upon receipt of the letter and payment, the JSC resolved to invite the claimant for an oral hearing of her disciplinary case. At the time, the claimant was aware of the charges made against her, she was called in advance and the letter of invitation dispatched to her address. The hearing proceeded on 24th April, 2017 and the claimant was in attendance and she responded to all matters addressed with her and admitted that she was sorry that public funds had been misused under her watch facts which the respondent treated as admission of the charge and took into account the claimant had since refunded such monies to the Judiciary.
 36. The respondent considered all matters and the hearing of the claimant and established there was gross misconduct through irregular receipt of payments which was not disputed and despite the fact of the claimant refunding the same, such gross misconduct was not justified and hence summary dismissal was found appropriate. As the officer with responsibility to account for public funds at her station, the claimant failed the constitutional threshold under Article 73 ad 232 and the payment of overlapping DSA were too many and could not have been mere coincidences and on these grounds, the claims made are not justified and should be dismissed with costs.
 37. At the close of the hearing both parties filed detailed written submissions which are put into account.
 38. The claimant submitted that under Article 47(1) of *the Constitution* and the *Fair Administrative Action Act*, the claimant was entitled to are administrative action when the respondent was addressing her case.



- She was not issued with any complaints made against her or allowed fair hearing or the opportunity to examine any documents and witnesses. Under Section 43 of the *Employment Act*, 2007 (the Act) there were no justified reasons to terminate employment which resulted in unfair and unlawful dismissal.
39. Under Section 24(5) of the Third Schedule to the *Judicial Service Act*, an employee who is invited to a disciplinary hearing should be allowed a fair chance to examine and have access to any documentary evidence shared which was not the case for the claimant. She was sanctioned over matters not addressed at the hearing and no witness was called in her presence to give her a chance to examine him or her.
40. In the case of *Rebecca Ann Maina & 2 others v Jomo Kenyatta of Agriculture and Technology* [2014] eKLR the court held that internal disciplinary proceedings should allow the employee a chance to respond to the allegation made against them. In the case of *Shollei v Judicial Service Commission & another* [2022] eKLR the court held that administrative procedure applicable in disciplinary proceeding before the JSC should abide the due process under Article 47 of *the Constitution*. In this case, the claimant was denied internal fair administrative action leading to unfair termination of employment.
41. The respondent submitted that the summary dismissal of the claimant was fair and justified pursuant to Section 45(2) of the Act as held in the case of *Naima Khamis v Oxford University Press (EA) Limited* [2017] eKLR and in the case of *Kenfreight (EA) Limited v Benson K Nguti* [2016] eKLR the court held that where the employer is able to demonstrate that termination of employment is for a fair reason, then this is valid and justified. The claimant was found to be of gross misconduct upon irregular payment of monies to herself for various attendances which were overlapping or not allowed. When the matters were addressed with her by the CRJ and the auditor, she repaid back but that did not address the gross misconduct as held in *Kenya Revenue Authority v Reuvel Waithaka Gitahi & 2 others* [2019] eKLR.

Determination

42. In a letter dated 15th August, 2016 the respondent raised with the claimant with three charges that;
1. She was paid from her court station ksh. 47,000 as DSA to attend the JSSS meeting on 17th and 26th October, 2014 and Kshs. 60,000 to attend the same activity on 4th and 8th June, 2014 which JSSS is a separate entity from the Judiciary which was charged for such expense;
 2. Between August, 2014 and may, 2015 the claimant was irregularly paid ksh. 587,280 for DSA on overlapping days resulting in overpayments; and
 3. The claimant was paid Kshs. 51,000 to attend KMJA meeting contrary to the CRJ memo of 5th February, 2015 prohibiting use of government resources.
43. In the letter, the claimant was directed by the respondent as following;
- Therefore, take Notice that you are required to give a written response to the charge within 21 days from the date of this charge.
44. On the same date, 15th August, 2016 the respondent interdicted the claimant over the same charges with further details and particular that;
- ... these allegations are an attend to fraudulently misappropriate Judiciary's funds and amount to acts of gross misconduct that must be subjected to disciplinary action. ...



45. With these two letters, the claimant was notified of matters facing her as being grave and related to matters and acts of gross misconduct that must be subjected to disciplinary action and for this reason she was required to give her responses within 21 days.
46. On record, the response given by the claimant is through letter dated 2nd September, 2016. The letter was an acknowledgement of receipt of the communications issued and the matter of handing over and with it attached a payment of Ksh.745, 280 to the Judiciary, the amount said to have been irregularly paid to her.
47. In an undated letter of the respondent received at Busia Magistrate's Court on 20th January, 2017 the claimant was invited to attend before the JSC Human Resource Management Committee for hearing of her disciplinary case following her response of 2nd September 2016 with instructions that;
- ... you will be answering to charges communicated to you in the show cause letter.
- The date of the hearing will be on 24th January, 2016 ...
- A follow up letter issued with regard to the disciplinary hearing on 24th January, 2017.
48. The claimant testified that on 23rd January, 2017 she was called over the phone and advised to attend disciplinary hearing which she did.
49. On the 24th January, 2017 before the JSC Committee hearing the claimant, the presiding chairperson read the 3 charges to the claimant who confirmed that she was aware and was allowed to respond and part of it was that;
- ... I told the CRJ I am ready to reimburse that money. So the CRJ gave me an ok to reimburse. I came with cash to the Auditor. The Auditor told me he cannot accept cash, go and wait for a letter. That is how it will give you the reference and everything of how you will reimburse that money. So I went back to the station only for the letter to come and it was interdiction. Since I demonstrated remorse and I was willing to pay I was told to do it in banker's cheque, I did it and I was issued with a receipt. ...
50. The chairperson further engaged the claimant on the monies refunded and the claimant accepted that she indeed did a refund of Kshs. 745,280 to the judiciary and that;
- ... I am sorry that – Actually, I used to have four courts, I also used to be the DR, I did not follow strictly what the accountants used to bring to sign and that was public money that got lost, that got misused. I am very sorry about that.
- ...
51. What is clear to this court is that on the charges notification, on the 21 days the claimant was given to respond, the only matter that she addressed was to refund the monies said to have been irregularly paid to her. With the admission and payment of such monies, the notice that this amounted to gross misconduct, a sanction should have issued. I take it, for completeness, the disciplinary hearing before the JSC Committee was meant to seek clarifications from the claimant. The fact that her response to the charges was to refund these monies which she justified as being the leaders, she was responsible and therefore took account of her office and hence paid up the monies cannot justify a claim that the respondent acted with malice.
52. In employment and labour relations, part of the motions of Section 41 of the Act is to allow the employer to bring to the attention of the employee any matter of misconduct so as to allow the



- employee the chance to defend herself by making all necessary representations. Even in a case of gross misconduct in terms to Section 44 of the Act, the same motions of Section 41(2) apply where the employee who is notified of her actions of gross misconduct should make her representations before a sanction can issue.
53. The claimant opted to respond to the 3 charges made against her by refunding the sum of ksh.745, 280 to the respondent. she apologised for these overpayments, overlapping payments and irregular payments. Without any responses to discount or challenge the allegations made against her, with the refund, the motions of taking the claimant through a disciplinary process was just but to clarify that indeed she understood and appreciated the matters facing her as well addressed by the JSC Committee Chairperson.
 54. The motions of Section 41 of the Act are not for the employer to address only. On the one part the employer must issue the employee faced with allegations of misconduct or gross misconduct notice with an outline of the allegations or charges. On the other part, the employee issued with such notice and given time to respond must seize the moment and give her side of the story with an explanation in response or defence.
 55. This motions are important because an employee who squanders the opportunity to respond and give responses and defence wastes the opportunity and cannot salvage it by filing suit to urge what ought to have been addressed at the shop floor. In the case of *Ngunda v Ready Consultancy Limited (Civil Appeal 129 of 2019) [2022] KECA 577 (KLR) (4 February 2022) (Judgment)* the court held that an employee who was invited to attend disciplinary hearing and failed to do so to defend himself wasted the opportunity and cannot claim there was unfair termination of employment pursuant to Section 45 of the Act.
 56. In the case of *Carolyn Munala v Hoggers Limited [2018] eKLR* the court held that;

An employee who squanders the internal grievance handling mechanism provided by an employer cannot come to court and say, “I refused to talk with those people and therefore I was not heard, order them to pay me.” It is not the role of court to supervise the internal grievance handling processes between employers and employees. The role of the court is to ensure that such processes are undertaken within the law.
 57. And in the case of *Chief Justice and President of the Supreme Court of Kenya & another v Khaemba (Civil Appeal 522 of 2019) [2021] KECA 322 (KLR) (17 December 2021) (Judgment)* the court had a similar proposition that an employee who squanders the internal grievances handling mechanisms provided by the employer cannot claim that he or she was not heard.
 58. Similarly, in this case, the claimant was issued with notice of the charges she faced, she was allowed 21 days to reply, there was no direct response to the charges in response or explanation of the matters outlined save to refund the monies said to have been irregularly paid to her. the matter ought and should have stopped with that admission with a sanction as indicated in the notice of 15th August, 2016 and the respondent, in an effort to ensure completeness of the process allowed her oral hearing and where she confirmed to have been irregularly paid monies from the Judiciary for attending to JSSS matters facilitated through Judiciary funds, attending meeting that were overlapping with double allocation of DSA and also attending KMJA meetings funded by the Judiciary despite this being a separate entity and notwithstanding the CRJ having issued a memo of 5th February, 2015 which prohibited use of government resources.
 59. The court cannot fault the process adopted by the respondent. There being no responses to the allegations made against the claimant, the sanction issued can equally not be faulted.



60. The order of reinstatement on the findings above cannot issue. Compensation is not available in the circumstances of this case.

61. Accordingly, the claim herein is found without merit and is hereby dismissed. Each party shall bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 28TH DAY OF MARCH, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... **and**

