



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 106 OF 2017

(Before Hon. Lady Justice Maureen Onyango)

CHARLES KOMBE CHARO.....CLAIMANT

VERSUS

EAST AFRICAN PORTLAND CEMENT COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant initiated this suit by a memorandum of claim dated 19th January 2017 and filed on 23rd January 2017. The Claimant alleges that his five (5) years contract with the Respondent dated 17th September 2012 was prematurely terminated by the Respondent on 16th December 2016 on the ground that he had attained the retirement age for 60 years.

2. The Claimant prays for –

a).. An order against the Respondent directing it to reinstate the Claimant to his employment immediately and in the alternative

b).. Payment of salary for the residual of the contract period that is January 2017 to September 2017 of

Kshs.483,738 x 9..... Kshs.4,353,642

c).. Three months' salary in lieu of notice. Kshs.1,541,214

d).. General damages for breach of contract that is one year salary 483,738 x 12..... Kshs.5,804,856

e).. Gratuity at 31% x 483,738 x 12 x 4.3..... Kshs.7,737,873

f).. An order that the Claimant be issued with a certificate of service

g).. Costs and interest of this suit

3. On 16th May 2018, the Claimant amended the memorandum of claim to insert a paragraph on gratuity at 31% Kshs.7,737,873/-. The amended memorandum of claim was filed on 23rd May 2018.

4. In its response, the Respondent filed a statement for response on 29th September 2021 and prayed for dismissal of the suit with costs.

Claimant's Case

5. The Claimant avers that on or about 17th September 2012, the Respondent employed him as the Head of Production Operations at a consolidated salary of Kshs.750,000/- per month under a term contract for a period of five (5) years due to expire on 17th September 2017.

6. The contract had a renewal clause subject to a written request at least six (6) months before expiry of the contract. The contract was terminable by either party giving a three months' notice or payment in lieu of notice.

7. It is averred that on 16th December 2016, the Respondent in breach of contract prematurely terminated the Claimant's contract alleging that the Claimant had attained 60 years without complying with the conditions of termination of contract by not allowing the Claimant serve

the full term for five years and failure to give a three months' notice or payment in lieu of notice.

8. That the Respondent refused to rescind the letter of termination as demanded by the Claimant. That the Claimant was on leave up to 17th January 2017.

9. The Claimant further avers that he served the Respondent diligently and with dedication and turned round the company in 2013 and made profit.

Respondent's Case

10. The Respondent's case is pleaded as follows:

11. The Respondent admitted that the Claimant was employed to the position for Head of Production Operations on 17th September 2012 for a period for five years.

12. It is averred that the Claimant misrepresented his date of birth as being 5th January 1957 instead of 5th January 1956 thereby rendering clause 3 of the letter of appointment void and unenforceable to the extent that it contravenes the provisions for the State Corporations Act read together with the Pensions Act.

13. The Respondent denies that the Claimant served diligently, with dedication and turned the company to profitability in 2013.

14. On the alleged premature termination, the Respondent avers that the Claimant's employment contract was to run for five years as provided by clause 3. That clause 3 was illegal for being in contravention of statute law.

15. The error in the contract was occasioned by the Claimant's express misrepresentation of his date of birth having indicated the same as 5th January 1957 in lieu of 5th January 1956.

16. That upon realizing that the Claimant had attained retirement age, the Respondent had no choice but terminate his contract of employment effective 1st January 2017.

17. It is further averred that the Claimant could not be reinstated as such an action would have been in contravention of the law.

18. Finally, the Respondent avers that it had valid and justifiable ground for terminating the Claimant's employment.

Evidence

19. The Claimant CHARLES KOMBE told the Court that he signed the employment contract on 17th September 2012 and indicated thereon that his age was fifty-five years and was terminated don 16th December 2016 for having attained the retirement age for 60 years. He testified he was given a new contract on 17th September 2012 for five years and it was not bound by the Human Resource Policies and Procedures Manual for Public Service, May 2016 when he joined the company in 1999.

20. It was his testimony that he had given the Respondent all his documents including a copy for the identity card and passport and had not lied about his age.

21. On cross examination the Claimant confirmed that he had no evidence to show that he had turned around the company. He also confirmed that the date of birth on the identity card was correct that is 1956. He also confirmed that he had completed and signed the employee card where the date of birth was indicated as 5th January 1957. That the date on the identity card was wrong and he had not provided a birth certificate. He confirmed that his official date of birth was 1956.

22. Finally, he confirmed that he was engaged as Head of Production Operations under a five-year contract and he was a public service employee.

23. RW1 JOEL KEMEI adopted the witness statement and was cross examined. The witness confirmed that the letter of appointment showed the Claimant's age as 55 years and the contract was due to expire on 17th September 2017. That the documents the Claimant had previously given the company had a different date of birth that is 5th January 1956.

24. The witness further confirmed that the letter of appointment dated 17th September 2012 was an agreement between an employer and an employee due to expire on 17th September 2017.

25. The witness testified that the Claimant misrepresented his age and on discovery he was terminated and was not given a notice of termination and terminal dues had not been paid.

26. The witness was unsure of whether the Claimant had cleared with the Respondent.

27. On re-examination, the witness stated that the Claimant had sought reinstatement.

Claimant's Submissions

28. The Claimant submits that it is trite law that parties are bound by their contract and courts enforce and do not rewrite contracts. That the parties herein had a five-year contract effective 17th September 2012 and expiring on 17th September 2017.

29. It is further submitted that the agreement was not dependent on the Claimant's age and the Respondent's reliance on the Public Service Commission Human Resource Policy and Procedures Manual (PSC Manual) and the Circular Ref. No. OP. CAB.2/7A dated 20th March 2009 was a misapprehension of facts and the law.

30. It is submitted that Section D.20 of the PSC Manual provides that –

“The employment of an officer serving on contract or probationary terms may be terminated by an Authorized Officer in accordance with the provisions of the officer's agreement or by giving appropriate period of notice or gross salary in lieu of notice.”

31. It is submitted that the Claimant was serving under an agreement and termination should have been in accordance with the terms of the agreement.

32. That the Respondent does not dispute breaking the contract but takes refuge under the PSC Manual.

33. It is also submitted that the circular dated 20th March 2009 on Review of Retirement Age did not prohibit the granting of a contract to a person who had attained the age of 60. That the Respondent did not dispute that the Claimant was earning Kshs.483,738 per month.

34. Pushing the case further, it is submitted that the Respondent breached the contract of employment because, it did not give the Claimant a termination notice or chance to be heard why his employment contract should not to be terminated. That the termination was premature and the Claimant suffered loss of earnings to the tune of Kshs.4,353,642/- and the Claimant had a legitimate expectation to serve the entire duration of the contract.

35. That the Claimant was not consulted before the termination letter was issued and is thus entitled to three (3) months salary in lieu of notice as provided by Clause 5 of the letter of appointment.

36. It is also submitted that the Claimant is entitled to gratuity at 31% as per the letter of appointment.

37. Reliance is made on the decision in **Kenfreight (E.A) Limited v Benson K. Nguti [2019] eKLR** where the Supreme Court of Kenya held that –

“We find that once a court has reached a finding that an employer has unlawfully terminated an employee's employment, the appropriate remedy is the one provided under Section 49 of the Employment Act. We also need to clarify that a payment of an award in Section 49(1)(a) is different from an award under Section 49 (1)(b) and (c).”

38. The Claimant urges the Court to award the sum of Kshs.19,007,733.44.

Respondent's Submissions

39. The Respondent on the other hand submits that the Respondent is a state corporation governed by the provisions of the State Corporations Act and was bound by the Curricular by the Head of Public Service dated 20th March 2009 as well as the PSC Manual, May 2016. The decision in **Mark Ole Karbolo & 4 Others v Acting Minister Ministry of Industrialization & Another [2012] eKLR** is relied upon.

40. It is also submitted that clause 3 of the employment contract which specified the duration of the contact was included by mistake of fact induced by the Claimant as to his date of birth. Reliance was made on the decision in **Tropical Food Products International Limited v Eastern and Southern African Trade and Development Bank (The PTA Bank) [2007] eKLR** where the Court of Appeal relied on the sentiments of the House for Lords in **Solle v Butcher (1949) 2 All ER 1107** with approval, on the power of the Court to set aside a contract for mistake if it would be unconscionable for the other party to avail itself a legal advantage as well as the contribution of equity to the development of the law on mistake *inter alia*, that equity will assist the party pleading mistake irrespective of whether it was one of fact or law or common mutual or unilateral.

41. It is submitted that the facts of this case fit within the matrix of a mistake which renders the contract voidable by equity since the Claimant misrepresented his age as 55 in his employment record card as well as the contract of employment which made the Respondent believe that the contract would run for five years without breaching the retirement age. That the Claimant would have obtained an unfair advantage by working past the mandatory retirement age. Thus, the Claimant's employment contract is voidable at the instance of the Respondent.

42. It is further submitted that the Claimant's termination was not based on disciplinary grounds but on fidelity to the law as regards retirement age of employees in state corporations.

43. Reliance was also made on the decision in **Kenya Kazi Services Ltd v Dickson Onjwaya Wasike & 42 others [2021] eKLR** where

this Court refused to uphold the Respondent's cross appeal for an award for salary for the remainder of the contract period, as was held in **Bank of Uganda v Tinkamanyire (2008) UGSC 21** to urge that the Claimant is not entitled to payment for the remainder of the contract term.

44. Finally, it is submitted that since the termination of the Claimant's contract to employment was neither illegal nor unfair but actuated by the need to obey the law, regarding retirement age under the Pensions Act and Government directives, that the Claimant cannot seek compensation for unfair termination and the action should be dismissed.

Analysis and Determination

45. The issues for determination are: -

- a) Whether the Claimant's contract of employment was vitiated by mistake and thus voidable at the option of the Respondent;
- b) Whether the Claimant retired or was terminated by the Respondent;
- c) Whether the Claimant is entitled to the reliefs sought.

46. As to whether the Claimant's contract of employment was vitiated by mistake, the Respondent submitted that Clause 3 of the employment contract which specified the duration as five (5) years was included by a mistake of fact induced by the Claimant's misrepresentation of age. It is contended that the Claimant's employment record card dated 28th August 2001 indicated that the Claimant was born on 5th January 1957 as declared by the Claimant. Relatedly, the Claimant indicated that his age was 55 in the letter of appointment dated 17th September 2012.

47. The Respondent uses the decision in **Tropical Food Products International Limited v Eastern And Southern African Trade and Development Bank (The PTA Bank) (supra)** to urge that the Claimant should not be allowed to obtain an unfair advantage by working after retirement age by reason of the Respondent's mistake.

48. It is important to interrogate this submission further by answering the question whether in fact the Respondent made a mistake by reason of the Claimant's misrepresentation of his date of birth on 28th August 2001.

49. There is no documentary evidence on record to show when the Claimant joined the Respondent. However, the Claimant testified that he joined sometime in 1999. He further testified that he gave the Respondent copies of the national identity card and the passport.

50. It is common ground that the Claimant misrepresented his date of birth when he completed the employee's record card on 28th August 2001. It is common knowledge that employee record cards are completed by employees before or after employment and are part of the documents in an employee's file kept by the Human Resource Department and is intended to capture details of the employee of purposes of internal affairs of the employer including insurance, next of kin and contacts in the event of an emergency.

51. Although the information was provided before the contract was signed by the Claimant such information though part of the contract is not a primary document on facts that are verifiable by other documents to be the basis of the contract between the parties. The primary document in the ascertainment of an employee's age is the national identity card or birth certificate in the absence of a national identity card for persons below the age of 18. The national identity card is one of the document often demanded by prospective employers during the interview.

52. Information provided by an employee for internal use cannot be deemed the authoritative source of information where other generally accepted official documents are available. The Respondent had copies of the Claimant's national identity card, passport and the Kenya Revenue Authority PIN certificate. All these documents had the Claimant's date of birth. The Respondent had the wherewithal to discover the discrepancy and raise it with the Claimant within a reasonable time of his employment and demand an explanation. It did not.

53. In a similar vein it is contended that the Claimant indicated his age as 55 on the letter of appointment dated 17th September 2012 on the day he signed it.

54. Intriguingly, neither the Respondent nor the Claimant alleged that the terms of the contract dated 17th September 2012 were not previously agreed upon by the parties or were not negotiated at all.

55. It is not in dispute that duration of the agreement had been agreed upon before the Claimant signed the document and inserted his age as 55 years.

56. Hypothetically, what would have been the case if he had not indicated his age or inserted a different number? Would that have invalidated the contract? This Court is not persuaded it would have affected the contract.

57. Finally, the termination letter dated 16th December 2016 states that –

“In accordance with personal records held by the company, your date of birth is 5th January 1956, an indication that you have attained and surpassed the mandatory retirement age of 60 years.”

58. The letter makes no reference to a mistake or misrepresentation by the Claimant.
59. For the above reasons this Court is satisfied that Respondent has on a balance of probability not established that it entered into contract with the Claimant under a mistake induced by the Claimant as regards his date of birth.
60. RW1 Joel Kemei confirmed on cross examination that the Claimant misrepresented his age but made no reference to any mistake being made by the Respondent.
61. Even assuming that that contract of employment was vitiated by unilateral mistake which generally renders a contract voidable at common law and equity as submitted, the Respondent did not establish that it acted within a reasonable time. It acted four years and three months later, a fair cry of the sagacious equitable maxim that equity aids the vigilant but not the indolent.
62. It is the finding of this Court that the contract between the parties was not vitiated by mistake.
63. As to whether the Claimant was terminated or retired from employment, the starting point is invariably Section 45 of the Employment Act 2007. Section 45(1) for the Act provides that:

- (1) No employer shall terminate the employment of an employee unfairly.**
- (2) A termination of employment by an employer is unfair if the employer fails to prove—**
- (a) that the reason for the termination is valid;**
- (b) that the reason for the termination is a fair reason—**
- (i) related to the employee’s conduct, capacity or compatibility; or**
- (ii) based on the operational requirements of the employer; and**
- (c) that the employment was terminated in accordance with fair procedure.**

64. In addition, Sections 43 and 47(5) of the Act provide that it is the duty of the employer to prove the reason or reasons for the termination and justify the same, falling which the termination is deemed to have been unfair.

65. Similarly, the jurisprudence emerging from this Court and the Court of Appeal is consistent that for a termination to be deemed fair, it must pass the substantive justification and procedural fairness tests. See **CMC Aviation Limited v Mohammed Noor [2013] eKLR**, **Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR** and **Kenafric Industries Limited v John Gitonga Njeru [2016] eKLR**.

66. In **Naima Khamis v Oxford University Press (EA) Limited [2017] eKLR**, the Court of Appeal expressed itself as follows:

“On the first issue, that is whether the termination was lawful, we wish to take note of the provisions of Section 43(1) of the Employment Act, which provides that in any claim arising out of termination of a contract, the employer is required to justify the reason or reasons for the termination, and where the employer fails to do so, the termination is deemed to have been unfair. Also Section 45(2)(c) requires a termination be done according to a fair procedure. From the foregoing, termination of employment may be substantively and/or procedurally unfair. A termination is also deemed substantively unfair where the employer fails to give valid reasons to support the termination. On the other hand, procedural unfairness arises where the employer fails to follow the laid down procedure as per contract, or fails to accord the employee an opportunity to be heard as by law required.”

67. The Court is in agreement and is bound by these sentiments.
68. On retirement, the Respondent relied on uncited provisions of the State Corporations Act, Cap 444 and the Pensions Act, Cap 189 to urge that the mandatory retirement age was sixty (60) years.
69. Reliance was also made on paragraph D21 of the PSC Manual, 2016 on reinterment age.
70. It was submitted that since the Respondent was a state corporation, it was subject to the PSC Manual, 2016 and the Head of Civil Service Circular dated 20th March 2009. The foregoing notwithstanding, sight must not be lost of the fact that the Respondent is listed on the Nairobi Securities Exchange and is obligated to act in accord with the provisions of the Capital Markets Act and all attendant regulations, rules and standards prescribed by the regulator.
71. It is also important to note that Paragraph D.20 of the PSC Manual, 2016 makes provision for termination of employment contracts of officers serving on contract the paragraph is explicit that: -

“The employment of an officer serving on contract or probationary terms may be terminated by an Authorized Officer in accordance with the provisions of the officer’s agreement or by giving appropriate period of notice or gross salary in lieu of

notice.”

72. It is common ground that the Claimant was serving under a contract executed on 17th September 2012. The contract of employment provided a mechanism for termination and retirement was not one of them, nor was the Claimant’s age a term of the contract.

73. If the Respondent intended the Claimant to retire on attaining the age of 60, nothing would have been easier. It would simply have inserted a provision to that effect that the contract would lapse on expiration of its duration or when the Claimant attained retirement age whichever occurred earlier.

74. As it is, the employment contract made no reference to the Claimant’s age since the parties thereto had not made it a term of the contract or subject to it. The Claimant and the Respondent had voluntarily entered into a fixed term contract for a period of five years terminable in accordance with its terms, the Court so finds and holds.

75. In addition, Circular Ref No. OP.CAB.2/7A dated 30th March 2009 relied upon by the Respondent as the basis of termination of the Claimant’s contract of employment adverted to employees serving on contract as at 5th March 2009 including renewal of contracts.

76. The circular does not preclude state corporations or the government from engaging persons who have attained the age of 60 on contractual basis and the civil service is replete with examples.

77. Analogous to paragraph D.20 of the PSC Manual, 2016, the circular is explicit on how contracts would be treated then, and by implication after the circular. This is informed by the fact that a contract imposes legally enforceable rights and obligations. It is the view of the Court that the circular dated 20th March 2009 is a rather tenuous ground to rely on to justify a termination on the basis of retirement age notwithstanding an existing contractual relationship between the parties.

78. As regards the status of the Respondent, the Court is in agreement with the finding and holding of the High Court in **Mark Ole Karbolo & 4 Others v Acting Minister Ministry of Industrialization & Another (supra)** that the Respondent is a state corporation and therefore subjected to the provisions of the State Corporations Act, Cap 446, Laws of Kenya.

79. Significantly Section 5(3) of the Act provides that –

“A state corporation may engage and employ such number of staff, including the chief executive, on such terms and conditions of service as the Minister may, in consultation with the Committee (State Corporations Advisory Committee), approve.

80. As correctly observed by Warsame J. (as he then was) in **Mark Ole Karbolo & 4 Others v Acting Minister Ministry of Industrialization & Another (supra)** the affairs of state corporations are functions of the board of directors of the Corporation. The Respondent adduced no evidence to demonstrate that the Claimant’s contract had not been approved by the relevant committee of the board and the board itself in view for the seniority of the Claimant in the organisation’s hierarchy.

81. Finally, the termination letter dated 16th December 2016 under the reference “**Retirement from Service**” states as follows –

“In accordance with personal records held by the company, your date of birth is 5th January 1956; an indication that you have attained and supposed the mandatory retirement age for 60 years. In line with public service provisions on retirement age, you are supposed to have already retired from service on the subsequent date upon attaining your 60th birth anniversary on 5th January 2016.

In this regard and your current contract notwithstanding, the board on 16th December 2016 has decided that you retire mandatorily from the company’s service with effect from 1st January 2017.

Accordingly, your last date of duty and service will be 31st December 2016 and you will be paid salary up to and including the said date less any company liabilities. You should therefore arrange to hand over any company property in your possession and commence process of clearance to facilitate your exit from service ...”

[emphasis added]

82. Noteworthy, the Respondent admitted that as at the date of this letter, the Claimant was on leave and did not have the slightest idea that he would not be resuming duty in the year. In other words, no retirement notice or advise had previously been given to the Claimant. Secondly, the letter is purportedly informed by a board resolution of even date that the Claimant had retire his “*current contract notwithstanding*”.

83. Put differently, the letter commanded the Claimant to retire from service effective 1st January 2017. It did not require the Claimant to respond even if he had any concerns, notwithstanding the fact that the Respondent ignored the contract of employment in making its decision.

84. RW1 confirmed on cross examination that it was an agreement between an employer and an employee. The witness went further and confirmed that the Claimant “*misrepresented his age and on discovery he was terminated*”.

85. Finally, he confirmed that the Claimant was not given any notice of termination and was not paid terminal dues.

86. It is common ground that the Respondent did not engage the Claimant in any way before the letter of termination was communicated and the Claimant was on leave. The fact that the retirement age is 60 and the Claimant had attained the age did not absolve the Respondent from its cardinal obligation to notify the Claimant that it was considering terminating his contract on the ground of retirement age. It was incumbent upon the Respondent to hear the Claimant and make a determination. Attainment of the age of 60 by the Claimant could not camouflage the fact that that Claimant had a legally binding agreement with the Respondent due to expire on 17th September 2017.

87. For the foregoing reasons, the Court finds and holds that the Respondent terminated the Claimant's employment contract of employment unfairly.

Reliefs

88. The Claimant prays for several reliefs and Court proceeds as follows;

(a) An order of reinstatement

89. Since the Claimant left employment five years ago, the remedy for reinstatement has been overtaken by events and thus unavailable by virtue of Section 12(3)(vii) of the Employment and Labour Relations Court Act, 2011. The claim is **dismissed**.

(b) Salary for the residual of the contract

90. This is a claim for anticipatory earnings not available in employment contracts. The jurisprudence emanating from this Court and the Court of Appeal is consistent that the anticipatory earnings have no anchorage in law.

91. The sentiments of Rika J. in **Engineer Francis N. Gachuri v Energy Regulatory Commission [2013] eKLR** are instructive as are the authoritative holdings of the Court of Appeal in **Elizabeth Wakanyi Kibe v Telkom Kenya Limited [2014] eKLR** as well as **D. K. Njagi Marete v Teachers Service Commission [2019] eKLR**. Importantly, the contract between the parties was terminable by three (3) months' notice by either party or pay in lieu of notice. The claim for Kshs.4,353,642/- for the remainder of the contract is **disallowed**.

(c) Three months' salary in lieu of notice Kshs.1,451,214/-

92. The Respondent did not deny that the Claimant's basic salary was Kshs.483,738/- per month and the Claimant was entitled to three (3) months' notice.

93. Having found that the Claimant's employment was terminated unfairly, the Claimant is awarded the sum of Kshs.1,451,214/- as provided by Section 49(1)(a) of the Employment Act.

(d) General damages for breach of contract the one year salary 483,738 x 12 = Kshs.5,804,856/-

94. The remedy of general damages for breach of contract of employment has no anchorage under employment law in Kenya. The remedy provided by Section 49(1)(c) of the Employment Act is compensatory, the equivalent of a number of months' wages or salary not exceeding 12 months based on the gross monthly wage or salary of the employee. The remedy may be awarded by the Court in all circumstances in which it is determined that the employee's summary dismissal or termination was unjustified. Subject to the provisions of Section 49(4) of the Act.

95. In this case, the following merit consideration –

(i) The Claimant had served the Respondent for about four years and three months under the contract, the subject matter of this suit and wished to continue as evidence by seeking the remedy of reinstatement.

(ii) The Claimant contributed to the termination by reason of misrepresenting his date of birth in the employee's record card dated 28th August 2001 notwithstanding the fact that the Respondent had more authoritative sources of the correct date of birth.

(iii) The Respondent blatantly disregarded the terms of an existing contract and purportedly terminated the Claimant on the basis of the PSC Manual 2016 which has express provisions on termination of officers serving on contract where the agreed terms or conditions are determinative.

(iv) The Respondent ambushed with Claimant with the purported retirement.

96. In the circumstances the equivalent of four months' salary is fair, **Kshs.1,934,952/-**.

(e) Gratuity at 31% (483,738 x 12 x 4.3 x = Kshs.7,737,873.048

97. Paragraph 14 of the employment contract provided that –

“Upon successful completion of each contract term, you will qualify for a gratuity calculated at a rate of 31% of basic salary for each completed year of service. This gratuity is taxable. The gratuity shall not be paid if your separation from the company is due to gross misconduct as provided for in the Employment Act.”

98. Neither the letter of appointment nor the Respondent’s evidence allege that the Claimant was guilty of gross misconduct. Having found that the Claimant was terminated on the ground of retirement, he is eligible for gratuity under paragraph 14 above, which the Court awards the sum of **Kshs.7,737,873.048**.

(f) Certificate of service

99. Respondent to issue a Certificate of Service to the Claimant.

100. **In conclusion, judgment is entered for the Claimant in the above terms with costs.**

101. Interest at Court rates from the date of judgment till payment in full.

102. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 24TH DAY OF FEBRUARY 2022

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