



REPUBLIC OF KENYA



**KENYA LAW**  
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**Cheptoo v Kenya Power & Lighting Company Limited (Cause  
E042 of 2022) [2025] KEELRC 2204 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2204 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E042 OF 2022**

**M MBARŪ, J**

**JULY 24, 2025**

**BETWEEN**

**CAROLINE BOMETT CHEPTOO ..... CLAIMANT**

**AND**

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

**JUDGMENT**

1. The respondent was employed as a casual worker in November 1997 and then on contract from April 2006 as a clerk in the Business Development Section, earning Ksh. 86,012.38 per month. The work location was Electricity House, Mombasa.
2. The claim is that in September 2019, the claimant was summoned before the internal audit team to respond to audit queries relating to her work and alleged involvement in rebilling and unprocedural meter changes. The respondent alleged that, following investigations in the coast region, the claimant was found to be part of a network that collected money from customers and withheld revenue from the company. It is also claimed that the claimant received Ksh. 28,470 from private electricians as follows.
  - a. Ksh. 18,800 from Edlam O,
  - b. Ksh.1,330 from J Fumba,
  - c. Ksh.1,190 from K. Muthui,
  - d. Ksh.2,300 from Salim Mpate.
3. The claim is that the allegations had nothing to do with the claimant's duties. These allegations were premeditated and tainted with malice, resulting in a summary dismissal on 4 February 2020. The claimant is seeking an order of reinstatement to her position with full salary, and, as an alternative, payment of salary until retirement at 60 years. In the alternative, the claimant is seeking payment of the following terminal dues:



- a. Salary arrears from 10 February 2020 to date  $\text{Ksh.}86,012.28 \times 28 = \text{Ksh.}2,408.64$
  - b. Salary payment to retirement  $\text{Ksh.}86,012.38 \times 168 = \text{Ksh.}14,450,079,$
  - c. General damages,
  - d. Aggravated and exemplary damages,
  - e. Costs of the suit.
4. The claimant testified that the audit team summoned her to respond to various allegations. She was then issued with a notice to show cause, in which the respondent claimed that she had received money from four private electricians, thereby denying the company revenue. However, the allegations were first brought to her attention in the notice to show cause. During the disciplinary hearing, she was questioned only about the money she received from Salim Mpate, who had borrowed money from her for a chama, and he had made a refund via M-Pesa. Throughout the audit report, the claimant is mentioned twice as having received payment of Ksh. 28,470 from persons not identified. No details or dates were provided for the alleged payments made or received. The audit report does not mention any private electrician other than Salim Mpate. The respondent did not specify the origin of the other accusations.
  5. The claimant testified that her role in the department was to approve job designs and respond to customer queries. She had worked for the respondent for over 20 years and was due to retire with a clean record, but was instead summarily dismissed.
  6. The claimant also called Rogers Kweyu as his witness. He testified that he was present during the disciplinary hearing as the union representative and had also written to the respondent that the allegations made against the claimant lacked credibility. Rebilling and retrofitting are technical issues that an audit team cannot address, requiring personnel with expertise in these areas. The accusations against the claimant were to avoid the real problems facing the company, hence victimising persons who were unrelated to the alleged losses discovered by the internal audit investigations.

## Response

7. In response, the respondent's case was that the claimant was employed in November 1997 and rose to the position of clerk in the eBusiness Development Section, earning Ksh. 86,012.38. Following an internal investigation report on rebilling and unprocedural meter change in the coast region, it was revealed that the claimant was part of a network that collected money from customers and denied the company revenue. The claimant received Ksh. 28,470 from private electricians:
  - a. Ksh.18,800 from Edlam O,
  - b. Ksh.1,330 for J Fumba,
  - c. Ksh.1,190 from K Muthui,
  - d. Ksh.7,150 from Salim Mpate.
8. The claimant was issued a notice to show cause, but the explanations provided were found to be insufficient and inconsistent. The claimant failed to provide proof and account for the money received.
9. Following a disciplinary hearing, the employee was found to be culpable, resulting in termination of employment. She was entitled to a right of appeal, but failed to justify her actions.



10. The basis for termination of employment was legal and procedural. Through a letter dated 18 December 2019, a show cause was issued with particulars of matters the claimant was to respond to. The claimant responded and was invited to a disciplinary hearing on 13 January 2020. On 4 February 2020, notice of summary dismissal was issued, which allowed for the right of appeal.
11. The offence of gross misconduct, contrary to the code of conduct, occasioned the termination of employment. The respondent followed the provisions of sections 41, 43, 44, and 45 of the [Employment Act](#) and established there were justified grounds for the claimant's summary dismissal. The claims made should be dismissed.
12. In evidence, the respondent called John Tollah, who testified that as an internal auditor, the team received information indicating that complementary rebilling was being used to issue irregular credits to customers, and their meters were replaced to conceal the irregular rebilling, which was purportedly due to faulty meters. The team reviewed the credits awarded in the coastal region and established that Ksh. 41,139,766 was irregularly rebilled, resulting in a loss to the respondent.
13. The audit team established that the irregularities involved employees, customers, and private electricians. The team prepared a report dated 9 December 2019. The investigations included interviews and the collection of evidence, including M-Pesa statements and bank account statements.
14. Tolloh testified that the investigations established that where meters malfunctioned, it was the respondent's duty to replace them to safeguard against revenue loss. Rebilling is used to correct under- or overcharges on the customer's account. Still, employees have also misused this process to benefit directly by being paid to replace healthy meters through retrofitting, a change from post-paid to pre-paid. Private electricians were used to source customers with substantial outstanding debts. They paid in cash or through mobile money transfer.
15. The respondent also called Jasper Muretithi Kabutu, the senior human resources and administration officer, who testified that the claimant was employed as an assistant mate assistant earning Ksh.46,106.07 per month. As a clerk in the business development section, the claimant breached her contract of employment by failing to undertake duties and received money from private electricians, amounting to Ksh 28,470.
16. The claimant was allowed to show cause but failed to give satisfactory responses. She was invited to the disciplinary hearing, and the panel noted that the claim confirmed that private electricians were known to her and had received money from them for private business and chama. The claimant failed to explain why the money was flowing from only one direction in the sum of Ksh. 500 or Ksh. 1,000, and hence the disciplinary committee recommended summary dismissal. The claimant was allowed to appeal, but this appeal was without merit.
17. The claimant was paid her salary until 10 February 2020, and the claims made are without merit.

### **Determination**

18. According to the records, the claimant was last employed as a Front Desk Operations specialist with responsibilities in Design and Construction, as indicated in a letter of deployment dated 28 March 2019.



19. Through a notice dated 4 February 2020, the respondent terminated the claimant’s employment through summary dismissal. The reasons were that:

As part of the network that collected money from customers and denied the company its due revenue, you received Ksh. 28,470 from private electricians as follows ...

20. Under sections 44(3) and (4) of the Act, an employer is allowed the sanction of summary dismissal where the employee is in breach of the employment contract and for gross misconduct. The safeguard for the employee is Section 41(2) of the Act, which requires that she be informed of the allegations and allowed to make representations.

21. In *Cooperative Bank of Kenya Limited v Yator* [2021] KECA 95 (KLR), the court, in addressing a case of summary dismissal, held that:

... even where an employee has committed gross acts of misconduct, which acts warrant summary dismissal, the law requires that before such sanction is undertaken, an employer must ensure procedural fairness to the employee by allowing the employee to give his defence. Where the employer is unable to hear the employee in defence, such must only be in exceptional circumstances which the employer must demonstrate.

22. The employee must be given the benefit of notice and allowed a hearing to make representations. The evidence against the employee must be tabbed to allow for a proper response.

23. In *Kenya Revenue Authority v Rewel Waitihaka Gitahi & 2 others* [2019] KECA 300 (KLR), the court established that, in finding the employees culpable for gross misconduct, the employer had conducted investigations and the investigators examined more than 65,000 receipts that had been deleted over a period of two years. Further investigations sampled 360 original receipts recovered from taxpayers, which had been deleted from the system, and the system identified the person responsible for the deletions. This process helped to narrow down culpability to 12 employees out of 40, whose further investigations continued. The computer system could not be accessed for data deletion by anyone without the secret code, which was only possessed by the employees. The cashiers had personal passwords to the computer system for revenue collection.

24. What these cases demonstrate is that internal audits and investigations, unlike general reports, are targeted and focused. They are intended to uncover critical evidence and identify the culpable individuals. This is the The standard of proof described in the case of *Bamburi Cement Limited v William Kilonzi* [2016] eKLR and *CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona* [2015] eKLR that 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. Reasonable grounds must exist and be demonstrated.

25. The elements to be considered under section 41(1) of the Act are outlined in *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike* [2017] eKLR, that an employee must be allowed the following:

- (i) an explanation of the grounds of termination in a language understood by the employee;
- (ii) the reason for which the employer is considering termination;
- (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;



- (iv) hearing and considering any representations made by the employee and the person chosen by the employee.
26. In this case, the audit report dated 9 December 2019 mentions the claimant under paragraph 4.10.4 as part of the clerical staff who had transactions with private electricians. She is noted as staff No. 15909, who received Ksh. 28,470 without the details.
27. The other mention of the claimant is under paragraph 6.38, where the audit report indicates that she received Ksh. 28,470 from private electricians. The report noted that the claimant admitted to receiving money from Salim Mpate for chamas, part of which was a refund for money she had lent him earlier.
28. Did Salim Mpate testify to why there was a money exchange with the claimant?
29. Other than Salim Mpate, the claimant was alleged to have received money from:
- a. Ksh. 18,800 from Edlam O,
  - b. Ksh.1,330 from J Fumba,
  - c. Ksh.1,190 from K. Muthui,
30. No evidence is presented to support these allegations, and the details regarding access to the M-Pesa transactions leading to the claims are not provided. The audit process seeking to establish the revenue loss of Ksh.41 million ended up being perfunctory, and the claimant was assigned a loss of Ksh.28,470.
31. In this matter relied on the findings in *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike* [2017] eKLR and the case of *Kenya Revenue Authority v Reuwel Waitbaka Gitabi & 2 others* [2019] KECA 300 (KLR), cited above. The genuine belief that an employee has committed gross misconduct warranting summary dismissal is not a casual determination. Evidence must directly implicate the employee, and the employer should establish this connection. To merely suspect the claimant of receiving money from private electricians concerning the issues under investigation – such as rebilling and unprocedural meter changes – is to assign blame wrongly. This undermines the purpose and integrity of the inquiry. The claimant’s evidence remains correct that she was victimised while other employees who were indeed guilty. The fact that some employees, such as Linet Kemunto, who was found to have received money transferred from private electricians, were nonetheless issued a warning letter, highlights the provisions of sections 45(5)(d) and (e) of the Act. When assessing an employee’s culpability, the employer should consider:
- (d) The previous practice of the employer in dealing with the type of circumstances which led to the termination; and
  - (e) The existence of any previous warning letters issued to the employee.
32. The procedures were undertaken with a predetermined mindset. Some employees had to shoulder the blame. Indeed, there is no account of the respondent’s alleged fraud over Ksh. 41 million. An audit should be credited for what it ought to be.
33. The charge of rebilling and an unprocedural meter change assigned to the claimant was without proof. There is no link to the allegations that she received Ksh. 28,470 from private electricians. This was an amorfus term.
34. Fair labour practices are a fundamental requirement on the shop floor. In *Pathfinder International Kenya Limited v Stephen Ndegwa Mwangi* [2019] KECA 759 (KLR), the court emphasised that in employment and labour relations, unlike in criminal proceedings, parties are required to address



disciplinary cases at the shop floor as the best source of primary evidence. Therefore, failing to provide an employee with any material evidence to support their defence; to fail to investigate the case within a reasonable time to give an employee appropriate directions; failing to adhere to the pre-set rules of engagement, such as the internal policy regulations relating to disciplinary cases; such circumstances amount to an unfair labour practice. These are principles.

35. This position is aptly captured by the Supreme Court of Kenya in the case of *Kenya Ports Authority v Munyao & 4 others* [2023] KESC 112 (KLR) that:

... unfair labour practice encompasses all conduct prior to, in the course of employment, during and after termination of employment. The provisions of article 41 therefore encompass the full spectrum of labour practices. The provisions of article 41 are borne from the realization that employment and/or right to work is a human right. The right is also linked to other rights in the Bill of Rights, more so the protection of life and the dignity of a person. The right is, therefore, a principle with legal obligations.
36. Access to the employee's phone records for use as evidence against the subject employee without providing the employee a fair opportunity to review the documents and make an informed response is both unconstitutional and unlawful. It is weighed against Article 41 of the *Constitution* and Section 41 of the Act. These violations resulted in the unfair termination of employment, contrary to Section 45 of the Act, and cannot be justified under Section 43 of the Act.
37. The power granted to the employer to maintain work records should not be misused to retaliate against an employee who is denied access. A disciplinary hearing should be held to establish the facts of a dispute on the shop floor. Where the respondent obtained information from third parties, including mobile phone money transactions, such information should have been provided to the claimant as part of the information required at the disciplinary hearing. Hiding this information was not necessary in assisting the respondent to find out the truth of the applied transactions. Obtaining these records and failing to produce them in these proceedings does not place the respondent in good standing.
38. Regarding the remedies sought, the claimant is pursuing salary arrears from 10 February 2020, until the date of retirement. Employment was terminated on 4 February 2020, which has been established as unfair. An employee who is dismissed from her employment, although unfairly, is expected to mitigate her loss and seek new opportunities.
39. For the unfair termination of employment, the court takes into account that the claimant had a clean work record. She had served the respondent for 23 years. This had taken away the best part of her life in the service of the respondent. Taking these facts into account, a compensation of six months' gross salary is deemed appropriate at Ksh. 86,012.28 x 6 = Ksh. 516,073.68.
40. Notice pay is due in cases where summary dismissal is deemed unfair. The claimant is awarded Ksh. 86,012.28.
41. Although the claim for general damages and aggravated damages was pleaded, it did not elaborate on these claims.
42. On costs, the matter was filed in 2022. The conclusion of the hearings was often stalled due to the claimant's inaction. Each party shall bear its costs.
43. Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms:
  - a. A declaration that employment was terminated unfairly,



- b. Compensation Ksh. 516,073.68,
- c. Notice pay Ksh. 86,012.28,
- d. Each party to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 24TH DAY OF JULY 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

