



**Wekesa v Multimedia University of Kenya (Cause 1682 of 2016)
[2022] KEELRC 1507 (KLR) (13 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1507 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1682 OF 2016**

**JK GAKERI, J
JUNE 13, 2022**

BETWEEN

GEORGE WEKESA CLAIMANT

AND

MULTIMEDIA UNIVERSITY OF KENYA RESPONDENT

JUDGMENT

1. By a memorandum of claim dated 20th August, 2016 and filed on 23rd August, 2016, the Claimant sued the Respondent seeking various reliefs for interdictio pending investigation.
2. Subsequently, on 18th July, 2018 the Claimant filed an amended memorandum of claim dated 9th July, 2018.
3. The Claimant alleges that his interdictio by letter dated 16th August, 2016 was made in contravention of the prescribed procedure as well as the constitutional principles of fair administrative action including being condemned unheard.
4. The Claimant further alleges that after resuming duty the Respondent arbitrarily varied his salary by withdrawing entertainment, responsibility allowances and airtime refund.
5. The Claimant prays for:
 - i) A declaration that the said decision to interdict the Claimant without fair trial was unfair biased and did not follow the due process thus rendering it illegal and unlawful and the same be hereby quashed.
 - ii) A declaration that the petitioner resumes his duties as per the letter of employment and position held prior to the proceedings herein unconditionally with no loss benefits, salary and allowances.



- iii) An order restraining the Respondent from interfering, harassing and/or threatening the Claimant's contract of employment until attainment of mandatory retirement age.
 - iv) General damages for the compensation for psychological torture and malignant of the Claimant's name.
 - v) Costs of this petition.
6. The Respondent filed a memorandum of reply on 17th July, 2017 but subsequently filed an amended one on 6th August, 2018 seeking the dismissal of the Claimant's memorandum of claim.

Claimant's case

7. The Claimant avers that he was employed by the Respondent as a lecturer in June 2012 on permanent and pensionable terms and discharged his duties diligently.
8. That in September 2012, he was given administrative duties as head of the University dispensary. He supervised the staff under him and was In-charge of general administration and effective running of the dispensary. That he did not proceed on leave in 2015 as the University was in the process of ISO certification and was directed as such.
9. That on or about 30th May, 2016 the Claimant applied for 20 days leave and handed over the departmental affairs to his junior to ensure service delivery. That annual leave is a non-negotiable entitlement which no one could deny him.
10. That on 16th June, 2016 the office of the Vice Chancellor (VC) wrote interdicting him pending investigations of allegation that the Claimant had severally failed to adhere to prescribed rules and regulations on public procurement.
11. It is the Claimants case that he was never notified or summoned about the complaints or allegations that the allegations related to the procurement department.
12. That the decision to interdict him contravened the prescribed procedure. That he had no justification and had been condemned unheard contrary to the tenets of employment practices.
13. The Claimant avers that the Respondent did not comply with its Human Resource Manual that required such allegations to be investigated and a complaint raised against the affected person for a response.
14. That the decisions to interdict him was in breach of the right to fair administrative action and rules of natural justice.
15. It is the Claimants case that by Court order, he resumed duty on 29th June, 2018 but the Respondent denied him airtime refund, entertainment and responsibility allowance.
16. That his application for annual leave for 20 days was approved and he resumed duty on 24th October, 2017 and by letter dated 13th September, 2017, the Respondent purported to vary the contract of employment without cause or due process.

Respondent's Case

17. In its amended memorandum of reply, the Respondent admits that the Claimant was its employee as pleaded in paragraph 3,4, and 5 of the claim but denies averments about leave and ISO certification.



18. It is the Respondents case that the interdiction was intended to facilitate investigation on the allegations of breach of procurement regulations and the Claimant would be informed of the outcome within 90 days.
19. That the Respondent complied with the university statutes on interdiction and in particular Schedule 6 clause 6.3.5 of the terms of service applicable to the Claimant.
20. The Respondent contends that the interdiction was not a disciplinary sanction against the Claimant or assumption of guilt.
21. That the outcome would have determined the way forward in the matter on way of charges being framed against the Claimant or exculpation from blame.
22. That the Claimant had not been condemned unheard as investigations were ongoing by the time the suit was filed and the Claimant had resumed duty.
23. In the Respondent's case that allowances claimed by the Claimant are the prerogative of the employer.
24. That since the Claimant was no longer in charge of the medical clinic, the allowances were not due as they are responsibility based and all other allowances had been paid.
25. It is the Respondent's case that the Claimant freely appeared before the University's Enquiry Committee investigating the matter on 5th September, 2016.
26. It is the Respondent's averment that the allegations made against the Claimant were serious and the interdiction was justified to pave way for investigation and protection of whistle blowers.
27. That during interdiction, the Claimant was paid half salary, full housing allowance with access to the University Medical Scheme.
28. That the Respondent exercised managerial prerogative in this instance and the Claimant's action is premature since the University had not exhausted its disciplinary process.
29. Finally, it is averred that the Respondent complied with due process requirements as mandated by its statutes and no disciplinary action could be taken until investigations had been concluded within 90 days.

Claimant's Evidence

30. The Claimants witness statement mainly rehashed the contents of the memorandum of claim with minimal additions.
31. It is the Claimant's testimony that after he resumed duty from leave (11th September to 23rd October, 2017) on 24th October 2017, he received a letter which varied the terms of his contract informing him that one Mr. Patrick Kamiti had been appointed as the one in charge of the University clinic.
32. That the Respondent varied his salary by withdrawing entertainment and responsibility allowances and airtime refund arbitrarily and without due process.
33. Finally, the Claimant testified that the Respondent's actions are malicious and intended to demote and frustrate him aggravating an illegal disciplinary process.
34. On cross-examination, the witness confirmed that he was still an employee of the Respondent and was to report to the clinical officer on administrative matters.
35. That he performed his professional duties and had no role in procurement.



36. Finally, the witness confirmed that the interdiction letter stated that allegations had been made and were to be investigated.

Respondent's Evidence

37. RW1 Mr. Wilson Kagwe adopted the written statement which rehashed the contents of the memorandum of response and was cross examined.
38. The witness confirmed that the outcome of the investigation was not communicated to the Claimant and no disciplinary proceedings were commenced against the Claimant.
39. It was RW1's testimony that the interdiction was unprocedural according to the Court's ruling date 6th October, 2016.
40. That the Claimant resumed duty on 20th July, 2017 and there had been no letter of variation of the term of the contract of employment.
41. The witness testified on a return to work formula which is not an issue in this suit and the allowances claimed herein are specific to the Claimant.
42. On re-examination, the witness stated that the responsibilities of the Claimant changed following the appointment of new person in charge of administrative matters such as procurement which led to the removal of the entertainment and responsibility allowances and airtime refund.

Claimant's submissions

43. According to the Claimant, the issues for determination are;
- i. Whether the Respondent unilaterally has the right to vary the terms of the contract of employment and whether by doing so violated the Claimant's constitutional rights under Articles 41 and 47 of the *Constitution* of Kenya, 2012;
 - ii. Whether the Claimant is entitled to the allowances contained in the return to work formula dated 14th March, 2017;
 - iii. Whether the Claimant is entitled to the reliefs sought.
44. On the first issue, the Claimant relies on Section 10(5) of the *Employment Act* on variation of terms of contract of employment and relies on the decision in *Susan Murila & another (COTU) v Richard Kipkoech Langat & another* [2019] eKLR.
45. The decision in *Melisa Akinyi Ayoyi v Claudio Benaglia t/a Royal Tulia Resort* [2018] eKLR is also relied upon to urge that an employee must be consulted before actions that alter the contract of employment are taken.
46. It is submitted that the Respondent's letter dated 13th September, 2017 purported to vary the Claimant's terms of his contract without due process and no consultation had taken place.
47. That the letter dated 15th January, 2018 merely informed the Claimant that he was no longer entitled to entertainment allowance, responsibility allowance and airtime refund.
48. It is submitted that the decision by the Respondent to withdraw the allowances on the ground that the allowances were the prerogative of the Respondent was unlawful since it was unilateral.



49. The decision in *Justina Mutitu Nyaga v Kenya Civil Aviation Authority* [2017] eKLR is also relied upon to urge to urge that it is the duty of the employer to produce the records of employment.
50. That the Claimant's responsibilities were varied unilaterally which the Respondent could not legally do.
51. As to whether the variation violated the employment contract as well as the right under Article 41 and 47 of the *Constitution*, the decision in *Maxwell Miyawa & 7 others v Judicial Service Commission* [2017] eKLR is relied upon to urge that such a variation was unlawful and amounted to a repudiation of the contract in view of the obligation to consult.
52. That the variation amounted to an unfair labour practice. Reliance is also made on Article 47 of the *Constitution* of Kenya, 2010 as well as Section 4(2) and (3) of the *Fair Administrative Actions Act*.
53. The decision in *Stella Ndunge Kimatu v Teachers Service Commission* [2020] eKLR is relied upon to urge that the provisions of the *Fair Administrative Actions Act* were not complied with.
54. The Court is urged to find that the Respondent's unilateral action violated the law.
55. As to whether the Claimant is entitled to the allowances contained in the return to work formula dated 14th March, 2017, it is urged that the Respondent was required to pay the Claimant doctor's allowance of Kshs.72,000/- non-practicing allowance of Kshs.46,000/- and medical Risk Allowance of Kshs.20,000/- since the Claimant was Grade 12 equivalent to Job Group P.
56. That the Respondent disregarded the same and adduced evidence that the allowances are risk allowance Ksh.5,000/- non-practicing Kshs.40,000/- and no doctors allowance at all.
57. The decision in *Kenya Medical Practitioners Pharmacists & Dentists Union (KMPDU) v County Government of Kisumu* [2020] eKLR is relied upon to reinforce the submission.
58. It is submitted that the Respondent be ordered to honour the terms of the return to work formula of 14th March 2017.
59. As regards the reliefs sought, it is submitted as follows;
 - a. The Court is urged to make an order restraining the Respondent from interfering, harassing and/or interfering the Claimants contract of employment until attainment of mandatory retirement age.
 - b. As regards general damages for psychological torture and malignment of the Claimant name, it is submitted that the Respondent victimized the Claimant by varying the terms of employment that the variation occasioned anxiety and exposed the Claimant to psychological torture. The decision in the *Standard Group Limited v Jenny Luesby* [2018] eKLR is relied upon to urged that damages are available in employment contracts if an employee establishes breach of a constitutional right in the context of an employment contract.
60. It is submitted that since the Claimants right to fair labour practices was violated, damages should be awarded.
61. That the variation of the terms of employment occasioned financial embarrassment. The Court is urged to award damages for psychological and emotional anguish/torture and suffering.
62. That the Claimant be awarded costs.



Respondent's Submissions

63. The Respondent identifies five issues for determination including costs;
 - i) Whether the Respondent had the right to unilaterally vary the terms of the contract of employment;
 - ii) Whether the Claimant's interdiction was procedural;
 - iii) Whether the Claimant's salary was affected by the return to work formula;
 - iv) Whether the Claimant is justified to be awarded the prayers sought.
64. On the first issue, the Respondent states that the Claimant was appointed as the Medical Officer of the University Clinic by letter dated 12th May 2012, he was the In-charge of the University Clinic and was therefore entitled to some allowances payable to In-charge/Heads of Departments such as Entertainment, Responsibility and Airtime.
65. That the allowances are payable as a prerogative of the employer as opposed to a legal requirement.
66. That the contract of employment was not varied, but, the Claimant ceased to be an In-charge or Head of Department.
67. The Respondent submits that being a Public Institution, the Claimant could not benefit from allowances given to Heads of Department and did not perform same roles.
68. As regards the interdiction, it is contended that the Respondent's action was not intended to punish the Claimant but to facilitate investigation as the interdiction letter intimated.
69. The Respondent submits that it complied with the internal mechanisms as the allegations were serious and the outcome of the investigation would have been communicated to the Claimant.
70. That the procedure was not activated by malice. The decision in *Geoffrey Mworira v Water Resources Management Authority & 2 others* [2015] eKLR is relied upon to urge that courts of law should sparingly interfere with employer's functions unless circumstances demand.
71. That the Claimant was invited to appear before the committee investigating the allegations.
72. It is submitted that the Respondent followed the internal mechanisms and the Court should hold as such.
73. As to whether the Claimant's salary was to be affected by the return to work formula of 2014, it is urged that the Claimant's amended memorandum of claim had no prayer for the Claimant's salary and allowances to be increased in tandem with the return to work formula. It is submitted that a court cannot award what has not been pleaded.
74. The decision in *Jeremiah Wachira Ichaura v Kenya Power & Lighting Co. Ltd* [2014] eKLR is relied upon for the proposition that parties are bound by their pleadings and a court of law cannot grant what is not pleaded.
75. The Court is urged not to consider or make a determination on the issue.
76. It is submitted the return to work formula did not affect the Claimant. That the formula was applicable to doctors working in the public service and paid directly from the public coffers as it was negotiated between KMP&DU and County Governments.



77. The Court is urged to dismiss the claim.
78. As regards the reliefs claimed, it is submitted that Schedule 6 of under the title “Roles” provide that-
“The duties of each member of staff in these grades will be specified by the Head or Chairperson of his department acting on behalf of the Vice Chancellor.”
79. It is submitted that the Respondent hired the Claimant as a medical officer and the VC assigned him the role of being the In-charge of the medical centre which role had additional allowances and was not hired as the In-charge of the medical centre. That the VC had the prerogative to re-allocate roles when the Claimant was interdicted.
80. That the allowances were pegged on the roles of the In-charge, which the Claimant no longer was.
81. The Court is urged not to find merit in prayer number 2 of the amended memorandum of claim.
82. In conclusion, the Respondent states that its internal disciplinary process were not breached and as such, it was not in contravention of the Constitution of Kenya, 2010 or any legislation.

Analysis and Determination

83. After careful consideration of the pleadings, evidence on record, submissions by counsel and the law, the issues for determination are;
- i. Whether the Claimant is entitled to the allowances contained in the return to work formula dated 14th March 2014;
 - ii. Whether the Respondent unilaterally varied the terms of contract of employment with the Claimant;
 - iii. Whether Claimant is entitled to the reliefs sought.
84. As to whether the Claimant is entitled to the allowances in the return to work formula dated 14th March, 2014, the home port are the pleadings the evidence on record.
85. A perusal of the Claimants Amended Memorandum of claim dated 9th July, 2018 reveals that the allowances are not pleaded and there is no prayer specific to them, the consequence of which is that the Respondent did not respond to the issue in its amended memorandum of reply dated 2nd August, 2018.
86. The fact that the Claimant has neither a narration of his entitlement to the allowances nor a specific prayer in its pleadings, would appear to suggest that it did not envision it as an issue for determination or worth consideration by the Court.
87. Instructively, the Claimant raised the issue by way of questions to the Respondent’s witness on cross-examination.
88. The Respondent ignored the issue altogether on re-examination of its witness.



89. On this issue, the Court is in agreement with the Respondent’s submission that it cannot award what has not been pleaded and parties are bound by their pleadings as eloquently put in *Jeremiah Wachira Ichaura v Kenya Power & Lighting Co. Ltd (supra)* as follows;
- “...I agree with counsel for the defendant that the same is not pleaded. Parties are bound by their pleadings and the Court cannot grant what is not pleaded in the plaint. I have perused the plaint and do find that the plaint has not pleaded...”
90. The Court is guided by those sentiments.
91. In the totality of the Claimants suit the Claimant makes no reference to the allowances payable under the return to work formula dated 14th March, 2014 or the relevant document itself.
92. The Court finds the issue out of context for determination. The Court lacks jurisdiction to determine the issue.
93. As to whether the Respondent varied the terms of contract with the Claimant, the provisions of the *Employment Act*, 2007 are as explicit that any variation of the basic terms of contract require the involvement of the employee.
94. Section 10(5) of the *Employment Act* provides where any matter stipulated in sub-section (1) changes, the employer shall, in consultation with the employee revise the contract to reflect the change and notify the employee in writing.
95. *Blacks Dictionary* 10th Edition 2014 defines consultation as
- The act of asking the advice or opinion of someone. A meeting in which parties consult and confer.
96. The provisions of Section 10(5) of the *Employment Act* were elaborated in *Melisa Akinyi Ayoyi v Claudio Benaglia t/a Royal Tulia Resort* [2018] eKLR where the Court stated:
- “The *Employment Act* does not allow for unilateral change in contracts of employment to enable employers achieve their financial objectives. The employee must be notified and consulted about the change. The mantra in employment and labour relations is never ‘take it or leave it’. There is always an obligation to consult on change in terms and conditions of employment more so when the proposed change, results in an inferior salary to the employee”.
97. Finally, in *Susan Murila & another (COTU) v Richard Kipkoech Langat & another (supra)* the Court explained that-
- “The provisions of Section 10(5) are couched in mandatory terms. The provisions demand of the employer to first make the changes in consultation with the employee and secondly, to issue the employee with a revised contract reflecting the changes”.
98. The Court is in agreement with these sentiments.
99. In a nutshell, the law requires the employer to consult the employee before the changes are effected.
100. Instructively, the law does not provide that the employees consent is required.



101. In *Maxwell Miyawa & 7 others v Judicial Service Commission* [2017] eKLR, Radido J. stated:
- “The *Employment Act* appears to contemplate consultations between the employer and employee if the essentialia of an employment contract are being altered. The essentialia of a contract in this respect would include duration of contract, job description, identity of the employer, place and hours of work and remuneration among others”.
102. It is not in dispute that the Respondent withdrew certain allowances the Claimant used to enjoy and appointed another person as the In-charge of the University Medical Centre without consulting the Claimant.
103. On its part the Respondent contended that the Claimant’s appointment to the position of In-Charge by the VC and the attendant allowances were the prerogatives of the VC.
104. Strangely, neither the Claimant nor the Respondent produced a letter of appointment or the job description of the Claimant. Relatedly, the Claimant avers that he was appointed as a lecture in June 2012 with no administrative duties until September, 2012.
105. It would appear that administrative duties were not part of the original package in June 2012. However, the employer availed no letter of appointment to demonstrate that the allowances were attached to the office of the In-charge and not the Claimant’s employment contract.
106. A copy of a job description on record allegedly signed by the Claimant as Medical Officer is dated 2016 not 2012 as alleged. But more importantly, the single page document has one signature only and lacks authenticity.
107. The mantra in employment is that it is the duty of the employer to keep employment records. Section 10(7) of the *Employment Act* provide:
- If in any legal proceedings can employer fail to produce a written contract or the written particulars prescribed in subsection (1), the burden of proving or disproving an alleged term of employment stipulated on the contract shall be on the employer.
108. Puzzlingly, the Respondent availed no list of documents. Section 10(7) of the Act is emphatic that the Respondent in this case bore the burden of disproving that the Claimant was entitled to the allowances claimed. It availed no letter to demonstrate the circumstances in which the allowances were payable. Were the allowances attached to the Claimant’s position as a lecture/Medical Officer or as the In-charge of the university clinic and for how long? Was the office of In-charge held at the pleasure of the Vice Chancellor? Did the appointment of Mr. Patrick Kimiti automatically disentitle the Claimant the allowances?
109. The copies of the Claimant’s payslips on record show that the Claimant earned entertainment allowance of Kshs.27,500/-, responsibility allowance of Kshs.12,500/- and airtime refund of Kshs.1,200/-.
110. The foregoing notwithstanding, the Court takes judicial notice of that fact in main stream civil service and state corporations, responsibility allowance, entertainment allowance and airtime is generally payable to officers who are either Heads of Department or are performing some defined responsibilities over and above their normal duties. The rank and file does not generally earn such allowances.
111. In the instant case the Respondent should have consulted the Claimant to explain to him why the allowances would be discontinued. The notice of appointment of Mr. Patrick Kimiti as In-charge of



- the University Clinic notifies the Claimant that some other person had been appointed as In-charge. The letter makes no reference to the discontinuation of allowances.
112. Although the Claimant testified that his job description did not change, he did not confirm that he has been performing any administrative duties at the Respondent's clinic.
 113. On cross-examination, the Claimant confirmed that he had no role in procurement any more. In his evidence in chief, the Claimant testified that he was involved in procurement as a user department.
 114. For the foregoing reasons it is the finding of the Court that the Respondent discontinued the Claimant's allowances without consulting the Claimant as required by law. However, in the interest of justice, the Claimant is awarded a portion of the unpaid allowances up to the date of this judgement.
 115. In the absence of the letter of employment or appointment of the Claimant as In-charge of the Respondent's clinic, the Court will not order the restoration of the allowances.
 116. General damages for psychological torture and malignment of petitioner's name. Before deriving into the Claimant's case on this prayer, it is essential to indicate that the Claimant led no evidence of how his name was malignment or that he suffered any loss as a consequence.
 117. Relatedly, it is unclear to the Court whether the Claimant is seeking damages for defamation as no particulars have been furnished. In the absence of a cogent evidence of the alleged malignment of name, one of the foundations of the claim for general damages has collapsed.
 118. Although the Claimant alleged that the non-payment of allowance subjected him to pecuniary embarrassment he tendered no evidence of the financial obligation which he could not meet or that his lifestyle changed in any way owing to the withdrawal of the allowances. Relatedly, the Claimant remains in the employment of the Respondent.
 119. The gravamen of the Claimant prayer for general damages for psychological torture is that the Court order that lifted his interdiction indicated that the Respondent was at liberty to institute fresh disciplinary process as per its manual and accord the Claimant a fair hearing but the Respondent did not do so and victimized the Claimant by withdrawal of his allowances.
 120. It is the Claimants case that these actions of the Respondent exposed the Claimant to psychological torture.
 121. Regrettably, neither the memorandum of claim nor the Claimant's statement particularize the alleged psychological torture.
 122. The Respondent could have opted not to institute fresh disciplinary process for any number of reasons which the Court cannot speculate.
 123. The Claimant was duty bound and to demonstrate how the inaction by the Respondent affected him or amounted to psychological torture.
 124. The Claimant submits that the withdrawal of allowances by the Respondent was unfair and amounted to an unfair labour practice under Article 41 of the Constitution of Kenya, 2010 and is thus a constitutional issue.
 125. Be that as it may, it is trite law that a constitutional issue must be pleaded and particulars of the alleged violations provided coupled with the Articles of the constitution allegedly violated. The extent of the violation must also be particularized.



126. See *Anarita Karimi Njeru v Republic* [1979] eKLR. The need to plead and prove violations of constitutional rights was emphasized by the Court of Appeal in *Standard Group Limited v Jenny Luesby (Supra)* as follows;

“So long as an employee can plead and prove breach of a constitutional right within the context of the employees’ contract of employment or demonstrate that he is entitled to damages in circumstances as contemplated under the *Employment and Labour Relations Court Act*, over and above those awardable for unlawful termination, we see no impediment for the trial Court granting such relief”.

127. The Court is bound and guided by these sentiments.

128. Apart from failing to plead that a constitutional right had been violated or breached setting out the relevant particulars of the violation and the extent of the violation or breach, the Claimant led no cogent evidence of the alleged violation.

129. For the foregoing reasons, it is the finding of the Court that the Claimant has on a balance of probability failed to demonstrate that the Respondents conduct amounted to psychological torture and malignment of his name to be entitled to damages. The prayer is accordingly dismissed.

130. Finally, the Claimant prays for an order restraining, the Respondent from interfering, harassing and/or threatening the Claimant’s contract of employment until attainment of the mandatory retirement age.

131. From the pleadings and evidence on record, the Claimant has not demonstrated that he has any anxiety or apprehension that the Respondent has in any way threatened or harassed the contract of employment of the Claimant other than the withdrawal of allowances part of the subject matter of the instant dispute.

132. Relatedly, the Claimant did not provide a copy of his contract of employment for perusal by the Court.

133. For a Court of law to make a prospective order such as the one sought by the Claimant there must be credible and cogent evidence pointing to the possibility of the employer interfering or threatening the contract of service in question which is not the case here.

134. This is buttressed by the Claimant’s confirmation that after reinstatement by the Court the Claimant has been in the employment of the Respondent and no issue had arisen. For these reasons the prayer is declined.

135. In conclusion, judgement is entered for the Claimant against the Respondent as follows;

- a. Payment of ½ of the responsibility and entertainment allowances and airtime refund from the date the allowances were withdrawn to the date of this judgement.
- b. Costs of this suit
- c. Interest at Court rates from date of judgement till payment in full.

136. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13TH 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

