



**Masire v Kenya Power & Lighting Company Limited (Cause
62 of 2022) [2025] KEELRC 2189 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2189 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 62 OF 2022**

**M MBARŪ, J
JULY 24, 2025**

BETWEEN

BONIFACE OGOLA MASIRE CLAIMANT

AND

KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

JUDGMENT

1. The respondent employed the claimant as a general worker in 1888 and later permanently as an artisan II at the Mbaraki office, Mombasa, earning Ksh. 200, 977 per month.
2. The claim is that in July 2019, the claimant was summoned by the internal audit team to respond to audit queries related to his work on rebilling and procedural meter changes. The claimant was then issued a notice to show cause and invited to a disciplinary hearing, which led to his summary dismissal on 4 February 2020, on the grounds that he received Ksh.77,965 from various electricians who were agents of Crispus Mwaniki Maina for irregular complimentary rebilling of accounts as follows:
 - a. Ksh.26,000 from D Wamalwa,
 - b. Ksh.4,528 from J Barasa,
 - c. Ksh.16,187 from M Odhiambo,
 - d. Ksh.31,250 from S Mpate
3. The claimant was also accused of irregular meter change, rebilling accounts, and failing to return replaced meters to the store.
4. The claim is that the allegations made were untrue. The respondent distorted the charges against the claimant to shift blame, as he lacked the power or authority to undertake rebilling or meter changes and therefore had no reason to receive the alleged monies. He was not connected to any meter or account



change as claimed. This was the result of a premeditated decision by the respondent to dismiss him based on malice. The disciplinary process was a sham, leading to an unlawful and unfair termination of his employment after over 37 years.

5. The claimant is seeking an order for restatement and the payment of back salaries. Alternatively, they request payment of salary until retirement or, in another alternative, payment of terminal dues.
 - a. Order of reinstatement and back salary for 28 months, Ksh. 5,627,356.
 - b. Salary for 54 months to retirement Ksh.10, 852,758.
 - c. Terminal dues until retirement Ksh. 16,480,114.
 - d. General damages.
 - e. Aggravated and exemplary damages.
 - f. Costs.
6. The claimant testified that his roles as an artisan included connecting listed meters for customers. He would receive an order and pick up the meter from the stores for installation. This would be allocated by the supervisor through a Work Order. He worked diligently until he was issued with a notice to show cause on 18 December 2019, and it was alleged that he had engaged in rebilling and irregular meter changes, and he was paid Ksh.71,000. He responded to the notice on 23 December 2019 and additionally asked the respondent for details of the allegations and the amounts he was said to have received. He also noted that he used to sell tilapia fish to various customers, a business he continues to undertake to date.
7. The claimant testified that the allegation of a meter change is incorrect since he had no profile to change a meter or allocate work to himself. Once a meter was changed, he had to return the previous one, which he did to his supervisor. The alleged meter change was not specified, preventing him from having a fair chance to respond.
8. On 3 January 2019, the respondent provided him with a breakdown of the alleged payments to electricians, including the names of Barasa, Wamalwa, and Mpate. However, these names were not supported by any M-Pesa statements to verify the nature and reasons for the payments.
9. The claimant was invited to the disciplinary hearing on 16 January 2020 and alleged that he received money from private electricians and that he performed meter changes and rebilling irregularities. Despite his explanations, he was dismissed from employment on 4 February 2020. He was not provided with the particulars of the alleged payments. The audit report that the respondent relied on was not shared with him to enable him prepare his response. Some of the payments and transactions in his M-Pesa related to a period before 2017, while the audit was conducted in 2019. Without the money transfer statements and details, the claimant was unable to relate to and provide a proper response during the disciplinary hearing. This resulted in an unfair termination of employment, and the claims should be upheld.
10. The claimant testified that he was accused of having taken 20 meters from the stores and handed them to William. The details were not provided to him to enable a proper response. The allegations that he received Ksh. 3, 000 for each meter were without proof.
11. The claimant also testified that he was accused on not returning some meters to the stores after completing site works. He had 3 meters noted as not returned including No. 13432257. During the audit process, he required to go to the stores and trace the 3 meters. He managed to get two and not all



- three. He asked for more time to trace it from the yard where the replaced meters had been dumped, and needed to go through the piles, but the audit team told him it was okay to stop the search. He could therefore only trace two and not meter number 13432257. Had he been given time, and allowed at the yard, he was sure to get it.
12. He had not been able to return the meters or account for them due to work pressure. The supervisor was aware of this fact and that all returned meters were left at the Mbaraki yard. There were protocols for the return of meters, which he failed to apply.
 13. During the disciplinary hearing, the claimant admitted that he had been paid by the noted private electricians, except for the payments related to his fish business. He also revealed that he had not returned all the meters to the stores and requested time to locate the one that was missing.
 14. The claimant also testified that at the time his employment terminated, he had liabilities with the respondent at ksh.276, 000 which had not been cleared. With the loss of employment, he was not able to pay. Previously, he had received a warning for illegally installing a meter in a different building instead of the designated location, as noted in the Work Orders. He received a caution letter for negligence from his manager.
 15. In response, the respondent's case is that the claimant's employment was terminated on 4 February 2020 for:
 1. Receiving Ksh.77,965 from various electricians who were agents of Cripsus Mwaniki Maina for irregular complimentary rebilling of accounts as follows;
 - a. Ksh.26,000 from D Wamalwa,
 - b. Ksh.4,528 from J Barasa,
 - c. Ksh.16,187 from M Odhiambo,
 - d. Ksh.31,250 from Salim Mpate
 2. Changing meters for irregularly rebilled accounts and failing to return replaced meters to the store.
 16. The claimant was invited to respond to the charges and failed to give a satisfactory response. The termination of employment by summary dismissal was justified.
 17. There was due process before the termination of employment. Through a notice dated 18 December 2019, the respondent invited the claimant to show cause for receiving Ksh. 77,965 from electricians who were agents of Crispus Mwanik Maina for irregular complimentary rebilling of accounts and for changing meters irregularly. The claimant responded on 23 December 2019 but failed to give satisfactory answers. He was invited to the disciplinary hearing and was found culpable, leading to the termination of his employment. Present during the hearing was his union representative.
 18. The claimant was allowed the right of appeal, but failed to raise any new issues, and it was rejected.
 19. At the time employment terminated, the claimant had various liabilities including:
 - a. Motorcycle loan Ksh.226, 000.40.
 - b. Staff bicycle loan Ksh.50, 400.Total Ksh.276, 400.40.



20. The claims are without merit, the claimant is not owed any salary arrears, and the suit should be dismissed.
21. In evidence, the respondent called John Tollah, the internal auditor and a member of the team that conducted investigations and submitted a report dated 9 December 2019. He testified that following the audit investigations, the respondent found the claimant culpable for receiving KSh. 77,965 from various electricians who were agents of Crispus Mwaniki Maina for irregular complimentary rebilling of accounts. The claimant was found to have been changing meters for irregularly rebilled accounts and failing to return the replaced meters to the store.
22. Tollah testified that during investigations, it was established that Said Manso, the caretaker for the Jiwali Baroda building in Mombasa, had a postpaid account (No. 14321160) and that 6 other buildings received credit of KSh. 103,816 before William, a private electrician, facilitated the retrofits. Boniface Ogola Masire, the claimant, collected 25 meters for the Jiwai Building and irregularly handed them to William, who received KSh. 3,000 per meter for installation.
23. On 28 September 2018, account No. 14321160 received irregular credit of KSh. 30,145 to clear the debt and to facilitate the retrofit.
24. On 2 October 2018, Salim Mpate paid KSh. 852 to clear the pending balance in the account No.14321160, and he sent KSh. 3,000 to the claimant, who collected the meter from the store to retrofit meter No. 009463505 with prepaid meter No.37193224013. In his statement, the claimant stated that he received money from fishing.
25. Tollah testified that the claimant facilitated the irregular replacement of postpaid accounts with meter No. 060946719 and 060929221, issued to Fatuma Ali Abdulrahman, with prepaid meters. This occurred after receiving irregular credits of KSh. 9,209 and KSh. 11,412, respectively. Following the replacement, the claimant failed to return the meters to the stores to conceal the irregularity.
26. When the claimant was questioned about his conduct, he admitted that his duties included fixing meters for customers, both new and old connections, and replacing meters. His supervisors included Benedict Mulu, who assigned work orders. He also stated that the sum of KSh.31,250 paid by Salim Mpate was from the sale of fish, and the KSh.3,000 payment was not for the installation of meter no. 37193224013, but for payment for fish he had sold. The KSh.20,000 payment from Wamalwa was for fish sales.
27. The claimant admitted that he had not returned meter No. 060946719 and 060929223 after collecting them from customer premises on 11 April 2019 due to work pressure. He stated that his priority was to attend to fixing and changing meters on site, which led him to overlook returning the meters to the stores.
28. The respondent also called Anne Siyamo, the senior human resource and administration officer, who testified that the claimant was found culpable of receiving KSh.77,765 from various electricians, changing meters for irregularly rebilled accounts, and failing to return replaced meters to the stores. Upon audit investigations, the claimant was invited to respond to the issues arising from his conduct. He was issued with a show cause notice but failed to give a satisfactory response, leading to a disciplinary hearing. Notices were issued, and he attended in the company of his union representative. Upon the decision of the disciplinary panel, the claimant was allowed the right of appeal.
29. Siyamo testified that the claimant had a record of disciplinary cases and was issued a warning letter on 22 January 2019 for negligence of duty by failing to retrofit meter No. 37194668382. On 4 April



2013, the claimant was issued a warning for intentional misrepresentation of facts regarding meter No. 60876343. On 24 August 2005, the claimant was cautioned for negligence of duty.

30. At the end of employment, the claimant had outstanding financial liabilities to the respondent, including the sum of Ksh.276,400. The claimant applied for loans which were not fully repaid and owes the respondent.
31. There are no written submissions on record.

Determination

32. The sanction of summary dismissal is the most severe and should only be issued in the clearest cases where the employee is found to be in breach of the employment contract and engaged in gross misconduct. Under section 44 of the *Employment Act* (the Act), the employer is permitted to terminate employment through summary dismissal. The procedures related to this are addressed in *Standard Group Limited v Jenny Luesby* [2018] KECA 353 (KLR); the employer is allowed the sanction of summary dismissal where their conduct amounts to gross misconduct. In the case of *Muthaiga Country Club v Kudheih Workers* [2017] KECA 282 (KLR), the court held that when the facts and evidence directly implicate the employee in breaching the employment contract and involve gross misconduct, summary dismissal is permissible.
33. The safeguard for the employee is the provisions of section 41 of the Act. In *Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Ltd*, [2013] eKLR, the provisions of section 41 of the Act were held to be a mandatory process. The ruling was upheld in the case of *CMC Aviation Limited v Mohammed Noor* [2015] eKLR.
34. The claimant's case is that he was wrongly accused of receiving money from private electricians, whereas he was engaged in a fish selling business. He was accused of changing meters for irregularly rebilled accounts and failing to return a meter to the stores, which was not correct; he accounted for all meters. His argument was that he was victimised in a broader scheme by the respondent for associating with his workmates. Additionally, the respondent was engaging in a blame-game after conducting an audit without following proper procedures.
35. The respondent's case is that the claimant was accused of receiving Ksh. 77,965 from electricians who were agents of Crispus Mwaniki Maina for irregular complimentary rebilling of accounts. That he received Ksh. 26,000 from D Wamalwa, Ksh. 4,528 from J Barasa, Ksh. 16,187 from M Odhiambo, and Ksh. 31,250 from Salim Mpate.
36. Who is Crispus Mwaniki Maina? Where the claimant is alleged to have received money as his agent, the connection between the payments and the claimant is unclear. The case that the payments arose from irregular complimentary rebilling of accounts remains unsubstantiated, as these accounts have not been reviewed. This piece of evidence is lost.
37. Furthermore, what happened to Crispus Mwaniki Maina? Was he held accountable for the alleged involvement with the claimant and the electricians? Which irregular accounts for complimentary rebilling were under scrutiny for the supposed payments? The audit may not have extended to this level.
38. The second charge related to the switching of meters during irregular rebilling accounts and the failure to return replaced meters to the stores. Tollah testified that on 11 April 2019, the claimant retrieved No. 060946719 and 060929223 from the customer's premises. He did not return them to the stores.
39. The claimant admitted that he had not returned meter No. 060946719 and 060929223. His reasons were that, at the time, in April 2019, he was overwhelmed at work and had a lot of pending tasks.



He also acknowledged that he was familiar with work procedures and that all meters collected from stores had to be accounted for. He did not regularise this aspect, which led to a case where he could not account for one meter. He requested more time to trace it at Mbaraki yard, but it could not be located.

40. This was a serious failure on the part of the claimant. His employer trusted him to perform his duties diligently. He failed to carry out his responsibilities with proper care and attention and to regularise the meters collected from stores in accordance with the policy. Under section 44 of the Act, an employee who neglects to perform their duties correctly or as specified in their contract of employment commits a serious breach and is negligent. This is subject to summary dismissal.
41. At the time of employment termination, the claimant had a poor record. He had been cautioned for negligence of duty and warned for various lapses in his performance of duties.
42. The failure to provide an account of work tools collected from stores, under the pretense of being overwhelmed at work, is not a reasonable excuse. The sanction of summary dismissal is justified.
43. The remedy of reinstatement or terminal payments is not justified.
44. The claimant owes the respondent Ksh. 276,400.40.
45. Accordingly, the claim is without merit and is hereby dismissed. 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

