



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muriuki v Kenya Power & Lighting Company Limited (Cause  
1168 of 2018) [2026] KEELRC 701 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEELRC 701 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1168 OF 2018  
CN BAARI, J  
MARCH 12, 2026**

**BETWEEN**

**PATRICK MWANGI MURIUKI ..... CLAIMANT**

**AND**

**KENYA POWER & LIGHTING COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This judgment relates to the Claimant's Memorandum of Claim dated 1<sup>st</sup> July, 2018, and filed in court on 9<sup>th</sup> July, 2018. Under the claim, the Claimant seeks a declaration that the termination of his employment was unlawful, illegal, unfair, and wrongful, payment of a total sum of Kshs.28,967,228.16, comprising notice pay, service pay, and damages for the unfair termination. The Claimant further seeks an order for payment of costs of the suit and interest thereon.
2. The Respondent entered an appearance on 8<sup>th</sup> August, 2018, and subsequently filed a Response to the Claim dated 22<sup>nd</sup> August, 2018, denying the Claimant's claim.
3. The Claimant's case was heard on 15<sup>th</sup> March, 2023, 21<sup>st</sup> June, 2024, and concluded on 27<sup>th</sup> February, 2025. The defence case was heard on 26<sup>th</sup> May, 2025.
4. Submissions were filed for both parties, and have been duly considered.

**The Claimant's Case**

5. The Claimant's case is that he was on or about 17<sup>th</sup> August 2017, unlawfully, illegally, maliciously, and without any colour of right dismissed from his employment with the Respondent despite his exemplary service for a period of 10 years, rising to the position of Operation and Maintenance Engineer.



6. The Claimant states that the Respondent's decision to terminate him on account of negligent management of duties, lack of supervision of staff, and monitoring optimal use of company resources, leading to the construction of illegal lines, was unfair and lacked justification and proof.
7. The Claimant states that the Respondent's actions to terminate his services were malicious, unfair, unlawful, and illegal on the premise that he had allocated duties to the feeder in charge.
8. He avers that he was terminated for outright mistakes committed by private individuals who were charged personally in an alleged criminal event, and the Respondent failed to appreciate that criminal activities are private and personal.
9. It is his case that the Respondent terminated his services without appreciating the weight of evidence in Kajiado Criminal case No.321 of 2017. He avers that the Respondent imposed a heavier responsibility on him despite the fact that he had delegated as appropriate.
10. The Claimant states that he earned a gross monthly salary of Kshs.266,000/-. He avers that he had about 10 engineers under him and oversaw 7,000 km of voltage lines.
11. It is his case that a complaint was made by a customer at Kitengela, and an employee of the Respondent and an outsider were arrested and charged with construction of illegal lines, but the case was later dismissed for lack of sufficient evidence.
12. The Claimant avers that he responded to a notice to show cause issued to him by the Respondent and that he was informed that his explanation of the occurrence was not satisfactory. The Claimant states that his accusations are negligence, participation in the construction of an illegal line, and receipt of money from third parties.
13. He avers that he was heard and, upon termination, he appealed, and the decision earlier made was upheld on appeal.
14. On cross-examination, the Claimant sought to correct an error in his claim where he sought Kshs.26,000,000 instead of Kshs.2.6M in damages for the unfair termination.
15. The Claimant confirmed that he was in charge of the Kajiado station and that supervisors reported to him. He contends that he served diligently and had no disciplinary issues prior to this.
16. The Claimant confirmed that Kajiado station was under him and that he was issued a letter indicating that he failed to supervise and was negligent, leading to illegal construction, and that he was given a chance to explain. The Claimant states that he conceded that Kajiado was under him and that he promised to be more vigilant in the future.
17. The Claimant further told the court that he does not know the source of the materials used in the illegal construction. He confirmed that he was invited to a hearing and advised of his right to be accompanied, but he attended unaccompanied.
18. The Claimant further confirmed receipt of a termination letter which listed negligence of duty as the reason for the termination. The Claimant states that he was paid terminal dues comprising one month's notice pay and issued with a certificate of service. The claimant states that the Respondent demanded that he pay a loan he owed the Respondent within 14 days, and he did.
19. The Claimant confirmed that he filed an appeal against the dismissal, and he was heard on the appeal. He avers that the reason for his termination is not valid.



20. The Claimant confirmed that he was a member of the Respondent's pension scheme, but did not receive communication on payment of pension benefits.
21. In re-examination, the Claimant confirmed that he received a caution letter before the disciplinary hearing and did not have another disciplinary issue.
22. It is the Claimant's prayer that the court grant him the reliefs listed in his statement of claim.

### **The Respondent's Case.**

23. The Respondent's case is that the Claimant was its employee until 17<sup>th</sup> August, 2017, when his services were duly and lawfully terminated for negligence of duties that resulted in the construction of an illegal power line, occasioning loss of the Respondent's property.
24. The Respondent denies that the Claimant was unlawfully, illegally, maliciously, or unfairly dismissed as alleged or at all.
25. The Respondent avers that the Claimant was duly and lawfully dismissed after he was found and admitted to being negligent in his duties, occasioning great loss and danger to the Respondent.
26. The Respondent avers that it employed the Claimant with effect from 1<sup>st</sup> July 2007 as the 4<sup>th</sup> Assistant Engineer and was duly issued with an Employment Letter dated 29<sup>th</sup> June 2006.
27. The Respondent further states that the Claimant was then promoted to 3<sup>rd</sup> Assistant Engineer and assigned special responsibilities as the Operation and Maintenance (O & M) Manager in charge of Kajiado County. It avers that, as the O & M Manager, the Claimant was responsible, inter alia, for the supervision of the Respondent's Staff, the inspection of services, networks and feeders, and the timely response and resolution of customers' complaints in the assigned County.
28. It is the Respondent's case that on or about 10<sup>th</sup> March 2017, the Claimant was cautioned and warned by the Respondent for being negligent in his duties, resulting in unacceptable delay in responding to customer complaints within his County of jurisdiction. It further states that on or about 4<sup>th</sup> April, 2017, it received a complaint from its customer regarding an illegal and unauthorized power line that was fraudulently constructed and connected to its property in Kajiado County.
29. It avers that upon enquiry, the Claimant was unable to provide satisfactory explanations to the incident and was subsequently suspended on 11<sup>th</sup> May, 2017, to allow the Respondent to investigate the incident. It states that, upon investigation, the Claimant was found to have been negligent in his duties and was invited, vide Summons dated 5<sup>th</sup> April, 2017, to a disciplinary hearing on 11<sup>th</sup> April, 2017, wherein the Claimant's explanations were found unacceptable.
30. The Respondent states that on or about 17<sup>th</sup> August, 2017, the Claimant's services were duly and lawfully terminated on the ground of negligence in the management of his duties leading to the construction of an illegal power line.
31. The Respondent maintains that the Claimant was paid all his terminal dues and emoluments and issued with a Certificate of Service as required by law.
32. It avers that the Claimant subsequently appealed against his termination, which was duly considered in accordance with the Staff Regulations and Procedure, with the Claimant's termination being upheld.
33. The Respondent avers that the termination of the Claimant was lawful, justified, and procedural, and that the Claimant was given a fair hearing in compliance with the provisions of the *Employment Act* and the Respondent's own Staff Regulations and Procedures.



34. The Respondent further avers that the Claimant was negligent in his work and failed to supervise his staff and protect the Respondent's property that was entrusted in his custody, control, and supervision, resulting in illegal construction and connection of an electricity power line that exposed and caused the Respondent an enormous loss and damage.
35. The Respondent avers that the Claimant was paid all his terminal dues, and as such, the Claimant's claim does not raise or disclose any reasonable cause of action as against the Respondent and ought to be dismissed for being a nonstarter and frivolous.
36. RW1 told the court that the Claimant was a member of the Respondent's pension scheme and NSSF, and that deductions were made in both respects.
37. On cross-examination, RW1 told the court that complaints were received against the Claimant, but that the complaint letters are not before the court.
38. She further confirmed that the investigation report was not before the court, similar to the disciplinary proceedings. She confirmed that the disciplinary action was not in respect of previous complaints, and no criminal charges were preferred against him.
39. The Respondent prays that the court dismisses the Claimant's claim with costs.

### **Analysis and Determination**

40. The following issues present for determination: -
  - i. Whether the termination of the Claimant's employment was fair and lawful.
  - ii. Whether the Claimant is entitled to the remedies sought.

### **Whether the termination of the Claimant's employment was fair and lawful**

41. The fairness of a termination of employment is determined by whether or not the employer adhered to the twin tenets of procedural and substantive fairness espoused under Sections 41, 43, 45, and 47 of the *Employment Act*, 2007.
42. On procedure, Section 41 requires that an employee be notified of the allegations against him/her, accorded an opportunity to respond to the specific charges, and heard in defense, accompanied by a fellow employee or union representative where the employee is a member of a union.
43. The Court of Appeal in *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR, set out what has come to be recognized as the bear minimums of a fair hearing as follows: -

“Section 41 of the *Employment Act* provides the minimum standards of a fair procedure that an employer ought to comply with. The Section provides for notification and hearing before termination on grounds of misconduct. The court stated that four elements must be discernable for the procedure to pass:

- a. an explanation of the grounds of termination in a language understood by the employee;
- b. the reason for which the employer is considering termination;
- c. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made



- d. hearing and considering any representation by the employee and the person chosen by the employee.”

44. The Claimant admitted that he received a notice to show cause, that he responded to the show cause, and was invited to appear and defend himself before the disciplinary committee of the Respondent.
45. The Claimant also confirmed that he was informed of his right to be accompanied by a fellow employee or union representative, but chose to attend the hearing unaccompanied. It is further not disputed that the Claimant was informed of his right of appeal, that he appealed against the termination of his employment, and that the decision was upheld, therefore confirming his dismissal.
46. On the available evidence, it is clear that the Respondent substantially complied with the procedural requirements of Section 41 of the *Employment Act*, 2007.
47. I therefore conclude that the termination of the Claimant’s contract met the threshold of procedural fairness, and so I hold.
48. The second limb in determining a fair termination/dismissal is the question of substantive fairness. In *British Leyland UK Ltd v Swift* (1981) I.R.L.R 91, Lord Denning described the test of reasonableness in the following words: -

“The correct test is: was it reasonable for the employers to dismiss him?” If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him.”

49. Further Section 43 of the *Employment Act* states: -

“(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.”

50. The Respondent terminated the Claimant on grounds of negligence of duty, failure to supervise staff, and failure to prevent illegal construction of a power line. Negligence no doubt constitutes a valid ground for termination under Section 44(4)(c) of the *Employment Act*. However, the employer must demonstrate, on a balance of probabilities, that the employee was culpable, that the negligence was established through evidence, and the decision was reasonable in the circumstances.
51. In *CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona* [2015] KECA 919 (KLR), the Court of Appeal held that an employer must demonstrate the factual basis for the reason relied upon, and the test is whether a reasonable employer would have terminated in similar circumstances.



52. The Respondent, through its witness, admitted that the complaint letters against the Claimant, the investigation report, and the disciplinary proceedings were not produced before court.
53. Further, no documentary evidence was tendered to demonstrate how the Claimant's negligence directly resulted in the illegal construction of a power line, and neither was evidence led to show that the Claimant personally participated in, authorized, or benefited from the illegal connection.
54. It is also evident that although criminal proceedings were taken against the suspected culprits, the Claimant was not one of the persons charged, nor were the criminal proceedings shown to have resulted in a conviction implicating the Claimant.
55. Section 43(1) of the *Employment Act* demands that failure by an employer to prove the reason for termination renders the termination unfair. In my view, the absence of the report of the investigation said to have been conducted by the Respondent, together with the disciplinary records, significantly weakens the Respondent's case. It is not enough for an employer merely to assert misconduct; it must prove it.
56. In the end, I hold that the Respondent has failed to discharge its statutory burden of proving a valid, fair, and justifiable reason for terminating the Claimant.
57. The termination of the Claimant's employment therefore fails the test of substantive fairness, and so I hold.

### **Whether the Claimant is entitled to the reliefs sought**

#### **Notice Pay**

58. The Claimant admitted that he was paid one month's notice pay. This claim, therefore fails on that account.

#### **Service Pay**

59. Under Section 35(6) of the *Employment Act*, service pay is not payable where an employee is a member of NSSF or a registered pension scheme.
60. The Claimant confirmed on cross-examination that he was a member of the Respondent's pension scheme and NSSF. He is therefore not entitled to service pay, and the claim fails and is dismissed.

#### **Compensation for Unfair Termination**

61. Section 49 of the *Employment Act* empowers the Court to award up to 12 months' gross salary as compensation for unfair termination/wrongful dismissal.
62. Considering the Claimant's 10 years of service, a clean disciplinary record prior to the incident subject of this suit, and his contribution to the termination as the overall supervisor of the alleged culprit, I deem an award of 7 months' salary sufficient compensation for the unfair termination, and which is hereby awarded.
63. In whole, the Claimant's claim succeeds in terms of the following orders: -
  - a. A declaration that the termination of the Claimant's employment was substantively unfair and unlawful.
  - b. That the Respondent shall pay the Claimant seven (7) months' salary as compensation for unfair termination at Kshs. 1,862,000/-



c. The Respondent shall bear the costs of the suit.

64. It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
12<sup>TH</sup> DAY OF MARCH, 2026.**

**C. N. BAARI**

**JUDGE**

Appearance:

N/A for the Claimant

Ms. Otieno h/b for Mr. Muga for the Respondent

Ms. Esther S- C/A

