



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

(Before Hon. Lady Justice Maureen Onyango)

C.B.A NO. 1 OF 2020

INTER PUBLIC UNIVERSITIES COUNCILS CONSULTATIVE

FORUM OF THE FEDERATION OF KENYA EMPLOYER S

EMPLOYER

VERSUS

KENYA UNION OF DOMESTIC, HOTELS, EDUCATION INSTITUTIONS

AND HOSPITAL WORKERS (KUDHEIHA) UNION

WITH

MINISTRY OF EDUCATION

1ST INTERESTED PARTY

MINISTRY OF LABOUR

2ND INTERESTED PARTY

ATTORNEY GENERAL

3RD INTERESTED PARTY

SALARIES AND REMUNERATION COMMISSION

4TH INTERESTED PARTY

AND

C.B.A NO. 2 OF 2020

INTER PUBLIC UNIVERSITIES COUNCILS CONSULTATIVE

FORUM OF THE FEDERATION OF KENYA EMPLOYERS

EMPLOYER

WITH

THE UNIVERSITIES' ACADEMIC STAFF UNION (UASU)

UNION

WITH

MINISTRY OF EDUCATION

1ST INTERESTED PARTY

MINISTRY OF LABOUR

2ND INTERESTED PARTY

ATTORNEY GENERAL

3RD INTERESTED PARTY

SALARIES AND REMUNERATION COMMISSION

4TH INTERESTED PARTY

AND

C.B.A NO. 3 OF 2020

INTER PUBLIC UNIVERSITIES COUNCILS

CONSULTATIVE FORUM (IPCC)

EMPLOYER

WITH

KENYA UNIVERSITIES' STAFF UNION (KUSU)

UNION

JUDGMENT

On 10th January 2020 the Court received three (3) Collective Bargaining Agreements (CBAs) for registration. The CBAs are in respect of the following parties –

1. INTER PUBLIC UNIVERSITIES COUNCILS CONSULTATIVE FORUM OF THE FEDERATION OF KENYA EMPLOYERS (IPUCCF)

WITH

KENYA UNION OF DOMESTIC, HOTELS, EDUCATION INSTITUTIONS AND HOSPITAL WORKERS (KUDHEIHA)

2. INTER PUBLIC UNIVERSITIES COUNCILS CONSULTATIVE FORUM OF THE FEDERATION OF KENYA EMPLOYER (IPUCCF)

WITH

THE UNIVERSITIES' ACADEMIC STAFF UNION (UASU)

3. KENYA UNIVERSITIES' STAFF UNION (KUSU) CLAIMANT

WITH

INTER PUBLIC UNIVERSITIES COUNCILS CONSULTATIVE FORUM

THE CBAs were forwarded to the Court by three identical letters which I reproduce below –

“Ref: ML&SP/CPMU/W/9310/CA/65/(23) 10th January 2020

The Judge

Employment and Labour Relations Court,

P.O. Box 47606-00100

NAIROBI

RE: REGISTRATION OF COLLECTIVE AGREEMENT

The Cabinet Secretary has received for registration under Part VII Section 60, sub-sections 6(a) and 6(b) of the Labour Relations Act, 2007; Rule 36(1-3) of the Employment and Labour Relations Court Procedure Rules, 2016 of the Laws of Kenya the 5th Agreement signed on 28th October, 2019 by the

following parties: -

INTER - PUBLIC UNIVERSITIES COUNCILS CONSULTATIVE

FORUM (IPUCCF)

AND

KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS AND ALLIED WORKERS

(KUDHEIHA)

The Ministry has analysed the agreement and confirmed that it conforms to the Wages Guidelines issued on 29th August, 1973 and their amendments of 23rd November, 2005.

On the basis of the analysis the Ministry wishes to emphasize the Salaries and Remuneration Commission's (SRC) advice in their letter referenced SRC/TS/UG/3/7 VOL VII (120) DATED 13th December, 2019 to the Ministry of Education that the implementation of the terms in the CBA be undertaken based on the allocated amount of Kshs.8.8 Billion, which is inclusive of all associated costs including pension liabilities resulting from the review for the three CBA's (UASU, KUSU and KUDHEIHA).

The agreement is therefore forwarded for your further action.

SIGNED

Peter K. Tum, OGW

PRINCIPAL SECRETARY"

The last paragraph of the letter caps the cost of implementation of the three CBAs to Kshs.8.8 Billion.

The three CBAs were allocated Registration numbers RCA No. 62 of 2020, RCA No. 63 of 2020 and RCA No. 64 of 2020 respectively.

The CBAs were all fixed for consideration for registration on 15th January 2020 pursuant to Section 60(1) and (7) of the Labour Relations Act which provide that –

60. Registration of collective agreement

(1) Every collective agreement shall be submitted to the Industrial Court for registration within fourteen days of its conclusion.

(7) The Industrial Court—

(a) may register a collective agreement within fourteen days of receiving it;

(b) may refuse to register a collective agreement unless all parties to the agreement have had an opportunity to make oral representations to the Industrial Court; and

(c) shall give reasons for refusing to register any collective agreement.

When the parties appeared in court on 15th January 2020, Ms. Ruth Kirwa representing the Employers and Mr. Sitienei who appeared for the Salaries and Remuneration Commission (SRC) had reservations to the registration of all the three CBAs.

Mrs. Kirwa stated that although the employer had signed the CBA, it had received advise that certain clauses in the CBA need to be reviewed. These were clauses in respect to retirement age and the implementation of the Master scales so that it could fit within the amount that had been allocated by the Government. Mrs. Kirwa explained that at the time her clients signed the CBA they were under the impression that all was well but later received advise on how the Master Scale should be implemented and that retirement age should comply with public policy and regulations.

Mr. Sitienei for SRC informed the court that SRC did give advice on parameters for the negotiations but when draft CBAs were forwarded to SRC for clearance, the costing arising was above the budgetary allocation by Treasury of Kshs.8,8 Billion. He informed that Court that if the CBAs were registered there was likelihood of challenges in implementation. That the clause in the CBA that addresses implementation would have to be amended to avoid challenges in implementation.

Mr. Sitienei further informed the court that the retirement clause needs to be aligned with policy in the public sector for the various categories of public officers.

Ms. Akuno appearing for the Attorney General on behalf of the Ministry of Education and Treasury stated she had reservations on the retirement clause.

Mr. Peter Mulwa appearing for the Ministry of Labour had no objection subject to the concerns of SRC being addressed.

Mr. Mwangi appearing of KUDHEIHA, Ms. Maina for UASU and Mr. Cyrus Wakori for KUSU all had no objection to the registration of their respective CBAs.

In view of the objections by the employer, SRC and the Attorney General, the registration of the CBAs was deferred to 4th February 2020 to give the parties a chance to meet and iron out the issues that were in contention.

The parties were unable agree and on 3rd July 2020 the court delivered a ruling in which it made the following interim orders –

- 1. All the three CBAs Nos. 1, 2 and 3 of 2020 are accepted for registration as presented to the court with the exception of the retirement age clause which will be determined in the final judgment and is therefore excluded from the CBAs.**
- 2. The implementation will be on horizontal basis pending further orders of the court after consideration of the issues set out herein above.**
- 3. The retirement age currently in force will continue until the dispute herein is finally determined.**
- 4. The issue of whether to implement the CBA both horizontally and vertically will abide the final determination of the dispute herein.**
- 5. All parties herein are directed to file submissions on the issues set out herein above within 30 days.**
- 6. These matters will be heard by way of highlighting of the further submissions to be filed together with the submissions already on record on a date to be set by the court at the time of delivery of this ruling.**

The issues for determination as set out in the ruling therefore are the following –

1. How the figure of Kshs.8.8 billion was arrived at.
2. How earlier CBAs were implemented, whether vertically, horizontally or diagonally.
3. Whether the CBAS should be implemented diagonally as proposed by the unions or horizontally as proposed by SRC.
4. The retirement age.

Origin of Capping of Kshs.8,8 billion

In the report prepared by SRC dated 28th October 2019, it set out the chronology of events leading to the eventual signing of the three CBAs that are the subject of this judgment.

From the correspondence between the SRC and IPUCCF, it is clear that the original proposal by the unions was to costs Kshs.38.5 billion to impellent. After consultation with Treasury the SRC by letter dated 28th August 2019 forwarded to the Chief Administrative Secretary and Principal Secretary, Prof Collette Suda, SRC proposed a salary structure as shown in Table 1 attached to the budget with a ceiling of Kshs.6,891,150 as set out in Table 2 thereof.

In the notices for implementation it is stated that –

- (i) The JE basic salary structure for Public Universities is to be implemented with effect from 1st July, 2019.*
- (ii) Align current salary structure in salary grades as evaluated with a salary structure of between eight (8) and twelve (12) salary points.*
- (iii) For jobs whose current salaries are below the basic salary structure, provided in Table 1, place the jobs in the rightful Job Evaluation (JE) grading structure and implement the JE grading structure (with annual increments).*
- (iv) For jobs whose current salaries are above the basic salary structure, retain the existing salary structure (with annual increments) until the next review.*
- (v) The basic salary structure for Job Evaluation is for use by the management as a basis for negotiation with the Trade Unions (UASU, KUSU and KUDHEIHA), levels 1 to 15 A, within the Collective Bargaining Agreement Cycle 2017 - 2021.*
- (vi) House Allowances is to be retained at existing rates.*
- (vii) For the management employees, levels 16 - 20, align their current basic salaries to the resultant basic salaries for Job Evaluation as provided in Table 1.*
- (viii) Institutions may consult the Commission to provide technical support on implementation of JE salary structures.*

Upon receipt of the letter from SRC and after holding meetings with the union, the Chairman of the Joint Negotiating Committee of the Universities sought clarification on several issues by letter dated 25th September 2019 –

“September 25, 2019

The Chairperson

Salaries and Remuneration Commission

Williamson House 6th Floor, 4th Ngong Avenue

Nairobi, Kenya

Box 43126 – 00100

Dear Madam

RE: NEGOTIATIONS OF 2017-2021 CBA WITH THE UNIVERSITIES ACADEMIC STAFF UNION (UASU) ON 24TH SEPTEMBER, 2019 AT JACARANDA HOTEL NAIROBI

I wish to bring to your attention three (3) issues that the UASU negotiating team raised during the above referenced negotiations and which they seek clarification from your office.

First, the Union raised concern that there was no proposal to increase housing allowance in the offer tendered to them. They added that if this is not done, the UASU members will go for eight (8) years without any increment in housing allowance. The Union, therefore, requested that you consider providing for increased housing allowances for the Union members.

Secondly, the Union team was concerned about the effective date and implementation date for the 2017 – 2021 CBA. They noted that the implementation date is from 1st July, 2019 while the effective date is 1st July, 2017. In this regard, there was no provision for arrears for the two years in question. The Union requested that the Salaries and Remuneration Commission makes it clear when the arrears will be paid.

Thirdly, the UASU negotiating team raised concern that the document from the SCR has given provisions for the minimum and maximum points for each of the twenty (20) scales. However, the Union would like to have a complete picture of all the eight (8) notches for each of the 20 job groups.

I wish to request the SCR to furnish me with a response to the issues raised above by the Union in shortest time possible so that I can engage the Union and finalize the negotiations promptly.

Yours Sincerely

PROF. ISAAC M. MBECHE PhD, FKIM

AG. VICE CHANCELLOR

AND

CHAIRMAN OF JOINT NEGOTIATION COMMITTEE”

In its response dated 30th September 2019 after a consultative meeting with the IPUCCF, the SRC forwarded a conversion table with a costing of Kshs.7,021,640,478.

By letter dated 14th November 2019, the IPUCCF wrote to SRC as follows –

“November 14, 2019

The Chairperson,

Salaries and Remuneration Commission

Williamson House 6th Floor, 4th Ngong Avenue Nairobi, Kenya

Box 43126 - 00100

Dear Madam

COST OF THE CBA OF 2017-2021 FOR ALL PUBLIC UNIVERSITIES AND CONSTITUENT COLLEGES

I wish to let you know that the Joint' Negotiations Committee of IPUCCF organized for all Finance and HR Officers of every University to come to Jacaranda Hotel starting from November 6, 2019 to November 9, 2019 to work out the cost of implementing the CBA using the guidelines you provided to the JNC. The SRC Technical team also participated in this exercise.

I am therefore pleased to inform you that the total cost of CBA came to Kshs.13,775,961,023 which is broken down as follows:

2017/2018 - Kshs.1,408,962,631

2018/2019 - Kshs.2,705,858,724

2019/2020 - Kshs.4,242,166,792

Total 2018/2019 – 2019/2020 - Kshs.6,952,025,087

2020/2021 Kshs.5,414,973,303

SRC allocation: 7 Billion

As you can see from the figures, the amount available does not cover the entire period of the CBA. We are aware that there may be no extra funds available to Cover the entire period of the CBA.

The proposal of using what is available has been presented to your technical team and it is proposed that we implement the CBA from July 1, 2018, and July 1, 2019 to June 30, 2020.

This will bring stability in the universities and allow the Government to look for some money to sustain the CBA from July 1, 2020 going forward.

I look forward to your favourable response as soon as possible.

Yours Sincerely,

SIGNED

PROF. ISAAC M, MBECHE, PhD, FKIM

AG. VICE CHANCELLOR

AND

CHAIR, JOINT NEGOTIATIONS COMMITTEE”

By letter dated 26th November 2019, the IPUCCF again wrote to SRC on the issue of computation of the CBA salary increments. Part of the letter reads a follows –

“Further, the SRC required the Universities to counter-check and re-compute their workings in view of the guidance and provide details and a summary to the Commission for their consideration in facilitating the budget and financial resources to implement the CBAs.

Following the above, the Universities CBA Joint Implementation Committee comprising of the Joint Negotiations Committee, Union National officials and Finance Officers converged from Friday November 22, 2019 to Sunday November 24, 2019 to review and re-compute the figures so as to comply with SRC guidelines. The Finance Officers have since redone their workings as per SRC expectations. Detailed soft copy workings will be provided to the Commission.

It was noted that the 2016/2017 CBA figures were in some instances higher than base figures provided by SRC and the Finance Officers felt that it would be prudent to retain the higher figures to avoid double payments to staff and in compliance with the SRC guidance. As you will note from the re-computed figures, the total amount required to implement the 2017-2021

CBAs is Kshs.13,812,192,039.

This is, therefore, to forward this report for your further action

with a view to facilitating provision of the required resources to implement the 2017-2021 CBAs to staff in Public Universities and Constituent University Colleges in Kenya.

On behalf of Universities, this is to once more thank you for your continued understanding.

Yours Sincerely

SIGNED

PROF. ISAAC M, MBECHE, PhD, FKIM

AG. VICE CHANCELLOR

AND

CHAIR, JOINT NEGOTIATIONS COMMITTEE”

The IPUCCF also forwarded the signed CBAS to SRC by letter dated 29th November 2019 for advise on the way forward.

By letter dated 13th December 2019, SRC confirms that the CBAs signed and forwarded to it complied with SRC’s advice on all relevant provisions. The SRC however states that the implementation must be undertaken within the allocation Kshs.8,8 billion. It states in the letter that the tabulation by the implementation committee which indicated the implementation figure as Kshs.13,812 billion is erroneous.

In a letter dated 13th January 2020 the SRC states –

(i) Reiterate that the implementation of the terms of the CBA be undertaken based on the allocated total amount of Kshs.8.8 Billion which is inclusive of pension liabilities resulting from the reviews;

(ii) The total allocation of Kshs.8.8 Billion should be arrived at by direct mapping of current salary points (2016/17 as the base salary year) for respective grades to the advised salary structure for each year of the CBA period, 2017 - 2021 as shown in the enclosed Table;

(iii) Automatic annual increment be implemented through the normal budgetary process and should not result in double compensation during the implementation of the CBA; and

(iv) MoE and IPUCCF should issue a corrigendum of excluding:

a. Review of retirement age, and

b. Horizontal and diagonal implementation criteria of the CBA.”

[Emphasis added]

From the foregoing, it is evident that the figure of Kshs.8,8 billion was allocated by Treasury upon the advice of SRC.

It is further clear that the IPUCCF and the Unions have tried to fit the implementation of the three CBAs into the allocation of Kshs.8.8 billion but their implementation has yielded a figure of Kshs.13,812 billion.

It is further clear from the letter dated 13th January 2020 from SRC that automatic annual increment, which SRC acknowledges is payable, has been excluded from the allocation of Kshs.8.8 billion. The annual increment would affect pension liabilities as pension is based on a percentage of the basic salary.

The answer to the first issue for determination is therefore that SRC arrived at the figure of Kshs.8.8 billion based on horizontal implementation of the CBA meaning that the SRC excluded annual increment as demonstrated in the Table attached to the letter dated 13th January 2020 reproduced below –

CBA Salary Structure Implementation Criteria

NOTCH	2016 - 17	2017- 18	2018 - 19	2018 - 20	2019 - 21
1.	12,100 P	13,592 P	15,084 P	16,576 P	18,068 P
2.	12,432	13,985	15,537	17,090	18,643
3.	12,763	14,377	15,991	17,604	19,218
4.	13,095	14,770	16,444	18,119	19,793

5.	13,427	15,162	16,897	18,633	20,368
6.	13,759	15,555	17,351	19,147	20,943
7.	14,090	15,947	17,804	19,661	21,518
8.	14,422	16,340	18,257	20,175	22,093
9.	14,754	16,732	18,711	20,689	22,668
10.	15,086	17,125	19,164	21,203	23,242
11.	15,417	17,517	19,617	21,717	23,817
12.	15,749	17,910	20,071	22,231	24,392

The next issue is how earlier CBAs were implemented

In the submissions of KUSU dated 12th May 2020, it has attached the CBA for the period 1st July 2013 to 30th July 2017, the predecessor to the CBA that is the subject matter of this dispute. The implementation schedule is similar to that in the present CBA.

UASU has also produced the implementation matrix for the immediate past CBA which also confirms the mode of implementation to be similar to that contain in the three CBAs under reference herein.

The IPUCCF did not comment on the issue and neither did SRC or the Attorney General.

From what is on record, I can conclude that previous CBAs, or to be specific, the immediate past CBA, was implemented in exactly the same way as proposed by the unions ad as provided in the implementation matrix of all the three CBAs as presented to the court.

As pointed out by the Unions, the negotiations were strictly within

the beacons and parameters provided by SRC and indeed, parties had no leeway to negotiate since SRC came up with pre-determined Master salary scales which were merely adopted by the parties. This is confirmed by Annex 7 of SRC Report which is the letter from SRC dated 30th September 2019. What is contained in the CBA is what was submitted to IPUCCF by SRC in the said letter dated 30th September 2019.

How the CBA should be implemented?

From the evidence before the court, there is no contention that the advice and guidance of SRC was obtained before, during and after the negotiation of the CBA. SRC gave its approval to the CBAs. In the letter dated 13th December 2019, the SRC wrote *"the Salaries and Remuneration Commission (SRC) hereby, confirms that the CBA copies as signed and forwarded have complied with SRC's advice on all relevant provisions."* In the last paragraph of the letter, the SRC wrote

"The purpose of this letter therefore, is to inform you of the Commission's approval of the CBAs for registration."

The point of departure is in the implementation of the CBAs. Paragraph 3 of the Implementation Notes of all the three CBAs provides as follows –

"3) Interpretation and implementation of the salary tables for 2017 - 2021 CBA

The conversion tables should be read vertically and horizontally (diagonally) during implementation and computation of arrears starting from 2016/2017 financial year and using salary scale and step as identified in one (1) above with exception of step 12 which will be read horizontally only. Total arrears will depend on (i) date of joining the institution and (ii) the number of months worked in the year under reference."

As has been observed above, the implementation proposed by SRC excluded annual increments. SRC insists that the CBAs be implemented horizontally only.

In the letter dated 30th September 2019, SRC proposed annual increments with 12 notches for each grade. These notches represent the annual increments which differentiate a long serving employee from a newly employed employee.

The annual increments therefore represent the vertical implementation while the CBA increases are contained in the horizontal implementation.

In its letters dated 28th August 2019 at page 3 thereof, the SRC stated as follows –

(iii) *For jobs whose current salaries are below the basic salary structure, provided in Table 1, place the jobs in the rightful Job Evaluation (JE) grading structure and implement the JE grading structure (**with annual increments**).*

(iv) *For jobs whose current salaries are above the basic salary structure, retain the existing salary structure (**with annual increments**) until the next review.*

[Emphasis added]

In the letter dated 30th September 2019, SRC again stated –

(ii) *Public Service employees including Universities staff are generally cushioned against the effect of inflation through the automatic annual increment on the basic salary which is loaded prior to implementation of the new salary structure;*

This is the letter that proposed the Master plan and conversion table that were adopted in the CBAs as proposed by SRC. The SRC thus acknowledged that in the proposed salary schedule annual increments which public service employees including universities staff were entitled to had not been included in the proposed salary schedules.

Finally, in the letter dated 13th January 2020, SRC acknowledges that

annual increments are payable but states that the same should be implemented through normal budgetary process. At paragraph (iii) thereof it states –

(iii) *Automatic annual increment be implemented through the normal budgetary process and should not result in double compensation during the implementation of the CBA;*

[Emphasis added]

It is clear from the foregoing that SRC acknowledges that the annual increment is payable. It is further clear that the same was included in the CBAs as approved by SRC and further that it is the exclusion of the annual increment together with the resultant increment in pension liability by the public universities that caused the difference between the Kshs.8.8 billion proposed by SRC and the Kshs.13,812 billion that resulted from the computation by the Joint Implementation Committee of the funds required to implement the CBAs.

The court therefore finds that the CBAs signed and registered as well as the computation by the implementation committees of the universities is correct and is based on the unaltered matrix as presented to the IPUCCF by SRC. The court therefore confirms that the computation by the Implementation Committee of IPUCCF was accurate and that the figure of Kshs.8.8 billion is not sufficient to implement the CBAs as it did not include the annual increments and the resultant pension liabilities payable by the IPUCCF members on behalf of their staff.

The SRC is therefore directed to work together with IPUCCF implementation Committee, the Ministry of Education and Treasury to make provision for the additional budgetary allocation necessary for implementation of the CBAs.

Retirement Age

The three CBAs provide for retirement ages as follows –

CBA No. 1 of 2020

The mandatory retirement age for all employees in the public Universities within grades 1-4 shall be 65 years.

Employees shall be expected to retire when he/she reaches his/her subsequent birth day.

CBA No. 2 of 2020

4.11 (a) The retirement age shall be 75 years;

(b) An academic member of staff may retire voluntarily at the age of 50 years or above.

CBA No. 3 of 2020

The retirement age for members covered under this agreement shall be sixty five (65) years. Any member of staff under these terms may opt for early retirement at fifty (50) years.

Retirement in the public sector is governed by government policy. The last circular on retirement in the public sector is dated 20th March

2009 and reviewed mandatory retirement age for public servants from 55 to 60 years but retained retirement age for public servants whose retirement age was above 60 years.

The circular states: -

“REVIEW OF THE MANDATORY RETIREMENT AGE FOR PUBLIC SERVANTS

The current policy on retirement of Public Servants provides for a mandatory retirement age of 55 years. This is with the exception of Judges, Academic staff in Public Universities, Research Scientists and Public Servants with disabilities whose retirement ranges from 60 years to 74 years.

...

In order to address the above challenges and in the spirit of harmonizing the retirement age applicable to the East African Community Countries, the Government has decided to raise the mandatory retirement age for all Public Servants from 55 years to 60 years with effect from 1st April, 2009. The provisions in the Pensions Act Cap. 189, various Pension Schemes and other Policy Guidelines governing the Civil Service, Disciplined Services, Teachers, State Corporations, Public Universities and the Armed Forces regarding compulsory and voluntary retirement will remain.

...”

The SRC guidelines which this court is enjoined to consider while dealing with matters that fall under the purview of SRC, provide that among the parameters to be considered in negotiations are Government Policies and Guidelines. The SRC guidelines provide –

8. Government Policies and Guidelines: Collective Bargaining Negotiations should adhere to existing policies and guidelines such as the Minimum Wage Guidelines, Public Service Commission Human Resource Policies and Procedures Manual, State Corporation guidelines and various SRC advisories.

Parties can therefore not negotiate outside public policy and guidelines.

For these reasons the proposals for amendment of retirement age are expunged from the CBAs.

The current practice as set out in the pension schemes for universities, the policies and guidelines in place and the provisions of any law that governs retirement age in the public sector shall apply.

The CBAs are therefore confirmed as registered on 3rd July 2020 as amended by this judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF JANUARY 2021

MAUREEN ONYANGO

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, the court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on the 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.

MAUREEN ONYANGO

JUDGE