



**Nyakira v Kenya Power Lighting Co Limited (Cause E049 of 2022)  
[2025] KEELRC 2203 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2203 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E049 OF 2022**

**M MBARŪ, J  
JULY 24, 2025**

**BETWEEN**

**VITALICE GUDA NYAKIRA ..... CLAIMANT**

**AND**

**KENYA POWER LIGHTING CO LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant is seeking the following orders:
  - a. A declaration that the summary dismissal was wrongful, illegal and unlawful,
  - b. Reinstatement to his employment and position and payment of his salary arrears from the time of the wrongful dismissal to date as follows,
    - i. Gross salary Ksh.94,487.49 x 28 months Ksh.2,645,636
    - ii. Salary expectation at retirement at 60 years Ksh.94,487.49 x 144 months Ksh. 13,606,128
  - c. In the alternative, payment of salary arrears and benefits from the time of wrongful termination to retirement with full pension benefits,
  - d. In the alternative, payment of the terminal benefits, salaries and benefits,
  - e. General damages,
  - f. Aggravated and exemplary damages,
  - g. Costs of the suit.



## Claim

2. The respondent employed the claimant as a casual worker from 2010 and then as an artisan Mate Assistant in January 2015. He was promoted to the Design and Construction Department, Coast Region, Mbaraki depot in Mombasa, earning Ksh. 94,487 per month. The claimant worked under the in-charge officer of his section and had no authority to initiate any work process other than through instructions from the supervisor in charge.
3. The claim is that in September 2019, the claimant was summoned to appear before the respondent's internal auditors to answer audit queries relating to his work. The respondent alleged that rebilling and an unprocedural meter change were discovered following audit investigations, per a report prepared by the respondent, Coast Region.
4. The claimant responded to all the questions and provided detailed technical explanations regarding the suspect meters. The evidence indicated that nothing suspicious had occurred, resulting in no revenue loss to the respondent. His personal M-Pesa transaction, referred to by the respondent, was entirely personal and unrelated to the respondent's operations. However, the respondent proceeded with a predetermined stance and disciplinary process, resulting in the claimant's summary dismissal on 4 February 2020 for the following reasons:
  - a. You abdicated your duties to private electricians,
  - b. You understated closing readings of various accounts to avoid correct billing,
  - c. You received Ksh. 60,488 from electricians who were linked to Crispus Mwaniki as follows:
    - Ksh.12,130 from J. Fumba,
    - Ksh.31,500 from K Were,
    - Ksh. 8,828 from M. Odhiambo,
    - Ksh.1,000 from S. Mwendwa,
    - Ksh. 6,500 from S. Mpate, and
    - Ksh. 530 from Tyson Mbugua.
5. The claim is that the charges against the claimant were spurious, and the alleged receipt of suspect money was made to tailor and support a determined outcome. The supposed right of appeal against the summary dismissal was processed perfunctorily to align with the respondent's already set outcome.
6. The claim is that the claimant had a legitimate expectation of working until retirement. However, he was subjected to discriminatory treatment by the respondent, who victimised him for exercising his right to freely associate with colleagues and participate in social activities, even though such associations had no relevance to work ethics. The respondent was aware of the perpetrators and beneficiaries of the alleged scheme to drain revenue, including one Crispus Mwaniki, who had access to computer passwords known by senior individuals working for the respondent. Instead of addressing the core issues at the regional or head office, the respondent resorted to mass victimisation of over 37 employees as scapegoats at Mbaraki depot, and the summary dismissal was a sham.
7. The claimant testified that he was working under the supervision of Adan Hilo and Sabina Olal, who reported to Eng. Ben Mulu. His duties included metering, installing meters, new installations, service line cables, meter separation, additional load, postpaid meters, prepaid meters, and retrofitting. He worked as part of a technical team of five persons under the supervisor.



8. The claimant testified that in September 2019, the internal audit team summoned him to respond to his alleged involvement in rebilling and an unprocedural meter change. He was alleged to have abdicated his duties to private electricians, understood closing readings of various accounts to avoid correct billing, and received money from private electricians.
9. The claimant testified that he responded to the allegations made against him and noted that he did not abdicate his duties. He also stated that the private electricians he was alleged to have worked with were not identified in the notice to show cause. The specifics of the allegations were not provided, and he could not have allowed third parties to perform his duties, since these were assigned by his line supervisor. Details of the meter readings and the understated accounts were also not given. When the auditors contacted the claimant, they indicated that he had received Ksh.136,000 through his Mpesa, but the letter of summary dismissal stated Ksh.60,000 without any explanation. The names of the individuals purportedly giving money were not mentioned until he received the response to the claim.
10. The claimant testified that he had received money from various persons for a family business that hired motor vehicles, tents, chairs, and drivers.
11. In his reply to the respondent's notice to show cause, the claimant did not deny receiving money from various individuals. The amount of Ksh.60,488 was received from Crispus Maina, a workmate, as well as other third parties who were unrelated to his work, from his private business.
12. The allegations that he gave Salim Mpate 19 meters were incorrect. He was not called during the investigations or the disciplinary hearing, nor was there a statement for the claimant to interrogate. Before exchanging a meter, the respondent required a process of application and approvals before validation. The claimant would record the meter reading before any change. In one instance, for account No. 020XXXX94, the individuals who entered it into the system made an error. The claimant's duties did not include system changes. His supervisor should have noted this and referred it to the proper officer to address.
13. In response, the respondent's case is that the claimant was employed as an artisan mate assistant and was dismissed on 4 February 2020 for neglecting his duties to private electricians, underreporting closing readings of various accounts to avoid accurate billing, and receiving Ksh.12,130 from electricians linked to Crispus Mwaniki as follows,
  - i. Ksh.12,130 from J Fumba,
  - ii. Ksh.31,500 from K. Were,
  - iii. Ksh.8,828 from M. Odhiambo,
  - iv. Ksh.1,000 from S. Mwendwa,
  - v. Ksh. 6,500 from S. Mpate,
  - vi. Ksh.530 from Tyson Mbugua.
14. There was a lawful and procedural basis for the termination of employment. On 18 December 2019, the respondent issued the claimant a show cause notice regarding the claimant's involvement in fraudulent activities against his employer and his failure to adhere to the company code of ethics. The show-cause notice followed an internal audit investigation into rebilling and unprocedural meter changes, dated December 9, 2019. It established that the claimant had abdicated his duties to private electricians, understated closing readings of various accounts to avoid correct billing, and received Ksh.60,488 from electricians linked to Crispus Mwaniki.



15. The claimant made his responses on 24 December 2019. The respondent considered the response on 7 January 2020 and invited the claimant to a disciplinary hearing on 15 January 2020, at which he attended with his union representative, the branch secretary of KETAWU. The claimant's explanations were unacceptable, and his employment was terminated on 4 February 2020 for gross misconduct. The offence was contrary to the code of conduct and ethics. The claim of discriminatory treatment was incorrect, and the claimant was allowed to associate freely with his colleagues.
16. The claimant had a poor work record and was issued a warning on December 10, 2018, for unacceptable conduct. On 30 September 2017, the claimant was warned over his conduct and given the benefit of the doubt. On 12 November 2015, the claimant was warned for insubordination.
17. During his employment, the claimant accrued various liabilities with the respondent. These included:
  - a. Employee sales Ksh. 2,000
  - b. Staff loan Ksh. 26,298.35
  - c. Motorcycle/scooter loan Ksh 30,000Total Ksh.84,496.46
18. The claims made are without merit and should be dismissed.
19. In evidence, the respondent called John Tollah, the internal auditor, who testified that the claimant was dismissed for gross misconduct. The respondent conducted investigations through an audit after receiving information that complementary rebilling was used to issue irregular credits to customers. The meters were replaced to conceal the irregularities on the account, as they were faulty. The claimant was dismissed following a disciplinary hearing.
20. Tolah testified that the respondent had been in the spotlight for suffering losses in its distribution network. As the country's sole electricity distributor, an internal audit was conducted to reduce losses and prevent instances of revenue loss. The investigations established the followings:
  1. The claimant gave Salim Mpate, a private electrician, meters who charged customers Ksh.4,000 for 9 meters and Ksh.4,800 for the other 10 meters,
  2. The claimant collected 19 meters from the respondent and handed them over to Salim Mpate, who installed them for Bethuel Kimonge Mwambada, a respondent's customer. Mpate charged Ksh. 4,400 for each. Benedict Mulu raised a work order to aid the meter installation, after which a credit of Ksh. 43,116 was issued for retrofitting electricity account No. 23XXXX797 and 18 others.
  3. The claimant collected 8 meters from the respondent and handed them to Moyo Abdalla Salim Kuuza, a private electrician who installed the meters for Mwanajuma Ali Dunga, a customer, for whom he charged Ksh. 6,500 for each. Benedict Mulu raised a work order to aid the installation of the meters for Ksh. 17,949 were issued for the retrofitting account No.23XXXX670, and 7 others were issued.
  4. The claimant assisted Hassan Said Malogho, a private electrician, in obtaining meters for his customers, after which he compensated them by paying between Ksh. 500 and Ksh. 1,000.
  5. The Mpesa statements confirmed that the claimant received Ksh 60,488 from private electricians who were linked to Crispus Mwaniki as follows,
    - i. Ksh.12,130 from J Fumba,



- ii. Ksh.31,500 from K. Were,
  - iii. Ksh.8,828 from M. Odhiambo,
  - iv. Ksh.1,000 from S. Mwendwa,
  - v. Ksh. 6,500 from S. Mpate,
  - vi. Ksh.530 from Tyson Mbugua.
21. Tollah also testified that the respondent's internal audit investigations involved observation, interrogation, and analysis of the data from InCMS, IMS, witness statements, and Mpesa statements obtained through court orders.
  22. The internal audit established that Ksh. 41,139,766 was irregularly rebilled. The respondent ordered a reversal and recovered Ksh. 22,873,841. The investigation revealed rebilling and an unprocedural meter change in the coastal region.
  23. The respondent also called Anne Siyamo, the human resources and administration officer based in Mombasa, who testified that the claimant's conduct while in service was not diligent. He was party to fraud and dishonesty and guilty of gross misconduct, which justified summary dismissal.
  24. The claimant was notified of his acts of gross misconduct and allowed to reply and attend a disciplinary hearing; however, he failed to provide satisfactory responses. The claimant did not request to be supplied with the internal audit report, the details of the allegations, or the names of the private electricians.
  25. The claimant had a poor record and was issued a warning on 10 December 2018 for using abusive language against his supervisor. He also failed to install a meter under Ref. No. A221XXXXX009, which resulted in an accumulated bill of Ksh. 2,061,421. When the matter was considered, he was issued a notice of benefit of doubt. The claimant was, therefore, a habitual offender.

### **Determination**

26. The main issue for determination in this case is whether the Claimant's dismissal was justifiable and lawful, and whether the remedy sought, reinstatement, should be issued or alternative remedies.
27. An employer is allowed the sanction of summary dismissal where the employee breaches fundamental provisions of the employment contract or engages in gross misconduct contrary to sections 44(3) and (4) of the *Employment Act*. Such an employee must undergo due process under section 41(2) of the Act.
28. In this case, the respondent asserts that the claimant was guilty of gross misconduct, as evidenced by the claimant abdicating their duties to private electricians, understating closing readings, and receiving Ksh. 60,488 from electricians who were linked to Crispus Mwanki.
29. The claimant, on his part, denied these allegations and stated that he received various sums from colleagues and other third parties related to his private business and social associations. Still, the respondent refused to accept his explanations. The claimant further asserted that the particulars of the abdication of duty were not brought to his attention prior to the disciplinary hearing and that he was not provided with the internal audit report, which would have allowed him time to prepare his responses. The show cause issued indicated that he had received Ksh. 123,000 from different persons, including his colleagues, but the termination notice contained details regarding Ksh. 60,488 were incorrect as he had no opportunity to cross-examine the listed persons.



30. Save for taking an employee through the due process of sections 44 and 41 of the *Employment Act*, Section 43 of the Act provides that:
- (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.
31. Section 45 (2) of the Act provides 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 fair -
      - (i) related to the employee's 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
32. The question then is whether the Respondent had a genuine reason to warrant the Claimant's summary dismissal and whether, in reaching its decision, the Respondent employed fair procedure.
33. First, the claimant was among 37 other employees dismissed by the respondent based on the internal audit report dated 9 December 2019.
34. Secondly, the claimant and other persons who had filed their claims in the same series were invited to answer audit queries, show cause, and eventually, a disciplinary hearing without the advantage of having the audit report. No one knew what the alleged private electricians had said about them.
35. The essence of section 41 of the Act is to notify the employee of the allegation he is facing so that he can make his representations.
36. The respondent invested in an internal audit to address the problem of loss of revenue of over Ksh. 41 million. Therefore, such a loss must be systematically addressed and the culprits identified. Obtaining a court order to access the M-Pesa statements of the employees, although lawful, had the counter-effect of ensuring that the data collected was brought to the attention of the affected employee during the enquiry period, allowing them a fair and reasonable opportunity to respond. Taking the data to apply it to ambush the claimant and other affected employees, lost the justification under Article 50 of *the Constitution*, and resulted in an invalid process.
37. The subject court order leading to data access from the claimant's M-Pesa statement was not produced in these proceedings, negating the alleged Court Order in this regard.
38. In the case of *Kenya Revenue Authority v Reuvel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR), the court emphasised that where the employer genuinely believes the employee to have committed an act of gross misconduct, this refers to instances where an employee either 'commits a criminal offence' or "on reasonable and sufficient grounds is suspected of having committed" a criminal offence to the detriment of his employer or his employer's property.



39. The standard of proof is on a balance of probability, not beyond a reasonable doubt, as held in *Bamburi Cement Limited v William Kilonzi* [2016] eKLR. All the employer must prove is why it “genuinely believed to exist,” causing it to terminate the employee’s services. That is a partly subjective test; the nature of proof required is as follows:

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

40. The foundation of genuine belief is reasonable and sufficient grounds based on the employee's conduct. The employer cannot merely claim that they genuinely believed there were reasons leading to the summary dismissal. The basis must be established, as held in *Nation Media Group Limited v Onesmus Kilonzo* [2017] KECA 181 (KLR), that, aside from the reasons being genuine, they must also be valid and fair under section 45(2) of the Act. This scenario was addressed in *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike* [2017] KECA 446 (KLR), in which the employer believed, and had ample and reasonable grounds for that belief, that the employee had attempted to steal cable wire from its stores, which he was in charge of. The existence of a reasonable basis and valid justification actualised the belief.
41. In this case, the claimant is accused of giving Mpate, a private electrician, 19 meters, which Mpate charged customers, denying the respondent revenue. Tollah testified that Mpate received 19 meters from the claimant, of which 9 were charged Ksh. 4,000 and 10 at Ksh. 4,800. In the audit, these 19 meters are not particularised. Did they exist? How were they identified and linked to the claimant?
42. Further, Tollah testified that the claimant collected 19 meters from the respondent and handed them over to Mpate, who installed them for Bethuel Kimonge, their customer, and he charged Ksh. 4,400 for each meter. Tollah emphasized that Benedict Mulu raised the work order for Ksh. 43,116 for retrofitting account No. 2376979 and 18 other meters. However, Tollah did not give the details of the 19 meters under reference. This is not related to the previous 19 meters under the initial charge. Meanwhile, the first set of 19 were charged Ksh. 4,000 or Ksh. 4,800, the second set of 19 was charged Ksh. 4,400. Without the details of the meter under reference in the audit report, the linkage to the claimant is lost.
43. Fundamentally, Benedict Mulu raised the work order, not the claimant. What responsibility was assigned to the officer to render an account? The alleged retrofitting of electricity account No. 23XXXX797 and 18 others without the particulars and relationship with the claimant is lost.
44. Notably, Tollah testified that the claimant collected 8 meters from the respondent and handed them to Moyo Abdalla Salim Kuuza, a private electrician, who installed them for Mwanajuma Ali Dunga and charged Ksh. 6,500. However, Benedict Mulu raised the work order for the installation at Ksh. 17,949 for account No. 23XXXX670 and 7 others.
45. Did the audit follow the paper trail to create a causal link with the claimant? Other than listing account No. 23XXXX670, where are the other 7? Did the supervisor, Benedict Mulu, consider all the meters and the retrofitting?
46. The other matter raised by Tollah was that the claimant assisted Hassan Said Malogho, a private electrician, in obtaining meters for his customers, after which he compensated them by paying between Ksh. 500 and Ksh. 1,000. However, the charges made against the claimant were that following the internal audit and court order to investigate his M-pesa transactions, it was confirmed that he received Ksh 60,488 from private electricians who were



- \* Ksh.12,130 from J Fumba,
  - \* Ksh.31,500 from K. Were,
  - \* Ksh.8,828 from M. Odhiambo,
  - \* Ksh.1,000 from S. Mwendwa,
  - \* Ksh. 6,500 from S. Mpate,
  - \* Ksh.530 from Tyson Mbugua.
47. Given the charges made against the claimant, who was Crispus Mwaniki? The respondent failed to pursue the witness summons for Crispus Mwaniki. Was he a necessary witness to confirm the allegations made against the claimant?
48. The chronology of events provided by the respondent against the claimant included allegations that he gave Mpate 19 meters. He charged various amounts, including Ksh. 4,400 for each, to Bethuel Kimonge. He collected 8 meters and handed them to Moyo Salimu, who charged Ksh. 6,500 for each. He also assisted Hassan Said Malogho in obtaining metres for his customers, and in return, he was paid Ksh. 500 or Ksh. 1,000. However, the Mpesa statements by the respondents show the following transactions:
- a. Ksh.12,130 from J Fumba,
  - b. Ksh.31,500 from K. Were,
  - c. Ksh.8,828 from M. Odhiambo,
  - d. Ksh.1,000 from S. Mwendwa,
  - e. Ksh. 6,500 from S. Mpate,
  - f. Ksh.530 from Tyson Mbugua.
49. The only connection is S. Mpate for Ksh.6,500, but there are allegations that Mpate was issued with 19 meters and paid between Ksh. 4,000 and 4,500 for each. There is no link with the rest. What was the alleged exchange for the payments?
50. The allegations that the claimant received these monies linked to Crispus Mwaniki is lost. The counter-effect is that the reasons for the summary dismissal are unrelated or interconnected to the claimant's alleged conduct.
51. Although the court acknowledges an underlying internal issue within the respondent's operations regarding meters, rebilling, and retrofitting, the commissioned internal audit failed to achieve its objectives. This can be traced from Tollah's evidence that the internal audit investigation only became necessary after the respondent was put in the spotlight for suffering losses in its distribution network, which is the sole electricity distributor. Otherwise, things would run as required until this negative spotlight came. The respondent had no other mechanism to establish the problem(s). In response to this spotlight, the internal audit was conducted. The claimant became one of its victims.
52. An audit is not concerned with generalisations; it is particular. This was not the case with the claimant's case.
53. Simply applying the audit report against the claimant and inferring that he failed to return all the meters to the stores and account for 3 specific meters he had removed from a site was to miss the bigger picture.



In any event, the supervisor, Benedict Mulu, addressed the location of meter No.020XXXX94, raised a JV to correct the error, and returned it for keying.

54. The critical evidence from the respondent is that several employees were involved in various matters related to the revenue loss. Breaking down the total loss to the claimant from Ksh. 41 million to Ksh. 60,488 is to abdicate the audit function and lay blame with inconsequential results.
55. The court finds no genuine and sufficient basis for the allegations against the claimant, which is valid and fair. This resulted in unfair termination of employment. The allegations tested within the provisions of sections 43 and 45 of the Act fail the test of fairness and validity.
56. The claimant is seeking an order of reinstatement. However, the termination of employment occurred on 4 February 2020, over 3 years ago. Under section 12(3)(viii) of the Employment and Labour Relations Court Act and section 49 (4) of the Employment Act, in addressing the remedy of reinstatement, the court is required to consider the time elapsed since the termination of employment, as held in Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] KECA 300 (KLR). Furthermore, the claimant had a poor work record; he received a warning for insubordination and insulting language towards his senior, which should be accounted for under section 45(5) of the Employment Act.
57. After considering all factors and the unfair summary dismissal, compensation remains necessary. The claimant worked for the respondent under his written contract from January 2015 to February 2020, a period of five years. He had hoped to retire at 60, but this was not the case. Compensation for three months is deemed appropriate at Ksh. 94,487.49 per month, totalling Ksh. 283,462.47.
58. On this basis, notice pay is due in one month at Ksh. 94,487.
59. The claim for salary arrears does not arise since the claimant has not offered any services to the respondent since 4 February 2020. He testified that he received various payments from third parties through M-Pesa from a private business; hence, he has mitigated his loss by engaging in other activities. The claim for payment until retirement is not justified.
60. Due to unfair termination of employment, terminal dues, including pension, are payable upon termination of employment. This shall be processed upon clearance.
61. The claimant had various liabilities to the respondent. These included:
  - a. Employee sales Ksh. 2,000
  - b. Staff loan Ksh. 26,298.35
  - c. Motorcycle/scooter loan Ksh 30,000Total Ksh. 84,496.46
62. These are deductible from the terminal payment under sections 17 and 19 of the Employment Act.
63. The claimant filed his claim for costs in 2022. The delay in completing the matter has largely been due to various adjournments occasioned by the claimant. Costs are not due.
64. Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms;
  - a. Employment terminated unfairly,
  - b. Compensation Ksh. 283,462.47.



- c. Notice pay Ksh. 94,487.
- d. The claimant shall clear for processing his due term of entitlement dues, including pension, if any.
- e. The dues above shall be paid less Ksh. 84,496.46 owed to the respondent,
- f. 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 .....

