



**Otota v Parliamentary Service Commission (Cause 659 of 2016)
[2023] KEELRC 1025 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1025 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 659 OF 2016
K OCHARO, J
APRIL 27, 2023**

BETWEEN

ALLAN IBRAHIM OTOTA CLAIMANT

AND

THE PARLIAMENTARY SERVICE COMMISSION RESPONDENT

JUDGMENT

1. This suit was initiated through a memorandum of claim dated 14th April 2016, by the Claimant against the Respondent. Alleging that the termination of his employment by the Respondent, was wrongful, unfair and unlawful, the Claimant sought against the Respondent the following reliefs and orders:
 - a. That the claimant be paid Kshs 5,472,430 as particularised in paragraph 18 of the claim.
 - b. Cost of the claim.
 - c. Interest on (i) and (ii) above the court rates
 - d. Any other relief that this court may deem just and fit to give.
2. The Respondent entered appearance on the 13th May 2016 and subsequently filed a Response to the claim on the same date. At the close of pleadings, the matter got destined for hearing on merit. The matter proceeded, the Claimant's was heard on the 16th November 2021, while Respondent's was on the 4th July 2022,

The Claimant's Case.

3. The Claimant stated that on or about the 23rd May 2013, the Respondent issued a letter of offer for employment as a Driver 1 PSC 5 with a monthly salary of Kshs 66,000. Subsequently, through a letter of appointment dated 14th May, 2013, appointed on contract terms of service and deployed to work for the office of the Leader of Majority- National Assembly, with effect 14th May, 2013.



4. The Claimant stated that on the 29th October 2013, the Leader of Majority, Hon. Aden Duale issued him with a letter requiring him to be deployed to his Constituency in Garissa and his salary be reduced to Kshs 20,000. However, the Respondent's Human Resource department didn't effect the redeployment. The department stopped paying his salary on or about the 6th November 2013.
5. That Claimant states that on the 6th November 2013 the Respondent issued him with a letter of termination of his employment. The letter didn't put forth the reasons for the termination. Prior to the letter, he was not given a chance to be heard as by law required. Further, on the 5th February 2014 he was issued with a summary dismissal letter. The said letter did not at all bring out any acts of gross misconduct alleged against him that would be a basis for the dismissal.
6. The Claimant stated that he continued working for the leader of majority until 1st March 2014 when he was asked to leave as his contract had come to an end.
7. The Claimant stated that he worked for long hours and was entitled to an hourly overtime payment of Kshs 1000.
8. The Claimant referred the Court to the Respondent's letter dated 17th June 2014, in response to his Counsel's demand letter. In the said response letter, the Respondent asserted that the Claimant's employment was terminated on the 1st November 2014.
9. He further stated that on or about the 25th March 2015, he was called by one George Otieno to go to Parliament police station to collect his belongings from the Leader of Majority, National Assembly, but on arrival he was threatened to be arrested for tarnishing the Leader's name and his parliamentary staff card was forcefully taken from him.
10. The Claimant stated that the Respondent has failed and adamantly neglected to pay him his dues, as a result he has suffered anguish and financial embarrassment.
11. The claimant outlined his terminal dues as follows; One Month Salary *in Lieu* of notice Kshs 66,000 Salary Arrears for 6 months Kshs 333,000 Loss of gratuity (31% x 66000x 5years). Kshs 103,230 Unpaid Overtime (574hrs x 1000) Kshs 574,000 Loss of income for the unexpired contract period 66,000 x 54 months.....Kshs 3,596,400 Compensation for unfair termination (66000 x 12 months) Kshs 799,200
12. In his evidence in cross examination the witness stated that though he received the latter dated 29th October from Hon. Duale, he didn't report to Garrisa as it was far. However, he remained stationed at Parliament where he continued offering VIP driver services.
13. He testified that he was give the termination letter on the 1st of November 2014. However, the letter was backdated to 6th November 3013. Despite receiving the letter dated 6th November 2013, he continued working because his dues hadn't been paid. After, being removed from the pay roll he continued to work up to year 2015, when he disengaged. During this period the Respondent and the Leader, paid him Kshs 20,000, monthly in cash.

The Respondent's Case

14. The Respondent presented Douglas Ng'ang'a, its Director Human Capital and Administration services to testify on its defence to the claim herein. The witness urged the Court to adopt the contents of his witness statement as part of his evidence in chief, and the documents filed by the Respondent, as its documentary evidence. As there was no opposition by the Claimant, they were adopted and admitted, respectively.



15. The witness stated he is aware that through a letter dated 14th June 2014, the Respondent facilitated employment of the Claimant on behalf of the Leader of Majority Party, National Assembly. Under its mandate in respect of members of staff to serve Members of Parliament under Article 127 of the Constitution, the Respondent only facilitates their employment by ensuring availability and payment of requisite funds, whether salary, allowances or terminal dues. Otherwise, their identification, selection, and appointment is for the Member of Parliament to do.
16. The witness stated that on or about 5th November 2013, the Respondent was notified by the Leader of Majority, National Assembly, that the Claimant had refused to honour his deployment to serve him at the Constituency Office. This blatant refusal was a clear breach of the terms of engagement and amounted to gross misconduct, within the Respondent's disciplinary procedures. Consequently, the Hon. Member directed the Respondent to terminate his employment. The Claimant was accordingly dismissed from employment with effect from 29th October 2013 through a letter dated 6th November 2013.
17. The Claimant was thereafter advised to collect his entitlements which included gratuity of 31% of his total basic salary, and one month's salary in lieu of notice, however he has not made any efforts to clear with the Respondent and correct the entitlements. He stated that the claimant had not made any efforts to clear with the parliamentary service commission and collect his terminal dues.
18. The witness testified that the Claimant's employment was not indefinite, it was tied to currency of the period of service of the Leader of Majority. It would subsist as long as the Leader was in office. Though it wasn't stipulated in the appointment letter, his term was to run for 5 years.
19. Paragraph 4 of the appointment letter provided for a termination notice of one month by any of the parties wishing to terminate the contract of employment.
20. According to the witness, in situations of employment like the Claimant's was, it is the Constituency office that deals with redeployment. However, the witness would not testify on the circumstances under which the Claimant was being redeployed.
21. The witness wouldn't account for the whereabouts after the termination. The claimant cannot be heard to claim for payment of salary post the termination date. Any payments for overtime worked could only be made after claim in a prescribed form was made and supported by the supervisor of the person claiming. The Claimant never made any claim in this manner or at all.
22. Under cross examination, the witness stated that the Claimant's employment was not one with unlimited time.
23. The letter dated 6th November 2013, didn't offer any reasons for the termination. The contract of employment allowed the Respondent to terminate by giving notice. The Claimant was not given a chance to be heard before the termination.
24. The witness testified in admission that the Respondent's letter dated 17th June 2014, indicates the date of termination occurred on the 1st November 2014. Further that the Transport, work daily ticket tendered in evidence by the Claimant indicates that his department of work was Parliament.
25. The Respondent was committed to pay the Claimant his dues duly once he cleared with it. The record on his daily check in and out was with his supervisor.
26. In his evidence under re-examination, the witness stated that though the letter dated 17th June 2014 indicates 1st November 2014 as the date of termination, to him



The Claimant's Submissions.

27. The Claimant distilled the following issues for determination thus;
- i. What was the period of employment of the claimant to the Respondent?
 - ii. Whether the claimant was unfairly terminated from employment/what are the remedies available
 - iii. Whether the claimant is entitled to 12 months compensation?
 - iv. Whether the claimant entitled is entitled to loss of income for the unexpired period of contract?
 - v. Whether the claimant is entitled to salary arrears for the months of October, November, December 2014 January and February 2015
 - vi. Whether the claimant ought to be paid for salary in lieu of notice, loss of gratuity and unpaid overtime?
28. The Claimant submitted that parties herein have no common stand regarding when his termination occurred. According to him, he worked from May 2013 to 1st March 2015, and this can be deduced from the Parliament Transport work ticket, which he tendered as evidence. The Respondent didn't contest the documents. Consequently, this Court should disregard the Respondent's allegation that the termination occurred of the 29th October 2013, through the letter dated 6th November 2013.
29. From the work ticket, it is very clear that the Claimant on several occasions drove the Respondent's motor vehicle after the date alleged by the Respondent's as the date of termination of his employment. Those entries are a confirmation that he worked through the year 2014 to March 2015.
30. On the 2nd issue the Claimant submitted that he was summarily dismissed from employment. The dismissal was without procedural and substantive fairness. Section 41 of the *Employment Act* mandatorily requires of an employer intending to summarily dismiss an employee under section 44[3] or [4] to hear, and consider any representations made by, the employee before making a decision to dismiss. No doubt, the procedure provided for under *the Act* was not followed at all. The dismissal was procedurally unfair therefore.
31. It was further submitted that section 43 of *the Act* requires the employer to prove reason[s] for dismissal of an employee from employment or termination of an employee's employment. The Claimant was not given any reason for the dismissal. The Respondent didn't satisfy the requirement of the provision. The Respondent did not demonstrate that the dismissal was on a fair and valid reason, in accord with the provisions of section 45 of *the Act*. Concerning procedural and substantive fairness threshold, the Claimant relied on the decision in the case *Janet Nyandiko v Kenya Commercial Bank Limited* (2017) as quoted in the case of *Jonah Mwaura Ngugi v Safaricom PLC* (2019) eKLR.
32. On the reliefs sought, it was submitted that having established that he was unfairly terminated he is entitled to a compensatory award pursuant to the provisions section 49[1][c] of the *Employment Act*, an equivalent of 12 months' salary.
33. It was further submitted that the contract of employment of the Claimant was on which was in nature a fixed term one, it would end at the lapse of the period of service of the Member of parliament- 5 years. He only worked for 6 months before his employment was unfairly brought to an end. In essence, he had 54 months to work before expiry of his contract period. He is therefore entitled to loss of income



to an extent of $66,000 * 54 = 3,564,000$. To buttress this point reliance was placed on the holding in the case *Dickson & 3 Others v Ali Barbour's Restaurant Ltd* (2013) eKLR.

34. The Claimant argued that the Respondent did not challenge his claim for salary arrears for the months of October, November, December 2014 and January and February 2015 thus urges the court to award the same.
35. His claim for gratuity, the salary in lieu of notice and compensation for overtime worked, a total of 574 hours was not contested as such, the court should make an award under these heads as prayed for in his statement of claim.

Respondents submissions.

36. The Respondent distilled the three issues for determination thus;
 - i. Whether the claimant's termination of employment by the Respondent was lawful?
 - ii. Whether the claimant is entitled to gratuity and unpaid leave?
 - iii. Whether the claimant is entitled to loss of income for the unexpired period of contract?
37. The Respondent submitted that the law relating to fair termination is encapsulated in the provisions of section 43 and 45 of the *Employment Act*. As espoused in the case of *Pamela Nelima Lutta v Mumias Sugar Co. Ltd* [2017]eKLR, it encompasses two elements, fair procedure and valid reason.
38. The Respondent further submitted that clause 4 of the contract of employment provided for termination of the contract by either party giving one month's notice or one month's salary in lieu of notice. In compliance with this contractual term, it terminated the Claimant's employment vide a letter dated 6th November, 2013 and therein committed itself to make the notice pay.
39. It was argued that in his own evidence, the Claimant stated that he was dismissed after he refused to be redeployed to Garrisa. That he was warned that the refusal would, lead to the termination of his employment as it was contrary to the code of conduct governing the employees within the Respondent's establishment. The Claimant was therefore well aware of the consequences of his refusal, he decided to brave them.
40. The court was urged to find that the dismissal of the Claimant from employment was procedurally fair, and with a sound reason, therefore substantively fair.
41. Article 108 of the *Constitution* of Kenya establishes Office of the National Assembly Leader of Majority and the Leader on Minority. Owing to their increased duties in Parliament, holders of the offices are allowed to appoint additional staff in to aid them in service delivery. In the case at hand the Claimant was appointed by the Leader of Majority Party.
42. It therefore follows that the Claimant's term of employment was not going to be for an indefinite term but one that was to depend on the tenure of office of the Majority Leader who appointed him. The contract of employment would immediately cease upon the Leader ceasing to be in the office. The Claimant was a constituency staff in terms of the *Parliamentary Service [Constituency Offices] Regulations, 2005*.
43. On the reliefs sought by the Claimant the Respondent argued that through the letter dated 6th November 2013 it wrote to the Claimant informing him that he was entitled to one month's salary *in lieu* of notice and a service gratuity of 31% of the basic salary for the period he served as a driver, less government liabilities, upon presentation of a clearance certificate. The Claimant hasn't made any efforts to clear with the Respondent and present the certificate to enable facilitation of the payment.



44. It further submitted that the Claimant has not produced any document as proof of the overtime hours worked and he does also not provide proof of how the alleged 574 hours and the overtime rate of 1000 per hour were arrived at. Duty lay upon the Claimant to prove. In support of this the Respondent cited the case of *Muriungi Kanoru Jeremiah v Stephen Ungu M'mwarabua* [2015] eKLR.
45. The Respondent argued that the work tickets that were produced by the Claimant are incapable of belief. The work tickets provide a field for insertion of the driver's name further submitted that there are anomalies in the work and number. In the work ticket number 342354, for GK A995X, the driver's name is indicated as Gituku under field for driver number 1. The second driver's name is Ibrahim Otata, driver No. 2.
46. A close look at the tickets and the entries in regard to driver No.2 reveal that Ibrahim Otata signed on the following dates 8/10/2013, 9/10/2013, 17/10/2013 and 18/10/2013 thereafter for six days, 30th and 31st October and 1st to 4th February 2014. For the period between October and January there is no record to suggest that he ever worked till March 2015 as he alleged. Consequently, his allegation that he worked up March 2015, is untrue and was unproven.
47. The tickets were false, to buttress this point, the holding in *R V Dodge and Harris* [1971] All ER 1523, was cited, thus;

“A document is false..... if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it or authorise its making.....or if, though made by or on behalf of or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material..... is falsely stated therein; and in particular a document is false; - [a] if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein ; [b] if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; [c] if, though made in the name of an existing person, it is made by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorized it.”

48. The Respondent argued that considering the nature of the Claimant's employment, being dependent on the Leader of Majority continuing to be in office, being in office which would be cut short anytime, and that the contract of employment of the Claimant didn't provide for it, the Claimant cannot be heard to claim for loss of income for the “unexpired period of the contract.”

Analysis and Determination.

49. Having read the pleadings, evidence on record and submissions by counsel, the issues for determination are;
- i. Whether termination of the Claimant's employment by the Respondent was unfair?
 - ii. Whether the Claimant is entitled to the prayers sought?



Whether the termination of the Claimant's employment was unfair.

50. There is no dispute that through a letter dated 6th November 2013, captioned "Termination of Contract" the Respondent wrote in part;

"I refer to this office letter Ref: 9900414/3 of 14th June ,2013 and regret to inform you that your contract as a Driver1 PSC 5 in the Office of the Leader of Majority [National Assembly]is hereby terminated with effect from 29th October,2013....."

It was the Claimant's case that the termination was unfair.

51. In addressing presence of fairness or otherwise in termination of an employee's employment, a court must consider two aspects, the substantive justification and the procedural fairness. The two form the total unit of fairness in the termination or summary dismissal. Absence of both or any of them shall render the termination or dismissal unfair.

52. The two components are statutory. Section 43 of the *Employment Act* dictates that in a dispute involving termination of an employee's employment, the employer bears the burden to prove the reason[s] for the termination. In absence of the proof, the termination shall be deemed unfair. Section 45 of the Act places a further burden on the employer to prove that the reason[s] was valid and fair. This position was elaborated in the case of *Walter Ogal Anuro v Teachers Service Commission* (2013), thus;

"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."

53. The Claimant contended that he was summarily dismissed from employment without any valid and fair reason, and therefore the dismissal was substantively unfair. Section 44[1] of the *Employment Act* stipulates when summary dismissal occurs thus;

"[1]. Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term."

It is common factor in this matter that the contract of employment between the Claimant and the Respondent was as per its terms one terminable by a one month's notice. There is no contest that the notice contemplated in the contract was not issued. Therefore, what occurred was a summary dismissal of the Claimant.

54. In appreciation of the gravity of the summary dismissal sanction, the law is designed in a manner to guarantee that employees are not summarily dismissed on every alleged transgression. A transgression that has to attract the sanction must be of the degree and character that the law specifically contemplates. In the Kenyan situation section 44[3] and [4], provides for the degree and character, respectively. Thus;

3. Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has indicated that he has fundamentally breached his obligations arising under the contract of service.

4. Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of the employee for lawful cause, but the enumeration of such matter or the decision of the employer to dismiss an employee



summarily under sub-section 3 shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for dismissal if.....”

55. Important to state that the duty to prove that the employee’s alleged transgression was of the gravity and character contemplated in law, lies on the employer, in this case the Respondent, in the failing, the summary dismissal will be deemed substantively unfair. Substantive fairness speaks to the decision itself not the procedure leading thereto, as procedural fairness does. Where the employer fails to demonstrate that the transgression was of the degree and character, the court interrogating the fairness of the dismissal will have no challenge in concluding that the reason[s] for the dismissal was not valid and fair.
56. No doubt, the termination letter hereinabove referred to did not at all disclose the reasons for the dismissal. This notwithstanding, the Respondent’s witness on the reason for the Claimant’s dismissal, stated that the Leader of Majority directed them to dismiss him. The witness however didn’t tell this court how the communication was done or place before it any document-the communication.
57. The witness went on to barely assert that the Claimant refused the redeployment to Garrisa. I note that the letter from the Leader of Majority addressing the redeployment was dated 29th October 2013. The Claimant was asked therein to report to the Leader of Majority’s Constituency office on the 1st November 2013. Further, that in his own evidence the witness stated that the Claimant did request the Respondent to redeploy him within Parliament, but there was no opening whereto.
58. No doubt, the termination letter was issued only 5 days after the date when the Claimant was expected to report to Garrisa pursuant to the letter, not by the Respondent who issued him with the appointment letter but the Leader of Majority. The witness didn’t tell this court, when within this short period [29th October 2013 and 6th November 2013], deliberations were made on the Claimant’s request, and whether and how, the Claimant was informed that redeployment elsewhere would not be possible. The Court has not lost sight of the Claimant’s testimony that he found the move to have him redeployed to Garrisa challenging as the station was far, and that the Leader of majority had indicated that his salary was to be Kshs 20,000.
59. By reason of the premises, this Court is convinced that the Respondent was not able to prove that the dismissal of the Claimant was on account of a fair and valid reason. Further, I hold that the Respondent didn’t act in equity and justice.
60. Section 41 of the *Employment Act*, sets the structure for procedural fairness in the Kenyan situation. According to the provision any employer intending to terminate an employee’s employment or summarily dismiss the employee, must notify the employee to be affected of his or her intention and the grounds forming basis for the intention. The employer then shall accord the employee an adequate opportunity to make representation on the ground[s]. Conjoined with the right to make representation[s] is the right of accompaniment. The employer shall accord the employee an opportunity to be accompanied by a colleague of his own choice [if the employee is not a member of a trade union] or a union representative [if the employee is a member of a union]. Lastly, the employer is enjoined to consider the representations before making any decision.
61. No doubt, a conclusion that the Respondent didn’t adhere to this procedure at all, cannot be off mark.
62. The evidence by the Respondent’s witness was that it issued the Claimant with the contractual termination notice. The tone of the evidence being that in the circumstances, that was all the Respondent was under duty to do, it is enough that the notice was issued. In my view, this kind of thinking is not in sync with the post 2008, employment and labour relations legal regime, a regime



which came in with expansive rights and protection in favour of employees. In fact, this is what the court elaborated in the case of *Mary Mutuna Mwenda v Ayuda* [2013] eKLR cited with approval by Court of Appeal in the case of *Hema Hospital v Wilson Makongo Marwa* [2015] eKLR, thus;

“20. As Radido, J observed in *Mary Mwenda v Ayuda* [2013]eKLR:

“The Employment Act, in a radical departure from the position which obtains under the common law and in Kenya prior

63. I therefore find that the claimant’s termination was unfair and unlawful as it lacked in both procedurally and substantively.

Whether the Claimant is entitled to the reliefs sought.

64. It was a contractual term in the employment contract between the Respondent and the Claimant, that the relationship created thereunder was terminable by either party giving the other one month’s notice or salary in lieu. There is no contest that the Claimant’s employment was terminated by summary dismissal, without issuance of the notice that was contemplated under the contract. No doubt therefore, that the Claimant is entitled to an award of one month’s salary in lieu of notice, Kshs 66,600.
65. The Claimant sought for a compensatory relief pursuant to the provisions of section 49[1][c] of the *Employment Act*, on account that the dismissal was unfair and wrongful. Having found as I have herein above that indeed the same was unfair, I now turn to consider whether the relief can be availed to him. Section 49[1] [c] of the *Employment Act* bestows the court with authority to grant an employee who has in a suit successfully assailed his or her employer’s decision to discharge him from employment, compensation for the wrongful or unfair discharge. This Court has said again and again that the authority is discretionally, exercised not without whim, sympathy, or caprice, but judiciously as the justice of each case may demand.
66. I have carefully considered the circumstances under which the Claimant was dismissed, which in my view amount to an unfair labour practice, the substantial deviation by the Respondent from what the law required of it, and the length of period the Claimant was in the service of the Respondent, and the length of period he expected to serve, 5 years, and conclude that he deserves compensation, and to an extent of 8 [eight] months’ gross salary, Kshs 532,800.
67. The termination letter expressed that the Claimant was entitled to his gratuity in accordance with the terms of the letter of appointment, 31% of his basic salary for the period served. For the reason[s] hereinafter, this court holds that for purposes of this case, the Claimant only worked for the Respondent for a period of five and half years. Therefore. Kshs 9,462.75.
68. The Claimant has sought for salary arrears for the months of October, November, December, 2014, January, February, 2015, in the gross sum of Kshs 333,000. The contract between the Claimant and the Respondent was terminated by the letter dated 6th November, 2013. Consequently, post this date no rights or liabilities could accrue on the contract. If the Claimant did work in the months, the basis for the claim under this head, then it must have been pursuant to another employment engagement, not the terminated contract, the subject matter of this suit. This court therefore declines to make any award under this head in favour of the Claimant.
69. Important to state that by reason of the position this court has taken hereinabove[para.68], nothing useful turns on the dismissal letter dated 5th February 2013, which surprisingly predates the contract of employment that was between the parties, and the work tickets tendered by Claimant.



70. The Claimant asserted that he worked overtime in the total hours 574. He then went on to claim for compensation on the same at Kshs 1000 per hour. How this rate and the total alleged overtime hours were arrived at was left for the court to guess. Guessing which I refuse to. Consequently, I find that no foundation by way of evidence was laid for this claim. The same was not proved. It is not merited.
71. The Claimant alleges that he could have worked for the Respondent for 5 years. I have carefully considered the letter of offer and letter of appointment that he was issued with. Both of them do not speak to 5 years, or any specific term. It is trite law that this Court cannot supply a term[s] into a contract between the parties. The Claimant's claim for loss of income for the unexpired period, clearly finds basis on a matter not stipulated in the employment contract, but on the Claimant's own presumption. By this reason, I reject the claim under this head.
72. In the upshot, judgment is hereby entered in favour of the Claimant in the following terms;
- A]. One month's salary *in lieu* of notice..... Kshs 66,600.
 - B]. Gratuity for the period served, 5.5 months, Kshs 9,462.75.
 - C]. Compensation pursuant to section 49[1][c] of the [Employment Act](#).....Kshs 532,800.
 - D]. Interest on the sums awarded hereinabove at court rates, from the date of this judgement till full payment.
 - E]. Costs of this suit.

READ, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF APRIL, 2023.

OCHARO KEBIRA

JUDGE

In The Presence

Ms Wachira For The Claimant.

Ms. Musyimi For Mr. Angayo 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

