Roberts & 3 others v Equity Bank Kenya Ltd (Cause 652 of 2017)
[2023] KEELRC 12 (KLR) (12 January 2023) (Judgment)

Neutral citation: [2023] KEELRC 12 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 652 OF 2017

AN MWAURE, J

JANUARY 12, 2023

BETWEEN

ALAN JOHN ROBERTS ..... 1ST CLAIMANT

RAPHAEL DEVANTIER ..... 2ND CLAIMANT

GERARD JAN HOFHUIS ..... 3RD CLAIMANT

ALEXANDER PAVLOS ..... 4TH CLAIMANT

AND

EQUITY BANK KENYA LTD ..... RESPONDENT

JUDGMENT

1. The 1st to 3rd claimants are alleging unlawful and unfair termination on account of redundancy. The 4th claimant's claim is on alleged breach of his conditions of work. They filed the memorandum of claim dated the March 6, 2017 on the April 3, 2017. The claimants avers that they were employed by the Respondent as industry specialists in manufacturing, business strategy, transport and logistics, asset & wealth management respectively

Claimants' case

2. The 1st and 2nd and 3rd Claimants were employed in their various roles as specialists from South Africa and 4th Claimant was from Toronto Canada.

3. The 1st Claimant was issued a consultancy agreement of one year by the respondent running between January 23, 2013 to January 24, 2014. After expiry of the same he was given a two year's contract commencing from 0n January 27, 2015 to January 26, 2017. The reason given to issue him a contract instead of a consultancy was to preserve respondent's confidentiality information.

4. He says he lost his benefits for housing and accommodation amounting to Kshs 200,000/= as a result of being put on a contract in place of a consultancy

5. The second Claimant says he was employed by the respondent on permanent basis from June 24, 2013

6. The third claimant was employed on a three year's contact effective June 3, 2013 to 2016.

7. The fourth claimant was employed from February 2015 to 2017 January by the respondent bank.

8. The claimants state they worked diligently and dutifully and faithfully and respondent did not raise any concerns on their performance during their term of service.

9. It is the claimant's averments that on the February 26, 2013 they were invited by the General Manager Human Resource at 8 am and were asked to attend a meeting at 10 am that same day for corporate and update meeting. They attended the meeting and found present were Chief Officer Human Resource, Group associate Director, General Manager Industry and specialist transport Manager and General Manager Agribusiness .The four claimants were all present.

10. The claimants state that they were informed that the Board had made a decision to terminate the services of industry specialist and were assured it was a strategic decision of the board but otherwise the respondents were pleased with their performance.

11. The 1st and 2nd and 3rd Claimants say they were issued a termination letter on March 11, 2016. The 4th Claimant however says he was asked by the CEO Mr James Mwangi to tender his resignation and he had no choice and so he resigned on allegation of loss of investments with the Chase Bank. He says that the closure of Chase Bank had nothing to do with him.

12. The claimants say that the decision to declare them redundant came as a surprise to them considering that the Respondent was not undertaking any redundancy process during the material time, the Respondent had recently renewed the claimants' work and residency permit,

13. The respondent's had not informed the claimants of any impending redundancies and had not reached out to the claimants to explore other alternatives of employment within the Respondent's organization. The Respondent had at an investor's briefing through its CEO declared that it would not retrench any of its employees and that if retrenchment was inevitable, the affected employees would be absorbed into other roles within the Respondent and that the Respondent had been pleased with the performance of the claimants thus far as evidenced by the positive performance appraisals carried out by the Respondent during the course of their employment.

14. The claimants state that the Respondent maliciously coerced, manipulated and constrained the claimants into signing termination letters by threatening to withhold any and all such terminal benefits due to the claimants under their respective contracts. That the claimants who were middle aged white/ Caucasian managers or industry specialist were discriminated against and/ or declared redundant. The Claimants further claimed that the Respondent promoted one Stephen Moche, an employee of indigenous origin, to the role of head of business advisory and consulting within IEBL, a position previously held by the 2nd claimant which was done despite the said person's negative appraisal and lack of requisite qualifications.

15. The claimants aver that the Respondent breached the law on redundancy when it failed to establish an objective or any criteria for redundancy selection, there was no prior notice to the 1st to 3rd claimants of the impending or potential redundancies to enable them seek alternative sources of employment, no notice of intention to declare them redundant to the County Labour Officer, and there was no attempt to find alternative employment for the 1st to 3rd claimants. The claimants are of the view that

the decision to terminate them was not only unfair in substance, against good employment principles but was also implemented un-procedurally.

16. The 4th claimant allege that his employment contract was casually terminated by the CEO of the Respondent which termination was flawed both in substance and procedure before being coerced to resign.

Respondent's case

17. The Respondent in the statement of response filed with the notice of motion application says that save for the 4th claimant who resigned voluntarily, the 1st 2nd and 3rd claimants were declared redundant and that the Respondent followed due process in declaring them redundant.

18. The respondents aver that the 1st claimant consciously signed his termination letter on the March 17, 2016 while the 2nd claimant also knowingly signed his letter on the March 17, 2016 and the 3rd claimant knowingly signed his letter of termination on the March 16, 2016.

Claimants' Evidence

19. Claimant witness No. 1 Allan John Robert gave sworn testimony and said he was the General Manager with Equity Bank. He adopted the witness statement in the matter as evidence in the case. He also adopted the documents in the list of documents as exhibits. The witness said in the cross -examination that the redundancy was a board decision and that he had earlier been assured that his contract would be renewed and had one year to expiration of his contract before he was declared redundant. He further says that there was no much consultation because they were told the decision to terminate had already been taken.

20. He said that there was an investor's meeting and in that meeting they were assured by the CEO James Mwangi that there would be no redundancies.

21. Claimant witness No 2 Raphael Devantier gave sworn testimony and adopted the witness statement dated the March 6, 2017 as his evidence in chief. He also adopted the documents in the list as exhibits in the case. He said that on the February 26, 2016 he was called for a meeting and at the meeting he discovered the discussion was about their redundancy. He was told that his position would be declared redundant. He mentioned that it was an open forum discussion where a number of concerns were raised which the Bank responded to but there was no much room for discussion. He says that he was then told there would be further discussion with the HR but was not offered any alternative employment with the bank.

22. Upon re- examination, he stated that when he was declared redundant, there was no process that was going on at the bank. The news that he was being declared redundant was given in the meeting of the February 26, 2016 but had received no notice from the employer to declare his position redundant. He says they had been informed that the purpose of the meeting was corporate SME update meeting. He also says respondent did not inform them the criteria used to declare the redundancy.

23. Claimant witness No.3 Gerald Jan Hofhuis also gave sworn testimony and adopted the witness statements dated the March 6, 2017 and the bundle of documents as exhibits in support of the claim. He in cross examination said that he also attended the meeting of February 26, 2016 and there was information on redundancy. He said that even though he raised concerns he was told the issue was already decided and he could not do anything about it.

24. He informed court that he was told that his skills could not be sufficiently utilised in the Kenyan market but he said he did do not agree with that as there were other services he could offer. He told court he was not aware if his position was filled.

25. Claimant witness No 4 Alexander Pavlos gave sworn testimony and adopted the witness statement dated the March 6, 2017 as his evidence in chief. He also adopted the documents in the list of documents as part of exhibits in the case. He said that his contract was initially for one year and was renewed for 2 years and that he left employment in April 2016 and his contract was to expire on the January 31, 2017. He testified before the honourable court that he was told to go to the HR and resign and he had no option but to resign.

Respondent's evidence

26. RW1 Wycliff Ontubi said he is a senior Employee Relations Manager at Equity Bank. He adopted the witness statement signed on the June 27, 2022 as his evidence in chief and produced the list of documents dated January 8, 2019 and numbered pages 1-43 as his exhibits. On cross – examination he said that the bank has a HR policy on redundancy and due process as per the labour laws and their policy was followed. He said that the first communication was on the February 26, 2016 and employees were not informed of such act of redundancy. He said that letters relating to termination on account of redundancy were sent on the March 11, 2016 to the claimants. He further said that the redundancy itself was board decision but he is not sure when the decision was made and there were no documents as related to the board meeting. He also said that in his opinion the meeting of February 26, 2016 communicated to the affected employees the intention of the bank, the notice read 'termination of the employment' which was effective March 31, 2016. The bank used the criteria of profitability and there were two other employees who were declared redundant and the bank was not targeting particular race. The witness said that the claimants were not offered any positions as there were no matching positions because the claimants were specialists.

Claimant's submission

27. The claimants submits that the events surrounding the termination of the 1st, 2nd and 3rd Claimants' employment are inconsistent with a termination on grounds of a genuine redundancy, since the Respondent failed to comply with provisions of section 40 of *employment act* which provide that employer should :

    a. establish an(y) objective criteria for the redundancy selection; or

    b. give them notice or prior warning of the impending or potential redundancies to enable them seek alternative sources of employment (more on this shortly); or

    c. give them a notice of intention to declare redundancy (more on this shortly);

    d. inform the County Labour Officer of the impending redundancy or;

    e. discuss with them whether they might be willing and be able to carry out any alternative duties elsewhere within its business.

28. That it was incumbent upon the Respondent to show the selection parameters it applied and how it came to select the 1st, 2nd and 3rd Claimants for the alleged redundancy and the basis of their selection. The Respondent irredeemably failed in this regard. The selection of the1st to 3rd claimants by the Respondent for redundancy cannot hold up to any objective assessment.

29. The claimants relied on the Court of Appeal decision in Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR where the court found that the airline did not apply a fair selection procedure and had, consequently, unlawfully terminated the employment of 447 employees. The claimant says that the reason for this finding was that the airline did not give evidence to demonstrate how the procedure was followed to identify the employees declared redundant. They submit that in the instant Claim, there was not even any procedure or objective criteria established, let alone its application on the 1st, 2nd and 3rd Claimants. The claimants argue that the Respondent irredeemably failed to prove the validity and/or fairness of the 1st, 2nd and 3rd Claimants' termination. Since the Respondent alleged that they declared redundancy for operational reasons, the Respondent had the burden to prove the validity and fairness of the reasons for the redundancy.

Respondent's submissions

30. The Respondent submits that upon it facing low demand for advisory products, the situation led to a restructuring of the Equity Bank Investment Group. The positions held by the 1st, 2nd and 3rd Claimants as industry specialists were declared redundant by no fault of their own and the termination was just and fair. The Respondent urged the Court to be guided by the reasoning of the Court in Jane I Khalechi vs Oxford University Press EA Limited [2013] eKLR where the Court observed as follows:

> " Courts have held that employers have the prerogative to determine the structures of their businesses and therefore make positions redundant. Positions and not employees, become redundant. When the position becomes redundant, the employee can be re-deployed, which means the employee is given another job, or the employee is retrenched, meaning the employee loses the job altogether...Companies restructure not necessarily because they are in financial distress, but for such other reasons as mechanization of the modes of production. The terms redundancy, reorganization and restructuring are related, but can be separable. There are other terms used in different jurisdictions, to denote this form of employment termination. These include downsizing, lay-off, and rightsizing. Whatever term is used, the decision results in the dissolution of an employment agreement" 42. It is the 1st, 2nd and 3rd Claimants' allegation that the redundancy was not justified as the cause of the Claimants' termination is without any basis.

31. The Respondent submits that the Respondent consulted with the Claimants in good faith, with candour and reasonableness. They further submit that the Respondent held a meeting with the affected employees on February 26, 2016 wherein the Claimants were informed of the challenges the Respondent had with the advisory team and the decision by the Board to close the Advisory team. The Claimants were given time to think about the matter and additional consultative meetings were held on March 8, 2016 and March 9, 2016. The Respondent submits that through consultative meetings the Respondent sought to find mitigation strategies and give the Claimants the much-needed preparedness. When it became inevitable, and the Respondent was unable to find alternative roles for the Claimants, the Respondent issued the Claimants with redundancy notices on March 11, 2016.

32. The Respondent argue that it established the criteria to be applied in the redundancy process, uniformly applied it across the board and identified the employees to be affected.

33. In support of this submission, the Respondent relied on the decision of the Court of Appeal in Cargill Kenya Limited v Mwaka & 3 others (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR) where the Court held that "...in determining who goes and who stays, the employer must ensure that it fairly, objectively, and uniformly applies the selected criteria. The employers should carefully guard against bias and discrimination especially where many employees are affected..."In determining the employees

to be declared redundant, the Respondent considered various factors including the 1st, 2nd and 3rd Claimants skills and abilities. It is not disputed that the 1st, 2nd and 3rd Claimants are industry specialists in various capacities as experts in manufacturing, business strategy, transport & logistics, and asset & wealth management. It is evidenced both from the employment contracts for each of the said Claimants and their witness statements that these Claimants had specialized skills.

Determination

34. It is not in dispute that the 1st to 3rd Claimants work was terminated on account of redundancy. What remains to be decided is whether there were valid reasons for the declaration of redundancy and whether the Respondent followed the required procedure in doing so. This is in addition to the issue whether the 4th claimant's contract was breached and was coerced to resign. The court will then fashion the appropriate remedy, if any.

35. In determining whether the claimants were lawfully declared redundant the court will of course consider the relevant statutes and case laws. In Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR the Court of Appeal held that Section 40 (1) (a) stipulates, 1. 'An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions;- a) Where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for and the extent of the intended redundancy, not less than a month prior to the date of the intended termination' .....the learned Judge of the High Court in the Kenya Union of Commercial Food and Allied Workers vs British American Tobacco Cause No. 143 2008 outlined the manner in which redundancy consultations should be conducted when he stated, "The legal obligation on the parties to consult on the matter is designed to enable the parties to explore ways and means of minimizing the social and economic impact of the loss of jobs. The obligation is primarily imposed on the employer. The union's duty is to make reasonable counter proposals to the employer's proposals with a view to giving the affected employees a "soft landing ground". In our view such consultations must be meaningful and held within the true spirit of collective bargaining. The employer ought to give the union an opportunity to influence its decision. There must be a genuine attempt to resolve the matter through objective consideration of the proposals generated by the parties to mitigate the harsh impact of redundancy.

36. In Cargill Kenya Ltd v Mwaka & 3 others [2021] KECA 115, the Court of Appeal discussed at length the import of the notice required by section 40(1)(a) & (b) of the *Employment Act*, 2007 and observed that: "While the requirement of consultation was not expressly provided in section 40 of the *Employment Act*, that requirement was implied, as the main reason and rationale for giving the notices in section 40(1)(a) and (b) to the unions and employees of an impending redundancy. Section 40(1) of the Act did not expressly state the purpose of the notice. Although it also did not expressly provide for consultation between the employer and the employees or their trade unions before the final decision on redundancy was made, the requirement for consultation was provided for in the Kenyan law and implicit in the *Employment Act* itself. By dint of Article 2(6) of *the Constitution*, the treaties and conventions ratified by Kenya were part of the law of Kenya. Kenya was a State party to the International Labour Organization (ILO), which it joined in 1964 and was bound by the ILO conventions. Article 13 of Recommendation No. 166 of the ILO Convention No. 158-Termination of Employment Convention, 1982-required consultation between the employers on the one hand and the employees or their representatives on the other before termination of employment under redundancy. In interpreting statutes, the courts had the function of filing in the textual detail by implication, which arose either because it was directly suggested by the words expressed, or because they were indirectly suggested by rules or principles of law which were not excluded by the express

wording of a statute. Consultations on an intended redundancy between the employer and the relevant unions, labour officials and employees were implied by section 40(1)(a) and (b) of the *Employment Act*. Consultation was also specially required by Article 47 of *the Constitution* and section 4(3) of the *Fair Administrative Action Act*. An administrative action was defined under the *Fair Administrative Action Act* to include any act, omission or decision of any person, body or authority that affected the legal rights or interests of any person to whom such action related. Employers fell within the category of persons whose action, omission or decision affected the legal rights or interests of employees, and more so the redundancy by the appellant in the instant appeal was not contested. The appellant was therefore also bound by the provisions on consultation required by article 47 of *the constitution* of Kenya and section 4(3) of the *Fair Administrative Action Act*. The purpose of the notice under Section 40(1)(a) and (b) of the *Employment Act*, as was to give the parties an opportunity to consider measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned.

37 Alongside such as finding alternative employment, the consultations were meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it was unavoidable. That meant that if parties put their heads together, chances were that they could avert or at least minimize the effects of the terminations resulting from the employer's proposed redundancy. Where redundancy was inevitable, measures should have been taken to ensure that as little hardship as possible was caused to the affected employee",

38. Alongside the cited authorities Section 40 0f the *employment Act* provide the procedure to deal with redundancy. The said section states as follows;

a. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

b. where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

c. the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

d. where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

e. the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

f. the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

g. the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service."

39. The court has perused the documents submitted by the respective parties and has not found that there was due notification to the claimants Nos 1 to 3 to declare them redundant as required by section 40 (1) (b) of the *Employment Act*. The notice given to the labour officer by the respondents was never copied to the 1-3rd claimants and so fails the requisite legal prerequisite.

40. The reason proffered for the termination by the respondents is that the positions were no longer profitable to the company and further there was no other suitable placements for the claimants Nos 1 to 3 and so they had to be let off. This was a managerial decision taken by the Respondent and which it deemed to have been taken in the interests of better management of the company. There was no evidence on record to demonstrate that the 1st to 3rd claimants were shown concrete evidence of that assertion and further there was no involvement or input of the claimants in selecting those to be declared redundant from all the pool of the employees of the respondent .Even though there may have existed a valid reason to declare the redundancy nevertheless as held in the case of Agnes Ongandi v Kenya Electricity Transmission Company Limited (2016) eKLR "there must be a rationale, justification and participation of employees upon the employer setting out clear criteria to be followed".

41. The court has also not seen any evidence as to how the Respondent selected the 1st to 3rd claimants to be the ones declared redundant. Section 40 0f the *employment act* is clear that the criteria for selection as who is to be declared redundant be made transparent.

42. The other point is that if the organisation has other suitable jobs or positions the employer should demonstrate that the employee cannot be redeployed in such other positions and the layoff is the last option available. The respondent is a big employer and should have demonstrate it had no other possible placement for the three claimants.

43. Finally the court considered whether there were due consultations with the claimants before the decision to terminate was taken. In both the letters of termination to the claimants and the notice to the labour office, the Respondent was merely informing of a fait accompli, that is, a decision that had already been arrived at by the board to terminate them on account of redundancy. It did not therefore give the claimants or the Labour officials the opportunity to engage with a view to minimising the effects of making the redundancy declarations. Genuine and meaningful consultations could only be undertaken during the initial stages of the redundancy process.

44. In the case of Jane Khalechi v Oxford University Press E.A Limited Cause 924 of 2020 the court held that if indeed there was re-organisation in the respondent business it must have serious management concern that should have involved extensive consultations and documentation. The court held that an employer should not be allowed to simply cite re-organisation during the redundancy and without any basis identify and single out an individual employee for termination.

45. In the case of Kenya Airways Limited V Aviation and Allied Workers union Kenya and 3 others (2014) e KLR the court held that as a whole for termination of employment under redundancy to be held lawful it must be both substantially justified and procedurally fair.

46. The provisions in section 40 of the *employment act* is therefore mandatory and is not like the employer has a choice as to whether to adhere to the same or not.

47. The respondent having failed to follow the provisions of the laws in declaring the claimants Nos 1, 2 and 3 redundant therefore finds and declares that the said claimants Nos 1, 2 and 3 were unlawfully and wrongfully terminated.

Claimant

48. The claim of the 4th Respondent as can be seen from statements is that the Respondent despite its promises and representations significantly altered the terms of the consultancy agreement with the result that the employment contract clawed back on some of his legal entitlements and severely diminished his earning capacity.

49. The complaint is that the contract dated the 2nd January 2015 took away certain entitlements which otherwise were part of the earlier consultancy agreement. There is no evidence of statements made to show the 4th claimant was induced to enter into the contract prior to the said contract being signed by the parties as to constitute misrepresentations. The said contract is dated 30th January 2015 and it stated that his consolidated salary was US $ 12000. The other benefits he is alluding to including transport and house allowance are not contained thereto.

50. The 4th claimant avers his employment was terminated by the CEO on 7th April 2016. He says he was told by Mr Reuben Mbindyo to resign and so he did so and on 8th April he got a letter titled "acceptance of your resignation". He says he signed the letter so that he gets his terminal benefits. The court noted that none of the parties produced the 4th claimant's letter of resignation.

51. The court finds no evidence presented by the 4th claimant that he was forced or duped to sign the appointment letter between him and the respondent. He worked under the terms thereto until the 7th April 2016 when he tendered his resignation. There is no evidence that the 4th claimant was terminated from his employment as he claims but instead he actually resigned. In the absence of any evidence the claims by the 4th claimant are unproved.

52. Furthermore the court has found no evidence that 4th claimant was coerced to resign from his employment. The only document attached in relation to the issue is the acceptance letter dated 8th April 2016 which shows that resignation was at the instance of the 4th claimant and was acknowledged and accepted by the respondent.

53. In the case of Edwin Kipchumba v National Bank of Kenya Limited (2018). The court held "resignation is a unilateral act on the part of employee. There is no provision in the *Employment Act* suggesting that its efficacy is dependent upon any action of the employer. It follows therefore that once an employee hands in a resignation letter the employment relationship comes to an end. The subject of any ensuing obligations to the employer is a separate one to be pursued as such."

54. The court rules that the 4th claimant failed to make a claim against the respondent and so finds he is not entitled to the prayers sought.

Remedies

1. The 1st Claimant Allan John Roberts is awarded damages for wrongful and unlawful termination of employment equivalent to three months as he was paid other terminal dues amounting to Kshs.4,665,955/=. He is awarded US$11000 X 3 = US$33000.

   (b) Prayers for aggravated damages for discrimination fails as discrimination is not proved and also prayer for house allowances are declined as were not part of the contract.

   (c) Any unpaid pension should be paid to the 1st Claimant.

2. 2nd Claimant Raphael Devantier

   The 2nd Claimant is awarded damages equivalent to three months salary for unlawful and wrongful termination at US$ 13500 X 3 = 40,500 US$ and he was paid other terminal dues amounting Kshs.6,717,879/=.

   (b) The prayers for aggravated damages for discrimination are not proved and so are declined and so is housing allowance which was not part of the contract.

   (c) Any unpaid pension dues should be settled forthwith.

3. Gerard Jan Hofhuis is awarded equivalent to three months salary and he had been paid other terminal benefits 12500 X 3 = 37,500 US$.

(b) And prayer for aggravated damages fails as there is no proof of discrimination.

(c) House allowance also is not awarded as was not part of the contract of employment and so the same is declined.

(d) Pension if owing should be paid forthwith.

(e) The prayer for unpaid leave of 2,000,000/= is also not proved and so is declined accordingly.

4 4th Claimant – Alexander's suit is dismissed and each party is ordered to pay their costs.

(f) If there is any unpaid pension to the 4th Claimant, he should be paid the same forthwith.

(g) The Respondent is to pay costs of the suit to the 1st, 2nd and 3rd Claimants.

Orders accordingly.

Dated, signed and delivered virtually at Nairobi this 12th day of January 2023.

ANNA N. MWAURE

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.

ANNA N. MWAURE

JUDGE