



**Odanga v CIC Life Assurance Limited (Cause 401 of 2019)
[2023] KEELRC 1282 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1282 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 401 OF 2019**

J RIKA, J

MAY 31, 2023

BETWEEN

BARASA KEVIN ODANGA CLAIMANT

AND

CIC LIFE ASSURANCE LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 21st June 2019.
2. He states that he was employed by the Respondent on 18th August 2016 as Head of Sales-Corporate, earning a gross monthly salary of Kshs. 620,000.
3. He headed the corporate distribution channel and reported directly to the Managing Director, Ezekiel Owuor. He was diligent and was commended, and was often assigned tasks beyond his normal duties. On one occasion he was assigned the task of developing a 5-year strategic plan for the Respondent.
4. He was an insurance industry practitioner with over 18 years' experience, and was consulted by various colleagues at different levels, regarding existing and prospective clients of the Respondent. He was consulted by the General Manager, Jack Kionga; Managing Director, Ezekiel Owuor; and Group Chief Executive Officer, Tom Gitogo. It was common for him to engage colleagues from the Respondent's 5 distribution channels- corporate, cooperatives, bancassurance, schools and religious institutions, and Sacco assurance. It was normal for staff to be involved in other lines of business.
5. On 21st January 2017, the Claimant received a text message from the Managing Director Owuor, asking him to contact Bandari Sacco Chairman, and assist in securing business from the Sacco. This was despite the fact that the Sacco fell under the cooperatives distribution channel.
6. The Claimant contacted the Sacco's Finance Officer, Derrick Majani. Majani informed the Claimant that the Sacco had already appointed an intermediary known as Nygel Insurance Agency, and all



- communication on the matter should be directed the intermediary. The role of an intermediary in the insurance industry is to assist in the placement and purchase of insurance on behalf of the insured, as well as provide services to insurance companies and consumers that complement and insurance transaction.
7. The Claimant contacted the intermediary. The intermediary informed the Claimant that he would like to have the premium offered at a discounted amount. The Claimant relayed the information to James Wamae, Respondent's Assistant Underwriter. It was the role of the Underwriter, to prepare quotations. Wamae and the intermediary discussed the matter without undue influence from the Claimant.
 8. As Wamae was reviewing the renewal terms, the intermediary got back to the Respondent, with the information that 2 other Insurance Companies, Pioneer and APA, were willing to offer better terms for the business. The Claimant confirmed from his contacts that indeed, the 2 Insurance Companies were offering better terms to Bandari Sacco. He appraised Wamae accordingly. Wamae was at liberty to reject the request for discount. Similar previous requests on transactions involving Bamburi and Kenya Airways had been rejected by Underwriters.
 9. The intermediary requested that the Sacco be allowed to make payment for credit life and other lines of business, which were not within the Respondent's business. The premiums for these other lines of business would be refunded to the intermediary. The Claimant informed the intermediary that this was not accepted. The Sacco turned hostile to the Claimant on this account.
 10. The Claimant informed the Managing Director about this turn of events, who instructed the Claimant to keep off the Sacco. The Claimant complied with the instructions. This was the last involvement the Claimant had with the Sacco.
 11. He nonetheless came to learn that the Respondent approved discount as sought by the intermediary, and policy premiums were remitted on or about 26th April 2017. By this time the Claimant had long ceased involvement in the matter.
 12. In mid-2017, the Claimant was informed by the Respondent that the Respondent was investigating whether any fraudulent actions could have taken place, in securing the deal with Bandari Sacco. He was interviewed by the Investigator. The Respondent also undertook an audit. The Claimant was given a chance to respond to the audit report. His response did not include anything touching on Bandari Sacco.
 13. He was sent on compulsory leave, on or about 28th November 2018, to pave way for investigations. It was alleged that preliminary investigations indicated there could have been impropriety in securing the business. Before he was sent on compulsory leave, no issue was raised about the transaction by his immediate Supervisor, in accordance with the Respondent's Human Resource Policy and Procedures Manual.
 14. He received letter to show cause why disciplinary action should not be taken against him, dated 16th January 2019. He was alleged to have circumvented the Respondent's laid down procedure, by engaging the Sacco without following the proper channels and coercing the Respondent's Officers to offer policy discount to Bandari Sacco. He was not furnished with the Investigations Report to support the allegations. At no point during the investigations was he called upon to comment or provide information to the investigator.
 15. The letter to show cause contained matters that had been investigated more than 1 ½ years before. The Claimant had been fully exonerated, and the file closed. He responded to the letter to show cause.



16. He was invited to disciplinary hearing on 1st February 2019. He explained that his engagement with Bandari Sacco was in accordance with standard practice; he did not contravene any specific procedure; he did not coerce any Officer; and the transaction was carried out consultatively. The Disciplinary Committee however, did not consider his explanation and had already decided to end the Claimant's career. He acted on express instructions of his controlling Manager to engage Bandari Sacco. He had the authority of the Managing Director.
17. He was issued termination letter on 11th February 2019. He avers that termination was unfair, and in contravention of the Human Resource Policy Manual, the *Employment Act* and Article 41 of *the Constitution*. The Acting Managing Director was the General Manager Operations, under whom the Underwriting Manager worked. He ought not to have sat in the Disciplinary Committee. He was involved with the investigations.
18. He prays for Judgment for: -
 - a. Declaration that termination was un-procedural, unfair, unlawful and unconstitutional.
 - b. Permanent injunction restraining the Respondent from head-hunting, advertising, recruiting a new Employee to replace the Claimant.
 - c. Revoking or Annuling of the termination letter and immediate reinstatement of the Claimant without loss of salary and benefits.
Alternatively,
 - d. Compensation for unfair termination at Kshs. 7,440, 000.
 - e. Exemplary damages.
 - f. Damages for constitutional violation.
 - g. Interest from the date of termination till payment is made in full.
 - h. Costs.
19. The Respondent filed its Statement of Response on 2nd October 2019. It is conceded that the Respondent employed the Claimant. He was subject to the contract and the Human Resource Manual. He was not under his contract, responsible for the Respondent's cooperatives division. He had an obligation to involve either the General Manager or any other Sacco Relationship Officer from the cooperatives division, in dealing with cooperatives business. He failed to do so, in dealing with Bandari Sacco. The Managing Director, Owuor, did not prevent the Claimant from involving the General Manager and Sacco Officers.
20. Under The Group Life Underwriting Procedure Manual, 2016 renewal involved analyses of all the salient features of the scheme, including premiums paid, claims incurred and analyses would be passed to the Assistant Manager Underwriting or Underwriting Manager depending on the authority limit for the decision.
21. Derrick Majani, Bandari Sacco's Finance Manager, wrote an email dated 23rd January 2017 to the Claimant, regarding renewal. He indicated that the total insurance cost would be Kshs. 56 million. The entire amount would be paid to the Respondent. The Respondent would retain Kshs. 36 million, and release the rest to the intermediaries, to cater for other classes of insurance with other underwriters.
22. The Claimant then alleged that intermediary Nygel Insurance Agency, had asked for discount on 25th January 2017. He did not give evidence in writing of this request from Nygel. The request was alleged



- to have been made the same day Nygel received Kshs. 56,435,535, out of which Kshs. 36,435,535 constituted loan guard premiums.
23. The Claimant caused a quotation to be prepared for annual premium of Kshs. 32,019,107, occasioning the Respondent loss in excess of Kshs. 4 million. His last involvement with Bandari Sacco was not 3rd February 2017, as pleaded; he wrote an email dated 26th April 2017, advising that the discounted quotation was acceptable, and requested to be furnished with a debit note as Bandari Sacco wanted to make premium payments that morning.
 24. Investigations on the transaction ensued. The Claimant was interviewed. He was sent on compulsory leave on 28th November 2018. Preliminary investigations showed there could have been irregularity in the transaction. The Claimant was fully aware of the allegations against him. He circumvented Respondent's policy on underwriting. This occasioned the Respondent loss to the tune of Kshs. 4.4 million. He alleged to have market intelligence to warrant discount. The Respondent and Bandari Sacco already had an agreement in writing on the premiums.
 25. His behaviour amounted to gross misconduct. The Respondent had valid reason to terminate the Claimant's contract, under Section 43 and 44 [4] of the *Employment Act*, 2007. Termination was fair. The Claimant was granted adequate opportunity to explain himself. The Respondent lost trust and confidence in the Claimant. His role as Head of Sales- Corporate has since been merged with Micro-Department and the new role, Head of Sales- Corporate and Micro, assigned to another Officer.
 26. The Respondent prays that the Claim is dismissed with costs.
 27. The Claimant filed a Reply to the Statement of Response, on 19th December 2019. He reiterates that he received instructions from the Managing Director to engage Bandari's Finance Manager, Majani. He did not act irregularly and only offered support services to the cooperatives department. The Underwriting Manual was never shared with the Claimant. The Underwriting Department had the final say, and was not bound by any views from the Claimant. The Assistant Underwriter James Wamae was privy to the discussions which led to him granting Bandari Sacco a discount. The process of reorganization of roles commenced while the Claimant was still in employment. The Respondent used the allegations of fraud, to get rid of the Claimant, instead of carrying out a redundancy process.
 28. The Claimant gave evidence on 29th June 2022 and 18th November 2022 when he closed his case. Maureen Magoma, Respondent's Business Partner gave evidence on 18th November 2022 closing the hearing. The Claim was last mentioned on 21st February 2023, when the Parties confirmed filing and exchange of their Closing Arguments.
 29. The Claimant adopted his Pleadings, Witness Statement and Bundle of Documents on record [exhibit 1-21], in his evidence-in-chief. He pointed to a message at page 33 from his Managing Director, instructing him to engage Bandari Sacco. He narrated that he swung into action as instructed by the Managing Director. He explained that the Client became hostile to him. The Claimant did not participate in giving of the discount. He did not work in the underwriting business. He only gathered market intelligence. Wamae reported to the General Manager, not to the Claimant. The Claimant did not advise or coerce Wamae to give discount.
 30. Kshs. 4.4 million alleged to have been lost was not a correct amount. The initial quotation was Kshs. 36 million. The discounted one was Kshs. 32 million. The initial quotation had an administration fee of 20% and commission of 8%. The revised quotation had a lower administration fee of 12%. In the end the administration fee was reduced by 8%. The difference was about Kshs. 618,000. The figure of Kshs. 4.4 million was not correct. The Respondent had an actuarial section. If it was going to make a loss,



it would not have approved discount. The Claimant did not record a statement with the investigator. He never saw the Investigation Report.

31. Cross-examined, he told the Court that he had 18 years' experience. The Respondent had 6 divisions. They were headed by different Officers. Head of Bancassurance at one time undertook Claimant's task in relation to pension business. Head of Retail could refer certain business to the Claimant. He did not take the tasks away from the Claimant. Head of Churches and Schools Department took away some business from the Claimant's Department. This is because Churches and Schools were also considered to be corporates. The Claimant did not engage with Sacco business irregularly. He only acted in accordance with the instructions of the Managing Director.
32. He received the letter to show cause dated 16th January 2019. He was offered the opportunity to respond. He was invited to disciplinary hearing. He was advised of his right to have the company of a colleague at the forum. He did not have one. Hearing proceeded. He did not complain that he was not supplied the Investigations Report at the hearing, or in responding to the letter to show cause.
33. He had a right of appeal. He did not exercise it.
34. The reasons for termination were stated – fraud and circumvention of underwriting policy. It was said that the Claimant did not show evidence of market intelligence. He knew Derrick Majani before the transaction. Majani was involved in negotiations. He said that the Respondent would receive Kshs. 36 million. Intermediary mentioned the discount. There was no policy on discount handling. The Claimant did not find it necessary to have the discount request put in writing. The Client would have taken flight, if there was no discount. The Claimant had received 2 cautionary letters on the ground that he was deemed harsh on his subordinates. He was paid notice by the Respondent, after he cleared.
35. Redirected, the Claimant told the Court that instructions issued to him from the Managing Director Owuor. He would receive instructions from other Departments to pursue business. This was normal.
36. Maureen Magoma relied on her Witness Statement, Pleadings and Documents [exhibit 1-8], filed by the Respondent in her evidence-in-chief. She told the Court that the Claimant was summarily dismissed. Dismissal was commuted to normal termination. The Claimant was paid notice.
37. Cross-examined, she told the Court that she was not part of the Investigation Team. The Investigation Report was confidential. She did not see the entire Report. She did not know the individuals who investigated. She knew that the Respondent had an investigations section.
38. She was familiar with the allegations made against the Claimant. Commission is the incentive given to the salesperson who brings in business. She did not know what administration fee was. She did not know whether Nygel was the intermediary for Bandari. She thought the Claimant instructed Wamae to write the quotation. Wamae did not report to the Claimant. He reported the General Manager. Other persons, including actuaries were involved in determining what a fair premium would be. Head of Sales- Corporate would not generate quotation, but could give information on the business.
39. Magoma was part of the Disciplinary Committee. A redacted version of the Investigations Report was availed at the hearing. A full one could not be availed, because it was confidential. She was not sure whether other Officers were dismissed.
40. The email from Wamae to the Claimant, dated 21st January 2017, alludes to discussions involving the quotation. Magoma did not know if discussions took place. The General Manager Jack Kionga, who supervised Wamae, knew about the transaction. Premiums would be sent to the agent, who would pay the Respondent. Discount was given by the Respondent. Magoma was not aware about discount policy at the Respondent.



41. Market intelligence is any additional information, that touches on the business. The Witness did not know what the Claimant was expected to do, to prove market intelligence. She did not know what particular clause in the Underwriting Procedure, the Claimant violated. She did not know if the Investigation Team, faulted the screenshots of messages given to the Claimant by the Managing Director, issuing instructions of the Bandari Sacco business. It was not contested that he received the instructions. Business with Bandari Sacco was finalized on a date Magoma did not recall. There was no audit report, which concluded that the transaction had anomaly.
42. Magoma did not see any preliminary report, referred to in the letter placing the Claimant on compulsory leave. Wamae is still working. He heads underwriting. Business restructured and job titles may have changed.
43. The Disciplinary Committee was supposed to prepare a report after the hearing, and submit to the Chief Executive Officer. The report was prepared in the form of minutes of the disciplinary hearing. The Committee recommended summary dismissal of the Claimant. The Committee did not get evidence that discount had been sought. She did not know whether Investigators took a statement from Nygel. The Insurance Regulatory Authority has provision for fraud investigations. The Respondent dealt with fraud internally. It was not escalated to the Regulator.
44. Redirected, Magoma told the Court that Investigations were carried out internally. The Claimant participated in the investigations He did not ask for a copy of the Investigation Report at the hearing.
45. The issues are, whether termination of the Claimant's contract was procedurally fair; whether it was based on valid reason[s]; and whether he merits the remedies pleaded. The relevant law is under Sections 41, 43, 45, 47 and 49 of the [Employment Act](#), read with Section 12 of the [Employment and Labour Relations Court Act](#).
46. The Claimant has extended his Claim to constitutional litigation, but the Court would decline that extension from the outset. The Evidence and the Pleadings before the Court, clearly point to a contractual dispute, which is amenable to contractual and statutory remedies. There is nothing to warrant the invocation of the organic law, in this dispute.

The Court Finds:-

47. The Claimant was employed by the Respondent as Head of Sales-Corporate, in CIC Life Assurance, a subsidiary of CIC Insurance Group. He was employed effective from 1st September 2016.
48. His contract bound him to report to the National Sales Manager, a position he says, did not exist.
49. He instead reported directly to the Managing Director, Ezekiel Owuor.
50. He was alleged to have engaged in fraud and deliberate circumvention of company underwriting procedures, and heard at a disciplinary meeting, held on 1st February 2019.
51. His contract was terminated on 11th February 2019. The reasons were as stated above. The Respondent expressed its view also, that it had lost trust and confidence in the Claimant. It was explained that the Claimant committed, or was reasonably suspected of having committed, a criminal offence to the substantial detriment of his Employer, or Employer's property, in the language of Section 44[4] of the [Employment Act](#).
52. Fair procedure. The Claimant was sent on compulsory leave, on 28th November 2018 to pave way for investigations into the allegations of fraud and circumvention of company underwriting procedures.



- He continued earning full salary for the period of compulsory leave. He was advised compulsory leave was for a period of 30 days.
53. Clause 11.5.1.1. of the Respondent's HR Policy and Procedures Manual [Manual] regulated suspension. It allowed for suspension for up to 3 months with full pay, to allow for investigations.
 54. Compulsory leave was extended for another 30 days, to end on 20th December 2018.
 55. The Claimant was issued a letter to show cause why he should not be disciplined, regulated under clause 11.5.2 of the Manual, dated 16th January 2019. The letter is detailed, and called on the Claimant to reply, by 11.00 a.m. on 24th January 2019.
 56. The Claimant complied, replying through his letter dated 23rd January 2019, which is equally detailed.
 57. He was invited to a disciplinary hearing through a letter dated 24th January 2019. Hearing was on 1st February 2019. The Claimant was advised of his right to be accompanied by a colleague of his choice in terms of Section 41 of the *Employment Act*, and clause 11.5.3 of the Manual.
 58. The Claimant agreed in his evidence before the Court, that he was heard. He was not supplied with the Investigation Report, but conceded, and the minutes of the meeting on record show, that he did not request for the Report. He states that he did not raise any objection concerning the unavailability of the Report when he replied to the letter to show cause, and/ or at the disciplinary hearing.
 59. He further conceded that he did not have the company of a colleague, although he was advised by the Respondent of this right. Clause 11.5.6 of the Manual granted the Claimant the right of appeal. The right was communicated to the Claimant by the Respondent in the letter of termination, but again the Claimant chose not to exercise the right. He did not appeal.
 60. His challenge on the participation of Jack Kionga, may have been well founded under clause 11.5.3.1 of the Manual, Kionga having been involved with the charges and investigations subject matter of the disciplinary hearing. Kionga was the acting Managing Director, and issued the Claimant the letter to show cause and the letter inviting the Claimant to disciplinary hearing. The Claimant reported to the Managing Director. Ideally, Kionga should not have been part of the Disciplinary Committee. However, the minutes of the meeting show that the Claimant confirmed he knew everyone in the room, and did not have any objections. He did not object to the participation of Jack Kionga. He, as observed above did not appeal against the composition of the Disciplinary Committee.
 61. Nothing much turns on the Claimant's argument, founded on clauses 11.5.4.1 and 11.5.5 which require the Disciplinary Committee to forward its report to the General Manager-Human Resource and Administration, and to the Group CEO. The Court agrees with the Respondent, that the minutes of the disciplinary hearing constituted a report of the Disciplinary Committee. It was not necessary for the Committee to generate a separate report.
 62. He was issued the letter of termination dated 11th February 2019. He was paid notice after clearance. The Respondent told the Court that in doing so, it commuted summary dismissal to regular termination through notice.
 63. The Court is of the view that procedure was in accordance with Sections 41 and 45 of the *Employment Act*, and largely, conformed with clause 11.5 of the Respondent's HR Manual. The minimum standards of procedural fairness were met.
 64. Validity of reason[s]. The Claimant was instructed by Managing Director Ezekiel Owuor, on 21st January 2017, to contact Bandari Sacco, and "close business." It was the Managing Director, as shown



in the screenshot message exhibited by the Claimant, who gave the Claimant Derrick Majani's phone contact, 0722 467 551.

65. The Claimant states that he swung into action upon the instructions of the Managing Director, and contacted Bandari Sacco.
66. The record indicates that the Claimant did not act unilaterally in pursuing the Bandari Sacco transaction. There is an e-mail dated 25th January 2017, about a week after the Managing Director instructed the Claimant, generated by James Wamae, Assistant Manager, Group Life Underwriting, which attached the quotation to Bandari Sacco. Quite clearly, the Claimant consulted the underwriting section and did not act unilaterally. He did not generate the quotation. Significantly the e-mail from James Wamae was copied also, to Jack Kionga, General Manager- Operations, who oversaw underwriting.
67. Subsequent communications show that the Claimant was collegial, involving different Officers, in the transaction. The 6 channels of distribution – corporate [Claimant's], cooperatives, bancassurance, schools and religious institutions, retail, and Sacco assurance – did not operate entirely separately, with one Officer from a particular channel, prohibited from assisting other channels. The Managing Director was aware of this, when he instructed the Claimant, from corporate channel, to pursue Sacco business.
68. On 26th April 2017, Kionga wrote to both the Claimant and Wamae, enquiring if the Bandari Sacco quotation was the last one. The previous day, he had written to the Claimant and Wamae, asking if the transaction would attract a normal commission of 8%. Wamae wrote back to Kionga, advising that the transaction would attract an administration fee of 12% as opposed to 28% currently applicable. The Claimant did not act as a lone ranger in the transaction. He consulted the General Manager Operations Kionga, and the Assistant Manager –Underwriting Wamae.
69. The Bandari Sacco business appears to have caused some internal heat between corporate and cooperatives channels of distribution, nevertheless. Wamae wrote to Kionga on 31st October 2017, with a copy to the Claimant, seeking guidance, stating that, "Previously, I have been put on the spot by the cooperatives team, when they feel I am giving quotes for Saccos to corporate."
70. Kionga did not advise Wamae against involving the Claimant, but advised that Wamae involves the Mombasa Branch, because the business belonged to that Branch.
71. The Claimant was bold, writing back that Bandari Sacco was in no way corporate business, but that he was simply facilitating, because he had been approached by the Client. He advised Wamae to be free to deal with the transaction in any manner he deemed fit.
72. It is not persuasive for the Respondent to allege that the Claimant acted out of his line of business, or that he coerced other Officers in conducting business with Bandari. Underwriting channel was free to conduct its business without undue influence from the Claimant. The business in question involved both the Managing Director and the General Manager Operations. It is difficult to see how any defects in the transaction, were attributable to the Claimant.
73. The Court agrees that if Bandari Sacco through its intermediary made a request for discount, it was entirely upon Wamae and his channel, in consultation with Kionga, to say no. They did not say no. Discount was given, and Kshs. 32 million, instead of Kshs. 36 million paid to the Respondent. It was not shown how the Claimant caused this discounting, or how he benefitted from it. It was a decision which, according to the Claimant resulted in reduced administration fee, from 20% to 12%. It



- resulted in reduction of the fee and commission from 28% to 20%. The difference between the original quotation and the discounted quotation was about Kshs. 618,000.
74. The Claimant told the Court, and was not significantly contradicted by the Witness for the Respondent, that the Respondent had an actuarial function, and if it was going to make loss by discounting, discount would never have been approved. Business Partner Magoma, told the Court she was not sure what administration fee is. She did not know what percentage it was before and after renewal.
 75. Magoma confirmed that other persons including actuaries were involved, in crafting a fair premium. The Claimant was not expected to generate the quotation, but was allowed to give information on the business. The Court understood this evidence to mean that the Claimant was within his mandate to advise the Respondent that other Industry Players were willing to offer Bandari Sacco a better discounted deal, than was on the table from the Respondent. The Respondent in turn must have considered potential loss of business. The Court does not think it was material if Bandari Sacco was an existing Client of the Respondent or whether the transaction was in the nature of contract renewal; with better offer from other Industry Players, there was nothing to hold back Bandari Sacco from taking its business elsewhere. This informed the Respondent to approve discount. It was not any fraud or trickery by the Claimant, that led to a discounted quotation. What the Claimant did, was to share market intelligence, and Magoma told the Court, that the Claimant was not prohibited from sharing such information.
 76. Fraud in the insurance industry is taken much more seriously than the Respondent alleged to have done. Magoma told the Court that the Insurance Regulatory Authority was not involved. Police Officers were not called in. Although an Employer is entitled to conduct its own internal investigations and deal with the findings internally, there are industry standards to be followed. There were serious allegations of fraud, as shown in the email of the Managing Director Owuor, to Tom Gitogo, Group Chief Executive Officer, sent on 22nd May 2018. The email is referenced, 'Suspected Fraud.' It relates to Bandari Sacco Policies. Owuor complains that he received a strange WhatsApp message from one Jonas Siriba, who claimed to be an agent of Bandari Sacco. Siriba made serious allegations about the business with Bandari Sacco. He said that he had received a letter from the Respondent on extension of contract. He alleged to have received a discount of Kshs. 29.7 million from the Respondent. Although Owuor suggests at the beginning of the email that he received the message from a strange number, he states that he mentioned to Siriba, that he was aware Siriba was paid Kshs. 37.8 million by the Sacco. Owuor makes a very serious allegation that he was ambushed by the Chairman and Treasurer of Bandari Sacco at Technical University at the Coast, and offered a bribe of Kshs. 2 million, to let the fraud pass. He lastly postulates, that he suspected Bandari Sacco business was fraudulent, and that the 'magic' happened from last October [2017], during "his fight with Kevin Barasa on the said account."
 77. Gitogo himself, opted for internal investigations by Chief Internal Auditor, through his Memo, dated 3rd July 2018.
 78. Why would a Managing Director of a blue-chip company, when offered a bribe by a Client, not report the crime to the Police, but instead allow fraud to fester, and allege fraud and circumvention of company underwriting procedures against the Claimant, 8 months later, on 16th January 2019? The Court agrees that an Employer is entitled to deal with employment offences internally, but where fraud is involved to the extent alleged by the Respondent and its Managing Director, it would have been logical to involve the Insurance Regulatory Authority and the Police.
 79. The Respondent charged the Claimant inter alia, with circumvention of company underwriting procedures. Magoma told the Court that she was not aware of any Audit Report, which concluded



- that there was anomaly in the transaction. She did not know what particular clause of the underwriting procedures was violated by the Claimant.
80. Magoma further told the Court on cross-examination, that she did not see any preliminary report referred to in the letter of compulsory leave. She did not see any Witness Statement, which accused the Claimant of any wrongdoing. She confirmed that James Wamae, who prepared the quotations is still working for the Respondent.
 81. This evidence from both Parties does not show a valid reason, to justify termination of the Claimant's contract, as required under Sections 43 and 45 of the *Employment Act*.
 82. The Court is persuaded that termination was procedurally fair, but not based on valid reason.
 83. Remedies. As suggested at the outset, this is a dispute relating the Claimant's contract and governed by the *Employment Act*. There is no justification to claim constitutional violations and damages. There are statutory and contractual breaches, which are capable of being remedied within the four corners of the contract, and within the provisions of the relevant statutes.
 84. The prayer for damages for constitutional violations is declined.
 85. Exemplary or punitive damages, are awarded to punish the Respondent for outrageous conduct, and/or to reform the Respondent, or deter others from engaging in similar conduct. The Court does not think that while the Respondent acted unfairly within the understanding of the term 'unfair' in the *Employment Act*, that the Respondent acted outrageously. Exemplary damages are not merited.
 86. The prayer asking the Court to restrain the Respondent from recruiting another Employee in place of the Claimant, is moot and unreasonable. Another Employee was recruited in the restructured role previously held by the Claimant. The Respondent realigned its Corporate and Micro Department with the new position occupied by another Employee from 15th March 2019.
 87. The *Employment Act* does not provide for a remedy known as revocation or annulment of a letter of termination. It does however allow for reinstatement. Reinstatement is unavailable under Section 12 [3] [viii] of *Employment and Labour Relations Court Act*. It is not practicable, reasonable or legal, the Claimant having left employment over 4 years ago.
 88. It is declared that termination was unfair, for lack of valid reason[s].
 89. The Claimant is a career Insurance Professional. He had worked for the Respondent for about 2 ½ years. Overall, he had 18 years' experience in the business. His contract offered him permanent and pensionable terms. It was not made clear to the Court at what age the Claimant was when his contract was terminated, and at what age he was expected to retire. The HR Manual exhibited by both Parties is incomplete. Clause 19.2.2 which is indicated in the table of contents to regulate retirement, is omitted. The copy exhibited by Claimant ends at clause 11.9.1, while one by the Respondent closes at clause 14.3. The Claimant was paid notice after he cleared.
 90. The Court has not found substantive justification leading to termination of his contract, and it is therefore the view of the Court that the Claimant did not contribute to the circumstances leading to termination of his contract.
 91. He is awarded equivalent of 5 ½ months' gross salary in compensation for unfair termination at Kshs. 3,410,000.
 92. He is granted costs of the Claim.



93. He is granted interest at court rate, from the date of Judgment, till payment is made in full.

IN SUM, IT IS ORDERED: -

- a. It is declared that termination was unfair, for lack of valid reason[s].
- b. The Respondent shall pay to the Claimant equivalent of 5 ½ months' salary in compensation for unfair termination at Kshs. 3,410,000.
- c. Costs to the Claimant.
- d. Interest granted at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL, UNDER PRACTICE DIRECTION 6 [2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST MAY 2023.

JAMES RIKA

JUDGE

