



**Nyanguda v Kenya Power & Lighting Co. Limited (Cause
39 of 2022) [2025] KEELRC 2187 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2187 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 39 OF 2022
M MBARŪ, J
JULY 24, 2025**

**BETWEEN
CONSOLATA ANYANGO NYANGUDA CLAIMANT
AND
KENYA POWER & LIGHTING CO. LIMITED RESPONDENT**

JUDGMENT

1. The respondent employed the claimant as a casual worker in December 2006 as a relieving secretary. She was employed on permanent and pensionable terms as a clerical clerk in the business development section, earning Ksh. 114, 163.59 per month. The last posting was at Electricity House in Mombasa as the in charge, of the development engineer section.
2. In September 2019, the claimant was summoned to appear before internal auditors to answer questions related to her work and the alleged involvement in re-billing and procedural meter changes, based on an audit investigation and report prepared by the respondent for the Coast region.
3. The claimant responded to the summons. There were disciplinary proceedings and a summary dismissal on 4 February 2020 due to being part of a network that collected money from customers and denied the company revenue. The claimant was alleged to have received various monies from electricians totalling KSh. 22, 500 from K. Muthui Ksh.2, 300, K Were Ksh.15, 700 and from Salim Mpate Ksh.4, 500.
4. The claim is that the claimant had no power or authority to act or exercise the power to change meters, and the allegations made against her were not justified. The charges were made with a predetermined outcome of summary dismissal. The respondent relied on hearsay and illegally obtained Mpesa statements to justify the summary dismissal.
5. The claim was that the claimant was subjected to discrimination for exercising her right to freely associate with colleagues in her work environment and everyday social life, when such an association



had no effect on her work ethic or output and did not violate her employment terms. The disciplinary procedures were meant to victimise the claimant as a scapegoat over matters the claimant was not involved in/

6. The claim is that there was an unlawful and wrongful termination of employment. She claimed an order of reinstatement with back salaries from 10 February 2020 to June 2022, totaling 28 months, amounting to Ksh. 3,196,580.52.
7. In the alternative, the claimant is seeking the following terminal dues;
 - a. Unpaid salary from 10 February 2020 to June 2022 for 28 months Ksh.3, 196,580.52.
 - b. Salary expectation to retirement at 60 years Ksh.114,163.59 x 120 months Ksh.16,896,211.32
8. Further alternative, the claimant is seeking full payment of terminal benefits, salaries and compensation for wrongful dismissal;
 - a. Salary from 10 February 2020 to June 2027 114,163.59 x 148 months Ksh.16,896,211.32
 - b. General damages;
 - c. Aggravated and exemplary damages;
 - d. Costs of the suit.
9. The claimant testified in support of her claim that the respondent employed her as a clerical officer in the design and construction department. Her duties included attending to enquiries and complaints from customers, receiving new applications and meter separations from customers, and inserting applications as assigned by the supervisor.
10. In December 2019, the claimant was summoned to appear before the internal auditors to answer audit queries regarding the alleged involvement in rebilling and irregular meter changes. She was accused of receiving money from electricians and denied the respondent's revenue. That she received monies from electricians totaling Ksh.22, 500;
 - a. K. Muthui Ksh.2, 300;
 - b. K. Were Ksh.15, 700; and
 - c. Salim Mpate Ksh.4, 500.
11. During the disciplinary hearing, no evidence was produced. The claimant explained her work and that she initiated processes based on instructions from her supervisor. What she did was not faulted as being fraudulent or unethical. The allegations made against the claimant related to third-party transactions that were not part of her official duties.
12. The claimant testified that the alleged M-Pesa transactions related to church fundraisers and side hustles that are common in everyday life and had no relation to her employment with the respondent or customers' accounts. She explained the alleged payments during the disciplinary hearing and was not supplied with any customer accounts that had resulted in loss of revenue to the respondent. She protested the manner in which M-Pesa statements were extracted and manipulated to make a pre-determined decision, but the respondent went ahead and decided to terminate employment by summary dismissal.
13. The claimant testified that the disciplinary process was a violation of her rights due to the selective use of evidence, specifically M-Pesa statement extracts that the respondent produced for transactions



outside her employment. The alleged third parties were not called to allow the claimant to explain her relations with them, but the respondent relied on illegally obtained evidence with a predetermined outcome: summary dismissal. This was discriminatory and meant to victimise and scapegoat some employees, leading to termination of employment.

14. In evidence, the claimant called Rodgers Kweyu, the trade union branch secretary, KETAWU, Coast region. He testified that, as the union representative, he is familiar with the claimant's case, as well as with several other employees involved from Mbaraki Field Unit and Electricity House. The termination of employment followed an investigation into the audit. The union, as the employees' representative, was not consulted during the audit process and subsequent disciplinary proceedings. The investigations and disciplinary hearings were conducted in contravention of the procedures agreed upon in the CBA. The audit report was misleading and unprofessional, failing to reflect the actual state of affairs accurately. The union made its reservations on the audit report through letters dated 24 January and 28 August 2020.
15. Kweyu testified that there were no valid reasons for the audit investigations and the same was informed by the need for the management to be seen as doing something in the company. The audit targeted personnel issues rather than financial, technical, and security processes to identify any shortcomings in the coastal region. The appointed auditors had a premeditated outcome that intimidated and harassed the affected employees. The auditors resorted to rumours and external interference, particularly personal M-Pesa transactions, whose information was sourced illegally. The auditors involved external persons they termed 'private electricians' to achieve a set purpose to intimidate employees, when in fact, none of the allegations were proved.
16. The disciplinary process followed was flawed, hence unlawful. The charges were an omnibus of 're-billing and unprocedural meter change' when the financial auditors did not understand the process of re-billing and meter change. These are technical matters that were ignored. The charges had no accompanying statements of the allegations or evidence of M-Pesa transactions were obtained. This resulted in discriminatory treatment of the affected employees.
17. Kweyu testified that the appeal process was perfunctory. It was carried out without due process and was not impartial. The internal auditor, Okoth Kaluoch, was involved in investigations and disciplinary process and also participated in the appeal panel. The terms "re-billing" and "meter change" were misunderstood and misinterpreted to suit varying circumstances. The disciplinary panel did not understand company procedures, the role of private contractors and technical processes such as retrofitting, which featured in the secondary charges under the omnibus charge. The appeal panel did not appreciate that the audit was intended to conduct a financial audit and was not competent to conduct a technical or procedural audit; hence, their report could not be used in the disciplinary process. The audit did not account for the fact that the company's software system, the INCMS system, lacked controls. Despite staff complaints, the problems were shifted to the staff to defend the procurement and use of the flawed system.
18. Kweyu testified that all the appeals following the summary dismissals were upheld. This was despite each affected employee tabling evidence to support their case, and hence, proof that the respondent had a predetermined position on the matter. The claimant was victimised to justify a set decision.
19. In response, the respondent's case is that following the Internal Audit Investigations Report 2019/2020 on rebilling and unprocedural meter change coast region, it revealed that the claimant was part of a network that collected money from various electricians, totalling Ksh.22,500 from K. Muthui Ksh.2,300, K. Were Ksh.15,700, and Salim M pate Ksh.4,500. Called upon to explain, the answers to



the audit queries were insufficient and inconsistent. The claimant failed to provide proof or account for the money received when questioned during the investigation.

20. The claims of constitutional violations and discrimination lack specific details or evidence. The basis for termination of employment was legal and proper. The respondent followed the due process. Through a letter dated 18 December 2019, the claimant was issued a show cause notice outlining the offences committed. The notice noted that following an audit investigation, the claim was found to be part of a network that collected money from customers and denied the company the due revenue. The claimant received money from various electricians, totalling Ksh. 22,500. The claimant responded to the notice to show cause, upon which she was invited to the disciplinary hearing on 13 January 2020, where she attended in the company of her representative. On 4 February 2020, a notice of summary dismissal was issued.
21. The response is that termination of employment was occasioned by the offence of collecting money from customers and denied the company revenue. This conduct was unacceptable and left the respondent with no alternative but to dismiss the claimant from her employment to maintain a conducive work environment and order. The respondent followed the procedures outlined in Sections 40, 41, 43, and 45 of the *Employment Act*. The orders sought for reinstatement are not tenable, and the alternative reliefs sought are not due since employment was lawfully terminated. The respondent complied with Section 43 of the *Employment Act*, and the claims made should be dismissed with costs.
22. In evidence, the respondent called John Tollah an internal auditor. He testified that the internal audit department received information that complementary rebilling was being used to issue irregular credits to customers, and the meters were replaced to conceal the irregular rebilling, purporting that the meters were faulty. The credits were reviewed from the coast region to confirm accuracy. The respondent established that Ksh. 41,139,766 was irregularly filed, resulting in the company operating at a loss and losing revenue.
23. Once the audit reviewed the irregularities, it was established that the scheme of rebilling and unprocedural meter changes was multifaceted, where employees, customers, and private electricians worked in collusion to fleece both the company and its customers. Investigations were set out to establish who was involved.
24. A team of internal auditors conducted an investigation and filed an audit report on December 9, 2019. The auditors conducted a wide range of investigations that involved interviews with interested parties, the collection of evidence, and the review of M-Pesa statements and bank statements. The audit established the following;
 - a. Where meters are malfunctioning, the company must replace them to safeguard against revenue loss.
 - b. Rebilling is done to correct any under-/overcharge on the customer's account. However, employees used the system to benefit directly by getting paid to replace health meters through retrofit – change from post-paid to pre-paid.
 - c. Private electricians were used to source customers with huge or outstanding debts and would sell the idea of paying half the debt. Customers paid either in cash or by mobile money transfer, and the money was forwarded to the employees who were handling the rebilling.
 - d. the customers would be asked to pay 50 per cent of the debt, and it would be illegally cleared from the system, leaving a trivial balance which would be paid immediately by the customer or an agent.



- e. After rebilling, work orders were generated for meter replacement under the guise that the meter was faulty. The installation staff would then collect the meters from the store and hand them over to private electricians for installation. The private electricians would then demand between Ksh.2,500 to 3,000 from the customers for every meter. The clerk who generated the work orders would be paid a facilitation fee of between Ksh.500 and 1,000 per meter.
 - f. If a property has more than one post-paid meter and one is irregularly rebilled, to hide the irregularity, the other meters would be replaced through retrofitting.
 - g. Meter separation was also abused, where a customer would have their post-paid meter changed to pre-paid, and in the process, more meters were picked up by creating more accounts. Meters were collected by installation in preceptors but handed over to private electricians who sold them to customers.
25. Tollah testified that during the investigations, the claimant was implicated as a clerk in the Business Development Section. She had access to the system and was in a position to aid in the irregular complementary rebilling. She received money from 3 private electricians, being Ksh. 2,300 from K. Muthui, Ksh.15,700 from K. Were and Ksh.4,500 from Salim Mpate. Questioned during investigations, the claimant said that she was running a fish business and a church, and the payments by the electricians were church contributions ranging from KSh. 500 to 1,000, thus the several transactions with them.
 26. Tollah testified that, from a reasonable man’s perspective, it is not a coincidence that the claimant was known to the electricians and received money from them. As a clerk, this was to facilitate the irregular complimentary rebilling, and none of them supported the claims that they were making church contributions. The claimant used the company as a conduit in a fraudulent transaction, resulting in a loss of revenue.
 27. The respondent followed up on the reversal of Ksh. 41,139,766 that had been irregularly rebilled and recovered Ksh. 22,873,841. The claimant’s actions amounted to corruption and unethical practices, constituting gross misconduct under the Code of Conduct and Sections 44(3) and (4) of the *Employment Act*. The investigations recommended that that action be taken against the claimant for being part of a network that collected money from customers and private electricians. The claims made are without merit and should be dismissed.
 28. Jasper Muriithi Kabutu, the senior human resources and administration officer, Mombasa, testified that the claimant was employed in December 2006 as a relieving secretary and rose through the ranks to a clerk in the infrastructure development, earning Ksh. 45,686.40 per month. In her role, the claimant’s duties included receiving customer queries, new applications and meter separations. The claimant’s employment was regulated under the *Public Officer Ethics Act* and the Leadership Integrity Act, as well as the respondent’s Code of Conduct. All employees of the respondent are required to conduct their duties and abide by the law and the Code of Conduct.
 29. Following audit investigations and reports dated December 9, 2019, the claimant was implicated in unethical conduct, and disciplinary action was recommended. Through a notice dated 18 December 2019, the claimant was required to show cause why disciplinary action should not be taken against her for being part of a network that collected money from customers and denied the company revenue. The claimant received money from electricians, amounting to Ksh. 22,500 from K. Muthus, Ksh. 2,300 from K. Were, Ksh. 15,700 from Salim Mpate, and Salim Mpate Ksh.4,500.
 30. On 24 December 2019, the claimant replied but failed to address the monies received from the private electricians and further stated that she was not involved in any fraudulent activities stated in the notice



to show cause. These explanations were deemed unsatisfactory, and a full disciplinary hearing was necessary. Through a notice dated 6 January 2020, the claimant was invited to attend on 13 January 2020 and bring any witnesses and evidence.

31. The claimant attended the disciplinary hearing with her 3 witnesses. She admitted receiving money from the electricians but failed to provide evidence that the money transactions were for private business or church contributions as claimed. A summary dismissal was recommended and effected through notice dated 4 February 2020. The reason for the termination of employment was lawful and justified, as the claimant was found to be part of a network that collected money from customers and denied the company revenue.
32. The claimant filed an appeal on 21 February 2020 and was invited to a hearing, where she admitted receiving money from the private electricians and did not submit any proof that it was for private business.
33. Muriithi testified that on 4 February 2020, the terminal dues for the claimant were tabulated and paid through her salary on 10 February 2020. The respondent followed the due process outlined in Sections 41, 43, 44, and 45 of the *Employment Act*. The allegations that the termination of employment was unlawful and unfair are without merit and should be dismissed.
34. The Claimant submitted that the disciplinary process was flawed and predetermined, denying her a fair hearing and lacking valid reasons for termination. She argued that the Respondent presented no evidence to substantiate allegations that she was part of a network collecting money from customers and denying the company revenue, which was the purported basis for her summary dismissal. Furthermore, during the cross-examination of the Respondent's witnesses, they failed to establish a link between the Claimant and any wrongdoing. Essentially, the Respondent was unable to demonstrate a valid reason for termination under Section 43(1) of the *Employment Act* and did not afford her procedural fairness as required by Section 45(2) of the *Employment Act*.
35. In the case of *Benedict Abonyo Omollo- v Judicial Service Commission and 2 Others* (ELRC No.47 of 2015), and the case of *Keen Kleeners v Kenya Plantation and Agricultural Workers Union* (Civil Appeal No.101 of 2019), KECA 352(KLR) 17 December 2021, where the court has held that the employer must prove reasons leading to termination of employment under sections 43 and 45 of the Act. such reasons must be valid and fair.
36. The Claimant sought reinstatement, noting that Section 49(4) of the Act, read with Section 12(3) (vii) of the *Employment and Labour Relations Court Act*, regulates such orders, and an order should not issue after three years of dismissal. However, the Claimant filed suit within three years, and the cumulative delay of almost five years was not her fault; thus, she rightfully claimed reinstatement. In support of the prayer for reinstatement. The respondent is a public entity and can place her accordingly.
37. The Claimant also sought general and exemplary damages, citing the case of *Gichuru v Package Insurance Brokers Ltd* (Petition 36 of 2019) [2021] KESC 12 (KLR) (22 October 2021), where the Supreme Court, addressing discriminatory treatment, held that an employer must provide reasons for actions against an employee if discrimination is alleged. If no justification is provided for discriminating against a protected group, discrimination exists and must be addressed. In *OI Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR, which awarded Kshs.7,500,000 , and *Mary Mwaki Masinde v County Government of Vihiga & 2 Others* (2015) eKLR, which awarded Kshs.3,000,000. Based on the cited case law, the claimant submitted that the circumstances of her termination warrant an award of general and/or exemplary damages, as well as an award of Kshs. 2,000,000 would be adequate. She also sought the costs of the suit.



38. The respondent argues that the claimant failed to prove her reasons for receiving the money that caused her dismissal. The Respondent cites section 107 and 108 of the *Evidence Act* and referenced the case of Gateway Insurance Co Ltd v Jamila Suleiman & another, which cited Trust Bank Limited v Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001, where the Court stated that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. The respondent concluded that the claimant's failure to controvert the evidence justified her dismissal under the Code of Conduct and her employment contract.
39. Regarding procedural fairness, the respondent submitted that it has demonstrated that the claimant was issued a show-cause letter, given an opportunity to respond, invited to a disciplinary hearing, and allowed representation by a union official. Accordingly, the claimant participated actively in the disciplinary hearing, and the dismissal letter clearly stated the reasons for termination. Further, her subsequent appeal was also heard. Therefore, procedural fairness was maintained.
40. The respondent cited Section 45 (2) and section 44 (3) of the *Employment Act* and the case of Thomas Sila Nzivo v Bamburi Cement Limited, where the Court held that the employer had reasonable and sufficient grounds to suspect the Claimant of having acted to the substantial detriment of the Respondent and its property, and was justified in summarily dismissing the Claimant under Section 44 [4] [g] of the Act. The Employer was not required to have conclusive proof of the Claimant's involvement; it was only expected to have reasonable and sufficient grounds.
41. The respondent submitted that it complied with Sections 41 and 43 of the *Employment Act* and had a reasonable belief that the claimant violated the Code of Conduct and her employment contract. In any event that 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 as held in Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2016] KEELRC 19 (KLR) and Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] KECA 446 (KLR) where the Court of Appeal reiterated that Courts must balance the interests of both employers and employees, recognising that employers are also Kenyans with rights that the courts are obligated to respect and uphold, underscoring that justice is a two-way highway.
42. The respondent emphasised that Section 49 of the Act provides remedies for breaches, and the court should consider the impact of the employee's breach or wrongful conduct while weighing the financial and operational impact of damages on the employer. Therefore, the respondent asserted that the claimant is not entitled to remedies for wrongful termination, as the dismissal was fair.

Determination

43. Through a notice dated 4 February 2020, the respondent terminated the claimant's employment by summary dismissal. The reasons were that the claimant was involved in rebilling and an unprocedural meter change, as per the audit investigations report dated 9 December 2019. The charges were that;
44. Being part of the network that collected money from customers and denied the company its due revenue, you received money from various electricians totaling Ksh. 22,500 as follows: K. Muithui, Ksh. 2,300, from K., Ksh. 15,700 and from Salim Mpate, Ksh. 4,500.
45. Before the summary dismissal, through a notice dated 18 December 2019, the respondent required the claimant to show cause why her employment should not be terminated following the internal audit investigations report of 9 December 2019. The claimant was accused of rebilling and an unprocedural meter change. The charge was that the claimant was part of a network that collected money from



customers and denied the company due revenue. You received money from various electricians, totaling Ksh. 22,500 as follows ...

46. The claimant replied on 24 December 2019 and noted that;
- ... I work as a clerk in the Business Development Section. My roles and responsibilities are as follows;
1. Attending to queries and complaints from customers.
 2. Receiving new applications and meter separation from customers.
 3. Insertion of applications in the system.
47. Therefore, I am not in any way involved in the meter change since it is purely done by the customer service section.
48. During the Audit process, there was no single fraudulent activity that was raised from the process that I carry out on the system. I am also not aware of any case that money was collected from customer to facilitate the process that I do on the system. I have not been informed of any process that I did on the system that resulted in the customer losing its due revenue.
49. All my activities are office-based and I only process meter separation that has been verified and approved by our customer service teams.
50. Money issues are relative, and they can be for many purposes, and therefore I did not receive any money from electricians to facilitate fraudulent activities as indicted in your letter. ...
51. Tollah testified that the audit investigations revealed that rebilling was meant to correct any under/overcharge. Still, the employees used the rebilling to benefit directly by getting paid at the company's expense.
52. The claimant was alleged to have received money from electricians. Where the noted persons were indeed electricians paying her for rebilling or meter change, the connection(s) to the noted rebilling and meter change(s), if any, were not investigated. The link between the alleged re-billing and meter change is not addressed. The alleged payments by the private electricians must have been for a reason(s).
53. The claimant explained the M-Pesa transactions between her and the private electricians related to her social activities, which were unrelated to her employment. These included selling fish and church fundraising. The audit team asked the claimant to support these transactions, but she asserted that fish is bought in the open market without a receipting system. At the same time, church activities and fundraising are not receipted.

The audit team was not satisfied.

54. Crucial in this regard is rebilling and meter change. Which rebilling was affected? Which meter change was affected? Any retrofit identified?
55. The caustic link to the claimant, the alleged electricians or any revenue loss, as a result, is lost. As an audit process, save for M-Pesa transactions from the claimant, the link to rebilling details, meter changes, and retrofit identification would have given crucial particulars to the charges made against the employee. What then was the purpose of the audit investigations following an alleged loss of Ksh.41,139,766? Did the audit do a paper trail to find out how such huge amounts were lost by the claimant?



56. Crucial in Tollah's evidence was the fact that the respondent has officers for installation inspectors. In rebilling, meter changes, or retrofitting, what is the link to the claimant?

Blame must be elsewhere.

57. For these proceedings, the claimant's case and her response to the notice to show cause on 24 December 2019 appear to be truthful. She was not involved in rebilling or meter changes as alleged. The details of the rebilling and meter changes were not provided, preventing her from responding effectively to the allegations. Efforts to link her M-Pesa transactions, based on explanations for selling fish and church fundraising, are everyday activities for citizens. Without the missing details of the rebillings and meter changes, or retrofit, the allegations against the claimant lack validity, reasonable justification, or lawfulness.
58. *Keen Kleeners v Kenya Plantation and Agricultural Workers Union (Civil Appeal No. 101 of 2019)-KECA*. The court emphasised that, under sections 41, 43, and 45 of the Act, the employer is not only bound to undertake the procedural requirements but also to provide substantive justice. Beyond adherence to the procedures, Section 45 of the Act requires ensuring that there are valid and fair reasons for the termination of employment. The court held that:
59. The duty placed upon the employer does not end with compliance with the procedural requirements outlined in sections 35 and 41 of the Act. Under section 43 of the Act, an employer must prove the reasons for the termination....Beyond adherence to these requirements under Section 45 of the Act, the law places an equally heavy burden upon the employer to not only justify the grounds for termination, but go further to prove that the reasons given for termination of employment are valid and fair and weighed in the circumstances of the case, such reasons are reasonable.....Even where the due process is addressed by issuing an employee with notice of alleged misconduct and inviting him to a disciplinary hearing, which the respondents did to the claimant, the reasons leading to the termination of employment must meet the fairness standards of sections 43 and 45 of the Act.
60. This position is reaffirmed in *Simiyu v Buke Tours & Safaris Limited & another [2025] KEELRC 2050 (KLR)*, where the court held that under section 45 of the Act, the termination of an employee's contract of service will be deemed unfair if the employer is unable to demonstrate that he had a valid reason to terminate the contract; and he terminated the contract in accordance with fair procedure.
61. The fact that the employer has a valid reason to terminate an employee's contract of service is not enough to justify ending an employment relationship. In addition to having valid grounds for termination, the process the employer uses to dismiss the employee must be fair. The requirements of Section 41 of the Act are mandatory, as held in *Mary Help The Sick Mission Hospital & another v Ngung'u [2025] KEELRC 1938 (KLR)*.
62. An employer cannot rely on a genuine belief that the employee has committed workplace misconduct or gross misconduct. This belief must be founded on cogent evidence which, on a balance of probabilities, points to the employee's culpability. It cannot be founded on conjecture. This is what I understand the courts to have been saying in *Kenya Revenue Authority v Reuwel Waitthaka Gitahi & 2 others [2019] eKLR*, *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] KECA 446 (KLR)* and *Galgalo Jarso Jillo v Agricultural Finance Corporation [2021] eKLR*.
63. In the instant case, the court has not been shown the persuasive material upon which the Respondent entertained the belief that the Claimant was guilty of the accusations which were levelled against her.
64. On the show cause notice, it is apparent from the response that the Claimant provided a cogent rebuttal to the accusations against her. In return, the respondent failed to submit evidence on how the claimant



was linked to the alleged loss of Ksh. 41 million in rebilling and retrofitting. The claim that the claimant was part of a network leading to the loss of revenue was based on conjecture rather than evidence.

65. In the premises, the court finds the respondent did not substantiate the charges it levelled against the Claimant. As such, the respondent has failed to demonstrate that it had substantive grounds to terminate the Claimant's employment through summary dismissal.
66. This resulted in unlawful and unfair termination of employment.
67. The claimant is seeking an order of reinstatement and back payments. However, this is overtime in time under Section 12(3) of the Employment and *Labour Relations Act*. Again, the claimant left under a very hostile work environment, and a return will not foster peaceful industrial relations.

The alternative prayer is payment of terminal dues.

68. Given the finding of unfair termination through summary dismissal, the claimant had diligently worked without any poor record from December 2006 to 4 February 2020. She had hoped to retire on her employment with the respondent, but this was not to be. Compensation at three months gross salary of Ksh. 114,163.59 x 3 = Ksh . 343,490.77 is hereby found justified.

Notice pay is due at Ksh. 114,163.59.

69. Regarding the claim for general damages, exemplary damages, and punitive damages, the findings above relate to the unfair termination of employment and are addressed and redressed. The compensation award shall suffice.
70. On costs, the claimant made a great effort to have the matter heard without delay. However, due to various reasons beyond her control, the matter could not be concluded earlier than now. She is entitled to 50% of her costs.
71. Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms:
 - a. a declaration that employment terminated unfairly,
 - b. Compensation Ksh. 342,490.77.
 - c. notice pay Ksh. 114,163.59,
 - d. 50% of costs.

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

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

