



REPUBLIC OF KENYA



KENYA LAW
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**Ojuok v Kenya Power & Lighting Co. Ltd (Cause 63 of 2018)
[2022] KEELRC 1396 (KLR) (18 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1396 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 63 OF 2018**

S RADIDO, J

MAY 18, 2022

BETWEEN

JAMES AKONGO OJUOK CLAIMANT

AND

KENYA POWER & LIGHTING CO. LTD RESPONDENT

JUDGMENT

1. This Cause was heard on 16 December 2021 and 21 February 2022. James Akongo Ojuok (the Claimant) and a Chief Security Officer, County Business Manager and Senior Human Resources Officer with Kenya Power & Lighting Co Ltd (the Respondent) testified.
2. The Claimant filed his submissions on 4 March 2022 and the Respondent on 20 April 2022.
3. For determination are two primary questions:
 - i. Whether the termination of the Claimant's employment was unfair?
 - ii. Appropriate remedies.

Unfair termination of employment

Procedural fairness

4. The Respondent issued a show-cause notice to the Claimant on 17 February 2017. The notice set out the allegations against the Claimant and requested him to respond in writing within 72 hours.
5. The Claimant responded on the same day, and after that was invited to attend an oral hearing which he did on 13 March 2017 and the Disciplinary Committee recommended dismissal.
6. The Respondent dismissed the Claimant through a letter dated 13 June 2017.



7. The Claimant appealed against the dismissal and an appeal hearing was held on 30 August 2017. The appeal was not successful.
8. The Claimant alleged that the Respondent did not follow due process/fair hearing before dismissing him. He also asserted that the disciplinary process was malicious because the Respondent did not comply with its internal disciplinary procedures and that the Disciplinary Panel was not impartial.
9. The Claimant was informed of the allegations to confront, and he made a written respond. He was then called to an oral hearing which he attended. The Respondent then granted the Claimant an opportunity to appeal and entertained an appeal.
10. With respect to internal disciplinary procedures and impartiality, the Claimant did not pinpoint the specific procedures violated by the Respondent. A copy of the Policies was not presented in Court.
11. The Claimant did also not present corroborative evidence that the Disciplinary Committee members were biased or conflicted.
12. Apart from listing names of employees allegedly at the beck and call of his seniors, there was no factual foundation to the allegations.
13. The Court does not find any conflict of interest or impartiality in the Disciplinary Committee, or the Chief Security Officer having sat in the Disciplinary Committee.
14. Evidence of such conflict was not placed before the Court. Equally, there was no evidence that he could have or did influence the remaining 8 members of the Disciplinary Committee.
15. In terms of sections, 35(1)(c) and 41 of the *Employment Act*, 2007, the Court is satisfied that the Respondent complied with the statutory requirements of procedural fairness.

Substantive fairness

16. Sections 43 and 45 of the *Employment Act*, 2007 has placed a burden on the employer to not only prove but prove as valid and fair the reasons for dismissing an employee.
17. The Respondent gave two reasons for dismissing the Claimant:
involvement in constructing an illegal 3-phase line at substation 25013 to Royal City Hotel, Kiboswa, uprating a transformer from 50KVA to 200KVA and conductors from 50mm² to 100mm² leading to loss of revenue.
18. To discharge the burden, the Respondent called 3 witnesses.
19. The Claimant did not deny that a 3-phase line connecting to the Royal Garden Hotel was constructed or that a transformer was upgraded from 50KVA to 200KVA, or that conductors were also uprated. What he disputed was ascribing the actions upon his shoulders.
20. The Claimant was initially employed as a technician in 1985, but he rose the career ladder, and by the material time, he was an Assistant Superintendent in charge of Operations & Maintenance, Kisumu County.
21. The technical people who conducted the actions in contention were direct supervisees of the Claimant. The Claimant stated in his witness statement, which was adopted as part of the evidence, that he used to get updates from these technicians through phone calls as he was busy with other reports (unable to visit all the sites). He also stated that the juniors booked the requisite materials, and he had no reason to doubt their intentions.



22. It is highly improbable that the Claimant was not aware of what was going on, being the superintendent of the junior staff who carried out the works.
23. The Court finds that the Claimant's dismissal was for valid and fair reasons.

Conclusion and Order

24. The Court finds the Cause without merit, and it is dismissed with costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED ON THIS 18TH DAY OF MAY 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Onsongo & Co. Advocates

For Respondent Kipkenda & Co. Advocates

Court Assistant Chrispo Aura

