



REPUBLIC OF KENYA
KISM DISCIPLINARY COMMITTEE
CASE NO KISM/DC 002/2021

IN THE MATTER BETWEEN

MARGARET MUTHUI.....COMPLAINANT

AND

CATHERINE KANGANGI RESPONDENT

JUDGMENT

**DETERMINATION OF THE COMPLAINT BY MS MARGARET WANJA
MUTHUI AGAINST MS. CATHERINE KANGANGI ON ILLEGAL
PROCUREMENT PRACTICES**

COMMITTEE MEMBERS PRESENT

Dr. Vincensia Apopa	Chairperson
Mr. Antony Ogwang	Member
Mr. Alfred Baliach	Member
Counsel Samson Masila	Member
Mr. Thomas Otieno	Member
Dr. Martin Gachukia	Secretary

ABSENT WITH APOLOGY

Ms. Joan Kweyu	Member
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INTRODUCTION

Ms. Margaret Wanja Muthui Deputy Director – Supply Chain Management at Kenya Rural Roads Authority (KeRRA) and a member of Kenya Institute of Supplies Management (KISM) No. 62986 holder of practitioners License No. K163/2016 registered a complaint with the Institute vide a letter Ref. KeRRA/08/14/VOL.IV (04) dated 10th March, 2021 Complaint No. KISM/DC 002/2021 against Ms. Catherine Waithira Kangangi Senior Supply Chain Management Officer appointed as Ag. Deputy Director Supply Chain Management at Kenya Rural Roads Authority vide a letter Ref. KeRRA /02/4/0077/Vol.1 (62) dated 10TH February, 2021 and a member of KISM No 63987 and holder of practicing license No. K175/2016

Ms. Margaret averred that Ms. Catherine Waithira Kangangi acted unprofessionally contrary to Sec. 47 of the Public Procurement and Asset Disposal Act 2015 by usurping her duties and refusing to vacate the office for her after receiving the court order reinstating her to her previous position and requested for a disciplinary action to be taken against Ms. Catherine Kangangi for failing to uphold the rule of law and contempt of Court Order No. ELRCPET/EO27/2021 dated 24th February 2021.

Parties Argument during Hearing

Margaret indicated that she received a letter from the Chairman of the board directing the Chief Executive Officer to deploy her to the State Department of Infrastructure (Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works) for assignment of duties similar to a decision

made in the year 2017 where she received a letter in February 2017 from one Eng. Ogango who had been instructed by the Minister to release her to the Office of the President which she obeyed and reported but got frustrated which led to her decision to go to court then.

On receipt of the letter from the CEO on 10th February 2021 she decided to go to court where she secured a court order quashing the Board's decision and reported back to the office.

She stated that whereas the court order was addressed to KeRRA, as the Head of Procurement function she marked the court order to Catherine Kagangi who was appointed in an acting position as the Ag. Deputy Director – Supply Chain Management and wrote a letter to the CEO to that effect which she never got a response and the order also was not complied with.

She expressed her disappointment that Catherine Kagangi being a member of the professional standard within the Institute and was much aware of the court order had audacity to continue performing her duties while she is in the office. Catherine was then relocated to another office where she was denied access.

She was unhappy as she expected her to obey the court order failure to which she decided to report Catherine to the Disciplinary Committee of the Institute knowing that there are disciplinary instruments that had been put in place in the Institute. She further indicated that part of these matters are in court hence she was careful not to discuss much.

In response to the issues raised by Magrate that Catherine was in defiant of the court order, Catherine indicated that she received a letter of appointment as acting head of Procurement for the Authority from her employer which she has

an obligation to obey. The letter indicated that she was to act in that position for a period of six months or and until the position is substantively filled whichever is earlier.

She further indicated that she has been taking instruction from her employer and had not received any contrary directive.

She averred that the court order was not addressed to her hence not obligated to obey it unless instructed by her employer but will continue carrying out the said duties until advised otherwise by her employer.

While responding to the issues raised by Catherine, Margaret asserts that Catherine reports to Head of Procurement and not the Director General, and considering the way the government works in form of protocol, it was much in order for her to mark the court order to Catherine.

The Committee's Decision

The committee has considered the complainant's plea and the responses thereto and finds that the complaint raises the following issues for review;

- i) Whether Ms. Catherine acted unprofessionally contrary to section 47 of the Public Procurement and Asset Disposal Act, 2015
- ii) Whether Ms. Catherine Waithira Kangangi action of obeying her employer's directive to act as Deputy Director Supply Chain Management in the presence of Margaret Wanja Muthui amounted to contempt of court order No. ELRCPET/E027/2021.
- iii) Whether Catherine's act amounted to Usurping of duties and Insubordination.

Issue No. 1: Whether Ms. Catherine acted unprofessionally contrary to section 47 of the Public Procurement and Asset Disposal Act, 2015

On the first issue framed for determination, section 47 of the Public Procurement and Asset Disposal Act states as follows;

Section 47(1) A procurement function shall be handled by procurement professionals whose qualifications are recognized in Kenya

The committee finds that Ms. Catherine Kangangi is a procurement professional registered with KISM as member No 63987 and holder of practicing license No. K175/2016.

Issue No. 2: Whether Ms. Catherine Waithira Kangangi action amounted to contempt of court order No. ELRCPET/E027/2021.

The committee finds that the court order was addressed to the CEO who had obligation to comply and not Margaret, hence it was not in order for Margaret to mark the court order to Catherine.

Further the committee established from Margaret's submission that the matter is still before court.

Issue No. 3: Whether Catherine's act amounted to Usurping of duties and Insubordination.

The committee finds that Catherine Kangangi was appointed by the Ag. Director General as the Acting Deputy Director Supply Chain Management vide a letter Ref. No. KeRRA/02/4/0077/Vol.1/ (62) dated 10th February 2021 with clear Job description.

Determination

In view of all the above findings, the committee in exercise of powers conferred upon it by the provisions of Section 23 of Supplies Practitioners Management Act (SPMA), hereby makes the following ruling;

1. Ms. Catherine Kangangi did not violate any provision of the code of ethics and standards of professional conduct of supply chain practitioners that would warrant a disciplinary action against her.
2. The matter had been articulated in court and judgement delivered.
3. KISM has got no powers to enforce a court order addressed to another Institution/party. In that regard Margaret is advised to file a contempt of court proceedings. THE MATTER IS BEST PURSUED THROUGH SAME FORUM.
4. Since a final Judgment had been issued, TO REVIEW THAT DECISION WOULD BE TANTAMOUNT TO SITTING ON APPEAL WHICH MANDATE THE DC DOES NOT HAVE UNDER LAW. Ms. Margaret can only appeal to a higher court.
5. Each party shall bear their own costs.

The committee made a unanimous decision hence any person aggrieved by the committee's decision may appeal against that decision to the high court pursuant to Regulation 23(7) of SPMA.

Delivered on **28th day of March 2022**

Delivered and Signed by

Dr. Vincensia Apopa

Chairperson

Signature Date
 28/3/22

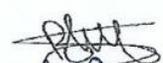
Mr. Antony Ogwang

Member

 28/03/2022

Mr. Alfred Baliach

Member

 28/03/2022

Counsel Samson Masila

Member

 28/03/2022

Mr. Thomas Otieno

Member

 28/03/2022

Delivered in the presence of:

Joanne Kweyu

Member

Catherine Kangangi

Respondent

Martin Gachukia

Secretary