



**REPUBLIC OF KENYA**

**IN THE DISCIPLINARY COMMITTEE**

**DISCIPLINARY COMMITTEE COMPLAINT NO: 013 OF 2022**

**IN THE MATTER OF BENARD TARA OCHIENG': PRACTISING WITHOUT  
BEING PROPERLY LICENSED CONTRARY TO SECTION 20 OF THE  
SUPPLIES PRACTITIONERS' MANAGEMENT ACT, CAP 537**

**JUDGMENT**

1. This judgment is the decision of the Disciplinary Committee and is issued pursuant to Regulation 43 of the Supplies Practitioners Management (Discipline) Regulations (2015) of the Supplies Practitioners Management Act, Act No. 17 of 2007.
2. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the Committee has thoroughly considered any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

**BACKGROUND**

3. The genesis of this present case is a complaint letter dated 13th June, 2022 against the supply chain officers employed by the County Government of Homa Bay. The complaint letter dated 13<sup>th</sup> June 2022 adduced six allegations

of improper conduct. In particular, the complaint adduced the following allegations against the county government, that:

- I. The Chief officer has assigned one procurement officer to carry put functions of the Director Procurement against the law.
- II. The department of Agriculture is alleged to have lost a lot of money through irregular procurement process in procuring motor cycles at exorbitant prices which also do not follow the due process of the law on NARIC project which was a donor fund.
- III. There seems to be two parallel factions at the procurement department with a lot of impersonation which should also be investigated findings shared.
- IV. It is also sad to report that while all these are happening the internal mechanisms have equally failed to solve or handle the matter because most of the “big fish” are parties involved.
- V. It is also in the public domain that Homa Bay County government is one of the counties that have employed nearly 95% of the procurement staffs who are unqualified and are not in regular standing with unlicensed practitioners’ despite of official communication from KISM warning them over unskilled staff handling procurement assignments. This also should be taken seriously and be investigated
- VI. Other issues of concern which must be looked into by the Institute are:
  - a. Forged procurement document,
  - b. Procurement processes conducted by unauthorized and unlicensed officer who could be in no regular standing.
  - c. Sources of fund is donor fund under NAREG project.

The Institute through its disciplinary committee established under **Section 22 of the Supplies Practitioners Management Act** (the Act) and pursuant to its mandate under **Section 23 of the Act** and in accordance with **Rule 17 & 42 of the Supplies Management (Disciplinary) Regulations, 2015** determined in a meeting held on 12th September, 2023 **that allegations Nos.**

(5) and (6) established a prima facie case in line with its mandate and that allegations numbers (1), (2), (3) and (4) though raised serious issues bordering on mala fides and criminality are not within the mandate of the DC committee.

5. The complaint raised a novel issue regarding the mechanism for determining anonymous complaints filed at the institute. The committee thoroughly considered this issue and, on 22nd November 2023, ordered that the institute conducts further investigations pursuant to **Section 3 of the Supplies Practitioners' Management Act No. 17 of 2007.**
6. The institute subsequently conducted investigations against the respondent on **27<sup>th</sup> & 28<sup>th</sup> November 2023** to **ascertain the number of Supplies Practitioners currently working for the County Government; and to ascertain the level of compliance with regard to licensed Supplies Practitioners currently working in the County government of Homa Bay.**
7. The comprehensive audit yielded the findings of the report dated **19<sup>th</sup> January 2024** and the DC considered and adopted the same. Concurrently, the DC determined *suo motu* that the Complaint raised novel issues, in particular, the DC's jurisdiction to handle anonymous Complaints and the manner of exercise of the DC's investigative powers and authority donated under the Act and the Disciplinary Regulations, 2015. Consequently, the DC considered the matter as an interlocutory point of law and issued a Ruling on the 20<sup>th</sup> of June, 2024 directing *inter alia* that: -
  - a. In the event of a Complaint subject of which Investigations do ensue, the DC shall receive and consider the findings same in line with Section 23 of the Act and Regulation 9 of the Disciplinary Regulations, 2015 and determine whether to dismiss the matter or fix hearings.

- b. Accordingly, Proceedings be taken out and notices for hearing do issue against persons adversely mentioned and suspected of violations in the Report.
  - c. The Institute do prosecute the Complaint as the same would be deemed to have arisen from the investigations which is a process of the law expressly provided for under Statute.
  - d. The Council be at liberty to take appropriate action against other persons adversely mentioned but against whom the DC had no jurisdiction to discipline.
8. The anonymous Complaint, the Investigative Report and the Ruling of 20<sup>th</sup> June, 2024 accordingly formed the basis upon which the DC directed the institution of proceedings against the Respondent herein.
  9. The Parties' respective cases are set out below.

#### **Complainants Case**

10. The complainant is the Kenya Institute of Supplies Management through its Directorate of Standards and Compliance represented by Ms. Matu.
11. Ms. Matu submitted that investigations were commenced pursuant to the orders of the Disciplinary Committee.
12. During the hearing, the complainant submitted that they had received the complaint against the respondent on 13<sup>th</sup> June 2022. Following the receipt of the complaint, they undertook a series of investigations.
13. These investigations were completed by November 2023. The investigative team then presented a report to the committee for consideration.

14. Upon reviewing the report, the committee determined that a prima facie case had been established against the respondent
15. The complainant's counsel stated that consequently, the Respondent received summons and hearing notices for the hearing.
16. Counsel for the complainant further noted that practicing without a valid license for that practice year was in contravention of the Supplies Management practitioners act, 2007.

### **Respondent's case**

17. The Respondent attended the hearing virtually on 20/8/24.
18. The Respondent tendered his testimony and was examined.
19. The Respondent submitted that he is an employee of Homabay County government, Procurement Department working as a Supply Chain Management officer
20. He confirmed that he is a registered member of the institute vide membership number 80018 and with practicing license number K3237/2022
21. He confirmed that his license for 2022 was valid.
22. He admitted that he was practicing without valid license in the year 2023.
23. The Respondent availed his current practicing License, in which he had renewed for 2024.

### **Determination**

#### **A. Jurisdiction**

24. The Supplies Practitioners Management Act (hereinafter referred to as "the Act") along with its accompanying Rules, provides a detailed legal framework governing the training, regulation, registration, and licensing of supplies practitioners. This statutory scheme establishes clear educational, experiential, and ethical standards aimed at ensuring professionalism, integrity, and accountability within the supplies management profession.

25. The Disciplinary Committee of the Council, constituted under Section 22 of the Act, is vested with the authority to receive and investigate complaints brought against practitioners. This mandate is to be exercised in accordance with the provisions of the Act, ensuring that practitioners adhere to the prescribed standards of professional conduct.
26. Section 23 of the Act further grants the Disciplinary Committee the power to impose disciplinary measures on any practitioner who willfully violates established standards and ethical guidelines. These powers include the authority to remove a practitioner from the register; suspend their registration, revoke their practicing license, or impose fines as prescribed by the Council.
27. The respondent herein is therefore well within the jurisdiction of the disciplinary committee for reason that he is a registered member of the Kenya Institute of Supplies Management.
28. **Section 20** of the SPMA prohibits practice by any person without a valid Registration Certificate. The said provision reads thus: -  
***“20. (1) After the expiry of twelve months from the commencement of this Act, no person shall engage in the business of a supplies practitioner unless he has been duly issued with a registration certificate and a practicing license by the Institute in accordance with this Act.”***
29. Accordingly, the said provision also provides a mandatory requirement for a license to practice as a Supplies Practitioner.
30. Under **Section 20 (3)** of the said Act, registration (valid registration Certificate) is one of the mandatory prerequisites for application and issuance of a Practicing License.

31. **Section 20 (6)** creates a criminal offence for engagement in the business of a Supplies practitioner without valid registration Certificate and valid practicing License. The said Section provides: -

***“(6) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings, or imprisonment for a period not exceeding three years, or to both such fine and imprisonment.”***

32. It is therefore only upon the satisfaction of the abovementioned qualifications can a supplies practitioner practice validly. This is in line with the institute's mandate of regulating the qualifications of suppliers and ensuring professionalism and integrity in the field of supplies management.

33. **Section 21** of the **Supplies Practitioners Management Act (SPMA)** stipulates that a license issued under the Act is valid for one year and must be renewed annually.

34. **Section 30** of the Act makes it an offense for any individual who, though eligible, practices as a supplies practitioner without being registered or licensed. Upon conviction, such a person may face a fine not exceeding one hundred thousand shillings, imprisonment for up to two years, or both.

35. **Section 32** holds employers accountable for hiring unregistered or unlicensed individuals as supplies practitioners. An employer convicted of this offense may face a fine not exceeding five hundred thousand shillings or imprisonment for up to three years. If the employer is a corporate body, the Chief Executive Officer is personally liable for these penalties.

36. Practicing without proper registration and licensing constitutes a criminal offense under the Act, exposing the individual to prosecution and criminal sanctions.

37. The **KISM Code of Ethics and Standards of Professional Conduct No. 1 of 2020**, which binds all Supplies Practitioners, sets forth ethical and professional standards to be followed.
38. Specifically, **Standard 3.6 of the Code** prohibits practicing without a valid Registration Certificate and License, classifying such conduct as professional misconduct.
39. The Supplies Act, in conjunction with the KISM Code of Ethics, clearly criminalizes the practice of supplies management without valid registration and licensure. Both practitioners and employers are subject to severe penalties, reinforcing the legal and ethical obligations governing the profession.
40. **Regulation 12** thereof provides that registration shall confer membership while **Section 13** provides that validity shall remain in force for one year. **Regulation 16** provides that a person shall be removed from the Register if that person fails to pay the prescribed fee but only upon Notice of 14 days and an opportunity to be heard before the Registration Committee established under Section 15 of the SPMA.
41. **Regulation 38** of the said Registration and Licensing Regulations is pertinent to the Complaint before this Committee. The Regulation provides: -
- “A person who carries on the business of Supplies Practitioner commits professional misconduct if such person practices, attempts to practice or permits any person to practice without holding a valid registration Certificate.”***
42. The collective import of the legal provisions set out above is the unequivocal conclusion that practice without requisite renewal of registration

and a valid licence is expressly proscribed by the relevant laws and punishable as both a criminal and professional misconduct.

43. It is instructive to note that the institution of proceedings of professional misconduct does not preclude the criminal prosecution of accused and/or implicated persons. The Institute reserves the liberty to choose the disciplinary route or criminal proceedings or both.
44. The law however limits exercise of authority and jurisdiction of the DC to disciplinary action against supplies practitioners only. Section 2 of the Act defines a “supplies practitioner” as a person registered as a supplies practitioner under section 16 of the Act.
45. In the premises afore-going, it is the determination of the DC that the Respondent herein being a Supplies Practitioner is therefore properly within the purview and jurisdictional reach of the DC. The Respondent did confirm that she is a registered member of the Kenya Institute of Supplies Management.
46. Consequently, the duty of the DC remains the determination of the singular issue as to whether the Respondent herein engaged in the business of a Supplies practitioner without a valid registration and practice license for the relevant period or at all and if so the legal ramifications of such acts.
47. In her evidence in chief before the Committee, the Respondent expressly admitted that for the year 2023, she did not take out a license and neither did she renew her membership as required by law established.
48. In consideration thereof, it is a dictate of the law that the Respondent, being a registered supplies practitioner by the Kenya Institute of Supplies Management, was unequivocally bound by the laws governing the profession

as well as the Code of Ethics and Standards of Professional Conduct, No. 1 of 2020.

49. The Practitioner's registration as a professional mandated strict adherence to these ethical standards and regulations. The failure to comply with these provisions, particularly in renewing his license constitutes a clear breach of professional duty.
50. It is not in contention, whether in fact or law, that the practitioner's failure to renew his license and membership as required under the Code of Ethics and Standards of Professional Conduct directly contravenes the obligations imposed on all registered professionals by the law established.
51. This deviation not only undermines the integrity of the profession but also amounts to professional misconduct as defined by the regulatory framework. The law, therefore, unequivocally deems this non-compliance a violation that warrants appropriate disciplinary action in accordance with the established legal and ethical standards.
52. It is imperative to note that the employment of a professional to the Department concerned with procurement presupposes the proper qualification of such an individual. It is imperative therefore that the said person is duly registered and licensed and maintains the said registration and licences throughout the period of employment. It matters not that someone is actively engaged or not.
53. Statutory obligations are not mere lofty aspirations that persons to whom an obligation is set in law may choose to or not to obey or when to comply. Obeisance to the law is the cornerstone of societal order and the fraternity of Procurement and Supplies Practitioners demands no less.

54. It is imperative to note that in the wisdom of Parliament it imposed strict compliance and even imposed hefty fines and sentences including the possibility of incarceration and denial of liberty for non-compliance. Even this Committee has no latitude to excuse non-compliance as, itself, it is bound to act as dictated by the law.

55. The committee acknowledges that the respondent expressed remorse and requested leniency. We are however compelled to render a determination in light of the flagrant breach of professional standards by a considerable number of procurement officers within the County Government of Homabay and the need to set a precedent that upholds the integrity of the profession.

56. In light therefore of the above and Respondent's admission of fault, this Committee finds him culpable for professional misconduct for practising without renewal of membership and valid Certificate for the year 2023.

57. Before the Committee can make its final Orders, the DC considers it fitting to broach one issue of considered relevance that arose from the proceedings.

58. The Committee as a custodian of the code of conduct and enforcement of Standards of practice as stipulated under the law, notes with grave concern the inaction by the employer in enforcing an obligation strictly provided for under law. Section 32 prohibits employers from retaining in their employment unregistered supplies practitioners and imposes Criminal sanctions against the Chief Executive Officer of the employer for violations of such a nature.

59. We therefore find the employer, the County Government of Homa Bay, at fault for employing and retaining an unregistered and unlicensed procurement staff, in clear violation of Section 32 of the Supplies Practitioners Management Act. This constitutes a serious breach of statutory obligations. The Committee, therefore, directs that this Judgment be transmitted to the

Council of the Institute with recommendations for appropriate legal action against the County Government of Homa Bay for violation of Section 32 of the Act.

60. On the same note, it is directed that the Judgment be also notified to the attention of the head of public service in the County Government as a caution and notice of their duties and obligations under law and as a reminder of the consequences for non-compliance.
61. Now back to the primary issue herein, upon the finding of culpability as above, the Committee must consider what sanctions to impose.
62. **Rule 42** prescribes as follows with regard to the powers of this committee when making a determination in complaints in exercise of its jurisdiction under Section 23 of the Supplies practitioners management act, Act No. 17 of 2007.

Rule 42 provides:

***"42. Decisions of the Committee***

***(1) After the hearing the complaint, the Committee may determine or order—***

***(a) that the complaint be dismissed;***

***(b) that the member of the Institute be reprimanded;***

***(c) that the member of the Institute be suspended from practice for a specified period not exceeding two years;***

***(d) that the name of the member of the Institute be struck off the register of members;***

***(e) that the member of the Institute pay to the aggrieved person compensation of such amount as the Committee may determine, but limited to the extent of loss incurred taking into account all other prudent mitigating measures at the claimant's disposal; or***

***(f) make such order as the Committee considers fit.”***

63. In exercise of its mandate under Sections 23 of the Supplies practitioner's management act, Act No. 17 of 2007 and Rule 42 & 43 of the Supplies practitioner's management rules this committee hereby orders as follows:
64. The Respondent is found to have violated Section 20 of the Supplies Practitioners Management Act No. 17 of 2007 by engaging in supplies business without a valid license during the 2023 practicing year. The Respondent acknowledged the violation and expressed remorse.
65. Acknowledging that the imposition of sanctions is based on discretion it is important that the exercise of such discretion is carried out with caution, due care, judiciously so as to void the process of whimsical action that may result in sanctions that are that are not only disparate and inconsistent but also disproportionate and unjustified under the circumstances of each case.
66. Properly guided as such, this Committee in exercise of its mandate under Sections 23 of the Supplies practitioner's management act, Act No. 17 of 2007 and Rule 42 & 43 of the Disciplinary Regulations, 2015 this committee hereby finds as follows.
67. The Respondent is found to have violated Section 20 of the Supplies Practitioners Management Act No. 17 of 2007 by engaging in supplies business without a valid license during the 2023 practicing year.
68. It is therefore Ordered as follows: -
- a. In light of the above and the totality of the circumstances, the DC doth hereby issue a severe REPRIMAND to **MR. BERNARD TARA OCHIENG'** with strict caution that any other cited instances of non-compliance may and shall albeit without prejudice to the right to defence, attract

more severe sanctions including the possibility of suspension from practice and criminal prosecution.

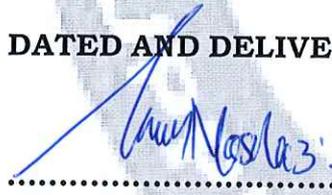
b. No order as to costs.

69. The Respondent is further reminded of the obligation to adhere strictly to the rules of practice and is cautioned that any future violations may result in more severe disciplinary actions. The Disciplinary Committee will be forced to initiate removal proceedings for non-compliant staff members pursuant to Section 23(d) of the Supplies Practitioners Management, 2007.

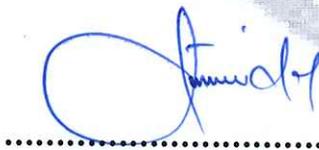
It is so ordered.

***Pursuant to the authority granted under Section 23(7) of the Supplies Practitioners Management Act, 2007, the parties are hereby informed of their right to appeal this decision to the High Court. Any party aggrieved by this decision may exercise this right within the statutory period prescribed by law.***

**DATED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF SEPTEMBER 2024.**



.....  
**SAMSON NYAMAI MASILA ADVOCATE**  
**CHAIRPERSON**



.....  
**KENNEDY ARIEMBI**  
**MEMBER**

.....  
**JUDITH CHIMAU ADVOCATE**  
**MEMBER**

.....  
**PROF. LARRY GUMBE**  
**MEMBER**

.....  
**FCPA PARAAG DEVANI**  
**MEMBER**

.....  
**THOMAS OTIENO**  
**MEMBER**

.....  
**EVANCE ONGATI**  
**MEMBER**

.....  
**DR. REBECCA MUTIA**  
**MEMBER**



