



REPUBLIC OF KENYA

IN THE DISCIPLINARY COMMITTEE

DISCIPLINARY COMMITTEE COMPLAINT NO: 002 OF 2022

**IN THE MATTER OF DAVID OPAR 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 the present case is a Complaint originated by an anonymous letter dated 13th June, 2022 addressed to the Chief Executive Officer of Kenya Institute of Supplies Management (**the Institute**) through the Chairperson of the Disciplinary Committee raising allegations of gross misconduct and fraud

at the Department of Agriculture and Livestock of Homabay County Government.

4. The said Complaint raised a myriad of other allegations *inter alia*, that:

- I. The Chief Officer in the said Department had assigned one procurement officer to carry out functions of the Director Procurement against the law.
- II. The department of Agriculture was alleged to have lost a lot of money through irregular procurement process in procuring motor cycles at exorbitant prices which also did not follow the due process of the law on NARIG project which was a donor fund.
- III. That there seemed to be two parallel factions at the procurement department with a lot of impersonation, which ought also to be investigated, and findings shared.
- IV. The Complaint further alleged that while all these were happening the internal mechanisms had equally failed to solve or handle the matter because most of the “big fish” were the parties involved.
- V. It was also in the public domain that Homabay County government was one of the counties that had employed nearly 95% of the procurement staff who are unqualified and are not in regular standing with unlicensed practitioners’ despite an 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 funds is donor fund under NARIG project
5. The Disciplinary Committee (DC) established under **section 22 of the Supplies Practitioners Management Act** (the Act) was seized of the matter and pursuant to its mandate under **Section 23 of the Act** and in accordance with **Rule 9 of the Supplies Management (Disciplinary) Regulations, 2015** conducted a preliminary inquiry in its meeting held on 12th September, 2023.
 6. Pursuant to **Rule 9 (2) (b)** the DC determined **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 they raised serious issues the same bordered on malpractices and criminality which are not within its mandate.**
 7. In exercise of its powers under Section 22 (3) & (4) of the Act, as read with Regulations 9 (2) (b) and 10 (4) of the Disciplinary Regulations, 2015, and by extension, Regulation 12 (3) which is *in pari materia*, the DC made Orders directing the Institute to conduct further investigations on the two allegations pursuant to its wide mandate under **Section 3 of the Supplies Practitioners' Management Act No. 17 of 2007.**
 8. The Institute through its Standards and Compliance Directorate conducted visits to the County and conducted investigations on **27th & 28th November 2023** with the primary objective of **ascertaining** the compliance status of the SCM staff within the County in line with the allegations subject of the Complaint.
 9. The comprehensive audit yielded the findings of the report dated **19th 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 20th 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.
10. The anonymous Complaint, the Investigative Report and the Ruling of 20th June, 2024 accordingly formed the basis upon which the DC directed the institution of proceedings against the Respondent herein.
11. The Parties' respective cases are set out below.

Complainant's Case

12. This case was set down for hearing on the **26th July 2024**. The complainant was represented by Ms. Matu. The respondent appeared virtually and was represented by Mr. Keiton Felix.

13. The Complainant accordingly is the Kenya Institute of Supplies Management. The Institute prosecuted the Complaint through its Directorate of Standards and Compliance represented by Counsel Ms. Matu who gave a sworn testimony.

14. Ms. Matu testified that upon receipt of the Orders of the DC, the Department seconded a Compliance Officer to carry out the Investigations, which would reveal that the Respondent was an employee of Homabay County in the Department of Procurement carrying out, and tasked with procurement functions and duties.

15. Ms. Matu, in conclusion produced the Complaint dated 13th June, 2022 and the Investigation Report dated **23 November 2023** and register as evidence in chief.

Respondent's case

16. The Respondent was represented by Mr. Keaton Felix.

17. The respondent testified that he was employed from the year 2016. The Respondent confirmed that he was indeed a registered and licensed member of KISM under License.

18. He submitted that he renewed membership from the year 2020. He was employed as a Supply Chain Management Assistant Clerk with duties such as opening committee tenders and acted as a secretary to the tender evaluation committee.

19. He further submitted that all the duties he performed were as set out in his contract of service. He further testified that he was duly licensed during that time.

Cross-examination

20. Upon cross-examination by committee member Ongati, the respondent could not recall if he had availed his practicing certificate on **27th November 2023**.

Reexamination

21. The respondent testified that he has never practiced without a license.
22. He testified that the nature of his job description is that of a supply chain management assistant officer.
23. He further testified that he had availed practicing license for the period 2022.
24. He testified that no material information had been placed on record to demonstrate specific activities.
25. He held further that he had not been supplied with the report.
26. He testified that in any period that he did not have a license, he states that he never performed any duty.
27. The committee directed that the institute furnishes the documents by way of an affidavit.
28. It was also directed that the submissions be filed.

Determination

Jurisdiction

29. The Supplies Practitioners Management Act (hereinafter 'the Act') and the Subsidiary legislation thereunder establish a comprehensive framework for the training, regulation, registration and licensing of supplies practitioners. The legal framework sets clear educational, experiential, and ethical standards for supplies practitioners, these regulations help uphold professionalism, integrity, and accountability in the field of supplies management.

30. The Disciplinary Committee of the Institute is established under Section 22 of the Act with the mandate of receiving and investigating complaints against practitioners in accordance with the Act.

31. Section 23 of the Act delineates the jurisdiction of the DC and stipulates the powers and reach of the DC. It clothes the DC with powers for the removal from the register, suspension of registration or revocation of the practicing license or the imposition of fines on supplies practitioners for professional misconduct and/ or acts and omissions in violation of the set standards and ethical guidelines.

32. **Section 23 1 (d)** outlines and describes the conduct that constitutes Professional misconduct under the Act and at **23 1 (d) (xiv)** states *vide licet*

:-

“does or fails to do any other act which may be prescribed”

33. Section 16 of the Act further requires the mandatory registration of all Supplies Practitioners to qualify to engage and carry out procurement duties and functions.

34. Section 20 of the Act correspondingly prohibits the practice of Supplies chain management 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.” (Emphasis Ours)

35. Consequently, the said provision therefore prescribes the mandatory requirement for a license to practice as a Supplies Practitioner.

36. **Section 20 (3) of the said Act** on its part circumscribes the criteria and requirements for licensing. Registration is one of the mandatory prerequisites for application and issuance of a Practicing License.
37. These requirements are in line with the Institute's Statutory mandate of regulating the qualifications of suppliers and ensuring professionalism and integrity in the field of supplies management.
38. The consequences of practice without a license are consequently set out at Section 20 (6) of the Act criminalizes practice 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.”***
39. The validity of a license issued under the Act is delimited to a period of one year. Section 21 requires renewal of license on annual basis.
40. Summarily put, the supplies act establishes the disciplinary committee and empowers it to hear and determine complaints where a prima facie case of professional misconduct has been established.
41. Further to prohibition of practice without a license, the Act also proscribes practice by persons who though eligible have not obtained registration and acquired license. This is the crux of **Section 30 of the Act** which provides thus :-

“Any person who, though eligible to be registered or licensed under this Act, is not so registered or licensed and practices as a supplies

practitioner commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both”

42. Section 32 on its part states as follows: -

“(1) Any employer who employs an unregistered or unlicensed person as a supplies practitioner shall be guilty of an offence and is liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.”

“(2) Where the employer provided in subsection (1) is a body corporate, the Chief Executive Officer of that corporation shall be guilty of an offence and shall be liable to the penalties provided in subsection (1).”

43. The Act therefore makes it an offence of a criminal nature to practice without valid registration and license. Accordingly, an unqualified person is liable to prosecution and criminal sanctions with **hefty fines set at Kshs. 100,000/=**

44. The KISM Code of Ethics and Standards of Professional Conduct No. 1 of 2020 to which every Supplies Practitioner subscribes, outlines the code and standards to which each of supplies Practitioners is bound.

45. **Standard 3.6 of the said Code of Conduct** prohibits practice without a Registration Certificate and License.

46. The Supplies Practitioners Management (Registration and Licensing) Regulations, 2015 (hereinafter “Registration and Licensing Regulations”) reinforce the requirement for registration and licensing.

47. **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.

48. **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.”

49. The collective import of the legal provisions set out above is the unequivocal conclusion that practice without requisite renewal of registration and a valid license is expressly proscribed by the relevant laws and punishable as both a criminal and professional misconduct.

50. 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.

51. 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.

52. The respondent acknowledged during testimony that he had been practising without a valid license, which is a clear violation of the professional standards.
53. He further claimed that he had not been provided with a copy of the complaint, yet he made no effort to actively seek or obtain it despite having the opportunity to do so.
54. Additionally, the respondent failed to file the required affidavit as directed by the committee, showing non-compliance with the procedural obligations set forth.
55. In light of these factors, particularly his admission to practising without a license, we are compelled to rule against the respondent.
56. In the premises foregoing, 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 he is a registered member of the Kenya Institute of Supplies Management.
57. 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.

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unregistered supplies practitioners and imposes Criminal sanctions against the Chief Executive Officer of the employer for violations of such a nature.

70. 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.

71. 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.

72. Now back to the primary issue herein, upon the finding of culpability as above, the Committee must consider what sanctions to impose.

73. **Rule 42** of the Disciplinary Regulations, 2015 prescribes the powers of this committee when making a determination of 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."

74. In imposing its sanctions, the Committee must be guided by rules of fairness and the principle of proportionality and the fact that sanctions are an important aspect of the administration of justice.

75. 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

76. 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:

77. 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.

78. 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. David Opar Ochieng** with strict caution that any other cited instances of non-compliance may and shall albeit without prejudice to the right to defense, attract more severe sanctions including the possibility of suspension from practice and criminal prosecution.
- b. Secondly, for reasons already set out earlier in this Judgment the DC has considered it fitting and accordingly hereby imposes a fine of Kshs. 10,000/= against Mr. David Opar Ochieng.
- c. No order as to costs.

79. The DC notes that, comparably the criminal sanctions set for non-compliance include a fine of Kshs. 100,000/= or a jail sentence of a term not exceeding 3 years.

80. 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 13TH DAY OF SEPTEMBER, 2024.

Maryanne Karanja

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CM. MARYANNE KARANJA
CHAIRPERSON

Kennedy Ariembi

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KENNEDY ARIEMBI
MEMBER

Judith Chimau Advocate

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JUDITH CHIMAU ADVOCATE
MEMBER

Samson Nyamai Masila Advocate

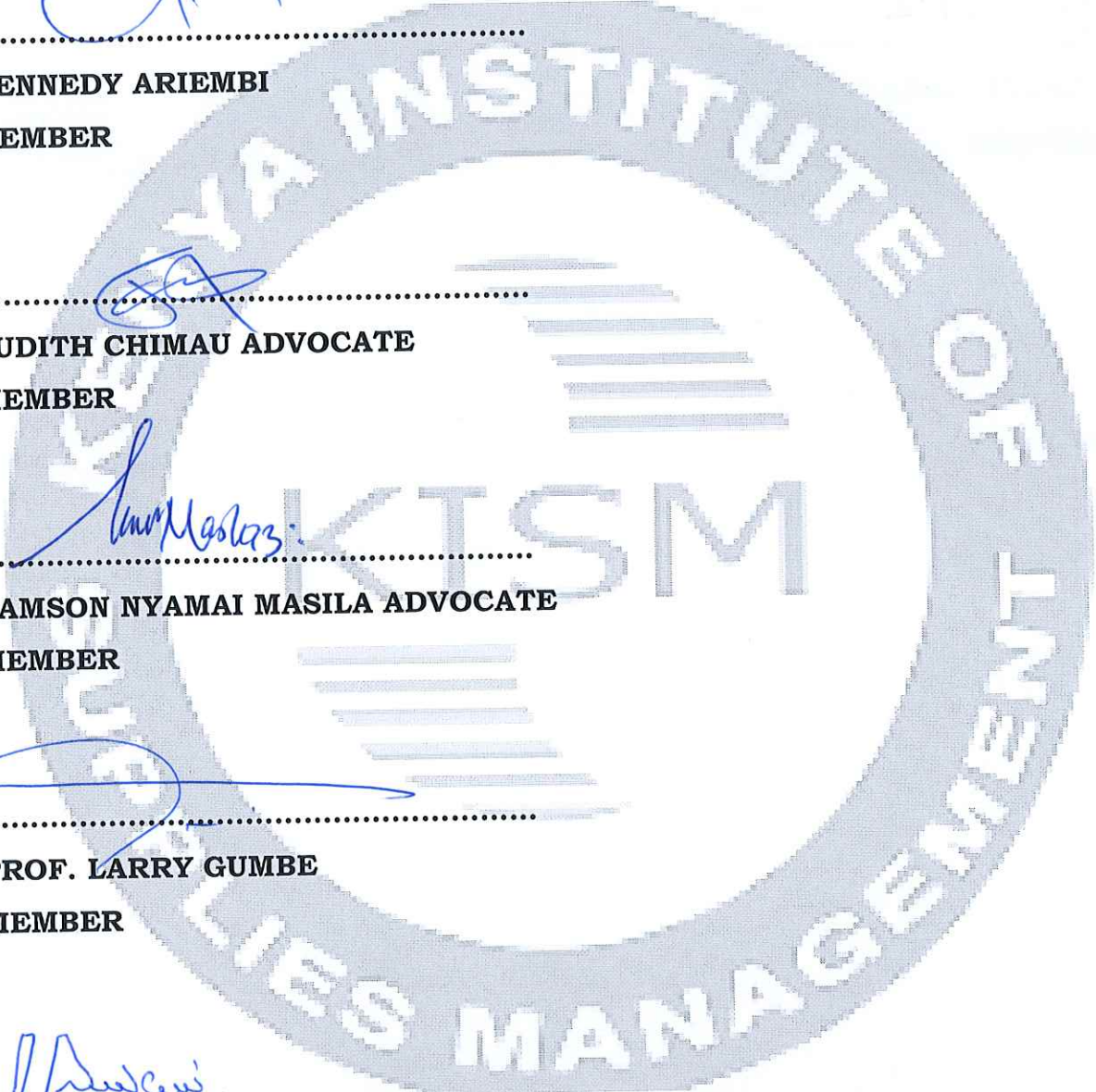
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SAMSON NYAMAI MASILA ADVOCATE
MEMBER

Prof. Larry Gumbe

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PROF. LARRY GUMBE
MEMBER

FCPA Paraag Devani

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FCPA PARAAG DEVANI
MEMBER





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THOMAS OTIENO

MEMBER



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EVANCE ONGATI

MEMBER



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DR. REBECCA MUTIA

MEMBER

