



**Kichinda v Kenya Power & Lighting Co. Limited (Cause
E046 of 2022) [2025] KEELRC 2314 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2314 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E046 OF 2022**

**M MBARŪ, J
JULY 31, 2025**

BETWEEN

EGHWA KICHINDA CLAIMANT

AND

KENYA POWER & LIGHTING CO. LIMITED RESPONDENT

JUDGMENT

1. The judgment herein has taken longer to conclude than other matters in the same series. Going through the records, the file was missing key elements. The respondent entered an appearance, filed various documents, but there is no response to the claim. I have scanned the records, the CTS, yet this document is not on the record.
2. The respondent employed the claimant as a clerical officer in October 1990. She was promoted, and her last position held was that of Clerical Officer in the customer service department, Coast Region, at a salary of Ksh. 203,326 per month.
3. The claim is that the audit team summoned the claimant in September 2019 to answer audit queries relating to her work and the alleged involvement of her supposed son, Anthony Kichinda, who, although a non-employee of the respondent, is said to have colluded with Chris Maina to defraud the respondent and also received M-Pesa payments. He was also accused of raising irregular work orders, which the respondent termed as irregular rebilling and unprincipled meter changes. This was discovered after the audit investigations in the coastal region.
4. The claimant responded to the audit questions. Despite her protests that she was linked to her supposed son due to similar names, and allegations of irregular dealings following unlawful access to M-Pesa money transactions, the disciplinary panel recommended her summary dismissal on 4 February 2020. The reasons given were that the claimant had raised work orders to change postpaid meters to



prepaid after irregular rebilling, citing faulty meters as the reason, yet the meters were healthy. The claimant was accused of receiving Ksh 96, 777 from private electricians to facilitate the irregularities.

- a. Ksh 2,400 from D. Wamalwa
 - b. Ksh.5,627 from H. Wanje
 - c. Ksh.26,300 from J. Fumba
 - d. Ksh.550 from K. Muthui
 - e. Ksh.50,500 from K. Were
 - f. Ksh.11, 500 from Salim Mpate.
5. The allegations made related to functions outside the claimant’s mandate are without evidence. The disciplinary process had a predetermined outcome to victimise the claimant, which was unlawful and unfair. The claimant had a legitimate expectation to work for the respondent until retirement and had a clear work record.
6. The claimant claimed for an order of reinstatement without loss of benefits, payment of her salaries for 28 months from the date of termination to filing suit, and in the alternative, payment of her terminal dues.
- a. An order of reinstatement,
 - b. Salary for 28 months Ksh.5,693,147.60
- In the alternative
- c. Salary arrears to retirement Ksh. 5,693,147.60
 - d. Salary expectation to retirement for 84 months Ksh.17,079,442
 - e. Salary benefits from the date of termination to retirement for 112 months, Ksh. 22,772,590.40.
7. The claimant testified in support of her case that the respondent accused her of working with private electricians for rebilling and procedural meter changes without providing any details. She was not in the rebilling section and was not in any position to decide whether to change a meter. She could not tell if an account had been rebilled.
8. During the audit investigations, no accounts or meters were brought to her attention that required a response, and no account was found to have been irregularly rebilled. There were no dates when the alleged monies were received or the M-Pesa details. No witness was called to the linked money transactions.
9. The claimant testified that he supervisor assigned her duties and approved the work orders.
As noted above, there was no response filed.
10. The evidence and witnesses called by the respondent had no foundation.
11. The claimant submitted that she was not given a fair hearing and that his termination lacked valid reasons. She contended that the respondent failed to connect her to any wrongdoing, thereby failing to meet the burden of proof for termination under Section 43(1) of the *Employment Act*. She argued that the dismissal letter accused him of raising work orders to change postpaid meters to prepaid after irregular rebilling, citing the reason as faulty meters, yet the meters were healthy and were being billed for a total of Kshs. 96,777/= from private electricians to facilitate the irregularities. However, the



claimant stated she was never questioned about specific accounts or meters, and she alleged Mpesa receipts were for personal transactions, a point the respondent did not dispute.

12. The claimant submitted that other employees with similar M-Pesa receipts did not face disciplinary action, an indication that the disciplinary action was applied discriminatively. She alleged that the respondent's reliance on hearsay, innuendo and irrelevant material led to his unfair summary dismissal after 30 years of employment. In *Benedict Abonyo Omollo v Judicial Service Commission and 2 Others* (ELRC No.47 of 2015), the court relied on the case of *Keen Kleeners -versus- Kenya Plantation and Agricultural Workers Union* (Civil Appeal No.101 of 2019) KECA 352(KLR) that held that the employer must prove reasons for termination of employment under Sections 43 and 45 of the Act.

13. Employment was terminated unfairly. The claimant is seeking an order of reinstatement. She filed this suit within three years of dismissal, and the current elapsed time of almost five years is not her fault; therefore, she is entitled to reinstatement. In the case of *Benedict Abonyo Omollo*, cited above, the Court, while supporting reinstatement after three years held:

the period of 3 years contemplated under the law lapsed at no fault of the claimant save to accommodate the respondent. Indeed the claimant moved the court within the three years period. He should not be denied the primary remedy sought through no fault of his own "...Taking into account the discriminatory treatment applied against the claimant by the respondents, the unfair termination of his employment, cumulatively, the primary remedy of reinstatement overtaken in time, the court is allowed under Section 49(3) of the Act to order for reinstatement or re-engagement.

14. The Claimant further seeks general and exemplary damages, citing the case of *Gichuru v Package Insurance Brokers Ltd* (Petition 36 of 2019) [2021] KESC 12 (KLR) where the Supreme Court held:

According to section 5(7) of the Act, an employer alleged to have engaged in a discriminatory practice must give reasons for taking certain actions against the employee. Where such actions are shown not to have any justification against the protected group, then there exists discrimination against such an employee and must therefore be addressed...There is no justification for such treatment established by the respondent. The court finds the claimant was unfairly treated and discriminated against by the respondent based on his ethnicity, and on these findings, he is entitled to general damages of Kshs. 2,000,000 for discriminatory treatment.

15. In the case of *Ol Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR, the court awarded Ksh. 7,500,000, and *Mary Mwaki Masinde v County Government of Vihiga & 2 Others* (2015) eKLR, the court awarded Kshs. 3,000,000. On that basis, the Claimant submits that Kshs. 2,000,000 would be an adequate award in this instance.

16. The Respondent denies the Claimant's assertions, maintaining that its employees are strictly governed by a Code of Conduct and Ethics prohibiting fraudulent activities and corruption, with non-adherence leading to sanctions including dismissal. In the internal audit report, titled 'Investigation Report No. 01-2019/2020 Rebilling and Unprocedural Meter Change Coast Region,' it was established that the Claimant's involvement in a network that received money from private electricians and raised unauthorised work orders, thereby denying the company revenue. Specifically, the report claims the Claimant received Kshs. 96,777 from various private electricians and raised unauthorized work orders to change postpaid meters to prepaid ones, often citing faulty meters when they were healthy. Instances cited include collusion with a private electrician to assign a meter replacement work order to a non-technical staff member (a driver) and unauthorized retrofits for customer accounts.



- The Respondent highlights that the Claimant acknowledged generating and assigning work orders unprocedurally, contrary to established practices, and that her supervisor distanced himself from such unprocedural actions.
17. The respondent submitted that there was substantive justification and procedural fairness in the claimant's dismissal in line with section 45 of the *Employment Act*, 2007, which requires an employer to demonstrate a valid and fair reason for termination based on conduct, capacity, compatibility, or operational requirements, and that the termination followed a fair procedure. In support of this, reliance was placed on the Court of Appeal case of Pius Machafu Isindu V Lavington Security Guards Ltd (2017) eKLR that emphasised that for a termination or summary dismissal to be fair, there must be substantive justification and a fair procedure.
 18. The Respondent submitted that its Code of Conduct and Ethics prohibits employees from engaging in fraudulent activities and corruption, requiring them to act in the company's best interest professionally. Further, the Code states zero tolerance for corruption, bribery, and fraud, expecting employees to perform duties honestly, fairly, and transparently, and failure to meet standards can result in sanctions, including dismissal.
 19. The claimant was terminated for two reasons: raising unprocedural work orders to change post-paid meters to pre-paid meters, falsely citing faulty meters when they were healthy, and for being part of a network that collected Ksh. 96,777 from private electricians, resulting in lost revenue for the company. It was argued that the claimant admitted to ordinarily raising and assigning work orders unprocedurally, which goes against ethical standards. This action also violated her duties to verify the accuracy of documents before processing them, as outlined in a letter dated 8 February 2025. The claimant acknowledged receiving money from private electricians but could not substantiate her defence that the money was for a chicken and rice business, despite multiple opportunities. Therefore, the respondent had sufficient reason, based on the audit report, to believe that staff, including the claimant, were collecting money from private electricians to facilitate irregular rebilling and unprocedural meter changes, financially harming the respondent. Consequently, the burden was on the claimant to prove the money was for her business and not for fraud. To support this view, reliance was placed on the case of Montex Knitwear Limited v Gopitex Knitwear Mills Limited to emphasise that uncontroverted evidence stands unchallenged.
 20. In the case of Thomas Sila Nzivo vs Bamburi Cement Limited [2014] eKLR and Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR, it is asserted that an employer only needs reasonable and sufficient grounds for suspicion, not conclusive proof beyond a reasonable doubt, with the standard of proof being on a balance of probability. Therefore, the respondent was justified in terminating the claimant.
 21. The termination followed a fair procedure. In the case of David Gichana Omuya v Mombasa Maize Millers Ltd [2014] eKLR, the respondent highlights that procedural fairness involves notifying the employee of charges, providing an opportunity to respond, and considering their representations. In Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR, the court outlined four elements for procedural fairness: explaining termination grounds in clear terms, stating the reason for potential termination, allowing the employee a chosen representative, and hearing and considering representations from both the employee and their chosen representative.
 22. The respondent detailed its meticulous administrative disciplinary process, in which the claimant received an Explanation Letter dated 18 December 2019, outlining charges based on the Audit Report. He responded on 24 December 2019, requesting additional information. The respondent provided this information in a letter dated 3 January 2020. The claimant did not respond to this further



letter, which she confirmed during cross-examination. The claimant was invited to a disciplinary hearing on 16 January 2020, with the invitation reiterating charges and informing her of her right to representation, witnesses, and evidence. On conclusion of the hearing, the minutes recorded were signed by the claimant, who shows she was accompanied by Rodgers Kweyu, Gilbert Okero (KETAWU), and Richard Otieno (respondent's employee).

23. The respondent submitted that a reasonable employer would have dismissed the employee based on the gross misconduct, as supported by *CFC Stanbic Bank Ltd v Danson Mwashako Mwakuwona* [2015] eKLR. The employer complied with the termination procedure under Sections 41 and 43 of the *Employment Act* and had a reasonable belief that the claimant violated its Code of Conduct and her employment contract. In any event, the claimant has not presented evidence to contradict that the termination was procedurally fair. Therefore, the claimant's termination met the threshold of procedural fairness. Given the substantive justification and procedural fairness of the termination, the respondent asserts that the claimant is not entitled to the remedies sought. The respondent emphasises that courts must balance the interests of both employer and employee, as held in *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike* [2017] eKLR.
24. While section 49 of the Act provides for remedies, including compensation for unfair termination, the court should apply these judiciously, considering the case's circumstances and the impact of the damages on both parties. Additionally, the court should consider any adverse effects suffered by the employee due to their breach or wrongful conduct, aiming to adequately compensate for loss of income or other harms, while also weighing the financial and operational impact on the employer. The court should exercise discretion judiciously to achieve justice.

Determination

25. Through a notice dated 4 February 2020, the respondent terminated the employment of the claimant through summary dismissal because;
 - Raised work orders to change postpaid meters to prepaid after irregular rebilling, citing the reason as faulty meters, yet the meters were healthy. The report further revealed that you received money totalling Ksh. 96,777 from private electricians to facilitate the irregularities as follows....
26. The claimant admitted that part of her duties was to raise work orders as directed by her supervisor.
27. The claimant worked in the revenue protection unit. Rebilling was done via computer input, which was not part of her duties. The respondent does not challenge this position.
28. Under clause 6.31 of the audit report, the respondent acknowledged that the claimant was in the revenue protection unit. She was accused of raising work orders to change postpaid meters to prepaid after irregular rebilling, citing that the meters were faulty while they were healthy.
29. However, the audit investigations failed to provide details of the work orders issued to change postpaid meters to prepaid meters following irregular rebilling. The postpaid meters changed to prepaid to address irregular rebilling issues, which are not noted or particularised. The healthy meters that the claimant allegedly altered and is said to be faulty are not specified.
30. Were there such meters at all? Did the claimant raise any work orders to change postpaid meters to prepay after irregular rebilling? Which meters are these?



31. The chain of the alleged network, involving customers, private electricians, and other employees that led to revenue loss for the respondent, is unclear. The audit failed to unearth any tangible evidence to blame the claimant.
32. Further, the claimant is alleged to have received money from various persons referred to as private electricians and fellow employees. The details are that the following gave her money;
 - a. Ksh 2,400 from D. Wamalwa
 - b. Ksh 5,627 from H. Wanje
 - c. Ksh 26,300 from J. Fumba
 - d. Ksh 550 from K. Muthui
 - e. Ksh 50,500 from K. Were
 - f. Ksh 11. 500 from Salim Mpate.
33. In defence, the claimant explained that she had a chicken-rearing business. She sold to fellow employees and other individuals, including the cited private electricians. The global sum of Ksh 96. 777 hence became necessary to explain. How did the respondent arrive at these totals, and on which dates? Were employees benefiting from the claimant's stated business, vis-à-vis the alleged private electricians and other members of the public? How did the respondent explain these payments?

It therefore became a subjective exercise.
34. Without the respondent giving the details of these money transactions alongside the internal issues of alleged work orders for prepaid and postpaid meters used for rebilling, the causal link is lost.
35. Under section 43 of the *Employment Act* (the Act), although the employer is allowed to terminate employment for a valid and fair reason which the employer genuinely believes to exist and related to the employee's conduct, as held in *Ratemo & 2 others v Dufourg* [2025] KECA 1359 (KLR) and *Ojwang v Kenya Power & Lighting Co (KPLC)* [2025] KEELRC 2068 (KLR). The belief must be based on reasonable grounds. Looking at the allegations, a reasonable man would genuinely believe that indeed the subject employee's conduct was questionable. This is the essence of section 45(2) of the Act. That employment must terminate for fair, valid and reasonable grounds.
36. In the case of *Nannungi v Kimondo Gachoka & Company Advocates* [2025] KEELRC 2012 (KLR), if the employer fails to prove the reason(s) for terminating an employee's employment, the termination is deemed to have been unfair. The genuine belief must therefore be based on sound proof that, on the face of it, upon good reason, the employee can be said to have engaged in the alleged conduct.
37. To protect the fundamental right not to be unjustifiably dismissed, a threshold of substantiality should be applied to the reasons for dismissal, assessed objectively.
38. The assertion of such a threshold is essential under the open-ended 'the employer's genuine belief' provision under section 43 of the Act. These provisions, which weigh against 'other substantial reason' under section 45 (2) of the Act, must be interfaced to secure and protect the employee from a subjective application of section 43(2) of the Act. The argument by the employer that, based on some allegations, they 'genuinely believed' to exist sufficient reasons for termination of employment would be erratically applied to negate the purpose and import of sections 43 and 45 of the Act.
39. If genuine beliefs were mistaken, this issue was not considered sufficiently; an objective examination of the substance of the reason given by the employer would ensure that employees can only ever be found



to have been fairly dismissed for a valid and pressing reason. The reason's sufficiency or otherwise must be judged by the court as fair, valid and reasonable based on the facts of the case. This approach would better reflect the purpose of the law and give a higher standard of protection to the right not to be unjustifiably dismissed.

40. In this case, the general allegations made against the claimant by the respondent, without the particulars of the alleged irregular rebilling of faulty healthy meters, lacked substantive justification, resulting in unfair termination of employment. The threshold of standard of proof established in the cases of *Galgalo Jarso Jillo V Agricultural Finance Corporation* [2021] eKLR, *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others* [2019] eKLR and *British Leyland (UK) Ltd V Swift* [1981] IRLR, on the principle of reasonable responses test, is not achieved in this case.
41. The claimant is seeking an order of reinstatement. This is overtaken with time under section 12(3) of the *Employment and Labour Relations Court Act*.
42. The alternative prayer is payment of terminal dues upon retirement. However, the claimant must mitigate the loss of employment. She testified that she was running a private business, which was part of the problems leading to the summary dismissal.
43. The findings above address compensation due. The claimant had worked for the respondent from 1990 to 2020 with a good record. She had hoped to retire from the job within 84 months. This was not due to the unfair termination of employment. A compensation of 4 months' gross salary of Ksh. 157,136.78 is hereby deemed appropriate, amounting to Ksh. 628,547.12.
Notice pay for one month, Ksh. 157,136.78.
44. Regarding general damages, exemplary damages, and costs, as addressed in the analysis and findings above, the claimant is awarded costs.
45. Accordingly, judgment is entered for the claimant against the respondent in the following terms;
 - a. Employment terminated unfairly,
 - b. Compensation Ksh 628,547.12
 - c. Notice pay Ksh 157,136.78
 - d. Costs of the suit.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 31ST DAY OF JULY 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

