



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 1942 OF 2015**

*(Before Hon. Lady Justice Maureen Onyango)*

**BONIFACE KARAU.....CLAIMANT**

VERSUS

**FIRST COMMUNITY BANK.....RESPONDENT**

VERSUS

**TAKAFUL INSURANCE OF AFRICA.....INTERESTED PARTY**

**RULING**

The Applicant filed a Notice of Motion on 13<sup>th</sup> October 2016 against his former employer, the Respondent herein. In the application, he enjoined the Interested Party who insured a facility granted to him by his employer.

He seeks the following orders, in his application:

1. Spent
2. That this Court, pending the hearing and determination of the Claimant's application, do issue an injunction restraining the Respondent herein, and/or their agents or servants from alienating, selling, transferring and/or attempting to sell by way of auction or otherwise or in any way whatsoever dealing with the Claimant's property known as LR No. RUIRU/KIU BLOCK3/2343 situate at Ruiru in Kiambu County.
3. That pending the hearing and determination of this suit, the Respondents, by themselves, their servants, agents or otherwise howsoever be restrained from interfering with the Claimant/Applicant's quiet and peaceful enjoyment of their property situated at Ruiru in Kiambu County.
4. That this Court be pleased to issue a mandatory injunction against the Interested Party to pay the monthly instalments payable for nine months from the date of the unlawful termination of employment so as to regularise the facility.
5. That thus Court be pleased to order that pending the hearing and determination of the Claimant's claim and application, that the Claimant be allowed to service the facility in Fixed Monthly instalments of KShs.74,909/= effective from the 10<sup>th</sup> month after the unlawful termination of employment until judgment is delivered.
6. That this Court be pleased to issue an order to the Respondent to provide a breakdown of the monthly instalments payable by the Applicant from 9 months after the time of unlawful termination/dismissal until judgment.
7. That the costs of this application be provided for.
8. That this Court do issue such further orders as it may deem fair and just in the circumstances.

The Application is premised on grounds that

1. In July 2014, the Applicant was employed by the Respondent and as a term of the employment, the Respondent took over the facility from Barclays Bank of Kenya under the Transaction Type TAWARUQ, which is an Islamic financing instrument.

2. The facility was paid in monthly instalments of Kshs.74,909/= under the TAWARUQ Transaction type and was serviced by the Applicant's salary to the Respondent.
3. The facility was insured by Takaful Insurance of Africa, the Interested Party agent at the instance of the Respondent under an insurance scheme taken out by the Respondent for its employees under group policy no. P/HOB/2015/802/000035 known as FCB Staff Facility Guard.
4. In August 2015, he was unfairly terminated allegedly by means  
  
of unlawful retrenchment leaving him with no stable source of income.
5. It was a term of the insurance policy that an employee would enjoy a the benefits of the insurance policy upon termination on account of redundancy or retrenchment and the policy would cover monthly loan repayment instalments up to nine (9) months or a maximum of Kshs.1,000,000.
6. The interested party has failed to make payments for the facility as the 9 months out of the 10 months' arrears in the Statutory Notice are as a result of the insurance redundancy claim non-payment for 9 months as per the insurance contract and loan exit repayment proposal.
7. He has a group membership certificate no. F000030/FG/02/2015/1 for the period running from 1<sup>st</sup> February 2015 to 31<sup>st</sup> January 2016 with all premiums fully paid and all the retrenchment claims met as per the insurance undertaking.
8. On 28<sup>th</sup> September 2016 the Applicant was served with a 40 days Statutory Notice to sell his property known as L.R. No. Ruiru/Kiu Block 3/2343 situate at Ruiru in Kiambu County which is his matrimonial home.
9. The Respondent and Interested Party being principal and agent have colluded and connived to unlawfully dethrone him from his hard earned matrimonial home. It is only just and fair that he is not penalised for the acts and omissions of the Respondent which were done without his involvement.

The Application is supported by the Applicant's affidavit sworn on 13<sup>th</sup> October 2016. He avers that after termination, he demanded that the Respondent makes a claim from the Interested Party and advise in accordance with the staff exit loan proposal and the Insurance Policy. He further avers that he lodged a complaint with the Insurance Regulatory Authority on 29<sup>th</sup> July 2016 and was informed that the policy holder was the Respondent hence it had the sole responsibility to make the claim from the Interested Party.

Both the Respondent and Interested Party filed their respective Replying Affidavits in response to the application. In addition, the Interested Party filed a Preliminary Objection dated 5<sup>th</sup> December 2016, (though the Claimant and the Respondent refer to this Preliminary Objection as the Respondent's Preliminary Objection).

The Preliminary Objection raises the following grounds:

1. That the suit is a non-starter as it does not disclose a cause of action against the Interested Party.
2. That there is no privity of contract between the Claimant and the Interested Party.
3. Other grounds and reasons as may be adduced at the hearing thereof.

### **Respondent's case**

The Respondent filed a Replying Affidavit sworn by Nelly Indimuli, the Respondent's Human Resource Officer, on 8<sup>th</sup> November 2016. It further filed Grounds of Opposition dated 28<sup>th</sup> October 2016 which are reiterated in the Replying Affidavit.

She deposes that the Applicant's averment that he had legitimate expectation to be employed until and beyond a time when repayment of the facility was completed cannot be sustained as the contract of employment is a separate and distinct contract not subject to the facility agreement.

That the Applicant complied with the provisions of Section 40 of the Employment Act and that the Applicant was informed of the reasons for termination through an exit meeting held with officials of the Respondent on 7<sup>th</sup> August 2015. Further, the Respondent was entitled to terminate the contract without notice.

She contends that the Respondent lodged a claim with the interested party on behalf of the Applicant on account of redundancy. However, the Interested Party stated that the claim was inadmissible hence not payable. Further, if payments were to be made they would only apply for 9 months and that the Applicant had been in default for 9 months.

She avers that the facility is in arrears as from April 2016 to date and having not made any monthly payments as from April 2016 there is no justification for him to continue making monthly instalments. She avers that given that the insurance policy was between the Respondent and the Interested Party, the Applicant has no privity of contract on the same.

She avers that should this Court allow the Applicant to make payment at a fixed rate contrary to the terms and conditions of the facility it would be tantamount to this Court rewriting the terms of the agreement between the Applicant and the Respondent.

She avers that the Respondent is within its statutory and contractually agreed right to sell the property forming the security for the facility advanced to the Applicant. She avers that this Court is not *forum conveniens* for the Applicant's claim under the insurance policy and the same cannot operate to defeat the Respondent's statutory power of sale.

She avers that the Applicant is guilty of laches and is thus undeserving of any equitable relief since equity aids the vigilant not the indolent. She further avers that the Court under Article 162(2) of the Constitution lacks the requisite jurisdiction to hear and determine any dispute relating to the use and occupation of and title to land.

She contends that the Applicant has not obtained any orders enjoining the Interested Party in these proceedings.

The Applicant in response to the Respondent's Replying Affidavit filed a Further Affidavit sworn in 2<sup>nd</sup> November 2016.

He avers that the assertion that there is no connection between the staff employment and facility takeover is an attempt to misled the Court. Further, the Respondent did not comply with the provisions of section 40 of the Employment Act on fair and lawful termination on account of redundancy. He avers that the Interested Party's reasons for inadmissibility of the claim as stated in its letter dated 3<sup>rd</sup> December 2015 support his application in which he demands that the Interested Party be made to pay 9 months' repayment due to insurance costs.

### **Interested Party's Case**

The Interested Party filed a Replying Affidavit sworn by Hakim Musa, a Senior Underwriter, Family Takaful, on 2<sup>nd</sup> December 2016.

He avers that it was a term of the insurance policy that if unemployment occurred due to the insured member's resignation, acceptance of voluntary retrenchment, the expiry of a non-renewable fixed term contract, any form of retirement or dismissal in terms of his/her contract then the claim would be inadmissible.

He avers that after the Applicant's termination by the Respondent, the Interested Party conducted investigations to ascertain the Applicant's financial status and established that the Applicant has stable income from private businesses.

He avers that the policy stated that the claim would be admissible if the insured had no source of income. He further avers that the claim was not reported within the required 60 days.

He avers that the Applicant has not met the standard required for grant of injunction.

### **Applicant's Submissions**

The Claimant although acknowledging the determination on jurisdiction as set out in the case of **Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited [1989] eKLR**, submits that there are instances where the courts are faced with a unique issue of jurisdiction that is of a "mixed grill case" like in the case of **Amos Kiumo and 2 Others v Cabinet Secretary Ministry of Interior and Coordination of National Government & 3 Others [2014] eKLR** where the Court held:

*"...there must be something more to the substantial question than merely novelty or complexity of the issue before the court. It may present unique facts not plainly covered by the controlling precedents."*

He submitted that the staff mortgage was an employment benefit that he would not have benefitted from if he was not an employee of the respondent. He relied on the case of **Abraham Nyambane Asiago v Barclays Bank of Kenya Limited [2013] eKLR** where the Court held that an employment relationship can generate a multiplicity of rights and obligations which fall under employment and labour relations as intended by law makers.

He further relied on the decision in **Suzanne Achieng Butler & 4 others v Redhill Heights Investments Limited & another [2016] eKLR** where the court observed that what is important in determining which court would have jurisdiction in mixed grill cases is the "*pre-dominant test*". It is his submission that the Court must determine whether the predominant purpose of the transaction between him and the Respondent was employment or the mortgage facility.

With respect to his application, he submits that the rules governing the grant of injunction are well settled in **Giella v Cassman Brown & Co. Ltd [1973] E.A. 358**. He submits that he has demonstrated that he has a prima facie case with a probability of success for reason that it was not until he filed this suit that he was informed of the reason for his termination. That should the respondent dispose of his property no amount of compensation would be adequate.

He submits that the balance of convenience tilts in his favour as the Respondent took over his loan facility from Barclays Bank and thereafter unlawfully terminated him.

He contends that a fourth principle has evolved over time which is that conduct of parties must be scrutinised. It is his submission that the Respondent and Interested Party have colluded not to offer the Claimant any accounts of the loan due.

With respect to the Preliminary Objection, he submits that the power to strike out a suit as one disclosing no reasonable cause of action is drastic power which should be exercised sparingly. He relies on the case of **DT Dobie Company Ltd v Muchina [1982] KLR 1** where the Court held that no suit ought to be summarily dismissed unless it appears to be hopeless and discloses no cause of action.

He submits that the proposition that a contract cannot confer a benefit other than to a party to it has been subject of much criticism. He relies on the case of **Darlington Borough Council v Wiltshire Northern Limited [1995] 1 WLR 68** where the court observed as follows –

*“The case for recognizing a contract for the benefit of a third party is simple and straightforward. The autonomy of the will of the parties should be respected. The law of contract should give effect to the reasonable expectations of contracting parties. Principle certainly requires that a burden should not be imposed on a third party without his consent. But there is no doctrinal, logical or policy reason why the law should deny effectiveness to a contract for the benefit of a third party where that is the expressed intention of the parties. Moreover, often the parties, and particularly third parties, organize their affairs on the faith of the contract. They rely on the contract. It is therefore unjust to deny effectiveness to such a contract.”*

He submits that the insurance policy does not provide for exclusion of retrenchment and that the Interested Party has not provided any proof to show that he has a stable income. In conclusion, he submits that the Applicant has established legal principles that would warrant the orders sought.

### **Respondent’s Submissions**

The Respondent submits that under Article 162(2)(a) of the Constitution and Section 12 of the Employment and Labour Relations Court Act, this Court is mandated with original jurisdiction to hear and determine all employment and labour related matters.

It submits that the subject matter of the loan facility between the Claimant and the Respondent was for purely commercial purposes, extraneous to the objects of the contract of employment. Therefore, the relationship is outside the scope of the employment contract. It relies on Supreme Court’s decision in **Samuel Kamau Macharia v Kenya Commercial Bank Limited & 2 Others [2012] eKLR** that

*“A court’s jurisdiction flows from either the constitution, or legislation or both. Thus a Court of law can only exercise jurisdiction as conferred on it by law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...where the constitution exhaustively provides for the jurisdiction of a Court of law, it must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”*

It is therefore its submission that the fact that this Court does not have jurisdiction makes the instant application a nullity.

It submits that the Court of appeal in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125** defined a prima facie case as a case in which a court or tribunal would conclude that there exists a right that has been infringed by the opposite party. It submits that the Applicant has not demonstrated that a clear and unmistakable right is to be protected. It further submits that the applicant is in default of his obligations under the facility.

It submits that the Applicant’s claim is a monetary claim for Kshs.63,000,000. However, an injury is irreparable where there is no standard by which the mount can be measured with reasonable accuracy or the injury is such a nature that can be remedied by monetary compensation.

It submits that a prima facie case has not been established thus the irreparable injury and balance of convenience need no consideration. It submits that in view of all the facts and circumstances obtaining in the instant matter, the balance of convenience tilts in its favour. It urges the Court to dismiss the applicant’s application.

### **Interested Party’s Submissions**

The Interested Party submits that privity of contract cannot confer rights or impose obligations on strangers to it. It submits that the Court of Appeal in **Aineah Liluyani Njirah v Agha Khan Health Services [2013] eKLR** held that a third party should be able to enforce a term of the contract when the contract expressly states that the third party has a right of enforcement. It submits that as much as the Applicant was a beneficiary under the policy taken out by the Respondent, there was no privity of contract between the Applicant and the Interested Party because the Respondent was the policy holder.

It submits that the Court has no jurisdiction to determine the matter. In addition, the Applicant has not disclosed a cause of action against it and has not demonstrated a prima facie case with a probability of success.

### **Determination**

The issues for determination are:

1. Whether this Court has jurisdiction to determine the matter.
2. Whether the Applicant has a valid claim against the Interested Party.
3. Whether the Applicant has met the threshold for grant of injunctive relief.

## Whether this Court has jurisdiction to determine the matter

The Respondent and the Interested Party have submitted that this Court has no jurisdiction to determine this matter. They aver that pursuant to the Letter of Offer 25<sup>th</sup> August 2014, the facility was for the purpose of a commercial transaction for the purchase of sugar. It avers that the transaction falls outside the scope of the employment contract. The Respondent further in its Replying Affidavit sworn by Nelly Indimuli avers that this Court lacks the requisite jurisdiction to hear and determine any dispute relating to the use and occupation of and title to land.

The Applicant avers that he was not qualified for a commercial/personal loan with the 1<sup>st</sup> Respondent when the letter of offer was issued and as such the only credit transaction was a staff mortgage takeover from his previous employer.

It is not contested that the parties herein were in an employment relationship. The loan facility granted to the Applicant was a takeover of a facility from his former employer, Barclays Bank Limited, which the respondent did for the sole reason that the applicant had joined its employment.

The Letter of Offer dated 25<sup>th</sup> August 2014 provided that the security for the loan was a legal charge on property title No. Ruiru/Kiu Block 3/2343 and the continued assignment of the claimant's salary to the staff account held by the Respondent. Further, the Claimant's termination letter refers to the loan as staff facilities.

The jurisdiction of this Court is established under Article 162(2)(a) of the Constitution and is to determine disputes relating to employment and labour relations. Section 12(1) of the Employment and Labour Relations Court Act provides:

**(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—**

**(a) disputes relating to or arising out of employment between an employer and an employee;**

**(b) ...”**

In **Boniface Lum Amunga Biko v National Bank of Kenya Limited [2017] eKLR** the Court held:

*“In this regard therefore, the concept of employment and labour relations is wide and not restricted to the contract of service. With employment, there comes other relations at play such as the work benefits that require formation of relations such as the one leading to facilities such as loans, mortgage, and car and buying of agricultural land. Such relations cannot be divorced from the core employment relationship of the employer and employee. To do so would be lose the context within which labour relations find meaning.”*

In the letter of termination of the claimant's employment, the respondent acknowledges the loan facility advanced to the claimant as follows

”FCCB/STAFF/845/2015

*Private and Confidential*

*Mr. Boniface Karau*

*Through:*

*The General Manger*

*First Community Bank Limited*

HEAD OFFICE

*Dear Boniface*

RE: TERMINATION OF EMPLOYMENT

*We write to advise that your services to the Bank are hereby terminated with effect from today, 7<sup>th</sup> August 2015 in line with your employment contract.*

*Your final dues will therefore be computed as follows:*

*Payment for 7 days of August 2015*

*Kshs.64,438.36*

Three months' salary in lieu of notice	Kshs.280,000.00
Severance Pay Package (1 Year)	Kshs.138,082.20
Severance Pay (Prorated 38 Days)	Kshs.14,375.70
Payment for 4 leave days earned but not taken	Kshs.38,821.80
(The above amounts are subject to tax)	<u>Kshs.(154,047.80)</u>

**Kshs.379,670.36**

You however have the following liabilities:

Staff Facility 1 – (Kshs.4,940,345.86)

Staff Facility 2 – (Kshs.33,800.04)

Provident fund dues will be paid as per the rules of the scheme.

We request you to note the following additional conditions:

1. You are required to hand over any bank assets in your custody and all outstanding projects or assignments to the Senior Manager, ABF & Mortgages.
2. You are required to fully complete the handover form, a signed copy of which should be submitted to the Senior Manager, ABF & Mortgages for approval before a Clearance Certificate is issued to you. Successful completion of this process will be critical to your formal departure from the Bank.
3. The facilities are to be cleared upon exit unless a repayment /takeover proposal is received and accepted by Management. All unsettled facilities within 30 days of exit shall be transferred to market rate or as otherwise advised by Management.

Kindly sign the attached copy of this letter to signify your understanding and acceptance of the above mentioned dues and conditions.

Yours Faithfully

SIGNED

Nelly Indimuli

FOR: HEAD OF HUMAN RESOURCES”

The letter clearly refers to the loan as “staff facility”. This court has jurisdiction to determine the issue of a loan facility advanced by an employer by the employer as that would constitute part of the employees’ employment benefits.

The issue in dispute in the suit relates to unfair termination of employment. The applicant seeks compensation for the unfair termination of his employment. In determining the suit, the court will also have to make a determination on the benefits that the applicant is entitled to.

In **Abraham Nyambane Asiago v Barclays Bank of Kenya Limited [2013] eKLR** the Court held:

“The question then is what constitutes a dispute relating to or arising out of employment between an employer and an employee. Is it confined to issues that are ordinarily found in employment contracts or does it extend to all matters emanating from the employment relationship? Counsel for the Respondent asked the Court to down its tools in this matter because the subject matter is land and not employment. With much respect to the learned Counsel, that is a very narrow interpretation of what constitutes an employment and labour matter and the consequential jurisdiction of the Industrial Court.

By its nature, the employment relationship generates a multiplicity of rights and obligations, some of which are not to be found in the express provisions of the employment contract. In my view, all these fall under employment and labour relations as intended by the law makers...”

I therefore find that this Court has jurisdiction to determine the matter.

**Whether the applicant has a valid claim against the Interested Party**

The Interested Party in its Preliminary objection avers that the suit does not disclose a cause of action against it and that there is no privity of contract between the Claimant and the Interested Party.

The Policy document that the respondent took out with the Interested Party provided that the proposer for the insurance was FCB Staff Facility Guard whereas the members covered, the beneficiaries, were the staff of the respondent among them the applicant. As rightfully submitted by the Interested Party, even though the Applicant was a beneficiary under the policy, he cannot enforce the terms of the policy document. A third party cannot enforce a contract even if it was made for his benefit as the third party did not negotiate the terms of the contract. This is what was held in **Agricultural Finance v Lengetia Ltd [1985] KLR 765** where the Court of Appeal held:

*“As a general rule a contract affects only the parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”*

There are however exceptions to the doctrine of privity of contract as stated in **Aineah Liluyani Njirah v Agha Khan Health Services [2013] eKLR**. In the instant suit, the applicant does not seek to enforce any orders against the Interested Party. This court will however have to decide whether the claim by the Applicant that he had a cover with the Interested Party that would have paid for his premiums for 9 months is a valid claim. The Interested Party has not denied that such a cover existed. It has however pleaded that it rejected the claim, a matter that was never communicate dot the Applicant who is the beneficiary. Further it has pleaded that it investigated the claimant yet the claimant was not aware of such investigation. The court will thus have to determine whether the rejection of the claim by the Respondent on behalf of the Applicant was valid. For this reason, it is necessary for the Interested Party to be joined in the suit as an Interested Party. No privity of contract is necessary in such circumstances. I thus find the joinder of the Interested Party necessary.

### **Whether the Claimant has met the threshold for grant of injunctive relief**

The principles for grant of injunctive orders were set out in the case of **Giella v Cassman Brown & Company Ltd (1973) EA 358**. The applicant must show that he has a prima facie case with a probability of success and that he stands to suffer irreparable damage should the orders not be granted.

### **Prima facie case**

The Claimant contends that he was issued with a 40 days Statutory Notice of sale of his property known as L.R. No. RUIRU/KIU BLOCK 3/2343 situate at Ruiru Kiambu County by the respondent. He avers that the facility was serviced by his salary but following the unlawful termination of his employment, he has been left with no income.

In the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** the Court of Appeal endeavoured to define a Prima facie case as follows:

*“So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter...”*

*... prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”*

In the memorandum of response, the respondent states that the claimant's employment was lawfully terminated. It is thus a matter for determination after hearing evidence from the parties. I find this to be sufficient to establish a prima facie case.

While considering the application, I have also noted that there is a fatal error in the same. The Interested Party is not a party to the claim and no prayers have been sought against the Interested Party. The said party was brought into this suit through this application. Unfortunately, the application does not contain a prayer for joinder of the Interested Party.

As the Interested Party has already defended itself in respect of the application, it will not be prejudiced by being formally joined to the suit. I however grant the applicant limited leave of 14 days with which it may file an application to join Takaful Insurance of Africa as a party to the suit.

### **Irreparable damage**

On irreparable damage, the applicant states that should the property be sold he will be rendered homeless and no amount of monetary compensation would remedy this. He further states that since the termination of his employment was unfair he should be allowed to repay the loan at the staff rate of KShs.74,909 per month until the court determines the suit.

I agree with the Applicant that should his property be sold; he would be remedied by damages.

### **Balance of convenience**

In this case the balance of convenience tilts in the Applicant's favour as he is at risk of losing his matrimonial home should the orders sought

not be granted. Further, should the court find that the termination was unfair, there would be legitimacy in holding that the applicant continues to pay the loan facilities at the preferential interest rates applicable to employees.

## **Orders**

From the foregoing the application succeeds in part and I issue the following orders –

1. An order be and is hereby issued that pending the hearing and determination of this suit, the Respondents, by themselves, their servants, agents or otherwise howsoever be restrained from interfering with the Claimant/Applicant's quiet and peaceful enjoyment of their property situated at Ruiru in Kiambu County.

2. An order be and is hereby issued that pending the hearing and determination of the Claimant's claim and application, that the Claimant be allowed to service the facility in Fixed Monthly instalments of Kshs.74,909/= pending hearing and determination of this suit.

In respect of prayer 4 the applicant is granted leave to file the appropriate application to formalise the joinder of Takaful Insurance of Africa as party to this suit.

The costs of this suit shall in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23<sup>RD</sup> DAY OF APRIL 2020**

**MAUREEN ONYANGO**

**JUDGE**

## **ORDER**

In view of the declaration of measures restricting court of 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**