



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. E337 OF 2020**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY PUBLIC SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

Vide its Statement of Claim dated and filed on **28<sup>th</sup> July 2020**, the Claimant herein avers that the retirement/termination of the Grievant employment by the Respondents was wrongful, unfair and unlawful.

The Claimant avers that its member was employed by the Respondent until his unlawful mandatory retirement as communicated by letter dated 6<sup>th</sup> December, 2017.

The Claimant contends that the aforementioned termination was illegal, unfair and in breach of Article 41 of the Constitution of Kenya and clause 29(a)(b) of the Collective Bargaining Agreement between Nairobi County Government and the Kenya Government Workers Union.

In the claim, the Claimant seeks the following reliefs:

- a. A declaration that the retirement/termination of the Grievant employment by the Respondents was wrongful, unfair and unlawful;
- b. An Order do issue quashing the Respondent’s letter dated 6<sup>th</sup> December, 2017 by the County Chief officer on the mandatory retirement of the Grievant;
- c. An Order do issue directing the Respondents to unconditionally reinstate and/or reengage the Grievant (Jean Damascene Kaberuka) in his employment with the Respondents he held before the mandatory retirement notice without loss of employment benefits, seniority and/or service;
- d. In the alternative, the Court be pleased to enter Judgement against the Respondents for payment of;

i. Expected Salary;

From January, 2019 to December 2019

73,290.85 x 12 months..... Kshs.879,490.20

From January, 2020 to December 2020

74,305.85 x 12 months..... Kshs.891,670.20

From January, 2021 to December 2021

74,410.85 x 12 months..... Kshs.892,930.20

From January, 2022 to December, 2022

75,425.85 x 12 months..... Kshs .905,110.20

From January, 2023 to December, 2023

76,440.85 x 12 months..... Kshs .917,290.20

**Total Claim Amount..... Kshs4,486,491.00**

e. Costs of the Suit; and

f. Any other award that the court deems fit and just.

The Respondents filed their Memorandum of Appearance on 24<sup>th</sup> March and Statement of Defence on 25<sup>th</sup> August 2020 where they denied the Claimant's allegations in toto.

### **Claimant's Case**

The Claimant herein is a trade union duly registered under the Labour Relation Act, 2007. It avers that it is duly recognized by the 1<sup>st</sup> Respondent and has negotiated a Collective Bargaining Agreement with the Respondent which was entered into on 12<sup>th</sup> October, 2012 and duly registered by the Industrial Court under the reference RCA No. 21 of 2013. It is the Claimant's case that under Article 3 of the Claimant's Constitution the Claimant is mandated to provide legal advice or assistance, where necessary, over matters affecting the employment of its members and it is in exercise of that Article that the Claimant is preferring the instant suit on behalf of its member, **Jean Damascene Kaberuka** (herein after referred to as the Grievant.)

The Claimant avers that the Grievant was employed as a Nurse A2 working with Nairobi City County Government since 1998 and that his employment contract with the Respondent stipulated that his term of service would end when he attained the mandatory retirement age of sixty (60) years (on 31<sup>st</sup> December, 2018). That he worked diligently, devoted to his duty and maintained a clear disciplinary record. That on 25<sup>th</sup> August, 2017 he was shot by gangsters and sustained severe injuries.

That the said injuries affected his vision particularly his left eye which led to irreversible visual impairment and was subsequently registered as a person living with disability. That after explaining to the relevant bodies the nature of his injuries and the predicaments that had befallen him, the Grievant requested for an extension of his retirement age. Despite this request, the Grievant was issued with a Mandatory retirement notice vide the letter dated **6<sup>th</sup> December, 2017** where he was informed that he would retire from the service of Nairobi City County Government on **31<sup>st</sup> December, 2018**.

That on **19<sup>th</sup> November, 2018**, before lapse of the retirement notice, the Grievant was issued with a certificate for persons with disability. The Claimant, on behalf of its member immediately wrote to the County Secretary Nairobi City County Government informing him that since Mr. Jean D. Kaberuka had been recommended and issued with a certificate for persons with disability, he was now recognized as a person with disability under Persons with Disability Act hence it was prudent that his age limit for retirement be increased to sixty five (65) years in accordance with Laws of Kenya. That, however, the Respondent failed to conduct any further discussion or meeting with the Grievant on the revision and/or variation of his period of service in his employment contract. That this was contrary to clause D.21 of the Human Resource Policies and Procedures Manual for Public Service provides that all officers shall retire from the service on attaining the age of 60 years, 65 years for persons with disabilities and/or as may be prescribed by the government from time to time.

The Claimant maintains that the Respondent ought to have considered that the Grievant had obtained a certificate for persons with disabilities and revised and/or varied the particulars of the employment contract to reflect that the employee was disabled. That in failing to do so, the Respondent violated the Grievant right to fair Labour practices as provided under Article 41 of the Constitution of Kenya.

That no prejudice which will be occasioned on the Respondent if the Claimant were to be reinstated and/or reengaged since the relationship between the Grievant and the Respondent has been cordial all throughout their employment relationship. Further that there exists an extremely grave risk that if the orders of temporary injunction as prayed for are not granted, the Respondents will continue to further oppress other employees and/or persons with disabilities under their employment.

In support of its case, the Claimant filed a number of documents that included a certificate of persons with disability dated 19<sup>th</sup> November 2018, letter dated 1<sup>st</sup> November 2017 requesting extension of retirement age, the CBA agreement and medical assessment reports among other documents.

### **Respondent's Case**

he respondents in their joint statement aver that the Claimant is non-suited and the claim as drawn and filed is incompetent, for want of locus of standi on the part of the Claimant. They deny the existence of a collective bargaining agreement between them and the Claimant as alleged in the statement of claim or at all. They aver that the alleged collective bargaining agreement referred to herein by the Claimant was executed in the year 2012, before the respondents came into existence and the respondents could consequently not have been a party thereto.

The respondents further state that the said Grievant's engagement with the respondent as an employee was never at any time undertaken on the basis of the Grievant's disability or otherwise as there was no disclosure of any incident of disability on the Grievant and therefore the terms of engagement were those of a normal person. That the instant claim is premised on a mis-comprehension of the law and the notion that the Grievant having acquired disability while in employment was therefore entitled, at the tail end of his tour of duty, to terms applicable to those who had disability at the time of their first engagement. Further that there is no legitimate question arising of illegal and or unlawful termination of the Grievant as the necessary laws and regulations were followed to the letter with regard to the said retirement.

The respondents pray that the Claimant's suit be dismissed with costs.

Upon request by the Claimant's counsel, the court directed the parties to proceed by way of written submissions. By the time of delivering this judgment, both parties had filed their written submissions.

### **Claimant's Submissions**

In his submissions, the Claimant maintains that the forced retirement of the Grievant by the respondents was unfair and unlawful as it was done contrary to the provisions of Article 41 of the Constitution of Kenya. He submits that the Grievant dutifully, selflessly and with a lot of dedication performed his duties until his forced retirement and had no prior notice.

In response to the Respondents' preliminary objection the Claimant submits that the Claimant had locus to institute the instant claim on behalf of its member. Counsel, in support of his argument cites Article 22(2) and 258(2) of the Constitution of Kenya. That the Claimant herein being a registered trade union is a body corporate with the capacity to sue and be sued in its own name. Further that under Article 3 of the Claimant's Constitution the Claimant is mandated to provide legal advice or assistance, where necessary, over matters affecting the employment of the members. That where a trade dispute exists, a trade union has locus standi before a court to present a matter on behalf of its member(s) as is in the instant matter which involves the wrongful, unfair, unlawful and un-procedural mandatory retirement of one of its members with disability from employment.

On whether the Respondents are strangers to the collective bargaining agreement, the Claimant cites Section 58 of the Urban Areas and Cities Act which states that:

**Any act, matter or thing lawfully done by any local authority before the commencement of this Act and any contract, arrangement, agreement, settlement, trust bequest, transfer, division, distribution or succession affecting any service delivery, trade of any form, sale or dealings on land or any other matter affecting assets, liabilities or property belonging to a local authority whether moveable, immovable or intellectual property shall, unless and until affected by the operation of this Act, continue in force and be vested in a body established by law.**

The Claimant avers that it is recognized by the 1<sup>st</sup> Respondent and has negotiated a Collective Bargaining Agreement with the Respondents which was entered into on 12<sup>th</sup> October, 2012 and duly registered by the Industrial Court under the reference RCA No. 21 of 2013 for the exclusive terms and conditions of employment for all unionisable employees of the Respondents. That the Kenya Local Government Workers Union validly and legally changed its name to Kenya County Government Workers Union and thus the rights and obligations entered into by Kenya Local Government Workers Union survived or devolved to Kenya County Government Workers Union. Further that the 1<sup>st</sup> Respondent was the successor of the Nairobi Municipality once the local authorities became defunct after the 2013 general elections. That the 1<sup>st</sup> Respondent herein has been remitting monthly union dues to the Claimant and has been committed to implementing the 2012 Collective Bargaining Agreement and cannot jump ship now and purport to deny of its involvement in ensuring the implementation of the 2012 Collective Bargaining Agreement.

The Claimants further submits that at the time the Grievant was forced to retire, he was a person with disability within the meaning of the law. That he had already been registered as a person with disability and informed the respondents of the same. He cites Article 260 of the Constitution of Kenya, 2010 which defines disability as:

**any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities.**

The Claimant further posits that the mandatory retirement of the Grievant at the age of 60 years instead of 65 years was wrongful, unfair and unlawful. He cites section 15(6) of the Persons with Disabilities Act provides that:

**(6) The minimum retirement age for persons with a disability shall be sixty years.**

Further that Clause 29(a) and (b) of the Collective Bargaining Agreement between Nairobi City County Government and the Kenya County Government Workers Union reads as follows-

*a. The Council shall call upon any officer to retire from its service at any time following the officer attaining the age of 60 years, and a notice of retirement shall be given to the officer six months in advance of the 60<sup>th</sup> birthday provided that an officer may exercise the option to retire on or after attaining the age of 55 years by giving six months' notice.*

*b. Provided that persons with disabilities shall retire at the age of 65 years with an option to retire early as under (a) above."*

The Claimant that the Persons with Disability Act, has not provided any mandatory retirement age for persons with disabilities but has only provided for a minimum retirement age. Further that the terms of a collective bargaining agreement are binding and ought to be incorporated

into the contract of all unionisable employees of a particular employer, if the employer has a recognition agreement with the union or if the employer has subsequently concluded a collective bargaining agreement with the union. As such counsel submit that it was only just for the Respondents to adhere to the terms of the collective bargaining agreement and accord the Grievant the opportunity to retire at the age of sixty-five (65) years. The Claimant relied on the case of **Margaret Martha Byama v Alice A. Otwala & 3 Others [2016] eKLR** where the Court stated as follows:

*“The Act does not make any provision on when a person must register once certified to be a person with disability. What the Court can deduce from this deliberate omission in the Act is that disability can either be congenital or as a result of subsequent illness or incidental injury. The latter aspect can occur to anyone at any stage in life. Therefore, Parliament in its wisdom saw the mischief or injustice which would occur if timelines were set on when to register as a person with disability.”*

The Claimant concludes that from the foregoing, it was evident that the Respondents deliberately failed to consider that the Grievant had developed a disability in the course of his service and as a result, the terms in relation to persons with disabilities as enshrined in the Persons with Disabilities Act as well as provided in the Collective Bargaining agreement ought to have been applicable to the Grievant. That the mandatory retirement of the Grievant was unjustified, unlawful and unfair and that the instant claim should be allowed as prayed.

### **Respondents’ Submissions**

The Respondents submit that the Claimant herein has no locus standi to file this claim. That the Claimant’s constitution simply refers to legal advice or assistance over matters affecting its members but does not include substituting itself for any of its individual members to bring out a claim. The Respondents further refute the claim that the instant claim is a trade dispute claim and argue that the instant claim simply arose out of the difference between the employee and his employer. The Respondents posit that a trade dispute is defined in Section 2 of the Labour Relations Act as

**“trade dispute” means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers’ organisation and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union;**

The Respondents submit that the process of instituting trade dispute claims is well laid down in the Labour Relations Act which includes a report to the relevant Minister who in turn appoints a conciliator. It is where conciliation has failed that a trade dispute may be referred to the Court. That this claim has neither been reported for the purposes of conciliation nor does it fall within the parameters set out in Section 74 of the Labour Relations Act and is consequently incompetent.

The Respondents further submit that the collective bargaining agreement dated 1<sup>st</sup> September 2012 was executed before the respondents came into existence and that the respondents are therefore not bound by the said collective agreement. The Respondent further submits that at the time of engagement as an employee, the Grievant was able bodied and therefore his employment contract duly reflected the same. That the position of the law (**PERSONS WITH DISABILITIES (ACCESS TO EMPLOYMENT, SERVICES AND FACILITIES) REGULATIONS, 2009**) and particularly regulation 12 only grants a person who acquires disability during the course of employment the following rights

**i. Right to be shifted, by the employer, to some other suitable post on the same pay scale and service benefits after acquiring disability is not suitable for the post he or she was holding or;**

**ii. Where it is not possible to adjust an employee against a post, such employee may be kept on a supernumerary post until a suitable post is available or he or she attains the age of superannuation, whichever is earlier.**

The Respondent therefore submits that the Claimant has hopelessly failed to demonstrate its locus standi or demonstrate any reasonable cause of action and that consequently the claim should be dismissed with costs.

### **Determination**

Having carefully considered the pleadings, evidence, submissions and authorities cited by the parties, I find that the issues for determination are: -

- i. Whether the Claimant has locus standi.
- ii. Whether the mandatory retirement of the Grievant at the age of 60 instead of 65 was wrongful, unfair and unlawful.
- iii. Whether the Claimant is entitled to the reliefs sought.

### **Whether the Claimant has locus standi.**

The Respondents in a Notice of Preliminary Objection dated 25<sup>th</sup> August 2020 aver that the Claimant has no locus standi thus making the instant claim incompetent.

In the instant case, the Respondents have not contested that the Grievant is a registered member of the Claimant herein. Their argument is that the Claimant’s constitution simply confers the Claimant powers to offer legal advice or assistance over matters affecting its members but

that such powers do not include substituting itself for any of its individual members.

The instant issue is similar to the issue in **Kenya National Private Security Workers Union v Security Guards Services Limited [2020] eKLR** where the **Makau J. observed that:**

*“In Kenya Shoe & Workers Union v Modern Soap Factory Ltd [2017] eKLR this court faced with a similar issue held that:*

*“I agree with Mbaru J’s opinion in the communication workers union case, that without recognition by an employer, a trade union, even where it is registered to represent workers in a sector, remains a by-stander to the disputes between the workers and their employers. However, if the workers are members of the union, the union can only assist them in disputes just as a lawyer does without substituting the litigants’ names from the pleadings. The time has come when the Trade Unions should differentiate between representing their members in collective disputes and assisting them in their personal disputes. In the first instance, the union can sue in its name but in the second scenario, the member must sue in his or her own name. The situation has since changed with the decision by the Court of Appeal on 7<sup>th</sup> February 2020 in **Modern Soap Factory v Kenya Shoe and Leather workers Union Civil Appeal No. 37 of 2019** where the court held that:*

*“In our judgment we can see no reason why a registered union, whose constitution so empowers, should not have standing to institute a claim on behalf of its members and to represent its members in court ... A recognition Agreement is ... a bilateral agreement between a trade union and an employer on the basis of which the trade union engages with the employer regarding terms and conditions of employment of its members. It is not the basis upon which the trade union represents its members in court. As correctly stated by the learned Judge, the two roles are distinct.”*

Accordingly, I associate myself with the binding precedent of **Modern Soap Factory v Kenya Shoe and Leather workers Union Civil Appeal No. 37 of 2019** and hold that the Claimant herein has locus standi to institute the instant suit on behalf of its member.

**Whether the Claimant followed the laid down procedure in filing this claim and if answer is in the negative whether failure to do so was fatal to the instant claim**

The statutory process of instituting employment and labour claims is adequately prescribed under Sections 62-72 of the Labour Relations Act. Section 62(3) of the Labour Relations Act, 2007 provides that a trade dispute concerning the dismissal or termination of an employee shall be reported to the Minister within 90 days of the dismissal or any longer period that the Minister, on good cause, permits. Vide Section 67(1)(a) of the Labour Relations Act, 2007, the conciliator or conciliation committee shall attempt to resolve the trade dispute referred to them within 30 days or any extended period agreed to by the parties to the dispute. Section 69 of the Labour Relations Act, 2007 provides that a trade dispute is deemed to be unresolved after conciliation if the conciliator issues a certificate that the dispute has not been resolved by conciliation or thirty days from appointment of the conciliator or any longer period agreed by the parties expires.

In the instant case, the Claimant never referred the matter to a conciliator. This runs afoul to the aforementioned process of instituting employment claims before this court. However, this court is alive to the spirit and jurisprudence emanating from the Constitution of Kenya. Article 159 provides that justice shall be administered without undue regard to procedural technicalities. This is further supported by section 20 (1) of the Employment and Labour Relations Court Act which provides that in any proceedings to which this act applies, the court shall act without undue regard to technicalities. Section 15(4) further gives this Court powers to refer matters to conciliation. The Section provides as follows:-

**(4) If at any stage of the proceedings it becomes apparent that the dispute ought to have been referred for conciliation or mediation, the Court may stay the proceedings and refer the dispute for conciliation, mediation or arbitration.**

Owing to the foregoing it is the court’s finding that failure to follow the said process does not give a fatal blow to the instant claim. Though it deprived the parties a chance to sort out their issues under the Alternative Dispute Resolution mechanisms provided under Article 159 and Section 15 of the Employment and Labour Relations Court Act, it did not occasion prejudice on the Respondents, who in any event, were free to move the Court under Section 15(4) of the Act.

**Whether the mandatory retirement of the Grievant at the age of 60 instead of 65 was wrongful, unfair and unlawful.**

It is not in dispute that at the time of retirement, the Grievant was a person living with disability as the certificate of persons with disability attached by the Claimant puts the issue to rest. It is the Respondents contention that since the Grievant was not disabled at the time of engagement as an employee, he is not entitled to the reliefs sought. Further that they are strangers to the Collective Bargaining Agreement relied on by the Claimant as at the time the CBA was executed, the Respondents had not come into existence. Further that **Regulation 12 of the Persons with Disabilities** only entitles disabled employees the following rights:

**i Right to be shifted, by the employer, to some other suitable post on the same pay scale and service benefits after acquiring disability is not suitable for the post he or she was holding or**

**ii. Where it is not possible to adjust an employee against a post, such employee may be kept on a supernumerary post until a suitable post is available or he or she attains the age of superannuation, whichever is earlier.**

The issue of timing of registration as a person with disability was dealt with in the case of **Margaret Martha Byama v Alice A. Otwala & 3 Others [2016] eKLR** where the court held:

*“Under the Act disability is defined as “a physical sensory, mental or other impairment, including any visual, hearing, learning or physical incapacity which impacts adversely on social economic or environmental participation. Once a person has been certified to be one with disability as provided in the Act that person qualifies to be registered in accordance with section 7(1) (c) of the Act. 16. The Act does not make any provision on when a person must register once certified to be a person with disability. What the Court can deduce from this deliberate omission in the Act is that disability can either be congenital or as a result of subsequent illness or incidental injury. The latter aspect can occur to anyone at any stage in life. Therefore Parliament in its wisdom saw the mischief or injustice which would occur if timelines were set on when to register as a person with disability.”*

In the instant case, the Claimant’s member sustained the injuries that led to his disability on 25<sup>th</sup> August 2017 as evidenced by the attached medical reports. The correspondences attached by the claimant prove that the claimant initiated the process of obtaining a certificate for persons with disability after the aforesaid incident. As such, the respondents’ argument that the Claimant’s employee is bound by the terms of engagement when he was able bodied fails.

The argument that the Respondents are strangers to the Collective bargaining agreement also fails as it is trite that upon the enactment of the Constitution of Kenya, 2010, the County Governments inherited the Human resources of the defunct local authorities. They are bound by the Collective Bargaining Agreement executed by the defunct local authority.

It is not in dispute that the Grievant was a public officer. A Government Circular dated 29<sup>th</sup> May 2012 raised the retirement age of persons with disabilities in the public service to 65 years and since then officers in the public service who fall under the definition of persons living with disabilities retire at the age of 65.

It is also not in dispute that at the time of the compulsory retirement, the Respondents were aware that the Grievant was duly registered as a person living with disability. The letter dated 1<sup>st</sup> November, 2017 requesting for an extension confirms this. The Respondents neither objected to the authenticity of this letter nor did they attach the response to the said letter, if at all. This confirms that they were aware of the claimant’s member predicament but opted not to respond. Consequently, it is this court’s finding that the mandatory retirement was **wrongful, unfair and unlawful**.

#### **Whether the Claimant is entitled to the reliefs sought**

The Claimant prays for an order quashing the Respondent’s letter dated 6<sup>th</sup> December 2017 and unconditional reinstatement of the Grievant without loss of employment benefits, seniority and/or service.

The Claimant’s major prayer is reinstatement. The jurisprudence in regard to this remedy is that courts should only resort to this remedy in exceptional circumstances. This is so because an order of reinstatement is an order of specific performance which courts must refrain from granting except in exceptional circumstances. The basis for exercising the discretion to grant this remedy is provided for in section 49 of the Employment Act. In the case of **Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] eKLR** this Court had this to say:-

*“Reinstatement is provided for under Section 49(3)(a) of the Employment Act as one of the remedies that a Court, by virtue of Section 50, shall be guided by. It is couched in Mandatory terms and requires the court to take into account ANY OF THE FOLLOWING MATTERS set out in Section 49(4)(a) to (m) before it can order reinstatement;*

- a. The wishes of the employee;*
- b. The circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and*
- c. The practicability of recommending reinstatement or re-engagement;*
- d. The common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances;*
- e. The employee’s length of service with the employer;*
- f. The reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination;*
- g. The opportunities available to the employee for securing comparable or suitable employment with another employer;*
- h. The value of any severance payable by law;*
- i. The right to press claims or any unpaid wages, expenses or other claims owing to the employee;*
- j. Any expenses reasonably incurred by the employee as a consequence of the termination;*
- k. Any conduct of the employee which to any extent caused or contributed to the termination;*

*l. Any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and*

*m. Any compensation, including ex gratia payment, in respect of termination of employment paid by the employer and received by the employee.”*

From the pleadings, it is clear that the Claimant’s main wish and prayer is reinstatement and that the prayer for damages has been pleaded as an alternative. The circumstances of the case confirm that the Grievant was entitled to an extension of his retirement age. However, the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination militates against granting this prayer. The Grievant has already turned sixty two years and is only left with three years before reaching the extended statutory retirement age for persons living with disability. Further, in his letter dated 1<sup>st</sup> November 2017, in which he sought extension of his retirement age, the Claimant only requested for 2 years which have lapsed. As such the circumstances of this case do not meet the exceptional threshold for reinstatement. Owing to the lengthy duration of service the Grievant offered his services to the Respondents, the court awards him compensation equivalent to 12 months’ salary, that is:

**73,290.85 x 12 months..... Kshs.879,490.20**

I also award costs to the Claimant together with interest from date of judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 17<sup>TH</sup> DAY OF JUNE 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this+ court 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 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.

**MAUREEN ONYANGO**

**JUDGE**