



REPUBLIC OF KENYA



**KENYA LAW**  
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**Owino v Kenya Power & Lighting Co. Limited (Employment and Labour Relations Cause E047 of 2022) [2025] KEELRC 2169 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2169 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E047 OF 2022**

**M MBARŪ, J**

**JULY 24, 2025**

**BETWEEN**

**APPELLES ACHIENG OWINO ..... CLAIMANT**

**AND**

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

**JUDGMENT**

1. The respondent employed the claimant in 2007 as an assistant clerk in the business development section, earning Ksh. 63,285 per month. The work site was Electricity House in Mombasa, working under the supervision of the development engineer.
2. The claim is that in September 2019, the claimant was summoned before the internal auditors to answer audit queries related to her work and alleged involvement in rebilling and unprocedural meter changes, following audit investigations as per the report prepared by the respondent. The claimant responded to the queries; however, the respondent had already predetermined the outcome of the disciplinary hearing, resulting in a summary dismissal on 4 February 2020.
3. The claim is that following the audit investigations dated 9 December 2019, the respondent alleged that the claimant was part of the network that received money from private electricians and denied the company revenue. It was alleged that she received Ksh.40,377 from the following persons:
  - a. Ksh.5,870 from Salim Abdurrahman,
  - b. Ksh. 1,800 from J Barasa,
  - c. Ksh.1,000 from K Were,
  - d. Ksh.24,907 from M Odhiambo and
  - e. Ksh.6, 800 from Salim Mpate.



4. The claimant denied these allegations, stating that there was no evidence to link her to the allegations, hence leading to an unfair termination of employment. She was victimised for associating with her workmates in the work environment and was used as a scapegoat, targeted over alleged fraud.
5. The claimant claimed damages for loss of employment that she had hoped to undertake until retirement. The alternative, payment of salaries and benefits until retirement. In the alternative, payment of terminal dues and benefits.

The claims are:

- a. Salary arrears from 10 February 2020, for 28 months, Ksh. 63,285 x 28 Ksh.1,771,980
  - b. Salary until retirement for 156 months Ksh. 9,872,460
  - c. Terminal benefits for 188 months Ksh.11,644,440
  - d. Costs of the suit.
6. The claimant testified that during the audit investigations, when summoned, she confirmed that she had not initiated any processes or jobs that were not under her supervisor's instructions. No instructions received resulted in fraud or unethical activities related to customer accounts or the denial of revenue to the respondent. She had no dealings with private or external electricians who violated company policy. No one was named or called to give evidence against the claimant to support the allegations.
  7. The claimant testified that she worked for the respondent for 20 years with no record of misconduct. The alleged M-Pesa transactions used by the respondent related to personal money borrowings or loans connected to a side hustle that was common in everyday life and unrelated to customer accounts. She confirmed this during the disciplinary hearings, and no additional evidence was provided to challenge her assertions. The respondent obtained manipulated records to support a predetermined outcome.
  8. The claimant testified that she was accused of rebilling, yet he had no power to take such action. This was not her role. In her department, she did not do meter separation. Upon receipt of an application for a new meter, she was inserted into the system as new work, which is different from meter separation.
  9. The claimant testified that she was issued a notice to show cause for rebilling, but it was not true that private electricians had sent her money. She confirmed that she knew Salim Abdurrahman, Michael Odhiambo, and Salim Mpate, but did not know or have a relationship with Barasa and Were.
  10. The claimant admitted that Abdurrahman paid her Ksh. 5,500 because she owned a boutique and sold clothes to him. Salim was a long-time customer and would buy bags, shoes and lesos. Salim bought clothes for Ksh 5. 870 and bags for Ksh 3. 000. The boutique offered a variety of items for both men and women. He collected different items on other days. Michael Odhiambo also bought shirts and shoes from the boutique. One time during a festive season, he bought goods worth Ksh 24. 600.
  11. The claimant testified that she continues to run the boutique to date. She sold various items to Odhiambo, Were, and Barasa, who paid in cash; she cannot recall the exact details. Despite defending herself before the disciplinary panel in the absence of her accusers, the respondent issued a notice of summary dismissal. During investigations, the noted private electricians were not mentioned. She did not have the M-Pesa statements that the respondent was relying on.
  12. The claimant called Rogers Kweyu as her witness. Kweyu testified that the respondent carried out an internal audit after the regional manager raised concerns about rebilling and retrofitting. The claimant was a clerk and was not involved in rebilling or retrofitting.



13. Kweyu testified that, as the secretary of the union in the region, on 28 August 2020, he wrote to the respondent regarding the issues of rebilling and retrofitting, noting that these were technical terms and that the audit team required an expert to explain them before applying them to the claimant and other employees. The line manager was responsible for assigning an employee in revenue the task of establishing a new connection. In this case, rebilling related to internal connections not carried out by private electricians, and it is unreasonable to hold the claimant responsible for this issue, as they were involved in business development and not meter reading. The allegations and the reasons given for summary dismissal are not logical.
14. Kweyu testified that he attended the disciplinary hearing with the claimant, and the panel was from outside the coast region, as was the norm. He was not given a chance to explain the technical application of rebilling and retrofitting, which would have greatly assisted the disciplinary committee in coming up with a proper finding.
15. One fact that he noted was that, under clause 6.30.6 of the audit report, the findings are incorrect.

He has never delegated any of the jobs assigned to him to private electricians (Note: he handed over 19 meters to Salim Mpate, who charged the customer Bethuel Kimonge Ksh.84,000 for 19 meters, see 4.6.1)
16. The respondent failed to conduct the internal audit to determine who made the meter changes and why. The use of the terminologies of rebilling and retrofitting was not appreciated or given the correct interpretations.
17. In response, the respondent's case is that, through an internal audit and investigations into rebilling and unprocedural meter changes in the Coast Region, it was revealed that the claimant received money from persons involved in fraudulent activities and was summoned to report on the investigation's findings. The claimant's explanations to the audit queries were insufficient and inconsistent. The claimant failed to provide proof or account for the money received when questioned during the disciplinary hearing.
18. Through the letter dated 18 December 2019, the claimant was issued with a show cause notice regarding the offences committed. The investigations revealed that the claimant was part of a network involved in rebilling and unprocedural meter changes, and thus collected Ksh. 40,377 from electricians after processing applications submitted by private electricians. This deprived the respondent of revenue.
19. The claimant responded to the show cause letter and considered her response. The disciplinary hearing was convened on 13 January 2020 and found her culpable, resulting in her summary dismissal, as per a notice dated 4 February 2020. The claimant was given the right of appeal, which was heard on 17 November 2020 and declined.
20. The response also states that the summary dismissal was justified, and the claimant was afforded due process. The claims made are not justified and should be dismissed with costs.
21. In evidence, the respondent called John Tollah, an internal auditor and part of the team that conducted the investigations in the report dated 9 December 2019, regarding rebilling and unprocedural meter changes in the Coast region.
22. Tollah testified that during the review, the auditor's investigations included interviews and the collection of evidence, such as M-Pesa statements and bank account records. This confirmed that when meters malfunction, the respondent had a duty to take measures to prevent revenue loss. Rebilling is



performed to correct any under- or overcharges on a customer's account; however, employees exploited this process to their advantage by obtaining payments to replace faulty meters through retrofitting, a shift from postpaid to prepaid services.

23. Private electricians were hired to find customers with large unpaid debts. Customers would pay either in cash or via mobile money transfers. The money would be sent to the employees, including the claimant, to help with the rebilling process. The customers would be asked to pay 50 per cent of the debt, and the remaining amount would be legally cleared from the system, leaving a small balance to be paid immediately.
24. After the rebilling, work orders were created for meter replacement, claiming they were faulty. The installation team would then pick up the meters from the store and hand them over to private electricians for installation. The private electricians would charge between Ksh. 2,500 and 3,000, while the employee is paid between Ksh. 500 and 1,000 per meter.
25. Tollah testified that during investigations, the claimant was implicated as a clerking member of the business development section with system access, capable of assisting in irregular complementary rebilling by facilitating meter separation to obtain new meters for customers whose bills had been cleared. The claimant received money from private electricians, and when questioned at the disciplinary hearing, she claimed to own a boutique but lacked evidence to support this claim.
26. Through a syndicate involving the claimant, the respondent lost revenue, and the claimant was complicit in this loss. Through fraudulent transactions, the respondent pursued Ksh. 41,139,766, which had been irregularly rebilled, and recovered Ksh. 22,873,841, which would have been lost due to fraud. The claimant's actions included corruption and conflict of interest, and under section 44 of the Act, this justified summary dismissal.
27. Ann Siyamo, the senior human resources and administration officer, testified that the claimant was an assistant clerk in business development, earning a basic wage of Ksh. 42,254.07 per month. Her roles included inserting and processing paid and received applications into the system, as well as attending to customer queries.
28. Following an audit investigation, the claimant was found to have engaged in dishonest and unethical conduct, resulting in summary dismissal. She received money from private electricians and, upon showing cause, was admitted to the same. The disciplinary panel heard the claimant and found her culpable, which justified the sanction issued. The respondent followed due process, provided reasons for termination, and allowed for the right of appeal.
29. Siyamo testified that the claimant had a poor record and was previously involved in other disciplinary issues, including soliciting a bribe from a customer for Ksh 10,000 to supply electricity via reference No.E22122011030361. The claimant was suspended during the investigations and later issued a warning for the offence.

Parties agreed to file written submissions.

Only the claimant complied.

30. The Claimant submitted that the foundation of her claim, along with similar claims by former colleagues, is an internal audit titled 'Investigation Report No. 01-2019/2020 – Rebilling and Unprocedural Meter Change – Coast Region', which alleged irregular issuance of credits through complementary rebillings, purportedly disguised through meter changes, leading to an irregular rebilling amounting to Kshs. 41,139,766.00. The Claimant argues that this audit was not an impartial fact-finding exercise but rather a search for scapegoats following allegations of financial loss. Notably,



the Audit team's lead, Mr. John Tollah, did not provide a letter of instruction for the audit nor submit any operations manual or protocol that was followed.

31. The Claimant alleges that the audit and disciplinary process was procedurally flawed, as employees who were summoned were never informed of the reasons for their summons. The materials allegedly relied upon, such as M-Pesa statements, witness statements from customers and electricians, and system-generated data, were neither presented in court nor disclosed to the Claimants. She also argued that instead of conducting formal interviews or recording minutes, the auditors chose to summarise their findings in paraphrased narratives, which she characterises as speculative interpretations lacking any evidentiary basis. She further contends that the audit report, which spanned over 65 pages, was never provided to her, with crucial documentation being deliberately excluded from the court record on the justification that it was too bulky.
32. The claimant submitted that despite this lack of transparency, she was issued Notices to Show Cause. Disciplinary hearings followed these, but at no point was there access to the evidence against her. The Resources department acknowledged that the disciplinary panel had access to certain system information that was never made available to the employees. This lack of parity undermined the fairness of the process. There was no valid reason for termination, and the employer's burden under Section 43(1) of the [Act](#) to prove the grounds of dismissal was not discharged.
33. The Claimant described the allegations against her as an unsubstantiated afterthought, emphasising that no specific acts of misconduct were ever linked to her. Instead, she claims the accusations were based on hearsay, conjecture, and unlawfully obtained information. The claimant was unfairly targeted due to her association with certain colleagues, while others in similar positions were not subjected to any disciplinary action. As such, she regards her dismissal as unjustified, procedurally unfair, and therefore illegal, as held in [Benedict Abonyo Omollo v Judicial Service Commission and 2 Others](#) (ELRC No. 47 of 2015), which emphasised the employer's duty under Sections 43 and 45 of the [Act](#) to prove both the substantive and procedural fairness of a dismissal. Even where the procedural requirements, such as issuing notices and holding hearings, are observed, the reason for termination must still meet the fairness standard.
34. The Claimant seeks reinstatement under Section 49(4) of the Act, noting that although nearly five years have passed since the dismissal, she filed this suit within the statutory three-year period. She argues that the delay was not of his making, relying on the Benedict Omollo case, where the Court ruled that reinstatement could still be granted beyond the three-year period where delay was not attributable to the claimant, especially where dismissal had irreparably damaged the claimant's professional standing.
35. The Claimant also seeks general and exemplary damages. In support of this prayer, she cites [Gichuru v Package Insurance Brokers Ltd](#) (Petition 36 of 2019), where the Supreme Court held that discriminatory employment practices require justification. The respondent in that case failed to justify actions taken against the employee, leading the court to conclude that the claimant had been unfairly discriminated against and was awarded general damages of Kshs. 2,000,000. In [Ol Pejeta Ranching Ltd v David Wanjau Muboro](#) [2017] eKLR, in which the court awarded Kshs. 7.5 million in damages, and [Mary Mwaki Masinde v County Government of Vihiga & 2 Others](#) (2015) eKLR, which awarded Kshs. 3 million. Accordingly, the Claimant proposed an award of Kshs. 2,000,000 as appropriate.

## Determination

36. Under section 44 of the Act, an employer is allowed to terminate employment due to breach of the employment contract or gross misconduct. In the investigation report dated 9 December 2019, under



- clause 4.10.4, the claimant is identified as part of the electrical staff who had dealings with private electricians. The amount of Ksh. 40,377 is allocated. However, no details are provided.
37. The statement acknowledged under clause 6.37 of the report aligns with what the claimant maintained in her evidence. She had a boutique and sold various items to different persons, including Salim, Barasa and Were.
  38. In *Barclays Bank of Kenya v Ndegwa* [2024] KECA 1852 (KLR), the court held that, in assessing a termination of employment claim, under Section 43 of the *Employment Act*, the applicable test is whether the employer at the time of terminating the employee's services genuinely believed that there existed reasons justifying the termination. This position is reiterated in the case of *Kenya Power & Lighting Company Limited v Aggrey Wasike* [2017] eKLR and *Lawrence Nyamichaba Ondari v National Hospital Insurance Fund* [2018] eKLR.
  39. However, the employee also enjoys legal protection. In *Kenya Power & Lighting Company Limited v Aggrey Wasike* [2017] eKLR, the court emphasised that the test under section 43 of the *Act* is subjective. There must be a reasonable basis for believing and acting in the manner that the employer does in terminating the employment.
  40. This scenario is gone into in *Barclays Bank of Kenya v Ndegwa* [2024] KECA 1852 (KLR), cited above. The court analysed an alleged fraudulent transaction involving an employee and third parties. A trail of events was reassessed. The court applied the subjective test, upon the application burden of a balance of probabilities, the events narrated by the employer,
 

... [the employer] established to the required standard that it genuinely believed that the respondent was privy to the audit report submitted to the Bank in support of the loan application by Shani Engineering.
  41. The subject employee had access to the audit report. In this case, the claimant was not privy to the reports that led to the notice to show cause; the disciplinary hearing panel had access to various reports and statements, including the M-Pesa mobile transfers, without providing them to the claimant.
  42. In *Ondari v National Hospital Insurance Fund* [2025] KECA 687 (KLR), the court, in addressing the standard of proof under section 43 of the *Act*, held,
 

The interdiction letter, the internal audit report, and the EMU report all clearly state that the appellant was being blamed for failing to perform his duties with due diligence to safeguard the respondent and for causing the loss of public funds due to his acts and omissions. Finally, the termination letter gave the said reasons for terminating the appellant's employment.

Upon receiving the preliminary report implicating the appellant, the respondent involved the appellant, where the report was discussed. It did not stop there; further investigations were conducted, after which the appellant was asked to respond, which he did. An independent report was commissioned and obtained from EMU, all of which implicated the appellant. If an individual is deemed negligent in their actions or fails to perform their duties, leading to the organization losing funds, what other valid reason would an employer require?
  43. The employee benefited from the audit report; he was involved in the investigations and discussions. Further investigations were carried out, allowing the employee to respond. Evidence implicated him in the loss of funds.



44. In this case, Tollah presented evidence that the claimant was involved in a network that facilitated fraudulent transactions through rebilling and retrofitting. He testified that the claimant would engage private electricians to source customers with large balances and advise them to pay through employees to reduce the balances by half. To cover this, a work order would be generated for meter replacement under the pretence of being faulty. In this case, the claimant or installation staff would collect meters from the store and hand them over to private electricians for installation, then charge customers between Ksh. 500 and 3,000 per meter, and in return, pay the claimant between Ksh.500 and 1,000.
45. Tollah emphasised in his evidence that the claimant had access to the system and was in a position to assist with the irregular complimentary rebilling and meter separation to obtain new meters for customers who were irregularly billed. However, the details of the irregular rebilling, the specific meters that were changed, or the new ones issued upon separation, and the customers affected in the process are not addressed. The serious gaps in the audit cannot be due to error. Instead, they suggest it was deliberately planned. The claimant should be found culpable.
46. If this evidence were to be taken as correct, the audit undertaken would have easily followed a paper trail. The composition of the network. In particular, the customers sourced by the claimant for rebilling and retrofitting, if any. The affected meter(s) changed, and the huge outstanding balances were reduced by 50 per cent, followed by the installation of postpaid or prepaid ones.
- The causal link with the claimant is missing.
47. What the court was left with is an allegation of rebilling, retrofitting, and an unprocedural meter change devoid of evidence. The alleged payment of Ksh. 40,377 from the from:
- a. Ksh.5,870 from Salim Abdurrahman,
  - b. Ksh. 1,800 from J Barasa,
  - c. Ksh.1,000 from K Were,
  - d. Ksh.24,907 from M Odhiambo and
  - e. Ksh.6, 800 from Salim Mpate.
- A result that is not in line with the charge or allegation.
48. Indeed, the claimant admitted that she knew and transacted with Salim, Barasa and Were. Her case was that she had a boutique selling various items to them. Were there also investigations to check the veracity of the payments? For example, when did the claimant receive payment from Odhiambo at Ksh. 24,907 vis-à-vis the audit queries? How is this payment related to the rebilling and the unprocedural meter change? Which rebilling and which meters were altered?
49. Ultimately, were the details of the audit availed to the claimant before the disciplinary hearing?
50. The respondent called witnesses who confirmed that the claimant was not issued the audit report or the M-Pesa records. The reason was that she did not ask for them.
51. The purpose of section 41 of the *Act* is to protect both the employer and the employee on the shop floor during disciplinary hearings. It cannot be true that an employer should be permitted to use its power and resources to ambush an employee to justify a summary dismissal. This is unacceptable in an open and democratic society based on human dignity, equality, equity, and freedom. This is the essence of our constitution and the quintessence of fair labour practices secured under Article 41 of the *Constitution*.



This resulted in unfair termination of employment.

52. On the remedies sought, reinstatement is overtaken in time, and the circumstances in the cited case of *Benedict Abonyo Omollo v Judicial Service Commission and 2 others* are different. The claimant in this case had a record of previous warning for soliciting money from a customer, while the other had no such record. Under section 45(5) of the *Act*, such matter must have a bearing in assessing the remedies sought.

The claimant is entitled to notice pay and compensation.

53. The claimant had worked for the respondent from 2007 to 2020, a period of 13 years. A compensation of 3 months is hereby found appropriate at Ksh.63, 285 x 3 = Ksh. 189,855.

Notice pay is due at 63,285.

54. Regarding costs, based on the analysis above, each party will cover its own costs.

55. Accordingly, judgment is hereby entered for the claimant against the respondent for compensation at Ksh. 189. 855 and notice pay at Ksh. 63,285. 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 .....

