



**Njuguna v Co-operative Bank of Kenya Limited (Cause 229 of 2019)
[2023] KEELRC 87 (KLR) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 87 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 229 OF 2019
SC RUTTO, J
JANUARY 20, 2023**

BETWEEN

CATHERINE WAMBUI NJUGUNA CLAIMANT

AND

CO-OPERATIVE BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

1. The claimant was employed by the respondent with effect from September 5, 2005 as a graduate clerk. She rose through the ranks and at the time of her termination, she was holding the position of Service Desk Officer. The claimant avers that she rendered uninterrupted passionate service to the respondent under the terms set out in the service contracts, the respondent's Operating Manual, Staff Manual and Code of Conduct and Ethics. That she was accused of irregularly diverting staff loans thus resulting in a conflict of interest and as a result, she was dismissed from employment. The claimant has termed her termination as unlawful and wrongful hence seeks against the respondent, the sum of Kshs 9,563,333.00 being payment for 23 years of service, severance pay, compensatory damages, loss of benefits and notice pay.
2. The respondent challenged the claim through its response dated July 16, 2019 through which it avers that between September and December 2017, the claimant was engaged in private business for monetary or commercial gain, a conduct which conflicted with her position in the bank contrary to its Code of Conduct and Ethics. That further, the claimant's termination was procedural, just and fair hence she is not entitled to any of the reliefs sought. To this end, the respondent has termed the claim as ill-advised and if allowed, will permit the claimant to reap from her wrongful conduct having exposed the respondent to loss of funds. To this end, the respondent has urged the Court to dismiss the claim with costs.
3. The matter proceeded for hearing on June 16, 2022 with each side calling oral evidence.



Claimant's Case

4. The claimant testified in support of her case and to start with, she adopted her witness statement to constitute her evidence in chief. She also produced the bundle of documents filed together with the claim as her exhibits before Court.
5. In her evidence, the claimant stated that she was unjustly and unfairly terminated from employment. She stated that on November 13, 2018, she was issued with a letter to show cause why disciplinary action should not be taken against her on grounds of gross misconduct. That she responded to the show cause letter and on January 21, 2019, she received a letter from the respondent summarily dismissing her from employment.
6. Recollecting the series of events that led to her disciplinary action, the claimant stated that in 2015, she bought parcels of land near KCB Ruai for the sum of Kshs 2,500,000.00, together with her former colleagues. That shortly thereafter, she had an urgent need for money hence one of her colleagues, by the name Mumbi Runji, bought her out for the sum of Kshs 1,000,000.00. That she did not transfer ownership of the land as it was expensive to do so and did not find a reason to do so as they were friends with the said Mumbi Runji.
7. It was her evidence that from that period, she was not in any way involved in matters pertaining to that land and more especially, sourcing for purchasers. That she later learnt that her friends had indeed found buyers and who were the respondent's employees.
8. That she did not personally know the buyers and never met the employees of the respondent who allegedly purchased the properties and therefore could not have "assisted them defraud the Bank". That their identities were brought to her attention through the disciplinary case.
9. That in as much as it is a fact that she appeared as the co-owner of the properties sold to the respondent's employees, she totally had no hand in the dealings of the matter and did not play a role in the valuation of the property and in the financing approval process for the purchase of the properties.
10. It was her further evidence that she did not play any role in the legal process which involved perfecting of the security documentations and neither was she privy to the communications, approvals or understanding between the borrowers and the Bank on the loans they were taking.
11. That further, she had no financial benefit or any other kind of gain from the said transactions that would show that she was part of the "alleged fraud." She contended that there was no sufficient evidence tendered to support the said allegations.
12. That in the 13 years she worked for the respondent, she tried to her outmost best to safeguard the bank's interest and not a moment had she done an act that would bring the bank's reputation to disrepute or acted in such a manner that would cause a conflict of interest in her position at the bank. That she worked diligently and her record bears her out, having been in several occasions trusted to hold senior positions in the Bank whenever her colleagues were away.
13. That from her termination, it was apparent that the employment laws had been flouted as she had not been accorded any form of audience as required despite a disciplinary panel being formed regarding the issue.
14. It was the claimant's further evidence that she was unfairly terminated as a result of witch hunt which was only calculated to end her bright career.
15. Concluding her testimony, the claimant asked the Court to allow her claim as prayed.



Respondent's Case

16. The respondent called oral evidence through Mr. Ben Mwaura, who testified as RW1. He identified himself as its Employee Relations Officer and at the outset, sought to adopt his witness statement to constitute his evidence in chief. He also produced the documents filed on behalf of the respondent as exhibits before Court.
17. RW1 told Court that the claimant was terminated for selling parcels of land registered under her name to fellow members of staff. That the sale was at exorbitant rates. That the respondent ascertained this due to the amounts indicated in the sale agreement vis a vis what was being channelled to the vendor. That the amount in the sale agreement was different from the one listed. That the amount would go to the vendor and the other amount to the purchaser. That the respondent has a residential property loan to all its staff and it is expected that the amount disbursed would be used as stated. That the bank pays a fringe benefit tax for all loans given at a concessionary rate. That where loan proceeds are not utilised as required, it means that the bank is losing money. It was his further testimony that the bank is also exposed, in that, in the event the purchaser is not able to service the loan, it is left with a collateral it cannot realise hence resulting in a financial loss to the bank.
18. RW1 further told the Court that the claimant uttered a false agreement as she appended her signature to a document she knew to be false. That in particular, the claimant assisted some members of the respondent's staff in defrauding the Bank by entering into sale agreements to sell two plots of land to them at exaggerated purchase prices with the intention of diverting part of the loan proceeds to the staff as clearly outlined in the show cause letter issued her on November 8, 2018.
19. That the claimant responded to the show cause letter on November 15, 2018 and confirmed having owned the two parcels of land jointly with a former member of staff, by the name Mumbi Runji and apologized for the breach of the respondent's policies pleading not to be subjected to disciplinary action.
20. That after deliberations, the claimant was invited to attend a staff disciplinary hearing scheduled for December 3, 2018 to elaborate on her conduct and was informed of her right to tender documentary evidence in support of her case and her entitlement to the presence of a member of staff at the hearing.
21. That the claimant attended the disciplinary hearing on December 3, 2018 unaccompanied by any member of staff. That during the hearing, it emerged that the claimant jointly owned the two parcels of land namely Mavoko Town Block 3/55054 & 55055, that were sold to two members of staff of the respondent, since they were partly in her name and she was a signatory of the account INO Mumbi/ Naomi/ Catherine at Diamond Trust Bank through which the payments were made and was thus a beneficiary of the sale proceeds. That moreover, the completion documents included the claimant's passport size photos, copy of ID and KRA PIN which were used to process the transfers of the two plots.
22. It was RW1's evidence that the claimant was taken through an elaborate disciplinary hearing where she defended herself and was thereafter issued with the minutes of the disciplinary hearing for her review and she confirmed them to be accurate and a true account of the deliberations between the respective parties. That she was given time to present evidence in support of her case but did not do so.
23. That upon deliberation and consideration of the claimant's responses at the disciplinary hearing, the respondent summarily terminated her services in accordance with the provisions of the employment contract and the Staff Manual and Policies as read with Section 44(3) and (4) of the [Employment Act](#).



24. That in effecting the claimant's summary dismissal, the disciplinary panel considered the facts and evidence tendered during the disciplinary hearing and the provisions of the respondent's Staff Manual more particularly Appendix 14 thereof on Disciplinary, Grievance Policy and Procedure which also outlines offences constituting gross misconduct and/or serious neglect justifying summary dismissal as in the instant case.
25. That on January 25, 2019, the claimant appealed against the decision of the respondent disciplinary panel and her Appeal was reviewed and responded to on February 7, 2019 affirming the decision reached on January 16, 2019 citing lack of new evidence or grounds to warrant reconsideration of the decision.
26. RW1 further refuted any allegations of discrimination and avers that the respondent deals with every employee's case of misconduct privately and conducts thorough investigations before issuing a show cause letter, considering the response and weighing whether it warrants a disciplinary hearing as laid down in its policies and code of conduct and ethics in place and the law.
27. Closing his testimony in chief, RW1 asked the Court to dismiss the claim with costs.

Submissions

28. Both parties filed written submissions upon close of the hearing. The claimant submitted that she was not given a proper reason why her employment was terminated. That further, proper procedure was not followed. She further submitted that the members of staff who would have accompanied her were intimidated thus making it impossible for them to appear. In support of the claimant's submissions, the cases of *Kenya Union Commercial and Allied Workers v Meru North Farmers Sacco Limited* and *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* (2014) eKLR were cited. It was further urged on behalf of the claimant that she was not accorded a fair hearing during the disciplinary hearing as the panel was biased and shifted the burden of proof to her. The claimant stated in further submission, that her termination was procedurally and substantively unfair.
29. The claimant further argued that the respondent discriminated against her since no other person in the transaction leading to the alleged conflict of interest was asked to show cause, reprimanded, suspended and or dismissed. That further, she should continue paying the loans at the interest rate she was paying before as the law does not operate in a retrospective manner.
30. In its opening, the respondent submitted that trust, integrity and honesty are the cornerstones of banking business and the financial service industry in general. It was further submitted by the respondent that the claimant was the author of her misfortune and her summary dismissal was beyond reproach. That she was dismissed for fair and valid reasons and taken through the correct procedure prescribed for summary dismissal. That the claimant's actions amounted to gross misconduct warranting summary dismissal. In support of the respondent's submission the Court was invited to consider the authorities of *Kenya Revenue Authority v Reuwel Waitihaka Gitahi & 2 others* (2019) eKLR, *Violet Kadala Shitsukane v Kenya Post Savings Bank*, *Evans Kamadi Misango v Barclays Bank of Kenya Limited* (2015) eKLR, *Job Omambia Mariara v Consolidated Bank of Kenya* (2021) eKLR and *Dorcas Nyambura Njuguna v Spire Bank* (2020) eKLR.

Analysis and Determination

31. Flowing from the pleadings on record, the evidence presented and the opposing submissions, to my mind, the Court is being called to determine the following issues:
 - i. Whether there was justifiable cause to terminate the employment of the claimant.



- ii. Whether the claimant was accorded procedural fairness.
- iii. Is the claimant entitled to the reliefs sought?

Justifiable cause for termination?

- 32. The starting point in determining this issue is section 43(1) of the *Employment Act* (Act) which requires an employer to prove the reasons for the termination of an employee and failure to do so, such termination is deemed to be unfair. Further, section 45 (2) (a) and (b) of the *Act* provides that a termination of employment is unfair if the employer fails to prove:
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason-
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; ...
- 33. The import of section 45 (2) (a) and (b) is that the reason for termination must pass the “fairness and “validity” test. In this regard, over and above proving existence of reasons to justify termination, an employer is required to prove that the said reasons were fair and valid.
- 34. In addition to the foregoing, section 43 (2) of the *Act*, provides that such reasons resulting in an employee’s termination must be matters the employer genuinely believed to exist at the time.
- 35. Turning to the instant case, the reasons for which the claimant was terminated can be discerned from her letter of summary dismissal which reads in part:

“It was established that you committed an act that amounted to gross misconduct in that you engaged in private business for monetary or commercial gain or behaviour which is in conflict with your position in the Bank and which is likely to negatively affect your productivity in your duties in the Bank in that you assisted staff in defrauding the Bank by entering into Sale agreements to sell plots to them at exaggerated purchase prices with an intention to divert part of the loan proceeds back to them. It was further established that the staff loan were be disbursed through Onsando Ogonji & Tiego Advocates after which the lawyer transferred the cash for the actual purchase price to you and your partners Bank account while the balance of the cash over and above the purchase price was diverted back to the respective staff members.

Further it was established that you made or signed a statement or entry in a document or official record which was to your knowledge false in that you signed land sale agreements for the sale of the plots to Bank staff with exaggerated amounts causing the Bank to lend to staff more than was necessary to purchase the said parcels of land. Consequently, the Bank is exposed to loss of cash as the plots which sold to the respective members of staff had their purchase price inflated while the actual value of plots may not cover for the Bank loans in case of loan default.

Your actions as above amounted to gross misconduct, contravened provisions of Bank’s Operating Manual, Staff Manual and Bank’s Business Code of Conduct & Ethics and exposed the Bank to huge losses as the value of the Plots (Security held for those properties) is not commensurate with the loan amounts granted to the staff thereby putting your integrity as a Bank employee in question.”



36. I find it imperative to revisit the circumstances leading to the claimant's termination so as to ascertain the fairness and validity of the reasons for the said termination.
37. The claimant was accused of gross misconduct in respect of assisting members of staff of the respondent to defraud it by entering into agreements to sell them land at inflated prices. The parcels of land in question are Mavoko town block 3/55054 & 55055 as well as Donyo Sabuk/Komarock Block 1/55048.
38. In respect of Mavoko Town Block 3/55054 & 55055, an extract of the sale agreement which was exhibited together with the claimant's show cause letter, indicates the purchasing price as Kshs 2.6 million. It further identifies the vendors as being Catherine Wambui Njuguna, the claimant and Mumbi Runji while the buyer was Loise Njeri Karanja. It was the respondent's case that it disbursed the loan in the sum of Kshs 2.6 million to the purchaser, Loise Njeri Karanja, through the firm of Onsando Ogonji and Tiego Advocates vide account no 01136030963600. That on 13th April, 2018, the said firm of Advocates transferred Kshs 1,060,000.00 to the bank account number 0276784001 held at Diamond Trust bank in the name of Mumbi, Naomi and Catherine account through RTGS. It was the respondent's contention that this meant that the purchase price for the two plots was Kshs 530,000.00. That this was contrary to the sale agreement signed which indicated the purchase price as Kshs 2.6 million.
39. The respondent further exhibited an extract of the RTGS transfer which indicates that the firm of Onsando, Ogonji and Tiego, transferred the sum of Kshs 1,510,000.00 to account number 1146306393 in the name of Loise Njeri held at KCB, Ongata Rongai branch.
40. With regards to the second parcel of land, Donyo Sabuk/Komarock Block 1/55048, the respondent stated that a member of staff by the name Rono Kiplangat Bernard applied for a staff loan of Kshs 1.4 million to buy the same. to this end, it exhibited an extract of the sale agreement contained in the claimant's show cause letter. The sale agreement identifies the vendors as Catherine Njuguna(claimant) and Mumbi Runji while the purchaser is identified as Rono Kiplangat Bernard. The respondent contended that Kshs 535,000.00 was disbursed to the vendor's account no. 027xxxxx01 held at Diamond Trust bank whereas Kshs 835,000 was diverted back to the staff account held at KCB. That this meant that the purchase for the plot was Kshs 535,000 and not 1.4 million. An extract of the relevant bank transactions was exhibited by the respondent.
41. The claimant was accused of failing to declare the potential conflict of interest contrary to the respondent's Code of Conduct and Ethics, which gives examples of conflict of interest to include:
- i. Engaging in any personal business transaction involving the bank for profit or gain.
 - ii. Discovering a business opportunity through an employee's work with the bank and pursuing it or disclosing it to a third party.
 - iii. Receiving improper personal benefits as a result of the employee's position with the bank.
 - iv. Engaging in outside employment or serving as an officer, director, partner or consultant of another organisation.
42. It was the respondent's further contention that the bank grants loans to its members of staff at very low interest rates to acquire property hence pays for fringe benefits tax to bridge the difference of the interest as required by the Kenya Revenue Authority. That the loan disbursed is to be used strictly for the purpose intended and facilitating diversion of the staff loans by other members of staff amounted



to dishonesty and breach of trust. That further, the loans are not properly secured as the land being inflated as in the instant case, may not cover the loans in case of default.

43. In her response to the show cause letter, the claimant denied entering into the sale agreement with the named members of staff being Loise Njeri Karanja and Rono Bernard Kiplagat. She denied being party to the transactions involving the parcels of and in question. In this regard, the claimant disowned the signatures appearing in the sale agreements and stated that the same do not belong to her.
44. What I hear the claimant to be saying is that the signatures against her name on the sale agreements in respect of the parcels of land, are an act of forgery. Having alleged as much, it was incumbent upon her to prove the same. It is trite law that “he who alleges must prove”.
45. On this score, I find the following expression from the Court Appeal in the case of [*Kinyanjui Kamau v George Kamau*](#) [2015] eKLR, to be apt:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* (2008) 1 KLR (G&F) 742 wherein the Court stated that:

“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

46. I further draw guidance from the determination of the Court of Appeal in the case of [*Demutilla Nanyama Pururmu v Salim Mohamed Salim*](#) [2021] eKLR where it was held that:

“As the appellant was the one claiming that the documents were forgeries, the burden was on her to prove that the documents were not authentic government documents as claimed by the respondent. Section 107 of the *Evidence Act*, provides as follows: -

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

47. Back to the case at hand, the claimant did not lead any evidence to discount the authenticity of her signature as contained in the two sale agreements.
48. I must also add that the Court does not have the expertise to examine documents and handwritings in order to determine whether or not they are authentic. As a matter of fact, it is quite unfair to the Court, to have the parties disown documents and signatures without providing the requisite proof. How is the Court to discern this fact and ascertain the authenticity of the signatures on record? In this case, the claimant was well aware that her case turned on the authenticity of the signatures contained in the sale agreements. Why didn't she avail evidence to prove that the same were not authentic but act an of forgery?
49. In any event, if indeed, the claimant's signature was forged in order to effect the land transfers, she did not state what action she had taken noting that the same was a serious offence. Under cross examination, the claimant stated that she had not lodged a complaint with regard to the use of her



name and signature in the sale transaction. She further testified that to date, she was yet to annul the sale agreements.

50. Indeed, I find the claimant's conduct rather odd upon learning of the said land transactions. She did not act as a person whose signature and name had been used to undertake a transaction she avers she was not part of. If indeed true that she was not party to the transactions, then her approach to the issue was rather casual.
51. In light of the foregoing, the Court has not been given a plausible reason to doubt the authenticity of the signatures contained in the extracts of the sale agreements in question. I am therefore enjoined to consider the same as they appear.
52. With regards to the transactions, the claimant admitted buying the parcel of land at KCB Ruai sometimes back with her former colleague Mumbi Runji. Despite stating that she had sold her portion to the said Mumbi, there was no evidence to support her assertion. As a matter of fact, a sale agreement to that effect would have sufficed.
53. Further, the claimant admitted being a joint holder to the account at DTB in which the sale proceeds from the sale transaction were deposited. Evidently, an extract of the bank transactions indicates the claimant's name as an account holder. Despite the claimant stating that she was a dormant account holder, she did not prove the same.
54. The claimant was insistent that the respondent shifted the burden of proof to her when she was asked to present evidence to exonerate herself. This does not seem to be the case. Why do I say so? When faced with the allegations through the show cause letter, the claimant's line of defence was that she was not party to the land transactions in question. It was therefore expected that she would support her assertions with evidence. She was merely being asked to support her defence with evidence and the same cannot be regarded as shifting the burden of proof to her.
55. The claimant stated that the evidence she could have used was not within her reach as Mumbi Runji was not picking her phone calls. This was the more reason why she should have taken appropriate action against the said Mumbi for the alleged use of her name and particulars in the land transactions. As it is, this was grave enough since it resulted in her termination from employment.
56. In light of the circumstances presenting above, the respondent had a reason to believe that the claimant had not acted honestly in regards to the said land transactions seeing that her name and signature was in the sale agreement in her capacity as vendor. Further, and to top it off, she was one of the joint account holders of the bank account where the sale proceeds had been deposited. As it was, the evidence against her was damning and it was only prudent for her to prove her assertion that she was not party to the transactions in question.
57. Without evidence to the contrary, the respondent had reason to believe that indeed, the claimant had participated in the land transactions hence had acted in a dishonest manner by inflating the costs of the parcel of land on paper.
58. In the case of *Kenya Revenue Authority v Reuel Waitaha Gitahi & 2 others* [2019] eKLR, the Court of Appeal cited with approval the decision in *Mckinley v BC. Tel* (2001) 2 SCR 161 where the Canadian Supreme Court rendered itself as follows:

“Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say,



for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.”

59. The claimant's conduct in this case was sufficient cause for the respondent to lose confidence in her hence presented a valid and fair reason for her termination from employment.
60. To this end, I find that the termination of the claimant was based on valid and fair grounds hence the respondent discharged its burden under sections 43 (1) and 45 (2) (a) and (b) of the *Employment Act*.
61. Having found as much, I now turn to consider whether the claimant was accorded procedural fairness prior to termination.

Whether the Claimant was Subjected to a Fair Process

62. Pursuant to section 45 (2) (c) of the *Employment Act*, an employer is required to comply with the provisions of a fair process and prove that it accorded an employee a fair hearing. The specific requirements of a fair hearing are provided under section 41 of the Act. In this regard, an employer is required to notify an employee of the intended termination, the reasons thereof in a language he or she understands, in the presence of another employee or a shop floor union representative.
63. From the record, the claimant was issued with a show cause letter dated November 8, 2018. The allegations against her were well detailed in the said show cause letter. She responded to the said show cause letter, whereafter she was invited for a disciplinary hearing on December 3, 2018. Further, the reasons for her dismissal were well elaborated in her letter of dismissal. She appealed against her dismissal and she was given a response in respect of the same. The claimant confirmed as much when testifying under cross examination.
64. In light of the foregoing, I cannot help but conclude that the claimant was accorded procedural fairness as she was informed of the reasons the respondent was considering terminating her employment and was granted an opportunity to present her defence to the allegations against her prior to her dismissal. In addition, the letter of summary dismissal detailed the reasons for her termination.
65. In the end, I find that the claimant's termination was neither unfair nor unlawful.

Reliefs

66. The claimant has prayed for an order that the respondent be estopped from charging interest on her existing loan facilities at commercial rates. According to the extract of the respondent's Staff Manual on Loans, the staff rates of interest are only applicable upon exit where an employee had served for over ten years and had left for reasons other than dismissal. As such, these circumstances do not apply to the claimant as she was dismissed from employment.
67. With regards to the prayer for notice pay and compensatory damages, the same is unsustainable as the Court has found that the claimant's termination was not unfair and unlawful.
68. The claimant also prayed for service pay in the sum of Kshs 4,053,451.00. I will decline to award the same as I note from her pay slips that she was contributing towards a pension scheme as well as the National Social Security Fund (NSSF). In light thereof, she falls within the ambit of exclusions stipulated under section 35 (6) (a) and (d) of the Act hence the claim in that regard falls.
69. The claim in regards to severance pay is also declined as the same is only payable where an employee has left employment on grounds of redundancy, which was not the case herein.



Orders

70. In the final analysis, I dismiss the claim in its entirety with an order that each party bears its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JANUARY, 2023.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Omariba

For the Respondent Mr. Oloo

Court Assistant Abdimalik Hussein

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

