



**Ogola v Sanlam General Insurance Limited (Cause E865 of 2022)
[2024] KEELRC 13591 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13591 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E865 OF 2022
SC RUTTO, J
DECEMBER 20, 2024**

BETWEEN

CHRISTIAN BASIL OGOLA CLAIMANT

AND

SANLAM GENERAL INSURANCE LIMITED RESPONDENT

JUDGMENT

1. It is common ground that the Claimant was employed by the Respondent with effect from 12th May 2021 as the Head of Technical Operations and was terminated from employment on 31st October 2022. It is the Claimant's case that he diligently and with all due honesty served the Respondent throughout his employment and was ready, willing and able to continue with such service.
2. The Claimant further avers that the disciplinary hearing leading to his termination from employment was completely flawed and principally aimed at terminating his services and the outcome was premeditated. It is the Claimant's view that the Respondent acted unfairly, unreasonably and in breach of his labour rights as enshrined in Article 41 (1) and 47(1) of *the Constitution*.
3. The Claimant has further averred that considering the senior level position he held in the Respondent company, the Respondent's actions have totally locked him out of the industry save for the intervention of the court.
4. It is against this background that the Claimant has prayed for the following reliefs:
 - a. A declaration that the Claimants' employment was unfairly terminated by the Respondent.
 - b. A declaration that the Respondent violated the Claimant's rights to fair labour practices, right to an administrative action that is lawful, procedurally fair and reasonable under Articles 41(1) and Article 47 (1) of *the Constitution* of Kenya, 2010.



- c. An order compelling the Respondent to pay the Claimant his full terminal dues including his pension noting that the terms the Claimant enjoyed were permanent and pensionable.
 - d. General damages for unlawful and unfair termination of employment and violation of constitutional rights.
 - e. 12 months' pay (770,000 x 12= 9,240,000)
 - f. Outstanding leave days 12 days- Kshs 308,000/-
 - g. Payment of the outstanding balance of Kshs 5.9m of account of mortgage with Stanbic Bank
 - h. 1 month pay in lieu of notice as per termination letter-Kshs 770,000/-
 - i. Compensation for Lost opportunity and inability to work in the insurance industry-(Kshs 770,000 x 10)=7,000,000/-
 - j. Compensation for the delay in conducting and concluding the disciplinary process expeditiously contrary to clause 9.2 of the Human Resource manual thereby occasion mental injury.
 - k. Certificate of Service.
 - l. Payment of all statutory dues.
 - m. Costs of the claim plus interest thereon.
 - n. Such other appropriate relief as the Court may deem fit and reasonable under the circumstances.
5. Through a Memorandum of Defence dated 4th April 2023, the Respondent has denied the Claimant's averments that the disciplinary process leading up to his termination from employment was flawed, skewed, unfair, premeditated and in breach of the Human Resources Manual, the *Employment Act* and *the Constitution*.
 6. Putting the Claimant to strict proof, the Respondent has further denied his averments that he served diligently and will all due honesty. Consequently, the Respondent has asked the Court to dismiss the Claimant's Claim with costs.
 7. During the trial, which took place on diverse dates, both parties called oral evidence.

Claimant's Case

8. The Claimant who testified in support of his case, started by adopting his witness statement to constitute his evidence in chief. He proceeded to produce all the documents filed on his behalf as exhibits before court.
9. It was the Claimant's evidence that in October 2021, the Respondent's Chief Executive Officer (CEO) resigned hence he was appointed the Acting Principal Officer with effect from 1st December 2021 for 3 months whereafter a new CEO was recruited. That on 1st June 2022, following a reorganization of the company structure, he was appointed as the Head of Commercial Business responsible for all non-motor business in the company.
10. The Claimant averred that in his new designation, he had a discussion with the CEO who expressed displeasure with the reinsurance manager who had been there since 2016 and according to him (CEO), was not adding value. According to the Claimant, the CEO proposed that the best approach was to



issue him with 3 cautionary letters in quick succession that would allow him to be fired. The Claimant refused this approach which caused friction with the CEO.

11. The Claimant averred that on 12th August 2022 during the morning hours, he received a show cause letter from the CEO dated 11th August 2022 in regards to a claim for motor vehicle registration No. KDE 444J that had been written off and paid.
12. According to the Claimant, the show cause letter was on account of a process review that was carried out by A & K whose main purpose was to review any process gaps in the disposal of salvages. He was interviewed by A & K and the basis of the discussion was to give insights on the disposal of motor vehicle salvages and the gaps that are there in the process that would need to be addressed. This was captured in a report dated 27th June 2022.
13. That he was therefore surprised to receive a show cause letter on the above matter since his report and statement to A & K, had focused on the process gaps within the company. To date, he has not received a copy of the final report that was prepared by A & K in regards to the claim.
14. The Claimant averred that prior to receiving the show cause letter there were no further discussions with the CEO except for emails where he inquired on the best way to treat the disposal of salvages and the gaps that are there and how best to address them.
15. In his response to the show cause letter, he provided a detailed response showing how the claim followed the laid down process in regards to the claim assessment, claim investigation, claim adjustment and claim settlement. He went far and beyond and ordered for an additional assessment of the claim by two independent claims assessors who issued a report on 26th November 2021 confirming that the vehicle was a write-off and that the damages on the vehicle were consistent with the accident.
16. The Claimant further averred that the claims process did not require him to carry out additional investigation but he made the decision to carry out extra investigations of the matter to provide comfort to the company that the claim was legitimate.
17. According to him, the sum insured of the vehicle was Kshs.17.5 million and a vehicle was to be declared a write-off if the repair cost exceeded 60% of the sum insured. Both technical reports had put the repair cost at Kshs. 11 million and Kshs. 12 million respectively meaning the repair cost was 63% and 69%.
18. Once the claim was paid, the salvage would go for a public auction, a process that was the responsibility of the Claims Manager. That the Salvage Handling Policy requires the Claims Manager to issue a reserve price as the vehicles go out to auction which she did.
19. Once the auction was concluded, the results would then go to a salvage disposal committee who would make a recommendation for disposal to the CEO who would then approve disposal. He agreed with the recommendation of the committee to dispose of the salvage at the highest bid price of Kshs. 2.5 million against the reserve price issued by the Claims Manager of Kshs.1.5 million.
20. The Claimant further averred that on 12th August 2022, at around mid-afternoon, he received a second show cause letter in regards to a tender related to the Kenya Electricity Generating Company (KenGen). The matter related to a quotation that was issued to two insurance brokers.
21. It was the Claimant's testimony that it was the Business Development Manager who was reporting to the CEO who had issued the quotation. According to the Claimant, the quotation was issued against the express advisory that he had given.



22. That on 18th May 2022, he had sent out an email to the central underwriting office who advised that they could not do the quotation. In his email, he had copied the CEO and the Business Development manager who were both aware of the position that the Central Office had adopted.
23. That further to this email the CEO convened a meeting on 20th May 2022, where he directed that the two insurance brokers be engaged for the insurance quotation in regards to KenGen.
24. The CEO and the Business Development Manager agreed that they would each approach specific brokers who the company would work with on the quotation. The Claimant averred that in the meeting, he raised the position of the central underwriting office and the CEO indicated that the matter would be addressed later.
25. In his follow-up with the Business Development Manager on the fact that they could not issue the quotations as advised by the central underwriting office, he responded that it was not enough to stop the issuance of the quotation and that he would ensure that the requirements to get approval would be provided later.
26. The Claimant further averred that in the meetings with the CEO to explain the matter, he indicated that in as much as he sympathized with and understood his explanations and the circumstances, he was constrained to issue him with a caution letter in order to look good to the regional office in South Africa. That in a strange twist of events, instead of a warning letter, he was served with a show cause letter.
27. He responded to the Notice to Show Cause letter on 14th August 2022 by giving a detailed explanation. He provided clarity that the quotation had been issued by the Business Development Manager who was not authorized to issue such quotations and that he had sent out an email to the central underwriting office who advised that they could not do the quotation.
28. The Claimant maintained that the quotation in question was issued, signed, and dispatched by Jack Marwa, the Business Development Manager for Corporate Business.
29. The Claimant was categorical that he had never issued signed, approved, or authorized anyone nor delegated underwriting authority to any staff outside of underwriting. That it was therefore not possible to control these actions especially due to the different reporting lines.
30. The Claimant further stated that he was not engaged in further discussions with any intermediaries or with the CEO in regard to the quotations and since the Business Development Manager was reporting directly to the CEO, he was not privy to what other discussions went on between them and what authorization he had received.
31. In spite of the detailed clarification and explanation on the two notices, he received a notice of disciplinary hearing on 27th September 2022. The hearing took place on 5th October 2022 where he explained the issues regarding the two claims.
32. He averred that the Respondent failed to adhere to the procedural steps provided for in Clause 9.5 of the Human Resource Policy and Practices Guideline of 2021 and failed to avail all the mandatory documents provided therein.
33. It was the Claimant's contention that the said Business Development Manager despite issuing the quotation and ignoring his express advice, was not issued with a caution letter nor a show cause letter on the matter.



34. In the disciplinary hearing, he raised the concern with the committee about the issuance of two letters on the same day giving him three days to respond and which was a challenge as it did not give him adequate time.
35. The Claimant averred that since joining the Respondent in May 2021, he had worked in conjunction with the Central Underwriting Team (CUT) in reviewing their commercial book and ensuring that all the risks therein are properly priced, rated and the necessary referral approvals received. That he continued performing his oversight role firmly to ensure full compliance and did not deliberately breach any of the company guidelines.
36. That despite his explanations, he received a termination letter which was to take effect from 31st October 2022.
37. He responded to the termination letter with an appeal letter dated 2nd November 2022 addressed to the Group Chief Executive Officer as provided in the Staff Manual.
38. At the point of filing the claim, the Respondent had not responded to the letter nor set an appeal date which denied him an opportunity for a fair hearing.
39. He opted to appeal the termination since he felt that the decision of the disciplinary committee ignored the facts of each of the two cases and that the CEO having been involved in the KenGen quotation process and the actions of his direct reportee would influence the committee unjustly. He had no opportunity to object to this since the notice of hearing did not list the committee members.
40. According to the Claimant, his reputation in the insurance market has been tarnished which means that there is no chance to secure employment because all senior positions require approval of the Insurance Regulatory Authority through a fit and proper check part of which requires a check of previous employment and whether there has been any fraud or disciplinary process.
41. He can no longer pursue an occupation in the industry save for the decision of this Court.
42. The Claimant averred that from the conduct of the CEO, it was clear that the company had made up its mind to terminate his services, and that they would look for whatever reason, to force him out of employment for failing to aid the CEO in his malicious, illegal and vengeful vendetta against employees of the company.

Respondent's Case

43. The Respondent called oral evidence through Mr. Jack Marwa, Ms. Judith Oloo and Ms. Gladys Muema who testified as RW1, RW2 and RW3 respectively. Mr. Marwa who was the first to go, identified himself as the Manager, Commercial Development-Broker Chanel.
44. Similarly, RW1 adopted his witness statement to constitute his evidence in chief. He further produced all the documents filed on behalf of the Respondent as exhibits before Court.
45. It was RW1's evidence that sometime in mid-May 2022, KenGen floated a tender for the provision of insurance services for the year 2022-2023. The tender was scheduled to close on 26th May 2022. The Respondent considered submitting a bid and it tasked the Claimant, as Head of Operations-Technical, with obtaining the required approvals in order to put together a quote.
46. On 18th May 2022, the Claimant sought approval from the CUT through the Head of Commercial (Hanan M. EI Maadaway) to pursue the business. CUT responded on the same day and advised that the Respondent could not pursue the business as crucial information that was necessary for the



- preparation of a quote had not been made available. The CUT nevertheless suggested to the Claimant that if the Respondent could send a surveyor then it may be worth the money.
47. The Claimant proceeded to supervise the team that prepared a joint bid and quotation with A-Plan Insurance Brokers Limited. He (RW1) was part of that team.
 48. RW1 averred that the Claimant's underwriting team prepared the initial quotation, which had a 15% LTA (Long Term Agreement) discount. That the Claimant allowed this discount for good risks (Hydros and Wind power) and suggested that premiums should be loaded for Geothermal, Okaria and Kipevu Diesel.
 49. On 25th May 2022, he discussed changes to the above quotation with the Claimant over the phone in order to make the quotation more competitive.
 50. According to RW1, the Claimant agreed with him that some adjustments needed to be made to the quote. That in an email he sent to the Claimant on 25th May 2022 at 10:33 pm, he confirmed the discussions they had held.
 51. About an hour after sending his email to the Claimant, he received market intelligence to the effect that discounts of up to 30% were being offered by other entities that were also seeking to win the KenGen tender.
 52. He immediately called the Claimant, shared this market intelligence and requested an additional 10% discount, which he approved. After receiving the Claimant's approval, he amended the quotation and sent it to the Claimant while referring to the discussion that they had just had. The amended quotation was finalized, and he signed it on behalf of the Respondent with the Claimant's full knowledge. The amended quotation was then submitted to KenGen on 26th May 2022.
 53. RW1 further stated that KenGen accepted the joint bid by the Respondent and A-Plan Insurance Brokers Limited and issued a notification of award.
 54. It was RW1's testimony that it was only after KenGen had accepted the joint bid by the Respondent and A-Plan Insurance Brokers that he learnt that the Claimant had not yet obtained CUT approval and reinsurance support. He also learnt that the Claimant attempted to obtain belated approval from CUT and the Respondent's reinsurers. They both declined, meaning that the Respondent could not offer the insurance services required by KenGen.
 55. That consequently, the Claimant prepared and issued a letter dated 6th June 2022 by which he advised A-Plan Insurance Brokers that the Respondent had withdrawn its quote and withdrawn from the joint bid.
 56. He is aware that a dispute subsequently arose between the Respondent and A-Plan Insurance Brokers and the latter caused its Advocates to issue the Respondent with a demand letter.
 57. RW1 stated that in consulting and liaising with the Claimant, he followed normal practice. That it is only the underwriting team, which was led by the Claimant, that had the authority to approve quotations and the Claimant, as Head of Technical Operations, was at the time the only person who had in-country underwriting authority.
 58. RW1 was categorical that it was the Claimant's responsibility as Head of Technical Operations, to obtain CUT approval and the reinsurance support required for the Respondent to participate in the KenGen tender.



59. He further averred that during the entire period when the Respondent's quotation was prepared, reviewed, amended and eventually submitted, the Claimant did not state or even suggest that CUT approval and reinsurance support had not yet been obtained. He therefore took it that the same had already been obtained.
60. Ms. Judith Oloo who testified as RW2, identified herself as the Respondent's Head of Finance and Administration. Equally, she adopted her witness statement to constitute her evidence in chief and proceeded to produce the documents filed on behalf of the Respondent as exhibits before Court.
61. It was RW2's evidence that on 30th September 2021, the Respondent provided a comprehensive motor vehicle insurance cover for Motor Vehicle Registration No. KDE 444J, a Mercedes Benz AMG G63 (Motor Vehicle) for a period of one year.
62. On 9th October 2021, the Motor Vehicle was involved in a road traffic accident and the owner made a claim to the Respondent pursuant to the insurance cover.
63. The assessments were made by two external assessors; Prime Assessors and Elite & Vision Assessors; and the Respondent's internal assessor.
64. According to RW2, the following decisions were made with the Claimant's approval following the assessments:
- a. That the Motor Vehicle should be declared a write-off,
 - b. That the Motor Vehicle should be disposed of as insurance salvage, with a salvage amount of KES. 1,500,000/=; and
 - c. The owner of the Motor Vehicle should be compensated for the loss of the Motor Vehicle.
65. That on 28th February 2022, the insurance salvage of the Motor Vehicle was sold at an auction to a third party. However, there was a delay in releasing the Salvage to the purchaser as a dispute arose regarding the rights of the owner of the Motor Vehicle to purchase it. The salvage was eventually released to its purchaser after he had made a demand through a lawyer.
66. It was the testimony of RW2 that various questions subsequently arose regarding inter alia the pre-accident value of the Motor Vehicle, the reasonableness of the repair estimates given for the Motor Vehicle after the accident, the reasonableness of the value of the salvage, the basis of the decision to declare that the Motor Vehicle was a write-off, the propriety of the procedure followed prior to declaring that the Motor Vehicle was a write-off, the determination of the reserve price of the salvage and the cause of the delay in releasing the salvage to its purchaser.
67. That following an investigation by the Respondent's Forensics Department, it was determined inter alia that:
- a. The questions that had arisen were valid.
 - b. The pre-accident value of the Motor Vehicle was higher than its purchase price, thereby creating an appetite for fraud.
 - c. The repair estimates given for the Motor Vehicle after the accident were exaggerated. This was then used to justify the writing-off of the Motor Vehicle;
 - d. The reports of the assessors who assessed the Motor Vehicle gave salvage amounts that were notably different; and



- e. The writing-off of the Motor Vehicle was approved despite the notable differences in the reports of the assessors.
68. RW2 further averred that in its report dated 19th April 2022, the Respondent's Forensics Department recommended that the parties who executed the claim relating to the Motor Vehicle should be requested to show cause why disciplinary action should not be taken against them.
69. She is also aware that the following issues arose in relation to the Claimant's role in the Motor Vehicle issue:
 - a. Having seen the divergent assessments by the 2 external assessors and the internal assessor, it was unclear why the Claimant went ahead to give approvals without questioning the differences;
 - b. The Claimant did not explain the rationale for agreeing with and approving the internal assessor's recommended salvage amount of Kshs. 1,500,000/=, which was much lower than the salvage amount recommended by the 2 external assessors;
 - c. The Claimant did not demonstrate due skill, care and diligence in reviewing and interrogating the recommendations of the internal assessor.
70. In October 2022, the Respondent received a Report dated 22nd October 2022 from Kenya Pride Automobile Valuers and Assessors Limited which showed the following:
 - a. The nature of the repairs that were actually carried out on the Motor Vehicle;
 - b. The parts of the Motor Vehicle that were replaced;
 - c. The parts of the Motor Vehicle that were not replaced and were not likely to be replaced;
 - d. The total repair cost of the Motor Vehicle was only about Kshs. 2,800,000/=.
71. Ms. Gladys Muema who testified as RW3, identified herself as the Respondent's Senior Legal Officer. Similarly, she adopted her witness statement to constitute her evidence in chief and produced the documents filed on behalf of the Respondent as exhibits before Court.
72. RW3 stated in her evidence that the Claimant was appointed by the Respondent as its Head of Corporate Business Line with effect from 1st June 2022. He held the said position until his termination on 31st October 2022.
73. The reasons for the Claimant's termination were; Negligence in the execution of his duties as Head of Operations while handling KENGEN TENDER NO. KGN-LEG-011-2022 for provision of insurance services and lapses in the execution of the Claimant's duties as the Head of Operations while handling the write-off and disposal of the insurance salvage of motor vehicle registration number KDE 444J.
74. She is aware that the Respondent reviewed the pertinent facts relating to the Motor Vehicle issue as well as the contents of the Forensics Report and made inter alia the following observations in relation to the Claimant's involvement:
 - a. After receiving the claim investigation report from his direct report, the Claimant did not query or show evidence of exhaustively questioning the rationale of the report to write off the Motor Vehicle. Accordingly, the Claimant failed to offer the oversight role bestowed on him as the business leader;



- b. The Claimant incompetently failed to question the rationale followed by the internal assessor to arrive at the price of the salvage as well as question why the internal assessor advised that the Motor Vehicle should be written off. No effort was demonstrated in the Claimant's report as a business leader to imply that he had explored all options;
 - c. The Claimant failed to carry out due diligence to confirm that the internal assessor's report was competitive and in line with the Respondent's Salvage policy to safeguard the Respondent's interests;
 - d. The Claimant failed to proactively guide his team on the Salvage bid communication to the insured while he was in copy in the correspondence. This led the team to communicate conflicting information to the insured on the Salvage auction, which frustrated the disposal process;
 - e. The Claimant failed to demonstrate effective leadership in the claim process leading to substantial loss on the Salvage that would otherwise have been prevented.
75. She is also aware that the Respondent reviewed the pertinent facts relating to the KenGen tender issue and made inter alia the following observations in relation to the Claimant's involvement:
- a. The Claimant quoted on the risk above the country underwriting authority without reference and explicit approval authority with reference to CUT, which was a breach of his underwriting authority;
 - b. The Claimant also quoted on the risk and offered additional discounts over and above those sanctioned by his underwriting authority and the Respondent's reinsurance partners;
 - c. In the underwriting process, the Claimant did not refer to CUT guidelines, hence causing a breach of his approved underwriting authority. The Claimant did not notify the Respondent's Principal Officer of his action;
 - d. The Claimant breached the market terms offered by the technical committee and willfully extended additional discounts on a basis that was neither referred to nor acceptable to the technical committee;
 - e. The Claimant informed the local technical committee of the change of terms after the award and the rationale offered for the deviation from underwriting guidelines was substantiated; and
 - f. The relevant underwriting information as described in the technical document (i.e. the risk surveys and loss ratio) and as prescribed under the Claimant's underwriting authority was obtained after the award or not obtained at all.
76. RW3 further averred that by a letter dated 11th August 2022, (show cause letter 1) which he received on 12th August 2022, the Respondent requested the Claimant to show cause by 16th August 2022 why disciplinary action should not be taken against him.
77. By a letter dated 12th August 2022, (show cause letter 2) which the Claimant received on 12th August 2022, the Respondent requested him to show cause by 18th August 2022 why disciplinary action should not be taken against him.
78. On 14th August 2022, the Claimant submitted a letter dated 14th August 2022 comprising his response to show cause letter 1 and another one dated 14th August 2022 comprising his response to show cause letter 2.



79. The Respondent considered the contents of the two responses and determined that they did not satisfactorily address the allegations made against the Claimant in the show cause letters.
80. Consequently, by a letter dated 27th September 2022 the Respondent invited the Claimant to attend a disciplinary hearing that was to be held virtually on 5th October 2022 at 12:00 noon.
81. In the notice of the disciplinary hearing, the Respondent duly advised the Claimant of his right to be accompanied by a colleague at the disciplinary hearing.
82. A disciplinary hearing was held virtually on 5th October 2022 at 12:00 noon before a disciplinary hearing committee comprising Catherine Gitobu, Tobias Doyer and Christine Ng'ang'a.
83. The disciplinary committee deliberated on the Claimant's disciplinary case and decided that the appropriate disciplinary sanction was termination. The Respondent terminated the Claimant's employment with effect from 31st October 2022.
84. RW3 stated that by a letter dated 2nd November 2022, the Claimant appealed against his termination. After receiving the Appeal Letter, the Respondent began the process of constituting an appeal committee as set out in the Human Resources Manual.
85. While the Respondent was in the course of constituting the appeal committee, the Claimant filed this suit. The Respondent was determined to comply with its obligations under the Human Resources Manual and consequently, by a letter dated 6th December 2022, the Claimant was invited to attend an appeal hearing that was to be held virtually on 13th December 2022 at 12.00 noon.
86. By a letter dated 13th December 2022, which the Claimant delivered to the Respondent on the same date at 11:53 am, just seven minutes before the time fixed for the appeal hearing, the Claimant informed the Respondent that he would not attend the appeal hearing.
87. That an appeal hearing was held virtually on 13th December 2022 at 12:00 noon before an appeal committee comprising Gareth Beaver, Isaac Wanjohi and Madren Olunya.
88. By a letter dated 21st December 2022, the Respondent advised the Claimant of the decision of the appeal committee, which was to the effect that his appeal had no merit and was therefore not successful; and that the decision of the disciplinary committee made on 5th October 2022 was upheld.
89. Upon close of the hearing, both parties filed submissions which I have considered.

Claimant's Submissions

90. On his part, the Claimant submitted that the termination of his employment was manifestly unfair, as the Respondent failed to provide a justifiable reason for his dismissal. It was his contention that this action contravenes the principles of natural justice and procedural fairness as outlined under Section 43 of the *Employment Act*. In support of the Claimant's submissions, the case of Joseph Mwaniki Nganga vs United milers Limited (2022) eKLR was cited.
91. The Claimant further submitted that while serving as the Acting Principal Officer, his authority was expressly limited by the company to approving write-offs of up to Kshs. 5 million. For amounts exceeding this threshold, his role was restricted to reviewing the provided documents and making a recommendation to the Group Chief Executive Officer, who had the ultimate authority to approve the write-off and settlement of the claim. To this end, he referenced a letter dated 19th December 2021, in which he contended that the Group Chief Executive Officer appended his signature as a sign of approval thus authorizing that the claim be settled as a write-off.



92. As such, the Claimant maintained that his termination on the basis of failing to fulfill oversight responsibilities is unfair and unlawful.
93. It was the Claimant's further submission that he exercised due diligence in his role contrary to the Respondent's assertions. In the Claimant's view, his termination for allegedly failing to fulfill oversight responsibilities was unfair and unjust.
94. The Claimant further submitted that he cannot be held liable for actions performed without his participation or authority. It was his position that the evidence presented indicates that he neither supervised nor authorized the preparation or submission of the KenGen tender bid.
95. In the same vein, the Claimant maintained that there was no delegated authority granted to Jack Marwa to authorize or sign quotations related to the KenGen tender. It was the Claimant's position that he cannot be held liable for actions he did not commit, nor for the actions of an individual who is not his direct reportee.
96. The Claimant further submitted that he was subjected to an unfair disciplinary process. In this regard, he posited that the process was unreasonably delayed and that the Respondent withheld crucial documents, including the disciplinary hearing minutes, essential for the Claimant's appeal preparation.
97. According to the Claimant, the Respondent failed to adhere to the constitutional requirements under Article 47 of *the Constitution* of Kenya, resulting in significant procedural unfairness and a violation of both legal and company policy standards.
98. It was the Claimant's further submission that Respondent delayed the appeal process until he had filed the matter before the court, demonstrating a lack of procedural fairness and an intentional disregard for the requirement of timely administrative action.
99. The Claimant further posited that the Respondent's failure to provide the necessary documents and particulars crucial for his appeal preparation constitutes a clear violation of his rights and procedural fairness. On this issue, he placed reliance on the case of Willie Kipkoech Langat vs County Public Service Board & 2 others [2022] eKLR.
100. In further submission, the Claimant stated that the Respondent's decision to pay the salary in lieu of notice before the appeal hearing reveals a predetermined outcome, demonstrating that the appeal process was a mere procedural formality without any substantive impact.

Respondent's Submissions

101. On the Respondent's part, it was submitted that the grounds for subjecting the Claimant to the disciplinary process and thereafter terminating his employment were both reasonable and justified, based on clear evidence of misconduct, negligence, and breach of company policies.
102. Referencing the cases of CFC Stanbic Bank Limited vs Danson Mwashako Mwakuwona (2015) eKLR and Charles Musungu Odana vs Kenya Airports Authority (2019) eKLR, the Respondent posited that it acted as a reasonable employer by terminating the Claimant's employment due to clear instances of gross misconduct, negligence, and failure to adhere to company procedures.
103. According to the Respondent, its decision was based on genuine concerns about the Claimant's conduct, and thus, the dismissal meets the standard of reasonableness and fairness.
104. The Respondent further submitted that it has demonstrated that the Claimant's handling of the KenGen tender directly violated internal underwriting guidelines. On this score, the Respondent



argued that despite clear communication from CUT advising against pursuing the tender due to insufficient information, the Claimant proceeded to coordinate the preparation and submission of the joint bid with A-Plan Insurance Brokers Limited.

105. The Respondent maintained that the Claimant acted without the required underwriting approvals from both CUT and the Respondent's reinsurers, which exposed it to significant financial and reputational risks.
106. It was the Respondent's further submission that as Head of Operations-Technical, the Claimant was in a position of significant authority and trust within the Respondent's organization. That he was expected to demonstrate a high level of professionalism, adherence to company policy, and sound judgment in his decisions.
107. The Respondent further submitted that the Claimant's serious misconduct provided clear grounds for disciplinary action, and the process was justified.
108. With respect to the motor vehicle issue, the Respondent submitted that the Claimant had a duty to provide oversight, ensure compliance with internal procedures, and protect the company's reputation. That his failure to act decisively, question discrepancies, and manage the process efficiently led to significant operational lapses.
109. It was the Respondent's further submission that all necessary procedural safeguards were adhered to, ensuring that the Claimant was given every opportunity to defend himself in line with the [Employment Act](#) and its Human Resources Policy and Practices Manual.
110. It was the Respondent's position that the Claimant's decision to deliberately ignore and skip the appeal hearing was equivalent to and must carry the same consequences as the decision of an employee who deliberately ignores and skips a disciplinary hearing. In support of this argument, the Respondent placed reliance on the case of *Alexina Kerubo Isaro vs Postal Corporation of Kenya (2019) eKLR*.
111. In the Respondent's view, the Claimant's allegations of unlawful termination are unfounded and appear to be a calculated attempt to secure unwarranted compensation.

Analysis and Determination

112. Having considered the pleadings by both parties, the evidentiary material on record, as well as the rival submissions, the Court isolates the following issues for determination: -
 - i. Whether the Respondent has proved that there was a valid and fair reason to terminate the employment of the Claimant;
 - ii. Whether the Claimant was taken through a fair process prior to termination; and
 - iii. Is the Claimant entitled to the reliefs sought?

Valid and fair reason for termination?

113. Section 43(1) of the [Employment Act](#) (Act) requires an employer to prove the reasons for termination and failure to do so, such termination is deemed to be unfair. Connected to this provision is Section 45 (2) (a) and (b) of the Act which provides that a termination of employment is unfair if the employer fails to prove that the reason for the termination is valid, fair and related to the employee's conduct, capacity or compatibility; or based on the operational requirements of the employer.
114. Fundamentally, beyond proving the existence of the reasons for the termination of an employee from employment, an employer is required to substantiate the said reasons.



115. In the instant case, the Claimant was terminated from employment on grounds that he neglected his duty and breached company operating standards. It was further alleged that the Claimant failed to act honestly and fairly with due skill, care and diligence in the interest of the Respondent's stakeholders and the integrity of the financial services industry and respect for diversity.
116. The reasons leading to the Claimant's termination from employment stem from two major issues. The first one related to the manner in which the Claimant executed his duties in handling the write-off and disposal of insurance salvage of Motor Vehicle Registration No. KDE 444J while the second issue was with respect to a tender that had been floated by KenGen for the provision of insurance services and for which the Respondent company placed a bid.
117. I will consider the two issues separately in order to ascertain whether the Respondent has proved that it had a valid and fair reason to terminate the employment of the Claimant based on his conduct.
118. With respect to the issue of the write-off and disposal of insurance salvage of Motor Vehicle Registration No. KDE 444J, the Claimant was accused of not querying the rationale of the report to write off the said Motor Vehicle. It was further alleged that he had failed to offer the oversight role bestowed on him as the business leader.
119. According to the Respondent, the Claimant failed to carry out due diligence to confirm that the internal assessor's report was competitive and in line with the Respondent's Salvage policy to safeguard the Respondent's interests.
120. On his part, the Claimant stated that the process he followed with regards to the salvage was compliant with the laid down process and that he went far and beyond and ordered an additional assessment of the claim by two independent claims assessors who confirmed that the vehicle was a write-off and that the damages on the vehicle were consistent with the accident. That even though not required, he carried out extra investigations to provide comfort to the company that the claim was legitimate.
121. The Claimant further averred that the sum insured of the vehicle was Kshs. 17.5 million and a vehicle was to be declared a write-off if the repair cost exceeded 60% of the sum insured. Both technical reports had put the repair cost at Kshs.11 million and Kshs. 12 million meaning the repair cost was 63% and 69% respectively.
122. In support of its case, the Respondent exhibited a copy of a forensic report dated 19th April 2022. In the said report, it was noted that the Motor Vehicle in question received pre-accident value which was higher than the actual purchase price creating an appetite for fraud. That this was computed with exaggerated repair estimates to justify a write-off.
123. The forensic investigators further observed that there was no evidence that either level of approval of the write-off challenged the reports of the assessors despite the notable difference in the salvage amounts.
124. From the record, the Respondent's internal assessor had estimated a salvage value of Kshs 1.5 million, while Prime Assessors had estimated a salvage value of Kshs 2.5 million and on the other hand, Elite & Vision Assessors had provided a salvage value estimated at Kshs 3.5 million.
125. The Respondent's Salvage Handling Policy provides that a vehicle shall be declared a write-off if the cost of repairs exceeds 60% of the pre-accident or the sum insured whichever is lower at the time of the accident. The Policy further provides that the vehicle shall be declared a write-off by an assessor working on behalf of the company.



126. It is notable that both external assessors (Prime Assessors and Elite & Vision Assessors) assessed the repair value at 65% and 70% respectively hence being above 60% of the value of the Motor Vehicle. This position was adopted by the internal assessor, Matt Kariuki.
127. It is also worth noting that the forensic investigators did not interview the two assessors and Regent Automobile Valuers who had carried out a pre-accident valuation of the Motor Vehicle. Therefore, crucial information which was necessary to draw an objective assessment was omitted.
128. Another issue raised by the Claimant is with respect to his approval limit. In this regard, he averred that approval by the Head of Operations was limited to Kshs 3 million and the CEO's approval was limited to Kshs 5 million. That since he was the Acting Principal Officer, at the time, he could only approve up to Kshs 5 million. The Claimant further averred that the Group CEO had the ultimate authority to approve the write-off and settle the claim. That his responsibility was limited in the oversight of such claims.
129. It was the Claimant's case that the CEO reviewed and approved settlement and there were no concerns.
130. It is notable that this position was not controverted by the Respondent hence the Court takes it that the information is factual.
131. Further, the Salvage Handling Policy provides for the appointment of a Tender Committee to handle the salvages. The said Committee comprises the Head of Finance, Head of Operations and Business Planning Executive. Further as per the policy, the Internal Auditor is a permanent invitee to the meetings and deliberations of the Committee and is to be called upon to act in an advisory capacity.
132. The Policy further provides that the Committee is to report to the CEO and shall at all times obtain the approval of the CEO before executing any decision.
133. Testifying under cross-examination, RW2 admitted that she was a member of the Tender Committee and that the information relating to the Motor Vehicle in question was brought to the attention of the Committee. She stated that they believed that everything was above board.
134. According to her, the Claimant could have queried the assessor's report. Thus, the question that comes to the fore, is why the Tender Committee similarly failed to query the report. As I suppose, the role of the Tender Committee was to oversight the salvage handling process and not to merely rubberstamp what was presented to them.
135. As such, the Tender Committee was equally obliged in my view to call for all the information relating to the salvage handling process and to query the reports.
136. In view of the foregoing, it is evident that the salvage handling process was subject to internal checks at different levels from the claims department all the way to the CEO's office. Therefore, it is this court's view that it was not reasonably fair to wholly attribute blame on the Claimant with respect to the manner in which the salvage of Motor Vehicle Registration No. KDE 444J was handled.
137. All things considered, it is my finding that the manner in which the Claimant handled the write-off and disposal of the insurance salvage of Motor Vehicle registration No. KDE 444J did not constitute a fair and valid reason for termination of his employment.
138. With regards to the KenGen tender, the Claimant's position is that it is Jack Marwa (RW1) who issued, signed and dispatched the quotation. The Claimant was categorical that he did not sign, approve or authorize anyone nor delegated authority to any staff outside of underwriting. According to the Claimant, the quotation was issued against the express advisory that he had given. The Claimant



further made reference to an email dated 18th May 2022 in which he had been advised by the central underwriting office that the Respondent could not issue the quotation. The Claimant further averred that in his email of 18th May 2022, he copied the CEO and RW1 hence they were both aware of the position adopted by the central underwriting office.

139. On the other hand, the Respondent stated that when the Claimant sought approval from the CUT, he was advised that the Respondent could not pursue the business as crucial information that was necessary for preparation of a quote had not been made available. Nonetheless, the Claimant proceeded to supervise the team in the preparation of a joint bid and quotation with A-Plan Insurance Brokers Limited.
140. In his testimony before Court, RW1 stated that he finalized the amended quotation which he signed on behalf of the Respondent with the Claimant's full knowledge. That it was only after KenGen had accepted the joint bid by the Respondent and A-Plan Insurance Brokers that he learnt that the Claimant had not yet obtained approval from the CUT and reinsurance support.
141. RW1 further stated that during the entire period of the bid preparation, the Claimant did not state or even suggest that the CUT approval and reinsurance support had not yet been obtained.
142. The Claimant was further accused of quoting on the risk above the country underwriting authority without reference and explicit approval authority from the CUT, which was a breach of his underwriting authority. He was further accused of offering additional discounts over and above those sanctioned by his underwriting authority and the Respondent's reinsurance partners.
143. It is common ground that it was only the underwriting team, led by the Claimant, that had the authority to approve quotations and that he was at the time, the only person who had in-country underwriting authority.
144. Revisiting the record, it is evident that in an email dated 18th May 2022, the Claimant was notified by one Hanan El Maaway, the Commercial Lines Underwriting Manager, that the Respondent could not underwrite the KenGen tender without recent surveys and loss ratios.
145. Contrary to the Claimant's assertions that he was not a party to the preparation and issuance of the quotation, the trail of email correspondence on record states otherwise. I will sample a few.
146. In an email dated 20th May 2022 dispatched at 13:47 addressed to Lucy Kibuthi and Joshua Mwanzia and copied RW1, Wamaitha Gichuki, Michael Ndegwa and Mary Mwende, the Claimant stated as follows:

“Lucy,

See attached the KENGEN tender,

Kindly work with Mary so that we can have the quotation ready by Tuesday Morning. All we need to do is align the sums insured to the schedule of quotes.

@Joshua Mwanzia (KESG) please ask Africa Re. or Zep Re to give us the recommended rates for all KENGEN stations if no new ones are available, we can get the ones for 2021, keep the timeframe in mind.”

147. In another email dated 24th May 2022, addressed to RW1, Mary Mwende, Lucy Kibuthi and Joshua Mwanzia with respect to the KenGen Tender, the Claimant stated as follows;

“Mary,



Please split the quote further so that it follows the lots which are 11. The quote is currently in 3 lots only. Once done let us discuss together with Jack which areas we can need to work further on. Initial quotes should have the rates as shared be(sic) Africa Re. lets target 11 am discussion tomorrow.”

148. What is evident from the emails reproduced above, is that the Claimant was giving directions on the preparation of the KenGen tender bid.

149. In another email dated 24th May 2022 dispatched at 11:55 am, Mary Mwende addressed the Claimant, Lucy Kibuthi, Joshua Mwanzia and copied RW1 and others, as follows:

“Dear Christian,

We have populated the schedule as attached and are awaiting feedback on the rates to finalize on the quotation. However, we have not included the CAR and machinery breakdown for Ethiopia since its not covered in our treaty.”

150. During cross-examination, the Claimant confirmed that Mary Mwende was part of his team. He further admitted that the quote was a product of his team.

151. It is therefore apparent that the Claimant was part and parcel of the team that was preparing the KenGen tender bid. As a matter of fact, he played a central role in the process as it is evident from the email trail that the team working on the bid was constantly consulting him and in turn, he was giving them directions.

152. Indeed, the Claimant was even keen to remind the team of the timeframe as he did in the email of 20th May 2022. This is not consistent with the actions of a bystander in the process.

153. In light of the foregoing, I cannot help but question why the Claimant would lead the team as he did but failed to remind them that the CUT was yet to issue the necessary approvals. I say so noting that the email correspondence reproduced above was after 18th May 2022, when the CUT had declined approval.

154. Besides, there is no evidence that the Claimant pulled the plug on the bidding process as the close of the tender drew near, yet there was no underwriting authority.

155. In an email dated 26th May 2022 at 12:54 AM, on the day the tender was closing RW1 addressed the Claimant as follows:

“Dear Christian,

As agreed, I have added a 10% NCD on the fires and engineering risks apart from Okaria & Kipevu diesel that have no discounts our total discounts are now capped at 25% but the market is offering as high as 30% discount on the classes. I am however confident in the final terms and hope for the best.”

156. Testifying under cross-examination, the Claimant admitted that they spoke with RW1 before the above email was sent. This was further confirmed by RW1’s call log which was exhibited in Court.

157. As it is, that was the day the tender was closing yet the Claimant failed to alert RW1 to halt the process or at least give him a disclaimer that there was no approval from the CUT. After all, it was only the Claimant who could obtain the approvals from the central underwriting office hence such information was within his knowledge.



158. In light of the foregoing, the Court is not persuaded by the Claimant's assertions that he was no party to the preparation and submission of the KenGen tender bid.
159. I must say that despite the fact that RW1 is the one who signed the quote, that did not diminish the Claimant's role in the preparation of the tender as he had been an active participant in the process leading up to the submission of the bid. In any event, he could have stopped the bidding process at any time before the submission of the bid but he failed to do so. In this case, he has not provided any evidence that he did as much.
160. As it later turned out, the Respondent won the KenGen tender but had to pull out as the reinsurers declined to support the quotation unless there was an adjustment of the premium. As such, through a letter dated 6th June 2022, the Claimant notified A-Plan Insurance Brokers of the Respondent's inability to maintain the quote.
161. This resulted in A-Plan Insurance Brokers issuing a demand for compensation through their Advocates for the sum of Kshs 175,003,219.55 being quantified lost commissions and in default, threatened to pursue legal redress.
162. It is therefore not in doubt that in its quest to win the KenGen tender, the Respondent had been exposed to litigation as well as reputational risks.
163. Addressing the question of standard of proof in employment matters, the Court of Appeal had this to say in the case of Kenya Revenue Authority vs Reuwel Waithaka Gitahi & 2 others [2019] eKLR:
- “The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist,” causing it to terminate the employee's services.”
164. Applying the standard of proof in this case, I am convinced that the Respondent had a valid and fair reason to commence disciplinary action against the Claimant on account of his actions and omissions regarding the KenGen tender bid.

Fair process?

165. In terms of Section 45 (2) (c) of the Act, an employer is required to prove that it terminated an employee's employment in accordance with a process that is fair. The specific requirements of a fair process are encapsulated under Section 41(1) of the Act. This process entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.
166. In this case, the Claimant has raised several issues regarding the process he was subjected to, prior to his termination from employment. The Claimant contends that the process was unreasonably delayed and that the Respondent withheld crucial documents including the disciplinary hearing minutes which were essential for the preparation of his appeal.
167. The Claimant avers that he was issued with the show cause letters on 12th August 2022 while the disciplinary hearing was convened on 5th October 2022 following his persistent follow-ups.
168. It is apparent that the Claimant responded to the notice to show cause vide a letter dated 14th August 2022 and he was invited for the disciplinary hearing vide a letter dated 27th September 2022. This was approximately one and a half months apart. According to the Claimant, this was undue delay.



169. With respect to the appeal, the Claimant has averred that following his termination from employment, he lodged an appeal vide a letter dated 2nd November 2022. He waited for 15 days but no response was forthcoming from the Respondent hence he filed the instant suit.
170. From the record, the Respondent notified the Claimant vide a letter dated 6th December 2022 that his appeal hearing was scheduled to be held on 13th December 2022. This was approximately one month apart. By then, the Claimant had moved the Court and filed the instant suit.
171. Notably, the Respondent's Human Resource Policies and Practices Guidelines do not prescribe the period between when an employee is issued with a notice to show cause and the time he or she is invited for the disciplinary hearing. Similarly, the aforementioned Human Resource Policies and Practices Guidelines do not stipulate the duration of constituting the appeals committee.
172. In as much as Article 47(1) of *the Constitution* guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, there is no standard definition of what constitutes expeditious administrative action. As such, this is subject to the circumstances of each case.
173. In this case, the Court holds the view that the timeframe taken by the Respondent to invite the Claimant to the disciplinary hearing and in constituting the Appeals Committee was not unreasonably long as to undermine the Claimant's right to an expeditious hearing.
174. The Claimant has further impugned the disciplinary process on grounds that the Respondent failed to provide him with the necessary documents and particulars crucial for his appeal preparation. He termed this a clear violation of his rights and procedural fairness.
175. In his letter dated 13th December 2022, the Claimant declined to appear for the appeal hearing and indicated to the Respondent that he had instituted the suit herein. In his letter, the Claimant notified the Respondent that he was yet to receive the minutes of the disciplinary hearing and that this had affected his ability to effectively prepare for the appeal hearing.
176. From the record, the Claimant lodged his appeal on 2nd November 2022. In the said appeal, he did not request for the minutes of the disciplinary hearing. As such, the Claimant cannot allege that the said minutes were unreasonably withheld by the Respondent. Consequently, the Respondent cannot be faulted for not availing the same to the Claimant.
177. The Claimant has further claimed that the disciplinary proceedings against him were fundamentally flawed due to lack of impartiality. He contended that the involvement of the Respondent's CEO, George Kuria in the KenGen tender issue and the motor vehicle issue and his subsequent involvement in the disciplinary hearing and decision making process compromised the fairness and objectivity of the proceedings.
178. From the record, there is no indication let alone a suggestion that the Respondent's CEO was a member of the disciplinary and appeal committees that were constituted to hear the Claimant's disciplinary case. As such, I am unable to discern the aspect of impartiality in the disciplinary process that the Claimant was subjected to.
179. In considering the import of Section 41 of the Act, the Court of Appeal had this to say in *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR: -

“Four elements must thus be discernible for the procedure to pass muster:-



- (i) an explanation of the grounds of termination in a language understood by the employee;
- (ii) the reason for which the employer is considering termination;
- (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- (iv) hearing and considering any representations made by the employee and the person chosen by the employee.”

180. Applying the above decision to the instant case, I am satisfied that the Respondent complied with the minimum requirements stipulated under Section 41 of the Act.

181. I say so noting that the Claimant was informed of the allegations levelled against him and was given an opportunity to be heard in person and to respond to the said allegations. To that extent, the Respondent cannot be faulted.

182. Accordingly, I cannot help but conclude that the termination of the Claimant was neither unfair nor unlawful.

Reliefs?

183. As the Court has found that the Claimant’s termination was neither unfair nor unlawful, the reliefs sought cannot be sustained.

Orders

184. It is against this background that the Claim is dismissed in its entirety with an order that each party bears its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

.....
STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Alosa

For the Respondent Ms. Khauser instructed by Mr. Omondi

Court Assistant Millicent

