



**Ngatia t/a Ngatia & Associates Advocates v Jumba (Appeal E146 of 2021)  
[2022] KEELRC 13030 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13030 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E146 OF 2021  
JK GAKERI, J  
OCTOBER 31, 2022**

**BETWEEN**

**FREDRICK NGATIA T/A NGATIA & ASSOCIATES  
ADVOCATES ..... APPELLANT**

**AND**

**GEOFFREY AMUGUNE JUMBA ..... RESPONDENT**

*(Being an appeal against the Judgment and Decree of the Chief Magistrates'  
Court of Kenya at Nairobi (Hon LB Koech (Mrs) PM dated 26th October 2021)*

**JUDGMENT**

1. This is an Appeal arising from the judgment of the Chief Magistrate's Court of Kenya at Nairobi by Hon LB Koech (Mrs) PM dated October 26, 2021, where the court entered judgment in favour of the claimant in the following terms
  - a. One-month salary in lieu of notice Kshs 45,000/=
  - b. Compensation for unfair dismissal Kshs 90,000/=
  - c. House allowance Kshs 101,250/=
  - d. Unremitted NSSF Kshs 3600/=
  - e. Accrued Salary Kshs 30,000/=
  - f. Accrued Leave not taken Kshs 31,500/=
  - g. Certificate of Service to issue
  - h. Less Amount paid Kshs 21,000/=.



2. Aggrieved by the award, the Appellant lodged the instant appeal citing the following grounds in the Memorandum of Appeal;
- i. The trial court erred in law and in fact in holding that there was no evidence of prior warnings to the Respondent notwithstanding the Appellants reference to the numerous prior warnings given to the Respondent given in the letter of termination dated September 20, 2019 and which warnings were not disputed.
  - ii. By holding the respondent's termination as unfair by reason that he was not given an opportunity to defend himself, the trial court grossly erred in law and in fact and proceeded against the gradient of the evidence on record that prior to the Respondents suspension on September 20, 2019, the Respondent had failed to serve an urgent application and when asked why the respondent's excuse that he had no money was controverted by the appellants accountant.
  - iii. The trial court erred in law and in fact in failing to appreciate that the respondent was given an opportunity to be heard prior to his suspension on 20<sup>th</sup> September 2019 and the decision to summarily dismiss him was only reached after the reason proffered by him was found to be implausible.
  - iv. The trial court erred in law and in fact in holding that the respondent was entitled to one month's salary in lieu of notice and proceeding to award the same notwithstanding the respondent's concession that he had been summarily dismissed.
  - v. That upon holding that the reasons given to the appellant during the hearing of the suit "amounted to gross misconduct" for the appellant was entitled to summarily dismiss the Respondent without notice under Section 44 of the *Employment Act* the court contradicted itself by awarding the Respondent one month's salary in lieu of notice.
  - vi. By awarding the Respondent Kshs 101,250/= as purported house allowance on the basis that the appellant breached his responsibility to issue the respondent with an employment contract, the trial court fell into gross error of law and fact by failing to appreciate sufficiently or at all that the *Employment Act, 2007* recognizes both oral and written contracts of employment.
  - vii. The trial court erred in law and in fact by insouciantly and without any cause and/or justification ignoring the testimony of the appellants witness to the effect inter-alia that the Respondents salary as well as that of all the other employees of the appellant including himself is a consolidated one.
  - viii. By awarding the Respondent House allowance in the sum of Kshs 101,250/= which had neither been negotiated by the parties alluded to nor claimed by the Respondent prior to the summary dismissal, the trial court erred in law and in fact but unjustly enriched the respondent by holding that the respondent was only paid Kshs 21,000/= despite his own confession that he had also been paid an additional Kshs 18,000/=
  - ix. The trial court erred in law and in fact by awarding the respondent Kshs 90,000/= as two months' compensation for unfair dismissal while all those sums are subject to statutory deductions.



- x. The trial court erred in law and in fact in awarding the respondent the sum of Kshs 31,500/= being salary for alleged accrued statutory leave days notwithstanding the Respondent had been paid in full all the unspent leave days up to the date of termination.
  - xi. The trial court misapprehended the dispute placed before it and further misdirected itself in applicable principles of law thereby arriving at a decision that is unsupported by evidence and manifestly wrong.
3. The Appellant seeks the following orders:-
  - a. The appeal herein be allowed.
  - b. Judgment and decree of the Chief Magistrate's Court Hon LB Koech (Mrs), PM dated October 26, 2021 in Nairobi Magistrates Employment and Labour Case No 1986 of 2019 be set aside in entirety and substituted with an order dismissing the Respondent's claim dated November 6, 2019 with costs to the appellant.
4. The Respondent filed grounds of opposition together with a Memorandum of Cross Appeal both dated December 1, 2021. The respondent later filed a Replying Affidavit sworn on the December 8, 2021.
5. In the grounds of opposition, the respondent avers that the impugned judgment provided sufficient reasons for finding that the Respondents termination was unfair for the appellant's non-compliance with the procedure as set out in section 49 and 50 of the Employment Act.
6. The respondent further averred that the judge in the impugned judgment exercised his jurisdiction judiciously and within the principles provided in section 49 and 50 of the Employment Act, 2007 in allowing the reliefs granted as a redress for unfair termination.
7. The Respondent urges the court to disregard all the contempt that it merits and dismiss the same with costs and uphold the judgment and decree of the Chief Magistrate court at Kenya dated October 26, 2021 in Nairobi.
8. The Respondent being aggrieved by the award he filed a memorandum of Cross-Appeal citing the following grounds in the Memorandum of cross-appeal;
  - i. The trial court erred in law and in fact in awarding the appellant the sum of Kshs 31,500/= being salary for accrued statutory leave days notwithstanding that the appellant had not been paid in full for all unspent leave days up to date for termination
  - ii. The learned judge misapprehended the dispute placed before the court and further misdirected itself in the applicable principles of law and in terms of quantum in awarding redress to the appellant for unfair termination.
  - iii. The learned judge erred in law and in fact in awarding the appellants redress and/or damages that were manifestly little.
9. The cross-appellant seeks the following orders:-
  - c. The cross-appeal herein be allowed.



- d. The monetary award in the judgment and decree in the Chief Magistrate’s Court of Kenya at Nairobi (Hon LB Koech (Mrs), PM dated October 26, 2021 in Nairobi Chief Magistrates Employment and Labour case number 1986 of 2019 Geoffrey Amugune jumba vs Fredrick Ngatia t/a Ngatia & Associates Advocates be set aside and the award therein be reviewed upwards.

10. The appeal was canvased by way of written submissions.

### **Appellant’s Submissions**

11. The appellant submits that the trial court erred in law and in fact in finding that there was no evidence of prior warnings to the respondent despite the appellant has produced a letter dated October 15, 2019 that made reference to several warnings that had been issued to the respondent.
12. The appellant submits that the trial court erred in law and in fact in finding that the respondent’s termination was unfair by not being granted an opportunity to defend himself despite the respondent confirming that when served.
13. The appellant relies on the holding in *Postal Corporation of Kenya vs Andrew K Tanui* (2019) eKLR where the Court of Appeal stated thus;

“Admittedly there has been considerable debate as to what amounts to a fair hearing or procedure in disciplinary proceedings. Indeed, the appellant has cited the Kenya Revenue Authority case where the court held that the fairness of a hearing is not determined solely by its oral nature and that hearing maybe conducted through an exchange of letters as happened in that case.”
14. The appellant submits that the respondent failed to perform a particular task and was asked to give an explanation which was found to be implausible and which was in addition to previous warnings given by the appellant.
15. The appellant submits that the court’s finding that the respondent was not given a chance to be heard was arrived at under the misapprehension that such a hearing must be oral, which is not the case going by the Court of Appeal decision cited.
16. The appellant submits that the communications and the exchange of documents between the parties amounted to a fair hearing and urges the court to find as such.
17. The appellant relies in Section 43(2) of the *Employment Act* which provides;

“The reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee”.
18. The appellant submits that the trial court analysed the evidence and held that the reasons given by the respondent amounted to gross misconduct and the court had no reason to deviate and hold that the termination was unfair.
19. Section 44(1) of the *Employment Act* provides that “summary dismissal shall take place when an employer terminates employment without notice . . .” And section 44(4) provides that gross misconduct is a ground for summary dismissal.



20. The appellant submits that the respondent was summarily dismissed and therefore not entitled to any notice pay.
21. The appellant submits that the appellant's salary was consolidated and the court had no basis in awarding any amount as house allowance and relies on the provisions in section 31(2) of the [Employment Act](#).
22. The appellant further submits that the court erred in law and in fact and unjustly enriched the Respondent by holding that he had been paid Kshs 21,000/= only, while the respondent in cross-examination confirmed that he had been paid an additional Kshs 18,000/=.
23. The appellant further submits that the court in awarding 2 months salary compensation failed to take into consideration the statutory deductions made to various statutory bodies.
24. The appellant further submits that the respondent had been paid for all his unspent leave days up to the date of termination therefore the award of Kshs 31,000/= for accrued statutory leave days was unjustified.
25. The appellant also submits that the court misapprehended itself by arriving at a decision that is unsupported by evidence and urges the court to allow the appeal and dismiss the cross appeal as filed by the Respondent.

### **Respondent's Submissions**

26. The Respondent submits that he was terminated from employment on September 20, 2019 and no valid reason was advanced by the appellant and that he was denied an opportunity to defend himself.
27. The respondent submits that Section 43 of the [Employment Act](#) obliges every employer to prove the reasons for termination and relies on the holding in [Walter Ogal Anuro vs Teachers service commission](#) (2013) eKLR where the court held;

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

28. The respondent submits that he was dismissed unfairly as no notice was issued, no reasons advanced and he was not granted a fair hearing therefore the appellant went against the standards established on fair dismissal as enshrined in the [Employment Act](#).
29. The respondent further submits that the termination was unfair as it was not based on the claimants conduct, capacity or compatibility as provided under section 45(2)(c) of the [Employment Act](#).
30. The respondents further submitted that the appellants never adduced evidence of any warning letters as required by law.
31. The respondent relied on the holding in [Louise Otiemo vs Kenya Commercial Bank Limited](#), ELRC Cause 1050 of 2011 where the court held;

“The Doctrine of Natural Justice or procedural fairness is now an essential part of employment relationship and therefore an employer had to comply with the procedures set out in section 41 of the Employment Act even in circumstances where instant dismissal was contemplated on the grounds of gross misconduct”.



32. The respondent further submitted that an employer has an obligation to issue an employee with a letter of appointment as stated in *Joseph Okello Odhiambo vs YJ Elmi & Others* (2012) eKLR where the court stated that

“Failure to issue the claimant with letters of appointment amounted to an unfair labour practice contrary to Article 41(1) of the Constitution of Kenya, 2010”.

33. The respondent submitted that he was never issued with an employment contract nor his terms of engagement reduced into writing and the appellant did not adduce any evidence leading of the fact that the respondent’s salary was consolidated and thus included his housing allowance.

34. The respondent further submitted that the law on the award of damages was settled on the decision in *Rook vs Rairre* (1941)1 All ER 297 where the court stated that the Appellate court can interfere with an award of damages in certain defined circumstances.

35. The respondent submitted that Section 49 of the *Employment Act* granted remedies which may be awarded in singular or multiple terms and which are discretionary rather than mandatory to be granted on the basis of the peculiar facts of each case.

36. The respondent submitted that the trial court award be reviewed upwards and the appellants appeal be dismissed with costs.

### **Rejoinder**

37. In rebuttal to the Respondent’s submissions, the Appellants filed supplementary submissions dated August 29, 2022 urging that a single ground of gross misconduct was more than sufficient to warrant a summary dismissal of an employee.

38. Further, the Appellant submits that *Employment Act* recognises oral contracts relies on the decision in *Robai Musinzi Vs Mobamed Safdar Khan* (2012)eKLR where the court held that under the *Employment Act*, a verbal contract was a contract that confers rights that can be enforced.

39. The Appellant further submits that the basis for awarding damages in civil matters is different from employment matters whose award is based on reasons for termination and procedure of termination.

40. The Appellant submits that there were valid reasons to warrant a dismissal of the respondent and he was granted an opportunity to be heard before the decision was made.

41. The appellant urges the court to find that the claim had no merit and set aside the judgment of the lower court and dismiss the respondents claim with costs.

### **Determination**

42. This being a first appeal, it is the duty of the court to review the evidence adduced before the lower court and satisfy itself that the decision of the court is based on sound principles of law.

43. This proposition has been emphasized by the Court of Appeal in several decisions.

44. In *Selle & Another v Associated Motor Boat Co Ltd & Others* [1968] EA 123-126 the court stated as follows:

“ . . . this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court . . . is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the



evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect . . .” (See also *Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja* [1986] eKLR and *Mwanasokoni v Kenya Bus Service Ltd* (1982-88) 1 KAR 278).

45. I have considered the availed pages of the record of appeal and the submissions of parties in this matter and find that the following issues commend themselves for determination;
- i. Whether the Appeal is merited.
  - ii. Whether the Cross-appeal is merited.

### **Whether the Appeal is merited**

46. As to whether the appeal is merited, the court proceeds as follows:
47. As regards the absence of a written contract of service, the appellant contended that the *Employment Act, 2007* recognizes both oral and written contracts. I agree, section 8 of the Act is unambiguous that the provisions of the Act shall apply to oral and written contracts.
48. However, section 9 of the *Employment Act* provides that certain contracts of service must be in writing. This provision states;
- "a. A contract of service –
    - i. for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or
    - ii. which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.
  - b. An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3)."
49. These provisions lay it bare that the contract of service between the appellant and the respondent should have been reduced into writing by the appellant who regrettably did not do so. The respondent was an employee of the appellant for about 1 year, 5 months and 20 days which gave the parties sufficient time to reduce the basis of their relationship into a written form as ordained by section 9 of the *Employment Act, 2007*.
50. The foregoing holding finds support in the decision in *Joseph Okello Odhiambo & another V YJ Elmi & others* (2017) eKLR where the court equated the failure of an employer to issue a letter of appointment to an employee as an unfair labour practice contrary to Article 41 of the *Constitution of Kenya, 2010*. (See also *Robai Musinzi V Mohammed Safdar Khan* (2012) eKLR).
51. The appellant faults the Lower Court’s decision on the finding that the claimant was not given an opportunity to defend himself. That the finding was against the gradient of the evidence on record.
52. The evidence on record shows that the claimant was suspended from employment on September 20, 2019 and dismissed thereafter.



53. The appellant submits that the claimant had been afforded an opportunity to defend himself before the suspension, a claim the claimant denied.
54. Following the appellant's argument, it would appear that the claimant refused to obey instructions or perform duties allocated to him, was asked about it, responded and was thereafter suspended from employment.
55. That the Accountant also testified that the respondent had been given cash to file and serve the application.
56. What begs the question is whether the claimant had been notified of the charges against him prior to the alleged hearing and whether he had been notified of the right to be accompanied by a fellow employee at the hearing and had the opportunity to cross-examine the accountant.
57. The respondent on the other hand relies on the provisions of section 41 of the *Employment Act* and the decision in *Louice Otiemo V Kenya Commercial Bank Ltd* to urge that natural justice and procedural fairness is the bedrock of fair termination of employment contracts.
58. It is trite law that the hearing need not be oral, the Court of Appeal has so affirmed.
59. However, the documents relied upon by the party urging that there was a hearing as contemplated by section 41 of the *Employment Act* must be explicit that indeed the employee had an opportunity to present his/her case sufficiently and the requisite documents were availed to him to prepare for his defence.
60. In this case, the respondent tendered no evidence on when the hearing took place, and who the participants were and the decision made.
61. Instructively, the claimant was suspended on September 20, 2019 and was dismissed thereafter.
62. Suspension of an employee typically precedes an investigation or inquiry before the next course of action is taken by the employer depending on the findings.
63. From the evidence on record, it is unclear whether any form of investigation or inquiry took place and what the findings were and whether the respondent was informed of the outcome and what transpired between the suspension and eventual dismissal from employment.
64. In the absence of cogent evidence demonstrating that indeed the claimant was accorded an opportunity to be heard, the court is not persuaded that the appellant has discharged the burden of proof that there was a hearing.
65. It is the further finding of the court that the appellant has not made a sustainable case for this court to interfere with the finding of the trial court.
66. As regards termination, the reason on record is "strained relationship."
67. Mr Pascal Omunyala Advocate testified that on the material day, the claimant had been given an Urgent Application to file and serve which he did not and was suspended on the same day. It was his testimony that the claimant was difficult to work with and routinely disobeyed instructions other than from Mr Ngatia.
68. These were very serious allegations against the respondent and required verifiable documentary evidence that the claimant acted in the manner alleged since a one-off conduct would not justify the ground of termination relied upon.



69. It is unclear why the appellant did not adduce documentary evidence of the previous warnings, other than the letter dated October 15, 2019 issued after suspension, if they indeed existed before September 20, 2019.
70. Reference to previous warnings that are documented elsewhere, is in the courts view insufficient evidence to establish the fact they were indeed issued. When, for instance was the last warning issued?
71. The trial court was satisfied that although the reasons for termination given at the hearing could amount to gross misconduct, the evidence on record was insufficient.
72. Puzzlingly, the trial court went out of its way to search for other reasons for termination of the claimant's employment yet the letter of termination had identified the reason as "strained relationship" which should have been exemplified by relevant particulars or instances to show how the relationship was strained. Without clear illustrations of the specific acts or omissions the respondent was accused of, an attempt to place the phrase in the context of section 44(1) and (4) of the *Employment Act* would be to overstretch imagination.
73. In the premise, it is the finding of the court that the reason for termination relied upon by the appellant could not justify summary dismissal of the respondent and notice of termination was essential.
74. As to whether the respondent was entitled to housing allowance, the appellant relies on section 31(2) (a) of the *Employment Act, 2007* to urge that the right to housing allowance under sub-section 31(1) of the Act does not vest where the contract of service "contains a provision which consolidates as part of the basic wage or salary of the employee an element intended to be used by the employee as rent or which is otherwise intended to enable the employee provide himself with housing accommodation."
75. The trial court held that the respondent's claim that the respondent's salary was consolidated was unsubstantiated by the absence of a written contract of service and awarded house allowance.
76. The appellant submits that its salary to the claimant was consolidated and its witness gave oral evidence to that effect.
77. Significantly, section 10(7) of the *Employment Act* provides that;
- "If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in sub-section (1), the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer."
78. In the instant case, the respondent provided no written contract of service or particulars and was thus bound to establish that it paid housing allowance as ordained by the provisions of section 31 of the *Employment Act*.
79. A part from its witness stating that the salary paid to the respondent was inclusive of house allowance, it tendered no documentary evidence that that was indeed the case. A copy of the respondent's itemised pay statement would have revealed the particulars ordained by section 20 of the *Employment Act* which provides that;
- "a. An employer shall give a written statement to an employee at or before the time at which any payment of wages or salary is made to the employee."
80. Sub-section (2) of the section 20 sets out the particulars to be specified in the itemised pay statement.
81. In the absence of the documentary evidence required by the provisions of section 9(1)(a) or section 20 of the *Employment Act, 2007* or other verifiable evidence specific to housing allowance paid to the



Claimant, it would be difficult for the appellant to establish that the salary paid to the respondent was inclusive of housing allowance.

82. In view of the foregoing, the court has no basis to interfere with the finding of the trial court on housing allowance.
83. As regards the holding that the respondent had only been paid Kshs 21,000/=, the appellant urges that the respondent admitted on cross-examination that he had been paid an additional Kshs 18,000/=, a sum the respondent has not denied receipt.
84. Based on the evidence on record, the court is satisfied that the trial court erred in holding that only a sum of Kshs 21,000/= had been paid as opposed to Kshs 38,000/=.
85. As regards the quantum of compensation, the trial court is assailed on the ground that it unjustly enriched the respondent by awarding 2 month's salary as compensation, Kshs 90,000/= for unfair dismissal from employment. It is urged that the court should have factored in statutory deductions as admitted by the respondents.
86. Although section 49 of the *Employment Act, 2007* confer upon court's jurisdiction to award the reliefs enumerated there under, the reliefs are in the first instance discretionary and the discretion must be exercised judiciously and specifically within the parameters set out in section 49(4) of the *Employment Act*.
87. Needless to underscore, the Court of Appeal has been unyielding that any quantum of compensation awarded under this provision must be justified.
88. In this case, the trial court did not explain the basis on which it arrived at the 2 month's salary, an omission which justifies this court's interference with the quantum of compensation awarded.
89. It is not in dispute that the respondent was an employee of the appellant from April 1, 2018 to September 20, 2019, a duration of about 1 years 5 months and 20 days, a fairly short time.
90. Secondly, evidence on record reveal that on the material day, he had been requested to file an urgent application, a task he did not discharge and did not explain to the advocate the challenges he was facing for corrective action to be taken until he was asked about it and thus contributed to the termination of employment.
91. Third, it is unclear whether the respondent wished to continue in the employment of the appellant.
92. Fourth, the respondent did not appeal the decision to terminate his employment.
93. In the circumstances, the court is satisfied that the equivalent of one (1) month salary is fair, Kshs 45,000/=.
94. Finally, as regards accrued leave, the trial court awarded Kshs 31,500/= for 21 days.
95. The appellant submits that it had paid the respondent for all unspent leave days.
96. It is unclear when the 21 leave days accrued since the respondent had been an employee of the appellant for almost 1<sup>1</sup>/<sub>2</sub> years.
97. Relatedly, there is no narrative as to why the 21 days leave was awarded.
98. In the absence of the relevant particulars, the amount of Kshs 31,500/= is considered as undeserved.



### **Whether the Cross-appeal is merited**

99. The Respondent filed a Cross-appeal dated December 1, 2021 seeking to have the judgment and decree of the Chief Magistrate's Court of Kenya at Nairobi dated October 26, 2021 set aside and the award reviewed.
100. The cross-appeal is based on two grounds namely; unpaid leave days and quantum of compensation.
101. As regards the unpaid leave days, the respondent states that he had not been paid for all his leave days.
102. Regrettably, the respondent did not provide evidence in support of this ground. It is unclear how many days were still outstanding and how many had been paid for as the respondent appears to suggest. In the absence of the relevant particulars, this ground of the cross-appeal fails.
103. As regards the quantum of compensation, it is urged that the trial court misapprehended the dispute before the court and misdirected itself on the principles of law applicable in terms of quantum in awarding redress for unfair termination.
104. That the amount awarded was too low.
105. Although the trial court makes no specific reference to the provisions of section 49(1)(c) of the *Employment Act, 2007*, this court is satisfied that the trial court awarded the 2 month's salary on the basis of the foregoing provision and as adverted to elsewhere in this judgement, other than the failure to justify the compensation awarded, the trial court neither misapprehended nor misdirected itself on the applicable principles of law. This ground of Cross-appeal likewise fails.
106. In the end, the Cross-appeal fails in its entirety and is accordingly dismissed with no orders as to costs.
107. In the upshot, the appeal is partially successful as follows;
- i. The quantum of compensation is reduced to one (1) month's salary Kshs 45,000/=.
  - ii. The amount paid under paragraph (h) of the award is Kshs 39,000/= in lieu of Kshs 21,000/=.
  - iii. The sum of Kshs 31,500/= awarded for unpaid leave is disallowed.
108. For the avoidance of doubt, all other awards of the trial court are upheld.
109. In light of the partial success of the appeal, each party shall bear its own costs of the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 31<sup>ST</sup> DAY OF OCTOBER 2022**

**DR. JACOB GAKERI**

**JUDGE**

**ORDER**

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



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

