

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E510 OF 2024

FELIX **NDIMU**

KYALO.....CLAIMANT

VERSUS

KENYA WATER INSTITUTE.....1ST RESPONDENT

**THE CHAIRPERSON GOVERNING
COUNCIL KENYA WATER INSTITUTE.....2ND
RESPONDENT**

THE DIRECTOR/CEO KENYA WATER INSTITUTE.....3RD RESPONDENT

J U D G M E N T

1. The Claimant’s employment history is not disputed. What is in contest are the reasons that led to the termination of the Claimant’s employment and the procedure applied by the Respondents in effecting the said termination.

2. The Claimant contends that the 3rd Respondent unlawfully and in bad faith terminated his employment. He asserts that the actions of the 3rd Respondent were unfounded and in contravention of the provisions of the Employment Act, the terms of his employment contract, and the 1st Respondent’s Human Resource Guidelines and Procedure Manual.

3. On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondents:

a) A declaration that the purported termination of the Claimant by the Respondents on 11th June 2024 was unfair, wrongful and unwarranted.

b) A reinstatement order directing the Respondents to permanently reinstate the Claimant as the Respondent's Internal Auditor job scale KW6.

c) In the alternative to prayer (2), the Respondent prays for: -

i. A Declaration that the Claimant was constructively dismissed by the Respondents.

ii. Ksh 276,000/- being 3 months' salary in lieu of Notice.

iii. Severance pay for years worked.

iv. Ksh. 1, 104, 000/- being 12 months' compensation for unfair termination.

v. Leave days earned but not taken.

e) Certificate of service.

f) Costs of this claim and interest thereon from the date of filing this claim until payment in full.

4. Opposing the Claim, the Respondents filed a joint Memorandum of Reply dated 13th December 2024, in which they aver that due process was followed in the

termination of the Claimant's employment. They further contend that the 3rd Respondent acted with the knowledge and blessings of the 2nd Respondent, contrary to the Claimant's assertions. On that basis, the Respondents have urged the Court to dismiss the Claim with costs.

5. In his Reply to the Respondents' Memorandum of Reply, the Claimant reiterated the averments contained in his Memorandum of Claim.
6. The matter proceeded for hearing on 29th April and 30th September 2025, during which both sides called oral evidence.

Claimant's Case

7. The Claimant testified in support of his case and called two additional witnesses, namely **Ruth Ngina Mwanza** and **Samuel Kamau Mwangi**. Ms. Ruth Ngina Mwanza, who testified first as CW1, identified herself as a security officer and, at the outset, adopted her witness statement to constitute her evidence in chief.
8. CW1 stated that in 2023, she was deployed by her employer, Canon Security Services, to serve at the 1st Respondent's Kitui branch.
9. She testified that while stationed at the 2nd Respondent's premises as a security guard, one of her responsibilities was to ensure that employees signed in upon reporting to work. According to her, this involved recording in a counter book

labelled “*Kewi Staff Book*” the employee’s name, time of arrival, time of departure, vehicle registration number where applicable, signature, and the relevant date on a daily basis.

10.CW1 further testified that in 2024, she became acquainted with the Claimant when he was transferred from Nairobi to work at the 1st Respondent’s Kitui Campus.

11.She stated that on or about 5th March 2024, being the Claimant’s first day at the station, he duly signed in at the gate as required and she assisted him in completing the entry in the counter book.

12.CW1 added that she did not see the Claimant for some time thereafter, but that on 26th April 2024, he reported back to work. During a cordial conversation, the Claimant informed her that he had been on leave and was reporting back to duty, whereupon he again signed the counter book.

13.**Samuel Kamau Mwangi**, who testified as CW2, identified himself as an ICT professional and a former employee of the 1st Respondent. Likewise, he adopted his witness statement to constitute his evidence in chief.

14.CW2 testified that while serving at the Kitui Campus, he met the Claimant, who had recently been transferred from the Nairobi Campus.

15. According to CW2, in March 2024, the Claimant contacted him via WhatsApp seeking assistance to log into the Enterprise Resource Planning (ERP) system after he had been logged out. He explained that at the time, the ERP system operated through the institution's Wide Area Network and enabled staff from various departments, including finance, accounts and procurement, to access institutional resources.
16. He further stated that the ERP system had an integrated portal through which staff could access services such as payslips and leave applications, while students could access information relating to credentials, fee structures and examinations.
17. CW2 testified that the Claimant informed him that he required assistance, in his capacity as an ICT administrator, to apply for thirty (30) days' leave through the ERP system or portal, which was the standard procedure for submitting leave applications, as he was unable to access the system.
18. CW2 therefore requested the Claimant, via WhatsApp, to provide his ERP login credentials, which the Claimant did.
19. Upon attempting to log in using those credentials, CW2 stated that he discovered that the Claimant's account had been locked and disabled by the Respondents. He

further explained that both the ERP system and the integrated portal were still in their formative stages and had not yet been fully configured to allow authorized access from outside the institution's premises. Consequently, the Claimant could not apply for leave remotely and therefore sought his assistance.

20.CW2 testified that he found it unusual that the Claimant's access had been disabled, noting that such action was not ordinarily required during transfers between campuses. He therefore advised the Claimant to provide his portal password as an alternative means of facilitating the leave application.

21.CW2 stated that he thereafter entered the relevant credentials and, at the Claimant's request, submitted a leave application indicating a start date of 15th March 2024 and an end date of 26th April 2024.

22.He further informed the Claimant that the only remaining step was approval of the leave request by the then Principal, **Mr. Stephen B. Buluma.**

23.According to CW2, the prevailing practice was that once an officer had submitted a leave application and informed their supervisor, Human Resources office, or the Principal, they could proceed on leave, with formal approval being reflected in the system subsequently.

24. **Felix Ndimu Kyalo**, the Claimant herein, testified as CW3 and similarly, he adopted his witness statement to constitute his evidence in chief. He also produced the list and bundle of documents filed on his behalf as his exhibits before the Court.

25. The Claimant testified that on or about 27th February 2024, he received a letter from the 1st Respondent transferring him from the Nairobi Campus to the Kitui Campus to serve as an Internal Auditor with immediate effect.

26. He further testified that on 2nd March 2024, the 3rd Respondent blocked his official email address and access rights to the ERP system, thereby restricting his access to institutional records. According to the Claimant, this action prevented him from performing his duties effectively and was contrary to internal audit principles. In his view, the action formed part of a scheme by the 3rd Respondent to constructively dismiss him.

27. The Claimant stated that he reported to the Kitui Campus on 5th March 2024 and thereafter requested his supervisor to grant him seven (7) working days, from 6th March 2024 to 14th March 2024, to enable him to relocate from Nairobi to Kitui and settle.

28. He further testified that he inquired from the Respondents whether he could be granted transfer allowance in accordance with the 1st Respondent's Human Resource Policy and Procedures Manual.

29. According to the Claimant, a letter from the Principal of the Kitui Campus, Mr. Stephen B. Buluma, dated 6th February 2024 but which he stated was intended to read 6th March 2024, confirmed that he had reported to the Kitui Campus and had been released to hand over and settle.

30. The Claimant testified that under the 1st Respondent's Human Resource Policy and Procedures Manual (Human Resources Manual), he was entitled to a transfer allowance payable three (3) days prior to departure where the transfer distance exceeded forty (40) kilometres, which was the case between Nairobi and Kitui.

31. He further testified that while making arrangements to settle at the new station, and owing to the short notice of transfer, he realized that he was not in a favourable financial position to relocate immediately. He added that his wife had recently given birth and he therefore requested thirty (30) days' leave out of his accumulated forty (40) days' leave.

32. The Claimant stated that he informed his supervisor and the Human Resource Manager at the Kitui Campus and that they agreed in principle that he could

apply for the thirty (30) days' leave through the ERP system. He stated that he did so on 13th March 2024 and proceeded on leave from 15th March 2024 to 25th April 2024.

33. He further testified that upon completion of his leave, he resumed duty on 26th April 2024 and continued with his normal duties. He added that he had been unable to access the ERP system using his usual login credentials because his access had been blocked on the instructions of the 3rd Respondent.

34. The Claimant further testified that he was subsequently issued with a show cause letter dated 22nd April 2024, to which he responded with a letter dated 26th April 2024 addressing the allegations made against him.

35. He further stated that he was thereafter served with an interdiction letter dated 30th April 2024 requiring him to cease working pending investigations, which he contended contained false allegations.

36. The Claimant testified that he later received a letter dated 22nd May 2024 inviting him to attend a disciplinary hearing scheduled for 30th May 2024.

37. He attended the disciplinary hearing and responded to the allegations levelled against him, adding that he had never previously been subjected to disciplinary

action or issued with any warning during his employment with the 1st Respondent.

38. According to the Claimant, notwithstanding his response to the allegations, the 3rd Respondent unlawfully terminated his employment on 11th June 2024. He contended that under Clause 22 of his appointment letter and Clause 15.3 of the 1st Respondent's Human Resources Manual, the authority to terminate his employment vested in the 2nd Respondent. In his view, any termination effected without the approval and recommendation of the 2nd Respondent was null and void.

39. The Claimant further contended that under the 1st Respondent's organizational structure, grading and staff establishment guidelines, the 3rd Respondent had no mandate to terminate employees and could only implement decisions made by the 2nd Respondent.

40. He maintained that the 2nd Respondent had not convened a meeting to deliberate on or approve the termination of his contract and that, consequently, the 3rd Respondent could not lawfully implement or ratify such a decision.

Respondents' case

41. The Respondents presented oral evidence through **Brian Wanyonyi Wechabe** and **Amos Owino Odhiambo**, who testified as RW1 and RW2, respectively. Mr. Wechabe, who testified first, identified himself as an Advocate of the High Court of Kenya currently serving as the Company Secretary of the 1st Respondent. Similarly, RW1 adopted his witness statement to constitute his evidence in chief. He further produced the Respondents' list and bundle of documents as exhibits before the Court, save for the confession letter dated 30th April 2024 attributed to **Amos Owino (RW2)**.

42. RW1 testified that the transfer of the Claimant to the Kitui Campus was part of a routine staff reorganization.

43. He further stated that since the Claimant was being deployed to a different position from the one he previously held at the Nairobi Campus, it was standard practice to restrict access to the email account associated with the former position. According to RW1, the responsibilities attached to the new role were different, and therefore, there was no necessity for the Claimant to retain access to the previous email account following the transfer.

44. RW1 further testified that access to staff email was distinct from access to the ERP system. He explained that ERP access was available to staff members

through individual identifiers and credentials uniquely assigned to each employee.

45. He further stated that there was no record of the Claimant having requested his supervisor to grant him seven (7) working days to relocate from Nairobi to Kitui. In this regard, he referred to an internal memorandum dated 18th April 2024 from the Principal of KEWI Kitui Campus addressed to the 3rd Respondent.

46. According to RW1, the said memorandum indicated that the Claimant had not followed the prescribed procedure in applying for leave. He further stated that the authenticity of the letter dated 6th February 2024 produced by the Claimant was questionable, adding that the then Principal of the Kitui Campus was not present at the station on the date indicated in the letter.

47. RW1 testified that following receipt of the memorandum dated 18th April 2024, the 1st Respondent, through the 3rd Respondent, issued the Claimant with a Notice to Show Cause requiring him to explain his alleged absenteeism from duty between 7th and 14th March 2024 and his decision to proceed on leave without approval between 15th March 2024 and 25th April 2024.

48.He stated that the Claimant responded to the Notice to Show Cause by way of a letter dated 26th April 2024, in which he maintained that he had not committed any wrongdoing.

49.RW1 further testified that the Claimant was subsequently interdicted through a letter dated 30th April 2024. Among the issues outlined in the interdiction letter was that the Claimant had fraudulently accessed and transacted on the 1st Respondent's ERP system to generate a leave request. RW1 added that the Claimant had also impersonated the then Principal of the Kitui Campus to create the impression that the leave request had been duly approved.

50.RW1 further stated that there was evidence showing that the Claimant had approached one Amos Owino Odhiambo (RW2), who worked with the company responsible for managing the 1st Respondent's ERP system, and requested his assistance to unlawfully access the system and approve the leave request under the guise that it had been approved by the Principal of the Kitui Campus.

51.RW1 further testified that the transfer allowance was ordinarily processed once a staff member had reported to the new station and submitted a formal request. In his view, the Claimant did not follow the proper procedure in applying for leave.

52.He further stated that the 1st Respondent invited the Claimant to attend a disciplinary hearing through a letter dated 22nd May 2024.

53.RW1 added that the letter dated 6th February 2024 produced by the Claimant and which he claimed had been erroneously dated was established to be inauthentic. He explained that the letter bore a date preceding the Claimant's transfer to the Kitui Campus and also suggested that the Claimant had reported to the campus a year earlier. He further stated that the minutes of the Human Resource Advisory Committee meeting held on 6th June 2024 indicated that the Claimant acknowledged that the authenticity of the letter was questionable.

54.RW1 further testified that the established practice required a staff member to obtain approval from their immediate supervisor and the Human Resource Office before proceeding on leave. According to him, this procedure enabled the Human Resource Office to determine whether arrangements needed to be made to fill any gap created by the staff member's absence.

55.He further contended that it was incorrect for the Claimant to suggest that he could initiate or process a leave request outside the established procedures.

56.RW1 testified that upon considering the Claimant's representations together with the confession made by the individual alleged to have assisted him, the

Respondents concluded that the Claimant's conduct was sufficiently serious to warrant dismissal from employment.

57. He further stated that the Claimant's actions amounted to gross misconduct and rendered the continuation of his employment with the 1st Respondent untenable. According to RW1, the absence of prior disciplinary action or warning letters did not diminish the seriousness of the alleged misconduct.

58. RW1 further testified that the 3rd Respondent acted with the authority of the 2nd Respondent, pursuant to a resolution passed at a Governing Council meeting held on 27th November 2023.

59. He also stated that the 3rd Respondent subsequently updated the Governing Council on the termination of the Claimant's employment during a meeting held on 6th June 2024.

60. Without prejudice, RW1 added that since the 3rd Respondent had signed the Claimant's appointment letter, it would also have been appropriate for him to sign the termination letter.

61. RW1 further testified that although the 1st Respondent's Human Resource Manual provided an internal appeal mechanism, the Claimant opted instead to file the suit herein.

62. **Amos Owino Odhiambo** who testified as RW2, identified himself as an IT professional working with Appkines Solutions Ltd, the company responsible for installing and managing the 1st Respondent's ERP system. Similarly, RW2 adopted his witness statement to constitute his evidence in chief. He further produced a letter dated 30th April 2024, contained in the Respondents' list and bundle of documents as an exhibit before the Court.

63. RW2 testified that he received a call from the Claimant from his phone number (0724***), requesting him to approve a leave application on behalf of the Claimant's immediate supervisor.

64. He further stated that on 16th April 2024, he logged into the ERP system without the approval of the ICT Manager or the use of an official email address, as required, and approved the Claimant's leave request on behalf of the supervisor.

65. RW2 testified that when his actions came to light, he wrote the letter dated 30th April 2024, addressed to the 3rd Respondent, in which he admitted his actions and tendered an apology.

Submissions

66. The Claimant contended that the Respondents failed to adduce any evidence to demonstrate that the letter dated 6th February 2024 was a forgery or that it had not been executed by the then Principal of Kitui Campus, **Stephen B. Buluma**. The

Claimant further submitted that no evidence was presented before the committee or this Court to show that the management of the Kitui Campus, including his immediate supervisor, was unaware that he was not on leave. To this end, the Claimant submitted that he had sufficiently demonstrated that he had indeed applied for leave and that the same had been duly granted.

67. The Claimant further submitted that annual leave is not a discretionary benefit but rather a statutory and constitutional entitlement, forming part of an employee's right to fair labour practices under Article 41 of the Constitution. In this regard, he argued that he had accumulated over forty (40) leave days, which, in his view, was a clear indication that the Respondent had persistently failed and/or neglected to facilitate him to take his lawful leave entitlement.

68. The Claimant further argued that an employer is under an obligation to take reasonable steps to trace and contact an employee who is absent from duty before resorting to dismissal on grounds of abandonment of duty. In support of this position, he relied on the decision in ***Central Furniture Shop Limited v Mohamed (Appeal E097 of 2023) [2025] KEELRC 199 (KLR)***.

69. In the same vein, the Claimant submitted that the Respondents ought to have made reasonable efforts to trace him. He proceeded to argue that the Respondents neither made such efforts nor produced any evidence to demonstrate that they had

attempted to do so. According to the Claimant, this omission lends credence to his assertion that he was on leave that had been duly approved by the Respondents.

70. The Claimant further submitted that, pursuant to Clause 3.24.1 of the 2nd Respondent's Human Resources Manual and his employment agreement, the 3rd Respondent lacked the authority and mandate to terminate his employment. It was his position that both the Human Resources Manual and his contract of employment expressly provide that the power to terminate his services is vested solely in the Council and not the Director. Still on this issue, the Claimant argued that Clause 15.3 of the said Policy only authorizes the Director to terminate the employment of employees engaged on contract or probationary terms, a category to which he does not belong.

71. The Claimant further contended that the reasons advanced by the Respondents for his termination were unjustified, baseless, and unsupported by any evidence.

72. It was the Claimant's further submission that the minutes of the meeting demonstrate that his evidence was not considered at all and that no discussion took place regarding what he actually said. In his view, the process merely served to cement a decision that had already been made beforehand.

73. At the time of writing this judgment, the Respondents' submissions were not traceable either in the Court's physical record or on the online portal. This was despite the Respondents being granted 14 days' leave to file their written submissions on 28th January 2026.

Analysis and determination

74. Flowing from the record, the Court has isolated the following issues for determination:

- i. Whether the Respondent has proved that there was a fair and valid reason to terminate the employment of the Claimant;**
- ii. Whether the Claimant was accorded procedural fairness prior to being terminated from employment;**
- iii. Is the Claimant entitled to the reliefs sought?**

Fair and valid reason?

75. Pursuant to **Section 43(1) of the Employment Act**, the burden lies on the employer to prove the reasons for termination, failing which the termination is deemed unfair. In addition, **Section 45(2)(a) and (b) of the Employment Act** requires an employer to demonstrate that the reasons for termination are valid, fair, and related to the employee's conduct, capacity, compatibility, or its operational requirements.

76. In the present case, it is evident from the termination letter dated 11th June 2024, that the Claimant's employment was terminated on grounds of alleged absenteeism and falsification of records.

77. The allegations culminating in the termination of the Claimant's employment arose from an internal memorandum dated 18th April 2024 authored by the Principal of the Respondent's Kitui Campus, **Matara Kaburi**, and addressed to the 3rd Respondent.

78. In the said internal memorandum, Mr. Kaburi indicated that there was no record of the Claimant having worked at the Kitui Campus following his transfer. He further stated that there had only been verbal information suggesting that the Claimant had visited the campus on a single occasion, namely on 5th March 2024. Mr. Kaburi also expressed doubt regarding the authenticity of a letter dated 6th February 2024, which indicated that the Claimant had reported to the Kitui Campus on 5th March 2023.

79. In his response to the Notice to Show Cause, the Claimant stated that he had reported to the Kitui Campus on 5th March 2024 following his transfer. He further indicated that he spoke to his supervisor, who allowed him time from 6th March 2024 to 14th March 2024 to hand over at his previous station and to settle in at the new station.

80. It is noteworthy that the letter dated 6th March 2024 does not indicate the specific duration granted to the Claimant to hand over at his previous station or to settle at the new station.

81. In the same response, the Claimant stated that he applied for thirty (30) days' leave commencing on 15th March 2024 and ending on 25th April 2024, and that he resumed duty on 26th April 2024.

82. It is apparent that the Claimant's response prompted the issuance of an interdiction letter dated 30th April 2024, in which he was accused of fraudulently transacting on the 1st Respondent's ERP system to generate his own leave request on 13th March 2024. It was further alleged that the leave request had not been approved by the Manager of Human Resources and Administration.

83. The Claimant produced in support of his case a copy of his leave application indicating that the leave was to commence on 15th March 2024 and end on 26th April 2024, with the approval reflected as having been given by "**Buluma**" on 14th March 2024.

84. The Respondents disputed the authenticity of the leave approval and produced a letter dated 30th April 2024 authored by RW2, in which he admitted that he had

approved the Claimant's leave application on the ERP system without authority. In that letter, RW2 stated that the Claimant had asked him to approve the leave request on behalf of his immediate supervisor.

85. During cross-examination, the Claimant testified that he had asked RW2 to check whether his leave application had been approved. He further admitted that RW2 accessed the system under the credentials of his immediate supervisor and acknowledged that such conduct was illegal.

86. Upon further cross-examination, the Claimant confirmed that he proceeded on leave before receiving approval from his supervisor and further admitted that **Mr. Buluma** had not personally accessed the system to approve his leave request.

87. From the foregoing, it emerges that the Claimant proceeded on leave without obtaining the requisite approval from his supervisor. In effect, his absence from duty was without authority. Under **Section 44(4)(a) of the Employment Act**, absence from work without leave or lawful cause constitutes a ground for summary dismissal.

88. In addition, the evidence shows that the Claimant caused the leave approval to be entered from his supervisor's end through the unauthorized intervention of a third party, RW2. This conduct was clearly irregular and unlawful.

89.Indeed, even assuming that the Claimant's assertion that his supervisor had verbally approved his leave was true, it is unclear why he did not request the same supervisor to formally approve his leave application in the system, rather than engaging RW2 to do so without authorization.

90.In light of the foregoing, the Court is persuaded that the Respondent has demonstrated, on a balance of probabilities, that the Claimant's conduct provided a valid and fair reason for termination of his employment within the meaning of **Section 45(2)(a) and (b) of the Employment Act.**

Procedural fairness?

91.The requirement for procedural fairness is generally provided for under **Section 45(2)(c) of the Employment Act**, while the specific requirements of a fair hearing are outlined in Section 41 of the Act. Under these provisions, an employer is required to notify an employee of the intended termination in a language the employee understands and to afford the employee an opportunity to respond to the allegations in the presence of a union representative or a colleague of their choice.

92.In the present case, it is not disputed that the Claimant was issued with a Notice to Show Cause, to which he responded. It is also common ground that the

Claimant was subsequently served with an interdiction letter outlining further allegations against him.

93. The record further indicates that the Claimant was invited to attend a disciplinary hearing and was informed of his right to be accompanied by an advocate or an expert of his choice. From the minutes of the disciplinary hearing produced before the Court, it is evident that the Claimant attended the hearing and made oral representations in response to the allegations levelled against him.

94. The Claimant's contention is that the 3rd Respondent lacked the authority to terminate his employment, arguing that the 3rd Respondent could only implement or ratify decisions made by the 2nd Respondent.

95. On their part, the Respondents hold that the 3rd Respondent acted with the knowledge and approval of the 2nd Respondent.

96. In support of this position, the Respondents produced minutes of a meeting of the 1st Respondent's Governing Council held on 27th November 2023, in which it was resolved that the 3rd Respondent be granted authority to terminate the employment of staff in job group KW5 and below who engage in acts of gross misconduct, subject to compliance with the procedures set out in the Human

Resource Manual, and with a requirement to subsequently notify the Council of any such action taken.

97. The Respondents also produced minutes of the Governing Council meeting held on 12th July 2024, in which the Council noted the disciplinary action taken against the Claimant and Samuel Mwangi.

98. In view of the foregoing evidence, the Claimant's assertion that the 3rd Respondent lacked authority to terminate his employment fails.

99. In sum, the Court is persuaded that the Respondents complied with the minimum procedural requirements of a fair hearing as prescribed under Section 41 of the Employment Act in terminating the Claimant's employment.

Reliefs?

100. Having found that the termination of the Claimant's employment was founded on a valid and fair reason and carried out in accordance with the procedure prescribed under Section 41 of the Employment Act, the claims for notice pay and compensatory damages cannot be sustained. In the same breath, the prayer for reinstatement is declined.

101. The claim for severance pay is likewise declined, as the same is only payable under **Section 40(1)(g) of the Employment Act**, where termination arises from redundancy, which is not the case here.

102. With regard to the claim for accrued leave days not taken, it is notable that the Claimant did not particularize the specific number of leave days allegedly due to him. Consequently, the Court is unable to make an award under this head.

103. However, since the existence of the employment relationship is not in dispute, the 1st Respondent shall issue the Claimant with a certificate of service in terms of Section 51(1) of the Employment Act.

Orders

104. In the final analysis, the Claimant’s claim is hereby dismissed, with an order that each party shall bear its own costs.

105. The 1st Respondent shall issue the Claimant with a certificate of service within fourteen (14) days from the date of this Judgment.

DATED, SIGNED and DELIVERED at MERU this 13th day of March 2026.

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STELLA RUTTO
JUDGE

In the presence of:

Mr. Okullo for the Claimant

Mr. Isinta for the Respondent

Qabale Court Assistant

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 had 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.

STELLA RUTTO

JUDGE