



Lewa v United States International University [USIU] –Africa (Cause 449 of 2019) [2022] KEELRC 4010 (KLR) (29 June 2022) (Judgment)

Neutral citation: [2022] KEELRC 4010 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 449 OF 2019**

**J RIKA, J
JUNE 29, 2022**

BETWEEN

PETER MUTUKU LEWA CLAIMANT

AND

**UNITED STATES INTERNATIONAL UNIVERSITY [USIU] –
AFRICA RESPONDENT**

JUDGMENT

Pleadings

1. The claimant filed his statement of claim on July 9, 2019. He states, he was employed by the respondent university on April 1, 1997, as an associate professor.
2. He became a full professor of management, through a letter of promotion dated June 15, 2009.
3. He was appointed as the dean, Chandaria School of Business in the academic and students affairs division, on September 1, 2017. He was placed on a 3-year contract, running to July 2020.
4. He was summarily dismissed on April 17, 2019, on allegations of fraud. He was said to have deliberately falsified records and disobeyed a lawful command. The claimant states that these allegations were without basis. His last salary was Kshs 622,270 monthly.
5. The claimant states that he was discriminated against by the respondent. He was discriminated on account of age; he was singled out and dismissed on arbitrary and invalid grounds; he was not treated like other employees; he was issued notice to show cause, without investigations; he was exposed to peer ridicule, after his colleagues were prematurely told that he had been dismissed; he was denied his right to fair labour practices; the respondent did not follow its human resource policies and procedures manual, in dealing with the claimant; the respondent ignored that the claimant was not paid monies for co-teaching with Dr Jeremiah Koshal, and made unfounded allegations of fraud against the claimant



- regarding co-teaching; and the respondent failed to protect the claimant against the deputy vice-chancellor academic & students affairs, who used her position to target the claimant, as part of her personal vendetta.
6. The claimant states, he was treated maliciously by the respondent. He was dismissed without regard to sections 41 and 43 of the *Employment Act*; the respondent spread word out about the claimant's dismissal prematurely; he was ridiculed; no investigation of the allegations made against the claimant took place; the respondent purported to carry out a hearing, but had prejudged the claimant; the respondent failed to furnish the claimant with necessary documents before the hearing; the respondent purported to appoint claimant's replacement the same day the claimant was dismissed; the respondent disregarded the claimant's right of appeal; he was defamed and his character tarnished by the respondent; his probity and ethics were called into question before his students and colleagues; and the respondent failed to protect the claimant against the whims of the deputy vice-chancellor.
 7. The claimant prays for: -
 - a. Reinstatement.
 - b. Salary arrears for the entire period the claimant has been out of employment.
 - c. In the alternative payment for –Loss of salary for 16 months to cover up to August 2020 at Kshs 9,956,320.Loss of medical benefits over the same period at Kshs 334,000.Loss of adjunct/ part-time salary at Kshs 2,400,000.Loss of supervision fees for DBA and MBA at Kshs 1,000,000.12 months' salary in compensation for unfair termination at Kshs 7,467,240.Full pension
Total...Kshs 21,157,560.
 - d. Damages for discrimination.
 - e. Exemplary damages for lost opportunity.
 - f. Permanent injunction to restrain the respondent from replacing the claimant.
 - g. Costs with interest.
 8. The respondent filed its statement of response on August 19, 2019. It is not disputed that the claimant was employed by the respondent as pleaded. The claimant engaged in fraud and/ or corruption and was taken through a disciplinary process. he was dismissed in accordance with the respondent's human resource policies and procedures manual, as well as the *Employment Act*, 2007.
 9. In January 2019, the claimant committed acts of fraud with a view to procuring remuneration for services not rendered. He was given an opportunity to respond to the accusations. He was taken through a disciplinary process. The process culminated in termination of the claimant's contract, in accordance with the law. The respondent did not treat the claimant discriminatively or maliciously. All employees of the respondent are treated equally. Sections 41 and 43 of the *Employment Act* were observed. The respondent denies particulars of loss and damage pleaded by the claimant. The claimant was paid terminal benefits amounting to Kshs 654, 437, and will be paid his pension, upon completion of the exit forms. The respondent prays the court to dismiss the claim with costs.

Hearing.

10. The claimant gave evidence on February 12, 2021, June 10, 2021, and September 16, 2021 when he rested his claim. Prof Ruthie Rono, respondent's deputy vice-chancellor, gave evidence for the respondent on September 16, 2021 and September 17, 2021. Dr Paul Okanda, respondent's director, information and communication technology, gave evidence for the respondent on October 15, 2021



and December 10, 2021 when the hearing closed. The dispute was last mentioned in court on February 23, 2022, when parties confirmed filing and exchange of their closing submissions.

Claimant's Evidence.

11. The claimant adopted his statements of claim and witness on record, as well as his bundle of documents. He restated that he worked for the respondent for 23 years, having been appointed as an associate professor on April 1, 1997. He later became a full professor and dean of the Chandaria Business School. He became dean in May 2017. He was appointed for an initial period of 3 years, and was promised another 3 years upon successful completion of the 1st period. His salary was Kshs 622,270 monthly.
12. 2 years into his 1st 3-year period, he was summarily dismissed. He received a letter to show cause, dated January 31, 2019. He was alleged to have been involved in fraud and corruption; falsification of documents; and failing to obey/ ignoring lawful instructions.
13. The university had money-making courses. Dr Jeremiah Koshal taught one of the money- making courses, BUS 6035A [global MBA group]. This was under the faculty where the claimant was the dean.
14. Dr Koshal's students wrote to the dean [claimant], through their president, saying they were not getting proper teaching from Dr Koshal, and that they would walk away, if there was no remedial action. They listed 6 complaints against Dr Koshal: his class was theoretical; he did not encourage discussions; he was not sure about the course content; he was not able to give directions; he did not give local examples; and class application was difficult, forcing students to cram, instead of engaging the concepts.
15. The claimant had to intervene. He wrote to his supervisor, the deputy- vice-chancellor on September 14, 2018. He offered to co-teach with Dr Koshal. The deputy vice- chancellor wrote back, asking the claimant to use diplomacy in dealing with Dr Koshal.
16. The claimant consulted Dr Koshal as soon as he received the students' complaints and offered to co-teach. There was no time to look for another lecturer to replace Dr Koshal. The claimant would mentor Dr Koshal. Co-teaching was the practice, not the policy. Both the claimant and Dr Koshal would be paid for co-teaching. The deputy vice-chancellor gave the claimant the green light to co-teach with Dr Koshal. Both lecturers would be paid for co-teaching.
17. The claimant spent 3 hours in the class. He kept going back to monitor how Dr Koshal was doing. He was by Dr Koshal's side, until the class ended.
18. The claimant was not supplied evidence of fraud or corruption by the respondent. He asked the respondent to report him to the police, if he had engaged in fraud. No report was made. The claimant's intervention changed the attitude of the students. These were mature students, mostly CEOs in various companies.
19. Dr Koshal lied that the claimant did not teach with him. The claimant taught a full class, which was confirmed by the class president. The class president wrote, appreciating his intervention. Dr Koshal wrote to Prof Njenga stating he had been paid half of his entitlement at Kshs 140,000 and demanding to be paid the other half at Kshs 140,000. The truth is that both lecturers were not paid. The claimant did not claim payment because of the stories about fraud, that were flying around.
20. Director of graduate programmes, Catherine Karanja, similarly wrote on January 3, 2019, alleging that the claimant and Dr Koshal had each received Kshs 140,000 for co-teaching. This too was a lie.



21. The respondent's disciplinary minutes show findings and observations reached. They confirm that the claimant and Dr Koshal were not paid anything. The director of finance was part of the disciplinary panel. It was confirmed that no payments were made. Allegations of fraud and corruption were not proved. The claimant was not shown any falsified document. He did not ignore instructions given by the deputy vice-chancellor. He consulted throughout. He wrote several e-mails to Dr Koshal to consult on co-teaching.
22. The respondent's human resource policy requires that allegations against staff are investigated. The allegations against the claimant were not investigated. The human resource office and legal counsel are supposed to consult after investigation has taken place. The claimant was not aware of any investigation report. The respondent did not follow its own rules.
23. The claimant wrote to the respondent, upon receiving the disciplinary notice, asking for adequate time to prepare. He asked for 30 days on receiving the charges. He was only allowed 10 days. He was not supplied any document. He went to the hearing like a blind man. He attended the hearing without prejudice.
24. He appealed against the decision to summarily dismiss him. He restated that he had submitted himself to the disciplinary hearing without prejudice. He claims he was discriminated against on the ground of age. He was going to attain retirement age of 65 years in October 2019. He was compelled to leave earlier. There is a letter issued in January 2018, giving the claimant notice, a year before the due retirement date in October 2019.
25. He was not treated like other employees. There were cases of minor and major misconduct, which were taken through conciliation. He was exposed to ridicule. The deputy vice-chancellor wrote a letter to all staff, on the date of termination, informing them that the claimant had been relieved of all his duties. She was not happy with the claimant, and wanted to see the claimant out of office at the earliest.
26. The claimant suffered loss of salaries for 16 months. He claims salaries for 16 months running from 2019 to 2020. He was denied medical cover for 2 years. He took out his own medical cover with UAP Insurance Company. He claims this item, basing his computation on market rate of Kshs 167,000 annually. Other losses include adjunct allowances. He had done $\frac{3}{4}$ of supervision of MBA candidates. The task was assigned to other lecturers after the claimant was dismissed. It was a loss to him.
27. The claimant told the court he no longer wishes to pursue the prayer for reinstatement, stating that it has been overtaken by events.
28. On cross-examination, the claimant testified that he was appointed dean on May 2, 2017. Appointment became effective on September 1, 2017. It was to be for 6 years. The 1st period of 3 years would have ended on July 1, 2020. It would be extended for another 3 years. The letter, at paragraph 2, states that appointment was for 3 years. There was a termination clause, and the respondent was not under obligation to renew. Renewal was not automatic. The respondent could terminate at any time.
29. The claimant holds among others, PhD in development finance. As Dean, he generally ran the school of business, human resource, finance, scholarly activities, curriculum issues and community service. He offered leadership in academic affairs.
30. The respondent offered global mba from some years back. It had at the time of the claimant's testimony, held 2 graduation ceremonies. He co-taught strategic management leadership, with Dr Koshal. It is a component of global MBA. These were 2 different courses. There were other lecturers who could have taught this unit. Part-timers could teach this too. The claimant did not ask any particular one to teach.



- The respondent required someone who is grounded and experienced. Strategy is a multidisciplinary course. The claimant had taught, and published in, strategic leadership and ethics.
31. The claimant assigned Dr Koshal the course. He was to mentor him. The dean could be paid extra income. Mentorship was part of the dean's role. It was not part of teaching.
 32. The respondent has a catalogue. Students are part of the stakeholders. The catalogue has guidelines. There is a procedure for students' complaints. A student with a complaint should first engage the lecturer.
 33. The claimant did a quick investigation. He interviewed the students' leader. The students were mostly CEOs of various companies. They complained to the claimant in his capacity as the dean. He approached the deputy vice-chancellor Ruthie Rono on September 14, 2018, and responded to the students' leader, the same day.
 34. The claimant approached Dr Koshal before he saw the deputy vice-chancellor. He did not show Koshal the students' letter. He was protecting Koshal. The claimant handled the whole issue professionally. Mentorship is a long-term exercise. Koshal had already been mentored. Koshal had been mentored for 2 years. The deputy vice-chancellor did not propose that the 2 lecturers share the proceeds of co-teaching on a ratio of 50:50; she advised that they agree on modality.
 35. The respondent employs people who are already trained. It does not train on the philosophy of teaching [pedagogy]. The claimant taught one topic for 3 hours on leadership. Koshal got teaching notes from the respondent. After his own teaching, the claimant went on to support Koshal for 15-20 minutes.
 36. Once approved and the name was on the register, there was no need to supply documents to receive payments. The chief accountant e-mailed the claimant on October 17, 2018, advising that the claimant could not be paid, without supporting documents. It was a new requirement, the claimant explained, involving full-time lecturers.
 37. Supporting documents were provided as indicated in the letter dated September 24, 2018. Dr Koshal's teaching had been rubbish. It was not all about appearing in the classes. The claimant could in fact have demanded the full payment at Kshs 280,000.
 38. Catherine Karanja prepared course schedules. She prepared rosters. The claimant forwarded the payment schedule in his letter of September 24, 2018. After this, documents prepared by Catherine and her assistants were forwarded. They show that the claimant co-taught with Koshal. The last document was done assuming Koshal would teach alone, and receive Kshs 280,000. This was amended in the other document to reflect that the Claimant was instructed to co-teach. The documents were forwarded immediately after the classes ended. The deputy vice- chancellor was on leave, so her deputy, Prof Mulinge, signed on her behalf.
 39. The minutes of the disciplinary meeting states that it was the claimant, who informed Catherine that he had co-taught. The effect was to show that there was co-teaching and the 2 lecturers would share the money.
 40. The letter to show cause issued on January 31, 2019. The claimant was to respond within 2 days. The letter alleged that the claimant inserted his name in the teaching schedules. He showed the disciplinary committee communication between him and the deputy vice-chancellor, asking the lecturers to agree on co-teaching modality. Lecturers do not enter into written agreements to co-teach; they depend on trust. Falsification of records is a misconduct under the respondent's human resource policy, as is fraud, and insubordination.



41. The letter to show cause states investigation would be carried out. the human resource policy did not require the investigation report to be supplied to the claimant. Report would be given to the head of the department. The head of the department would then constitute the disciplinary committee within 7 days of receiving the report. The committee is supposed to hear the matter within 5 days.
42. The claimant attached documents to his response to the letter to show cause. He was not sure if he had all the documents necessary for his defence. He expected the investigation report to be part of the documents availed to him. The claimant wrote on February 23, 2019 to the director of administration, saying he needed 30 days to prepare. The faculty handbook allowed the claimant to have 30 days. He was not sure that he exhibited this handbook before the court.
43. The claimant maintained that the deputy vice-chancellor did not respond to his e-mails. He clarified that these were e-mails addressed to Koshal, and copied to the deputy vice- chancellor. He expected the deputy vice-chancellor to come in.
44. The employee handbook provided for retirement at the age of 65 years. The claimant retired but was on contract. Retirement notice just gave the retirement procedure. The dispute is based on the contract. Discrimination arose, because the claimant was not handled like other persons. The claimant received 2 dismissal letters, one after the initial disciplinary hearing, and the other, after he appealed.
45. Redirected, the claimant told the court that the co-taught course was for a total of 12 days. Revision and administration of exams was on Saturday. The letter appointing the claimant as dean, states that in event of non-renewal of his contract, he would revert to a suitable position, on commensurate terms. There were no other lecturers available to co-teach with Koshal. The claimant was qualified to teach all strategic leadership courses. He is a multidisciplinary academic. The students were mainly CEOs and well-groomed. They consulted Koshal. Evidence of co-teaching is in black and white. The claimant and Koshal agreed on modalities. They were to share payment. The claimant would teach for 3 hours. He was going to be the main discussant. He did 3 hours continuously. Dr Njenga and Catherine were consulted and were aware that the claimant would co-teach. Insertion of the claimant's name in the teaching schedules was by Catherine. The claimant requested for documents before the hearing. They were not supplied. He was not supplied list of witnesses and charges. He asked for 30 days to prepare for the hearing, but was heard within 10 days. The 3-year contract would expire after the date of retirement. Retirement notice issued 1 year before retirement date. Other deans would have their contracts extended beyond the retirement date.

Respondent's Evidence

46. Prof Ruthie Rono, respondent's deputy vice- chancellor, adopted her witness statement and documents filed by the respondent, in her evidence.
47. She confirmed that the claimant was dean of Chandaria School of Business, appointed in 2017, on a 3-year contract. The contract was not automatically renewable. He would revert to a suitable position upon lapse, if there was no renewal. His contract contained a termination clause.
48. The claimant wrote an e-mail to the deputy vice-chancellor on September 14, 2018, attaching a complaint made by the student leader. The students alleged that Dr Koshal's class was too theoretical. The claimant proposed to co-teach. The deputy vice-chancellor replied, advising the claimant to consult Koshal. She did not advise that they share co- teaching payment. She did not endorse 50:50 sharing. The claimant said nothing about mentorship. He never went back to the deputy vice-chancellor.



49. The student complaint emerged after 1 week of teaching. The respondent allows co-teaching for its executive MBA course. Workload would be shared 50:50. Mentorship is part of the university's culture. It does not attract separate payment.
50. Dr Koshal had been teaching as an associate professor for 2 years. There appeared to have been no understanding between the claimant and Koshal on co-teaching and payments. The claimant told the deputy vice-chancellor that he had not shared the students' complaints with Koshal. He shared the e-mails from Catherine Karanja and Kefa Njenga with the deputy vice-chancellor.
51. Koshal complained that he was paid Kshs 140,000, instead of Kshs 280,000 as he was entitled, having taught alone. Catherine wrote to Dr Koshal, copied to the claimant, advising that the course was co-taught, and money should be shared 50:50. Catherine co-ordinated the programme.
52. The deputy vice-chancellor instructed Catherine to submit course allocation records. She consulted Catherine. Catherine said that she was advised by the claimant to alter the records, to include him as a co-lecturer. The course title and schedules were availed. Koshal was shown as taking the course. The accountant wrote saying she could not process the claimant's payments for extra work, without approval.
53. The claimant wrote to the director of finance through the deputy vice-chancellor, attaching course schedules, time-tables and payments to be made. He and Koshal were included, to receive Kshs 140,000 each. The original time-table and payment schedule only had Koshal's name. The one forwarded to the director of finance was the second schedule, which included the claimant.
54. The deputy vice-chancellor summoned both lecturers. The university policy calls for consultations in such a dispute. Koshal was not willing to share payments. The deputy vice-chancellor advised him to lodge a formal complaint. Koshal did so.
55. The deputy vice-chancellor called the claimant separately, and shared Koshal's position with the claimant. He was adamant that he co-taught. Course evaluation by students indicated Koshal taught them. They gave Koshal very high score. There was no indication from the students' evaluation that the claimant taught them. Course outline also showed that Koshal taught the students.
56. Therefore, there was a stalemate between the 2 lecturers.
57. The deputy vice-chancellor wrote to the claimant, advising that she would escalate the matter to the disciplinary committee. The claimant wrote to the deputy vice-chancellor, thanking her and insisting that he had co-taught and payment should be split, between him and Koshal.
58. She reported the matter to the vice-chancellor and the director of human resource. The vice-chancellor's office investigated the matter in accordance with the human resource procedure. Notice to show cause dated January 31, 2019, issued. The human resource manual for management requires a response is made within 7 days. The claimant was suspended to pave way for investigation. He ceased to perform the duties of the dean, but could continue teaching. Within 7 days, the vice-chancellor could accept explanation, write a warning or refer the matter to the disciplinary committee. The vice-chancellor referred the matter to the disciplinary committee.
59. The claimant was given 10 days to prepare for the hearing. The human resource manual provides for 7 calendar days.
60. He was heard and found culpable. Dismissal letter issued on April 17, 2019. He appealed. He was heard on appeal on May 8, 2019 and his appeal declined. The respondent communicated to the faculty members about dismissal, because they needed to be told. The dean oversees activities of the school



- assisted by various departmental heads. The respondent needed continuity. The claimant's role as dean, was taken over by the associate dean.
61. The claimant was taken through all the requisite processes before the hearing. The respondent did not discriminate. The claimant is the deputy vice-chancellor's age-mate. Retirement notices issue a year before. The claimant had a contract which went beyond the retirement age. If the respondent intended to discriminate, it could have given the claimant a contract of 2 years. There was no evidence of co-teaching. He was issued his certificate of service. He was paid terminal dues in accordance with the respondent's human resource policy.
 62. Cross-examined the deputy vice-chancellor told the court that exhibit 68 of the claimant's documents, indicates that the payment for co-teaching was made. The disciplinary hearing minutes indicate neither Koshal nor the claimant, was paid. There was a variance between the two documents.
 63. There was no policy regulating co-teaching. The course was for 2 weeks. The claimant wrote to the deputy vice-chancellor, saying there would be co-teaching, with shared payment. The deputy vice-chancellor replied. She did not stop the claimant from co-teaching. She asked him to use diplomacy in dealing with the subject.
 64. At page 50 of the claimant's documents, the students wrote an e-mail to the claimant, thanking him for teaching them. The deputy vice-chancellor did not thank these students. Koshal was paid half the amount at Kshs 140,000, and the other half in November 2018
– total Kshs 280,000.
 65. Koshal wrote the e-mail of January 3, 2019 to Kefa Njenga. He states that he had been paid half of his teaching dues. The disciplinary committee sat on February 28, 2019. Its position was that the amounts had not been paid. From the record, Koshal had been paid. The letter to show cause indicates claimant was paid half. The disciplinary proceedings indicate he was not.
 66. All charges against the claimant went together. The 1st charge states that the claimant was fraudulent. He changed the original payment schedule. Fraud was not reported to the police.
 67. The respondent charged the claimant with corruption. He sought 50:50 payment, after attending only one class. He was the school CEO. The schedule of payment originated from him. Financing was part of his docket as the dean. Preparation of the schedule was part of his financial management docket. He owned and managed the budget. Catherine, the programme co-ordinator did not decide budgetary matters. She went on annual leave, after submitting the original teaching schedules.
 68. The claimant defied lawful instructions. The deputy vice-chancellor had instructed the claimant to consult Koshal. He wrote to Koshal on the subject. He explained that he thought Koshal had agreed to co-teach. The vice-chancellor investigated the matter from the time the complaint was lodged.
 69. The human resource manual regulates the investigation procedure. The claimant responded to the disciplinary hearing invitation. He stated that he had not been furnished with list of witnesses and documents. He stated that he needed 30 days to prepare. He was not given the 30 days.
 70. The disciplinary committee pointed out various discrepancies. Dismissal was based on the recommendation of the committee. It was recommended that management takes appropriate action. Dismissal was an implied recommendation. He was found guilty of all allegations. No money was paid to him at the time. Letter to show cause alleged that he was paid.
 71. Dismissal letter alluded to payment of final dues. He was to appeal within 5 days of receiving the dismissal letter. The letter of dismissal issued on April 23, 2019. The deputy vice-chancellor wrote to



staff the same date, informing them, that the claimant had been dismissed. The claimant had not yet exhausted his right of appeal.

72. He was issued 1-year retirement notice dated January 19, 2018. He was appointed dean for 3 years, commencing in 2017, expiring July 2020. If the contract was not renewed, he would revert to a position commensurate with his status. The respondent was aware of the retirement notice, at the time it issued the contract. Students had left the university, by the time co-teaching was investigated. Most were foreign students. Class president could be contacted by e-mail.
73. Redirected, the deputy vice-chancellor told the court that there were 3 allegations against the claimant-fraud & corruption; falsification of documents; and failing to obey lawful instructions. The allegation was not that the claimant received payment.
74. There was no policy on co-teaching. Lecturers were left to agree amongst themselves. Mentorship was on different dimensions. It went from the very beginning, touching on preparation of the syllabus, preparation of research, which involved all aspects. Attendance of one class could not amount to mentorship.
75. The deputy vice-chancellor instructed the claimant, through her e-mail of September 15, 2018, to consult with Koshal. There were 4 days remaining in the particular course. The appreciation by the class president, notes that the claimant attended one class and made other visits. This did not amount to co-teaching. Koshal received half payment at the end of the semester. The claimant managed the budget. The payment schedule was amended. There was anxiety among the payment officers, which may have resulted in discrepancies. This came out in the disciplinary proceedings. The claimant asked for 30 days to prepare for disciplinary hearing. The human resource manual provides for 7 days. He was allowed 10 days. It was correct to inform staff that the claimant had been relieved of his duties. Information did not affect the claimant's right of appeal. It was conclusive that the claimant attended 1 lecture and made short visits thereafter.
76. Dr Paul Okanda adopted his witness statement on record. He explained that the human resource manual does not require the respondent to record witness statements and prepare a list of witnesses, in disciplinary processes. None was prepared, and none could therefore, be availed to the claimant.
77. Okanda told the court that allegations against the claimant were specific. He falsified documents. He did not co-teach with Koshal.
78. The allegations were investigated by the vice-chancellor, in accordance with the human resource manual. The investigation report would be the premise upon which the charges were drawn. The claimant was accorded full opportunity to defend himself. The respondent was not required to undertake a full hearing akin to court proceedings. The process was just and fair.
79. The claimant failed to follow the instructions of the deputy vice-chancellor on consulting Koshal. He was familiar with all the involved parties, and was free to call any of them, as his witness. He did not raise any concern at the hearing. The administrator Jared, wrote to the claimant before the hearing, explaining all details of the hearing. All documents were available to the claimant. He did not specify which document was inaccessible to him.
80. The committee ascertained that there was no agreement between the claimant and Koshal, to co-teach. There was no agreement on workload, hours, subjects and exam setting. The e-mail from the class president to the claimant, corroborated Koshal's position. The claimant attended 1 class and made subsequent visits, which did not amount to co-teaching.



81. Students' evaluation reports show the instructor was Dr Koshal. There was no mention of a 2nd lecturer. There was no evidence of any teaching material, prepared by the claimant. There were about 30 students. They evaluated Koshal highly. They did not state that his teaching was wanting. Koshal had covered about ¾ of the course, by the time the claimant attended his class.
82. The disciplinary committee made recommendations about the allegations. There was no allegation that the claimant had received money for co-teaching. The claimant alleged he was mentoring Koshal. All senior academics do mentoring of their juniors. Mentoring is not remunerative.
83. On cross-examination, Okanda told the court that the university has a management council, and senior managers are its members. The council offers strategic and administrative leadership.
84. The vice-chancellor carried out investigation. Report was submitted to the claimant in form of the letter of show cause. This letter comprised the totality of the investigation report. The letter did not mention that payment was made to the claimant. Failure to pay the claimant did not constitute fraud. Koshal indicated to the disciplinary committee that he was paid Kshs 140,000. The committee found that no one was paid. The letters to show cause did not state that either the claimant or Koshal was paid. Catherine, the course co-ordinator, wrote in her e-mail of March 1, 2019, that the claimant and Koshal received Kshs 140,000 each. Attending class did not amount to co-teaching.
85. There was a charge of falsification of documents. Catherine prepared the schedule of payments under instructions from the claimant. The document has a list of all courses and remuneration the lecturers were entitled to. The deputy vice-chancellor also signed the schedule.
86. The claimant did not agree on the modalities of co-teaching with Koshal, as had been instructed by the deputy vice-chancellor. There is a standard practice on co-teaching, but no written policy. There was no evidence that the claimant engaged Koshal. Whatever communication there may have been between the claimant and Koshal, is not what Okanda would call consultation on modalities of co-teaching. The claimant wrote an e-mail complaining that Koshal was not responding to the claimant with regard to consultation. The 2 lecturers had co-taught before. Okanda was not able to say what modalities regulated the earlier co-teaching.
87. Koshal had done more than ¾ of the course. If he was too bad, he would have been replaced. He would be paid for what he had taught. It would not have been in his best interest to replace him. Strategic management did not include leadership at graduate level. Okanda was not aware that the claimant taught strategic leadership at doctoral level. The disciplinary committee recommended that disciplinary action is taken against the claimant.
88. Redirected, Okanda restated that Catherine, the course administrator, prepared time-tables, in accordance with the instructions issued by the dean. Payment schedules were authorized by the dean. The claimant made an appearance in Koshal's class, but did not participate in the teaching afterwards. Focus of the disciplinary committee was on the 3 allegations, not on whether the claimant received money. The human resource policy applied to managers. There was no format prescribed by the policy, on investigations. The vice-chancellor investigated. The information on payment schedules originated from the dean's office. The claimant was not qualified to teach strategic management.

Issues.

89. The issues, as understood by the court, and as broadly stated by the parties in their closing submissions, are: whether the claimant's dismissal was substantively fair; whether it was procedurally fair; whether he was discriminated against by the respondent; and whether he merits the remedies sought.



The Court Finds: -

90. The claimant was appointed by the respondent on April 1, 1997 as an associate professor. He was made a full professor of management, on May 20, 2009. He was lastly appointed dean, Chandaria School of Business on May 2, 2017. He was issued a 3-year contract which was to expire on July 31, 2020. In event of non-renewal, the claimant would revert to a comparable position within his faculty. The appointment to various positions is evidenced by letters of appointment, commonly exhibited by the parties.
91. It must be recorded from the outset, that on January 19, 2018, 6 months after the contract appointing the claimant as dean for a period of 3 years was executed, the respondent issued the claimant a retirement notice. He was advised that he would be retired on his 65th birthday, which fell on October 25, 2019. When the events that form this dispute unfolded, the claimant was serving retirement notice.
92. It is not disputed that on January 31, 2019, the respondent issued a letter to show cause to the claimant, requiring him to respond to 3 allegations, which followed a complaint made by the claimant's colleague Dr Jeremiah Koshal, on teaching of BUS 6035 [leadership and ethics] course, in the fall of 2018 semester. The allegations were that: -
 - a. The claimant committed an act of fraud or corruption.
 - b. The claimant deliberately falsified records, or documents, to enable him receive payment for work which he did not accomplish in line with the university policy.
 - c. The claimant failed or ignored to obey lawful instructions given to him by the deputy vice-chancellor academic affairs, advising the claimant to engage Dr Koshal on co-teaching of BUS 6035.
93. The letter to show cause also served as a letter of suspension.
94. The claimant responded on February 5, 2019 explaining his position. He was notified to attend disciplinary hearing, through a letter dated February 18, 2019. He appeared before and was heard by the disciplinary committee on February 28, 2019. The committee found against the claimant on all the 3 allegations, and recommended *inter alia*, that the management takes appropriate action against the claimant. management dismissed the claimant through a letter dated April 17, 2019. The claimant appealed against the decision on April 26, 2019. The appeal was heard on May 8, 2019, and rejected on May 14, 2019.
95. Lastly, it is not disputed that the claimant was paid a total of Kshs 654,437 in terminal dues, and was availed his certificate of service.
 - a. Substantive fairness.
96. The court wishes to examine the last charge on insubordination first. The claimant was said to have failed to obey, or ignored the instructions of the deputy vice-chancellor, Prof Ruthie Rono.
97. The instructions are contained in an e-mail dated September 15, 2018 from the deputy vice-chancellor to the claimant. The students in course BUS 6035A had written an e-mail to the claimant, through their president William Shabanga on September 14, 2018. They complained that Dr Koshal's class was too theoretical and Koshal did not apply relevant examples to theory; Koshal did not encourage discussions, yet the topics were very interactive; he appeared unsure about the contents and just read from the slides; he was unable to provide direction on questions discussed during the class, leaving the questions hanging without conclusion; he did not use local examples, to help the students internalize



- the topics; and class application was very difficult, compelling the students to cram, instead of engaging the concepts.
98. The claimant, who served as dean of the school of business, proposed to co-teach the students with Koshal and therefore sought the endorsement of the deputy vice- chancellor. His proposal is to be found in his e-mail to the deputy vice-chancellor dated September 14, 2018. He states that because students had raised fundamental issues with Koshal’s teaching, the claimant should co-teach with Koshal, and no loss would be incurred by the respondent, because the payment for co-teaching, would be split between the claimant and Koshal.
 99. The instructions from the deputy vice-chancellor were:
“The feedback from the students is important. Please use your diplomacy with the lecturer [Koshal] so that he understands why you are offering to co-teach with him, and agree on the modality of co-teaching. As we plan on pedagogy, we will focus on the several sessions on this area.”
 100. The claimant accepted the instructions of the deputy vice-chancellor the same date, thanking the deputy vice-chancellor for her wisdom, and assuring her that the claimant had co- taught with Koshal in the past, and that the claimant would do the best PR [public relations] moving forward. He did not see any problem arising in the proposed co- teaching.
 101. The claimant states that he sat with Koshal and explained to him, that the claimant would teach for Koshal, to demonstrate a few things. The claimant states in his e-mail to the deputy vice-chancellor of January 18, 2019, that “ I explained everything to him well and he agreed.”
 102. According to Koshal, in his evidence before the disciplinary committee, the claimant called Koshal within the first week of BUS 6035A, showed Koshal one line, in an e-mail purported to have been written by students complaining about Koshal’s methods. The claimant asked Koshal to take remedial measures, and that was it.
 103. There was therefore, in the view of the court no concurrence between the claimant and Koshal, about co-teaching and sharing of payments. The instructions of the deputy vice-chancellor, was that the claimant should use his diplomacy, make Koshal understand why it was necessary to co-teach, and agree on the modality of co-teaching. The claimant did not persuade the court that he went by the instructions of the deputy vice-chancellor, in dealing with Koshal.
 104. There is nothing written between the claimant and Koshal evincing diplomacy and agreement, as had been instructed by the deputy vice-chancellor. There are many e-mails which have been exhibited, involving the relevant players in this dispute, but none from the claimant to Koshal, showing that the claimant adhered to the instructions of the deputy vice-chancellor.
 105. The e-mails from the claimant to Koshal after the dispute erupted, and after the teaching was completed, suggest to the court that there was no agreement and diplomacy from the inception, as had been proposed by the deputy vice-chancellor.
 106. The claimant wrote a series of e-mails, recollecting the events that ended in his dismissal. There are hardly any e-mails preceding the complaint lodged by Koshal upon the instructions of the deputy vice-chancellor, showing that the claimant engaged Koshal diplomatically and reached a consensus with Koshal on co-teaching.
 107. On January 14, 2019, the claimant writes to Koshal that “ I thought you agreed on the way forward, before I came to teach you...” There was no agreement, and the claimant merely thought there was one. His choice of words in this e-mail do not reflect that he exercised diplomacy with Koshal from the inception. Was the claimant going to teach his fellow lecturer, or to co-teach?



108. The e-mail to the deputy vice-chancellor of January 18, 2019 from the claimant, similarly does not suggest that he claimant had properly followed the path instructed by the deputy vice-chancellor, on September 15, 2018. He writes “I sat down with Prof Koshal and explained to him that I would teach for him to demonstrate a few things and I explained everything and he agreed... the Prof wants to be paid the full amount and I am saying no, because he did not do the job alone...” Again, the tone and tenor of the claimant does not suggest there was diplomacy, or an agreement on co-teaching. The proposal was not that the claimant would teach for Koshal and demonstrate a few things; it was that the lecturers would co-teach.
109. The court does not think that the claimant acted on the advice of the deputy vice- chancellor as instructed, when the claimant proposed co-teaching. He did not exercise diplomacy, or do ‘the best PR I can’ as he committed to do, in his e-mail of September 15, 2018. He came out across in his e-mails, as being abrasive, and disrespectful of his fellow lecturer. As the dean, he appears not to have used the right approach, in reaching out to Koshal. In the end, there was no agreement on the modality of co-teaching between the claimant and Koshal. There is no agreement seen by the court, written, or established orally, in the evidence of the claimant. Koshal categorically denied the existence of any agreement between him and his dean.
110. Insubordination occurs under section 44[4] [d], when an employee knowingly fails or refuses to obey a lawful and proper command, which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer. It was affirmed in *Dede Esi Annie Amanor Wilks v Action Aid International* [2014] e-KLR that insubordination amounts to an act of gross misconduct, warranting summary dismissal.
111. The second charge was that the claimant falsified documents, to enable him receive payment for work he did not do.
112. The charge is based on the allegation that Catherine Karanja, the administrator of the executive MBA and DBA courses at the school, originally prepared teaching schedules which did not show that the claimant co-taught with Koshal. She entrusted the schedules to her assistant around September 24, 2018 for transmission to the claimant. She went on annual leave. On return, she found that the schedules had been sent back from the finance department, so that some documents which had been left out, could be attached, to support payment. She noticed that the schedules had been amended to indicate that the claimant co-taught with Koshal.
113. The court has plenty of doubt on the veracity of this charge relating to falsification of documents. The responsible officer in preparation of the schedules and time-tables, was the administrator Catherine Karanja. On January 3, 2019, she wrote to Kefa Njenga, stating that the course BUS 6035 A was co-taught by the claimant and Koshal. Her assistant Faith, suggested at the disciplinary hearing that Catherine was not on annual leave, when the changes to include the claimant were made. The court formed the view that the changes were made with the full knowledge of the administrator Catherine. Furthermore, it was the evidence of Dr Okanda that the schedules were prepared by the administrator, upon the instructions of the claimant and were signed by the claimant, as well as the deputy vice chancellor. How would the claimant be blamed for falsifying documents which were endorsed by the deputy vice-chancellor?
114. There was no evidence placed before the court, showing that the dean, the claimant herein or Catherine, were barred from effecting changes on the schedules, if it was necessary to amend, such as where errors were noted on the original documents. The claimant believed he co-taught with Koshal and was entitled to payment. Catherine agreed with him. She even instructed Faith to edit the soft copy of the schedules to include the claimant, before the schedules were resubmitted to the finance



- department. The court is not persuaded that amendment to the schedules, to include the claimant's name, amounted to falsification of documents.
115. The 3rd and last charge is related to the 2nd. It is that the claimant was involved in an act of fraud or corruption. The respondent's employee handbook, has 2 categories of disciplinary offences- minor and major misconduct. Major misconduct includes fraud, deliberate falsification of records or documents, and committing any act of fraud or corruption.
 116. The evidence presented on the charge of falsification of documents, appears to the court to be the same evidence underlining the allegations of fraud and corruption. No clear distinction was made before the court, with regard to falsification, fraud and corruption.
 117. The court understood the charges of fraud and corruption, to mean that upon falsifying documents to indicate that the claimant co-taught, the claimant intended to receive payment which was not due to him. The claimant would be deemed to have acted against one of the core values of the respondent- upholding of professional ethics and standards, and being accountable.
 118. The respondent is a private institution, and did not escalate the charges against the claimant to public investigators and prosecutors. It is not in the view of the court suitable to borrow the definition of the term 'corruption' from the *Anti-Corruption and Economic Crimes Act*, as submitted by the claimant. The offences must be understood within the context of the respondent's human resource policy.
 119. Was the claimant involved in unethical conduct and breach of professional standards? The court formed the view that the 3rd charge, hinged on the parties' perception of co-teaching.
 120. It was admitted by respondent's witnesses, that there was no policy regulating co-teaching. Dr Okanda suggested that the lecturers relied on practice. The disciplinary committee acknowledged this gap, observing that there was need, for guidelines to be developed, for co-teaching.
 121. Without such guidelines, it was always difficult to say what co-teaching entailed. If the claimant had a role, or if other senior lecturers had a role in mentoring their junior colleagues, how would mentorship be distinguished from co-teaching? What did co-teaching entail, and what workload sufficed, for a lecturer to be deemed to have co-taught? This lack of clear co-teaching guidelines, was confounded by the presence of mentorship, which Dr Okanda told the court is not remunerative.
 122. Koshal was scheduled to teach BUS 6035 A, for about 2 weeks between 10th and September 22, 2018. The claimant stated he joined Koshal, taught for about 3 hours and made up follow-up visits thereafter. Koshal told the disciplinary committee that the claimant appeared in his class for about 20 to 30 minutes. The class president William Shabangu, wrote an appreciation e-mail to the claimant dated November 26, 2018, stating that the claimant had intervened in the students' complaints, and attended one of the lectures, "of which you really helped through your enthusiastic style of discussions... we strongly believe intervention impacted the class thereafter..."
 123. There is no doubt in the mind of the court that the claimant was involved in teaching with Koshal. His involvement in terms of the workload, in a 12-day course, was not 50:50, relative to Koshal's. Koshal may therefore have correctly felt hard done by the proposal to share the proceeds of co-teaching equally with the claimant.
 124. The assertion made by the respondent, that students rated Koshal highly in their evaluation, does not in the view of the court, rule out participation by the claimant. The student president in the above e-mail appears to be saying that the claimant's intervention, led to improved teaching by Koshal. High rating of Koshal by the students, may well have been the result of the claimant's intervention, if the e-mail by the student president can be relied upon.



125. The court enquired in the course of the proceedings whether it was not possible to share payments in proportion to the workload discharged by the respective professors, but was told that the ratio was invariably 50:50.
126. These are the policy gaps which created the misunderstanding between the lecturers. The claimant stated that he had co-taught with Koshal before, without any dispute. It was however in a course where money was not involved. Once extra income was involved, and without a clear policy regulating co-teaching, it was inevitable that some misunderstanding would arise.
127. The court does not think, looking at the overall picture, that the claimant acted in a corrupt and fraudulent manner. The respondent trusted the lecturers to co-teach, without clearly defining what co-teaching entailed, and relied too much on the ability of the lecturers to reach gentlemen agreements on sharing of the workload and payments. The culture of mentorship, perhaps also blurred the practice of co-teaching. When the dean visited Koshal's class, it would not always be clear if he visited as a mentor or a co-teacher. The charge of fraud and corruption, in this co-teaching policy vacuum, rested on quicksands, and was not established.
 - b. Procedural fairness.
128. Procedure was largely fair and in conformity with the *Employment Act* and the respondent's human resource policy.
129. The respondent made attempts at de-escalation of the dispute between the lectures, prior to lodging of the formal complaint by Koshal. The deputy vice-chancellor called the claimant and Koshal, and attempted voluntary settlement. The lectures stood their ground, leading to the advice to Koshal by the deputy vice-chancellor, to lodge a formal complaint.
130. Once the complaint was lodged, the procedures in the human resource policy were invoked. The claimant was issued a letter to show cause, why disciplinary action should not be taken against him. Three offences were clearly stated in the letter dated January 31, 2019. The offences fell within the category of major misconduct under the respondent's human resource policies and procedures manual. The claimant responded comprehensively, in his letter dated February 5, 2019.
131. Investigation was carried out through the vice-chancellor's office and the human resource office. The claimant was invited to a disciplinary hearing, within the time frame granted under clause 6.2 of the human resource policies and procedures manual. He was allowed 10 calendar days to prepare for the hearing, while the manual provides for 7 days from the date of receiving the charges. The court has not seen any other human resource policy document, which allowed the claimant to have 30 days to prepare for the disciplinary hearing.
132. The court similarly has not seen any human resource policy document, which required the claimant to be supplied with witness statements prior to hearing. The claimant was well acquainted with the issues against him, and the persons who had expressed, or dealt with, those issues leading to the disciplinary process. He had engaged the deputy vice-chancellor and Koshal before the disciplinary hearing.
133. Hearing took place on February 28, 2019 at the deputy vice-chancellor's boardroom. The claimant was accompanied by a colleague of his choice, Dr Josephine Arasa, in fulfilment of section 41 of the *Employment Act*. The claimant gave his evidence, as did the main witness against him- the deputy vice-chancellor, Koshal and Catherine Karanja. There was no witness who appeared by way of ambush. All were familiar figures to the claimant, and their evidence was not anything that the claimant was unfamiliar with.



134. The committee made its observations and recommendations after hearing the claimant. They found the claimant guilty on all counts. They made recommendation for management to take appropriate disciplinary action within the respondent's human resource policies and procedures manual.
135. Management relieved the claimant his duties as the dean and lecturer on April 17, 2019. He was advised of his right of appeal. He appealed to the vice-chancellor Prof Paul T. Zeleza on April 26, 2019. He was heard on appeal, on May 8, 2019. The appeal was declined.
136. The claimant complains that the deputy vice-chancellor was wrong in announcing to the faculty, that the claimant had been summarily dismissed, before the claimant exhausted his right of appeal. The court does not think that the deputy vice-chancellor, erred. The human resource policy manual calls for management to take appropriate disciplinary action, after hearing has been concluded by the disciplinary committee. There is no clause which compels management to stay its decision, pending the exhaustion of the appellate procedure. The deputy vice-chancellor was simply discharging her role, by informing the faculty that the dean had been relieved of his deanship. The court agrees that this information was necessary to the faculty, and it did not in any way, hinder the claimant's right of appeal. If the claimant was successful on appeal and was reinstated as dean, it is probable that the faculty would be informed about his success and return to the deanship, with similar alacrity. The claimant was not prejudiced by having the faculty learn of his dismissal.
137. The court does not find significant departure by the respondent, from the minimum standards of procedural fairness prescribed under sections 41 and 45 of the *Employment Act*. The respondent acted in accordance with the disciplinary procedure created by its human resource policies and procedures manual.

Remedies.

138. In the end the court is satisfied that the claimant did not act in accordance with the instructions given to him by the deputy vice-chancellor, in handling Koshal. The other 2 allegations concerning falsification of documents, corruption and fraud were not established.
139. There were extenuating circumstances however, on the charge of insubordination, which should have been taken into account by the respondent, in meting out punishment. The disciplinary committee recommended appropriate action be taken against the claimant. Appropriate action did not inevitably, have to be dishonourable discharge.
140. The court has concluded that the respondent did not have a policy to guide the lecturers in co-teaching. It has concluded that it would be difficult for the lecturers to always reach consensus on co-teaching and shared payment. It was not entirely the fault of the claimant, that he was not able to fulfil the instructions of the deputy vice- chancellor, by engaging Dr Koshal diplomatically, and persuading him to co-teach and share the proceeds of co-teaching. The claimant thought that he had been understood by Koshal, but in the end, that was not the correct position. The misunderstanding between the 2 lecturers as concluded above, could have been avoided, with co-teaching guidelines. The claimant was placed at a disadvantage by the absence of such guidelines, engaging his colleague on the subject, based on what he considered to be his best public relations acumen. The court would therefore find that the respondent ought to have taken into account the extenuating circumstances, which may have contributed to the claimant being in a position of apparent insubordination.
141. Other important factors the respondent ignored, in summarily dismissing the claimant, include the retirement notice, which was issued by the respondent, on January 19, 2018. The claimant was notified



- that he would be retired on October 25, 2019, his 65th birthday. This was as per the respondent's retirement policy.
142. The notice advised the claimant that he would be paid his pension on retirement.
 143. This notice issued during the subsistence of the contract made between the parties on May 2, 2017, which appointed the claimant as dean, Chandaria School of Business. The contract preceded the retirement notice.
 144. The contract was for 3 years, commencing September 1, 2017 ending July 31, 2020.
 145. The retirement notice, advising that the claimant that his employment would be terminated through retirement on October 25, 2019, issued while he had already been advised on another termination date- July 31, 2020.
 146. There was no clear effective date of termination [EDT] advised upon the claimant. There was October 25, 2019 and July 31, 2020. In the end, it was April 17, 2019 through summary dismissal. The certificate of service further casts doubt on the EDT, stating that the claimant's last day of service was April 25, 2019. It was suggested that a second letter of dismissal issued after the appeal was heard. But the record indicates the appeal was heard on May 8, 2019, so that the second letter could not have come before that date. The practice, where an employee has appealed against an employment decision internally, is that the date of dismissal given after the original hearing, is not altered by the appellate decision, unless the particular workplace policy states otherwise. The date of dismissal ought to have remained the April 17, 2019. The date of commencement and expiry, in a contract of employment must be unambiguous, particularly because the length of service impacts terminal benefits.
 147. The respondent's human resource policies and procedures manual requires that all separations, between the respondent and its staff, are fair and well-managed. Was the claimant's separation fair and well-managed? The manual defines discharge/ termination to include termination for a variety of reasons, including misconduct, redundancy, retirement, medical grounds and closure of the respondent. The respondent ought to have been consistent on the EDT.
 148. The respondent does not appear to have adequately considered that the claimant had served for 23 years. He had been promoted to full professor and eventually to the position of dean, Chandaria School of Business.
 149. His performance as a lecturer and dean, was not faulted throughout the 23 years. He was faulted at the sunset of his service only, on his approach to co-teaching.
 150. The charges over which the claimant was dismissed, related mainly to his role as the dean, school of business. He was alleged to have falsified documents, so as to claim payments for co-teaching. The complaints by the students to the claimant, reached the claimant in his capacity as the dean. This was the origin of the dispute. Was it not possible for the respondent, in punishing the claimant, to take away his deanship, without taking away his role as a lecturer? The claimant had taught without being the dean, for 20 years. The deanship contract provided for such an eventuality, stating that if the contract was not renewed, the claimant would revert to a suitable position within the faculty on a salary commensurate with his rank. Although this related to non-renewal, the court does not think similar accommodation would reasonably be denied to the long-serving professor, on non-completion of the deanship.
 151. It should have been considered also, that the claimant did not in the end receive payment of Kshs 140,000 for co-teaching with Koshal. He explained that he felt the allegations had occasioned him disrepute, and he therefore opted to forego payment. He may have been contrite. If the respondent



- was satisfied that Koshal merited the full payment of Kshs 280,000, it would have been possible to pay him as much, after the claimant relinquished his claim.
152. The respondent did not make it clear in the letter appointing the claimant as dean, how he would revert to another suitable position if the contract was not renewed, while the retirement notice would validly have taken effect, on October 25, 2019. Ambiguity in contracts of employment, is resolved in favour of the employee.
 153. Employers are permitted to retain their employees post-retirement on contract, or even recall retired employees on contract. When a retirement notice is issued after the contract has been executed, and comes into effect before the expiry of the contract, it must be made clear by the employer if the retirement notice is intended to vary the contract. Retirement as acknowledged in the respondent's human resource manual, is one way of terminating employment. The date when employment comes to an end must be advised on the employee, consistently.
 154. The court does not find merit in the claimant's assertion about discrimination. He did not name any comparators who were treated more favourably than him, with regard to co-teaching. He taught his own course in strategic management BUS 6020 D, simultaneous with the minimal co-teaching he carried out with Koshal. He was paid a full Kshs 280,000 for his course.
 155. Being taken through a disciplinary process did not amount to discrimination. The respondent had its own reasons, to believe that there was need to invoke the disciplinary process against the claimant. There was no proof of malice. There was no age discrimination. The respondent offered the claimant a contract running beyond his 65th birthday. He pleads that the contract would have been renewed for another 3 years, notwithstanding his having attained the retirement age of 65 years. The retirement notice did not give the wrong date of retirement. There is no evidence at all, showing that the claimant was discriminated on account of his age. The deputy vice-chancellor who said she is claimant's age-mate, is not shown to have had any personal vendetta against the claimant, as alleged by the claimant.
 156. There is no merit in the claims for salary for the remainder period of the contract of 16 months, at Kshs 9,956,320; loss of medical benefits at Kshs 334,000; loss of adjunct salary of Kshs 150,000 for 16 months at Kshs 2,400,000; and loss of supervision fees for DBA and MBA at Kshs 7,467,240. The prayers are speculative and anticipatory. They are predicated on an assumption that the claimant would invariably have completed his contract. The prayers though specifically pleaded, were hardly strictly proved. There was a clause in the claimant's contract, allowing parties to disengage before the end of the contract. The misunderstandings between the claimant, his supervisor and faculty members made it likely, that the claimant's deanship could have been terminated prematurely. These prayers are speculative and not merited.
 157. He has withdrawn his prayer for reinstatement.
 158. There is no substance in the prayers for salary arrears for the period the claimant has been out of employment. Back wages are ordinarily paid upon reinstatement.
 159. Similarly, there is no merit in the prayers for damages for discrimination. The court has not found any evidence suggesting that the claimant was subjected to discrimination.
 160. Exemplary damages, is not a compensatory remedy, but awarded to a claimant to punish a respondent and deter a respondent and others from similar objectionable behaviour in the future. Exemplary damages are not awarded for lost opportunity. The claimant has not laid a basis for punishment and deterrence of the respondent. The conduct of the respondent in disciplining the claimant, can hardly justify punishment and deterrence.



161. The claimant as concluded above, was due to retire on October 25, 2019, or leave at the end of his contract, on July 31, 2020. The prayer for a permanent injunction, restraining the respondent from replacing the claimant, is contrary to what the parties agreed in their contract of employment.
162. In the end the court is convinced though, that the claimant should not have left through a dishonourable discharge, with the tag of falsification of documents, corruption and fraud, forever hanging around his neck. The respondent had issued a valid retirement notice, which was to take effect 6 months from the date the claimant was summarily dismissed. The claimant should have reverted to another role, and lasted for the remaining 6 months before retirement, as was intended by the parties from the beginning. The respondent ought to have allowed the claimant to serve the retirement notice, and to retire honourably, in accordance with the existing retirement notice.
163. The court commutes summary dismissal to termination through retirement, in accordance with the retirement notice issued by the respondent to the claimant, dated January 19, 2018, which took effect on October 25, 2019.
164. The respondent shall pay to the claimant 6 months' salary for the period between April 17, 2019 and October 25, 2019, at Kshs 3,733,620.
165. The claimant shall receive his full pension in accordance with the retirement notice.
166. He is allowed 50% of the costs.
167. Interest granted at court rates from the date of this judgment till payment is made in full.
168. Lastly it is noted on the record, that the claimant was paid terminal dues amounting to Kshs 654,437 and received his certificate of service.

In sum, it is ordered: -

- a. Summary dismissal is commuted to termination through retirement, in accordance with the retirement notice, dated April 19, 2018, which took effect on October 25, 2019.
- b. The respondent shall pay to the claimant salary for the period between April 17, 2019 and October 25, 2019 at Kshs 3,773, 620.
- c. The claimant to be paid full pension in accordance with the retirement notice.
- d. The respondent shall pay 50% of the costs to the claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF JUNE 2022.

JAMES RIKA

JUDGE

