REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1036 OF 2018

(Before Hon. Justice Dr. Jacob Gakeri)

ROSSLYN KHADENYI MADERE...CLAIMANT

VERSUS

NAISULA HOLDINGS LIMITED T/A NAISULA SCHOOL..................1ST RESPONDENT

CECILIA MUCHEMI..2ND RESPONDENT

JUDGMENT

1. By a memorandum of claim dated 21st June 2018 and filed on 22nd June 208, the Claimant sued the Respondent alleging wrongful and/or unlawful termination of her employment by the Respondent on account of redundancy and prays for –

(1) 12 months' salary as compensation for unfair termination Kshs.1,020,000

(2) 3 months' salary in lieu of notice

(Remitted) (Kshs.171,337)

Total 1,103,662.26

(3) General damages for breach of contract and loss of employment

(4) Certificate of service

(5) Costs of this suit

(6) Interest on (1), (2) and (3) above

2. The Claimant's case is pleaded as follows: That the Claimant was employed by the Respondent as a teacher under a written contract dated 21st June 2016 at a salary of Kshs.85,000/- per month.

3. It is averred that on 14th February 2018 the Respondent unlawfully and without any reason terminated the services of the Claimant and failed to pay terminal benefits due to the Claimant specifically in lieu of notice, severance pay and compensation for wrongful termination. That after demand and notice to sue, the Respondent remitted Kshs.171,337.74 to the Claimant's Counsel having computed the three months' salary in lieu of notice at Kshs.65,000/- (basic pay only). The Claimant avers that the total amount due is Kshs.1,103,662.26.

4. It is further averred that the Respondent terminated the Claimant's employment without a warning letter contrary to Section 45(1), (2)(a) and (b) of the Employment Act. That the Claimant had not committed any transgression to warrant termination as no reason for termination was given as provided by Section 43 of the Act and did not give the Claimant an opportunity to defend herself and/or be heard contrary to Section 41 of the Act.

5. It is further averred that the termination was contrary to the rules of natural justice and unlawful hence the claim for 12 months' salary as compensation.

Respondent's Case

6. The Respondents filed their response to the memorandum of claim on 15th October 2018. They denied the contents of the memorandum of claim save for the description of the parties and aver that the 1st Respondent employed the Claimant as a teacher under a renewable contract from 26th August 2016 at a basic salary of Kshs.65,000/- per month inclusive of house allowance of Kshs.20,000 per month. It also avers that that Claimant was required to act in good faith, fidelity and loyalty to the Respondent, obey lawful orders and exercise care, skill and competence. That the Claimant did not adhere to the terms of the contract and the Respondent issued numerous verbal warnings.

7. It is further averred that a of the Claimant found her performance unsatisfactory and she was notified by a letter dated 14th February 2018 by which the Respondent terminated her employment by invoking Clause 8 of the 1st Respondent's terms and conditions of service for staff. That the letter dated 4th September 2017 was the Respondent's warning to the Claimant and she was paid three months' salary in lieu of notice.

8. Finally, it is averred that the Claimant was at liberty to collect the certificate of service after clearance with the 1st Respondent.

Evidence

9. The Claimant adopted her written statement and testified that her salary was Kshs.85,000/- per month.

10. That on 14th February 2018, she reported to work and had a Teacher/Parent conference before she was informed by the Secretary to the Director that the Director wanted to see her immediately. The Director informed the Claimant that her services were no longer required and advised her to collect a letter from the Secretary on the way out. She testified that no complaint had been raised against her and was not taken through any disciplinary hearing and the letter did not set out the reason(s) for termination.

11. The Claimant admitted having been paid the sum of Kshs.171,337.74 after her Advocate sent a demand letter to the Respondents.

12. The Claimant also admitted having received a review letter dated 4th September 2017 alleging that she had not been meeting some of the obligations but the same was not discussed though she was given three months to improve. No other review was undertaken. The Claimant was subsequently terminated on 14th February 2018. That the sum of Kshs.171,337.74 did not include house allowance.

13. On cross examination, the Claimant confirmed that she had no contract of employment with the 2nd Respondent and had been contracted by the 1st Respondent and had no performance challenges. The Claimant denied that she had not cleared with the school. She testified that she cleared on 14th February 2018 as instructed by the Director.

14. **RW1, MR. GEORGE OMONDI** told the Court that he was the Deputy Principal of Naisula School, In-charge of Academics and the Claimant was the English teacher at the school. He testified that the Claimant's review had areas she was requested to work on but did not and was terminated. That the Claimant did not clear with the Head of Department and specifically did not return the books issued to her as well as the clearance form. That the Claimant had performance issues.

15. On cross examination, the RW1 confirmed that the Claimant's monthly salary was Kshs.85,000/- as provided by paragraph 3 of the letter of appointment dated 21st June 2016 as well as Clause 6 on termination. RW1 also confirmed that the termination letter dated 14th February 2018 did not indicate the reason for termination. That the letter dated 4th September 2017 gave the reasons for termination.

16. The witness further confirmed that the three (3) months' notice given by the letter dated 4th September 2017 lapsed in December and the Claimant was not subjected to any other review before termination. RW1 finally confirmed that he had not summoned the Claimant to clear with the school

17. On re-examination, RW1 stated that the head of Department recommended the hiring and firing of teachers.

Claimant's Submissions

18. The Claimant identifies several issues for determination namely; the terms and conditions attached to the letter of appointment dated 21st June 2017, notice of termination, termination of the Claimant and the reliefs.

19. As regards, the terms and conditions, it is submitted that both parties admitted that the letter dated 21st June 2017 executed by the parties was the basis of the contract of service between them and the Claimant's salary was Kshs.85,000/- inclusive of house allowance. That the contract of service was and is subject to the Employment Act, 2007 and the Constitution of Kenya, 2010.

20. As to whether the Claimant had been notified of the termination, it is submitted that the termination was unfair in that the letter dated 14th February 2018 had no reason for termination and no previous notice to show cause had been served upon the Claimant and no review of performance was conducted after the three months intimated by the letter dated 4th September 2017 lapsed.

21. That RW1 admitted that no notice to show cause was given. It is further submitted that the Claimant's testimony that she was never admonished for her performance remained uncontroverted. That since the Claimant was not terminated after the three months' notice given on 4th September 2017 and was allocated classes and discharged her duties from 6th January 2018, the letter dated 4th September 2017 had no

bearing on the termination.

22. As regards termination, the Claimant submits that the letter dated 14th February 2018 had no reason for termination. Section 43 of the Employment Act, 2007 is relied upon to buttress the submission. That not even RW1 could provide a reason of termination. It is submitted that despite the termination Clause in the letter of appointment, the termination fell short of the requirements of the law.

23. It is submitted that there is no record of any investigation of any dereliction of duty by the Claimant or the opportunity accorded to the Claimant to respond to the concerns or allegations. It is submitted that in the premise, the Claimant's termination was unfair since the provisions of the Employment Act were not complied with.

24. That the Respondent adduced no evidence of a disciplinary hearing and the Claimant did not defend herself in the presence of a co-employee of her choice.

25. With regard to prayers, it is submitted that that Claimant is entitled to the reliefs sought namely/ three (3) months' pay in lieu of notice since the Claimant was terminated without notice. That although the Respondent paid the Claimant Kshs.171,337.74, the sum excluded the house allowance due to her as monthly salary. That house allowance is a right under the Employment Act.

26. That 12 months' salary for wrongful termination and general damages for breach of contract should be awarded on account of the manner of termination and the circumstances at the time and a certificate of service by dint of Section 41 of the Employment Act.

27. Reliance was made on the decisions in **Kenfreight (EA) Limited v Benson K. Nguti [2019] eKLR** as well as **GMV v Bank of Africa Limited [2013] eKLR.**

Respondent's Submissions

28. To the Respondent, the following issues commend themselves for determination: -

(i) Whether there was a contract of service between the Claimant and the 1st Respondent;

(ii) Whether there was a contract of service between the Claimant and the 2nd Respondent.

(iii) Whether the Respondent wrongfully terminated the Claimant services and/or employment;

(iv) Whether the Claimant is entitled to the prayers sought.

29. As regards issue (i), it is submitted that Section 2 of the Employment Act defines a contract of service. That the Act is clear on the freedom of the parties to agree on the terms and conditions of employment.

30. On issue (ii), it is submitted that the Court is incapable of including persons who are not privy to a contract in a dispute on the contract. The Court is urged to find that the 2nd Respondent was improperly enjoined for want of privity of contract. The decision in **Savings and Loan (K) Limited v Kanyenje Karangaita Gakombe & Another [2015] eKLR** as well as **Dunlop Pnuematic Tyre Co. Ltd v Selfridge and Com Ltd [1915] AC 847**, are relied upon in support of the submission.

31. As to whether the Claimant was wrongfully, terminated it contended that the 1st Respondent invoked its right to terminate the employment contract as provided by Clause 8 of the employment agreement, which in Counsel's view contained the substratum of the rights and obligations of the parties which the Court is bound to enforce. The decisions in **Hassan Zebeidi v Patrick Mwangangi Kibaiya & another [2014] eKLR** and **National Bank of Kenya v Pipeplastic Samkolit (K) Ltd and another [2002] EA 503** are used to underscore the argument that the employment contract was the basis of the contractual relationship between the parties who are bound by its terms and conditions.

32. It is submitted that the Claimant's termination was not based

on a disciplinary issue. The Respondent merely invoked a contractual right and did not have to rely on any misconduct to terminate the contract. The decision in **Kenya Revenue Authority v Menginya Salim Murgani [2010] eKLR** was used to reinforce the submission.

33. As regards the reliefs sought, it is submitted that since the Claimant was terminated as per the terms of the contract of employment, the Claimant is not entitled to 12 months' gross pay as compensation for wrongful dismissal. The sum of Kshs.171,337.74 paid, covered three months' basic salary in lieu of notice.

34. On general damages for breach of contract, it is submitted that the remedy was not available for breach of contract. That the only remedy available was special damages and none was pleaded or proved. The decision in **Consolata Anyango Ouma v Southern Nyanza Sugar Company Limited [2015] eKLR** was relied upon is support of the submission.

35. On house allowance, it is urged that it is a contractual privilege of the Claimant during the subsistence of the employment and lapsed on termination. It is submitted that since the Claimant was no longer in employment, she was not entitled to damages for the three months. The decision in **Darn Otieno v Stanbic Bank Kenya Limited [2012] eKLR** is cited as authority.

36. The Respondent urges the Court to dismiss the claim with costs.

Analysis and Determination

37. After careful consideration of the pleadings, evidence on record, submissions by Counsel and the law, the issues for determination are: -

a) Whether termination of the Claimant's contract of employment was wrongful or unfair;

b) Whether the Claimant is entitled to the reliefs sought.

38. Before delving into the issues identified above, it is essential to dispose of the peripheral issue of whether the 2nd Respondent ought to have been party to this suit raised by the Respondent's Counsel.

39. The Claimant confirmed on cross examination that she had no contract of employment with the 2nd Respondent and asserted that she had entered into a contract of employment with Naisula Holdings Limited, the 1st Respondent as the letter of appointment dated 21st June 2016 attests. There was no privity of contract between the Claimant and the 2nd Respondent. The decision in **Dunlop Pnuematic Tyre Co Ltd v Selfridge and Com Ltd (supra)** relied upon by the Respondent illustrates the legal position. The Claimant's Counsel did not submit on the issue and nothing turns on it.

40. It is the finding of the Court that the 2nd Respondent was improperly joined in these proceedings.

41. As regards termination, it is not in dispute that the 1st Respondent engaged the Claimant as a teacher effective 26th August 2016 at a consolidated monthly salary of Kshs.55,000 and was terminated on 14th February 2018 by the 1st Respondent invoking the three months' notice Clause in the contract of employment and paid the Claimant Kshs.171,337.74 being three months basic salary in addition to the days worked before the date of termination.

42. The law on termination of employment contracts is contained in the Employment Act, 2007. The Act provides for the various modes of types of termination of contracts of service and an employer is free to adopt any mode of termination as dictated by the circumstances of the case. More importantly, the Employment Act makes it an imperative that termination of an employment contract be fair.

43. Section 45 of the Employment Act encapsulates the overarching principle of fairness. Under this provision, termination a contract of employment must be substantively and procedurally fair. The Court of Appeal and this Court have elaborated the provisions of Section 45 of the Employment Act, in legions of decisions such as **Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR** and **Naima Khamis v Oxford University Press (E.A) Ltd [2017] eKLR.** Other decisions include **Standard Group Limited v Jenny Luesby [2018] eKLR** and **CMC Aviation Limited v Mohammed Noor [2015] eKLR**.

44. Section 45(2) of the Employment Act provides that –

(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.

45. In addition, Sections 43 and 47(5) prescribes the burden of proof to be discharged by the employer and employee in cases of unfair termination or summary dismissal.

46. Finally on the statutory front, Section 41 of the Employment Act makes provision for the procedural precepts to be complied with in cases of termination on grounds of misconduct, poor performance or physical incapacity.

47. Courts of law have religiously and tenaciously enforced these provisions and upheld the principle of fairness in termination of employment contracts irrespective of the mode of termination invoked by the employer.

48. In **Kenfreight (EA) Limited v Benson K. Nguti [2016] eKLR,** the Respondent had served the appellant for about 14 years from 1996. On 26th November 2010, he received a letter from the Group Managing Director of the appellant, terminating his employment with effect from 1st December 2010 having been given one month notice. The Claimant challenged the termination as having been illegal, wrongful, unfair and discriminatory, that there was no justifiable reason for the termination and no hearing before termination had been conducted. The Respondent denied the claim and averred that the Respondent's termination was not based on disciplinary grounds but was a normal termination where the employer had invoked a term of the contract of employment between the parties. The Court of Appeal upheld the decision of Makau J. that the termination was unfair and unlawful. The Court of Appeal expressed itself as follows –

"Termination notice is regulated by statute. Section 35 makes provision for categories of contracts and the manner of their termination. Of relevance is section 35(1)(c) and (2) which is to the effect that a contract of service for an indeterminate period, where wages or salary are paid periodically at intervals of or exceeding one month, is terminable by either party at the end of the period of 28 days next following the giving of notice in writing. This provision and the entire section 35(1) does not apply "… in the case of a contract of service whose terms provide for the giving of a period of notice of termination in writing greater than the period required by the provision of this subsection which would otherwise be applicable thereto". (our emphasis). A 'month' under section 3 of the Interpretation & General Provisions Act means calendar month. In this case the month of the notice was December hence the notice was for 31 days. The contract of service in this dispute provided for a notice period greater than 28 days. The parties were bound by the terms of the contract of service to the effect that the contract would be terminated by either party giving one month notice or in lieu of notice, the payment of one month salary by either party. Ex facie the appellant complied with the terms of the contract of service by paying to the respondent Kshs.676,362/-, the latter's one month salary in lieu of notice.

The next and more critical question is whether the termination was unfair …"

49. Similarly, in **Kenfreight (EA) Limited v Benson K. Nguti [2019] eKLR** the Supreme Court of Kenya expressed itself as follows –

"To us, it does not matter how the termination was done, provided the same was challenged in a Court of law, and where a Court found the same to be unfair or wrongful, Section 49 applies."

50. The Court is bound by these propositions of law.

51. In the instant case, it is the Respondent's submission that since the contract of service between the parties provided for termination by either party giving a three months' notice, the Respondent had invoked the relevant Clause and since parties are bound by the terms and conditions of the contract the Court is bound to give effect to the intention of the parties.

52. I agree that parties are bound by the terms and conditions in their contract of employment underscore the fact that but employment law in Kenya is for the most part statutory though general principles of the law of contract apply. No doubt enactment of the Employment Act and other related statutes in 2007 heralded a new era in employment and labour relations. Instructively, the decision in **National Bank of Kenya v Pipeplastic Samkolit (K) Ltd and another (supra)** was based on the law before the Employment Act, 2007 was enacted. The law then was neither progressive no elaborate as it is today.

53. It is common ground that the claimant was terminated on 14th February 2018. The letter of termination read as follows: -

14th February 2018

Rosslyn Khadenyi Madere

P.O. Box 20877

Nairobi, Kenya.

Dear M/s. Madere,

Re: Termination of employment

This is to inform you that the School has decided to terminate your employment contract as an English, English Literature and Drama teacher at Naisula School with effect from 14th January 2018.

As stated in your offer letter of employment in the termination Clause, you will be paid three months basic salary in lieu of notice and for the days worked for this month.

Kindly make arrangements to clear with the School by handing over to the Deputy Principal – Academics so that your final dues can be processed.

Yours sincerely,

SIGNED

Cecilia Muchemi

Executive Director"

54. Evidently, the Respondent invoked Clause 6 of the letter of appointment as elaborated by Clause 8 of the "*Terms and Conditions of service for the staff*" which the Claimant had signed. Clause 8 provides that –

"Subject to Clause 7 of this document and Clause 6 in the letter of appointment, this employment may be terminated at any time by

either party giving the other three months notice or pay in lieu of notice. On termination you shall undertake to hand over the school property including all records of work."

55. According to the Respondent it "*did not have to rely on misconduct in order to terminate a contract of service and a party can terminate such a contract without giving any reason*". Intriguingly, the Respondent avers that the letter dated 4th September 2017 referenced performance review was a warning to the Claimant to improve performance as well as the three months' notice as per the terms of employment.

56. On matter performance, the obligations of the employer were aptly captured in **Agnes Yahuma Digo v PJ. Petroleum Equipment Ltd, [2013] eKLR** as well as **Jane Samba Mukala v Ol Tukai Lodge Ltd [2013] eKLR.**

57. The Respondent led no evidence on the measures it had put in place to enable it asses performance of its employees or measures taken to address poor performance of an employee or when the Claimant was last evaluated. The Respondent provided neither a performance management framework or policy nor performance appraisal tool and no evidence was led on how the Claimant would be assisted and/or facilitated to address the concerns raised.

58. In addition, no evidence was adduced on how the "*significant improvement*" adverted to by the letter would be measured and a determination made and by who. It is not in dispute that the Claimant testified that the school closed on 6th December 2017, opened on 6th January 2018, she was allocated classes and continued rendering services until 14th February 2018. The Claimant was categorical that she did not participate in any review or appraisal subsequent to the letter dated 4th September 2017.

59. Even assuming that the letter was a warning, the Claimant should have been invited for a meeting to review her performance on the terms catalogued in the letter and a decision made depending on the outcome. This did not happen and significantly termination came more than two months after the three months. RW1 confirmed the same on cross examination.

60. For the foregoing reasons, it is the finding of the Court that since the circumstances leading to termination of the Claimant's employment reveal that there were allegations of poor performance as contemplated by Section 41 of the Employment Act, the Claimant had the right to be heard before termination. RW1 testified that the Claimant's performance review had outstanding issues which the Claimant was required to work on but did not.

61. On cross examination, RW1 confirmed that the Head of Department issued no letter or written communication to the Claimant on performance, but was emphatic that "*these are the areas that led to her termination*". He also confirmed that if there were any deficiencies, the Claimant would be talked to by the Head of Department and no meeting took place and the Supervisor did not forward any report to him on the Claimant.

62. The totality of the evidence is that the Claimant's performance was neither reviewed nor appraised after 4th September 2017.

63. It is unclear how the Respondent arrived at the decision to terminate the Claimant's employment on 14th February 2018.

64. Similarly, the Claimant's termination of employment on 14th February 2018 was conducted without notice, it amounted to summary dismissal.

65. In a similar vein, the Respondent did not justify the reason(s) of termination, the alleged ground of unsatisfactory performance was not proved and the Claimant was not afforded an opportunity to be heard on the allegation. The termination condemned the Claimant unheard.

66. For the foregoing reasons, it is the finding of the Court that termination of the Claimant's contract of employment by the Respondent on 14th February 2018 failed to meet the threshold prescribed by the provisions of Sections 41, 43, 45 and 47(5) of the Employment Act.

Reliefs

67. The Claimant prays for the following –

(a) Terminal dues amounting to Kshs.1,103,662.26

68. The terminal dues comprising of 12 months' salary for unfair termination (at Kshs.85,000/- per month) Kshs.1,020,000.00. As the Supreme Court observed in **Kenfreight (EA) Limited v Benson K. Nguti (supra),** the reliefs under Section 49 apply to all circumstances in which a Court finds that a termination was either wrongful or unfair and having found that the Claimant's termination was unfair for noncompliance with the provisions of the Employment Act, the Claimant is eligible for the discretionary remedy provided by Section 49(1)(c) of the Act. In determining the quantum of compensation under Section 49(1)(c) of the Act, the Court is guided by the provisions of Section 49(4) of the Act. The Court has considered the following:

(i) The Claimant was an employee of the Respondent for a duration of about one year and five months and wished to continue.

(ii) The contract of employment was terminable by either party by three months' notice or pay in lieu of notice and the Claimant paid a total of Kshs.195,000/- being three months' basic pay.

(iii) The Claimant had no previous warning letter or notice to show cause.

(iv) There were concerns about the Claimant's performance as evidenced by the letter dated 4th September 2017 whose contents the Claimant acknowledged.

69. For the foregoing reasons, the Court is satisfied that the equivalent of two months' salary is fair, **Kshs.170,000/-**

(b) Three months' salary in lieu of notice Kshs.255,000.00 less Kshs.171,337.74

70. As adverted to elsewhere in this judgment, the Respondent paid the Claimant Kshs.171,337.74 being the net of three months basic pay in lieu of notice and 14 days worked in February 2018. Noteworthy, the Respondent used the basic salary to compute the three months' notice pay. It is submitted that housing was a privilege enjoyed by an employee and since the Claimant had exited service, she could not enjoy the privilege.

71. I disagree. Housing is not a privilege extended to the employee by the employer as a benevolent gesture. It is a statutory right and employers are constrained to act in accordance with Section 31 of the Employment Act. Similarly, pay in lieu of notice is the employee's monthly salary including all allowances payable in accordance with the contract of employment and the Employment Act, 2007.

72. More significantly, Clause 8 of the Terms and Conditions of Service of the staff is unambiguous that *"… this employment may be terminated at any time by either party giving to the other three months' notice or pay in lieu of notice …"* Relatedly, Clause 6 of the letter of appointment uses the phrase *"three months"* "*pay in lieu of notice*". Granted that the Respondent invoked Clause 6 of the letter of appointment and Clause 8 of the Terms and Conditions of service for the staff, it is unclear how the Respondent determined that pay in lieu of notice comprises basic pay as opposed to the monthly salary.

73. In the absence of any justification for the computation of pay in lieu of notice, Clause 6 and 8 cited above apply and the Court finds that the Claimant is entitled to the entire three months' pay. The sum of **Kshs.60,000/-** is outstanding and is awarded.

(c) General Damages for breach of contract and loss of employment

74. The Claimant submits that this is a discretionary remedy on account of the manner in which the termination took place but cites no judicial authority or firm proposition of law for the submission. The Respondent on the other hand submits that it is trite law that the remedy of general damages is not available for breach of contract relies on the decision in **Consolata Anyango Ouma v South Nyanza Sugar Co. Ltd [2015] eKLR** where the Court stated as follows:

> "*The next question is whether the appellant was entitled to damages as a result of the breach. As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This is principle is encapsulated in the Latin phrase restitution in integrum …*"

75. The Court is in agreement with the Respondent's submission that the remedy of general damages is not available for breach of contract in post Employment Act 2007 as the Court of Appeal observed in **Kenfreight (EA) Limited v Benson K. Nguti (supra).** See also **Alphonse Maghanga Mwachanya v Operation 680 Limited [2013] eKLR.**

(d) Certificate of Service

76. The Claimant is entitled to a certificate of service.

Conclusion

77. **In the final analysis, judgment is entered for the Claimant against the Respondent for the sum of Kshs.230,000/- with costs.**

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

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 2ND DAY OF FEBRUARY 2022

DR. JACOB GAKERI

JUDGE

<u>ORDER</u>

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