



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 1675 OF 2015**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**BEATRICE O'MBAKA ASIENWA.....CLAIMANT**

**VERSUS**

**INFORMATION PROFESSIONALS**

**AFRICA LIMITED..... 1<sup>ST</sup> RESPONDENT**

**VISCAR INDUSTRIAL**

**CAPACITY LIMITED..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim dated 21<sup>st</sup> September 2015 and filed on 22<sup>nd</sup> August 2015, the Claimant sued the Respondents alleging that the Respondents terminated the contract between them without according the Claimant an opportunity to be heard on the complaint and no reason was provided.
2. The Claimant prays for –
  - (i) Judgment against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally for Kshs.1,075,000/-.
  - (ii) Declaration that the termination of contract of services of the Claimant was irregular and illegal.
  - (iii) General damages for breach of contract of service.
  - (iv) Cost of this suit and interest on (i) above at Court rates.
3. The Respondent responded to the claim by memorandum of reply and responses filed on 6<sup>th</sup> November 2015 and 4<sup>th</sup> November 2015 respectively. Both Respondents prayed for dismissal of the suit with costs.

**Claimant's Case**

4. The Claimant's case is pleaded as follows: -
5. That on or about June 2014, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents through a Group Team Leader requested the Claimant to join a team of consultants in administrative support management on the Counties Information Communication Technology (ICT) Road Maps Development Project to participate in a tender floated by the Information Communication and Technology Authority of Kenya hereinafter referred to as ICTA.
6. The Respondents were prequalified for the bid and the Claimant was engaged as a consultant in management support at a consideration of Kshs.37,500/- per day in consultancy for 30 days making to total consideration of Kshs.1,125,000/-.
7. That the Claimant discharged her part of the contract until 28<sup>th</sup> day of April 2015 when by letter from the Group Team Leader of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent stopped the Claimant from executing her role under the contract thereby breaching the terms in that the Respondents did

not pay the Claimant her dues or accord her the opportunity to be heard on the complaints, failure to obey the terms of the contract and breach of the contract of service between the parties.

8. It is averred that the Respondents gave no reason for the termination in violation of the provision of Sections 17(1), 45(1) and 35(4) of the Employment Act, 2007 and Article 41 of the Constitution of Kenya, 2010.

9. It is the Claimant's case that attempts to settle the matter have fallen through yet the sum of Kshs.1,125,000/- is outstanding and due to the Claimant.

### **Respondents' Case**

10. The 1<sup>st</sup> Respondent filed its response to the claim on 6<sup>th</sup> November 2015 denying all the Claimant's allegations. It is their case that the Claimant breached the implied terms of the contract by divulging information of a project with third parties and was guilty of insubordination, betrayal of trust and incited other consultants in the project against the Respondents thereby jeopardizing the project. That the Claimant was paid an ex gratia sum of Kshs.50,000/- in full and final settlement of her dues which she unconditionally accepted without protest.

11. The Respondents deny having violated the Constitution of Kenya or provisions of the Employment Act, 2007 as alleged by the Claimant and the refusal to hire the Claimant was tabulated in the 1<sup>st</sup> Respondent's letter dated 25<sup>th</sup> April 2015.

12. The Respondents further aver that they had a contract for services with the Claimant and not a contract of service as defined by the Employment Act, 2007.

13. It is the Respondent's case that that description of the Claimant in paragraph 1 of the memorandum of claim coupled with the services to be rendered by the Claimant as pleaded in paragraph 4 implies that that Claimant could not have been an employee of any of the Respondents but an independent contractor and the parties were not bound by the provisions of the Employment Act and the Court had no jurisdiction to entertain the suit.

14. It is further averred that the Claimant was already an employee of another organisation as pleaded in paragraph 1 of the memorandum of claim and was merely to provide consultancy services as elaborated in paragraph 4 and which were beyond the ambit of the Employment Act.

15. The Respondents deny owing the Claimant any money at all.

16. Finally, the Respondents object to the jurisdiction of the Court on the ground that the claim does not fall within the provisions of the Employment Act and would raise a preliminary objection on the issue.

### **Evidence**

17. The Claimant adopted the written statement and was cross examined. In her statement, the Claimant admits that she is an institutional capacity and human resource consultant working at the Centre for Policy Analysis (CEPA) Kenya as a Director, Programmes and Projects and often teamed up as part of a CEPA consortium, individual consultant or as part of other consultancy teams or firms requiring experts in her area of specialisation and had worked for several organisations in Kenya, Uganda, Sudan, Sierra Leone, South Sudan and Lesotho and that is how the Claimant met Mr. John Liboyi, the Managing Director of the 1<sup>st</sup> Respondent and consequently a agreed to join a team of consultants under (IPA Ltd), the 1<sup>st</sup> Respondent, to bid for a tender floated by the ICT Authority of Kenya.

18. The first meeting was held on 2<sup>nd</sup> July 2014 at the IPA Ltd offices, Studio House Plums Lane off Ojijo Road, Parklands for an overview of the consultancy which was followed up by an email dated 16<sup>th</sup> July 2014.

19. It is the Claimant's evidence that between July and September 2014, Mr. John Liboyi kept in touch by calls or text messages on the progress of the bid until 8<sup>th</sup> September 2014 when the Claimant was notified that their bid had been prequalified by the ICT Authority and a proposal on the same was the next step.

20. The Claimant was invited for a meeting on 8<sup>th</sup> October 2014 and thereafter attended various activities providing inputs in her role as "*Administrative Support Manager*" (ASM). For instance at a meeting on 26<sup>th</sup> October 2014, the Claimant's position as the ASM was formalised and her role would be for one (1) calendar month or 30 consultancy days and was given a business card. It was her testimony that the proposal was submitted to the ICTA on 30<sup>th</sup> October 2014.

21. The Claimant further testified that she attended a contract negotiation meeting between IPA Ltd and the ICT Authority held at the latter's offices on 22<sup>nd</sup> December 2014 where modalities for implementation of the contract were discussed and agreed.

22. The Claimant testified that between January and February 2015, she participated in the formulating and preparation of consultant CUS for presentation to the ICT Authority as well as in the recruitment of a key expert in finance and additionally participated in a workshop organised by IPA Ltd on 24<sup>th</sup> January 2015.

23. In February 2015, the Claimant spearheaded the operationalization of the project administrative support office and preparation of draft contracts and individual TORS for consultants.

24. That in March 2015 the Claimant was overseeing and backstopping the operations of the administrative support office and on 21<sup>st</sup> March 2015 she participated in the Data Collection Instruments (DCI), training, workshop.

25. The Claimant further testified that on 1<sup>st</sup> April 2015, she reported to the IPA office and carried out her oversight role and left at 6.00 pm.

26. That Mr. John Liboyi called her the following day and asked her whether she would report to the office but she indicated that she would not since she was only required to report to the office once a week on Fridays and had reported on a Wednesday because Friday 3<sup>rd</sup> April 2015 was a public holiday. That the two met on 17<sup>th</sup> April 2015 out of which meeting John Liboyi alleged that the Claimant –

*“Had breached trust by disclosing contract matter between IPA Ltd and ICT Authority and the issue had been discussed with the Managing Director of the 2<sup>nd</sup> Respondent, the parties in the project and it had been agreed that the Claimant’s services be terminated for breach of trust.*

27. That the Claimant was shocked by the allegations as the same had not been brought to her attention and requested for a way forward. The witness testified that she was requested to indicate how she intended to be compensated for the days worked. She communicated the same by letter dated 17<sup>th</sup> April 2015 and John Liboyi responded on 28<sup>th</sup> April 2015. It is the Claimant’s testimony that the manner in which Mr. John Liboyi responded made her seek legal redress.

28. The Claimant further, told the Court that she as the ASM answerable to the Group Team Leader. She was supposed to be paid Kshs.37,500 per day for a maximum of 30 days spread over 6 months as Professional Teer 1.

29. On cross examination, the witness confirmed that she was no longer working at the Centre for Policy Analysis (CEPA) since the task had lapsed.

30. She confirmed that she was engaged as an expert in human resource matters and was not given a contract of employment but was given terms of reference for the consultancy. That her working hours were 8 am – 5 pm every day and no provision for annual leave. That her obligation was to deliver an output in the six months’ period.

31. The witness also confirmed that she had no sick leave and was a consultant as the ASM and was engaged as such.

32. On re-examination, the witness confirmed that she used to report to the offices of the 1<sup>st</sup> Respondent along Plums Road, off Ojijo Road and her engagement with the Respondent had no leave or sick leave and was a project for six months.

33. Finally, the Claimant testified that she was an employee of the 1<sup>st</sup> Respondent and supervised by the 2<sup>nd</sup> Respondent.

34. The Respondents tendered no oral evidence but filed written submissions.

#### **Claimant’s Submissions**

35. The Claimant isolates two issues for determination, namely whether:

- (i) The contract between the parties was of service or for service;
- (ii) The Claimant is entitled to the reliefs sought.

36. On the first issue, the Claimant adopts the submissions previously made to Court on the preliminary objection raised by the Respondents. In the submissions, the Claimant stated that the contract of service between the parties is decipherable from the various correspondences between them as evidence by the Claimant’s bundle of documents. Reliance was made on the various tests courts have developed to determine whether the contract is of one of services or for service such as the control test, integration, economic or business reality, mutuality of obligation and termination of the relationship.

37. Reliance was made on the decision in **Geoffrey Makana Asanyo v Nakuru Water and Sanitation Company and 6 Others [2015] eKLR** and **Gilbert Sule Otieno v Seventh Day Adventist Church (EA) Ltd (sued on behalf of S.D.A Church Kiamunyi East [2014] eKLR**.

38. In **Geoffrey Makana Asanyo v Nakuru Water and Sanitation Company and 6 Others [2015] eKLR** Ongaya J. stated that –

*“Whether the relationship between the parties’ amounts to a contract of service or contract for services is an issue both of law and fact but largely, one of fact.”*

39. In **Gilbert Sule Otieno v Seventh Day Adventist Church (EA) Ltd (sued on behalf of S.D.A Church Kiamunyi East [2014] eKLR** Radido J. stated that –

*“The hallmarks of a true independent contractor are that the contractor will be a registered taxpayer, will work his own hours, runs*

*his own business, will be free to carry out work for more than one employer at the same time...*"

40. It is so submitted by the Claimant.
41. Finally, the Claimant submits that if the Court found that it had no jurisdiction to entertain this suit, then it may transfer the suit to the right Court as was the case in **Geoffrey Makana Asanyo v Nakuru Water and Sanitation Company and 6 Others (supra)** and **Prof. Daniel N. Mugendi v Kenya University & 3 Others [2013] eKLR**.
42. It is submitted that Ongaya J. had previously dismissed the preliminary objection on jurisdiction on the premise that the Respondents had not indicted in what other way they had engaged the Claimant. That the pleadings had no indication that the Claimant was engaged as a consultant.
43. It is submitted that the Respondents have not furnished further material on which the preliminary objection could be sustained. That since the Respondents contested the issue of jurisdiction only, the other averments by the Claimant are assumed to be admitted.
44. It is the Claimant's submission that she was fished out of the private consultancy into employment by the Respondents who according to the Claimant were engaged in a joint venture.
45. That minutes in documents 4, 5, 6, 7, 8, 9 and 10 were chaired by the Managing Director of the 2<sup>nd</sup> Respondent.
46. It is submitted that there was a contract of service between the Claimant and the Respondents but the Respondents did not comply with the provisions of Section 17(1) of the Employment Act. That the facts are discernible from the Claimant's bundle of documents and evidence is sufficient to demonstrate the contract of service.
47. Reliance is made on the writings of **Simon Deakin S. Norms Labour Law, 3<sup>rd</sup> Edition**, page 146 – 148 on the distinction between contract of service and contract for services.
48. Reliance is further made on the decision in **Geoffrey Makana Asanyo v Nakuru Water and Sanitation Company and 6 Others (supra)** to exemplify submission.
49. It is the Claimant's submission that one of the reasons for termination was insubordination. That the Respondent's argument is restricted to the definition in Section 2 of the Employment Act yet the contract of service encompasses more parameters.
50. Reliance is made on **Black's Law Dictionary, 9<sup>th</sup> Edition** for the definition of wages.
51. On breach of contract, the Claimant relies on Section 4(2) of the Employment Act contending that Respondent provided no reason for termination and no disciplinary process.
52. On compensation, it is submitted that the Claimant worked for the entire period and was entitled to be paid Kshs.1,075,000/- at the rate of Kshs.37,500/- per day.

#### **Respondent's Submissions**

53. The Respondent identifies three issues for determination, namely whether;
  - i) There was an employer-employee relationship between the Claimant and the Respondent;
  - ii) The facts of this case fall within the ambit of this Honourable Court; and
  - iii) What remedies are available to the Claimant.
54. The Respondent submits that the Claimant was not and was never an employee of the Respondent. Reliance is made on Section 2 of the Employment Act, 2007 on the definition of the terms employee and employer. Reliance is also made on Sections 7 and 10 of the Act as regards the contract of service and its particulars. It is contended that the Respondent did not issue any document as evidence of a contract of service of between itself and the Claimant.
55. The Respondent urges the Court to note that the Claimant was self-employed and would occasionally team up with other consultants or firms who required expertise in her area of specialisation and the Managing Director of the 1<sup>st</sup> Respondent requested her to join a team of consultants to bid for a project advertised by the ICT Authority.
56. It is submitted that consultants are independent contractors and they *modus operandi* does not fall within the confines of the Employment Act, 2007.
57. Pushing the case further, the Respondent urges that the Claimant's participation was not on the basis of employment but as prospective consultant in administrative support management.

58. It is submitted that the 1<sup>st</sup> Respondent was the lead bidder, while the 2<sup>nd</sup> Respondent participated in the pre-bid process as a corporate consultant in telecommunication and the two companies could not employ the Claimant in a single role as claimed.

59. The Respondent opines that the fact that the Claimant declined to take up additional duties on the ground of other commitments is uncharacteristic of an employee and suggests that the Claimant was not an employee.

60. It is further submitted that unlike the Claimant, employees report to work at designated times and leave at a particular time dictated by the employer. They do not report to work at a time of their choice. That employees do not bill their employers but are paid wages/salary which is fixed, periodic and paid at a particular time.

61. The decision in **Gilbert Sule Otieno v Seventh Day Adventist Church (East Africa) Ltd (sued on behalf of S.D.A. Church, Kiamunyi East) [2014] eKLR** was relied upon in support of the submission.

62. As regards jurisdiction, the Respondent relies on the celebrated words of Nyarangi JA in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR**. It is submitted that the Court has no jurisdiction in this matter as there is no employment relationship between the Claimant and the Respondent.

63. Reliance is also made on Section 12 of the Employment and Labour Relations Court Act, 2011.

64. Finally, the Respondent urges that the Claimant's claim is for breach of contract, non-payment for services rendered and damages which are outside the realm of this Court.

### **Analysis and Determination**

65. The issues for determination are whether: -

- a) There was a contract of service between the Claimant and the Respondent;
- b) Whether the Claimant is entitled to the sum claimed.

66. The case turns on whether the Claimant was an employee of the Respondents or not.

67. The first point of call are the provisions of the Employment Act, 2007.

68. Section 2 of the Act states that

**"contract of service" means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies;**

69. Relatedly Section 2 of the Act provides that

**"employee" means a person employed for wages or a salary and includes an apprentice and indentured learner;**

70. The definition in **Black's Law Dictionary, 8<sup>th</sup> Edition**, page 564 underscores the centrality of control in an employer-employee relationship.

71. Section 10 provides that a written contract of service specified in Section 9 shall state particulars of employment which may, subject to subsection (3), be given in instalments and shall be given not later than two months after the beginning of the employment.

72. Subsection 2 catalogues the essential elements of a contract of service.

73. In addition, Section 10(3) of the Act identifies other particulars of a contract of service including annual leave, incapacity to work, pension, length of notice, duration of the contract, etc.

74. As intimated in **Pietro Lunghi v Simba Hospitality Services Limited T/a Villa Rosa Kempinski, Cause No. 906 of 2017**, the issue of whether a contract of service exists between parties has been problematic and various tests have been enunciated by Courts.

75. In the words of Mackenna J. in **Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance (1968) 2QB 497** a contract of service exists if –

(i) *"The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.*

(ii) *He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.*

(iii) *The other provisions of the contract are consistent with its being a contract of service.*”

76. According to **Clerk & Lindsell on Torts, 13<sup>th</sup> Edition, 1969** at page 123 –

*“Some of the tests which have been suggested in cases are considered below, but ultimately the decision in each case will turn upon the view taken by the Court of the relationship between the parties considered as a whole.”*

77. In **Kenneth Kimani Mburu & another v Kibe Muigai Holdings Limited [2014] eKLR** Rika J. stated that –

*“In answering the first question, the Court must attempt to evaluate these two agreements, and make a finding whether they are employment contracts, or consultancy contracts ... They for instance adopt the word ‘salary’ which is a feature of the employment contract, ... A Consultant performs work for another person, according to his own processes and methods. A Consultant is not subject to another’s control, except to the extent admitted under the contract ... A Consultant is paid a fee ... not a salary ... A Consultant would have the latitude to discharge his obligation according to his own processes and methods, which would include the ability to subcontract or hire own assistants ... It is the obligation of an employer to enforce statutory deductions ... The fact that no evidence was presented showing payment of these employee deductions is not an indication that there was no employer-employee relationship ... It was not necessary that the words ‘employer’ and ‘employee’ be expressed on the face of the agreements, for them to be deemed to be valid employment contracts ... Consultancies/independent contracts are based on the periphery of the employer’s business. They are not integral to the business ... The absence of a termination clause and leave clause in the agreements does not invalidate or make them any less binding employment contracts. Section 10 of the Employment Act 2007 provides some of the characteristics of an employment contract such as pay; basic job description; personal details of the employer and the employee; date of commencement; terms and duration...”*

78. Similar sentiments were expressed by Wasilwa J. in **David Odwori Namuhisa v Magnate Ventures Limited [2017] eKLR**.

79. I will now proceed to apply the foregoing principles to the instant case. The Claimant submits that there was a contract of service between her and the Respondents. That the contract is decipherable from the various documents on record. It is submitted that the Claimant was servant under the control of the Managing Director, one John Liboyi and operated from the 1<sup>st</sup> Respondent’s offices and was accused of insubordination, was subject to the rules and procedures of the employer and was part of the business and was terminated by the Director of the 1<sup>st</sup> Respondent on 28<sup>th</sup> April 2015.

80. Similarly, it is not in contest that the Claimant was invited to participate in the preparation of a proposal for submission to the ICT Authority for a project it had floated and the Claimant participated in several meetings for instance meetings held on 16<sup>th</sup> October 2014, on 26<sup>th</sup> October 2014, 3<sup>rd</sup> January 2015, 24<sup>th</sup> January 2015, (workshop), 10<sup>th</sup> February 2015, 22<sup>nd</sup> February 2015, 28<sup>th</sup> February 2015 and 20<sup>th</sup> March 2015.

81. From the records, the Claimant was invited for the inaugural meeting of the proposed team of consultants on 2<sup>nd</sup> July 2014 but no minutes were filed and no other meeting took place until 8<sup>th</sup> October 2014.

82. Although the Claimant had no letter of appointment, she had Terms of Reference (TOR) reproduced in Mr. John Liboyi’s letter dated 28<sup>th</sup> April 2015 as follows: -

1. *Project activities and events run efficiently and effectively.*
2. *Logistics activities are well planned, well communicated and well documented.*
3. *All communication to consultants is well coordinated is positive and effective.*
4. *Electronic and paper filing systems are well maintained.*
5. *Project website well maintained.*
6. *Consultancy team provided with quality support.*

83. It is unclear whether the Claimant fulfilled all the TOR. Moreover, the Managing Director of the 1<sup>st</sup> Respondent was unhappy with her outputs.

84. Although the Claimant testified in oral evidence that she worked from 8.00 am – 5 pm every day, that was not the case. In the written statement the witness indicated that she was only required to report to the office “*once a week on Fridays*”. This is exemplified by the Claimant’s failure to meet the Managing Director on 2<sup>nd</sup> April 2015 as he had suggested. She informed him that she was in the office on 1<sup>st</sup> April 2015 and had therefore fulfilled her obligation of being in the office once a week. The meeting was scheduled for 10<sup>th</sup> April 2015 but did not take place.

85. The two met on 17<sup>th</sup> April 2015. Other than “*attending*” meetings, participating and overseeing, there is no record of the actual tasks which the Claimant discharged on day-to-day basis as an employee as alleged.

86. From the evidence on record, there was no formal agreement on remuneration for the services rendered. The minutes dated 26<sup>th</sup> October 2014 make no reference to the members of staff affected by the revised staffing rates or what the rates were prior to the revision and what the categorisation meant. The Claimant tendered no evidence to show that she was categorised as Professional Teer 1 vis a vis other members of staff.

87. This position is further reinforced by the Claimant's letter dated 17<sup>th</sup> April 2015 through which she submitted her invoice of Kshs.757,625/- for work done in February, March and April 2015. It is unclear as to when the Claimant commenced work, having testified that she was only paid Kshs.50,000/-.

88. Puzzlingly, the Claimant states that *"I would therefore wish to have the outstanding matter of my contract and payment for the period worked settled"*. The letter is also unambiguous that *"In the absence of a contract confirming contractual obligations my invoice and supporting timesheets are based on the following (d) signed contract and terms of reference in respect of my position would be forwarded to me for my signature as soon as you finished, negotiation processes with the other project personnel"*.

89. In addition to the foregoing, the Claimant testified that she worked for gain at the Centre for Policy Analysis (CEPA) Kenya but had since left after the task ended.

90. On cross examination, the Claimant confirmed that the Respondent intended to engage her as a consultant in administrative support management and had been given the terms of reference. The witness further confirmed that she was a consultant.

91. In re-examination, the Claimant testified that she was an employee of the 1<sup>st</sup> Respondent supervised by the 2<sup>nd</sup> Respondent but provided no evidence of the relationship between the two companies.

92. The Claimant was at the material time serving as the Director of Programmes and project at the Centre for Policy Analysis (CEDA) Kenya.

93. It was the Claimant's testimony that sometime in October 2014, she joined a team of consultants to provide administrative support in the course of preparation of a proposal for a consultancy advertised by the ICT Authority.

94. Between October 2014 and 1<sup>st</sup> April 2015, the Claimant participated in meetings and workshops organised by the 1<sup>st</sup> Respondent. It is unclear when the six months' project period commenced.

95. The Claimant was given the terms of reference setting out her role in the preparation of the proposal.

96. Although the terms of engagement including remuneration were agreed upon at a meeting and remuneration would be based on output timelines they were never formalised. The Claimant had no salary or wage. The Claimant was required to report to the office of the 1<sup>st</sup> Respondent once a week and had the rest of the week to herself as the letter of 17<sup>th</sup> April 2015 confirms.

97. The Claimant was engaged as a consultant to provide administrative support as confirmed on cross examination.

98. There was no contract to service between the Claimant and the 1<sup>st</sup> Respondent.

99. The role of the 2<sup>nd</sup> Respondent in the dealings between the Claimant and the 1<sup>st</sup> Respondent was not explained.

100. The upshot of the foregoing is that the Court is not persuaded that the Claimant has placed before the Court sufficient material for the Court to make a finding that the Claimant was an employee of the 1<sup>st</sup> Respondent within the meaning of Section 2(1) of the Employment Act, 2007.

101. Having found that the Claimant has on a balance of probabilities not established that there was a contract of service between herself and the Respondents, and was thus not an employee, this Court is satisfied that **the present claim is for dismissal and is hereby dismissed.**

102. **Parties to bear their own costs.**

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22<sup>ND</sup> DAY OF MARCH 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court 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**