



**Okech v Coca-Cola Beverages Kenya (Formerly Trading as Nairobi Bottlers Limited)
(Cause E668 of 2023) [2024] KEELRC 13532 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13532 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E668 OF 2023
SC RUTTO, J
DECEMBER 20, 2024**

BETWEEN

NELSON OKOTH OKECH CLAIMANT

AND

**COCA-COLA BEVERAGES KENYA RESPONDENT
FORMERLY TRADING AS NAIROBI BOTTLERS LIMITED**

JUDGMENT

1. Through a Statement of Claim which was amended on 12th October 2023, the Claimant avers that he was employed by the Respondent in July 2008 in the position of a raw Material Stock Clerk. That subsequently, he was promoted to the position of a unit leader in the same unit, and in July 2018, following an organisation restructuring, he was transferred to the engineering stores where he served as a clerk until his untimely termination.
2. According to the Claimant, the Respondent terminated his employment contract unconstitutionally, unfairly and unlawfully. Consequently, the Claimant prays for the following reliefs against the Respondent:
 - a. A declaration that the Claimant's employment with the Respondent was unfairly and unlawfully terminated.
 - b. An order for reinstatement of the Claimant's employment without loss of benefit from the date of the impugned termination.
 - c. In the alternative, an award of 12-month salary for unfair termination.
 - d. An order that the Respondent properly computes the Claimant's dues and pay any outstanding amount in addition to the damages above.



- e. An order of general damages for discrimination, mental anguish and violation of Constitutional rights as pleaded herein.
 - f. Interest and costs.
 - g. Any other relief as the Honourable Court may determine.
3. Opposing the claim, the Respondent avers that the Claimant was an employee of the Nairobi Bottlers Limited, a subsidiary of the Respondent herein and a separate legal entity. That there is no employer-employee relationship between the Respondent and the Claimant hence this Court lacks jurisdiction to determine the Claim herein. Without prejudice, the Respondent avers that the termination of the Claimant's employment was legal and fair. As such, the Respondent has asked the court to dismiss the Claim with costs.
 4. The matter proceeded for hearing on 20th June 2024 during which both sides called oral evidence.

Claimant's Case

5. The Claimant testified as CW1 and at the outset, sought to adopt his witness statement to constitute his evidence in chief. He proceeded to produce the documents filed alongside his claim as well as his supplementary list and bundle of documents as exhibits before Court.
6. It was the Claimant's testimony that on 23rd October 2022, he was accused of taking away pieces of printing papers out of the office without authorization. According to the Claimant, he had reported to work, on the said day for a SACCO meeting which also involved other employees. As required, his motor vehicle was subjected to a search on entry, and the guard on duty was required to record every item that was in the vehicle at entry.
7. After the meeting, he drove out through the gate where his car was subjected to the usual checks on exit. It is at this point that the guard on duty purported to identify a ream of papers, which were present inside the car during entry in the morning.
8. The Claimant averred that the alleged used ream of papers was his and that he had bought the same together with other stationery for his home office and to facilitate his children's schooling.
9. The Claimant averred that he demanded that the guard show him a record of things that were in the car in the morning during entry, but it turned out such records were not kept, raising serious questions of negligence by the said guards.
10. He further demanded to see the daily entry records of the motor vehicles that had accessed the premises that day, and it also turned out that no such records were kept for that day.
11. That on 4th November 2022, he received a show cause letter and on 6th November 2022, he responded to the show cause letter, where he explained himself on the allegations arising out of the incident.
12. The Claimant further averred that from the time he was issued with the show cause letter to the time of the disciplinary hearing on 6th December 2022, the Respondent took more than 31 days contrary to the policy, and which time would be sufficient for them to make a decision whether there was sufficient evidence to charge him or not.
13. According to the Claimant, the disciplinary process was shambolic with a premeditated outcome. It was his contention that he was not provided with any form of evidence which was being relied on to accuse him of theft despite asking for the same.



14. He further averred that at the disciplinary hearing, he requested for the CCTV footage of that day for the stretch where his car was parked and where the office was. According to the Claimant, these recordings should have captured him carrying an object consistent with a ream of papers to his car.
15. That at the disciplinary hearing, the committee chair concluded that there was no conclusive evidence and directed that further evidence be provided relating to CCTV video recording before further processes, a direction which created a legitimate expectation on his part that there would be a further hearing at which the video footage would be availed for him to rely on for his defence.
16. The Claimant averred that he did not receive further evidence in the next hearing but was shocked to be given a termination letter a short while later.
17. The Claimant contends that the Respondent had an obligation to ensure the hearing was fair, and that the allegations were established before he could lose his employment.
18. On 16th February 2023, he made an appeal against the decision of the disciplinary committee.
19. That at the first hearing of his appeal, the tribunal adjourned on the basis that the evidence required to carry out the appeal was missing. At that point, he believed that the course of justice would be corrected, and the CCTV records would be availed but that didn't happen. When the appeal hearing resumed, no single piece of evidence was availed as the Chair informed him that the CCTV evidence that was crucial had been erased as it was more than 45 days later.
20. The Claimant termed this unfair as the Respondent knowing very well how important the CCTV footage for the specific date was relevant, didn't see the need to have the same extracted and kept as evidence as they claimed.
21. The Claimant averred that the only one piece of 'evidence' that was ultimately used to make a decision against him at the Appeal hearing was a picture of a box that was shown to him during the hearing from a computer screen.
22. That the said photo showed that the ream of papers found in his car was of the same brand as that used in the office. That the Respondent's witness claimed that he had deleted the original photo from his phone which was strange as the witness himself had 'taken' that photo as evidence of an offence, and could not have deleted it when the hearing had not even taken place.
23. According to the Claimant, the Respondent does not procure such ream of papers in bulk. He averred that the Respondent only purchases small quantities from local suppliers who in turn rely on bulk importers. According to him, the same brand of paper is available freely in local bookshops, supermarkets and dealers.
24. The Claimant further averred that his plea that the ream of papers in his car was one he uses for his child's school work was not entertained. That the purported similarity in batch numbers was a lie as a casual comparison shows that the batch number relied on to terminate him does not match the batch number in the ream of paper found in his car.
25. The Claimant further contended that the Respondent deliberately withheld evidence that would have exonerated him from liability, and purported to punish him for his failure to produce evidence.
26. That despite his representations at the appeal and the lack of evidence which was proved by the adjournment and failure to adduce the same after reconvening the hearing, the Respondent gave a verdict dismissing his appeal on 5th May 2023.



27. The Claimant further averred that there was no incident of a loss at the stores. According to him, the stock levels showed consistency with the consumption of the stock papers. That further, no stock losses of the printing papers was reported in the engineering stores as supported by store controller, stock take records and signed-off minutes from the hearing.
28. According to the Claimant, he has been subjected to a prolonged episode of mental distress, anguish and emotional breakdown due to lack of job and economic means arising from the termination.

Respondent's Case

29. The Respondent called oral evidence through Mr. Joseph Uvini and Ms. Lilian Mirie who testified as RW1 and RW2 respectively. Mr. Uvini was the first to go. He identified himself as an employee of Sekura International Limited. It was his evidence that he is a Project Manager at Sekura International Limited which offers security services to the Respondent.
30. RW1 stated that Sekura International Limited ensures that the Respondent's property is protected. He is aware of the case herein which was reported to him on 23rd October 2022. He undertook his investigations based on the documents and authored the investigation report dated 26th October 2022 which he produced before court as an exhibit.
31. RW2 who identified herself as the Respondent's Human Resources Specialist-ER, IR & People Services started by adopting 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 the court.
32. It was RW2's evidence that in the performance of his duties and responsibilities, the Claimant was required to adhere to the Respondent's Code of Conduct and Ethics Policies.
33. That on or about 23rd October 2022, the Claimant went to work at the Respondent's plant while driving a motor vehicle. He checked in and alleged that he was going to a SACCO meeting taking place at the same venue.
34. On his way out of the Respondent's premises, the security guards noticed that he was carrying two 18.5 L Keringet Water Bottles as well as a used ream of printing paper whose brand is A1ONE. The printing paper was placed behind the driver's seat and in a hidden position. This necessitated investigations as to whether the used ream of papers belonged to the Respondent.
35. The Investigation Report was authored by Sekura International Limited which is the company providing security services to the Respondent. The findings of the Investigation Report established that the batch numbers on the ream of papers matched those of papers that were kept at the engineering store. The Respondent therefore concluded that the Claimant had attempted to make away with company property and recommended disciplinary action against him.
36. That given Sekura International's conclusion of the Claimant's violation of the Respondent's Policies above, the Respondent initiated the next stage of disciplinary proceedings against the Claimant, by the issuance of a Notice to Show Cause vide a letter dated 1st November 2022 to the Claimant requiring him to submit an explanation why disciplinary action should not be taken against him for theft of company property.
37. On 6th November 2022, the Claimant responded to the Notice to Show Cause letter.
38. Having found the response to be unsatisfactory, the Respondent responded to the Claimant's letter of 6th November 2022 via a letter dated 30th November 2022 notifying him of a disciplinary hearing to be



- held on 5th December 2022. The Claimant was informed of the charge against him and that he could bring any evidence, witnesses and/or a representative to the disciplinary hearing.
39. RW2 further averred that the Respondent duly constituted the disciplinary committee in compliance with Clause 10.5.3 of the Human Resource Common Policies Handbook.
 40. On 5th December 2022, the Claimant's disciplinary hearing proceeded, and he was granted ample opportunity to make representations.
 41. Upon examining the evidence before it, the disciplinary panel reached a conclusion that there was a valid cause to terminate the Claimant's employment contract. The Respondent also conducted a Disciplinary Feedback Session for the Claimant who attended the meeting with a witness wherein the Respondent communicated its verdict on the hearing to the Claimant. The Respondent also responded to various queries about the disciplinary process that was raised by the Claimant.
 42. She is aware that the Respondent formally communicated this decision to the Claimant through a letter dated 9th February 2023. The letter also served to notify the Claimant that his employment contract had been terminated by the Respondent for breach of its policy. The letter also informed the Claimant of his right to appeal within fourteen (14) days if dissatisfied.
 43. The Claimant appealed against the decision of the disciplinary panel vide a letter dated 16th February 2023 addressed to the Respondent's Human Resource Director.
 44. It was RW2's evidence that the Respondent invited the Claimant for an appeal hearing vide a letter dated 7th March 2023. The invite specified that the hearing shall be on 16th March 2023 and provided an option for the Claimant to be accompanied by a witness.
 45. On 16th March 2023, the appeal hearing proceeded and one Mr. Nelson Kerosi was present as a witness. He was the guard who found the ream of paper while the Claimant was about to leave the premises. Mr. Kerosi was allowed to present the evidence against the Claimant and was subjected to questions from the panel about the veracity of his evidence.
 46. The Respondent invited the Claimant for a further appeal hearing vide a letter dated 31st March 2023. The invite specified that the hearing would be on 12th April 2023 and provided an option for the Claimant to be accompanied by a witness.
 47. It was her further evidence that the Respondent conducted a further appeal hearing on 12th April 2023 and similarly, Mr. Kerosi was in attendance, gave evidence and was asked clarification questions by the Chair of the Disciplinary Committee.
 48. After reviewing the evidence, the Appeal panel gave its verdict upholding the termination of the Claimant's employment contract. The decision was delivered vide a letter dated 27th April 2023.
 49. According to RW2, the Claimant was paid all his final dues available to him including his unpaid salary and leave days after clearance from the Respondent. It was her testimony that the Claimant signed a release and discharge letter on 23rd May 2023 that indicated the receipt of his terminal benefits.

Submissions

50. The Claimant submitted that the reasons advanced for his termination were unlawful, unfair and unreasonable. It was the Claimant's contention that he was simply sent home packing for owning papers manufactured by the same brand as those the Respondent uses.
51. The Claimant stated in further submission that the Respondent failed to discharge its burden of proof by not adducing evidence during the hearing to justify his termination pursuant to Section 47(5) of the



Employment Act. In support of this position, the Claimant placed reliance on the case of Pius Machafu Isindu vs Lavington Security Guards Limited [2017] eKLR.

52. It was the Claimant's further submission that the procedure leading to his termination was unfair and skewed. On this score, he argued that he was not provided with the evidence used to levy the accusation of theft/possession of company property without authorization against him prior to and during the disciplinary hearing which is contrary to the Respondent's policy.
53. Citing the case of Convine Omondi Nyamweya vs Geothermal Development Company Limited [2020] eKLR, the Claimant argued that the Respondent's actions of purporting to give evidence during the 2nd appeal hearing, after termination of his employment was contrary to the requirements of a fair process.
54. Submitting in support of its case, the Respondent urged the court to find that based on Section 44(4) (g) of the Employment Act, it was correct in categorizing the offence of unauthorized possession/ theft of company property as a gross misconduct offence and handling it as such in accordance with the established disciplinary procedures of the company. To buttress this position, the Respondent referenced the case of Reuben Ikatwa & 17 Others vs Commanding Officer British Army Training Unit Kenya & Another [2017] eKLR.
55. The Respondent further urged the court to find that it was right in concluding that the batch numbers were similar despite the difference in manufacturing time. In the Respondent's view, it was more likely that a series of the same paper was bought at the same time.
56. Referencing the case of Civil Appeal No. 66A of 2017, Kenya Revenue Authority vs Reuwel Waithaka Gitahi & 2 others [2019] eKLR, the Respondent urged that the substantive justification in the instant case was reasonable and that another employer would have arrived at a similar conclusion.
57. The Respondent further submitted that it followed every single step in the disciplinary procedure as set out in the succeeding paragraphs in its disciplinary policy.
58. In conclusion, the Respondent submitted that it genuinely believed that the Claimant had committed a gross misconduct offence of unauthorized possession of company property. That further, the Claimant was afforded an equal and fair opportunity to be heard regarding the charges that were levelled against him and that the procedure according to the disciplinary policy was strictly adhered to.

Analysis and Determination

59. I have considered the pleadings by both parties, the documentary evidence on record together with the rival submissions and isolated the following issues for determination: -
 - i. Whether the Respondent had a fair and valid reason to terminate the employment of the Claimant;
 - ii. Was the Claimant accorded procedural fairness before being terminated from employment?
 - iii. Is the Claimant entitled to the reliefs sought?

Valid and fair reason?

60. Pursuant to Sections 43(1) of the Employment Act (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. There is more. Under 45 (2) (a) and (b) of the Act, an employee's termination from employment is deemed unfair if the employer fails to prove that the reason for the termination is valid, fair and related to the employee's conduct, capacity or compatibility; or based on the employer's operational requirements.



61. The record bears that the Claimant was terminated from employment on grounds that he was found in possession of a ream of papers which matched the batch number of photocopy papers at the Respondent's store.
62. The grounds leading to the termination of the Claimant from employment flowed from the Notice to Show Cause dated 1st November 2022 in which he was accused of attempting to leave the Respondent's premises on 23rd October 2022, with a ream of the Respondent's printing papers without a gate pass and which he did not declare at the time of entry.
63. The Claimant was further notified through the Notice to Show Cause that an investigation report had revealed that the printing papers were the Respondent's property.
64. The said investigation report which was produced by RW1 as an exhibit before court, indicated that the printing papers found in the Claimant's car were well secured with a cover that has batch no. 82207172RC16 (sic) with timings of 14.08.48. As per the investigation report, the said batch number was traced to the engineering store where a carton was found with batch no. 82207172RC16 (sic) with timings of 14.06.10.
65. The investigation report further indicated that the Claimant had checked in and declared two Keringet jerricans but not the printing papers.
66. What is outstanding is that despite the similarity in the batch numbers indicated in the investigation report, the timings are different. Thus, is it probable that the Claimant purchased the ream of papers in his possession from the same batch number as the one in the Respondent's store? the answer is yes. As such, the fact that the ream of papers found in the Claimant's possession belonged to the same batch number as those in the Respondent company was not conclusive evidence that the Claimant had taken the said ream of papers from the Respondent's engineering store.
67. What's more, the Respondent did not indicate whether there was a carton in the engineering store bearing the same batch number with the exact timings as the cover containing the ream of papers found in the Claimant's car.
68. Further to the foregoing, the Claimant exhibited a copy of a cash sale receipt dated 8th August 2022 from JD Classic Bookshop which indicates that he purchased stationery items including one ream of printing papers. Evidently, the Claimant had attached the said cash sale receipt to his response to the Notice to Show Cause.
69. In her testimony before court, RW2 also confirmed that the Claimant presented the cash sale receipt during the disciplinary hearing.
70. Be that as it may, it is apparent from the record that the Respondent's disciplinary and appeal panel did not interrogate the cash sale receipt and or discount the same in determining the Claimant's culpability.
71. Further, the record bears that the first appeal hearing which was scheduled to take place on 16th March 2023, was adjourned to allow the appeal team obtain physical evidence with respect to the case. As such, the appeal team noted that the appeal was not concluded.
72. As it turned out, this evidence was not availed as Edward, the HR representative at the disciplinary hearing informed the meeting that the box had been replaced with another box hence it was not physically present.
73. In addition to the foregoing, it is notable that the Claimant had requested for the CCTV footage showing his entry into the Respondent's premises on 23rd October 2022 and his movement between



the stores and his car. However, the said CCTV footage was not availed as the Chairperson of the appeal hearing stated that CCTV memory is erased after 45 days.

74. What manifests from the foregoing is that the only evidence on record against the Claimant was the fact that the ream of papers found in his possession belonged to the same batch number as the one in the Respondent's engineering store albeit bearing different timings.
75. In light of the gaps highlighted above, it is apparent that the evidence relied on by the Respondent in terminating the Claimant's employment was unreliable and doubtful.
76. It is this court's view that the similarity in the batch number of the ream of papers found in the Claimant's possession and at the Respondent's engineering store was not credible evidence that a reasonable employer would use to hold the Claimant culpable of the allegations of theft.
77. The net effect of the foregoing is that the Respondent has failed to prove to the requisite standard that the Claimant had in his possession, a ream of paper that was the property of the Respondent.
78. To this end, this Court arrives at the inescapable conclusion that the Respondent has failed to satisfy the requirements of Section 43(1) as read together with Section 45(2) (a) (b) of the Act and as such, it has not proved that the grounds advanced for termination of the Claimant's employment were fair and valid.

Procedural fairness?

79. The requirement for fair procedure is generally provided for under Section 45 (2) (c) of the Act. Further, Section 41 of the Act makes specific requirements with regards to the process to be followed by an employer in effecting termination of employment.
80. From the record, the Claimant was issued with a Notice to Show Cause dated 1st November 2022. He was required to respond to the same within five working days. He responded through a letter dated 6th November 2022 and the disciplinary hearing was conducted on 6th December 2022.
81. According to the Claimant, he was not provided with the evidence used to levy the accusation of theft against him.
82. From the record, the Chair of the disciplinary hearing held on 6th December 2022, indicated that he would follow up on the evidence in order to share a conclusive report. However, it turned out that on the next hearing date being 9th February 2023, the evidence was not availed and instead, the Claimant was terminated from employment on the same date.
83. The Claimant further requested for the evidence during his appeal hearing. As a result, the said appeal hearing which had been scheduled for 16th March 2023 was postponed. Once again, the said evidence was not availed but nonetheless, the appeal panel proceeded with the appeal hearing and upheld the Claimant's termination from employment the lack of evidence notwithstanding.
84. On this score, I find it worth emphasizing 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.
85. The entire disciplinary process ought to embody the elements of a fair hearing such as prior and adequate notice, comprehensive particulars of the allegations in question, grant of a request for an adjournment where sufficient grounds are advanced, and right to access information, materials, and evidence to be relied upon by the employer in arriving at its decision.



86. Turning to this case, the court returns that in as much as the Respondent appeared to have complied with the provisions of Section 41(1) of the Act and the steps of the disciplinary process as set out in its Disciplinary Handling Policy, the process was not in accordance with justice and equity. Consequently, the disciplinary process was devoid of procedural fairness.

Reliefs?

87. The Claimant has prayed for an order of reinstatement into employment without loss of benefits from the date of termination. Under the *Employment Act*, the remedy of reinstatement is provided for under Section 49(3) (a). The factors to be considered by a court of law when deciding whether to grant an order reinstatement, are spelt out in Section 49(4) as follows:

- a. the wishes of the employee;
- b. the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and
- c. the practicability of recommending reinstatement or re-engagement;
- d. the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances;
- e. the employee's length of service with the employer;
- f. the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination;
- g. the opportunities available to the employee for securing comparable or suitable employment with another employer;
- h. the value of any severance payable by law;
- i. the right to press claims or any unpaid wages, expenses or other claims owing to the employee;
- j. any expenses reasonably incurred by the employee as a consequence of the termination;
- k. any conduct of the employee which to any extent caused or contributed to the termination;
- l. any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and
- m. any compensation, including ex gratia payment, in respect of termination of employment paid by the employer and received by the employee.

88. Arguing in favour of his reinstatement, the Claimant has submitted that his efforts to secure another job have proven futile and he has remained unemployed to date since 9th February 2023 when his employment was terminated. He has further submitted that the claim has been brought within the three years envisioned by law since the date of termination. He has further posited that it is an undisputed fact that the Respondent has the capacity and different positions within which they can deploy him.

89. The Respondent has argued against any order of reinstatement and termed it untenable and not practicable. The Respondent has further argued that trust has been eroded and is no longer existent between the employer and the employee in this case.



90. Having considered the rival positions taken by both parties over the issue and guided by the considerations set out under Section 49(3) of the Act, it is this Court's view that the remedy of reinstatement would not be suitable in the circumstances.
91. On this score, I will follow the determination in the case of Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR, where the Court held that reinstatement has to be considered on its own merits based on the spirit of fairness and justice in keeping with the objectives of industrial adjudication. The Court proceeded to underscore some of the key principles that ought to be applied in considering reinstatement as a remedy. For instance, the traditional common law position that courts will not force parties in a personal relationship to continue in such a relationship against the will of one of them. In the Court's view, that will engender friction, which is not healthy for businesses unless the employment relationship is capable of withstanding friction like where the employer is a large organization in which personal contact between the affected employee and the officer who took action against him will be minimal.
92. In light of the foregoing and applying the key principles set out in Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 others [supra], I am not persuaded that reinstatement is a practical remedy in the circumstances.
93. To this end, the order that commends itself in this case, is an award of damages for unfair termination. As the Court has found that the Claimant's termination was for a reason that was not valid and fair, and was not in accordance with equity and justice, he is awarded compensation equivalent to 10 months of his gross salary.
94. In arriving at this award, the Court has taken into account the length of the employment relationship, the fact that the Respondent failed to prove that indeed, there was a valid and fair reason to warrant the Claimant's dismissal from employment, the totality of the circumstances attendant to the Claimant's termination from employment as well as the Claimant's prospects of securing comparable or suitable employment with another employer.
95. The claim for outstanding terminal dues is disallowed as the Claimant did not indicate the specific amount he is claiming to this extent.
96. The claim for general damages is similarly declined as the court has awarded the Claimant compensatory damages for unfair termination. That should suffice.

Orders

97. It is against this background that I enter Judgment in favour of the Claimant against the Respondent in the following manner:
 - a. A declaration that the Claimant's termination from employment was unfair and unlawful.
 - b. The Claimant is awarded compensatory damages in the sum of Kshs 1,989,580.00 being equivalent to ten (10) months of his gross salary.
 - c. Interest on the amount in (b) at court rates from the date of Judgment until payment in full.
98. The Claimant shall also have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2024.

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STELLA RUTTO



JUDGE

In the presence of:

Ms. Wambuta instructed by Mr. Amol for the Claimant

Mr. Okiring instructed by Mr. Ochieng for the Respondent

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

