



**Manyara v Phoenix Aviation Limited (Cause E1034 of 2023)  
[2025] KEELRC 33 (KLR) (17 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 33 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1034 OF 2023  
SC RUTTO, J  
JANUARY 17, 2025**

**BETWEEN**

**JEREMY MANYARA ..... CLAIMANT**

**AND**

**PHOENIX AVIATION LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Through a Memorandum of Claim dated 11<sup>th</sup> December 2023, the Claimant avers that he worked for the Respondent as a Security Manager with effect from 28<sup>th</sup> August 2017. According to the Claimant, he served the Respondent diligently and effectually up to the date of his illegal, irregular and unjustified termination. The Claimant is categorical that he never committed the improprieties alleged against him and that the same were hatched for the sole purpose of hounding him out of office. In his view, the process set to investigate him was preceded by a conclusion and stage managed to mislead and or hoodwink him.
2. It is against this background that the Claimant prays for the following reliefs:
  - a. A Declaration that the termination of the Claimant's employment by the Respondent was unlawful, irregular, devoid of legal underpinning and unjustified.
  - b. Reinstatement of the Claimant for the purpose of restoration and actualization of the Claimant's rights to fair administrative action under Article 47 of the constitution of Kenya, 2010 and the fundamentals thereto complete with salary and benefits for the period served outside employment due to the impugned termination
  - c. An order for General and Exemplary Damages for Illegal/irregular termination, mental anguish and anxiety inflicted on the claimant by the respondent.



- d. An order for Special damages equivalent to salary for 5 years, 4 months effective 1<sup>st</sup> September 2023 at the rate of Kenya Shillings two hundred and seventy-five thousand (Kes275,000.) per month for the said period of 59 months commencing 1<sup>st</sup> September 2023, ending 31<sup>st</sup> July 2028 all totaling to Kshs 16,225,000.
3. Opposing the Claim, the Respondent avers in its Statement of Defence dated 5<sup>th</sup> March 2024, that it took the correct measures as the Claimant's employer to investigate the allegations levelled against him and even employed the services of an external investigator and that it had no ulterior motives such as hounding him out of office.
4. The Respondent further avers that the disciplinary process was carried out in accordance with the rules of natural justice and that the Claimant was afforded a fair hearing and that there was no bias in the process. That prior to the disciplinary process, the Claimant had been given numerous warnings on his conduct in the office, which warnings he never acted upon. Consequently, the Respondent has asked the Court to dismiss the Claim with costs.
5. The matter proceeded for hearing on 15<sup>th</sup> October 2024, during which both sides called oral evidence.

### **Claimant's Case**

6. The Claimant who testified in support of his case, started by adopting his witness statement as well as the list and bundle of documents filed alongside the Memorandum of Claim to constitute his evidence in chief.
7. It was the Claimant's evidence that on 13<sup>th</sup> July 2023, he received a suspension letter from the Human Resource Department referencing sexual harassment, intimidation and bullying. The suspension letter promised investigations and material disclosures/fair process on the part of the purported complaints and the Respondent's Human Resource Department.
8. According to the Claimant, the said suspension letter was scanty on information and devoid of particulars.
9. The Claimant averred that in a letter dated 14<sup>th</sup> July 2023 to the Respondent, he noted that the suspension letter had no particulars of the allegations against him and expressed his reservations with regard to the fairness and objectivity of the investigations that had commenced on a shambolic basis.
10. On 3<sup>rd</sup> August 2023, he received a Notice to Show Cause which in the Claimant's view contained allegations that were shallow, generalized, unverified, imprecise and devoid of particulars.
11. The Claimant averred that he discounted and explained the allegations away and set the record straight and looked forward to objectivity, cogent analysis and dismissal of the allegations bandied against him. According to the Claimant, he expected exoneration.
12. The Claimant further stated that on 17<sup>th</sup> August 2023, without any further reference to him, the Respondent initiated an internal process that was so inefficient, rash and procedurally unfair. The Claimant contended that the process was commenced and processed in violation of his rights.
13. He further averred that the said internal process was brought to his attention for the first time during the proceedings as it is not provided for in the Human Resource Manual.
14. That on 23<sup>rd</sup> August 2023, the Respondent issued him with a termination letter without contingent and convincing reasons.



15. The Claimant was categorical that he never committed the improprieties alleged against him. He maintained that the allegations were thrown at him without justification and his explanation was not taken into account by the Respondent.
16. It was the Claimant's evidence that there was an internal conspiracy and scheme to give him a bad name and ride on it to shambolically process him out of the office.
17. He contended that the process and origination of his termination was wrought with illegalities, improprieties and malicious schemes. That no impropriety and no justification warranted the said horrendous acts against his termination.

### **Respondent's Case**

18. The Respondent called oral evidence through Ms. Annah Musa who testified as RW1. At the outset, RW1 identified herself as the Respondent's Human Resource Manager and equally, she adopted her witness statement to constitute her evidence in chief. She further produced the list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
19. While admitting that the letter of suspension was part of the Respondent's investigation process into the complaints leveled against the Claimant, RW1 averred that the same was in accordance with the Employment Law and the Respondent's policy and was to allow for fair and unbiased investigation.
20. RW1 further averred that the letter of suspension did not draw any conclusions and that the Claimant was encouraged to reach out to the Accountable Manager in the instance he needed any information concerning the matter. That further, the Respondent also acknowledged that the situation may have been distressing to the Claimant and made a promise to expedite the investigation.
21. She further averred that the Respondent employed the services of an external investigator to investigate the complaints made against the Claimant and provided him with the available information at the time and that the investigation process was conducted fairly.
22. RW1 further denied the Claimant's assertions that the Notice to Show Cause contained generalized allegations. In this regard, she averred that all the complaints were set out clearly in the Anonymized Report on Sexual Harassment as per the facts received from the complainants.
23. RW1 further stated that the Respondent did not and could not have handled the investigation with a cavalier attitude given the grave nature of the allegations as well as the number of complaints leveled against the Claimant.
24. In RW1's view, the disciplinary process was carried out in accordance with the rules of natural justice and that the Claimant was afforded a fair hearing and there was no bias in the process. That the Claimant was afforded a fair hearing and that none of his constitutional rights were violated.
25. RW1 further averred that all the Respondent's employees have always been familiar with the Human Resource Manual and it has always been a part of the disciplinary process of the Respondent.
26. She further testified that the Claimant's legitimate expectation may not be taken into consideration as the allegations leveled against him are numerous and very grave and it was the Respondent's duty and responsibility to ensure that every employee in the company works in a safe environment.
27. It was RW1's further evidence that there was no malice aforethought whatsoever while conducting the investigations and during the whole disciplinary process.



## Submissions

28. On the part of the Claimant, it was submitted that in the entirety of the proceedings; from commencement to conclusion, the constitutional and legal parameters under Article 47 of the *constitution* and Section 4 of the *Fair Administrative Action Act* were applied in the converse and in breach. On this score, the Claimant contended that the outcome is not legally and constitutionally aligned and is thus null and void ab initio.
29. It was further submitted by the Claimant that fair administrative action as contemplated by Article 47 of the *constitution*, and the Fair Administrative Actions Act, common law and fair labour practices as stipulated in Article 41 of the *constitution* required that he be subjected to a fair administrative process which conspicuously lacks in the actions of the Respondent.
30. Invoking Sections 106 and 107 of the *Evidence Act*, the Claimant maintained that there was no scintilla of evidence adduced. In the Claimant's view, his dismissal was unfair and unjustified.
31. The Claimant further submitted that the internal process did not adduce any evidence to corroborate any claim raised. In this regard, he contended that the internal process initiated flies in the face of the law and imperatives of Article 47 of the *constitution* and was so convoluted as to amount to unfair administrative action.
32. It was the Claimant's further submission that the letter dated 13<sup>th</sup> July 2023 was very generalized and no details were raised. That he raised concerns and sought to be supplied with more information vide his letter dated 14<sup>th</sup> July 2023. Instead of the Respondent responding to his queries, they summoned him for a disciplinary hearing. To buttress his position, the Claimant placed reliance on the case of *Ol Pejeta Ranching Limited vs David Wanjau Muhoro (2017) eKLR*.
33. The Claimant further submitted that at the disciplinary hearing, his representative/Advocate was not allowed to participate in the proceedings leading to the termination of his employment. In the Claimant's view, this action on the face of it was unfair to him as the allegations levied against him were a result of an external investigator's report allegedly procured by the Respondent.
34. Referencing the case of *Hawkins Ouma vs Microfinance Bank Ltd [2023] eKLR*, the Claimant posited that the factor of no evidence and the fact that there was no disclosed or crystallized complainant confirms conclusively that the entire fabric of the allegation was driven on malicious, unreasonable and irrational considerations on the part of the Respondent.
35. With respect to procedure, the Claimant submitted that during the hearing, he was not given an opportunity to cross-examine the witnesses who gave advance evidence against him. That further, he was not furnished with any documents before the hearing, hence he went to the disciplinary hearing without full particulars and extent of the evidence against him that would enable him to properly prepare for the hearing.
36. It was the Claimant's further submission that the Respondent did not furnish him with a copy of the investigation report to enable him to prepare for the hearing and also to be aware of the complaints raised against him. In support of the Claimant's submissions, reliance was placed on the case of *Postal Corporation of Kenya vs Andrew K Tanui (2019) eKLR* and *Rebecca Ann Maina & 2 others vs Jomo Kenyatta University of Agriculture and Technology (2014) eKLR*.
37. On the Respondent's part, it was submitted that in the termination of the Claimant's employment, adherence to procedural fairness was critically observed as required under Section 41 of the



Employment Act. To this end, the Respondent made reference was made to the case of CFC Stanbic Bank Limited vs Danson Mwashako Mwakuwona (Civil Appeal No.3 of 2013) (2015) eKLR.

38. It was the Respondent's further submission that in conducting the disciplinary hearing, it followed the necessary protocols to offer a fair opportunity for the Claimant to present his case as was held in Kenya Revenue Authority vs Menginya Salim Murgani (2010) eKLR.
39. The Respondent further posited that the allegations presented substantial reasons for termination, as sexual harassment and intimidation severely breach employment trust and integrity, the basis for which substantive fairness is confirmed.
40. According to the Respondent, the principle of protecting victims in sensitive legal contexts such as in workplace sexual harassment claims contributes to a safe working environment by implicitly supporting measures that protect victims' identities to encourage reporting and responsiveness to such claims.
41. It was the Respondent's view that anonymizing complainants during the process is consistent with employment law, human rights principles and best practices, in emphasizing the protection of complainants' identities in sexual harassment claims.
42. The Respondent further posited that it is the critical responsibility of an employer to uphold employee welfare and dignity, recognizing that any form of harassment in the workplace undermines both employee morale and productivity, failure of which can result in legal consequences for the employer thus reinforcing the Respondent's rationale for ensuring disciplinary action.
43. In conclusion, the Respondent submitted that all procedural and substantive requirements under the Employment Act were met, thus justifying the Claimant's termination after exhaustive investigation and due process.

### **Analysis and Determination**

44. Having considered the pleadings by both parties, the evidentiary material on record as well as the rival submissions, the following issues stand out for determination:
  - i. Whether the Respondent has proved that there was a justifiable reason to terminate the employment of the Claimant;
  - ii. Was the Claimant accorded procedural fairness prior to being terminated from the Respondent's employment?
  - iii. Is the Claimant entitled to the reliefs sought?

### **Justifiable reason?**

45. From the record, the Claimant was terminated from employment on grounds that he engaged in acts of sexual harassment, intimidation and bullying. It is apparent that the grounds leading to the Claimant's termination from employment stemmed from the Notice to Show Cause dated 2<sup>nd</sup> August 2023. In the said Notice to Show Cause, the Claimant was notified of allegations levelled against him by five anonymous complainants, all of whom were employees of the Respondent company.
46. The thread running through the allegations by all the complainants is that the Claimant engaged in acts of sexual harassment, bullying and intimidation of the said complainants who were not named.
47. With respect to the 1<sup>st</sup> complainant, the Claimant was alleged to have sexually harassed her almost as soon as she began her employment with the Respondent. In this regard, she accused the Claimant of



- engaging in unwelcome physical contact of sexual nature through inappropriate hugging and kisses on the forehead, making inappropriate or rude comments about her appearance, looks and matters concerning her private life, making repeated and unwanted social invitations for dates and physical intimacy and suggesting that she should have sex with him to alleviate her loneliness. The Claimant was further accused of making repeated and unwanted social invitations for dates and physical intimacy. That any failure to accept his advances would result in difficulties at work.
48. Concerning the 2<sup>nd</sup> complainant, the Claimant was accused of making remarks on her dress code as well as other rude, intrusive and sexual remarks to her. It was further alleged that the Claimant made threats to the 2<sup>nd</sup> complainant that he would hinder or obstruct her work by terminating or ensuring that her employment contracts were not renewed simply because she refused his sexual advances and would not allow bullying and intimidation.
  49. On the part of the 3<sup>rd</sup> complainant, it was alleged that the Claimant made unwelcome sexual advances towards her. That in an attempt to communicate her intention to work peacefully with him, she agreed to meet him after work but he made sexual advances that completely shocked her.
  50. As to the 4<sup>th</sup> complainant, the Claimant was alleged to have groped her and made several unwanted sexual advances after he had offered her a lift home. That the 4<sup>th</sup> complainant voiced her displeasure and refusal to engage in acts with the Claimant and in turn, he threatened that she would lose her position in the company. The Claimant was further accused of creating a hostile and toxic work environment by continuously distracting her and pulling her away from work and at the same time engaging in acts of harassment and bullying towards her.
  51. With regards to the 5<sup>th</sup> complainant, it was alleged that the Claimant once offered to take her home and upon arrival, he (Claimant) was invited into the home where he proceeded to make lewd remarks about her to another individual in her home. The Claimant was further accused of acting in a hostile manner towards the 5<sup>th</sup> complainant as she continuously rejected his advances.
  52. It was further alleged that the Claimant made threats that he would hinder or obstruct the 5<sup>th</sup> complainant at work and that he would make false comments about her. That this greatly affected her work as well as how her fellow employees interacted with her.
  53. It is notable that aside from the narration of the allegations against the Claimant in the Notice to Show Cause, there was no evidence presented by the Respondent in whatever form or manner to back up the allegations of sexual harassment, intimidation, or bullying by the Claimant against the five complainants. For instance, the Respondent did not exhibit written statements by the five complainants documenting their own version of events constituting the allegations against the Claimant.
  54. As it is, the narration contained in the Notice to Show Cause constitutes an account of what transpired between the Claimant and the complainants from a third-party perspective. Indeed, I cannot help but question the manner in which the complaints against the Claimant were received and processed yet no evidence was presented before the court by the Respondent to that end.
  55. Under Sections 43(1) and 45 (2) (a) and (b) of the *Employment Act*, an employer is required to prove the reasons for an employee's termination and failure to do so, such termination is deemed to be unfair. In this regard, such reasons ought to be fair, valid and related to the employee's conduct, capacity or compatibility; or based on the operational requirements of the employer.



56. Applying the aforesaid statutory provisions to the case herein, it follows that the Respondent was required to prove on a balance of probabilities that the Claimant engaged in acts of sexual harassment, bullying and intimidation against the complainants.
57. The Black's Law Dictionary, 10<sup>th</sup> Edition defines sexual harassment to mean "a type of employment discrimination consisting in verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks and unwelcome touching".
58. In this case, the main elements of sexual harassment that needed to be proved against the Claimant were, that there were unwelcome requests for sexual favors, unwanted verbal, non-verbal or physical conduct of a sexual nature. Further, that there was a less favourable treatment or detriment that arose as a result of the rejection or submission to the unwanted conduct.
59. Fundamentally, it was crucial in this case for the Respondent to substantiate the allegations of sexual harassment, bullying and intimidation by the Claimant against the complainants. I hasten to add that the Respondent only needed to substantiate the allegations by one complainant and not necessarily the five of them.
60. As it is, the evidentiary material on record does not in any way substantiate the allegations levelled against the Claimant. As stated herein, the allegations against the Claimant were only spelt out in the Notice to Show Cause and were not corroborated through evidence presented in whatever form or manner.
61. It is worth pointing out that with respect to the 1<sup>st</sup> complainant, the Respondent indicated in the Notice to Show Cause that she (1<sup>st</sup> complainant) had kept a call log and was ready and willing to retrieve the same together messages from Safaricom. Therefore, this confirms that the Respondent was in a position to avail additional evidence to support the allegations against the Claimant but it failed to do so.
62. What's more, the Respondent has averred that it had engaged the services of an external neutral investigator to investigate the allegations against the Claimant. Be that as it may, the investigation report emanating from the said investigations was not exhibited before court.
63. I agree with sentiments of the court in the case of Ouma *vs Faulu Microfinance Bank Limited (Cause E015 of 2022)* [2023] KEELRC 2809 (KLR) (9 November 2023) (Judgment) that sexual harassment is a traumatizing and dehumanizing act to the victim. However, the allegations of sexual harassment still need to be proved and it is not sufficient for an employee to only allege that she was sexually harassed. In that case, the Court underscored that the right to employment must be protected and should only be taken away for valid reasons consistent with Sections 43 and 45(2) of the *Employment Act*. I entirely concur.
64. Needless to say, in this case, the Respondent has failed to discharge its evidential burden under Sections 43(1) read together with Section 45(2)(a) and (b) of the *Employment Act*.
65. All in all, the Respondent has not proved to the required standard, that there was a justifiable reason to warrant the termination of the Claimant's employment.

### **Procedural fairness?**

66. Under Section 45 (2) (c) of the *Employment Act*, an employer is required to prove that an employee's termination from employment was in accordance with fair procedure. Section 41 (1) of the Act makes specific requirements with regards to the process to be complied with by an employer. It entails notifying the employee of the allegations levelled against him or her and thereafter granting him or her



the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.

67. From the record, the Claimant was suspended from duty pending investigations. Through the letter of suspension dated 13<sup>th</sup> July 2023, the Claimant was notified that the Respondent had received several complaints regarding his conduct and alleged incidents of bullying, intimidation and sexual harassment.
68. Subsequently, through a Notice dated 2<sup>nd</sup> August 2023, the Claimant was asked to show cause why disciplinary action should not be taken against him on account of the allegations set out in the said Notice. To this end, the Claimant was invited to tender his response to the allegations contained in the said Notice to Show Cause.
69. What is striking about the Notice to Show Cause is that the identity of the five complainants was not disclosed to the Claimant. This being the case, one wonders how the Claimant was expected to defend himself effectively against the allegations leveled against him without knowing who the complainants were.
70. Indeed, the allegations against the Claimant were so grave and the identity of the complainants was a very crucial element in this case as it would have ensured that the Claimant was well informed of all the particulars regarding the allegations against him.
71. Without such crucial information, it is highly probable that going in for the disciplinary hearing, the Claimant was ill-prepared as he was not fully aware of the allegations laid out against him by the Respondent and the nature of the defence he needed to mount against the same. It is more than probable that this compromised his line of defence during the disciplinary hearing.
72. Indeed, the Respondent did not advance any plausible reason as to why it remained mysterious about the identity of the complainants, whom the Claimant had allegedly harassed sexually, bullied and intimidated.
73. On this score, I adopt the determination by the Court of Appeal in the case of *OI Pejeta Ranching Limited vs David Wanjau Muhoro* [2017] eKLR, where it was held as follows:

“As also rightly found by the learned trial Judge, no evidence was placed before court to show that the Respondent had been issued with a charge (s) of the specific allegations that he was required to answer during the hearing. Going in for the hearing, it is discernable from the record that the Respondent only knew in general terms, the allegations he was to face and counter...In the circumstances, therefore it cannot be said that the termination process was fair.” Emphasis mine
74. In this case, nothing would have been easier than for the Respondent to fully disclose the allegations against the Claimant by providing the names of the complainants whom he had harassed sexually harassed, intimidated and bullied.
75. Connected to the foregoing, the complainants who were the principal accusers against the Claimant, did not appear at the disciplinary hearing to allow him cross-examine them on the allegations they had raised.
76. Granted, the Respondent may have had good intentions in keeping the identity of the complainants confidential. However, this should only have been limited to persons who were not relevant to the case but certainly not the Claimant who was the accused in this case. The rules of natural justice



- demanded that his accusers be made known to the Claimant and for him to be allowed to face them in the disciplinary hearing.
77. Bearing in mind the mysterious manner in which the Respondent handled the Claimant's case, one cannot help but question how the Respondent was in a position to differentiate between genuine and phantom accusations.
  78. In addition to the foregoing procedural lapses, the Claimant was not given the investigation report ahead of the disciplinary hearing. From the minutes of the disciplinary hearing, the Claimant was given the investigation report right before the hearing commenced. RW1 confirmed as much during cross-examination.
  79. In the case of *OI Pejeta Ranching Limited vs David Wanjau Muhoro* [supra], the employer attempted to furnish the employee with the audit report on the hearing date but the employee rejected it. The Court of Appeal rightly found that the audit report would have made no impact as there was no time for the employee to amply prepare and that it was merely tendered as a technical formality. In that case, the Court reckoned that there was no reason given as to why the employee could not have been supplied with a copy of the audit report much earlier and in good time.
  80. Similarly, in this case, I find that there was no value in the Respondent availing the investigation report just before the start of the disciplinary hearing. It served no purpose at all as it was not practicable that the Claimant would have reviewed it and prepared his defence accordingly. As such, I have no doubt in my mind that the Claimant's level of preparedness for the disciplinary hearing was impaired on account of lack of the investigation report which was the basis for his termination from employment.
  81. As a matter of fact, the Respondent has not advanced a plausible reason why the Claimant was not given the investigation report ahead of the disciplinary hearing to allow him prepare adequately.
  82. I wish to underscore that the mere fact that an employer issues an employee with a Notice to Show Cause, invites him or her to tender a reply thereto and thereafter grants the employee an opportunity to appear for a disciplinary hearing does not in itself amount to a fair hearing.
  83. The entire disciplinary process is not a mere formality for the purposes of ticking boxes. It ought to embody the elements of a fair hearing such as comprehensive particulars of the allegations in question, the right to cross-examine where applicable, and the right to access information, materials, and evidence to be relied upon by the employer in arriving at its decision. As highlighted herein, these elements were lacking in the process applied by the Respondent in terminating the Claimant's employment.
  84. The total sum of my consideration is that the Respondent did not act in accordance with justice and equity in terminating the Claimant's employment hence did not comply with the spirit of a fair hearing as envisaged under Section 41 of the *Employment Act*.
  85. In the end, the process was not fair against the Claimant hence his termination was unlawful.
  86. As I conclude on this issue, I echo the sentiments of the court in the case of *Njibia vs Mathare Youth Sports Association & another (Cause 1048 of 2018)* [2024] KEELRC 1435 (KLR) (14 June 2024) (Judgment) that courts are guided by the facts and the law alone, not by sexual harassment advocacy and theories and that the Court has a mandate under Section (6) of the *Employment Act*, to assist the society in fighting and eradicating sexual harassment at the workplace, but it must not lose sight, of the similarly protected rights of persons accused of perpetrating sexual harassment, to a fair disciplinary process, and termination of employment, based on valid ground.



## Reliefs?

87. As the Court has found that the Respondent has not proved that there was a justifiable reason to terminate the Claimant's termination and in so doing did not comply with the spirit of a fair hearing as envisaged under Section 41 of the Employment Act, the Court awards him compensatory damages equivalent to seven (7) months of his salary. This award further takes into account the length of the employment relationship between the parties as well as the circumstances attendant to the Claimant's termination from employment.

## Orders

88. It is against this background that I enter Judgment in favour of the Claimant against the Respondent as follows:
- a. A declaration that the termination of the Claimant from employment was unfair and unlawful.
  - b. The Claimant is awarded compensatory damages in the sum of Kshs 1,925,000.00 being equivalent to seven (7) months of his salary.
  - c. Interest on the amount in (b) at court rates from the date of Judgment until payment in full.
  - d. The Claimant shall also have the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JANUARY 2025.**

.....  
**STELLA RUTTO**

**JUDGE**

**In the presence of:**

For the Claimant Ms. Kwamboka

For the Respondent Mr. Mbagi instructed by Mr. Kiamba

Court Assistant Millicent

**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**

