



**Mwendwa v Oxfam GB Kenya Programme (Cause 1600 of 2013)  
[2023] KEELRC 1952 (KLR) (16 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1952 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1600 OF 2013  
J RIKA, J  
AUGUST 16, 2023**

**BETWEEN**

**JUDY MWENDWA ..... CLAIMANT**

**AND**

**OXFAM GB KENYA PROGRAMME ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed her Statement of Claim, way back on 3<sup>rd</sup> October 2013.
2. She states that by a letter dated 13<sup>th</sup> November 2016, she was employed by the Respondent as a Logistics Assistant.
3. She states, and the letter dated 13<sup>th</sup> November 2016 agrees, that the effective date was 13<sup>th</sup> January 2006.
4. This is a little bit confusing, because the letter of employment appears to have issued, about one year after the Claimant was employed.
5. In her evidence before the Court on 25<sup>th</sup> February 2021, she told the Court, “I started working for the Respondent on 13<sup>th</sup> November 2006.” It is therefore safe to adopt the 13<sup>th</sup> November 2006 as the date she was employed by the Respondent.
6. Her contract was initially for 3 months, terminating on 12<sup>th</sup> February 2007. It was subsequently extended variously, for 2 months; 3 months; 1 month; 16 days; 6 months; 2 months; 1 month; 1 month; 1 month; 3 months; and 6 months ending 31<sup>st</sup> October 2009. The original terms and conditions of employment remained unchanged.
7. The multiple short term contracts, came to end on 9<sup>th</sup> February 2010, when the Respondent advised the Claimant that she had been employed in an open-ended contract, with a 3 months’ review period. She was designated as the Logistics / Administration Officer, effective 16<sup>th</sup> February 2010. Her monthly salary was Kshs. 131,232.



8. On 26<sup>th</sup> October 2010, her salary was improved to Kshs. 1,669,277.40 annually.
9. Her review period [probation], ended successfully, on 20<sup>th</sup> August 2010. She was confirmed as Logistics/ Administration Officer.
10. She was suspended indefinitely, by the Respondent on 20<sup>th</sup> February 2013, on allegation of irregularities in procurement and logistics operations. She states that no reasons were given showing irregularities, and she was not present during investigations leading to suspension.
11. She was invited for a meeting through a letter dated 16<sup>th</sup> April 2013 where 8 allegations of misconduct were tabled. She replied to all the allegations. She attended a second meeting on 23<sup>rd</sup> April 2013. She was not presented with evidence to support the allegations. She answered all the questions put to her.
12. On 30<sup>th</sup> April 2013, the Respondent wrote to her, stating that all the allegations against her had been established, and a decision to summarily dismiss her reached. Her last salary was Kshs. 163,728 monthly.
13. She lodged an Appeal on 10<sup>th</sup> May 2013. She was heard on 20<sup>th</sup> May 2013. Her responses to questions put to her on Appeal, were not properly captured.
14. She held the position of Logistics and Administration Officer, and the allegations raised against her, related to procurement practices, which took place in 2011. Most of the allegations could be attributed to Minimum Standards for Category 1 Emergency Procedures, in place at the time.
15. The Claimant states that the Respondent carried out annual performance appraisals. If an Employee was found not to be proficient, the Employee would not benefit from a pay increment. The Claimant was always found to be proficient, and received pay increments consistently.
16. She states that allegations against her were inconsistent with all her contract extensions; proficient performance; positive internal audits; pay reviews; and job description.
17. Her prayers are: -
  - a. Declaration that summary dismissal was unfair and unlawful.
  - b. Damages for unfair dismissal equivalent of 12 months' salary at Kshs. 1,964,739.
  - c. Loss of income equivalent of 12 months' salary at Kshs. 1,964,739.
  - d. 2 months' salary in lieu of notice at Kshs. 327,456.
  - e. Costs and interest.
18. The Respondent filed a Statement of Response and Counterclaim, dated 22<sup>nd</sup> November 2013. The Counterclaim was withdrawn at the hearing.
19. It is conceded that the Claimant was employed by the Respondent as pleaded. The performance review forms were generalized, and took an overall approach and not a qualitative approach. The Claimant was aware of this loophole and took advantage of trust that the Respondent reposed in her, misusing her position to occasion the Respondent tremendous financial loss.
20. She was advised about the reason she was suspended. In the letter dated 20<sup>th</sup> February 2013, she was told that, "As discussed in our meeting... there appears to be some irregularities with our procurement practices...in order to allow Oxfam time to investigate... you have been suspended ... the investigation will be carried out by KPMG...we hope to do so within 14 days."



21. The letter could not give any specific procurement malpractice, as the same was subject of the investigation. Investigation was predicated on complaints from different stakeholders. They complained that Respondent's procurement costing was too high; goods procured were of low quality; and at times, goods did not meet specification. Staff complained that Logistics Office was in breach of its duties, and did not give the Respondent value for money.
22. The Claimant was made aware of the allegations against her, and was summoned for disciplinary hearing. She responded to the allegations, showing that she was aware of the transactions subject matter of the allegations.
23. Her duties included organization of market surveys and negotiation with suppliers for favourable payment terms and pricing; and organization and review of all logs and administration documents for payments. It is not true that she was unaware of the procurement malpractices which took place in 2011.
24. The Minimum Standards for Category 1 Emergency Procedures expired on 30<sup>th</sup> September 2011. Procurement of subject items occurred in the year 2012. The Minimum Standards did not apply.
25. Even when the Standards applied, the Claimant breached procurement procedures. When she undertook procurement exercise, there was manipulation of the process, to favour a specific supplier. In supply of tents, instead of inviting bids from tens suppliers, she called for bids from Kenya Tents, Furniture Elegance, Megamart Appliances and Nakumatt Holdings. Elegance Furniture and Megamart were known to the Claimant, to be owned by one person. Kenya Tents did not stock dome tents for 5 years before enquiry by KPMG. ETR receipt by Kenya Tent did not have KRA number. There was no explanation.
26. The Claimant did not go for the most competitive bids, defeating the purpose of competitive bidding. She issued Purchase Order 14 on 24<sup>th</sup> August 2012, before the Respondent approved the Comparative Bid Analysis on 10<sup>th</sup> September 2012. The Respondent's procedure did not allow the Claimant to do this.
27. Purchase Order for Kenya Tent was issued on 24<sup>th</sup> August 2012. The Pro-Forma Invoice was received on 27<sup>th</sup> August 2012. It was unclear how the Claimant knew what price to use in the Purchase Order, when the quotation arrived.
28. Kenya Tent delivered goods on 4<sup>th</sup> September 2012. The Respondent received them on 5<sup>th</sup> September 2012. This happened before the bid analysis was concluded on 10<sup>th</sup> September 2012.
29. The Claimant provided no explanation why LPOs were back-dated.
30. There were questionable variations in quotes provided by suppliers. Trade Bells gave a quotation of Kshs. 550 per meal per person, and a month later, the price was changed to Kshs. 650 per persons.
31. The Claimant managed 2 properties by proxy, which she leased to the Respondent. She did not disclose this information to the Respondent. She used her position to canvass for employment of her relatives and friends by the Respondent. She discounted invoices without authorization from the Respondent.
32. Procedure was fair. She was dismissed on valid grounds; she was suspended at the beginning; she was advised on the reason of suspension; she was paid her full salary and benefits during suspension; the allegations against her were independently investigated by KPMG; investigation concluded that the Claimant was engaged in procurement malpractices; she was called for a disciplinary hearing; charges were specified against her; she was heard in the company of a colleague; she was summarily dismissed



after hearing; she was granted the right to appeal; she was heard in the presence of her colleague, who was of the view that the Claimant was fairly heard; and the Appeal was dismissed after hearing.

33. The Respondent prays the Court to dismiss the Claim.
34. [ The Claim, was initially consolidated to be heard alongside Industrial Court Cause Number 1599 of 2013, Norbert Nzomo Kivunzyo v. Oxfam GB Kenya Programme. When Parties appeared for hearing before the Court on 25<sup>th</sup> February 2021, they informed the Court that they now wished to deconsolidate the Claims, a request which the Court granted. Some Pleadings and Documents in Cause Number 1599 of 2013, are filed in the present Cause Number 1600 of 2013, even after the order of deconsolidation. It is hereby directed, and an order has been made in Cause Number 1599 of 2013, that such Pleadings and Documents shall be removed from this file and placed in the correct file. Further, Cause Number 1599 of 2013, shall be placed before the Hon. Deputy Registrar, and allocated to another Hon. Judge for hearing and disposal, on an accelerated basis. At one time the consolidated Claims were dismissed for non-attendance, and reinstated later upon the Claimants persuading the Court that there was an error in scheduling the hearing date].
35. The Claimant, Judy Mwendwa, gave evidence on 25<sup>th</sup> February 2021, and called 1 Witness, Jared Anyika, who gave evidence on 17<sup>th</sup> June 2021, closing the Claimant's case.
36. Human Resource Manager Pauline Makongo gave evidence on 17<sup>th</sup> June 2021 and 22<sup>nd</sup> October 2021. Country Director John Emmanuel Kituyi gave evidence for the Respondent on 2<sup>nd</sup> November 2022, closing the hearing.
37. The Claim was last mentioned on 20<sup>th</sup> April 2023, when Parties confirmed filing and exchange of their Closing Submissions.

#### **Claimant's evidence.**

38. The Claimant adopted her Witness Statement dated 6<sup>th</sup> January 2020, in her evidence. She also adopted Documents as listed in her List of Documents.
39. She restated her employment history with the Respondent, and her terms and conditions of employment. She confirmed that she was alleged to have engaged in procurement irregularities. She was presented with charges; suspended; taken through disciplinary hearing; and summarily dismissed.
40. She told the Court that allegations were generalized and bare. She was alleged to have been involved in fraud, occasioning the Respondent loss of money. There was a whole chain in procurement process.
41. She was not availed relevant documents leading to the disciplinary hearing. She was accompanied to the hearing by a colleague, but was hampered by unavailability of relevant documents. She defended herself blindly. Her argument was weak. She received a letter of summary dismissal at the end of the hearing.
42. She was surprised to be told that she disregarded Respondent's processes and occasioned the Respondent loss. She conducted procurement in accordance with the Respondent's existing procedures. There were approvals throughout. All suppliers were prequalified. The Claimant did not engage any supplier outside the prequalified ones.
43. Kenya Tent tender was procedural. There was a tender committee. Waiver was done and approved by Country Director. The Claimant appealed against summary dismissal unsuccessfully. She had contract extensions and pay increments, based on good performance.



44. She acted as a referee to an orphan. The orphan was not her relative as such. She just forwarded his CVs. She did not handle any property transaction where she was conflicted. The Respondent had a property agent, who made all property transactions.
45. She first saw documents relevant to her defence, when the Claim was brought before the Court. KPMG report states that there was no evidence of staff receiving illicit payments. KPMG did not interview the Claimant, and was also not availed all the relevant documents.
46. There was an emergency in the period 2011-2012. There was a famine. The emergency called for exceptions to procurement procedures, to achieve first delivery of goods and services.
47. Cross-examined, the Claimant told the Court that she had been promoted severally. She was proficient in procurement. She was placed on suspension. The Respondent hoped to complete investigations within 14 days. The likelihood of extension of the period, was communicated. Suspension was not at the beginning, a disciplinary sanction. Investigations took place. As of April 2013, she was aware of the allegations. She replied to all the allegations.
48. Properties were leased out by the Respondent. The Claimant e-mailed the Landlady, through her official e-mail account. She referred to the Landlady as her cousin. She spoke about the fridge not fitting. The Claimant stated that she had paid the service charge. She told Scola, the Landlady, "thank you for remembering my ka-drink!" [ slang for small drink]. Scola was a party to the lease agreement.
49. Davies and Shirliff Limited was in the Respondent's list of suppliers. The Claimant wrote to this supplier and others, forwarding Jared's CVs. She referred to him as her cousin, although he was not.
50. There was an LPO dated 24<sup>th</sup> August 2012. The Claimant could answer questions on the order and invoice, without having the full documents. There was a tender waiver. She could not access the full documents to enable her answer the question. There were reviews with agreed objectives. Later, median appraisal was introduced. It had challenge areas. The Claimant became proficient after this.
51. The reason justifying dismissal was given. It was alleged that the Claimant was negligent. She did not have all documents to enable her respond. She was not sure about the period of emergency warranting procurement procedures waiver. The Auditor stated that there was possibility of illicit transactions.
52. Redirected, the Claimant told the Court that she was not availed the investigation report, before the disciplinary hearing. Procedure required she is availed all documents, before the hearing. Kenya Tents delivered what was procured. Payment was made. There was a waiver at the time. 3 other Employees, other than the Claimant, were involved in the transaction. The property was procured through agents. The Claimant did not receive any payment by way of kickback, from Scola.
53. Jared Anyika told the Court that he worked for the Respondent, from 2011 to 2015. He was the Staff Representative, during the Claimant's disciplinary hearing. Substantively, he was the Respondent's Regional Supplies Chain Manager. He was approached by the Claimant as a technical advisor. A lot of the allegations were technical in nature. Jared looked at them, and found no substance in them.
54. The Claimant was not availed relevant documents, in accordance with the Respondent's Human Resource Procedures. It was hard to know the basis of the allegations. There were no reports, external or internal, availed to the Claimant, before the hearing. Jared and the Claimant requested for documents. None was supplied. The Claimant was not able to defend properly. She had no choice but to continue with the hearing. The Claimant appealed. No documents were availed on appeal. Appeal process was not fair. Jared left employment a year after the Claimant filed her Claim. He told the Court that after representing the Claimant, he was confronted with similar allegations as the ones that led to the summary dismissal of the Claimant. He was availed necessary documents, which facilitated him



- to adequately defend. He was in the end warned, but opted to resign later. His view was that if the Claimant was accorded a similar facility to defend herself, she would have been successful.
55. Cross-examined, Jared told the Court that he left the Respondent in 2015. The allegations against him were made in 2014. He did not handle any allegations relating to the Claimant. He worked at the Regional Office. The Claimant worked in the Kenya Office.
  56. Jared helped the Claimant prepare for the hearing. She had a written defence. Jared did not help the Claimant in preparing the defence. On second thought, he told the Court that he had assisted the Claimant. It was a detailed defence. She was aware of the allegations. Her response made reference to documents. There were issues she could recall from memory. Jared obtained documents from another Employee in his disciplinary case. He did not engage in misconduct through this mode of obtaining documents. He represented the Claimant, in accordance with invitation made by the Respondent.
  57. Human Resource Manager Pauline Makongo told the Court she worked for the Respondent, from the year 2019. She adopted her Witness Statement and Documents filed by the Respondent, in her evidence.
  58. Records held by the Respondent disclosed there were procurement irregularities, in 2012. These are captured in the Respondent's exhibit 1, comprising e-mails by Operations Manager, Farhiya Ali. Complaints were raised against the Logistics Department. The Claimant was the Logistics Officer.
  59. An investigation was carried out as shown at Respondent's exhibit 9 [a]. The Claimant was suspended and further investigation carried out. Irregularities were unearthed.
  60. The Claimant was said to have manipulated processes to favour certain suppliers. Quotes for supply of tents, were obtained from firms which were not tent suppliers. Some companies which put in bids, had common directors. Pheroze was a common director to bidders Furniture and Megamart. Alphonce, also known as Muema, signed correspondence from the 2 firms. The Claimant should have detected these anomalies. She did not declare conflict of interest, in the transaction involving her cousin. She involved her relatives, whom she referred to as 'relas,' in Respondent's business. She engaged in invoice discounting for a supplier. It was not in her place. Discounting would have to come from a Senior Officer. She forwarded her nephews CVs to one of the Respondent's suppliers, Davies & Shirtliff seeking employment. It was against the Respondent's Code of Conduct. She spoke in her e-mails about waiting for her bowl of githeri [maize and beans dish]. She alleged to have contacts at Daadab, where employment recruitment was going on. She was canvassing contrary to the Code of Conduct.
  61. Kenya Tents sent a quotation for supply of tents, on 27<sup>th</sup> August 2012. She approved payment of Kshs. 1.5 million to Kenya Tents by 24<sup>th</sup> August 2012, even before the tents were delivered. Internal investigations, and external one by KPMG, implicated the Claimant.
  62. She was invited to a disciplinary hearing. Relevant documents were attached to the invitation. She gave a comprehensive response. She was heard and a decision to dismiss her made. She appealed and was heard. Country Director presided over the appeal hearing. Jared Anyika was not present. The minutes are exhibited. Minimum Standards during emergencies, were not in place, in 2012. She was paid all her salary and benefits during suspension. Termination was fair.
  63. On cross-examination, Pauline confirmed that the Claimant was not availed the Internal Report and the KPMG Report before the disciplinary hearing. Farhiya Ali wrote the dismissal letter. She could dismiss through delegation. Nigel, who was the Country Director, delegated. The letter of suspension indicated that the Claimant would be supplied with the requisite documents. She was given an abstract of issues she was required to respond to. She was not availed the full report. She lodged an Appeal.



Pauline did not know if she was availed the full report on Appeal. She responded to each and every issue of Appeal.

64. There was irregularity relating to Kenya Tents. Comparative bid analysis shows it was finalized by the Claimant. The bid was approved by a committee of 5 individuals. Bid analysis involved others, beyond the Claimant. The Respondent did not state that the Claimant carried out the exercise alone. She did not follow the correct procedure. Kenya Tents delivered the goods, and received payment.
65. She was involved in other irregularities, surrounding Tradebells; tenancy agreement; and soliciting for a job for her relative. Pauline was not aware of the Claimant approached anyone at the Respondent for such a job.
66. KPMG Report refers to limitations KPMG encountered in its undertaking. Non-discussion with the Claimant, was part of the limitations.
67. Redirected, Pauline told the Court that the CEO, Nigel, did not participate in the appellate hearing. The Claimant's contract extensions were issued by the CEO or the Human Resource Manager. Other authorized officers could act on behalf of the Respondent. The Claimant replied to all allegations comprehensively. She was not hampered by lack of the full KPMG Report. The Purchase Order for Kenya Tents shows it was issued, before quotation. The Responsible Officer was the Claimant. She sent e-mail to Tradebells, quoting the price, instead of picking the quotation from Tradebells.
68. John Emmanuel Kituyi, Respondent's Country Director, adopted his Witness Statement, Pleadings and Documents as originally filed, and supplemented. He confirmed that the Respondent was no longer pursuing its Counterclaim.
69. He told the Court on cross-examination that the Respondent's exhibited 2 Investigation Reports by KPMG. The contents were the same, the difference being in the dating. Limitations were noted in the Reports. The Claimant was not interviewed by KPMG.
70. Relevant information was given to the Claimant. Procurement system has several approvals-requisition, quotations, review and analysis, issue of Purchase Order, and purchase of the goods. The Claimant was involved at all the stages. Procurement was her core business. She was the Logistics and Administrative Officer. Goods were delivered, the issue being on the process. The CEO told the Court that he did not wish to judge on the criminality of the Claimant's conduct.
71. Redirected, he told the Court that KPMG initially prepared a Draft Report for discussion. The Report states that KPMG did not partner with the police. Evidence was obtained internally. Disciplinary process was not dealing with the criminality of the Claimant's conduct. Pro forma invoice from Kenya Tents is dated 27<sup>th</sup> August 2012. The Purchase Order is dated 24<sup>th</sup> August 2012. Payment was made on 28<sup>th</sup> August 2012. Accusations were mainly on the procedure. There were missteps, in violation of the Respondent's policies. Disciplinary action was based on this.

## **Issues**

72. The issues are whether:
  - a. The Claimant was summarily dismissed following a fair procedure;
  - b. The Respondent had fair and valid reason to justify termination; and,
  - c. The Claimant merits the remedies sought.



## The Court Finds

73. The Claimant was employed by the Respondent under a series of short-term contracts. Details of these contracts are stated at paragraph 6 of this Judgment.
74. Effective 16<sup>th</sup> February 2010, she was employed under an open-ended contract, as a Logistics / Administrative Officer.
75. She was summarily dismissed through the Respondent's Operations Manager Farhiya Ali, in a letter dated 30<sup>th</sup> April 2013. The effective date of termination [EDT] was stated to be 30<sup>th</sup> April 2013.
76. She was informed that following her disciplinary hearing which took place on 23<sup>rd</sup> April 2013, that she was found to have been negligent and possibly fraudulent in discharging her duties. She was found to have breached the Respondent's Code of Conduct and abused her position of trust within the Respondent.
77. Procedure. The Respondent suspected there were irregularities in its procurement, within its logistics operations. The Parties held discussions revolving around the suspicion, and on 20<sup>th</sup> February 2013, the Claimant was suspended, to allow the Respondent conduct full investigations.
78. The Claimant was advised that external Auditors KPMG, would undertake investigations. She was notified that after investigations, she would probably be taken through a disciplinary hearing. Her procedural rights at the hearing were stated from the outset, in the letter of suspension.
79. She was invited to the disciplinary hearing through a letter dated 16<sup>th</sup> April 2013. Hearing was on 23<sup>rd</sup> April 2013. She was availed the Respondent's Work Policy and a letter containing information, on the findings of the investigations. She was advised of her right to be accompanied to the hearing by a colleague or a trade union representative.
80. The information supplied related to negligence and possible fraud; conflict of interest; and canvassing. Details included Kenya Tents procurement; procurement from other suppliers such as Tradebells, Furniture Elegance, Megamart Appliances, and Nakumatt Holdings; management of 2 properties leased by the Respondent; and placing a request to a supplier, Davis & Shirliff for employment of her nephew. She was informed about the emails she had exchanged with one Silas Omenda, regarding canvassing of an employment slot at the Respondent.
81. She made a comprehensive response, giving a blow by blow account, on all items listed by the Respondent in its statement of accusations. She told the Court that she prepared the response with the aid of Jared Anyika, who told the Court that he was a technical person, and that the issues involved were very technical.
82. Her concerns, expressed in her response, did not include her complaint, that she was not availed sufficient documents to enable her defend. She did not state that she was responding to the questions blindly, or weakly, for want of documentation. She stated her concerns to be: she spent almost 2 weeks on suspension; there was no explanation by the Respondent for the delay; suspension letter was not signed by the Management; the Respondent took long to investigate, if she was guilty; the Respondent showed no trust in the Claimant while she was still on duty; and her past performance was not considered.
83. She was heard on 23<sup>rd</sup> April 2013. She told the Court that she attended hearing in the company of her colleague. The charges were well known to her. A decision was made to dismiss her with effect from 30<sup>th</sup> April 2013. The decision was communicated through Farhiya Ali, Operations Manager. The



- Court does not find any merit in the Claimant's submission that Farhiya was not mandated to issue the letter of summary dismissal.
84. The Claimant lodged an Appeal dated 7<sup>th</sup> May 2013. She was heard on Appeal and summary dismissal decision sustained. The appellate decision was communicated to the Claimant, on 17<sup>th</sup> June 2013.
  85. The Court is satisfied that procedure was fair, and met the minimum statutory standards of fairness, under Sections 41 and 45 of the *Employment Act*.
  86. Valid reason/s. The accusations against the Claimant at the disciplinary hearing had been well-communicated to her, in the processes leading to the hearing.
  87. Although she complained in the proceedings herein about non-availability of the KPMG Report before the disciplinary hearing, its contents which were communicated to the Claimant in a redacted form, were not dissimilar to the statement of accusations communicated to the Claimant before the hearing, which she comprehensively replied to.
  88. The anomalies concerning Kenya Tents are well documented, and the Claimant never explained these anomalies before the Court or at the disciplinary hearing.
  89. She issued a Purchase Order on 24<sup>th</sup> August 2012. Her colleague Richard Ogada, only approved the Comparative Bid Analysis, on 10<sup>th</sup> September 2012. The purpose of competitive bid was to establish the supplier before commissioning for the goods. The pro-forma invoice was received on 27<sup>th</sup> August 2012. The Claimant did not explain how she knew the price to use in the Purchase Order, when the quotation arrived 3 days later.
  90. The goods were delivered and received on 5<sup>th</sup> September 2012 by the Respondent, even before the bid analysis. KPMG suggested that the Claimant single-sourced Kenya Tent.
  91. The evidence by the Respondent, and the KPMG Report, discounted the Claimant's explanation that she acted in accordance with the Minimum Procurement Standards, which allowed waiver of certain procurement procedures in event of emergencies such as famine. The Standards were effective until 30<sup>th</sup> September 2011. They were not in place, when the Claimant raised Purchase Order on 24<sup>th</sup> August 2012, before the bid analysis.
  92. The Claimant was Logistics/ Administration Officer, involved in the procurement process at every turn. It was not helpful for the Claimant to state that she acted alongside other Officers. The KPMG Report confirmed that other officers were involved. It was in the discretion of the Respondent to take action against the others. The KPMG Report states that of the transactions KPMG examined, 10% of the anomalies were attributed to David Mwangi as the responsible officer; 38% to the Claimant; 33 to Norbert Nzomo; 12% to Alice Shivario; and 7 % to others. The highest percentage of liability for the anomalies, was apportioned to the Claimant. It was a prerogative of the Respondent to take disciplinary or other actions against the concerned Employees, guided by its perception of each Employee's liability.
  93. Her failure to disclose conflict of interest was confirmed at the disciplinary hearing and in the KPMG Report.
  94. It is explained that the Claimant discussed Brooklyn Apartments with her cousin Scola, in an e-mail dated 7<sup>th</sup> September 2011. A cleaner of the house had left the premises uncleaned, complaining about non-payment of wages. Mwendwa asked Scola to let her make the payment, rather than have Scola's name tarnished.



95. In her e-mail of 9<sup>th</sup> February 2012, she discussed another property, Vogue Ville. The Claimant made payments on behalf of Scola. Scola in turn paid the Claimant for her services. In Scola's e-mail of 1<sup>st</sup> February 2012, she sent money to the Claimant, asking her to pay certain amounts with regard to the property. The Claimant was not acting for nothing on behalf of Scola. Scola advises the Claimant:  
"Balance should be your ka-drink." [slang for - the balance of the money is for your little drink]
96. The Claimant responds:  
"I appreciate your always remembering my ka-drink, yaani kutoa jasho." [slang for- thank you for always remembering my little drink, it wipes away my sweat]
97. The 2 properties were owned by Scholastica Nasimiyu, and were leased to the Respondent. The Respondent was not made aware of the relationship between the Claimant and Scola. The Claimant made no disclosure of conflict of interest.
98. The Respondent's Code of Conduct requires all staff to:  
"declare any financial, personal, family [or close intimate relationship] interests in matters of official business, which may impact on the work of the Respondent, e.g. contracts for goods and services."
99. It was confirmed that the Claimant wrote an e-mail dated 7<sup>th</sup> July 2011 to her colleague Margaret at Daadab Refugee Camp, soliciting for the employment of Silas Omenda's child.
100. She told Silas not to worry because she had contacts at Daadab. "I have my people up there," she wrote. She told Silas that she wished to finalize on his request, and that she had asked Margaret to sort out the issue, even if the child was employed at Wajir.
101. Adopting cryptic language, characteristic of corrupt dealings, Silas writes to the Claimant that:  
"Oxfam [Respondent] works with others to overcome poverty and...what about me? Waiting for my githeri [maize and beans dish] from you people...really waiting."
102. Silas appears to have been complaining to the Claimant, about the delay in securing a job for his child at Oxfam.
103. The Claimant responded promptly, stating that:  
"The githeri will be availed to you in a big way. Today is a Friday and a bad day to eat githeri, so we await next week!"
104. The Claimant was pleading for a little more time to secure employment for Silas's child. Silas concluded the conversation with the advice to the Claimant that, "There is no excuse this time. I have opened the IPO."
105. KPMG found that while the identity of Silas Omenda was shadowy, it appeared that the Claimant was indebted to him, and she was assisting him in turn, in securing employment with the Respondent, for his child.
106. In her response to the statement of accusations preceding the disciplinary hearing, the Claimant disclosed the identity of Silas Omenda.
107. Silas Omenda was the Deputy Undersecretary at the Ministry of Finance, Department of Tax Exemptions. According to the Claimant, he had been assisting the Respondent in securing tax exemptions, for vehicles valued at above Kshs. 14 million [approximately]. The Claimant was his contact person at the Respondent.



108. The Claimant states that she needed to get tax exemption approvals, but not to assist Silas in securing employment at the Respondent. She states that many of her colleagues had been approached by outsiders to secure employment at the Respondent, and that her dealing with Silas, was how the Government works.
109. She then goes into matters irrelevant to the issues at hand, disclosing that she was sexually harassed by Silas's boss, and that she handled sexual harassment professionally. What does sexual harassment by Silas's boss have to do with the Claim herein?
110. The Claimant and Silas Omenda were simply engaged in Government/NGO corrupt practices, where the Public Officer facilitates the Claimant in her tax exemption pursuits, in return for an employment position at the Respondent. The language of githeri, employed between the Claimant and Silas Omenda, discloses that there was some form of 'eating,' defining the relationship between the two, where tax exemption attracted a quid pro quo. The language is similar to the earlier property transactions, where the Claimant asked for and was given a "ka-drink," by Scola. It is the language of eating and drinking, a culture of corruption, in the Government and Non-Government Organizations.
111. Even though the dealings with Silas may have in the end benefited the Respondent, the mode adopted by the Claimant, was not the official position of the Respondent. Canvassing in a recruitment process, went against the Respondent's Policy and Code of Conduct, which state, that Staff must behave in a manner that does not undermine national or international perceptions of Respondent's impartiality.
112. The last incident which the Court finds, alongside the above incidents, to have amounted to valid and fair reasons warranting dismissal, related to the communication between the Claimant and Waweru from Davies & Shirtliff. She similarly wrote to Ditu, from Kinpash Enterprises.
113. Both firms were suppliers to the Respondent.
114. She forwarded to the firms her nephew's CVs, "as per our discussions." Davis invited the nephew for an interview, while Kinpash undertook to write back.
115. While the Claimant can at a social level, be commended for opening doors for her relatives, the Respondent's Code of Conduct did not encourage such conduct. The Claimant was using her position and interaction with Respondent's suppliers, in advancement of private interest. The Code of Conduct states that Staff, " must be responsible for the use of information and resources which she has access by reason of her employment with the Respondent...ensure that her personal and professional conduct is and seen to be, of the highest standards and in keeping with the Respondent's beliefs, values and aims." Employment of her nephew by any of the suppliers would most likely prejudice the fairness of procurement processes, and create the appearance of bias. It would, like her interaction with Silas Omenda, create the impression that the Claimant was involved in a corrupt quid pro quo practice, causing the Respondent reputational damage.
116. There were more than sufficient reasons established by the Respondent, showing that summary dismissal was fair, under Sections 43 and 45 of the *Employment Act*.
117. Procedure was faultless.
118. In the end, the Court is satisfied that termination was fair, and no remedies are due to the Claimant.

### **It Is Ordered**

- a. The Claim is dismissed.
- b. No order on the costs.



**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6[2], ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 16<sup>TH</sup> DAY OF AUGUST 2023.**

**JAMES RIKA**

**JUDGE**

