



**Atisiaya v National Social Security Fund & another (Petition E208 of 2022)  
[2023] KEELRC 2212 (KLR) (25 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2212 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E208 OF 2022  
JK GAKERI, J  
SEPTEMBER 25, 2023**

**BETWEEN**

**JULIUS MIHESO ATISIAYA ..... PETITIONER**

**AND**

**NATIONAL SOCIAL SECURITY FUND ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL REGISTRAR OF PERSONS ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner commenced this suit by way of a Petition filed under Certificate of Urgency on 6<sup>th</sup> December, 2022 and was later Amended on 14<sup>th</sup> January 2022 seeking conservatory orders prohibiting the 1<sup>st</sup> Respondent from retiring the petitioner from service.
2. The Petition is supported by a Supporting Affidavit sworn on 5<sup>th</sup> December, 2022 and which generally replicates the contents of the petition.
3. In the petition, the Petitioner avers that he is a Kenyan Citizen born on the 5<sup>th</sup> September 1965 and was issued with a National Identity card on 9<sup>th</sup> March 1989 that indicated his year of birth as 1965.
4. The Petitioner states that he was employed by the Office of the Auditor General on 2<sup>nd</sup> of January 1990 and subsequently resigned in August 1998 to take up employment with the 1<sup>st</sup> Respondent and was required to submit copies of his professional certificates, NSSF and NHIF cards which he dully submitted.
5. It is the Petitioner’s case that in 2008 he was promoted to the position of Internal Auditor II and while serving in the position, he applied for the new generation Identity card which was issued but he noted that the card indicated the date of birth as 5<sup>th</sup> September 1962 in lieu of 5<sup>th</sup> September 1965.



6. The petitioner states that he had severally tried to have the anomaly corrected and even swore an affidavit on the same but his efforts fell through.
7. The petitioner further states that when he applied for a car loan using the identity card, the application was declined on account that he had altered his date of birth.
8. In response, the petitioner wrote a letter dated 25<sup>th</sup> November 2022 stating that he was born on 5<sup>th</sup> September 1965 and not 5<sup>th</sup> September 1962 and attached his KRA pin certificate, an Affidavit, Baptismal card, NHIF card and school leaving certificates that show the correct age as evidence of the date of Birth.
9. The petitioner avers that the 1<sup>st</sup> Respondent withheld his salary for the month of November 2022 and on enquiring vide letter dated 1<sup>st</sup> December 2022, the 1<sup>st</sup> Respondent issued a letter dated 1<sup>st</sup> December 2022 retiring him from work effective 10<sup>th</sup> December 2022.
10. The petitioner avers that the actions of the 1<sup>st</sup> Respondent humiliated him and breached his right to human dignity and exposed him to untold suffering and hardship as he was unable to service his loans and pay for personal amenities such as food.
11. The petitioner alleges that the 1<sup>st</sup> Respondent's decision to retire him was premeditated as decipherable from the fact that prior to being furnished with the retirement letter, the 1<sup>st</sup> Respondent had withheld the petitioner's salary.
12. It is the petitioner's case that the 1<sup>st</sup> Respondent violated the provisions of Article 2(1), 27(1), 28, 35, 41, 47, 50, 50(2) of *the Constitution* of Kenya, 2010.
13. The Petitioner prays for;
  - a. A declaration that the 1<sup>st</sup> Respondent actions and subsequent decision of 1<sup>st</sup> December 2022 violated his fundamental rights and freedoms as guaranteed under articles 10,27,28,40,41,47 and 50 of *the constitution*.
  - b. An Order Of Certiorari quashing the 1<sup>st</sup> Respondents letter dated 1<sup>st</sup> December 2022 which retired him from service.
  - c. An Order For Prohibition barring the 1<sup>st</sup> Respondent from implementing the decision contained in the letter dated 1<sup>st</sup> December 2022 retiring the petitioner on 10<sup>th</sup> December 2022.
  - d. An Order Of Mandamus compelling the 1<sup>st</sup> Respondent to pay the petitioner his withheld salary for December 2022.
  - e. An Order Mandamus compelling the 2<sup>nd</sup> Respondent to correct the new generation Identity card to insert the petitioners date of birth as 5<sup>th</sup> September 1965
  - f. An order of compensation for pain, suffering and loss of reputation to the petitioner.
  - g. Conservatory orders sought in the application accompanying the petition be allowed.
  - h. An order reinstating the petitioner to his former position and upon reinstatement the 1<sup>st</sup> Respondent to pay the petitioner his back salaries.
  - i. In the Alternative to prayers above, this Honourable court grants an ORDER MANDAMUS compelling the 1<sup>st</sup> Respondent to pay the petitioner all his retirement benefits including maximum compensation for unfair termination amounting to Kshs.4,292,721.24 (357,726 x 12 months) and 1month Notice pay of Kshs.352,726.77



- j. Cost of this petition
- k. Interest on prayers (f), (i), and (j) above at court rates from the date of filling this suit until payment in full.
- l. Any other relief or orders that this Honourable court shall deem just and fit to grant.

### **1<sup>st</sup> Respondent's case**

14. In Response to the petition the 1<sup>st</sup> Respondent filed a Replying Affidavit sworn by Sharon Achieng, the Employees Relations Officer on 5<sup>th</sup> April 2022.
15. The affiant states that the petitioner applied for the staff pension benefits and preceded for retire as such it is preposterous for the petitioner to seek an order reinstating him to the former position while he has already applied and received his pension benefits.
16. The affiant further states that although the petitioner indicated that his date of birth is 5<sup>th</sup> September 1965, he attached an identity card that shows he was born on 5<sup>th</sup> September 1962.
17. The affiant states that neither the prayer for compensation for unfair termination nor notice pay is a retirement benefit.
18. The 1<sup>st</sup> respondent urged the court to dismiss the petition with costs.

### **2<sup>nd</sup> Respondents case**

19. In its response to the amended petition, the 2<sup>nd</sup> respondent filed grounds of opposition dated 3<sup>rd</sup> May 2023.
20. It states that the petition is pre-mature as the petitioner had not appealed against the decision to retire him to the Public Service Commission Board as such it offends the doctrine of ripeness.
21. It further states that the petition offends the provisions of Section 9(2) and (3) of the Fair Administrative Actions Act on the principle of exhaustion of internal dispute resolution mechanism such as appeal or review.
22. The 2<sup>nd</sup> respondent states that the prayers sought are a monumental, procedural and legal nullity and an abuse of the court process and prays for dismissal of the petition with costs.

### **Petitioner's submissions**

23. Counsel for the petitioner highlighted the following issues for determination.
  - a. What is the petitioners date of Birth?
  - b. Whether the 1<sup>st</sup> Respondent followed due process in retiring the petitioner's services
  - c. Whether the petitioner's rights and fundamental freedoms have been violated by the Respondents
  - d. Whether the reliefs sought should be granted?
24. On the first issue counsel submitted that the decision to retire the petitioner via a letter dated 1<sup>st</sup> December 2022 on allegation that he attained the retirement age was substantially unfair.



25. Counsel submitted that all the documents submitted by the petitioner during the recruitment process being the NHIF card, National Identity card (Old Generation) and Professional Certificates bear the petitioner's date of Birth as 5<sup>th</sup> September 1965 which copies of the documents are in custody of the 1<sup>st</sup> Respondent.
26. It was submitted that reliance on the date in the new generation identity card by the respondent to retire him was unsubstantiated as the card was never submitted with his documents.
27. Counsel urges the court to find that the petitioner did not alter the date of birth as there are other documents that confirm that his date of birth was 5<sup>th</sup> September 1965 and not 5<sup>th</sup> September 1962.
28. It was contended that the petitioner had attached an affidavit which he swore upon being issued with the new generation Identity card and noted the anomaly on the date of Birth and his attempts to have the same corrected was not successful.
29. Reliance was made on the holding in *Rufas Osotsi Olefa vs Nairobi City Water & Sewerage Company Limited* (2018) eKLR to urge that the petitioner's retirement by the respondent was substantively unfair.
30. On the second issue the petitioner submits that the 1<sup>st</sup> Respondent in effecting the retirement did not follow the process as outlined in the 1<sup>st</sup> Respondents Grievance Handling and Staff Discipline policy and section 41 of the *Employment Act* which states;

“Notwithstanding any other provision of this part, an employer shall before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representation which the employee may on the grounds of misconduct or poor performance, the person if any chosen by the employee within subsection (1) make...”
31. Counsel further submitted that the Respondent was required to consider the representation of the petitioner prior to retiring him and that the disciplinary process was not followed as it commenced with investigations instead of an adhoc committee being established as required under clause 6.3.2 of the Grievance Handling and Staff Disciplinary Policy.
32. That petitioner was also apprehensive that the investigations were rushed as the respondent neither availed the evidence relied upon nor granted the petitioner an opportunity to respond to the allegations levelled against him.
33. On the third issue, counsel submitted that the petitioner's right under Article 28 of *the Constitution* of Kenya, 2010 was violated by the 1<sup>st</sup> Respondent by withholding his salary for a month thus subjecting him to degrading inhuman conditions.
34. Reliance was made on the holding in *Billow Isaac vs Ministry of Interior and co-ordination of the National Government and 3 others* (2021) eKLR where the court held that failure to pay salary to an employee after rendering services amounted to subjecting employee to degrading, inhuman and torturous conditions contrary to Article 28 of *the Constitution* of Kenya, 2010.
35. Counsel further submitted that the 1<sup>st</sup> Respondent violated the petitioner's rights under Article 50 and 47 by failing to furnish the petitioner with the evidence and materials presented to it before taking the administrative decision and failing to give the petitioner ample opportunity to respond to the accusations levelled against him.



36. Pushing the argument further, counsel urged that the 1<sup>st</sup> Respondent violated the petitioner’s right to fair labour practices under Article 41 of [the Constitution](#) by retiring him prematurely without following the due process and without justification.
37. On the third issue, counsel submitted that a decision taken in breach of principles of natural justice was null and void and ought to be quashed. Counsel urged that the decision to retire the petitioner be quashed.
38. It was further submitted that failure to pay an employee contravened Article 28 and the 1<sup>st</sup> Respondent should be compelled to pay the petitioner his salary for the month of December 2022.
39. Counsel submitted that the decision to retire the petitioner was malicious, arbitrary and unfair and the petitioner was entitled to an award of damages for the pain and damage caused by virtue of section 12 of the [Employment Act](#). The decision in *Nasibo Dabaso Jillo versus commander Kenya Army & Another* (2015) eKLR was relied upon to urge that an award of Kshs.3,000,000/= would be adequate compensation.
40. On reinstatement, counsel submitted that the petitioner fulfilled all the conditions prescribed under Section 49 of the [Employment Act](#).
41. Reliance was made on the sentiments of the court in *Dr. Kennedy Juma Mulunda vs Teachers Service Commission & 2 Others* (2022) where the court in reinstating the petitioner stated
 

“The premature nature of the disciplinary process taken into account, the senior position held by the petitioner, the court finds the order of reinstatement being appropriate in the circumstance of the case. The 2<sup>nd</sup> Respondent is a large public body and the petitioner can be placed accordingly”
42. Finally, counsel submitted that if the court was not inclined to reinstate the petitioner, he be awarded full compensation, a one-month’s salary in lieu of notice and Kshs.3,000,000/= in damages.

### **1<sup>st</sup> Respondent’s submissions**

43. The Respondent’s counsel isolated two issues for determination;
  - a. Whether the 1<sup>st</sup> Respondent was justified in retiring the petitioner
  - b. Whether the petitioner is entitled to the reliefs sought?
44. On the first issue, counsel cited the provisions of section 80(1) of the [Public Service Commission Act](#) which provides that;
  1. When a public officer has attained the mandatory retirement age as maybe prescribed in the regulations
    - a. the public officer shall retire from service with effect from the date of attaining the mandatory retirement age.
    - b. the commission or other appointing authority shall not extend the service of such retired public officer beyond the mandatory retirement age.
45. Counsel submitted that on the 1<sup>st</sup> November 2022 the petitioner submitted a car loan application and attached a copy of the identity card number 6637846 which showed his date of birth as 5<sup>th</sup> September



1962 which implied that he attained the age of retirement on the 5<sup>th</sup> September 2022 which triggered an investigation of the petitioner's record.

46. Counsel submitted that on investigation the 1<sup>st</sup> respondent discovered that the National Identity Card No. 6637846 issued on the 13<sup>th</sup> January 1995 that was produced on appointment had the year of altered to read 1965, the date of Birth in the application form had been erased and rewritten to read 1965 and the NSSF membership card bore the petitioner's date of birth as 1962.
47. It was submitted that the 1<sup>st</sup> Respondent wrote to the National Registration Bureau seeking to confirm the petitioners date of Birth and they responded vide the latter dated 23<sup>rd</sup> November 2022 confirming the petitioners date of birth as 5<sup>th</sup> September 1962.
48. Reliance was made on the holding in Republic vs Judicial Service Commission & 2 others Ex parte Erastus M. Githinji (2019) eKLR where the court held that;

“Thus the court presumes that the applicants birth certificate is true evidence of the dates and other facts it declares and the officer who issued the certificate had the authority to issue it and he issued the certificate in relying on the entries in the register and such useful and relevant information”
49. Counsel submitted that the 1<sup>st</sup> respondent was justified in upholding 5<sup>th</sup> September 1962 as the petitioner's date of birth and the decision to retire him was lawful and procedural. According to counsel, any reasonable employer faced with similar facts would have retired the petitioner.
50. Counsel relied on the sentiments of the court in Jacinta Wambua V Stanbic Bank Kenya Ltd (2022) where the court cited the sentiments of Lord Denning in Leyland UK Ltd V Swift (1981) IRLR 9.
51. Counsel further argued that the petitioner did not produce his birth certificate which would have been proof and conclusive evidence of his date of birth.
52. On the alleged termination of employment, counsel submitted that the petitioner's employment was not terminated on the grounds of misconduct or poor performance hence section 41(2) of the *Employment Act* could not apply in the circumstances.
53. Counsel urged that in retiring the petitioner, the 1<sup>st</sup> respondent did not violate any constitutional rights as it simply complied with the law.
54. As regards the reliefs sought, counsel submitted that the petitioner was not entitled to the reliefs and urged the court to find that the petition was devoid of merit and dismiss it with costs.
55. The 2<sup>nd</sup> respondent did not file submissions.

### **Findings and determination**

56. From the pleadings by the parties and submissions by counsel, the issues for determination are whether;
  - i. The petitioner's rights were violated?
  - ii. The 1<sup>st</sup> Respondent was justified in retiring the petitioner?
  - iii. The petitioner's is entitled to the reliefs sought?
57. The threshold of a Constitutional petition was articulated in Anarita Karimi Njeru V Attorney General (1979) KLR 154 and has been restated in legions of decisions such as Mumo Matemu V Trusted Society of Human Rights Alliance and Josphat Nanok & another V Ethics and Anti-



Corruption Commission (2018) eKLR and Kiambu County Tenants Welfare Association V Attorney General & another (2017) eKLR among others.

58. The threshold is;
- i. A precise statement of constitutional provisions allegedly violated or threatened with violation,
  - ii. Manner of the alleged violation or threat.
  - iii. Nature and extent of the alleged violation or threat.
59. In the instant case the petitioner contends that his right to be treated with dignity as enshrined in Article 28 of *the Constitution* of Kenya, 2010 was infringed by the 1<sup>st</sup> Respondent by withholding his salary for the month of November 2022 and as such his ability to pay his bills was curtailed, a fact the Respondent did not controvert.
60. In Jonathan Spangler v Centre for African Family Studies (CAFS) (2017) eKLR, the court held that failure to pay salary to employees after rendering their services was subjecting them to degrading, inhuman and torturous conditions.
61. The court is persuaded and finds that the petitioner's right under Article 28 of *the Constitution* of Kenya, 2010 was violated by the 1<sup>st</sup> Respondent.
62. The court is satisfied that the petition herein meets the threshold in Anarita Karimi Njeru V Attorney General (Supra) as regards the right to human dignity.
63. Similarly, the petitioner alleged that his right to fair hearing and administration action as enshrined in Article 47 and 50 of *the Constitution* of Kenya was violated by the 1<sup>st</sup> Respondent by its decision to retire him.
64. The 1<sup>st</sup> Respondent notified the petitioner its desire to retire his services by letter dated 1<sup>st</sup> December 2022 for having attained the retirement age. The 1<sup>st</sup> Respondent stated that it relied on information from National Registration Bureau confirming that the petitioner's date of birth was 5<sup>th</sup> September 1962. Puzzlingly, the respondent did not attach the report or letter from National Registration the Bureau which would have assisted the court in appreciating the circumstances in which the decision was made.
65. The 2<sup>nd</sup> respondent did not file any document including a copy of the confirmation letter allegedly relied upon by the 1<sup>st</sup> respondent in making its decision.
66. Conversely, the petitioner attached copies of the School Leaving Certificate, NHIF card valid from 30<sup>th</sup> October, 1998, Baptismal card issued by the Dioceses of Kakamega, Bunyangu Catholic Mission P.O. Box 559 Maragoli all showing that the year of Birth was 1965. Significantly, the petitioner attached a legible copy of the old generation Identity Card which clearly shows that his date of birth was 5<sup>th</sup> September, 1965. In addition the petitioner swore an Affidavit in March 1996 seeking correction of the year of Birth in the new identity card.
67. The 1<sup>st</sup> respondent is duty bound to keep the records of its employees and the records ought to show when an employee is due for retirement for purposes of planning and training for that purpose. In the instant case, the 1<sup>st</sup> respondent appear to have been awakened by the petitioner's Application for a car loan form, thus accidentally.



68. Needless to belabour, retirement is not a menial issue and there being a dispute on the date of retirement, the 1<sup>st</sup> Respondent ought to have subjected the petitioner to a process for both sides to ventilate their case and a decision made thereafter.
69. While the court is in agreement that the respondent's counsel that a copy of the birth certificate would have assisted in determining the petitioner's date of birth, none was availed by either party.
70. It is also common knowledge that employers do not typically request for birth certificates as long as an employee has provided a copy of the Identity Card.
71. Relatedly, neither the 1<sup>st</sup> nor the 2<sup>nd</sup> respondent alleged that the old generation of Identity Card were issued on the basis of birth certificates or that birth certificates were a requirement. Using the Identity Card as the principal document on the date of birth, the petitioner's evidence outweighs that of the 1<sup>st</sup> respondent as he has a copy of the old identity card with the date of birth he associates with and has several other verifiable documents attesting to that date.
72. The court is alive to the fact that the petitioner should have had the misrepresentation on his Identity Card rectified to obviate future challenges such as the instant one.
73. However, the court is not persuaded that he should be penalized for not having done so. The fact that he swore an affidavit about one (1) month after the new generation Identity Card was issued suffices.
74. Although evidence on record reveals that the petitioner had accessed his retirement dues, which he had to do to navigate the abrupt change of status to a retiree, the 1<sup>st</sup> respondent's argument that he was no longer an employee cannot avail it since it occasioned the unfortunate turn of events by failing to keep a tab on employee records.
75. In any case, even if the petitioner was reinstated, he would only enjoy about 1 year and 11 months before he retires at the age of 60 in September 2025.
76. Having found as above, it is evident that the respondent terminated the Claimant's employment in contravention of the provisions of the Employment Act, 2007 as it had no substantive justification for the termination and did not conduct it in accordance with a fair procedure as elucidated in *Walter Ogal Anuro V Teachers Service Commission (2013) eKLR*.
77. The 1<sup>st</sup> respondent failed to demonstrate that it had a valid and fair reason to terminate the petitioner's employment or did so in accordance with a fair procedure as ordained by the provisions of Section 41 of the Employment Act, 2007.
78. Having so found, the petitioner is entitled to the reliefs provided by Section 49(1)(c) of the Employment Act, 2007 for unfair termination of employment.
79. In the court's view, the respondent should have served a notice on the petitioner expressing its intention to retire him as it is apparent that the 1<sup>st</sup> respondent was unaware of the anomaly on the date of birth. The manner in which it dealt with the petitioner's matter is discreditable.
80. For the foregoing reasons, it is the finding of the court that the petitioner has demonstrated on a balance of probabilities that he was unfairly retired by the 1<sup>st</sup> Respondent.
81. On entitlement to reliefs, the court proceeds as follows;



## Declaration

82. Having found that the 1<sup>st</sup> respondent violated the petitioner's right to dignity guaranteed by Article 28 of *the Constitution* of Kenya, 2010, a declaration to that effect is merited.

## Reinstatement

83. The remedy of reinstatement is provided for under Section 12(3)(vii) of the *Employment and Labour Relations Court Act*, 2011 read together with Section 49(3)(a) of the *Employment Act*, 2007.
84. Section 49(3) of the *Employment Act* underscores the essence of reinstatement as follows;
- “Where in the opinion of a labour officer an employee's summary dismissal or termination of employment was unfair, the Labour Officer may recommend to the Employer to;
- a. reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated . . .”
85. It is trite law that analogous to other reliefs under Section 49(1) of the *Employment Act*, the remedy of reinstatement is discretionary. The court is enjoined to exercise its discretion on the basis of the provisions of Section 12(3)(vii) of the *Employment and Labour Relations Act*, 2011 and Section 49(4) of the *Employment Act*, 2007.
86. Under Section 12(3)(vii) of the Act, the remedy of reinstatement is only available within 3 years of cessation of employment and the petitioner's case falls within the prescribed time limit.
87. Under Section 49(4) of *Employment Act*, 2007, it is clear that the petitioner wished to continue in the 1<sup>st</sup> respondent's employment as exemplified by the prayer for reinstatement.
88. Second, although the petitioner was not the cause for the forced retirement by the 1<sup>st</sup> respondent, he contributed to the confusion as he made no demonstrable attempts to have the date on the Identity Card rectified. Having sworn the Affidavit in early March 1996 and the Identity Card was issued on 6<sup>th</sup> February, 1996, the petitioner ought to have shown the subsequent efforts made to have the anomaly rectified but did not.
89. Third, the 1<sup>st</sup> respondent adduced no evidence to demonstrate why reinstatement would be impracticable. Other than the fact that the petitioner accessed part of his pension in an endeavour to ameliorate his financial circumstances, it was not alleged that the parties separated acrimoniously and could not relate again or their respective positions had fundamentally changed.
90. As stated in *New Zealand Education Institute V Board of Trustees Auckland Normal Intermediate School*, (1994) Zernz 414 cited in *Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 3 others* (2014) eKLR;
- “ . . . Practicability is capable of being carried out in action, feasibility or the potential for the re-imposition of the employment relationship to be done or carried out successfully . . .”
91. The Newzealand case was clear that practicability of reinstatement denoted the balancing of interests of the parties and the justices of their cases in the past and future.



92. According to Maraga JA (as he then was) in the Kenya Airways case;

“Practicability in these circumstances includes reasonableness which invokes a broad inquiry into the equities of the parties cases so far as the prospective consideration of reinstatement is concerned. This includes consideration of the prospective effects of the order of reinstatement not only upon the individual employer and employee in the case but also upon the other affected employees of the same employer and perhaps upon 3<sup>rd</sup> parties.”

93. Fourth and needless to emphasize, the petitioner had been an employee of the 1<sup>st</sup> respondent for a period of 24 years and 2 months which is a long time and had no recorded misconduct.

94. Fifth, the petitioner anticipated that he would remain in the 1<sup>st</sup> respondent’s employment till retirement in 2025.

95. Finally, since the petitioner is above 55 years, the chances of procuring comparable employment are non-existent.

96. For the foregoing reasons, the court is satisfied that since the petitioner has been out of employment for only 10 months, the remedy of reinstatement is not only reasonable but practicable and it is accordingly granted.

97. In the upshot, judgement is entered in favour of the petitioner against the 1<sup>st</sup> respondent in the following terms;

- a. Declaration that the 1<sup>st</sup> respondent violated the petitioner’s right of inherent dignity by denying him the salary for November 2022 having worked for it.
- b. Reinstatement of the petitioner to his position with back salaries and without loss of benefits.
- c. Costs of the petition with interest from date hereof.

98. For the avoidance of doubt, all reliefs not expressly granted are declined.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2023**

**DR. JACOB GAKERI**

**JUDGE**

**ORDER**

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

**DR. JACOB GAKERI**



**JUDGE**

