



REPUBLIC OF KENYA



KENYA LAW
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**Chege v Kenya Power & Lighting Company Limited (Cause
E043 of 2022) [2025] KEELRC 2190 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2190 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E043 OF 2022**

M MBARÚ, J

JULY 24, 2025

BETWEEN

TERESIA WAIRIMU CHEGE CLAIMANT

AND

KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

JUDGMENT

1. The respondent employed the claimant in June 1992. She worked as a clerical officer in the customer service department, earning Ksh. 135,000 per month. She was based at the Mbaraki depot, Mombasa, working under the supervision of the engineer.
2. The claim is that in September 2019, the claimant was summoned to appear before the internal auditors to answer audit queries relating to her work and alleged violations of rebilling and unprofessional meter changes following audit investigations. The claimant responded but was later issued a notice to show cause over the same allegations, leading to a disciplinary hearing and summary dismissal on 4 February 2020, over allegations that she was part of a network that collected money from customers and denied the respondent revenue. She was accused of receiving Ksh. 98,930 from several private electricians who were agents of Crispus Mwaniki, and that she raised work orders for the conversion of post-paid meters to prepaid meters without formal request from the customers or approval from the section in charge.
3. The claim is that the allegations and charges made against the claimant were framed to terminate her employment. The allegations lacked proof, and efforts to obtain the details were not honoured. The audit report used to draw the allegations and charges was not shared, nor were the details of the alleged payments from private electricians as the agent of Crispus Mwaniki.
4. The claimant was denied her right to work and earn a living until retirement following the summary dismissal. She claimed an order of reinstatement to her employment position, along with back wages



for 28 months. Alternatively, payment for 120 months until retirement and payment of terminal dues for 148 months. The claims are:

- a. Order of reinstatement and back payments for 28 months Ksh. 3,798,411.12;
 - b. Payment to retirement for 120 months Ksh. 16,278,904.98.
 - c. Terminal dues for 148 months Ksh. 20,077,315.92.
 - d. General damages,
 - e. Aggravated and exemplary damages.
 - f. Costs.
5. The claimant testified that her role as a clerical officer included attending to customers, retrofitting, processing meter separation, and assigning jobs to technicians under the business development section, under the supervision of Engineer Mulu.
 6. In September 2019, the claimant was summoned by the audit team for alleged rebilling and an unprocedural meter change. She responded to all questions. She denied initiating any processes or jobs without the supervisor's instructions. Not all the jobs done were subject to fraud, as alleged. None were brought to her attention, and she had no relationship with the private electricians. None was named or called to give evidence. There was no agency with Crispus Mwaniki, who worked at the Coast regional office at Electricity House and handled all his computer passwords. The claimant had no access or authority to make changes to the system above the supervisor level.
 7. The claimant testified that she was accused of receiving Ksh. 98,930, which was a regular payment for various side jobs unrelated to her employment. These were not linked to the respondent in any way, and no evidence was presented to suggest that the money was obtained illegally. Despite the claimant presenting various records of her side job, which included running a beauty shop and selling clothes, the transactions were not verified. To support her business, the claimant submitted travel documents, including her passport, to demonstrate that she had made purchases abroad and sold clothes and beauty products to various individuals. The respondent did not take this evidence. She still runs the business to date.
 8. The claimant testified that she has never worked with Crispus Mwaniki as alleged. Her supervisor was Engineer Mulu. She gave the example of Jacob Mbalu, a workmate with whom she had released various work orders, but did not know Crispus Mwaniki or communicate with him. Jacob was a driver and would multitask at stores. She issued him several work orders, but lacked the authority to follow up on where the meters were fixed.
 9. The allegations that private electricians had paid her were unsubstantiated. The M-Pesa money transactions related to her private business, which has a permit and registration certificate as proof of ownership, as well as a sales ledger. The agents allegedly linked to Crispus Mwaniki were not provided with sufficient information to enable the claimant's address to be addressed effectively.
 10. One auditor, Amusala knew of the claimant's business and had made purchases. She traded with several other employees, and despite presenting this evidence, the respondent refused to consider it. The respondent had her M-Pesa statement without her knowledge and could have analysed these transactions. This was not done.
 11. The disciplinary hearing was pre-determined to victimise her and lead to summary dismissal, which was unfair and without justification.



12. The claimant called Rodgers Kweyu, the witness who testified that, as the union representative, he attended the claimant's disciplinary hearing and that of other employees. The audit report used technical terms such as rebilling and retrofitting without a clear understanding of the underlying processes. He wrote to management with concerns about the investigations and the audit report, noting that the audit had focused on personal issues rather than financial ones. Had the same issues related to financial and security processes, it would have highlighted the shortcomings. The auditors questioned various employees with a guilt-driven mindset, thereby denying them a fair chance to respond. The audit report, M-Pesa records, and bank statements were not provided to the claimant, nor to other employees. The auditors involved external persons, calling them private electricians, to create a conspiracy theory of an alleged scheme and network for revenue loss.
13. Kweyu testified that the audit team lacked professional experience and failed to appreciate the procedures related to retrofitting and rebilling, and their findings were flawed. There were omnibus findings of rebilling and retrofitting for the claimant and other employees without details or accompanying statements. The persons who conducted the investigations also participated in the disciplinary hearing, which was irregular, resulting in unfair termination of employment.
14. Kweyu also testified that the claimant and other employees were victimised and discriminated against. Some employees were issued with warnings, while no action was taken against others. The management had a predetermined intention to terminate the employment of specific employees, thereby acting in a discriminatory manner without justification.
15. In response, the respondent admitted that the claimant was employed as a clerical officer in the customer service department. Following an internal audit dated 9 December 2019, she was found to have engaged in unprocedural rebilling and meter changes with private electricians as the agent of Crispus Mwaniki. The claimant was issued with a notice to show cause but failed to provide a satisfactory response. She was invited to a disciplinary hearing and was found guilty of unethical and gross misconduct, which led to her summary dismissal.
16. The response is that the claims made are without merit. The claimant was taken through the due process backed with evidence. The claim lacks evidence of a constitutional or statutory violation.
17. On 18 December 2019, the claimant was issued with a notice to show cause based on the audit findings that she was part of the network that collected money from private electricians and denied the company revenue. The claimant received Ksh. 98,930 from electricians who were agents of Crispus Mwaniki. She raised work orders for the conversion of post-paid meters to prepaid meters without a formal request from the customers or approval from the supervisor.
18. The claimant was invited to attend a disciplinary hearing via a notice dated 16 January 2020. She attended, and the committee found her culpable, leading to her summary dismissal. She was allowed the right of appeal, which she exercised, but it was dismissed.
19. The respondent had justified reasons leading to the summary dismissal under sections 41, 43, and 44 of the *Employment Act* (the Act). Due process was followed, and the remedies sought, including reinstatement, should not be issued or the alternative reliefs.
20. In evidence, the respondent called John Tollah, an internal auditor, who testified that the following information about employees engaging in complimentary rebilling to issue irregular credits to customers and replacing their meters, which led to a loss of Ksh.41 million to the respondent, an internal audit investigation was conducted and a report submitted on 9 December 2019.



21. During the audit, the team contacted the claimant to address various issues where her conduct was found lacking. It was confirmed that when a meter malfunctioned, the respondent was responsible for replacing it to protect revenue. Rebilling would be performed to correct any overcharges or undercharges on the customer's account, but employees exploited this process to extract money directly from customers through retrofits. Private electricians were employed to identify customers with high bills, which would then be reduced. Customers paid in cash and via M-Pesa, with the proceeds used to compensate employees after they received their benefits.
 22. The claimant, being a clerk, had access to the system and was in a position to generate work orders. She raised a work order for a meter replacement and assigned it to a non-technical staff member, including Jacob Mbalu, who is a driver. The claimant received Ksh. 17,850 from several private electricians whose jobs she handled. The work orders generated were not approved as required by the respondent.
 23. Private electrician Hassan Malagho applied for a retrofit on behalf of Linda Antonio Batiste, customer No. 1350389, and generated a work order, which was assigned to Jacob Mbalu. The electrician confessed that he paid the claimant for the work done.
 24. Other accounts in the name of Fatma Omari Ahmed – 45644778 and 45644842 – were converted without authority, and the claimant generated the work order for Mbalu.
 25. Tollah testified that investigations revealed that the claimant alleged she was running a clothes business where the electricians made purchases. The same electricians' benefits form was used for work orders generated by the claimant. They paid between Ksh. 500 and Ksh. 1,000.
 26. The company was used as a syndicate and in collusion to deny it revenue. Under Section 44 of the *Act*, the conduct of the claimant was deemed to be corruption, hence gross misconduct, and thus eluded summary dismissal.
 27. Jasper Muriithi Kabutu testified that he is a senior human resources and administration officer of the respondent. The claimant, as a clerk, had duties such as attending to customers, retrofitting, processing meter separation, reviewing new connections, and preparing memos. The claimant was bound by the respondent's policy not to engage in unethical conduct or gross misconduct.
 28. Following an investigation, the claimant was found to have engaged in fraud and to have been part of a network that collected money from customers and deprived the company of revenue. She received Ksh. 98,930 from private electricians who acted as agents for Crispus Mwaniki. The claimant submitted a work order for converting post-paid meters to pre-paid meters without a formal request from the customers or approval from the person responsible. This constituted corruption and gross misconduct, resulting in her immediate dismissal.
 29. Muriithi testified that the claim went through the disciplinary process and was found culpable, resulting in termination of employment on 4 February 2020. She was given the right to appeal, and the claims made should be dismissed.
 30. At the conclusion of the hearing, both parties submitted written submissions.
- Determination
31. Through a notice dated 4 February 2020, the respondent terminated employment by summary dismissal on the grounds:

Being part of the network that collected money from customers and denied the company its due revenue, you received Ksh. 98,930 from several electricians who were agents of Crispus



Mwaniki. You also raised a work order for the conversion of post-paid meters to prepaid meters without a formal request from the customers or approval from your sectional head. ...

32. The notice to show cause issued on 18 December 2019, bore the same generic information as other employees. There were no particulars. The claimant was required to respond to why she had rebilled and performed an unprocedural meter change after receiving Ksh.98,930 from private electricians who were agents of Crispus Mwaniki.

33. In *Lydia Chepkosgei Mutai v Kenya Power & Lighting Company Ltd* [2016] KEELRC 1442 (KLR) and the case of *Kenya Revenue Authority v Reuwel Waitbaka Gitahi & 2 others* [2019] KECA 300 (KLR), the parameters of proof were outlined 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.

34. The court further relied on the case of *Bamburi Cement Limited v William Kilonzi* [2016] eKLR on the nature of proof required as follows:

The question that must be answered is whether the appellant’s suspicion was based on reasonable and sufficient grounds. According to section 47(5) the burden of proving that the dismissal was wrongful rests on the employee, while the burden of justifying the grounds of wrongful dismissal rests on the employer. It is a shared burden, which strictly speaking amounts to the same thing...

Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More Specifically the test is whether the employee’s dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee’s obligations to his or her employer.

35. In this regard, the genuine belief of the employer applied subjectively must be based on reasonable and sufficient grounds against the employee. The assessment of the context of the alleged misconduct, which violates an essential condition of the employment contract.

36. It is therefore not sufficient to plead that the employer issued notice of summary dismissal and relied on reasons it genuinely believed to exist under section 43(2) of the *Act*.

The provisions of section 43 should be read together with section 45(2) of the Act.

(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.

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—

37. The reasonable and sufficient grounds applied by the employer to terminate employment must be valid and fair.
38. These provisions must mirror the constitutional underpinning in article 41 of the Constitution, which governs rights and fairness in labour relations. This should serve as the foundation.
39. In this case, the claimant was alleged to have received money from private electricians as the agent of Crispus Mwaniki. The claimant was based in a different workstation from Crispus Mwaniki, and she testified that she did not know him or work with him. She was under the supervision of another employee, Engineer Mulu.
40. What is the connection between the alleged private electricians, the claimant and Crispus Mwaniki?
41. From the reports filed by the respondent, the claimant is alleged to have been involved in irregular rebilling, and she received Ksh. 37,850 work orders, generated by private electricians whose jobs she handled, were assigned to Jacob Mbalu, a driver. Part of the claimant's duties were to retrofit, process meter separation, review new connections, and issue work orders. The allegations made against her were that:

For instance, private electrician, Hassan Said Malagho applied for a retrofit on behalf of Linda Antonio Batiste, customer Account No. 1350389 whereupon Teresiah Wairimu generated work order and assigned it to Jacob Mbalu. The electrician confessed having given her money for good work done...
42. One of the claimant's duties is to issue work orders. The charge that she received money from private electricians as the agent of Crispus Mwaniki is not in tandem with the allegations made; there is a wide variance.

On the second allegation of:

... you also raised a work order for the conversion of post-paid meters to prepaid meters without a formal request from the customers or approval from your section in charge.
43. The subject works orders used for conversions and the meters changed are not particularized. The case was that:

... other accounts in the name of Fatma Omari Ahmed (456XX778 and 456XX842) were converted without authority, and Teresiah Wairimu generated a work order for Mbalu. ...
44. As noted above, the duties assigned to the claimant included generating work orders. What was the error in this transaction? Whose authority was she required to obtain? This has not been gone into. From the audit report, Jacob Mbalu was sanctioned for his conduct.
45. Fundamentally, the genuine belief is not based on valid, fair, and reasonable cause. The complexities of the investigations led to flawed allegations that the claimant was acting as an agent for another employee, without any evidence to support this. The auditors' investigations failed to carry out a proper human resource function, which is usually outside the scope of an audit.
46. The audit team had no specific mandate. This is not noted in the report.



47. The court finds that the summary dismissal of the claimant was based on reasons that lacked validity and were not fair and reasonable. This led to the unfair termination of employment, contrary to Section 45 of the Act.
48. The claimant is seeking an order of reinstatement with back pay. However, this remedy is overtaken by time under section 12(3) of the *Employment and Labour Relations Court Act*. Even if it were available, a return to the shop floor would be hostile and inappropriate. The claimant testified that she is still engaged in her business.

Notice pay and compensation are due.

49. The claimant had no poor record. She had worked diligently from June 1992 until 4 February 2020, when her employment was terminated. An award of 3 months' pay is hereby found justified at Ksh. 135,000 x 3 = Ksh. 405,000.
50. Notice pay is awarded at Ksh. 135,000.
51. Regarding the claim for damages, including exemplary and punitive damages, no details were provided. The written submissions did not explain these points, except for the claimant's assertion that she was treated differently from other employees. With the award of compensation for unfair dismissal, this should suffice.
52. Regarding costs, each party shall bear its costs.
53. Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms:
- a. Employment terminated unfairly.
 - b. Compensation Ksh.405,000.
 - c. Notice pay Ksh.135,000.
 - d. Each party bears 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

