REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. E571 OF 2021

(Before Hon. Lady Justice Maureen Onyango)

KENYA ELECTRICAL TRADES AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

KENYA POWER AND LIGHTING COMPANY LIMITED..... 1ST RESPONDENT

NATIONAL YOUTH SERVICES.....2ND RESPONDENT

RULING

1. By an application dated 15th July 2021, the Claimant/Applicant seeks the following orders –

a. Spent.

b. Spent.

c. THAT pending the hearing and determination of this Application a mandatory order of injunction do issue compelling the Respondent Company whether by themselves or their representatives, servants, agents, and/or assigns to stop the process of Launching the Memorandum of Understanding dated 5th February 2020, this Friday 16th July 2021,

d. THAT pending hearing and determination of this Application, the Honourable Court be pleased to issue an order restraining the Respondent Company whether by themselves or their representatives, servants, agents, and/or assigns from implementing/launching/adopting/relying/ steering in any manner whatsoever, anything incidental to or related to the Memorandum of Understanding dated 5th February 2020.

e. THAT pending hearing and determination of this Application and Claim the Respondent be restrained from effecting and/or implementing in any manner whatsoever, any of its intentions contained in its Memorandum of Understanding dated 5th February 2020 on intended outsourcing.

f. THAT pending hearing and determination of this suit, the Honourable Court be pleased to issue an order that the Memorandum of Understanding dated 5th February 2020 shall not affect the current Collective Bargaining Agreement (2017-2021) between the Respondent Company and the Claimant Union.

g. THAT the Honourable Court be pleased to issue an Order that pending the hearing and determination of this suit no unionisable employees employed as a meter reader and or working and or performing any work related, incidental and/or connected with meter reading

h. THAT this Honourable Court be pleased to grant such other or further orders as it may deem fit to grant.

i. THAT costs of this Application and suit be met by the Respondent.

2. The application is supported by the grounds on the face thereof and the affidavit of ERNEST NAKEYA NADOME, the General Secretary of the Claimant/Applicant trade union.

3. Mr. Nadome states that the constitution and rules of the Union allows it to represent the interests of the 1st Respondent's unionisable employees. That the 1st Respondent recognises the Claimant as the sole trade union for purposes of collective bargaining agreement since 1985.

4. Mr. Nadome states that the terms and conditions of service of the 1st Respondent's unionisable employees are guided by the collective bargaining agreement between the Respondent and the claimant.

5. Further that the recognition agreement between the Claimant and the 1st Respondent provides at Clause 11 that the parties shall negotiate on any claims for alteration to terms of service which may affect all employees or any group of employees of the 1st Respondent.

6. Mr. Nadome states that the Respondents have entered into a Memorandum of Understanding dated 5th February 2020 to outsource provision of Meter Reading Service jobs that are currently being performed by members of the Claimant/Applicant and has ignored, refused, failed and/or neglected to engage and consult the Claimant Union in violation of provisions stipulated in the Constitution of Kenya, 2010.

7. He deposes that the 1st Respondent was hell-bent to have the Memorandum of Understanding dated 5th February 2020 Implemented on Friday 16th July 2021.

8. It is Mr. Nadome's averment that the 1st Respondent's attempt to invite the Claimant to the launch was belated, as it was an attempt to sanitize an irredeemable and unlawful process and invite has been declined.

9. He avers that the provisions in the Memorandum of Understanding dated 5th February 2020 indicate that the Respondent is set to wrongfully summarily dismiss by unlawful redundancies 300 employees, members of the Claimant/ Applicant whose jobs are Meter Reading Services and are within the unionisable cadre and terms are incorporated in the registered Collective Bargain Agreement.

10. It is the Applicant's position that unless the Respondent is stopped from implementing the memorandum of understanding, the Claimant will suffer irreparable damages.

11. The 2nd Respondent filed grounds of opposition dated 20th October 2021 in which it raises the following grounds –

> 1. THAT all the claims made by the Applicant are against the 1st Respondent therefore the 2nd Respondent ought to be expunged from the proceedings as there is no cause of action against them.
>
> 2. THAT the Application is founded on the misapplication of the Memorandum of Understanding dated 5th February 2020 which has lapsed by operation of law on 5th August 2020.
>
> 3. THAT the key objective of the Memorandum of Understanding 2021 was data clean which involves improved system reliability, efficient design and construction of electrical infrastructure and a properly updated system.
>
> 4. THAT the 2nd Respondents will only be involved in collecting meter coordinates to determine the exact location not meter reading or revenue collection that is done by the Applicant members.
>
> 5. THAT the partnership between the 1st Respondent and the 2nd Respondent was agreed upon after substantive consultations and assurances to the Applicant as to the protection of its members' jobs.
>
> 6. THAT the 2nd Respondent does not have a recognition agreement with the applicant herein, therefore there is no relationship between the applicant and 2nd Respondent.
>
> 7. THAT the application lacks merit hence vexatious and misconceived and thus fundamentally defective and an outright abuse of the courts process.

12. The 1st Respondent also filed a replying affidavit of DAVID MONANDI, its Manager – Human Resource sworn on 26th July 2021 who deposes that the application is misconceived and amounts to abuse of Court process. That the same is filed under the wrong provisions of the law and that the issue before the Court is not a labour matter but a commercial matter hence this Court has no jurisdiction to hear the same. Further, that there is no cause of action against the 2nd Respondent who should be expunged from these proceedings.

13. It is further the deposition of the Affiant that the Applicant lacks locus standi to file this suit.

14. The Affiant states that the fiscal well-being of the 1st Respondent is threatened and therefore interventions such as the collaboration with the 2nd Respondent is critical to the survival of the 1st Respondent.

15. That it is within the public knowledge that the electricity business environment for the last three years has been tough to the 1st Respondent and the 1st Respondent has so far issued three profit warnings. This has been attributed to several factors including: changes in the operating environment; electricity thefts due to meter tampering and illegal power lines, the impact of COVID-19 and the containment measures put thereof, among others.

16. That in this regard and to change the circumstances of the 1st Respondent, different initiatives have been formulated including reviewing the 1st Respondent's Corporate Strategic Plan and *"Implementing Know Your Meter Initiative, Know Your Network Initiative, War On Losses Initiative"* as well as partnering with institutions such as the 2nd Respondent

17. The Affiant states that the 1st Respondent is structured into the following different divisions:

a. Business Strategy Division

b. Commercial Services & Sales Division

c. Finance Division

d. Human Resources & Administration Division

e. ICT Division

f. Infrastructure Development Division

g. Internal Audit Division

h. Kenya Power Institute

i. Legal, Regulatory Affairs & Company Secretary Division

j. Network Management Division

k. Regional Coordination Division

l. Supply Chain Division

18. That the division within the 1st Respondent's establishment charged with meter reading is the Commercial Services and Sales Division whereas this data clean-up exercise is an initiative within the Regional Coordination Division.

19. That meter reading entails preparing an itinerary (group of meters aligned to a transformer) which is done in accordance with the meter reading cycle/calendar (monthly) as generated by the 1st Respondent's ICT system, then the meter reader using the itinerary, visits the physically location of the meters in that itinerary and while at the sites punches the information from the meter into a handheld terminal after which the meter reader uploads the information in the handheld terminal into the ICT system

20. It is further the averment of Mr. Monandi that the memorandum of understanding that is the basis of the instant suit expired by effluxion of time and the arrangement between the Respondents is on totally different engagement terms which do not include meter reading as clearly stated by the 1st Respondent in its notices issued to the public dubbed *"HodiHodi"* as follows:

> "Kenya Power has partnered with the National Youth Service (NYS) for a countrywide data gathering exercise on all pre-paid and post paid that will kick off on Monday, 19th July 2019. Customers are advised to note that the NYS officers involved in this operation will only be involved in collecting meter co-ordinates to determine their exact location, and will not engage in any revenue collection or meter reading exercise."

21. That as indicated in paragraph (k) of the grounds of opposition, the partnership between the Respondents is an efficient means to fast-track the Facilities Database (FDB) digital platform data clean-up exercise to facilitate the digitization of the 1st Respondent's network, and provide the framework for the 1st Respondent grid automation project. The Facilities Data Base digital platform, is a Geographical Information System (GIS) application, through which the 1st Respondent captures analyses, manages and stores its transmission and distribution facilities data.

22. That the data clean-up will reduce technical and commercial loss, improve visibility of all the 1st Respondent's infrastructure and metering devices on the FDB digital platform for efficient and effective service delivery, improve system reliability which relies on accurate customer database thus improve efficiency in customer incidence management, ease location of 1st Respondent's customers and improve in customer service in terms of response to outages among other benefits.

23. That from the foregoing, it is clear the data clean-up exercise is totally different from meter reading activities and it is a special exercise not done at all by the meter readers in their ordinary course of work.

24. That many activities between the Respondents have been ongoing prior to the filing of this suit on 19th July 2021 and that the meter reading activities by the 1st Respondent's staff will continue in the usual manner as the data clean-up exercise will not impact in any way the meter reading activities.

25. That there is no prejudice whatsoever that will be occasioned to the applicant as the relationship between the applicant and the 1st Respondent is contractual and there are well established mechanisms to mitigate any perceived prejudices.

26. The Affiant states that the suit is based on speculation as there is no redundancy or dismissals, and neither will there be any alterations to the terms and conditions of service of the employees.

27. It is further the Affiant's averment that officials of the Applicant held a consultative meeting with the Respondent's Managing Director and CEO on 2nd July 2021 at which:

i. It was explained to the applicant that the exercise is a government-to- government project, financed by the World Bank through a loan extended to the Government of Kenya under the Kenya Electricity Management Programme (KEMP), and specifically for the data clean-up exercise and that the financing is not available for internal utilization by the 1st Respondent. That it will be undertaken by 770, 2nd Respondent's officers (700 servicemen and women and 70 supervisors) together with 1st Respondent's staff.

ii. Assurance was given to the applicant that there will be no job losses as the 1st Respondent's business is currently understaffed and that the business requires more technical cadre of staff.

iii. Though the applicant was of the position that it is capable to undertake the data clean-up exercise, it was recognize that, internally there is no human resource capacity to execute this exercise and further the 1st Respondent has no financial resources to undertake the exercise.

iv. The applicant requested for the launch to be delayed by one week (of which was granted) to enable the applicant revert. However, up to now the applicant has not reverted other than maliciously filing this suit.

28. The Affiant further states that there was a presentation about the partnership between the 1st and 2nd Respondents to the officials of the Applicant on 13th July 2021.

29. The Affiant avers that the suit is filed in bad faith as the Applicant has stopped negotiations of the CBA, refused to allow its members to sign performance contracts and engaged in acts intended to frustrate the business operations of the 1st Respondent.

30. The 1st Respondent further filed replying affidavits of **John Muli** and **Emily Kirui** both sworn on 26th July 2021, in response to which, the Applicant filed a further affidavit of **Ernest Nakeya Nadome,** and further submissions dated 27th October 2021.

31. The application was disposed of by way of written submissions which the parties highlighted on 3rd November 2021. The Claimant/Applicant and the 1st Respondent highlighted their submissions. The 2nd Respondent did not attend Court on 3rd November 2021 and therefore did not highlight its submissions.

Analysis and Determination

32. The issues arising for determination are: -

i. Whether this Court has jurisdiction to hear this claim;

ii. Whether the Applicant has locus standi;

iii. Whether there is a valid CBA between the 1st Respondent and the Claimant/Applicant

iv. Whether the Applicant is entitled to the orders sought in the application

Jurisdiction of Employment and Labour Relations Court

33. It is the 1st Respondent's position that the memorandum of understanding between the 1st Respondent and the 2nd Respondent is a commercial agreement and this Court has no jurisdiction to hear and determine the same as it has no bearing in the employment and labour relations between the Applicant and the 1st Respondent. The 1st Respondent relies on the decision of the Supreme Court in **Republic v Karisa Chengo & 2 others [2017] eKLR** and **Owners of Motor Vessel "Lillian S' v Caltex Oil (Kenya) Ltd [1989] KLR 1**.

34. The Applicant on the other hand submits that the jurisdiction of this Court flows from Article 162(2)(a) of the Constitution and Section 12(1) of the Employment and Labour Relations Court Act. It submits that the dispute relates to the registered CBA between the 1st Respondent and the Claimant which it submits cannot be heard by any other Court. It relies on the decision of Majanja J. in **United States International University (USIU) v Attorney General [2012] eKLR** where the Court stated: "Since the court is of the status of the High Court, it must have the jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret the constitution and fundamental rights and freedoms is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of the Constitution within a

matter before it."

35. Labour relations is provided for under the Labour Relations Act which regulates recognition agreements and collective bargaining agreements.

36. The claim before this Court relates to the agreement between the 1st Respondent and the 2nd Respondent for engagement of National Youth Service recruits to carry out meter reading, which according to the Claimant, threatens the employment of its members who are meter readers. The Claimant has taken issue with the 1st Respondent for not consulting it before getting into the arrangement with the 2nd Respondent.

37. There is no commercial contract whose terms have been placed before this Court for adjudication. The issues in dispute as set out on the face of the claim are –

i. Unfair, unlawful, illegal and Wrongful Labour Practices.

ii. Unlawful, unfair, illegal, wrongful and illegal outsourcing of the provision of Meter Reading Services.

iii. Violation and Breach of the Recognition Agreement and the current Collective Bargain Agreement.

iv. Violation and Breach of Articles 41,47,159(2) and 162 of the Constitution of Kenya 2010.

38. The issues are no doubt matters within the exclusive jurisdiction of this Court. I find no merit in the objection of the 1st Respondent to the jurisdiction of this Court to hear this matter.

Whether the Claimant has locus standi to file this suit

39. Based on the issues in dispute as set out above, the 1st Respondent's locus standi is not in doubt. It is registered as a trade union in the sector in which the 1st Respondent operates and has both a valid recognition agreement and collective bargaining agreement with the 1st Respondent. It is thus properly before this Court in its own right and on behalf of its members.

Whether there is a valid CBA between the 1st Respondent and Claimant/Applicant

40. The 2nd Respondent has submitted that there is no CBA between the 1st Respondent and the Claimant/Applicant because the CBA between them has expired.

41. Section 59(3) of the Labour Relations Act which is quoted by the 2nd Respondent in its submissions would dispel any notion of lack of a CBA between the 1st Respondent and Claimant/Applicant. The same states –

> **The terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.**

42. Further the paragraph 38.0 of the CBA referred to by the 2nd Respondent provides as follows –

> **38.0 DURATION**
>
> The duration of this Agreement shall be for four years with effect from 1st January, 2017. Thereafter, either the Company or the Union may give the other notice expressing its wish for the Agreement to continue in force for a further period or its intention to negotiate a new Agreement to replace the existing one.
>
> Until such a date as a new Agreement is agreed upon, the existing Agreement shall remain in force. The Agreement can be negotiated earlier prior to the expiry of the four years on mutual agreement by the parties."

43. It is thus obvious that a CBA does not expire upon the lapse of the period stated on its face but remains in force indefinitely or until it is reviewed by the next CBA. Even the termination of the relationship between the trade union and employer would not terminate the CBA as the terms are, upon registration, incorporated into the employment contracts of all employees that are subject to the CBA.

Whether the Claimant/Applicant has established a prima facie case

44. The Memorandum of Understanding that is the subject of this suit is dated 5th February 2020. It is signed between KPLC the 1st Respondent and NYS, the 2nd Respondent. The objective of the memorandum of understanding is stated as follows:

> "The purpose of this MOU is to lay down the framework of engagement in order to regulate and guide the parties in the provision of services sought under this MOU."

45. The scope of the memorandum of understanding is stated at Clause 2 thereof as follows –

i. The MOU governs the broad objectives and conditions of *the partnership between KPLC and NYS.*

ii. The parties may elect to enter into detailed engagement contracts in order to implement the provisions of this MOU.

iii. Unforeseen contingencies may necessitate further collaboration between the parties in the event such contingencies arise.

iv. Detailed specific arrangements of each collaborative activity between the two institutions shall be developed within the provisions of the MOU and after approval, shall become annexes to the MOU.

v. Such specific documents may include; a memorandum of agreement (MOA) that defines in details the specific project being undertaken and a Financial Memorandum (FM) that defines in detail all the financial matters/undertakings required for the collaboration of parties to be successful.

46. The duration is given as –

"The MOU will remain in force for six (6) months at the end of which both parties will review the collaboration agreement. The Parties may opt to renew the MOU or otherwise as may be agreed between them."

47. Areas of collaboration are set out at Clause 5 of the CBA as follows –

"**Meter reading**

i. KPLC will hire three hundred (300) NYS recruits and Ten (10) Supervisors for a period of three (3) months on a pilot *basis for meter reading in Nairobi County;*

ii. The terms of engagement will be agreed by the parties.

48. The roles and responsibilities of the parties are stated at Clause 6 of the memorandum of under thus –

6.1 KPLC will:

i. Pay NYS servicemen and officers deployed to KPLC to provide meter reading services an all-inclusive daily subsistence allowance in the rates set out in annexure A hereof. Such agreed rates shall be paid in full by KPLC to NYS on a monthly basis.

ii. In addition to payment of daily subsistence allowance, KPLC shall also cater for the transport charges of the said personnel from NYS Headquarters at Ruaraka at the rates.

iii. Provide NYS personnel deployed to KPLC with such meter *reading materials, training and orientation to enable NYS personnel undertake the meter reading services in an optimal and efficient manner*.

6.2 NYS will:

i. Provide meter reading services within the areas to be identified by KPLC.

ii. Provide an initial contingent of service men/women and supervisors to be deployed to KPLC consisting of 300 personnel and Ten (10) Supervisors.

iii. Provide the means of transporting the personnel to and from the various locations within Nairobi County for purpose of carrying out meter reading services

iv. The aforementioned number of personnel may be varied by mutual agreement of the

v. NYS will provide daily situation reports (SITREP) to the General Manager, Customer Service, KPLC on the status of meter reading undertaken by the NYS team on duty including occurrences and incidents.

vi. NYS personnel on duty shall sign attendance registers which shall be authenticated by their supervisors and shall enable KPLC to determine and process payments.

vii. NYS officers will be paid for the days on duty, those not on duty (on off duty) will not be eligible for payments.

viii. NYS personnel are expected to maintain a high level of *ethical standards undertaking the meter reading services.*

ix. NYS will be held responsible for any unethical behaviour of misconduct or criminal acts by its servicemen/women.

x. NYS will cover responsibilities of injuries and sickness of their officers while on duty.

49. According to the Applicant, the memorandum of understanding was to be implemented from 5th July 2021. The Respondents on the other hand aver that the memorandum of understanding lapsed, and the agreement entered into between the 1st and 2nd Respondents is for collection, and clean-up of data, and to pick up geographical coordinates of the 1st Respondent's lines and meters. A copy of the agreement has been annexed to the affidavit of Emily Kirui as annexure "*EKJ*". I have perused the agreement dated 9th June 2021 and the scope of work is stated at appendix A Clause 3 as follows –

> "**3. Scope of the services**
>
> The scope is to carry out through GIS data clean-up of all the MV & LV infrastructure and customer meters. The exercise will involve use of both KPLC staff employees and NYS service men and women."

50. There is no reference to the memorandum of understanding in the said contract.

51. For an Applicant to be granted injunctive orders, the Applicant must satisfy the following principles as set out in the celebrated case of **Giella v Cassman Brown & Company Limited [1973] EA 358** namely –

i. A prima facie case with probability of success.

ii. Irreparable harm if the injunctive orders are not granted.

iii. If in doubt, on a balance of convenience.

52. Prima facie case was defined by the Court of Appeal in **Mrao Limited v First American Bank of Kenya Limited & 2 others** as follows –

> "So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."

53. Irreparable harm was also defined in the case of **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR** as –

> "... irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury."

54. According to the principles in **Giella v Cassman Brown & Company Limited (supra)** an applicant must establish both prima facie case and irreparable harm in order to qualify for grant of injunctive orders.

55. In the instant case, the Claimant seeks the following orders in the memorandum of claim –

a. Determination that the Respondents actions infringe on the Claimant Union's Constitutional Right to Fair Labour Practices.

b. Determination that Respondents actions are unlawful, wrongful, illegal and do affront the 1st Respondent and the Claimant Collective Bargain Agreement dated the 27th January 2017.

c. Mandatory order of injunction do issue compelling the Respondent Company whether by themselves or their representatives, servants, agents, and/or assigns to stop the process of Launching the Memorandum of Understanding dated 5th February 2020, this Friday 16th July 2021.

d. Order restraining the Respondent Company whether by themselves or their representatives, servants, agents, and/or assigns from implementing/launching/adopting/ relying/steering in any manner whatsoever, anything incidental to or related to the Memorandum of Understanding dated 5th February 2020.

e. Determination that no redundancies be effected by 1st Respondent through the Memorandum of Understanding dated 5th February 2020.

f. An Order that the Memorandum of Understanding dated 5th February 2020 shall not affect the current Collective Bargaining Agreement (2017-2021) between the Respondent Company and the Claimant Union.

g. An Order that the Memorandum of Understanding dated 5th February 2020 shall not affect any grade and or cadre of employees represented by the Claimant.

h. An Order as to costs

56. Prima facie case therefore refers to the likelihood of the Claimant succeeding in the orders sought in the claim.

57. From the evidence on record, it is clear that what was implemented by the 1st Respondent was the agreement dated 9th June 2021 for GIS Data Clean up and not for meter reading.

58. It is further not demonstrated by the evidence on record that the agreement dated 9th June 2021 is in any way connected with or arises from the memorandum of understanding.

59. The Respondents have however not demonstrated that the memorandum of understanding, which is the subject matter of the suit, has been terminated or that it has lapsed. Paragraph 3 of the memorandum of understanding provides that the parties may opt to renew the memorandum of understanding.

60. In the memorandum of claim, the Claimant complains that the 1st Respondent failed to involved the Claimant in the discussions leading to the agreement lunched on 16th July 2021, which in the Claimant's understanding was the memorandum of understanding. The Claimant was therefore under the mistaken belief that it was the memorandum of understanding that was being launched on 16th July 2021 and this informed the filing of the suit herein and the application on 15th July 2021.

61. The recognition agreement and collective bargaining agreement signed by the parties both enjoin them to consult and discuss any differences between them. Clause 39.0 of the CBA provides as follows –

> **"39.0 DISPUTES**
>
> It is incumbent upon the Company and the Union to ensure that the foregoing terms and conditions of service are understood by all employees of the Company and are observed by all parties. Should differences arise between the Company and its employees, or the Union, as to the interpretation or application of, or compliance with the provisions of these terms of service, earnest efforts shall be made to settle such matters in accordance with the negotiating procedure laid down in the Recognition Agreement and in the Labour Relations Act."

62. Clause 10 of the recognition agreement also provides as follows –

> ***"10.*** **CONSULTATIVE AND NEGOTIATING MACHINERY**
>
> The Company and the Union undertake that consultation and negotiation between them on behalf of the unionisable employees shall be conducted in accordance with the machinery and rules described in this agreement and annexures. Before negotiations, both parties may exchange relevant proposals."

63. It is my finding that the Claimant has not established a prima facie case with probability of success, the case having been grounded on a mistaken belief that what the 1st Respondent was launching on 16th July 2021 was the memorandum of understanding dated 5th February 2020.

64. For the foregoing reasons the orders sought in the application are declined. The Claimant and the 1st Respondent are however encouraged to hold consultations in the manner provided in both the recognition agreement and the collective bargaining agreement with a view of ironing out any misunderstandings between them and agreeing on a mutual resolution of the main suit herein.

65.The suit shall be mentioned on 16th May 2022 for parties to address the Court on the way forward.

66. There shall be no orders for costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 15TH DAY OF FEBRUARY 2022

MAUREEN ONYANGO

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.

MAUREEN ONYANGO

JUDGE