REPUBLIC OF KENYA

IN THE DISCIPLINARY COMMITTEE

DISCIPLINARY COMMITTEE COMPLAINT NO: 024 OF 2022

IN THE MATTER OF JANET 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 the 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 Homa Bay 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 Homa Bay 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 is 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. The Complainant accordingly is the Kenya Institute of Supplies Management. The Institute prosecuted the Complaint through its

Directorate of Standards and Compliance represented by Ms. Mutugi who gave a sworn testimony.

13. Ms. Mutugi 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.

14. Ms. Mutugi, in conclusion produced the Complaint dated 13th June, 2022 and the Investigation Report dated **27 November 2023** as evidence in chief.

Respondent's Case

15. The Respondent presented her oral testimony and was examined. The Respondent is a registered member of the Institute, Member No. 80337, with a licence no. K3217/2022.

16. The Respondent worked as a Supply Chain Management Officer and retired in May 2024. She admitted to have been practicing in 2023 without the requisite licence.

17. The Respondent admitted to having made a late license application due to having had two funerals, of her son and her husband. Additionally, due to financial constraints, and the lack of requisite CPD points, she was not able to renew her license.

18. She pleads for mercy due to extraneous circumstances she faced during the year in question.

Determination

Jurisdiction

19. 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.

20. 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.

21. 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.

22. **Section 23 1 (d)** outlines and describes the conduct that constitutes Professional misconduct under the Act and at **23 1 (d) (xiv)** states *videlicet*:-

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

23. 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.

24. 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 practising license by the Institute in accordance with this Act. (Emphasis Ours)

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

26. **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 Practising Licence.

27. 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.

28. The consequences of practice without a licence are consequently set out at Section 20 (6) of the Act criminalizes practice without valid registration Certificate and valid practicing Licence. 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."

29. The validity of a licence issued under the Act is delimitated to a period of one year. Section 21 requires renewal of licence on annual basis.

30. Further to prohibition of practice without a licence, the Act also proscribes practice by persons who though eligible have not obtained registration and acquired licence. 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 practises 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"

31. 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)."

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

33. 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.

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

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

36. **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.

37. **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."

38. 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.

39. 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.

40. 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.

41. In the premises aforegoing, it is the determination of the DC that the Respondent herein being a Supplies Practitioner is therefore properly with 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 under **membership no. 80337**

42. 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.

43. In her evidence in chief before the Committee, the Respondent expressly admitted that for the year 2023, she did not take out a licence and neither did she renew her membership as required by law established.

44. 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.

45. 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 her license and maintaining her membership under the assigned number, constitutes a clear breach of professional duty.

46. It is not in contention, whether in fact or law, that the practitioner's failure to renew her 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.

47. 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.

48. 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.

49. The Respondent attributed her failure to comply, to personal issues. The Respondent contended that the failure to take out a licence was occasioned by her inability to obtain Continuing Professional Development (CPD) points due to financial constraints.

50. We must caution that such does not suffice as a Defense to non-compliance with statutory requirements. Financial constraints, while unfortunate, do not negate the requirement to fulfill professional obligations, including the acquisition of CPD points necessary for maintaining licensure. Accordingly, the Respondent's financial circumstances do not provide a valid justification for her failure to comply with this mandatory requirement, and thus, her argument is without merit.

51. 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.

52. 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.

53. The Committee is however alive to the circumstances and it must consider matters on a case to case basis. In this case, mitigation was offered. It is observed that despite the Respondent's acknowledgment of her fault and expression of intent to correct her actions, she displayed noticeable lack of genuine remorse in her demeanor during the hearing.

54. Her conduct suggests an absence of genuine contrition and did not convey a sincere acceptance of responsibility, which raises concerns about her acknowledgement of the gravity of the charges against her and the depth of her commitment to rectifying her misconduct. This lack of remorse undermines the credibility of her stated intentions and commitment to the Standards of ethics and code of conduct.

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

56. 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.

57. 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.

58. 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.

59. 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.

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

61. **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."

62. 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.

63. 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

64. 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:

65. 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.

66. 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 **MS JANET 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. No order as to costs.

67. 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.

68. 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.

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CM. MARYANNE KARANJA

CHAIRPERSON

.....

KENNEDY ARIEMBI

MEMBER

.....

JUDITH CHIMAU ADVOCATE

MEMBER

.....

SAMSON NYAMAI MASILA ADVOCATE

MEMBER

.....

PROF. LARRY GUMBE

MEMBER

.....

FCPA PARAAG DEVANI

MEMBER

.....

THOMAS OTIENO

MEMBER

..... 13/9/24

EVANCE ONGATI

MEMBER

.....

DR. REBECCA MUTIA

MEMBER