



**Musau v Schneider Electric (Kenya) Limited (Employment and Labour Relations
Petition E107 of 2023) [2025] KEELRC 1962 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1962 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E107 OF 2023**

HS WASILWA, J

JULY 2, 2025

BETWEEN

ENG STANLEY KALILE MUSAU PETITIONER

AND

SCHNEIDER ELECTRIC (KENYA) LIMITED RESPONDENT

JUDGMENT

1. By a Petition dated 26th June 2023, the Petitioner sought for the following reliefs; -
 - a. A declaration that the Petitioner's Fundamental Rights and Freedoms have been violated by the Respondent.
 - b. A declaration to the effect that the Respondent constructively dismissed the Petitioner's employment unfairly.
 - c. A declaration that the Respondent discriminated against the Petitioner.
 - d. Exemplary damages for lost opportunity.
 - e. Aggravated Damages.
 - f. General Damages for Constitutional breaches and violations.
 - g. Costs of and incidentals to these proceedings be borne by the Respondent.
 - h. Any other relief that this Honourable Court may deem just to grant.

Petitioner's Case

2. The Petitioner avers he was employed by the Respondent company as a Director Building & Contractor Segment and he was confirmed in May 2021 upon completion of a six-month successful



probation period. Subsequently, he served the Respondent in various capacities throughout his three years of employment up until his termination from employment where he held the role of Channel Sales Leader-East Africa.

3. The Petitioner avers that on 3rd April 2023, he was summoned by his boss, Madam Carol Koech for a routine catch up meeting in which he was verbally informed of the Respondent's intention to part ways with him; and that the Human Resource Director would prepare a letter of Mutual Separation. There was no written communication or any records prior to the meeting to support the Respondent's abrupt decision.
4. The Petitioner avers that on 4th April 2023, he held a session with the Respondent's Human Resource in which she advised him to update his CV and begin to look for another job since the decision for his exit had already been made.
5. It is the Petitioner's case that he sought to know the reason for his possible exit but none was availed to him.
6. The Petitioner avers that he was handed a letter of disengagement by the Respondent's HR Director on 17th April 2023 with instructions to sign to which he declined.
7. The Petitioner avers that he took compassionate leave on 4th May 2023 till 16th May 2023 and upon resumption of duty on 23rd May 2023, the Chief Finance Officer sent out a routine sales meeting notification which left him out but included his team member, a junior who reports to him instead.
8. The Petitioner avers that the Human Resource Director delivered to him two sets of documents on 29th May 2023. These documents comprised of the Mutual Separation Agreement for him to review and sign but he declined to sign the documents since they were drafted without his consent, consultation and/or input.
9. It is the Petitioner's case that the Respondent's conduct was in violation of the Petitioner's constitutional rights and concept of fairness and justice as enshrined under Articles 41 and 47 of *the Constitution* and Section 4 of the Fair Administrative Actions Act. It further contravened all the principles of Natural Justice and the Rule of Law.
10. The Petitioner submitted that the Respondent acted arbitrary, in a high handed ,prejudicial and oppressive manner towards him without due regard to the constitutionally protected fair labour practices that accrue to employees.
11. It is the Petitioner's case that he has suffered great economic loss and mental stress and stands to be precluded from the job market up to retirement age due to the nature of the charges raised against him and the failure to be accorded a fair process before termination of his services.
12. The Petitioner avers that unless the court intervenes, an irreparable violation of the Petitioner's fundamental rights will continue to prevail since the Respondent has terminated her employment using unfair labour practices.
13. It is the Petitioner's case that contrary to the Respondent's disciplinary policy 3.1.1 which sets the investigation procedure; the Respondent did not conduct any investigations; no witness statements were taken from him or any of his then team members or anyone from the organization as proof of the allegations by the Respondent.



Respondent's Case

14. In opposition to the Petition, the Respondent filed a Replying Affidavit dated 9th August 2023 sworn by Miranda Ndegwa, the Human Resource Director, East Africa of Schneider Electric [Kenya] Limited.
15. The Respondent avers that vide a contract of employment dated 12th October 2020, it employed the Petitioner. Subsequently, the Petitioner was appointed to his role as the Channel Sales Leader by an appointment letter dated 19th October 2022.
16. The Respondent avers that the Petitioner willingly entered into the contract of employment which outlined his remuneration, working hours, duties, responsibilities, a non-exhaustive list of acts or omissions that could lead to summary dismissal at clause 16.5, and the Respondent's Disciplinary Rules and Procedures would apply in clause 16.
17. It is the Respondent's case that the Petitioner was summarily dismissed for gross misconduct as envisioned under Section 44 [4] of the *Employment Act*.
18. The Respondent avers that the Petitioner was issued a notice to show cause letter that laid down the specific allegations along with the basis for each allegation and the documents relied upon for each allegation were specified. The Petitioner was further invited for a disciplinary hearing on 23th June 2023 and he was informed of his rights at the hearing, including the fact that he had the right to be accompanied by any employee of his choice.
19. The Respondent avers that the Notice to Show Cause further informed the Petitioner that the allegations constituted gross misconduct and were in violation of his employment contract and the Policy; and that the gross misconduct carries a range of sanctions, including summary dismissal.
20. Additionally, the letter required the Petitioner to provide any relevant documents he wished to rely on and inform the Respondent if he intended to call any witnesses during the hearing no later than 24 hours before the scheduled hearing. However, the Petitioner did not provide any such documents.
21. The Respondent avers that the advice given in accordance with the Company's policy, the Petitioner requested to be accompanied by his lawyer, Mr. Jefferson Museve, instead of an employee of his choice for the disciplinary hearing, however, the Respondent agreed to his request.
22. The Respondent avers that the Petitioner was informed that the Notice to Show Cause exceeded the standard prescribed under the policy to ensure the Petitioner had ample time to adequately prepare for the hearing. The Petitioner did not raise any objections regarding the time frame provided.
23. The Respondent avers that the Petitioner responded to the Notice to Show Cause on 22nd June 2023 and the disciplinary hearing took place on 26th June 2023. At the start of the hearing, he was informed on the composition of the panel members and other relevant individuals were also in attendance as required.
24. It is the Respondent's case that it considered the Petitioner's seniority as well as the need for impartiality when constituting the disciplinary panel. The members were senior members of the Respondent's organization and well-respected professionals and had not had significant interaction or prior interaction with the Petitioner.
25. The Respondent avers that during the hearing, the Petitioner was given an opportunity to respond to each allegation. However, he chose not to call any witnesses or cross examine the Respondent's witnesses. He also did not challenge the evidence submitted by the Respondent.



26. The Respondent avers that it sent the Petitioner detailed minutes of the disciplinary hearing on 29th June 2023 which were signed off by all the attendees for his review and signature; the Petitioner acknowledged receipt of the minutes but to date he has not provided any further response.
27. The Respondent avers that upon reviewing the evidence on record and considering the representations made during the hearing, the disciplinary panel resolved that the Petitioner was guilty of the allegation in the Notice to Show Cause and prepared a report setting out its recommendations. Subsequently, the Respondent sent the Petitioner a termination letter on 30th June 2023 informing him that the allegations against him were satisfactorily proven and amounts to gross misconduct justifying his summary dismissal from employment in line with Section 44[4] of the [Employment Act](#).
28. The Respondent avers that the Petitioner completed the clearance process on 3rd August 2023 and as a result all the terminal dues will be disbursed to him by 15th August 2023. The delay in the final settlement of the terminal dues was attributed to the Petitioner's failure in fulfilling the Respondent's clearance requisites but he was issued a certificate of service on 7th August 2023.
29. The Respondent avers that the Petitioner was informed of his right to appeal before 7th July 2023, however, the Petitioner did not file any appeal against the decision of the disciplinary panel.
30. The Respondent avers that the Petitioner failed to report to work and continually absented himself from the workplace without permission from 7th June 2023 to 23rd June 2023. The Respondent wrote to the Petitioner on 9th June and 15th June 2023 and called the Petitioner repeatedly on 7th June 2023 but received no response. During the hearing, the Petitioner did not dispute he was absent and he failed to address the allegation of not obtaining the necessary approvals for being absent which was against the company's procedure.
31. The Respondent avers that the Petitioner unsatisfactorily stated he was working from home due to alleged hostility in the workplace and the reallocation of his responsibilities; despite the Respondent's letters dated 9th June 2023 and 15th June 2023 stating his duties has not been reassigned. Therefore, the Petitioner's actions amounted to gross misconduct under Section 41[4][a] of the [Employment Act](#) that provides for justifiable grounds for dismissal which includes an employee absenting himself from the workplace without leave.
32. It is the Respondent's case that the Petitioner failed to perform his contractual duties which amounts to grounds for summary dismissal under Section 41[4][c] of the [Employment Act](#) when an employee neglects to wilfully perform work which is his duty.
33. The Respondent avers that the Petitioner did not attend meetings which is within his responsibilities as evidenced in the letters dated 9th June 2023 and 15th June 2023 which stated his duties had not been reassigned.
34. The Respondent avers that the Petitioner chose to inform his team about his decision to leave the company during a meeting on 29th May 2023 without prior communication with the management. This unilateral announcement has had far reaching consequences, causing uncertainty and confusion among the team members necessitating immediate damage control measures due to its disruptive effect on the team and external client service delivery and the baseless accusations against other employees' contrary to its policies.
35. It is the Respondent's case that the claim for constructive dismissal is baseless as the Petitioner was still and employee of the Respondent until the point of his termination and therefore, he did not resign as alleged; he was justifiably summarily dismissed.



Evidence in court.

36. The Petitioner [PW1] adopted the petition and supporting documents, statements and affidavits as his evidence in chief.
37. During cross-examination, PW1 testified that he was on compassionate leave from 4th May 2023 to 17th May 2023 after he lost his father. He came back to work on 17th but did not resume duty on 23rd May 2023.
38. PW1 testified that in respect to the email to his junior, he was on compassionate leave during that period and the business of the company needed to proceed even in his absence.
39. PW1 testified that there was a project mass meeting held on 7th June 2023 but he did not attend as noted in the minutes produced in court.
40. The Respondent's witness [RW1], Miranda Ndegwa testified that she is the Respondent's Human Resource Director, and adopted a statement dated 9th September 2023 and further affidavit dated 5th September 2024 as her evidence in chief.

Petitioner's Submissions

41. The Petitioner submitted on two issues: whether the Petitioner was lawfully, fairly and procedurally dismissed by the Respondent; and what remedies are available to the Petitioner.
42. The Petitioner submitted that he was accused of having committed acts of misconduct that led to his dismissal yet none of the allegations could be proved.
43. It is the Petitioner's submission that he gave evidence to the effect that he did not stay away from the office without permission but he informed the Respondent on 6th June 2023 when he physically reported to work, that he would work from home as a result of the hostility and toxic environment he was subjected. Whereas, the Respondent's witness was unable to produce any evidence of Petitioner's absenteeism during the period it is claimed he absconded duty, therefore, the allegation could not be proven against the Petitioner.
44. On wilful neglect of duties, the Petitioner submitted that the Respondent did not place any document or evidence to confirm he was assigned particular duties and he failed to deliver or perform the same. Additionally, the Respondent's witness testified that there is no evidence showing that the Petitioner was subjected to a performance evaluation as a result of neglect of his duties as alleged. The Petitioner contends that he continued to work from home when called upon to do so despite the Respondent taking away the responsibilities and duties that fell within his docket, thus, the allegation is unfounded and malicious.
45. The Petitioner submitted that the Respondent failed to place any evidence before this court in support of its allegation that the Petitioner disrupted the work environment. The Respondent did not bring any employees or witnesses to testify on his disruption of the company systems; this allegation is not valid or proven by the Respondent.
46. It is the Petitioner's submission that the allegations that led to his termination were all frivolous and lacked merit. He adequately responded to the allegations through his response to the show cause letter and the same were not proven to warrant termination.
47. The Petitioner submitted that he served the Respondent for over 3 years with a clean and exemplary record and was ready and willing to continue serving the Respondent were it not for the unjustified



and malicious termination he was subjected to. Consequently, he is entitled to the prayers as set out in his petition.

Respondent's Submissions

48. The Respondent submitted on three issues: whether this Honourable Court should admit the above tampered documents and the Further Supplementary List of Documents; whether the Respondent violated the Petitioner's constitutional rights by terminating the Petitioner's employment on reasonable and lawful grounds, including absenteeism from work without permission, wilful neglect of duties, and disrupting the work environment; whether the Petitioner was constructively dismissed; and whether the Petitioner is entitled to the remedies sought in the Petition.
49. On the first issue, the Respondent submitted that it is trite law that one can only adduce evidence vide an affidavit. Rule 65 [8] of the Employment and Labour Relations Court [Procedure] Rules provides for the provisions of the Civil Procedure Rules in respect of affidavits to apply. The Petitioner's purported Further Supplementary List of Documents does not meet the requirements of Order 19 Rule 1 of the Civil Procedure Rules, that is, no sufficient reason has been provided by the Petitioner as to why it should be admitted without an affidavit and the same violates the Respondent's employees' constitutional right to privacy under Article 31 of *the Constitution*.
50. The Respondent submitted that the *Data Protection Act, 2019* gives effect to Article 31 by regulating the collection, processing, storage, and sharing of personal data. It requires that data be processed lawfully, transparently, and for a specific, explicit, and legitimate purpose. Furthermore, under Section 106B [4] of the *Evidence Act*, an electronic record can only be admitted as evidence in court if it is accompanied by a certificate confirming the authenticity of the said record and the device that captured the recording.
51. It is the Respondent's submission that the audio recordings in the purported Further Supplementary List of Documents are inadmissible under Article 50[4] of *the Constitution* as the two employees violated the right to privacy under Article 31 of *the Constitution*, as reinforced by the *Data Protection Act, 2019* by the unwarranted disclosure and/or processing of personal information through the audio recordings, which were unlawfully obtained.
52. On the second issue, the Respondent submitted that considering the Petitioner's senior position, it was not possible to have junior employees as part of the Disciplinary Panel. Therefore, his superiors situated in different regions had to constitute the Disciplinary Panel as per the Respondent's Grievance and Disciplinary Policy [Disciplinary Policy]. As such, the ratio decidendi in *Korich v Fairview Hotel Limited* [Cause 594 of 2018] [2023] KEELRC 499 [KLR] [28 February 2023] applies mutatis mutandis to the instant situation considering that the Respondent has a global presence and the seniority of the Petitioner.
53. The Respondent relied on the case of *Korich v Fairview Hotel Limited* [supra] whereby the court held that if an organisation has few members of staff, it is permissible to outsource a chair of a disciplinary hearing. The court added that the outsourced chairperson ought to conduct the proceedings impartially and objectively while upholding all the requirements under sections 41-45 of the *Employment Act*. Therefore, the Respondent submitted that the Disciplinary Panel was impartial and properly constituted.
54. On the right to fair hearing, the Respondent submitted that Petitioner has not demonstrated to the court how his right to fair administrative action as guaranteed under Article 47 of *the Constitution* has been violated. The termination process was efficient, lawful, and procedurally fair as the Petitioner and the Respondent engaged in active discussions as evidenced in the email correspondence of 27th



April 2023 by the Petitioner and that of 23rd and 24th May 2023, which culminated into the Mutual Separation Agreement.

55. The Respondent submitted that the issue on termination only arose after the Petitioner absconded from duty and wilfully violated the Respondent's policy. These actions prompted the issuance of the notice to show cause which clearly specified the allegations along with the basis for each allegation; was accompanied by documents relied upon for each allegation; informed the Petitioner of his rights at the Disciplinary Hearing, including the fact that he had the right to be accompanied by any employee of his choice; informed the Petitioner that the allegations outlined therein constituted gross misconduct and were in violation of his Employment Contract, the Sections 44 [4] [a] [c] of the *Employment Act*, and Clauses 4 of the Disciplinary Policy; informed the Petitioner he was required to provide any relevant documents he wished to rely on and he was free to call any witnesses during the Disciplinary Hearing as per Clause 3.1.2 of the Disciplinary Policy. Additionally, the timelines in the Notice to Show Cause, which was 5 days to the date of the Disciplinary Hearing exceeded the timelines provided for under Clause 3.1.2 of the Disciplinary Policy being at least 24 hours before the hearing, and the Petitioner was informed of the same.
56. The Respondent further submitted that during the disciplinary hearing, the Petitioner, who was accompanied by his advocate Mr. Jefferson Museve, was offered the chance to challenge the evidence produced to which he declined and insisted on relying on his responses in his letter of 22nd June 2023. Upon conclusion of the hearing, the Respondent shared the minutes with the Petitioner for his review and signature. Subsequently, a report was prepared that found the Petitioner guilty of gross misconduct leading to the issuance of the termination letter dated 30th June 2023 which set out the findings and outcome of the disciplinary process and advising the Petitioner of his right to appeal the Disciplinary Panel's decision. It further outlined the appeal procedure and specified the designated persons to whom the appeal was to be submitted.
57. It is the Respondent's submission that given the proper issuance of the Notice, the fair conduct of the disciplinary proceedings, and the reasoned decision of the Disciplinary Panel, there was no violation of the Petitioner's rights under Articles 47[1], 47[2], or 50[1] of *the Constitution*.
58. The Respondent submitted that the Petitioner intentionally absconded from his duties, failed to attend important meetings, and failed to respond to calls from his manager, Carol Koech. Therefore, his duties had to be done by someone else in the office during his wilful neglect of duty to ensure the continuous smooth running of the company. In this testimony, the Petitioner was unable to demonstrate any tasks he performed remotely during his absence and failed to attend meetings that formed part of his job description thus, from the standpoint of a reasonable employer, this conduct amounted to wilful neglect of duty. Accordingly, the Petitioner's summary dismissal was lawful under Section 44[4][a] and [c] of the *Employment Act*, which permits summary dismissal where an employee absents themselves without permission or lawful cause or wilfully neglects to perform their duties.
59. The Respondent submitted that in the Notice to Show Cause and during the disciplinary hearing, the Petitioner was informed of the allegation of disrupting the work environment by informing his team about his decision to leave the Company during a meeting held on 29th May 2023 without prior communication with the management. However, in his response, the Petitioner failed to specifically respond to the allegation but instead gave a blanket denial of the claim in totality.
60. On procedural fairness, the Respondent submitted that it took great care in constituting the Disciplinary Panel by considering the Petitioner's seniority in the company, the need for impartiality, the Respondent's Disciplinary Policy, and the potential for an appeal process. Before terminating, the



Petitioner's employment, the Respondent also followed the procedure guiding the process of summary dismissal in its Disciplinary Policy.

61. It is the Respondent's submissions that this Court should refrain from interrogating the merits of its decision and instead confine itself to examining whether the procedure followed was fair and lawful, as envisaged under Article 47 of *the Constitution*; as the right to fair administrative action does not entitle a party to a review of the merits of the decision but rather safeguards procedural fairness.
62. On discrimination, the Respondent submitted that the Petitioner bore the overriding obligation to outline in detail and specificity how the Respondent discriminated against him to discharge his evidential burden and establish that his treatment at the hands of the Respondent was unconstitutional; this would be the only basis upon which the burden would shift to the Respondent to prove the contrary. However, the Petitioner has not demonstrated before this court how the Respondent's actions were discriminatory against him, and on what basis the alleged discrimination arose.
63. On legal expectation, the Respondent submitted that it is trite law that a legitimate expectation can only be founded upon a promise or practice by a party, and the party is expected to fulfil that expectation as held in *Communications Commission of Kenya & 5 others v Royal Media Services & 5 others* [2014] eKLR.
64. It is the Respondent's submission that the Petitioner failed to demonstrate how the Respondent's actions in effecting the summary dismissal deviated from the procedure set out in the Respondent's Grievance and Disciplinary Policy.
65. On the third issue, the Respondent submitted that that constructive dismissal arises only where an employee resigns, with or without notice, due to hostile treatment or intolerable working conditions attributable to the employer. In this case, the Petitioner did not resign but was summarily dismissed for gross misconduct; as such, the claim of constructive dismissal is untenable. It relied on the legal principles for determining constructive dismissal set out by the Court of Appeal in *Coca Cola East and Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR.
66. The Respondent submitted that the Petitioner claims his absenteeism from work was a result of hostility and a toxic environment. However, during cross-examination, the Petitioner stated that he had never raised this with the Respondent at any time during his employment, as well as in the discussions that led to the Mutual Separation Agreement; and he further admitted that he did not inform the Respondent of any decision to work from home. Therefore, the constructive dismissal is a mere afterthought, intended to shield the Petitioner from accountability for the allegation levelled against him.
67. It is the Respondent's submission that it did not unilaterally prepare the Mutual Separation Agreement; RW1 testified that there were discussions between the Petitioner and Respondent during a meeting held on 22nd May 2023, upon which the terms of the Mutual Separation Agreement were mutually agreed upon by both parties. Additionally, the Petitioner's email dated 24th May 2023 refers to deliberations between him and RW1 on behalf of the Respondent confirming the process was mutually initiated, voluntary, and based on a shared agreement between both parties. It is upon these discussions and understanding that the Mutual Separation Agreement was prepared.
68. The Respondent submitted that it was lawful and within the parties' rights for the Respondent and the Petitioner to engage in voluntary discussions culminating in the termination of their relationship. Therefore, it is disingenuous and in bad faith for the Petitioner to now claim that he was not part of the discussions underpinning the Mutual Separation Agreement.



69. The Respondent submitted that immediately, the Petitioner stated that he was no longer interested nor agreeable to the Mutual Separation Agreement, it officially withdrew from the Mutual Separation Agreement discussions through an email to the Petitioner dated 6th June 2023. Just like other contracts, a mutual separation agreement requires mutual consent for its formation and performance and if consent is withdrawn before the agreement takes effect, that contract would not bind any parties to it.
70. The Respondent submitted that the Mutual Separation Agreement is unsigned, and thus unbinding, and the Petitioner failed to adduce any evidence demonstrating the alleged coercion into entering into a mutual separation between himself and the Respondent. The Petitioner has not shown when, how, by whom, or in what manner such coercion occurred.
71. On the final issue, the Respondent submitted that no constitutional remedy should be availed to the Petitioner, as he has only cited the provisions of *the Constitution* alleged to be violated but there was no indication of how they were violated. The Petitioner has failed to demonstrate with particularity and adequacy how the Respondent has violated his constitutional rights to fair labour practices, fair administrative action, and fair hearing.
72. It is the Respondent's submission that the court should not entertain this claim by the Petitioner as he has failed to demonstrate how a purposive and holistic interpretation of *the Constitution* under Article 259 would enforce his rights or would address the alleged violation of his rights.
73. I have examined all the evidence of the parties and submissions filed herein. These are the issues for this court's determination:
1. Whether the petitioner was constructively dismissed or summarily dismissed.
 2. If summarily dismissed if the dismissal was proper and justified.
 3. If summarily dismissed whether the petitioner's rights under *the constitution* were infringed upon
 4. If summarily dismissed if the petitioner is entitled to the remedies sought.
 5. If the respondents should pay costs of this suit.

Issued No 1

74. The petitioner and the respondents both agree that the petitioner was an employee of the respondent. The point of divergence however is on the manner of separation between the two.
75. The petitioner has contended that he was constructively terminated by the respondent. The respondents on their part aver that the petitioner was summarily dismissed of gross misconduct under section 44[4] of the *Employment Act* 2007.
76. The petitioner testified before this court and indicated that he worked from home and the allegation of absenteeism was not true. The petitioner testified that he had worked well with the respondent but out of no apparent reason he was informed by the respondent's CEO that the HRD would prepare a letter of mutual separation for him and on 4/4/2023, he held this meeting with the respondent's human resource manager who advised him to update his CV since a decision for his exit had already been made.
77. He indicates that he was not given reason for the possible exit but on 4/4/2023 at 9.08 am he received an email from an external service provider of the respondent based in South Africa to share feedback for HR. The petitioner produced before this court the email [App EMK-3] which show that there was an email from Carol Koech on this day April 20th 2023 titled handover plan. Rererence was also



made by the petitioner in his email to Caro at 5pm referring to a meeting of 3/4/2023 at 1300hrs and 24th April 2024 at 11.30am on the same issue of handover pan.

78. In an email to the petitioner Q1 2023 performance of the same day 4/4/23 at 9am, the petitioner was also informed that there was some feedback from HR that was important to discuss. Prior to this date the petitioner has averred that he had been approached with a mutual separation agreement. One such agreement is at app SMK-21. The agreement has not been denied by the respondents. It is however unsigned.
79. On 29/5/2023 at 4pm Miranda Ndegwa sent the petitioner an email in which she indicated as follows:

“Dear Stanley

I hope this email finds you well. I understand the mutual separation agreement was delivered to you this morning. We had attempted dispatching the agreement to you on Friday with a handover of the signed agreement and equipment and payment instruction to be done today, but this did not happen because of scheduling conflicts. Please let me know when we can discuss timing for the equipment handover and payment instructions since our intention is that we meet your proposal timelines of 31/5/2023.

Kind regards

Miranda Ndegwa.

80. The petitioner denied being the initiator of the timelines indicated above. On 26/5/23, there had been a letter from the respondents – Miranda Ndegwa again delivering the mutual separation agreement and it stated as follows:

“Dear Stanley

Mutual separation agreement

We refer to the above matter. The proposal contained therein in your email of 24/5/2023 [your proposal] and our various mutual discussion on the above subject. We confirm that Schneider Electric [Kenya] Ltd [the company] is agreeable to your proposal. To this end we enclose two copies of the mutual separation agreement for your execution. Please sign and return to us a duly signed copy of the same by 29th May 2023. Please confirm receipt of the enclosed documentation by signing and dating acknowledgment slip contained hereunder letter and sending it back to us.

Yours faithfully

Signed

Miranda Ndegwa

for and on behalf of Schneider Electric [Kenya] Ltd”

81. Vide an email of 6/5/2023 10.06 am from the petitioner he sought some documents from the respondents [pg 74 of petitioners documents]. However Miranda Ndegwa responded vide hers at 10.40am same day as follows:

Dear Stanley

I hope this emails finds you well. I am wiring in response to our conversation yesterday morning as my office regarding the mutual separation agreement [MSA] as well as your email below. Firstly, I would



like to clarify that our initial understanding was that there was mutual agreement and understanding between both parties regarding the MSA. However, during our conversation yesterday, you informed me that there is no longer mutuality in relating to the MSA. The company fully acknowledges and respects your reconsideration position and based on this, we have made the decision to withdraw the MSA. It is important to note that a mutual separation agreement can only be established with the agreement of both parties involved. Given this recent development, we consider your email below to have been suspended by the current circumstances. If there are any other issues or concerns you would like to discuss, please don't hesitate to reach out. Thank you for your attention and we wish you a pleasant day.

Kind regards

Miranda Ndegwa”

82. I have set out the issues relating to the MSA. Since the petitioner had contended, he was sought out and asked to send in his resignation since there is no resignation letter before court it cannot be said that he was constructively dismissed.

Issue No 2

83. This now brings me to issue no 2 above on summary dismissal. I have considered the chronology above on MSA. However, following the collapse of the MSA, as above, it is still imperative to note that the parties still communicated on the MSA on 30/3/2023. Miranda Ndegwa wrote an email to the petitioner on 30/5/2023 as follows:

“Good morning Stanley

I refer to your email below and our previous discussion regarding the same. I would like to ensure that this matter progresses in a timely manner. I kindly request you provide any comments you may have in the MSA in the course of the day. Your feedback can be shared via email to allow us to finalise this matter effectively.

84. I see a push or determination to have the MSA progress. However on 21/6/2023 following apparent collapse of the MSA on 30/5/23 the petitioner was served with a Notice to show cause where he was accused of :-

- [1] Absenteeism from work without permission or reasonable basis. It was stated that he had been absent from office from 7th June 2023 to date.
- [2] Wilfully neglecting his duties during the prolonged unauthorised absence.
- [3] Disrupting the work environment: it was indicated that this had been ongoing since April 2023 whereby he was engaging junior employees in unnecessary and unsolicited conversations about his departure from the organisation and baseless allegations against certain individuals.

85. He was in this email informed that the allegations constituted gross misconduct and also informed of a disciplinary hearing to be conducted against him and the requirements thereof. He was asked to acknowledge the notice to show cause within 24 hours.

86. He indeed responded on 22/6/2025 denying the allegations therein. He admitted staying away from the office but indicated he had informed the respondent's office of the same. He indicated he had chosen to work from home due to the hostility and toxic environment at work.



87. On neglect of his duties, he indicated that he has not been assigned any duties but the duties had been reassigned to another. He also denied disrupting the work environment.
88. The petitioner was thereafter invited to a disciplinary hearing which took place on 26/6/2023 as per the minutes submitted before court by the respondents. The petitioner has averred that the disciplinary panel was partial and improperly constituted. The petitioner averred that the procedure adopted against him was flawed and against the respondent's article 3.1 grievance and disciplinary policy marked SMK4 which states as follows:
- "there are four steps to the disciplinary process
- step 1: investigation
- step2: disciplinary hearing
- step 3: decision and sanction
- step 4: communication informing the employee of the decision"
89. Article 3.1.1. states as follows:
- An investigation will be carried out promptly and thoroughly into any matter that is reasonably suspected or believed to contravene any Company Policies or Rules or which may otherwise be a disciplinary matter. Investigations may be carried out by the Manager, or another appropriate Staff member as required by the business, who has had no direct involvement with the situation and produce a summary report. The summary report should not recommend disciplinary action or any other outcome.
- In cases of serious fraud, the Security team may need to be involved. Except in cases where it is inappropriate for any reason the Employee will be informed that the investigation is taking place and when it has been concluded. Depending on the nature of the allegations, the Employee may or may not be involved in the investigation.
- Key principles for carrying out an investigation:
- Establish what did happen and, if it is clear, what should have happened; Establish who was involved and whether all the parties involved have been identified; Gather statements from witnesses as soon as is practicable; Collate all evidence as soon as possible; Consider whether suspension is appropriate.
- If the Employee is interviewed as part of the investigation and s/he requests that a representative accompany him/her, the investigation should be arranged to enable this. This is on the basis that urgent investigations are not unduly delayed though the chosen representative not being readily available. During this investigatory stage the role of the representative is to support the Employee, rather than to contribute to the discussions.
90. Article 3.1.2 step on disciplinary hearing details how the hearing should be carried out. From these procedure rules, the petitioner has averred that there were no investigations carried out. He indicated that there was no investigation and no witnesses were also called to prove allegations against him. It is indeed true that there is no evidence that investigations were indeed carried out. No investigation report was presented before this court or at the disciplinary hearing.
91. The petitioner was accused of among other charges negligence of duty and disruption of the workplace. There is no evidence adduced that he was assigned some work which he failed to do. As to disruption



of the workplace he was accused of engaging with junior staff and causing trouble at work. No such staff were called as a witness to prove allegations raised against him.

92. Section 41 of the *Employment Act* 2007 states as follows:

41.[1]. Subject to section 42 [1], an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

93. The need to call witnesses and to have the employee cross examine them is clearly spelt out under the law. In the case of the petitioner, no witness was ever called to state the case against him and to be subjected to cross examination.

94. It is noteworthy that the law is clear that an employee can be accompanied by an employee of their choice. The petitioner chose to attend in company of his counsel. It is however absurd that the respondents were also represented by two counsels. This disciplinary process took a different turn which in my view went beyond an internal disciplinary process and so was improperly done.

95. It is also true that as per the meeting minutes that the allegations were read to the petitioner which he denied and then the panel started questioning him at length. The process envisaged for a fair hearing was thus flawed.

96. As to reason leading to the disciplinary hearing and eventual dismissal of the petitioner, it is apparent that he was served in one letter with a notice to show cause and a notice for a hearing. The impact of this communication to the petitioner was to inform him that there are allegations levelled against you which we expect you to respond but even as you respond you must be subjected to a hearing. This connotes a pre-determined position by the respondent to subject him to a disciplinary hearing no matter his explanation on the notice to show cause which also denotes bad faith.

97. The notice to show cause came hot on the heels of an attempted MSA which failed. This also in my view shows bad faith on the part of the respondent and especially due to the fact that in their charges against the petitioner they contended that the petitioner had been communicating with junior staff all the way from April 2023 when the MSA had already commenced.

98. The entire process was in my view flawed, unfair and unjustified as provided for under section 45[2] of the *Employment Act* 2007 which states as follows:

[2] A termination of employment by an employer is unfair if the employer fails to prove——

- a. that the reason for the termination is valid;
- b. that the reason for the termination is a fair reason——
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and

[c] that the employment was terminated in accordance with fair procedure.

99. It is therefore my finding that the summary dismissal of the petitioner was unfair, unjustified for lack of valid reason and a fair disciplinary process as per the respondents own procedures.



Issue No 3

100. I have established that the summary dismissal was unfair and unjustified as per section 45[2] of *Employment Act*. It has however been submitted by the respondents that the petitioners rights under *the constitution* have been breached. The petitioner averred that their rights under *the constitution* and in particular articles 41, 47 and 259 were breached.
101. Indeed as found above, the petitioner was subjected to a flawed disciplinary process. This right to fair labour practices under article 41 of *the Constitution* were breached. The said process was still in breach of article 47 of *the Constitution* wherein the petitioner was condemned in advance before the hearing after being issued with a notice to show cause which the respondents found it not worthy considering and notified him for a disciplinary hearing in the same communication.
102. It is therefore my finding that indeed, the petitioner's rights under articles 41 and 47 of *the Constitution* were breached.

Issue No 4 And 5

103. As concerns remedies available to the petitioner, I do find and render the following finding:
1. That the summary dismissal of the petitioner by respondent was unfair and unjustified.
 2. A declaration that the petitioner's fundamental rights and freedoms have been violated by the respondents.
 3. A declaration that the petitioner is entitled to damages for breach and violation of his constitutional rights which I award at Kshs 5 million.
 4. The respondents will pay costs of this suit plus interests at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

