



**Matanda v Pathfinder International Kenya (Cause E184 of 2023)  
[2024] KEELRC 1800 (KLR) (15 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1800 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E184 OF 2023**

**JK GAKERI, J  
JULY 15, 2024**

**BETWEEN**

**JAVAN SYDNEY MATANDA ..... CLAIMANT**

**AND**

**PATHFINDER INTERNATIONAL KENYA ..... RESPONDENT**

**JUDGMENT**

1. The Claimant commenced the instant suit on 7<sup>th</sup> March, 2023 alleging unfair termination of employment by the Respondent.
2. The Claimant prays for;
  - a. A declaration that termination of employment was without any valid basis and is illegal, null and void ab initio.
  - b. A declaration that the unilateral extension of the Claimant's probation was illegal, null and void ab initio.
  - c. Reinstatement of the Claimant without loss of job, rank, status or benefits.
  - d. An order directing the Respondent to pay the Claimant all his withheld benefits including salaries and allowances.
  - e. In the alternative to (d) above;
    - i. One month salary in lieu of notice.
    - ii. Contractual gratuity on entire contract term.
    - iii. Accrued leave days to February 2023.
    - iv. Pension contribution after lapse of probation in December 2022.



- v. All salaries, allowances and benefits due under the remainder of the employment term upto 1<sup>st</sup> July, 2024.
  - vi. Compensation for unfair termination of employment.
  - vii. Retention of Medical Cover upto July 2024 as per the terms of the contract.
  - viii. Certificate of service.
3. It is the Claimant's case that he was employed by the Respondent on 8<sup>th</sup> April, 2022 as a Global Information Security Officer for a term of 2 years and served diligently and his employment was terminated vide letter dated 22<sup>nd</sup> February, 2023 on allegations of dishonesty and violation of terms of employment.
  4. The Claimant avers that arising from a confidential investigation report, he was issued with a notice to show cause dated 12<sup>th</sup> January, 2023 alleging falsification of travel receipts in order to obtain irregular reimbursements for travel between 24<sup>th</sup> – 28<sup>th</sup> October, 2022 and 10<sup>th</sup> – 14<sup>th</sup> October 2022 and responded to the notice to show cause, was invited for a hearing held on 17<sup>th</sup> February, 2023 and attended and copies of receipt numbers 160 and 171 were not availed after request which according to the Respondent were annexures to the confidential report which it had availed to the Claimant.
  5. The Claimant avers that he was accused of having falsified receipt number 5698, 5741 and 5761 and he contacted Nadine Carhire and Tours, the same provider and it confirmed that the three receipts were genuine and issued by it.
  6. The Claimant alleges that the termination of employment was pre-meditated and had no legal basis.

### **Respondent's case**

7. The Respondent admits that the Claimant was its employee effective 1<sup>st</sup> July, 2022 and was bound by its Staff Handbook.
8. It is the Respondent's case that its Global Internal Audit & Compliance Unit (Global Compliance) had received notice of two instances where the Claimant may have submitted falsified taxi/ transportation receipts for travel expenses reimbursement while in the course of his work for an activity between 10<sup>th</sup> – 14<sup>th</sup> October, 2022 for the Uzazi Salama Project – a sub-award agreement between AMREF Health Africa and the Respondent and for a Data Privacy training in Mombasa between 24<sup>th</sup> – 28<sup>th</sup> October, 2022 and investigations concluded that the Claimant submitted false claims of Kshs.32,250/= as verified by the service providers.
9. That after the investigation report was presented, a decision was made on 14<sup>th</sup> December, 2022 to suspend the Claimant and the suspension was extended due to the Christmas festivities and again in the New Year and equally suspended his probation as he could not be appraised while on suspension.
10. The Respondent further avers that it invited the Claimant for a disciplinary hearing and in compliance with a court order, heard him in the presence of his advocate on 17<sup>th</sup> February, 2023 and his employment was terminated on 22<sup>nd</sup> February, 2023.
11. That the Claimant's counsel wrote to the Respondent's Director of Information Technology expressing dissatisfaction with the outcome but before an appeals panel was constituted, the Respondent received summons in relation to the instant suit.



12. It is the Respondent's case that owing to the circumstances that led to the termination of the Claimant's employment, reinstatement was untenable as trust and confidence reposed in the Claimant had diminished and termination of employment was for lawful cause.
13. The Respondent avers that the Claimant's dues as per the Letter of termination of employment are available subject to clearance.
14. The Respondent prays for dismissal of the Claimant's suit with costs.

#### **Claimant's evidence**

15. On cross-examination, the Claimant testified that he was suspended vide letter dated 14<sup>th</sup> December, 2022 and was extended owing to the Christmas festivities.
16. It was his testimony that he received the notice to show cause and responded and received the confidential investigation report on his alleged misconduct.
17. He admitted that he did not invite the service providers as witnesses but wrote to them through his counsel but did not file the letter or invite them to the hearing.
18. The Claimant testified that hearing on 17<sup>th</sup> February, 2023 took place in the presence of his counsel and his appeal was not heard though by then he had already filed his case.
19. On re-examination, the witness testified that he shared the letter from Nadine Carhire and Tours with the Respondent on 17<sup>th</sup> February, 2023 and it was acknowledged and was referred to in the minutes.
20. That extension of probation was provided for by the policy and required agreement of the employee and he had not agreed to the extension.

#### **Respondent's evidence**

21. RWI, Mr. Keith testified that in the 1<sup>st</sup> case (October 10<sup>th</sup> – 14<sup>th</sup> 2022), the Claimant provided receipts which appeared falsified and contacted service provider to confirm authenticity and ascertained that in some cases the Claimant claimed higher than what he actually paid.
22. The witness, however had no evidence of communication with the driver or email messages.
23. That the Claimant did not ask for receipts number 160 and 171.
24. The witness confirmed that the Claimant falsified 3 receipts number 5698, 5741 and 5761 and the service provider confirmed as much (Nadine Carhire & Tours) and they were not invited for cross-examination by the Claimant.

#### **Claimant's submissions**

25. On extension of the probationary period, counsel submits that as the letter of employment provided for 6 months and the employer could only extend it with agreement of the employee and as the Claimant did not in this case, the extension is a nullity and the Claimant stood confirmed by operation of law on 2<sup>nd</sup> January, 2023 as held in *Lear Shighadi Sinoya V Autech Systems Ltd.*
26. On termination of employment, counsel cites the decision in *Muthaiga Country Club V Kudheih Workers* (2017) eKLR on the interplay between Section 43 and 47(5) of the *Employment Act*, 2007.



27. According to counsel, failure by the Respondent to avail receipt No. 160 and 171 vitiated the disciplinary hearing as it impaired the Claimant's ability to challenge the charges on falsification of receipts nor were records of the alleged Mpesa transactions availed to the Claimant.
28. Thus, the genuine receipts were not availed to the Claimant and RWI had no evidence as to how the driver was contacted and availed the genuine receipts and it was unclear as to who rendered the services to the Claimant.
29. That an internal memo on the trip to Homabay and use of taxi services was also unavailable as it was not filed.
30. Counsel submits that since the charges against the Claimant were serious, it behooved the Respondent to avail evidence to show what led to the charges and cited the decisions in *Judicial Service Commission V Gladys Boss Shollei & another Civil Appeal No. 50 of 2014* and *Michael Dowling V Work Place Safety & Insurance Board (2004) CAN LII 43692*.
31. Counsel submits that for the 2<sup>nd</sup> trip on 24<sup>th</sup> – 28<sup>th</sup> October, 2022, the receipts the Respondent alleged not genuine, numbers 5698, 5741 and 5761 were confirmed as genuine by the issuer and confirmed the same on WhatsApp and the same was shared during the hearing.
32. On exhaustion of internal dispute resolution, counsel urges that the Respondent had no documented appeal procedure in its Handbook and the Claimant advocate's letter dated 27<sup>th</sup> February, 2023 was neither acknowledged nor responded to.
33. Counsel submits that the termination of the Claimant's employment was substantively and procedurally unfair.
34. On the reliefs sought, counsel urges that as the termination of employment had no basis, the declarations sought are merited.
35. The remedy of reinstatement was abandoned owing to the fact that the employment contract was slated to end at the end of June 2024.
36. Similarly, the prayers for pay in lieu of notice, gratuity, accrued leave days and pension contribution were abandoned as were prayers for medical cover and certificate of service.
37. On salary and benefits for the remainder of the contractual term, counsel submits that the same was merited (16 months) Kshs.13,296,186.56 and cited the decision in *Jackson Kanigia Myagah V University of Nairobi (2022) eKLR*.
38. Counsel finally urges that the Claimant is entitled to 12 months salary for unfair termination of employment Kshs.9,972,139.92 and cites the Court of Appeal decision in *Kenfreight (EA) Ltd V Bension K. Nguti (2016) eKLR* to reinforce the submission.

#### Respondent's submission

39. As to whether the Claimant was given an opportunity to defend himself, the Federation of Kenya Employers (FKE) urges that he was issued with a notice to show cause on the allegations and responded, was suspended from service, was invited for a disciplinary hearing and attended with his counsel and his employment was terminated on 22<sup>nd</sup> February, 2023.
40. That the Respondent gave the Claimant the opportunity to appeal but filed the instant suit.



41. On substantive fairness, FKE submits that the investigation report lay bare the findings of the Respondent and thus the Respondent had a reasonable ground to genuinely believe that there was falsification of receipts.
42. That the Claimant ought to have availed the maker of the receipts for cross-examination.
43. That the Claimant did not exonerate himself from the allegation of having falsified receipts in Homabay.
44. Reliance was made on the sentiments of B.O. Manani J. in *Galgalo Jarso Jillo V Agricultural Finance Corporation* (2021) eKLR on the import of Section 43(2) of the *Employment Act*, 2007 as well as those in *Hamson Muhia Mwangi V Standard Chartered Bank* to urge that the Claimant misconducted himself at the workplace and the disciplinary process was fair.
45. On reliefs, FKE submits that as termination of employment was fair, none of the reliefs sought is merited.

### **Analysis and determination**

46. It is common ground that the Claimant was an employee of the Respondent effective 1<sup>st</sup> July, 2022 to 22<sup>nd</sup> February, 2023 under a 2 year fixed term contract and was subject to a 6 months probationary period.
47. It is also not in contest that the Respondent conducted investigations into alleged falsification of receipts by the Claimant and a report was prepared and a copy was availed to the Claimant who had been on suspension since 14<sup>th</sup> December, 2022 to pave way for investigation.
48. The 1<sup>1/2</sup> page report by Keith Hourihan (RWI) details the alleged falsification of receipts by the Claimant between 10<sup>th</sup> – 14<sup>th</sup> October, 2022 and 24<sup>th</sup> – 28<sup>th</sup> October, 2022.
49. The Appendices I – IX are not attached to the copy filed in court.
50. The Claimant faults the termination of his employment in that, the service provider, in the 2<sup>nd</sup> case confirmed that the receipts were genuine and in the earlier case receipts number 160 and 171 allegedly availed to the Respondent as the genuine receipts were not availed to the Claimant which hampered his ability to respond to the allegations effectively.
51. After considering the pleadings, evidence on record and submissions by parties, the issues for determination are;
  - i. Whether the Claimant was still serving under a probationary contract.
  - ii. Whether termination of the Claimant's employment was unfair.
  - iii. Whether the Claimant is entitled to the reliefs sought.
52. Concerning probation, it is not in contest that the Claimant's employment contract provided for a 6 months probationary period which could be extended for not more than 6 months with agreement of the employee as required by Section 42(2) of the *Employment Act*, 2007.
53. It is also common ground that by the time the Claimant was suspended for 14 days effective 14<sup>th</sup> December, 2023 and the extensions of probation thereafter, he was still serving on probation scheduled to lapse on 31<sup>st</sup> December, 2023.



54. Similarly, by letter dated 6<sup>th</sup> January, 2023, the suspension was extended to 31<sup>st</sup> January, 2023 on the premise that investigations were still on-going.
55. Strangely, by letter dated 30<sup>th</sup> January, 2023, the Respondent informed the Claimant that his probationary period had been suspended from 2<sup>nd</sup> February, 2023 to resume after the disciplinary process was completed.
56. Puzzlingly, by letter dated 19<sup>th</sup> December, 2022, the Respondent had already extended the Claimant's probation by one month even before the 6 months lapsed.
57. Was the Claimant still serving under probationary terms on 2<sup>nd</sup> February, 2023 when the Respondent purported to suspend the probation?
58. Section 42(2) of the *Employment Act*, 2007 is unambiguous that;  
A probationary period shall not be more than six months, but it may be extended for a further period of not more than six months with the agreement of the employment.
59. The Respondent adduced no evidence to prove that it summoned the Claimant and he agreed to the extension of probation and in any case the Respondent had not evaluated or appraised the Claimant in consonance with its Staff Handbook (Revised 2<sup>nd</sup> Edition) 23<sup>rd</sup> January, 2019 that;  

“The job performance of each new employee will be formally discussed and reviewed at the end of the probation period”.
60. The Respondent could not justify an extension of probation without a formal discussion and review of the Claimant's performance after the initial 6 months.
61. But as adverted to above, the purported extension of probation was unilateral not consensual as by law required and thus unlawful and ineffectual.
62. The Claimant's probation lapsed at the end of December 2022.
63. What is the effect of the purported suspension vide letter dated 30<sup>th</sup> January, 2023?
64. It is trite law that a probationary contract is a contract of employment and cannot be varied without the employee's consent.
65. The purported suspension in this case was unlawful and ineffectual.
66. Having found that the Claimant's probation ended at the end of December 2022 and having further found that the purported suspension of probation and earlier extension were unlawful and ineffectual in law for want of the Claimant's agreement, the Claimant was confirmed in his position by operation of law effective 1<sup>st</sup> January, 2023. (See Narry Philemon Onaya-Odeck V Technical University of Kenya (2017) eKLR and David Araka V Uchumi Supermarkets Ltd (2021) eKLR.
67. As regards termination of the Claimant's employment, parties have adopted opposing positions with the Claimant alleging that it was substantively and procedurally unfair. The Respondent on the other hand urges that it was lawful and procedural.
68. It is trite law that for a termination of 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 and did so in accordance with a fair procedure.



69. Put in alternative terms, the employer is required to demonstrate that it had a substantive justification for the termination of employment and ensured procedural fairness as captured by the Court of Appeal in *Naima Khamis V Oxford University Press (E.A) Ltd* (2017) eKLR and *Ndolo J. in Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR.

### **Reason for termination**

70. The Respondent's notice to show cause accused the Claimant of having submitted falsified travel receipts and had thus not acted honestly in breach of the Respondent's Fraud Policy and Code of Conduct.
71. In his response, the Claimant maintained that receipts number 195 and 184 were duly issued by the driver who provided services and receipt number 195 covered 2 trips from Airport to Homabay and back on 10<sup>th</sup> October, 2022 and 14<sup>th</sup> October, 2022.
72. The Claimant complained that alleged receipt numbers 160 and 171 issued by the same driver were not availed to him.
73. On the second allegation, the Claimant stated that receipt number 5698, 5741 and 5761 were authentic.
74. The Claimant denied having submitted receipt number 5671.
75. During the hearing on 17<sup>th</sup> February, 2023, counsel for the Claimant indicated that his request for receipts number 160 and 171 had not be honoured.
76. Mr. Keith retorted that they had only provided reference details from Mpesa showing what the driver was paid.
77. He did not share the alleged receipts.
78. It also emerged that at the instigation of the Claimant's vide letter dated 17<sup>th</sup> January, 2023, the Carhire and Tour firm confirmed that the receipts number 5698, 5741 and 5761 were genuine and the undated letter was shared at the hearing.
79. Evidently, other than the Claimant's testimony, no other evidence was adduced.
80. From the minutes of the hearing, it is unclear as to which evidence the Respondent relied upon to make its decision granted that the Claimant had controverted the contents of the investigation report.
81. The termination letter dated 23<sup>rd</sup> February, 2022 cited the charges identified in the notice to show cause as the reasons for dismissal.
82. It would appear that the Respondent did not consider or interrogate the Claimant's defence to the notice to show cause or at the hearing yet the investigation report had several gaps.
83. For instance, the report states that the driver called by the investigator confirmed having transported the Claimant on 10<sup>th</sup> and 14<sup>th</sup> October, 2022 and availed different copies of receipts of a lesser sum of money, which regrettably the Respondent did not share with the Claimant or file in court.
84. Similarly, neither the driver's phone number nor his name was disclosed.
85. Granted that the driver did not record a statement with the investigator and none was attached to the report and copies of the alleged genuine receipts were only seen by the investigator, as the witness was



- unsure, it is difficult to find that the Respondent has proved that receipt number 195 and 184 were falsified.
86. The alleged receipts would have punctured the Claimant's evidence on the genuineness of the receipts he had submitted.
  87. In the absence of such evidence, the Claimant's evidence that the receipts were issued by the driver who rendered services and were genuine remains uncontroverted.
  88. Concerning the training at the Coast, the report indicates that when the vendor was contacted, it "noted that receipt numbers 5698, 5741 and 5671 were not authentic in their response."
  89. Regrettably, a copy of the response was neither attached nor availed for scrutiny. Was it an email, sms or letter? All these methods are printable for availment to the Claimant and the court.
  90. More significantly, as the Respondent did not deny that the service provider was Nadine Carhire and Tours or that the driver they talked to did not work for the tour firm, yet the same firm responded to the Claimant counsel's inquiry in writing, the counsel's response appears more authentic as it is from the firm as opposed to an unnamed driver and neither his phone number nor email address was disclosed.
  91. Similarly, the Claimant denied having submitted receipt number 5671 identified by the investigation report.
  92. Having failed to controvert the letter from Nadine Carhire and Tours, the Respondent could no longer sustain its contention that the receipts in question were falsified.
  93. In determining this issue, the court is guided by the decision in *Galgalo Jarso Jillo V Agricultural Finance Co-operation (Supra)*, where B.O. Manani was emphatic that it must be proved that the employer had a reasonable basis for the belief that it had a reason to terminate the employee's employment
  94. Although the test under Section 43(2) is partly subject as held by the Court of Appeal in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others (2019) eKLR* in the instant case, the court is not persuaded that the Respondent had a reasonable basis to genuinely believe that it had a reason to terminate the Claimant's employment in the face of his rebuttal and absence of the allegedly genuine receipts.
  95. For the foregoing reasons, it is the finding of the court that the Respondent has failed to prove on a balance of probabilities that it had a substantive justification to terminate the Claimant's employment.

## **Procedure**

96. It is common ground that procedural fairness is an indispensable element of a fair termination of employment and as held in *Pius Machafu Isindu V Lavington Security Guards Ltd (2017)*, the requirements of Section 41 of the *Employment Act, 2007* are mandatory.
97. In *Postal Corporation of Kenya V Andrew K. Tanui (2019) eKLR*, the Court of Appeal isolated the tenets of Section 41 as reason(s) or grounds on which termination of employment is being considered, explanation of the reasons in a language understood by the employee in the presence of another employee of his choice or shop floor representative, right to make representations and finally hearing and considering the representations made by the employee and/or his or her representative.
98. In this case, it is common ground that the Respondent issued a notice to show cause dated 12<sup>th</sup> January, 2023 and the Claimant responded vide letter dated 19<sup>th</sup> January, 2023, was invited for a hearing, attended with his counsel and signed the minutes and was dismissed thereafter.



99. From the minutes dated 17<sup>th</sup> February, 2023, it is unclear whether Pamela Onduso read out the charges the Claimant was facing either before or after introduction of the team present.
100. The Claimant's counsel raised the issue of non-availment of the alleged genuine receipts number 160 and 171 from the taxi driver in Kisumu and Mr. Keith agreed they had not done so and none was shared at the meeting.
101. Being the only evidence the Respondent was relying on for the trip to Homabay, it was incumbent upon the Respondent to avail its evidence to sustain the charge.
102. As adverted to elsewhere in this judgment, without the alleged genuine receipts to counter the receipts the Claimant submitted, or other demonstrable evidence, the Respondent could not sustain the 1<sup>st</sup> charge against the Claimant.
103. It is trite law that an employee against whom charges have been levelled is entitled to the evidence the accuser intends to rely on. It is a fundamental requirement of the right to fair hearing that such material be availed.
104. The Respondent's refusal to furnish the Claimant with the two alleged receipts hampered his ability to rebut the Respondent's allegation of falsification of receipts and vitiated the procedure adopted by the Respondent.
105. Finally, there is no evidence to suggest that the Respondent considered the Claimant's representations at hearing.
106. Neither the minutes of the hearing nor the letter of termination make reference to Claimant's representations or responses.
107. Intriguingly, neither the notice to show cause nor the letter of termination identify the falsified receipts or how the figure of Kshs.32,250/= was arrived at.
108. Flowing from the foregoing, it is discernible that the Respondent has failed to demonstrate that the procedure it adopted in terminating the Claimant's employment met the threshold of Section 41 of the *Employment Act, 2007*.
109. In a nutshell, it is the finding of the court that the Respondent has failed to prove on a balance of probabilities that termination of the Claimant's employment was substantively justifiable and procedurally fair.
110. As to whether the Claimant is entitled to the reliefs sought, the court proceeds as follows;

#### **i. Declaration**

111. Having found that the Respondent has failed to prove that it had a valid and fair reason to terminate the Claimant's employment and did so in accordance with a fair procedure, a declaration that the termination was unfair is merited.

#### **ii. Declaration**

112. Having found that the unilateral extension of the Probationary period by the Respondent was unlawful and ineffectual, a declaration to that effect is merited.

#### **iii. Reinstatement**

113. This remedy was abandoned as the employment contract was scheduled to lapse in June 2014.



- iv. Pay in lieu of notice, contractual gratuity, pension contribution, medical, certificate of service and accrued leave days
114. These claims were also abandoned by the Claimant.
- v. Salary and Benefits for the remainder of the contractual term
115. Neither the Claimant's statement of claim nor the witness statement make a case for this relief.
116. The contention by counsel that the Claimant had a legitimate expectation of serving for the entire term is unsustainable as there is no guarantee or certainty that he would do so as the contract of employment had an exit clause at his instance.
117. The fact that the contract was for a fixed duration cannot be construed to mean that the parties had to stick together throughout the contractual term. Separation was possible at any point.
118. This is also a claim for anticipatory earnings and the Claimant has not demonstrated its legal anchorage as held in *D.K. Njagi Marete V Teachers Service Commission (2020) eKLR*.
119. See also *Engineer Francis Gachuri V Energy Regulatory Commission (2015) eKLR*, *Elizabeth Wakanyi Kibe V Telkom Kenya Ltd (2014) eKLR* among others.
120. The claim is unproven, is unmerited and it is disallowed.

**vi. Compensation for unlawful or unfair termination**

121. Having found that termination of the Claimant's employment by the Respondent was unfair, the Claimant is entitled to compensation under Section 49(1)(c) of the *Employment Act*.
122. In arriving at the quantum of compensation, the court has taken into consideration the fact that;
- i. The Claimant was an employee of the Respondent for a very short duration of 7<sup>3</sup>/<sub>4</sub> months.
  - ii. The Claimant had no recorded incident of misconduct or poor performance.
  - iii. The Claimant expressed his wish to remain in employment by filing of an appeal vide its counsel's letter and sought reinstatement.
  - iv. The Claimant contributed to the termination of employment by affording the Respondent an opportunity to doubt his honesty.
  - v. The Respondent paid all the non-contentious prayers of the Claimant including gratuity.
123. In the circumstances, the court is persuaded that the equivalent of 2 months' salary is fair.
124. In conclusion, judgement is entered in favour of the Claimant against the Respondent as follows;
- a. Declaration that termination of employment by the Respondent was unfair.
  - b. Declaration that the unilateral extension of probation by the Respondent was unlawful.
  - c. Equivalent of 2 months gross salary Kshs.1,662,023.32.
125. In the circumstances, parties shall bear their own costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 15<sup>TH</sup> DAY OF JULY 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

