



Mukono v Dan K Ameyo Francis Etole t/a Guto, Etole & Co Advocates (Cause E727 of 2020) [2024] KEELRC 1261 (KLR) (15 May 2024) (Judgment)

Neutral citation: [2024] KEELRC 1261 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E727 OF 2020**

JK GAKERI, J

MAY 15, 2024

BETWEEN

MOSES S MUKONO CLAIMANT

AND

**DAN K AMEYO FRANCIS ETOLE T/A GUTO, ETOLE & CO
ADVOCATES RESPONDENT**

JUDGMENT

1. The Claimant filed the instant suit on 10th November, 2020 and amended the Memorandum of Claim on 23rd October, 2023 alleging unlawful dismissal, non-payment of salary, terminal dues, non-remittance of statutory deductions and unfair labour practice.
2. The Claimant avers that he was employed by the Respondent advocate practicing in the name and style of Ameyo Guto, Etole & Company Advocates on 30th April, 2012 at a monthly gross salary of Kshs.25,000/= which rose to Kshs.45,645.60 in November 2012 and Kshs.56,360/= from 1st December, 2012.
3. That by October 2016, the salary had risen to Kshs.70,559/= but only paid Kshs.70,000/= in cash.
4. It is the Claimant's case that he served the Respondent diligently.
5. The Claimant avers that his salary for July 2016, amounting to Kshs.20,559/= was not paid as was the salary for January 2017, February 2017, June 2017 (Kshs.70,559). In July 2017, only Kshs.50,000/= was paid.
6. It is the Claimant's case that prior to termination of employment on 13th November, 2017, he was handling Petition No. 9 of 2017 David Wamatsi Omusotsi V Benjamin Njomo Washiali & 2 others and was introduced to the Petitioner on the afternoon of 4th September, 2017 and the deadline was 6th September, 2017, 48 hours away and worked on the Petition alone and left for Kakamega on 6th



September, 2017 to finalise the Petition and file the same but the Respondent was unavailable and the Petitioner paid for the flight and accommodation at Kakamega and only received Kshs.10,000/= from the Respondent and a further Kshs.5,000/= from the secretary on 18th October, 2017.

7. The Claimant avers that he proceeded to Kakamega for a ruling slated for 2nd November, 2017 with no financial facilitation and the Petition was dismissed.
8. That on 6th November, 2017, he found a letter on his desk demanding an explanation why defective affidavits were sworn by quacks yet they had not read the ruling and attempts to seek audience fell through.
9. It is the Claimant's case that he had not been paid by 10th November, 2017 yet other employees had been paid and Mr. Etole sent him Kshs.1,000/= on M-pesa on 13th November, 2017 and gave him the letter of termination that afternoon. A cheque of Kshs.160,000/= was enclosed, being October salary and one month's notice and balance of the July 2017 salary of Kshs.20,000/=. The Claimant avers that the 13 days worked in November were not paid for.
10. The Claimant further avers that he was not allowed to proceed on annual leave or paid for the leave days and paid a sum of Kshs.66,224/= to the Kenya Revenue Authority (KRA) as tax.
11. It is the Claimant's case that he was not paid a house allowance.
12. The Claimant prays for;
 - a. That the summary dismissal was unfair, wrongful and unlawful.
 - b. A declaration that the Claimant is entitled to terminal dues and compensation amounting to Kshs.2,589,252.45 comprising;
 - i. Salary balance for July 2016 Kshs.20,559.00
 - ii. Salary balance for December 2016 Kshs.45,559.00
 - iii. Salary balance for January & February 2017 Kshs.45,559.00
 - iv. Salary for June 2017 Kshs.70,559.00
 - v. Salary for 13 days in November 2017 Kshs.35,279.50.
 - vi. Leave Allowance for 5 years Kshs.352,795/=
 - vii. House Allowance @ 15% for 67 months Kshs.846,708.00
 - viii. Deducted PAYE 2012 – 2014 Kshs.343,492.00
 - ix. Refund PAYE for 2016 Kshs.66,224.00
 - x. Unremitted NHIF deductions Kshs.8,400.00
 - xi. General damages for discrimination.
 - c. Interest on (b) above.
 - d. Costs of this suit.
 - e. Certificate of service.
 - f. Any other prayer that the court may deem fit.



Response

13. The law firm of M/S Amolo & Kibanya Advocates entered appearance on behalf of the Respondent on 30th June, 2021 and filed a Memorandum of Response on 2nd August, 2021.
14. The Respondent denies that the summary dismissal of the Claimant was unfair or unlawful and avers that the Claimant failed to carry out his duties diligently in relation to Petition No. 9 of 2017 resulting in its dismissal thus exposing the employer to disrepute and potential lawsuit for professional negligence or misconduct.
15. The Respondent further avers that the Claimant was accorded the opportunity to explain and confirmed the careless and shoddy manner in which he had executed the task.
16. It denies owing the Claimant any terminal dues and prays for dismissal of the suit with costs.

Claimant's evidence

17. On 14th February, 2024, the scheduled hearing date the Respondent was absent and hearing proceeded at 1.00 pm when the Claimant adopted his written witness statement which largely replicates the Memorandum of Claim and produced the documents on record as exhibits.
18. The Respondent adduced no evidence and had not filed a witness statement.
19. In an endeavour to accommodate the Respondent, the court directed that its case would remain open till the confirmation of the filing of submissions on 18th March, 2024 but it did not respond even after service.

Claimant's submissions

20. Counsel for the Claimant submitted on reason for termination, procedure employed and the Claimant's entitlement to reliefs.
21. Concerning the procedure followed, reliance was made on the sentiments of the Court of Appeal in County Assembly of Kisumu & 2 others V Kisumu County Assembly Service Board & 6 others (2015) eKLR on the essence of fair hearing as well as the provisions of Section 41 of the *Employment Act*, 2007.
22. Further reference was made on the sentiments of Mbaru J. in Mary Chemweno Kiptui V Kenya Pipeline Co. Ltd (2014) eKLR to urge the mandatory nature of the provisions of Section 41 of the *Employment Act*, 2007 and submit that the Claimant was not accorded due process.
23. Counsel submitted that the demand for explanation as not a notice to show cause and was written before the writer had read the ruling and the Claimant was not accorded sufficient time and was not heard.
24. Counsel submitted that the prescribed process was not followed rendering the dismissal flawed.
25. As regards the reason for termination, reliance was made on the provisions of Section 43 of the *Employment Act*, 2007 to urge that the reasons ought to have been given to the Claimant for a response and cited Galgalo Jarso Jillo V Agricultural Finance Corporation (2021) eKLR as well as Mary Chemweno Kiptui V Kenya Pipeline Co. Ltd (Supra) to urge that the Respondent failed to prove that it had a valid and fair reason to summarily dismiss the Claimant.



26. On entitlement to the reliefs sought, counsel submitted that the Claimant's evidence was unchallenged as the Respondent adduced no evidence and the alleged negligence or carelessness in handling Petition No. 9 of 2017 was neither investigated nor proved and no threat of a legal action was demonstrated.

Determination

27. The issues for determination are;
- i. Whether termination of the Claimant's employment was unfair.
 - ii. Whether the Claimant is entitled to the reliefs sought.
28. Before delving into the issues isolated above, it is essential to set out the principles that govern undefended suits or where the Respondent is absent.
29. In *Humphrey Munyithia Mutemi V Soluxe International Group of Hotels and Lodges Ltd* (2020) eKLR, Maureen Onyango J. stated as follows;
- “In the case of *Monica Kanini Mutua V Al- Arafat Shopping Centre and another* (2018) eKLR, the court held that in an undefended claim, it is trite that the Claimant establishes all the facts of the claim and must establish the existence of an employment relationship with the Respondent as a preliminary issue before establishing the alleged unfair termination of the employment.”
30. In the instant case, the Respondent admits that it employed the Claimant as a Legal Assistant on 30th April, 2012 and further admitted that he was dismissed from employment because of the manner in which he handled Petition No. 9 of 2017, *David Wamatsi Omusotsi V Benjamin Washiali Njomo & 2 others*.
31. Similarly, the Claimant has attached sufficient documentary evidence to demonstrate that he was indeed an employee of the Respondent.
32. Regarding the burden of proof, the provisions of Sections 107 and 109 of the *Evidence Act* set out the guiding principles and are reinforced by Section 47(5) of the *Employment Act*, 2007 that;
- For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.
33. The foregoing position is fortified by the sentiments of the court in *Kirugi & another V Kabiya & another* (1987) KLR 347 as follows;
- “The burden was always on the plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof. Likewise, failure by the defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
34. Similarly, in *Nicholus Kipkemoi Korir V Hatari Security Guards Ltd* (2018) eKLR, Abuodha J. stated as follows;
- “This burden of proof does not become any less on the employee simply because the employer has not defended the claim or absent at the trial. The Claimant must still prove his or her case. It is therefore not enough for the employee to simply make allegations on oath or in



the pleadings which are not backed by any evidence and expect the court to find in his or her favour.”

35. (See also *Gichinga Kibutha V Caroline Nduku* (2018) eKLR and *Jackson K. Tuitoek V Stephen Tangus Salienyi & 2 others* (2013) eKLR).
36. Concerning termination of employment, it is axiomatic that for a termination or dismissal from employment to pass the fairness test under Section 45 of the *Employment Act*, 2007, it must be proved that the employer had a valid and fair reason to terminate the employment or dismiss the employee and did so in accordance with a fair procedure.
37. Put in the alternative, it must be demonstrated that there was not only a substantive justification for the termination but also procedural fairness. (See *Naima Khamis V Oxford University Press (E.A) Ltd* (2017) eKLR).
38. As aptly captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR, while substantive justification is concerned with the reason(s) for the termination or dismissal, procedural fairness relates to the procedure employed by the employer in the termination or dismissal.

Reason for termination

39. The Claimant submits that his termination from employment was unfair because he was neither given a notice to show cause nor the reason for termination of employment. It is the Claimant’s case that the reason for termination must be made known to the employee before termination.
40. Section 43 of the *Employment Act*, 2007 provides that;
 1. In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45.
 2. The reason or reasons for termination of a contract are the matters that the employer at the time of the termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
41. These provisions are explicit that it is the employer’s obligation to demonstrate that it had a valid and fair reason to terminate the services of the employee.
42. By letter dated 2nd November, 2017, under the reference “Explanation”, the Respondent demanded an explanation from the Claimant as to who picked the Commissioners for Oaths, commissioned the Affidavit and the due diligence conducted on the Affidavits.
43. In his response dated 6th November, 2017, the Claimant stated that he requested one Mr. Kundu Wesutsa to commission the Affidavits but he declined for unexplained reasons. That he called an unnamed lady and the documents were commissioned late that evening.
44. That after two days, he discovered that the stamp used was that of Kigen & Co. Advocates but not the individual advocate and begun following up so as to rectify the anomaly.
45. The Claimant further explained that Mr. Wesutsa Advocate gave him the contact of a lady by the name Christine Atieno who turned out to be a clerk and was unco-operative.
46. The Claimant explained that he then started tracing the firm of Kigen & Co. Advocates on the LSK Website and ascertained that it was based in Eldoret and tried to contact an Advocate by the name Linah Jepkosgei Kebenei-Kigen and visited her on 4th October, 2017 after the pre-trial and admitted



- that the stamp used was hers but she is not the one who commissioned the documents and had no office at Kakamega and the signature used was not hers but forged and swore an Affidavit to that effect which was filed in court and reported the matter to the police vide OB No. 54/6/10/2017.
47. The Claimant admits that the Petition was struck out prematurely on a technicality as the Petitioner's affidavits were struck out for being annexed as evidence of witnesses.
 48. Finally, the Claimant indicated that the Petition and the supporting documents were drafted under immense pressure, fatigue and haste owing to the short time and "some of the anomalies could not be realized by a single person."
 49. In its termination letter dated 10th November, 2017, the Respondent makes reference to the letter dated 2nd November and the Claimant's response and notes that the explanation was unsatisfactory.
 50. The reason for termination of the Claimant's employment is that he allowed improperly commissioned Affidavits to be filed in court and the dismissal of the Petition on account of improper documentation exposed the Respondent to a claim of professional negligence and the Claimant had been negligent in handling the Petition.
 51. Although the Claimant argues that the letter dated 2nd November, 2017 was not a notice to show cause, in the court's view, it was as it demanded an account as to what occasioned the dismissal of Petition No. 9 of 2017 relating to Mumias East and the letter made reference to defective affidavits.
 52. Finally, the letter demanded very specific information which the Claimant was seized of having prepared the Petition and the specificity of the information sought is confirmed by the Claimant's response dated 6th November, 2017, parts of which are addressed herein above.
 53. From the response, it is discernible that the Claimant had challenges with the commissioning of the Affidavits after Mr. Kundu Wesutsa declined to do so.
 54. Puzzlingly, the Claimant is cagey on who actually commissioned the Affidavits before the Petition was filed and only discovered the anomaly 2 days after the fact and attempts to rectify the anomaly fell through.
 55. Finally, it cannot be gainsaid that the termination of the Claimant's employment was ground on the manner in which he handled Petition No. 9 of 2017 and nothing else and based on his written response, it is discernible that the commissioning of the Affidavits was not handled in accordance with the dictates of professionalism and the employer may have had a reason to terminate the Claimant's employment, the short duration and the pressure notwithstanding.
 56. Regrettably, the Respondent opted not to adduce or tender any evidence to substantiate the contents of the Memorandum of response dated 26th July, 2021 and has thus failed to prove that it had a valid and fair reason to terminate the Claimant's employment on 10th November, 2017.

Procedure

57. It requires no emphasis that the provisions of Section 41 of the *Employment Act*, 2007 prescribe the procedural precepts in the termination of employment or summary dismissal and as held by the Court of Appeal in Pius Machafu Isindu V Lavington Security Guards Ltd (2017) eKLR Section 41 of the *Employment Act* is couched in mandatory terms.
58. (See also the sentiments of Monica Mbaru J. in Mary Chemweno Kiptui V Kenya Pipeline Co. Ltd (Supra).



59. Section 41 of the *Employment Act*, 2007 requires notification of the allegation or charges preferred against an employee and a hearing. It is intended to guarantee due process in the termination of an employment relationship.
60. In the words of Mbaru J. in *Mary Chemweno Kiptui V Kenya Pipeline Co. Ltd (Supra)*;
- “ . . . Where an employer fails to follow these mandatory provisions whatever outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing in the presence of their union representative or in the presence of a fellow employee of their own choice. The situation is dire where such an employee is terminated after such a flawed process without a hearing as such termination is ultimately unfair . . . ”
61. The court is in agreement with these sentiments which apply on all fours to the circumstances of this case.
62. From the documentation on record and the evidence availed by the Claimant, it is decipherable that the Claimant was not taken through a disciplinary process before termination of employment.
63. There is no evidence of any communication or dealing between the parties after the Claimant tendered his explanation on 6th November, 2017 and termination on 10th November, 2017.
64. It therefore follows that termination of the Claimant’s employment by the Respondent did not comply with the provisions of Section 41 of the *Employment Act*, 2017 and thus unfair.
65. Flowing from the foregoing, it is the finding of this court that termination of the Claimant’s employment by the Respondent was unfair.

Whether the claimant is entitled to the reliefs sought

66. Having found as above, the court proceeds as follows;

i. Summary dismissal

67. It is the finding of the court that the summary dismissal of the Claimant from employment was unfair.

ii. Salary balance July 2016, December 2016, January 2017, February 2017 and June 2017

68. The Claimant tendered no evidence as to why he was not paid a salary since 2016 but more importantly adduced no evidence as to what he did in his endeavour to ensure that the outstanding salary was paid.
69. More significantly, however, this claim was enforceable within 3 years of termination of employment on 13th November, 2017.
70. Using the salary for June 2017 as the latest in time, since the cause of action arose on 30th June 2017, time started running and the 3 years lapsed on 1st July, 2020 before the instant suit was commenced.
71. Section 90 of the *Employment Act*, 2007 provides that;

“Notwithstanding the provisions of Section 4(1) of the *Limitation of Actions Act* (Cap 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after cessation thereof.”



72. Judicial authority is consistent that Section 90 is couched in mandatory tone and does not confer on the court discretion to extend the limitation of time.
73. Simply stated, a claim not enforced within three (3) years is stale and as limitation of time implicates the court's jurisdiction to hear and determine a claim, the court hereby downs its tools on this prayer.

iii. Salary for 13 days worked in November 2017

74. The Claimant's termination letter promised that he would be paid dues and one month's salary and was paid Kshs.160,000/=; which according to him included salary for October 2017, one month's salary and outstanding salary for July 2017, Kshs.20,000/= evidence the Respondent did not controvert.
75. In the absence of evidence to show that the Respondent paid for the 13 days the Claimant worked in November 2017, the same is deemed outstanding and due to the Claimant.
76. The Claimant is awarded salary for the 13 days worked in November 2017.

iv. Leave allowance for 5 years

77. The Claimant testified that he was not allowed to proceed on leave and the Respondent tendered no controverting evidence.
78. Since the court's jurisdiction is restricted to 3 years, the Claimant is awarded pay in lieu of leave for 3 years.

v. House allowance for 5 years

79. The Claimant alleges that he was not paid housing allowance for the entire duration of employment and prays for Kshs.709,117.95.
80. Housing is one of the statutory rights of an employee under Section 31 of the *Employment Act, 2007*. However, the provisions of Section 31(1) of the Act identify several exceptions which includes provisions of the CBA and where the employment contract provides for consolidation of salary.
81. Clause 4 of the Claimant's Letter of Appointment dated 20th April, 2012 stated inter alia;

“You will be paid the agreed lump sum amount of Kenya Shillings Twenty Five Thousand (25,000) as your total remuneration which includes salary and all other allowances and expenses less any statutory deductions e.g PAYE, NSSF, NHIF etc”.
82. As the Respondent did not provide housing, the foregoing clause is explicit that any other allowance payable to the Claimant was part of the lump sum payment.
83. In the court's view, the claim for house allowance is unsustainable in light of the foregoing explicit provision of the letter of appointment.

The prayer is accordingly declined.

vi. Deducted PAYE not remitted 2012 – 2014

84. The Claimant is claiming a refund of PAYE which the employer allegedly deducted but did not remit.
85. First, the Claimant tendered no evidence to prove that the amount claimed was indeed deducted from his salary for the 31 months in question. He availed copies of payslips for September 2012, March 2013, August 2014 and September 2015 only. It is unclear why the other copies were not availed as evidence.



86. Second, a letter from the KRA's Income Tax or Domestic Taxes Department attesting that the sum of Kshs.343,492/= was outstanding as income tax in the Claimant's account would have proved the tax liability.
87. Having appointed the Respondent as his tax agent for purposes of his income tax deductions, the Respondent is liable to make good any liability or deficit in the Claimant's income tax account at the KRA for the duration of the Claimant's employment.
88. This court cannot order recovery of PAYE deducted and allegedly not remitted without cogent evidence of the Claimant's tax liability to the KRA coupled with supportive evidence that the Respondent has refused to make good the liability as an agent even at the instance of the KRA which is legally mandated to enforce the *Income Tax Act*.
89. The claim is unmerited and is disallowed.
90. In any case, the employer is still liable to remit the amount of tax due to the KRA in respect of the Claimant's tax account.

vii. - Refund for PAYE 2016

91. Having found that the Claimant has not demonstrated his tax liability at the KRA and why the KRA has not demanded the same from the Respondent, it is unclear as to the circumstances in which the Claimant by-passed his tax agent with the KRA and paid Kshs.66,224/= as income tax and is now claiming the same from the court.
92. As held above, this court lacks jurisdiction to enforce the provisions of the *Income Tax Act*.
93. The claim is unmerited and is disallowed.

viii. NHIF deductions not remitted May 2017 – November 2017

94. The Claimant did not provide the National Health Insurance Fund statement for June to November 2017 to establish the alleged indebtedness.
95. The statement on record reveals that a credit of Kshs.1,200/= was made in May 2017.
96. In the absence of evidence to prove that the amount was indeed unpaid, the claim is unmerited and is disallowed.

ix. General damages for discrimination

97. Under paragraph 45 of the written statement, the Claimant states that his dismissal was discriminatory as his salary was not being paid, a breach of contract which he refused, failed or neglected to enforce within 3 years after termination of employment.
98. The Claimant adduced no evidence to prove that all the other employees were paid except him and why he was not paid and the explanation provided when he raised the issue in 2016 and in 2017.
99. In *Peter K. Waweru V Republic (2006) KLR*, the court expressed itself as follows;

“Discrimination means affording different treatment to different persons attributable wholly or mainly to their description whereby persons of one such description are subjected to . . . restrictions to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description . . .



Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex . . . a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.”

100. Wilson J. expressed similar sentiments in *Andrews V Law Society of British Columbia* (1989) 1 SCR 321.
101. See also *Nyarangi & others V Attorney General* (2008) KLR 688.
102. Both Article 27 of *the Constitution* of Kenya and Section 5(3) of the *Employment Act*, 2007 outlaw discrimination on any ground including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language, birth, condition of employment, training, promotion, recruitment or other matters arising out of the employment.
103. In this case, the Claimant has not provided particulars of the alleged discrimination. He availed no evidence as to why he was not paid his salary in July and December 2016 and did nothing about it and the same allegedly happened in January, February and June 2017.
104. This is atypical in an employment relationship where an employee is not paid earned salary for 3 consecutive months and does nothing about it and continues working for the same employer. There must have been a reason and the Claimant is not forthright about it.
105. In the upshot, having failed to prove that he was discriminated, the claim for general damages is unmerited and is declined.

SUBDIVISION - x. 12 months compensation

106. Having found that termination of the Claimant’s employment by the Respondent was unfair for want of a substantive justification and procedural fairness, the Claimant is entitled to compensation under the provisions of Section 49(1)(c) of the *Employment Act*, 2007.
107. The court has taken into consideration the fact that;
 - i. The Claimant was an employee of the Respondent for a duration of about 5 years which is not a long time.
 - ii. The Claimant did not appeal the decision or express his wish to remain in the Respondent’s employment.
 - iii. The Claimant has no previous record of misconduct or notice to show cause.
 - iv. The Claimant substantially contributed to the termination by the manner in which he handled the commissioning of the Affidavits in Petition No. 9 of 2017. From his explanation dated 6th November, 2017, it is clear that the affidavits were commissioned by a person he did not know and only ascertained the true position 2 days later when it was too late.
108. In the circumstances, the court is satisfied that the equivalent of 4 months gross salary is fair.

xi. Certificate of service

109. The Claimant is entitled to a certificate of service by dint of Section 51 of the *Employment Act*, 2007.
110. In conclusion, judgment is entered in favour of the Claimant’s against the Respondent in the following terms;



- a. That the summary dismissal of the Claimant by the Respondent was unfair.
- b. Unpaid salary for 13 days worked in November 2017.
- c. Pay in lieu of leave for 3 years.
- d. Equivalent of 4 months gross salary.
- e. Certificate of service.
- f. 50% of the costs of this suit.
- g. Interest at court rates from date of judgment till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 15TH DAY OF MAY 2024.

DR. JACOB GAKERI

JUDGE

ORDER

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

DR. JACOB GAKERI

JUDGE

