



**Gichuki v Kenya Power & Lighting Company Plc (Petition E021 of 2024)
[2025] KEELRC 2578 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2578 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E021 OF 2024
J RIKA, J
SEPTEMBER 26, 2025**

BETWEEN

MARGARET WANJIKU GICHUKI PETITIONER

AND

KENYA POWER & LIGHTING COMPANY PLC RESPONDENT

JUDGMENT

1. The Petition is dated 4th November, 2024. It is founded on the affidavit of the Petitioner sworn on 3rd November 2024, and her further affidavit sworn on 7th April 2025
2. Her position is that she was employed by the Respondent as a meter reader, in 2015.
3. She exhibits her initial letter of appointment, dated 9th April 2015. She was employed on a fixed term contract of 3 months, which was renewable.
4. The contract was subsequently renewed for short periods of 3 months, until 4th July 2023, when the Petitioner was dismissed by the Respondent.
5. The reasons justifying dismissal are stated in the letter of summary dismissal to be:

“A security investigations report on construction of illegal lines at Shabab, Nakuru County, revealed that between 13th October 2022 and 22nd November 2022, you participated in fraudulent activity namely, construction of an illegal three phase line, and metered the same, with a stolen meter number 20170767 to one Henry Mugambi Ongure.”
6. She states that she served the Respondent as a meter reader, on these short term contracts, for a continuous period of 8 years and 2 months.
7. She was dedicated to her work, earning a commendation and being appointed as a supervisor by the Respondent, over the period.



8. She explains that at the time of dismissal, she held a contract of a period of 3 months, upon whose expiry, she was to be employed on a 5-year contract.
9. She was deployed to read meters at Shabab area in Nakuru, in October 2022. On 13th October 2022, her colleague Moses Kirui requested her to assist a customer in the area, to upgrade his installation from single to three phase.
10. Kirui introduced the customer Henry Mugambi Ongure to the Petitioner at the site.
11. The Petitioner agreed to assist the customer in good faith, as the Respondent's good ambassador.
12. She explained to the customer the upgrade procedure. She advised him to submit his application form and supporting documents to her, which the customer did. She in turn submitted the form and the documents to the Respondent's design section.
13. The section advised the customer that the meter had an outstanding bill, which he was required to clear before upgrade.
14. On 23rd November 2022, the Petitioner received communication from the Respondent's human resource office, requiring her to report to security department. She was alleged to have been involved in illegal installation of a line. She learnt that Ongure had connected the meter himself, pending his application for upgrade. The Petitioner recorded a statement denying involvement in any fraudulent activity, restating that she assisted the customer in good faith.
15. The Petitioner was issued a letter to show cause why she should not be disciplined. She responded. She was invited for disciplinary hearing, on 3rd May 2023. No witnesses gave evidence against her.
16. She was dismissed on 4th July 2023.
17. She appealed, was heard and her appeal declined.
18. The Respondent also lodged a criminal complaint against the Petitioner and other staff. They were prosecuted and acquitted in the criminal proceedings.
19. On 27th May 2023, the Petitioner wrote to the Respondent's Managing Director seeking his intercession. There was no response.
20. She petitions the Court to find that the Respondent violated her constitutional rights by:
 - a. Denying her the benefits available to an Employee on permanent and pensionable service. [Articles 27, 28 and 41 of *the Constitution*].
 - b. Dismissing her without valid reason.
21. She prays for:
 - a. Declaration that dismissal was wrongful, unfair and unlawful.
 - b. Declaration that the Respondent violated the Petitioner's constitutional rights under Articles 27, 28, 29[f], 41 and 43 of *the Constitution*.
 - c. Declaration that the Petitioner is entitled to normal benefits due to an Employee on permanent and pensionable service.
 - d. The decision to dismiss the Petitioner be quashed.
 - e. An order for reinstatement without loss of benefits.



- f. The Respondent to compute and pay to the Petitioner, the difference between benefits paid to the Petitioner and those payable on permanent and pensionable service.
 - g. Genal damages for malicious prosecution.
 - h. Interest on all the awards herein.
 - i. Costs to the Petitioner.
22. The Respondent's position, as explained in the affidavit of Duncan Ndung'u sworn on 6th February 2025, is that the Petitioner was employed by the Respondent as a meter reader in 2015, as stated in her Petition.
23. The Respondent received an investigation report on staff involvement in fraudulent activities, namely construction of illegal line at Shabab, Nakuru County.
24. Disciplinary action was recommended against the Petitioner. She was found to have been involved in construction of an illegal line and metering the line with a stolen meter number 20170767, for the benefit of Henry Mugambi Ongure.
25. The illegal line existed for more than 1 month, within the Petitioner's jurisdiction. She did not raise an alarm about its existence, or ensure that the outstanding bill of Kshs. 7,500 on the single line meter, was paid.
26. The fraudulent activity almost resulted in loss of Kshs. 191,397 to the Respondent, if not detected as it was by the security team.
27. The Petitioner recorded a statement, confirming that she indeed met Henry Mugambi Ongure.
28. Ongure himself confirmed he met the Petitioner and her colleague, Moses Kirui.
29. Kirui confirmed that he introduced the Petitioner to Ongure, and that the 3 of them met and discussed the illegal line construction, at Ongure's premises.
30. Employees of the Respondent, Joel Okal and Albert Chemitin, recorded statements confirming that they visited and inspected Ongure's premises, and confirmed the presence of an illegal line.
31. The Petitioner was issued a letter to show cause, on 28th March 2023. She responded on 4th November 2023, admitting her involvement with Henry Mugambi Ongure.
32. She was invited for disciplinary hearing. She was advised on her right to be accompanied. The specific charges were communicated to her.
33. Hearing took place on 3rd May 2023. She attended with her witness. She conceded her involvement with Ongure. The disciplinary committee concluded that the Petitioner was involved in construction of an illegal line. It recommended that she is summarily dismissed. The Respondent implemented the recommendation.
34. Termination was fair and lawful. The Respondent submits that the dispute does not involve constitutional grievances and can be wholly dealt with under the *Employment Act*, 2007.
35. The Respondent urges the Court to dismiss the Petition with costs.
36. The Parties agreed on 16th May 2025, that the Petition is considered and determined, on the strength of their pleadings, affidavits, documents and submissions. They confirmed filing and exchange of their submissions at the last mention before the Court, on 2nd July 2025.



37. The issues are whether: the Petitioner's extended 3-month contracts were in violation of fair labour practices; dismissal was fair and lawful; whether her Petition raises constitutional grievances; and whether she merits the prayers sought.

The Court Finds: -

38. It is common evidence that the Petitioner was employed by the Respondent as a meter reader, on 9th April 2015. She was employed on a 3 – month contract.
39. The contract was renewed subsequently. All her contracts were short term, mainly for periods of 3 months. They were described by the Respondent as 'temporary employment.'
40. The Petitioner worked cumulatively, for 8 years and 2 months, while still being characterized by the Respondent as a temporary Employee.
41. Unfair Labour Practices. It is obvious that having worked for 8 years and 2 months, the Petitioner cannot, by any stretch of imagination, have been serving on a temporary contract.
42. Her work of meter reading was not in itself in the nature of temporary work. It is work that is central to the Respondent's mandate, of supplying electricity to the public. It is work that is part of the Respondent's core functions. It is not work that could reasonably be performed, by temporary staff.
43. By engaging the Petitioner for 3 months, in succession, over a period of 8 years and 2 months, the Respondent was clearly in violation of her right to fair labour practices.
44. The right to fair labour practices, under Article 41 of *the Constitution*, includes the right to reasonable working conditions, and to fair remuneration.
45. The Respondent retained the Petitioner as a meter reader for 8 years and 2 months, without guaranteeing her job security, and the benefits that go with permanent and pensionable service. There was no assurance that she would continue working, beyond any period of 3 months. The Respondent had no obligation to her, at the expiry of each contract, except as given under the short term contracts, and may as well have declined renewal, without any adverse legal consequences. She worked without the assurance of job security. Her benefits were defined and confined to separate periods of 3 months.
46. She was denied benefits that are earned cumulatively, over a long period of continuous service.
47. Short term contracts issued over a period of 8 years and 2 months, have the same effect on the Employee, as casual employment. Section 37 of the *Employment Act* is designed to discourage casualization of labour. Offering short term contracts to Employees, for prolonged periods, is casualization of labour, which deprives Employees of job security and terminal benefits due to permanent and pensionable Employees. The Petitioner would miss out on cumulative benefits such as the gradual salary increments, and stifle career mobility. Her creditable years of service meant nothing to the Respondent. Skills gained by her, in meter reading, in over 8 years were not recognized or rewarded. The Respondent utilized those skills to fulfil its core function, while consistently placing her in temporary service. The contracts were exploitative, and an unfair labour practice.
48. Exploitation was glaring. Even as she served without job security, she was appointed in an acting capacity as the officer-in-charge at Milimani area on 10th December 2018. She was expected to supervise other meter readers. She was to oversee revenue collection. Where on earth are Employees supervised, and revenue collection overseen, by temporary Employees?



49. 3-month period in employment, is normally associated with probationary contracts. The Respondent, a State Corporation, treated the Petitioner as though she was probationary, for 8 years and 2 months. It exploited her for 8 years and 2 months, in using her to perform a core function, without job security.
50. Regulation No. 44 of the Public Service Commission Regulations 2020, states that where a service is required for more than 24 hours, but not exceeding 21 days, the public service entity, like the Respondent herein, may engage a qualified person to render that service, on a contract not exceeding 21 days. Where there is need for temporary services, not contemplated under the Regulations, the public entity may procure the services of an independent service provider. Where service required is for not more than 24 hours, the public entity may engage a person on casual basis, where payment for services rendered is made at the end of the day.
51. The *Public Service Commission Act*, at Section 45 [1] stipulates that a person may be engaged on a term contract, for a period of at least 12 months, but not exceeding 5 years.
52. The Act and the Regulations governing public service entities, protect public servants against casualization. There is no room for separate temporary contracts running into years, such as the Petitioner was subjected to, by the Respondent. The Act and the Regulations advocate for fair labour practices in the public service.
53. The Supreme Court of Kenya in Petition No. E008 of 2023, Kenya Ports Authority v. Joseph Makau Munyao & 4 Others defined unfair labour practice as any conduct prohibited by law, governing relations between the parties.
54. The E&LRC in a decision that was cited with approval by the Supreme Court above, Peter Wambugu Kariuki & 16 Others v. Kenya Agricultural Institute [2013] e-KLR, explained that the right encompasses constitutional and statutory provisions, workplace conventions and usages, that breath life to Article 41 of *the Constitution*.
55. Although not defined in the *Employment Act*, the concept of unfair labour practices, enshrined in Article 41 of *the Constitution*, has therefore been interpreted through caselaw, to broadly, comprise any unfair act or omission, that arises between an Employer and an Employee. Most of these practices are rife in ongoing employer-employee relationships. They are not restricted to the point at which the relationship is terminated.
56. The Court is satisfied that the Respondent repeatedly violated the Petitioner's right to fair labour practices, by subjecting her to separate 3-months' contracts, over a period of 8 years and 2 months.
57. Constitutional grievance. Having concluded that the Respondent violated the Petitioner's Article 41 rights, it would follow that the Petition raises a constitutional grievance. The *Employment Act*, 2007 as observed above, does not define, or make reference to unfair labour practices. The Act regulates unfair acts or omissions mainly in relation to termination of employment. The Petitioner would be limited in articulating her Article 41 rights, if she wholly relied on the *Employment Act*, as proposed by the Respondent. While the Court doubts that her grievances include violations under other Articles of *the Constitution*, there is adequate justification in her claim for violation under Article 41.
58. Unfair and unlawful termination. On procedure, the Petitioner was suspected in involvement in a common employment offence at the Respondent: illegal construction of lines.
59. She was suspected alongside her colleague, Moses Kirui, of aiding a customer, Henry Mugambi Ongure, in constructing an illegal line at Shabab area, in Nakuru County. The illegally constructed line was metered with a stolen meter.



60. The offence was investigated. The Petitioner made a statement on investigation. She was issued a letter to show cause dated 28th March 2023. She replied on 4th November 2023.
61. She was invited for disciplinary hearing through a letter dated 27th April 2023. She was advised on her right to be accompanied, in accordance with Section 41 of the *Employment Act*.
62. She was heard on 3rd May 2023, in the presence of her colleague.
63. A decision was made to summarily dismiss her, communicated in a letter dated 4th July 2023.
64. She lodged an appeal, which was heard at length, on 27th October 2023. She was accompanied at the appeal hearing by 2 colleagues, Kennedy Magana and James Wambugu.
65. Dismissal decision was upheld by the appeal panel, and the appellate decision communicated in a letter to the Petitioner, dated 4th January 2024.
66. This procedure cannot be faulted. It was in accordance with the minimum statutory standards of procedural fairness, prescribed under Section 41 of the *Employment Act*.
67. Validity of reason. The Petitioner did not at any time, deny that she was involved with Henry Mugambi Ongure, the beneficiary of the illegal line.
68. It was established through investigations, and through site visits by installation inspectors Joel Okal and Albert Chemitin, that an illegal line had been constructed, and metered with a stolen meter.
69. The Petitioner conceded she was introduced to Ongure by Kirui, and that the 3 of them converged at Ongure's premises, preceding the construction of the illegal line.
70. The Petitioner's line of defence was that she acted in good faith, as an ambassador of the Respondent, and merely acted to assist a customer of the Respondent. Right from her response to the letter to show cause, to her appeal hearing, she consistently held that she acted in good faith, and did not know that she was aiding a criminal, Ongure, to construct an illegal line.
71. The Court does not think that this line of defence, would deprive the Respondent of justification in dismissing the Petitioner. Under Section 43 of the *Employment Act*, the reason or reasons for termination of a contract of employment, are matters that the Employer, at the time of termination, genuinely believe to exist, warranting termination.
72. The investigations report dated 28th February 2023, contains statements of various witnesses, including that of Henry Mugambi Ongure. He narrated how he met both Petitioner and Kirui at his premises, and how the 2 Employees, solicited from him Kshs. 30,000, before reducing the sum to Kshs. 10,000, to assist him. The Petitioner herself conceded meeting Ongure, and assisted him in applying for upgrading of his line. She explained to Ongure the procedure, gave him the application form, which she then took to the design section. She forgot about Ongure until she was summoned by the Respondent's human resource office, and accused of aiding Ongure in his illegal line construction.
73. Evidence placed the Petitioner and Kirui, at the premises where illegal construction of the line occurred. They were hosted by Ongure. There was sufficient reason to justify termination.
74. In her response to the letter to show cause, the Petitioner explained that she was implicated because she helped a customer secure an additional load. She asked for leniency.
75. On appeal she and her representatives acknowledged there was wrongdoing, and again sought leniency.



76. The Petitioner, Kirui and Ongure were charged with the offence of illegal construction of the line, at Nakuru CM's Court. They were acquitted.
77. The criminal case had no bearing on the disciplinary proceedings. It has no bearing on the Cause herein. The Petitioner and her colleague were not facing criminal charges, at the disciplinary panel. The 2 processes are separate and independent.
78. It is also noted that the facts were in any event, never tried in the criminal case. The case collapsed, as criminal cases frequently do, on account of ineptitude of the prosecutorial authorities. The prosecuting officer did not have the police file, on the date the case came up for hearing. The Trial Court declined to adjourn the hearing, instead acquitting the Petitioner and her co-accused. Nothing much can be read from the criminal case, in proof of the Petitioner's involvement in the employment offence, over which she was dismissed.
79. The Court is satisfied that termination was based on valid reasons, under Sections 43 and 45 of the *Employment Act* 2007.
80. Termination was procedurally and substantively fair.
81. Remedies. The prayer to declare termination unfair and unlawful is declined.
82. It is declared that the Respondent violated the Petitioner's constitutional rights, under Article 41 of *the Constitution*.
83. The Court is not able to accede to prayer 3. The prayer is generalized. It does not specify what benefits are normally enjoyed by permanent and pensionable Employees.
84. An order to quash the decision summarily dismissing the Petitioner, would result in an order of reinstatement. The prayer is not merited, termination having been carried out fairly, for valid reasons.
85. Likewise, the prayer for reinstatement is without foundation. Termination was procedurally fair and substantively justifiable.
86. The Petitioner's prayer for computation and payment of benefits she ought to have received, if she was in permanent and pensionable service, is declined. It is a prayer whose grant, would only open a secondary dispute between the Parties. The Petitioner ought to have placed evidence before the Court on identification, computation and payment of such benefits, to enable the Court resolve the dispute in full, instead of throwing back the responsibility for determining benefits if any, due to her from the Respondent, to the Respondent. Courts have a responsibility to determine disputes in full, by giving final determination on all issues, to obviate open-ended disputation of facts, and the frequent revisits to the Court for assistance in resolving these post-judgment disputes.
87. The prayer for damages for malicious prosecution is misplaced. There was no evidence of malicious prosecution. The Petitioner was validly prosecuted for involvement in criminal activities against a public entity. She was acquitted on technicality, on account of prosecutorial ineptitude.
88. To establish malicious prosecution, the Petitioner needed to show that: prosecution was initiated by the Respondent; it lacked reasonable and probable cause; it was initiated with improper motive; it ended in acquittal of the Petitioner; and the Petitioner suffered damages such as reputational harm or humiliation. The Petitioner was prosecuted for reasonable and probable cause, devoid of improper motive.
89. The Court has however concluded that her right to fair labour practices was glaringly violated by the Respondent, warranting grant of general damages.



90. She worked for 8 years and 2 months. Violation of her right to fair labour practices was repeated for that period. The Respondent is a public entity, and deliberately violated the Petitioner's Article 41 rights. It disregarded the spirit and letter of the *Public Service Commission Act* and Regulations and the *Employment Act*.
91. The Petitioner is granted general damages for violation of her right to fair labour practices, at Kshs. 450,000.
92. Interest granted at court rate, from the date of Judgment till payment is made in full.
93. No order on the costs.

It Is Ordered: -

- a. It is declared that the Respondent violated the Petitioner's constitutional rights under Article 41 of *the Constitution*, by employing her on repeated temporary contracts of 3-months, over a period of 8 years and 2 months.
- b. The Respondent shall pay to the Petitioner general damages for this violation, at Kshs. 450,000.
- c. Interest granted at court rate, from the date of Judgment, till payment is made in full.
- d. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, UNDER RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 26TH DAY OF SEPTEMBER 2025.

JAMES RIKA

JUDGE

Court Assistant: Matthew Kiprono

P.M. Ratemo & Company Advocates for the Petitioner

Justus Ododa, Advocate for the Respondent

