



**Apondo v Kenya National Examination Council (Cause 261 of 2021)
[2022] KEELRC 13484 (KLR) (6 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13484 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 261 OF 2021
AN MWAURE, J
DECEMBER 6, 2022**

BETWEEN

JOAKIM OMEDO APONDO CLAIMANT

AND

KENYA NATIONAL EXAMINATION COUNCIL RESPONDENT

JUDGMENT

Introduction

1. The present claim was instituted by way of the memorandum of claim dated the April 17, 2019 and filed on the April 26, 2019 claiming unlawful and unfair termination. He says he was first employed by the respondent herein on probationary basis through the letter dated the March 11, 2013 as an ICT Officer/Systems Analyst/Programmer with effect from March 1, 2013 on a monthly basic salary of Kshs 72,250/=

Claimant's Case

2. The claimant says that at the time of his dismissal, he was earning the sum of Kshs 118,838/= and was given a letter of confirmation of appointment after the probationary period, by the respondent through the letter dated March 11, 2014. He says that on the March 29, 2016, without justification whatsoever, the respondent wrote to him stating that its board had decided to suspend him with immediate effect, premising the letter on nebulous and unsubstantiated grounds of the claimant's involvement in examination malpractices.
3. The claimant avers that the respondent wrote to him a further letter on the April 15, 2016, alleging gross misconduct, in which letter the respondent cites unsubstantiated, scurrilous and unfounded grounds of misconduct. The claimant states that despite him responding to the unsubstantiated and baseless allegations of gross misconduct alleged on him by the respondent, the respondent nevertheless



decided to dismiss him from employment through a letter dated the April 25, 2016, which dismissal was characterized in the said letter as retirement in public interest.

4. The claimant avers that the reasons advanced for his dismissal from employment do not in any way amount to any justifiable legal ground that can be premised on any law to warrant his dismissal from employment.
5. The claimant prays for the following remedies;
 - a. A declaration that the dismissal from employment by the respondent through the letter of dismissal dated April 25, 2016 was unfair and/ or illegal and or discriminatory
 - b. An order for compensation for the amount of Kshs 1,426,056.00 for discrimination.
 - c. An order for the claimant to be granted a certificate of service pursuant to section 51 of the Employment Act 2007.
 - d. Costs of the suit plus interests.
 - e. Any other relief that this honourable court may deem fit and just to grant in the circumstances.

Respondent Case

6. The respondent entered an appearance through the firm of Obura, Mbeche and Co Advocates on the May 22, 2019. The respondent says that the claimant as an employee of the respondent was subject to the respondent's code of conduct and ethics which, inter alia, required the claimant to avoid situations in which his private interest conflicted or he could reasonably conflict with or perceived to conflict with impartial fulfilment of his official duties and the public interest.
7. He was not to subject his duties to private interest, and not to influence or be seen to influence or be deemed to have influenced decisions that favour or may advantage him. That it was a condition of the claimant's employment that any breach of the terms of code of conduct and ethics could make the claimant liable to punishment including and not limited to disciplinary action.
8. The respondent further says that the claimant was also required to uphold the values and principles of public service as set out in chapter 13 of Constitution and could only remain in service of the respondent if the public had confidence in him as a public servant.
9. That in the years immediately before 2016 the respondent's operations were plagued by persistent leakage of examinations much to the dismay of the government, stakeholders in the education sector and the general public. The respondent avers that on the March 24, 2016 in an effort to contain the situation and re-establish public confidence in the Council, the Government dissolved the Council and appointed a new one. The Government at the same time instituted criminal investigations into the conduct of several employees of the respondent, the claimant being one of them.
10. The new council of the respondent had, as one of its responsibilities, to determine the suitability or otherwise of all staff members because it became apparent that some of them were involved in exam leakages. The respondent's council resolved to suspend the claimant alongside other employees to allow further investigations into the operations of the respondent and in fulfilment of disciplinary procedures.
11. That the claimant was duly suspended as per the council's resolution and the suspension was in accordance with his terms and conditions of service. That in the course of the suspension the respondent had the benefit of being briefed by the country's intelligence services and it turned out that



the claimant was a member of a well-knit group of conspirators within the respondent's outfit involved in examination leakage.

12. The respondent says that the claimant was called upon to show cause which response the respondent found to be unsatisfactory. That the council of the respondent held a meeting on April 23, 2016 at which meeting it was decided that the claimant together with other employees be retired in public interest as it was obvious that given the rate at which the confidence in the respondent had deteriorated, members of the public would continue having no faith in the respondent if the claimant together with his other colleagues were to remain involved in the management of the respondent affairs. The respondent states that it accordingly issued the claimant with the letter dated the April 25, 2016 retiring him in public interest.
13. The respondent says that the claimant having been given the notice to show cause and responded to the same, he was accorded sufficient opportunity to defend himself and therefore the requirements of justice were met.

Claimant's Evidence

14. CW1 Joakim Omedo Apondo gave sworn testimony and adopted the witness statement dated the April 17, 2019. He also adopted the documents in the list dated the same day as exhibits. He says he was employed as systems analyst and programmer on the March 11, 2014 and worked from 2013 to 2016 having initially worked on probationary basis.
15. The witness testified that he was called by the secretary to the Chief Executive Officer to go and pick a letter which was a suspension letter dated the March 29, 2016 where he was accused of exam leakages. The claimant says the move surprised him as he was in the ICT department and not production of examination materials. He stated that he thereafter left the office after handing over the laptop and all equipment. That about 2 weeks later he was told to go pick a letter dated the April 15, 2016 which was calling upon him to show cause.
16. The claimant says that his role was to renew and develop IT systems at KNEC. He says he was accused of leaking of exams and participating in practices that caused leakages of exams production. He says his work is not related to exams. He responded to the NTSC by his letter dated the April 17, 2016.
17. Claimant further says he was called to the council's offices and picked a letter of retirement on public interest and was retired effective the same date. This was on April 25, 2016. He says he was never called to any hearing and the process was never followed as in the manual. He says his salary was Kshs 118,838/= at the time of his termination. He maintained that there is a code of conduct and ethics but he says he never breached the same. He also said that he never participated in any exam leakages.
18. He says he was never given reason for the suspension but got the letter dated the March 29, 2016 explaining that he was suspended to investigate his involvement in exam malpractice and on the April 15, 2016 he got letter clarifying grounds of misconduct. He says he is not sure there was a public concern on the leakages and is not sure whether the suspension arose from those reports. The claimant added that the allegations were put to him and he responded to those allegations.
19. In re-examination he said that his response was acknowledged by the respondent in the letter of retirement. He stated that in his suspension letter he was informed further information would be addressed to him but he was never given other information. He also said he was never mentioned in the report of examination leakages.
20. RW1 Befla Jemurgor Bisen said she is the Secretary at the Kenya National Examination Council which she joined in the year 2016 and do not know the claimant in the case. She testified she was responsible



for handling legal records. She says prior to forming the Council on the March 24, 2016 there was a public outcry due to exam leakage. She adopted the witness statement dated the August 19, 2019 as evidence in chief and the documents attached to the memorandum of response as exhibits in the case.

21. In cross-examination Betta said that her work is to offer secretarial services to the Board and there is HR in charge of the employees. She said that she is the rightful person to give evidence because of the production of records. She said that all the records are availed to her and the documents emanate from HR department. She further said that the claimant was not part of the council. She stated that when examination council was disbanded 11 employees were suspended but others were retained. The claimant according to her was ICT officer whose job entailed ICT security and security of exam data.
22. She said the claimant was to assist in IPS backup and was investigated by the security agencies. The security agencies, she says, gave report that the claimant was part of the conspirators and that the reports are top secrets. She explained that she did not write the reports herself but just testified as informed. She also said that there are no specific charges preferred against the claimant.
23. The witness said that there is no malice in retiring the claimant and that after the claimant responded to the allegations he was not invited for any hearing. She also said that there was no other letter before retirement letter and there was nothing personal against the claimant.
24. In re-examination, she said that there were 11 members suspended including the claimant and there is an investigation report by the council as it is top security document which cannot be released.
25. The parties filed written submissions in support of their respective cases.

Claimant's Written Submissions

26. The claimant submits that the claimant was summarily dismissed from his employment on grounds of gross misconduct under section 44 of the [Employment Act](#) and in breach of the KNEC Human Resource Policies, Procedures and Terms and Conditions of Service Manual, 4th edition. The claimant argues that in its efforts to confuse the honourable court on the relevant manual the respondent relied on the 3rd edition whilst recognising that there was 4th edition in operation by the time the claimant was unlawfully dismissed.
27. The claimant contends that the respondent issued the claimant the letter dated the April 15, 2016 indicating the grounds for the dismissal as gross misconduct. The claimant argues, inter alia, that the grounds for termination as contained in the said letter were not valid bearing in mind that the grounds of dismissal were in form of general allegations touching on various other people and were not specific enough to be objectively determined on their validity.
28. That the grounds of dismissal as contained in the letter dated the April 15, 2016 varied and/ differed to a great extent with the job description of the claimant. The claimant says that no particular allegation raised by the respondent in the letter dated the April 15, 2016 touched on the conduct of the claimant in the course of discharging his duties.
29. The claimant submits that the respondent failed to provide any explanation to the claimant in a language that he could understand. The grounds of his dismissal as expressed in the respondent's dismissal letter of the April 25, 2016 were not specific and this failure is contrary to section 45 of the [Employment Act](#), 2007. The claimant further says no evidence was adduced in support of the grounds of dismissal.
30. The claimant further argued that the respondent's dismissal was at all times discriminatory. He argues that he was not the only officer from ICT department to have been involved in system administration



matters whilst employed by the respondent. The claimant argued that by singling him out for dismissal in the ICT department, the respondent is guilty of discrimination in line with the reasoning of the court in *Rose Wangui Mambo & 2 others v Limuru County Club and 17 others*.

31. The claimant further submitted that section 45 (4) (b) of the *Employment Act*, 2007 provides that ‘termination of employment shall be unfair where in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employee. The claimant relied on the case of *Walter Ogal Anuro v Teachers Service Commission* 2013 eKLR where the court held that for termination to pass the fairness test, there must be both substantive justification and procedural fairness and that substantive fairness has got to do with the establishment of a valid reason for termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination. The claimant also relied on the case of *Raymond Cherokewa Mrisha v Civicon Limited* 2014 e KLR Cause No 213 of 2014 for proposition that termination without valid reasons and fair procedure amounts to unfair termination.
32. The claimant also contends that the respondent did not adhere to the correct procedure in terminating the claimant from employment in what it termed as public interest in the letter dated the April 25, 2016 which included lack of a notice to show cause, lack of a fair hearing process and abrogation of the claimant’s right to appeal. The claimant submits that these procedural requirements are provided for under the procedure outlined under sections 41, 43, 45 and 47 (5) of the *Employment Act*, 2007 as well as the respondent’s Employment Manual.
33. The claimant submitted even where there is in existence retirement in public interest as a form of punishment in the Human Resource Manual, this does not take away the right of an employee to procedural and substantive justice under sections 41, 43, 45 and 47 of the *Employment Act*.
34. The claimant relied on the case of *Thomas Musila Mackenzie v Kenya National Examination Council (KNEC)* (2020) Eklr (ELRC No 87 of 2017 Nyeri) where the court said that:-

“The claimant was retired in the public interest. There is no provision in the *Employment Act* of this mode of termination of a contract of service. Retirement in public interest is therefore a form of termination of employment which is instigated by the employer and would aptly fit the description of involuntary termination. As seen in this case it does not take the character of or comply with the dictates of a disciplinary process though in some cases it may be the result of a disciplinary case. The claimant was placed on a course for a disciplinary case but before he was heard a decision to retire him in the public interest was undertaken. He had been asked to show cause and he did not write back denying the slew of allegations made against him or offer any explanation. The decision the respondent took to retire the claimant in the public interest of necessity should comply with the requirements of section 43 of the *Employment Act*.”
35. The court went further to state “the respondent had the onus to show objective and demonstrable grounds warranting the retirement in the public interest. Whereas the disciplinary process that was ongoing was not barred by the decision of the court in the judicial review application, the claimant’s termination in the public interest had to comply with the need to show objective and demonstrable grounds warranting the retirement in the public interest. Before the court there was an assertion there was a highly confidential report that allegedly inculpates the claimant. No evidence was adduced that could demonstrate the involvement of the claimant as one of those responsible for exam leakages by commission or omission. It was held in the judicial review application No 3 of 2016 by Nduma J. that the respondent had failed to accord the claimant a hearing and this was not apparently challenged on appeal. In this case the claimant has proved that the respondent violated one of the cardinal rules of



natural justice by not giving him a fair hearing before retiring him in the public interest. He is therefore entitled to recover for this unlawful and unfair dismissal. In the final analysis I enter judgment for the claimant against the respondent”.

36. The claimant also relied on the case of *Joseph Mwaniki Nganga v United Millers Limited* 2022 eKLR for the proposition that:-

“In view of the provisions of section 41 of the *Employment Act*, the employee’s right to be heard whenever an employer is contemplating termination, is a sacrosanct right. It cannot therefore, be taken away through the invocation of a termination clause. In *David Gichana Omuya v Mombasa Maize Millers Limited* [2014] eKLR the court held that the requirements of section 41 of the *Employment Act* have a long pedigree in administrative/public law and are referred as the rules of natural justice. The court finds and holds that the procedure adopted in the termination of the claimant, fell short of the statutory threshold. It then follows that the termination of the claimant was procedurally unfair”.

Respondent’s Submissions

37. The respondent submitted that retirement from public service in public interest is distinguishable from termination from service on account of commission of an employment offence against the public institution with whom the employee has a contract. In retiring an employee in public interest, the institution which has signed the employment contract with the employee is supposed to be acting as an agent and trustee of the public good.
38. The respondent submits that government security agencies conducted an elaborate and extensive investigation which culminated in a report being prepared which established that the claimant and 10 other employees were involved in examination leakages. That in the light of the claimant being adversely mentioned in the said report, the claimant was taken through a disciplinary process by the respondent and it is upon the conclusion of that disciplinary process that the respondent went ahead to retire the claimant on public interest grounds pursuant to the letter dated the April 25, 2016.
39. The respondent further submitted that it is a matter of common sense that given the secretive manner with which examination papers are set and handled any leakage of such papers would in the absence of evidence to the contrary be blamed on those involved in examination setting and handling. The leakages would either be the work of those who manage the process by engaging in covert activities or as result of negligence on their duties. That either way the claimant was a senior manager in the respondent’s computer operations and cannot escape blame.
40. The respondent says that if the public could not directly hold the claimant responsible for specific covert acts, the public would be justified not to trust him to hold any position in the examination administration chain. The respondent argues that the public expected the respondent as their trustee and agent to invoke the application of the rule allowing for the retirement of the claimant in public interest.
41. The respondent says that the production of newspaper cuttings in its memorandum of response was not intended to prove claimant’s involvement in the leakage but rather to demonstrate public concern at what was going on at the respondent’s establishment with respect to examination leakages. The respondent submits that there were examination leakages and that is why the council was disbanded and a new one was appointed. The respondent says that the claimant himself did not object that there were examination leakages. The respondent says that the production of newspaper cuttings in the evidence was meant to demonstrate to the court the public reaction to the leakages which in essence epitomized public interest in the saga.



42. The respondent submits that Constitution places the people of Kenya otherwise known as the public at the pinnacle of sovereignty and once the court can confirm there was indeed reason for the public to be aggrieved with the administration of examination process which can be traced to either the commissions, omissions or negligence on the part of the management team then the honourable court should not hesitate to come to the conclusion that the respondent was justified in retiring members of the management team in public interest.
43. The respondent further contends that retirement in public interest which is otherwise referred to as compulsory retirement in advanced jurisdictions, like in India is not punishment but an administrative action taken by the governments in the interests of the public order, safety and harmony.
44. The respondent relied on, inter alia, the Indian case of Surendra Prasad Misra v Engineer in Chief, Irrigation 2004 2 UPLEBEC 1479 where it is said the High Court of India observed that:-
- “When the charge against the Government Servant has been proved by the departmental enquiry and punishment has been awarded and entry to that effect has been entered in the confidential report compulsory retirement on the basis of that entry is valid and cannot be held to be in the nature of punishment.”
45. The respondent also cited the case of K. Kandaswamy v Union of India, (1995) 6 SCC 162: 1995 SCC (L & S) 1361 (1995) 31 ATC 479, where it is said the Supreme Court of India held that:-
- “if the appropriate authority forms a bonafide opinion that in view of the doubtful integrity it would be desirable in public interest to retain the officer concerned in service the action thereof cannot be challenged before the courts, though it is open to the aggrieved party to impugn it on the ground that requisite opinion is based on collateral grounds or arbitrary. When the order has been passed by the Competent Authority on the basis of totality of facts and circumstances appropriate to the case the order cannot be held to be arbitrary, unjustified or based on evidence. When the adverse remarks in the confidential reports contained a reflection on his integrity in discharging the duty, the decision to compulsory retire him on such adverse remarks is held to be in public interest.”
46. The respondent urged the court not to ignore the fact that the grounds for retiring the claimant were based on the confidential reports prepared by the intelligence investigative organs of the Government giving rise to the subjective opinion formed by the respondent that it was in public interest that the claimant be retired.
47. The respondent also relied on the Court of Appeal case of Kenya Revenue Authority v Reuwel Waitbaka Gitabi & 2 others 2019 Eklr where it is said the court held that:-
- “As correctly observed by counsel for the appellant, KRA is a public organ bestowed with the important duty of collecting revenue for running government services, which activity must attract public scrutiny. As such, the employees of KRA must be held in utmost trust and integrity. When trust has irretrievably broken down, due to acts and omissions of the respondents, it would be foolhardy to force the employer and the employee to stick together. We are in no doubt that the respondents contributed to the acts leading to their termination as envisaged under section 49(4)(b)(c)(k) which lead us to the determination that the termination, though flawed due to procedural lapses, was lawful and justified. In the circumstances of this case and in consideration of public interest, the remedy that commends itself to us is that the services of the respondents shall stand terminated”.



48. The respondent further submitted that the claimant's submission that the retirement was discriminatory is insincere since the pertinent investigations were conducted by the independent government agencies not involved in the day-to-day management of the respondent.
49. On whether the claimant was given a fair hearing before being retired, the respondent submitted that the claimant was suspended *vide* the letter dated the March 29, 2016 in line with the Human Resource Policies, Procedures, Terms and Conditions of Service Manual. That subsequently, the respondent issued the claimant with a show cause letter dated the April 15, 2016. The respondent submits that whilst the claimant says that the show cause letter was too general and vague, he was at the same time in a position to respond exhaustively to the same as evidenced by the last document produced as evidence attached to the memorandum of claim.
50. The respondent says that it thereafter held a board meeting on the April 23, 2016 whereby one of the agenda items was to consider the response to the show cause letter written by the claimant. The respondent says that the response was found wanting and hence they proceeded to retire the claimant on public interest grounds pursuant to the letter dated the April 25, 2016 and the claimant was paid his terminal dues.
51. Having gone through the pleadings, the evidence and the submissions, the court frames the following issues for determination
 - a. Whether there was justifiable basis for terminating the claimant's employment on the grounds of public interest
 - b. The remedies, if any, the claimant is entitled to.

Determination

52. The issues raised by the present claim are quite novel. The court is called upon to decide whether the respondent could have terminated the claimant on the basis of public interest and whether there is evidence in support of termination on public interest grounds.
53. The claimant received a letter of suspension on charges of gross misconduct on March 29, 2016. He was then sent another letter to show cause and was dated April 19, 2016. The claimant put up a response to the charges of gross misconduct against him but thereafter the council met and deliberated on his response and made a decision to retire him on public interest. This was by their letter of retirement dated April 25, 2016.
54. The claimant with ten others was indicted of being a party to exam leakage. The respondent avers there was investigations carried out by the investigative agencies and they found the eleven staff members culpable of the said exam leakages. Hence the claimant was placed on suspension and shortly after was retired from the organisation.
55. The court of course finds this is a dicey situation. One there is no provision in law of employment that perse provide for dismissing employees on public interest. The court is finding it hard to treat this "retirement in public interest" as part of provisions of employment laws.
56. Secondly there is no evidence whatever that connect the claimant with the alleged exam leakage. There was a public cry on examination leakage but apart from the claim by the respondent that the investigations agencies set apart eleven staff members as the ones who were guilty of exam malpractices there is otherwise no evidence to connect any of those individuals to the said leakages. At least there is no such evidence produced in court.



57. There is also no evidence set out to point in the IT Department how many employees were there and what made the referred investigation agency pick on the claimant as one of those who was involved in the said exam leakages. There are a lot of questions to this whole investigation process and no answers.
58. The court also wonders if the other ten individuals referred by the investigation agencies ended up being dismissed?
59. To go back to the earlier question does the reference of termination of employment of public employees “in public interest” deprive them from the protection of employment Laws of Kenya. The Employment Act sections 43 & 45 provide that a valid reason should be given by the employer before terminating the employment of the employee. This does not exclude public servants.
60. As for the concept of retirement in public interest the court would rely on the case of Thomas Musila Mackenzie v Kenya National Examinaiton Council (KNEC) supra where claimant was retired in the public interest. The court held:-

“The claimant was retired in the public interest. There is no provision in the Employment Act of this mode of termination of a contract of service. Retirement in public interest is therefore a form of termination of employment which is instigated by the employer and would aptly fit the description of involuntary termination. As seen in this case it does not take the character of or comply with the dictates of a disciplinary process though in some cases it may be the result of a disciplinary case. The claimant was placed on a course for a disciplinary case but before he was heard a decision to retire him in the public interest was undertaken. He had been asked to show cause and he did not write back denying the slew of allegations made against him or offer any explanation. The decision the respondent took to retire the claimant in the public interest of necessity should comply with the requirements of section 43 of the Employment Act.”

61. In the case of Njagi Marete v Teachers Service Commission cause 329 of 2009 the court held:-

“The respondent did not justify retirement of claimant in public interest. It was not shown that there was a complaint shown which was initiated by a member of the public or by the respondent that this complaint was investigated and the claimant was given a chance to answer to the complaint and a decision made to retire him was based on valid ground.”

If public employers were merely allowed to cite public interest in retiring their employees without giving elaboration of the circumstances giving rise to the infringement of public interest the Employment protection given under the Employment Act 2007 would be meaningless to public servants.”

62. The respondent have averred that the claimant was terminated in accordance to his contract. They also say they could not disclose the details of the exam leakages because of the sensitive nature of the matter. Whereas this may be the case but on the other hand every individual is also entitled to fair treatment under Constitution articles 47 & 50 and the Laws of Employment.
63. The employee is also entitled to be given valid reason for summary dismissal and also to being accorded a chance to be heard in the presence of a witness be it a fellow worker of his choice or a shop floor union representative. This is as provided in section 41(1) of Employment Act which provides:-

“Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain



to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Subject to the provisions of this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.”

64. The claimant was not given a chance to explain himself and was not told why his response to the notice to show cause was not satisfactory. The termination of the claimant therefore failed the fairness test provided in myriad of authorities among them Walter Ogal Onuro v Teacher Service Commission Cause No 955 of 2011 where court held that:-

“for termination to pass fairness test it ought to be shown that there was not only substantive justification but also procedural fairness. The substantive justification has to do with the reason for termination and the procedural fairness has to do with the process for termination.”

65. The flow of all this is that the claimant was not fairly terminated from employment under the guise of retirement in public interest. The court rules the claimant even if a public servant was still entitled to protection under Constitution and the employment laws. The court therefore holds he was wrongfully terminated and enters judgement in his favour.

Remedies

1. Claimant is compensated for unfair and illegal termination at 4 months equivalent to his salary Kshs 475,340/= and this award as well suffices to compensate him for discrimination as well.

Total award is Kshs 475,340/= together with interest at court rates from date of judgement till full payment.

2. Costs are awarded to the claimant.

3. Claimant to be availed his certificate of service within 14 days from today’s date.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 6TH DECEMBER, 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 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 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

