



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 264 OF 2018

JOHN WEKESA WANJALA.....CLAIMANT

VERSUS

MURANG'A UNIVERSITY OF TECHNOLOGY.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent for summarily dismissing him from employment. He averred that he was employed as assistant lecturer on 4th June 2013 and that he was later promoted to position of lecturer on permanent and pensionable terms on 27th July 2016. The Claimant averred that he served the Respondent in two capacities as a lecturer and as an acting chairman in the human resource department from 6th August 2013. He averred that he has never been involved in any disciplinary cases nor has he ever been served with either verbal or written warning until when he was summarily dismissed on 20th June 2018. The Claimant averred that after investigation of missing marks he established that there was a script for student registration No. BE213/1661/2014 in the examination office which had not been captured in the ERP system and he then entered the marks into ERP system as the chairman of the department who is the chief examination officer. He averred that on 17th June 2018 while presenting results at school level, Mrs. Muhoro disputed marks for the unit HEH:2409 Managing HR projects for the same student. The Claimant averred that the Dean appointed a committee of five people to investigate the matter and that on 19th June 2018 before the committee completed its investigations the matter was reported to the Deputy Vice Chancellor by Mrs. Muhoro and the Deputy Vice Chancellor hijacked the matter and presented it to the Vice Chancellor without investigations. The Claimant averred that he was thereafter served with a summary dismissal letter on or about the 20th June 2018. He averred that he was never accorded the disciplinary procedures in the terms of service of the Respondent. He averred that on 24th June 2018 he appealed the dismissal to the full Council according to the terms of service of Murang'a University of Technology. He averred that he was invited for a hearing on 13th July 2018 but the hearing did not take place due to reasons best known to the Respondent. The Claimant averred that he was thereafter invited to a hearing which took place in the University Board Room with only 3 Council members and 8 members of management contrary to appeal requirements. He averred that he was not given a fair hearing nor a chance to explain or interrogate the witnesses and that he was served with a letter confirming dismissal on 29th August 2018. The Claimant averred that he was not the official invigilator of the unit HEH 2408 Contemporary Issues in Human Resource Management but was called upon to assist as the official did not turn up. He averred that his role was to collect scripts and Mr. Robert Mwangi was in charge of the examination and the attendance list. He averred that it seems that some students did not sign the attendance list and that no one disputed the scripts collected as all are for eligible students who were graduated by the Respondent in August 2018. The Claimant averred that the Respondent had been deducting pension money without remitting to the pension scheme since January 2018 to date amounting to Kshs. 155,589/- contrary to Part IV Protection of Wages and that he also taught part time in the May to August session 2017, September to December semester 2017 and January to April 2018 for which he was not paid. The Claimant prayed for reinstatement into service of Murang'a University of Technology as due procedure as laid down in the Constitution's bill of rights, labour laws and the terms of service of Murang'a University of Technology were not followed, for a declaration that the summary dismissal is null and void, payment for damages suffered due to unlawful, unfair and wrongful dismissal, the loan arrears accrued on the loan that he was servicing be paid by the Respondent as he took the loan with the Respondent as the collateral through the payslip, all monies deducted by the Respondent as pension be remitted to the respective authority, the Respondent be fined and jailed for deducting salaries and not remitting to the pension scheme according to Part IV Protection of Wages and Section 19 on deduction of wages under the Employment Act. He also sought that the part time appointments be paid totalling to Kshs. 391,500/- with interest at the rate of 14% accrued up to the time of payment, accumulated annual leave of Kshs. 962,420.40, payment of Kshs. 77,809,320/- on expectation that he was to be in service of Murang'a University up to the retirement age of a lecturer which is 72 years. The Claimant averred that it should be recalled that the Respondent through its letter of dismissal indicated that he was not suitable to hold any public office thus jeopardizing any chance of employment. The Claimant prayed for costs and interest of the suit as well.

2. The Respondent in its memorandum of reply averred that the Claimant's claim is baseless, frivolous, vexatious and an abuse of the court processes and does not disclose any reasonable cause of action against the Respondent. The Respondent averred that Mrs. Muhoro is the unit lecturer of unit HEH: 2409 and she detected an anomaly in the exam that she had administered for that Unit as the marksheet that she had prepared was not the one that was presented to the Respondent's Board of Examiners. It was averred that she noted that there was a student registration number BE213/1661/2014 called Julia Wanjiru Ndung'u who she had been marked 'absent' in the original Marksheet but had been included as one of the students who did the exam. The Respondent averred that there was a student by the name Warandah Hempstone

Julius registration number BE213/1201/2014 who had not been listed in the new marksheet but was included in the marksheet that had been prepared by Mrs. Muhoro. The Respondent averred that upon noticing this anomalies Mrs. Muhoro raised an alarm with the Respondent's Board of Examiners. The Respondent averred that pursuant to the anomalies noted, a committee was procedurally formed by the Dean to investigate the serious examination malpractices which had put the Respondent's reputation to risk. The Respondent averred that during their investigations the committee found out that there was a new manuscript that was in the bundle of manuscripts bringing the total of manuscripts to 106 instead of 105 as per the exams invigilation records form. The Respondent averred that the new manuscript was not signed by Mrs. Muhoro as opposed to the earlier one that bore her signature as it was prepared by her being the unit lecturer and that the new marksheet was signed by the Claimant and the external examiner. The Respondent averred that the marksheet bore the initials "LK" as the third signatory to which the Claimant admitted to the committee to have inscribed. The Respondent averred that upon thorough and independent investigations by the Respondent, the Claimant was found to have played a primary role in the anomalies aforesaid. The Respondent averred that accordingly the Claimant was summarily dismissed by the Respondent's Vice Chancellor for gross misconduct. The Respondent averred that it conducted itself lawfully as it exhausted its internal mechanisms in investigating the examination anomalies. The Respondent averred that the Claimant was given every chance to state his case and was given a hearing pursuant to his rights under the Constitution and the Employment Act as well as the Respondent's internal disciplinary and grievance handling policy. The Respondent averred that the Claimant was treated fairly and equally like all other employees and that it was not in violation of any law and in particular any of the clauses of its employment engagement with the Claimant and the rules of natural justice. The Respondent thus prayed that the Claimant's suit be dismissed with costs.

3. The Claimant testified as did the Respondent's witnesses. He stated that he had been employed by the Respondent as an assistant lecturer on 4th June 2013 and appointed as chair of department on 8th August 2013. He stated that he was promoted to position of Lecturer on permanent and pensionable terms in July 2016 and has been serving as Lecturer and Chairman of the Respondent since 2013. He testified that he served the Respondent with impeccable competence and diligence and was not subject of disciplinary issues or proceedings till his summary dismissal on 20th June 2018. He stated that the dismissal letter failed to clarify the issue of a Lecturer and the issue of a Lecturer and the issue of Chairman as these have different responsibilities. He stated that the Registrar Administration and Planning had no authority to dismiss him as a Lecturer and that the authority is vested in the Council. He stated that the Respondent dismissed him without following procedure in terms of service, the Constitution and the Employment Act 2007. He testified that the issues emanated when he was compiling results for January to April 2018 where it was established a student BC2013/1621/2013 had missing marks for Unit HEH 2409 Managing HR Projects. He stated that after investigation the script was found in the examination office which is the custodian of the scripts and as chair of the department who is the chief examiner he was to enter the marks in the ERP system which is what he did. He stated that on 15th June 2018 the results were discussed at departmental level chaired by Examination Office of the Department as he was attending a Senate meeting and someone had to step in to chair on his behalf. He testified that on that day no issue was raised and on 17th June 2018 when presenting the results, Mrs. Muhoro disputed the results for the student he had referred to and as a result the Dean, School of Business appointed a Committee of 5 people which comprised of among others Priscilla Muhoro, Peter Kahiga Mwangi and the Claimant as members to investigate the matter. He stated that on 19th June 2018 before they concluded the work the matter was reported to the Deputy Vice Chancellor who hijacked the matter and reported to the Vice Chancellor contrary to protocol. He testified that on 20th June 2018 he was served with summary dismissal letter contrary to requirement of disciplinary procedure as stated in terms of service and on 22nd June 2018 he appealed to Council per his terms of service. He stated that he was invited for a hearing on 23rd July 2018 but the same did not take place due to reasons best known to Respondent. He testified that on 28th August 2018 there was a hearing at the Boardroom with 3 Council members and 8 members of management contrary to appeals requirement in the terms of service. He stated that was not heard by full Council and that on 29th August he received letter confirming the dismissal. He testified that according to the schedule of the University he was not the Lecturer of the Unit or the official invigilator and that he was called at the last minute to invigilate as the official did not turn up. He stated that his role was to ensure there was no cheating and to collect the scripts as the students left and that all the students he took scripts from were eligible and the Respondent has since graduated them. He testified that on the course in question there was issue of scrips presented being more than the number of students present. He stated that the scripts he submitted were equivalent to the number of students and that the students who graduated are the same number. He stated that the Respondent deducted money for pension scheme but there was no remittance from January 2018 contrary to Constitution on deduction of wages. He testified that he had taught part time in May to August 2017, September to December 2017 and January to April 2018 for which there is no payment which is in violation of the Respondent's work load policy. He stated that he was discriminated against in his employment.

4. In cross-examination by Mr. Chege for the Respondent he stated that he was Dr. Wanjala and that Mrs. Muhoro is an assistant Lecturer at Respondent and was the Unit Lecturer of HEH 2409. He stated that the examination dates are on 27th June 2018 and that he did not administer that exam. He testified that he did not mark the paper HEH 2409 and that there are procedures after examination is administered which is that the exams are kept at the exam office and on the date of exam the examination is taken from exam office together with scripts and is taken to exam room. He stated that it is a requirement for students to sign before they enter the exam room and that the students normally sign. He stated that he did not know if they signed as he was not there and the only way we can confirm is through the attendance and that if they did not sign you check the script. He testified that there are cases where students sit but do not sign and that he had checked the attendance for this paper and the student's name was not on the attendance sheet. He testified that he could not tell if there were other students missing. He stated that he could tell her attendance sheet was not signed but had a script in the bundle. He testified that he knew Warandah Hempstone Julius and he did not know if his name was in the transcript. He stated that if he checked the result he would know if the student was present. He stated that the issue was the missing script and that he was aware of a mark sheet. He stated that this is a list containing the names of students with the marks they scored and that it is not a must to be only the students in the attendance list. He stated that a mark sheet is prepared by the examiner and that for the unit in question the examiner was the unit Lecturer Mrs. Muhoro. He stated that the signatures are for the Examiner, the External Examiner, Chairman of Department and Dean of School. He testified that the mark sheet was signed by the Examiner Mrs. Muhoro, the External Examiner, the Chairman of the Department, and the last person who had not signed is the Dean. He stated that the Examiner's signature was there and Mrs. Muhoro was the Examiner. He testified that he did not know who collected the scripts. He stated that the irregularity was in procedure used by Mrs. Muhoro to report the anomaly and that she was to report to Chair of the Department. He stated that she comes from a different department and that she had to report but not to the Deputy Vice Chancellor. He stated that one reports to the senior person supervising then it goes to Dean and so on. He stated that after marking the marks are entered into the ERP system which is an electronic data system. He testified that the marks are entered by the Lecturers – the Examiners. He testified that he had access to this system and that he had a password and could enter data or delete data. He stated that he was not aware of the removal of Warandah and the insertion of Julia W. Nduung'u. He testified that qualification for sitting an exam is verified by the Registrar as students are registered into the system. He stated that she was qualified to sit the examination and it was not his duty to verify if a student has paid fees or not. He stated that what made him to say she is qualified is because she had an exam card which is issued by

Registry Academic Officer. He stated that in the exam she did he was not the invigilator. He stated that he was aware the Employment Act provides for dismissal for gross misconduct without notice. He testified that the Head of HR Administration was the Registrar, Deputy Vice Chancellor and the Vice Chancellor. He stated that the letter was signed by Registrar and that the letter said the management had received some information and made a decision. He stated that he saw one mark sheet with initials LK. He testified that according to the exam regulations something wrong was to have happened and that there was nothing wrong with that exam. He stated that the Council is comprised of 6 members and these are Chairman of Council, Deputy, Members and that the Vice Chancellor is the secretary of the Council. He stated that he was not aware that Julia was expelled. He testified that he was aware of Murang'a University Staff Pension Scheme and that there was no remittance from January 2018. He stated that the part time remuneration he claimed is for 4 Bachelors Units from May to August 2017, September to December 2017 and January to April 2018 and that he was not aware the payments till December 2017 were made. He stated that he had quoted memorandum of UASU and PUECF where the retirement age of a Lecturer is now 72 years as negotiated. He was referred to the Respondent's list of documents and in particular Clause 3.31 on Enforcement of Code of Conduct. He testified that at the point of dismissal the Disciplinary Committee had not been given any information and did not meet him and in a nutshell the employer had contravened this provision. He testified that the Respondent had said that he had entered the marks yet he was not the Lecturer and he said that as Chair of the Department he had the right to enter re-sits and special marks. He stated that if there was a script in custody of the Respondent he do not see the reason why he cannot enter the marks. He stated that it is the Chairman of Department at Senate who is held responsible and if there is no marks you must explain and if there are no marks you must correct. He testified that it was asserted he had sabotaged the University's efforts to obtain fees. He stated that the duties of the Lecturer do not include a duty to issue an exam card or duty of looking into fee payment of students. He stated that he was accused of altering the HEH results and maintained that there is no unit known as HRD and what we have that is near is Contemporary Issues in Human Resource Management which was not assigned to him. He stated that the number of candidates indicated in his submission is 36 and the confirmation in dismissal letter refers to 34 which is not correct. He stated that the procedures in dismissing him were not correct. He confirmed that he preferred an appeal against the wrongful dismissal. He stated that the appeal did not proceed and the reasons were best answered by the Respondent and that the reason advanced was that there was no quorum to consider the agenda. He stated that there was an appeal hearing on 28th August 2018 and the earlier meeting was on 23rd July 2018. He stated that there is difference between hearing of appeal and hearing before dismissal and that the appeal was on basis of not being heard. He stated that in the correspondence before the court the Committee noted due process was followed as he was heard and matter determined in accordance with law. He testified that it was said that he forged the signature in the exam mark sheet for HEH 2409 and that he had submitted the resignation at the Vice Chancellor's office and the same was overtaken by events. He stated that his appeal was dismissed. He was referred to an appeal by Julia Wanjiru Ndung'u who appealed against expulsion for sitting exams without paying fees. He stated that it shows she sat for exam with a forged card and that he was not aware as he do not know about issuing exam card. He testified that she sat the exam HEH 2409 and he do not prepare the time table for exams and did not know as he was not the invigilator and he was not the one who supervised the exam. He stated that he did not call her. He testified that he knew Dr. Benson Mwangi the Director of Quality Assurance, Dr. Pierac Agufana the Dean and Dr. Brian who is Dean of students and the Chair of Hospitality and Dr. Gachanja. He stated that was a panel beating of documents to achieve the Respondent's case. He testified that he could enter re-sits and special marks in the ERP system which is enterprise resource planning system. He stated that he had the right to enter marks and that he entered the marks for Julia Wanjiru Ndung'u after establishing the missing marks for the unit. He stated that they were missing from the system and before the marks were processed you must check and confirm whether they are all entered. He testified that when he was checking the entries he found the student was lacking the marks for the Unit HEH 2409 and he checked on the exam office to see if there was a booklet for the student and found there was a booklet and he then came and recorded the marks. He stated that the Unit Lecturer was Mrs. Priscilla Muhoro the course Unit Lecturer. He stated that the committee meets after external examiner and Chairman of the Department has to establish if there are missing marks and that the Departmental Committee met in this case and he was not present at the Departmental Board meeting held on 5th June 2018 as he was before Senate. He stated that he approved the minutes for circulation and signed the minutes as he had requested Grace to chair. He testified that special re-sits were to be held at the same time as the exam which was late April. He testified that at the departmental meeting the question was about the candidate in the pass list but who did not sign attendance sheet. He stated that he did not agree with the findings and that at the time he had already entered her marks in the system. He stated that he did not know about failure to sign the exam attendance sheet and that sitting the exam and not signing the exam sheet are two different things. He stated that he was not the Invigilator or the course tutor. He testified that he knows she sat and he established the course script as he looked in the exam office and saw the script then entered the result. He testified that he did not change the mark list and that the marks were missing. He stated that what was missing was just the marks and that the name was there as the student had sat for 5 exams and 4 Units had marks and only this one was lacking. He stated that it is the marks that was missing and not the name. He was referred to the mark sheet for HEH 2409 and stated that the marks sheet was in print and was signed by Priscilla Muhoro, Assistant Lecturer and course tutor. He stated that the name Ndung'u Julia Wanjiru was indicated as absent. He testified that when the mark is not entered the system will give you absent and that when the marks are missing the computer gives you absent. He referred to the list and stated that No. 32 was Warandah Livingstone Julius and that he did not know if the said student sat the exam. He was referred to the second mark sheet for the same exam which had the same names. He stated that he was not there when it was signed and stated that he could see a signature that looks like L and K - LK. He testified that in that list Ndung'u Julia Wanjiru passed and the date is given as 29th May 2018. He stated that the name Warandah is missing in this list and that he was not aware his marks went missing. He was referred to a letter from Dean of School of Business on mark sheet signed LK and is addressed to Deputy Vice Chancellor Academics and Staff and stated that he had no conversation with Prof. Machogu and that Dr. Machogu was not part of the committee. He testified that he knew Prof. Machogu from 2015 and that he can falsify documents to implicate the Claimant. He stated that he did not collect a mark sheet at Nokras Hotel as it was not his duty to collect the mark sheet. He stated that before the exams went to external examiner, they are at examination office under lock and key. On pension he stated that the Respondent collected his pension and did not forward. He was referred to the pension scheme statement and he confirmed that deductions were made and these were to be remitted to the scheme once dispatched to the employees. He stated that the last remittance was in January 2018 and when referred to the document confirmed that the last remittance is shown as June 2018. He was shown an attempt to hack an email and stated that he did not see his name but saw the name John Wanjala. He testified that he was John Wekesa Wanjala and that he uses all his 3 names in google. He stated that he did not attempt to hack Prof. Machogu's email. He stated that Google does not give this information. He was referred to a request for a grant and confirmed his signature under his name. He recognized Dr. Richard Juma and Dr. Jason Wapukha who is now deceased. He stated his colleague passed away in May 2018 and the date given is 4th June 2018 on the document. He stated that the signature is not a month after he died. He testified that everyone had signed and that it was just a mess up as the colleague did not die in May and was there during the graduation in June. He stated it was just a slip of the tongue and requested that he be asked about his signature. He testified that he did not forge Dr. Juma's signature and that he was the one who took the document after signing his part. He stated that Dr. Wapukha was not dead when he took it and the issue of his signature came up after he took the document. He stated that this is not what led to his demotion and denied that he was ever relieved of his post as chairman the letter appointing an acting head notwithstanding. He stated that the letter is dated 12th June and was copied to him and that he received it. He stated he was not replaced and if the employer wanted to have 20 people to work in the same place. He was referred to the system log which showed an entry with his name. He stated that what he

remembered is that he entered her marks just once. He stated that the document was a fabrication and that what he accepted is the entry of marks only. He stated that he did not delete the marks though it shows there was deletion. He admitted that he was aware of the exams policy and that Policy No. 2.0(i) provided that no student was to sit without clearing fees. He stated that he was aware of that and that the point of determining if the students have paid fees or not is before the exam. He testified that it was not his job to check and that it is the finance officer who then gives the exam card. He was referred to what looks like fees statement for student Julia Wanjiru Ndung'u who has a balance of Kshs. 102,158/-. He said that his job is to make sure that missing marks are entered. He stated that he was appointed the Chair of the Department and he was to act as Chief Examiner of the Department and as Chief Examiner Officer he was to ensure exams are prepared, have gone through the verification. He stated that there was the Registrar who is to ensure the payment is done and his duties are also to ensure missing marks are loaded while payment is part for the finance officer.

5. The 1st Respondent's witness examined by Mr. Miller was Mrs. Priscilla Wambui Muhoro a Lecturer in Commerce Department School of Economics in the Respondent. She stated that on 17th April 2017 she gave students an exam in the Code HEH 2409 Managing Human Resource Project and 35 students signed the attendance sheet. She testified that on the attendance list Julia's name is not there as she did not do any exam. She testified that there was a school board of examiners meeting on 11th May 2018 and as they discussed the results she noted the lady who had not signed the attendance list was on the graduation list. She pointed that out and Prof. Machogu the Dean appointed a committee to look into the issue. She stated that he appointed Mr. Chege, Dr. Wanjala, Mrs. Mwangi, herself and Mr. Kahunga. She stated that during the meeting it was established Julia did not sit the exam and the team also discovered there was a booklet in the exam office. She testified that Dr. Wanjala said there was a booklet and they sent Dr. Wanjala and Mr. Kahunga who confirmed there was a script bearing the student's registration number. She stated that it was established there was a mark sheet and added that there was one she gave with her signature and her name and another mark sheet with initial LK and countersigned by Dr. Wanjala was sent. She was referred to the first and stated that this is the mark sheet she gave to be forwarded to the External Examiner and that it had her name and signature. In it Julia Wanjiru was absent and there are no marks as she did not sit the exam. She stated that if the remarks read 'absent' it means the student did not sit the exam. She testified that the Committee also established there was another mark sheet printed later and the name Julia Wanjiru Ndung'u was there and that of Hemstone Warandah was present. She was referred to the mark sheet and stated that LK is not her signature and that Julia Wanjiru has CAT mark and exam marks and is dated 29th May 2018. She testified that the one she signed was dated 22nd May 2018 7 days prior. She stated she do not know if Julia sat the exam in the 7 days and she could have been included in the list. She stated that the Committee reported to the Dean and gave minutes and that she later reported the case to Deputy Vice Chancellor because she realized there were mark sheets she signed and the one taken to external examiner was not the one she signed. She feared she would be held responsible so she reported to the Deputy Vice Chancellor. She stated this showed someone was interfering with what she had given. She testified that Hemstone Waranda sat the exam and on the attendance list he was No. 7. She was referred to the other mark sheet and stated that Waranda's name is missing and that there was some who interfered with the records she had given and she reported to Deputy Vice Chancellor Priscah Tuiotek. She was cross-examined by Dr. Wanjala and testified that the student did not sit the exam as there is an attendance list and each student who sat was to sign. She stated that Julia did not sign and that the booklet is important as is the attendance list. She said that both are very important as the two go together since you cannot have a script without the attendance. She testified that she delivered the examination scripts to exam office and there is a document she signed when she took the scripts. She said that she had delivered 105 scripts and the exam officer counted the booklets and also looked at the lists. She maintained that she presented 105 booklets and names and the exam officer signed and she signed. She stated that the name of the student Julia Wanjiru was not in the attendance list and that there is no way you can have the script. She testified that the students are known by name and the registration number. She stated that students appear in the pass list if they do the exam. She stated that the script was in the examination office safe and that she did not know if Julia had marks in the other units. She stated that what was given was the graduation list and so she asked what Julia's name was doing on the list for graduation as Julia did not sit the exam. She stated that the members present were Mr. Chege, Mr. Kahinga, Dr. Wanjala and herself and that Grace was not present as Grace Mwangi gave apology. She stated a committee should give a report and that she was not the custodian of the minutes and after the team was through it gave the Dean the report. She stated that she raised the issue with the dean of the school and did not report to Chairman of the Department. She stated that she reported the issue to Deputy Vice Chancellor because of the seriousness of the case. She had reported to the Dean and the reason she went to the Deputy Vice Chancellor was because after the committee was established and gave the outcome of investigations she decided to report to the Deputy Vice Chancellor because of the seriousness. She stated that she looked at the magnitude of the issue and so she reported to the Deputy Vice Chancellor Academics and it was not personal. She stated that she was the one who marked HEH 2409 and prepared the mark sheet which she handed to administrator department of Commerce and it was recorded in a record book. She stated that she was in the department of commerce and this unit was in HR department. She stated that the Chair of Department is the one who handles the mark sheet and the examination officer makes sure that exams are done and mark sheets are collected. She stated that she gave the mark sheets to Chair of the Department which gave the workload. She stated that she did not give the exam sheet to the examiner but to administrator in the office department of commerce. She testified that there were 2 mark sheets and the Committee established a mark sheet signed with initials LK was forwarded to external examiner. She testified that she examined Warandah Hemstone a 4th year student and that she had 2 groups 4th and 3rd year which gave the total 105. She stated that Warandah had the exam card and he did the exam and when she entered marks in ERP his name was not going through. She reported to Dr. Wanjala and requested him to enable her enter the mark sheet. She stated that the list she printed was after the entry by Dr. Wanjala. In re-examination she stated she had 105 scripts, the Examination officer signed though she could not recall who of the two Mr. Gitau or Mr. Nyaga signed. She stated that the issue is to do with the 35 students not the 105. She stated that Julia was not in the pass list and needed to have done the exam. She testified that Julia was not on attendance list and results are discussed in the department. She stated that was not in the department and was serving the HR department in this paper. She stated that what is required is marks and they have to have marks and an attendance as students must do the exam. She stated that during the committee meeting Dr. Wanjala said the booklet was in the examination office and it was confirmed there was a booklet but in the office safe. She stated it was not normal to have it in the safe.

6. The Respondent's 2nd witness was Prof. Clifford Getaro Machogu the Acting Dean School of Business and Economics and that he was in the same position at the time. He stated that on 31st May 2018 he was with the chair Dr. John Wekesa Wanjala and that there were external examiners at Hotel Nokras. He testified that he went to see them with Dr. Wanjala. He stated had the external examiner had completed the moderation and he had scripts, mark sheets and marking scheme. He testified that the external examiner was done and these being confidential he and Dr. Wanjala then chair of the Human Resources Department agreed to get the scripts to the University. He stated that they got all the scripts and brought them to the University in the same car. He testified that when they got to the University, the exam materials are kept in the exam office and they told Mr. Nyaga who asked his assistant to collect the scripts from the car. He stated that Mr. Francis Njoroge collected the scripts and once they were removed then he went and moved his car to a safer place. He stated that after that because process of external examiners was done they met to consider the results in June and at the meeting on 11th June 2018 the departments present their results. He stated that Priscilla Muhoro objected one of the students was included in the graduation list. He testified

that there was a report that Julia Wanjiru Ndung'u had a re-sit and she did not sit the exam. The student had not sat for one paper and he considered that to be an allegation to be investigated. He stated that Priscilla Muhoro was the one who said Julia's name was included. He stated that there was a conflict or disagreement in the response given by Dr. Wanjala which was that Julia sat a special exam. He stated Julia did not sit for the correct exam administered by the internal examiner and that this was not normal procedure. As far as he was concerned Julia did not sit and so he constituted a Committee chaired by the members of the School Board to consider the matter and report to him. He stated the Committee members were Samuel Chege, Peter Kagunda and Grace Mwangi and he asked Priscilla Muhoro and Dr. Wanjala to be in attendance to provide information to the Committee. He stated that the Committee met and reported to him that Julia Wanjiru did not sit. He stated that the Committee perused documents questioned the 2 staff, visited the exam office and gave their finding and they identified the student who was in a mark sheet. He stated that every candidate who sits an exam had to sign and if there was student in pass list and out of the attendance it would be irregular. He stated that the Committee established Julia Wanjiru Ndung'u appeared in pass list but did not sign the attendance sheet. He testified that the committee was to establish the reason for the variance. He stated that according to him she did not sit the exam and they expunged her name from pass list. He stated that there was a report was sent to his email showing someone tried to hack his email. He stated that the attempt was made near Mombasa and it gave a name John Wanjala. He testified that the signal came to his email showing someone had tried to log into his email and that was unethical and wrong. He said it was John Wanjala the Claimant and when he got this report from Google he reported to Police. He stated that when he got the Committee report he compiled it and forwarded it to Deputy Vice Chancellor. He recommended disciplinary action against Claimant and later learnt Dr. Wanjala had been dismissed. He stated that in the course of investigation on the additional student they had discovered a mark sheet signed LK and countersigned by Dr. John Wanjala as Head of Department. He testified that Dr. Wanjala confessed that he was the one who signed as LK. He stated that it was not going very good for Dr. Wanjala so Dr. Wanjala asked him to help mitigate. He stated that LK is not Priscilla Muhoro's signature and that the internal examiner was Priscilla Muhoro and she ought to have signed. He testified that the external number had more scripts that were not captured in the mark sheet and the external examiner was not given all the documents. He testified that this was not accidental, it was intentional. He stated that when exams are processed, the internal examiner submits all the mark sheets and Priscilla Muhoro submitted them to Dr. Wanjala and these were to be processed in conjunction with the exam office and forwarded to external officer. He stated that the document forwarded was not what was to be forwarded.

7. In cross-examination by Dr. Wanjala he stated that the Chairman of the Department is responsible to forward scripts to the external examiner and that the Head of Department forwarded the scripts to external examiner. He was referred to Mr. Wainaina's statement and said that they have different roles. He testified that the Chairman of Department prepares all the documents and the check list is signed by examination officer and HOD to indicate what is given. He stated that the preparations were done by HOD, in this case the Claimant, and the exam officer Grace Mwangi. He stated that as Dean he was the Head Administration and Academic Head of the School of Business. He stated that he was permitted to go and see the external examiner and that at the time Dr. Wanjala was Head of the Department appointed by the Vice Chancellor. He stated that on 31st May 2018 at 8.30am he went together with the Claimant to meet the external examiner at Hotel Nokras and they brought the documents from the external examiner back to the Respondent. He stated that there is no record but he went with the Claimant and used the witness' car. He stated that they did not go to collect University material but to meet the external examiner who said he was done and that is why they went back with the scripts. He testified that they did not want to expose the examination materials to hotel staff as some of the staff are likely to be students and that is why they agreed to take them to the Respondent. He stated that they do not have a person who signs LK and that there were 105 scripts delivered to external examiner. He stated that he appointed a Committee to investigate the marks issue and the Committee normally gives a report and one was delivered which was before court. He testified that he received an email from the Google which indicates there was attempt to log in and that the access was attempted by John Wanjala. He stated that in the report it is John Wanjala and that the John Wanjala attempt took place near Mombasa and it was blocked. He testified that the external report goes to Vice Chancellor and the external examiner makes comments which are to be effected as Chairman of Department and as Dean he was to ensure they are implemented and that is why he needed to know. He said the external examiner states the 105 scrips tally and the report has number of candidates as per mark sheet is what was less – 36 as the second mark sheet was never submitted. He testified that there were 2 sets of students and one group in 3rd year and one in 4th year. He said that one had 36 students and these were submitted. He stated that the 2 sets of documents are scripts and mark sheet and the script given was 105 while the mark sheet had 35 candidates and that is why the external examiner was unable to determine performance. In re-examination he stated that there were 2 codes for the Human Resource courses and there were 105 students and there were 2 groups. He stated that HEH 2409 is different form HER 206 for purpose of confirming performance. He stated that the form was signed by COD Dr. John Wekesa Wanjala at time of forwarding to the external examiner. He was referred to the LK and Exam Sheets and stated that the external examiner had a mark sheet which had 105 candidates and the scripts were 105. The signature is to show there was a script. He stated that there is a difference between mark sheet and scripts and that the scripts were 105 while mark sheet shows students were 35. He testified that one mark sheet was not submitted.

8. The Respondent's 3rd witness was Grace Wangari Mwangi an employee of Respondent and an Assistant Lecturer and Acting Chair of Department of Human Resource Management. She stated that at the time she was the examination and time-tabling officer in Department of Human Resource Management. She stated that she was the acting as exam officer on 28th May 2018 when she prepared exams for dispatch to the external examiner to moderate. She stated that she packed marking scheme, question paper and a mark sheet in an envelope and then tying it with the examination booklets. She testified that she used the submission to external examiner moderation form and on the form indicated what she had packed. She stated that it indicated the Unit Code, Unit Title and then ticking whether there is a mark sheet, a marking scheme and a question paper and on last column she wrote the number of booklets she had packed. She testified that after ascertaining the details were correct, the Claimant was to sign which he did on 28th May 2018. She stated that after exams came back she went to examination control to collect mark sheet and examination attendance list for further examination processing and during the School Board of Examination meeting Mrs. Muhoro who taught HEH 2409 Managing Human Resource project raised an issue after noticing inclusion of a student who did not take the exam included in the mark sheet. She stated that she had carried the copy and they looked at the mark sheet and it was established it was not the original mark sheet submitted by Mrs. Muhoro and the signature on the mark sheet was not hers. It had initials LK and was counter signed by Dr. John Wekesa Wanjala. She was referred to a copy of that mark sheet and confirmed the mark sheet had 35 students with initial LK counter signed by Dr. Wekesa and the external examiner. She was referred to the other mark sheet which is a 2 in 1 as it had 2 classes combined since HEH 2409 was a 4th year class but the unit was the same. She stated that the mark sheet had 35 students, was signed by Mrs. Priscilla Muhoro and the mark sheet was printed on 22nd May 2018. She stated that the other mark sheet BHR 106 is for the 3rd year class and it has 70 students with marks and is signed by Mr. Priscilla Muhoro. She stated that this is the mark sheet she packed for dispatch to external examiner. She testified that when they established the mark sheet that was signed LK, she did not know who LK is but it is signed by the Claimant, this made them to refer to the external examiners report to see what he commented on the unit. She stated that he had indicated the performance could not be determined because there was a missing mark sheet and the missing mark sheet was for the 3rd year students. After that she was appointed as Acting HRM Department due to the reason of the issue that came up which was an

irregularity. She stated that she was appointed to take over from Dr. Wekesa and that it was true he handed over to her. After her appointment Dr. Wekesa handed over to her and after some time she decided to arrange the documents and came across the mark sheet she had dispatched to the external examiner which was the mark sheet signed by Mrs. Muhoro. When she found the mark sheet she reported to Prof. Machogu who advised her to keep it in safe custody till it was required. She stated the discovery was accidental because there were cartons in the office and these documents and someone seems to have been responsible. She testified that she packed the mark sheet and that was on 28th and the one signed LK was on 29th which was irregular and was not an accident. She was referred to the committee meeting appointed by Prof. Machogu to investigate and stated that she was part of the committee but did not attend the committee meeting as she was on leave. She stated she did not have any ill will towards the Claimant. In cross exam by Dr. Wekesa she stated that she had known him when he joined the Respondent which was about 5 years and that it is a short period and because she worked with him they had a close relationship as he led the department. She stated that she did not know if there were discipline issues and she never recorded any statement prior to the matter before court. She said that she was the one who prepared the booklets before the dispatch and the preparation is in examination control and the Chair of the Department signature comes after the documents are packed and the Chair of the Department comes and signs. She stated that she called the Chair of the Department to come and sign. As far as she could remember the Chair of the Department came and had not carried anything. She stated that the document was the submission to external examinations form. She stated that the first person to sign is the internal examiner (lecturer) then the external examiner the Chair of the Department. After they come from the external examiner the mark sheet which the Claimant handed to her had not been signed by him. She stated that the mark sheets are normally signed when they are referred from external examiner. She stated she was the examination officer of the department and her duties were to receive instructions from the Claimant and her Chair of the Department. She was the one who received exams from Lecturers, ensured moderation internally and then externally and then would get the exams brought to her packaged and sent to external examiner. She said examination control is manned by examination officers and that it is an exam control room where all the exams are marked. One would go in mark and leave and it is not under lock and key but one is allowed to register their name and enter the office. She stated that one does not need permission of examination officer as one records their name and there is a guard. She stated that she was a Lecturer at the University and if she has an exam she would go to the exam control room, pick the exam, record it and go to the Lecturer Hall and administer the exams and return the scripts after she has retrieved them. She testified that one cannot pick without it being recorded. She stated one must sign and collect the scripts they wish to mark which was in a different room from where the packaging was done. She was referred to the marksheet and stated that by looking at the signature she could tell it is Pricilla Muhoro's signature as she could identify it as one can see P Muhoro or something. She testified that she collected the mark sheets and brought them to department for processing and in the envelope, there was that mark sheet in the envelope. She stated she did not see any anomaly and that the Claimant chaired the Departmental Board. She stated that she was in the meeting during the moderation period and she did not raise the issue because she did not know anything about it. She stated that she was not the course Lecturer. She stated that at the department level they did not project mark sheets but consolidated mark sheets. She did not know the number of HEA 2409 and that at the Departmental meeting she did not focus on those mark sheets. She was a lecturer in the same class and taught 4th year second semester and examined 35 students. She testified that she cannot account for all the units they did. She stated that the unit she taught is what she referred to and to the specific unit no one missed. She stated that the mark sheet had 36 students but one did not do the exam so it had 35 students who had marks. She testified that the Dean constituted a committee to investigate and it did investigate. She stated she cannot produce the findings of the investigation and that the Committee called her to enquire where she was as they were starting the meeting. She was referred to her appointment letter and she testified that she was appointed Chairperson of the Department. She stated they had a close working relation and the Claimant prepared the letter and in trust the hand over letter was addressed to CEO and she was to sign with the Dean and Prof. Machogu. She stated that instead he disappeared with it. She stated that the Claimant was the one who knows what he did. She testified that she was not the deploying office and did not know where he was deployed. She stated that she had no evidence he was terminated and that she only had her letter of appointment as Head of Department which was produced to court. She said that the Respondent conducts itself diligently as every public institution has to abide the law and the Respondent is no exceptional. In re-examination she testified that the exams room is manned and there is a watchman and after one enters there is a guard and one records that they have accessed the building. Not everyone can go in and only Lecturers go there and they must record they have entered. She stated that she worked with trust and the Claimant did the letter then he went and in my thinking she thought he had gone to deliver to CEO but he never did so. She stated he was expected to hand it over to CEO and she and Prof. Machogu were to sign. She stated that the Claimant never handed over.

9. The Respondent's 4th witness was Timothy Gitau Ngugi who was the Acting Chair of Department of Human Resource Management. He stated that he was the Deputy Registrar and at the time of this matter was Deputy Registrar in-charge of Exam Department. He said that the exam was issued on 17th April 2018 to Mrs. Muhoro and she went and administered the exam and he picked the exam scripts on the same day. After the exam the scripts were returned he picked them, counted them to ascertain the number and found 105 and signed. The exam is HEH 2409 Managing Human Resource Projects. He stated that there is a form the Lecturers sign when picking which is the exam issuance and collection form. He stated that the form before court showed at serial No. 1 that at 1.50 pm Mrs. Muhoro picked and the returns were noted. He stated that for security they are kept at examination office and the exams are requested using the forms, fill the first part and it shows they were picked at 10.00 am and in part B they were returned at 4.45 pm and they were signed in. He stated that they are 105. He stated the forms show the security returned and the form is signed by Mrs. Muhoro and the officer. He stated that they took 105 scripts to external examiner and when the scripts were returned by Prof. Machogu and Dr. Wekesa the scripts were not produced as expected and verification revealed the scripts in HEH 2409 had an extra script for BE213/1661/2014 which was in the bunch of the scripts but this number did not appear in the exam attendance. He stated that this is the number that identifies the student and it has no name. He testified that this script was on the bundle but the exam list did not have the script and they commenced investigations to ascertain who the student was. He stated that when investigations were undertaken he was on leave and his junior James Nyagah undertook investigations. He stated that they discovered a number of things. It was realized the script was not among those who sat the exam and the student had not paid fees or signed nominal roll and thus was not cleared to sit exam. He was referred to the exam script and noted that the ticks are done at the beginning of sentence and the other scripts have ticks that were at the end of the sentence. He stated that the marking style was different from the other 105 scripts which was marked differently. He was referred to the student fees statement and stated she had a balance of KShs. 162,000/- and her number is BE/213/166/2014 named Julia Ndung'u Wanjiru. He stated that she owed the fees as of 8th June 2018 and she sat the exam purportedly on 17th April. He was referred to the nominal roll for self-sponsored students in Bachelor of Commerce and he stated her name appears and she did not sign. The nominal roll is signed when student pays fees and reports for the semester. He said that students are required upon reporting for semester register and they do so by signing the nominal roll which is signed to indicate their attendance at registration. He was referred to the statement he wrote to Deputy Vice Chancellor Academic Affairs defaulting the extra script found and stated that he was briefed by Mr. Nyaga and he briefed the Deputy Vice Chancellor and forwarded the evidence gathered. He stated that the key finding was that the script appeared in the scripts and we found that it was irregular and the student had not signed the normal roll and owed fees. In cross-examination by Dr. Wekesa he stated that he had known the Claimant since 2013 when the Claimant came to University which was about 6 years. He stated he had not heard of any misconduct by the Claimant. He stated that at the time he was in charge at the

exam office and during examination day the principal invigilators pick the exams from examination office and when the booklets are returned they count and note the number then lock the scripts received. Every anomaly must be recorded. He stated that they received 105 booklets from Mrs. Muhoro and there were 106 at a point which caused them to investigate. He stated that the extra script was for Julia Ndung'u and they compared the exam attendance list and that is the only script that did not appear in the attendance list. He stated that students need to attend two thirds of lectures, pay fees, sign nominal roll and do the exam. He stated that her booklet was extra and they found it when the external examiners returned the scripts. He stated that they found it at exam office. He stated that once they received the exams brought by Prof. Machogu and the Claimant was when they noted the extra script. He said that it was reported to him that the Claimant brought the scripts though he did not see the Claimant do so. He stated that once they got the Examination scripts they were counted. He said appending a signature is admitting the document and that he did not append the signature because there was no form from external examiner. He stated that the scripts were brought by the Claimant and Prof. Machogu. He stated that he believed his staff when they said the Claimant brought the scripts and that there was an extra script. He testified that they began investigating the script. He testified that he came on 12th June and received a report and saw the extra script, the nominal roll, the fee statement and the exam list. He made a report to Deputy Vice Chancellor and waited for action. He stated that he noted the marking was different and explained in all the scripts the ticks appeared at the end and the particular script had ticks on the left and not the right. He was referred to other scripts and noted the ticks are at the middle not the beginning and other at the beginning. He stated a report was made to the Deputy Vice Chancellor on 14th June and he did the report as in-charge of exams office and his investigation did not have a conclusion on who was to blame. He stated that he was a Deputy Registrar and handled student matters and the student did not pay fees and sign the roll. He said it was her responsibility to pay fees and sign the roll. He stated that the Chair of Department signed the form to forward the scripts confirming scripts, outline, mark sheet and the documents were in order. He stated that dispatch was per the list prepared by the Department exam officer and the booklets sent were 105. In re-examination he testified that the Claimant brought the scripts and that Mr. Nyagah his second in command told him the scripts were brought by the Claimant.

10. The 5th witness for defence was James Mwangi Nyaga the Senior Administrative Assistant in office of Quality Assurance and previously worked in the examination office as examination officer under Timothy Gitau. In regard to the matter at hand, he stated that he was aware that on 28th May 2018 was the day they took the exam to external examiner. He testified that he and James Njoroge took the exam script to Nokras Hotel to the external examiner and left the documents under the custody of the hotel management as the examiner had not arrived. He stated that they do verify the script before they take them to the external examiner and they rely on the Chair of Department's documentation. He stated that the bundle for HEH 2409 were 105 scripts and that he was in the office on 31st May 2018 where the acting Dean and Chair School of Business & Economics Dr. Wanjala told him they had sought to bring the exam from the hotel. He stated that he asked them and they said the material was in the car and they told him they had all the exams. He stated that he instructed Francis Njoroge to offload the exam from Prof. Machogu's car. He testified that this was not the normal procedure as it was the exam office to collect. He found it strange but they said there was a graduation due. He said that prior Wanjala came to him at the office and they showed him the vehicle and they both told him they had gone to Nokras to see the Lecturer. He testified that Njoroge picked the scripts and said they were loose and not tied as they should. He asked him to find Prof. Machogu and Dr. Wanjala and he was told they had left and so the staff verified and sorted them out as they were in a mess. When they sorted out and verified they came back to him and notified him that they found an anomaly in HEH 2409 which had a number that went out with 105 and then the number came back was 106. He confirmed the bundle had an anomaly and placed it in the safe and was awaiting the confirmation of extra script. He stated that on 5th June he begun investigation and after counter checking the attendance list he was left with 1 booklet and it had a title of HEH 2409. He stated that the questions were identical and the marking style differed and so he put it aside. He testified that he found the booklet BE/231/1661/2014 was the extra one and that he found it belonged to Julia Wanjiru Ndung'u. He stated that he investigated and found that at account office she had not paid fees. He said that he went to the Registrar's Office and found she had not signed nominal roll to allow her to sit exam as she was not a bona fide student. He stated that Timothy Gitau was Deputy Registrar and was his superior but on leave. He stated that he was in charge when he investigated and notified him of the findings and that Timothy wrote the report to Deputy Vice Chancellor. He identified the copy of the booklet they found which was not supposed to be on the bundle. In cross-exam by Dr. Wekesa he stated that he was the one who took the script to the external examiner and they were in order per the dispatching list. He stated that the documents were delivered to Nokras Hotel in the order of the dispatch and that the person who was to go and collect was Njoroge or Mr. Gitau not anyone else. He stated that he did not question the Claimant and Prof. Machogu because they are senior officers. He stated the scripts are very very serious issues and that is they verified and that is why they checked as they did. He said he could not return it and had to investigate to find out why they are not tallying. He found there was one booklet which was extra and cannot tell who placed it there. He was not held accountable. He was re-examined and stated that Prof. Machogu gave an explanation that he and Dr. Wanjala went to see the external examiner and that they had gone to Hotel Nokras. He stated that they both of them came to the counter and with the explanation given and the Claimant did not refute.

11. The Respondent's 6th witness was Francis Thuo Njoroge the Clerical Officer in Catering Department. He was examined in chief by Ms. Dar and stated that he worked in the exam department from July 2013 to October 2018. His main responsibility was to keep records under supervision of James Mwangi Nyaga a Senior Exam officer. He stated that on 15th May 2018 Miss Priscilla Muhoro a Unit Lecturer requested to be given her Unit HEH 2409 mark sheet which he gave her and she returned it the same day at 4.45 pm and he verified the scripts. He was shown the examination issuance for marking forum and confirmed its correctness. He testified that on 28th May 2018, Grace Mwangi the exam officer of HR Department came to prepare the scripts and confirmed number of scripts, marking scheme, question paper and also mark sheet to forward to external examiner. He was shown the form filled and recognized it and confirmed it was correct. He stated that on the same day that is 28th May 2018 he and James Mwangi Nyaga took the exam scripts to Nokras Hotel where the external examiners are accommodated and on 31st May 2018 his superior James Mwangi Nyaga called him while on duty and asked him to go and collect the exam scripts from Prof. Machogu's car the Dean of School of Business and Economics. He stated that the car was parked outside security office and found the exam scripts loosely tied and scattered. He stated that he informed Mr. Nyaga of this and he instructed him to remove the transcriptions and store them in the examination store room. He was instructed to verify the bundle to ascertain all exam transcripts had been returned and he started verifying and was helped by Executive Secretary and the Deputy Registrar to verify. He stated that on the same day at 4.00pm they noted an anomaly of the Unit HEH 2409 which had 106 scripts and the transcripts submitted to external examiner were 105. There was 1 extra. He was cross-examined by Dr. Wekesa and testified that he did not receive those transcripts and that it was James Mwangi Nyaga who is the one who received them. He stated that he was only instructed to go remove them. He stated that there was an examination collection form which is used as a check list to check the exams sent to examiner and also to check the returned ones. He stated that there was an anomaly in that there was a difference and the difference was one. He said that he informed his boss Mr. James Mwangi Nyaga of that anomaly. He stated that the exam officer of HR Department prepared the form and the Claimant supervised that preparation. He stated that the head of the unit is the Head of Department who is the overall controller of the exams. He stated that the work of exam moderation is to ensure the exam is undertaken and the exam personnel help. He said that the exams were taken by the department and the

anomaly pointed out. He stated that he carried the documents to the external examiner and they were 105 when they took them on return they were 106. He testified that the exam officer of the Department prepared the document to be submitted to external examiner and he confirmed the Claimant also signed. He stated that he was a junior officer and took the scripts to Nokras Hotel and his supervisor James Mwangi Nyaga spoke to the management of the hotel and after tallying was instructed to remove the scripts and keep them in a room. He left the documents in the custody of the hotel. Confirmed that they delivered to management of hotel. He stated that it was not his work to ascertain the number of scripts the external examiner received. He stated that we can presume the external examiner received them as they are. He testified that he did not receive any script from the Claimant. He stated he was instructed to verify all examination documents had been returned and he found an anomaly only on that unit where he found all the scripts had been returned except for HEH 2409 where they were 106 listed of 105. The main reason is they were 105 at time of submission and they were 106 on return. He stated he did not know who to blame for this. He stated that in the examination department there are various personnel and he witnessed Grace preparing the documents and saw the Claimant supervising that exercise. He did not see the Claimant come with any document. In re-exam he stated that it was the Head of Department's role as the controller of the department and as the overall controls everything. He stated that the external examiner is under control of Head of Department and all they do is to assist. He stated that the Head of Department signed giving them authority to submit and if he had not signed they would not deliver.

12. The 7th defence witness was Stephen Kahara Wanjau acting ICT Director for Respondent and he stated that he started working in 2007 as a computer specialist and had served for about 13 years. He stated that he was called on 19th June 2018 by the Registrar Academic Affairs Mr. Juma and he was to confirm a mark for Julia Wanjiru Ndung'u Reg. No. BE/213/1661/2014 concerning a Unit HEH 2409 Managing Human Resources Project. He stated that the University has a system called ERP which manages the institution's data and the system is integrated and one of the modules is examination management. He testified that each user is given access given on various privileges accorded to them and that a user is given a user name and a password so that upon entry they change and enter their own password. He stated the account given enables one do any job depending on the privileges granted to that account. He stated that all logins used are recorded by the system log and that on this material date he queried the system and produced the system logs concerning marks entry into the ERP system and passed on the same information to management. He was referred to a system log and stated that on it you will find details of transactions done for a student and the logs have a column with the user and the name of the user is Dr. John Wekesa Wanjala. He stated that it shows the computer used and the third column shows the activities there is a date of 28th May and on the second page is 11th June 2018. He stated that when he found this he interrogated the system to see what was done. He stated that the screen shot captures the date and the time stamp is 16.37 and shows the mark input and this shows the user who entered the system entered a mark, an exam mark on 27th May 2018 and that user is Dr. Wekesa. He stated that the end user was by this time Chief Examination Officer and had rights to enter marks, modules marks and do all the rights and privileges he had under Head of Department. He stated that the next column shows the mark and that gave a grade of B. He was referred to another entry and stated that it shows the mark entered by the Lecturer which is only the last mark and it was only 22 and that the mark was entered by the end user Priscilla Muhoro on 21st May 2018 at time stamp 14.14 pm. He stated that the other document shows a screen shot of marks which indicates when Dr. John Wekesa Wanjala began updating marks for Julia Wanjiru from around 12.21 pm making an update of the system concerning the same students on 7th June 2018 at 16.12 hrs. This was demonstrated on the last log which shows a change to some student at 16.15 hrs. He stated that when the University procured the system it had been tested in other Universities and it has served them well from September 2016 to date and it is used for purposes of exam management among others. He stated that they have not had any complaints regarding reliability of the system. He stated that access rights are permissions granted to an end user to be able to use the system to make or alter records per the permission granted and in this case Dr. Wanjala is an end user who had been granted access and user rights and as Head of Department was Chief Examination Officer. He stated that on 11th June 2018, the user also went ahead to delete marks for the same student which was CAT mark on 11th June 2018 at 17.18 hrs and this hit system at 17.18 hrs and that the system captures what the user is doing. He stated that in this case on 1st October 2017 the Claimant using User PC updated a record HBC 2110 the session was during semester 1 2014-2015 and the student is BE 213/1661/2014 and the CAT mark was 18.6 and the exam is 43.4 and the exam is deleted. That is what he meant by the update on record. He stated that for example on 28th May 2018 at 12.21 hrs the same user made an update to details for student BE 213/1661/2014 Ndung'u Julia Wanjiru in semester 2 2017-2018 academic year and he made a change to that record and the update was on the same date at 16.13 hrs and on 7th June at 16.12 hrs then at 16.16 hrs and on 11th June 2018 at 7.18 made a deletion of the mark for unit HEH 2409 and the mark for HEH 2409 a unit done in semester 2 2017-2018 and the deletion is for an exam recorded as 47. He was cross-examined and he stated that the Claimant was the Chairman of Department in HR and they interacted with him as a simple user. He testified that the Claimant requested for support and the interaction was on support basis. He stated that he was not in the academic division and did not know how they produce the lists for graduation or pass lists. As far as he was concerned all the examination officials are trained on how to operate ERP and they are shown how to operate and produce the pass lists and graduation lists. He stated that they only come in for support and the help is technical. He stated that one needs a continuous assessment test or exam to get marks and the marks are entered by Lecturer. He stated that at end of the semester, students are expected to have sat CAT and an exam at end of the semester and the Lecturer would have in course of exam input the marks for a CAT. He stated that at the end of semester the Lecturer enters the marks for the exam in the system and that is what is needed to generate pass list for students. Once marks are entered into the system the lecturer can generate a mark sheet which shows the list of all students who sat the exam and the Lecturer can generate the mark sheet. He said the system is accessible by anyone who has access and you can print the pass mark or even project it. He stated that when it comes to exam processing, the Chairman of the Department and as Chief Examination Officer has access. He stated the record shows there are marks entered into the system and were amended and that a Head of Department has a right to modify marks and it is the responsibility of Head of Department to know why the alteration is made. He stated that he was not privy to registration as that happens in office of the Registrar and he did not know the reason for the deletion. He stated that he was not a witness at disciplinary but provided information as requested by management on 19th June 2018 and the logs show this. He said the system logs show the print out was done on 19th June as per the screenshots.

13. The 8th witness for the Respondent was Grace Njeri Wahinya a secretary at the office of the Deputy Vice Chancellor of the Respondent. She stated that she recalled 4th June 2018 when Dr. Wanjala brought in a grant submission form to be sent out for a grant he had been awarded by the Vice Chancellor. As she was arranging it to take it for her action she noticed the signatures for the co-researches were not matches. She was referred to the grant submission form that was to make payment to 3 researches the late Dr. Wapukha, Dr. Wanjala and Dr. Richard Juma upon receiving it she was to join it with the research and submit it to Deputy Vice Chancellor for her action to approve for payment. She stated that she noticed the signature of Dr. Wapukha and that of Dr. Juma were not theirs as she had the grant document which had their signature. She asked Dr. Wanjala if these were their signatures and he said he had signed for them. She asked why he did not sign 'for' he said it was okay and they were co-researchers. She stated that by then Dr. Wapukha was in hospital at the time he was not dead and Dr. Juma was in. She called his office and he was there and before she called Dr. Juma she asked Dr. Wanjala to let her take it to Dr. Juma to

sign and he said it was okay and so she passed it to the Deputy Vice Chancellor and then matter was referred to CID office Murang'a. She stated that the signatures were forged as he signed their signatures and not for them. She stated that he tried to sign the signatures or imitated their signature. She testified that normally one can sign for someone. She was cross-examined by Dr. Wanjala and stated that her role in the Deputy Vice Chancellor's office is to receive the incoming documents and forward them to her for signature or approval and she also ushers in visitors among other duties. She stated that she was only verifying the document which is one of her duties and she asked about the signatures. She said that she asked who had signed for Dr. Wapukha who was in hospital in Eldoret and the Claimant said he had signed for them. She stated that he was not the messenger but they were a co-researcher and the Claimant brought the documents which is a role of a messenger. She testified that he told her that he had signed for Dr. Wapukha and Dr. Juma. She said the Claimant had won this grant and one where he was a Principal researcher and the principal researcher was the one to pick the document and have it signed and he called and said the Claimant would pick it and have it signed and returned. She said she could not produce the evidence as he is dead and she does not have the document. She stated that the Claimant was the one who took the document.

14. The 9th defence witness was Dr. Richard Otieno Juma Registrar Academic and Student Affairs. He stated that as Registrar he was in charge of the administration and when he was employed, Dr. Wekesa was Chairman Human Resource Department and as Chairman of Department he was in charge of one of his duties which is examination and teaching. He stated that he exercises this on behalf of Deputy Vice Chancellor and together with Dr. Wekesa and their colleague now deceased the advertised grant was applied for and they successfully won the grant and were waiting for the disbursement. He stated that on 5th June 2018 he was called and informed the submission was preserved with their signatures which were signed for them. He stated the Claimant signed a signature purporting to be his. He was shown the grant application form and he said it was signed as if he was signing it and that it is a forgery which was reported to the Police. He stated that the matter is under OB/21/23/1/19. He stated that on 4th June 2018 he was present in the University. He was cross-examined by Dr. Wekesa and stated that he was called by the Vice Chancellor on 5th June and informed of the forgery. He stated that he was not called by the disciplinary committee and that the Vice Chancellor showed him the submission form and asked him to confirm the signature and he said it was not his. He stated that he was aware this was a joint proposal and he knows the Claimant appended the signature. He stated that there is a signature signed as if he signed and it is a forged signature. He stated that he was Registrar Academic Affairs and he deals with admission, registration, student matters and even teaching. He testified that they admit students in every semester and what they do is look at the documents including the admission and if properly admitted are entered into the system. He stated that the students then go to department to register for the units in the department. He stated that they do not manage the units. He stated that if they clear paying fees then they register for units online. He stated that there are differences for new students and the continuing students. He stated that the student did not pay fees and so she was not active in the system and that the Chair or Dean can enter the system through their passwords. He stated that the student can be registered by the Chair of Department and that the student herself cannot access the system if not activated. He stated a student who has not paid fees is not allowed to be on campus and that they at times illegally are in compound. The Chair of Department is the one who is responsible for teaching and if a student is not supposed on the captured then Chair of Department is ineffective. He stated that fees are paid at Registrar's office and the office of Registrar is to ensure the students pay and the Chair of Department is to ensure the student is not in class if they have not paid. He testified that the Chair of Department is given nominal role and should enforce. He stated that this student had not paid fees and as far as he was concerned she was illegally in the University and that the student was put in the system illegally and they deleted and that is why they are in court. He stated that they do not approve results in the senate. He stated that he was present when the Approval of Marks Senate sat. he said that the issue of marks is under jurisdiction of the Chair of Department and the marks are presented by the school and they trust the School Board to have perused. He stated that the results had issues. He stated that the Chair of Department has authority to enter and delete marks but should do so after senate has passed.

15. The 10th and final witness for the Respondent was Prof. Prisca Tuitoek the Deputy Vice Chancellor in charge of Academic and Student Affairs. She stated that the summary dismissal was signed by Deputy Registrar as Registrar was away. She stated that the lecturer in charge of HEH 2409 came to see her and found her in the Boardroom of the University and when she went out to collect something at the office the Lecturer asked to see her. She said the Lecturer told her there was something disturbing her. She stated that the Lecturer said one of the students the Lecturer had marked absent was being presented as a person to graduate. She testified that the Lecturer had informed Prof. Machogu who discussed with the Board and he put together a Committee comprising the Claimant and other staff to investigate and they found the student had sat for an exam outside the exam period. She stated that it was found out there was an extra script in the stack as there were to be 105 and they were 106 and one was peculiar in the marking. She stated that there was a mark sheet which bore signature of another Lecturer other from that of the Lecturer and it had the signature LK and had the name of Warandah missing and had name of Julia Wanjiru. She stated that when this was brought to her by Mrs. Muhoro she did her investigation and it took her 3 days and she established there was a different mark sheet. The new one had been signed by Claimant as Head of Department and the external examiner. She called the Dean and wanted to know who had signed LK and she asked him to establish who signed on part of LK. She said the Dean told her Dr. Wanjala signed LK. She talked to exam officer Timothy Gitau to find out what happened when they received the stack and was told that they were ready to pick exam and Prof. Machogu and Dr. Wanjala came with the exams. She said that 105 had gone to the external examiner and when they counted there were 106 and so there was an extra script. She stated that she spoke to the Chairman of Department who then was someone else – Grace Mwangi. She was informed that the examination mark sheet was not the same one presented to the board. She stated the University takes great care about its exams so they also wanted to find out from Julia what happened and she also was taken through disciplinary. She stated that they called her and called her father and she did not turn up but however appealed after being disciplined in absentia. She stated that Julia appealed and faced appeals committee and said that she was called on a Sunday and took the exam in a tuition block on a Monday was after the others about 2 weeks later. This is very wrong. She testified that exams cannot be done outside the examination period. She stated that the Claimant was Chief Invigilator and it was wrong to do what he did in his position. She stated that as Deputy Vice Chancellor she was in charge of research and on 4th June Dr. Wanjala came to her office bringing in a submission for Vice Chancellor Grant. She said that he obtained a research grant and the principal investigator is the late Wapukha. She stated that her secretary Grace Wahinya received the forms and the signatures were not the ones she knew. She said her secretary reported that the Claimant told her that because Wapukha was in hospital he signed and that he told her it was okay and he signed for Dr. Juma the co-investigator and therefore forged the signatures. When she got that information she had to report that to Vice Chancellor and that Dr. Wanjala accepted before her that he did the forgery. She testified that the Vice Chancellor was not amused and demoted him and gave Grace Mwangi the job. She stated that the Claimant was given opportunity to be heard and the dismissal was for good cause. She confirmed part time payments were made and stated that the University was not a guarantor to his loans and it only was to confirm that he was an employee. She testified that the Claimant was given an opportunity to explain himself and the opportunity to come to appeals committee, and that he asked questions and he was given opportunity to answer. She stated that he was given opportunity to redeem himself and that the investigations that were done were procedural as done in the University and the Claimant was given opportunity to redeem himself. She was cross examined by Dr. Wanjala and stated that she carried out an investigation and made report to Vice Chancellor. She said that she called Dean School of Business and Economics Chair of Department, the examinations officer and the lecturer. She stated that the evidence was brought to her and she looked at the same and then

reported to Vice Chancellor who then dismissed the Claimant. She stated that the first information came from Mrs. Muhoro the Lecturer who simply informed her this had happened. She stated that she did not act on Mrs. Muhoro's information alone and that she took information from others and relied on Timothy Gitau, Mrs. Muhoro, Grace Mwangi and the information brought to her. She also called for ERP log to show who entered marks and she prepared report and presented to Vice Chancellor. She stated that he would have time to be questioned at the disciplinary committee and he was dismissed on 20th June 2018 and the hearing was later as the dismissal was summary a termination for good cause. She stated that the Employment Act and the terms of service allow dismissal for gross misconduct. She stated that the employee was given a chance in the appeals board and he was given a chance to be heard. She stated that there is a contract which was permanent and pensionable and that she was aware contract provides for disciplinary process. She stated that the student did not sit with the rest of the students and this was proved through the investigations. She stated that the script for the student was introduced later and outside the examination period as the student sat for exam alone supervised and invigilated by the Claimant. She stated that the student was called sometimes in May 2018 which was a Sunday afternoon. She testified that the student came and testified and what the student stated is she was called and she thought it was okay for her to come for the exam. She testified that the student came and did exam alone and the minutes are proof of the appeal for the student. She stated that the first disciplinary was held on 15th August 2018 when she did not show up and her father turned up and he was alone. The disciplinary went on and student appealed and when the committee sat in October 2018 for appeal she appeared. She stated that the reasons for dismissal were for gross misconduct and falsification of the records and alteration of records on ERP. That marked the end of a very long trial.

16. The Claimant filed submissions and submitted that since the issue before court does not touch on the units he was assigned by the Respondent through the Senate as it is in the workload as a lecturer, the decision of dismissal was misinformed, unlawful, wrongful and illegal with ill motive to achieve personal gain. The Claimant submitted that the issue before court relates to a unit which was not under his duty as a lecturer but he was associated with it as a Chairman who is the chief examiner. The disciplinary procedure in the terms of service which were relied on applies to grade 11-15 where the chairman position does not fall, hence the disciplinary action that was taken against him has no basis making the decision wrongful, illegal, unlawful, null and void. The Claimant submitted that he was assigned duty to invigilate the examination and not invigilating the signing of attendance register. He submitted that there was no complaint concerning scripts which means that all students received their results and there were no irregularities reported. He submitted that he did not commit any gross misconduct to warrant termination. He submitted that if the employer wanted to remove him from the position of being a chairman, it was at liberty to do so without affecting his position as a lecturer because chairmanship is a political position of favour and is not governed by Murang'a University terms of service. He maintained that he was dismissed without following the Murang'a University Technology disciplinary procedure as it is in terms of service. He relied on the case of **Naftaly Rugara Muiga v Jomo Kenyatta University of Agriculture and Technology (JKUAT) [2015] eKLR** where it was held that the dismissal was unlawful in terms of reasons and procedure, the petitioner was then reinstated to service without loss of salary, benefits and seniority. The Claimant submitted that he was unfairly terminated as he was not accorded a hearing, nor was interrogated before being dismissed contrary to Section 41 and 45 of the Employment Act and that he was discriminated against contrary to Section 5(3) of the Employment Act. He submitted that he was heard by a 3 member Council instead of 6 and he was also denied representation by Union officials contrary to the Murang'a University terms of service. The Claimant submitted further that the Registrar or the Management has no authority to dismiss the lecturer of the University but the authority only emanates from the Council. He submitted that the Vice Chancellor who chairs management meetings has no power to employ or dismiss a lecturer of the University, but can only do so when authorized by the Council. He submitted that in the dismissal letter there was no indication of such authority being granted by the Council. He relied on the case of **Josphat K.Z Mwatellah v Technical University of Mombasa Council & Others [2017] eKLR** where the court held that "the CS lacked legal and contractual authority to fire the claimant, the letter by the CS was done ultra vires the law, TUM charter, statutes and terms and conditions of service. Consequently, held that the termination of the claimant's contract was unlawful because it was not written by the claimant's employer." The Claimant submitted that the allegation of falsifying mark sheet records and forgery of the signature of university personnel for Unit HEH 2409 is false. This is because the person concerned with mark sheet receiving is the departmental examination officer who fixes the mark sheet to every bundle of scripts arranged as per the unit code and in title in the examination office after which he embarks on the process of external moderation by taking the scripts to the external examiner. If indeed there was a falsification the examination officer would have raised the issue at the department or school board chaired by her as the Claimant was attending senate meeting at that time. The Claimant further submitted that he does not understand where the allegation of falsification emanated from because it was not indicated in the dismissal letter dated 20th June 2018. The Claimant submitted that entering marks into the system whose script was in the custody of the Respondent does not amount to gross misconduct as it was the Claimant's duty to ensure every student who sat for the examination had a right to have his/her marks captured in the ERP system. The Claimant submitted that the resolution from the Committee that was formed to investigate the matter was that the student sat for the examination and thus deserved the marks. However, this report was ignored since it was a planned agenda to get the Claimant out of employment. He submitted that the matter was reported to the Deputy Vice Chancellor on 19th June 2018 before the committee completed its work and reported the same to the Vice Chancellor contrary to decision making levels and reporting protocol as the two were among the group who had hatched the move to oust the Claimant from employment. The Claimant submitted that he was not the official invigilator of the unit HEH 2408 hence he was wrongly punished for the duty that was not officially assigned by the employer. He submitted that the allegation that he introduced a student No. BE213/1661/2014 in the pass list is false. The Claimant submitted that the student sat for the examination as acknowledged by the Respondent in their letter and his work was to command the ERP system which is the property of the Respondent by entering the missing marks and the system automatically generates the pass list which he then presents to the departmental board of examiners and school board of examiners for moderation. He submitted that further, on the allegation that the student wrote examinations outside the examination date of 17th April 2018 does not concern the Claimant as it is the responsibility of the University time tabler and the examination office to establish where, when and who invigilated the examination. On the allegation that the Claimant facilitated a student to evade paying school fees by allowing student no. BE213/1661/2014 to irregularly use another student's examination card No. 0022350/1083, the Claimant submitted that from his appointment letter there was no such duty of issuance of registration cards and handling fees payment. The Claimant further submitted that the allegation of variance in the mark sheet does not arise as the 36th student in the mark sheet was doing a special exam hence his results were reflected in the mark sheet for 2015/2016 academic year. The Claimant submitted that he had proved his case on a balance of probabilities that his contract of employment was terminated wrongfully, unfairly, unlawfully and illegally by the Respondent without any valid reason and urged the court to award him as prayed in the memorandum of claim.

17. The Respondent's submissions were that the Claimant did not comply with the orders of the court which were to extract and serve the Respondent with the court orders of 12th November 2018 and as such the Claimant should not obtain any advantage from the proceedings herein and that this honorable court should exercise its discretion for its own protection and to prevent an abuse of the court process. The Respondent submitted that the Claimant's testimony as brought out in cross-examination was made of unsubstantiated allegations. It

submitted that it is not true that the Claimant has been a loyal servant, as he has on several occasions been at loggerheads with the Respondent for various acts of fraud within the Respondent University which culminated in the matter at hand, where the Claimant engaged in an examination malpractice. The Respondent submitted that the Claimant was summarily dismissed for gross misconduct as provided for under section 44 of the Employment Act. The Respondent submitted that it therefore conducted itself properly within the confines of the law in dealing with the Claimant for gross misconduct. The Respondent submitted that the Claimant failed to tender any documents to prove his allegations and his assertion that the documents are in the court record cannot hold water as no documents were marked or produced in evidence. The Respondent cited the case of **Kenneth Nyaga Murage v Augustin Kiguta & 2 Others [2015] eKLR** and submitted that the Claimant failed to tender any evidence. The Respondent submitted that the claim by the Claimant must fail on this account as he cannot come in to introduce these documents at the submissions stage as he has done by annexing documents to his submissions. The Respondent submitted that these documents which were not referred to in the Claimant's testimony and were also not produced in his evidence in chief. The **Suraya Holdings Limited v ICICI Bank Limited HCCC 85 of 2015** was cited for this proposition. The Respondent submitted that this is a court of evidence and in the absence of evidence to any claim the same remains a mere allegation as the burden of proof lies on the Claimant to prove his allegation of wrongful dismissal. The Respondent submitted that the Claimant however did not discharge this evidentiary burden as imposed on him and he shifted the burden to the Respondent in his submissions and as such the Respondent urges the court to find that the Claimant has failed to prove the allegation that he was wrongly dismissed. The Respondent submitted that as held by the Court of Appeal in the cases of **Bamburi Cement Limited v William Kilonzi [2015] eKLR** and **Co-operative Bank of Limited v Banking Insurance & Finance Union (K) [2017] eKLR** as well as the case of **Elijah Oyoo Okoth v Vice Chancellor Karatina University & Another [2019] eKLR** urged the dismissal of the suit with costs to the Respondent.

18. The Claimant was dismissed ostensibly for examination malpractice. He was a chair of the Department of Human Resources where an examination was conducted in a course lectured by Mrs. Muhoro. The student in question one Julia Wanjiru Ndung'u did not sit the exam on the day Mrs. Muhoro administered it but sat at a later day. Evidence led suggests it was the Claimant who actually orchestrated this. From the evidence of Prof. Machogu, Mr. Njoroge of the exams office, Mrs. Muhoro the lecturer, Mrs. Grace Mwangi, Mrs. Wahinya secretary to DVC, Mr. Stephen Wanjau IT expert, Dr. Juma and Prof. Tuitoek the DVC it is clear the Claimant's service was not stellar. It is evident the Claimant altered the marks entered in the ERP system of the University contrary to expectations. He admitted he did it ostensibly to correct an error as there was a script that was missing. In the court's considered view this was sufficient basis for dismissal under Section 41 of the Employment Act. The dismissal was not the kind that Section 44 addresses as he was summarily dismissed without a hearing. Though it was gross misconduct no doubt, the Claimant ought to have been heard before dismissal not after dismissal. The meetings that were held subsequent where he was heard were after the fact. He should have been suspended, investigations conducted as was done then hearing conducted after notifying the Claimant of the intention to dismiss. In this case the Claimant was not accorded that opportunity. For that he will recover some compensation but cannot be reinstated because of the gravity of the charges against him. He did not prove that there were no payments for the part-time work he undertook while serving the Respondent. He failed to demonstrate how he can be entitled to payment of wages until the age of 72 when lecturers retire. He is not entitled to pay for a period not worked or served. Given the provisions of Section 49(4)(b) of the Employment Act, a court has to consider the degree of contribution by employee when awarding compensation. The Section provides as follows:-

49. (4) A labour officer shall, in deciding whether to recommend the remedies specified in subsections (1) and (3), take into account any or all of the following—

(a) the wishes of the employee;

(b) the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the

termination; (Underline mine)

In this case were it not for the failure to follow due process the Respondent had every right to terminate the services of the Claimant for the egregious conduct and therefore in consideration the court will only award him compensation for one month which is Kshs. 216,137/- only. The rest of his claims were not proved and are disallowed.

It is so ordered.

Dated and delivered at Nyeri this 18th day of November 2019.

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar