



**Obart v Kenya Power & Lighting Company Limited (Cause 385
(E360) of 2020) [2026] KEELRC 161 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 161 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 385 (E360) OF 2020**

**JW KELI, J
JANUARY 23, 2026**

BETWEEN

BEATRICE ATIM OBART CLAIMANT

AND

THE KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

JUDGMENT

1. Vide a memorandum of claim dated the 22nd of April 2020, the Claimant sued the Respondent and sought the following Orders:-
 - a. A declaration that the Claimant was unfairly, wrongfully and unlawfully terminated from employment
 - b. An order that the Claimant be reinstated back to her position without loss of position and benefits
 - c. A declaration that the Claimant is entitled to be compensated for violation of her constitutional rights as envisaged under Article 28, 31, 41 (1), 47 and 50 of *the Constitution* of Kenya 2010Or in the alternative:
 - a. An order for payment to the Claimant of the actual pecuniary loss suffered as a result of wrongful termination from the date of such termination to the date of such determination as detailed in the Claimant's Memorandum of Claim.
 - b. An order for payment of interest to the Claimant by the Respondent.
 - c. An order on general damages.
 - d. An order for the payment of legal costs.



- e. An order for the payment of other costs and any other relief this Honourable Court may deem fair and fit to grant.
2. The Claimant in support of the claim filed her list of witnesses dated 22nd April 2020, witness statement filed on 6th August 2020; and list of documents dated 22nd April 2020 with the bundle of documents attached. The Claimant later filed a further list and bundle of documents dated 12th September 2022; and a third list of documents dated 21st July 2023.
3. The Respondent entered appearance through the Honourable Attorney General and filed a memorandum of response dated 2nd September 2020. In support of the said memorandum of response the Respondent filed a witness statement of HELLEN NGANGA dated 24th July 2023; witness statement of STEPHEN MUMO dated 25th July 2023; and a list and bundle of documents with the bundle of documents attached, dated 6th November 2023.
4. In response to the Respondent's memorandum of response, the Claimant filed a reply dated 31st May 2021.

Hearing and evidence

5. The claimant's case was heard before Justice Ocharo Kebira on the 11th March 2024, when the claimant testified and adopted her witness statement dated 22nd April 2020 and produced documents under the list dated 22nd April 2020, 12th September 2021, and supplementary list dated 21st July 2023 as exhibits 1-13. The claimant was cross-examined by counsel for the respondent Mr. Munene and re-examined by her counsel.
6. The respondent's case was heard before me on the 13th March 2025 when Hellen Nganga testified as RW1 and adopted her witness statement dated 24th July 2023 as her evidence in chief and produced documents under list dated 6th November 2023 as R-exhibits 1-9. She corrected her statement at paragraph 3 to read 1984 instead of 2018 and in paragraph 20 to indicate the minutes were signed on 7th June 2018. RW1 was cross-examined by counsel for the claimant Ms Ochieng and re-examined by her counsel. RW2 was Stephen Mumo Muoka who testified on the 4th June 2025 who told the court he was the chief security officer in charge of operations of the respondent. He adopted as his evidence in chief his witness statement dated 25th July 2023 and produced the investigation report as R-exhibit 3 and stated the correct date of the report is 24th April 2018 and not 2016. He corrected the date in his witness statement in paragraph 2 to read 17th April 2018. He was cross-examined by counsel for the claimant Ms Ochieng.

The Claimant's case in summary

7. The Claimant's case is that she was employed by the Respondent in June 1984 as a General Worker in the Human Resource Department, Nairobi Region. She held various other roles before appointment to the role of Clerk IV and later Clerk IIA. As an employee of the Respondent, the claimant was a member of the Kenya Electrical Trades & Allied Workers Union (KETAWU) hence the prevailing collective agreement between the union and the Respondent governed the Claimant's service. The Collective Bargaining Agreement with Kenya Electrical Trades & Allied Workers Union provisions directly affected and or governed the working relationship between the Claimant and the Respondent, as follows: on completion of more than 20 years of service, either party may terminate this contract by giving the other four months' notice of intention to terminate the employment or wages in lieu; after 12 months of service, the employees shall be entitled to 30 working days leave excluding Saturdays, Sundays and Public Holidays with full pay of each day's absence; salary of the employee shall be as



shown in appendix "A" reproduced hereunder: Clerk IIA = Designation Scale Group H, Minimum Basic Salary = Kshs. 36,405 to increase to 42,855 in 2020, every employee entitled to house allowance Scale G-H = Kshs.27,030 to increase to 33,460, leave allowance of Kshs. 20,132/-. As per the Claimant's pay slip for May 2018, the Claimant's salary had been increased to Kshs. 116,126.40.

8. On 29th May 2018, the Claimant was issued with a show cause letter on the premise of fraudulently raising petty cash vouchers amounting to Kshs. 122,755 as cover up for funds spent between 1st March 2018 to 21st March 2018; and for an unaccounted shortfall of Kshs. 28,926. The Claimant responded to the show cause letter, and a disciplinary hearing was held on 5th June 2018. However, she was terminated from employment by a letter dated 12th June 2018 pursuant to Clause 27 of the CBA, since the Respondent was dissatisfied with her response.
9. It is averred by the Claimant that the unaccounted shortfall was not Kshs. 28,296 but rather Kshs. 68,930, and the same was already submitted to the Respondent. Further, the allegations levelled against the Claimant were allegedly based on a security investigation report as referenced in the show cause letter dated 29th May 2018, but she was never provided with the said report in order to respond to the specific accusations allegedly contained therein. According to the Claimant, failure to avail to her this critical document turned the whole disciplinary and/or termination process into a complete sham.
10. The Claimant states that the letter of termination stated that the Claimant would be paid salary up to and including 13th June 2018, four (4) months' salary in lieu of notice amounting to 425,518.05, after application of a Kshs 52,986.86 deduction, comprising of staff medical excess loans and re-allocation of paymasters payment. The Claimant disputes the stated deductions.
11. The Claimant challenges the Respondent's termination of her employment on the basis that she was terminated without a fair hearing, and without proof of valid reasons for the termination. She states that the Respondent violated her Constitutional rights under Article 31, 41 and 47; the provisions of the Employment Act 2007; and the Respondent's own Human Resource Policy on Employee Separation.
12. The Claimant claims her projected salary from June 2018 until December 2023 when she would have retired from service, with a modest 10% projected annual salary increment; gratuity at 15% of total earned salary from the date of her employment; and general damages to be assessed by the court.

Respondent's case in brief

13. The Respondent admits that it engaged the Claimant on 6th August 2016 as a General Worker II in the Human Resource Department, Nairobi Region, and as at the time of her dismissal, she was in the position of Clerk IIA. Some terms of the Claimant's employment contract were that: the Claimant was to at all material times adhere to the obtaining laws (Public Officer Ethics Act and Leadership Integrity Act), regulations and the Respondent's code of conduct and policies; and the company reserves the right to terminate the claimant's service without notice if in its opinion the respondent is a party to any fraud or dishonourable act or is guilty of any other gross misconduct. The Respondent's Code of Conduct and Ethics subjects its employees to ethical rules, such as restrictions from engaging in fraud and corruption and also urges them to act in the best interest of the company in a professional manner. It expressly states that the Respondent has a zero tolerance to corruption, bribery and fraud in all their forms and that all the Respondent's employees are expected to perform their duties honestly, fairly, transparently and to act in the best interest of the Respondent in all situations. It is categorical that they should avoid interests, activities, investments, relationships and influences that might compromise their objectivity, effectiveness and the faithful performance of their duties.



14. It is the Respondent's case that the Claimant signed the Code of Conduct and Ethics on 6th October 2017 hence binding herself to the Respondent's standards, including that the authority assigned to an officer of the Respondent is a public trust to be used for the public good which mandates an officer to take personal responsibility for the reasonably foreseeable consequences of their actions and omissions. She also bound herself to the provision in the Code of Ethics outlawing financial impropriety. Deviation from these standards would attract sanctions including termination/dismissal.
15. The facts of the matter according to the Respondent were that contrary to the set out provisions of the Respondent's Code of Conduct and Ethics, the Claimant fraudulently raising a petty cash voucher amounting to Kshs.122,755 as a cover up for funds spent between the period 2nd March 2018 and 21st March 2018 and also had an unaccounted shortfall of Kshs. 28,926 from the bar accounts at the time of audit.
16. Following the preparation of an Investigation Report No. KPI/2C.2B/INV/14/SM on alleged Unprocedural Procurement Activities at Stima Club where the Claimant was implicated for engaging in unethical conduct against the Company's Code of Ethics and a recommendation for disciplinary action against her made by the auditors, the Claimant was issued with a Show cause letter dated 29th May 2018 outlining the offences and requiring her to respond within 72 hours (3 days) of receipt.
17. In compliance with the timelines set out in the Show cause letter, the Claimant responded vide a letter dated 30th May 2018, but failed to satisfactorily address the charges against her involving fraudulent accounting. After considering her response, the Respondent determined that it was prudent for it to hold a disciplinary hearing, and invited the Claimant for the same. In the invitation letter, the Claimant was informed that the hearing would be held on 5th June 2018, she had the right to be accompanied by any witness and she had the right to present to the disciplinary panel any evidence to support her defense. The disciplinary hearing proceeded on 5th June 2018 at the Respondent's premises with the disciplinary panel composed of a Manager Security, Manager, HRS, Chief Finance Officer, Nairobi West and Senior HR &Admin Officer, Industrial Relations presiding over the proceedings. The Respondent is adamant that the Claimant was granted a fair hearing where she actively participated having been reminded of allegations against her. The questions she was asked and her responses were captured in the minutes signed on 7th July 2018. The Claimant was thereafter issued with a letter of termination which clearly gave reasons for her termination from employment.
18. The Respondent denies that the charges against the claimant were made up, the Respondent acted in bad faith, the outcome was pre-determined and that the Respondent's actions were tainted by malice as alleged by the Claimant. It insists that it followed due process in line with the law and its internal disciplinary processes, and had valid and fair reasons for the dismissal.

Determination

Issues for determination

19. The claimant outlined the following as the issues for determination-
 - i. Whether the Claimant was unfairly, wrongful and unlawful terminated from employment;
 - ii. Whether the Claimant is entitled to relief's sought;
 - iii. Who should bear the costs of the suit;
20. Conversely, the respondent outlined the following issues for determination in the suit-



- a) Whether the Claimant’s termination was unlawful.
 - b) Whether the Claimant is entitled to any benefits as sought in the statement of claim.
 - c) Whether the Claimant is entitled to costs of the suit
21. The court found the parties were in agreement on the issues for determination in the suit to be-
- iv. Whether the termination of the employment of the claimant was unfair ;
 - v. Whether the Claimant is entitled to relief’s sought;
 - vi. Who should bear the costs of the suit;

Whether the termination of the employment of the claimant was unfair;

The claimant’s submissions

22. The Court in the case of Pius Machafu Isindu v Lavington Security Guards Limited [2017] KECA 225 (KLR) held that; ‘13. There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination. The Act also provides for most of the procedures to be followed thus obviating reliance on the Evidence Act and the Civil Procedure Act/Rules. Finally the remedies for breach set out under section 49 are also fairly onerous and generous to the employee’. It is based on the determination of this case and the provision of law that we wish to submit that the Claimant herein was unfairly and wrongfully terminated as hereunder. To begin with, the disciplinary hearing that the Claimant was subjected to violated Section 41 (1) of the Employment Act, 2007 which stipulates that; ‘41. Notification and hearing before termination on grounds of misconduct (1)Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.’ This section speaks to two conditions, which is procedural fairness and substantive fairness. This position was cemented in the case of Walter Ogal Anuro V Teachers Service Commission[2013] eKLR the Court cited the two conditions that an employer must prove for a termination to pass the fairness test, it held that: 22.However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness.’ It is our submission that the Claimant was subjected to a disciplinary hearing based on a Security Investigation Report. Although the investigation report was mentioned in the Respondent’s Letter dated 29th May 2018, the same was never availed to the Claimant and the first time the Claimant interacted was when this matter was filed in court. Even then, the report filed in court was missing significant pages and appendices which the Claimant could not have responded to effectively. The rules of fair justice dictate that when a person is facing a hearing, they should be availed with all the evidence that will be used against them. This did not happen in this case and as such the disciplinary hearing was flawed from the onset. We rely on the decision in Freddy Kipkorir Lang’at v Co-operative University of Kenya [2021] KEELRC 101 (KLR) whereby the courts held that, In this case, the Respondent similarly did not go the whole way by disallowing the Claimant an opportunity to defend himself. The tenets of procedural



fairness encompass advance and reasonable notice of not only the steps to be taken in the disciplinary process but also documentation to prepare a defence where such documentation is in the custody of the Respondent as in this case. Put another way, if one is accused of misleading the employer and the evidence for such is the correspondence with a third party, it is incumbent upon the employer to lay the whole case against the employee by availing the full accusation and await the response or defence of the employee. (Emphasis ours) We are therefore submitting that the termination process was procedurally wanting and as such it was unfair. Secondly, under Section 43 of the *Employment Act*, the employer bears the burden of proving the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair.

23. It is our submission that the Respondent has not proved the reasons for termination. Whereas the Respondent stated that the reason for the Claimant's termination was that she fraudulently raised a petty cash voucher amounting to Kshs. 122,755 and that she had unaccounted shortfall of Kshs. 28,926, the particulars of the same were not proven. The Claimant, in her response dated 30th May 2018 provided for a clear and concise breakdown for the amounts totalling to the Kshs. 122,755. She also explained the deficit of Kshs. 28,926. Her explanation was not disproved by the Respondent both at the disciplinary hearing and before this Honourable Court. The Respondent did not conduct any investigations to disprove the explanation given by the Claimant. At the disciplinary hearing, the Respondent seemed more invested in the process of how the petty cash vouchers were raised. The Respondent has not placed before this Honourable court that the Claimant flaunted any procedure in the discharge of her duties. In the Investigation Report produced before this Honourable Court, it has been indicated that there are no documented procedures at the Club to guide in all procurement activities. This fact is corroborated by the number of employees raising invoices and petty cash voucher according to the incomplete report filed before this honourable court. It is therefore our submission that the Claimant's termination was flawed in substance and as such, the Respondent has not proven that it had justifiable reasons to terminate the Claimant's employment. It is our submission that established legal principles dictate that an employment termination must satisfy the fairness test enshrined in Section 45 of the *Employment Act*, 2007 for it to be valid. In particular, under Section 45 (2), the law states that (2)A termination of employment by an employer is unfair if the employer fails to prove— a. that the reason for the termination is valid; b. that the reason for the termination is a fair reason— i) related to the employees conduct, capacity or compatibility; or ii) based on the operational requirements of the employer; and c. that the employment was terminated in accordance with fair procedure. According to Section 47 (5), the onus of proving that unfair and/or wrongful termination has occurred rests on the employee while the employer bears the burden of justifying the grounds of termination. It is therefore our submissions that the Claimant herein has discharged the burden of proving that the termination was unfair while the Respondent has not justified the grounds of termination.

Respondent's submissions

24. Section 43 (1) of the *Employment Act*, 2007 provides that: "In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45." Subsection (2) provides that- "The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee."²⁴.Section 45 (2) of the Act provides that: "A termination of employment by an employer is unfair if the employer fails to prove- a) that the reason for the termination is valid; b) that the reason for the termination is a fair reason – i. related to the employee's conduct, capacity or compatibility; or ii. based on the operational requirements of the employer; and c) that the employment was terminated in accordance



with fair procedure. In the case of *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR; the Court while commenting on section 43 of the *Employment Act* stated that, “an employer will be deemed to have a substantive justification for terminating a contract of service if he/she genuinely believed that the matters that informed the decision to terminate existed at the time the decision was taken. In other words, it is not a requirement of the law that the substantive ground informing the decision to terminate must in fact be in existence. All that is required is for the employer to have a reasonable basis for genuinely believing that the ground exists even if it later turns out that it, in fact, did not. In my view, what the law is concerned with here is whether the circumstances surrounding the decision to terminate would justify a reasonable man on the street, standing in the same position as the employer, to reach a similar decision as him/her regarding the termination.”²⁶. Commenting on this question, the Court of Appeal in *Kenya Revenue Authority v Reuel Waithaka Gitahi & 2 others* [2019] eKLR said as follows: - “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. That is a partly subjective test.”²⁷. Section 47 (5) of the *Employment Act*, 2007 provides thus; “For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”²⁸. In the case of *Protus Wanjala Mutike v Anglo African Properties t/a Jambo Mutara Lodge Laikipia* [2021] eKLR; the Claimant’s case was dismissed for failure to prove that unfair termination occurred.²⁹ My Lady, in the present case, we submit that the Respondent had a valid reason to initiate the disciplinary process of the Claimant. The reasons were based on the Claimant’s conduct, capacity and compatibility and the operational requirements of the employer. The Claimant herein received a notice to show cause dated 29th May 2018. In the notice, it was stated that on 2nd May 2018 the Claimant wrote a receipt for petty cash amounts to Kshs. 122,755.00 as a cover-up for money spent between the period 2nd March 2018-21st March 2018. The Claimant was equally notified of the unexplained shortfall of Kshs. 28,926.00 from the bar accounts.³¹ The Claimant in his response dated 30th May 2018, did confirm that she raised the petty cash voucher in May 2018 whereas the expenditure occurred in March 2018. In regard to the shortfall she confirmed that it was in fact 69,930.00 instead of Kshs. 28,926.00.³² It is important to note that the Claimant did not show the name of officers who had the balances and the amount they owed.³³ Following her explanation which was deemed unsatisfactory, she was invited to a disciplinary hearing on 5th June 2018.³⁴ The Claimant did attend the disciplinary hearing and even signed the attendance sheet at page 50 of the Respondent’s list and bundle of documents.³⁵ During cross-examination, the Claimant confirmed being asked whether she came with a witness and her answer was that she had none. This shows that she had been made aware of the importance of coming with a witness. (See page 39 of the Respondent’s list and bundle of documents).³⁶ During cross-examination, the Claimant did acknowledge that the petty cash voucher was covering the period 2nd March 2018-21st March 2018. (Page 40 of the Respondent’s list and bundle of documents)³⁷. At page 40 of the Respondent’s bundle, the Claimant was asked why she failed to follow procedure for accounting. The Claimant’s answer was “...I promise to stick to the rules”. We submit that this was an admission that she failed in her work.³⁸ At page 40, the Claimant further admitted working in the accounting sections since 1994 and therefore familiar with the accounting procedures. At page 41 of the Respondent’s bundle, the Claimant whilst at the Disciplinary hearing, was asked on authority being granted prior to expenditure. The Claimant’s reply was that- “I overlooked the procedure in this”. We submit that this was an admission.⁴⁰ At page 42 of the Respondent’s bundle, the Claimant confirmed that the voucher was invalid because it was not authorized.⁴¹ In regard to the shortfall, the Claimant admitted at page 43 of the bundle that the shortfall was 69,930.00 and not 28,926.00 as alleged.⁴² At page 44 of the Respondent’s bundle, the Claimant admitted that the shortfall covered between the



period from January-May 2018. We submit that had the report not been raised, it would have difficult to raise the issue. 43. At page 44, the Claimant's closing remarks were as follows- "Thank you for listening. Will do my best to follow procedure". We submit that this was an admission on the part of the Claimant that there was a valid reason to warrant the disciplinary proceedings. 44. In the case of *National Bank of Kenya v Samuel Nguru Mutonya* [2019] eKLR; the Court of Appeal (referring to its previous decisions) said that in determining whether a decision by the employer to terminate is just and equitable, "the adjudicating authority is enjoined to scrutinize the procedure adopted by the employer in reaching the decision to dismiss the employee." It is therefore important to consider whether the Respondent met this second requirement. 45. My Lady, following the Disciplinary procedure on 5th June 2018. The Claimant's services were terminated on 12th June 2018. 46. Being dissatisfied with the termination proceedings, the Claimant appealed against the decision vide letter dated 19th June 2018. 47. The Appeal was heard on 24th August 2018. (See pages 27-29 of the Claimant's documents). The Claimant signed minutes on 3rd October 2018. This means that she was satisfied with the process and the members of the panel. During the hearing of the appeal case, the Claimant was asked why it took long to prepare a petty cash for expenses incurred in March 2018. The Claimant's response was that she was too busy and that it took time. (See page 28 of the Claimant's bundle). 49. It was apparent on the appeal, in regard to the issue of unaccounted amount, the Claimant was to advise the paymaster on recovery which she had not done but had informed the staff. 50. On 18th February 2019, the Claimant received a decision of the appeal disciplinary proceedings upholding her termination of employment. 51. It is therefore our humble submission that the due process was followed.

Decision

25. The threshold for determination of fairness of termination of employment is according to the provisions of section 45 (2) of the *Employment Act* to wit:- '45(2) A termination of employment by an employer is unfair if the employer fails to prove—
- (a) that the reason for the termination is valid
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure." To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the *Employment Act* (*Walter Ogal Anuro v Teachers Service Commission*[2013] eKLR).

Substantive fairness

26. The prove of claim of unfair termination from employment is according to section 47(5) of the *Employment Act* to wit- '47(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer"
27. The court found that it was in dispute that the claimant's employment was terminated. The court then proceeds to establish whether the termination was justified in accordance with the provisions of section 43 of the *Employment Act* to wit- '43. Proof of reason for termination
- (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination



shall be deemed to have been unfair within the meaning of section 45.(2)The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee”

28. The termination was preceded by Notice to Show cause, which the claimant stated she responded to on the 29th May 2018. The claimant did not produce the Notice to show cause. The letter titled explanation deemed as the show cause was produced by the respondent and it stated as follows- ‘29th May 2018

Beatrice Atim Obart S/no.2676

Thro,

Stima Club Manager

Dear Beatrice,

EXPLANATION

A security investigation report has revealed that you wrote receipt No.787 on 2nd May 2018 for petty cash amounting to kshs 122,755/= as a cover up for the money spent for the period between 2nd March 2018-21st March 2018.It also revealed that there was an unexplained shortfall of kshs 28,926/= from the bar accounts.

Note that Management views this as fraud and negligence of duty on your part. However, before any action is taken, you are hereby given a chance to show cause why disciplinary action should not be taken against you for the offence.

Your reply should be received within 72 hours from the date of this letter failure to which it will be assumed that you have none and management will institute appropriate disciplinary measures without further reference to you.

Yours faithfully,

For: The Kenya Power & Lighting Co. Ltd.”

29. The Claimant responded to the above vide her letter dated 30th May 2018 where she stated as follows- ‘Explanation Letter For Reference NO.KP1/5A/10/1/OBART/2676/FMK/ajk

In reference to your letter dated 29th may 2018, I wish to state the following. Every end month we do monthly reports which we capture all the expenditure of the club. Having to do all the finance and administrative I do all the accountings as I prepare the monthly report. On said date 2nd may 2018, all the receipts were needed by the auditors and had kept them on a file where all expenditures of the month are kept. I had to raise a petty cash voucher to account for the amount spent. Kindly find below the fabrication of the receipts in question explaining the expenditure which were not fraudulent.....”The claimant stated there was a difference in bar account related to KPLC staff amounting to Kshs, 69930 and not 28926 as stated in show cause. In the response the claimant accounted for the Kshs. 122,755 by tabulation of the items of expenditure.

30. The respondent issued the claimant with an invitation to disciplinary hearing dated 5th June 2018 on same issues under the show cause. The minutes of the proceedings of the disciplinary of 5th May 2018 were produced by both parties. (C-exhibit 1). The court confirmed on perusal of the minutes that the issues for explanation were as per the show cause and the invitation letter. The claimant was issued with



a letter of termination of service dated 12th June 2018 which disclosed the reasons for the termination as follows- 'RE: Termination Of Service

Further to our explanation letter dated 29th May 2018, your response dated 30th May 2018 and the disciplinary hearing held on 5th June 2018 this is to advise you that your explanation was not accepted on the following grounds:-

1. You fraudulently raised a petty cash voucher amounting to Kshs. 122,755 as a cover up for funds spent between the period 2nd March to 21 March 2018
2. You also had unaccounted shortfall of Kshs. 28,926/= from the bar accounts at the time of audit.” The court found there was consistency on the reason for termination. The claimant in witness statement stated that the petty cash vouchers were for items bought and for general expenses as computed for total sum of Kshs. 122,755. The Claimant also stated that the allegations were based on a security investigation report indicated in the show cause letter dated 29th may 2018 which was strange and irregular to her and she had not been provided with the report of the investigation. During the hearing the claimant adopted her witness statement on the foregoing assertions. During cross-examination the claimant told the court that she was issued with a show cause letter which informed her of the allegations against her. That she responded. The claimant admitted the petty cash voucher was raised with regard to the period 2nd march 2018 to 21st march 2018. The Claimant told the court that a petty cash voucher authorizes the expenditure and can be raised before or after. That the voucher authorizes and accounts for money spent. That at the material time she was in charge and raised the voucher. The claimant told the court the manager could not have authorized the expenditure as she had not raised the cash voucher. The claimant told the court that at the disciplinary hearing she was asked why she did not follow the procedure and answered-‘ I promise to follow the procedure. I was supposed to raise vouchers” The claimant told the court that this was not an admission. That she had told the disciplinary panel that normally petty cash voucher should be raised and promised to be raising petty cash vouchers in the future. In re-examination the claimant relied on the security report that indicated there was no guidelines for procurement activities.
31. Conversely, during the hearing the respondent’s witness Hellen Nganga on being referred to page 42 of the claimant’s bundle to effect that the claimant explained the accounting process that the manager was away from march-April 2018, Hellen responded that the issue was that the petty cash voucher was raised in the month of May after expenditure. The witness agreed that the claimant had explained the shortfall being monies owed by staff (page 36 of the claimants’ bundle was list of the debtors) and recoverable but insisted that was unprocedural. The witness further stated the list of debtors was of names and hotels without particulars of the dates and signatures. The witness stated that the voucher was raised when the manager was on suspension. During re-examination the Respondent’s witness told the court that the petty cash voucher was raised when investigation had started.
32. The court in determination of the validity of the reasons is guided by section 43 of the [Employment Act](#). Was the reason for termination justified? Did the reason exist before the termination. The court finds that it was not in dispute that the claimant raised a petty cash voucher in the month of May with respect to expenditure under investigation for month of March to April. The Claimant admitted she was in charge of the expenditure in the period as the manager was away. The first charge was –‘You fraudulently raised a petty cash voucher amounting to Kshs. 122,755 as a cover up for funds spent between the period 2nd March to 21 March 2018.” The court finds that the claimant admitted having raised the petty cash voucher in the month of May for expenditure of March and April which was one of the issues under investigation. The employer was justified to conclude her conduct was fraudulent and meant to cover up funds spent and under investigation. On the short fall the claimant gave a list of



debtors to justify the shortfall but the employer was not satisfied for lack of substantiation. The court cannot replace its thoughts with those of the employer and ought to rely on the facts before the court and the employer. In *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR the Court of Appeal stated as follows: - “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. That is a partly subjective test.” The claimant admitted to the allegations of raising petty cash voucher after expenditure, which expenditure was under investigation by the employer. In the circumstance the court holds that the employer justified its reason for the termination and believe that the claimant acted fraudulently.

33. On procedure- The fairness procedure is as stated in section 41 of the *employment act* to wit – ‘Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.’” The claimant challenged the procedure on basis of having not been issued with the investigation report and stated the allegations against her were strange. The court outlined the show cause above and the invitation to the disciplinary hearing and the minutes. The court found that the claimant answered all questions from point of information and at no time did she raise issues of the said report. The challenge of the process based on failure to be provided with the investigation report was a mere technicality. The claimant at the disciplinary process admitted to her failure to follow the procedure of raising petty cash voucher hence the defence of her not having been an accountant or the lack of procurement guidelines was of no relevance. The issue concerned her preparation of petty cash voucher to cover up prior expenditure of which she admitted to have done and failing to justify the cash shortfall. There was no prove of any prejudice she may have suffered for lack of provision of the said investigation report. The court is satisfied that the process under section 41 of the *Employment Act* was complied with substantially and that the claimant was given a fair hearing before the termination which was based on valid reason of misconduct (section 45 of the *Employment Act*).

Whether the claimant is entitled to relief sought.

34. The prayers related to the claim for unfair termination. The court held the termination was fair. The entire claim is held to lack merit.
35. In conclusion, the claim is held to lack merit and is dismissed with costs to the respondent.
36. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF JANUARY, 2026.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Claimant: absent

Respondent: absent

