



**Wasirimba v Bhunda t/a Bhundia Associates (Employment and Labour Relations Cause 2101 of 2017) [2022] KEELRC 13306 (KLR) (25 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13306 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2101 OF 2017**

**SC RUTTO, J  
NOVEMBER 25, 2022**

**BETWEEN**

**JOY NABWIRE WASIRIMBA ..... CLAIMANT**

**AND**

**BHAGWANJI BHIMJI BHUNDA T/A BHUNDIA ASSOCIATES . RESPONDENT**

**JUDGMENT**

1. The claimant avers that she was employed on or around August 1, 2009 as a sociologist on a one year renewable contract. That upon expiry of her initial contract, the respondent renewed her services by renewing her contract of employment for several years as a result of her hard work and commitment at work, but on different salary scales. That in total, the claimant served the respondent diligently for a period of seven years between 2009 to 2017.
2. That on October 11, 2016, the claimant underwent a successful emergency caesarian section and automatically proceeded for maternity leave, a request she conveyed to the respondent through phone. That in the month of October and November, 2016, during her maternity leave, the respondent opted to pay her monthly salary in instalments.
3. That when she reported to work on February 20, 2017 after the end of her maternity leave, the respondent did not talk to her or assign her work. That this went on for one week hence she decided to stay at home and await further instructions from the respondent. That since February, 2017, she has never been recalled to resume work and her efforts to reach the respondent for a clarification of her work status have been futile.
4. The claimant avers that the conduct of the respondent amounted to constructive dismissal on account of her maternity. That her termination from employment was unlawful and unprocedural. It is for this reason that she seeks against the respondent, the sum of Kshs 2,057,130.00 being unpaid salary for the months of October and November, 2016, January and February, 2017, notice pay, compensatory



damages and compensation for the remainder months under her contract running from June 30, 2016 to June 30, 2017 as well as an unconditional certificate of service.

5. Opposing the claim, the respondent averred that in 2016, it came to learn that the claimant was working for another company being Kenya Electrical Transmission Company (KETRACO) contrary to her terms of employment. That further, the claimant's contract of employment ended on June 30, 2016 whereby she absconded duty and responsibilities allocated to her, thus her salary for the period she was not at work, was only paid on humanitarian grounds.
6. The respondent further denied that the claimant served diligently from 2009 up to 2016. It further contended that she was not entitled to any maternity leave as she had absconded duty. The respondent further denies terminating the claimant's employment unlawfully. It is on this account that the respondent has asked the court to dismiss the claim with costs.
7. The matter proceeded for hearing on May 25, 2022, and both parties called oral evidence.

### **Claimant's case**

8. At the trial, the claimant testified as CW1 and sought to adopt her witness statement and bundle of documents filed together with the claim, to constitute her evidence in chief. She further produced the said documents as her exhibits before court.
9. The claimant testified that she was expectant in October, 2016 and was due in November, 2016. That on October 11, 2016, she had to undergo an emergency caesarian section as the ultra sound revealed that the umbilical cord around her baby's neck was tight. That as such, she called the office and spoke to the respondent's administrator by the name Ms Nadia and conveyed the information to her.
10. That after her caesarian section, she commenced her maternity leave and informed Ms Nadia as much. That on November 5, 2016, she called Nadia to enquire why her salary had not been remitted. That the Ms Nadia informed her that she had been declared redundant in October, 2016. That these were Ms Nadia's words, 'hawataki watu wanazaaza'.
11. It was her further testimony that she was later paid Kshs 30,000.00 through Mpesa by the said Ms Nadia who informed her that the money was being paid purely on humanitarian grounds. That contrary to Ms Nadia's assertions, she was paid full salary for the month of December, 2016. That she was also paid full salary for the months of June, July, August and September, 2016.
12. That she resumed work in February, 2017 when her maternity leave ended and for one week, she was not assigned work nor given any instructions. That subsequently, she decided to wait at home for the respondent's further instructions.
13. That at the time, she was servicing a loan with Barclays bank and her loan account was in arrears due to irregular payments from the respondent. That she approached the bank and orally requested that it suspends charging interest on her account as she was not in employment, since she had been retrenched by the respondent. That the bank advised her that her account had a loan retrenchment insurance cover for compensating account holders who had been retrenched but had pending bank loans. That she was then requested to avail evidence of her retrenchment so as to allow her benefit from the said insurance cover.
14. That when she approached the respondent seeking to be furnished with evidence of her retrenchment, she was given a letter of recommendation dated January 24, 2017. That after many follow ups, she was issued with a letter of termination which was backdated to April 7, 2017.



15. In further testimony, the claimant denied absconding duty and stated that she was never warned or issued with a letter to show cause for absconding duty. She further testified that her assignment with KETRACO was casual and that she only used to work there over the weekends and during her off days when required. That in fact, her immediate supervisor, Engineer James Njue was aware of the same. That further, her assignment with KETRACO never conflicted with her work.
16. Concluding her testimony, the claimant asked the court to allow her claim as prayed.

### **Respondent's case**

17. The respondent called oral evidence through Mr James Njue who testified as RW1. He sought to rely on his witness statement as well as the bundle of documents filed on behalf of the respondent, which he asked the court to adopt to constitute his evidence in chief. The documents were also produced as the respondent's exhibits before court.
18. It was his testimony that he is a trained civil engineer specializing in water and environmental engineering and has worked for the respondent since 2009, first as a design engineer and later as a project manager. That the claimant is known to him as she was working directly under him.
19. RW1 testified that the claimant was employed by the respondent on a one year renewable contract. That the contract was renewable subject to her satisfactory performance and availability of work in the respondent firm. That towards 2015, the claimant started taking frequent leaves for unexplained reasons. That sometimes, she would just receive an impromptu call and would request for instant leave. That that was quite inconveniencing to the respondent as it had deadlines to meet. That this trend continued in 2016 and became more frequent.
20. That at the time, the claimant was expectant hence would state that she needed to go for medical checkup. That the respondent gives all its employees two days leave per month, as well as maternity, paternity and compassionate leave. That in early 2016, the claimant had exhausted her leave days and had accrued negative leave days.
21. That the claimant's contract which was running from July 1, 2015 to June 30, 2016, ended. That she was expectant after her contract ended but continued going to the office once in a while. That in October, 2016, the claimant welcomed a baby but failed to formally notify the respondent. That at the time, the respondent did not have much work and most of the staff had been laid off in 2015 and the claimant was one of the few staff who had been left at the respondent firm.
22. That the claimant started absconding duty in August, 2016 as she would come for a few days per week. That in the month of September, 2016, she did not report to work. That although the claimant failed to report to work from August, 2016, the respondent processed her salary upto December, 2016 when it had incontrovertible evidence that she was working for another company. That as such, the claimant's salary for the month of August to December, 2016 was for work not performed hence she ought to refund the same.
23. In further testimony, RW1 stated that he was not aware that the claimant was an employee of another company and that she was moonlighting. That the respondent only came to learn of the same after the claimant had left employment, hence the reason for her numerous and instant offs. That the claimant's engagement with KETRACO was conflicting with her employment with the respondent. That indeed, the claimant had declared in her tax returns to the Kenya Revenue Authority (KRA), that KETRACO was her primary employer.



24. RW1 further denied the claimant's assertion that she was retrenched from employment. He further told court that the claimant was not a permanent employee hence was not entitled to a retrenchment cover. That the claimant wanted the respondent to state that she was a permanent employee, which was not the case. That the respondent has never declined to issue the claimant with a certificate of service and that the same has always been ready for collection but the respondent is not ready to lie that the claimant was a permanent employee.
25. The court further heard that after the claimant had left employment, the respondent came across information that she had actually been stealing and using its professional report to try and get consultancy services by wrongly presenting herself as the author and producer of such professional reports, which was untrue.
26. That the respondent duly remitted the claimant's NSSF dues and other statutory payments hence there were no other payment that were due to her.
27. RW1 further stated that the claimant requested for financial assistance hence was paid from June, 2016. That she had also taken a loan which was being deducted from her salary. That that explains the reason why she was not paid her full salary. That on July 4, 2017, the claimant applied for a loan of Kshs 30,000.00 to attend to her mother. That the loan was deferred after her mother passed on. That further, the claimant had applied for a loan of Kshs 69,250.00 sometimes in 2011 for school fees and she did not repay the same. That there was another outstanding loan of Kshs 73,450.00 which she had failed to pay.
28. RW1 summed up his testimony by stating that the claimant has never been terminated her and that she is the one who left employment without notice and illegally obtained payment for work not done.

### **Submissions**

29. The claimant submitted that there was a valid contract for a period of one year between herself and the respondent running from June 30, 2016 to June 2017. That she had legitimate expectation from the conduct of the respondent that the contract would be renewed. To support this argument, the claimant cited the case of *Caroline Muthoni Njoroge vs LVCT Health (20119) eKLR*. It was the claimant's further submission that the said contract was enforceable in law and its terms were by implication the same as her previous contract.
30. It was the claimant's further submission that she was unfairly dismissed from employment. That her letter of termination issued on April 7, 2017 shows that she was terminated on December 31, 2016. That it was just backdated to justify the respondent's conduct but the termination remains unfair.
31. On its part, the respondent submitted that the facts and circumstances surrounding the claimant's case do not support the claim for a constructive dismissal. Placing reliance on the case of *GMV vs Bank of Africa Kenya Limited (2013) eKLR*, the respondent further argued that for the claimant to claim discrimination on the basis of pregnancy, she had to establish a nexus between an adverse employment decision and her pregnancy. It was the respondent's further submission that the claimant's attempt to accuse it of unfair termination cannot be supported by the evidence tabled. That it cannot be said to be constructive dismissal when an employee opts to resign to get out of a tight stop. To buttress this argument, the respondent cited the case of *Stella W Muraguri vs Edward Kamau Muriu & 4 others Cause 2027 of 2015*.

### **Analysis and determination**

32. Flowing from the pleadings before court, the evidence on record and the opposing submissions, the issues falling for the court's determination can be distilled as follows:



- i. Was the claimant in the respondent's employment after June 30, 2016?
- ii. If the answer to (i) is in the affirmative, was the claimant unfairly and unlawfully terminated from employment?
- iii. What reliefs if any, avail to the claimant?

### **Existence of the employment relationship after June 30, 2016**

33. It is common ground that the claimant's contract ended on June 30, 2016. It is also not in dispute that she was not issued with another contract of employment. What the parties appear to have taken different positions on, is whether the claimant remained in the respondent's employment past June 30, 2016. On her part, the claimant avers that she was at work until when she proceeded on maternity leave. On the other hand, the respondent states that the claimant was not attending work regularly and that she was on and off from August, 2016.
34. The respondent has also stated that it paid the claimant's salary all through to December, 2016. The question is why would it pay her salary if at all her contract had ended and she had ceased being its employee?
35. Further, there is a letter dated April 7, 2017 terminating the claimant's employment with effect from December 31, 2016. This implies that the claimant was still in the respondent's employment. She could not have been terminated if at all she had ceased being its employee way back on June 30, 2016. Indeed, this means that the respondent still had control over her employment.
36. In addition, there is a letter dated January 24, 2017, issued by the respondent and referenced 'to whom it may concern'. The letter confirms in its body that the claimant worked for the respondent until December 31, 2016.
37. Coupled with the foregoing, the respondent exhibited leave application forms filled by the claimant in the months of August and September, 2016. It would therefore have been absurd for the claimant to apply for leave from the respondent, when in essence, she was no longer its employee.
38. In view of the above, the respondent by its own conduct acted in a manner to suggest that the claimant's contract had been renewed and it is estopped from asserting otherwise. Therefore, for all intents and purposes, the claimant was the respondent's employee after June 30, 2016, despite not being issued with a fresh contract of employment.

### **Unfair and unlawful termination?**

39. A termination of employment must be both substantively justified and procedurally fair. This is the crux of sections 41, 43 and 45 of the *Employment Act*.
40. Substantive justification entails proof of reasons for which an employee was terminated while procedural fairness relates to the procedure applied by an employer in terminating the employee's employment. I will first consider substantive justification.
  - i. Substantive justification
41. Section 43(1) of the *Employment Act* requires an employer to prove the reasons for termination, and in absence thereof, such termination is deemed to be unfair. Closely related to this provision is section 45 (2) (a) and (b) of the *Employment Act*, which provides that a termination of employment is unfair if the employer fails to prove that the reason for the termination is valid, fair and is related to the employee's conduct, capacity or compatibility; or based on its operational requirements.



42. From the record, it would seem that the claimant's troubles began in November, 2016 when her salary went unremitted. According to the respondent, the claimant had absconded duty while she avers that she was on maternity leave and that the respondent was aware of the reason for her absence from work.
43. The claimant avers that she telephoned the respondent's administrator by the name Ms Nadia and notified her of the fact that she had delivered her baby hence had commenced maternity leave. On the other hand, the respondent contends that the claimant did not apply for maternity leave formally.
44. Section 29 (1) of the *Employment Act* entitles a female employee to maternity leave for a period of three months with full pay. Further, pursuant to subsection (2), the employee upon resumption of duty from maternity leave, has the right to return to the job, she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.
45. That said, it is evident under subsections (4) and (5) of section 29, that the right to maternity leave is not absolute and is subject to notification to the employer in writing and production of the requisite certificate from a qualified medical practitioner or midwife. I will reproduce the said statutory provision as hereunder:

' 29(4) A female employee shall only be entitled to the rights mentioned in subsections (1), (2) and (3) if she gives not less than seven days notice in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave on a specific date and to return to work thereafter.

(5) The notice referred to in subsection (4) shall be in writing.

(6) A female employee who seeks to exercise any of the rights mentioned in this section shall, if required by the employer, produce a certificate as to her medical condition from a qualified medical practitioner or midwife.' Underlined for emphasis

46. In the instant case, the claimant stated that she informed the respondent of her caesarian section procedure and commencement of her maternity leave through phone, when she spoke to Ms Nadia. It is noteworthy that she did not allude to making the notification in writing. As a matter of fact, she did not produce such notification before court.
47. It is therefore apparent that the claimant did not apply for maternity leave as required under law and did not notify the employer in writing as much, following her caesarian section. Seemingly, she assumed that her employer knew where she was. As such, she did not act in compliance with section 29(4) and (5).
48. I am fortified by the determination in *Lucy Wanjiru Nyaga vs Batiment Group Limited [2019] eKLR*, where the learned judge reckoned thus:

' [20.] Subsection [4] states the right above, and other associated rights under Section 29, accrue only if the employee gives the employer not less than 7 days notice, or a shorter period as may be reasonable, of her intention to proceed on maternity leave on a specific date and to return to work thereafter.

24. This evidence does not establish that the petitioner complied with section 29 [4] of the *Employment Act*, so as to be entitled to maternity leave.



25. There is nothing on record showing she notified the respondent, of her intention to go on maternity leave, on any particular day, and return to work at the end of her maternity leave.
26. The court does not think that the petitioner was discriminated against by denial of her right to maternity leave. She did not fulfill a basic statutory requirement, upon which exercise of her right, rested.'
49. Therefore, for the claimant to benefit under the rights accruing under section 29 (1), (2) and (3) of the Employment Act, she was bound to do her part and comply with the requirements under subsection (4) and (5).
50. It is my finding that in absence of such notification, the employer was justified in concluding that the claimant had absconded duty.
51. The essence of such a notification is not just for formality purposes. It is meant to inform an employer when the maternity leave starts and when it comes to an end. This way, an employer is able to plan its operations accordingly. In addition, it is for record purposes.
52. For the above reasons, the respondent would have been justified to commence disciplinary action against the claimant for abscondment of duty.
53. The respondent further averred that it came to learn that the claimant was working for a parastatal being, KETRACO Limited hence its stoppage of her salary. To this end, the respondent exhibited the claimant's KRA tax returns in which she has declared KETRACO as her employer. The respondent further exhibited a copy of a medical insurance form with the CIC Insurance Company Limited bearing the name of the claimant as the policy holder. The said medical insurance form, which has been taken out by KETRACO, further identifies the claimant as a way leave assistant and indicates that she joined the said KETRACO on June 15, 2015.
54. It is worth mentioning that the claimant did not dispute the said exhibits and her employment with the said KETRACO. Her only contention was that the respondent was aware of the arrangement she had with KETRACO and that the same was not in conflict with her employment with the respondent.
55. Further, the claimant contended that she only worked for the said KETRACO on a casual basis, over the weekends and during her off days. Judging by the evidence exhibited, this does not seem to be the case as it is apparent that the claimant was anything but a casual employee and if anything, the employment relationship appears quite solid. Otherwise, why would she be issued with a medical cover if at all she was a casual employee? Further, why would she declare the said KETRACO as her employer in her KRA tax returns?
56. These observations discount the claimant's assertions in regards to the nature of her employment relationship with the said KETRACO.
57. Armed with the foregoing information and evidence, the respondent had all the right to commence disciplinary action against the claimant on account of engaging in another employment relationship while she was still its employee.
58. That said, one may wonder what action the respondent took against the claimant. Here is what happened. The respondent issued the claimant with a letter of termination dated April 7, 2017, which is couched as follows:

' Joy Wasirimba



I regretfully confirm that your employment was terminated with effect from December 31, 2016. This is due to lack of projects hence no income to sustain your salary, if the situation improves, we shall gladly employ you back.

I would be happy to write a recommendation letter for your employment search. I wish you luck in finding a new employment.

Nadia Salim  
administrator.'

59. Essentially the grounds for which the claimant was eventually let go by the respondent, was 'lack of projects'. In essence, she was being declared redundant.

60. Under section 2 of the [Employment Act](#), the term 'redundancy' is defined to mean 'the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment'.

61. Termination by way of redundancy is addressed under section 45(2) (b) (ii) of the [Employment Act](#) as follows:

' A termination of employment by an employer is unfair if the employer fails to prove-

- (a) That the reason for the termination is valid;
- (b) That the reason for the termination is a fair reason-
  - (i) .....; or
  - (ii) Based on the operational requirements of the employer; and'

62. Revisiting the reasons which led to the claimant's termination, it is no doubt that the same was being attributed to the respondent's operational requirements.

63. Bearing in mind the provisions of sections 45(2) (b) (ii) of the [Employment Act](#) as well as the definition of the term redundancy, it is crystal clear that an employer is bound to prove that the redundancy situation was effected on valid and fair reasons that were based on its operational requirements. In terms of section 43(1), 45 (2) and 47(5) of the [Employment Act](#), the burden of proof lies with the employer.

64. In this case, the respondent having opted to terminate the claimant by way of redundancy, it was duty bound to prove the reason for such termination, being that it did not have adequate projects to sustain her salary. As was held by the Court of Appeal in [Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others \(2014\) eKLR](#):

' For any termination of employment under redundancy to be lawful, it must be both substantially justified, and procedurally fair'.

65. The court went on to hold as follows in the above case of Kenya Airways:

' Thus, redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and the termination is in accordance with a fair procedure. As section 43(2) provides, the test of what is a fair reason is subjective. The phrase 'based on operational requirements of



the ' must be construed in the context of the statutory definition of redundancy. What the phrase means, in my view, is that while there may be underlying causes leading to a true redundancy situation, such as reorganization, the employer must nevertheless show that the termination is attributable to the redundancy – that is that the services of the employee has been rendered superfluous or that redundancy has resulted in abolition of office, job or loss of employment.'

66. As I have stated above, substantive justification entails proof of reasons leading to termination of employment. In this case, the respondent did not lead evidence in whatever form or manner, to prove that the reasons advanced for the claimant's termination were fair, valid and related to its operational requirements.
67. Accordingly, I cannot help but find that the respondent has not proved that it had a justifiable reason to declare the claimant redundant, hence her termination was unfair.
- ii. Procedural fairness
68. As the respondent elected to terminate the claimant by way of redundancy, it was bound to comply with the procedural requirements set out under section 40(1) of the *Employment Act*. I will restate the same hereunder.
- a. Where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
  - b. Where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
  - c. The employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
  - d. Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
  - e. The employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
  - f. The employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
  - g. The employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service.
69. The respondent in this regard did not prove that it complied with any of the foregoing requirements in terminating the claimant on grounds of redundancy. That is to say, there was no notice of intention to declare redundancy and notice to the labour officer. There was also no proof of payment of one month's salary in lieu of notice and severance pay. Finally, there was no evidence of the selection criteria applied in earmarking the claimant for redundancy.
70. I must emphasize that once the respondent opted to terminate the claimant's employment on grounds of redundancy, it was bound to comply with all the procedural requirements and anything short of



the same rendered the termination procedurally unfair. A redundancy process has no shortcut and an employer must go the long haul once it has opted to terminate an employee under those grounds.

71. As the court determined in *Hesbon Ngaruiya Waigi vs Equitorial Commercial Bank Limited (2013) eKLR*:

' Where redundancy is declared by an employer, the procedure to follow is as set out under the provisions of section 40 of the *Employment Act* and where not followed, any termination as a result will be deemed unprocedural and unfair. Any termination of an employee following a declaration of redundancy must be based on the law otherwise the same becomes wrong and if the grounds used to identify the affected employees are not as per the law, the same becomes unfair.'

72. Having failed to prove that it complied with the requirements under section 40(1), the resultant termination of the claimant was unlawful.

73. What reliefs then is the claimant entitled to?

### Reliefs

74. The claimant is awarded one month's salary in lieu of notice as there is no proof that the same was paid out to her upon termination.

75. As the court has found that the claimant's termination was both unfair and unlawful, she is awarded compensatory damages equivalent to three (3) months of her gross salary. This award has considered the fact that the claimant was on a one year contract at the time of her termination.

76. The claim for severance pay is declined as the claimant was yet to complete one year since the commencement of her contract after June 30, 2016. It is worth mentioning that the other contracts do not count as they had been served and completed. The claimant was on a new contract that was independent of the previous ones.

77. The claim for unpaid salary during the maternity leave period is declined for reasons stated above, being that the claimant failed to comply with the statutory requirements by making a formal notification to the respondent, as required under law.

78. The claimant is also entitled to a certificate of service in terms of section 51 of the *Employment Act* as evidently, she had served for more than four consecutive weeks in her last employment contract.

### Orders

79. In the end, the claim succeeds in the following manner: -

- a. The claimant is awarded compensatory damages in the sum of Kshs 270,000.00 which sum is equivalent to three (3) months of her gross salary.
- b. An award of one month's salary in lieu of notice being Kshs 90,000.00.
- c. The total award is Kshs 360,000.00.
- d. Interest on the amount in (c) at court rates from the date of judgement untill payment in full.
- e. The respondent shall bear the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER 2022.**



.....  
**STELLA RUTTO**

**JUDGE**

**Appearance:**

For the Claimant Mr. Musungu

For the Respondent Mr. Kimathi

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 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 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**

