



**Musyimi v Kenya Christian Industrial Training Institute (Cause  
1919 of 2016) [2023] KEELRC 2466 (KLR) (16 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2466 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1919 OF 2016  
JK GAKERI, J  
OCTOBER 16, 2023**

**BETWEEN**

**RACHEL NJERI KAMAU MUSYIMI ..... CLAIMANT**

**AND**

**KENYA CHRISTIAN INDUSTRIAL TRAINING INSTITUTE ... RESPONDENT**

**JUDGMENT**

1. The Claimant commenced this suit by a Statement of Claim dated 16<sup>th</sup> September, 2016 and filed on even date alleging unfair termination of employment and non-payment of terminal dues.
2. The Claimant avers that she was employed by the Respondent in September 1998 as a Personal Assistant to the Founder and Director, one Mr. Hackett Berkeley. That the contract of employment was oral and her monthly salary was Kshs.30,587/= and a further Kshs.25,000/= not included on the payslip.
3. It is the Claimant's case that she served the Respondent diligently and with utmost loyalty until 10<sup>th</sup> November, 2015 when locks to her office were replaced by one of the Respondent's directors, and the Claimant could not access her office thereafter.
4. That she was sent on indefinite leave of absence by letter dated 8<sup>th</sup> December, 2015 on allegation of desertion of duty, responded on 9<sup>th</sup> December, 2015 and was summarily dismissed from employment on Friday, 11<sup>th</sup> December, 2015 having served the Respondent for 18 years.
5. The Claimant filed a response to the Respondent's defense where she maintained that her office was locked by one Charlotte Hackett on 10<sup>th</sup> November, 2015 accompanied by guards.
6. That as the Personal Assistant to Mr. Hackett, the Founder, Secretary and Treasurer of the Respondent, the Claimant had access to board members and knew their names and placed their travelling allowance in envelopes but never saw one Mr. Rawago.



7. That the Claimant received instructions from Mr. and Mrs Hackett exclusively even when they were out of the country and denied having received the letter dated 9<sup>th</sup> December, 2015.
8. The Claimant prays for;
  - a. A declaration that termination of employment was unfair.
  - b. An order directing the Respondent to pay the Claimant the sum of Kshs.893,784.00 comprising;
    - i. One month's salary in lieu of notice Kshs.55,587.00
    - ii. Leave days 2015 Kshs.55,587.00
    - iii. Pension contribution Kshs.115,566.00
    - iv. Compensation for unfair termination Kshs.667,044.00
    - v. Certificate of service
    - vi. Costs and interest.

### **Respondent's case**

9. In its Reply filed on 21<sup>st</sup> December, 2016, the Respondent denies having terminated the Claimant's employment unfairly and avers that the Claimant acted in a manner insubordinate to the employer.
10. According to the Respondent, the salary indicated on the Claimant's payslip was his salary and denies having locked out the Claimant out of her office.
11. The Respondent avers that it invited the Claimant for a defense and she was subsequently summoned by the board for a hearing vide a letter dated 9<sup>th</sup> December, 2015 but she did not appear for the hearing and her employment was terminated for insubordination, for having refused to recognize the board as her employer.
12. The Respondent avers that it is a duly registered institution with a Chairman and Secretary and Mr. Rawago is a member of the board as confirmed by the High Court in HCCC No. 415 of 2015 in 2016.
13. It denies owing the Claimant any pension dues as it had paid the sum of Kshs.333,919/=.
14. That the Claimant was a frequent deserter and the Respondent acted fairly.
15. The Respondent prays for dismissal of the suit with costs.

### **Claimant's evidence**

16. On cross-examination, the Claimant testified that she had no written contract of employment with the Respondent and her Supervisor was one Lydia Wanjiku but worked for the KCCTI IPCM Department having been hired by Berkely Hackett in 1998.
17. The witness admitted that the worksheets for 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> September, 2015 did not reveal her presence at the work place but denied having been a habitual deserter. That she worked even when outside the office.
18. The witness denied having acted with impunity even though her husband was a member of the Respondent's board and was the 2<sup>nd</sup> Plaintiff in HCCC No. 415 of 20145.



19. The witness denied having reported to the work place late or claiming to be a special employee.
20. The witness denied having acted in an insubordinate manner towards the supervisor.
21. She denied having received or signed the letter of invitation dated 9<sup>th</sup> December, 2015 and was unaware of the invitation, but admitted having received and responded to the letter dated 8<sup>th</sup> December, 2015.
22. The witness denied having been invited for any hearing or not acknowledging Mr. Rawago as a member of the board.
23. On the salary, the witness confirmed that her pay was Kshs.30,587.00 and the Kshs.25,000/= was from ICPM as commission but had no evidence of the payment.
24. It was her testimony that she was a signatory to all Respondent's accounts.
25. The witness denied having been aware of the reason for termination of employment.
26. It was her testimony that for 17 years, Mr. Rawago did not attend a single board meeting and the Claimant was unaware of his membership and the unauthenticated report of the auditor showed that he was not a director but was present at the meeting on 8<sup>th</sup> December, 2015.
27. That she was unaware of the days she is alleged not to have been at her place of work, (119 days).
28. The witness admitted that the claim for pension had been sorted and she had no claim against the Respondent.
29. The witness testified that after her office was invaded, she felt unsafe but still attended his brother's disciplinary hearing on 8<sup>th</sup> December, 2015.
30. On re-examination, the witness maintained that she was not invited for a disciplinary hearing and received no communication from the Respondent alleging insubordination nor warning letter.

### **Respondent's evidence**

31. RWI, Rawago testified that he was the Founder of the Respondent and the court had confirmed his membership to the Respondent's board in September 2016.
32. He acknowledged that the board had instigated the audit report on record in early 2015.
33. That the Claimant reported to the work place on 8<sup>th</sup> December, 2015 after having absconded duty and had refused to pick calls. The witness did not make the alleged calls.
34. That the Claimant did not recognize the board of the Respondent and constantly stated that the witness was not a member of the board.
35. That the Claimant was a Personal Assistant to Hackett Berkely and would report to work at 10 or 11 am and leave at 2 pm without permission.
36. On cross-examination, the witness confirmed that he participated in the formation of the Respondent but had no evidence to buttress the allegation, but for *the constitution* dated 10<sup>th</sup> August, 1993.
37. It was his testimony that the Respondent was a Limited Company with Directors but had no evidence to prove the allegation.
38. That the letter on the Claimant's desertion was served on 8<sup>th</sup> December, 2015 when the Claimant attended the brother's disciplinary hearing.



39. That the letter did not accuse the Claimant for insubordination.
40. The witness testified that the Claimant became arrogant after she received the letter and only responded to the issue of desertion.
41. The witness admitted that the Respondent did not notify the Claimant that she was entitled to appear with a colleague for the hearing.
42. The witness confirmed that the termination letter merely stated that the reason for termination was “provable misdemeanor”.
43. That it was the duty of the Respondent’s secretary to issue the Letter of Appointment.
44. That he had no evidence to show that the Claimant was ineffective and lazy, not even a warning letter for the 17 years she was an employee of the Respondent.
45. That the audit report on record stated that the witness was a retired director and the findings were shared with the board, received on 28<sup>th</sup> September, 2015 and the court ruling was rendered one year later.
46. The witness confirmed that the Claimant did not participate in any disciplinary hearing.
47. On re-examination, the witness testified that before 10<sup>th</sup> November, 2015 and 8<sup>th</sup> December, 2015, the Claimant was not reporting to work.
48. That the audit report is neither signed nor certified by the Auditor.
49. That the Plaintiffs in HCCC No. 415 of 2015 were relatives of the Claimant.
50. The witness testified that the Claimant was invited for a hearing but did not show up and the letter was hand delivered to her. The witness did not indicate who did so.
51. That Article 7(a) of the Respondent’s Constitution accorded the board power to summon irate employees and the Claimant was a habitual deserter.

#### **Claimant’s submissions**

52. Counsel isolated two basic issues for determination, namely;
  - i. Whether termination of the Claimant’s employment was unfair and unlawful.
  - ii. Whether the Claimant is entitled to the reliefs sought.
53. On termination, counsel submitted that it was the duty of the Respondent to prove that it had a valid reason to terminate the Claimant’s employment as ordained by the provisions of Section 41 and 45 of the [Employment Act](#), 2007.
54. Reliance was made on the decisions in *Matsesho V Newton (2022) KEELRC 1554*, *CMC Aviation Ltd V Mohammed Noor (2015) eKLR* and *Abraham Gumba V Kenya Medical Supplies Authority (2014) eKLR* on the essence of the reason for termination of employment.
55. Section 44(4)(d) of the [Employment Act](#) was also cited for the definition of insubordination, and urge that the Respondent had not demonstrated that the Claimant disobeyed any orders from her superiors or engaged in a verbal confrontation with any of them.
56. That the reason for termination was not properly communicated.



57. On procedural aspects of the termination, counsel itemised the requirements as details of the accusations against the employer, opportunity to respond, hearing and decision.
58. Counsel further submitted that the procedures were not followed and cites the decisions in Shankar Saklani V DHL Global Forwarding (K) Ltd (2012) eKLR, Galgalo Jarso Jillo V Agricultural Finance Corporation (2021) eKLR and Bamburi Cement Ltd V William Kilonzi (2016) eKLR to urge that the provisions of Section 41 of the [Employment Act](#) were mandatory.
59. As regards the reliefs sought, counsel relied on the sentiments of the Supreme Court decision in Kenfreight EA Ltd V Benson K. Nguti (2019) eKLR on the reliefs provided by Section 49 of the [Employment Act](#), 2007.

### **Respondent's submissions**

60. Counsel identified five (5) issues for determination touching on absenteeism, irregular payments, insubordination, procedural fairness and the reliefs prayed for.
61. On absenteeism, counsel cited Section 44(2) of the [Employment Act](#) to urge that the Claimant was a habitual deserter as evidenced by the letter dated 8<sup>th</sup> December, 2015 and only appeared on the material day as she was a witness in a disciplinary hearing.
62. Counsel relied on worksheets marked as "5A" to argue that the Claimant was absent from duty for 147 days in 2015.
63. On irregular payment, counsel submitted that the claim for Kshs.55,587.00 as salary had no supportive evidence as the payslip on record had a salary of Kshs.30,587.00.
64. On insubordination, counsel submitted that the Claimant treated the board insubordinately, especially Mr. Rawago as her pleadings reveal.
65. The decision in Benjamin Maundu V Telkom Kenya Ltd (2020) eKLR was relied upon to reinforce the submission on insubordination.
66. As regards the procedure employed by the Respondent, counsel submitted that the Claimant received the letter dated 8<sup>th</sup> December, 2015, responded on 9<sup>th</sup> December, 2015, received the invitation on the same day but did not attend the hearing. That the Claimant did not dispute service of the letter. Contrary to counsel's assertion, the Claimant disputed service cross-examination.
67. Sentiments of Wasilwa and Nduma Nderi JJ in Nahashon Murithi V Teachers Service Commission (2016) eKLR and Bernard Shem Koweru V United Millers Ltd (2020) eKLR respectively were relied upon to urge that the Claimant's failure to attend the hearing worked against her.

### **Findings and determination**

68. The issues for determination are;
  - i. Whether termination of the Claimant's employment by the Respondent was unfair and unlawful.
  - ii. Whether the Claimant is entitled to the reliefs sought.
69. As to whether termination of the Claimant was fair or unfair, counsels have adopted opposing positions typical in disputes. While the Claimant's counsel submitted that the Respondent had failed to provide a valid and fair reason for termination nor complied with the procedure, counsel for the



- Respondent urged that the Claimant was a habitual deserter and treated the board insubordinately and she failed to attend the hearing having been invited.
70. Needless to belabour, the provisions of Sections 35, 41, 43, 44, 45 and 47(5) of the *Employment Act*, 2007 prescribe the substantive and procedural tenets of termination of employment contracts. These provisions are specific on the requisite notice, procedure to be complied with, reason(s) and its validity and fairness, gross misconduct and justification. (See Pius Machafu Isindu V Lavington Security Guards Ltd (2017) eKLR.
71. These provisions are unambiguous that for a termination of employment to pass the fairness test, it must be shown that the employer had a substantive justification for the termination and adopted a fair procedure in conducting the termination of employment as exquisitely captured by Ndolo J. in Walter Ogal Anuro V Teachers Service Commission (2013) eKLR as follows;
- “ . . . For a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination, but also procedural fairness . . . ”
72. (See also Naima Khamis V Oxford University Press E.A Ltd (2017) eKLR) where the Court of Appeal expressed similar sentiments).

### **Reason for termination**

73. Section 45(2)(a) and (b) of the *Employment Act*, 2007 require the employer to demonstrate that it had a valid and fair reason to terminate the employee’s employment based on the employee’s conduct, capacity or compatibility or operational requirements of the employer.
74. In the instant suit, the allegations relate to conduct of the claimant, that she was a habitual deserter and treated the board insubordinately.
75. Did the Claimant desert her duties or abscond?
76. According to Black’s Law Dictionary, 10<sup>th</sup> Edition, Desertion means;
- “ The wilful and unjustified abandonment of a person’s duties or obligations.”
77. In the often cited South African case in Seabolo V Belgravia Hotel (1997) 6 BLLR 829 (CCMA), the court attempted to distinguish desertion from unauthorised absence from duty as follows;
- “ . . . desertion is distinguishable from absence without leave, in that the employee who deserts his or her post does so with the intention of not returning, or having left his or her post, subsequently formulates the intention not to return.”
78. According to the Respondent’s attendance sheets, it is apparent that the Claimant was not in the office on various days in September 2015. Her response was that she was performing duties outside the office.
79. The Respondent attached a two page document under the name Rachel Njeri Kamu summary for the 2015. Page 2 is a spread sheet under the heading “Rachel’s Attendance Schedule Year 2015.”
80. None of the pages has a date or authentication signature.
81. It is unclear to the court as to who prepared the document as RWI made no reference to it. The two pages lack authentication or source and are unreliable as evidence. This applies equally to the report relied upon by the Claimant to show that Mr. Rawago was not a director of the Respondent, as it



lacks authentication by anyone. The witness however, mentioned the attendance register but made no reference to a single page of the registers.

82. The Claimant testified that her office locks were replaced by Mrs Hackett on 10<sup>th</sup> November, 2015, allegations the Respondent's witness did not deny or explain. However, her appearance on 8<sup>th</sup> December, 2015 was curious, having testified that she feared for her life.
83. Although RWI testified that attempts to reach out to the Claimant before 8<sup>th</sup> December, 2015 fell through, he confirmed that he is not the one who made the alleged calls to the Claimant and had no evidence to support of his claim.
84. If indeed the Claimant had been absent from her post for the 147 days in 2015, as alleged, what action did the Respondent take to regularise the situation? Why did the Respondent not invoke the provisions of Section 44(4)(a) of the Employment Act, 2007 before December 2015?
85. Similarly, if the Claimant was ineffective and lazy as alleged, why was the Respondent impotent for the duration the Claimant was its employee until December 2015?
86. Notably, there is not a single document attesting to the Claimant's conduct or minutes of the board or even a complaint by anyone, the fact that her husband was a member of the Respondent's board notwithstanding.
87. It is trite law that an employer alleging that an employee has deserted the work place must show the steps taken to contact the employee for resumption of duty and is expected to issue a notice to show cause to the Claimant as held in *Felistas Acheha Ikatwa V Charles Peter Otieno* (2018) eKLR among other decisions.
88. In this case, the Respondent issued a notice to show cause when the Claimant appeared in the office on 8<sup>th</sup> December, 2015.
89. It is unclear to the court why the Respondent could not forward the letter by email or registered post if the desertion took place on 10<sup>th</sup> November, 2015, almost one (1) month earlier.
90. A possible inference is that the Respondent was aware why the Claimant may not have been reporting to work and was indecisive. A letter dated sometime in November 2015 would have demonstrated that the Respondent was concerned with the Claimant's absence.
91. It is unclear as to how long the Respondent would have waited before declaring the Claimant a deserter.
92. In the court's view, the evidence availed by the Respondent falls below the threshold required to establish desertion. At any rate, the Claimant brought herself back and by letter dated 9<sup>th</sup> December, 2017, explained her absence from 10<sup>th</sup> November, 2015.
93. The notice to show cause had another reason, namely absence from office for more than 21 days without authorization from the office, which the Claimant denied.
94. Puzzlingly, the summary dismissal letter dated 11<sup>th</sup> December, 2015 has no reason(s) for the termination of the Claimant's employment, a fact RWI admitted on cross-examination.
95. The letter reads in part;

“Further to our letter to your dated 8<sup>th</sup> December, 2015, it is noted with regret that you are not remorseful for your “provable misdemeanor” hence you have left the board with no option but to summarily dismiss you from the services of KCITI”



Yours faithfully,”

96. The letter makes no reference to the meaning of “provable misdemeanour” or its elements.
97. Based on the letter, it is unclear as to whether the Claimant’s employment was terminated for the alleged desertion or absence from duty without authorization or both. The Claimant denied the former and explained the latter and no further evidence was adduced to sustain either allegation. The alleged insubordination was unproven as RWI adduced no evidence.
98. It requires no emphasis that the employer is required to demonstrate that it had a valid and fair reason for the termination of employment. The authorities cited by the Claimant’s counsel on this point are spot on.
99. The Respondent must clearly indicate why the employee’s employment was terminated not only for information but for purposes of appeal.
100. How would the Claimant have appealed in this case where particulars of the alleged “provable misdemeanour” were only known to the Respondent’s director who signed the letter for the board and not as Chair of the board?

### **Procedure**

101. While the Claimant’s counsel urged that the relevant procedures were not followed in terminating the Claimant’s employment, the Respondent’s counsel maintained that the Claimant failed to appear for the disciplinary hearing and thus squandered the opportunity to defend herself.
102. Section 41 of the *Employment Act*, 2007 sets out the procedural precepts which an employer is required to comply with for a termination of employment to pass the fairness test.
103. Courts have additionally catalogued the essentials of procedural fairness under Section 41 of the Act as; explanation of the grounds of termination in a language understood by the employee, reason for which termination of employment was being considered, presence of another employee when the explanation of the grounds of termination is made and hearing and consideration of any representations made by the employee and the person chosen by the employee. (See *Postal Corporation of Kenya V Andrew K. Tanui* (2019) eKLR and *Loice Atieno V Kenya Commercial Bank Ltd* (2013) eKLR among others.
104. It is common ground that the Respondent issued a notice to show cause dated 8<sup>th</sup> December, 2015 and the Claimant responded by letter dated 9<sup>th</sup> December, 2015. The parties are in agreement that far.
105. Contrary to the Respondent’s counsel’s submission that the Claimant did not deny having received the letter of invitation to the hearing dated 9<sup>th</sup> December, 2015, the witness testified that she did not receive the letter and confirmed the same on cross-examination.
106. The Respondent adduced no evidence to demonstrate how service of letter was effected upon the Claimant and by whom.
107. On the previous day, the Claimant unexpectedly happened to appear for another employee’s disciplinary hearing and was served with a notice to show cause.
108. From the Respondent’s evidence, it is unclear why the Claimant was in the office on 9<sup>th</sup> December, 2015 as well.
109. According to RWI’s written statement dated 23<sup>rd</sup> October, 2021, the Claimant was summoned to appear on 8<sup>th</sup> December, 2015.



110. The statement makes no reference to the invitation dated 9<sup>th</sup> December, 2015 nor the alleged hearing.
111. Without credible evidence on who and how service of the invitation letter was effected, to controvert the Claimant's testimony, the court is not persuaded that the Respondent invited the Claimant for a hearing allegedly scheduled for 10<sup>th</sup> December, 2015.
112. Apart from the absence of a notice, it is unclear as to whether there was a scheduled hearing at all or what transpired thereat.
113. For undisclosed reasons, the Respondent availed neither a copy of the attendees or membership of the committee or the proceedings up to the moment the committee realized that it was a no show for the Claimant, nor the recommendations of the committee.
114. Intriguingly, the summary dismissal letter makes no reference to neither the alleged invitation or the alleged hearing nor the recommendation by the Respondent's board.
115. From the RWI's evidence, it is decipherable that no hearing had been scheduled on 10<sup>th</sup> December, 2015 and no sitting took place allegedly on account of the Claimant's absence.
116. To his credit however, RWI confirmed that even if the letter of invitation had been served on the Claimant, it did not explain her entitlement to being accompanied by a fellow employee of her choice.
117. Based on the testimony on record, it is the finding of the court that the Respondent has failed to demonstrate compliance with the mandatory provisions of Section 41 of the *Employment Act*, 2007.
118. The foregoing analysis is fortified by the sentiments of the Court of Appeal in *Postal Corporation of Kenya V Andrew K. Tanui (Supra)* as follows;  

“ In this case, the letter inviting the Respondent to appear before the board was only two lines containing the date and venue. It said nothing about the reasons for such invitation. It said nothing about the Respondent appearing with another employee of his choice. The retort that an employer has no obligation to ask the employee to be accompanied does not avail the appellant because the law requires that such other person be present to hear the grounds of termination and if so inclined, make representations thereon. A hearing not so conducted is irregular . . . ”
119. These sentiments apply on all fours to the facts of the instant case.
120. The alleged letter of invitation consists of two sentences. The second sentence emphasizing on the urgency of the matter only.
121. The letter has no acknowledgement by the Claimant nor the reason for the invitation among other omissions.
122. From the foregoing, the court is in agreement with counsel's submission that termination of the Claimant's employment was procedurally wanting.
123. The Respondent counsel's submission that the Claimant refused or failed to attend the hearing would have been sustainable if the Respondent had demonstrated that the invitation was actually served and received by the Claimant.
124. In a nutshell, it is the finding of this court that the Respondent has failed to demonstrate that termination of the Claimant's employment was fair.



## Reliefs

### a. Declaration

125. Having found that termination of the Claimant's employment by the Respondent was unfair for non-compliance with the provisions of the Employment Act, 2007, a declaration to that effect is merited.

### b. One month salary in lieu of notice

126. The Respondent adduced no evidence of having paid the Claimant salary in lieu of notice as required by Section 36 of the Employment Act, 2007 as no notice was given and the same is awarded, Kshs.30,587.00.

127. For the avoidance of doubt, the Claimant's salary is taken as per the payslip on record for the simple reason that the Claimant adduced no evidence that indeed she was receiving any additional amount at all. Such evidence would have implicated the provisions of Section 10(7) of the Employment Act, 2007 and the burden would have shifted to the Respondent to prove otherwise.

### c. Leave days for 2015

128. The Respondent adduced no evidence to show that the Claimant had proceeded on leave in 2015 or paid in lieu.

The prayer is awarded payment for the actual number of leave days unpaid.

### d. Pension contribution

129. The Claimant testified that this prayer was sorted and nothing was outstanding.

The prayer was abandoned and is accordingly dismissed.

### e. Compensation

130. Having found that termination of the Claimant's employment was unfair, the Claimant is entitled to the relief provided by Section 49(1)(c) of the Employment Act of upto 12 months compensation subject to the provisions of Section 49(4) of the Act.

131. In the instant suit, the court has taken into consideration the fact that;

- i. The Claimant was an employee of the Respondent for over 17 years, which is a long period of time.
- ii. The Claimant had no previous recorded or verbal warning or disciplinary hearing.
- iii. The Claimant did not appeal the Respondent's decision nor demonstrate her wish to continue in the Respondent's employment.
- iv. The Claimant contributed to the termination of employment.
- v. The Respondent paid the Claimant's pension benefits.

132. In the circumstances, the court is satisfied that the equivalent of five (5) months gross salary is fair.

### f. Certificate of service

133. The Claimant is entitled to certificate of service by dint of Section 51 of the Employment Act, 2007.



134. In the upshot, judgement is entered in favour of the Claimant against the Respondent in the following terms;
- a. Declaration that termination of the Claimant's employment by the Respondent was unfair.
  - b. One month's salary in lieu of notice Kshs.30,587.00
  - c. Actual leave days for 2015.
  - d. Equivalent of 5 months gross salary.
  - e. Certificate of service.
  - f. Costs of this suit.
  - g. Interest at court rates from the date hereof till payment in full.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 16<sup>TH</sup> DAY OF OCTOBER 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**

