



REPUBLIC OF KENYA



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**Wamuyu v Humprey & Company LLP & another (Cause 490 of 2017)  
[2023] KEELRC 2201 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2201 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 490 OF 2017  
AN MWAURE, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**LILLIAN WAMUYU ..... CLAIMANT**

**AND**

**HUMPREY & COMPANY LLP ..... 1<sup>ST</sup> RESPONDENT**

**CORPORATE CONSULTING INTERNATIONAL (K) LIMITED .... 2<sup>ND</sup>  
RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed a Memorandum of Claim dated 13<sup>th</sup> March 2017.

**Claimant's Case**

2. On 10<sup>th</sup> October 2016, the Claimant was employed and/or contracted as an independent consultant by the 1<sup>st</sup> Respondent to provide consultancy services to the 2<sup>nd</sup> Respondent. The Claimant was provided by the Respondents with an office space and an email address with the 2<sup>nd</sup> Respondent's domain (corporateconsultinginternational.org).
3. The Claimant worked under the supervision of Dr. Stephen Njiru, now deceased, who was a partner in the 1<sup>st</sup> Respondent's organisation and that the consultancy agreement was not signed. The Claimant avers the non-signing of the consultancy agreement made her relationship with the Respondents unclear.
4. She says that under the terms of engagement, express or implied from the conduct of the Respondents the Claimant provided consultancy services on a project which the Respondents had tendered at the International Foundation for Electoral Systems (IFES) which was geared towards implementation of



- the 'Kenya Electoral Assistance Program (KEAP), 2017 in consideration of which the Respondents agreed to pay Kshs. 90,000/- per month to the Claimant for the services offered.
5. The Claimant avers that she achieved all her deliverables in relation to the aforementioned project and during the pre-award survey stage, additional documents were requested by IFES which was prepared and submitted by the Claimant. Further, the preparation of these additional documents involved outsourcing of services from auditors to prepare audited reports for the year 2014 and 2015 at an additional cost of Kshs. 30,000/- not covered under the consultancy agreement.
  6. The Claimant avers that pursuant to the aforementioned, the Respondents' proposal to IFES was duly approved and signed on 6<sup>th</sup> December 2016.
  7. Further, during the period of provision of her consultancy services, the Claimant worked closely with the 1<sup>st</sup> Respondent's managing partner, the late Dr. Stephen Njiru and key staff of the Respondents and that she was even given a Christmas bonus issued as a cheque of Kshs 50,000/- duly signed by the 3<sup>rd</sup> Respondent (struck off from the pleadings) on 20<sup>th</sup> December 2016 which acknowledged the existence of the employment relationship.
  8. She says that after the death of Dr. Njiru, Hon. Kiraitu Murungi took over the day to day management of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent and the Claimant brought to his attention the terms of the consulting/ employment agreement and pointed out that it had not been signed owing to the death of Dr. Njiru. The Claimant requested for payment of the services she provided and outsourced audited accounts. She says that however, despite the letter and further notices, the Respondents have failed, neglected and/or refused to pay and/or compensate the Claimant for providing her services as agreed.

### **Respondent's Case**

9. The 1<sup>st</sup> Respondent entered appearance and filed a response to the Claimant's statement of claim dated 5<sup>th</sup> April 2017. The 2<sup>nd</sup> Respondent did not enter appearance in this suit.
10. The 1<sup>st</sup> Respondent denied that they employed and/or contracted the Claimant as an independent consultant on 10<sup>th</sup> October 2016 to provide any services to the 2<sup>nd</sup> Respondent or to any other person and at no time did it authorize its employees to work jointly with the Claimant. Further, it did not at any time require the services of the Claimant as alleged and put the Claimant to strict proof.
11. The 1<sup>st</sup> Respondent aver, the late Dr. Stephen Kimemia Njiru wore many hats in lifetime some of which were not carried out by him as a partner in the 1<sup>st</sup> Respondent such as the subject matter of this suit.
12. The 1<sup>st</sup> Respondent admit to have issued a cheque of Kshs. 50,000/- to the Claimant but deny it was meant to serve as a bonus or acknowledgement of the alleged employee-employer relationship but it maintains it was issued as a one off Christmas token in recognition of the fact the Claimant was presumed to have been working closely with the late Dr. Njiru.
13. The 1<sup>st</sup> Respondent deny breach of the Claimant's reasonable expectation and aver that it is not required to assume liabilities of the late Dr. Njiru in so far as the same were not reasonably accrued by him as a partner of the 1<sup>st</sup> Respondent.

### **Hearing**

14. The Claimant testified on 8<sup>th</sup> March 2023 and relied on her witness statement dated 13<sup>th</sup> March 2017 as her evidence in chief and her list of documents filed on even date as exhibits 1-26.



15. She testified that she was employed by the 1<sup>st</sup> Respondent as a consultancy and seconded to the 2<sup>nd</sup> Respondent and that she worked from the 1<sup>st</sup> Respondent's office and with its employee namely Maureen Warui who approved the pre awards she was working on.
16. During cross examination, the Claimant testified that she started working for the Respondent on 10<sup>th</sup> October 2016, under Dr Njiru and that he passed on before she signed the contract allegedly from the 1<sup>st</sup> Respondent which was tabled in this court undated, unsigned and the consideration and/or monthly wages unaddressed.
17. She further testified that she was working under Project International Foundation for Electoral Systems which was awarded to the 2<sup>nd</sup> Respondent.

### **Respondent**

18. The 1<sup>st</sup> Respondent witness, Lucy Muthoni testified that she is an employee of the 1<sup>st</sup> Respondent and adopted her witness statement dated 5<sup>th</sup> April 2017 as her evidence in chief and her list of documents dated 5<sup>th</sup> April 2017 as exhibits.
19. RW1 testified that she was a consultant with the 2<sup>nd</sup> Respondent together with other employees of the 1<sup>st</sup> Respondent such as Maureen Warui and that employees of the 1<sup>st</sup> Respondent were engaged with the 2<sup>nd</sup> Respondent on an individual level as consultants and she says, there was no connection between the two companies.
20. RW1 further testified that she used to create time to work for the 2<sup>nd</sup> Respondent however, her priority was the 1<sup>st</sup> Respondent and that 2<sup>nd</sup> Respondent is an independent company.
21. RW1 testified that the cheque of Kshs. 50,000 issued to the Claimant was done on humanitarian grounds as Dr. Njiru passed on before he had paid the Claimant. Further, the 1<sup>st</sup> Respondent never paid Christmas bonuses.

### **Claimant's Submissions**

22. To establish an employment relationship between the Claimant and 1<sup>st</sup> Respondent, the Claimant submitted that from the documentary evidence that is the unsigned consultancy agreement, documentary evidence in form of email correspondence and the Claimant worked under the supervision of one Maureen Warui an employee of the 1<sup>st</sup> Respondent, it is noted that the Claimant worked under a contract of service and therefore the Claimant was an employee.
23. The Claimant submitted that from the correspondences the 1<sup>st</sup> Respondent was the employer while the 2<sup>nd</sup> Respondent was a mere vehicle used by the 1<sup>st</sup> Respondent for tendering for the IFES project. The Claimant argued RW1 testified that her contract allowed her to work for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in different capacities, that beats logic that the 1<sup>st</sup> Respondent would allow its employees to work for other companies in different capacities and at the same time.
24. The Claimant relied on Industrial Court at Nairobi, in Cause Number 1011 of 2010 between Symon Wairobi Gituma v. East African Breweries Limited & 3 others which found that:-

“..... subsidiary or sister Companies are often merely places of work for many Employees, and that Courts should look at the business structure, not the legal structure adopted by the enterprise, in enforcing Employees' rights. In this regard, Courts must not hesitate in



disregarding corporate separateness, and apportion liability to the centre of decision-making in the enterprise.”

25. The Claimant further submitted she was paid Kshs. 50,000 as bonus in acknowledgment of the employment relationship, therefore the 1<sup>st</sup> Respondent is a proper party to this suit.

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

26. The 1<sup>st</sup> Respondent submitted the 2<sup>nd</sup> Respondent was never served and no return of service was filed before this court and denies the Claimant's submission that since the 2<sup>nd</sup> Respondent did not enter appearance this matter is between Claimant and itself. The 1<sup>st</sup> Respondent submits that following the death of Dr. Njiru, the 1<sup>st</sup> Respondent was made an easier target for the Claimant's allegations.
27. The 1<sup>st</sup> Respondent submitted that it disowned the unsigned contract presented before this court by the Claimant as a fabrication and maintains it is an attempt by the Claimant to force an employer-employee relationship with the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Respondent presented contracts of its employees before this court to demonstrate the difference in form and style of the alleged contract.
28. The 1<sup>st</sup> Respondent further submitted, the Claimant admitted during cross examination that she drafted the contract but did not sign the same. It is the 1<sup>st</sup> Respondent's position that it is an unheard of that a prospective employee drafts their own contract of employment.
29. It was submitted for the 1<sup>st</sup> Respondent, the Claimant was never an independent contractor of the 1<sup>st</sup> Respondent on grounds that she did not lead any evidence to show she received instructions from the 1<sup>st</sup> Respondent or she was directly controlled by the 1<sup>st</sup> Respondent; the Claimant has not led any evidence to show she received payments from the 1<sup>st</sup> Respondent only alleging receipt of a cheque of Kshs. 50,000 from Hon. Kiraitu Murungi and this cannot be the basis of implying an independent contractor relation and lastly a contract of service /employment contract must be more than 12 months.
30. The Respondent submitted, it is unarguable the 2<sup>nd</sup> Respondent is not one and the same as the 1<sup>st</sup> Respondent and that the 1<sup>st</sup> Respondent was not privy to the dealings of the 2<sup>nd</sup> Respondent and relied on East African Breweries Limited V Kenya Revenue Authority (2007) Eklr thus: -
- “a contract cannot be enforced against a third party who is not a party to the contract”
31. It was further submitted that Dr. Stephen Njiru being a director of both the Respondents and both companies shared a postal address but does not mean the obligations of the 2<sup>nd</sup> Respondent can be saddled on the 1<sup>st</sup> Respondent.
32. It was the Respondent's submissions that the Claimant's pleadings and testimony aver that she was hired as an independent contractor for the 2<sup>nd</sup> Respondent and by the late Dr. Njiru in his own capacity as a director of the 2<sup>nd</sup> Respondent and it would be unfair if the 1<sup>st</sup> Respondent is burdened by the obligations of another entity.
33. The Respondent submits that the claimant was never constructively dismissed and neither did she resign under protestabd in any event if she was employed by the 1<sup>st</sup> Respondent which the 1<sup>st</sup> Respondent denies then she never resigned constructively to give rise to the doctrine of constructive dismissal.



## Analysis and Determination

34. The main issues for determination by the court are: -
- a. Whether there exists an employment and/or independent contractual relationship between the Claimant and the Respondents.
  - b. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondent are one and the same and whether the 1<sup>st</sup> Respondent is a proper party to this suit.
  - c. Whether the Claimant is entitled to the reliefs sought.

### **Whether there exists an employment and/or independent contractual relationship between the Claimant and the Respondents?**

35. The Claimant submitted that there exists an employment relationship on grounds that the 1<sup>st</sup> Respondent contracted to provide consultancy services to the 2<sup>nd</sup> Respondent and she raises the arguments that she worked from the offices of the 1<sup>st</sup> Respondent and used the infrastructure of the 1<sup>st</sup> Respondent in performing the assignments and further she worked under the supervision of the 1<sup>st</sup> Respondent's partner Dr. Stephen Njiru (deceased) and an employee by the name Maureen Warui.
36. During cross examination, the Claimant admitted the unsigned contract referred as 'consultancy agreement' relied on is undated and further the consideration or fees is blank. She further testified that she was working under Dr. Njiru and the Project International Foundation for Electoral Systems which was awarded to the 2<sup>nd</sup> Respondent.
37. The aforementioned was reiterated by the 1<sup>st</sup> Respondent's witness who testified that the Claimant and herself were engaged as consultants for the 2<sup>nd</sup> Respondent under the supervision of the late Dr. Njiru albeit independently from her contract with the 1<sup>st</sup> Respondent.
38. This court is tasked to determine whether the Claimant had an employment relationship with the Respondent or she was an independent contractor.
39. Section 2 of the *Employment Act*, 2007 defines a contract of service between an employee and employer:-

“contract of service” means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies;

“employee” means a person employed for wages or a salary and includes an apprentice and indentured learner;

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.”



40. In *Omusamia v Upperhill Springs Restaurant (Cause 852 of 2017) [2021] KEELRC 3 (KLR) (5 October 2021)* (Judgment) the court pronounced itself as follows:-

“A contract for service was a contract by which a person, contractor or service provider made a commitment to another person, the client, to carry out material or intellectual work or to provide a service for a price or fee. Its characteristic being that the contractor was free to choose the means of performing the contract and no relationship of subordination existed between the contractor or the provider of the service and the client in respect of such performance.

In determining if a worker was an independent contractor or an employee the court had to search for the total relationship of the parties. It was exceedingly doubtful whether the search for a formula in the nature of a single test for identifying a contract of service served a useful purpose. The most that could profitably be done was to examine all the possible factors which had been referred to in those cases as bearing on the nature of the relationship between the parties concerned. Not all the factors would be relevant in all cases or had the same weight in all cases. Equally no magic formula could be propounded for determining which factors should, in any given case, be treated as the determining ones.

The tests that courts had employed over years, included, the control test – assessing the presence or absence of control; a manager or supervisor might or might not have over their worker, the fourfold test; control, ownership of the tools, chance of profit, risk of loss, and lastly the integration test. The approach looked at whether the service being provided by the worker was an integral part of the business done on behalf of the business but not integrated into the business.

The factors to consider in determining whether one was an employee and therefore under a contract of service was where:

the servant agreed to provide his own work and skill by providing services for that matter, in consideration of wages or other remuneration.

The servant agreed that in the performance of that service they would be subject to the master’s control. Control included the power of deciding the things to be done, the way in which they had to be done, the means to be employed and in doing them, the time and place where they were to be done.

The contract of service complied with the terms of an employment agreement. That entailed complying with the statutory requirements in the *Employment Act* including minimum wage, provision for leave and payment of income tax.”

41. In *George Kamau Ndiritu & Another vs Intercontinental Hotel [2015] eKLR* the court held:-

“I think however, that this facet of law has grown beyond this and in this regard I agree with the holding of Kimondo J in *Everret Aviation Limited vs the Kenya Revenue Authority [2013]eKLR* that in determining whether a relationship between parties is a contract for services between two independent parties or a contract of service giving rise to an employer/employee relationship, the traditional tests of control of the work by the employer and its integration into the employer's core business are no longer conclusive.”



42. Hon. Justice Kimondo J in *Everret Aviation Limited Vs the Kenya Revenue Authority* [2013] eKLR held:-

“There are also various tests to be employed when there is doubt whether a person is an employee. One of those tests is whether the person’s duties are an integral part of the employer’s business. See *Beloff vs Preddram Limited* [1973] ALL ER 241. The greater the direct control of the employee by the employer, the stronger the ground for holding it to be a contract of service. (See *Simmons Vs Heath Laundry Company* [1910] 1 KB 543, *O’ Kelly Vs Trusthouse Forte* [1983] 3 ALL ER 456.) That test is however not conclusive. The passage cited by the appellant in *Halsbury’s Laws of England Vol I 26*, 4th edition paragraph 3 is instructive:

“There is no single test for determining whether a person is an employee, the test that used to be considered sufficient, that is to say the control test, can no longer be considered sufficient, especially in the case of the employment of highly skilled individuals, and is now only one of the particular factors which may assist a court or tribunal in deciding the point. The question whether the person was integrated into the enterprise or remained apart from and independent of it has been suggested as an appropriate test, but is likewise only one of the relevant factors, for the modern approach is to balance all of those factors in deciding on the overall classification of the individual. The factors relevant in a particular case may include, in addition to control and integration: the method of payment; any obligation to work only for that employer, stipulations as to hours; overtime, holidays etc; arrangements for payment of income tax and national insurance contribution; how the contract may be terminated; whether the individual may delegate work; who provides tools and equipment; and who, ultimately, bears the risk of loss and the chance of profit. In some cases the nature of the work itself may be an important consideration”.

- 43 That paragraph does not however end where the appellant quoted. It proceeds further to state the following, and which goes to the crux of the matter here:

“The way in which the parties themselves treat the contract and the way in which they describe and operate it is not decisive; and a court or tribunal must consider the categorization of the person in question objectively. Thus a person could have been described as self-employed during the currency of the engagement but upon its termination claim to have been in fact an employee for the purpose of claiming unfair dismissal, though such a course of action could have unfortunate taxation implications.

In case of what is frequently referred to as ‘atypical employment’, such as temporary or casual work, sporadic work or homeworking, it may be appropriate, when deciding upon the employment status of an individual subject to such a regime, to consider whether there is sufficient mutuality of obligations to justify a finding that there was a contract of employment”.

(See also *Market Investigations Limited Vs Minister of Social Security* [1968] 3 ALL ER 732, *Fall Vs Hitchen* [1973] 1 ALL ER 368.)

- 44 The court has then to proceed carefully and objectively. It cannot rely on the descriptions of work that the parties put forward. There will be contracts of service where the master cannot control the manner in which the work is done. But they remain contracts of service. It is thus important to distinguish



between a contract of service and contract for service. There I am well guided by the holding of Denning L.J. in *Stevenson Jordan and Harrison Ltd Vs Macdonald and Evans* [1952] 1 TLR 101 at 110:

“I fully agree with all that my Lord has said on all the issues in this case. It raises the troublesome question of the distinction between a contract of service and a contract for services. The test usually applied is whether the employer has the right to control the manner of doing the work. Thus in *Collins Vs. Herts County Council*, Mr. Justice Hilbery said:

“The distinction between a contract for services and a contract of service can be summarized in this way: In the one case the master can order or require what is to be done, while in the other case he cannot only order or require what is to be done but how it shall be done.

45. But in *Cassidy Vs. Ministry of Health*, Lord Justice Somervell pointed out that that test is not universally correct. There are many contracts of service where the master cannot control the manner in which the work is to be done, as in the case of a captain of a ship. Lord Justice Somervell went on to say: “One perhaps cannot get much beyond this ‘Was the contract a contract of service within the meaning which an ordinary person would give under the words?’” I respectfully agree. As my Lord has said, it is almost impossible to give a precise definition of the distinction. It is often easy to recognize a contract of service when you see it, but difficult to say wherein the difference lies. A ship’s master, a chauffeur, and a reporter on the staff of a newspaper are all employed under a contract of service; but a ship’s pilot, a taxi-man, and a newspaper contributor are employed under a contract for services. One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of the business, and his work is done as an integral part of the business; whereas, under a contract for services, his work, although done for the business, is not intergraded into it but is only accessory to it”.
46. Having considered the pleadings, evidence in court and submission, this court hold that the Claimant was retained as an independent contractor and not an employee of the 2<sup>nd</sup> Respondent and at best hers was not an employment as defined in the *employment act*.
47. The Claimant herself testified that she provided consultancy services for the 2<sup>nd</sup> Respondent for the specific project tendered by the 2<sup>nd</sup> Respondent at IFES geared towards implementation of KEAP,2017. Further she failed to prove that she was indeed receiving a monthly salary or that the Respondents were remitting the required statutory deduction on her behalf as an employee; and/or she was accorded the statutory benefits of an employee as set out under the *Employment Act* e.g annual leave. This are vital ingredients to prove one is an employee as adduced in the aforementioned case law. Hence the conclusion that the claimant did not qualify to be regarded an employee of the respondents.

**Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondent are one and the same and whether the 1st Respondent is a proper party to this suit.**

48. The Claimant submitted that from the correspondences that the 1<sup>st</sup> Respondent was the employer while the 2<sup>nd</sup> Respondent was a mere vehicle used by the 1st Respondent for tendering for the IFES project. Further, the employees of the 1<sup>st</sup> Respondent were engaged in the project which was supervised by the late Dr. Njiru (a partner of the 1<sup>st</sup> Respondent and a director in the 2<sup>nd</sup> Respondent) and that she worked at the Respondent’s premises Fortis Tower.
49. However, during cross examination, the Claimant testified that she was engaged solely under the project for IFES geared towards implementation of KEAP,2017 which was awarded to the 2<sup>nd</sup>



Respondent. This brings forward the question as to whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondent are the same company based on the above?

50. The 1<sup>st</sup> Respondent is a limited liability partnership governed by *Limited Liability Partnership Act*, 2011. Section 6 (2) of the Act which provides that:-

“On being registered under this Act, a limited liability partnership becomes a body corporate with perpetual succession with a legal personality separate from that of its partners.”

Further Section 11(2) states: -

- “(2) Notwithstanding subsection (1), a limited liability partnership is not bound by anything done by a partner in dealing with a person if—
- (a) the partner has in fact no authority to act for the limited liability partnership by doing that thing; and
  - (b) the person knows that that person has no authority or does not know or believe that person to be a partner of the limited liability partnership”

51. The 2<sup>nd</sup> Respondent is a limited liability company registered under the *Companies Act*, 2015. The well-known case of *Salomon v Salomon* [1897] AC 78 the House of Lords held that a company is in law a separate person from its members. The Court of Appeal in the case of *Victor Mabachi & Anor vs Nurtun Bates Ltd* NRB CA Civil Appeal No. 247 of 2005 [2013] eKLR held that,

“[A company] as a body corporate, is a *persona juridica*, with a separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil.”

52. This court therefore disagrees with the Claimant’s argument and holds that the two entities are in law regarded as separate entities and as submitted by the 1<sup>st</sup> Respondent, the only connecting factor was that the late Dr. Stephen Njiru was a partner of the 1<sup>st</sup> Respondent and a director to the 2<sup>nd</sup> Respondent. The Claimant did not produce any document in this court such as an official search of the 2<sup>nd</sup> Respondent to ascertain that the ownership of the two entities are indeed the same, therefore her claims remain to be mere allegations.
53. The 2<sup>nd</sup> Respondent is a body with legal personality which can be sued on its own capacity and it would have been prudent for the Claimant to serve her claim to it and take necessary steps to ensure its appearance in this court.
54. On whether the 1<sup>st</sup> Respondent is a proper party to this suit, the Claimant submitted that she was paid a sum of Kshs. 50,000/- as bonus which is an acknowledgment of the employment relationship. This was vehemently denied by the 1<sup>st</sup> Respondent and its witness as it stated it was only a gift on grounds that the Claimant used to work closely with its deceased partner and that it never gave its employees Christmas bonuses and this was a one off. Further, this court has established that the Claimant was only but an independent contractor of the 2<sup>nd</sup> Respondent. In view of this, the 1<sup>st</sup> Respondent is not a proper party to this suit as there is lacking proof that the claimant had a contract of employment document with the first respondent.
55. In view of the foregoing, the court finds there is no proven privity to the dealings of the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent and yet the claimant seems to have had some dealings with the late Dr Njiru



and not the 1<sup>st</sup> respondent. As held in the case of East African Breweries Limited vs Kenya Revenue Authority (2007) eKLR

“ a contract cannot be enforced against a third party who is not a party to a contract.”

56. The court holds the claimant did not have an employment contract with the respondent and so her claim is dismissed.

57. Each party will bear their respective costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2023.**

**ANNA NGIBUINI MWAURE**

**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.

**ANNA NGIBUINI MWAURE**

**JUDGE**

