



**Lwoba v Parliamentary Service Commission (Cause 2357 of 2017)
[2022] KEELRC 13096 (KLR) (1 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13096 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2357 OF 2017
AN MWAURE, J
NOVEMBER 1, 2022**

BETWEEN

HENRY S LWOBA CLAIMANT

AND

PARLIAMENTARY SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Claimant filed the memorandum of claim dated the 7th June and filed on the November 27, 2017 alleging unlawful and unfair termination. He says that he was employed by the Respondent on the December 6, 2005 on permanent and pensionable terms hitherto before he had served on contractual basis.
2. That on the March 11, 2015 while serving faithfully and diligently he was requested to brief the Director General Parliamentary Joint Services on issue that related to procurement of Public Outreach Publicity material Western Region. The Claimant avers that on the very day he made very elaborate explanation to the Director General vide his internal memo of the same date and a letter enclosing the proceedings or minutes of the meeting.
3. The Claimant says that on the March 17, 2015 he was served with a letter of the same date requesting him to show cause as pertains to the various activities associated with the procurement of the Public Outreach Publicity material. The Claimant asserts that he was called upon to show cause particularly on matters of dishonesty and uttering false documents and obstruction contrary to Section 135 of the *Public Procurement and Disposal Act* which the Claimant did on the March 30, 2015.
4. The Claimant asserts that the clerk to the Respondent wrote back to the Claimant on the April 2, 2015 stating that he was not satisfied with the Claimant's explanation leading to the said issue being forwarded to the Respondent for disciplinary resolution. The Claimant says that as a result he received and replied to several queries raised by the Respondent and on the June 15, 2015, the Respondent



formally presented charges against the Claimant to which he duly responded. The Claimant says on the August 27, 2015 was handed a letter of dismissal from employment of the Respondent.

5. The Claimant states that through-out the exercise he did not see his accusers but was confronted with write ups and letters making allegations to which he dutifully replied. The Claimant says that after being subjected to an alleged disciplinary process he was dismissed and requested to hand over all the materials back to the Respondent.
6. The Claimant says that he exercised his right of appeal as outlined in the Parliamentary Service Commission regulation after which the Respondent maintained that there was no new evidence that could lead to change of earlier decision made. On the February 9, 2015, the Claimant says he exercised his right to make an appeal against the decision to terminate his employment in accordance with Parliamentary Service Commission which appeal was duly delivered and received by the Respondent. The Respondent refused to consider the same and so his dismissal became eminent.
7. The Claimant avers that the disciplinary procedure and the decision to terminate his employment were ill thought out and malicious as:-
 - a. He did not originate the procurement process, the document was authored by the printing department,
 - b. The documents were not in custody of the Claimant but in possession of the requester and the Claimant's work was only to inspect the documents,
 - c. The materials were bulky and no one could hide them or obstruct any person who wanted access to them, the said materials were received and/ or delivered while the Claimant was on leave,
 - d. The formal acceptance of the materials was conducted vide the meeting held on the 04/02/2014 and no query was raised on the material.
8. The Claimant as a result prays for judgment against the Respondent as follows;
 - a. Salary for the month of August 2015 Ksh 246,000/=
 - b. An amount equivalent to 10% increase annually on the salary accumulatively to the retirement age.
 - c. Leave due earned but not paid of ksh 246,000/=
 - d. Leave dues for the balance of the employment period of 16 years.
 - e. Reinstatement in the employment of the Respondent with back pay with full benefits and increment to the date of reinstatement.
 - f. Salary for the unexpired period of service of 16 years at the rate of ksh 246,000/= together with other increment
 - g. Salary for the unexpired period of service of 16 years at the rate of ksh 246,000/= together with any other increment.
 - h. Severance pay for the years worked at the rate of ksh 123,000/= per year from the January 23, 2006 to the August 27, 2015.
9. The Respondent filed the memorandum of appearance dated the February 26, 2018 and filed on the February 28, 2018. The Respondent then filed the response on the March 12, 2018. Respondent avers



that the Claimant who was the procurement officer at the time was dismissed from the service owing to irregularities in the procurement materials for the public outreach programme and the breach of the *Public Procurement and Disposal Act, 2005* and having found the Claimant's conduct to have been unlawful, the Claimant was dismissed from the service and there was no malice towards the Claimant.

10. The Respondent says that the Claimant's dismissal was in line with the *Constitution*, the *Employment Act*, the *Fair Administrative Act* and the *Parliamentary Service Act* and the Regulations thereunder. The Respondent prayed that the suit be dismissed with costs to the Respondent.

Claimant's Evidence in Court

11. CW1 Henry Lwoba gave sworn testimony that he was employed by the Respondent on the September 27, 2004 as a personal assistant to the commissioner. He says that by the time he was terminated he was holding the position of procurement officer and was to perform procurement duties and was inspection officer.
12. He says that on the 17/3/2015 a notice to show cause was given to him pertaining to public outreach procurement materials. According to him the claims made were of dishonesty, uttering of a document and hindering of the tendering Committee from performing its duties. He testified that he signed the form s11, a counter requisition form knowing material was not received by user Dept Printing Department. The form s11 is a form that is written to the user Dept to obtain goods from the store. The user Department consumes material and in this case was the printing Department.
13. The Claimant says that he was not guilty of signing this document as far as his duties were concerned. The s11 form was not forged document. It is as he sees it a counter requisition form and he only authorised user to receive the materials which he says were brought to parliament. He says the Respondent accused him of obstructing inspection committee on goods delivered.
14. The Committee according to him could have inspected the goods and there was no obstruction. He says they did not go to where the goods were because the chair said she did not authorise the procurement of the goods. The chair said the goods would not be inspected without authority of the user. The Claimant said that the goods were locked in the Printers Department and were to be used in that department. He also says the goods were not locked in the store.
15. The witness confirmed he attended the disciplinary meeting on the July 22, 2015 and in the disciplinary meeting according to him were several committee members who asked him to explain what he knew about procurement. He testified that he confirmed what he knew about procurement and he explained the right procedure was followed. The disciplinary meeting according to him took less than 10 minutes following which he was issued with a letter of termination with no person giving any evidence against him.
16. The witness stated that he did not see one George Arum and there was no opportunity for cross-examination. He said there were no witnesses or anybody who made the allegations against him. Further he told the Court that he did not know the allegations were made against him when he went to the disciplinary meeting. The committee, he says, recommended that his salary be withheld for one year for the recovery of any loss. He testified that the Committee never recommended that he be terminated from his job and the PSC according to the witness lost nothing to charge him since the materials were delivered.
17. On cross-examination he said that he was a procurement officer and a member of opening committee. He was also secretary to the inspection and acceptance committee. The witness mentioned getting involved in the outreach materials and signed the S11 forms to authorise issuance of goods. He said



there was someone in charge of the stores. Claimant said if goods are in the store the store man releases them and that in this case there was no space at the store so the goods were kept elsewhere.

18. The Claimant also informed the Court that if goods are received by user or in the store the form is signed that goods are received and user signs another form. He says that when he signed S11 the goods had been delivered and were in available space though they had not been inspected. He told Court the chair said that the goods could not be inspected because they were not authorised by the user. The inspection according to him was not done on delivery therefore.
19. The witness said that he was notified of the charges against him when he received the letter of NTSC and was given time to respond to the accusations against him. He conceded that he did appear before the disciplinary committee. He further said that he participated in the procurement process and was told to explain what he did by the committee. He insisted that the Respondent did not follow the regulations as laid down.

Respondent's Case

20. The Respondent produced the affidavit sworn on the October 14, 2019 by Mr Nyegenye Jeremiah, secretary to the Parliamentary Service Commission as evidence in chief. Oral evidence was not adduced in Court by the Respondent.

Claimant Submission

21. The Claimant submits that the law holds that the reasons for termination must be cogent and must be proved by employer. The charges according to him were basically under Section 353 of the Penal Code and Section 135 of Public Procurement Act. These were charges he answered to following issue of the NTSC and the same ought to be the charges reflected on at the decision vis-à-vis the evidence adduced by the parties.
22. It is submitted that Section 353 is about knowingly uttering false documents and the document alleged to have been uttered is the form S11. The perusal of that form and the evidence of the Claimant shows the form never originated from the Claimant but the requester which was the user department through one Mr Kisia. The Claimant's signature was to signal the delivery of property and so the Claimant to this extent is totally innocent of the offence of uttering the document. The Claimant says that the document was not in any case false.
23. On obstruction contrary to Section 135 of the public procurement and disposal act the Claimants admitted he was secretary to inspections and acceptance committee. He says the agenda of inspection of western Kenya publicity material was scheduled by committee pending internal audit and so he did not obstruct it.
24. Claimant says even if the Respondent had got it right, there was still no obstruction as on pg 28 of the Respondent's bundle one Mrs Martha Chege raised the matter in a meeting of the inspection and acceptance committee held on the February 19, 2015 where it was resolved that the goods will not be inspected until they get authority from the user and the user here is Mr Kisia. He says in any event the document was not false.
25. The Claimant says that this confirms that the goods had been delivered and that what held back the inspection and acceptance was authority from the user, Mr Kisia. And if so where, how and when did the Claimant obstruct the Committee and more so as the property were all in the open place at the stairs and nobody could have blocked anyone from seeing and inspecting them. The offence is accordingly unproven.



26. The Claimant further contended that the proceedings conducted violated the right to fair trial. He says the notice to show cause was premised on two offences under Sections 353 and 135 of the Penal Code and Public Procurement Act respectively and the particulars thereof whilst the proceedings were on issues that did not relate to the two offences at all as it appears the issue is on question on opening of quotation and addition of E solution to the list of suppliers. This, the Claimant says is a new concept in the trial for which the Claimant was never given an opportunity to answer to contrary to what Article 47 of the Constitution of Kenya stipulates.
27. On whether the process as required by the law was followed, the Claimant submits that there was a violation of the law pertaining to Fair Administrative Action Act in that the Claimant did not see his accusers who were the witnesses, he did not know what they testified about because he only came to see their testimony when the Respondent compiled their statements yet the witnesses accused the Claimant of adding E solution to the list and Mr Kihuro and Meshak Ogina stated they witnessed opening of four quotations from various firms on the list.
28. The Claimant also submitted that the offence which the Claimant was charged and invited to show cause did not reveal either in their particulars or the charge any issue relating to E solution and the procurement of the entity. In the charge of procurement according to the Claimant, Mr Keith stated that one Mr Kamande is the one who added E solution.
29. The Claimant argues that in the Report of the Welfare Committee and the Recommendation by the Commission Committee on Staff Welfare pages 34 and 37 of the Respondent's bundle, the charges that are indicated to have been brought against the Claimant are based on the Parliamentary Service Commission Regulations, 2002 and on account of gross misconduct in terms of regulations 25 a, b, c, d, e, f, g, h and I and the charges are at par with the charges which the Claimant answered to in the notice to show cause dated the March 17, 2013. These are new charges from the ones which are in the Notice to Show Cause which amounts to trial by ambush. The charges in the notice to show cause dated June 15, 2015 refer to regulation 24 of parliamentary service regulation. The Claimant submits that Sections 43 and 45 of the Employment Act were not complied with therefore under the circumstances.
30. The Claimant relied on the case of Stanley Amuti Mombo versus Acesa Civil Appeal No 184 of 2018 where it is said that the Court of Appeal observed that failure to call a witness is tantamount to admission of the allegations made by the adversaries. The Claimant contends that it was crucial for the Respondent to call all those listed in the report to the committee who testified against the Claimant and failure to do so is interpreted as an indication of knowledge that opponent's evidence was true, or at least that the tenor of the evidence withheld would be unfavourable to his client's cause/case. The people named as witnesses worked in Parliament and no explanation was given why they could not be called as witnesses.
31. The Claimant concluded by saying that the Disciplinary Committee never reached a verdict in the Claimant's case and that the attachment marked JN 10 dated August 2015 is not a report of the disciplinary Committee to the PSC, the same is a Commission Paper by the commission committee on staff welfare and that in the paper the Commission is writing to the PSC after discussing a report by the Disciplinary Committee. The document does not originate from the Disciplinary Committee.

Respondent's Written Submissions

32. The Respondent argues that the Claimant was dismissed from the service owing to irregularities in the procurement of materials for the public outreach programme and the breach of the Procurement and Disposal Act 2005, for gross misconduct for contravention of regulations amounting to disobedience, dishonesty, falsehood, negligence and misuse of Commission's property.



33. The Respondent submits that it considered the disciplinary proceedings against the Claimant based on the provisions of Regulation 34 of the [Parliamentary Service Commission Regulations 2002](#) and complied with the procedure thereto and as such the Claimant's allegations of unfair and unlawful termination of employment are unfounded in law and misadvised.
34. The Respondent argues that the threshold that has to be met is procedural fairness as stipulated under Sections 41 and 45 of the [Employment Act](#). The Respondent relied on the Court of Appeal case of [Ken freight EA Limited versus Benson K Nguti](#) (2016) eKLR where it is said the Court held that the employer had met the requirements set out under Section 41 of the [Employment Act](#) as the Respondent had a fair and valid reason to terminate the Claimant's employment on account of gross misconduct, dishonesty and uttering of a false document and that the proper procedure was followed in dismissing him from service.
35. The Respondent's submissions are also that the Claimant was afforded an opportunity of being heard and the opportunity to be heard need not be an oral hearing and a person who submits written representations is deemed to have been heard and to have been accorded a fair hearing and therefore the opportunity to respond to the complaints against the Claimant amounts to fair hearing. The Respondent relied on, *inter alia*, the case of [Kenya Revenue Authority versus Menginya Salim Murgani](#) 2010 eKLR for the proposition that the fairness of a hearing is not determined solely by its oral nature. It may be conducted through an exchange of letters.
36. The Respondent further submitted that the rules of the Court allows either party to give evidence orally, by affidavit or witness statement. The Respondent says that the relevant provision is Rule 21 of the [Court's Rules](#) which provides that the Court may proceed to determine the suit before it on the basis of pleadings, affidavits, documents filed and submissions made by the parties and evidence may be given by an affidavit. The Respondent says it made the application and was allowed to adduce evidence by way of an affidavit.
37. The Respondent also submitted on the remedies. The Court has gone through the same and shall consider the rival submissions appropriately.

Issues for Determination

- a. Whether on a balance of probabilities the Respondent had reasonable grounds to believe that the Claimant engaged in the alleged malpractice entitling it to terminate the contract of employment.
- b. The remedies, if any, the Claimant is entitled to.

Determination

38. The [Employment and Labour Relations Court Procedure Rules](#) allow the use of affidavits for raising evidence at trial. It provides under Rule 21 that:

“The Court may either by an agreement by all parties, or on its own motion, proceed to determine a suit before it on the basis of pleadings, affidavits, documents filed and submissions filed.

There was no objection by the Claimant to the use of the affidavit by the Respondent in the present case. The use of the affidavit by the Respondent is accordingly not improper in the present case and the Respondent was allowed to present an affidavit in place of viva voce evidence.



39. Section 41(1) of the *Employment Act 2007* provides as follows: -

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

40. Section 43 provides as follows:

“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of the Section. Section 43(2) enacts that the reason or 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.”

41. Section 45 of the Act provides in part as follows: -

- (1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove: - (a) That the reason for the termination is valid;
 - (b) That the reason for the termination is a fair reason: - Related to the employees conduct, capacity or compatibility; or -Based on the operational requirements of the employer; and -That the employment was terminated in accordance with fair procedure.”

42. Section 47(5) of the Act provides as follows: -

“For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

43. Section 44 (4) (g) of the Act decrees that: -

“Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily under subSection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this Section, constitute justifiable or lawful grounds for the dismissal if:- (g) An employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer’s property.”

44. The Court of Appeal in *Kenya Revenue Authority versus Rewel Waitihaka Gitabi & 2 others* [2019] eKLR said as follows: -

“The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist,” causing



it to terminate the employee's services. That is a partly subjective. The Court, quoting from Halsbury's Laws of England went further to comment as follows: - "...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."

45. In *Thomas Sila Nzivo v Bamburi Cement Limited* [2014] eKLR the Court held that:

"The Respondent had reasonable and sufficient grounds to suspect the Claimant of having acted to the substantial detriment of the Respondent and its property, and was justified in summarily dismissing the Claimant under Section 44 [4] [g] of the Employment Act 2007. The Employer was not required to have conclusive proof of the Claimant's involvement; it was only expected to have reasonable and sufficient grounds. The physical audit, the discovery that no oil was available even as the Claimant protested, he received such oil..... all gave the Respondent reasonable and sufficient grounds to act against the Claimant."

46. The Claimant was one of the officers of the Respondent who were subjected to disciplinary proceedings on alleging of flouting the various regulations in the procurement of printing material. The NTSC dated the March 17, 2015 was that he signed the S11 form counter requisition form and issue voucher purporting to issue printing items from the PSC store whilst knowing that the items had not been delivered to the store.

47. This, the Respondent stated, was in breach of Section 353 of the *Penal Code*. In the minutes of the Disciplinary Committee, the charges have been variously framed as failure or refusal to perform unlawful duties, contravention of regulations, disobedience, falsehood, insubordination, negligence and misuse of the commission's property. The particulars of the charge, however, remained the same as can be seen in the statements that is signing the counter requisition form S11 before the goods are received in store.

48. The Claimant was also charged with obstruction contrary to Section 135 of the *Public Procurement and Disposal Act*, on account that he hindered the inspection and acceptance committee of the Parliamentary Service Commission as established under the *Public Procurement and Disposal Regulations, 2006* from carrying out its duty by failing to refer items received to the inspection and acceptance committee. In the minutes, the charges remained generally labelled as in the first charge, but with different particulars in the statement of witnesses. The allegation is on adding the 5th quotation for E Solution which was unauthorised.

49. It is also clear now that giving a valid reason by the employer for terminating an employee is mandatory and is not to the choice of the employer. The Claimant was issued a show cause letter and was accused of contravening Section 353 of the *Penal Code* and Section 135 of *Public Procurement and Disposal Act*. The Claimant wrote a response on March 30, 2015.



50. The Respondent being dissatisfied with the claimant's response sent him a letter dated June 15, 2015 and so accused him of gross misconduct contrary to regulations 24(1) of parliamentary service regulations. He was informed disciplinary proceedings would be commenced against him. He was accused of signing forms S11 purporting to issue goods to the Respondent knowing very well the same were not delivered to the stores.
51. The disciplinary meeting happened on August 2015 and several witnesses testified against the Claimant and Paul Sang and Evans Kisia. The Claimant was not represented in the meeting by a fellow worker in the meeting or a shop floor union representative. He admits he was not given a chance to ask any questions. In his evidence he says the meeting took ten minutes.
52. Initially it was recommended he should be reprimanded and surcharged. This was the board recommendation. However the committee on welfare held that he should be summarily dismissed.
53. The Claimant appealed on September 10, 2015 and the same was dismissed on January 20, 2016.
54. The Court has considered the evidence adduced by the respective parties, the submissions and the pleadings and find the Respondent has brought conflicting charges against the Claimant. They accuse him of signing form S11 for receipt of goods which were never delivered. There is no evidence to clearly show whether those goods were received and what was the loss if any to the Respondent.
55. The Respondent further accuses him of participating in irregular tendering process and also he is accused of tender opening process as per memo dated May 20, 2015 and once again he responded by his letter of May 29, 2015. He was also accused of blocking the committee from inspecting the goods and his response is that the goods were stored near the stair case and not in the store as there was no room in the store. He says at no time did he obstruct the goods from being inspected.
56. All these seems to point to inaccuracy if not falsehood from the Respondent because in one breath they claim the goods were not delivered and then allege the Claimant obstructed the committee from inspecting them.
57. The report by the various witness in the disciplinary meeting also seem contradictory. One Mr Arum stated Henry Lwoba altered summary of tender/quotation documents to add E solution. David Kithua said he was not aware when the solution was added and Alloys Tinega said Lwoba signed S11 form. All these contradictions raises eyebrows as to what transgressions the Claimant had committed to warrant summary dismissal.
58. The Court also finds the Respondent did not comply with *fair administrative action act* as the Claimant was not presented with his witness. He says he only saw their testimony through the Court documents.
59. Having not been given an opportunity to present his witness or a shop floor union representative as provided in Section 41 of the Employment Act the Court is of the view that the Respondent failed to follow the mandatory procedure provided in employment laws.
60. It also has failed to follow the procedure mandated in Section 41 of the Employment Act. In the case of Walter Onur Ogal vs Teachers Service Commission Cause No 955 of 2011 the Court held that in order for termination to pass the fairness test it ought to be shown that there was not only substantive justification for the termination but also procedural fair.
61. The Court further finds the Respondent did not comply with Section 47 of the constitution and Section 4 and 5 of The Fair Administrative Actions Act. In particular the Respondent failed to follow



fair procedure in dealing with the termination of employment of the Claimant as he did not give him fair chance to interview his witnesses and to present his case as per clear accusations.

62. The Court has also held that it is not enough to terminate employment by notice or payment in lieu of notice thereof. Termination should be based on valid reasons and fair procedure should be followed. (see *Kenfreight EAL Limited vs Benson K Nguti* 2016 eKLR.
63. Seeing the Respondent failed in following fair procedure as per *Fair Administrative Actions Act* Sections 4 and 5 and the employment laws especially Sections 41 and Section 45 of the *employment act* the Court rules that the Claimant was wrongfully and unfairly terminated. Judgment is entered in his favour.
64. Having ruled in favour of the Claimant I award him the following remedies:-
 1. Salary for August 2016 Kshs 246,000/-
 2. Leave days earned not taken Kshs 246,000/-
 3. The other prayers are not tenable and will not be granted as there is no provision of such as in the letter of employment and in the employment laws and in particular:-
 - a. Salary equivalent to 10% increment annually
 - b. Leave dues for balance of employment
 - c. Salary for unexpired period of 16 years
 - d. Severance pay not awarded as it was not declaration of redundancy and is not specifically provided in is contract of employment.
 - e. Reinstatement is overtaken by events as 3 years have expired since termination. Section 12 (vii) of Employment and Labour Relation Court.
 - f. Damages are not claimed.
 - g. Costs are awarded and interest at Court rates from date of judgment till full payment

Total awarded is Kshs 492,000/-

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 1ST NOVEMBER, 2022.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

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



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

ANNA NGIBUINI MWAURE

JUDGE

