

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NYERI**  
**CONSTITUTIONAL PETITION NO. E016 OF 2024**

**IN THE MATTER OF: THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLES 21, 22(1), 23 (1) & 3, 28, 30,31, 41, 47 AND 258 (1) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 28, 30, 31, 41 AND 47 THE CONSTITUTION OF KENYA 2010.**

**AND**

**IN THE MATTER OF: SECTION 2, 4, 26, 27, 28, 30, 35, 36, 41, 44, 45 AND 87 OF THE EMPLOYMENT ACT 2007 OF THE LAWS OF KENYA.**

**AND**

**IN THE MATTER OF: SECTION 3 AND 12 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT 2011.**

**AND**

**IN THE MATTER OF: RULE 4 (1) AND 10 (1) OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013.**

**AND**

**IN THE MATTER OF: SECTION 4 OF THE FAIR ADMINISTRATIVE ACT BETWEEN**

**STANELY NJENGA MBUGUA.....PETITIONER**

**VERSUS**

**STEPMA ENTERPRISES LIMITED.....RESPONDENT**

## JUDGMENT

1. The Petitioner avers that he was employed by the Respondent as a supervisor from 1<sup>st</sup> October 2021 to 19<sup>th</sup> July 2023, during which period he managed Rubis Energy Limited's petrol station in Banana, Kiambu County. He further avers that the Respondent subsequently assumed management of Rubis Energy Limited's petrol station at Uplands.
2. It is the Petitioner's case that he was never issued with a written contract of employment. Notwithstanding this, he contends that he served the Respondent faithfully and diligently until the termination of his employment on 19<sup>th</sup> July 2023.
3. The Petitioner further contends that the Respondent's director and shareholder, **Stephen Njenga Karanja**, disregarded his right to privacy both during and after the employment relationship. In particular, he avers that Mr. Njenga caused his phone number to be listed as a contact number for the two petrol stations without his consent, as a result of which he continued to receive calls and text messages from engineers and contractors regarding assigned tasks at the stations after the termination of his employment.
4. The Petitioner also avers that on 19<sup>th</sup> July 2023, the Respondent unlawfully and unfairly terminated his employment without affording him an opportunity to be heard.

5. Arising from the foregoing, the Petitioner seeks the following reliefs against the Respondent:

- a) **A declaration that the Respondent violated the Petitioner's Constitutional Rights under articles 28, 30, 31, 41 and 47 of the Constitution of Kenya.**
- b) **A declaration that the Petitioner's termination from employment was unfair and unlawful.**
- c) **An order that the Respondent pays the Petitioner damages for the violation of the Petitioner's constitutional rights.**
- d) **An order that the Respondent pays the Petitioner her terminal benefits in the form of:**
  - i. **Twelve (12) month's salary as compensation for unlawful termination.....Kshs .396,000/=**
  - ii. **Notice Pay.....Kshs. 33,000/-**
  - iii. **Salary arrears.....Kshs. 6,000/-**
  - iv. **Service pay .....Kshs 49,500/-**
  - v. **Total.....Kshs. 484,500/=**
- e) **An order directing the Respondent to issue the Petitioner with a certificate of service.**
- f) **The costs of this Petition to be awarded to the Petitioner.**
- g) **The amounts awarded to attract interests at court rates from the date of filing this petition until payment in full.**

6. The Respondent opposed the Petition by way of a Replying Affidavit sworn on 1<sup>st</sup> December 2025 by its director, **Stephen Njenga Karanja**. At the outset, Mr. Karanja contends that the Petitioner was engaged as an independent contractor under a contract for services, and not as an employee of the Respondent.

7. Mr. Karanja avers that the Petitioner did not earn a fixed salary but was remunerated based on services rendered in accordance with agreed contractual terms. He further denies that the Respondent infringed the Petitioner's rights under Articles 28, 30, 31, 41, and 47 of the Constitution of Kenya, 2010, in any respect, and urges the Court to dismiss the Petition with costs.

#### **Petitioner's Case**

8. The Petitioner avers that the Respondent created an account on the Sahara Ticket App for purposes of managing and coordinating contractor operations at the Rubis Energy petrol station in Banana and the Rubis petrol station in Uplands, both within Kiambu County.

9. He further avers that the contractor operations included civil engineering and repair works, branding and signage, pump maintenance, and other essential technical services necessary for the functioning of the petrol stations, and

that requests for maintenance and repairs were ordinarily generated and managed through the Sahara Ticket App.

10. He contends that the Respondent's director and shareholder listed his phone number as a contact for the two petrol stations without his express consent.

11. The Petitioner further avers that despite the termination of his employment on 19<sup>th</sup> July 2023, the Respondent has failed or neglected to remove his phone number from accounts operated by the Respondent or its directors.

12. It is his case that the Respondent has continued to use his phone number to advance its commercial and business interests, in violation of his right to privacy.

13. He further contends that by failing to remove his phone number from the Sahara Ticket App after the termination of his employment, the Respondent effectively subjected him to servitude and involuntary labour by extracting work-related engagement from him contrary to the law.

14. The Petitioner also avers that the Respondent summarily dismissed him on 19<sup>th</sup> July 2023 without affording him a hearing, issuing a termination letter, or providing reasons for the termination.

15. He further contends that the Respondent has not produced any written contract for services or evidence of a project-based engagement, and

maintains that his engagement satisfied the legal tests of an employment relationship.

16.The Petitioner asserts that he neither initiated nor consented to the use of his personal phone number on the Sahara Ticket App for the Respondent's commercial operations.

17.He maintains that his phone number was listed without his express, informed, or written consent, both during and after the termination of his employment.

18.The Petitioner further contends that the Sahara Ticket App account was created by the Respondent's director and operated for the Respondent's benefit, and that the Respondent exercised exclusive control over the account and bore responsibility for the removal of his personal data.

### **Respondent's Case**

19.The Respondent, through the Replying Affidavit sworn on 1<sup>st</sup> December 2025 by its director, **Mr. Karanja**, avers that the Petitioner has not demonstrated that he was ever engaged by the Respondent in any capacity.

20.Mr. Karanja further avers that no relationship of subordination existed between the Petitioner, as a contractor, and the Respondent, as a client, in the performance of the alleged services.

21.He contends that the engagement, if any, was project-based in nature and did not confer upon the Petitioner the rights and benefits reserved for employees under the Employment Act.

22.Mr. Karanja further avers that the Petitioner voluntarily initiated and consented to the use of his phone number on the Sahara Ticket App without the Respondent's involvement or authority, and that upon completion of his engagement, the Petitioner failed to take steps to have his number removed from the platform.

23.He further denies the allegations of servitude and involuntary labour, maintaining that the Petitioner was neither compelled nor coerced to perform any duties beyond the scope of his contractual obligations.

24.Mr. Karanja avers that the termination of the Petitioner's engagement was carried out in accordance with the terms of the contract for services, and that no employment obligations arose therefrom. He further contends that the Petitioner has not adduced sufficient evidence to establish that the termination was wrongful or unlawful.

25.In his view, the Petitioner's claim for compensation in the sum of Kshs. 484,500/- is unfounded and exaggerated, as he (Petitioner) was not entitled to employee benefits.

## Petitioner's Submissions

26. On his part, the Petitioner submitted that, at all material times between 1<sup>st</sup> October 2021 and 19<sup>th</sup> July 2023, he was engaged by the Respondent as an employee.

27. He further submitted that the Employment Act recognizes the existence of employment relationships even in the absence of a written contract, so long as the surrounding facts support such a finding.

28. Relying on the decisions in *Kenya Pipeline Company Ltd v Ndegwa & Another* [2023] KECA 226 (KLR), *Geoffrey Makana Asenyo v Nakuru Water & Sanitation Services Company* (2014) eKLR, *Kenya Hotel & Allied Workers Union v Alfajiri Villas* [2014] eKLR, and *Omusamia v Upperhill Springs Restaurant (Cause 852 of 2017)* [2021] KEELRC 3 (KLR), the Petitioner submitted that his engagement did not exhibit the characteristics of an independent contractor relationship. He maintained that he did not operate an independent business, did not serve multiple clients, and was not engaged on a project-based or results-oriented basis. Instead, he worked exclusively for the Respondent, earned a fixed monthly salary at the time of termination, and performed continuous supervisory duties integral to the Respondent's petrol station operations.

29. The Petitioner further submitted that he operated under the direct control and supervision of the Respondent's director, adhered to prescribed work schedules, received instructions on daily operations, and was accountable for managerial decisions at the Respondent's stations.

30. It was his position that the Respondent failed to produce any documentary evidence to substantiate its assertion that he was an independent contractor.

31. The Petitioner further submitted that the Respondent did not accord him a fair hearing prior to termination, failed to communicate any valid or fair reasons for his dismissal, and did not issue a notice to show cause or subject him to any disciplinary or investigative process. In support of this position, he relied on the case of *Walter Ogal Anuro v Teachers Service Commission [2013] eKLR* and *New Kenya Co-operative Creameries Limited v Olga Auma [2019] eKLR*.

32. The Petitioner further submitted that the Respondent's actions amounted to a violation of his right to privacy under Article 31 of the Constitution of Kenya, 2010, as well as the provisions of the Data Protection Act, 2019. In this regard, he relied on the case of *JWI & Another v Standard Group Limited & Another [2015] eKLR* and *Human Rights Commission v Communications Authority of Kenya & 4 Others [2018] eKLR*.

33. Citing the case of *Tumaz and Tumaz Enterprises Ltd & 2 Others v National Council for Law Reporting [2022] KEHC 14747 (KLR)*, the Petitioner further argued that the right to privacy is intrinsically linked to human dignity and personal autonomy.

34. The Petitioner maintained that the Respondent continued to use his personal phone number on the Sahara Ticket App and related job cards even after the termination of his employment, without his knowledge or consent, thereby causing him to receive calls and messages relating to the Respondent's business long after the employment relationship had ceased.

35. He further submitted that where the use of personal data is contested, the burden lies on the party utilizing such data to demonstrate that consent was obtained from the data subject for its commercial use. It was his position that, having shown that his phone number continued to be used post-termination, the evidentiary burden shifted to the Respondent to prove that he had consented to such use.

### **Respondent's Submissions**

36. On its part, the Respondent submitted that the Petitioner was not its employee but an independent contractor engaged under an oral contract for services, allegedly on a personal basis with its director. It maintained that the

engagement was project-based, non-exclusive, and lacked the essential characteristics of an employment relationship under Kenyan law.

37. Relying on the case of *Shayona Timber Limited v Ochieng (Employment and Labour Relations Appeal E031 of 2023) [2025] KEELRC 844 (KLR)*,

the Respondent submitted that the Petitioner failed to establish the key elements distinguishing a contract of service from a contract for services, namely control, integration, and economic dependency.

38. It was the Respondent's position that it exercised no control over the Petitioner, as evidenced by the fact that the Petitioner allegedly undertook projects for multiple clients, including persons other than Stephen Karanja, during the period in question. In this regard, reliance was also placed on the case of *Charles Mutua Mwanzi v Invesco Assurance Company Limited [2016] KEELRC*.

39. The Respondent further submitted that the Petitioner enjoyed a relaxed and informal relationship with its director, adding that the director was saved in the Petitioner's contacts as "Stevo," and that their interactions were project-based. It contended that the Petitioner was not required to report to the director or to any designated workstation, and that he never made any claim for unpaid salary during the period of engagement.

40. It was the Respondent's case that no employer–employee relationship existed so as to invoke the protections of the Employment Act or Article 41 of the Constitution.

41. The Respondent further submitted that the alleged violations of Articles 28, 30, 31, 41, and 47 of the Constitution were pleaded in a generalized manner without the requisite specificity. In support of this position, it relied on the case of *Anarita Karimi Njeru v Republic [1979] eKLR*.

42. The Respondent also contended that the inclusion of the Petitioner's phone number on the Sahara Ticket App must have been initiated and consented to by the Petitioner himself, without any directive or authority from the Respondent. It argued that upon completion of his engagement, the Petitioner failed to take steps to have the number removed, and that there was no nexus between the Respondent and the continued presence of the number on the application. The Respondent further maintained that the Petitioner never requested, directly or indirectly, that his number be removed.

43. In the Respondent's view, there exists no factual or legal basis to support the alleged constitutional violations.

44. Relying on the case of *Maurice Ajwang Owuor v Catholic University of Eastern Africa [2021]*, the Respondent submitted that the present Petition is an improper attempt to elevate a purely contractual dispute to a constitutional matter.

### **Analysis and Determination**

45. Having considered the pleadings filed by the parties, the evidence on record, and the respective submissions, the Court distills the following issues for determination: -

- i. Whether an employment relationship existed between the Petitioner and the Respondent;**
- ii. Subject to (i), whether the termination of the Petitioner's employment was lawful and fair;**
- iii. Whether the Respondent infringed upon the Petitioner's constitutional rights; and**
- iv. Whether the Petitioner is entitled to the reliefs sought in the Petition.**

### **Employment relationship?**

46. The parties have adopted wholly divergent positions on this issue. While the Petitioner maintains that he was employed by the Respondent in the capacity of a supervisor, the Respondent disputes this assertion, contending that the Petitioner was engaged as an independent contractor.

47. It is, however, common ground that the Petitioner rendered services to the Respondent pursuant to an oral agreement. The central question for determination is whether that engagement constituted a contract of service or a contract for service.

48. In addressing this distinction, the Court in the case of ***Christine Adot Lopeyio v Wycliffe Mwathi Pere [2013] KEELRC 244 (KLR)*** acknowledged the fine line separating independent contractors under a contract for service from employees under a contract of service, and proceeded to apply the following tests to differentiate what amounts to “employment” as opposed to “service” within those respective contractual arrangements;

- a) *The control test whereby a servant is a person who is subject to the command of the master as to the manner in which he or she shall do the work.*
- b) *The integration test in which the worker is subjected to the rules and procedures of the employer rather than personal command. The employee is part of the business and his or her work is primarily part of the business.*
- c) *The test of economic or business reality which takes into account whether the worker is in business on his or her own account, as an entrepreneur, or works for another person, the employer, who takes the ultimate risk of loss or chance of profit.*

*d) Mutuality of obligation in which the parties make commitments to maintain the employment relationship over a period of time. That a contract of service entails service in return for wages, and, secondly, mutual promises for future performance. The arrangement creates a sense of stability between the parties. The challenge is that where there is absence of mutual promises for stable future performance, the worker thereby ceases to be classified as an employee as may be the case for casual workers.*

49. Ordinarily, the nature of the legal relationship between parties is discerned primarily from the terms of their contract. In the absence of a written agreement in the present case, the Court will apply the foregoing established tests to infer the nature of the parties' relationship from the manner in which they conducted themselves.

50. In support of his claim, the Petitioner produced a series of WhatsApp messages exchanged between himself and the Respondent's director, Mr. Karanja. These communications reveal discussions on work-related matters, with several instances where Mr. Karanja issued instructions to the Petitioner. For instance, in one message, Mr. Karanja directed the Petitioner to shift his focus to "Uplands" due to a decline in work there, to which the Petitioner agreed. In another message, he instructed the Petitioner to collect

an “ETR” from a lady in Magina. In a further message, Mr. Karanja directed the Petitioner to measure “dips” alongside one Eva.

51. Applying the control test to these facts, it is evident that the Petitioner operated under the direction and control of Mr. Karanja.

52. It is equally apparent that the Petitioner was integrated into the Respondent’s business, with his duties forming an integral part thereof. In one of the WhatsApp messages, Mr. Karanja notified the Petitioner of an upcoming “offloading training” scheduled for June, and instructed him to nominate two site staff from each station, vet the nominees, and submit the list by 2:00 p.m. the following day. He concluded by expressing reliance on the Petitioner’s continued support, underscoring the Petitioner’s role within the Respondent’s operations.

53. Further to this, the Respondent did not contest the Petitioner’s assertion that he underwent various trainings to enhance his skills. In this regard, the Petitioner produced a certificate evidencing his participation in first aid training.

54. The Petitioner further tendered an M-Pesa statement showing receipt of payments from Mr. Karanja. While the Respondent maintains that the Petitioner was an independent contractor, it does not deny having engaged him to render services.

55. In one of the messages, Mr. Karanja commended the Petitioner for his performance, stating: “*Btw umefanya kazi smart sana...hata ita meeting Saturday will attend plus for May salary yako itakuwa 33k.*”

56. The issuance of instructions regarding meetings, coupled with a promise of a monthly salary of Kshs. 33,000/- strongly suggests an employer-employee relationship. Indeed, this satisfies the economic reality test, as it demonstrates the Petitioner’s financial dependence on the Respondent.

57. Further, it is notable that despite the Respondent pleading that the Petitioner’s engagement was project-based, it failed to specify the nature of such projects. On the contrary, the correspondence between the parties indicates that the Petitioner’s duties were routine and ongoing, rather than project-specific.

58. Additionally, the Petitioner produced a badge bearing his name and designation as “*station supervisor,*” which lends credence to his assertion of employment in that capacity.

59. Indeed, the role of a supervisor is, by its very nature, continuous and ordinarily requires full-time engagement, which is inconsistent with the characteristics of an independent contractor.

60. In sum, the Court finds that the Petitioner was engaged by the Respondent as an employee under a contract of service. Accordingly, an employment relationship is inferred from the manner in which the parties conducted themselves.

61. Having so found, the Court now turns to consider whether the termination of the Petitioner's employment was unfair and unlawful.

### **Unfair and unlawful termination of employment?**

62. The Employment Act prohibits unfair and unlawful termination of employment and mandates an employer to demonstrate that any termination is both substantively and procedurally fair. The applicable legal framework is set out under **Sections 41, 43, and 45 of the Employment Act.**

63. As regards substantive justification, Section 43(1) of the Employment Act requires an employer to prove the reason or reasons for terminating an employee's employment, failing which the termination is deemed unfair within the meaning of Section 45.

64. Under **Section 45(2)(a) and (b) of the Employment Act**, a termination is deemed to be unfair where the employer fails to establish that the reason for

termination is valid, fair, and related to the employee's conduct, capacity, compatibility, or its operational requirements.

65. From these provisions, it follows that an employer must not only state the reason for termination but must also demonstrate that such reason is valid, fair, and properly connected to the employee's conduct, capacity, compatibility, or to its operational needs.

66. In the present case, the record does not contain any letter terminating the relationship between the parties.

67. The Respondent has consistently maintained that the Petitioner was engaged as an independent contractor and that no employment relationship existed. However, this Court has already found elsewhere in this judgment that an employment relationship did exist between the parties.

68. In light of the Respondent's stance, it follows that no reason was advanced for the termination of the Petitioner's employment. Consequently, there are no reasons before the Court against which to assess the fairness of the termination as required under **Section 45(2)(a) and (b) of the Employment Act**.

69. It therefore follows that the Respondent failed to discharge its evidential burden under **Sections 43(1) and 45(2)(a) and (b) of the Employment Act**,

and the Petitioner's termination from employment is accordingly deemed to be substantively unfair.

70. Regarding procedural fairness, **Section 45(2)(c) of the Employment Act** requires an employer to demonstrate that the termination was carried out in accordance with a fair procedure. Section 41 sets out the minimum procedural requirements, including notifying the employee of the allegations and affording them an opportunity to respond in the presence of a fellow employee or a trade union representative of their choice.

71. The Petitioner contends that his employment was terminated without being afforded an opportunity to be heard.

72. Given the Respondent's position that no contract of service existed, no evidence was tendered to show that the Petitioner was notified of any intention to terminate his engagement, nor that he was given an opportunity to make representations prior to the termination.

73. Accordingly, the Court finds that the Respondent failed to comply with the procedure prescribed under Section 41 of the Employment Act, rendering the termination procedurally unfair and therefore unlawful.

74. In conclusion, the Court finds that the termination of the Petitioner's employment was both unfair and unlawful within the meaning of Sections 41, 43, and 45 of the Employment Act.

### **Constitutional violations?**

75. The Petitioner alleges that the Respondent infringed his constitutional right to privacy by listing his phone number as a contact for two petrol stations and on the Sahara Ticket App without his express consent. He avers that, as a result, he continued to receive calls and messages from contractors and engineers assigned to tasks at the said stations. He further asserts that the Respondent utilized his personal data to advance its commercial interests and that job cards were processed using his phone number.

76. In response to these allegations, the Respondent maintains that the Petitioner himself initiated and consented to the use of his phone number on the Sahara Ticket App.

77. To support his claim, the Petitioner produced several job cards bearing a phone number which he identified as his own. These documents are dated 23<sup>rd</sup> February 2022, 25<sup>th</sup> February 2022, 28<sup>th</sup> February 2022, and 13<sup>th</sup> July 2023.

78. Notably, these dates fall within the subsistence of the employment relationship between the parties and precede the termination of the Petitioner's employment.

79. It is further notable that the Petitioner did not place before the Court any evidence to demonstrate that he objected to or protested against the use of his phone number on the Sahara Ticket App during the subsistence of the employment relationship or thereafter.

80. Indeed, the communications produced by the Petitioner reveal a cordial engagement with the Respondent's director, Mr. Karanja. In such circumstances, had the Petitioner been opposed to the use of his number as a contact, he would have communicated as much to Mr. Karanja.

81. In the circumstances, the Court finds merit in the Respondent's assertion that the Petitioner consented to the use of his mobile phone number on the Sahara Ticket App.

82. What's more, there is no evidence that the Petitioner requested the removal of his number from the App following the termination of his employment, or that the Respondent declined any such request.

83. In view of the foregoing, the Court is not persuaded that the Petitioner's right to privacy as guaranteed under Article 31 of the Constitution was violated.

84.The Petitioner also contends that following the termination of his employment, he was subjected to servitude and involuntary labour, in that he continued to receive and respond to calls and messages without remuneration.

85.Article 30 of the Constitution prohibits slavery, servitude, and the imposition of forced labour.

86.In the present case, however, there is no evidence to demonstrate that the Petitioner was under any obligation to receive or respond to the said calls, messages, or that he performed any actual work as a consequence thereof.

87.The Court finds the Petitioner's assertion in this regard to be quite remote and far-fetched.

88.In the circumstances, the Court finds no basis to hold that the Petitioner was subjected to servitude and involuntary labour.

### **Reliefs?**

89.Having found that the Petitioner's termination was both unfair and unlawful, the Court awards him compensation equivalent to five (5) months' salary. In making this award, the Court has taken into account the length of the employment relationship, as well as the Respondent's failure to establish

valid reasons for the termination or to adhere to a fair procedure in effecting the same.

90. In addition, and in view of the finding that the termination was unlawful, the Court awards the Petitioner one (1) month's salary in lieu of notice.

91. The Petitioner is further awarded service pay pursuant to Section 35(5) of the Employment Act, there being no evidence to indicate that he falls within the exclusions set out under section 35(6)(d) of the Act.

### **Orders**

92. In the final analysis, judgment is entered in favour of the Petitioner against the Respondent as follows:

- (a) A declaration is hereby issued that the Petitioner's termination from employment was unfair and unlawful.**
- (b) The Petitioner is awarded one (1) month's salary in lieu of notice in the sum of Kshs 33,000.00.**
- (c) The Petitioner is awarded compensation in the sum of Kshs 165,000.00, being the equivalent of five (5) months' salary.**
- (d) The Petitioner is awarded service pay for the two (2) years worked, amounting to Kshs 33,000.00.**
- (e) The total award stands at Kshs 231,000.00.**

**(f) Interest shall accrue on the sum in (e) at court rates from the date of this judgment until payment in full.**

**(g) The Respondent shall issue the Petitioner with a certificate of service within thirty (30) days from the date of this judgment.**

**(h) The Respondent shall also bear the costs of the suit.**

**DATED, SIGNED and DELIVERED at NYERI this 17<sup>th</sup> day of April 2026.**

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**STELLA RUTTO**

**JUDGE**

**In the presence of:**

Mr. Kioko for the Petitioner

Ms. Mwendwa instructed by Mr. Ngaramba for the Respondent

Ndati 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 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 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**