



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**CAUSE NO. 2010 OF 2013**

**KIOKO KITHOME.....PLAINTIFF**

**VERSUS**

**KENYA POWER LIGHTING COMPANY.....RESPONDENT**

**Mr. G. Gitau for Claimant**

**M/s Oyombe for Respondent**

**JUDGEMENT**

1. The suit was commenced at the High Court by a plaint dated 15th March 2010 and filed on 17<sup>th</sup> March 2010. The plaintiff seeks General damages for harassment, intimidation and prosecution of the plaintiff and an order for reinstatement to duty with full benefits as per the collective bargaining agreement in place.

**Facts of the Case**

2. By consent, the parties, dispensed with oral evidence and agreed to rely on the pleadings, documentary evidence filed and written submissions. The plaintiff was employed by the defendant as an Artisan I working in various regions including Distribution O & M, Machakos Depot, and Nairobi South Sub region.

3. The plaintiff worked for the Respondent from 31<sup>st</sup> May 1983 upto 7<sup>th</sup> March 2008 when he was summarily dismissed on allegations of financial fraud at the Electricity House pay office. The plaintiff states that these allegations of fraud made against him were false and based on malice on the part of the defendant. It was alleged that the plaintiff had colluded with a temporary employee to commit the fraud and was reported to the police by the defendant. The defendant alleged to have lost about Kshs 400,000 due to the activities of the plaintiff.

4. The plaintiff states that senior officers of the defendant unlawfully used their position to intimidate and manipulate facts to frame the plaintiff and portray him as a dishonest person. As a result of the malicious allegations and summary dismissal from employment, the Claimant suffered loss and damage. The plaintiff seeks reinstatement to his job and payment of general damages.

5. The plaintiff relies on a list of documents filed on 2<sup>nd</sup> June 2010. He appealed against the decision to dismiss him and the same was dismissed on 27<sup>th</sup> March 2008 hence the suit. The respondent filed a statement of defence on 7<sup>th</sup> April 2010 in which it admits the particulars of employment and summary dismissal on grounds of fraud and denies particulars of recklessness, ill motive and malice attributed to it.

When the matter was transferred to this court the respondent filed another statement of defence dated 29<sup>th</sup> April 2014. It introduced documentary evidence annexed thereto as annex 1 to '7.'

6. The second statement of defence has more details than the initial one. The respondent states that the claimant colluded with other temporary staff in finance department, pay office and defrauded the respondent Kshs 400,000 through forged forms for domestic loans alleging to have been applied for by fellow colleagues at work. The plaintiff with other fraudsters used other staff names and numbers without their consent and fraudsters obtained money on third party basis. The plaintiff forged the Human Resources Officer's signature to authenticate the forged vouchers to enable the vouchers to be paid.

7. The defendant relies on annexed statements by former employees marked appendix '1' to establish the allegations made against the plaintiff. The plaintiff recorded a statement on 29<sup>th</sup> January 2008 and admitted that he was approached by one lady by the name Kitonga who told him that there was a deal they could do and get some money. According to the deal, the lady prepared the forged vouchers and the plaintiff assisted in collecting the money from the cash office. The statement by the Claimant is appendix '3' to the statement of defence.

8. The claimant admits that he was paid Kshs 40,000 upon presenting a voucher number 1360603 for Peter Syanda on 13<sup>th</sup> January 2007 and Kshs.40,000 in respect of another voucher for Peter Mulua. The Plaintiff presented other vouchers on diverse dates and admitted receiving the cash and sharing the same with Kitonga. The plaintiff was suspended from duty on 12<sup>th</sup> February 2012 pending further investigation. He was issued a show cause notice and given 72 hours to respond. On 18<sup>th</sup> February 2007, the plaintiff responded to the show cause letter and he admitted that he collected cash on diverse dates in the month of October and December on behalf of a staff at Nairobi office by the name Muthoni Kitonga which to his surprise turned out to be a forgery. The response is appendix '6.'

9. The Respondent considered the explanation by the plaintiff and took a decision to summarily dismiss him from its employment by a letter dated 7<sup>th</sup> March 2008. The respondent states that the plaintiff was lawfully summarily dismissed for colluding with others to defraud the Respondent Kshs 400,000.

### **Determination**

10. As stated earlier, the parties did not adduce any oral evidence. The plaintiff did not produce any documentary evidence tending to exonerate him from the alleged fraud other than the bare denial in the plaint. On the other hand, the respondent produced statements made by the claimant and his conspirators containing admissions that the plaintiff conspired with his co-workers to defraud the Respondent of about Kshs 400,000.

11. The plaintiff was given opportunity to defend himself and he admitted receiving the said money in the written explanation. The plaintiff has the onus to prove that he was unlawfully and maliciously dismissed from employment. The plaintiff has failed to discharge that onus and instead the respondent has through documentary evidence justified the summary dismissal of the plaintiff in that the plaintiff was summarily dismissed for a valid reason and a fair procedure was used to establish his guilt.

12. Accordingly, the plaintiff's case lacks merit and the same is dismissed with costs to the respondent.

**Dated and delivered at Nairobi this 6<sup>th</sup> day of May, 2016.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**