



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**PETITION NO E123 OF 2021**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....PETITIONER**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY PUBLIC SERVICE BOARD...2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

1. The Petitioner, herein being a trade union representing the employees of the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents, brought the instant Petition dated 30<sup>th</sup> July, 2021 on behalf of its members.

2. The Petitioner alleges that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have unfairly and unjustly discriminated, violated, and/or threatened the fundamental rights of its members, thus contravening Articles 27, 41(1) and 47 of the Constitution of Kenya, 2010.

3. The Petition which is supported by the Affidavit sworn on 29<sup>th</sup> July 2021, by Mr. Roba S. Duba, who introduces himself as the General Secretary of the Petitioner, seeks for the following orders against the Respondents;

*a) A declaration be and is hereby issued that the Respondents herein have violated the Constitutional rights of the Petitioner's members to equal protection and benefit of the law, protection from discrimination, fair labour practices and fair administrative actions under Articles 27, 41 and 47 of the Constitution respectively.*

*b) This Honourable Court be pleased to issue an order of injunction restraining the Respondents, their agents, officers, and/or persons acting under their instructions from carrying on with the impugned advertisement, planned interviews, recruitment, and/or employment of any new employees of the County without first undertaking staff audit, qualifications assessment, right job placements, and promotions.*

*c) A declaration be and is hereby issued that the Respondents are in breach of the Memorandum of Agreement or the Return to Work Formula signed between the Petitioner and the representatives of the Respondents on 5<sup>th</sup> February, 2021.*

*d) This Honourable Court be pleased to grant an order of Prohibition restraining the Respondents or anyone acting under their directions from proceeding with the planned interviews, recruitments, and/or employments of county workers pending the hearing and determination of this Petition.*

*e) An order of Mandamus be and is hereby issued compelling the Respondents to carry out staff audit, promotions, qualification assessment, and right job placements of the existing employees.*

*f) A declaration be and is hereby issued that the Respondents have infringed upon the Petitioner's members' legitimate expectation regarding promotions and carrying out staff audits before recruiting a new county workforce.*

*g) An order certiorari be and is hereby issued to bring to this Honourable Court and quash the 2<sup>nd</sup> Respondent's impugned advertisements inviting applications.*

*h) Costs of this Petition be provided for.*

4. The Respondents opposed the Petition vide their Answer to the Petition filed on 27<sup>th</sup> January, 2022, which I must say was filed inordinately late considering the fact that the court issued directions in regards to filing of the response to the Petition and submissions on

14<sup>th</sup> December, 2022. Such delay was inexcusable and is intolerable. Nonetheless, and in the interest of justice, the court considered the Answer to the Petition and the submissions of the Respondents.

### **Petitioner's case**

5. The Petitioner avers that its members were inherited by the Respondents from the defunct City Council of Nairobi. That since the establishment of the Respondents, its members had a legitimate expectation that before any external advertisements of vacancies and recruitment of new employees into the county, the Respondents would carry out a comprehensive staff audit, qualification assessments, promotions and/or right job placements. This would be in order to determine which positions can be filled by the current members of staff.

6. It states that to its dismay and that of its members, the 2<sup>nd</sup> Respondent placed advertisements on its website on 8<sup>th</sup> July 2021, through which it announced vacancies and invited applications from the larger public to fill various vacant positions in the 1<sup>st</sup> Respondent. The Petitioner avers that the same was done without any prior notice and/or consultation and as such, there was no guarantee that its members would be considered for the advertised positions.

7. In addition to this, the Petitioner highlights that some of the advertised positions have substantive office holders while others have employees who are serving in acting capacity.

8. The Petitioner avers that on 5<sup>th</sup> February 2020, a Memorandum of Agreement and/or Return to Work Formula was entered into by itself and representatives of the 1<sup>st</sup> Respondent. One of the terms of the agreement, was that the Petitioner, as a key stakeholder, would be involved in the process of promotions and placements to ensure none of its members are discriminated against.

9. That in spite of this, the Respondents are yet to fully implement what was agreed upon. As such, the Petitioner avers that the Respondents are estopped from any such actions that are in contravention with the said agreement.

10. It is also the Petitioner's contention, that by failing to afford its members adequate and equal opportunities for advancement, indirectly barring them from benefiting from the salary scales provided for under the CBA and declaring vacancies in positions that had substantive office holders, its members were discriminated against, contrary to the provisions of Article 27 of the Constitution.

11. In addition, the Petitioner states that the Respondents, by contributing to the loss of legitimate expectation of carrying out a staff audit; reneging on a valid Memorandum of Understanding and failing to involve it in the processing of promotions, had violated its members right to fair labour practices as guaranteed under Article 41(1) of the Constitution.

12. The Petitioner states that the 2<sup>nd</sup> Respondent's decision to advertise for positions in the county public service and subsequently conduct interviews, recruitments and employment of new county workers is an administrative action or is likely to affect the rights and interests of its members. On this account, it has cited the Respondents for violation of its members constitutional rights and hence in violation of Article 47 of the Constitution.

### **Respondents' case**

13. The crux of the Respondents' case is contained in its Answer to the Petition where it is averred that;

*a) there is no legitimate expectation for the 1<sup>st</sup> Respondent's (sic) members to be advised of any upcoming advertisements regarding employment opportunities;*

*b) There is no duty owed to the Petitioner in regards to consultation when advertising for employment opportunities;*

*c) the advertisement did not bar the Petitioner's members from applying for the advertised positions hence its claim is unsubstantiated;*

*d) It was untrue for the Petitioner to claim that it had not carried out a staff audit of the existing county workforce to determine the vacancies that cannot be filled by the current members of staff from the Petitioner's membership; and*

*e) employment matters are discretionary.*

14. On 1<sup>st</sup> December, 2021, the Court directed that the Petition be disposed of by way of written submissions.

### **Petitioner's Submissions**

15. The Petitioner submitted that the right to fair labour practices as enshrined under Article 41 of the Constitution, borders on fairness in employment practices, decisions, processes and the workplace in general. It buttressed its submissions on the case of **Peter Wambugu Kariuki & 16 others vs Kenya Agricultural Research Institute (2013) eKLR**.

16. The Petitioner further submitted that the planned recruitments by the Respondents are discriminatory against its members, which in turn is in violation of the provisions of Article 232(1)(i) of the Constitution. That these actions and/or decisions adversely affect the legal rights of its members due to the fact that it might render some members redundant and jobless.

17. It was also the Petitioner's submissions that the advertisements and planned recruitments are invalid being in breach of an existing validly signed Memorandum of Agreement and open to annulment by this court. On this score, it made reference to the case of **Geoffrey Mworio vs Water Resources Management Authority & 2 Others (2015) eKLR**.

18. In summation, the Petitioner submitted that the Court is empowered under Article 23(3) of the constitution and Section 12(3) of the Employment and the Labour Relations Court Act to grant orders sought in the petition. It urged that the Petitioner has clearly and convincingly proved that the rights of its members have been infringed hence asked the court to exercise its discretion in its favour.

### **Respondents' Submission**

19. On its part, the Respondent submitted that it was impermissible for a litigant to found a cause of action directly on the Constitution without alleging that the statute in question is deficient in the remedies it provides. On this issue it relied on several authorities including **Sumayya Athmani Hassan vs Paul Masinde Simidi & another [2019] eKLR** and **Communications Commission of Kenya & others vs Royal Media Services Ltd & 5 others (2014) eKLR**.

20. The Respondent further submitted that the Petitioner was required to demonstrate discrimination under Article 27 of the Constitution and in this regard, it had failed meet the substantive test. It invited the Court to consider the determination in the case of **Mohammed Abduba Dida vs Debate Media Limited & another [2018] eKLR** and **Samuel Nduati & 3 others vs Cabinet Secretary Ministry of Health & 9 others [2018] eKLR**.

21. It further opined that the Petitioner had the burden of proof to show that its constitutional rights had been violated and had failed to do so.

22. In conclusion, the Respondent submitted that the Petitioner had failed to plead with precision that its Constitutional rights as enshrined under Articles 27, 41 and 47 had been violated.

### **Analysis and Determination**

23. From the record, it is discernable that the Court is being called to determine the following issues;

**i. Whether the Petitioner's constitutional rights as enshrined under Articles 27, 41 and 47 have been violated or threatened to be violated?**

**ii. Is the Petitioner entitled to the reliefs sought?**

**Whether the Petitioner's constitutional rights as enshrined under Articles 27, 41 and 47 have been violated or threatened to be violated?**

24. The Petitioner has cited the Respondents for various constitutional breaches under Articles 27, 41 and 47. The Respondents have refuted this assertion and argued that the Petitioner has not demonstrated the said alleged breaches as by law required and has not pleaded the said breaches with the required precision.

25. In light of the foregoing, it is prudent to unbundle the constitutional provisions alleged to have been violated and evaluate the same against the circumstances herein.

### **Violation of Article 27**

26. The Petitioner has alleged that, the Respondents have violated the Constitution rights of its members as guaranteed under Article 27 in the following manner;

*a) Failing to afford the Petitioner's members fair, reasonable, adequate and equal opportunities for appointment and advancement in the county public service;*

*b) Indirectly barring employees who are members of the Petitioner from benefiting from the salary scales provided under a negotiate CBA with the County Government as an employer and instead intending to employ new workers under the Salaries and Remuneration Commission (SRC) terms of employment which are less favourable to employees;*

*c) Advertising the position of the Petitioner's members while there are substantive office holders in the positions being advertised;*

*d) Failing to promote the Petitioner's members, most of whom have served the County in various capacities and in acting capacities for long, and who should have the priority to be considered on the basis of their wide experience and skills earned on their jobs.*

27. Article 27 of the Constitution guarantees every person equality before the law, right to equal protection and equal benefit of the law. Essentially, the provision prohibits discrimination against any person on various grounds including, race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

28. At the outset, it is worth noting that the Petitioners have not proffered or identified the specific grounds under which its members have been discriminated or threatened to be discriminated against.

29. Nonetheless, Courts have through case law advocated for the widest construction of constitutional provisions. For instance, in the case of **Mohammed Abduba Dida vs. Debate Media Limited & Another**, the Court of Appeal determined that;

**“A broad and liberal interpretation of the provisions would mean that not only is discrimination on the grounds classified or specified prohibited, so too are any other grounds not specifically referred to by the provisions. So that discriminatory conduct would not merely be limited to the classifications set out, but could also include, any other ground, not specified by Article 27 (4) and (5)”.**

30. As such, there is need to look at the Petition in a wholesome manner so as to decipher the nature of the discrimination that has been allegedly practiced by the Respondents against members of the Petitioner. In my view, the Petitioners are challenging the advertisement placed on the 2<sup>nd</sup> Respondent’s website on 8<sup>th</sup> July, 2021. The question therefore is whether there has been discrimination by the Respondents against members of the Petitioner through the said advertisement?

31. The starting point is to consider the term discrimination so as to put the issue herein into context. The **Black’s Law Dictionary, (10<sup>th</sup> Edition)** defines discrimination as follows:

**“Differential treatment; a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.”**

32. Further, the Court of Appeal in the case of **Haki Na Sheria Initiative vs Inspector General of Police & 3 others [2020]** clarified that **“mere differentiation or unequal treatment does not per se amount to discrimination prohibited under Article 27 of the Constitution.”**

33. With this definition and clarification in mind, it is prudent to consider and analyse the contents of the advertisement in question. In this regard, the wording of the advertisement is key in determining whether there is a ground of discrimination apparent from its face or hidden within the text. The preamble of the advertisement reads as follows;

*“The Nairobi City County Public Service Board (NCPSB) invites applications from suitably qualified candidates to fill the following vacant positions.*

**IMPORTANT INFORMATION TO PROSPECTIVE APPLICANTS**

1. Applications can **ONLY** be submitted **ONLINE** on or before the stipulated deadline.
2. Applicants should be Kenyan citizens.
3. Applicants should meet requirements of chapter 6 of the Constitution of Kenya and will be required to have clearance certificates from EACC, KRA, CRB and a Certificate of Good Conduct from the Kenya Police Service.
4. Only shortlisted candidates will be contacted.
5. Applicants must have no prior criminal conviction or pending criminal action,
6. Applicants must be physically and medically fit.

***Nairobi City County is an equal opportunity employer. Qualified women and person living with disabilities are encouraged to apply...***

34. The rest of the advertisement provides for each vacancy, the job group, the job description, the openings and the qualifications required for the position.

35. The relevant provisions of Article 27 of the Constitution provide as follows;

**“[27 (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.**

**(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.**

**(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.**

**(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.**

**(5)A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4)...]”**

36. In light of the wording of the advertisement and the provisions of Article 27, the question that now begs for determination is whether the members of the Petitioner were discriminated against?

37. In order to determine this issue, I draw guidance from the case of **Mohammed Abduba Dida vs Debate Media Limited & Another (supra)** where the Court of Appeal developed the following criteria to be applied in determining the question of discrimination;

**“From the above cited authorities two fundamentals become apparent, one is that provisions or rules that create differences amongst affected persons do not of necessity give rise to the unequal or discriminatory treatment prohibited by Article 27, unless it can be demonstrated that such selection or differentiation is unreasonable or arbitrary and created for an illegitimate or surreptitious purpose. And the second is that, whether or not there has been a violation of the Constitution should be determined by applying a three stage enquiry to the circumstances of each case. The three stage enquiries are; firstly, whether the differentiation created by the provision or rules has a rational or logical connection to a legitimate purpose; if so, a violation of Article 27 will not have been established. If not, a second enquiry would be undertaken to determine whether the differentiation gives rise to unfair discrimination. If it does not, there is no violation of the constitution. But if the selection or differentiation gives rise to unfair discrimination, then the third enquiry would be necessary to determine whether it can be justified within the limitation provisions of the constitution.”**

38. As can be seen from its face, the advertisement was directed to all Kenyans who may meet the requirements for whichever position declared vacant. There is no preference or exclusion of persons who may or may not apply for any of the advertised positions. The only differentiation would be those qualified versus those not qualified.

39. The Petitioner has not specified any requirement in the advertisement that may be discriminatory to its members. If anything, there is no requirement that has expressly barred the members of the Petitioner from applying for any of the positions advertised. Further, and as stated herein, there is no differentiation spelt out in the advertisement except for the qualifications required. That is essentially, what would set everyone apart.

40. It is apparent that the only contention by the Petitioner is the fact that the advertisement invited Applicants outside the employment of the Respondents. To my mind, this does not amount to discrimination at all. In this respect, the Petitioner has not demonstrated the manner in which recruitment of new employees will be discriminatory to its members. It has further not demonstrated that the new employees will serve under more favourable terms compared to the current employees, who are its members. As it is, the reasons advanced by the Petitioner as amounting to discrimination against its members appear more speculative than real.

41. In the case of **Mohammed Abduba Dida vs. Debate Media Limited & Another [supra]**, the court found that the burden of proving that a right was infringed would be upon the person alleging such violation. The finding was in the following terms;

**“...ordinarily, the burden of demonstrating that a right was infringed would be upon the person alleging such violation, as that person would be in the better position to prove it. It is for the petitioner to show that, compared to another person, he or she has been denied a benefit or suffered a disadvantage, which are matters within the petitioner’s knowledge. Once the case is made out, the burden shifts to the other party. More particularly, in view of the observation that the rights alleged to have been infringed do not fall within the grounds classified by Article 27(4), more so the reason for the petitioner have to prove that his or her rights have been infringed in respect of the grounds alleged. And this is why the learned Judge stated, and we agree, that, “...where discrimination is alleged on an arbitrary ground, the burden is on the complainant to prove that the conduct complained of is not rational, that it amounts to discrimination and that the discrimination is unfair.”**

42. In view of the foregoing finding which I wholly adopt and reiterate, it was incumbent upon the Petitioner to prove that the advertisement placed by the 2<sup>nd</sup> Respondent was discriminatory against its members in one way or the other. My finding is that the Petitioner has not proved that the Respondents have violated the provisions of Article 27 by practicing discrimination against its members either directly or indirectly.

#### **Violation of Article 41**

43. Article 41 of the Constitution guarantees every person the right to fair labour practices. At the outset, it is notable that there is no definition ascribed to the term “fair labour practices”. In my considered view, the term underpins most of the provisions contained in the Employment Act (Act) hence should be interpreted within that context.

44. The Court in the case of **Peter Wambugu Kariuki and 16 Others vs Kenya Agricultural Research Institute [2013] eKLR** had this to say in regards to the term;

**“Secondly, it is the opinion of the court that the right to “fair labour practices” encompasses the constitutional and statutory provisions and the established work place conventions or usages that give effect to the elaborations set out in Article 41 or promote and protect fairness at work. These include provisions for basic fair treatment of employees, procedures for collective representation at work, and of late, policies that enhance family life while making it easier for men, women and persons with disabilities to go to work.”**

45. The Petitioner has alleged its members’ right to fair labour practices was infringed in the following manner;

*a) Failing to conduct staff audit and/or evaluation of the existing workforce to help them determine vacancies in the said workforce that cannot be filled by the current workforce drawn largely from the Petitioner’s membership as a worker’s union;*

b) *Failing to consider that the impugned advertisements and planned recruitment of new county workers has the automatic consequential effect of rendering the Petitioner's members redundant, given that the positions they currently hold both in substantive and acting capacities have been advertised;*

c) *Contributing to the loss of the reasonable, legitimate expectation that the Petitioner's members have had that the Respondents would carry out staff audit, qualification assessment, skilled labour availability, right job placements, and promotions before advertising vacancies and recruiting new employees into the County Public Service Board;*

d) *Reneging on a valid Memorandum of Agreement that was signed in 2020 between the Respondent's representatives and the Petitioner's Union, which inter alia resolved that pending promotions would be undertaken for the 10,671 county staff; and*

e) *Failing to involve the Petitioner Union in the process of promotions of workers to avoid that its members are not discriminated as was witnessed in the 2013 promotions, despite there being an agreement to that effect as contained in the memorandum of agreement dated 5<sup>th</sup> February, 2020.*

46. As I have stated herein, the term unfair labour practices must be construed in light of the provisions of the Employment Act vis a vis the alleged violation complained of by the Petitioner. The Petitioner has stated that the advertisement did not have due regard to the fact that some of the advertised positions could be taken up by its members and that the new positions could give rise to a case of redundancy within the Respondent's workforce. The Petitioner further avers that by the said advertisement, its members suffered loss of reasonable and legitimate expectation that a staff audit would be undertaken and that the Respondents had reneged on the agreement of 5<sup>th</sup> February, 2020.

47. The Respondent has denied the assertion by the Petitioner that no staff audit had been conducted. In this regard, this issue of fact which remained contested.

48. Further the issue of the imminent redundancy as raised by the Petitioner was not backed by concrete facts and hard evidence hence is presumptuous. A case of redundancy must be supported by real existing facts and not speculation, which I find is the case herein.

49. As it is, the relevant facts herein as raised by the Petitioner have been contested by the Respondents hence a determination of the same could only have been made following oral evidence.

50. In the circumstances, it is my considered view that the Petitioner has not proved that the Respondent violated the provisions of Article 41 of the Constitution and its assertions to that effect are quite speculative.

#### **Violation of Article 47**

51. Right to fair administrative action is guaranteed under Article 47 of the Constitution in the following manner;

**(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.**

**(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.**

52. What then constitutes an administrative action? **Section 2** of the Fair Administrative Action Act defines the term "administrative action" to include

**(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or**

**(ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.**

53. In view of the foregoing definition, does the advertisement of vacancies by the 2<sup>nd</sup> Respondent amount to an administrative action? The answer to this question is in the affirmative given that the same was undertaken in pursuance of the Respondents' mandate to recruit staff. The next question for determination is, whether the same was fair?

54. The Petitioner has averred that the Respondent violated its members' right to fair administrative action in that;

a) *Advertising for various positions in the County Public Service Board without a legal basis;*

b) *Making the decision to recruit new county employees in bad faith as demonstrated by their failure to first conduct staff audit and consider the fact that already there are existing employees holding those positions and who have the relevant qualifications, competencies, skills and experiences which repine them for promotion;*

c) *Acting in an unreasonable and unfair manner by failing to consider the redundant effects that their actions and planned recruitments would have on the Petitioner's members who already (sic) the positions being advertised; and*

d) *Failing the reasonableness and rationality test by failing to give the affected workers the reasons for such a decision to advertise positions in which they are rightful holders both in substantive and acting capacity.*

55. In essence, the Petitioner challenges the recruitment of new staff by the Respondents. The Petitioner has alleged that as per the Memorandum of Agreement dated 5<sup>th</sup> February, 2020, the Respondents were to undertake a staff audit prior to any promotions and which staff audit was yet to be undertaken.

56. The Respondents have contested this fact. It is worth noting that the Respondents being employers, have the prerogative to fill any vacancies that may arise within its establishment. Therefore, and being a custodian of employee records, it is only the Respondents who possess the knowledge of any gaps within the staff establishment. In this regard, it holds information as regards the skills, competencies and qualifications of each employee within its service. By their very nature, these are issues of fact, which hold the key to determining the central issue in the dispute herein. However, it is not practicable to prove or disprove the same through a Petition as the instant one.

57. Further the Petitioner asserts that the recruitment of new staff may lead to its members being declared redundant. Again, these are issues that are factual and not subject to speculation and can only be proved or disproved following viva voce evidence. Otherwise they remain speculative and do not disclose a constitutional violation as presented.

58. It is apparent that at the heart of this dispute, is the alleged breach of the terms of the Memorandum of Agreement which raises issues of fact. Any determination of whether there has been breach or not, will require oral evidence, which will be tested during cross examination.

59. The upshot of the foregoing is that the Petition as a whole does not disclose the alleged violation of the constitutional rights of the Petitioner's members by the Respondents.

60. In any event, the members of the Petitioner have not demonstrated that they have taken any definitive action in regards to the advertisement by the 2<sup>nd</sup> Respondent. As such, any right they may have in that regard is yet to crystalize so as to be subject to violation.

### **Findings**

61. In the final analysis, I find that the Petition as a whole, does not disclose any violation in respect of Articles 27, 41 and 47 of the Constitution.

62. As regards, the prayers for orders of injunction, prohibition and certiorari, the same are wrongly placed in the instant petition as they ought to be applied for through an Application for Judicial Review.

63. What I find to be in dispute herein is the allegation that the Respondents have failed to adhere to the terms of the Memorandum of Agreement/Return to Work Formulae dated 5<sup>th</sup> February, 2020 between the parties. Be that as it may, such an issue is not subject to a constitutional petition. Any alleged breach of the terms of the Memorandum of Agreement ought to have brought by way of a normal Claim, which would have required calling of oral evidence and cross examination of witnesses.

### **Orders**

64. The upshot of the foregoing is that the Petition is struck out with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2022.**

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**STELLA RUTTO**

**JUDGE**

**Appearance:**

For the Petitioner Mr. Oginga

For the Respondent Mr. Chege

Court assistant Barille Sora

### **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 had been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**