



**Arodi v Kobian (Kenya) Limited (Cause 987 of 2018)
[2024] KEELRC 809 (KLR) (17 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 809 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 987 OF 2018
JK GAKERI, J
APRIL 17, 2024**

BETWEEN

WILLICE ODHIAMBO ARODI CLAIMANT

AND

KOBIAN (KENYA) LIMITED RESPONDENT

JUDGMENT

1. The Claimant commenced this suit by a Memorandum of Claim filed on 19th June, 2018 alleging constructive dismissal.
2. The Claimant prays for;
 - i. A declaration that the Claimant was unfairly dismissed.
 - ii. Maximum compensation Kshs.2,151,000.00.
 - iii. Salary in lieu of notice Kshs.179,250.00.
 - iv. Withheld interest Kshs.530,200.00.
 - v. Unpaid service pay Kshs.537,750.00.
 - vi. Costs of this suit.
 - vii. Such other relief that the court may deem appropriate in the circumstances.
3. The Claimant avers that he was employed by the Respondent and worked until he resigned.
4. It is the Claimant's case that he was consistently frustrated by the Respondent who failed to release his service pay for six (6) years from September 2011 to August 2017 and withheld the Claimant's salary without justification.



5. The Claimant avers that the Respondent made his working conditions intolerable which compelled him to resign by withholding his salary which affected his ability to fulfil his financial needs and obligations.
6. That at the time of his resignation, his salary was Kshs.179,250/=.

Respondent's case

7. By its response dated 25th July, 2018, the Respondent admits that it employed the Claimant in its Accounts Department in September 2011 until 3rd August, 2017 when he voluntarily resigned and denies having frustrated him.
8. It is the Respondent's case that the Claimant was not entitled to service pay.
9. That the Claimant and one Mr. Makau Caxton Musyimi were in charge of Accounting and book keeping at the Respondent and clandestinely increased salaries without authority as they would input data in the payroll system for the Management to process salaries having hiked basic and gross salaries and accord the Respondent a small window to approve the salary payments and it was only discovered in February 2017.
10. That the Respondent carried out an investigation and ascertained the fraudulent and illegal increases of salary by the Claimant and misappropriation and as a consequence discontinued the Claimant's access to the payroll and when confronted on the issue, the Claimant tendered his resignation on 3rd August, 2017.
11. That the Claimant's annual increase of salary was substantially higher than those of others and the Respondent opted not to dismiss him summarily as it intended to recover the sum and have the Claimant and his colleague prosecuted.

Counter-claim

12. The Respondent claims Kshs.4,643,024.00 being unauthorised salary increments in 2011 Kshs.30,000/=, January, May, September and November Kshs.180,000/=, January, February, May and July 2013 Kshs.310,000/=, January, May and December 2014 Kshs.291,000/=, January, May, July 2015 Kshs.390,000/= and January 2016 Kshs.146,000/=.
13. It is the Respondent's case that from 2011 to 2016, the Claimant's salary rose from Kshs.30,000/= to Kshs.146,000/=, almost 5 times.
14. The Respondent prays for;
 - i. Kshs.4,643,024.00.
 - ii. Costs of and incidental of this suit with interest.
 - iii. Any other relief or remedy that the court may deem fit to grant.

Claimant's evidence

15. On cross-examination, the Claimant confirmed that he was not given an appointment letter in September 2011 and his salary was Kshs.35,000/= then and by 2013 it was Kshs.80,000/= but he had no record of the increment and the salary had risen to Kshs.179,250/= by August 2017.



16. In an apparent contradiction, the Claimant admitted having written the letter dated 27th February, 2017 and subsequently stated that he did not write the letter. He however admitted writing the resignation letter dated 3rd August, 2017 but did not provide a reason for the resignation.
17. The Claimant admitted that Caxton Musyimi was his colleague in salaries but denied having received a loan from one Danson Angweke, that on the contrary, he gave a loan to him.
18. The witness confirmed that the Respondent had a Payroll System (AREN) that required approval by management and the same had been approved.
19. On re-examination, the Claimant testified that he left employment as an Accounts Assistant as he had joined and the Respondent had no policy on salary increments but employees enjoyed increments and Charan Patel approved the payroll after the Claimant's data input.
20. Finally, the Claimant reiterated that he did not give a reason for resignation.

Respondent's evidence

21. RWI, Mr. Danson Angweke confirmed that he was still an employee of the Respondent at Kshs.29,000/= per month having joined the Respondent in 2012 at Kshs.7,000/= and had no letter of appointment.
22. The witness testified that the last salary increment was in January 2023 of Kshs.1,500/= and no letter had been given by the Respondent.
23. The witness testified that he gave the Claimant a loan of Kshs.120,000/= after he took a loan of Kshs.450,000/= and the same was recovered from his salary.
24. That the Claimant repaid Kshs.125,000/= while a subsequent loan of Kshs.40,000/= was repaid through the payroll and he was not surcharged for the Kshs.40,000/=.
25. On re-examination, RWI testified that the Loan Application Form was signed by the Claimant.
26. RWII, Mr. Joseph Kokoyo confirmed that he joined the Respondent in 1994 at Kshs.1,800/= per month and in 2018, his salary had risen to Kshs.53,000/= and Kshs.69,000/= currently and had no letter on salary increments.
27. The witness disclosed that in November 2016, he consulted Charan Patel and received an increment of Kshs.6,000/= in December but was surcharged Kshs.11,000/= as unauthorised salary.
28. That payroll matters were handled by the Claimant and Charan Patel, as the approver.
29. RWIII, Hellen Kavinza confirmed that her salary in August 2018 was Kshs.86,000/= and had risen to Kshs.112,000/= having started at Kshs.20,000/= and had neither an appointment letter nor salary increment notice.
30. It was her evidence that she had not received unauthorised salary increments.
31. RWIV, Mr. Peter Kahi, who conducted the audit confirmed that he did not contact the Claimant and prepared the report after the instant suit was filed.
32. That the total amount of money involved was Kshs.3,979,194.00.
33. The witness confirmed that in 2014, the Claimant's salary increment was below the average increase of 12.87 while in 2015, the Claimant's increase was 20%, 2016 was below the average but in 2017, it was above the average.



34. The witness confirmed that overall, the Claimant was not the main beneficiary of the salary increments and his increments were not above average as there was no flat increment of salary.
35. The witness confirmed that the increments were verbal and not documented as approved by Charan Patel.
36. On re-examination, RWIV testified that he could not reach the Claimant and the payroll software had been manipulated.
37. RWV, Mr. Charan Patel confirmed, on cross-examination that the Claimant served the notice period after resignation by letter dated 3rd August, 2017 and his last gross salary was Kshs.22,500/= as of July 2017 and had the CPA qualification.
38. The witness could not recall when the Claimant was employed or his salary when he joined the Respondent.
39. He confirmed that while the Claimant prepared the payroll, he transferred the funds to employee accounts.
40. The witness confirmed that the Respondent had 5 directors. Shail Patel dealt with Human Resource matters and the witness the payroll, and in 2014, the company had 34 employees.
41. The witness admitted that he was obligated to verify the payroll but failed in his duties as he was the Claimant's supervisor.
42. That he discovered that although the Claimant's salary was Kshs.116,000/=, the payslip showed Kshs.146,000/= and issued a letter of deduction of excess salary and a salary reduction had been proposed and effected.
43. According to the witness, directors of the Respondent decided on salary increments jointly and confirmed that the letter dated 27th February, 2017 was given to him directly.
44. On re-examination, the witness testified that salaries were increased once a year in January and the directors decided on the percentage or figure and the Claimant would input the figures and hand over the payroll to him for transfer of the funds which he would upload.
45. The witness confirmed that he expected the Claimant to be trustworthy and trusted him as an employee and only discovered his actions by chance.
46. That the salary of Kshs.20,000/= was for him to survive on and maintained that the Claimant gave him the letter dated 27th February, 2017.
47. That the Claimant gave him a cheque of Kshs.20,000/= to offset the errors on the payroll.

Claimant's submissions

48. Counsel for the Claimant submitted on increase of Claimant's salary, reduction of Claimant's salary, termination, reliefs, counter-claim and costs.
49. On salary increments, counsel submitted that as the Claimant's salary rose gradually from 2014 to 2016 and the increments were approved by the Finance Director, Mr. Charan Patel, the alleged irregular increments were non-existent and the Respondent had no fixed percentage or amount of salary increment for any employee and his increment was below the general average.
50. That in 2015, it was 4.29% while the average was 4.75%, while in 2016, it was negative.



51. Counsel urged that there was no evidence to show that the payroll software had been interfered with.
52. Reliance was made on the sentiments of Radido J. in *Peter Mbithi Mutia V Jubilee Insurance Co. Ltd* (2020) eKLR to urge that the salary increments could not have been fraudulent or illegal.
53. On the reduction of the Claimant's salary, counsel submitted that the change of salary from Kshs.179,250/= to Kshs.22,500/= was not a variation but a reduction.
54. Reliance was made on the decision in *Kennedy Mutua Mwangangi V Madison Insurance Company (K) Ltd* (2020) eKLR and the provisions of Section 19 of the *Employment Act*, 2007 to urge that the Respondent was bound to prove that the Claimant had occasioned loss of a known sum of money negligently or dishonestly and there was an agreement.
55. Counsel urged that when the salary reduction was effected, there was no specific amount of the money lost by the Respondent as the Forensic Report had not been prepared and there was no agreement and no investigation was conducted and the deductions could not exceed ²/₃rds of the salary as ordained by Section 19(3) of the *Employment Act*, 2007.
56. Counsel urged that the reduction of the Claimant's salary was illegal and unlawful as the letter allegedly written by the Claimant has no acknowledgment by anyone.
57. As to whether the Claimant was constructively dismissed, counsel relied on the decisions in *Coca Cola East and Central Africa Ltd V Maria Kagai Ligaga* (2015) eKLR, *Bakery Confectionary Food Manufacturing & Allied Workers Union (K) V Kenafric Industries Ltd* (2021) eKLR and *Naomi Sau Shako V Changamka Micro Insurance Ltd* (2021) eKLR among others to urge that the Claimant had proved the elements of constructive dismissal and was thus dismissed from employment.
58. On the reliefs sought, counsel submitted that the Claimant was entitled to all the reliefs prayed for.
59. As regards the counter-claim, counsel submitted that the Respondent had not furnished concrete evidence of the alleged manipulation of the Respondent's payroll and the Claimant testified that all the increments were approved by the Respondent.
60. Counsel urged the court to dismiss the counter-claim.

Respondent's submissions

61. Counsel for the Respondent addressed the alleged fraudulent salary increments, constructive dismissal, reliefs sought and the counter-claim.
62. On the salary increments, counsel submitted that evidence on record showed that the Claimant conspired with one Caxton Makau to fraudulently increase his salary and other employees and even paid Danson Agweke's loan through the payroll and the forensic investigation report revealed the same.
63. That according to Charan Patel, salary increments were annual and when the Claimant was discovered, he tendered an apology and offered to have the losses recovered from his salary though he disputed having authored the letter dated 27th February, 2017 and issued a cheque number 86 on 10th March, 2017 as an acknowledgment of his errors.
64. On constructive dismissal, counsel relied on the decision in *Coca Cola East & Central Africa Ltd V Maria Kagai Ligaga* (Supra) to urge that the Claimant had not demonstrated that he was constructively dismissed from employment as he resigned 6 months after discovery of his fraudulent activities and he owned up, he did not cite any frustrations by the Respondent in his resignation letter, acknowledged his error and offered to make reparations and issued a cheque to the Respondent.



65. That the Claimant had promised to pay back the amount lost but resigned and could not plead constructive dismissal and was not entitled to the reliefs sought.
66. Counsel submitted that the Respondent was entitled to the counter-claim.

Findings and determination

67. It is common ground that the Claimant was employed by the Respondent in September 2011 by word of mouth and was in charge of the payroll and served continuously until August 2017 when he tendered his resignation and alleges that he was constructively dismissed on account of the Respondent withholding his salary without justification.
68. Strangely, the Claimant makes no reference to the duration during which the alleged salary was withheld or when the same commenced.
69. Paragraph 13 of the Memorandum of Claim makes no reference to the particulars of the claim other than the amount claimed.
70. It is not in contest that the Claimant separated from the Respondent vide resignation letter dated 3rd August, 2017 which he did not contest on any ground. He gave the Respondent a 28 days notice as required by law.
71. The two sentence resignation letter addressed to Charan Patel, the Respondent's Finance Director under the reference "Resignation" stated the Claimant's postal address as P.O. Box 23650 00100 Nairobi and stated;

"I wish to resign from the company effective 31st August, 2017.

I wish you good health and lots of success."

Regards

Signed

Willis Arodi

72. On cross-examination, the Claimant confirmed that he wrote the resignation letter and gave no reason of the resignation.
73. In his evidence before the court, the Claimant makes no reference to the alleged withheld salary, duration or amount.
74. Similarly, he makes no reference to the alleged frustration he was subjected to by the Respondent.
75. The Claimant admitted in evidence that he prepared the Claimant's payroll using the AREN System where he would input data and extract an excel sheet for Mr. Charan Patel's approval and uploading to pay employee salaries. He admitted that they were 3 in the salaries section.
76. The issues for determination are;
 - i. Whether the Claimant was constructively dismissed by the Respondent.
 - ii. Whether the Respondent illegally and unlawfully reduced the Claimant's salary.
 - iii. Whether the Respondent is entitled to the counter-claim.
 - iv. Whether the Claimant is entitled to the reliefs sought.



77. On constructive dismissal, the classical definition of constructive dismissal are the sentiments of Denning MR in *Western Excavating (ECC) Ltd V Sharp* (1978) ICR 221 as follows;
- “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract”.
78. Closer home, the principle of constructive dismissal was domesticated and applied by the Court of Appeal in its decision in *Coca Cola East & Central Africa Ltd V Maria Kagai Ligaga* (Supra) cited by both counsels, where the court adopted the contractual test approach and enunciated the guiding principles under the contractual test. An employee alleging constructive dismissal must demonstrate that the Respondent’s conduct complained of constitute a repudiatory breach of the contract of employment. The burden of proof is borne by the employee.
79. The court outlined the guiding principles as; what the fundamental or essential terms of the contract of employment are, repudiatory breach of a fundamental term(s) of the contract, conduct of the employer is a fundamental breach going to the root of the contract, an objective test is applied, causal link between the employer’s conduct and reason for the termination of employment, the conduct of the Respondent must be the effective reason for leaving, the employee must not accept, waive, acquiesce or conduct himself in sum a manner to be estopped from asserting the repudiatory breach and the employee must discharge the burden of proof.
80. In the instant case, although the Claimant pleads frustration by the employer, he tendered no scintilla of evidence of the alleged frustration.
81. First, the resignation letter gave no reason for the Claimant’s action, a fact the Claimant admitted on cross-examination.
82. Second, neither the written statement dated 13th June, 2018 nor the oral testimony adduced in court paint a picture of what had transpired from January 2017 to 3rd August, 2017.
83. Indeed, the Claimant availed no sustainable or reliable evidence on why or the circumstances in which he resigned from the Respondent’s employment.
84. If for instance it was the alleged reduction of salary, when did it commence, how much was it, had he complained or enquired about it and what was the Respondent’s response?
85. Without the relevant and essential particulars, it is difficult for the court to find that there was a constructive dismissal.
86. As adverted to elsewhere in this judgement, an employee claiming constructive dismissal is required to prove it by showing that the Respondent’s conduct breached a fundamental term of the contract of employment which amounted to repudiatory breach and had effectively discharged the employee. The employee is also required to prove that there was a causal link between the employer’s conduct



- and the resignation. In other words, the employer's conduct was the causa causan for the leaving and the employee resigned at the instant.
87. Regrettably, the Claimant has not adduced sufficient evidence to establish that his employment was constructively dismissed by the Respondent.
 88. For the foregoing reasons, it is the finding of the court that the plea of constructive dismissal of the Claimant by the Respondent is unsustainable.
 89. As to whether the Respondent reduced the Claimant's salary illegally or unlawfully, the Claimant makes no allegation of reduction of or variation of his salary.
 90. Paragraph 5 of the Memorandum of Claim states that the

“Respondent had failed to release his service pay for 6 years from September 2011 to August 2017 and had also started withholding his salary without any justification or explanation.”
 91. Equally, paragraph 3 of the written statement states inter alia;

“... I was continually frustrated by the Respondent who failed to release my service pay and further started withholding my salary.”
 92. At this juncture, it is important to pose and inquire about the two statements cited above.
 93. Which service pay is the Claimant complaining about and which was due throughout his period of employment?
 94. Did his contract of employment provide for payment of service pay and when was it due? Did the Claimant complain about its non-payment?
 95. A cursory view of copies of the Claimant's payslip on record show that he was a member of the National Social Security Fund (NSSF) and was disqualified from service pay by dint of Section 35(6) (d) of the *Employment Act*, 2007.
 96. Counsel's submission that service pay was implied in the Claimant's contract of employment is unsustainable both factually and legally.
 97. The alleged frustration was unfounded and thus unjustifiable.
 98. The second aspect relates to the withheld salary. The question is which salary was upheld and from when? How much was it?
 99. Puzzlingly, the Claimant by default or design opted not to divulge or testify about the alleged withholding of salary thereby denying himself crucial evidence just in case his salary was withheld or reduced or varied as none has been demonstrated.
 100. Was the entire salary withheld or part thereof? And how was the figure of Kshs.919,139.00 arrived at and relates to what period, was it 2011 – 2017 or 2017 only?
 101. The Claimant made no reference to any withheld salary on cross-examination or re-examination and none of the Respondent's witness testified about it.
 102. However, in cross-examination, RWI Charan Patel responded that in March 2017, the Claimant's salary was Kshs.20,000/= and admitted that the Respondent and the Claimant had agreed that the Claimant's salary be reduced from March 2017 to August 2017 and it was reduced.



103. From the bits and pieces of evidence on record, it is decipherable that something happened in February 2017 which fundamentally changed the course of events.
104. Why would an employee give an employer a cheque and why would an employee's salary be reduced allegedly unilaterally by the employer and the issue is only raised more than 9 months later and after resignation and the Claimant only adverts to it in passing and tenders no evidence of the reduction or variation of salary?
105. In the absence of responses to these questions from the Claimant, it is highly probable that the Respondent's version of events is the true state of affairs.
106. It is common ground that the Respondent filed a copy of a letter allegedly written by the Claimant admitting to the fact that errors were made and that he was careless. The letter dated 27th February, 2017 has the Claimant's postal address similar to the letter of resignation written about 5 months later.
107. The letter is directed to the Respondent's Finance Director, Mr. Charan Patel under the reference "Errors in the payroll records". The writer acknowledges that errors and mistakes had been detected in the past couple of months and years and admits being in charge of the payroll and takes full responsibility for the mistakes.
108. Most importantly, the writer requests to forego his salary for 5 months from March 2017 for recovery of any monies lost owing to his carelessness and requests that another person be assigned the role of salary preparation responsibilities, apologies and signs the letter.
109. To the naked eye, the signature on the letter resembles that on the resignation letter and the writers name appears similar.
110. During cross-examination, when the Claimant was asked about the letter, he stated as follows;

"I wrote a letter dated 27th February, 2017. I have seen the letter. I did not write a letter of this nature."
111. Over and above, the contradictory testimony by the Claimant, he did not challenge the authenticity of his signature or postal address or allege that the letter was a forgery and perhaps by whom.
112. The fact that he did not contest the letter before the hearing would appear to suggest that he was aware of its existence.
113. Finally, he did not contest its contents.
114. RWI testified that the Claimant gave the letter to him.
115. The submission by counsel that it had no acknowledgement would not, in the court's view avail the Claimant as he did not contest the resignation letter which had none as well.
116. It is common ground that wages and salaries are protected by Part IV of the *Employment Act, 2007*.
117. The provisions of Section 17 to 25 of the Act address various aspects of salaries and wages including mode of payment, when due, deductions, payslip deductions as well as repayment of remuneration wrongfully withheld or deducted.
118. An employer who violates the provisions of Part IV of the *Employment Act, 2007* commits a criminal offence and is liable to criminal sanctions and the amount withheld or wrongfully deducted is repayable.



119. From the evidence on record, the Claimant has not demonstrated that his salary or part thereof was withheld and/or reduced by the Respondent illegally or unlawfully and if it was, then it was with his express consent as expressed in his letter dated 27th February, 2017 by which he promised to forego his salary for 5 months effective 30th March, 2017.
120. This was a tacit admission of guilt and that his carelessness had occasioned loss.
121. From the evidence on record, it is the finding of the court that the Claimant has failed to prove on a balance of probabilities that the Respondent wrongfully or illegally withheld his salary.

Counter-claim

122. The Respondent is claiming the sum of Kshs.4,643,024/= being the salary the Claimant overpaid himself from 2011 to 2016.
123. It contends that the Claimant's salary rose from 30,000/= to 146,000/= within 5 years which per se does not implicate wrongfulness on the part of the Claimant as salaries and increments are inter alia determined by the employer.
124. To buttress its case, the Respondent availed a copy of Forensic Investigation Report by PKF for the period 1st January, 2013 to 31st December, 2017 dated 11th February, 2019.
125. According to the report produced by RWIV, Mr. Peter Kahi, the amount attributable to the Claimant is Kshs.3,979,194.00 from 2012 to 2017 as the total sum.
126. In his evidence, RWIV was unambiguous that the Claimant's salary increment was for the most part below the average except in 2017 and he was not the highest beneficiary of the increments.
127. It is common ground that the Respondent had no documented policy on salary increments and RWV confirmed as much.
128. The Claimant confirmed that while his responsibility was to input data into the AREN Payroll System, approval was the responsibility of Mr. Charan Patel and who approved all the salary increments.
129. Notably, all the salary increments complained of were approved by Mr. Charan Patel on behalf of the Board of Directors, and paid to employees.
130. Strangely, Mr. Charan Patel admitted on cross-examination that he was required to verify the payroll but did not do so as the Claimant's supervisor.
131. The witness admitted that he approved and transferred all the increments in question as he trusted the Claimant.
132. According to RWI, the directors of the company made decisions on the annual increment of individual employees jointly but adduced no evidence of any meeting having been held from 2012 – 2017 or record of any annual increase of any employee's salary yet they received increments variously.
133. From the evidence on record and as adverted to elsewhere in this judgment, the alleged salary increments were below the general average save for 2017 and all were approved by Charan Patel.
134. In a nutshell, the Respondent has failed to demonstrate that the salary increments to the Claimant or any other employee had not been authorised, the Claimant's admission of errors and mistakes notwithstanding and having agreed to his proposal to forgo salary for 5 months, the Respondent is estopped from claiming any balance, if any, as it availed no evidence of the agreement other than the Claimant's proposal.



135. In the upshot, it is the finding of the court that the Respondent has failed to prove on a preponderance of probabilities that the Claimant awarded himself and paid salary increments.
136. The counter-claim is thus unproved and the same is disallowed.

Whether the Claimant is entitled to the reliefs sought

137. The Claimant's prayers are grounded on termination, withheld salary, interest and service pay.

i. Declaration and compensation

138. Having found that the Claimant has failed to prove that his employment was constructively dismissed by the Respondent, the prayer for a declaration is unmerited and is dismissed and the same applies to the claim for 12 months compensation for the dismissal.

ii. Withheld interest

139. The Claimant adduced no evidence as to the withheld interest. In the absence of relevant particulars as to the nature of interest and how it accrued, the prayer is unproved and is disallowed.

iii. Unpaid service pay

140. Service pay is a statutory right under Section 35(5) of the *Employment Act*, 2007. The Claimant, as adverted to elsewhere in this judgement provided no evidence to demonstrate that he was entitled to service pay.

The prayer is dismissed.

iv. Withheld salary

141. As found elsewhere in this judgment, the Claimant adduced no evidence to prove that his salary was withheld by the Respondent at any time during his employer.
142. The prayer lacks the necessary particulars. It is unsustainable and is declined.
143. From the foregoing, it is clear that the Claimant's suit against the Respondent is for dismissal and it is accordingly dismissed.
144. Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 17TH DAY OF APRIL 2024

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 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 *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

