Ndonye v Kandia Fresh Produce Suppliers Ltd (Cause 1785 of 2017)
[2023] KEELRC 716 (KLR) (16 March 2023) (Judgment)

Neutral citation: [2023] KEELRC 716 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 1785 OF 2017

K OCHARO, J

MARCH 16, 2023

BETWEEN

RAEL NDUKU NDONYE ..... CLAIMANT

AND

KANDIA FRESH PRODUCE SUPPLIERS LTD ..... RESPONDENT

JUDGMENT

Introduction

1. Through a memorandum of claim dated the August 30, 2017, the claimant instituted this claim against the respondent seeking the following reliefs;

    a. A declaration that the dismissal of the claimant from employment was unfair and unlawful and the claimant is entitled to be paid her terminal dues and compensatory damages.

    b. An order for the respondent to pay the claimant her terminal benefits and compensatory damages amounting to Ksh 1, 085,280.

    c. Cost of the suit and interest.

2. The memorandum of the claim was filed together with the claimant's witness statement and the list of documents that she intended to place reliance on as documentary evidence in support of her case.

3. Upon being served with the summons to enter appearance, the respondent entered appearance on the September 18, 2017 and filed its response to the claimant's statement on the December 5, 2017. In the memorandum of reply, the respondent denied the claimant's cause of action, and her entitlement to the reliefs sought.

4. Subsequent to the close of the pleadings, the matter was heard *inter-partes* on merit on the July 21, 2022.

5. At the hearing of the parties' respective cases, the witness statements that they had filed were adopted as part of their evidence in chief and the documents admitted as their documentary evidence.

The Claimant's Case.

6. The claimant states that she first came into the employment t of the respondent in April 2003 as a grader. In her said employment she worked diligently to the respondent's satisfaction. Her monthly cumulative salary was Ksh 14, 400, which was computed at Kshs 480 per a day.

7. The claimant further stated throughout the course of employment with the respondent, she could to work at 7 am and leave at 7 pm thus working 4 extra hours daily. Despite working the extra time, she was never at any time compensated for the same. Furthermore, she worked for 7 days a week and never took her entitled off days and annual leaves, which were equally never paid for by the respondent.

8. It is the claimant's contention that on the January 17, 2015, she was summoned by the respondent's Pack Manager who informed her that work had diminished, and regrettably her services were no longer needed. She stated that speaking from her 11 years' experience in the respondent's employment, the contrary was true, the respondent had sufficient work for her at the time.

9. According to her, the respondent's action amounted to dismissing her on account of redundant, yet there had not been any prior notification to her of the fact that the work at the respondent's had reduced to an extent that her services would no longer be required. She and others were informed that they would be called back as and when work was available.

10. Her efforts to have the matter resolved by conciliation through the labour office didn't bear any fruits as the respondent was not amenable to any amicable settlement by owning their mistake. The conciliator decided that she be paid 63 days' leave pay, and 2 years' service pay. The respondent didn't abide by the decision.

11. It is the claimant's position that the respondent's actions to dismiss her from employment were unwarranted, and unjustified. She had done nothing wrong to warrant a dismissal; the allegation that work had diminished at the respondent's was no valid and genuine reason; the action was not preceded by any notice; and no notice was ever served on the labour officer or her union of any intention to dismiss her on account of redundancy.

12. As the termination was unfair and unlawful, she is entitled the compensation particularised;

    i. One month salary *in lieu* of notice.....Ksh 14,400.

    ii. Unpaid/untaken leave for the entire duration of service being 11 years X 14,400.....Ksh 158,400

    iii. Unpaid/untaken holidays off for the entire period of service being (11/30 X 14,400=11 years x 2(double rate.....Ksh 116,160.

    iv. Unpaid overtime for 4 hours worked daily.

        a. Overtime for normal working days, (14,400/30 x1/8) =4 hours a day for 26 days a month x 12 months x3 years x 1.5(being 11/2 rate for normal working days.....Ksh 336,960

        b. Overtime for Sundays worked (14,400 =30 x 1/8) = Ksh 60 x 12 hours x 4 day x 12 months x 3 years) x 2 being double rate.....Ksh 207, 360.

v. Severance pay (being 15/30 x 14,400 = 11 years for every completed year of service on the account of redundancy..... Ksh 79, 200.

vi. Compensatory damages for wrongful/unfair dismissal being 12 months gross salary (14,400 X12) Ksh 172,800

13. When cross-examined, she told the court that she was terminated with immediate effect by Mr Ochieng and at the time of her termination she was still a casual employee. where she used to work from Monday to Sunday without off days. In the month there would be an off season of two days per a week. During off seasons they were not working.

14. She testified further that there was an arrangement in place for payment of overtime worked. The respondent was paying a general figure of Ksh 70, the pay was not anchored on the hours worked.

15. The claimant asserted that the medical certificates that she had placed before court demonstrated that she had worked for the respondent since the year 2003. The medical reports were a prerequisite for her getting employed by, and continuing to be in the employment of, the respondent.

16. She stated that following the complaint to the labour officer, her dues were computed at Ksh 44,640, which figure was later rectified downwards to Ksh 31,588, which was never paid.

17. The claimant testified that she and other employees got registered as members of NSSF, in the year 2009. Contrary to the respondent's allegation, she never retired voluntarily.

The Respondent's Case.

18. The respondent presented Dickson Mulwa Robert, to testify on its behalf in defence of the claimant's case. The witness stated that the respondent's core business is sourcing for various horticultural products from farmers locally and processing them for both local and export markets. The respondent's product range included beans, snow peas, sugar snaps, garden peas, avocadoes, mangos, passion fruits, baby corn and sugar cane.

19. It is averred that the respondent's operations are cyclic and seasonal, based on the availability of the horticultural products from various environs of Nairobi and the Company's work force size and skill requirements also varied depending on specific product availability, market demand and dynamics. The work force was largely piece rate and wages were paid weekly or bi-weekly.

20. The witness asserted that according to the records held by the respondent, the claimant was its employee as a piece rate wage earner for the intermittent period of January 2011 to December 2014. Her duties were sorting, grading, and packing horticultural produce at the company's warehouse. The allegation by the claimant that she worked for the respondent for 11 years is absolutely untrue. She only worked for days in between the period 2011-2014.

21. The witness further stated that the claimant's wages weren't fixed, they were dependent on the specific assignments given to her at various operations a d duration worked. At no time did the claimant work for a full month, he further contended.

22. The certificate of medical examination presented by the claimant cannot be basis for an assertion that she was an employee of the respondent. Obtaining them flow from the requirement in the food processing industry employees must have one as a pre-requisite for employment in the industry. Holding such a certificate doesn't act as a guarantee for a job but enhances one's chances of securing one.

23. The witness further asserted that from the records, the highest amount that the claimant ever earned, was Ksh 7,950. She wasn't on any monthly salary of Ksh 14,400 as she alleged. The wages were subjected to National Social Fund [NSSF] deductions for the entire period of her employment with the respondent. She cannot therefore claim service pay.

24. He alleged that the claimant stopped working at the end of December 2014, a thing which is common with piece rate workers who do migrate between various employees within the Industrial Area of Nairobi based on available economic opportunities.

25. He testified that the work schedule for the claimant as was for other workers was from 8.00 am to 5.00 pm, with the requisite lunch break from 1.00pm to 2.00 pm.

26. He stated that the matter was referred for conciliation at the Ministry of Labour& Social Security, culminating to the Labour Officer's finding that the claimant was entitled to Ksh 44,640. Considering the computation erroneous, the respondent through its letter dated September 1, 2015 to the labour officer, demanded rectification of the computation. The officer noted the mis-computation, rectified the same and reviewed the figure to Ksh 31,588. The respondent forwarded a cheque for this amount to the Labour Office for onward transmission to the claimant.

27. Cross-examined by counsel for the claimant, the witness testified that the respondent started engaging with the claimant in 2011. The engagement was without any written employment contract. He asserted that though the medical certificate for April 8, 2005, bore the name of the respondent, he was not aware whether the claimant was ever an employee of the respondent before 2011. The medical examination certificates are required by the respondent before employing any person.

28. According to him, the respondent did not have a check in and check out system. As the workers reported, they would write their names down and were not supposed to sign anywhere when they reported to work. It is at the hearing of this matter that he learnt the claimant did not pick her dues from the labour officer.

The Claimant's Submissions.

29. The claimant filed her written submissions on the September 15, 2022 stating that three issues emerge for determination, thus;

    a. What was the nature of the claimant's employment with the respondent?

    b. Was fair procedure applied before disengaging the claimant from employment?

    c. Whether the claimant is entitled to the reliefs sought.

30. On the first issue it was submitted that the claimant was not a piece rate but a casual worker. She further asserted that she worked continuously not intermittently as purported by the respondent. Further that in her last year of service, her salary was consistent, Ksh 480 per a day. This mode of payment cannot be consistent with any suggestion that her employment was piece rate in nature. The payment was for each day worked.

31. The manner of payment clearly placed her under the definition accorded by section 2 of the *Employment Act* for a casual worker. She urged the court to find that indeed she was, but that by operation of the law, section 37[3] of the *Employment Act*, her employment became one terminable by a twenty-eight days' notice under section 35[1][c] of the Act. To buttress this point, reliance was placed on the cases of *Chemelil Sugar Company v Ebrahim Ochieng Otuon & 2 others* (2015)eKLR and *Francis Ndirangu Wachira v Betty Wairimu Maina* (2019) eKLR.

32. The claimant submitted that the respondent's assertion that she voluntarily retired from her employment was not true. Her employment was terminated by the latter on account that its work had reduced to an extent that her services were no longer required. The termination was unfair as the prescripts of section 40 of the *Employment Act* were not taken into consideration. The said failure rendered the termination unfair by dint of the provisions of section 45 of the *Employment Act*.

33. A termination of an employee's can only be said to be fair, where it is established that there was substantive justification and procedural fairness for the same. In support of this submission, the claimant cited the holding in the case of *Walter Anuro Ogal v Teachers Service Commission* (2013) eKLR, that:

> "For a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer to effect the termination."

34. On the last issue the claimant submitted that, the respondent never paid her terminal dues, and further that the unfair termination entitles her to the reliefs sought.

The Respondent's Submissions.

35. The respondent filed its submissions on the October 31, 2022 distilling three issues for determination thus;

    a. Whether the claimant was indeed an employee of the respondent.

    b. Whether the claimant was unfairly terminated.

    c. Whether the claimant is entitled to the reliefs sought.

36. On the first issue, counsel for the respondent submitted, duty by dint of the provisions of section 107 and 109 of the *Evidence Act* lay on the claimant to prove that she was a casual employee of the respondent as she asserted. That the claimant was a casual labourer but not an employee. Fortification on this point was sought in the judicial decision in *Gitobu Imanyara & 2 others v Attorney General* (2016)eKLR cited in the case of *Nelson Okello Gunga v Bidco Refinaries Limited*(2018)eKLR.

37. The claimant's assertion that she started worki8ng for the respondent in the year 2003, holds no water as the only basis for the assertion was the medical certificate tendered by her in evidence. The medical examination certificate was one that was not issued by the respondent, and this much the claimant admitted in her evidence under cross examination.

38. On the second issue, it was submitted that section 47[5] of the *Employment Act* placed a legal burden on the claimant to prove that the termination of her employment was unfair. She didn't manage to do this for the respondent to be required to prove that the termination was justified. The respondent's position that the claimant left her employment in her own volition, was not shaken at all.

39. The claimant's case that her employment was brought to an end on account of redundancy does not find support in the evidence tendered by the claimant. It is a claim that remained unproven.

40. As to whether or not the claimant is entitled to the reliefs sought, it was argued that the claimant having asserted that she was a casual labourer, the reliefs she has sought cannot be availed to her owing to the

said nature of her employment. To support this submission, the respondent's counsel placed reliance on case of *Peter Wambani v Betuel Ndungu t/a Maji Pump Ventures* (2020) eKLR.

Analysis And Determination.

41. Having read the pleadings, evidence on record and the submissions by the counsels, the issues for determination are:

    i. When was the claimant first employed by the respondent?

    ii. What was the nature of the claimant's employment at the time of termination?

    iii. Whether the termination was fair.

    iv. Whether the claimant is entitled to the reliefs sought.

    v. Who should bear the costs of the suit?

When Was The Claimant First Employed By The Respondent?

42. The common factor as regards the relationship between the claimant and the respondent was that the same was commenced and ran without any form of written employment contract. However, the combatants herein were uncompromisingly in conflict as to when the relationship started and on its nature. The claimant contended that she first came into the employment of the respondent in the April 2003, as a grader. On the other hand, the respondent took a position that the claimant was a piece rate earning worker for the intermittent period of January 2011 to December 2014.

43. To demonstrate that she was employed by the respondent from the above stated year, the claimant tendered certificates of medical examination for various times, the oldest being that of February 10, 2005. The certificates were being issued pursuant to the provisions of the *Food and Chemical Substances Act* [cap 254]. The certificate is on a prescribed form [form d], which had a field for insertion of the names of the place and or entity at which the recipient of the certificate was to work. According to the claimant, she would pursue and procure the certificates at the demand of the respondent, for purposes of being allowed to continue working within the workplace.

44. Keenly looking at the provisions of the Act hereinabove mentioned and the certificate issued in the prescribed form [form d] thereunder, one cannot agree with the respondent's suggestion that the certificates are normally issued generally for workers looking for employment within the specific industries/ sectors covered by the Act. The certificates are issued to enable both the employer and the employee be compliant with the statutory requirement[s] under the Act. In my view, that is the reason why the certificate has a specific field for the workplace of the employee.

45. The court notes that after the separation, the claimant lodged a dispute with the labour officer, a fact that the respondent hasn't contested. Subsequently, there was a meeting held in the office of the labour officer on the July 3, 2015. From the officer's letter, which was commonly presented to this court by the parties herein dated August 26, 2015, out of the meeting the respondent was required to pay terminal dues in the sum of Ksh 44,640, made up as, [a] 63 days leave, Ksh 30,240.00 and [b] service pay for two [2] years, i.e 2007 and 2008, Ksh 14,400.

46. The respondent was required to deposit the money with the officer for onward transmission to the claimant. The respondent's witness stated that through its letter dated September 1, 2015, the respondent protested the computation of the amounts indicating that the claimant was not entitled to service pay, since its record did not show that she was its employee in the years 2007 and 2007. That eventually, the computation was rectified.

47. The respondent however did not state to court whether there was any meeting as was proposed in the stated letter to relook the figures, and whether the claimant was involved in any process leading to the alleged re-computation. This court notes that notwithstanding, the alleged reassessment, the item for service pay, Ksh 14400 was maintained. What was reassessed downwards was the leave pay, to Ksh 17,188. The sub- county officer's handwritten computation dated October 7, 2015 tendered as evidence leaves the court to conclude that the officer wasn't convinced that the claimant was not the respondent's employee in the years 2007 and 2008. Subsequently on the March 8, 2017, the respondent deposited a cheque with the officer for the sum including the amount for service pay for the two years. It is therefore estopped to allege that the claimant was not its employee before the year 20011.

48. In sum, I am convinced that the claimant was first employed by the respondent in 2003 as she contended, and that the respondent failed totally to rebut her evidence on that regard. What prevented the respondent to place the record for 2007 and 2008 that it referred to in their letter dated September 1, 2015 to disabuse the claimant's position is anyone's guess. However, a conclusion that production of the same would have been adverse to its case is inevitable. And this court so concludes.

49. In the case of *Lawi Wekesa Wasike v Mattan Contractors Limited* [2016] eKRL, the court stated, and I agree;

> " The practice of an employer failing to keep a record of its employees casual or permanent, on contract terms or open contracts is an act against its interest. Such a practice works against an employer. It is contrary to the law. Such a record should be maintained at all material times pursuant to part x of the *Employment Act* and particularly at section 79..... these provisions are set out in mandatory terms. They are to be adhered to without exception.... to keep such a record would vilify the respondent and or help the court assess the exact relationship between the claimant and respondent. The court is left with the evidence of the claimant and the respondent without any record, the evidence of the claimant is to be believed."
>
> What was the nature of the claimant's employment at the time of termination.

50. From the claimant's pleadings and witness statement of [turned evidence in chief], one garners an unmistakable impression that according to her, her employment relationship with the respondent was one in nature, a contract for unspecified time. The respondent on the other hand was of a firm view that the relationship fell under that category of piece range arrangement. It imperative to state that Kenyan employment is regulated by the *Employment Act*, other statutes, the *Constitution* of Kenya, 2010, and the International Labour Standards. The *Employment Act* recognises four main types of contracts of service; contract for unspecified period of time; for a specified period of time; for a specific task [piece work] and for casual employment. See *Krystalline Salt Limited v Kwekwe and 63 others* [2017] eKLR.

51. Section 2 of the *Employment Act* defines piece work;

> " ..... any work the pay of which is ascertained by the amount of work performed irrespective of the time occupied in its performance."
>
> In a piece rate arrangement, emphasis is given on the task to be accomplished not the time taken. In my view therefore, where an employer asserts that the relationship between him or her and the employee was one anchored on a piece rate arrangement, duty lies upon him or her to prove the pivotal element[s], the specific task that the employee was assigned to complete and, wage payable upon completion. From the evidence placed before this court

by the respondent, there is no material from which it can be discerned that the claimant at the material times was assigned specific tasks to be completed for specific wages.

52. In the upshot, I am convinced that the claimant wasn't a piece rate worker but one who worked under a term contract of employment.

Whether The Termination Of The Claimant's Employment Was Fair.

53. In a dispute regarding termination of an employee's as is here, the law places duty upon the employer to prove the reasons for the termination [section 43 of the *Employment Act*] and further that the termination was on a valid and fair reason [section 45[2]]. These provisions speak to substantive justification. The respondent asserted in its pleadings that the separation occurred when the claimant out of her own volition, stopped working as at December 2014, quite a normal thing for piece rate workers who could migrate between various employees within the industrial area. Imperative to state that the specific date when this happened was not stated.

54. The letter dated September 1, 2015, by the respondent to the labour officer, read in part;

> " ..... please note that Rael Nduku voluntarily requested for early retirement which the company accepted without her serving us with an adverse notice."
>
> I find this version inconsistent with the one herein above stated obtaining in the respondent's pleadings. Further, I find it inconsistent with the allegation that the claimant's employment was on a piece rate arrangement. Voluntary early retirement presupposes existence of a fixed retirement age in a contract of employment or a fixed term of service in the contract.

55. The claimant gave a different explanation for the separation, she was told that the termination was as a result of the reduced work at the respondent's. The respondent didn't tender any evidence for instance by way of statement of accounts, purchase orders, supplies or employee, records, to rebut her evidence. The respondent got blurred by its not firm position that she was a piece rate worker.

56. By reason of the premises, I am not persuaded to believe that the respondent proved that the reason for the separation was a voluntary early retirement by the claimant. It therefore failed to prove that the reason for the termination was valid and fair. I am however persuaded that her employment was terminated on account that there was reduction of work at the respondent's.

57. The claimant alleged that she was dismissed in a manner that suggested that she was on account of redundancy. This notwithstanding I have not lost sight of the fact that at paragraph 6 of her memorandum of claim she alleged summary dismissal. In my view, there is ample evidence that she was summarily dismissed. Section 44 [1] of the *Employment Act* provides for when summary dismissal takes place, that;

> " Summary dismissal shall take place when an employer terminates the employment of an employee without notice or less notice than that to which the employee is entitled by any statutory provision or contractual term."
>
> The claimant's employment was one that was terminable by notice under the provisions of section 35 of the Act. It is clear that no such notice or any notice was given before her employment was determined.

58. Section 44[3] of the Act provides that an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising

under the contract term. The respondent did not assert that the claimant breached her obligations under the employment contract fundamentally or in any manner or at all. It goes without say therefore that there was absent any valid or fair reason for the dismissal.

59. Unless under the provisions of section 44 of the Act, no employer has a right to terminate a contract of service without notice or with notice less than that to which the employee is entitled by any statutory provision or contractual term, so decrees section 44[2] of the Act. Any termination that is contrary to this provision shall be therefore unlawful.

60. Section 41 of the Act sets out the threshold that should be met whenever the employer contemplates terminating an employee's contract of service or summarily dismissing the employee from employment. First the employer is obligated to inform the employee of the intention of termination and the grounds forming basis thereof, secondly accord the employee an opportunity to make representation on the grounds and lastly to consider the representation by the employee or the accompanying person contemplated under the provision before making a decision.

61. Without much ado, it can be easily concluded and I conclude that the stipulations of section 41 of the Act were not adhered to. The dismissal of the claimant from employment was therefore procedurally unfair by dint of the provisions of section 45[2] of the *Employment Act*.

62. In view of the above, I conclude that the termination of the claimant by the respondent was both procedurally and substantively unfair.

Whether the claimant is entitled to the reliefs sought.

i. One Month Salary in lieu of notice.

63. Section 35(c) provides for 28 days' notice before the termination of the employee's employment. The nature of the claimant's employment as i have found herein above was one terminable by the stated notice. The claimant was not issued with the same or any notice before the summary dismissal. By dint of the provisions of section 35 as read together with section 36 of the *Employment Act*, I hereby award the claimant ,one month's salary *in lieu* of notice, Ksh 14.400.

ii. Unpaid/untaken Leave Days For The Entire Period Of Service.

64. The claimant sought a sum of Ksh 158, 400 for the unpaid or untaken leave. Section 28 of the *Employment Act* 2007 provides that the employees will be entitled leave and where leave entitled to is not taken, compensation in lieu thereof shall ensue.

65. There is no contention that when the dispute relating to the claimant's dismissal was placed before the labour officer, one of the items for consideration was outstanding leave benefits to the claimant. The figure of Ksh 17,188 was worked out as payable to the claimant, the respondent consequently issued a cheque whereon the figure was part of the cheque amount. The claimant didn't assert that this was not the rightful figure. I award the same under this head.

iii. Untaken/unpaid Holiday Offs For The Entire Period Of Service

66. The claimant further sought for the untaken holiday offs for the entire period of service. To this court this is too general a claim. Which holidays and off days? specificity on this lack in the claimant's pleadings and evidence. A court cannot make an award under a claim that has just been thrown to it.

iv. Unpaid Overtime For The 4 Hours Worked Daily Including Sunday

67. The claimant further asserted that for the 11 years she worked for the respondent, she could report to work at 7.00 am and leave at 7.00 pm, therefore working for four extra hours daily, consequently claiming Ksh 336,960. The claimant didn't lead any evidence to establish her entitlement to this relief. Reliefs are awarded on evidence not submissions. I decline to award any compensation under this head therefore. On the same breath, I decline to award the claim for "overtime for Sunday".

v. Severance Pay For The Entire Period

68. I have considered the evidence on record and not that for the period 2011 onwards, the respondent remitted NSSF deductions for the claimant's account. For the period that this happened the claimant cannot be heard to urge any entitlement to service pay. However, I award her service pay for the years 2003 to 2010, Ksh 50,400.

vi. Compensation for the unfair termination.

69. The claimant sought compensation for the unfair termination. The authority to make this award flows from the provisions of section 49 of the *Employment Act* and the same is exercised depending on the circumstances of each case. Taking into account the period the claimant worked for the respondent and the termination having been unfair, I conclude that the claimant is entitled to five (5) months compensation for the unfair termination, thus Ksh 72, 000 is hereby awarded to the claimant.

70. In the upshot, judgment is hereby entered for the claimant against the respondent in the following terms;

    a. A declaration that the dismissal of the claimant from employment was both procedurally and substantively unfair.

    b. Salary *in lieu* of notice.....Ksh 14, 400.

    c. Unpaid leave.....Ksh 17,188.

    d. Compensation pursuant to section 49[1][c] for unfair dismissal, 5 gross salar.....Ksh 72, 000.

    e. Service pay..... Ksh 50,400.

    f. Interest at court rates on the awarded sums from the date of this judgment till full payment.

    g. Costs of suit.

READ, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF MARCH, 2023.

Ocharo Kebira

Judge

In the presence of

Ms. Nyakoa for the Claimant.

Ms. Elizabeth for the Respondent.

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 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.

A signed copy will be availed to each party upon payment of Court fees.

Ocharo Kebira

Judge