



**Josephine Ndirima v Medecins Sans Frontiers Belgium (Cause
454 of 2022) [2022] KEELRC 3814 (KLR) (19 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3814 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 454 OF 2022
SC RUTTO, J
AUGUST 19, 2022**

BETWEEN

JOSEPHINE NDIRIMA NJUGUNA CLAIMANT

AND

MEDECINS SANS FRONTIERS BELGIUM RESPONDENT

RULING

1. There are two Applications before me for determination. The first Application which is dated June 27, 2022, was filed by the claimant and seeks to restrain the respondent from terminating her services and to declare the redundancy process it has initiated, as null and void. The claimant further seeks an order to restrain the respondent from harassing, intimidating, bullying, frustrating or interfering with her performance of duties.
2. The second Application which is dated July 14, 2022, was filed by the respondent and seeks to expunge from the court record, the documents appearing at pages 33 to 48 of the claimant's supporting affidavit.
3. I will start with the Application dated June 27, 2022. The Application is premised on the grounds on the face thereof and on the Supporting Affidavit of Ms Josephine Ndirima Njuguna, the claimant herein. Briefly, the grounds are that: -
 - i. She was employed in the respondent's finance department and is one of the three accountants;
 - ii. On February 7, 2022, together with other employees, she received an email from the respondent with the subject "Positions for redundancy at Kenya Supply Unit". The email listed the positions that were to be declared redundant from end of September, 2022.
 - iii. On March 22, 2022, the respondent's human resource manager held a meeting with herself, Enock Kering and Vicky Rono who told them verbally that the criteria that will be used in declaring people redundant was seniority in time, skill, ability and reliability;



- iv. On May 11, 2022, the claimant was called by the respondent and informed that she will be rendered redundant at the end of September, 2022, because she had scored the least marks amongst the three accountants;
 - v. she was not shown any scores to substantiate this position;
 - vi. the labour officer was not notified personally in writing of the reasons of and the extent of the redundancy;
 - vii. she was not involved in the redundancy procedure;
 - viii. the respondent in the selection of the employees to be declared redundant did not have due regard to seniority in time, skill, ability and reliability;
 - ix. against the three accountants, she was the one who had been in employment the longest with the respondent;
 - x. during the course of her employment, the claimant carried out her duties with the expected faithfulness, diligence and professionalism thereby fulfilling all the demands of her job;
 - xi. she has the most skills amongst the three accountants and was the one who trained the other two accountants;
 - xii. she had never been subjected to any performance improvement;
 - xiii. the claimant was tasked with the most complex tasks and the other accountants were her assistants;
 - xiv. Enock Kering made several mistakes in the performance of his duties but no disciplinary action was ever taken against him;
 - xv. The respondent discriminated against her on grounds of age as she is 60 years old; and
 - xvi. She is unlikely to get employment owing to her advanced age.
4. The respondent opposed the Application vide Grounds of Opposition and a Relying Affidavit sworn on July 15, 2022, by Edi Ferdinand Atte, its Head of Mission. The grounds of opposition are that: -
- i. The Claimant has not satisfied the test for the grant of an interlocutory injunction as espoused in the case of *Giellea vs Cassman Brown* (1973) EA 358;
 - ii. The claimant had failed to disclose material facts;
 - iii. The claimant had produced confidential documents in breach of her duty of confidentiality;
 - iv. The claimant's affidavit contains false and misleading information;
 - v. The claimant had not exhausted the available internal grievance mechanism; and
 - vi. The prayers sought are untenable as section 45 of the [Employment Act](#) permits an employer to terminate an employment contract.
5. Through the Replying Affidavit, the respondent avers that: -
- i. On or about November, 2021, the respondent took the decision to restructure its KSU operations so as to improve efficiency in its support of the missions in the region;



- ii. On February 7, 2022, it held a meeting with the affected employees regarding the intended restructure and likely redundancies;
 - iii. During the meeting, the respondent stated that the affected positions would be made redundant from the end of September, 2022 and that formal notices would be issued starting August;
 - iv. An email was sent on February 7, 2022, to staff who were informed of the extent of the redundancy in each position and that a selection criteria was being considered and would be shared in due course;
 - v. The staff were encouraged to seek any clarifications or ask any questions they may have throughout the process;
 - vi. The claimant never shared any concerns or raised grievances with the process;
 - vii. Following the communication of February 7, 2022, some staff were able to secure and take up positions at the Supply Kenya Intersection Department (SKID), which is run by a different entity, MSF-Switzerland;
 - viii. On March 22, 2022, the respondent made an online presentation on the selection criteria to the staff in the affected positions;
 - ix. The selection criteria was ability, skill, reliability, attendance, discipline and seniority with different weights being attached to each factor;
 - x. The claimant did not raise any issue or concern with the selection criteria;
 - xi. On or about March 31, 2022, each of the three accountants were evaluated against the said criteria;
 - xii. Following the assessment, the claimant scored the lowest score;
 - xiii. The claimant had performance issues since 2016 and was not fulfilling the primary purpose of her role; that it was not correct that she had been performing her duties with diligence and professionalism;
 - xiv. On March 11, 2022, the claimant was given feedback, on the outcome of the selection process; she stated that she needed time to process the information and would reach out in the event she had any questions;
 - xv. The claimant was also informed that she would receive a redundancy notice on August 1, 2022 in line with the respondent's earlier communicated plan;
 - xvi. It is not true that the claimant was not involved in the process; had the most skills amongst the three accountants; trained them when they joined the respondent; was tasked with the most complex tasks; was discriminated against on account of her age; and was not notified of the redundancy or its extent;
 - xvii. It is unfair and unwarranted for the claimant to describe the faults of other members of the department with the assumption that there was no disciplinary action taken against them; and
 - xviii. The claimant had not filed the suit in good faith.
6. The claimant filed a Further Affidavit in response to the respondent's Affidavit through which she averred that: -



- i. At the time the announcement of the intended redundancies was made, she was not aware that she would be among the employees to be redundant and that she only came to know of the same on May 11, 2022;
- ii. The respondent's selection criteria and scoring matrix offends the mandatory principle of what constitutes a redundancy as it lists discipline as one of the factors to be considered;
- iii. She was not involved in the evaluation process;
- iv. The assessment scores show that she scored the highest but was given the lowest marks;
- v. Her seniority was not considered by the selection committee;
- vi. She had never been subjected to a performance improvement plan as the one of November 5, 2021 was not completed;
- vii. They were not given the reasons why one accounting position was being declared redundant; and
- viii. She stands to suffer irreparable damage if the orders are not granted as she cannot get employment due to her advanced age.

Claimant's Submissions

7. The Application was canvassed through oral submissions on July 27, 2022. Both parties sought to rely on their respective pleadings.
8. The claimant through her Counsel on record Ms Kogai, argued that the Application had satisfied the conditions stipulated in the case of *Giella vs Cassman Brown* [1973] EA 358 in that she has a prima facie case, will suffer irreparable injury if the orders are not granted and the balance of convenience was in her favour.
9. As regards the issue prima facie case, Ms. Kogai submitted that there was no evidence that there was an alleged restructure in the respondent organisation in terms of section 40 of the *Employment Act* and in line with the definition of the term "redundancy". That redundancy ought to be as a result of no fault of the employee and as such, a disciplinary issue is not one of the considerations for declaring an employee redundant. Referring to the case of *Kenya Airways Limited v Allied Workers Union Kenya & 3 others* (2014) eKLR, Counsel urged that Section 40 of the *Employment Act* requires that before an employee is declared redundant, the employer should notify the employee and the labour officer. That in this case, this was not done. She proceeded to argue that there was no written notice to the labour office and the claimant, hence the redundancy process was procedurally unfair.
10. It was further submitted on behalf of the claimant that she had scored the highest during the assessment, hence the redundancy was unfair. That the respondent did not consider seniority during the redundancy exercise whilst she scored the highest in this category. That in the case of *Martin Mwangi v Protocol Solutions Limited* [2022] eKLR, the Court stated that failure to consider even one issue renders the redundancy process unfair. Ms Kogai further submitted that the claimant was more reliable than her colleagues, having worked for the respondent for 12 years and having received only received two warnings in 2016 and 2021. It was her further submission that the claimant was the most skilled as she had trained her other colleagues who were spared the redundancy. That further, she could not have applied for another job as the redundancy process was still ongoing. Ms Kogai further posited that the claimant was placed on a Performance Improvement Planning (PIP) during the redundancy process.



11. As regards irreparable loss, Ms Kogai argued that the claimant was 60 years old and had 5 years left before retirement, hence may not get alternative employment in the event she is declared redundant. That further, she had security of tenure and had loans to service. That if declared redundant, she will suffer irreparable loss which cannot be quantified.
12. On the issue of balance of convenience, Ms Kogai placed reliance on the case of *Paul Gitonga Wanjau vs Gathuthis Tea Factor Company Ltd & 2 others* (2016) eKLR and submitted that as per that determination, the Court ought to be guided as to which party will suffer more prejudice. That in this case, the respondent will not suffer any prejudice if the Application is allowed unlike the claimant who will suffer more prejudice as she will run into arrears and will be harassed by her creditors.

Respondent's Submissions

13. The respondent through its Counsel on record, Ms Babu, submitted that the claimant had not demonstrated that she had a prima facie case. That the decision to declare her redundant was communicated on February 7, 2022. That this was a good faith alert by the respondent to the affected employees to allow them mitigate their losses. That indeed, other employees were able to obtain other employment opportunities following this alert. That further, the selection criteria was communicated to all staff in a meeting held on March 22, 2022 and was undertaken by a committee of the respondent. Referring to the score sheets exhibited in support of the respondent's case, Ms Babu submitted that the claimant had the lowest score compared to her colleagues. That as a matter of fact, it was only with respect to seniority that the claimant had scored the highest.
14. It was Counsel's further submission that the disciplinary issue has a bearing on skill and reliability of an employee. To buttress this position, Counsel placed reliance on the case of *Paul Ngeno vs Pyrethrum Board of Kenya Ltd* (2013) eKLR and *Thomas De La Rue vs David Opondo Omutelema* (2013) eKLR. It was further submitted that the claimant was on a PIP since November, 2021 and that she's the one who had requested that the process be put on hold. As regards the issue of seniority, Ms Babu submitted that as per the decision in the Kenya Airways case (supra), Maraga JA (as he then was), held that the LIFO (Last In First Out) principle is not always applicable in cases of redundancy. Rather, it depends on the nature of the jobs.
15. Ms Babu further argued that there are grievance handling mechanisms within the respondent organisation, that the claimant could have employed before coming to Court. That as such, the respondent was shocked by the instant suit. Counsel further invited the Court to consider the determination in the case of *Eric Kamau and 3 others vs Dot com Bakery Limited* (2019) eKLR where it was held that the Court will sparingly interfere with an employer's internal processes. It was therefore her submission that the claimant had moved the Court prematurely and had not allowed the respondent to settle the matter internally.
16. As regards, irreparable loss, Ms Babu submitted that damages for unfair termination are provided for under Section 49 of the *Employment Act*. That as a matter of fact, the claimant had quantified the damages she is seeking. That as regards, the claimant's arguments that she was servicing loans, there was no guarantee that she would be employed until retirement. That further Section 45 of the *Employment Act* permits an employer to terminate an employee on operational requirements. On this issue, Ms Babu referred the Court to the case of *Kenya Engineering Workers Union vs Dunhill Automobiles Limited* (2020) eKLR.
17. With respect to the balance of convenience, it was Ms Babu's submission that the respondent stands to suffer more prejudice as it will be required to keep the claimant in employment until retirement. In closing her submissions, Counsel submitted that there was inordinate delay on the claimant's part as



she was informed of the redundancy on May 11, 2022 yet she filed the instant suit more than a month after, and never invoked the internal handling grievance mechanism.

Claimant's submission in rejoinder

18. In a brief rejoinder, Ms Kogai stated that it was pretentious for the respondent to issue notice when the redundancy process was complete. She reiterated that the claimant's loss is irreparable and cannot be quantified. That under section 49 (g) of the *Employment Act*, some of the factors to be considered when awarding reliefs, are opportunities available to an employee. That the only recourse the claimant had, was in Court as the respondent does not have an appeal mechanism. That as regards the delay in moving the Court, Counsel submitted that the claimant could not file the suit immediately due to financial constraints. It was her further submission that the disciplinary and the PIP issues were not relevant as this was a redundancy exercise.

Analysis and determination

19. Flowing from the pleadings on record and submissions by both parties, it is evident that the main issue for determination is whether injunctive orders should issue, thus restraining the respondent from terminating the claimant's employment on account of redundancy.
20. The grant of injunctive orders at this interim stage is guided by the principles set out in the celebrated case of *Giella vs Cassman Brown* [1973] EA 358 at page 360 where Spry VP held that: -

“ First, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (*EA Industries v Trufoods*, [1972] EA 420.)”
21. What this means is that, the claimant ought to demonstrate an arguable *prima facie* case with a likelihood of success and that in the absence of the orders, she is likely to suffer irreparable injury. Further, if the Court is in doubt, it should decide the matter on a balance of convenience.

Prima facie case

22. The Court of Appeal in the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others* [2003] eKLR defined a *prima facie* case in the following terms: -

“A *prima facie* case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
23. Essentially, the main consideration ought to be whether the claimant has established the existence of a right that has been apparently infringed by the respondent as to require a rebuttal. It also bears to note that a *prima facie* case is not a case which must succeed at the hearing of the main case.
24. In my view, the main issue in contention is the selection process undertaken by the respondent in effecting the redundancy exercise. According to the claimant, she had the highest scores but was given the lowest marks. The claimant has also challenged the selection criteria applied by the respondent and in particular the issue of discipline. She contends that the same should not have been used as a criteria while the respondent maintains that the same has a bearing on reliability.



25. The selection matrix annexed by the respondent indicates the areas of evaluation as being; ability, skills, reliability, attendance, disciplinary, and seniority. The score sheet is as follows: -

Factor

Enock Kering

Josephine Njuguna

Vicky Rono

Ability

3.5

2

4

Skills

3.5

3

4.5

Reliability

4

2

4.5

Attendance

0

0

0

Disciplinary

0

-4

0

Seniority

19

197

70

Total score

11

3

13



26. The respondent has contended that the claimant only scored the highest marks in seniority. Looking at the scores arithmetically, the marks are not adding up as the claimant appeared to have scored the highest marks specifically on the aspect of seniority where she was awarded a score of 197. It is therefore not clear how the aggregate scores were arrived at by the respondent, thus ranking the claimant below her colleagues. Being mindful that at this juncture the Court is not conducting a mini trial, I have not examined the evidence presented microscopically. As such, the rationale for the scores can only be made by the respondent in a trial where the evidence exhibited will be tested in cross examination.
27. Therefore as at now, from a cursory look of the evidence tabled and upon applying the same against the principle set out in the Mrao case (supra), I am satisfied that the claimant has proved that she has a prima facie and arguable case.
28. Establishing a prima facie case is not an end in itself and cannot form sufficient basis to grant an interlocutory injunction. It is for this reason that the Court must further be satisfied that the injury to be suffered by an Applicant in the event the injunction is not granted, will be irreparable.

Irreparable injury

29. The Court of Appeal had this to say in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR as to what constitutes irreparable injury: -

“An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
30. Bearing in mind the determination in the above case, the main consideration should be whether the claimant will suffer irreparable injury in the event she is not granted the injunctive orders she seeks at this stage.
31. The claimant contends that she will suffer irreparable loss incase the Application is not allowed since she may not be able to obtain alternative employment in the event she is terminated. On the other hand, the respondent avers that it will suffer irreparable loss as it will be required to retain the claimant in its employment.
32. I have considered both arguments and I find the same to be plausible, hence I have to apply the balance of convenience. In this regard, If I am to disallow the Application and the main suit succeeds, then the claimant will suffer irreparable harm as she will be out of employment by then and no amount of damages can compensate her for the sudden loss of employment. On the other hand, if I am to allow the Application and the main suit fails, then the only loss to be suffered by the respondent will be payment of the claimant’s salary for the few months it will retain her past the intended redundancy date, which will be during the pendency of the suit.
33. In the circumstances, I find that the balance of convenience tilts in favour of allowing the Application. To balance the interests of both parties, the suit shall be fast-tracked and concluded within the shortest time possible so as to mitigate the position of the respondent.

The Respondent’s Application

34. I now move to determine the second Application filed by the respondent and which is dated July 14, 2022. The Application seeks to expunge the documents appearing at pages 33 to 48 of the claimant’s Supporting Affidavit. The Application is premised on the grounds on its face and on the Affidavit of Edi Ferdinand Atte. Briefly that: -



- i. The documents contain confidential information pertaining to the respondent's operations, work, employees and activities which the claimant became aware of during the performance of her duties; and
 - ii. By producing the documents, the claimant has breached her duty of confidentiality to the respondent.
35. The claimant responded to the Application through her Replying Affidavit sworn on July 21, 2022. She avers that: -
- i. The documents sought to be expunged are emails which were either sent to her, or the ones she sent or copied to her within the respondent organization.
 - ii. She legally obtained the documents since she was the legitimate and authorized user of the email address labelled MSFOCB-Accountant.
 - iii. The documents form the backbone of her case because the trail of emails shows that the respondent never considered the factors to be considered under Section 40 of the Employment Act.
 - iv. Therefore, expunging the said documents would severely prejudice her right to fair hearing.
 - v. Her employment contract and the respondent's employee handbook are silent on disclosure for purpose of court litigation or proceedings as the present case.
 - vi. She did not share the documents with other employees, the press or on any social media platform.
 - vii. She only shared the documents with this court to help in determination of the case.
 - viii. The use of these documents and the information therein is strictly meant to prove the respondent's culpability in unfairly intending to declare her redundant and does not prejudice the respondent's trade, trade secrets or professional obligations in the industry.
 - ix. The emails are mere internal communications showing how the Respondent's officials discriminated against her as opposed to the other accountants in the office. The documents do not contain any client information.

Submissions

36. The Application was canvassed by oral submissions on July 27, 2022. The respondent through Ms Babu submitted that the claimant's contract of employment binds her to maintain confidentiality. To support her argument, Counsel made reference to clauses 2.3, 2.6, 10.5.2 and 10.6. 2 of its Employee Handbook. In this regard, Counsel submitted that the claimant was prohibited from disclosing information she acquired through her employment to third parties, without authorization. That indeed, breach of confidentiality is a cause for disciplinary action.
37. It was Ms Babu's further submission that the information disclosed relates to the respondent's financial issues for instance suppliers, payments for tax exemption and communication relating to her colleagues. That the claimant acquired the information in the course of her employment hence was not authorized to disclose the same.
38. In further submission, Counsel stated that the claimant's disclosure amounted to breach of Article 31 of the Constitution and the Data Protection Act. That there were lawful procedures of acquiring documents. That further, the claimant is still an employee of the respondent hence the disclosure of



information had affected the trust it had in her. She further argued that there are third parties for instance its suppliers, whose information is now in the public domain. That there is also information on the respondent's financial dealings and records. To buttress her submissions, Ms Babu invited the Court to consider the determinations in *David M'iti Makwacii vs Kenya Defence Forces* [2019] eKLR, *Martin Kabanga Gathawa vs Associated Battery Manufacturers (E.A) Ltd* [2019] eKLR and *Magdalene Kiboi & 17 others vs Engen Kenya Limited* [2019] eKLR. She thus urged the Court to allow the Application.

39. The claimant submitted through Ms Kogai that every citizen has a right information. That in the case of *Leland I Solano vs Intercontinental Hotel* [2016] eKLR, the Court laid down procedures on when documents can be expunged from the record. That one of such considerations is how the employee came across the information. That in this case, the claimant received and was copied in the emails hence she received the information regularly.
40. Ms Kogai further submitted that the documents form the backbone of the claimant's case. She cited to the case of *Deepesh Subhaschandra Modi vs Pan Africa Express Transport Ltd (Licensee of the Federal Express Corp)* [2019] eKLR to support her position. That further, there is no provision that bars the claimant from sharing documents within the ambit of her case. That the employment contract in this regard, was silent. That further, the respondent has not disclosed what prejudice it will suffer if the documents are disclosed to the Court.
41. It was further argued by Ms Kogai that the handbook only prohibits sharing of information to the press or the social media platform. That in this case, the information was only shared to the Court hence was for a limited purpose. That the Court has to balance access to information and confidentiality. She urged that this right can be limited if it will assist the Court to determine the case at hand. That the contents of the documents outweigh the respondent's interests in keeping the documents confidential.
42. Ms Babu in a quick rejoinder, submitted that the access to information is a matter of public policy and the *Access to Information Act* has a process of accessing information and that the claimant could have moved the Court in the event the respondent had failed to disclose the information. That the provision in the employee handbook is unlimited hence the same is not only limited to the social media. That disclosure only ought to be made with written authority.
43. As regards prejudice, Counsel submitted that the emails are prejudicial to the employees of the respondent, who have admitted to some mistakes in the email communication.

Analysis and determination

44. The main issue for determination is whether the Application is merited thus warranting the Court to expunge the documents cited by the respondent, from the record.
45. The respondent has relied on the confidentiality clause contained in the claimant's contract of employment as well as its Employee handbook. Clause 2.6 of the employee handbook reads in part: -

“Pledge of Discretion and Profession Secret

MSF Employees undertake to respect absolute discretion and confidentiality towards third parties outside the organization regarding their activities and that of MSF in the country, including on social media (Facebook, Twitter, etc).

While executing their duties, Employees may become acquainted with confidential information. Employees are under the obligation not to disclose any confidential



information by any means to anyone, including other staff members, except under written authorization from the MSF coordination.”

46. The claimant contends that she is seeking to produce the documents in order to prove her claim. It is notable that the claimant has alleged discrimination at paragraphs 22 of her Supporting Affidavit and at paragraphs 19-21 of her statement of claim. In this regard, she has referred to the email trail by her colleague, Mr Enock Kering. Evidently, this is meant to bolster her claim along those lines. Simple, she filed the email communication in a bid to save her job.
47. It is also not in doubt that the claimant has sought to disclose the information within the confines of her case and in a setting that can be termed as privileged. Besides the claimant has stated how she received the information and the same cannot be termed to have been irregular.
48. On this issue, I will follow the determination in the case of *Deepesh Subhaschandra Modi vs Pan Africa Express Transport Ltd (Licensee of the Federal Express Corp)* [2019] eKLR where the court held that: -
- “The Court has looked at the contract of employment signed by the Claimant on July 27, 2017.
12. It has a confidentiality clause in respect of the Respondent’s competitors, any person, firm or corporation but with a rider that the Claimant shall not make a disclosure of such confidential information after discontinuance of the employment relationship.
13. However, the contract is silent on disclosure for purposes of court litigation or proceedings.
14. To the Court, the Court is not a competitor of the Respondent nor does it fit the bill of any person, firm or corporation.”
49. In light of the foregoing, I am satisfied that expunging the information especially the email communication emanating from her colleague Mr Kering, may be prejudicial to the claimant’s case.
50. What I have struggled to find relevant is the information regarding the respondent’s financial dealings, reference to its suppliers and payments made in that respect. As such, there is no justification why the same should be retained on record. Accordingly, the same should be expunged.

Orders

51. Against this background, the following orders hereby issue: -
- a. The Application dated June 27, 2022 is allowed, to the extent that, pending the hearing and determination of this suit, the respondent be and is hereby restrained from terminating the claimant’s employment by way of redundancy.
- b. The Application dated July 17, 2022 is partially allowed to the extent that the information in respect of the respondent’s financial dealings, its suppliers and any such related intimation as appearing at pages 33 to 48 of the claimant’s supporting affidavit shall be expunged from the record. To this end, the claimant shall furnish the Court and the respondent with a fresh bundle of documents in compliance with this order.
52. Further, in view of the interim orders issued, time shall be of essence and the suit shall be disposed off expeditiously hence the Court directs that: -



- a. The respondent shall file and serve its Response, witness statements and bundle of documents within 21 days hereof.
- b. The claimant shall within 14 days upon service, file and serve any Reply to the Response the Claim.
- c. Thereafter pleadings shall close.

53. Costs shall be in the Cause.

DATED, SIGNED and DELIVERED at NAIROBI this 19th day of August, 2022.

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STELLA RUTTO

JUDGE

Appearance:

Ms. Kogai for the Claimant

Ms. Babu for the Respondent

Court Assistant Abdimalik Hussein

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

