

REPUBLIC OF KENYA

IN THE DISCIPLINARY COMMITTEE

DISCIPLINARY COMMITTEE COMPLAINT NO: 030 OF 2022

**IN THE MATTER OF MICHAEL OKOTH: 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 present case arises from a complaint initiated 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. The letter raised allegations of gross misconduct

and fraud within the Department of Agriculture and Livestock at 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. 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 **23 November 2023** as evidence in chief.

Respondent's case

15. The defendant presented his oral testimony and was examined. The defendant is a registered member of the Institute, Member No. 85176.
16. The Defendant stated that she joined Homa Bay County Government as a Procurement Assistant. He was appointed on 1 May 2023, deployed in July 2023 and posted on 2 September 2023.
17. He submitted that he has a Diploma in Procurement and Logistics from KCA University.
18. The Defendant concedes to the allegations and stated that he was registered in October 2023, and got his membership card in November 2023. He stated that he was ignorant of the need to go a step further and take out his license.
19. Due to financial challenges and his father passing away, he was unable to renew his membership and licensing status. He stated that his employer pushed him to apply for registration but did not have full information on membership.
20. He conceded that he was aware that professionals need to be aware of the laws that they practice under. Upon being questioned by the Committee, the Defendant did not know which law procurement professionals practice under.

Analysis

Jurisdiction

21. The Supplies Practitioners Management Act (referred to hereafter as 'the Supplies Act') along with its Subsidiary legislation, provides a detailed structure for the training, regulation, registration, and licensing of supplies practitioners. This legal framework outlines specific educational, experiential, and ethical standards, ensuring that professionalism, integrity, and accountability are maintained within the field of supplies management.
22. The Institute's Disciplinary Committee is constituted under **Section 22** of the Act, tasked with the responsibility of receiving and investigating complaints lodged against practitioners in accordance with the provisions of the Act.
23. **Section 23** of the Act defines the jurisdiction and authority of the Disciplinary Committee (DC), granting it powers to remove names from the register, suspend registration, revoke practicing licenses, or impose fines on supplies practitioners for professional misconduct or breaches of the prescribed standards and ethical guidelines.
24. **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”***
25. **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.
26. **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)

27. Resultantly, the provision establishes the mandatory requirement for holding a license in order to practice as a Supplies Practitioner.
28. Section 20(3) of the Act outlines the specific criteria and conditions necessary for obtaining a license, with registration being a compulsory prerequisite for both the application and issuance of a Practicing License.
29. These requirements align with the Institute's statutory duty to regulate the qualifications of suppliers and to uphold professionalism and integrity within the field of supplies management.
30. The penalties for practicing without a license are clearly stipulated in Section 20(6) of the Act, which criminalizes practicing without a valid Registration Certificate and Practicing License. Section 20(6) 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.”***
31. 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.
32. 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.
33. 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 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”

34. 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).”

35. 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/=**

36. 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.

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

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

39. **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.

40. **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.”

41. The cumulative effect of the aforementioned legal provisions leads to the unequivocal conclusion that engaging in practice without the requisite renewal of registration and a valid license is explicitly prohibited by the applicable statutes, constituting both a criminal offense and professional misconduct.

42. It is pertinent to observe that the initiation of proceedings for professional misconduct does not preclude the possibility of criminal prosecution against the accused or implicated individuals. The Institute retains the discretion to pursue disciplinary measures, criminal proceedings, or both concurrently.

43. However, the law confines the Disciplinary Committee's (DC) authority and jurisdiction to disciplinary actions against supplies practitioners exclusively. Section 2 of the Act defines a "supplies practitioner" as an individual duly registered under Section 16 of the Act as a supplies practitioner.

44. In view of the foregoing, the DC finds that the Respondent, being a registered Supplies Practitioner, falls squarely within the ambit of its jurisdictional authority. The Respondent has confirmed her registration with the Kenya Institute of Supplies Management under membership number **85176**.

45. Accordingly, the DC's mandate is to adjudicate the specific issue of whether the Respondent engaged in the practice of a Supplies Practitioner

without holding a valid registration and practicing license during the relevant period, and, if so, to determine the legal consequences of such actions.

On the issue of 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.

46. In considering the facts presented by the Respondent, the Committee acknowledges that he has conceded to the allegations against him. He admitted that while he was registered as a member of the Institute in October 2023 and received his membership card in November 2023, he was unaware of the requirement to obtain a practicing license.
47. The Respondent attributed his non-compliance to both ignorance and personal circumstances, including financial difficulties and the passing of his father, which hindered his ability to maintain his membership and licensing status.
48. The Committee notes the Respondent's assertion that his employer encouraged him to apply for registration, though he claimed to have been uninformed about the full membership requirements. However, we emphasize that professionals are expected to be fully aware of the laws and regulations governing their practice.
49. By his own admission, the Respondent acknowledged an awareness that professionals must be familiar with the legal framework of their field, yet demonstrated a lack of knowledge regarding the specific laws governing procurement professionals.
50. While the Committee recognizes the personal hardships experienced by the Respondent, we must stress that ignorance of the law is not a valid defense, and financial or personal challenges do not absolve an individual from compliance with statutory and professional obligations. Nevertheless,

we take into account the Respondent's apparent remorse and his plea for clemency before the Committee.

51. His genuine expression of regret will be considered in our determination, though it does not negate the requirement for professionals to uphold the standards of the profession.

Determination

52. 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.
53. The Practitioner's registration as a professional mandates strict adherence to these ethical standards and regulations. The failure to comply with these provisions, particularly in renewing his license and maintaining her membership under the assigned number, constitutes a clear breach of professional duty.
54. It is undisputed, both in fact and in law, that the practitioner's failure to renew his license and membership as required by the Code of Ethics and Standards of Professional Conduct constitutes a direct violation of the legal obligations imposed on all registered professionals.
55. This failure not only compromises the integrity of the profession but also constitutes professional misconduct as defined by the governing regulations. The law clearly classifies such non-compliance as a violation that justifies disciplinary action, in line with established legal and ethical standards.
56. It is important to emphasize that employing a professional within a procurement-related department presupposes that the individual possesses the necessary qualifications. As such, the person must be duly registered and

licensed, and must maintain both the registration and license throughout their employment. Whether or not the person is actively engaged is irrelevant.

57. Statutory obligations are not merely aspirational, where individuals subject to such requirements can decide whether or when to comply. Adherence to the law is fundamental to maintaining societal order, and the profession of Procurement and Supplies Practitioners is no exception to this principle.

58. 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.

59. 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 his fault and expression of intent to correct his actions, he displayed noticeable lack of genuine remorse in her demeanor during the hearing.

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

61. 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.

62. 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.

63. 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.

64. 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.

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

66. **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.”

67. 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.

68. 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

69. 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:

70. The defendant 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.

71. 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. MICHAEL OKOTH** 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. 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.

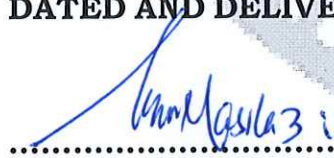
c. No order as to costs.

72. 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.

73. 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.


.....
SAMSON NYAMAI MASILA ADVOCATE
CHAIRPERSON



.....
KENNEDY ARIEMBI

MEMBER



.....
JUDITH CHIMAU ADVOCATE

MEMBER



.....
PROF. LARRY GUMBE

MEMBER



.....
FCPA PARAAG DEVANI

MEMBER



.....
THOMAS OTIENO

MEMBER



.....
DR. REBECCA MUTIA

MEMBER



.....
EVANCE ONGATI

MEMBER

