



Ojwang v Board of Management Kenyatta National Hospital (Cause 534 of 2018) [2023] KEELRC 1887 (KLR) (31 July 2023) (Judgment)

Neutral citation: [2023] KEELRC 1887 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 534 OF 2018
SC RUTTO, J
JULY 31, 2023

BETWEEN

ERICK O. OJWANG CLAIMANT

AND

BOARD OF MANAGEMENT KENYATTA NATIONAL HOSPITAL RESPONDENT

JUDGMENT

1. The instant suit was commenced by way of a Memorandum of Claim filed on 13th April, 2018, in which the Claimant avers that he was employed by the Respondent as a Supply Chain Officer with effect from 8th March, 2012. He started off as a temporary employee and was subsequently absorbed as a permanent employee. According to the Claimant, he worked well without any disciplinary issues until December, 2016 when he was interdicted and suspended from duty. The Claimant's interdiction was in respect of delivery of sugar by Vicate General Suppliers to the Respondent Hospital. The ensuing disciplinary process culminated in his termination from employment. The Claimant contends that the termination was unfair as the 300 bags of sugar in question were actually delivered to the Respondent Hospital and consumed. Against this background, the Claimant prays for notice pay, outstanding salary from January to December, 2017 and compensatory damages.
2. The Claim did not go unopposed. Through its Memorandum of Reply filed on 12th September, 2018, the Respondent denies the Claimant's assertions that he worked well without any disciplinary issues. It avers that the Claimant was given a final warning on 9th May, 2016 for misconduct, strong and final warning for negligence in performance of duty on 6th May, 2015, cautioned on 19th February, 2015 for failure to account for surplus and was asked to show cause why disciplinary action should not be taken against him for disregarding issuing procedures on 26th November, 2014. Putting the Claimant to strict proof, the Respondent avers that the Claimant was dismissed from service in accordance with the law, terms and conditions of service as well as the Collective Bargaining Agreement on account of



misconduct and falsification of documents. On account of the foregoing, the Respondent has asked the Court to dismiss the Claim with costs.

3. The matter proceeded for hearing on 27th October, 2022 and 24th January, 2023, during which both sides called oral evidence.

Claimant's Case

4. The Claimant testified in support of his case and to start with, he sought to adopt his witness statement to constitute his evidence in chief. He proceeded to produce the documents filed together with his Claim as exhibits before Court.
5. It was the Claimant's testimony that his duties generally included passing/giving quotation to suppliers, processing Local Purchase Order (LPO) and issuing them to suppliers, preparation for agenda and tender committee awards and evaluation of tenders.
6. That the core duty of the supply chain was to identify suppliers able to bring/supply items at the earliest time and at the least cost possible.
7. In December, 2016, he was issued with an interdiction letter indicating that he was interfering with ongoing investigations concerning delivery of sugar by Vicate General Suppliers. Before he received the said letter, he had been summoned by the Head of Catering Department, Ms. Muthamia concerning the issue.
8. He further stated that there was an issue with Delivery Notes Nos.112 and No.109 which seemed to have been having problems with certain insertions more so on quantity of sugar received from Vicate General Suppliers. The receiving team in the Ration Store seem to have indicated and/or informed the said officer that the quantity of sugar received from the same supplier was a total of 6 bags per delivery making a total of 12 bags whereas the actual delivery was 160 and 120 bags respectively.
9. It was his further evidence that the supplier had between the month of September and October 2016 delivered to the Respondent Hospital a total of 300 bags of 50 kgs of white sugar which were properly signed for, received and consumed by the hospital. For some reasons not known to him, the said manager seemed to believe that the said supplier did not supply the said quantity of sugar and that only 32 bags were received and consumed by the hospital within a period of 3 months.
10. He responded to the manager's queries and explained the situation and gave her the correct position and even invited her to go to the stores and verify the number of bags.
11. In March 2017, he received a suspension/show cause letter. He was asked to respond to the said allegations within 7 days which he did and he was suspended from duty immediately. During this period, he was only entitled to house allowance and commuter allowance.
12. In October 2017, he received a letter from the Human Resource Manager Department requesting him to appear before the disciplinary committee for a hearing. He received the letter on the date of the hearing and he managed to look for a shop steward with whom he attended the hearing, wherein he was being interrogated on the same charges and he gave his response. He was given a copy of minutes of the session which he signed for together with the shop steward.

Respondent's case

13. The Respondent called oral evidence through Mr. Justus Mbui, Jane Masiache, Bertha Ocholla, Josephine Makenzi and Erick Ochieng Ogutu who testified as RW1, RW2, RW3, RW4 and RW5 respectively. Mr. Mbui was the first to go. He identified himself as the Respondent's Human Resources



- Manager. He started by adopting his witness statement to constitute his evidence in chief. He further produced the documents filed on behalf of the Respondent as exhibits before Court.
14. It was RW1's testimony that his duties include planning, coordination, budgeting, training and development of staff; placement, deployment and transfer of staff, discipline and promotion of staff and general Human Resource management services in the Respondent Hospital.
 15. RW1 further stated that the Claimant's duties were to receive, ensure that inspection team inspects goods delivered, confirming the quantities received and issue inspected goods when needed.
 16. It was his evidence that vide a security daily incident report dated 16th January, 2017, it was reported that the Claimant had been involved in suspected forgery of documents for delivery of sugar in the Ration Store Main Kitchen. The documents were in regard to Voucher No.VC.0024841 for Vicate General Suppliers valued at Kshs.1,695,000.00.
 17. That at the time, the Claimant was working in the Supply Chain Department, attached to the Ration Store Main Kitchen. Vide a letter dated 17th January, 2017, the Claimant was suspended from duty to pave way for investigations. Investigations were done and a report dated 9th February, 2017 was compiled and submitted to him (RW1) and the Deputy Director Finance. It was established that the Claimant had used his position to manipulate figures and tamper with records of delivery of sugar with an intention to defraud the Respondent.
 18. Subsequently, vide a letter dated 2nd March, 2017, the Claimant was called upon to show cause why severe disciplinary action including summary removal from service should not be taken against him.
 19. The Claimant responded to the Show Cause vide his letter dated 6th March, 2017. He denied the allegations and contended that he is innocent and that the 300 bags of 50kg each of sugar were actually delivered to the Hospital and used between September 19th and 14th December, 2016 through Delivery Note nos 109, 112 and 117.
 20. RW1 further stated that the case was presented to the Staff Disciplinary & Advisory Committee which sat on 1st November, 2017. The Claimant was invited and appeared before the Committee with a Union representative, Mr. Kenneth Meme of Kudheihia and Mr. Zuberi Abdi of Supply Chain Department. The Claimant denied the charges leveled against him.
 21. The Disciplinary Committee established that the Claimant was guilty and it was resolved that he should be dismissed from the service on account of professional misconduct and falsification of documents to commit fraud.
 22. RW1 contended that the Claimant's dismissal was for good reason, fair and just.
 23. It was his further evidence that the Respondent served show cause letters on all personnel charged with receiving of supplied items being Jane K. Masiache, J. N. Mackenzie, Jane N. Ngei and Bartha Anyango Ogolla and they responded to the letters.
 24. The Claimant was informed of his right of appeal within a period of 21 days but he did not exercise his right of appeal.
 25. Ms. Jane Masiache who introduced herself as the Respondent's Catering Officer, testified as RW2. Similarly, she started by adopting her witness statement to constitute her evidence in chief. She listed her duties as being supervision of preparations of patients' meals, supervision of staff, receiving of food items and issuing the same to the cooks.



26. With regards to the procedure for receiving food items from the suppliers, RW2 stated that once a certain item has been supplied, they go in a team of 4 people (Nutritionist, Public Health, Cateress and Storekeeper/store man) to witness. They then sign for the delivery.
27. It was her evidence that on 3rd October, 2016, while on duty, she was informed by the Claimant who was the store man, that sugar had been delivered. She went and witnessed delivery of 6 bags of white sugar of 50kgs, vide delivery note number 112 by Vicate General Supplies and LPO No.0155739 of 3rd October, 2016. She signed the delivery note and then went and recorded the same in the delivery book/register in the main kitchen.
28. Ms. Bertha Ocholla who testified as RW3, identified herself as Assistant Chief Nutrition Officer. Similarly, she adopted her witness statement to constitute her evidence in chief. It was her evidence that she has been working at the Respondent Hospital since 2nd November, 1998. That she is the Team Leader of the Diet Kitchen and her duties entail overseeing all the work done by the nutritionists assigned to work at the diet kitchen.
29. She went on to state that on 14th October, 2016, she was called upon by the Claimant who was in charge of the Ration Store, to receive the sugar that had been brought in by a Supplier. The Public Health Officer confirmed the quality of the sugar to be safe for human consumption and therefore, the team proceeded to do the physical counting by the security officer. She physically counted a total of 6 bags of 50 kgs white sugar and confirmed with the rest of the receiving team members.
30. She then proceeded and signed the LPO No.0155739 with the Delivery Note No. 117 which clearly indicated the amount received as 6. The same record was entered into the Nutrition Receiving Book for record purposes. It was her evidence that she signed only one Delivery Note for the Consignment she received that day.
31. Ms. Josephine Mackenzie testified as RW4. She identified herself as a Public Health Officer-Food and Water Quality Control Unit. She enumerated her duties as being food and water quality control and inspection, Sanitation of the catering unit and enforcement of the *Public Health Act* Cap 242 and the Food and Chemical Substance Act, Cap 254.
32. It was RW4's evidence that on 19th September, 2016, she was called upon by the Claimant who was the Rations Store in charge, to inspect a consignment of sugar that had arrived. She carried out the inspection and took 2 samples of the white sugar that had been brought. She then signed a delivery note of 20 bags of 50 kgs of white sugar that she had seen and counted.
33. It was her further evidence that the consignment was delivered by M/s Vicate General Suppliers and the Delivery Note number was 109. She signed the delivery note that was handed over to her by the Claimant.
34. On 3rd October, 2016 she was called upon by the Claimant to inspect sugar that had arrived. She went and inspected 6 bags of 50 kg white sugar, took 2 samples and was given the delivery book by the Claimant to sign. She signed the Delivery Note No. 112 for 6 bags of white sugar 50 kgs each by M/s Vicate General Suppliers.
35. She further stated that on 14th October, 2016 she was called upon by the Claimant to inspect a consignment of white sugar. She inspected 6 bags of 50 kg white sugar after which she signed the Delivery Note no. 117 together with other inspection team members.



36. Mr. Eric Ogutu testified as RW5. He introduced himself as the Security Officer in-charge of Investigations at the Respondent Hospital. Similarly, he adopted his witness statement to constitute his evidence in chief.
37. RW5 enumerated his duties to include conducting internal security investigations, reporting and tracking all security and safety related issues.
38. It was RW5's evidence that on 25th November, 2016, he was given a memo enclosed with some documents from the Deputy Director, Finance, Mr. Kihuga. The documents enclosed were from the main kitchen, Ration Store for the payment of 300 bags of 50 kgs sugar per bag vide invoice No.007 dated 14th October, 2016 document No.5 for LPO No.0155739.
39. He stated that the complainant was the Acting Catering Manager, Ms Ruth Muthamia and AIE holder of the document that was to be used to pay the consignment. She could not comprehend how the consumption of 300 bags of sugar happened in one month.
40. He was then instructed to commence investigations during which he interviewed and recorded statements from staff attached to the Main Kitchen and who were the receiving team, the supplier and the Deputy Catering Manager. The supplier was unable to bring the driver who transported these bags to the Hospital. When he verified the documents, the registers of the receiving team were varying with the Delivery Notes from the supplier which were submitted by the Claimant, for payments in the last two deliveries.
41. He also noted that on 13th September, 2016, S13 Serial No.00010876 indicated a closing balance of 3,384 kgs which was not added to the opening balance of 300 bags of 50 kgs each totalling to 15,000kgs. He compiled a report dated 9th February, 2017 and submitted the same to the Deputy Director Human Resources and Deputy Director, Finance.
42. He reported the matter to the police and handed over the case to the Directorate of Criminal Investigations (DCI) since they were unable to get the driver who transported the sugar to the Hospital to clarify the figures that were supplied and also to confirm from the companies where Vicate General Supplier purchased the sugar to deliver to the Respondent Hospital.

Submissions

43. It was submitted on behalf of the Claimant that the Respondent is enjoined under Section 43 of the *Employment Act* to prove the reasons for termination. Citing the case of National Bank of Kenya vs Samuel Nguru Mutonya (2019) eKLR, it was the Claimant's further submission that the Respondent did not discharge this burden.
44. The Claimant further posited that he was dismissed without any proof of the reason for his termination. That his dismissal was harsh hence he should be awarded maximum compensation as per Section 49(1)(c) of the *Employment Act*.
45. On its part, the Respondent submitted that it had discharged its statutory burden imposed by Section 43 of the *Employment Act*. It was further submitted that the Respondent has proved on a balance of probabilities that the Claimant was dismissed from employment for a valid reason. On this score, the Respondent sought to rely on the case of Kenya Revenue Authority vs Reuwel Waithaka Gitahi & 2 Others (2019) eKLR.
46. It was further submitted by the Respondent that the termination of the Claimant was substantially justified and any reasonable employer would have dismissed the him.



47. On the question of procedural fairness, the Respondent submitted that in dismissing the Claimant, it followed due procedure as per the dictates of the [Employment Act](#).

Analysis and determination

48. I have considered the pleadings on record, the documentary evidence, oral testimonies rendered before Court, together with the rival submissions and the following issues stand out for determination: -
- i. Whether the Respondent had a fair and valid reason to terminate the employment of the Claimant;
 - ii. Was the Claimant accorded procedural fairness prior to being terminated from employment?
 - iii. Is the Claimant entitled to the reliefs sought?

Valid and fair reason?

49. Section 43 as read together with Section 45 (2) (a) and (b) of the [Employment Act](#) (Act) are the key statutory provisions in determining this issue. Whereas Section 43 requires an employer to prove the reasons for termination, Section 45(2) (a) and (b) provides that a termination of employment is unfair if the employer fails to prove: -
- a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason-
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; ...
50. Turning to the instant case, it is apparent from the Claimant's letter of dismissal that he was summarily dismissed on grounds of falsification of documents. The Claimant's letter of summary dismissal reads in part:

“Further to this office letter Ref: KNH/534665/A/20 dated 2nd March 2017, and your subsequent appearance before the Staff Disciplinary & Advisory Committee on 1st November 2017, your representations have not been given due consideration.

The Hospital Management has established that between 19th September 2016 and 17th October 2016, while deployed at the Ration Store, you raised an S13 No. 24665 to initiate payment process to Vicate General Suppliers for delivery of three hundred (300) bags of white sugar (50kg) each, valued at Kshs.1,695,000/=, purported to have been supplied to KNH as per delivery note numbers 109, 112 and 117.

Management has however, established that;

1. During the said period, only thirty-two (32) bags of white sugar (50kg) each valued at Kshs.180,800/= had been delivered and received in the Store. There was no delivery of 300 bags of white sugar to KNH and that the delivery notes were falsified by making false entries on them.
2. On average, the overall consumption of sugar in the Hospital over a period of one month is about one hundred and thirty two (132) bags of 50kg each. Going by the consumption rate of sugar, it was not possible to consume



three hundred (300) bags of 50kg within a period of one month i.e from 19th September to 17th October 2016.

3. The receiving team disputed the entries of 120 bags and 160 bag of sugar in delivery note numbers 112 and 117 respectively. They indicated that the figures were fictitious and confirmed that they only received six (6) bags of sugar on each delivery note. There was evidence to confirm that you tampered with the delivery notes.
4. The date on the delivery note No. 117 was glaringly tampered with so as to read October 2016 instead of September 2016.
5. You also raised S13 No. 24665 and indicated that the alleged three hundred (300) bags of sugar were all delivered at once yet this does not tally with the purported delivery note numbers 109,112, and 117.
6. The column for delivered quantities on the delivery notes was blank by the time you presented the same to the receiving team for signatures. You later inserted the figures of 20, 120 and 160 bags on the quantity column after the receiving inspection team members had signed the delivery notes and left the same with you. This action by yourself was intended to defraud the Hospital.

There is an apparent falsification of documents i.e the delivery notes and the S13 with an intention to defraud the Hospital. It is noted that had your fraudulent scheme succeeded and the payment made to the supplier, the Hospital would have lost Kshs. 1,514,200/= in a fraudulent manner. You are therefore, deemed to have used your position to manipulate figures and tamper with records on delivery of sugar with an intent to defraud the Hospital of huge amount of revenue. Your behaviour is a serious breach of discipline and a violation of the *Public Officer Ethics Act* 2007 and the professional code of conduct governing your practice as a supplies chain professional. The foregoing totally constitutes gross misconduct that cannot be condoned in the service...”

51. In essence, the Claimant was alleged to have raised S13 to initiate the payment process to Vicate General Suppliers for delivery of 300 bags of white sugar (50 kgs each) valued at Kshs 1,695,000.00 purported to have been supplied as per Delivery Notes nos. 109,112 and 117.
52. In his response to the Show Cause and during the disciplinary hearing, the Claimant was categorical that he received a total of 300 bags of white sugar being 20 bags through Delivery Note No. 109, then subsequently, 120 bags through Delivery Note No. 112 and 160 bags through Delivery Note No. 117. It was his further contention that number 6 appearing on the Delivery Notes refers to the item number and not the quantity received as per the tender document. The Claimant further stated that it is the supplier who raised the Delivery Note and that his role was only to verify the quantity delivered against the quantity in the Delivery Note.
53. According to the Delivery Notes exhibited by the Respondent, 20 bags of white sugar (50 kgs) were delivered through Delivery Note No. 109, dated 19th September, 2016, while 120 bags of white sugar (50 kgs) were delivered through delivery Note no. 112, dated 3rd October, 2016 and 160 bags of white sugar (50 kgs) were delivered through Delivery Note No. 117, dated 14th October, 2016.
54. Essentially, what this means is that according to the Claimant, a total of 300 bags of white sugar (50 kgs) were delivered to the Respondent Hospital on three occasions being 19th September, 2016, 3rd October, 2016 and 14th October, 2016.



55. The above information is in sharp contrast with the information given by the Claimant's fellow receiving team members who were consistent in their respective statements and testimony before Court, that between 19th September, 2016 and 17th October, 2016, they received a total of 32 bags of white sugar (50 kgs) as opposed to 300 bags of white sugar (50 kgs).
56. Specifically, RW2 stated that on 3rd October, 2016, she personally counted 6 bags of white sugar of 50 kgs and signed Delivery Note No. 112. According to her, the exercise took less than 5 minutes and that she could not have confused 6 bags of sugar for 160 bags.
57. On her part, RW3 stated that on 14th October, 2016, she signed Delivery Note No. 117 for 6 bags of white sugar of 50 kgs and that she physically counted the said bags of sugar. It is also noteworthy that in her response dated 10th March, 2017, to her show cause letter, she noted that the Delivery Note she had initially signed, had been tampered with and more figures were added to the initial figure they signed for.
58. On her part, RW4 stated that on 19th September, 2016, she received 20 bags of white sugar of 50 kgs through Delivery Note No. 109. She further stated that on 3rd October, 2016 she received 6 bags of sugar of 50 kgs through Delivery Note No. 112 and on 17th October, 2016, she received 6 bags of white sugar of 50 kgs through Delivery Note No. 117.
59. In essence, all the receiving team members who testified before Court, disowned the figures appearing in the Delivery Notes and maintained that what they signed for is different from what was appearing in the Delivery Notes on record.
60. It is further noteworthy that all the above witnesses who were part of the receiving team, confirmed that upon receiving the deliveries and signing the Delivery Notes, they entered the information in their respective internal registers being Catering, Nutrition and Public Health. Indeed, a perusal of the said internal registers which were exhibited by the Respondent, confirm as much and the entries therein tally with the information given by RW2, RW3 and RW4. This corroborates their respective testimonies before Court.
61. Further the 3 witnesses were consistent in their evidence that upon signing the Delivery Notes, they left the same with the Claimant who was the store man. This fact was confirmed by the Claimant during cross examination. One therefore wonders how and when did the figures specifically on quantity, significantly change from what the receiving team received, signed for and entered in their respective internal registers?
62. Indeed, it is only the Claimant who ultimately retained the Delivery Notes, that can explain the discrepancies. The fact that his evidence with regards to the quantity of sugar received through Delivery Notes No. 112 and 117 was significantly at variance with the evidence of the other receiving team members, point to some level of dishonesty on his part. As a matter of fact, the evidence of RW2, RW3 and RW4, who were part of the receiving team, completely overwhelmed the Claimant's evidence and I cannot help but conclude that he was not being truthful over the issue.
63. It goes without saying that since the Claimant was tasked with receiving goods, inspecting them and confirming the quantities received, utmost trust and honesty were key ingredients in the employment relationship.
64. Therefore, following the discrepancies in the Delivery Notes hence the suspicion that he had falsified the same, most certainly dented the trust the Respondent had in the Claimant, and consequently, it had a valid and fair reason to take disciplinary action against him.



65. In the case of *British Leyland UK Ltd. vs Swift* [1981] IRLR 91, it was held that: -

“The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which an employer might reasonably take one view: another quite reasonably take a different view. One would quite reasonably dismiss the man. The other quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him”

66. Applying the above determination to the instant case, it may very well be said that a reasonable employer in the Respondent’s shoes would have let go of the Claimant if faced with similar circumstances as the trust bestowed on him had been eroded.

67. In light of the foregoing, I find and hold that the reasons for the Claimant’s dismissal were fair and valid.

Procedural fairness?

68. The requirement for fair procedure is generally provided for under Section 45 (2) (c) of the Act. In addition, Section 41 (1) of the Act makes specific requirements in regards to the process to be complied with by an employer. It entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.

69. It is not in dispute that the Claimant was asked to show cause through a letter dated 2nd March, 2017. The allegations levelled against him were clearly spelt out in the said letter and he was given 7 days to respond to the said allegations. The Claimant tendered his response refuting the allegations against him and he was subsequently invited to appear for a disciplinary hearing through a letter dated 23rd October, 2017. Through the same letter, he was advised of the date of the hearing, the time and his right to be accompanied by a staff member or a union official of his own choice.

70. From the record, the Claimant appeared before the disciplinary committee on 1st November, 2017 in the company of Mr. Zuberi Mulusa. Also in attendance, was Mr. Kenneth Meme, a representative from the Union (KUDHEIHA Workers). At the disciplinary hearing, the Claimant was allowed to make his oral representations in response to the allegations raised against him. Together with his representative, they signed the disciplinary minutes.

71. Following the disciplinary hearing, the Claimant was informed of the decision to dismiss him from service with effect from 6th December, 2017. He was also informed of his right to appeal the decision against his dismissal. As per his own admission during cross examination, he did not exercise his right of appeal.

72. In view of the foregoing, I cannot help but note that the Claimant was accorded procedural fairness as he was informed of the allegations levelled against him, given an opportunity to be heard on his explanation to the allegations and given an opportunity to appeal the dismissal within 21 days. From the record, there is no evidence that he appealed against the Respondent’s decision to dismiss him.

73. In total sum, I find that the Claimant’s dismissal was neither unfair nor unlawful.



Reliefs?

74. As the Court has found that the Claimant's dismissal was not unfair and unlawful, the claim for notice pay and compensatory damages, collapse.
75. With regards to the claim for salary withheld during the period he was on suspension, it is notable that the Claimant was informed through the letter communicating his dismissal that:
- “The suspension hitherto imposed on you with effect from 17th January, 2017 should be lifted without loss of the withheld salary during the period of interdiction.”
76. My interpretation of the above statement is that the Claimant was entitled to be paid the salary withheld during the period he was on suspension from 17th January to 6th December, 2017, when his dismissal took effect. Therefore, the Claimant is entitled to his basic salary during the said period. For the avoidance of doubt, this is exclusive of his allowances as he was to earn the same during his suspension.

Orders

77. In the final analysis, I dismiss the claim substantially and only award the Claimant salary from 17th January, 2017 upto 6th December, 2017, being Kshs 597,721.60. This figure shall be subject to interest at court rates from the date of Judgment until payment in full.
78. There will be no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY, 2023.

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STELLA RUTTO

JUDGE

Appearance:

Mr. Rakoro for the Claimant

Mr. Muuo for the Respondent

Abdimalik Hussein Court Assistant

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

