



**Shinaka v Kenya Power & Lighting Company Limited (Cause
E050 of 2022) [2025] KEELRC 2171 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2171 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E050 OF 2022**

**M MBARŪ, J
JULY 24, 2025**

BETWEEN

SILAS MAYEKA SHINAKA CLAIMANT

AND

KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

JUDGMENT

1. The respondent employed the claimant as a clerk in 1996 and progressed through the ranks to the position of Field Artisan 2 in the customer service department, Coast region, Mombasa. His salary was Ksh. 158,126 per month.
2. The claim is that in September 2019, the claimant was summoned by the internal auditors to answer audit queries related to his work. He was specifically called to respond to issues referred to as rebilling and unprofessional meter change. These questions allegedly arose from an audit investigation.
3. The claimant responded to the questions and provided detailed technical explanations regarding the suspect meters, which evidence showed that nothing untoward had occurred, leading to the alleged revenue loss.
4. The claim is that, despite the auditors finding no fault in his responses, the claimant was invited to attend a disciplinary hearing and on 4 February 2020, he was issued with notice of summary dismissal. The reasons were that;
 - i. Irregularly rebilled under complimentary method, Ksh. 11.8 million and Ksh. 6.5 million credits and debits, respectively.
 - ii. Colluded with other staff to retrofit the illegally rebilled accounts to conceal the irregularities.
 - iii. Received Ksh. 15,000 from Tyson Mbugua via Mpesa on 11 May 2019 and thereafter rebilled account 22993301 for Rukiya Mohammed Ali.



- iv. Irregularly reduced the reading on Kenneth Maina Kobia's account by 520 units, giving it an irregular credit of Ksh. 14,937.
5. The claim is that the framing of the charges against him purported to assign powers and authority he did not have. He undertook his duties diligently and could not permit the receipt of suspect money as alleged. The charges made against him were merely to place blame on him to justify the summary dismissal.
6. The technical auditors found no issues with the claimant's work processes. The claimant was not supplied with evidence of the allegations made against him to allow him to prepare his responses. He suffered loss and damage since he had legitimate expectations to work in his position until retirement and thus claims an order of reinstatement and, in the alternative, compensation, general damages, plus aggravated and exemplary damages.

The claimant is seeking the following:

- a. An order of reinstatement with back pay
 - b. Salary for 28 months $\text{Ksh.}158,126 \times 28 = \text{Ksh. } 4,427,528$.
 - c. Salary expectation to retirements for 96 months $\times 158,126 = \text{Ksh.}15,180,096$.
 - d. Compensation for 124 months $\text{Ksh. } 19,607,624$.
 - e. General damages,
 - f. Aggravated damages.
 - g. Costs.
7. The claimant testified that, as a filed clerk 2, he was under the supervision of Eric Lipese, and his duties included attending to customers and rebilling. His supervisor would allocate and assign duties to him. In September 2019, the audit team called him and alleged that he was involved in rebilling and unprocedural meter changes. He was accused of colluding with other staff for retrofitting, which was not part of his duties. The respondent also alleged that he received Ksh.15,000 from Mbugua to change Kobia's account by rebilling, which was not correct. These allegations were not supported by any evidence. The 11.8 million and 8.5 million credits and debits alleged to have been allocated by the claimants were not specified. He asked for details, but none were provided.
 8. The claimant stated that on 9 May 2019, he received money from Tyson Mbugua, a colleague, which was a loan to pay his rent. The respondent claimed that he received the money on 11 May 2019, which is incorrect. No M-Pesa statement was produced to verify receipt of any money on that date.
 9. During the disciplinary hearing, the claimant admitted to receiving money from Tyson Mbugua, stating it was for a loan. This was not related to the question of rebilling 520 units for Kobia, as one was personal and the other work-related. The respondent officers called Kobia, and he vindicated the claimant, stating that he had no fault and was not dismissed.
 10. The allegations of retrofitting were not particularised. He was unable to provide the necessary details.
 11. Upon cross-examination, the claimant testified that while responding to the allegations made against him, he noted two accounts, No. 23148109 and 23148103. The customer came and stated that his meter had not been used for several months, and the claimant used his meter readings to adjust the bill out of trust, but the customer had given incorrect meter readings.



12. The claimant admitted that he made a mistake in trusting the customer. In the process, he missed a digit/point. By failing to send a meter reader to obtain proper readings, he made a mistake.
13. The claimant also admitted that he received money from Tyson Mbugua, but this did not change the meter reading. He had no details that Nuru sent Ksh.22,000 to Mbugua when he asked for a friendly loan from him to pay rent. He gave Ksh. 15,000.
14. At this time, the claimant worked on various meters, including No. 22993301. He rebilled the account using the photo that the customer had shared.
15. The customer provided readings for the period from 22 October 2017 to 12 July 2018, which were 39951 instead of 42360. The meter had remained active, but the customer claimed it was the same in April 2019.
16. The claimant thus admitted to rebilling the incorrect amount due to the error and trusting the customer.
17. The claimant also testified that he reduced Kenneth Kobia's account by 520 units. Upon his response, he was contacted and surcharged. He was not dismissed.
18. In response, the respondent's case is that the claimant was a Field Assistant III and, following audit investigations, he was found to have irregularly carried out his duties. He was issued with a notice to show cause dated 18 December 2019 and responded on 24 December 2019, but this was not satisfactory. He was invited to a disciplinary hearing where he failed to provide a proper explanation of his misconduct, leading to his summary dismissal on 4 February 2020.
19. The response is that the claimant was found guilty of irregularly rebilling using the complimentary method. He colluded with other staff to illegally alter accounts to hide the irregularities. He received Ksh.15,000 from Tyson Mbugua and the rebilled account No. 22993301 for Rukiya Mohamed Ali, and he irregularly reduced meter readings on Kenneth Maina Kobia's account by 520 units, giving it an irregular credit of Ksh.14,937.
20. This was gross misconduct that justified summary dismissal. The claimant was taken through the due process and allowed to make his representations. He was given the right of appeal but did not raise any new grounds; therefore, it was dismissed. The respondent acted lawfully and under the provisions of sections 41, 43, and 45 of the [Employment Act](#) (the Act). The claims made are not justified and should be dismissed.
21. In evidence, John Tollah testified that following an audit investigation by the Coast Region Office, the claimant was found to have engaged in irregular rebilling and retrofitting, receiving money and irregularly reducing meter readings. He was invited to show cause but failed to provide a satisfactory explanation.
22. From investigations, it was discovered that the claimant had significantly more credit rebills, yet his allowable limit was Ksh.100,000. He had excessive money transactions through M-Pesa between himself, other employees, and private electricians, which contributed to the irregular rebilling, meter changes, and processing of customer applications.
23. The claim was based on Electricity House in Mombasa from June 2018 to May 2019, and he rebilled using the complementary method, amounting to Ksh. 11.8 million, with Ksh. 6.5 million in credits and debits, respectively. The reasons for the rebilling were deliberate and aimed to benefit customers who, in turn, paid the claimant and other employees.



24. Investigations revealed that on 11 January 2019, the claimant rebilled account No.22993301 for Rukiya Mohamed by reducing the readings by 2,361 units from 42312 to 39951, and the customer received a credit of Ksh.59,166. The system corrected the irregularity once the correct meter reading was obtained, and the customer was billed appropriately.
25. On 11 May 2019, the claimant decreased the same account's meter reading by 2,384 units from 42335 to 39951, resulting in the customer receiving a credit of Ksh.63,463. He used the same method, but the system automatically corrected the irregularity when a reading of 42360 was recorded on 19 May 2019.
26. Tollah testified that while the claimant was conducting rebilling on 11 May 2019, he indicated in the RCCS that the readings provided by the customer Phone No. 0729617502, and upon investigation, this was discovered to be Tyson Mbugua, a private electrician. The building caretaker, Tindo Nuru, admitted he had sent Ksh.20,000 to Mbugua to help settle the bills and have the meter retrofitted. On the same day, the claimant received Ksh.15,000 from Mbugua and rebilled the account on 11 May 2019.
27. The claimant provided snapshots of meter readings showing a reading of 39951, but this was registered in the system in April 2018. A reading from August 2019 indicated a reading of 42360, and therefore, the adjustment is unjustified.
28. Tollah testified that on 5 March 2019, the claimant rebilled account No. 23148103 for Zuhura Njeri Mugo by reducing the units by 4,000 and gave the customer a credit of Ksh.91,038 without indicating the source of his meter reading. A rebilling on 22 March 2019 reinstated the units.
29. Kenneth Kobia's account No.26211481, a driver for the respondent in Busia, had a meter in Mombasa that was not read from November 2017. On 7 March 2019, accurate readings were obtained and billed at Ksh 68,081. The account was unlawfully rebilled, retrofitted, and a postpaid meter was concealed to hide the closing reading. The employees responsible for these alterations were paid to hide the debt, including the claimant, who on 22 May 2019 raised an RCCS reducing the bill by 520 units to Ksh 14,937, claiming that the readings were 11114. Kenneth Kobia sent Ksh 2,000 to the claimant.
30. On 24 June 2019, the claimant instructed Norman Nuru to raise an RCCS for a faulty meter and assign it to Oscar Obayi for action. On 21 June 2019, Obayi had raised a Work Order and authorised himself to collect the meter before the RCCS. Meanwhile, the finance division recovered Ksh. 64,579 from Kenneth Kobia via the payroll.
31. Tollah testified that Oscar Wasakha could not locate three meters, 060065303, 0342929, and 062193258 since he retrofitted immediately after the claimant had rebilled the account. The claimant admitted to rebilling the account for Zuhura Njeri Mogo when the customer presented meter readings, and he never verified the information. He also admitted receiving money from Tyson Mbugua, private electricians, following which the account for Rukia Mohamed was rebilled.
32. The respondent suffered a loss of revenue as a result of the conduct of the claimant, which provided justified grounds for summary dismissal.
33. The respondent also called Jasper Muriithi Kabutu, the senior human resources and administration officer, who testified that following the audit report dated 9 December 2019, the claimant was issued with a notice to show cause, leading to disciplinary hearing and he was found culpable. He was dismissed from his employment through summary dismissal for unprofessional conduct contrary to policy and sections 43 and 44 of the Act. He was given the right of appeal, which he exercised, but he did not justify his conduct. The summary dismissal was justified because the claimant received money from private electricians upon irregular rebilling and irregular reduction of meter readings.



34. Kabutu testified that at the time of the disciplinary hearing, the claimant had a work record. On 9 February 2017, he was issued a benefit of doubt letter, and on 28 May 2019, he was issued a caution notice. The claimant was a habitual offender.
35. The claimant had liabilities of Ksh. 167,729.19, which has not been repaid.
Both parties filed written submissions.

Determination

36. Through notice dated 4 February 2020, the respondent terminated the claimant's employment through summary dismissal. The reasons were that:
- v. Irregularly rebilled under the complimentary method, Ksh. 11.8 million and Ksh. 6.5 million credits and debits, respectively.
 - vi. Colluded with other staff to retrofit the illegally rebilled accounts to conceal the irregularities.
 - vii. Received Ksh. 15,000 from Tyson Mbugua via Mpesa on 11 May 2019 and thereafter rebilled account 22993301 for Rukiya Mohammed Ali.
 - viii. Irregularly reduced the reading on Kenneth Maina Kobia's account by 520 units, giving it an irregular credit of Ksh. 14,937.
37. The claimant's case is that the allegations made against him had no evidence since the alleged credits and debits were without particulars. He did not conspire with any other employees, and retrofitting was not part of his duties. The account of Rukia Mohamed was done based on customer meter photo shot, and the money received from Tyson Mbugua had nothing to do with this account. The claimant also responded that he was accused together with Kenneth Maina Kobia in connection with the account, but he was vindicated, meaning there was no wrongdoing.
38. In *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR, the court held that the Act places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving violation of statutory law.
- ... The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.
39. In *Alfred Ogenche Nchore v Kenya Kazi Services Limited* [2022] KEELRC 830 (KLR), the court emphasised that:
- Even in a case where there is a lawful ground to terminate an employee by the employer, it is accepted labour law jurisprudence that lawfulness cannot be equated with fairness. The tenets of natural justice go beyond lawfulness and require fairness. Accordingly, it is not a defence to an unfair dismissal claim that the employee's dismissal was lawful.
- And in the case of *Francis Ndirangu v Nakumatt Holdings Limited* [2016] KEELRC 1599 (KLR), the court held that:
- Reason for terminating an employee is usually measured against a standard of a reasonable employer. If taking the act or omission in issue into consideration, a reasonable employer



would dismiss, then the Court will uphold the dismissal but if no reasonable employer would dismiss, then the Court will find in favour of the employee.

40. In this case, the claimant was accused of various acts of misconduct in the performance of his duties. There are 4 main allegations:
- a. Irregularly rebilled under the complimentary method, Ksh. 11.8 million and Ksh . 6.5 million credits and debits, respectively.
 - b. Colluded with other staff to retrofit the illegally rebilled accounts to conceal the irregularities.
 - c. Received Ksh. 15,000 from Tyson Mbugua via Mpesa on 11 May 2019 and thereafter rebilled account 22993301 for Rukiya Mohammed Ali.
 - d. Irregularly reduced the reading on Kenneth Maina Kobia's account by 520 units, giving it an irregular credit of Ksh. 14,937.
41. The basis of the first charge is the audit report, which placed the claimant as having debits and credits of Ksh. 11.8 million and Ksh. 6.5 million, respectively. The respondent's case is that the claimant only had a rebilling limit of up to Ksh. 100,000 in the Coast region.
42. However, the breakdown of Ksh.11.8 and Ksh.6.5 million is not provided. The translation of the local limit of Ksh.100,000, visa-a-vis the global figures given, is not done. How the respondent arrived at these amounts is not stated. The rebilled accounts, the allocated credits, and the credits are not examined.

This allegation is left bare.

43. On the second allegation that the claimant colluded with other employees to retrofit and illegally rebill accounts to conceal irregularities, this largely aligns with the first part of the allegations. Without details as to which accounts were rebilled and retrofitted, the charge cannot stand.
44. On the third allegation of receiving Ksh. 15,000 from Tyson Mbugua via M-Pesa on 11 May 2019 and subsequently rebilling account 22993301 for Rukiya Mohammed Ali, the claimant admitted in his response to this allegation that on 5 March, the customer presented meter readings of 31817 and told him that his meter had not been in use for several months. He used the meter reading to adjust the bill but later discovered it was incorrect. The customer reading missed a decimal point. He had not sent a meter reader to confirm the reading and acted on trust that the customer was honest.
45. The claimant testified that he had worked for the respondent for over 21 years. He was conversant with the procedures and protocols of his duties, which included attending to customers and billing. A simple procedure, such as reading a meter based on the customer's reading and trusting the information, led to a grave error on his part.
46. Under the provisions of Section 44(4)(g) of the Act, an employee who performs his duties without due care and attention is careless. The loss to the employer is due to the negligence and fault of the employee. The resulting sanction is summary dismissal.
47. Through his conduct, the claimant failed to fulfil his duties of verifying the meter readings, resulting in revenue loss to the employer. He acted without due care and attention. He admitted to this fact, stating that he made a mistake.
48. On the last charge, irregularly reduced the reading on Kenneth Maina Kobia's account by 520 units, giving it an irregular credit of Ksh. 14,937. This claim does not deny the action but states that he was



verified when Kenneth Kobia was searched and was not dismissed. The claimant must account for his personal relationship with the employer. What the respondent chose to do to Kenneth Kobia, though incremental, has a bearing on his case and calls for accountability for his conduct. The basis cannot be that his colleague was merely surcharged. A surcharge is a permitted sanction.

49. For the claimant, failing to undertake his duties with due attention and leading to an irregular credit, which is admitted, under section 44 (3) of the Act, constitutes a fundamental breach of the employment relationship. By acting in a manner that results in loss to the employer, such conduct is regarded as gross misconduct under section 44(4) of the Act.
50. In this case, summary dismissal of the claimant was justified and lawful
51. The remedy of reinstatement or the alternative compensations are not available.
52. The claimant has a poor record. He has not denied that on 9 February 2017 and 28 May 2019, he was issued with a letter of benefit of doubt and a caution letter, respectively. These records do not place the claimant in good standing.
53. The claimant had a liability of Ksh.167,729.19, which is recoverable by law at the end of employment. On costs, on the findings above, each party shall bear its costs.
54. Accordingly, the claim is found 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

