

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI

CAUSE NO. E1016 OF 2021

JUSTIN ABUGA ARERI.....
.....CLAIMANT

VERSUS

MULTICHOICE KENYA LIMITED.....1ST
RESPONDENT

NANCY MATIMU.....2ND
RESPONDENT

JUDGMENT

1. Before Court is the Claimant's Memorandum of Claim dated 6th December, 2021, wherein the Claimant seeks the following reliefs as against the Respondents: -
 - i. That the dismissal of the Claimant is in breach of his fundamental rights and freedoms, namely the right to a fair hearing, fair administrative process, prohibition against unfair labour practice, and the right to privacy, and is hereby declared unfair and unlawful, hence null and void.
 - ii. That the dismissal of the Claimant constitutes unfair termination.
 - iii. Salary in lieu of notice of termination be awarded to the Claimant.
 - iv. 12 months' salary compensation for unfair termination.

- v. Damages for unfair termination.
 - vi. Damages for medical injury incurred.
 - vii. Special damages for all monies expended towards treatment of the medical injury.
 - viii. Damages for violation of fundamental right to fair hearing, fair administrative process, prohibition against unfair labour practice, and the right to privacy.
 - ix. Loss of earnings for the remainder of the period of retirement.
 - x. Costs of the claim.
 - xi. Interest on (iv) from the date of judgment till payment in full and on the accrued salaries.
 - xii. The Respondent issues to the Claimant a letter of service.
2. The 1st and 2nd Respondents filed a Respondents' Statement of Response dated 11th January, 2021, in response to the Claimant's claim.
 3. Conversely, the Claimant filed a Reply to the Respondents' Statement of Response dated 27th January, 2022, responding to the Respondents' Statement of Response.
 4. The Claimant's case was heard on 24th October, 2023, and again on 8th March, 2024, when the Claimant (CW1) testified in support of his case. He adopted his witness statement dated 7th February, 2024 and produced his list and bundle of documents dated 6th December, 2021 as exhibits in the matter and were marked as Claimant's exhibits Nos. 1-19 and 1-11.

5. The Respondent's case was heard on 26th May, 2025. The Respondent's witness, Ms. Nancy Matimo Waithera(RW1), testified in support of the Respondent's case. She adopted her witness statement dated 27th May, 2022, and produced the Respondent's list and bundle of documents of even date as exhibits in the matter, and were marked as Respondent's exhibits Nos. 1-22.
6. The Respondents' second witness, named Sharon Mwende, also testified on 25th November, 2025, adopting her witness statement dated 22nd May, 2025, in support of the Respondents' case.
7. Submissions were received from both parties.

The Claimant's case

8. The Claimant's case is that he was employed by the Respondent as the Regional Head, Lake Region, a position he held until 27th November 2020.
9. The Claimant avers that during his tenure, he diligently and satisfactorily discharged his duties and that there had been no complaints regarding his competence or performance. He further avers that in recognition of his performance, he received several awards and accolades from the Respondent for his work and contribution to the organisation.

10. The Claimant avers that he was summarily dismissed from his employment by the Respondents vide a letter dated 27th November, 2020, signed by the 2nd Respondent, Nancy Matimu.
11. The Claimant states that the dismissal was based on accusations of conflict of interest in the hiring of vans and irregularities in the recruitment of regional sales personnel, including undisclosed relationships and favouritism.
12. The Claimant states that the dismissal was preceded by a notice to show cause dated 6th November 2020, which contained the accusations against him. He avers that on the same date the notice was issued, the 2nd Respondent hastily suspended him from employment, confiscated his work equipment, deactivated his official email account, and ejected him from the workplace.
13. He avers that on 19th November, 2020, he was notified to attend a disciplinary hearing.
14. The Claimant contends that in his response to the show cause notice he categorically denied the allegations, as the same were purportedly based on provisions of a HR Manual which he had never been issued with and of which he had no knowledge of. He therefore maintains that he could not have violated policies that were neither brought to his attention nor acknowledged by him.

15. The Claimant asserts that the only policy known to him and issued by the Respondent was the “Multichoice Communications Policy,” which he had acknowledged by signing the last page.
16. The Claimant avers that on the allegations of favouritism in recruitment, he denies having been part of the interview panel. He avers that his role was limited to recommending suitable candidates, which he did in the same manner he had done in respect of other candidates previously, and denies any personal relationship or attachment with Davinah Kwamboka, asserting that the allegations of favouritism were imaginary and unsupported by any evidence.
17. He further contends that during the disciplinary hearing, no witness testimony or documentary evidence was presented to substantiate the allegations made against him.
18. The Claimant further avers that a disciplinary hearing was conducted on 23rd November 2020, which process was fundamentally flawed and amounted to unfair labour practice in violation of his right to a fair hearing and privacy. In particular, he states that he was not permitted to have a representative present, nor was he allowed to have legal representation during the proceedings.
19. The Claimant also contends that during the disciplinary process the Respondents failed to present witnesses for purposes of cross-examination and did not produce the

alleged HR policies relating to conflict of interest or favouritism which he was accused of breaching.

20. The Claimant states that despite providing a comprehensive response to the show cause notice explaining why the allegations were unfounded, the Respondents failed to address or respond to the issues he raised.
21. The Claimant further states that the letter of summary dismissal dated 27th November, 2020, did not give reasons for the decision or indicate how the disciplinary panel arrived at the decision to dismiss him. He therefore states that he was dismissed without any findings being communicated to him, and that if any findings were made, he was never informed.
22. The Claimant contends that the Respondents violated his right to a fair hearing and to have disputes determined in a fair and just manner by an impartial body.
23. The Claimant further asserts that even if reasons had been given, the alleged grounds of conflict of interest and favouritism would not constitute valid reasons under Section 45 of the Employment Act, since the allegations did not amount to misconduct, incapacity, or incompatibility, nor were they based on the operational requirements of the Respondent.

24. The Claimant maintains that the circumstances surrounding his dismissal demonstrate *mala fides* and malice on the part of the Respondents. In this regard, he points to the sequence of events in which the show cause notice and suspension were issued on the same day, which he contends indicates that the Respondents had already predetermined his dismissal.
25. The Claimant particularizes the alleged malice on the part of the Respondents to include, among other things levelling allegations based on policies that had never been issued to him, making unsubstantiated claims of conflict of interest, alleging a personal relationship with another employee without evidence, and dismissing him in a humiliating and punitive manner by confiscating his work gadgets, deactivating his email account and ejecting him from the workplace.
26. He further states that the Respondents accessed and examined his personal information and accounts in an attempt to extract evidence to justify the dismissal. He further avers that he was subjected to callous treatment during the disciplinary process, was denied salary in lieu of notice, and was not afforded a fair appellate process after the dismissal.
27. It is the Claimant's case that the summary dismissal of 27th November, 2020, was unlawful and in contravention of the provisions of the Employment Act. He maintains that the alleged grounds of conflict of interest and favouritism had

no basis in his contract of employment or in any policy that had been communicated to him.

28. The Claimant contends that the Respondents terminated his employment without valid reasons and through an unfair procedure, contrary to sections 43 and 45 of the Employment Act, and that the dismissal amounted to unfair and wrongful termination.
29. The Claimant further avers that the manner in which he was dismissed caused him serious emotional and psychological harm, stating that he suffered acute depression and incurred substantial medical expenses for which he continues to receive treatment.
30. On cross-examination, the Claimant confirmed that he is a Director of Mega Limited and that he formed it with friends named Charles Mengo and Fred Ngolo. He confirmed further that Charles Mengo was dealing with the 1st Respondent on an agency basis, though not a direct dealing.
31. It is his testimony that he forwarded details to the 1st Respondent at one point, showing that payment was to be made through Mega when Mengo made a request for payment of his money. It is his case that he did not declare an interest in Mega because Mega was not dealing with the Respondent.

32. He confirmed that Mengo's payment went through Mega, which was a company for which he was a Director.
33. The Claimant further confirmed that he knew Devina Kwamboka, whom the Respondent was recruiting as an administration supervisor for South Nyanza. It is his evidence that he sent materials on the interview to Devina and others to help them prepare.
34. The Claimant, on further cross-examination, indicated that he did not have the power to assign Devina any position.
35. It is the Claimant's testimony that he received a notice to show cause on 9th November and had up to 11th November to respond. He states that he sought more time to respond, and his time was extended by 72 hours, giving him a total of 6 days to respond to the show cause.
36. The Claimant avers that at the disciplinary hearing, he was questioned on conflict of interest and favouritism, and that he confirmed that he had sent Devina a document on the trainer's role on 20th April, 2020, which he further confirmed was a presentation guide. It is his case that he sent other documents to Quinter.
37. It is his further testimony that Quinter sent him the documents to confirm, and which were the same documents that he sent to Devina.
38. The Claimant states that he received notification of the disciplinary hearing, which listed his rights, including the

right to be accompanied and to question witnesses. He stated that no employee wanted to come to attend the hearing as his witness/representative.

39. The Claimant confirmed receipt of the dismissal letter and that it indicated the reasons for the dismissal. He further avers that he appealed against the dismissal, and an appellate panel was convened, the appeal was dismissed, and the reasons for the dismissal were given.

40. The Claimant contends that he was denied the right to bring an advocate to the hearing. He avers further that he does not authorize payment, but his role is limited to collecting data.

41. The Claimant prays that the Court grant him the reliefs sought under his Claim.

The Respondent's Case

42. The Respondent's case is that the Claimant was employed by the 1st Respondent as the Regional Head for Western and Nyanza until 27th November 2020, when his employment was brought to an end through summary dismissal.

43. The Respondents deny the Claimant's assertion that he performed his duties satisfactorily, at least with regard to the period during which the events giving rise to the disciplinary proceedings occurred.

44. The Respondents admit that the Claimant's employment was terminated through a letter of summary dismissal dated 27th November 2020, and maintain that the dismissal followed a lawful and procedurally fair disciplinary process and was based on valid grounds relating to the Claimant's misconduct.
45. The Respondents state that the Claimant was suspended from duty on 6th November, 2020 as a precautionary measure pending investigations. They state that the suspension was procedural and undertaken in accordance with the provisions of the 1st Respondent's Employee Handbook and Human Resource Policy, which allows for suspension in appropriate circumstances during disciplinary investigations.
46. The Respondents further deny the Claimant's allegations that the disciplinary action was based on non-existent policies, and maintain that the disciplinary process culminating in the Claimant's summary dismissal was conducted strictly in accordance with the Employee Handbook/Human Resource Policy and the applicable provisions of the Employment Act, 2007.
47. It is the Respondents' position that the Claimant was at all material times aware of and bound by the Human Resource Policy Handbook. It is their case that the Claimant signed his first contract of employment with the 1st Respondent on 25th April 2015, and acknowledged that he had been provided with the Human Resource Policy Handbook.

48. They further state that the said policy formed part of the Claimant's contract of employment, including his most recent contract as Regional Head – Western and Nyanza.
49. The Respondents aver that the Claimant's letter of appointment dated 21st May, 2020 reaffirmed that the Employee Handbook and Human Resource Policy continued to form part of his employment terms.
50. The Respondents dispute the Claimant's assertion that the only policy known to him was the Multichoice Communications Policy, maintaining instead, that the Claimant had been supplied with and was fully aware of all the company policies governing his employment.
51. The Respondents state that the Claimant was given a fair hearing. They contend that by a letter dated 19th November, 2020, he was notified of the disciplinary hearing and informed of his rights during the process. They aver that he was advised of his right to be accompanied by a fellow employee of his choice, as well as his right to call witnesses and question witnesses during the hearing.
52. The Respondents state that although the Claimant was afforded these rights, he opted not to exercise them.
53. The Respondents further aver that the Claimant was not denied legal representation, and that while he was free to procure such representation, he did not at any time before

or during the disciplinary hearing indicate any intention to be represented by counsel.

54. The Respondents maintain that the Claimant was accorded a full opportunity to question the Respondent's representatives and witnesses during the disciplinary hearing held on 23rd November, 2020, and therefore deny the Claimant's allegations that he was prevented from challenging the evidence against him.
55. The Respondents further state that the reasons for the Claimant's dismissal are clearly set out in the summary dismissal letter dated 27th November, 2020, which was duly served upon him. They maintain that the grounds for dismissal constituted proved misconduct under the Claimant's contract of employment as well as the Respondent's internal policies.
56. The Respondents further contend that the dismissal was lawful and undertaken in compliance with the Employment Act, 2007. They also point out that the Claimant's reliance on the Employment Act, Cap 226 is misplaced since that statute has been repealed and does not apply to the dispute.
57. The Respondents state that the Claimant was not denied an opportunity to appeal. They aver that, following the disciplinary hearing of 23rd November, 2020, the Claimant lodged an appeal, which was heard on 10th December,

2020; hence, the allegation that he was denied an appellate process is unfounded.

58. The Respondents also dispute the Claimant's factual assertions regarding events during the disciplinary process. They state that upon the Claimant's request via email on 11th November, 2020, he was granted supervised access to his official laptop between 13th November and 17th November, 2020. They aver further that during the disciplinary hearing, the Claimant indicated that he had declined the access on the basis that it had been granted on short notice.

59. The Respondents also contend that at no point during the disciplinary hearing did the Claimant raise any complaint regarding the fairness of the process, and they intend to rely on the record of the disciplinary proceedings to demonstrate that the hearing was conducted fairly.

60. In conclusion, the Respondents maintain that the Claimant's termination was based on valid and fair reasons, was preceded by a lawful and fair disciplinary process, and complied with the applicable law and the Respondent's internal policies.

61. On cross-examination, RW1 told this court that the Claimant was supplied with the 1st Respondent's Human Resources Manual and that, though she had no evidence that the Claimant received the manual, his letter of

employment indicates that the Manual was attached to it and that the Claimant did sign the letter.

62. RW1 confirmed that she sat in the disciplinary hearing but did not sit in the appeal hearing. She further confirmed that she issued the Claimant with a dismissal letter in her capacity as the 1st Respondent's Chief Executive Officer.
63. RW1 told the court that the Claimant assisted Ms. Devina Kwamboka with interview materials before the interview. She confirmed that Mega Eye had contracts with Trade Core and that the 1st Respondent would pay Trade Core for services rendered.
64. On her part, RW1, one Sharon Mwende, told the court that the Claimant's contract indicated that he had received the 1st Respondent's HR Manual. She states that she could not produce the manual that the Claimant signed.
65. RW2 further told the court that Mega Eye had a relationship with Trade Core, which had a relationship with the 1st Respondent. She avers that the 1st Respondent always paid Trade Core for the supply of Vans. It is her evidence, that based on an investigation conducted by Deloitte, that the Claimant is a Director of Mega Eye.
66. RW@ confirmed that Devina worked for an agency contracted by the 1st Respondent, but did not directly work for the 1st Respondent.

67. It is RW1's position that the Claimant did not approve payments.

68. It is the Respondents' case that the Claimant is not entitled to the reliefs sought in the Memorandum of Claim and urges the Court to dismiss the claim with costs.

The Claimant's submissions

69. The Claimant submitted that the Constitution of Kenya guarantees employees the right to fair labour practices and fair administrative action. He relied on Article 41 of the Constitution of Kenya, 2010, which guarantees the right to fair labour practices; Article 50, which guarantees the right to a fair hearing; and Article 47, which requires administrative action affecting rights to be lawful, reasonable, and procedurally fair.

70. It was further submitted that these constitutional protections are reinforced by Sections 43 and 45 of the Employment Act, which require an employer to prove valid reasons for termination and to demonstrate that termination was carried out through a fair procedure.

71. The Claimant relied on ***Munyi v Ethics and Anti-Corruption Commission (2025) KEELRC 2487 (KLR)***, where the Court held that a disciplinary process that denies an employee access to crucial evidence and witness statements ahead of the disciplinary hearing undermines

the fairness of the entire process, thereby rendering the dismissal unlawful.

72. The Claimant further relied on ***Walter Ogal Anuro v Teachers Service Commission [2013] KEELRC 386 (KLR)***, where the Court held that termination must satisfy both substantive and procedural fairness and that failure to observe due procedure renders the termination unfair even where an employer may have had a reason to dismiss an employee.
73. The Claimant submits that the Respondents acted unfairly in the manner in which the disciplinary process was conducted, in that the same day he received the notice to show cause, he was immediately suspended, his work equipment confiscated, his email account deactivated, and he was ejected from the workplace.
74. The Claimant further submits that he was denied legal representation or any other form of representation during the disciplinary hearing held on 23rd November, 2020, contrary to the principles of natural justice and the provisions of the Employment Act.
75. It was also the Claimant's submission that the allegations against him were premised on provisions of an HR Manual which had never been issued to him nor acknowledged by him.

76. The Claimant further submitted that the allegations of favouritism and personal relationships, particularly with Ms. Davinah Kwamboka, were never substantiated during the disciplinary proceedings. It was contended that Ms. Kwamboka was not an employee of the Respondent but of a supplier company, and therefore the alleged conflict of interest or favouritism was unfounded.

77. It is the Claimant's submission that his role in recruitment was limited to recommending potential candidates, which was a common practice within the organisation, and that he was not a member of the interview panel nor part of the final recruitment decision making process.

78. The Claimant also argued that during the disciplinary proceedings no witnesses were presented for cross-examination, and that the Respondents failed to produce the HR policies allegedly breached.

79. The Claimant further submitted that the Respondents engaged in unfair labour practices by suspending him without pay, withholding salary in lieu of notice and failing to provide him with a fair appellate process, which conduct violated Article 41 of the Constitution and the provisions of the Employment Act.

80. The Claimant relied on the Supreme Court decision in ***Kenfreight (EA) Limited v Benson K. Nguti [2019] KESC 79 (KLR)***, where the Court held that once a court

finds that termination of employment was unlawful, the appropriate remedies are those provided under Section 49 of the Employment Act.

81. The Claimant therefore prays that the Court grant the reliefs sought in the claim.

The Respondents' submissions

82. The Respondents submitted that the dismissal of the Claimant was both procedurally and substantively fair and therefore lawful within the meaning of the Employment Act, 2007.

83. On procedural fairness, the Respondents submitted that the disciplinary process was conducted lawfully and in accordance with Section 41 of the Employment Act, 2007. The Respondents denies the Claimant's allegations that the suspension and the Notice to Show Cause were issued on the same date and in bad faith.

84. It is the Respondents' submission that the Claimant was suspended on the 7th October 2020 for a period of thirty days with full pay to allow investigations into allegations of misconduct, as permitted under Clauses 14.1.3 and 14.1.5 of the 1st Respondent's Human Resource Policy. They further submit that on the 3rd November 2020, they received a forensic review report from Deloitte & Touche concerning alleged misconduct by the Head of Sales and Regional Heads. Following which, the Respondents issued the Claimant with a Notice to Show Cause dated the 6th

November, 2020, outlining the allegations and inviting him to provide an explanation as to why disciplinary action should not be taken against him.

85. The Respondents also disputed the Claimant's assertion that the Human Resource Policy and Conflict of Interest Policy were never availed to him. They submitted that the Claimant acknowledged receipt of the Human Resource Policy when he signed his employment contract dated 20th April 2015.
86. The Respondents further stated that the same policies were incorporated into subsequent contracts signed by the Claimant and were periodically communicated to employees through internal correspondence. In particular, they referred to an email communication dated the 30th June 2020, circulated to employees of MultiChoice Africa Ltd, requiring them to declare any conflicts of interest and providing links to the MultiChoice Group Code of Ethics and Conduct Policy and the Conflict-of-Interest Policy.
87. The Respondents further submitted that the disciplinary hearing complied with the procedural requirements under Section 41 of the Employment Act. They stated that the hearing was attended by the 2nd Respondent and two Deloitte investigators, namely Dennis Mwangi and Isaac Ng'ang'a, who were available for questioning.

88. The Respondents also contended that the minutes of the disciplinary hearing demonstrated that the Claimant was informed of his right to be accompanied by a fellow employee but elected not to exercise that right.

89. It is their submission that the dismissal letter, together with the presiding officer's reports from the disciplinary and appeal hearings, clearly set out the grounds for dismissal, thereby satisfying the requirements of Sections 43 and 45 of the Employment Act.

90. They further denied that the Claimant's right to privacy had been violated, stating that the allegations against the Claimant were based on the findings of the Deloitte & Touche forensic review report dated the 3rd November, 2020, rather than on any unlawful access to personal emails.

91. The Respondents further submitted that the Claimant was granted access to the laptop for four days upon request on the 11th November, 2020, and was also granted an extension of time to respond to the Notice to Show Cause. The Respondents also maintained that the Claimant was not denied the right to appeal, noting that an appeal hearing was conducted on the 10th December, 2020.

92. They further disputed the allegation that the 2nd Respondent presided over both the disciplinary and appeal hearings, submitting that the disciplinary hearing was

chaired by Elizabeth Koki while the appeal hearing was presided over by Anthony Njogu.

93. On substantive fairness, the Respondents submitted that the dismissal was grounded on valid and fair reasons within the meaning of Sections 43 and 45 of the Employment Act. They argued that the Claimant was guilty of misconduct arising from failure to declare a conflict of interest and from acts of favouritism in the recruitment process.
94. The Respondents submitted that the Claimant admitted that he was a co-director and shareholder of Mega Eye Experiential Limited together with Charles Nyakango Mengo, but failed to disclose this interest in his September 2020 Declaration of Interest Form.
95. They further submitted that one Charles Mengo had business dealings involving the supply of vans to the 1st Respondent through Tradco Services Limited, which acted as an agency sourcing vans for the 1st Respondent. The Respondents contended that payments relating to these arrangements were processed through Mega Eye Experiential Limited's bank account.
96. According to the Respondents, the Claimant's role as a director and shareholder in a company involved in transactions connected to the 1st Respondent created at least a potential or indirect conflict of interest contrary to Clause 3.4 of the 1st Respondent's Human Resource Policy and the MultiChoice Group Conflict of Interest Policy.

97. They further argued that the Claimant himself acknowledged the existence of the conflict during his appeal and indicated that he had subsequently resigned as a director of the company. The Respondents therefore submitted that the failure to declare the conflict constituted misconduct regardless of whether the Claimant personally benefited from the transactions.
98. The Respondents also submitted that the Claimant engaged in favouritism during a recruitment process involving candidates who were to provide services to the 1st Respondent through Exact Experiential Limited. They stated that the evidence showed that on the 20th April, 2020, the Claimant prepared and sent interview preparatory materials to a candidate, one Ms. Divina Kwamboka, thereby giving her an advantage in the recruitment process.
99. The Respondents contended that although the Claimant also assisted another candidate, Quinter Aoko, the assistance provided to her was materially different because she had prepared her own materials, which the Claimant merely reviewed. The Respondents, therefore, submit that the Claimant's actions conferred an undue advantage upon Ms. Kwamboka and amounted to misconduct.
100. The Respondents submitted that the 2nd Respondent does not bear any personal liability arising from the Claimant's dismissal, arguing that the 2nd Respondent acted in her

capacity as the Managing Director of the 1st Respondent and within the scope of her employment.

101. They submit further that employment disputes ordinarily lie against the employer and not against individual officers unless personal wrongdoing is established, which they argued had not been demonstrated in the present case.

102. On the final issue concerning the remedies sought, the Respondents submitted that the Claimant is not entitled to the reliefs claimed except for a certificate of service pursuant to Section 51 of the Employment Act. They argued that the claims for damages arising from alleged constitutional rights violations were unsupported by evidence.

103. They also contended that the Claimant was not entitled to salary in lieu of notice because his employment was terminated through summary dismissal, which is permissible under Section 44(1) of the Employment Act.

104. The Respondents further argued that the Claimant's claims for damages arising from alleged medical injury and medical treatment expenses were unsubstantiated because no evidence was presented linking any injury to the actions of the Respondents.

105. The Respondents submit that the Claimant's claim for loss of earnings for the remainder of the contract period until retirement is untenable, arguing that such a claim is

speculative and inconsistent with the statutory remedies provided under Section 49 of the Employment Act. In support of this position, the Respondents relied on the decision in ***Alphonse Maghanga Mwachanya v Operation 680 Limited [2013] eKLR.***

106. The Respondents urge the Court to find that the Claimant's claim is lacking in merit and to dismiss it with costs.

Analysis and Determination

107. The following issues fall for determination: -

- i. Whether the summary dismissal of the Claimant was procedurally and substantively fair and lawful.
- ii. Whether the Claimant's constitutional rights under Articles 41, 47, and 50 of the Constitution of Kenya 2010 were violated.
- iii. Whether the Claimant is entitled to the remedies sought.

Whether the summary dismissal of the Claimant was procedurally and substantively fair and lawful.

108. Section 41 of the Employment Act requires that before terminating an employee on grounds of misconduct, the employer must explain to the employee the charges against him/her in a language the employee understands, and allow the employee an opportunity to respond and be heard in relation to the charges, accompanied by a fellow employee or shop floor representative.

109. This procedural test was clearly articulated in **Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd [2013] eKLR**, where the court stated:-

“The ingredients of procedural fairness, as I understand it within the Kenyan situation, are that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee....Secondly, it would follow naturally that if an employee has a right to be informed of the charges, he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing, or through a representative or shop floor union representative if possible. Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

110. The Claimant herein received a Notice to Show Cause dated 6th November 2020. It is evident from the record that he was given sufficient time to respond, having been allowed an extension on request to respond to the show cause. It is also not disputed that a disciplinary hearing was conducted on 23rd November 2020.

111. The Claimant further confirmed on cross-examination that he was informed of his right to be accompanied by a colleague, but he told the court that no employee was willing to accompany him. He, however, confirmed that he attended the hearing.

112. The Claimant also admitted during cross-examination that he was informed of his rights at the hearing and that he appealed the decision, which appeal was heard on 10th December 2020.

113. The Supreme Court of Kenya in ***Kenfreight (EA) Limited v Benson K. Nguti [2018] KESC 61 (KLR)*** held that compliance with Section 41 is satisfied when the employee is informed of the allegations and given an opportunity to respond. Further, the Court of Appeal in ***Judicial Service Commission v Gladys Boss Shollei*** held that internal disciplinary hearings need not replicate court procedures so long as the employee is accorded a fair opportunity to defend themselves.

114. Further in ***Silvester Malei Kyengo v Kenya Meat Commission (2019) eKLR***, the court held:-

“In this case, the Claimant was first served with a show cause letter stating the charges against him, interdicted pending investigation, accorded an oral hearing in the company of another employee of his choice, and finally served with a

termination letter confirming that his defence was considered but his services terminated for reasons cited in the letter. Such procedure in my view passes the test of procedural fairness, and I so hold.”

115. In light of the foregoing, and noting that the Claimant received a show cause letter, responded to the allegations, attended a disciplinary hearing, was informed of his right to representation, and filed an appeal which was heard and determined, I reach the conclusion that the Respondent substantially complied with Section 41 of the Employment Act.

116. In the premise, I find the Claimant’s dismissal procedurally fair and lawful.

117. On whether the Respondent had valid and fair reasons to dismiss the Claimant, Section 43 of the Employment Act places the burden on the employer of proving the reasons for termination. Section 45 further requires that those reasons must be valid and fair, relating to the employee’s conduct, capacity, or compatibility.

118. The first reason for the Claimant’s dismissal concerns a conflict of interest. The evidence before this court demonstrates that the Claimant was a director of Mega Eye Experiential Ltd, and that the said Mega Eye received payments connected to services rendered through TradCo Services Ltd, which had a business relationship with the 1st

Respondent. In his testimony, the Claimant admitted that payments to Charles Mengo were made through Mega Eye's account.

119. The Respondents also led evidence that the Claimant failed to disclose this relationship in the September 2020 conflict of interest declaration cycle.

120. Conflict of interest disclosure obligations are commonly recognized as legitimate grounds for disciplinary action. In ***Bank of Baroda (Kenya) Ltd v Timwood Products Ltd (2008] KECA 350 (KLR)***, the Court affirmed that failure to disclose material interests affecting an employer's business may amount to misconduct.

121. Further, even if the Claimant did not personally authorize the payments, his role as a director of an entity connected to transactions involving the employer creates a perceived conflict of interest that employers are entitled to regulate.

122. This, in my view, was no doubt a fair and valid reason that justified the employer's right to institute disciplinary action.

123. The second ground for the Claimant's dismissal was favouritism. The Claimant again admitted on cross-examination that he sent interview preparation materials to a candidate named Devina Kwamboka.

124. In this regard, even though the Claimant did not sit on the interview panel, providing insider materials to one candidate could, in my view, reasonably be regarded as

compromising the integrity of the recruitment process. The Court in ***CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona [2015] KECA 919 (KLR)***, emphasized that an employer only needs to demonstrate a genuine and reasonable belief that misconduct occurred, and not proof beyond reasonable doubt.

125. The test is not whether the misconduct was proved, as happens in a criminal charge, but whether the employer had reasonable and sufficient grounds to take disciplinary action.

126. Taking into account the undisclosed directorship in Mega Eye, the financial link involving payments through the said company, and the assistance given to a recruitment candidate, I find and hold that the Respondents had reasonable and valid grounds to conclude that the Claimant engaged in misconduct.

Whether the Claimant's Constitutional rights were violated

127. The Claimant contends that the Respondent violated her rights under Articles 41, 47, and 50 of the Constitution.

128. Courts have variously cautioned against constitutionalizing ordinary employment disputes where statutory remedies exist. In ***Communication Commission of Kenya v Royal Media Services Ltd (2015) KESC 13 (KLR)***, the Supreme Court emphasized that constitutional remedies should not replace statutory

dispute mechanisms unless a clear constitutional violation is demonstrated.

129. The dispute herein primarily concerns termination of employment, which the Employment Act already provides comprehensive remedies for. Further, the Claimant has not demonstrated how his privacy was unlawfully breached or how the disciplinary process exceeded the statutory framework/limits.

130. In the circumstances, I find the claim for constitutional violations unfounded and devoid of merit.

Whether the Claimant deserves the reliefs sought

131. For the reason that the Court has found the Claimant's dismissal procedurally fair and based on valid reasons, it follows that the dismissal does not qualify as unfair termination under Sections 41, 43, and 45 of the Employment Act, 2007.

132. Consequently, the Claimant's claims for 12 months' salary as compensation for unfair termination, damages for unfair termination, loss of earnings to retirement, constitutional damages, and damages for medical injury all fail and are hereby dismissed.

Entitlement to Certificate of Service

133. Under Section 51 of the Employment Act, an employee who separates from an employer is entitled to a certificate of service regardless of the reason for termination.

134. In the end, I find the Claimant's memorandum of claim devoid of merit and is hereby dismissed, save only for an order that the Claimant be issued with a certificate of service within 14 days of this Judgment.

135. The Claimant shall bear the costs of the suit.

136. Judgment accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 19TH DAY OF MARCH, 2026.

**C. N. BAARI
JUDGE**

Appearance:

N/A for the Claimant

N/A for the Respondent

Ms. Esther S- C/A