



Riungu v Nation Media Group PLC (Employment and Labour Relations Cause 703 of 2019) [2024] KEELRC 870 (KLR) (28 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 870 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 703 OF 2019**

**K OCHARO, J
MARCH 28, 2024**

BETWEEN

GILBERT KINOTI RIUNGU CLAIMANT

AND

NATION MEDIA GROUP PLC RESPONDENT

JUDGMENT

Introduction

1. In his Statement of Claim dated 22nd October 2019, the Claimant contends that at all material times, he was an employee of the Respondent and whose employment was terminated on the 16th of May 2018. Contending that the termination was unfair and unlawful, he seeks the following reliefs against the Respondent;
 - a. A declaration that the termination of the Claimant's contract of service was unfair, unlawful and premised on invalid grounds.
 - b. Twelve (12) Months' gross pay in damages for unfair and unlawful termination.
 - c. Costs of and incidental to this claim.
 - d. A Certificate of Service.
 - e. Any other relief that this Honourable Court may deem just to grant.
2. The Respondent resisted the Claimant's claim through a Response to the Statement of Claim, filed herein on the 20th December 2019. The Respondent denied the Claimant's claim in toto and his entitlement to the reliefs sought.



3. In conformity with the directions of this Court given after the full hearing of the parties' respective cases, both parties have filed their written submissions.

Claimant's case

4. At the hearing, the Claimant urged this Court to adopt its witness statement dated 10th December 2019 as his evidence in chief. Without objection from the Respondent, he tendered in evidence all the documents filed under the list of documents dated 22nd October 2019 and the supplementary list dated 17th May 2021.
5. The Claimant's case is that he was employed by the Respondent on 26th May 2015 as a Team Leader in the NCD Department Nation Carriers Division, a division of Nation Media Group. He was confirmed into employment after a successful three (3) month probationary period. Subsequently, he rose to the position of Commercial Manager, Circulation Department, Grade D Mid. The Circulation and Distribution Department was concerned with the supply of newspapers to vendors and agents across the country.
6. Any unsold copies are usually returned to the company at its cost, which means the company absorbs the cost of printing, distribution and returns of the unsold copies to their stores on Mombasa Road.
7. He states that his duties entailed ensuring that the distributors get their orders promptly, and ensuring sales returns were delivered to the Respondent's stores on Mombasa Road.
8. The Claimant further states that he performed his duties faithfully and diligently even when he was moved to the Channel Sales section between 9th March 2018 and 15th May 2018, a section that he was not very familiar with. In this position, he was tasked with handling seven (7) Area Business Partners (ABP) and evaluating them. All the performance appraisals for the ABPs were shared and counter-checked by the General Manager. Thanks to his diligence, he never received any complaints or warning letters during his entire period of service, and was never put on any performance watch or subjected to a disciplinary hearing.
9. On 14th May 2018, after office hours, he received an email from the Human Resource Director inviting him to a meeting that the latter had slated for the following day, 15th May 2018 at 8.15 a.m. for a discussion on circulation issues. During the meeting, the Human Resources Director raised concerns relating to the company's challenging financial situation that was facing as a result of the reduction of hard copy sales of the newspapers over time; how sales returns were causing huge losses to the Company, for instance, sales returns for December 2017 had cost the Company Kshs. 30,000,000/- in losses; an alleged letter which had been sent by newspaper distributors to the company executives which almost caused a distributors' strike; an alleged miscommunication on a special edition paper titled "Matiba Tribute Native" which was a tribute to Matiba; and the strained relationship between the Claimant and his supervisor. At the said meeting, aspersions were cast regarding his performance.
10. The Claimant was offered the option to resign instead of being terminated from employment. He declined to accede to the proposal as according to him, he was neither to blame for under-performance nor had he breached his contract of service.
11. The Claimant states that on the 16th May 2018, he was summoned by Mr Micheal Walekwa, the General Manager Sales and Distribution, to his office, where he was handed an un-dated termination letter. In the letter, the reason for the termination was expressed as a loss of faith by the Respondent in his ability as an effective team. He had mismanaged returns and field staff, resulting in losses for the Company.



12. The Claimant asserted that as the Commercial Manager Circulation Department, he was not directly involved in the handling of returns, once delivered to the Nairobi Media Group stores. This was, to avoid a conflict of interest, and in conformity, with the company's policies and procedures in place then for checks and balances in handling the sales returns.
13. In particular, he was not in charge of nor did he interact with the Returns Verification Forms (RVF) to occasion mismanagement of returns; he could not and did not interact with the Returns Management Standard Operating Process (SOP) since the guidelines on approvals and the persons involved were well outlined to avoid fictitious returns, and he has no role therein.
14. The Claimant attributes the high rate of returns to higher print-out orders than the market could absorb with the General Manager Sales and Distribution, Michael Walekwa, directing print orders to be pushed upwards by 3-5% above the target, without considering what the market could consume.
15. The directive led to a higher supply than demand. Company drivers were directed not to accept returns from distributors that surpassed the allowable percentages. This caused a huge accumulation of returns for the year 2017. The General Manager gave express instructions that he was the only person who could authorize returns above the allowable 8%.
16. The Claimant further stated that the above-stated situation, a result of the directives by the General Manager, attracted complaints by Distributors to the Finance Manager, and more specifically on the rejection of returns. In an attempt to solve the issue, the Finance Manager directed that all rejected returns be collected and delivered to the Respondent's stores. The rejected returns were accumulated between September to December 2017. As a result, the returns for December 2017, were overstated. This necessitated an investigation to establish the influx of the December returns. The investigation report laid the blame on the General Manager of Sales and Distribution, for failure to consult the stakeholders and seek advice and authority on the matter.
17. The Claimant states that the termination of his Contract of Service was unfair, unlawful and contrary to Sections 41 and 45 of the *Employment Act* 2007, as he was never put under investigation, given an opportunity to show cause why his services should not be terminated, or invited for a disciplinary hearing.
18. Cross-examined by Counsel for the Respondent, the Claimant testified that the terms of his employment were embodied in the letter of appointment. Further, he discharged his duties satisfactorily, hence the several promotions and salary increments that he had.
19. He testified further that upon being promoted to the position of Commercial Manager Distribution, his roles were expanded to touch on sales.
20. The Claimant stated that he received the termination letter from the General Manager Sales, though it was authored by David Kyambia, Group Human Resource Director. Before the issuance of the letter, he had not had any discussion as regards the matters raised therein, with his immediate supervisor. He reiterated that he never received any warning letters.
21. Referred to the Memo dated 9th April 2018, the Claimant admitted that it was captioned "warning letter" and that it was addressed to him. Further, the inter-office memo dated 11th May 2018, was on the subject, "the late Matiba Native Selling". To this, he had earlier on responded.
22. The Claimant testified further that the termination was effective on 16th May 2018. He was paid in lieu of notice and his terminal dues were computed and paid out to him.



23. In his evidence in re-examination, the witness stated that in his email dated 9th April 2018, he was advising the Management on the whole Performance Improvement Plan process in respect of Alex Minda. Further, he didn't appraise him on the 15th of February 2018, as during that time Alex was on suspension. He managed to conduct the appraisal, on the 8th of March 2018, when he resumed duty. The allegation that the appraisal was not done was untrue, therefore. Upon the appraisal, the record was transmitted to the Respondent's Human Resource Department.
24. Commenting on the 2nd Memo dated 11th May 2018, whose subject was caution on the Matiba Native Selling, the Claimant contended that from the email dated 8th May 2018, which was written by the editorial Director, to the person who was complaining, it is clear that the issue had been discussed and resolved.
25. The 3rd caution was on mismanagement of direct sales reports. He testified that he had nothing to do with the returns. The memo was on matters that he was not in charge of, therefore.

Respondent's case

26. The Respondent presented one witness, Sekou Owino, its Head of Legal and Training, to testify on its behalf in the matter. The witness urged this Court to adopt his witness statement dated 25th January 2021, as his evidence in chief, and admit the documents that were filed herein by the Respondent as its documentary evidence. The statement and the documents were so adopted and admitted, respectively.
27. The witness stated that the Claimant was an employee of the Respondent from 26th May 2018 up until his services were lawfully terminated on the 16th day of May 2018.
28. It was stated that the Claimant's unwillingness to implement the Respondent's Board resolutions and directives in the performance of his duties led to the issuance of warning letters dated 9th April 2018, 11th May 2018, and 15th May 2018, against him. The letters contained instances of gross misconduct and incompetence against the Claimant.
29. The witness stated that despite being given 24 hours to show cause why disciplinary action could not be taken against him, the Claimant failed to do so.
30. The witness stated that thereafter, the Respondent's Board Resolved to terminate the Claimant's employment with effect from 16th May 2018. His employment was lawfully terminated and the Claimant was duly paid all his dues including one month's notice in lieu of notice.
31. The witness stated further that the decision to terminate the Claimant's employment was not unilateral as the Claimant was accorded a chance to defend himself, but failed to either verbally or in writing defend himself against the allegations of misconduct that had been levelled against him, in the three warning letters herein above stated.
32. There cannot be any basis for this Court to grant the orders sought, therefore, as the termination was fair.
33. Cross-examined by Counsel for the Claimant, the witness admitted that though he had asserted in his witness statement that the Board made a resolution to terminate the Claimant's employment, the Respondent had not placed before this Court any minutes from whence this can be discerned.
34. The witness further stated that the reasons that he put forth in his witness statement as those that precipitated the termination of the Claimant's employment, are similar to those that set out on the termination letter.



35. Cross-examined on the inter-office Memo dated 9th April 2018, the witness stated that it related to the performance appraisal of Alex. Further, Alex was appraised on the 8th of March 2018. The memo therefore was issued after he had been appraised. However, the bone of contention was that he was not appraised within a specific time.
36. The email of 15th May 2018, by Mr Walekwa raised the issue of mismanagement of returns. The document [return verification form] tendered by the Respondent, was not a returns management form. Further, it does not bring forth any roles that the Claimant was supposed to pray in the verification of the returns.
37. According to the investigation report on the high rate of losses, the ultimate responsibility fell on the General Manager of Sales and Director of Operations.
38. Though in the emails dated 15th May 2018, it was asserted that the Respondent incurred losses, the Respondent has not placed any document before the Court to demonstrate that indeed losses were incurred.
39. The un-dated termination letter indicated that the termination was to take effect, on 17th May 2018. Further, the Claimant was not issued with a notice to show cause. The emails to the Claimant did not expressly state that they were tantamount, to a notice to show cause.
40. The witness further stated that there were no disciplinary proceedings conducted against the Claimant.
41. In his evidence under re-examination, the witness stated that the Claimant would not have received the termination letter on 15th May 2018. The letter could have been issued on the 16th of May 2018.

Claimant's Submissions

42. Counsel for the Claimant submits that it isn't for no good reason that the Employment law gives protection to employees. The law is geared towards counteracting the employers' high bargaining power and dominance for purposes of harmonious employer-employee relationships, which no doubt is vital for a country's economic growth and development.
43. It is further submitted that Section 43 of the *Employment Act* places a duty on the employer to prove reasons for the termination of an employee's employment, and where the employer defaults in discharging this duty, the termination shall be deemed unfair under the provision of section 45 [2] of the Act.
44. Counsel further submits that the letter of termination places forth the reasons for dismissal of the Claimant from employment, thus, "loss of faith in your ability as an effective team leader, mismanagement of returns, and mismanagement of field staff among others". Further, the reasons cannot be held to be fair and valid.
45. The Respondent contended that the Claimant was not an effective team leader and cited the fact that he failed to review one Alex Minda who was on a performance improvement plan (PIP) within the stipulated time, as the basis for the accusation. However, the Claimant was able to demonstrate that during the alleged stipulated time, Alex Minda was on suspension. This ground was rebutted. Alex Minda resumed work on 15th January 2018 enabling the Claimant to appraise him on 8th March 2018.
46. It is submitted that the allegation that he mismanaged returns, doesn't hold any water. The Respondent has a Standard Operating Procedure (SOP) which inter alia is geared towards diminishing of chances of conflict of interest. The SOP does not at all indicate that the Claimant had a role to play in



- the management of returns. The verification forms that were tendered as evidence by the Respondent also show not that he was supposed to be involved in the verification role.
47. On the allegation that he mismanaged field staff, the Claimant submits that only the case of Alex Minda was presented as evidence of this. He convincingly demonstrated to the Respondent why there was a delay in reviewing him.
 48. A miscommunication relating to a publication of the Matiba Tribute was also raised as a reason for the dismissal. The Claimant states that this issue had long been settled as evidenced by an email produced by the Claimant dated 8th May 2018. The Respondent's argument that the matter was only dealt with at the departmental level isn't reasonable. The core department had conclusively dealt with the matter, it could amount to an unfair practice to re-open the matter against him.
 49. The Claimant further submits that the accusation by the Respondent that his actions and or inactions led to loss of revenue on its part, was not supported by any sufficient or any evidence. The Respondent failed to demonstrate that he was directly linked to the alleged losses. Rather, an investigative report commissioned by the Respondent on the high rate of returns identified the Claimant's Supervisor, one Mr. Walekwa as the culprit with ultimate responsibility for the losses. The report did not in any way implicate him.
 50. The Claimant urges this Court to conclude that the Claimant hasn't proved the reasons for the termination and or that they were valid. The termination was therefore unfair. To buttress this conclusion, reliance has been placed on the case of Pius Machafu Isindu vs Lavington Security Guards Limited [2017] eKLR.
 51. Counsel for the Claimant submits that the dismissal of the Claimant from his employment was procedurally unfair. The cannons of Section 41 of the *Employment Act* 2007 were not adhered to. The Respondent did not at any time inform him that it intended to dismiss him from employment and the reasons the basis for the contemplation. Further, the Respondent didn't give him any hearing to defend himself against the accusations that were being levelled against him. To bolster his submissions that there was no procedural fairness lacking in the dismissal of the Claimant's dismissal, he places reliance on the Court of Appeal decision in National Bank of Kenya vs Samuel Nguru Mutonya [2019] eKLR.
 52. To support the claim for the compensatory relief of 12 months' gross salary, it is submitted that the Court should consider the fact; that the Respondent did not have any justifiable reason for the action it took against him and did not comply with the statutory minimums on procedural fairness; as a result of the dismissal he suffered mental and emotional strain; his family was adversely affected fend for them; he was unable to service his loans; and he is also been struggling to secure alternative employment to date as his exit was published improperly in the worldwide online newsprint in Business Today on 28th May 2018, thus, "Nation Media Group (NMG) fires two top managers over fraud." The Court is urged to be guided by the decision in the case of Kenya Broadcasting Corporation vs Geoffrey Wakio [2019] eKLR

Respondent's Submissions

53. The Respondent's Counsel submits that Section 47 (5) of the *Employment Act* 2007 imposes a burden on the employee to prove that a termination of employment occurred and that the same was unfair or wrongful. It is only after the employee has laid this basis that the employer will be called upon to prove that the reasons for the termination were valid under Section 43 (1) of the *Employment Act* 2007. This was noted by the Court of Appeal in the case of Pius Machafu Isindu vs Lavington Security Guards Limited [2017] eklr.



54. It is further submitted that the Claimant anchored his case on the prime assertion that he was neither heard nor given any warning letters, before the dismissal. This assertion was dislodged when pressed under cross-examination, he admitted that did indeed he receive, the warning letter dated 9th April 2018, and caution letters dated 11th May 2018 and 15th May 2018.
55. Counsel for the Respondent submits that the termination letter is manifestly clear that the Respondent provided valid and fair reasons for the termination of the Claimant's employment. The termination was on matters that the Respondent genuinely believed to exist. This was in accord with the provisions of Section 43[2] of the [Employment Act](#).
56. The Respondent's witness aptly gave evidence that duly supports all the reasons that the Respondent based its decision to dismiss the Claimant from employment, clearly demonstrating that they were valid and fair.
57. The Respondent places reliance on Paragraph 642 of the Halsbury's Laws of England, 4th Edition, Vol. 16(1b) and the case of Evans Kamadi Misango vs Barclays Bank of Kenya Limited [2015] eKLR, to buttress the position that the reasonableness of the employer's decision should be tested against whether a reasonable employer could have decided to dismiss on those facts.
58. The termination of the Claimant's employment was carried out in accordance with the stipulations of clause 8 of his letter of appointment. He was paid all his terminal dues.

Issues for Determination

59. I have carefully considered the pleadings, the evidence and submissions by both parties and, the following issues emerge for determination: -
 - a. Whether the Respondent unfairly terminated the Claimant's employment;
 - b. Whether the Claimant is entitled to the reliefs sought.
 - a. Whether the Respondent unfairly terminated the Claimant's employment
60. It is not in dispute that the Claimant first came into the employment of the Respondent vide a Letter of Appointment dated 26th May 2015, and that after working for the Respondent for almost three years, the said employment relationship was terminated through a letter of termination on the 16th May 2018.
61. As rightly submitted by the Respondent, whenever a court is invited to interrogate the question of fairness in the termination of an employee's employment, its starting point in the discharge of the task must be an analysis of whether the employee [Claimant] has proved that he was terminated from employment unfairly or wrongfully, for this is consistent with Section 47 (5) of the [Employment Act](#) 2007 which provides that: -

“(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”
62. For some time, the interpretation of this provision of the law was blurry and confusing, however, it is now trite that it places distinct legal burdens at two centres. Firstly, the Claimant is charged with the legal burden to prove the two aspects hereinabove mentioned. However, it is worth noting that all that is required of him is to demonstrate prima facie, that there was termination of his employment and



that the same was unfair or wrongful. Secondly, it is only after the Claimant has discharged the onus, that the legal burden shifts to the Respondent [employer] to discharge the legal burden under section 43 [prove reasons for the termination], section 45 [to prove that the reason[s] for the termination was valid and fair, and section 41 [prove that the cannons of procedural fairness were adhered to.

63. I have carefully considered, the fact that the termination is not contested; the Claimant's assertion that the termination lacked procedural and substantive fairness; and the Respondent's reaction to the assertion, and conclude that the former has prima facie established that the termination was procedurally and substantively unfair.
64. Section 41 of the [Employment Act](#), places a duty upon the employer to demonstrate that the termination of an employee's employment, was procedurally fair. Under the provision, an employer contemplating terminating an employee must demonstrate that prior to the dismissal the employee; was notified of the intention and the grounds the basis of the intention; given an adequate opportunity to prepare and make a representation on the grounds, and the employer considered the representation before making the decision to terminate.
65. The Court of Appeal in *Chairman Board of Directors (National Water Conservation and Pipeline Corporation) v Meshack M. Saboke & 2 others* [2019] eKLR while citing with approval the case of *Janet Nyandiko versus Kenya Commercial Bank Limited* [2017] eKLR stated:-

“The parameters for determining whether the employer acted in accordance with justice and equity in determining the employment of the employee are inbuilt in the same provision. In determining either way, the adjudicating authority is enjoined to scrutinise the procedure adopted by the employer in reaching the decision to dismiss the employee; the communication of that decision to the employee and the handling of any appeal against the decision. Also not to be overlooked is the conduct and capability of the employee up to the date of termination, the extent to which the employer has complied with the procedural requirements under section 41, the previous practice of the employer in dealing with the type of circumstances which led to the termination and the existence of any warning letters issued by the employer to the employee.

Section 41 of the Act, enjoins the employer in mandatory terms, before terminating the employment of an employee on grounds of misconduct, poor performance or physical incapacity to explain to the employee in a language that the employee understands the reasons for which the employer is considering to terminate the employee's employment with them. The employer is also enjoined to ensure that the employee receives the said reasons in the presence of a fellow employee or a shop floor union representative of his own choice, and to hear and consider any representations which the employee may advance in response to allegations levelled against him by the employer.” (Emphasis mine).

66. The Claimant contended that his dismissal was procedurally unfair. The Respondent didn't adhere to the mandatory dictates of procedural fairness set out in the above-stated section. Though the Respondent had asserted in its pleadings that there was adherence, its witness in his evidence under cross-examination admitted that the Claimant was not, issued with any notice to show cause, any invitation to a disciplinary hearing, and or heard before the decision to dismiss him was reached. In my considered view, the Respondent failed to prove the presence of the three pivotal components of procedural fairness, notification, hearing and consideration in the process that led to the dismissal of the Claimant.



67. The Respondent attempted to assert that there was procedural propriety in the process by stating that the Claimant was served with warning letters prior to the dismissal. With great respect, the assertion is misplaced. Section 41 of the Act, keenly read, gives an undoubtable impression that the notification any notification as contemplated thereunder must clearly spell out two things, the employer's intention to terminate the employment the reasons stimulating the intention.
68. The memos/warning letters that the Respondent attempted to put reliance on lacked the aspects, in my view, they were not issued with the contemplation of section 41 in mind. They were issued to be just warning letters. They cannot be pushed to assume the character on a notification under the provision.
69. I now turn to the aspect of substantive justification. The question than springs up is did the Respondent place forth sufficient evidence to establish the reasons to the dismissal [Section 43], did it demonstrate that the reason[s] was fair and valid [section 45[2]]. Shortly hereinafter, I will demonstrate that the answer to these questions should be in the negative with reasons.
70. The Respondent asserted that the reasons for the dismissal of the Claimant from employment were spelt out in the termination letter and that they flowed from the three warning letters hereinabove mentioned. In my view, and understanding of the law, a reason for termination can only be fair if it was brought out as one that brought the employee's attention substantial justification can be said to be interwoven. The reasons advanced in the termination letter were reasons that were never brought to the attention of the Claimant in any concretized manner, as being the ones that the Respondent was to use it future as the basis for disciplinary action. As a result, I hold that the reasons were not valid and fair.
71. Further, I have carefully considered the three Inter-Office Memos presented by the Respondent, in my view, they speak to issues that were raised, deliberated on, and warnings/cautions issued as a consequence. They are in respect of what can be termed as complete processes in respect of the matters that were in issue at different times. Warnings and cautions issued in the circumstances like were in the instant matter, are sanctions against an employee though not as punitive as a dismissal or termination of the employee. They black stain the employee's record, though. Fairness and equity cannot allow an employer to pick reasons that were the subject matter of processes that culminated in warnings/cautions at various times, and term them fair and valid reasons for the employee's termination. To allow such, will be tantamount to sanctioning a breach of the rule against double jeopardy.
72. In the upshot, it is this Court's conclusion that the dismissal of the Claimant from employment was both procedurally and substantively unfair.

Whether the Claimant is entitled to the reliefs sought.

73. The Claimant seeks damages for unfair and unlawful termination equivalent to 12 months gross pay.
74. Under Section 49 (1) (c) of the *Employment Act* 2007, this Court has power to award compensation up to a maximum of 12 months' gross salary, however, the Court shall not lose sight of the fact that the power is discretionary, exercised depending on the peculiar circumstances to each case and with consideration of the relevant factors embodied in Section 49 (4) of the Act.
75. This Court has carefully considered the manner in which the Claimant was terminated from employment, the casual disregard of Section 41 of the *Employment Act* and edicts of substantive fairness by the Respondent, his length of service, being three (3) years, and that the Respondent's conduct can easily pass for an unfair labour practice, and conclude that the Claimant is entitled to 4 months gross salary as compensation. The Claimant's pay slip produced at page 8 of his List of Documents dated 22nd October 2019 shows that the Claimant earned a gross monthly pay of Kshs. 308,931/-. This evidence remained uncontroverted by the Respondent.



76. Per Section 51 of the *Employment Act* 2007, the Claimant should be issued with a Certificate of Service.
77. In the upshot, judgment is hereby entered for the Claimant in the following terms: -
- a. A declaration that the termination of the Claimant's Contract of Service was both procedurally and substantively unfair.
 - b. The Claimant be paid 4 months gross pay as compensation for unfair termination, tabulated at Kshs. 1,235,724/-.
 - c. Interest on (b) above at Court rates from the date of judgment until payment in full.
 - d. The Respondent shall bear the costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28th DAY OF MARCH, 2024.

OCHARO KEBIRA

JUDGE

In the presence of:

Mr. Mbugua for the Claimant

Ms. Wamuyu for the Respondent

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B of the 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.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

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