



**Khakata v Pricewaterhouse Coopers Limited (Cause 1505 of 2017)
[2022] KEELRC 3820 (KLR) (18 August 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3820 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1505 OF 2017
AN MWAURE, J
AUGUST 18, 2022**

BETWEEN

SIMON TIMOTHY KHAKATA CLAIMANT

AND

PRICEWATERHOUSE COOPERS LIMITED RESPONDENT

JUDGMENT

1. By the memorandum of claim dated 1st August 2017 and filed on the 02/08/2017 the claimant seeks the following remedies from the Respondent, Price Waterhouse Coopers;
 - a. The termination of the Claimant by the Respondent be declared unfair and unlawful.
 - b. Terminal dues as enumerated in 3(t) (a-d) above
 - c. Interests on (b) above at commercial rates as published by the Central Bank of Kenya from when they became due.
 - d. The Respondent to pay costs of this claim with interests at court rates.
2. The Claimant avers that he was employed by the Respondent on the 3rd January 2011 and grew through the ranks to the position of an Assistant Manager. The Claimant was a committed and hardworking employee who won significant assignments for the Respondent which included; provision of integrated fiduciary agency services to the Judicial Performance Improvement Project from World Bank which was approximately USD 900000/= value, Integrated Independent Fiduciary Agency for the Western Kenya Flood Mitigation Project from World Bank- approximately USD 540000/= value. Feasibility study for the transfer of assets to the devolved units from Kenya Municipal Programmes- approximately USD 133,000/- value among others. The claimant had also managed complex assignments spread across the country and outside the country.



3. The claimant says he left employment of the Respondent Company on 27th February 2013 to pursue further interests. He re-joined the Respondent on the 15th May 2015 after the Respondent approached him through its partner Mr Simon Mutinda.
4. At all material times, the claimant was on all occasions during his employment discharging his duties as assigned with due diligence and to the best of his ability as provided under the Contract of Employment.
5. On the 27th September 2016 at around 8.00 am, the claimant received a call from the head of Human Capital one Mrs. Elizabeth Ngayu who invited him for a meeting at 10.00 am. Upon arrival at the Head of Capital office in the 17th Floor, the claimant was informed that in attendance would be Mr Francis Muriu, one of the Partners of the Respondent and the Champion for Code of Conduct.
6. Mr Muriu then proceeded to inform the claimant that information had reached the Respondent that the claimant had signed a contract in Rwanda for training and word in the market was that there was PwC A and PwC B competing for the contract. The Claimant was informed that the contract was also done with Strathmore University where the Claimant's wife works.
7. The claimant says he explained that he had incorporated a Company on 17th October 2014 by the name Luthien Advisory Limited in Rwanda with the sole objective of being a local agent/partner for logistical purposes in the contract with Strathmore University but had terminated the agency relationship.
8. The claimant also explained that he had been informed that the Ministry of Finance and Economic Planning of Rwanda had requested for a proposal for recruitment of Tuition Providers for professional course to government accountants and internal auditors. The claimant then went on to reproduce the terms of reference of the request for proposal. He says he therefore had approached Cornerstone Training Institution together with Luthien Advisory Limited acting as logistical agent in order to submit the bid together which the two firms won.
9. He explained that he had not signed any contract with the Ministry of Finance and Planning of Rwanda but Mr. Muriu informed him that a decision had already been made that the claimant's employment has been terminated since he did not declare his interest in the training contract amounting to breach of the firm's code of conduct policy and that the head of human Capital was to inform him of the next steps to be taken.
10. He then went to see the head of human capital as directed who informed him that they needed to look at the new and additional information from explanation of the claimant before termination of his employment and put on hold the writing of the termination letter. The claimant then sent to the head of human capital the draft exit Memorandum of Understanding with Strathmore. At around 1.00 pm, Mr Simon Mutindi, the claimant Partner wrote an email to staff informing them that the respondent was no longer an employee of the Respondent which neither the claimant nor the Head of Human Capital were copied to.
11. On 28th September 2016, the claimant sent to the Head of Human Capital a letter from Strathmore indicating that Luthien Advisory Limited was not involved in the project and the email from Luthien Advisory Rwanda indicating that the Company had handed over the entire project to Strathmore University. He also forwarded the extracts of the contracts from Cornerstone Training Institute indicating that Luthien Advisory was not signing the contract which documents were forwarded to the Respondent's Legal Counsel for review.



12. On the 29th September 2016 the claimant went to see the Head of the Respondent following the additional information but the legal Counsel informed him that she was still looking at the documents but meanwhile the claimant should proceed with clearing from the Respondent since the decision to terminate his contract had already been made.
13. The claimant also complained to the head of human capital about the email sent to members of staff about his termination. Mr Simon Mutinda then wrote another email with a different subject line but with the same content in which the head of human capital together with the claimant were copied. The claimant complained and was advised to seek audience with the Managing Partner whereby the claimant booked an appointment with the Managing Partner.
14. On the 30th September 2016, the Claimant presented his case to the Managing Partner who informed him that the meeting was not a discussion and that she was aware of the decision of Mr. Muriu to terminate his employment. He was then issued with a termination letter dated 26th September 2016 which the Managing Partner agreed to be indicated as received on the 30th September 2016. The claimant avers that the Respondent unfairly and summarily dismissed him from employment, without legal cause and without following the correct legal procedures.

The Respondent's Case

15. The Respondent says that the claimant was employed by the Respondent as a Senior Manager-Advisory on 18th May 2015. The terms of his employment contract required the claimant to disclose any investment he had to comply with the Respondent's independence policies. He was required to adhere to and uphold the Respondent's code of conduct and the provisions of the staff handbook.
16. The respondent averment was that the claimant was required to avoid conflict of interest and that the Respondent could take appropriate measures where potential conflicts are identified. Similarly, the Staff Handbook at Clause 4.7 provides that no member of Staff may undertake, on his own account, any work to which remuneration is attached nor become a director of a company without first obtaining permission from the County Senior Partner. Independence confirmation form also forbade the holding of directorship or any external appointment with other companies
17. On or about January 2016, the Ministry of Finance and Economic Planning of Rwanda issued a tender notice requesting for proposals for the recruitment of tuition providers for professional courses, primarily in ACCA/CPA (R) CIA/IPSAS and IFRS, for its Government Accountants and Internal Auditors. Price Waterhouse Coopers Rwanda and University of Kigali submitted a joint bid for the tender to both PwC Rwanda and the University of Kigali and other firms known as Cornerstone Training Institute Limited and Luthien Advisory Limited also submitted bid.
18. The Respondent was informed by PwC Rwanda that the claimant herein was operating under the guise of Luthien Advisory Limited to bid for the tender. The Respondent was also informed that the claimant whilst bidding for the tender used the name 'Timothy Murunga' and provided a different email address as his email address.
19. The respondent says that the perception created in PWC Rwanda was that the Respondent surreptitiously bid twice for the said tender, ie through a staff member from its Kenyan office. This was a deception by the claimant done deliberately in clear breach of his terms of employment for his own benefit. The claimant's action was not only in direct conflict with the Respondent's interest but was also detrimental to the Respondent's professional reputation in Rwanda and where else the information may be available globally. His conduct further amounted to gross violation of the express



terms of his employment contract, the respondent's Code of Conduct and the provisions of the Staff Handbook.

20. The Respondent says that it is against this background that the Respondent's Human Capital Department in Kenya liaised with its Risk and Quality Department to investigate the matter. The Respondent conducted company search at the Office of the Registrar General in Rwanda on 5th August 2016 which disclosed that the claimant was the sole director of Luthien Advisory Limited. The said company was incorporated by the claimant for the sole purpose of provision of consultancy services, which services are also provided by the Respondent.
21. The Claimant was given a fair and reasonable opportunity of defending himself. Meetings were held at the Office of the Respondent in which he was given an opportunity to be heard. The Respondent says that the reasons provided by the claimant for his blatant disregard of the Respondent's policies, which in turn resulted in the conflict of interests, were unsatisfactory and thus the Respondent resolved to terminate his contract of employment on grounds of misconduct. The claimant was thus issued with the termination letter dated the 26/9/2016.
22. The Respondent further avers that the claimant occasioned the delay in tabulating his terminal dues. The Respondent members of staff are required to provide clearance letters from the Standard Chartered Bank Limited and Mhasibu Sacco when they have outstanding loans before their terminal dues can be released. The claimant delayed in providing this confirmation letter to the Respondent.

Claimant's Case

23. The Claimant Simeon Timothy Khakata gave a sworn testimony and adopted the witness statement filled on 2/08/2017 as his evidence in chief. He also produced the documents in the list filled on the 1/8/2017 as exhibits Nos 1-18. He also produced the document on pg 48 sales bonus computation as part of the exhibits. The further list of documents filed on 13/7/2021 is also produced as exhibits 1-10 for the claimants.
24. On cross examination, claimant said that he worked for the Respondent from 3/1/2011 as Senior Consultant to 27/02/2013. He re-joined on 15/5/2015 as Senior Manager. He signed the Independence declaration form at pg 73 of the Respondent's documents. He had promised not to engage in any business that would create conflict with the respondent. He had also confirmed that he did not have any directorship in a restricted entity. He was supposed to sign annual independence compliance form. He confirmed that he did not hold any directorship except where PRI approve.
25. The claimant said he was the MD and chair and this was a sole proprietorship of Cornerstone. Luthien advisory was incorporated in the year 2014 and was a special purpose vehicle for consultancy by Strathmore University. The services offered by Luthien was educational support activities. This was sole proprietorship and so company was not operational in Rwanda. Luthien partnered with Cornerstone for the consultancy in Rwanda. Luthien was dormant and he was the sole proprietor.
26. The Claimant said he had tendered for the assignment in Rwanda but was not aware PwC Rwanda also tendered in the same assignment. Luthien and PWC got the contract. He was provided with the documents, explained relationship with Luthien and responded to allegations of conflict of interest. After the meeting of 27/9/2016, he says that the respondent informed him they were considering his response and looking at his additional documentation. He was terminated on the 30/09/2016.
27. He says he was not given an opportunity to explain himself. He says he was informed the reasons for his termination. He says he is entitled to sale bonuses. He is aware of the sales bonus policy of 2015-2016. He is aware of the process to be followed for one to be eligible for the bonus. The sales bonus policy was



updated but his policy was earlier on pages 1-4. The updated policy came after he had left employment. He says he can confirm documents produced show sales bonus in the payslips of January 2016, June and July 2016. Any entitlement to bonus had to be approved he avers.

28. The Claimant says he was not paid as per his termination ie 3 months' salary but got paid a month later. He was to produce letter from the bank and details of loan to Mhasibu Sacco in order to be paid his dues. He says his payment was delayed for one month so he prays for interest.
29. He says there is importance of declaring independence especially when close family member is involved or PWC client is involved with the company. In consultancy, independence is not very strict but in audit it is crucial. He says Luthien was not a client of PWC and also PWC Kenya and PWC Rwanda are different entities. PWC Rwanda is registered in Rwanda. He was employed by PWC Kenya. When he was called for disciplinary hearing, he had no employee of his choice present at the hearing.

Respondent's Case

30. Respondent's witness Elizabeth Ngayu gave sworn testimony and said that she is the Senior Manager of the Respondent. She adopted the witness statement dated 6th September 2017 as part of her evidence in chief. The bundle of documents dated the 6th September 2017 were produced in the appendix as exhibits 1-10. The further list of documents filed on the 21st September 2021 were also produced as exhibits 11-12.
31. Upon cross-exam she said that the claimant was first employed on 3rd January 2011 before being re-engaged in May 2015. She said that they look at technical capabilities of the prospective employee and a recommendation is made. She said that there is a distinction between PwC Kenya and PwC Rwanda. They are a Global network of firms and carry the brand PWC but operations are governed by laws of the respective Country. The claimant was employed by PWC Kenya. The respondent say they had not merged Kenya and Rwanda and any staff can work within the region of East market and further these are different legal entities but support each other.
32. The respondent witness further said the Claimant was a director in one of his companies and he tendered for services in Rwanda PWC and so created a conflict of interest, Cornerstone and Lutheran was registered on 5th August 2016. Lutheran Advisory was registered before he was hired at PWC.
33. The witness said Cornerstone Luthien and Luthien services seem to be different legal entities but cannot confirm that they are different legal entities. She confirms that PWC Kenya did not participate in the tendering in that consultancy. She says she could not tell if PWC Kenya qualified to tender for that consultancy as she did not have the tender documents. PWC is not a training institution. He did not know if the claimant was a trainer.
34. The witness further said the Claimant's participation in the tender was creating discomfort in PWC Rwanda. Witness said she reached to the claimant via a phone call and did not ask for documents when she called him. During the meeting their ethics leader was present. This was one of their partners not the claimant's representative. When the meeting started claimant stated that he was comfortable to proceed with the meeting. The junior employee is bound to obey the boss. They gave the claimant notice of termination. They met the claimant 3 times before termination.
35. The witness says the termination letter is dated 26/9/2016 and is an error because it was on the 30th September 2016. The claimant was terminated for gross misconduct but paid one month salary in lieu of notice. The sales bonus is disputed but the documents are authentic but not complete ie not signed. The applicable policy was 2015 but one attached is for October 2015 and 2016.



36. On re-exam, the witness said the computations on pg 48 and 49 are not the Respondent's documents but are computations by the claimant. The contracts do not show dues or bonus calculations in relation to the claimant. The documents do not show the claimant participating in the assignments. The claimant was director of cornerstone Luthien and the company bid for tender with PWC Rwanda. It was a requirement of new employee to declare any directorship in other companies. The claimant did not declare that he was a director of any company at the point he was hired by the respondent.
37. PWC relies on declaration of independence, directorship and financial proportionality. The claimant created a conflict-of-interest i.e. tendering in the Rwandan University Consultancy. This is gross misconduct. In the meeting the ethic leader was present and claimant accepted he was okay to have him in the meeting. The claimant was paid all his dues. The claimant did not show evidence of applying for a bonus according to the bonus policy 2016 and 20.
38. The claimant and the Respondent filed submissions. The Court shall take note of the rival contentions in arriving at the verdict in this claim.

Claimant's submissions

39. In summary the claimant submissions are that the respondent had no advisory assignment in Rwanda as claimant was employed by PWC Kenya and not PWC Rwanda. The Claimant tendered that he bid for consultancy assignment.
40. The Claimant says Luthien advisory was dormant at the time he joined the respondent. He says Luthien Limited is different from Luthien advisory Limited. The claimant avers there were no valid reason to terminate his *employment Act*.
41. The Claimant relies on the various, authorities among them *Thierry Pousard-vs- Bradley Ltd*[2019]eKLR where court held that the claimant's dismissal was unfair for want of due process and valid reasons as stated in dismissal letter. The claimant's in his submission states he is entitled to the prayers sought.

Respondent's Submissions

42. The respondent in his submissions states that claimant was operating under a guise of Luthien Advisory Limited to bid for a tender. He was further informed he was using a guise name of Timothy Murunga, so the impression created was the PWC bid twice through PWC Rwanda and through a staff member in Kenya. The respondent says there is a certificate showing Lutheran advisory Limited was owned solely by the claimant.
43. The Respondent says claimant was given an opportunity to defend himself in a meeting held on 27th September 2016 and claimant admitted he had registered Lutheran Advisory Company Limited and had bid for a consultancy bid. The respondent says the claimant ignored the respondent's policy and so there were valid reasons to terminate his employment.
44. The respondent in his submission says that the claimant acted unprofessionally and so the respondent had no choice but to consider his termination. He relies on the case of *Agnes Kauata Mbiti v Housing Fiance Company Limited* [2017]eKLR where the court held:-

“where an employer has a work place policy that sets out the work requirements and acts that amount to gross misconduct, such must be read in context of section 44 of the *Employment Act* 2007. Each business is unique and section 8 of *Employment Act* 2007 allows an employer



to tailor a work place policy setting to matters that are considered unique in the business which warrant roles and regulations in such a section.”

The respondent citing numerous authorities urges the court to find the claimant failed to follow policies and procedures of the respondent and so the respondent followed the procedures provided in the law. He urges the court to disown the claimants claim therefore with costs to the Respondent.

Decision

Issues for Determination

45. Having considered the pleadings, evidence, submissions and authorities cited by the Claimant and Respondent, the court frames the following issues as falling for determination:-
- a. Whether the termination of claimant was unfair
 - b. Whether the respondent followed the procedure prescribed in terminating the claimant.
 - c. The remedies, if any, the claimant is entitled.
46. Section 43 of the *Employment Act* provides that in any claim arising out of the termination of a contract, the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45 of the EA.
47. Section 45 (1) and (2) of the *Employment Act* 2007 provides that-
- “(1) No employer shall terminate the employment of an employee unfairly. (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) related to the employee’s conduct, capacity or compatibility; or (ii) based on the operational requirements of the employer; and (c) that the employment was terminated in accordance with fair procedure.”
48. Section 47(1) (5) of the *Employment Act* 2007 provides that ‘For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.
49. The Court of Appeal in *Naima Khamis v Oxford University Press (EA) Limited* [2017] eKLR observed:-

“On the first issue, that is whether the termination was lawful, we wish to take note of the provisions of Section 43(1) of the *Employment Act*, which provides that in any claim arising out of termination of a contract, the employer is required to justify the reason or reasons for the termination, and where the employer fails to do so, the termination is deemed to have been unfair. Also, Section 45(2)(c) requires a termination be done according to a fair procedure. From the foregoing, termination of employment may be substantively and/or procedurally unfair. A termination is also deemed substantively unfair where the employer fails to give valid reasons to support the termination. On the other hand, procedural



unfairness arises where the employer fails to follow the laid down procedure as per contract, or fails to accord the employee an opportunity to be heard as by law required.”

50. The Respondent says that the claimant’s contract of employment was terminated after it was informed by PWC Rwanda that the claimant while operating under the guise of Luthien Advisory Limited bid for a tender given by the Ministry of Finance and Economic Planning of Rwanda. The impression in Rwanda is that the Respondent surreptitiously bid twice for the said tender ie through PWC Rwanda and through staff member from its Kenyan Office. This was a tender which PWC Rwanda had also bid for alongside University of Kigali. This, the Respondent says, was in clear breach of the contract of employment, Staff Handbook and the Code of Conduct.
51. Under Clause 4.7 of the Staff Handbook, states that no member of staff could undertake, on his own account any work to which remuneration was attached nor become a director of a company without first obtaining permission of the Respondent. Clause 2 of the Independence Confirmation Form required of the claimant to disclose his interest, if any, in a restricted entity. Restricted entity is described as including audit clients, to which particular investment and other independent requirements apply. This includes entities, as non-client entities, related to an audit client referred to as ‘related entities’.
52. The claimant indicated in that form that there were no such entities. He also indicated in clause 4 that he had no external directorship. In the details of any exemption to none compliance he indicated that there was none.
53. The claimant was employed by the Respondent on the 18th May 2015. The copy of certificate of registration produced shows he was the director of Luthien Advisory Limited whilst also employed by the Respondent and that he was such a Director when he accepted Respondent’s employment. There is no evidence tabled that he first sought permission from the Country Senior partner as mandated by the clause 4.7 of the Staff Handbook. This was plainly a breach of the said clause and accordingly his terms of employment. In that cause he breached the policies and procedures of his employer.
54. The evidence that the Company Luthien Advisory Limited and PWC Rwanda actually bid for tender for provision of the same or at the very least very related services may not directly offend the requirement of not being involved in restricted entity but offends requirement of section 4.7 of staff hand book. PWC Rwanda was different from PWC Kenya but then the two were related and obviously perception in public eyes cannot be ignored. This is what led to the awkward situation where dishonesty was imputed to the Respondent by virtue of the fact that the claimant as an employee in the Kenyan PWC Company used another company to make bid for the provision of the same service in Rwanda where PWC Rwanda was also bidding. The Claimant’s assertion that PWC is different from the Kenyan Company in these particular circumstances is not acceptable. But again it may be true he was not aware PWC Rwanda was tendering for the same consultancy or it may be correct.
55. The court finds the respondent had a convincing reason to consider terminating the claimant’s employment as he engaged in a consultancy that would have translated into remuneration to him whilst still employed by the respondent. The claimant says the contract was not signed by the time he was terminated but the contract had been awarded.
56. As to whether the Respondent complied with procedural requirements under section 41 of *Employment Act* pleading of the Claimant is pertinent. The claimant says in paragraph 2 (l) that he received a call on 27th September 2016 from Mrs Elizabeth Ngayu who invited him for a meeting slated for 10.00 am. Paragraph 2 (m) At the meeting he was informed that information had reached the Respondent that the claimant had signed a contract in Rwanda for training and word in the market was that there was PwC (A) and (B) competing for the contract. The claimant then went ahead



and explained himself how he had incorporated the subject company, Luthien Advisory Limited. In paragraph 2 r shows that the Respondent had indicated after the explanations given by the claimant that it needed to look at the explanations given by the claimant before making the decision to terminate.

57. The pertinent law as far as procedural requirement in terminating employee's employment is section 41 of the [employment Act](#) laws of Kenya much provides:-

“Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”

58. The claimant says on 27th September 2016 he was summoned by Human Capital and was called for a meeting. He was informed one Francis Muiru one of respondent's partners Champion for code of conduct was to be present. That is when he was informed about the contract for training and was told there was word that there was PWC(A) & PWC (B) competing for the contract. He was obviously not informed he was to attend a disciplinary meeting and was not asked to prepare for the same as required by the law and sound labour practices. He was not given an opportunity to invite a fellow workmate or shop floor representative to be present in his hearing. All that contravened crucial requirements of the law as far as procedure was concerned.

59. Claimant says the same day one Simon Mutinda had written to the staff informing them the claimant was no longer a staff of the respondent and the same email was not copied to the claimant or to the Head of Human Capital.

60. He says he gave his explanation and documentation and on 30th September 2016 the claimant went to see the Managing Partner who informed him he was aware of Mr. Muiru's decision to terminate him. He was then issued with a termination letter received on 30th September 2016. It is trite law that procedural process is as crucial as substantial justification as well captured in [Walter Ogal Onuro -vs- Teachers Service Commission](#) Case [2013]eKLR where the court held:-

“For termination to pass the fairness test, it ought to be shown that there was not only substantive justification for the termination but also procedural fairness.”

In *Kenfreight E.A. Limited v Benson k. Nguti* [2016]eKLR Civil Appeal No. 13 of 2015. The court held that” ... in addition, an employee was entitled to be heard and his representations if any considered by an employer before the decision to terminate his contract of service is taken.

61. Going by the flawed procedure in terminating claimant's employment by the respondent I find the case of unfair and unprocedural termination has been proved by the claimant and I proceed to enter judgment in his favour.

Remedies

62. The following are the reliefs awarded in view of Judgment entered in favour of the claimant:-

- (1) Interest on salary delayed for one month and as claimant has not specified amount and the justification same is declined
- (2) Compensation for unfair termination I will reasonably award two months seeing circumstances of termination Kshs.525,514 x 2 = Kshs.1,051,028/=



- (3) Sales bonus – going by the sales bonus policy and especially provisions that bonus will be payable the month following when it is awarded based on full sign off of the checklist and there is no evidence to support his claim or computation and especially that he was the sole staff who sourced the contract. I find no proof of the above and so this prayer is disallowed.

My total award in 1,051,028/= and I award costs to the claimant however and interest at court rates from date of Judgment till full payment.

Claimant also to be issued certificate of service 14 days from today's date.

63. Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 18 TH AUGUST, 2022

ANNA NGIBUINI MWAURE

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 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.

ANNA NGIBUINI MWAURE

JUDGE

