



**Mng'anya v Smart Banking Solutions Ltd (Cause 142 of 2020)
[2023] KEELRC 387 (KLR) (15 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 387 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 142 OF 2020
JK GAKERI, J
FEBRUARY 15, 2023**

BETWEEN

ROBERT MNG'ANYA CLAIMANT

AND

SMART BANKING SOLUTIONS LTD RESPONDENT

JUDGMENT

1. The Claimant initiated this suit by a Memorandum of Claim filed on 6th March, 2020 alleging unfair, wrongful, arbitrary and malicious declaration of redundancy, discrimination, harassment and breach of contract.
2. The Claimant avers that he joined the Respondent in Tanzania in June 2012 and moved to Kenya where he worked until 30th October, 2017 when his employment was unlawfully terminated. That his basic salary was USD 7000 per month and the contract was oral.
3. It is the Claimant's case that the Respondent secured a Work Permit for him dated 24th June 2016 for a period of 2 years.
4. The Claimant further alleges that he was being paid Kshs.10,000 including a disturbance allowance, housing allowance of USD 1350 and the Respondent paid fees for his children who were attending school in Kenya and was paid until 2017 when the employer started experiencing financial challenges and had to relocate the children to Tanzania as school fees was not being paid and the bank was also demanding its dues with interest on the credit card.
5. The Claimant further avers that he worked for the Respondent faithfully and diligently until his employment was unlawfully terminated.



6. That the Respondent insisted that the Claimant should not work for competitors and would be paid salary arrears and other payments in full and final settlement and was given a mutual separation agreement on the separation but rejected it and engaged an advocate.
7. The Claimant further alleges that he was unlawfully and unfairly declared redundant and his dues were never paid including four (4) month's salary before departure, USD 35,000. That he lost the sum of USD 1,350 as house deposit and returned to Tanzania.
8. The Claimant prays for;
 - i. A declaration that termination of his employment was unfair and unlawful.
 - ii. One month salary in lieu of notice, USD 7,000
 - iii. Fifty-four (54) leave days, USD 10,000 as follows: 2016 – 28 days, 2017 – 20 days.
 - iv. Twelve (12) months' salary for unlawful termination, USD 84,000
 - v. Arrears of salary, USD 11,250
 - vi. Rent for June, July, August and September 2017 at USD 4,050
 - vii. Certificate of service
 - viii. Costs of this claim
 - ix. Interests at court rates till payment in full
 - x. Any such other or further relief as the court may deem just and expedient to grant.

Respondent's case

9. In its Memorandum of Reply filed on 27th July 2021, the Respondent avers that it was incorporated in 2014 and the Claimant was a consultant and denies having employed or terminated his employment.
10. The Respondent further avers that the Claimant was responsible for school fees and house rent.
11. It is the Respondent's case that sometime in July 2017, the Claimant travelled to Tanzania and did not return to the Respondent's premises in Kenya as expected and was subsequently duly paid all compensation due.
12. The Respondent avers that after the Claimant's failure to return to Kenya, the Parties entered into discussions on a Mutual Separation Agreement and agreed that the Claimant be paid USD 35,000 by instalments and by letter dated 7th March 2018, the Claimant requested the Respondent to deduct from his final dues all outstanding debts with respect to his overdrafts and was paid as follows;
 - a. 19th December, 2017 USD 8,750
 - b. 15th January, 2018 USD 8,750
 - c. 6th March, 2018 USD 8,750
 - d. 19th April, 2018 USD 1,881.85
13. That the total amount paid to the Claimant was less the outstanding credit card debt owed by the Claimant which the Respondent had guaranteed.



14. The Respondent avers that the Claimant has not come to court with clean hands as he had deliberately failed to disclose the terms of the Mutual Separation Agreement and the amount paid to him in honour of the agreement of USD 35,000 and the suit was filed almost 3 years after the parties disengaged and no terminal dues were outstanding.
15. That the Respondent was not responsible for payment of the Claimant's children school fees or rent.
16. The Respondent prays for dismissal of the suit with costs.

Claimant's evidence

17. The Claimant adopted the contents of the written statement and was cross-examined.
18. The Claimant testified that he was engaged by the Respondent in Kenya in 2014, was Tanzanian and needed a work permit. He admitted having been paid previous salary of USD 27,000. The witness disingenuously told the court that he did not understand what was being paid but could recall a discussion on WhatsApp and e-mails with the employer.
19. That he had not been paid for 2 months by the time he left with his sons. He testified that he accepted the agreement but did not sign it. That he agreed to be paid within a period of 4 months and the entire amount of Kshs.35,000/= was paid to him as follows; salary for July 2017 USD 7,000, severance pay 21,000 and annual leave 7,000. That he accepted the agreement sometime in December 2017 and did not return the money paid.
20. The witness confirmed that he had accepted USD 7,000 as outstanding leave and was paid all outstanding salaries as at December 2017 and the claim for salaries for 2016 was erroneous. That he had no salary arrears to claim as itemised under paragraph 14(v) of the Memorandum of Claim. It was his testimony that there were arrears for house allowance for June to September.
21. As regards the amount accumulated on the Credit Card, the Claimant admitted that he was supposed to pay the amount due to the bank as the employer was the guarantor.
22. Finally, the Claimant was emphatic that he negotiated with the Respondent and was paid the sum of USD 35,000.
23. On re-examination, the witness testified that draft mutual separation agreement identified him as an employee of the Respondent and his passport number had been inserted. That the Respondent calculated dues from 2016 yet he started working in 2012. That he did not attend any training seminar and the Respondent had no new projects and was willing to continue working for the Respondent and did not sign the mutual separation agreement as requested.
24. That he was not given a certificate of service.
25. The witness confirmed that by 21st August, 2017, he was already in Tanzania and communication was by email and the Respondent was facing challenges and he had no air ticket to travel to Kenya.

Respondent's evidence

26. RWI, Mr. Patrick Ngugi Wairagu, adopted the written statement and testified that the Respondent was incorporated on 27th November, 2014 and commenced trading in Kenya in January 2015 and he joined the company on 18th January, 2016.
27. It was his testimony that sometime around 24th June, 2016, the Claimant and the Respondent agreed that the Claimant be engaged as a Consultant Chief Technical Officer and was not part of the



- Respondent's payroll and was paid a consolidated commission of USD 7,000 inclusive of housing allowance.
28. That his commission subsequently increased to about 8,350 to cater for the children's school fees and credit card expenses guaranteed by the Respondent.
 29. The witness explained that owing to the impending general election in August 2017, the Respondent started experiencing cash constraints but paid salaries and commissions until May, 2017 when there were delays in payment and for senior staff and consultants it was paid by instalments.
 30. That in July, 2017, the Claimant travelled to Tanzania on leave and did not return and his commission was paid until October 2017 when discussions on a settlement agreement commenced and he prepared the draft but the Claimant did not sign it though the Respondent honoured its part of the bargain.
 31. On cross-examination, the witness confirmed that he found the Claimant in employment and Diamond Trust Bank Limited was the only client the Respondent had.
 32. That the Claimant was working for SBS Tanzania from 2012.
 33. The witness testified that the Respondent company was not doing well and the Claimant was released.
 34. The witness confirmed that when the Claimant left in July 2017, he was still an employee of the Respondent even up to September 2017. The witness further confirmed that the emails showed that the company's projects were dead and the Claimant was essential to the effective operations of the company.
 35. That he had no evidence of the payment of the sum of Kshs.835,000/= and Kshs.125,000/= and Kshs.250,000/= paid in August and September respectively.
 36. On re-examination, the witness testified that the Claimant joined the Respondent in July 2016 as evidenced by a copy of the work permit on record.
 37. That while in 2016, the Claimant was paid in US Dollars, the SWIFT payment effected on 3rd December 2020 was in Tanzania shillings.

Claimant's submissions

38. According to the Claimant's counsel, the issues for determination were;
 - i. Unfair, wrongful, arbitrary and malicious redundancy contrary to Section 40 of the [Employment Act](#).
 - ii. Discrimination and harassment contrary to Section 45 of the [Employment Act](#).
 - iii. Breach of employment contract.
 - iv. Reliefs sought.
 - v. Costs
39. As regards the first issue, it was submitted that the Claimant was engaged by the Respondent in June 2012 under an oral agreement and was declared redundant in October 2017 and had worked for 5 years and the termination of employment was unfair, wrongful and malicious as the provisions of Section 40 of the [Employment Act](#) were not complied with. The decisions in *Hesbon Ngaruiya Waigi V Equatorial Commercial Bank Ltd (2013) eKLR* and *Jackson Muiruri Mwangi V Sinohydro Corporation (K)*



Limited (2016) eKLR were relied upon to urge that the prescriptions of Section 40 of the [Employment Act](#) are mandatory.

40. It was submitted that the Claimant was neither given a termination notice nor paid outstanding leave days in cash. That the sum of USD 35,000 paid by the Respondent was salary arrears for four months and could not extinguish the claim for redundancy.
41. On discrimination and harassment, counsel relied on section 45(5) (b) of the [Employment Act](#) to urge that the Claimant was discriminated in comparison to his colleagues. That the delay in the remission of salary amounted to discrimination and when he returned to Tanzania he was told not to return to Kenya but service the Respondent's clients in Tanzania.
42. That he was treated differently because of his ethnic background. That no other senior officer was treated like him.
43. As regards breach of the employment contract, the decision in *Kyengano V Kenya Commercial Bank Limited & another* (2004) eKLR was cited to underline the essence of freedom of contract.
44. Counsel submitted that the Respondent failed to pay fees for the Claimant's children in school having agreed to do so which humiliated the Claimant and the Respondent terminated his employment on account of redundancy. That although the Respondent claimed that the Claimant left in July 2017 and did not return, it continued paying his salary until October, 2017 when he was declared redundant.
45. The decision in *George Marita V Leading Rocks & Access Systems* (2022) eKLR was cited to underscore the duty of the employer to contact an employee who absconds work to ascertain why he/she was not reporting to work. It was submitted that the Claimant neither absconded nor deserted the work place.
46. As regards the reliefs sought, it was submitted that since Mr. Sean Merali did not testify, the Claimant had proved his case to the required standard.
47. The decisions in *Kimotho V Kenya Commercial Bank Limited* (2003) EA 108 and *Jeniffer Nyambura Kamau V Humphrey Mbaka Nandi* (2013) eKLR were relied upon to emphasize the effect of failure to call a witness and the burden of proof under the [Evidence Act](#) respectively.
48. On costs, the decision in *Cecilia Karuru Ngayu V Barclays Bank of Kenya & another* (2016) eKLR was relied upon to emphasize the entitlement of the Claimant to costs unless guilty of misconduct, negligent, vexatious or oppressive conduct.
49. The court was urged to award costs.

Respondent's submissions

50. By the time the court retired to prepare this judgement on 9th January, 2023, Respondent's submissions were not traceable in the system.

Analysis and determination

51. The issues for determination are:
 - i. Whether the Claimant was an employee of the Respondent and when he was employed.
 - ii. Whether the Claimant's employment was unlawfully terminated by the Respondent or he was declared redundant.
 - iii. Whether the Claimant is entitled to the reliefs sought.



52. As regards the engagement of the Claimant and when, parties adopted contrasting positions. While the Claimant testified orally that he joined the Respondent in 2012 in Tanzania, and worked till October 2017, the Respondent's witness testified that the Claimant was engaged as a Consultant Chief Technical Officer on 24th June 2016 under an oral agreement. RWI produced no documentary evidence of the terms of engagement and admitted that he was employed by the Respondent in January 2016 and was unaware when the Claimant joined and on what terms having joined the Respondent before him.
53. Puzzlingly, the Claimant's written statement has no date of engagement or employment nor the actual remuneration the Claimant used to receive per month. The Claimant's evidence has two inconclusive figures USD 10,000 and USD 7,000. RWI confirmed the sum of Kshs.7,000/= as the consolidated commission payable to the Claimant. A copy of an email from the Claimant to one Sean Merali confirms that the Claimant's consideration per month was USD 7,000.
54. Section 2 of the *Employment Act* provides that:
- Employee means a person employed for wages or a salary and includes an apprentice and indentured learner.
55. The definition of employer under section 2 of the *Employment Act* is sufficiently extensive and encompasses the Respondent.
56. Finally, Section 2 defines a contract of service as “an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership . . .”
57. Both the Claimant and RWI are in agreement that the contract between the parties was oral but differ on the terms.
58. Was the Claimant an employee of the Respondent?
59. Having demonstrated above, the Respondent engaged the Claimant to render services and he did so up to October 2017 and was paid the sum of USD 7,000 per month which was subsequently reviewed to 8,350 and the contract of engagement was oral, the Respondent adduced no evidence to contradict the Claimant's assertion that he was an employee.
60. The court is satisfied and finds that the Claimant has on a balance of probabilities demonstrated that he was an employee of the Respondent. This position is reinforced by the provisions of section 10 (7) of the *Employment Act* which provides;
- If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in sub-section (1), the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.
61. As regards the date of employment, parties similarly adopted different dates.
62. As mentioned elsewhere in this Judgement, the Claimant's written statement makes no reference to the date of employment or relocation to Kenya. The copy work of the work permit on record is dated 24th June, 2016. His sons student passes are dated earlier on 28th April, 2016.
63. RWI testified that the Respondent was incorporated on 27th November, 2014 and commenced business in January 2015 and could thus not have engaged the Claimant before January 2015.



64. Similarly, the Claimant testified that being a Tanzanian National, he required a work permit and the employer facilitated its acquisition in June 2016 for a duration of 2 years.
65. From the documents on record, the Claimant was not eligible for employment in Kenya before 24th June 2016 when he obtained a work permit.
66. Equally, the Claimant's salary paid on 3rd December 2015 was in Tanzania shillings which begs the question why the salary was paid in Tanzania if the Claimant was indeed in Kenya.
67. The circumstances of this case would appear to suggest that in 2015, the Claimant was an employee of the Respondent though working in Tanzania and only relocated sometime in 2016 which would appear to reinforce RWT's evidence that the Respondent commenced business in Kenya in January 2015.
68. Logically, the earliest the Claimant could have joined the Respondent was January 2015 and the court so finds.
69. As to whether the Claimant's employment was unlawfully terminated or the Claimant was declared redundant, the Claimant averred that his employment was unlawful and unfairly terminated by the Respondent. The Respondent on the other hand maintained that the Claimant remained its employee even after he returned to Tanzania in July 2017 and was paid until October 2017 when discussions on a mutual separation commenced.
70. Similarly, the emails and WhatsApp messages exchanged by the parties reveal a candid and cordial deliberations between the parties.
71. Was the Claimant declared redundant, and if so, were the provisions of the [Employment Act](#) complied with?
72. It requires no gainsaying that Section 2 of the [Employment Act](#) defines the term redundancy and Section 40 sets out the conditions to be complied with for a redundancy to pass muster.
73. Section 2 of the Act provides that redundancy means:
- The loss of employment, occupation, job or career by involuntary means through no fault of the employee involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.
74. Section 40 of the [Employment Act](#) prescribes the conditions an employer must comply with in carrying out a redundancy. The provision itemises the seven conditions to be met. The provision is couched in obligatory terms as emphasized in *Barclays Bank of Kenya Ltd & another V Gladys Muthoni & 20 others* (2018) eKLR where the Court of Appeal held as follows;
- “Section 40(1) of the [Employment Act](#) prohibits in mandatory tone, the termination of a contract of service on account of redundancy unless the employer complies with the following seven conditions, namely;
- a. If the employee to be declared redundant is a member of a union, the employer must notify the union and the local Labour Officer of the reasons and extent of the redundancy at least one month before the date when the redundancy is to take effect;
 - b. If the employee is not a member of the union, the employer must notify the employee personally in writing together with the Labour Officer;



- c. In determining the employees to be declared redundant, the employer must consider seniority in time, skill, ability, reliability of the employees;
 - d. Where the terminal benefits payable upon redundancy are set under a collective agreement, the employer shall not place an employee at a disadvantage on account of the employee being or not being a member of a trade union;
 - e. The employer must pay the employee any leave due in cash;
 - f. The employer must pay the employee at least one month's notice or one month's wage in lieu of notice; and
 - g. The employer must pay the employee severance pay at the rate of not less than 15 days for each completed year of service.”
75. While the Claimant maintained that he was declared redundant unlawfully and unfairly, the Respondent responded that the parties separated mutually, pursuant to an agreement. I will revert to this issue shortly.
76. Notably, both parties were in unison that the Respondent company was facing financial challenges in the second half of 2017 and could not pay salaries on time. RWI admitted that the Respondent's business was low. He confirmed on cross-examination that by August 2017, all the company's projects were dead and the company was struggling to stay afloat. This was clearly captured by an email from Sean Merali to the Claimant dated 21st August, 2017 which painted a depressing picture of the company as follows;
- “The large projects helped keep us afloat. Now that Malawi Project is dead, Pamoja is dead, Huduma is dead...all our eggs have failed to hatch. The Malawi factory was supposed to give us annual income to recover from Tanzania loan payments. That too didn't work. The voucher contract has been cancelled.
- Things are bad bob”
77. In his response, the Claimant stated as follows;
- “It is a shock. Let's meet and chart the way forward. There will be a way through. . .”
78. An email from Sean earlier in the afternoon had informed the Claimant that the company was unable to absorb accommodation costs and had suggested to the Claimant to take up training seminars as paid events based on his experience but the proposal appear to have fallen through.
79. Taken collectively, the email communication from Sean Merali to the Claimant in essence amounted to a redundancy statement by the Respondent.
80. However, it is common ground that the Respondent did not formalise the redundancy but engaged the Claimant for a mutual separation and the parties negotiated and agreed as confirmed by the Claimant on cross – examination. The witness confirmed that he accepted the arrangement sometime in December 2017 and money changed hands. The Claimant was as per the agreement paid a total of USD 35,000 less the Credit Card dues to the Diamond Trust Bank. The Claimant confirmed on cross-examination that he received the last instalment on 19th April, 2018.



81. Puzzlingly, the Claimant untruthfully testified that he did not understand what was being paid for, but when questioned by the Respondent’s counsel, he immediately recalled email communication and WhatsApp messages with the Respondent’s Sean Merali.
82. Uncontested images of WhatsApp messages between Sean Merali and the Claimant reveal that the discussions commenced in October 2017, a fact the Claimant confirmed on cross-examination and the Claimant engaged an Advocate. The Respondent was to draft the separation agreement and a copy was forwarded to the Claimant who promised to provide feedback.
83. Finally, by an email dated 27th November, 2017, the Claimant stated as follows;
- “ . . . I had set aside my July salary to offset the Credit Card. Let me know when I can receive this and the 2016 leave. I had a chat with Mzee on when the remaining USD 21,000 and USD 14,000 (July and 2016) can be paid would like 50% and remaining in 3 months instalments. I confirmed receiving the October salary. Am waiting for the amendments on the agreement which earlier sent and will sign it. Looking forward to close settlement for our mutual and continued cordial relationship.
- Wishing you well Bob”
84. This email would appear to suggest that there was a binding oral agreement between the parties whose written contents were yet to be finalised for execution by the parties. The copy on record was not executed and is of little probative value. RWI testified that he drafted the Mutual Separation Agreement and confirmed that the Claimant did not sign it but added that the Respondent honoured the terms of the agreement fully by paying the USD 35,000 which the Claimant acknowledged receipt.
85. The Claimant confirmed that he accepted USD 7,000 as leave payment and was paid all outstanding salaries as at December 2017 including the July Salary. He admitted that the Claim for 2016 was erroneous as he had nothing outstanding. Relatedly, he conceded he had no other salary arrears and the prayer for USD 11,250 was unsustainable.
86. Finally, on the prayers, the witness confirmed that rent allowance was payable with the salary but the June – September allowance had not been paid.
87. For the above stated reasons, the court is satisfied and finds that the Claimant and the Respondent entered into an oral separation agreement which was subsequently reduced into writing but was not executed by the parties.
88. It is trite law that a contract need not be written. It may be oral. As Mulwa J. held in Patrick Njuguna Kimondo V Geoffrey Vamba Mbuti (2019) eKLR,
- “ . . . Oral agreements supported by credible evidence can be and are enforceable.”
89. In this case, the totality of the WhatsApp messages and emails is evident that the parties had entered into a contract to separate mutually and the terms are set out in the exchanges between them.
90. However, contrary to the evidence of RWI that the Claimant waived his rights to plead unlawful termination, he did not as the oral agreement as expressed by the parties had no such clause nor was it express that the sum of USD 35,000 was in full and final settlement of the Claimant’s entitlements. The Claimant did not sign the draft agreement on record. See Coastal Bottlers Ltd V Kimathi Mithika (2018) eKLR on waiver of the right to pursue further claims or actions or effect of a discharge voucher.



91. It is evident that the Claimant was being released because of the dire financial position the Respondent company was facing and was thus declared redundant.
92. It is common ground that the provisions of Section 40 of the *Employment Act* were not complied in any respect and as a consequence, the separation transitioned from a redundancy to an unfair termination of employment within the meaning of Section 45 of the *Employment Act*, 2007.
93. A peripheral issue raised by the Claimant's counsel was whether the Claimant was discriminated and harassed contrary to Section 5 of the *Employment Act*, incorrectly captured as Section 45 (5) of the Act which does not address issues of discrimination and harassment. The contention that the Claimant was treated differently from his colleagues holding similar positions on account of his ethnic background was unsupported by any credible evidence. It is unclear who his colleagues were and how they were being treated for comparative analysis.
94. In *OI Pejeta Ranching Ltd V David Wanjau Muhoro* (2017) eKLR, the Court of Appeal cited with approval the decision in *Transport & General Workers Union & another V Bayete Security Holding* (1998) ZALC 147 where the South Africa Labour court held;

“discrimination takes place when two similarly circumstanced individuals are treated differently . . .”
95. Needless to emphasize, Section 5 (3) (a) of the *Employment Act* outlaws discrimination of the ground of ethnic background among many other parameters. It is unclear as to what the Claimant's ethnicity was as well that of his unidentified colleagues. The Claimant did not avail the essential factual background in support of this allegation.
96. In the absence of cogent evidence to substantiate the allegation, nothing turns on it.
97. Having found that termination of the Claimant's employment was unfair, I will now proceed to examine the appropriate relief(s) available to the Claimant.
 - a. Having found that termination of the Claimant's employment on account of redundancy was unfair, a declaration to that effect is hereby granted.
 - b. One (1) month salary in lieu of notice.
98. The Claimant adduced no evidence of entitlement to the one (1) month's salary prayed for herein. The evidence on record reveal that the Claimant had sufficient indication that his employment was coming to an end and negotiated an exit package.
 - c. Fifty – four leave days
99. The Claimant testified that he accepted USD 7,000 for unpaid leave.

The prayer is unsustainable and is disallowed.

 - d. 12 months compensation
100. Having found that termination of the Claimant's employment was unfair, the Claimant is entitled to the relief provided by Section 49(1) (c) of the *Employment Act*, 2007.
101. In determining the level of compensation, the court has taken the following into consideration.
 - i. The Claimant was an employee of the Respondent for about 2½ years which is a short duration.



- ii. The Claimant had no record of misconduct or warning letter.
 - iii. The parties negotiated an exit package although the Claimant had suggested certain changes and it was unclear whether they were incorporated by the Respondent and ultimately the written agreement was never signed but the Claimant received the sum of USD 35,000.
 - iv. The Claimant did not appeal or contest the redundancy or express his wish to continue serving the Respondent.
102. In the circumstances, the equivalent of one (1) month's salary is fair.
- e. Arrears of salary of USD 11,250
103. The Claimant confirmed on cross-examination that the Respondent had paid all arrears of salary. The prayer is disallowed.
- f. Rent for June – September 2017
104. The Claimant adduced no evidence to establish that the Respondent used to pay him an allowance over and above the salary as housing allowance and that it was outstanding for the months of June, July, August and September 2017. The prayer is disallowed.
- g. Certificate of service
105. The Claimant is entitled to a certificate of service by dint of Section 51 of the [Employment Act](#).
106. In conclusion, Judgement is entered for the Claimant against the Respondent in the following terms;
- a. Declaration that termination of the Claimant's employment on account of redundancy was unfair and unlawful.
 - b. Equivalent of one (1) month's salary USD 7,000.
 - c. Costs of this claim.
 - d. Interest at court rates from date of Judgement till payment in full.
 - e. Certificate of service.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 15TH DAY OF FEBRUARY 2023

DR. JACOB GAKERI

JUDGE

ORDER

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



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

