



Omondi v Kenya Power & Lighting Company Limited (Cause E620 of 2020) [2025] KEELRC 1823 (KLR) (20 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1823 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E620 OF 2020**

**JW KELI, J
JUNE 20, 2025**

BETWEEN
CRISPIN ODHIAMBO OMONDI CLAIMANT
AND
THE KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

JUDGMENT

1. The claimant filed a memorandum of claim date 5th October 2020 and amended on the 14th November 2023 against the respondent seeking the following reliefs:-
 - a) A declaration that the claimant's Summary Dismissal was unfair, wrongful, prejudicial and unprocedural,
 - b) A declaration that the claimant's right to fair labour practices enshrined in Article 41(1) of the constitution has been infringed and or violated by the respondent.
 - c) Kshs 2,091,78.68 being Twelve (12) months' salary as compensation for unfair termination. Summary dismissal
 - d) Kshs 348,529.78 being two (2) months salary being payment in lieu of Notice as provided in the Employment Contract.
 - e) interest-on-e-and d above Kshs 6,447,800.93 being three (3) years one (1) month salary as compensation from the time the claimant was unlawfully dismissed to the time he was acquitted.
 - f) Costs of the suit. General damages for unlawful summary dismissal.
 - g) Any other or further relief this Honourable court may deem fit and just to grant A certificate of service be issued.



- h) Interest on c, d and e above.
 - i) Costs of the suit.
 - j) Any other or further relief this Honourable court may deem fit and just to grant.
2. The claimant in support of the claim filed his witness statement dated 10th November 2023 together with a bundle of documents. The claimant filed reply dated 15th November 2024 received in court on the 19th November 2024.
 3. The claim was opposed by the respondent. It entered appearance and filed a memorandum of response dated 27th September 2021, witness statement of Mary Maya Rowa dated 13th October 2023 together with list of documents dated 27th September 2021 and the bundle of documents.

Hearing and evidence

4. The claimant's case was heard on the 19th November 2024 when the claimant testified on oath in his case, he produced as his evidence documents under list dated 14th November 2023 as his exhibits 1-16 and relied on filed pleadings. The claimant was cross-examined by counsel for the respondent Ms. Tusiime and re-examined by his advocate.
5. The respondent's case was heard on the 20th February 2025 where the witness for the respondent was Mary Maya Rowa who testified on oath and relied on his witness statement dated 13th October 2023 and produced documents under list dated 27th September 2021 save for Document No.4 which was marked MFI to be produced by the maker. RW was cross-examined by Mr. Nyangito, Advocate for the claimant and re-examined by her counsel. The maker was RW2, Daniel Njoroge, a senior assistant security officer who testified on oath and produced the marked document as R-exhibit No. 4 on the 20th February 2025.

Claimant's case in brief:-

6. The claimant's case was as per the witness statement reproduced as below:-
 - 'That I am the claimant and was employed by the respondent in the year 2009 position of a Technician in the year 2011
 - 3. That I had been consistently attaining good and very good performance review appraisals for all the years I had been working with the respondent until the year 2016 when I was transferred to Makueni County
 - 4. That for instant on 10th November 2014, 10th December 2015, 10th June 2016 I received appraisal letters from the Respondent's Regional manager - Nairobi South recommending and appraising me for discharging my duties diligently,
 - 5. That upon being transferred to Makueni County, I started experiencing problems in my employment and since then I have never been appraised fairly with the last two appraisals ending in appeals by myself. The appeals whose Tate I had never known to date.
 - 6. That I received my first ever warning in February 2019 and I was able to respond to the issues around the warning and despite my plausible explanation, my immediate supervisor still proceeded to issue me with a



warning on subsequently I was issued with another warning letter in April 2019 for delayed design jobs which required facilitation from the county manager.

7. That through email sent on Thursday 5th March, 2020 at 6pm, I was summoned to appear before the Head of Security Department of Friday, 6th March 2020 at 8am, but since I was not in the office when email was sent and was not in a position to access emails, I only saw the email the following day and I requested for another date to appear before the Head of Security Department.
8. That I was asked to appear on Monday 9th March 2020, which I did. That upon arrival at the head of Security Department Office I met with a representative from the Directorate of Criminal Investigations whom I recorded my statements with for an alleged illegal power connection at my residential home and was thereafter coerced to sign an agreement.
9. That upon signing, I was forcefully instructed to lead the team of officials from the Head Security Department to my house for inspection on illegal power connection where technicians who accompanied me, disconnected the solar connection then connected the power and I was asked to reconnect on my own as they took snap shots photos.
10. That upon making connections, the other security personnel started switching on all the electronics to ensure that they get the maximum load. They ensured that all the electronics were on. I was later coerced to sign off a letter confirming that I allowed the team to gain entry into my house for inspection on illegal power connection.
11. That the following day on 10th March 2020, a different team came and arrested me claiming that I was in direct supply of power.
12. That on 11th March 2020, I was arraigned in court and took a plea of not guilty because I was not aware of any criminal offence I had committed, I only learnt the alleged crime in court while charge sheet was read to me.
13. That I was released on 11th March 2020 on cash bail of Kshs. 100,000.00 pending the hearing and determination of the case.
14. That on 13th March 2020, while the criminal matter was pending before the court for hearing and determination I was shocked to be served with the Notice to Show Cause Letter. In the notice letter, I was supposed to respond to the allegations raised within 72 hours, despite being served with the said notice on a weekend as opposed to the working days, I managed to respond to the letter within the time line given to me.
15. That I was never accorded sufficient time to respond to the Notice to Show Cause Letter and that it is contention that I am being involved in a process with a for-gone conclusion, hence I was subjected to unfair labour practices and flawed administrative action.



16. That at the hearing, it was obvious that my written response was never fully addressed the issues in contention and the same is because of the time within which was I was to respond to the notice to show course.
17. That on 12th June, 2020 I was served with a summary dismissal dated on even date. On the said dismissal letter, it states that I was summarily dismissed on the following grounds;
 - a) Being in possession of a 3 phase cable while his application was for a single phase as evidenced by the single phase cable booked and collected from the stores.
 - b) Tempering with the company installation by moving the meter from the mater box.
 - c) Being on direct supply therefore defrauding company of its revenue.
 - d) Being involved in the construction of your own power connection by generating the material reservation.
18. That the above listed allegations are the same allegations I was charged with in the criminal suit number 1148 of 2020 Filed at Makadara Law Courts.
19. That I made an appeal against the decision by Respondent to summarily dismiss me through letter of appeal dated 29th June 2020.
20. That on 14th August 2020, through a letter dated on even date, I was invited for hearing slated on 2nd September 2020 at Stima Club Plaza, Ruaraka for my appeal letter application against unfair dismissal and the same was not accorded a fair hearing hence was dismissed without looking at the contagious issues.
21. That it was unlawful and malicious for the Respondent to dismiss me from employment while I had been charged at Makadara Law courts in Criminal Case No 1148 of 2020. The respondent ought to have waited for the court to determine the criminal case first before dismissing me.
22. That the Respondent herein was the complainant in the criminal matter.
23. That I was improperly charged and arraigned in court, however after due process ended, I was acquitted under section 210 of the [Criminal Procedure Code](#) through a ruling delivered on the 20th July 2023 and the criminal case was dismissed.
24. That the unlawful summary dismissal imposed upon me was illegall unfair process as provided in the [Employment Act 226](#) section 88 subsection 3 and other relevant provisions which states that no employer or employee shall be punished twice for the same offence. It is imprudent on respondent's conduct to dismiss me unfairly considering that the matter was in court.
25. That the decision for dismissing my employment contract, are marred with massive and glaring errors and that the decision was arrived at without consideration of my response to the show course letter and/or merits as is required in process of such magnitude.



26. I pray that this Honourable Court find that my dismissal was procured in an unprocedural and wrongful manner without proper procedures for a disciplinary hearing, and without any substantive justifiable reasons.
27. I further pray to this Court to further make an award as sought in my Memorandum of - Amended Claim dated 6th November 2023 in terms of all the prayers sought.
28. I wish to produce this witness statement as my testimony in chief in support of my claim and also wish to produce the documents appearing in my List and Bundle of Documents as exhibits in support of my amended Memorandum of claim” The claimant further produced exhibits in support of the case C-exhibits 1- 16.

The Respondent’s case

7. The Respondent employed the Claimant in 2009 as a Customer Service Assistant and was later promoted to the position of Technician in the year 2011 as per the employment agreement dated 24th October, 2011 attached under the Respondent’s list of documents, a position he held till his dismissal.
8. By virtue of the Claimant’s above position, he had various responsibilities assigned to him that required him to comply with the Respondent’s code of conduct and ethics which governs how the Respondent Company operates and also spells out prohibited conduct while fostering a culture of ethical performance. As per the contract of employment, the company policy & rules plus procedure of the employment laws, the Claimant was to work diligently. professionally and safeguard the rights of the Respondent at all times during his tenure of employment.
9. However, prior to his dismissal, the Claimant was severally warned by the Respondent for his unbecoming conduct of flouting laid down procedure and rules of the Respondent.
10. Contrary to the provisions of Section 168 (f) of the *Energy Act*. 2019, around March. 2020 the Claimant was found to have had an illegal power connection at his residential home which is illegal and unlawful and it was further established there was no meter in the Claimant’s meter box and on further analysis it was also established that the Claimant was using a three (3) phase meter instead of a single phase meter and that the Claimant was using a direct connection to supply his house with electricity.
11. That thenature of the dispute before the Court therefore is one relating to alleged unfair, wrongful, prejudicial and unprocedural summary dismissal of the Claimant’s employment at the Respondent Company. It relates to allegations that the Respondent unfairly dismissed the Claimant’s employment as such he sought various reliefs as stated above.
12. It is the Respondent’s case that it did not unfairly wrongfully or unprocedurally summarily dismiss the Claimant’s employment and the decision to dismiss the Claimant was upon subjecting him to the lawful disciplinary procedure which was legal, procedural and fair as the Respondent acted within the confines of the law and its actions were in accordance to *the Constitution* in particular Article 41. 47 and 50, fair labour practice, fair hearing, the employment law and statutes Section 41, 43, 44 and 45 of the *Employment Act* and other relevant employment policies and rules. In the circumstances, the Claimant’s claim against the Respondent is thus unfounded on that basis as the Claimant failed to prove his allegations.



Determination

Issues for determination

13. The court having perused the written submissions of both parties and having heard the case was of the considered opinion that the issues for determination in the dispute were :-
- a. Whether the termination was fair
 - b. Whether the claimant was entitled to reliefs sought

Whether the termination was lawful and fair

14. 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.
15. Section 43 provides for proof of reasons for termination as follows:-
- ‘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.”
16. The letter of dismissal was dated 12th June 2020 and stated the reasons for termination. The letter is reproduced below-

‘Kenya Power

The Kenya Power & Lighting PLC.

Central Office-P.O. Box 30099-00100, Nairobi, Kenys. Telephone-254-02-3201000-
Telegrams Stima Plaza, Kolobot Road Electric

Our Ref: KP1/5A/2A/2/OMONDI/17113/DNN/dm

12 June 2020

Crispin Odhiambo Omondi S/No. 17113 Thro



A Regional Manager, Nairobi County

Thro Chief Human Resource & Administration Officer, Nairobi

Dear Crispin,

DISMISSAL

Further to our explanation letter to you dated 13th March 2020, and your response letter a disciplinary hearing held on 5th May 2020, this is to advise you that your explanation has been unacceptable. You are therefore dismissed from the company services with effect from 16th June: under Clause 11 of your Employment Agreement for the following reasons:

1. Being in possession of a 3-phase cable while your application was for a single phase as evide by the single phase cable booked and collected from stores.
2. Tempering with the company installation by moving the meter from the meter box.
3. Being on direct supply therefore defrauding company of its revenue.
4. Being involved in the construction of your own power connection by generating the mat reservation.

The paymaster is advised to pay you salary up to and including 16th June 2020, your last working

Please note that you owe the Company the following liabilities.

1. Car Loan Coop Bank Kshs.645,967.71
2. Insurance Premium Staff Cars Kshs. 19,560.34 Kshs. 800.00
3. Employee sales Kshs.666,328.05 Kshs. 94,771.85

Total Less 31 Accumulated leave days

Total

Kshs.571,556.20

know how you intend to settle the total liabilities of Kshs. 571.556.20 within 14 c rom the date of this letter failure to which the Paymaster is advised to recover your final dues.

As regards your interest in the Retirement Benefits Scheme, please get in touch with the CEO &T) Secretary, Kenva Power Pension rund (CKPPF). the total amount f

However, please note that payment of any dues owed by the company will be subject to you complete the Clearance form enclosed herewith. Enclosed also find your Certificate of Service.

Note that you will room to appeal to MD&CEO, against this decision within 90 days from the rect of the letter.

I now take this opportunity to thank you for the service you have rendered to this company since November 2011 and wish you success in your future endeavours.

Yours faithfully,

For: The Kenya Power & Lighting CO. LTD.



Eng Aggrey Machasio General Manager, Infrastructure

C. General Manager, Human Resources & Admin. General Manager ICT -Please remove the staff from the system with effect from 16th June 2020. General Manager, Regional Coordination. Ag. Regional Manager, Nairobi General Manager & Company Secretary - Please issue demand letter after 14 days from 16th June 2020. General Manager, Stima Co-operative Ag. Manager, Commercial Services - Please remove the staff from Staff tariff with effect from 16th June 2020. Manager, Security Services Paymaster-Stop salary with effect from 16th June 2020.”

17. It was not in dispute that the claimant was arrested by police on the 10th March 2020 and arraigned at Makadara Law Courts on the 11th March 2020 on charges of fraudulent consumption of electrical energy contrary to section 168 (f) of the Energy Act 2019.
18. The respondent on the 13th march 2020 wrote a letter to the claimant and asked him to respond to the allegations of the fraud and further stated that the claimant had been found with one KPLC Meter, CIU mad a 3 phase service cable. The claimant was informed that the foregoing allegations amounted to gross misconduct which could lead to summary dismissal.(page 40 of the amended claim).
19. The claimant in his explanation to the respondent alleged malice and claimed those were unsubstantiated allegations and further stated the issues were subject of criminal proceedings and stated he would defend himself of the charges. Essentially, there was no direct explanation on the specific allegations of which the employer sought his explanation (response at pages 42-43 of amended claim).
20. The claimant produced the minutes of the disciplinary hearing held on 5th May 2020. At the hearing, the claimant was reminded that in the invitation letter he was informed of the right to witness and confirmed he had not come with a witness. He said the witness was far right now. The panel asked if they could proceed, of which he answered in the affirmative (page 44 of the amended claim) The claimant told the disciplinary panel his house had no power connection. He confirmed having applied for power in January 2015 but he did not have the application. He confirmed his meter was installed in 2015 by the respondent. On being asked what he was using between 2015 and 2020 he said he did not live there as the house was under construction. On being asked whether the meter was placed without connection he said he was not there. On being asked whether he left the meter there he answered in the negative stating the place was leaking since 2016. He confirmed the meter was prepaid and he was accumulating fixed charges and there was debt of Kshs. 2000 of which he had not paid for the reason that he was not living in the house.
21. It was recorded in the minutes that the claimant confirmed to the panel that he took the meter into the house from the meter box alleging water leakage until when the officers came to arrest him. (page 47 of the amended claim). He confirmed he repaired the meter box hence it was no longer leaking. The claimant confirmed that he did not tell the officers that the meter was in the house at time of arrest. He had said it was misplaced. The claimant denounced his statement that he had called an electrician to connect the electricity at his house alleging coercion by the officers. He had not reported the coercion to the employer. The claimant was asked by his boss Mark ‘ I believe you know the customer’s requirements. How did you end up with a 3 phase for a connection of single phase? Crispin/claimant (silence).(page 51 of the amended claim). He then confirmed that where a customer applied for single phase and in the system he has single phase but on ground a 3 phase , himself as designer at the company would report the matter to security.



22. During the court hearing the claimant confirmed he was silent on being asked how he had a three phase having applied for a single phase. He confirmed that he had a missing meter in the house and that is why the meter box was empty. The court established that at the disciplinary hearing the claimant indicated he removed the meter from the meter box for security purpose and also because the meter box was leaking water. The claimant confirmed he later produced the meter. He asserted that the meter was not connected to his house. He told the court he was on solar. During re-examination the claimant stated that the issue of the meter was canvassed and determined in the ruling in the criminal case and of which there was no appeal . The meter was not produced at trial of the criminal case.

Decision

23. The standard of prove of reasons for termination in employment claims is as per section 43 of the *Employment Act*. The court found that the strength of the claimant’s challenge of the validity of the reasons lay on the ruling of the lower court (criminal case) by Hon E.Mutunga dated 20th July 2023. (at pages 63-64 of the claim). The criminal trial court observed that the meter was not produced to support charge of illegal power consumption and that the investigating officer did not indicate that the premises where the power had been connected belonged to the accused person. The claimant was discharged under section 201 *Criminal Procedure Code*. The court found that the criminal case did not affect the dismissal decision of the respondent as the criminal case proceedings are not binding on the internal proceedings of the employer. The standard of proof in criminal cases is that of beyond a reasonable doubt while of the employment on balance of probabilities and that of a reasonable employer. The court further established the criminal case decision was way after the dismissal decision. The court established the criminal case was not decided on merit.
24. The court on perusal of the evidence before the disciplinary panel of the respondent and on perusal of the documents by the parties before the court established that the employer had valid reasons which existed for the termination. The claimant admitted he had applied for the meter, the meter was installed, he removed the meter from the meter box without authority of the owner(the respondent), he had not paid for the charges, and that there was a wire found in the premises which on connection powered gadgets in his house. The claimant was unable to explain why he had a three phase connection while he had applied for a single phase. Indeed he was silent on the question. The claimant confirmed that during his work as a designer with the respondent he would report such cases in the first instance to the security. The reason for the termination of the criminal case under section 210 of the *Criminal Procedure Code* was informed by the police investigator's failure to produce the foregoing evidence which the claimant confirmed existed at the disciplinary hearing . public prosecution of criminal cases belongs to the state. The respondent cannot be blamed for gaps in the investigations leading to the premature termination of the criminal case. The conduct of the claimant disclosed an offence against the respondent’s property denying it revenue falling under section 44(4)(g) of the *Employment Act* to wit:- ‘an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.’ The court held there was substantive fairness.

Procedural fairness

25. Procedural fairness is as stated in section 41 and 45 of the *Employment Act*. In *Judicial Service Commission v Gladys Boss Shollei* [2014] eKLR, the Court of Appeal emphasized that an employer is entitled to dismiss an employee where there is sufficient ground supported by evidence, provided due process is followed. In *Janet Nyandiko v Kenya Commercial Bank Limited* [2017] eKLR the court expressed itself as follows, and which was cited with approval by the Court of Appeal in the case of *National Bank of Kenya v Anthony Njue John* [2019] eKLR, thus: -"Section 45 of the Act makes



provision inter alia that no employer shall terminate the employment of an employee unfairly. In terms of the said section, a termination of an employee is deemed to be unfair if the employer fails to prove that the reason for the termination was valid; that the reason for the termination was a fair reason and that the same was related to the employee's conduct, capacity, compatibility or alternatively that the employer did not act in accordance with justice and equity." The court found there was call to the claimant for explanation by the respondent of the allegations leading to the arrest, there was response, the claimant was invited to a disciplinary hearing with caution on right to bring witness, there was an elaborate hearing and the representations of the claimant were taken, a dismissal decision on the same issues at explanation and hearing was issued and there was notice of right to appeal. The claimant confirmed he was invited to appeal hearing but choose to stay away as there was a court order. Fair hearing is deemed to have been met when the person is given opportunity to be heard. That was granted to the claimant. The court found there was substantive procedural fairness as stated under section 41 of the Employment Act.

Whether the claimant was entitled to reliefs sought

26. The claimant sought for the following reliefs:-
- a) A declaration that the claimant's Summary Dismissal was unfair, wrongful, prejudicial and unprocedural,
 - b) A declaration that the claimant's right to fair labour practices enshrined in Article 41(1) of the constitution has been infringed and or violated by the respondent.
 - c) Kshs 2,091,78.68 being Twelve (12) months' salary as compensation for unfair termination. Summary dismissal
 - d) Kshs 348,529.78 being two (2) months salary being payment in lieu of Notice as provided in the Employment Contract.
 - e) interest-on-e-and d above Kshs 6,447,800.93 being three (3) years one (1) month salary as compensation from the time the claimant was unlawfully dismissed to the time he was acquitted.
 - f) Costs of the suit. General damages for unlawful summary dismissal.
 - g) Any other or further relief this Honourable court may deem fit and just to grant A certificate of service be issued.
 - h) Interest on c, d and e above.
 - i) Costs of the suit.
 - j) Any other or further relief this Honourable court may deem fit and just to grant.
27. The court held the termination was lawful and fair. The claimant on dismissal was paid accumulated leave days and issued with a certificate of service which he admitted was issued during cross-examination.
28. The termination having been lawful and fair the reliefs sought then fail.
29. In the upshot, the claim is dismissed with costs to the respondent.
30. It is so Ordered.



DATED, SIGNED, AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20th DAY OF JUNE 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Appellant – Ms Okumu h/b Nyangito

2nd Respondent:-Ms. Tusiime

