



**Kienjeku v UAP Old Mutual Group (Cause 1524 of 2017)
[2022] KEELRC 1486 (KLR) (10 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1486 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1524 OF 2017**

**SC RUTTO, J
JUNE 10, 2022**

BETWEEN

STEPHEN M. KIENJEKU CLAIMANT

AND

UAP OLD MUTUAL GROUP RESPONDENT

JUDGMENT

1. The uncontested facts of this claim are that the claimant's services were retained through the then UAP Holdings Limited (UAP) as an Assistant Manager Procurement with effect from 7th October, 2013 and that he rose through the ranks to the position of Procurement Manager-UAP.
2. It is also common ground that there was a merger between UAP Holdings Limited and Old Mutual Holdings Limited, hence resulting in two separate positions for Procurement Managers. That as such, the claimant took up the position of Group Procurement and Contract Administration Manager, a position he held until his exit from the respondent.
3. It is also not in dispute that the claimant was issued with a notice of intended redundancy on 3rd February, 2017 and was subsequently terminated from employment on 22nd March, 2017. It is that termination that has triggered the instant claim.
4. On his part, the claimant has challenged the redundancy on the basis that it disregarded his role in the respondent's management and was in violation of his legitimate expectation following a successful job evaluation and the role design process, previously conducted by the respondent. The claimant further avers that the redundancy was not in compliance with the stipulated legal requirements.
5. The claimant considers his termination as a breach of his employment contract and the customary and/or agreed procedure indicated in the Notice of Intended Redundancies. As a result, the claimant seeks against the respondent: an order of reinstatement and in the alternative, a declaration that the respondent is in violation of section 5 of the *Employment Act*; a declaration that the respondent is in



breach of Articles 10, 27(1) and (5), 41(1) and (2) (b) of the Constitution of Kenya, 2010; a declaration that the termination of the claimant's employment was irregular, unfair, unlawful and discriminatory; short term incentive payment (cash) (year 2016) being Kshs 337,774.23; damages for loss of income/employment for Kshs 5,577,504.00; maximum compensation for unfair and unlawful termination for Kshs 5,577,504.00; general damages; costs of the claim and; interests at court rates from 22nd March, 2017.

6. Opposing the claim, the respondent in its defence, avers that sometimes in 2016 and early 2017, it reviewed its operations and structure with a view to improving its performance. That in this regard, it carried out an organizational restructuring which resulted in the elimination or alteration of various positions and roles within the respondent. That as such, it issued notices of intended redundancies on 3rd February, 2017 to the affected employees, including the claimant and to the relevant county labour offices. It avers that the selection criteria complied with the statutory requirements to consider seniority in time, skill and reliability. The respondent further avers that the claimant is not entitled to the reliefs sought hence asks the Court to dismiss the claim with costs.
7. The matter took off for hearing on 27th January, 2022 when each side presented oral evidence.

Claimant's case

8. At the commencement of the hearing, the claimant adopted his witness statement and bundle of documents to constitute part of his evidence in chief. The documents were also produced as exhibits before court.
9. It is the claimant's case that following the merger of UAP Holdings Limited and Old Mutual Holdings Limited, he was appointed to the position of Group Procurement and Contract Administration Manager. That this was pursuant to a competitive process in which one Mr. Allan Njenga had participated in. That the said Mr. Njenga took up the role of Manager- Contracts and tender Management and was directly reporting to him.
10. That the respondent subsequently undertook a job evaluation which confirmed his Role Size as "O" and role title as "Group Procurement and Contract Administration Manager". That his salary was also reviewed effective 1st January, 2016 following the successful completion of the Role Design Process, which had been conducted over and above the job evaluation exercise. That on 22nd March, 2016, the respondent informed him of the 2015 Country Variable Payment hence awarded him an Old Mutual Emerging Markets (OMEM) Total Variable Pay bonus, thus acknowledging his significant contribution to the respondent's general success.
11. It was his testimony that in late 2016 and early 2017, the respondent held two town hall meetings where it reinforced the understanding and belief of the importance of his role in its strategic alignment and further assuring him and other staff that there would be no job losses resulting from the merger. That the respondent assured him and other staff during the town hall meetings that the intended review of its organizational structure within Kenya would not result in job losses and that the same was meant to determine whether its structures were adequate in ensuring optimum performance and business efficiency.
12. That as such, the notice of intended redundancy served upon him by the respondent on 3rd February, 2017, was in utter disregard of his role in the respondent's management and violated his legitimate expectation following the job evaluation exercise and the Role Design Process conducted by the respondent. That further, his role was rendered superfluous and there were no consultations and participation from his end. That there was nothing to show that the respondent had disposed off the need for procurement and contract administration altogether thus rendering his position superfluous.



13. The claimant further stated that the review and selection of employees to be rendered redundant was in utter disregard of his seniority in time, skill, ability and reliability. That the process was unmeritorious in law. That following his termination, the respondent appointed Mr. Njenga as the Group Procurement and Contract Administration Manager, the exact same role that it had purported to render redundant and which he himself was more qualified and suited for, than the said Mr. Njenga. That he was privy to Mr. Njenga's academic qualifications, technical skills and expertise given that he was reporting to him directly.
14. He asked the Court allow his claim as prayed.
15. In cross examination, he admitted that the respondent held town hall meetings but the selection process was not indicated. That the town hall meetings were about coping with the process, emotional management and management of finances.

Respondent's case

16. The respondent presented oral evidence through Ms. Caroline Mwangi, who testified as RW1. She identified herself as the respondent's Human Capital Business Partner-Insurance and Asset Management. She proceeded to adopt her witness statement to constitute part of her evidence in chief. She also produced the documents filed on behalf of the respondent as exhibits before Court.
17. RW1 told court that sometimes in 2017, the respondent declared some positions redundant following the merger between UAP Holdings Limited and Old Mutual Holdings Limited. That some positions were duplicated hence the redundancy exercise, which commenced sometimes in February, 2017. That the redundancy was cross the board and the respondent held town hall meetings with all its employees and at the time, it was not known who would be affected. That the employees were advised to reach the office of Human Capital for consultations.
18. That the respondent did not give the claimant any assurance beyond the fact that the process would be undertaken fairly. That the respondent had a genuine desire to redeploy as far as practicable all affected employees. It was her further testimony that the respondent complied with the requirements of section 40 of the *Employment Act*. That the respondent's Chief Executive Officer communicated to all employees on the procedure to be undertaken in the redundancy exercise. That the claimant was well informed of the criterion that was to be used in the selection process. That the position that was being held by the claimant was rendered superfluous and it was not practicable to redeploy him.
19. RW1 further testified that it is not true that the claimant was more qualified and suited than Mr. Njenga for the role he now holds. She termed the statements as subjective and lacking in basis.
20. She summed up her testimony by stating that all affected employees were paid their terminal dues, which was over and above what is stipulated under the law.

Submissions

21. The claimant emphasized in its submissions that; consultations in cases of redundancy must be meaningful; and that sufficient disclosure by way of sufficient material to notify employees on the criteria of redundancy; and the reasons for redundancy have to be proved as existing and valid.
22. That in this case, the claimant was never informed of the criteria used for conducting the redundancies. That the respondent terminated the claimant without any consultations as what it presented in evidence, was merely trainings and seminars. It was further submitted that the notice issued to the



- claimant was short of the prescribed one month's period. That in addition, the redundancy was in violation of section 40 of the *Employment Act* and Article 41 of the *Constitution*.
23. In support of its submissions, the claimant placed reliance on Articles 10 and 41 of the *Constitution*, sections 5(3)(b) and 40(c) of the *Employment Act* and Article 13 of Recommendation N0. 166 of the International Labour Organisation (ILO) Convention No. 158 Termination of Employment Convention, 1982. The Court was also invited to consider the determinations in *Kenya Airways v Aviation & Allied Workers Union of Kenya & 3 others* (2014) eKLR and *Luke Kinyua Kamunti v Amigos Nuts and Commodities Limited* (2019) eKLR.
24. On its part, the respondent submitted that so long as the employer believes that a redundancy is warranted, then dismissal is justified. That an employer is entitled to undertake a redundancy just like any other human resource function. That in the instant case, the merger created a duplicity of roles hence it was necessary to scrap off some roles to enable smooth and efficient operations. The respondent further submitted that the redundancy was in compliance with section 40 of the *Employment Act*. That the consultation took 30 days before the respondent reached the decision on which employees were to be declared redundant. That further, the time taken to complete the process was well above the minimum requirement.
25. In further submission, the respondent stated that the claimant was informed from the onset, of the criterion to be used in the selection process. It was the respondent's further submission that a new role was created following completion of the process and when all considerations were made, Mr. Njenga was more skillful and reliable compared to the claimant for the new role. The respondent buttressed its submissions on the determinations in *Kenya Airways v Aviation & Allied Workers Union of Kenya & 3 others* (2014) eKLR, ELRC Cause No. *Kenya Plantation & Agricultural Workers Union v James Finlay (K) Ltd*, Civil Appeal No. 86A of 2016, *Pure Circle (K) Limited Paul K. Koech & 12 others* (2018) eKLR, Nairobi Civil Appeal No. 65 of 2012; and *Thomas De Larue v David Opondo Omutelema* (2013) eKLR.

Analysis and Determination

26. Arising from the issues in the pleadings, the evidence submitted before court and the submissions on record, the Court is being called to determine the following twin issues: -
- i. Whether the redundancy of the claimant was fair and lawful?
 - ii. Whether the claimant is entitled to the reliefs sought?

Whether the redundancy of the claimant was fair and lawful?

27. The claimant's termination was effected *vide* a letter dated 22nd March, 2017, referenced "Termination on Account of Redundancy" which is partly couched as follows: -

"We refer to the Company's letter dated 3rd February 2017 by which the Company gave you notice of its intention to carry out an organizational restructuring.

As explained in the above-mentioned letter, it was expected that the organizational restructuring would result in the elimination or alteration of various positions and roles. On this account, the Company duly complied with its statutory obligations, specifically those relating to consultation and selection. Additionally, a thorough review of the old organizational structure vis-a-vis the proposed structure was carried out to ensure the achievement of the goals of the restructuring process.



Following the close of the restructuring process, various positions within the Company's staff structure including the one you currently hold have been eliminated. As a result of the above, your services have been rendered superfluous.

In view of the current circumstances, the Company has been compelled to terminate your employment on account of redundancy. The termination takes effect immediately. In accordance with your employment contract as read with the Employment Act, 2007 and the Company's Employment manual you will be paid the following as your final dues..."
Underlined for emphasis

28. In Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others (2014) eKLR, the Court of Appeal found that "for any termination of employment under redundancy to be lawful, it must be both substantially justified, and procedurally fair".
29. This essentially means that a termination on grounds of redundancy ought to be both substantially and procedurally fair. Substantial fairness refers to the reasons for which the redundancy was effected, while procedural fairness has to do with the procedure applied in effecting the redundancy.

i. Substantive justification

30. In order to put into context, the concept of redundancy, it is prudent to consider its definition under Section 2 of the Employment Act which means, "the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment".
31. The significance of the definition of the term "redundancy" was amplified in the case of Kenya Airways (supra), as follows: -

"The phrase "based on operational requirements of the employer" must be construed in the context of the statutory definition of redundancy. What the phrase means, in my view, is that while there may be underlying causes leading to a true redundancy situation, such as reorganization, the employer must nevertheless show that the termination is attributable to the redundancy – that is that the services of the employee has been rendered superfluous or that redundancy has resulted in abolition of office, job or loss of employment."
32. In essence, the circumstances or reasons which leads to an employee being declared redundant ought to fall within the above definition. Further, the reasons for the redundancy, which would basically fall under Section 45(2) (b) (ii) of the Employment Act, ought to be proved. Section 45 (2) (b) (ii) provides thus: -

"[45]

- (2) A termination of employment by an employer is unfair if the employer fails to prove—
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - (i)or



(ii) based on the operational requirements of the employer...”

33. As can be discerned from his letter of termination, the reasons for which the claimant was declared redundant was that his position had been rendered superfluous.
34. The respondent has defended the redundancy process and termed the same as a consequence of the organizational restructuring it undertook sometimes in 2016/2017. That the restructuring resulted in the elimination or alteration of various positions and roles within the respondent organisation.
35. It is presumably after the reorganization that the position of the claimant was rendered superfluous.
36. In light of Section 45(2)(b)(ii) of the Employment Act, the respondent was bound to prove that indeed, the position of the claimant was rendered superfluous as a result of the organizational restructuring.
37. This is moreso given that the claimant has contended that his position was taken up by one Mr. Njenga who was his immediate junior in the organisation.
38. The claimant led evidence to prove that indeed, there was an initial restructuring which resulted in the creation of the position of Group Procurement and Contract Administration Manager and which he was appointed to.
39. There was also uncontroverted evidence that upon his appointment as Group Procurement and Contract Administration Manager, the said Mr. Njenga assumed the position of Manager -Contracts & Tender Management and was reporting to him directly.
40. It is the claimant’s case that after his termination on account of redundancy, Mr. Njenga took over his position. In answer to his assertion, the respondent has stated that it is not true that the claimant was more qualified and suited than Mr. Njenga for the position he now holds.
41. What the respondent did not tell the Court is whether indeed, Mr. Njenga holds the same position as the one that was previously held by the claimant. Further, and more importantly, the respondent did not exhibit the new organizational structure/organogram, to prove that indeed, the position of the claimant was rendered superfluous after the organizational restructuring.
42. In short, the respondent despite its assertions, did not prove that the claimant’s position was declared superfluous and that the position taken over by Mr. Njenga is not that of Group Procurement and Contract Administration Manager, that was erstwhile held by the claimant. There is no evidence that Mr. Njenga assumed a new role within the respondent’s organizational structure.
43. These gaps do not aid the respondent’s case and if anything, they lend credence to the claimant’s assertions that Mr. Njenga took over his position, which then imply that his position was not declared superfluous.
44. In as much as the respondent had the right and discretion reorganize its workforce as it pleased, it was bound to prove that the same was substantively fair and that indeed, the claimant’s position had been declared superfluous and that his position could not fit in its new organizational structure.
45. As it is, no evidence was tendered in Court to this effect hence I find that the redundancy exercise was substantively unfair against the claimant.



(ii) Procedural fairness

46. The procedure to be applied in effecting a redundancy is provided for under Section 40(1) of the Employment Act, and I will reproduce the same as hereunder: -
- a. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
 - b. where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
 - c. the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
 - d. where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
 - e. the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
 - f. the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
 - g. the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service.
47. It bears to note that all the conditions stipulated above are mandatory and it is not open to the employer to cherry pick and selectively apply the same.
48. From the record, a notice dated 3rd February, 2017 which appeared general, was issued to the claimant. It reads in part:
- “...An identical notice has been given to each and every employee of the Group who could be affected by the redundancy. Accordingly, the issuance of this notice to you does not necessarily mean that you will be selected and terminated on account of redundancy...”
49. As such, the claimant was issued with a notice at the initial stages of the redundancy exercise. Further, there is proof that the claimant was paid three (3) months' salary in lieu of notice, severance pay, leave earned but not taken and that the respondent notified the relevant county labour officer of the intended redundancies. To this end I am satisfied that the requirements set out under (a) (b) (e) (f) and (g) of section 40(1), above were fulfilled.
50. The main contention here appears to have been consultations and the selection criteria applied by the respondent. I will start with consultations.
51. The respondent has submitted that section 40(1) of the Employment Act does not make express provisions for consultations to be done in situations of redundancy. I do agree. Be that as it may, Article 13, Convention No. 158 - Recommendation No. 166 of the International Labour Organisation (ILO) convention, makes provision for consultations to be held with the affected employees or their



representatives, where applicable. On this issue, I am also guided by the decision of the Court of Appeal (Maraga JA as he then was) in the *Kenya Airways case (supra)* where he expressed himself thus: -

“Although it also does not expressly provide for consultation between the employer and the employees or their trade unions before the final decision on redundancy is made, on my part I find the requirement of consultation provided for in our law and implicit in the *Employment Act* itself. By dint of Article 2(6) of the Constitution, the treaties and conventions ratified by Kenya are now part of the law of Kenya. The Kenya Constitution, 2010 was promulgated on 27th August, 2010...The notices under this provision are not merely for information. Read together with Part VIII of the *Labour Relations Act*, 2007 which provides for reference to the Minister for Labour of trade disputes, including those related to redundancy (see Section 62(4)) for conciliation, I am of the firm view that the requirement of consultations implicit in these provisions.”

52. I echo the sentiments of the Learned Judge and I am persuaded that consultation is a key requirement during a redundancy exercise.
53. The respondent presented evidence that it undertook consultations and held town hall meetings/staff forums with the employees. It has further stated that the claimant was well aware of these forums and participated in them. The claimant disagreed with the nature of “consultations” undertaken and termed the forums convened by the respondent as trainings and seminars. It was his testimony during the trial that the staff forums were about coping with the redundancy process, emotional and financial management.
54. To my mind, the purpose of the consultations stipulated under Article 13 of the *ILO* Convention No. 158, is in regard to the appropriate measures to be taken to avert, minimize the terminations or to mitigate the adverse effects of any terminations on the employees concerned such as finding alternative employment. This position was well amplified by Maraga JA (as he then was) in the following manner in the *Kenya Airways case (supra)*: -

“The consultations are therefore meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable. This means that if parties put their heads together, chances are that they could avert or at least minimize the terminations resulting from the employer’s proposed redundancy. If redundancy is inevitable, measures should be taken to ensure that as little hardship as possible is caused to the affected employees. In the circumstances, I agree with counsel for the 1st respondent that consultation is an imperative requirement under our law.”

55. As stated under the aforesaid ILO Convention and as per the above determination, consultations are aimed at averting or at least minimizing the terminations resulting from an intended redundancy.
56. In a nutshell, the consultations ought to be substantive and meaningful for instance, employees may agree to take a pay cut, suitable redeployment, or may even propose other cost cutting measures, all with the aim of averting the redundancy in as much as possible or minimizing the number of terminations resulting from the redundancy exercise.
57. I have carefully considered the evidentiary material presented as proof of consultations and note that the information and content of the presentation was largely on self/career management after the redundancy. It covered areas such as building successful businesses and personal financial management; personal branding; interview preparation; and change.



58. In my view, the consultations undertaken by the respondent fell outside the parameters contemplated under Article 13 of the relevant *ILO convention*.
59. To its credit, the respondent attempted to support the employees to cope with the effects of the redundancy. However, it failed to address itself on the measures that it may have undertaken to avert the redundancy or at least minimize the terminations resulting therefrom.
60. In the end, the consultations did not achieve the purpose envisaged under Article 13 of the aforesaid *ILO Convention*.
61. The other contentious issue is the selection criteria applied by the respondent. Section 40(1) (c) of the *Employment Act*, requires an employer in the process of selection, to have due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy.
62. The claimant has contended that the respondent did not comply with the criteria set out under Section 40 of the *Employment Act* as it failed to pay regard to seniority in skill and time when deciding who to declare redundant. That in this regard, he was more skilled and qualified than Mr. Njenga who he alleges, took over his position.
63. On the other hand, the respondent has termed the claimant's assessment as subjective. The respondent contended that the "last in first out" criteria was not the only criteria applied in the selection. It was the respondent's case that the said Mr. Njenga was more skillful and reliable as compared to the claimant.
64. It is not in disputed that the claimant and Mr. Njenga had both competed for one position at some point in 2015 and that the claimant emerged as the most suitable candidate, hence his title, Group Procurement and Contracts Administration Manager.
65. Despite its assertions that Mr. Njenga was more suitable than the claimant for the position he took after the redundancy, there was no evidence that a fresh assessment was undertaken to determine who between the two was most suitable. The only assessment criteria that is on record was the initial interview undertaken in 2015 and which both of them had participated in.
66. It is not therefore evident from the respondent's end, what other suitability assessment was applied in order to set apart the claimant from Mr. Njenga, thus declare one more skilled and suitable than the other.
67. The respondent has also sought to rely on the performance appraisal rating of the claimant to show that he scored below average and that his performance, if not in all of the areas, needed improvement.
68. What the respondent failed to do in this case, was to prove that Mr. Njenga's performance appraisal rating was better than that of the claimant. None was presented for comparison. In light thereof, there is no evidence that Mr. Njenga was a better performer than the claimant, hence the assertion that he was more skilled and suitable for the role.
69. By all means, placing the claimant's performance appraisal on record, and leaving out Mr. Njenga's, who the respondent avers was more reliable at work, does not provide a fair ground for determination on who was more suitable for retention.
70. In a nutshell, it is my considered view, that the respondent did not prove that its selection criteria was fair and in compliance with the requirements of section 40 (1)(c) the *Employment Act*.



71. The total sum of the foregoing is that the respondent has not proved that the termination of the claimant on account of redundancy was substantively and procedurally fair as contemplated under the *Employment Act*.
72. In the end, I find that the claimant's termination on account of redundancy was unfair and unlawful.

Reliefs

Compensatory damages

73. The claimant has prayed for compensatory damages in the sum of Kshs 5,577,504/= being equivalent to 12 months of his gross salary. Having found that his termination was both unfair and unlawful, I will award him damages equivalent to six (6) months of his gross salary.

Short term incentive for the year 2016

74. The claimant has prayed for the sum of Kshs 337,774.23 under the head "short term incentive payment" for the year 2016. He termed this as a recognition of his contribution to the respondent's business success in 2016.
75. The respondent has disagreed that the claimant is entitled to the payment and that payment of the same was discretionary. The claimant placed reliance on the determination in the case of *Kenya Chemicals & Allied Workers Union vs Bamburi Cement Ltd* (2013) eKLR.
76. The said incentive was communicated to the claimant through a letter dated 22nd March, 2017 which reads in part: -

"I am therefore pleased that we can recognize your contribution through the payout of variable pay for 2016. Your variable pay is

Short term incentive payment (cash) Kshs 337,774.23.

Notes

The cash portion will be taxed and paid with your monthly salary in March, 2017."

77. Ironically, this communication came on the same date as the claimant's letter of termination. There is no evidence that this incentive was ever withdrawn by the respondent. It is notable that the same is in respect of 2016 hence it is presumed that the claimant had earned the same. Further, the respondent did not provide a rider that the incentive was payable at the respondent's discretion.
78. In the event the respondent had changed its mind about paying the incentive to the claimant, then it did not indicate so, by withdrawing the same. As it stands, the respondent having offered to pay the incentive to the claimant with no qualification or conditions whatsoever, there was a legitimate expectation that he would be paid the incentive as expressly stated by the respondent in its letter. As such, the claimant is entitled to the short term incentive payment for 2016.

Orders

79. In conclusion, I enter Judgment in favour of the claimant against the respondent as follows;
- a. A declaration that the claimant's termination was unfair and unlawful.
 - b. The claimant is awarded compensatory damages in the sum of Kshs 2,720,994.00 which is equivalent to 6 months of his gross salary.



- c. An award of Kshs 337,774.23 being the Short term incentive payment for 2016.
- d. The total award is Kshs 3,058,768.23.
- e. Interest on the amount in (d) at court rates from the date of Judgement until payment in full.

80. Costs follow the event, hence the respondent shall bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF JUNE, 2022.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Kimaru

For the Respondent Ms. Okuta

Court Assistant Barille Sora

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 had 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.

STELLA RUTTO

JUDGE

