



**Njeru v Intex Construction Ltd (Cause 715 of 2017)  
[2022] KEELRC 13193 (KLR) (11 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13193 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 715 OF 2017  
SC RUTTO, J  
NOVEMBER 11, 2022**

**BETWEEN**

**JOHN NJERU ..... CLAIMANT**

**AND**

**INTEX CONSTRUCTION LTD ..... RESPONDENT**

**JUDGMENT**

1. It is not in dispute that the claimant was employed by the respondent as an Assistant Human Resource Manager with effect from 18<sup>th</sup> July, 2016 and at the time of his termination, was serving in an acting capacity as the respondent's Human Resource Manager.
2. The claimant avers that he worked effortlessly, dedicatedly and diligently as expected by the respondent. That during his employment with the respondent, he had never had a case of misconduct. That his termination from employment was done arbitrarily, whimsically, without any reasonable cause and without notice. On this account, the claimant seeks several reliefs against the respondent including an order declaring his termination, unfair and illegal, an order of reinstatement, transport allowance, communication allowance, night out allowance, payment in lieu of leave, payment in lieu of notice, compensatory damages for unfair and wrongful termination, general damages for unfair and unlawful termination, costs as well as the interests of the suit.
3. The claim was opposed through the respondent's response dated 10<sup>th</sup> August, 2021. Citing various incidences, the respondent avers that the claimant was summarily dismissed from employment on 13<sup>th</sup> April, 2017 due to his careless and improper performance of his duties. The respondent further avers that the claimant's termination was not unfair and was conducted lawfully and following lawful procedures. The respondent has termed the claimant's suit as incompetent and has asked the Court to dismiss the same with costs.
4. The matter proceeded for hearing on 15<sup>th</sup> March, 2022 and both sides called oral evidence.



## Claimant's case

5. To start with, the claimant adopted his memorandum of claim, witness statement, supplementary witness statement and bundle of documents, to constitute his evidence in chief. He further produced the said documents as his exhibits before Court.
6. The claimant testified that he was disengaged unceremoniously through an email of 13<sup>th</sup> April, 2017, having worked for the respondent for about nine months. That in the course of his employment, he rendered outstanding services and rose through the ranks. That he dutifully discharged his obligations and responsibilities as the acting Human Resource Manager in the respondent company. That he was a permanent and pensionable employee and it was his legitimate expectation that his employment would run until he retired.
7. He further stated that contrary to the respondent's assertions, the then Human Resource Manager had not taken an extended leave, as she had obtained a court order restraining the respondent from engaging another person in her position. That he was therefore the substantive Human Resource Manager throughout the time of his engagement with the respondent, and that he was not given different terms of service.
8. It was the claimant's further testimony that the warning letter dated 17<sup>th</sup> January, 2016 was neither issued nor shared with him and the allegations therein are not true. That prior to a show cause, a warning must be issued. That at no time during his engagement with the respondent, was his attendance to duty a subject of discussion and the respondent never enquired into his alleged absence from duty. That he further wished to look at the biometric attendance report showing his absence from work.
9. That further he was neither responsible for any payment to the employees of ISSACO Limited and was not responsible for its operations. That the non-payment of Mituguu quarry staff was a long standing issue which was never resolved by the respondent over a long period of time. That as a matter of fact, his email dated 20<sup>th</sup> September, 2016 was aimed at resolving that issue. That further, it was not possible for him to have caused the problem with less than three months in service. He further pointed out that the email of Tuesday, September, 2016 at 4.12 p.m had been edited, and does show to whom it was addressed or copied.
10. That with regards to the memo of 16<sup>th</sup> February, 2017, his alleged failure to follow up on attendance is false as the same was addressed to Evans Rutto, a Human Resource Officer, who was responsible for staff attendance register and the communication was copied to himself and Brenda Maina yet the addresses are John, Gideon and Ismail. That in this regard there is no way he can be held culpable for a responsibility that does not concern him directly, yet there was a different person in charge and he was copied for information.
11. It was the claimant's further testimony that the allegations that he unilaterally reviewed the salary of an employee is false and not correct since at no time did he unilaterally do such a review. He distanced himself from the email communicating the salary review and averred that he neither authored nor is he aware of the same. He further stated that he was not even at work on that day and that as a long standing human resource practitioner, there was no way he would have done an email to review any employee's salary as he was the custodian of Human Resource policies and was aware that it was only the Managing Director who had the sole responsibility to review salary.



12. The claimant further stated that the respondent had withdrawn his laptop two weeks before the said email was written and the desktop he was using had no password and any one could access the same and write such an email with a view of pinning him down.
13. It was his further testimony that on 13<sup>th</sup> April, 2021 he was on duty throughout the day at the Intex Business Center along Mombasa Road and the same could be confirmed from the staff clocking reports and vehicle booking at the Gate by the security personnel, which documents are within the custody of the respondent. That his immediate supervisor did not contact him on that day and that he received the letter of termination by email.
14. That his summary dismissal was a predetermined action which was taken without any fidelity to the law and heavy punishment without any justification. That the respondent had no reason to terminate him and never gave him any notice to show cause to enable his respond to any issue or misunderstanding that it may have had with him. That further, he was not cautioned, warned or called for a disciplinary hearing prior to his termination.
15. In further testimony, the claimant testified that prior to his engagement, he was gainfully engaged at Mastermind Tobacco (K) Ltd, earning a lucrative salary before he was handpicked by the respondent. That having been employed in July, 2017 and confirmed on permanent appointment without an extension of probation, was a true testimony that he was a good and diligent worker.
16. In summing up his testimony, the claimant asked the Court to allow his claim as prayed.

#### **Respondent's case**

17. On its part, the respondent called oral evidence through Mr. Samit Ghelot who testified as RW1. He identified himself as the Managing Director of the respondent and stated that he was fully conversant with the facts giving rise to the claim. He also adopted his witness statement and documents filed on behalf of the respondent to constitute his evidence in chief. The said documents were also produced as exhibits before Court.
18. RW1 told Court that he was aware that following a successful interview with the respondent, the claimant was offered employment vide a letter dated 18<sup>th</sup> July, 2016, to serve in the position of Deputy Human Resource Manager.
19. That by a contract of employment dated 8<sup>th</sup> December, 2016, the claimant was confirmed and held the position of acting Human Resource Manager – Senior Management Level. That the claimant was reporting to him and was earning a monthly basic salary of KShs.255,000, owing to the fact that the then Human Resource Manager had taken an extended leave of absence.
20. That the claimant's terms and conditions of employment were governed by the contract of employment dated 8<sup>th</sup> December, 2016 and the respondent's Rules and Regulations in force from time to time to which the claimant committed to observe and which documents formed an integral part of his terms of employment.
21. It was RW1's further testimony that on or around 16<sup>th</sup> January, 2017, the respondent observed frequent incidences whereby the claimant had failed to come to work or falsely stated that he had been in a different site office which was confirmed to be false and a warning letter was issued to him.
22. That the said letter which is dated 17<sup>th</sup> January, 2017 was in regards to absence and/or failure to report at required work location(s) without notification and failure to communicate his whereabouts and/or falsely representing that he was at work. That the said warning letter was delivered to him at his place of



work. That through the said warning letter, the claimant was warned that any repeat incidences would result in further disciplinary processes.

23. That further to the claimant's persistent absence from work, he willfully failed, neglected and or ignored to carry out work instructions from the respondent, thus exposing it to potential liability on unpaid terminal dues to former employees specifically with regard to one Edward Maina, a former employee of ISSACO Limited and follow up on payment of employees at Mituguu Quarry despite persistent reminders and proper command from himself.
24. It was the testimony of RW1 that on 16<sup>th</sup> February, 2017, the claimant failed to follow up attendance on site and a further warning of disciplinary action was issued to him in that regard. That despite the performance and disciplinary issues exhibited by the claimant, he tried to speak to him to amend his ways, to no avail.
25. RW1 further stated that on 12<sup>th</sup> April, 2017, the claimant unilaterally reviewed the salary of an employee without following the requisite internal policies and procedures for review of salary and obtaining the necessary approval from himself and his office. That due to these misgivings by the claimant, he willfully, carelessly and improperly performed his work thus exposing the respondent to further liability.
26. That by an email dated 12<sup>th</sup> April, 2017 to the claimant, he requested him to explain the review of salary without approval and he failed, neglected and or ignored the said email and did not respond to the same.
27. That on 13<sup>th</sup> April, 2017, the claimant without leave or other lawful cause remained absent from the work place despite several attempts by the respondent to secure his attendance.
28. That arising from the foregoing and the claimant not having been responsive to the respondent, he was summarily dismissed from the employment on 13<sup>th</sup> April, 2017 due to his careless and improper performance of his duties.
29. That in the circumstances, the termination of the claimant's services was conducted lawfully and upon following lawful procedure hence cannot be termed as unfair.
30. RW1 added that he was not aware that the claimant's laptop had been withdrawn and that he never complained regarding the same. He added that the claimant is not entitled to transport allowance as he was using company transport. That he was also not entitled to accommodation allowance as the respondent provides accommodation in its sites which are outside Nairobi and in remote locations.
31. That the claimant is not entitled to any of the reliefs sought in his Memorandum of Claim due to the fact that his employment was terminated fairly and within the law.

## **Submissions**

32. The claimant submitted that he legitimately expected to work up to retirement age, which could be extended past 60 years. That his aspirations were cut short by the respondent's illegal and unsubstantiated act of terminating him. It was further submitted that the witness statement of RW1 and his testimony before Court does not form part of the reasons for which he was terminated as the same have not been detailed in the letter of termination.
33. Placing reliance on the provisions of sections 107,109 and 112 of the *Evidence Act*, the claimant further submitted that the respondent did not discharge the burden of proof expected of a litigant in judicial proceedings.



34. In further submission, the claimant asked the Court to consider the determination in the case of *Rebecca Ann Mina & 2 others v Jomo Kenyatta University of Agriculture and Technology* (2014) eKLR. He further submitted that the respondent made generalized statements that he was careless and improperly performed his duties hence the same cannot amount to a reason for termination within the meaning of section 47(5) of the *Employment Act*.
35. It was his further submission that he was not accorded a hearing to enable him defend himself hence the respondent failed to adhere to section 41 of the *Employment Act*. To support this argument, the claimant placed reliance on the decisions in *Mary Chemweno Kiptui v Kenya Pipeline Company* and *Kenya Union of Commercial Food & Allied Workers v North Framers Sacco Ltd*.
36. On the other hand, the respondent submitted that it had a valid and fair reason to consider and subsequently terminate the claimant's services. That this was in line with the provisions of section 45 of the *Employment Act*. That in this regard, the claimant had admitted dealing with the issues at Mituguu quarry and that he paid all the employees. That this was one valid reason for the respondent to consider termination of the claimant's services. To support its argument, the respondent placed reliance on the case of *Kipkirui Chepkeres Labati v Cooperative Bank of Kenya Ltd* (2022) eKLR.
37. It was the respondent's further submission that ISSACO Limited is a sister company and since the said company had closed shop, the claimant was called upon to assist in concluding the payments to the former employees. That the delays in the payment is what led to the issuance of the demand letter from the Nyeri County Labour Office. That with regards to the unilateral review of an employee's salary, the claimant did not deny that the email correspondence of 12<sup>th</sup> April, 2017 originated from his official work email jnjeru@intexafrica.com.
38. The respondent further submitted that the claimant was granted every opportunity to defend himself against the issues raised but he chose to ignore those opportunities by either failing to respond to the email questioning the matters or by failing to show up at work so that the matter can be pursued further. That the respondent did all it could to accord the claimant an opportunity to be heard but he was unavailable.

### **Analysis and determination**

39. Flowing from the pleadings on record, the evidentiary material placed before me as well as the opposing submissions, the Court singles out the following issues for determination:
- a. Whether the respondent had a justifiable reason to terminate the claimant's employment.
  - b. Whether the claimant was accorded procedural fairness prior to termination.
  - c. Is the claimant entitled to the reliefs sought?

### **Justifiable reason?**

40. Section 43(1) of the *Employment Act* (Act), requires an employer to prove reasons for termination, and in absence thereof, such termination is deemed to be unfair. What's more, section 45 (2) (a) and (b) of the Act, 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.



41. This legal position has been reaffirmed time and again by Courts. For instance, in the case of *Chairman Board of Directors (National Water Conservation and Pipeline Corporation) v Mesback M. Saboke & 2 others*, Nairobi Civil Appeal No 241 of 2015, where the Court of Appeal was held as follows:

“In light of the above provision, termination of employment will be unfair if the court finds that in all the circumstances of the case, it is based on invalid reasons or if the reason itself or the procedure of termination are themselves not fair. Section 43 of the *Employment Act* deals with proof of reasons for termination placing the burden on the employer to prove the reasons for termination failure to which termination is deemed unfair within the meaning of section 45.”

42. The reasons for which the claimant was dismissed from employment can be discerned from his letter of summary dismissal which is couched in part: -

“...due to careless and improper performance of work which forms the nature of and is your duty under your contract”

43. What manifests from the claimant’s letter of termination is that he was accused of careless and improper performance of work.

44. Applying the provisions of sections 43(1) and 45(2) (a) and (b) of the Act, the respondent was required to prove the fairness and validity of the reasons given for the claimant’s termination.

45. The respondent maintained that the reasons for the claimant’s termination are fair and valid. To support its case, the respondent proceeded to highlight several incidences in its defence in which it alleges the claimant carelessly and improperly performed his work.

46. In this regard, the respondent alleged that the claimant failed to carry out work instructions, thus exposing it to potential liability on unpaid terminal dues to one Edward Maina a former employee of ISSACO Limited. The claimant disputed this assertion and stated that he was not in charge of and was not responsible for the payments of employees of the said ISSACO Limited, which he termed as a separate company hence was not responsible for its operations.

47. In view of this apparent contest, it is imperative to revisit the evidence on record. The respondent exhibited an email of 17<sup>th</sup> December, 2016, addressed to the claimant with the subject being, “Edward Maina payoff”. The same is couched as follows:

“Hi John,

Please see below. I had requested from you to arrange a meeting on the below a while back- due to delays we now have the below summons.

Please advise.

From the documents I have seen Edward Maina has had 73 days of outstanding leave + 1 month’s salary paid in lieu of notice-have you checked all these items?

Kindly arrange the meeting for the staff arrears as requested a number of items. In addition, to the above, you also have to brief us on Mr. Yagnesh Patel.

Thanks.

Miten Shah”



48. On the same issue, Mr. Miten through another email of 27<sup>th</sup> January, 2017, referenced “Terminal Dues Owing to Edward Maina” addressed the claimant and copied other persons, as follows:

Dear John,

I had requested you some time now to prepare a list of all pending termination & arrears items, including that of Edward Maina, with calculations and to arrange a time to meet with MD so that this can be reviewed and the way forward agreed.

Can you kindly arrange for this as soon as possible without further delay.

Thanks.

Miten.”

49. It is worth noting that the claimant did not dispute receiving the communication above though his official email address. Further, the claimant did not give the rationale as to why he was being addressed on issues relating to the said ISSACO Limited.
50. Indeed, if at all the claimant had no connection or responsibility towards the said ISSACO Limited or its employees, he did not put the same in writing by way of a response to the email communication. This is moreso in view of the fact that he was addressed directly in the email communication and given instructions by his seniors at the respondent company, to act in regards to the dues payable the said Edward Maina.
51. Therefore, judging by the email communication exchanged in this regard, the claimant’s assertions that he did not have any responsibility in regards to payment of dues of the said Edward Maina who was a former employee of ISSACO Limited, do not sound plausible.
52. The respondent has further alleged that the claimant unilaterally reviewed the salary of one employee by the name Mr. Mathenge. That the claimant failed to follow the requisite internal policies and procedures for review of salary and obtain approval from the respondent’s managing director. On his part, the claimant disputed the respondent’s assertion and specifically, denied writing the email of 12<sup>th</sup> April, 2017, which communicated the salary review to the said Mr. Mathenge. The claimant further stated that by then, his laptop had been withdrawn and he was away in Chuka. He further stated that at the time, he was using a desktop which was accessible without a password.
53. The genesis of the dispute herein is an email of 12<sup>th</sup> April, 2017, emanating from jnjeru@intexfarica.com. I will reproduce the same as hereunder:

“Dear Mathenge,

Further to your inquiries regarding the review of your salary.

Kindly note that the management has considered and approved your request for salary review.

Am glad to inform you that your new gross salary will be Kshs 200,000.00 (two hundred thousand shillings) with effect from from 01<sup>st</sup> April, 2017.

Formal written communication will follow by next week,

Congratulations on this upward review.”

54. As stated herein, the claimant has denied writing the email communicating the salary review to Mr. Mathenge.



55. It would seem that upon dispatch of the impugned email, there were reactions to the same from three persons in the respondent company. In this regard, Mr. Pooran Shah addressed the claimant as follows:

“Dear John,

I am shocked to go through your this (sic) confidential email to Mathenge and copied to me among others. You came to me to discuss the matter and I asked you about the appraisals received from Ismail and I marked for comments from RST and Lalit. You agreed to put all together and bring back to me with other candidates on Monday. You never came back to me. What kind of pressure forced you to convey this email to Mathenge when you have not completed the process by taking MD approval. You are well familiar with the system in the company.

Please explain.

Thanx.”

56. On the same note, RW1 addressed the claimant as follows:

“Hi John,

On what basis was this salary increased? There are certain policies that need to be followed for reasons that can be explained if you wish.

However, you continue to operate in a manner that is compromising the staff and companies position.

All the best.

Samit”

57. Still on the same issue, Mr. Amit wrote:

“Hi John,

Did you source MDs approval on below? Just five minutes back Brenda brought this approval note to me for my signatures and to source MDs signature therfter. I returned that note as there was no performance appraisal form in support of this request.

Let me know if you have discussed and sourced MDs approval separately.

Regards

Amit.”

58. As stated herein, the claimant denied writing the email in question. Nonetheless, he did not deny that the address jnjeru@intexafrica.com, through which the email was dispatched, belonged to him. Further, he did not dispute receiving the emails from Amit, Pooran Shah and RW1, in connection to the impugned email.

59. Further, despite the claimant’s assertions, he did not tell the Court what he did upon noting that his email address was used to communicate the salary review to Mr. Mathenge. If it is indeed true that the email was sent without his approval, one would expect that upon receiving the reactions from Amit, Pooran Shah and RW1, the claimant would immediately distance himself from the said email and set the record straight. There is no evidence he did this.



60. I further find the claimant's assertion that he could not have written the email as his laptop had been withdrawn, to be rather odd. This is why. In this day and age, technology is so advanced that emails are accessible through other technological devices including mobile phones. As such, one does not need to have a laptop or a desktop for that fact, in order to communicate through email.
61. In addition, the claimant's assertion that he was not at work on that day, does not hold water given that emails are sent by electronic means through a network system. Essentially, this means that communication through email can be effected from anyplace subject to a working device and internet connectivity.
62. Further, it is apparent that by his assertion, the claimant is implying that he was impersonated or rather someone obtained unauthorized access to his email. No doubt, this is serious and ordinarily, it is expected that the claimant would have taken appropriate action. However, he did not state what steps he took on his part to remedy the situation.
63. It is further evident that the issue of Mr. Mathenge's salary review was not new and did not come out of the blues. As per Mr. Amit's email, the claimant had discussed the issue previously with him and he had been given the way forward.
64. The foregoing observations casts doubt on the claimant's version of events, that he did not write the impugned email of 12<sup>th</sup> April, 2017, communicating the salary review to Mr. Mathenge.
65. The foregoing lapses in respect of the claimant's performance of duty does not portray him as a prudent employee. Would a reasonable employer commence disciplinary action against him? I think so. I am fortified by the determination in the case of *CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona* [2015] eKLR where the Court of Appeal in assessing the reasonableness of a decision taken by an employer, considered the following passage from the *Halsbury's Laws of England*, 4<sup>th</sup> Edition, Vol. 16(1B) para 642: -

“...In adjudicating on the reasonableness of the employer's conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide whether it would have dismissed on those facts; it must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts. The basis of this approach (the range of reasonable responses test) is that in many cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted . If the dismissal falls within the band, the dismissal is fair; but if the dismissal falls outside the band, it is unfair.”

66. Based on the circumstances of the instant case, any reasonable employer would have considered taking disciplinary action against the claimant. Accordingly, the Court finds that the respondent had a valid and fair reason to commence disciplinary action against him.

### **Procedural fairness?**

67. Pursuant to section 45 (2) (c) of the Act, an employer is required to comply with the provisions of fair process and prove that it accorded an employee a fair hearing. The specific requirements of a fair process are provided for under section 41 of the Act. In this regard, an employer is required to notify



an employee of the intended termination, the reasons thereof in a language he or she understands and in the presence of another employee or a shop floor union representative.

68. This process was aptly summarized as follows by the Court of Appeal in the case of *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR:

“Four elements must thus be discernible for the procedure to pass muster: -

- i. an explanation of the grounds of termination in a language understood by the employee;
- ii. the reason for which the employer is considering termination;
- iii. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- iv. hearing and considering any representations made by the employee and the person chosen by the employee.”

69. Whereas the claimant has contended that he was not given a hearing prior to being terminated from employment, the respondent holds differently and avers that the claimant’s termination was pursuant to lawful procedure.

70. Applying the provisions of section 41 and the dicta in *Postal Corporation of Kenya v Andrew K. Tanui* [*supra*] to the case herein, I note that the respondent did not exhibit evidence through which the claimant was asked to render an explanation in regards to the allegations against him. In addition, there is no evidence that the claimant was invited to appear for a hearing so as to defend himself and give his side of the story in answer to the allegations.

71. Indeed, from the text in the claimant’s letter of termination, it is evident that this is a case where the facts speak for themselves. The letter reads in part:

“you are hereby notified with effect from 13<sup>th</sup> April, 2017, which is your last working date, your service with Intex Construction Limited have been summarily terminated due to careless and improper performance of work ...”

72. What manifests from the said letter is that the claimant’s dismissal was summary and took effect the same day. There was no notice or reference to a process akin to the one contemplated under section 41 of the Act.

73. Despite its assertions, the respondent did not demonstrate the manner in which the claimant was given an opportunity to defend himself. The email communication on record is not what is contemplated under section 41 of the Act. If anything, it appears like ordinary office communication.

74. Section 41 is very explicit as to the procedural steps an employer ought to undertake, in order to comply with the requirements of a fair process.

75. I further wish to point out that pursuant to the provisions of section 41(2) of the Act, it is evident that the process under section 41(1) is also applicable to cases of summary dismissal. Therefore, the respondent had no shortcut.

76. Despite having a justifiable cause to terminate the claimant’s employment, it had to comply with the provisions of section 41 which as couched, are mandatory.



77. In light of the foregoing, I am led to conclude that the process applied by the respondent in effecting the claimant's termination from employment was unprocedural hence rendered the termination unlawful.
78. What reliefs then avail to the claimant?

### **Appropriate Reliefs**

79. As I have found that the respondent has justified reasons to terminate the claimant but applied the wrong process contrary to the law, I award him nominal compensatory damages equivalent to one (1) month of his gross salary. This award further takes into account the length of the employment relationship.
80. The claimant is further awarded one month's salary in lieu of notice pursuant to clause 26.1 of his contract of employment.
81. The claim with regards to transport allowance, communication allowance, night out allowance and payment in lieu of leave, are hereby declined for want of proof. Being specific claims, they ought to have been proved by way of evidence. Indeed, the claimant has not indicated the manner in which he arrived at the global figures under each of the heads claimed. The figures appear to have been plucked from the air.

### **Orders**

82. In the final analysis, I enter judgment in favour of the claimant against the respondent and he is awarded:
- a. Compensatory damages equivalent to one (1) month's gross salary being Kshs 255,000.00.
  - b. One month's salary in lieu of notice being Kshs 255,000.00.
  - c. The total award is Kshs 510,000.00.
  - d. Interest on the amount in (c) at Court rates from the date of Judgment until payment in full.
  - e. The respondent shall also bear the costs of this claim.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2022.**

.....  
**STELLA RUTTO**

**JUDGE**

Appearance:

For the Claimant Ms. Omwenga

For the Respondent Ms. Kavaji

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**

