



Opondo v Director of Criminal Investigations & another (Judicial Review Application E028 of 2021) [2022] KEELRC 1461 (KLR) (15 June 2022) (Judgment)

Neutral citation: [2022] KEELRC 1461 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E028 OF 2021**

JK GAKERI, J

JUNE 15, 2022

BETWEEN

JOHN OPONDO APPLICANT

AND

DIRECTOR OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

**SUB-COUNTY CRIMINAL INVESTIGATIONS OFFICER, RUIRU 2ND
RESPONDENT**

JUDGMENT

1. By a notice of motion application dated 28th October 2021 filed under certificate of urgency, the Applicant sought several orders including conservatory orders pending the hearing and determination of the application.
2. The orders sought are;
 - i. That this application be certified urgent and heard ex-parte in the first instance service thereof being dispensed with.
 - ii. That pending the inter-partes hearing hereof, this Honourable Court be pleased to issue conservatory Orders suspending the Memo reference number CID/SEC/1/2/29/VOL.XXV/51 issued for and on behalf of the 1st Respondent as regards the transfer of the Applicant herein to Banisa Police Station.
 - iii. That pending the inter-partes hearing hereof, this honourable Court be pleased to issue conservatory orders suspending the disciplinary/orderly proceedings initiated against the Applicant by the 2nd Respondent alleging an offence against discipline under Section 88 of the [National Police Service Act](#).



- iv. That this honourable Court be pleased to issue Judicial Review Orders of Certiorari to bring into this Court for the purposes of its being quashed the Memo dated 20th August, 2021 and reference number CID/SEC/1/2/29/VOL.XXV/51 issued for and on behalf of the 1st Respondent as regards the transfer of the Applicant herein to Banisa Police Station.
 - v. That this honourable Court be pleased to issue Judicial Review Orders of Certiorari to bring into this Court for the purposes of its being quashed the disciplinary/orderly proceedings initiated against the Applicant by the 2nd Respondent alleging an offence against discipline under section 88 of the *National Police Service Act*.
 - vi. That this Honourable Court be pleased to issue prohibitory orders against the Respondents barring them from initiating, sustaining and/or concluding any disciplinary proceedings against the Applicant alleging an offence against discipline related to the Memo dated 20th August, 2021, reference number CID/SEC/1/2/29/VOL.XXV/51 issued for and on behalf of the 1st Respondent
 - vii. Costs of these proceedings be awarded to the Applicant.
3. The application which is expressed under Sections 12 of the *Employments and Labour Relations Act* Section 7, 8, 9 and 10 of the *Fair Administrative Action Act*, Articles 20, 22, 41 and 47 of *the Constitution* of Kenya, 2010 and all other enabling provisions of the law and is based on the grounds that;
- a. The Respondent has commenced disciplinary proceedings against the Applicant to compel him to abandon criminal investigations in a matter the 2nd Respondent seems interested. The 2nd Respondent ordered stoppage of the investigation against employees of the Kenya Power and Lighting Company Limited (KPLC) where the Applicant is the lead investigating officer and some of the suspects have already been charged. The 2nd Respondent threatened the Applicant of unspecified consequences if he continued the investigation and thereafter the Respondents published a notice transferring the Applicant to Banisa Police Station in Mandera where the Applicant served 4 years before.
 - b. The Applicant appealed to the internal Affairs Unit and the Inspector General of Police and is awaiting determination. In the meantime, the 2nd Respondent appointed a disciplinary committee and charged the Applicant for disobeying lawful command contrary to Section 88(a) of the *National Police Service Act* notwithstanding the fact that the two had a dispute regarding execution of the Applicant's duties.
 - c. The Applicant protested *the constitution* of the Disciplinary Committee by the 2nd Respondent as the accuser but the committee asked him to go to Court.
 - d. The Applicant was forced to proceed and be tried by a panel created by the accuser who had a personal interest and which led to the impugned transfer and was awaiting the outcome.
 - e. The fact that the members of the committee are junior to the 2nd Respondent and the answerable to him, there is a conflict of interest and the Applicant does not expect justice from the committee.
 - f. The 2nd Respondent is indirectly sitting in judgement in a matter in which he is a party.
 - g. It is in the interest of justice that the Court intervenes to arrest the injustices the Applicant is exposed to.



4. The notice of motion application is supported by an affidavit by the Applicant dated 27th October, 2021 where the Applicant depones that he was transferred to Githurai Kimbo in 2019 and has served for one year, 10 months having served in Mombasa, Nakuru and Mandera Counties previously.
5. That he was informed of the transfer to Banisa Police Station in Mandera County on 20th August 2021 a region he served from 2008 – 2011. The same was communicated by a memo ref. No CID/SEC/1/2/29/VOL.XXV/51 dated 20th August 2021 signed for and on behalf of the 1st Respondent.
6. That the transfer is borne out of which hunt and intended to punish the Applicant for doing his work since June 2021, having been allocated a case with Sgt Susan Nyaboke P.C Josephat Kimani and PC Luka Mugambi relating to property valued at Kshs.422,000/- stolen from one Peter Ndungu Kamau reported earlier in March at Mwihoko Police Station under OB5/10/3/2021 and no action had been taken.
7. That the complainant provided details about the stolen item on 8th June, 2021 including telephone numbers used to purchase tokens for the stolen meters.
8. That the Claimant subsequently arrested four (4) suspects Mr. Pascal Kibet, Samuel Wanyonyi, Thomas Were and Joseph Mwangi who were arraigned in Court.
9. That after arresting Boniface Momanyi and Humphrey Oluoch Nandi, who were employees of the KPLC, the Applicant released them on compliance notices to report back on 12th August, 2021 but they did not return.
10. That the Applicant later learnt that the two employees and one inspector Muruiki had filed a complaint against him with the Sub-County Criminal Investigations Office, Ruiru who told the Applicant that DCI Headquarters had directed stoppage of the investigations against the two KPLC officers. The investigations were stopped.
11. That on 13th August 2021, the four suspects were released on cash bail of Kshs.100,000/- each.
12. The Applicant depones that he was aware that his name was sneaked into the list of transferees to make it appear a normal transfer.
13. That the colleagues transfer has since been changed to Ongata Rongai.
14. That the Applicant was aware that on 31st August, 2021, the complainant Mr. Peter Ndungu Kamau visited the DCI and was told that the Applicant's transfer was occasioned by the harassing of KPLC officers.
15. That the transfer was caused by forces desirous of stopping the case against the KPLC staff.
16. The Applicant further depones that the transfer was discriminatory since his colleague who had been transferred to Samburu was re-directed to Ongata Rongai.
17. That the Applicant's investigations unearthed the rot within the rank and file of KPLC such as issuance of non- existing bills, bloated bills and few prepaid tokens, for which he deserved a medal.
18. That appeals to the Internal Affairs Unit and the Inspector General of Police dated 2nd September 2021 and 1st October 2021 are yet to be responded to.
19. That the Applicant received a notice to show cause on 29th September 2021 from the SCCIO for disobeying lawful orders which the Applicant responded to on 4th October, 2021, was thereafter charged and participated in the proceedings but did not expect justice from the panel and seeks orders to quash the Respondent's memo dated 20th August, 2021 as regards the transfer.



Respondent's Case

20. In their replying affidavit, the Respondent depones that the prayers sought are far- fetched and premature in that the Applicant ignored the internal mechanism in place to raise grievances, that the suit is intended to taint the image of the directorate.
21. As regards the transfer to Banisa Police Station, the Respondents depones that they have no records that the Applicant had served at the Police Station before.
22. That as a seasoned officer, the Applicant was aware that transfers and deployment were administrative actions anchored in institutional policies.
23. That the transfers had no relationship with the investigation the Applicant was undertaking, and at any rate pending investigations are handed over in the event of a transfer of an officer.
24. As regards the arrests made by the Applicant, it is deponed that one CPI Nicholas Muriuki seconded to the KPLC called the deponent and informed him that two DCI officers were demanding a bribe from two KPLC employees. That Boniface Momanyi ID No. xxxx and Humphrey Nandi ID No. xxxx made a verbal complaint against the Applicant and one Susan Moraa for having demanded bribes to the tune of Kshs.300,000/- so as not to charge them with an offence related to theft of tokens at the KPLC.
25. That the two were held at Githurai Police Station incommunicado and their particulars were not entered in the Occurrence Book or Cell Register as provided by the law.
26. That the Applicant and Susan Moraa called the two officers while they were in the deponent's office enquiring about their preparations.
27. That the SCCO1 of Ruiru, Mr. Justus Ombati was unaware of the case and had not sent officers to arrest KPLC staff withing the CBD.
28. On compliance notices issued by the Applicant under Section 52 of the *National Police Service Act*, it is deponed that upon arrest a suspect is booked in the Occurrence Book and thereafter released on cash bail or police bond pending processing for Court plea appearance which the Applicant did not do in this case. The suspect did not honour the compliance notice and lodged a complaint against the Applicant.
29. That back ground checks revealed that the Applicant's net salary was Kshs.9,974/- contrary to the service standing orders which required at least $\frac{1}{3}$ of the salary.
30. That the two officers were transferred to pave way for investigations having served for over two years. It is further deponed that the transfer affected 134 officers in total.
31. As regards the allegations of discrimination, it is deponed that Chapter 72 of the Standing Orders prescribed a mechanism of querying or appealing against a transfer.
32. That neither of the Respondents is to blame for the absence of a response from the Internal Affairs Unit or the Inspector General of Police.
33. It is the Respondent's case that the Applicant has not exhausted the internal administrative procedures regarding appeals and he should channel his concerns through the prescribed procedure in the Standing Orders.



34. Finally, it is the Respondent's case that the petition be dismissed with costs for lack of merit.
35. In response to the Respondents replying affidavit, the Applicant filed a further affidavit stating that he did everything legally possible within the Standing Orders to settle the matter amicably but the Respondents' ignored him.
36. That Fino Police Station in Mandera is a hardship area in Mandera County and Banisa was in the same County. That transfer to a hardship area for a second time was contrary to the Respondent's transfer policy.
37. Finally, the Applicant depones that his payslip was irrelevant to the proceedings but states that his salary had drastically fallen due to illegal deductions by the employer of alleged over payments made to him and that the loans he took were pre-approved by the Sub-County Boss and were due to family emergencies.

Applicant's Submissions

38. The Applicant isolated three issues for determination namely;
 - i. Whether the purposed transfer of the Applicant complies with the law;
 - ii. Whether the transfer of the Applicant is discriminatory;
 - iii. Whether there was any justification to take disciplinary action against the Applicant.
39. On the 1st issue, the Applicant submits that it was clear from the Respondent's affidavit that the Applicant's transfer was intended to give way to investigations.
40. That the transfer was affected before the conduct complained of had been investigated. It would defeat logic to transfer an alleged corrupt officers to another station before investigations are conducted.
41. That Chapter 72 of the National Police Standing Orders state that "Transfer shall not be used as a disciplinary sanction or reward measure". It is submitted that to the extent that the Respondent grounded the transfer on the alleged corrupt practices of the Applicant, and the same had not been investigated and disciplinary action taken, the transfer was unlawful.
42. It is further submitted that chapter 30 of the National Police Standing Order on discipline and schedule 8 of the *National Police Service Act* 2011 create offence against discipline including one on corruption and section 7 of the Standing Order provide the sanctions against discipline and transfer is not one of the sanctions.
43. It is the Applicant's submission that the sanctions under section 7 can only be imposed after an investigation of the alleged offence under section 9 followed by a disciplinary hearing established under Section 7(3) of the service Standing Orders.
44. That no investigations were conducted in this case and there was no disciplinary hearing before the Applicant was transferred.
45. It is submitted that the transfer was arbitrary as a disciplinary sanction in violation of the right to fair administrative action in Article 47 of *the Constitution*.
46. As to whether the transfer was discriminatory, the Applicant submits that the fact that he was transferred to Mandera County and his appeal was dismissed with no explanation while that of another colleague was changed amounted to discrimination contrary to Article 27 of *the Constitution* of Kenya and Section 5 of the *Employment Act*.



47. As regards justification for disciplinary action, the Claimant submits that the Respondent has not demonstrated that there was any.
48. That no evidence of corrupt activities was adduced against the Applicant or evidence of an OB report about the alleged corrupt activities.
49. It is the Claimant's submission that the Respondent has not shown that there was any justifiable reason for the transfer to Banisa Police Station.
50. That the transfer was actuated by malice by the supervisor who instructed him to discontinue investigations and as no investigations were conducted, the transfer was malicious.

Respondents' Submissions

51. According to the Respondent, the issue for determination are:
 - i. Whether the Applicant's transfer is discriminatory;
 - ii. Whether the Applicant deserve the order sought.
52. As to whether the Applicant's transfer was discriminatory, it is submitted that the Applicant adduced no evidence of discrimination in that the Applicant was part of 139 newly promoted officer's and the Applicant's name was number 83.
53. Reliance is made on the decision in *Geoffrey Mworira v Water Resources Management Authority & 2 others* [2015] eKLR to urge that the Courts should sparingly interfere with performance of human resource functions of an employer.
54. That the Respondents should be allowed to carry out their administrative functions.
55. As regards the orders sought, it is submitted that the Applicant is not entitled to the reliefs because the Respondents acted in consonance of the provisions of Section 4(3) of the Fair Administrative Actions Act and Commission Discipline Regulations, 2015.
56. That the Applicant on the other hand ignored the internal mechanisms in raising his grievances and sought intervention from offices that have no oversight or supervisory role.
57. It is the Respondent's case that the Applicant has not proven any ground for an order for judicial review. The Respondent relies on the decision in *Republic v Minister for Interior and National Coordination & 3 others Ex-parte PC Stephen Munga* [2015] eKLR where the Court held that the application in question was baseless and frivolous as the law had not been complied with. The decision in *Francis Mbugua v Commissioner of Police & 2 others* [2013] eKLR is relied upon to urge that the Applicant had not exhausted the internal mechanisms.
58. That should the Court make a determination over the same matter, the commission objectivity could be influenced by the Court.

Analysis and determination

59. The issues for determination are;
 - i. Whether the Applicant's transfer was discriminatory;
 - ii. Whether the Applicant is entitled to the orders sought.



60. As to whether the Applicant's transfer was discriminatory, the starting point is the evidence on record. The Applicant submits that he and one Susan Nyaboke were transferred to Mandera and Samburu Counties respectively which according to the Applicant are classified as hardship areas.
61. That on appeal, Nyaboke's transfer was cancelled and directed to Rongai while the Applicant's appeal was dismissed and no explanation was offered which amounted to discrimination.
62. In his supporting affidavit, the Applicant refers to an unnamed colleague whose transfer to Samburu was cancelled and diverted to Ongata Rongai. The Applicant provided no evidence of the cancellation or diversion of the transfer to Ongata Rongai. Without evidence of the colleagues' appeal and outcome, the allegation that the Applicant was treated differently is not sustainable. In addition, the Applicant has not filed the outcome of his appeal and makes no reference to the outcome in the supporting affidavit.
63. It is also important to note that the Applicant's transfer was part of memo Ref: CID/SEC/1/2/29/VOL.XXV/51 dated 28th August 2021 which identified over 130 newly promoted officers.
64. Relatedly, the Applicant's investigation team comprised four officers including PC Josephat Kimani and PC Luka Mugambi. It is unclear whether they were transferred as well, having been an integral part of the investigation at the KPLC. The Applicant makes no reference to the two officers.
65. Finally, even assuming that the transfer of one Susan Nyaboke to Samburu County was diverted to Ongata Rongai, which had not been established evidentially, the Claimant provided no evidence that the two officers made identical applications to the same authority and obtained different results.
66. It is the finding of the Court that the claim or allegation of discrimination has not been established.
67. As to whether the transfer was regular, the Applicant contests that it was actuated by malice by his immediate boss the 2nd Respondent.
68. Needless to emphasize, there is sufficient judicial authority for the proposition that employers have Liberty to transfer their employees subject to compliance with their procedures or policies and the law.
69. The Court is in agreement with the sentiments of the Court in *Geoffrey Mworio v Water Resources Management Authority & 2 others* (supra) that:

“The Court will very sparingly interfere in the employer's entitlement to perform any of the human resource functions such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy or any other human resource functions.”
70. It is not in dispute that the Applicant had been working at the Githurai – Kimbo Police Station form 2019 and had previously served in other police stations including Fino in Mandera County 2008 – 2011.
71. It is also not in contest that the Applicant and other officers were investigating a complaint on stolen items belonging to one Peter Ndungu Kamau which led to the arrest and arraignment of four suspects.
72. That the investigation led to interrogation of Mr. Boniface Momanyi and Humphrey Nandi, who were employees of the KPLC and who were neither arrested nor booked and did not honour compliance notices issued by the Applicant.
73. That the investigations were subsequently discontinued. The Applicant was transferred to the Banisa Police Station in Mandera County via the memo dated 20th August 2021.



74. Although, the Applicant depones that he was aware that his name was sneaked into the list of the officers to be transferred in an attempt to sanitize the transfer, the Applicant provided no evidence in support of the allegation.
75. Similarly, the Applicant provided no evidence to establish the allegation that his colleague was recalled at the DCI Headquarters and her transfer cancelled and diverted to Ongata Rongai.
76. Be that as it may, in paragraph 16 of their replying affidavit, the Respondents admit that the Applicant and his colleague one Susan Nyaboke were transferred to pave way for investigations.
77. That deponent is categorical that “I proposed and effected the transfer of the two officers whereby the Applicant one John Opondo was transferred to Banisa and Sgt Susan Moraa was transferred to Samburu.” The assertion that the two had served in Ruiru for the stipulated period of time intended to legitimize the transfers of the two could not ameliorate the Respondent’s case.
78. It is not lost to the Court that the Applicant and his colleague were transferred on the basis of an allegation that they had demanded a bribe of Kshs.300,000/- from two KPLC employees Mr. Boniface Momanyi and Mr. Humphrey Oluoch Nandi and the two had reported the same to the deponent.
79. It is also deponed that the allegations were also reported to the deponent by DCI Officer, CPI Nicholas Muriuki.
80. Puzzlingly, the deponent makes no reference to the status of the investigation or the outcome bearing in mind that the transfer was communicated of 20th August, 2021 and the affidavit was sworn on 16th February, 2022. This omission has serious ramifications on the Respondent’s case in light of the haste with which the Applicant and the colleague were transferred to pave way for investigation into the alleged corrupt practices.
81. The Applicant had neither been notified of the status of the investigations nor the outcome. It is also unclear why the Applicant was transferred to Banisa Police Station in Mandera County, where the Applicant had served previously from 2008 to 2011 yet the objective was to pave way for investigations.
82. It is not in contest that the transfer was affected before the investigation were carried out and before the Applicant’s version of the alleged activity had been heard.
83. The Court is in agreement with the Applicant’s submission that the he was condemned unheard. To transfer officers allegedly for corrupt practices before thorough investigations have been conducted does not augur well with the eradication of corrupt practices in the National Police Force and would not pass muster as a policy.
84. More significantly, and as submitted by the Applicant, a transfer cannot be used as a disciplinary sanction. Section 1(i) of Chapter 72 of the National Police Service Standing Order states that “transfer shall not be used as a disciplinary sanction” paragraph (ii) is emphatic that “where is found that a transfer has been used as a disciplinary sanction of reward measure the commission may revoke the transfer.”
85. Finally, acts of corruption are an offence against discipline under the National Police Standing Orders and under the Laws of Kenya.
86. Having demonstrated that the Applicant’s transfers was essentially a disciplinary sanction imposed before the alleged activities had been investigated and culpability determined, it is imperative to determine the related issue of how the Applicant dealt with the issue and the outcome.



87. In his supporting affidavit, the Applicant depones that on 2nd September 2021, he appealed against the transfer to the Director Internal Affairs Unit seeking their intervention.
88. That in the absence of a response, he did a reminder and wrote to the Inspector General of Police on 1st October 2021 seeking his intervention and is still awaiting a response.
89. This suit was filed on 1st November 2021, one month after writing to the Inspector General of Police for his intervention.
90. In their replying affidavit and submissions, the Respondents are consistent that the Applicant did not follow due process in the appeal process before filling this suit.
91. As regards the right of appeal, Regulation 22 of the National Police Service Commission (Discipline) Regulations, 2015 provide that:
- (4) The Commission or the designated appellate body as per the Service Standing Orders or the commission as the case may deal with an appeal by way of written submission by the parties or through oral hearing or both.
 - (5) Where an appeal is to the commission and the matter is to be handled through a hearing.
 - a. The commission shall constitute a panel to hear the case
 - b. The panel shall consider the matter within 21 days and shall make recommendations to the commission for the commission's consideration and final decision and
 - c. The decision and reasons for the decision shall be given to the officer by the commission, through the Inspector General within 14 days of receipt of the recommendation of the panel.
92. In the instant case, the Applicant tendered no evidence of compliance with the internal mechanisms on appeal or grievance handling. The Applicant does not allege that he was acting in consonance with the Standing Orders or the Regulations when he sought intervention of the Director Internal Affairs Unit or the Inspector General of Police.
93. It is unclear why the Applicant did not lodge an appeal in accordance with the Regulations.
94. Instructively, the letter to the Director of Internal Affairs Unit dated 2nd September, 2021 is a complaint against victimization and malicious transfer not an appeal.
95. The letter dated 30th September 2021 is a request for an update on the complaint as opposed to an appeal.
96. The letter to the Inspector General of Police dated 1st October 2021 is a request to the Inspector General for intervention over a malicious transfer.
97. The upshot of these letters is that the Applicant did not file an appeal as contemplated by law. He did not engage the prescribed internal mechanism but sought intervention from individuals in the system.
98. As an insider, the Applicant cannot allege that he was unaware of the prescriptions of the Standing Orders or the Regulations, 2015.
99. For these reasons, the Court is satisfied that the Applicant did not exhaust the internal mechanism before filling the suit herein. It is the finding of the court that the suit herein is premature as was the case in *Francis Mbugua v Commissioner of Police & 2 others* (supra).



100. The Applicant is seeking the Courts intervention before he has complied with the internal mechanisms on appeal against the transfer to Mandera. In the premise, the Court is inclined to adopt the sentiments of the Court in *Elory Kraneveld v Attorney General & 2 others* [2012] eKLR at paragraph 9-10.
- “Whereas every person has the right to protection of *the constitution*, it is not in all cases that orders prayed should be granted..... The petitioner has literally jumped the gun because he has presented his defence of innocence not before the trial Court but this Court. His actions are premature.”
101. In this case, the Applicant wants the Court to fault the transfer of all the officers identified in Memo Ref No. CID/SEC/1/2/29/VOL.XXV/51 dated 20th August, 2021 to have it quashed as regards transfer of the Applicant to Banisa Police Station.
102. Finally, as to whether the Respondent had justification to take disciplinary action against the Applicant, the Court is satisfied that since neither the investigation report nor progress of the investigations has been provided, the Respondent had no justification to act in the manner it did using the investigation as the basis for the Applicant’s transfer.
103. In conclusion in as much as the Applicant had not exhausted the internal mechanisms in challenging the transfer, the Court is satisfied that the Respondent s acted before the Applicant’s conduct had been found wanting based on the complaint they had received. The Applicant had neither been notified of the complaint nor invited to rebut it as stated elsewhere in his judgment. In addition, no report or status of the investigations has been availed to demonstrate the current state of affairs.
104. On the whole, the Court is satisfied that the Claimant has demonstrated that his transfer to Banisa Police Station, Mandela County was not regular on account that it was made on the basis of an un-investigated complaint of alleged corrupt activities.
105. In a similar vein and as demonstrated elsewhere, the transfer of an officer(s) is not among the sanctions prescribed by the National Police Service Standing Orders.
106. Although none of the parties to the case availed the transfer policy of the National Police Force, the Court is unpersuaded that what was done in this case was consistent with the Policy. Transferring officers against whom serious allegations/complaint have been made before the allegations or complaints have been interrogated to determine their veracity and the officer concerned invited to rebut the allegations is analogous to condemning a person unheard.
107. Accordingly, the notice of motion application dated 28th October, 2021 is found merited to the extent that the Applicant’s transfer to Mandera County was contrary to the National Policy Service Standing Orders and the law, and is granted in the following terms;
- a. The Applicant’s transfer to Banisa police station, Mandera County pursuant to Memo Ref No. CID/SEC/1/2/29/VOL.XXV/51 is hereby suspended pending conclusion of the investigations on the alleged corrupt activities by the Applicant whose outcome will determine the next course of action.
 - b. In light of the limited success of the Application, it is ordered that the parties bear own costs.
108. Order accordingly.

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

DR. JACOB GAKERI



JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

