



**Mwangi v Faulu Microfinance Bank Limited (Cause 581 of 2019)
[2023] KEELRC 3205 (KLR) (5 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3205 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 581 OF 2019
JK GAKERI, J
DECEMBER 5, 2023**

BETWEEN

DOLLY NYAMBURA MWANGI CLAIMANT

AND

FAULU MICROFINANCE BANK LIMITED RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent on 3rd September, 2019 alleging unfair termination of employment.
2. It is the Claimant's case that she joined the Respondent in October 2017 at a consolidated salary of Kshs.440,000/= which rose to Kshs.453,000.00 and was confirmed on 1st August, 2018 after completion of the probationary period.
3. The Claimant avers that she was issued with a Performance Management Improvement Plan (herein after PMIP) on 5th December, 2018 and another one on 3rd January, 2019 but back-dated to 5th December, 2018 and surpassed the targets but was issued with a notice to show cause on 23rd May, 2019 and responded in writing, was invited for a disciplinary hearing on 28th May, 2019, attended and eventually terminated from employment vide letter dated 16th June, 2019 for failure to meet expected standards under the PMIP.
4. It is the Claimant's case that she was not accorded a fair hearing and the appeal was not heard and determined owing to the presence of her counsel.
5. The Claimant prays for:-
 1. A declaration that termination of her employment by the Respondent was unfair, wrongful and unwarranted.
 2. Reinstatement as the Respondent's Head of Bancassurance.



3. In the alternative to prayer No. (2)
 - a. Three months' salary in lieu of notice Kshs.1,359,600/=
 - b. Severance pay for 2 years Kshs.453,200/=
 - c. 12 months compensation Kshs.5,438,400/=
 - d. Leave days earned but not taken
 - e. Pension scheme dues
4. Certificate of service.
5. Costs of this claim and interest.
6. Any other or further relief as the court may deem fit and just to grant.

Respondent's case

6. The Respondent admitted that the Claimant was its employee and was recruited after an interview and confirmed after a successful appraisal after extension of the probationary contract.
7. That the Claimant's performance was characterised by poor performance thereafter which necessitated the PMIP but the attempts fell through.
8. It is the Respondent's case that investigations revealed that the Claimant had breached the Respondent's policies and procedures by irregularly on boarding sale consultants and processing of commission and a second notice to show cause was issued and responded to.
9. That the disciplinary committee recommended termination of employment and the same was communicated by letter dated 10th June, 2019 and the termination was lawful and as it was summary, salary in lieu of notice was not payable but the Claimant was gratuitously paid one (1) month's salary in lieu of notice.
10. According to the Respondent, the Claimant's performance fell below par and efforts to have her improve bore no fruits and she conducted herself in a manner inconsistent with the Respondent's policies and job description.
11. That the Respondent advertised the position as there was no bar.

Claimant's evidence

12. On cross-examination, the Claimant confirmed that she was issued with two PMIPs and signed both on 5th December, 2018 and 3rd January, 2019 and raised the issue with the supervisor and submitted monthly returns as required as evidenced by emails on record.
13. As regards delay in forwarding the reports, the Claimant stated that she was not incharge of accounts and the figures had not been prepared for her submission and it was a monthly exercise.
14. The Claimant admitted receipt of the letter dated 23rd May, 2019 and was familiar with the persons therein, named as Caroline Wanjiku, Zakayo Kabeca and Jared Mararia but had not recruited them.
15. That payments were authorised by 3 persons and she was one of them as they fell under her docket of Bancassurance.



16. The witness confirmed having attended the hearing and appealed as she was dissatisfied with the outcome but was not heard on appeal though ready to proceed because she was accompanied by an advocate not allowed by the Respondent's Human Resource Manual which the witness feigned ignorance of.
17. On re-examination, the Claimant testified that during the 1st month of the PMIP, she met the target and she is the one who interviewed the Sales Consultants and handed them over to Human Resource for recruitment and signed the payment as processed by the accountant and there was a 3rd approver.
18. The witness confirmed that she attended the disciplinary hearing alone, hence her appearance with counsel for the appeal hearing.

Respondent's evidence

19. RWI, Mr. Richard Orina confirmed that the Respondent issued two PMIPs to the Claimant dated 5th December, 2018 and 5th December, 2018 respectively.
20. It was his testimony that on-boarding or recruitment of staff was a Human Resource function and commissions were processed by the Rewards and Benefits Department and payment approved by the Head of Department of Finance and the Claimant was not the Head of Finance.
21. The witness confirmed that although the letter of appointment provided for 3 months' notice, the letter of termination gave the Claimant one (1) month's salary.
22. That all policies and guidelines on termination were followed.
23. On re-examination RWI maintained that the Claimant breached the Respondent's Policies and her performance was poor.
24. That although the sale consultants were recruited by human resource, the benefits were irregularly paid.
25. That the two PMIPs were issued on the same day 5th December, 2018.

Claimant's submissions

26. Counsel for the Claimant addressed three issues including costs.
27. As to whether suspension and subsequent dismissal was lawful, counsel relied on Section 45 of the *Employment Act, 2007* to urge that for a termination to pass the fairness test, it had to be substantively and procedurally fair as held in *Walter Ogal Anuro V Teachers Service Commission (2013) eKLR* as well as *Fredrick Saundu Amolo V Principal, Namanga Mixed Day Secondary School & 2 others (2014) eKLR*.
28. On substantive fairness, counsel cited the provisions of Section 43 of the *Employment Act, 2007* to urge that the Claimant had met her target during the PMIP and the Respondent had no reason to terminate her employment.
29. On procedure, it was submitted that the Respondent did not follow due process and procedures outlined in the manual. No specific clauses were cited.
30. That the appeal was not heard and was thus denied the right to fair hearing.
31. As regards the reliefs sought, it was submitted that the Claimant was entitled to all the prayers sought and the Respondent should bear the costs of the suit.



Respondent's evidence

32. As to whether termination of the Claimant's employment was unlawful, counsel submitted that when the Claimant was notified of performance gaps, she consented to a PMIP and also agreed to monthly reviews and did not contest the plan and did not request for additional help but frustrated the process by delaying monthly reports to enable the Respondent monitor progress and her performance was below par leading to the notice to show cause and her explanation was unsatisfactory as the alleged meeting of targets was not demonstrated.
33. Counsel submitted that the Claimant had additionally violated the Respondent's policies on recruitment process by on-boarding three sales consultants and process their retainer yet they were unqualified for the same leading to another notice to show cause and subsequent termination of employment.
34. Reliance was made on the sentiments of the court in *National Bank of Kenya V Samuel Nguru Mutonya* (2019) eKLR where the court cited *Jane Samba Mukala V OI Tukai Lodge Ltd* (2013) eKLR to urge that the Respondent had shown that termination of the Claimant's employment for poor performance was lawful.
35. Reliance was also made on the reasonableness test in *British Leyland UK Ltd V Swift* (1981) I.R.L.R. 91 cited in *Joseph Mwaniki Nganga V United Millers Ltd* (2022) eKLR to urge that termination of employment was fair.
36. On due process, counsel submitted that the Respondent complied with the procedural requirements as the Claimant abandoned the appeal process and the termination of employment was procedurally fair.
37. On the reliefs sought, the Respondent submitted that the Claimant was not entitled to any as the termination of employment was not unfair and the claimant was guilty of gross misconduct.

Findings and determination

38. After careful consideration of the pleadings, evidence on record and submissions by counsel, the issues for determination are;
 - i. Whether termination of the Claimant's employment by the Respondent was unfair.
 - ii. Whether the Claimant is entitled to the reliefs sought.
39. As to whether termination of the Claimant's employment was unfair, the court is in agreement that for a termination of employment to pass the fairness test as prescribed by the provisions of Section 45 of the *Employment Act*, 2007, it must be demonstrated that the employer had a substantive justification for the termination and conducted it in accordance with a fair procedure as aptly captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (Supra).
40. It thus behooves this court to determine whether termination of the Claimant's employment met the threshold of fairness.

Reason for termination

41. Section 43(1) of the *Employment Act*, 2007 requires the employer to prove the reason(s) for the termination of employment failing which the termination is deemed unfair within the meaning of Section 45 of the *Employment Act*, 2007.



42. The reason(s) for termination of employment constitutes the substantive justification as it is the foundation of the decision by the employer.
43. In the instance case, it is common ground that the confirmation letter dated 3rd August, 2018 informed the Claimant that she would agree on a balance score card with the supervisor and a copy be furnished to the Human Resource Office for records and future appraisal would be based on performance against set targets.
44. Similarly, it is not in contest that by letter dated 18th May, 2018, the Claimant's probation was extended for a period of 3 months from 1st May, 2018 to allow the Claimant improve has performance which she appears to have done as evidenced by the confirmation letter. However, records reveal that the Claimant's performance for all Quarters in 2018 averaged at 2.2.
45. By letter dated 5th December, 2018, it is evident that the Claimant had a performance management discussion with the supervisor on even date and performance gaps had been noted which necessitated a PMIP and it was agreed that the Claimant would increase premiums by 50% from 232,148,000 to 348,222,000.
46. The baseline was the total premiums in October 2018.
47. The Claimant signed the PMIP on the same day.
48. The PMIP had a provision on the support needed as;Insurance of all bank assets through Bancassurance
Bancassurance Sales Manager
Banc assurance Sales Consultants in all branches
Increase Bancassurance weight to 25% on sales consultant score cardIntroduce commission earned in the Branches P & L account.
49. A handwritten note states that the foregoing "is separate from the delivery of target."
50. It is unclear as to what this statement meant since the statements made reference to part of the document signed by the Claimant and the supervisor.
51. According to the Respondent, the Claimant did not meet the targeted premiums of Kshs.116,074,000/= over the 3 months period and although the Claimant alleged that she had premiums of Kshs.30.6 million and Kshs.29.5 million for January and February 2019 she could not trace the figures for December 2018.
52. Puzzlingly, figures the Claimant had given to the Respondent's board of directors were also different from the actual figures from finance which were Kshs.23 million, 29 million and Kshs.31 million for the months of December 2018, January 2019 and February 2019 respectively and the Claimant admitted that she had not met the targets of the PMIP executed on 5th December, 2018 having achieved Kshs.83 million against a target of Kshs.116 million.
53. Evidently, the Claimant had not met the PMIP targets for the months of December 2018, January 2019 and February 2019.
54. From the documentary evidence availed, it is unclear as to what transpired from the end of February 2019 to May when the notices to show cause was issued.
55. The first notice dated 7th May, 2019 accused the Claimant of non-performance.



56. In her response, the Claimant alluded to the support she had requested for. However, the substance of the responses addresses her performances other than her performance under the PMIP.
57. The foregoing notwithstanding, and although the Claimant appreciated the assistance offered by the sale consultants, she had made other requests and they were an integral part of the PMIP and were not honoured by the Respondent.
58. How was she expected to deliver without the necessary facilitation as agreed upon? In the court's view, the Respondent failed the Claimant on the PMIP.
59. The 2nd notice to show cause dated 23rd May, 2019 accused the Claimant of failure to adhere to procedure on recruitment and selection of staff leading to irregular on-boarding of sales consultants, processing sales consultants retainer and commission payments contrary to the Respondent's policy and allowing payment of Kshs.35,625/= as retainer to Caroline Wanjiku, Zakayo Kabeca and Jared Maroria who were not qualified to earn the retainer.
60. In her response to the notice to show cause, the Claimant stated that she had always adhered to the Human Capital Procedures and denied having irregularly on-boarded sales consultants.
61. It was her testimony that there was no guidance on payment of commission and retainers and in any case commissions were approved by the Head of Finance.
62. The Claimant asserted that the Head of Finance misled her which lead to the payment of retainer to the three sales consultants and in any case she was not an accounting expert.
63. The totality of the Claimant's response is that she did not do anything unprocedural, although she did not explain how she was misled by the accountant and who did not sign the document or approve it.
64. In her written statement, the Claimant made no reference to role she played in the on-boarding and/ or payment of retainer to the three sales consultant.
65. On cross-examination, the Claimant was emphatic that she did not recruit them but knew them and in any case the payment was authorised by other persons and she only approved as the Head of Bancassurance.
66. The Respondent's investigation report dated 20th May, 2019 prepared by Keddy Kanyorota reveal that Zakayo Kabeca, Caroline Wanjiku and Faith Mueni Ndisi were working as Sales Consultants while Caroline Wanjiku had signed a contract and was awaiting a Staff Code.
67. That Zakayo Kabeca, Caroline Wanjiku and Jared Maroria were paid retainer yet they had not met their targets.
68. The investigation found that Zakayo Kabeca and Faith Mueni had not forwarded their documents to Human Resource and no background checks had been done.
69. The Claimant admitted that she interviewed the sales consultants but did not recruit them. If the Claimant forwarded their documents to Human Resource as she testified, did she receive a response that they had been engaged or any other indication they had been onboarded and how were they transacting the Respondent's business and were paid?
70. Although it was not the Claimant's job description to employ staff, she interviewed the Sales Consultants and it was incumbent upon her to ensure that they properly on-board before they commenced work in her department.



71. A hand written letter from one Faith Mueni Ndisi dated 8th April, 2019 shows the pivotal role the Claimant played in the recruitment of the sales consultants. The letter reveals that the retainer promised is what was paid and the author had not signed a contract of engagement.
72. None of the sales consultants had an appointment letter or staff code and they had neither signed the Bank Code of Conduct nor the Secrecy Bond
73. On payment of retainer to the Sales Consultants, the Claimant admitted that she prepared the payment documents, evidence she did not contradict during the hearings and annualized the premiums sales of the consultants for March 2019 to the full year and used the resultant figure to pay the retainer while evidence reveals that Cecilia Mwangi denied having prepared nor signed the General Transaction Form (GTF) and the premium schedule but admitted having prepared the payment approval summaries at the behest of the Claimant indicating retainers of Kshs.12,500/= and later learnt that payment had been made and raised the issue with the Claimant and her supervisor, Mr. David Mukaru.
74. The Investigation Report reveals that according to Mr. Wesley Kiptoo Menjo, a Bancassurance Officer, the GTF and other documents were prepared by the Claimant, though Cecilia Mwangi admitted having prepared the payment summary.
75. Wesley Kiptoo Menjo testified that he signed the payment document documents at the behest of the Claimant as his name had already been inserted and Cecilia Mwangi was unavailable at the time and payment was effected on 26th April, 2019.
76. Finally, the Disciplinary Committee found that the payment documents were approved by another member of staff yet the Accountant was not on leave and the Claimant personally requested Wesley Kiptoo to sign the documents as she waited.
77. The totality of the evidence on the payment of retainers to the Sales Consultant is that the Claimant played the pivotal role in having payment effected.
78. The termination dated 10th June, 2019 refers to the show cause letters dated 7th May and 23rd May, 2019 and the disciplinary hearing.
79. According to the letter, the termination of employment was on account of poor performance, performed her duties negligently and failed to observe company policies, procedures and breached the Respondent's operational procedures and control guidelines.
80. As regards poor performance, the court is persuaded that the test in Jane Samba Mukala V Ol Tukai Lodge (Supra) was met.
81. However, the fact that the Respondent did not deploy all the resources and facilitation it had promised, in the court's view vitiates the subsequent performance evaluation as one of the reasons for dismissal.
82. The foregoing notwithstanding, the Respondent has proved that the Claimant was actively involved in the irregular on-boarding of Sales Consultants and payment of retainers to three of them.
83. Section 43(2) of the [Employment Act](#), 2007 provides that;

“The reason or reasons for termination of a contract are the matters that the employer at the time of the termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.”



84. Similarly, in *Galgalo Jarso Jillo V Agricultural Finance Corporation (2021) eKLR*, the court stated as follows;
- “In other words, it is not a requirement of the law that the substantive ground informing the decision to terminate must be in existence. All that is required is for the employer to have a reasonable basis for genuinely believing that the ground exists.”
85. The Court of Appeal expressed similar sentiments in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others (2019) eKLR*, as follows;
- “The standard of proof is on a balance of probability not beyond reasonable doubt and all the employer is required to prove are the reasons that it genuinely believed to exist causing it to terminate the employee’s services. That is a partly subjective test.”
86. The foregoing sentiments are in consonance with the sentiments of Lord Denning MR in *British Leyland (UK) Ltd V Swift (1981) I.R.L. R 91* as follows;
- “The correct test is; was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer would have dismissed him the dismissal was fair. It must be remembered in all these cases that there was a band of reasonableness within which an employer might reasonably take one view; another quite reasonably take a different view . . .
- If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair though some other employer may not have dismissed him.”
87. Applying the foregoing provisions and propositions of law to the facts of the instant case, the court is satisfied that the Respondent has demonstrated on a preponderance of probabilities that it had a substantive justification to terminate the Claimant’s employment.

Procedure

88. As held in *Pius Machafu Isindu V Lavington Security Guards Ltd (2017) eKLR*, the [Employment Act, 2007](#) prescribes an elaborate mandatory procedure to be complied by the employer before termination of the employment relationship.
89. The elements of procedural fairness encapsulated in Section 41 of the [Employment Act, 2007](#) have been elaborated in countless decisions of this court and the Court of Appeal such as *Postal Corporation of Kenya V Andrew K. Tanui (2019) eKLR*, where the Court of Appeal isolated four elements as explanation of grounds of termination to the employee, reasons for which termination was being considered, entitlement of the employee to the presence of another employee of his choice during the explanation and hearing and considering the representations made by the employee or the person chosen by the employee.
90. In the instant case, the Claimant admitted that she received two notices to show cause dated 7th May, 2019 and 23rd May, 2019 setting out areas she was supposed to respond to and responded in writing.
91. The Claimant equally admitted that she was invited for a disciplinary hearing and attended the same.
92. The invitation letter informed the Claimant of the right to be accompanied by an employee of her choice.



93. Although the Claimant's written statement alleges that she was not accorded a fair hearing during the disciplinary hearing, the statement has no particulars of the alleged unfairness and neither written nor oral testimony evidence was furnished to demonstrate the denial of the right to fair hearing.
94. Minutes of the disciplinary hearing dated 7th June, 2019, whose contents the Claimant did not contest lay bare what transpired at the hearing.
95. The minutes reveal that the Claimant expressed her discomfort with the presence of her supervisor as one of the committee members but upon deliberations, it was proposed, and she did not object, that the supervisor sits through the hearing as an invited party not as a member of the committee and would not take part in the deliberations of the committee or be allowed to express his views in the Claimant's absence.
96. Minutes also show that after the hearing, the Claimant and her supervisor left the meeting for the Committee to deliberate on the matter and make recommendations.
97. The Committee recommended termination of the Claimant's employment in accordance with relevant internal processes.
98. It is common ground that the Claimant appealed the Respondent's decision to terminate her employment vide letter dated 1st July, 2019 and was invited for the appeal hearing on 2nd August, 2019 at 11.00 am by letter dated 31st July, 2019.
99. The letter notified the Claimant that she had the right to be accompanied by an internal staff to the meeting.
100. However, hearing could not take place on 2nd August due to quorum hitches, or 13th August, 2019 as the Claimant was indisposed.
101. The Claimant admitted that on the date of the appeal hearing, she appeared with her counsel contrary to clause 8.2.4.3 of the Respondent's Human Resource Manual June 2016 which is unambiguous that;

“No legal representation shall be allowed.”
102. Since the policies, procedures and rules were part of the Claimant's employment package, she was bound by them.
103. Minutes of the meeting dated 20th August, 2019 show that the committee deliberated the lawyer's presence and denied him audience or to sit through the meeting as an observer.
104. The minutes reveal that the Claimant's counsel made a request on notice period for invitation to attend the appeal and exclusion of counsel from hearings.
105. Having caught the committee unaware, the committee resolved to adjourn the hearing in light of the new issues raised by the advocate.
106. The Group Company Secretary advised the Claimant's advocate to raise the issues in writing for the banks consideration and decision.
107. Finally, the committee recommended that the appeal hearing be held in abeyance until the Claimant's advocate wrote to the Respondent as advised and the Claimant's position be filled.
108. Evidently, the Claimant was not eager to prosecute the appeal having learnt that the position she held had been advertised internally and neither the Claimant nor her advocate wrote to the Respondent after the appeal hearing aborted on 20th August, 2019.



109. Was the Claimant denied the right to be heard at the appellate stage?
110. The court is not persuaded that the Claimant was denied the right to prosecute the appeal as her appearance with an advocate as opposed to internal staff scuttled the hearing.
111. For unexplained reasons and contrary to the letter of invitation, the Claimant appeared with an advocate during the appeal hearing but appeared alone during the disciplinary hearing and did not raise the issue at the hearing on 31st May, 2019.
112. In light of the foregoing, the court is unable to agree with the Claimant's counsel's submission that the Claimant appeal was never heard while it is the Claimant who disregarded the Respondent's Human Resource Manual and appeared with an external as opposed to an internal person and when directed to raise the issues in writing for consideration by the Respondent, the Claimant did not do so.
113. The court is satisfied that the Respondent accorded the Claimant an opportunity to be heard, explain herself and question the supervisor or other person she desired to question and exercised the right of appeal but abandoned it before it was concluded.
114. From the foregoing, it is evident that the court has no compelling ground on which to fault the Respondent's disciplinary process as it accorded the Claimant an opportunity to respond to the charges, defend herself and present her case and appeal the decision.
115. Consequently, the court is unable to agree with the Claimant's counsel that termination of the Claimant's employment by the Respondent was procedurally flawed.
116. In the upshot, the court is unpersuaded that termination of the Claimant's employment was unfair.
117. As regards the reliefs sought, the court proceeds as follows;

Declaration

118. Having found that termination of the Claimant's employment by the Respondent was not unfair, the declaration sought is not merited and is declined.

Reinstatement

119. Having found as above, the remedy of reinstatement under Section 12(3)vii) of the [Employment and Labour Relations Court Act](#), 2011 read with Section 49(3)(a) of the [Employment Act](#), 2007, the remedy is unavailable.
120. More significantly, 3 years have lapsed since the Claimant's employment was terminated.

Alternative reliefs

3 months' salary in lieu of notice

121. Strangely, although paragraph 12 of the letter of appointment provided for 3 months' salary in lieu of notice, the Respondent paid one (1) months' salary albeit gratuitously.
122. The Disciplinary Committee recommended that the Claimant's employment be terminated in accordance with internal processes.
123. It did not recommend summary dismissal nor did the letter of termination dated 10th June, 2019, although the termination was effective the same day.



124. The Respondent's payment of one (1) months' salary was an acknowledgement that it did not accord the Claimant the requisite notice under the employment contract and the law and ought to have paid the Claimant 3 months' salary in lieu of notice pursuant to the provisions of Section 36 of the [Employment Act, 2007](#).

The Claimant is awarded 2 month's salary in lieu of notice.

Severance pay

125. Granted that the Claimant was not declared redundant under Section 40 of the [Employment Act, 2007](#), the prayer for severance pay is unsustainable and is dismissed.

Leave days earned but not taken

126. Noteworthy, the termination letter included this prayer as part of the Claimant's final dues as an accrued right.

127. For purposes of this suit, the relevant particulars were not availed or pleaded including the number.

128. Neither the written statement nor the oral testimony adduced in court make reference to the leave days. The prayer is declined.

12 months compensation

129. Having found that termination of the Claimant's employment was not unfair, the prayer for compensation is unsustainable and is dismissed.

Pension dues

130. The Claimant is entitled to her accrued pension dues in accord with the Trust Deed and applicable law. It is not for the court to decree the order.

131. The letter of termination of employment is explicit on it.

Certificate of service

132. The Claimant is entitled to certificate of service by dint of Section 51 of the [Employment Act, 2007](#).

133. In conclusion, the Claimant's suit for unlawful termination is dismissed.

134. As regards accrued rights, the Claimant is awarded as follows;

- a. Two (2) months' salary in lieu of notice Kshs.906,400/=.
- b. Certificate of service.

135. In the circumstances, it is only fair that parties bear own costs.

136. For the avoidance of doubt, the Respondent is bound by its letter dated 10th June, 2019 as it relates to the Claimant's final dues.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 5TH DAY OF DECEMBER 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 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 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

