



**Ojwang v Kenya Power & Lighting Co (KPLC) (Cause E003 of 2025)  
[2025] KEELRC 2068 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2068 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E003 OF 2025**

**JK GAKERI, J**

**JULY 14, 2025**

**BETWEEN**

**LUCAS OJWANG ..... CLAIMANT**

**AND**

**KENYA POWER & LIGHTING CO (KPLC) ..... RESPONDENT**

**JUDGMENT**

1. The claimant commenced the instant suit vide a statement of claim filed on 28<sup>th</sup> January, 2025 alleging unfair termination of employment by the respondent.
2. The claimant's case is that he was employed by the respondent on 28<sup>th</sup> February, 1992 as a Meter Reader and was promoted to Senior Meter Reader 3 earning a gross salary of Kshs.243,548.31 and served diligently for 30 years.
3. It is the claimant's case that he was falsely accused of giving malicious information to a customer on energy matters, conspired with one Jacob Okoth in constructing an illegal power line and the customer lost Kshs.140,880 denying the respondent company a capital fee of Kshs.257,253.00 and permitting another person to carry out electrical installation work without authority.
4. The claimant admitted having been granted an opportunity to be heard and prays for:
  - a. Three month's salary in lieu of notice.
  - b. Equivalent of 12 months salary.
  - c. Sum of Kshs.14,612,898.60 for the remaining 5 years of the contract of employment.
  - d. Costs of this claim.
  - e. Any other relief that the court may deem just and fair to grant.



### **Respondent's case**

5. The respondent admitted that the claimant was its former employee and termination of his employment was lawful as he had been issued with a notice to show cause dated 12<sup>th</sup> September, 2022 setting out the allegations made against him, responded vide letter dated 15<sup>th</sup> September, 2022, was invited for a disciplinary hearing, hearing took place and the Disciplinary Hearing Committee recommended termination of employment and the claimant received the dismissal letter dated 1<sup>st</sup> November, 2022.
6. The respondent prayed for dismissal of the claimant's case with costs.

### **Claimant's evidence**

7. On cross-examination, the claimant confirmed that he knew one Willis Odhiambo as well as Jacob Okoth and the latter came from his place. He further admitted having testified earlier at the appeal hearing that he did not know Jacob Okoth and refused to answer the question whether he was lying in court. CWI also admitted that when Mr. Willis Odhiambo came to the respondent's office to collect application forms, he was the only person Willis Odhiambo interacted with and the only other person in the office was the askari. He testified that he did not advise Mr. Willis Odhiambo that he would assist him to have his house connected to power and once again refused to respond to the question whether he was lying.
8. Similarly, the claimant testified that he was aware that an illegal line was recovered from Mr. Willis Odhiambo's premises and it was his testimony that he did not speak to Mr. Willis Odhiambo after 2018 and he only came back in 2022 and on that day, the claimant Mr. Watta and Barrack Obama were in the office and nothing happened, but he quickly changed and admitted that Mr. Willis Odhiambo confronted him about money he had allegedly given him and Mr. Watta intervened.
9. CWI admitted having recorded a statement during the investigation and other persons were also interviewed but denied having colluded with Mr. Jacob Okoth to install an illegal line and could not respond to the question why a customer would complain about him after 4 years.
10. Finally, the witness admitted that he worked for the respondent for 30 years and was aware that he was bound by the respondent's Code of Conduct and Ethics and did not pay the sum of Kshs.25,902.96 owed to the respondent.
11. On re-examination, the claimant repeated his evidence that Mr. Willis Odhiambo did not call him after the 2018 encounter and his complaint related to the recovery of his line by the respondent. The claimant admitted owing the respondent Kshs.25,000.00.

### **Respondent's evidence**

12. RWI testified that he was the Chief Security Officer of respondent, Western Region and his department conducted investigations on the allegations made against the claimant and prepared a report. That according to the investigation, Mr. Willis Odhiambo confirmed that when he dealt with the claimant in 2018, the claimant requested him to make payment vide Mpesa number 0714241706 and sent Kshs.126,880 and the recipient was one Mr. Jacob Okoth and eventually paid a total of Kshs.140,880.00 and it was Jacob Okoth and his team who connected his house to electricity.
13. The Mr. Raymond Watta Ouma confirmed that Mr. Willis Odhiambo came to the office sometime in 2022 to complain to the claimant, an argument ensued and he had to intervene and Mr. Willis Odhiambo reported the matter to the Security Department in Kisumu.



14. The witness confirmed that the Mr. Barrack Obama Oluoch had encountered a person at Gemrae area climbing an electricity pole but when the vehicle stopped, the person and those standing nearby run away but later recovered an illegal connected line from Willis Odhiambo's property.
15. The witness testified that the investigation found the claimant culpable and recommended disciplinary action.
16. On cross-examination Mr. Bernard Ambaka, the investigator, confirmed that the claimant had been an employee of the respondent for about 30 years and was charged at the Nyando Law Courts and acquitted of all charges, but could not confirm that the claimant had no warning letter or that the claimant was abled differently or that termination of the claimant was pre-determined.
17. The witness however confirmed that when Mr. Willis Odhiambo visited the respondent's office for the 1<sup>st</sup> time, he met the claimant who advised him on how to proceed in his quest to secure power connection but confirmed that the claimant did not received any money from Willis Odhiambo but Mr. Jacob Okoth received cash from Mr. Willis Odhiambo as confirmed by witnesses interviewed during the investigation.
18. RWII, Mr. Humphrey Otuko confirmed that he had no evidence to show that the claimant received any cash and Mr. Willis Odhiambo was only given a quotation when he approached the respondent for a second attempt to have power connected to his house.
19. RWII also confirmed that the claimant was charged at the Nyando Law Courts and subsequently acquitted of all charges.
20. The witness further confirmed that the claimant was disabled but could not testify as to when he suffered stroke. Whereas RWII admitted that the claimant's employment was terminated on 2<sup>nd</sup> November 2022, he denied that it was pre-determined, testifying that the attendant processes were complied with including a hearing, thus due process was followed.

### **Claimant's submissions**

21. Counsel for the claimant submitted on various issues, including whether the claimant was an employee of the respondent which was not contested.
22. Concerning termination of the claimant's employment, counsel cited the provisions of Section 41 of the *Employment Act* and sentiments of the court in Anthony Mkala Chitavi V Malindi Water & Sewerage Co. Ltd [2013] eKLR on procedural fairness, to urge that the respondent treated the claimant craftily and callously after having served it for over 30 years, having been acquitted of criminal charges in Nyando Criminal Case No. E354 of 2022.
23. Counsel submitted that the respondent conducted a sham hearing on 2<sup>nd</sup> November, 2022 and the claimant had not received any bribe.
24. Reliance was also placed on the sentiments of the court in Mary Chemweno Kiptui V Kenya Pipelilne Co. Ltd [2014] eKLR to urge that the respondent bore the burden of proof to show that the claimant was culpable.
25. Counsel further submitted that the respondent unilaterally decided to terminate the claimant's employment and urge the court to award the claimant maximum compensation.



26. As regards salary till retirement date, counsel submitted that the claimant ought to be paid the sum of Kshs.14,612,898.00 for the period he would have worked but for the unfair termination of employment.
27. On 3 months salary in lieu of notice, counsel urged that the claimant was entitled to the sum of Kshs.730,644.93 in lieu of notice as none was issued and costs of the suit.

### **Respondent's submissions**

28. As regards procedural fairness, counsel for the respondent submitted that the respondent had proved that the procedure employed to terminate the claimant's employment was fair.
29. Reliance was also placed on the provisions of Section 41 and 45(2)(1) of the *Employment Act* as were the decisions in *Postal Corporation Kenya V Andrew K. Tanui* [2019] eKLR, *Kenya Union of Commercial Food & Allied Workers V Meru North Farmers Sacco Ltd* [2013] eKLR, *Anthony Mkala Chitavi V Malindi Water & Sewerage Co. Ltd* (supra) and *Dairus Kiseu Mwamburi V Co-operative Bank* [2021] eKLR.
30. Concerning substantive fairness, counsel relied on the decisions in *Thomas Sila Nzivo V Bamburi Cement Ltd* [2014] eKLR to urge that the employer was only required to demonstrate that it had reasonable and sufficient grounds.
31. Reliance was also made on the sentiments of the court in *Evans Kamadi Misango V Barclays Bank of Kenya Ltd* [2015] eKLR, *John Jaoko Othino V Intrahealth International and Kenya Power & Lighting Co. Ltd V Aggrey Lukorito Wasike* [2017] eKLR on the reasonable responses test in *Halsbury's Laws of England* 4<sup>th</sup> Edition at 482 and the import of Section 43(2) of the *Employment Act*, to submit that the claimant was the only person who interacted with the customer and the customer confronted him in 2022 and it was out of the initial contact that the illegal line was constructed and was subsequently recovered by the respondent.
32. As regards reliefs sought, counsel submitted that the claimant was not entitled to any as the termination of his employment was fair and owed the respondent the sum of Kshs.25,902.96 and costs were discretional.

### **Analysis and determination**

33. It is common ground that the respondent employed the claimant as Meter Reader on 28<sup>th</sup> February, 1992 at a salary of Kshs.2,046 per month and by 2022 he had risen to the position of Emergency Office Operator I earning a salary of Kshs.207,611.33, less overtime which depended on the hours worked.
34. It is equally not in dispute that the claimant and one Jacob Odhiambo Okoth were charged with carrying out electricity undertaking without licence under Section 118 of the *Energy Act* but were acquitted on account that they were charged under a statute which became operational on 23<sup>rd</sup> December, 2019 yet the offence was committed on 19<sup>th</sup> March, 2018. Their culpability or otherwise was thus not determined.
35. It is also not in contest that Mr. Willis Odhiambo visited the Katito KPL office in March 2018 to apply for electricity accompanied by one Gordon Ochieng Onyango and was served by one claimant, who gave him the application from which he competed and availed all the attendant copies of documents including national identity card and KRA Pin certificate and the claimant gave him mobile number 0714241706 belonging to one Jacob Okoth in Gordon Ochieng's presence. The claimant admitted that Mr. Willis Odhiambo was accompanied by a person he could identify.



36. Mr. Gordon Ochieng's statement to the investigators confirmed that the claimant told Mr. Willis Odhiambo that he would send a contractor and accompanied them to the site for an inspection and the contractor turned out to be Mr. Jacob Okoth.
37. Having confirmed that he was the only person who dealt with Mr. Willis Odhiambo in 2018 and Mr. Willis Odhiambo confronted him four years later in 2022 allegedly about monies he had given him vide mobile number 0714241706, given to him in the presence of Gordon Ochieng, the claimant could not deny having colluded with Mr. Jacob Okoth a person, from his place and whom he know well to install an illegal connection at Mr. Willis Odhiambo property in Gem-Rae area.
38. Documentary evidence provided by the claimant further revealed that he received a notice to show cause dated 12<sup>th</sup> September, 2022 with two (2) charges and a response was required within 72 hours, responded vide letter dated 15<sup>th</sup> September, 2022 denying charges and the matter was escalated to the Acting Senior Human Resource and Administration Officer and was invited to a disciplinary hearing received it on 30<sup>th</sup> September, 2022 and hearing took place on 7<sup>th</sup> October, 2022. The disciplinary committee recommended termination of his employment. The committee was satisfied that the claimant guided Mr. Willis Odhiambo to the friend and it was probable that the claimant was involved in the construction of the illegal line.
39. The claimant's employment was terminated vide letter dated 1<sup>st</sup> November, 2022, appealed vide letter dated 18<sup>th</sup> December, 2022, was heard on 17<sup>th</sup> April, 2023 and, the Appeals Committee upheld the dismissal from employment and same confirmed vide letter dated 16<sup>th</sup> May, 2023.
40. The claimant characterised his dismissal from employment as unlawful and unfair contending that he was acquitted of all charges, the hearing was a sham with a predetermined outcome and was not given a warning.
41. Paradoxically, although the claimant averred that he was not given a fair hearing, in paragraph 20 of the claim, paragraph 6 states that he was given an opportunity to be heard and explain himself. Similarly, the four (4) sentence written witness statement dated 17<sup>th</sup> January, 2025 made no reference as to why the hearing conducted on 7<sup>th</sup> October, 2022 was a sham.
42. The respondent on the other hand maintained that the dismissal was lawful as it had a substantive justification and the procedure employed was fair.  
The issues for determination are: -
  - i. Whether termination of the claimant's employment was unfair.
  - ii. Whether the claimant is entitled to the reliefs claimed.
43. Before delving into the issues herein-above, it is essential, first to lay to rest the claimant's averment that he was acquitted of all charges. While the claim is true, he was acquitted under Section 210 of the *Criminal Procedure Code*, the acquittal was premised on the ground that the accused were charged under an Act of Parliament enacted after the fact, essentially a technical acquittal.
44. Relatedly, while the prosecution was a state case based on public law and for the public good, the employer was contractually entitled to determine the claimant's suitability to continue serving as its employee under the contract of employment, under private law. These are distinct and parallel processes with different objectives and justification and the standard of proof is different.
45. Secondly, it is necessary to appraise the claimant's evidence on record for the simple reason that it is the foundation of his case.



46. First, the claimant's written witness statement comprised four (4) lines only which largely replicated the averments in the statement of claim.
47. Having heard and seen the witness testify in court and perused all the documents on record I noted, as stated elsewhere in this judgment that when asked by counsel for the respondent whether he was lying, the claimant refused to respond to the question in two instances.
48. Second, the failure to record a witness statement properly so called appears to have been strategic not by default, to obviate instances of contradiction between his evidence and those of other witnesses which is apparent as illustrated below.
49. When asked about who was with him in the office when Mr. Willis Odhiambo visited in 2018, he stated there was a Security Guard (askari). While during the hearing he gave the same answer, he had in the early part of the hearing stated that he had other customers. He also later testified that there was one other customer in the office.
50. Similarly, when asked by counsel whether he knew Mr. Jacob Okoth he responded in the affirmative but during the appeal hearing, he testified that he did not know him.
51. Equally, when asked whether he promised Mr. Willis Odhiambo that he would assist him have his house connected, he testified that he did not yet during the disciplinary hearing, he admitted having told Mr. Willis Odhiambo that he would assist him.
52. Lastly, when asked whether Mr. Willis Odhiambo contacted him after 2018, he responded in the negative but during the disciplinary hearing, he admitted that Mr. Willis Odhiambo called once to inquire about his application and had earlier on denied having Mr. Willis Odhiambo's mobile number.
53. Puzzlingly, neither the claimant's statement of claim or written witness statement nor the statement he gave the investigator(s) disclose that Mr. Willis Odhiambo confronted him or that they had an argument in 2022, a fact that was confirmed by Mr. Barrack Obama and Mr. Raymond Watta and he admitted in court, whose harbinger was the interaction they had in 2018 and payments were made to a mobile number given by the claimant to Willis Odhiambo.
54. Having seen and heard Mr. Lucas Ojwang Ang'anya testify in court and having perused his statement to the investigator(s) and his responses at the disciplinary hearing and appeal hearing the impression the court gets is that he was economic with the truth and in circumstances provided contradictory responses to the same questions during the same sitting as highlighted elsewhere in this judgment. This could have been the reason why he found it difficult to respond to the question whether he was lying when asked by counsel for the respondent.
55. From the testimony on record, it is discernible that the common denominator between Mr. Willis Odhiambo and Jacob Okoth was the claimant and the investigator(s) found that indeed money changed hands from Mr. Willis Odhiambo and Mr. Jacob Okoth through a mobile number provided to Mr. Willis Odhiambo by Mr. Lucas Ojwang (the claimant), in the presence of Mr. Gordon Ochieng.
56. The totality of the evidence on record would appear to suggest that the claimant was the architect of the entire concatenation of events from 2018 to 2022 and which culminated in his dismissal from employment.
57. As to whether termination of the claimant's employment was unfair and unlawful, the court returns that the provisions of the Employment were substantively complied with.



58. The provisions of Section 41, 43, 44, 45 and 47(5) of the *Employment Act* provide that, for a termination of employment to pass the fairness test it must be demonstrated that the employer had a valid and fair reason to do so, the reason must relate to the employees conduct, capacity or compatibility or operational requirements of the employer.
59. In addition, the law requires that the procedure adopted by the employer to terminate the employee's employment was fair as held in *Naima Khamis V Oxford University Press (EA) Ltd* [2015] eKLR.
60. In other words, there must have been a substantive justification for the termination of employment and procedural fairness as held in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR.
61. Under the provisions of Section 47(5) of the *Employment Act*, all that the employee is required to demonstrate a prima facie case that his/her employment was terminated and the termination was unfair. The employer bears the burden of proof that it was fair.
62. As regards substantive justification for termination of the claimant's employment, the court finds that the respondent had a valid reason to do as demonstrated by the totality of the statements of Mr. Willis Odhiambo, Gordon Ochieng, Raymond Watta and Barrack Obama, which the claimant did not counter in his statement.
63. More significantly, the undisputed responses he provided to the disciplinary committee and the appeals commit revealed that he was aware of the entire process but opted not to disclose the same in his scanty witness statement. He originated the sequence of events when he interacted with Mr. Willis Odhiambo in 2018 and having been the only person who interacted with him on that date and confronted him 4 years later, and reported the matter to the Security Department in Kisumu and other persons corroborated the occurrence in 2022, it is more probable than improbable that is what transpired.
64. In court's view, the respondent has a reasonable basis to genuinely believe that it had a valid reason to terminate the claimant's employment as by law required.
65. (See in this regard *Galgalo Jarso Jillo V Agricultural Finance Corporation* [2021] eKLR, *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others* [2019] eKLR and *British Leyland (UK) Ltd V Swift* [1981] IRLR, on the principle of reasonable responses test.
66. Concerning procedural fairness, it requires no emphasis that the provisions of Section 41 of the Employment was be complied with as held in *Pius Machafu Isindu V Lavington Security Guards Ltd* [2017] eKLR, where the Court of Appeal land it bare that the provisions of Section 41 of the Act were mandatory. See *Mbaru J in Jane Samba Mukala V Ol Tukai Lodge Ltd* [2013] eKLR.
67. In this case, the respondent substantively complied with the provisions of Section 41 of the *Employment Act* but for the fact that it did not avail a copy of the Investigation report to the claimant to enable him prepare for his defence.
68. It is trite that an employee facing disciplinary proceedings is entitled to all the materials the employer is relying upon in the prosecution of its case, including the statements made by witnesses. Having investigated the complaint and arrived at specific conclusion, it was incumbent upon the respondent to avail a copy of the investigation Report to the claimant prior to the disciplinary hearing.
69. Having failed to do so the respondent impaired the claimant's right to a fair trial as held in *Andrew K Tanui V Postal Corporation of Kenya* [2019] eKLR, *Regent Management Ltd V Wiberforce Ojiambo Oundo* [2018] eKLR and *Ol Pejeta Ranching Co. Ltd V David Wanjau Muhoro* [2017] eKLR, where essential documents relied upon by the employer were not availed to the employee to prepare their defence.



70. In sum, failure by the respondent to avail a copy of the investigation report to the claimant rendered the termination of his employment procedurally flawed and thus unfair within the meaning of Section 45(4) and (5) of the Employment Act, for not being “just and equitable”.

### **Appropriate reliefs**

71. As regards the prayer for three (3) months salary in lieu of notice, the claimant tendered no evidence to justify the claim.
72. More significantly, the dismissal was summary and the conduct complained of by the respondent constituted gross misconduct within the meaning of the provisions of Section 44 of the Employment Act.

The prayer is declined.

73. Concerning the prayer for Kshs.14,612,898.60, being the remaining period of the contract of employment, thus is a claim for anticipatory earnings the lacks anchorage in law as held in D K Njagi Marete V Teachers Service Commission [2020] eKLR and Elizabeth Wakanyi Kibe V Telkom Kenya Ltd [2014] eKLR.
74. In both cases, the Court of Appeal cited with approval, the sentiments of Rika J. in Engineer Francis Gachuri V Energy Regulatory Commission [2013] eKLR as follows:

“There is no provision for payment of damages to the date of retirement. This is because employment like any other contract provides for exit from the contract. The fact that the claimant’s contract was referred to as permanent and pensionable does not mean it could not be terminated and once terminated, he can only get damages for the unprocedural or lack of substantive reason for the termination. No employment is permanent. That is why the Employment Act does not mention the word permanent employment”.

75. These sentiments apply on all fours to the facts of the instant claim.

The claimant is not entitled to sum of Kshs.14,612,898.60.

The prayer is dismissed.

76. On compensation, having found that termination of the claimant’s employment was procedurally unfair the claimant is entitled to compensation in accordance with the provisions of Section 49(1)(c) of the Employment Act up to a maximum of 12 months compensation.
77. In determining the quantum of compensation, the court has considered that the claimant had served the respondent for 30 years which along time and no evidence of previous disciplinary proceedings against him was availed. Secondly, the claimant appealed the decision but did not seek reinstatement or re-engagement.
78. Finally, the claimant was wholly to blame as he originated the events that culminated in his dismissal from employment.
79. In the circumstances the court is satisfied that the equivalent of one (1) month’s gross salary is fair.
80. As the respondent neither contested the claimant’s salary nor avail a copy of his pay slip(s), the claimant is awarded the sum of Kshs.243,548.31.
81. In conclusion judgment is entered in favour of the claimant against the respondent as follows:



- a. Equivalent of one (1) months gross salary Kshs.243,548.31.
- b. 50% costs of this suit.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 14<sup>TH</sup> DAY OF JULY, 2025.**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

