



Murua v Oracle Technology Systems (Kenya) Limited (Cause 1978 of 2017) [2023] KEELRC 1613 (KLR) (30 June 2023) (Judgment)

Neutral citation: [2023] KEELRC 1613 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1978 OF 2017**

SC RUTTO, J

JUNE 30, 2023

BETWEEN

STEPHEN MURUA CLAIMANT

AND

ORACLE TECHNOLOGY SYSTEMS (KENYA) LIMITED RESPONDENT

JUDGMENT

1. It is not in dispute that the claimant was employed by the respondent with effect from 1st January, 2014, as a Territory Sales Representative. The claimant avers that his role was subsequently changed to Hardware Sales Representative IV in the Cloud Infrastructure managing public sector and utilities within the territory of Kenya. He avers that during the period of December, 2016 to January, 2017, the respondent came up with a strategy called personal improvement plan to evaluate the employee's performance in respect of their objectives at work. The claimant further states that between 17th December, 2016 and 28th February, 2017, seven attempts were made to put him under the Personal Improvement Plan (PIP) in a manner contrary to the Oracle standard policy. According to the claimant, these measures were arbitrary and discriminatory as no other team member was held up to the same measures.
2. From the record, the claimant was subsequently subjected to a disciplinary process and thereafter terminated from employment on account of gross misconduct. It is that decision by the respondent to terminate the claimant's employment that has triggered the instant suit through which he now seeks the following reliefs: -
 - a. A declaration of reinstatement to employment without any loss of rank, salary and/or benefits;
 - b. A declaration that the act of the respondent in terminating him from employment is illegal and unlawful and therefore null and void;
 - c. Damages for illegal and unlawful termination from employment;



- d. Costs of the suit; and
 - e. Any other relief that this Honourable Court may deem fit to grant.
3. Opposing the Claim, the respondent avers that during the claimant's tenure of employment, he was expected and agreed to comply with the terms of his contract of employment and its internal policies. The respondent further avers that in 2016, it was noted that the claimant's overall performance was poor and below the expected standards and he was consequently placed on a PIP in accordance with its performance improvement policy and process. It avers that the claimant refused to be placed on the PIP and deliberately neglected, failed and/or refused to attend the PIP meetings without providing justifiable reasons. The respondent has termed the claimant's claims as false, misleading, misadvised and an abuse of the court process. Consequently, the respondent has asked the Court to dismiss the claimant's suit with costs.
 4. It is worth pointing out that the respondent had filed a Counterclaim through which it sought against the claimant the sum of Kshs 352,722.96 being the value of unsurrendered property in his possession at the time of his termination from employment. However, during the hearing, RW1 confirmed that the counterclaim had been overtaken by events hence was withdrawn.
 5. The matter proceeded for hearing on diverse dates during which both sides called oral evidence in support of their respective cases.

Claimant's case

6. The claimant testified in support of his case and to start with, he adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed together with his Claim as well as his Further list and bundle of documents as exhibits before Court.
7. It was the claimant's testimony that effective 27th March 2017, he was the only employee of the respondent put on PIP which was to be assessed monthly. On 26th July, 2017, the PIP measures were abruptly changed in a manner contrary to the Oracle Policy.
8. He stated that on or about July 2017, the respondent scheduled a PIP review meeting with him at a time during which he was on sick leave, hence the same was postponed.
9. The claimant contended that no due process was followed in calling the PIP review meeting and the same was done with malice and bad faith. After he returned to work from sick leave, the respondent scheduled another PIP review meeting to take place on 28th August 2017. Upon enquiring on the agenda of the said PIP review meeting, the respondent failed to respond and communicate the same to him thereby frustrating his chances of attending the meeting.
10. He avers that the respondent went ahead and scheduled another PIP review meeting on 31st August 2017 without addressing the concerns he had previously raised and as a result, he could not attend the meeting yet again. Vide a letter dated 5th September, 2017 the respondent invited him to attend a disciplinary meeting on 8th September, 2017 for alleged misconduct.
11. According to the claimant, the respondent failed to justify the reasons for setting up the disciplinary hearing based on its policy. He avers that the rules of engagement of the disciplinary policy were not adhered to by the respondent before inviting him to attend the disciplinary meeting.
12. The claimant told the Court that the disciplinary meeting took place on 8th September, 2017 and he requested to be allowed to record the proceedings of the hearing which request was declined.



13. It was his further evidence that during the disciplinary meeting, he requested the respondent to tender evidence to prove that the PIP was being effected on all employees, which evidence the respondent failed to provide. He averred that there are no accurate records captured during the disciplinary meeting held on 8th September, 2017.
14. The respondent later gave the decision and outcome of the disciplinary proceedings vide a letter dated 20th September, 2017 and terminated his employment with immediate effect for alleged serious misconduct and insubordination. He therefore claims that the termination was unlawful, illegal, discriminatory and malicious. He appealed against the respondent's decision and requested that a panel be constituted to hear his appeal. The respondent failed to respond to his plea.
15. It was his further testimony that during his employment, he never had any issues with the respondent.
16. He further contends that at the time of his termination, he was entitled to payment of commissions based on Fiscal Year 2018 Individualized Compensation Agreement. That the respondent has failed to pay him his salary for days worked plus other benefits accrued during the term of the agreement.

Respondent's case

17. The respondent called oral evidence through its Human Resource Manager, Mr. Mukunya Mugo who testified as RW1. He also adopted his witness statement to constitute his evidence in chief. He proceeded to produce the list and bundle of documents filed on behalf of the respondent as exhibits before Court.
18. It was RW1's testimony that the claimant's overall performance in the year 2016 was poor and below the expected standards. He was consequently placed on PIP in accordance with the respondent's Performance Improvement Policy and Process. The decision was communicated to the claimant on 17th December, 2016. He responded on 21st December, 2016 stating that he had reviewed the document and put forward his comments on the reasons for his poor and below expected performance standard.
19. The claimant refused to be placed on a PIP claiming that it was a scheme to force him out of the company. He subsequently notified the Compliance and Ethics team (C&E) that his managers had allegedly harassed him and gave him unreasonable instructions. Accordingly, a compliance case was initiated to address the claimant's queries. He was however notified that the compliance case and the PIP were independent processes and that he would still be required to attend and engage fully in the PIP.
20. RW1 further stated that the initial PIP commenced on 17th December, 2016 with an interim review scheduled for 31st January, 2017. The claimant was informed of the reasons why he was placed on a PIP, the required targets and the support to be availed by the respondent to enable him achieve the said targets. In 2017, the respondent updated the PIP targets and timeline for achievement against the targets in consultation with the claimant, taking into consideration his feedback and to ensure a fair and transparent process. On 17th March, 2017 a meeting took place to further clarify with the claimant the reason for the PIP and the targets.
21. The claimant raised a formal grievance on 30th March, 2017 alleging harassment and intimidation by his manager in relation to the handling of the PIP process. He clarified the scope of his grievance on 21st April, 2017 further to a call and follow-up email correspondence with the regional HRM. The PIP process was temporarily stopped pending investigation into the claimant's grievance. A grievance hearing took place on 15th May, 2017. Upon review of the facts presented and interviews conducted



by the regional HRM, the grievance raised by the claimant was found to have no basis. The issue was thus settled and an official report on the same issued to him.

22. RW1 further stated that the PIP process subsequently resumed and on reviewing Step1 of the PIP process (the Coaching Process) against the targets that were set for 25th and 31st May, 2017, it was noted that the claimant had failed to meet the target. As a result, the respondent resolved to proceed to Step 2 of the process (the actual formal PIP). The Step 2 PIP targets were communicated to the claimant on 13th June, 2017 and he was given an opportunity to present his queries on the same during an initiation meeting that took place on 22nd June, 2017. The targets were discussed with the claimant in detail and clarified during the meeting. RW1 contended that the Step 2 PIP targets were fair, reasonable and achievable.
23. On 22nd June, 2017, the claimant was invited to a meeting scheduled to take place on 30th June, 2017 to review his Step 2 PIP targets. In response, the claimant complained that the targets were not practical and that the timelines were unrealistic. He also alleged bias and that management was trying to sabotage him, despite these claims having addressed and settled through the grievance process. His concerns were once again addressed by the regional HRM.
24. It was RW1's evidence that the claimant refused to take part in the PIP and further escalated his unsubstantiated allegations against him, his managers and the regional HRM to the Vice President of Human Resources for EMEA (Senior HRM). He was reminded by the Senior HRM that he was required to comply with the respondent's internal grievance process. The claimant however failed to take steps to address his grievances as directed. He stated that the claimant also failed to attend the PIP scheduled for 30th June 2017.
25. RW1 stated in further evidence that the claimant continued to challenge the PIP process in July, 2017 even though his concerns had adequately been addressed. He averred that the respondent responded to the claimant in detail on the issues raised with a view to moving the process forward. Despite this, the claimant still failed to cooperate.
26. A further PIP meeting was scheduled for 31st July, 2017 at 4:00pm to review the claimant's performance. On the said date, the claimant communicated to the respondent at 9:31 am stating that he was in hospital and that he would report to the office later in the day. At 1:54 pm, the claimant sent an email to the respondent expressing his concerns on the PIP process and made reference to his Advocate. At 3:19 pm, the claimant's manager called him to clarify matters relating to an ongoing project. At no point during the series of correspondence that took place on 31st July, 2017 did the claimant notify the respondent of his inability to attend the PIP meeting as scheduled. This was deliberate and contrary to the provisions of the Annual Leave and Days-Off Policy which requires an employee to inform the respondent of his inability to attend work within reasonable time.
27. The claimant sent an email on 1st August, 2017 attaching a sick note giving him 21 days sick leave. Additional information was requested by the respondent and in particular, the X-rays, MRI scan and receipts that the claimant had offered to supply in his email dated 1st August, 2017.
28. Following the claimant's return on 22nd August, 2017, the respondent rescheduled the PIP meeting to 28th August, 2017 and further to 31st August, 2017 to give him a further opportunity to attend. This was communicated to him in the emails dated 25th and 31st August, 2017. He was informed that disciplinary action would be taken against him should he fail to attend the aforementioned PIP meetings. However, he deliberately neglected, failed and/ or refused to attend the PIP meetings without providing justifiable reasons.



29. The respondent consequently issued the claimant with a show cause letter on 5th September, 2017 requiring him to attend a disciplinary meeting on 8th September, 2017. This was done in accordance with Stage 4 of the Disciplinary Policy which provides for a disciplinary process where an employee's action amounts to potential gross misconduct due to its seriousness.
30. During the disciplinary meeting, the claimant was given an opportunity to respond to the allegations against him but he failed to provide satisfactory reasons for his refusal to attend the numerous PIP meetings or follow reasonable management instruction, leading to the respondent's loss of trust and confidence in him as an employee.
31. In light of the circumstances, the respondent decided to terminate the claimant's contract of employment on grounds of serious misconduct on 20th September, 2017. In accordance with the terms of the employment contract, the claimant's terminal dues were computed and he was issued with a Certificate of Service.
32. RW1 denied that the claimant was entitled to commissions as claimed. He averred that the claimant's contract of employment provided that payment of commission was not guaranteed but was conditional on the claimant achieving the targets for each fiscal year which commences on 1st June and ends on 31st May. The claimant's Fiscal Year 2018 Individualized Compensation Agreement (FY18 Agreement) provided that he was required to meet the set target of Kshs. 6,367,500/= which targets he did not meet. His contract was terminated before the end of the Fiscal Year for 2018 and as such, he is not entitled to any commission in respect of the same.
33. It was RW1's further evidence that the claimant was given an opportunity to appeal the decision to terminate his employment and on 21st September, 2017, he wrote an email to the respondent seeking to appeal against the decision to terminate his contract of employment. Rather than pursue the same, the claimant opted to file these proceedings and abandoned his appeal.
34. He further testified that the claimant is not entitled to an order of reinstatement as he has already been replaced. That further, the relationship between the respondent and the claimant has irretrievably broken down in light of his gross misconduct, failure to adhere to internal procedures and policies and lack of respect.

Submissions

35. On his part, the claimant submitted that the PIP process was commenced in bad faith and the entire process had been designed to set him up for failure as the said PIP set for him targets that were unachievable. That indeed, the entire process was set in motion for him to fail and was actuated by malice to hound him out of employment as he was the only one in the team that was subjected to the PIP.
36. In support of the claimant's submissions, reliance was placed on the cases of *Liberata Njau Njioka vs Magadi Soda Company Limited* (2011) eKLR and *Kenny Kinako vs Ringier Kenya Limited* (2016) eKLR. It was further submitted that a PIP, though a good practice, should never be forced upon an employee. It was argued that an employee must be given a fair chance to agree as he is the one to deliver on it and it cannot therefore be for the employer to simply write the PIP and issue it to an employee as the case herein. It was further submitted that the respondent had failed to substantiate its assertions that the claimant was the only one that had been subjected to PIP. The claimant submitted that in his view, this was discriminatory and goes to prove that the whole process was eschewed to defeat justice for him. On this score, he referred the Court to the case of *GMV vs Bank of Africa Kenya Limited* (2013) eKLR.



37. On the other hand, the respondent submitted that it did not ignore the claimant's grievances. Rather, it conducted a separate enquiry into the grievances raised in accordance with its grievance policy. The respondent posited that in fact, given that the grievances were connected to the ongoing PIP process, the same was suspended and only resumed when the grievance had been resolved.
38. Citing the case of *Liberata Njau Njioka vs Magadi Soda Case (2011) eKLR*, the respondent further urged that it is in the interest of both an employee and an employer for a performance improvement plan to be conducted within a reasonable time. In further submission, the respondent stated that the claimant's PIP took a period of at least nine months, during which period his cooperation was lacking. That in the totality of circumstances, its decision to terminate the claimant's employment was reasonable as it had lost trust and confidence in him as an employer. In support of this argument, the Court was invited to consider the determination in the case of *Judicial Service Commission vs Gladys Boss Shollei & another (2014) eKLR*.
39. The respondent further maintained that a reasonable employer would indeed dismiss an employee who, despite acknowledging his underperformance, refused to meaningfully participate in a PIP in accordance with its policy. It was further submitted by the respondent that a reasonable employer would reasonably dismiss an employee who blatantly defied reasonable instruction of their manager.
40. With regards to procedural fairness, the respondent submitted that the claimant's termination was procedurally fair, having been conducted in accordance with its disciplinary policy.

Analysis and determination

41. Having considered the pleadings, the evidentiary material on record, as well as the rival submissions, it is evident that the Court is being called to resolve the following questions: -
 - i. Whether the respondent had a justifiable reason to terminate the employment of the claimant;
 - ii. Whether the claimant's termination from employment was in accordance with fair procedure; and
 - iii. Whether the claimant is entitled to the reliefs sought.

Whether the respondent had justifiable reason to terminate the employment of the claimant

42. In order to prove fair termination under the *Employment Act* (Act), an employer must satisfy the Court that there was substantive justification to warrant termination of an employee. Pursuant to Section 43 (1) as read together with Section 45 (2) (a) and (b) of the Act, an employer is required to prove the reasons leading to an employee's termination. Such reasons ought to be fair, valid and related to the employee's conduct, capacity or compatibility; or based on the employer's operational requirements.
43. In the instant case, the reason for the claimant's termination can be ascertained from his letter of termination dated 20th September, 2017 which reads in part:-

“After careful consideration of the facts, relevant emails and documents, together with the statements made by you during the disciplinary hearing, Oracle Kenya (the company) has taken the decision to terminate your contract of employment after being found culpable of the allegations of insubordination and serious misconduct against you, stated below: Your failure and refusal to attend 2 PIP review meetings was upheld and considered a failure to adhere to a reasonable management instruction and an act of insubordination. You provided no reasonable explanation for your non attendance, refusal to engage in the PIP process or



otherwise work with your management to ensure you are meeting the standards required of Oracle; and Your willful disregard to management instructions relating to your employment has led to a loss of confidence in you as an employee of Oracle Kenya. The following were established at the disciplinary hearing....”

44. To put the issue in context, I find it imperative to revisit the facts relevant to the dispute. From the record, the claimant was placed on PIP with the projected start date being 1st December, 2016, followed by an interim review on 30th January, 2017 and the final review date being 28th February, 2017. It is apparent that things did not go as planned as the claimant did not sign and accept the PIP documents. In this regard, the claimant reviewed the PIP document and raised issues with his line manager Shane Fernandes. Subsequently, a revised PIP document was issued with fresh time lines.
45. Through his email of 7th March, 2017, the claimant raised a raft of issues and requested for a meeting to draw up SMART coaching goals with his line management. Consequently, a meeting was set up on 17th March, 2017 and in attendance was the claimant, RW1, Edward Muthiga (his host manager) and Shane Fernandes (his line manager). At the meeting, the team went through the PIP targets and in the end, it was agreed that all of them were fair and achievable.
46. Through an email of 30th March, 2017, addressed to RW1, the claimant formally raised a grievance against his line management alleging harassment and intimidation. Folake Adeniyi- Adeleye, the respondent’s regional Human Resource (HR) Director addressed the matter and through an email of 23rd May, 2017 gave feedback to the claimant stating that there was no evidence of harassment and victimization from his skip level managers. With that communication, the PIP process continued.
47. The PIP document was once again updated and through an email of 13th June, 2017, the claimant was required to give his feedback. The email reads as follows: -

“Stephen,

With the onset of a new fiscal year, there are new objectives that should be achieved and hence they are reflected in the new document. The document reflects what objectives were met/partially met and what were not met. The last four objectives have been updated.”
48. Subsequently, a meeting was held on 22nd June, 2017 to discuss and clarify the new PIP targets. In attendance was the claimant, RW1, Edward Muthiga, and Shane Fernandes. At the end of the meeting, several action points were agreed upon, key among them being that the claimant would proceed with the targets that had been clarified as they awaited clarity on the remaining targets. It was also agreed that the claimant would share his performance evidence on the Step 1 coaching process targets.
49. The claimant was not satisfied and through his email of 22nd June, 2017, the same day of the meeting, he raised several issues with regards to the PIP objectives. His line manager Shane Fernandes responded to him through his email of 22nd June, 2017 advising him that the PIP document had been updated on the same date after receiving his comments and suggestions. He was also advised that a scheduled meeting of 30th June, 2017 was to be the 1st Step 2 PIP review. Further, on 23rd June, 2017 Shane Fernandes clarified the PIP targets and asked the claimant to provide a list of the targets he had stated were not SMART.
50. It would appear that the claimant was still not satisfied up to that point hence he escalated the issue to the respondent’s Senior HRM, Vance who advised that the issue be dealt with through the processes of grievance handling in Kenya. To this end, he directed the regional HR to review and supervise the process.



51. In an undated letter, Folake Adeniyi responded to the claimant's issues comprehensively. She urged the claimant to focus his time and attention on achieving the targets set out in Step 2 PIP.
52. On 31st July, 2017 a call was set up for the PIP review meeting. The claimant indicated that he was unable to join as he was unwell with a dislocated shoulder. On 1st August, 2017, the claimant informed Edward Muthiga that he had been given 21 days sick off. He was informed through an email on 2nd August, 2017 to forward all medical documents relating to his recent visit to the hospital. He was also informed that his PIP review meeting had been rescheduled after his return to the office on 23rd August. Similar communication was made through a letter dated 3rd August, 2017 by Ayotunde Afolabi.
53. The claimant announced his return to the office through his email of 22nd August, 2017. On 28th August, 2017, Shane Fernandes forwarded to the claimant an updated document with updated dates and notes for the day's meeting. The claimant refused to accept the said document and through his email of 28th August, 2017 stated his reasons, key among them being that it contained significant changes.
54. Seemingly, the claimant did not attend the meeting of 28th August, 2017 which was later rescheduled to 31st August, 2017. The claimant also failed to attend the rescheduled meeting of 31st August, 2017 and notably, it is the claimant's failure to attend the said two meetings that led to his eventual termination from employment. Indeed, the claimant has not refuted the respondent's assertions that he was not in attendance at the said two PIP review meetings.
55. The claimant stated that he was not notified of the agenda of the meeting of 28th August, 2017 despite his enquires to that effect hence his non attendance. With due respect, this cannot be a plausible reason for his failure to attend the said meeting since he was well aware that the PIP review meeting initially slated for 31st July, 2017 had been rescheduled pending his recovery. Indeed, upon informing the respondent of his medical situation on 1st August, 2017, he was advised that his PIP review meeting had been rescheduled to a later date after his return to the office on 23rd August, 2017. It thus follows that the agenda of the meeting initially slated for 31st July, 2017 was retained for discussion at the meeting of 28th August, 2017.
56. In the event the claimant had reservations with regards to the meetings of 28th and 31st August, 2017, he did not present any evidence to that effect and specifically, that he had communicated as much to the respondent.
57. As stated herein, the PIP was initially scheduled to take off on 1st December, 2016 but the respondent kept rescheduling the same as the claimant raised concerns on a number of issues which were addressed at the human resource level and through the meetings of 17th March, 2017 and 22nd June, 2017.
58. As a result of the rescheduling, the PIP was long drawn out and stretched for close to nine months. Consequently, the objectives changed over time hence the PIP document was updated. The claimant raised an issue in this regard and in fact, cited the same as being one of the reasons he refused to sign and accept the PIP updated document. During cross examination, the claimant admitted that every year has new targets. Further, the email of 13th June, 2017, by Shane Fernandes captured this fact as he acknowledged that it was a new fiscal year hence there were new objectives. It is therefore logical that the targets were bound to change over time.
59. The claimant further contended that he was the only employee on PIP at the time. Notably, the claimant did not substantiate this claim by giving particulars of other employees within his team who were underperforming but were not placed on PIP. Further, it should be noted that in as much as there may be group/team based performance evaluation, ultimately an employee's performance is



individual. It was upto the claimant to defend his own individual performance and/or prove that as at 1st December, 2016, he had met his targets for the period under review hence he was not the right candidate for a PIP. In any event, it is worth noting that the claimant's performance was not the real reason behind his termination. Rather, it was his failure to attend the PIP review meetings of 28th and 31st August, 2017 which the respondent regarded as insubordination.

60. All in all, what I gather from the chronology of events leading upto the claimant's termination from employment, is that his failure to attend the meetings of 28th and 31st August, 2017 was the last straw.
61. In the circumstances, the claimant appears to have left the respondent with almost no option but to take the next step which was to commence disciplinary action against him. He did not leave the respondent with much choice, noting that the PIP process was almost clocking nine months whilst it was yet to take off the ground.
62. The net effect of my consideration is that the claimant's own conduct availed the respondent a justifiable reason to commence disciplinary action against him.

Whether the claimant's termination was in accordance with fair procedure

63. The requirements of a fair process are generally provided for under Section 45(2) (c) of the Act. The details of the specific requirements are well articulated under Section 41. These requirements are in respect to notification and hearing. In particular, an employer is required to notify the employee of the reasons for which it is considering termination of the employment contract. The employer is also enjoined to ensure that the employee receives the said reasons in the presence of a fellow employee or a shop floor union representative of his or her own choice and to hear and consider any representations which the employee may have in response to allegations levelled against him by the employer.
64. Turning to the instant case, the claimant was issued with a notice to attend a disciplinary hearing through a letter dated 5th September, 2017. The notice spelt out the allegations the claimant was expected to respond to and he was also advised of the date, time, the venue of the disciplinary hearing and the identity of the person to chair the proceedings. He was further advised of his right to be accompanied by a fellow employee.
65. From the record, the claimant attended the disciplinary hearing where he was given an opportunity to respond to the allegations raised in the notification dated 5th September, 2017.
66. Taking into consideration the process applied by the respondent in effecting the claimant's termination from employment, it is evident that the same was in consonance with the spirit and tenor of Section 41 of the Act.
67. It is worth mentioning that the claimant stated that the respondent failed to adhere to the rules of engagement of the disciplinary policy prior to inviting him to attend the disciplinary hearing. Nonetheless, the claimant did not specify and give better particulars as to what aspect of the disciplinary policy, the respondent had failed to adhere to.
68. The total sum of the foregoing is that the respondent has proved to the requisite standard that it had a fair and valid reason to commence disciplinary action against the claimant and in so doing, observed the requirements of a fair process. To this end, the claimant's termination was neither unfair nor unlawful.

Orders

69. In the final analysis, I find that the claimant is not entitled to the prayers sought hence I dismiss the claim in its entirety and make no orders as to costs.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE, 2023.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Ms. Wangui instructed by Mr. Mungai

For the Respondent Mr. Rao instructed by Mrs. Wetende

Court Assistant Abdimalik Hussein

ORDER

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

STELLA RUTTO

JUDGE

