

**REPUBLIC OF KENYA**

**IN THE DISCIPLINARY COMMITTEE**

**DISCIPLINARY COMMITTEE COMPLAINT NO: 035 OF 2022**

**IN THE MATTER OF VERAH OMINGO: 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 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. The letter raised allegations of gross misconduct

- 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 12<sup>th</sup> 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 **27<sup>th</sup> & 28<sup>th</sup> 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 **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

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 13<sup>th</sup> June, 2022 and the Investigation Report dated **23 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. 85005.

16. The Respondent stated that she was employed as an Administration Officer in 2015 until she was transferred into Procurement in October 2023 at the sub-county level in Oyugis Municipality. The Respondent pleaded that she had not practiced at all as all procurement matters are handled at the County Headquarters.

17. The Respondent admitted that she is a registered member of the Institute but could not recall exactly what year she was registered but it was before the transfer to the Procurement team.

#### **Determination**

##### **Jurisdiction**

18. The Supplies Practitioners Management Act (hereinafter "the Act") and the Subsidiary legislation thereunder establish a comprehensive

**certificate and a practising license by the Institute in accordance with this Act.** (Emphasis Ours)

24. Consequently, the said provision therefore prescribes the mandatory requirement for a licence to practice as a Supplies Practitioner.
25. **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.
26. 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.
27. 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.”**
28. The validity of a licence issued under the Act is delimited to a period of one year. Section 21 requires renewal of licence on annual basis.
29. 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**

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.

36. **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.”**

37. 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.

38. 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.

39. 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.

40. In the premises a 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 she is a registered member of the Kenya Institute of Supplies Management under **membership no. 85005**.

47. 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 licenses throughout the period of employment. It matters not that someone is actively engaged or not.

48. The Respondent attributed her non-compliance to the fact that she wasn't directly involved in procurement duties. The respondent claimed to have been working in Administration and later deployed to procurement department and attached to Oyugis Municipality. She contended that She had just been posted to the department implying that she was yet to obtain a license.

49. Section 2 of the PPADA 2015, describes "**procurement function**" to mean **a division within a procuring entity staffed with procurement professionals who are officially concerned with managing the procurement and asset disposal process and reports directly to the head of procuring entity functionally and administratively.**

50. It also defines a "**procurement professional**" to mean **a person who has professional qualifications in procurement or supply chain management from a recognized institution and is a member of the Kenya Institute of Supplies Management or any other procurement or supply chain professional body recognized in Kenya.**

51. In view of the above, it's the committee's view that her new designation regardless of how freshly re-designated, it requires adherence to the legal and professional standards governing the profession.

52. Furthermore, the employer's confirmation that the respondent was employed in the procurement department reinforces the fact that her role was within the realm of supply chain management. Whether serving in a

57. She has demonstrated a clear understanding of the seriousness of her non-compliance and the potential repercussions it has on her professional standing and the integrity of the supply chain sector. The respondent acknowledged that her actions were not in line with the ethical standards expected in her field, and has committed to rectifying these oversights in the future.
58. 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.
59. Before the Committee can make it's final Orders, the DC considers it fitting to broach one issue of considered relevance that arose from the proceedings.
60. 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.
61. 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.

66. 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

67. 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:

68. 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.

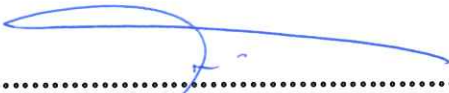
69. It is therefore Ordered as follows: -

a. In light of the above and the totality of the circumstances, the DC doth hereby issue a severe REPRIMAND to **MS. VERAH OMINGO** 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 **Ms. Verah Omingo**.

c. No order as to costs.



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

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

  
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**THOMAS OTIENO**  
**MEMBER**

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

  
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**EVANCE ONGATI**  
**MEMBER**

