



**Kung'u v Kenya Electricity Generating Company PLC (Petition  
E009 of 2022) [2024] KEELRC 1843 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1843 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E009 OF 2022**

**SC RUTTO, J**

**JULY 12, 2024**

**IN THE MATTER OF: THE CONTRAVENTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS IN ARTICLES 10, 27 (4) (5) & (6), 41(1),  
159, 258(1) 259 (1) AND 260 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF ARTICLE 7  
OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF SECTION 2 & 15(1)  
(D) AND (6) OF THE PERSONS WITH DISABILITIES ACT, 2003**

**IN THE MATTER OF: SECTIONS 5(3) OF THE EMPLOYMENT ACT, 2007**

**AND**

**IN THE MATTER OF: THE UNFAIR DISCRIMINATION ON GROUNDS OF DISABILITY**

**BETWEEN**

**JOHN GICHUKI KUNG'U ..... PETITIONER**

**AND**

**KENYA ELECTRICITY GENERATING COMPANY PLC ..... RESPONDENT**

**JUDGMENT**

1. It is common ground that the Petitioner herein, Mr. John Gichuki Kung'u, was employed by the Respondent with effect from 2<sup>nd</sup> October 1984 and that prior to his retirement, he was serving as a Senior Plant Operator I.



2. From the record, it is apparent that the instant dispute was triggered by the Respondent's letter dated 16<sup>th</sup> March 2020, to the Petitioner, notifying him of his retirement which was to take effect on 31<sup>st</sup> December 2020. According to the Petitioner, he requested for an extension of his retirement to the age of 65 on grounds of disability but the same was declined without any reason.
3. Against this background, the Petitioner seeks the following reliefs against the Respondent:
  - a. A declaration be and is hereby made that the Petitioner's right not to be discriminated against under Article 27 (4), (5), (6) and (7) of *the Constitution* of Kenya and Article 7 of the Universal Declaration of Human Rights had been violated.
  - b. A declaration be and is hereby made that the failure by the Respondent to extend the petitioner's Retirement age from 60 years to 65 years in total disregard of the stated Government policy amounts to a violation of his right not to be discriminated against on the grounds of health, age and disability.
  - c. A declaration be and is hereby made that failure by the Respondent to recognize the Petitioner as disabled person pursuant to the *Persons with Disabilities Act* No. 14 of 2003 is a discrimination against the Petitioner and a violation of his constitutional rights.
  - d. A declaration being a duly registered person with disability he is entitled to serve until the age of 65 years.
  - e. A declaration that the retirement notice dated 16<sup>th</sup> March 2020 is null and void hence the petitioner ought to be reinstated and paid his salary arrear he would have otherwise earned had his rights not been violated.
  - f. A declaration that the Petitioner is entitled to payment of Kshs.17,851,828.80 tabulated at Kshs. 297,530,48/- per month being the amount in arrears he would have otherwise earned had his rights not been violated for five (5) years until the retirement age of sixty (65).
  - g. A declaration be and is hereby made that the Petitioner be compensated a total sum of ten million Kenya shillings (Kshs. 10,000,000.00) or any other amount that the Court deems sufficient and/or appropriate by the Respondent for the violation of the Petitioner's rights and fundamental freedoms under Article 27 (4), (5), (6) and (7) of *the Constitution* of Kenya and Article 7 of the Universal Declaration of Human Rights.
  - h. Costs of this Petition.
  - i. Interest on prayers (7), (8) and (9) at Court rates till payment in full.
  - j. And any other or further relief as this Honourable Court may deem fit to grant.

#### **Petitioner's Case**

4. It is the Petitioner's case that he has a permanent physical disability and is certified as a person with disability by the National Council for Persons with Disabilities (NCPD).
5. The Petitioner further avers that Government Policy requires that a person with disability retires at the age of 65 as per the Circular Reference number MSPS/HRM/2/2/2/VOL.II(21) dated 29<sup>th</sup> May 2012.
6. It is the Petitioner's contention that he was made aware that he was scheduled to retire on 1<sup>st</sup> January 2021 when he attained the age of 60 as per the letter dated 16<sup>th</sup> March 2020 from the Respondent.



- That despite requesting for extension of retirement age and making a demand to the Respondent, no action was taken and he was forced to retire at the age of 60 years.
7. The Petitioner further contends that the Respondent's failure to extend his retirement age from 60 years to 65 years is in total disregard of Government Policy and amounts to a violation of his right not to be discriminated against on the grounds of health, age and disability.
  8. That further, he has been subjected to serious economic hardship as he cannot walk without the help of clutches thus depriving him of his right to livelihood and the right to be cushioned against the adversities of retirement accorded to persons with disability.
  9. He has been advised by his advocate on record, which advice he verily believes to be sound that Article 41 of *the Constitution* of Kenya 2010 provides for fair labour practices which the Respondent has a duty and obligation to respect, uphold and defend.
  10. He has further been advised by his advocate on record, which advice he verily believes to be sound that Article 20 (2) of *the Constitution* guarantees that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
  11. The Petitioner contends that he has been denied the enjoyment of the rights enshrined under Article 27 (4) (5) (6) and (7) of *the Constitution* and Article 7 of the Universal Declaration of Human Rights which provides for the right not to be discriminated on the grounds of disability, health and age.
  12. That further, he has been advised by his advocate on record which advice he verily believes to be sound that the Respondent was under an obligation to follow the provisions of *the Constitution*, *Employment Act* and *Persons with Disabilities Act*, 2003, and the Government Policy in respect to retirement of persons with disability in the extension of his retirement age.
  13. It is the Petitioner's contention that failure to follow the provisions of the Act or give any reasons for doing so made the decision of the Respondent unfair and discriminatory.

### **Respondent's Case**

14. The Respondent countered the Petition through a Replying Affidavit sworn on 18<sup>th</sup> July 2022, by Elias Korir, its Senior Human Resource Officer.
15. In his Affidavit, Mr. Korir avers that the Petitioner's employment came to an end through the normal process of effluxion of time and attrition by retirement when he attained the mandatory age of retirement being 60 years.
16. That prior to his retirement, the Respondent vide letter dated 16<sup>th</sup> March 2020 referenced "NOTICE FOR RETIREMENT" informed the Petitioner that he would be attaining the retirement age of 60 years on 1<sup>st</sup> January 2021 and consequently, that the notice of retirement had taken effect.
17. The Notice further informed the Petitioner that he had 42.5 accrued leave days which he was requested to take before the retirement date. Similarly, he was advised to follow up on his retirement benefits from the KenGen Retirement Benefit Scheme.
18. That at the time of his retirement, the Petitioner was earning Kshs. 265,801.09 per month and he was paid all his terminal dues upon retirement.
19. Mr. Korir further avers that the Petitioner's retirement took effect on 31<sup>st</sup> December 2020 and he ceased being an employee of the Respondent on the said date.



20. That subsequently, the Petitioner was issued with a letter and schedule detailing how his benefits under the retirement benefit scheme would be paid to him. He duly accepted the letter through a confirmation letter dated 18<sup>th</sup> January 2020.
21. He is advised by the Respondent's advocates on record, which advice he believes to be true, that for a person to be a beneficiary of the circular reference no. MSPS/HRM/2/2/2/VOL.II (21) of 29<sup>th</sup> May 2012 as a person with disability, they have to be registered with the NCPD.
22. Mr. Korir states that the Petitioner was allegedly recommended for registration as a person with disability pursuant to a Medical Assessment Report dated 13<sup>th</sup> March 2018 and drawn by a medical team assembled at Murang'a County Referral Hospital on 8<sup>th</sup> November 2017.
23. However, the Petitioner was allegedly issued with a card by the NCPD on 29<sup>th</sup> August 2016 which is about 18 months and 14 days before he was allegedly examined by the medical team that certified and recommended him for registration as a person with disability.
24. According to Mr. Korir, these discrepancies raised reasonable doubt as to the authenticity of the documentation supplied by the Petitioner to warrant him to benefit from the aforementioned Circular.
25. Mr. Korir is further advised by the Respondent's advocates on record which advise he believes to be true that the Petitioner was required to be registered in the Respondent's human resource database as a person with disability for at least three years before the date of retirement and that registration by the NCPD or possession of a tax exemption certificate shall not be considered as automatic evidence of disability.
26. It was Mr. Korir's further deposition that since his retirement, the Petitioner as a beneficiary of the KenGen Staff Retirement Benefits Scheme opted for a lump sum payment and monthly pension which he has been receiving and thus enjoying his retirement which is now effective and complete.
27. That he is further advised by the Respondent's advocates on record that this is an employment dispute with a well laid down legal regime that ought not to be circumvented or disguised as a constitutional issue.
28. Mr. Korir further avers that the Respondent denies the allegations of infringement or violations or threats of violation or infringement as set out in the Petition.
29. That the Respondent further denies that it received any demands or protest from the Petitioner and states that he was retired in accordance with the law and his retirement took effect on 31<sup>st</sup> December 2020. That he took out his pension and has been enjoying the same.
30. In Mr. Korir's view, the Petitioner is undeserving of the prayers sought.

### **Petitioner's Submissions**

31. The Petition was canvassed through written submissions. The Petitioner submitted that the Petition has explicitly demonstrated that the cause of action arose from the Respondent's action of unconstitutionally declining to extend his retirement age from 60 years to 65 years. In support of this position, the Petitioner cited the case of Anarita Karimi Njeru v Republic (1976-1980) KLR and Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others (2013) eKLR.
32. The Petitioner further submitted that the Respondent did not dispute the authenticity of the medical report and did not subject him to a second Medical Opinion to contradict its authenticity hence it is



not presumptuous to claim that the Respondent was fully aware of his authentic condition as a person living with a permanent disability. The Petitioner contended that the authenticity issue came as an afterthought with the intention to defeat his rights.

33. It was the Petitioner's further submission that a person with disability under the Persons with Disability Act enjoys other privileges such as exception from payment of PAYE tax which is usually remitted by the employer. It was his position that he has been enjoying this privilege after having applied for exemption as is evidenced by the five-year Income Tax Exemption Certificate Number KRA201914909466 dated 13<sup>th</sup> November 2019 obtained months prior to the Notice for Retirement.
34. The Petitioner further submitted that despite being categorized as a person with disability, the Respondent went ahead to forcefully retire him at the age of 60 in explicit and utter disregard of the Government Circular premised on Article 27 (6) of *the Constitution* and the internal Separation Policy.
35. The Petitioner further argued that Circular MSPS/HRM/2/2/2/VOL. II (21) was set to benefit all employees with disabilities as defined in Section 2 of the *Persons with Disabilities Act*, 2003 who are also registered with the NCPD. In the same breath, the Petitioner submitted that having been identified as a person with disabilities duly registered with the NCPD, the Respondent violated his right to not be discriminated under Article 27 of *the Constitution* by declining to extend the retirement age.
36. Submitting along the same lines, the Petitioner argued that the Respondent in declining to extend the retirement age contravened Section 5(3) of the *Employment Act*. In support of the Petitioner's arguments, the case of *Simon Gichuru Gitau v Package Insurance Broker Limited* (2021) eKLR was cited.
37. The Petitioner further submitted that he had a legitimate expectation that since the Separation Policy and the Government Circular accorded persons with disabilities, the fair administrative action would accord him the right to enjoy the benefit cushioning him from the adverse effect of the economic and social challenging conditions as a person living with disability. In support of this position, the Petitioner placed reliance on the case of *Margaret Martha Byama v Alice A. Otwala & 3 others* (2016) eKLR.
38. It was the Petitioner's further submission that he is for all intents and purposes entitled to benefit from the 2012 Government Circular. On this score, he argued that the Public Service Regulations 2020 came into effect on the 28<sup>th</sup> of January 2020 and as such Regulation 70(2) (b) which provides that for one to be considered for retirement as a person with disability one has to be registered in the public body's human resource database as a person with disability for at least three years before the date of retirement, is impracticable in this instance.
39. The Petitioner proceeded to argue that by the time the said Regulations came into force, he had one year left to his date of termination as per the Respondent's letter dated 16<sup>th</sup> March 2020 and thus impossible for him to comply with the said Regulation.
40. He further submitted that the application of the said Regulation against him is impracticable, unreasonable, unfair and against the spirit of *the Constitution*, the 2012 Government circular and a blatant violation of his right to equitable justice. To buttress his submissions, the Petitioner cited the case of *Engineer Samwel Ogola Ogege vs Cabinet Secretary, Ministry of Transport and Public Works (State Department of Infrastructure), Kenya National Highways Authority (Kenha) and Public Service Commission (PSC)* (2022) eKLR.



## Respondent's Submissions

41. On the Respondent's part, it was submitted that for the Petitioner's position to hold true, he must establish two factors; first, the factual question of disability and second the legal question of compliance with procedure. In the Respondent's view, the Petitioner has not discharged the legal burden of proving that he was a person living with a disability three years prior to his date of retirement at the age of 60 years or that he obtained that disability card after the three year period before the date of retirement at 60 years.
42. The Respondent further posited that the Petitioner has not proved on a balance of probability that the said disability must be of a permanent nature, can be perceived by significant sectors of the community, and the disability has a substantial impact on the ability of the officer to carry out ordinary day to day activities.
43. The Respondent further contended that the Petitioner was never registered in its Human Resource database as a person with disability. That this is informed by the fact that the Petitioner was picked by its system as being due for retirement as early as a year in advance and was notified of this fact in a letter dated 16<sup>th</sup> March 2020.
44. It was the Respondent's position that possession of a tax exemption certificate shall not be considered as automatic evidence of disability.
45. With respect to the Petitioner's claim that his rights under Article 27 of *the Constitution* had been violated, the Respondent argued that the Petitioner has failed to demonstrate in what way it accorded him different treatment solely or mainly as a result of his disability. In the same breath, the Respondent submitted that the Petitioner has failed to show with precision how the termination of his employment contract by the Respondent was discriminatory as compared to other individuals of equal status.
46. According to the Respondent, there is no comparator to demonstrate that other people in similar circumstances as the Petitioner received preferential treatment when compared to him. To support its argument, the Respondent referenced the case of Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others [2020] eKLR and John Harun Mwau v Independent Electoral and Boundaries Commission & another [2013] eKLR.
47. The Respondent further submitted that the Petitioner has failed to link the retirement at the age of 60 years to be discriminatory on the basis of his disability.
48. The Respondent maintained that the Petitioner was retired at the age of 60 years not because he was disabled but because he had attained the age that mandated he retires. The Respondent reiterated that there is no link to the Petitioner's retirement and discrimination on the basis of his physical disability.
49. As to the Petitioner's claim that his right to dignity had been violated, the Respondent referenced the case of M W K V another v Attorney General & 3 others [2017] eKLR and posited that they do not see in what manner a retirement of an individual at the right time of retirement amounted to failure to acknowledge the intrinsic worth of human beings, in particular, the Petitioner. That further, they do not see how the Petitioner was treated in any way that was not worthy of respect and concern by the fact that he retired at the age of 60 years as per the law.
50. The Respondent further submitted that the Petitioner's rights to fair labour practice were not violated in any way as he has not demonstrated that he was registered with the NCPD prior to his retirement effective 1<sup>st</sup> January 2021.



51. The Respondent submitted without prejudice that despite the Petitioner elevating the dispute to a constitutional level, this matter was atypical and could be resolved without invocation of *the Constitution*. That this is because the entire question of the retirement age of employees in the public service is a preserve of statute. On this score, the Respondent placed reliance on the case of *KKBVSCM & 5 others (Constitutional Petition 014 of 2020)* [2022] KEHC 289 (KLR) (22 April 2022) (Ruling).

### **Analysis and Determination**

52. Flowing from the pleadings herein and the rival submissions, the following issues can be distilled for determination:
- a. Whether the Petitioner's Constitutional rights were violated; and
  - b. Whether the Petitioner is entitled to the reliefs sought.

### **Constitutional violation?**

53. The Petitioner has cited the Respondent for constitutional violation and in this regard, has flagged Articles 27, 28 and 41(1) of *the Constitution*.
54. With respect to Article 27, the Petitioner has argued that he was discriminated by the Respondent's failure to extend his retirement age without any reason despite being aware that he has a physical disability which impacts negatively on his social, economic and environmental participation.
55. The Petitioner further averred that he is unlikely to be cushioned against the adversities of retirement and this is likely to affect his ability to provide for himself and his family. According to the Petitioner, this will affect his ability to carry out his day to day activities hence affecting his basic right to dignity.
56. The Petitioner has further argued that the Respondent violated his right to fair labour practices by failing to extend his retirement age in accordance with Government Policy despite being aware that he has a permanent disability.
57. Disputing the Petitioner's claims, the Respondent has contended that the Petitioner was recommended for registration as a person with disability on 8<sup>th</sup> November 2017 but was issued with a card by the NCPD on 29<sup>th</sup> August 2016. According to the Respondent, this was 18 months and 14 days before he was allegedly examined by the medical team that recommended for his registration as a person with disability. It is the Respondent's assertions that the discrepancies raised reasonable doubt as to the authenticity of the documents supplied.
58. The Respondent has further averred that the Petitioner was required to be registered in its human resource database as a person with disability at least three years before the date of retirement. In the Respondent's view, registration by the NCPD shall not be considered as automatic evidence of disability.
59. Regulation 70(2) (b) of the PSC Regulations provides as follows:
- “(2) A public officer shall be considered for retirement as a person with disability if the officer—
- .....
- (b) has been registered in the public body's human resource database as a person with disability for at least three years before the date of retirement: Provided that the Commission may consider cases



of disability that occur less than three years before the date of retirement; and...

60. Notably, the aforementioned Regulations came into force shortly before the Petitioner was issued with the Retirement Notice and before he attained the age of 60. This being the case, Regulation 70 (2) (b) would not in my view constitute a valid ground for the Respondent to decline extension of the Petitioner's retirement.
61. The above finding notwithstanding, did the Respondent violate the Petitioner's constitutional right in retiring him at the age of 60?
62. In support of his case, the Petitioner exhibited a card which was ostensibly issued by the NCPD on 29<sup>th</sup> August 2018. Be that as it may, the Petitioner did not lead evidence to prove that he brought the issue of his disability to the Respondent on or about 29<sup>th</sup> August 2018 when he was issued with the card by the NCPD. Further, the Petitioner did not exhibit a copy of his pay slip to confirm that after being issued with the Tax Exemption Certificate, he brought the same to the Respondent's attention and that he actually enjoyed tax exemption prior to being retired.
63. As it is, the Tax Exemption Certificate and the card from the NCPD alone are not sufficient proof that the Respondent was aware of the Petitioner's disability prior to issuing him with the Retirement Notice.
64. As I can discern from the record, there is no evidence that the Respondent was aware of the Petitioner's disability at the time it issued him with the Notice of Retirement dated 16<sup>th</sup> March 2020 and indeed, on 31<sup>st</sup> December 2020 when the retirement took effect. Equally, there is no evidence to support the Petitioner's assertions that upon being issued with the Notice of Retirement, he protested the same and asked for an extension of his service on account of his disability.
65. In the circumstances, it is not accurate for the Petitioner to state that he was retired by the Respondent contrary to the [Persons with Disabilities Act](#) and prevailing Government Policy.
66. Indeed, the record bears that the Petitioner was advised through a letter dated 18<sup>th</sup> January 2021 of the two options under which his benefits could be paid out. In this regard, he elected the option that would be applied in the payment of his benefits. This being the case, one wonders why the Petitioner would even proceed to elect how his benefits would be paid out if at all he was of the view that his retirement was premature.
67. In light of the foregoing, I cannot help but find that the Petitioner has not proved on a balance of probabilities that the Respondent acted in contravention of the Circular MSPS/HRM/2/2/2/VOL. II (21) and the [Persons with Disabilities Act](#).
68. Further to the foregoing, the Petitioner's assertions that he was discriminated by the Respondent's refusal to extend his retirement age from 60 to 65, were not substantiated. Here is why.
69. The Black's Law Dictionary, (10<sup>th</sup> Edition), has defined the term "discrimination" to mean: "Differential treatment; a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured."
70. In this case, the Petitioner has failed to demonstrate that the actions of the Respondent were discriminatory in that he was treated less favourably than his counterparts who were similarly situated.
71. Further, the Petitioner has not demonstrated the manner in which the Respondent violated his right to dignity and fair labour practices. As I have found herein, there is no evidence that the Petitioner



drew the Respondent's attention to his disability prior to the Notice of Retirement and the period thereafter before his retirement took effect.

72. The total sum of the foregoing is that the Petitioner has not demonstrated the manner in which the Respondent violated his constitutional rights as alleged.

73. Before I pen off on this issue, I find it imperative to mention that this Petition brings to the fore the doctrine of constitutional avoidance. On this score, I find useful guidance in the decision by the Supreme Court of Kenya in *Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others* [2014] eKLR where it was held that:

“The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v. Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

74. Further, in the case of *Gabriel Mutava & 2 others vs Managing Director, Kenya Ports Authority & another* (2016) eKLR, the Court of Appeal held that:

“Time and again it has been said that where there exists other sufficient and adequate avenue to resolve a dispute, a party ought not to trivialize the jurisdiction of the Constitutional Court by bringing actions that could very well and effectively be dealt with in that other forum. Such party ought to seek redress under such other legal regime rather than trivialize constitutional litigation... Of course, violations of constitutional rights may nonetheless be different, and more serious than the violations of statutory or contractual rights. There is no clear demarcation however, where one violation begins and ends, and when one violation should attract desperate remedies. In employment matters, such as was the case here, the contract of employment should have been the entry point. The terms and conditions of employment in the contract, govern the employment relationship, except to the extent that the terms are contrary to the law; or have been superseded by statute. Certainly invoking the constitutional route in the circumstances of this case was misguided. *The Constitution* should not be turned into a thoroughfare for resolution of every kind of common grievance... In saying all these, we are not oblivious to the fact that a party is entitled to sue under *the Constitution* even if there is an alternative remedy, and or other mechanism for the resolution of the dispute. However, it has since emerged on the authorities that constitutional litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous litigation christened constitutional when they are not and would otherwise be adequately handled in other legally constituted forums. Constitutional Litigation is not a panacea for all manner of litigation, we reiterate that the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.”

75. In light of the foregoing, I am of the firm view that this was a case that would have been well articulated through a Memorandum of Claim for unlawful termination under the *Employment Act*, 2007 as opposed to a constitutional petition.



76. As I have found that the Petitioner has not disclosed any constitutional violation, the remedies he seeks cannot issue.

**Orders**

77. In the end, I find that the Petition is not merited and is accordingly dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY 2024.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Petitioner Ms. Maina instructed by Mr. Matu

For the Respondent Mr. Odhiambo

Court Assistant Millicent Kibet

**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 had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

