Modern Mail Limited v Omolo (Appeal E027 of 2024)
[2025] KEELRC 1043 (KLR) (31 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 1043 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

APPEAL E027 OF 2024

JK GAKERI, J

MARCH 31, 2025

BETWEEN

MODERN MAIL LIMITED ..... APPELLANT

AND

JEREMIAH OCHIENG OMOLO ..... RESPONDENT

JUDGMENT

1. This appeal emanates from the Judment of Nyigei PM delivered on 20th May, 2024 in Kisumu MCELRC No. E007 of 2022 Jeremiah Ochieng Omolo V Modern Mail Ltd.

2. The brief facts of the case are largely uncontested. The claimant was employed by the respondent as a LOADER on 9th November, 2016 vide offer of Employment letter of even date at Kshs.14,866.00 per month and served until he was summarily dismissed vide letter dated 24th August, 2021, for gross misconduct.

3. The appellant testified that sometime in August, 2021 reconciliation revealed that the sum of Kshs.21,000.00 was missing and the respondent was responsible.

4. A notice to show cause dated 23rd August, 2021 was issued requiring a response within 48 hours but in a unexplained change, the appellant invited the respondent for a disciplinary hearing at the head office on the same day vide letter dated on even date from 5:00pm. The respondent attended the hearing and was dismissed from employment on the following day.

5. The respondent testified that he was not permitted to enter the boardroom with the colleague he wanted as a witness, a fact the appellant did not deny.

6. According to the appellant, the disciplinary hearing was regular and the summary dismissal of the respondent was lawful and fair as the disciplinary panel found him culpable and was paid terminal dues, Kshs.13,989.00. Both parties filed submissions dated 26th March, 2024.

7. While the respondent urged that the summary dismissal was unfair for want of a valid and fair reason and the respondent was entitled to the reliefs sought, the appellant submitted that the Kshs.21,000.00 unaccounted for by the respondent was a valid reason for dismissal, the attendant procedures were complied with and the suit ought to be dismissed.

8. The learned trial Magistrate found that the disciplinary process was conducted hurriedly, without according the respondent a fair hearing and held that the dismissal was unfair and unlawful and awarded the respondent one months salary in lieu of notice, 12 months compensation, certificate of service, costs and interest.

9. This is the decision appealed against.

10. The appellant faults the learned trial Magistrate on a total of 18 grounds.

11. That the trial court erred in law and fact by:

    1. Holding that termination was unfair yet the respondent was accorded an opportunity to be heard, a notice to show cause was issued on 20th August, 2021 and had 48 hours to respond.

    2. Stating that the respondent had less than 24 hours yet the respondent testified that he travelled to Nairobi over the weekend.

    3. Ignoring the fact the respondent alleged that he was not allowed to call a witness, focussing on time.

    4. Failing to note that the witness the respondent was supposed to call had a disciplinary hearing at the respondent's offices.

    5. Ignoring the fact that the respondent was given a hearing and had an opportunity to respond to the charges orally time notwithstanding.

    6. Disregarding the fact that the respondent had a warning letter dated 30th September, 2020 for failure to perform his duties.

    7. Awarding salary in lieu of notice yet the dismissal was summary, fair and terminal dues paid.

    8. Awarding 12 months salary for unfair termination yet the same was conducted in a fair and just manner hence not unfair.

    9. Ignoring the fact that the appellant lost Kshs.21,000, stolen by the respondent, a criminal offence.

    10. Holding that the termination process was unfair yet the respondent unlawfully took the appellants Kshs.21,000.00

    11. Misdirecting her mind to matters not before the court yet evidence showed that the termination process was procedural.

    12. Holding that termination was unfair while the contract of employment provided for summary dismissal.

    13. Holding that the appellant failed to prove that termination of the respondent's employment followed a fair procedure and arrived at an unfair and unjust decision.

    14. Awarding costs of the claim when the same was not subjected to a fair determination resulting in a wrong decision.

15. Misdirecting herself in failing to take cognizance of the fact that the respondent had not discharged the burden of proof under the *Evidence Act*.

16. Arriving at a decision which occasioned a miscarriage of justice.

12. The appellant prays for the setting aside of the decision in its entirety and all consequential decrees, Orders and in its place an Order dismissing the statement of claim with costs to the appellant.

Submissions

13. Directions on the filing of submission were given on 28th January, 2025 and each party was accorded 14 days and a mention slated on 10th March to confirm compliance on which date only the appellant's counsel was in court and informed the court that he filed his submissions on 5th February, 2025 together with the authorities and prayed for a judgment date, which the court gave as 31st March, 2025.

14. However, the last bundle of documents on the CTS were filed on 27th January, 2025 and it is the Record of Appeal pages 1 – 80.

15. By the time the court retired to prepare this judgment, none of the parties had filed submissions.

Analysis and determination

16. I have carefully considered the appeal without the benefit of submissions by parties.

17. In the court's considered view, the 18 grounds of appeal cited by the appellant question all the findings and awards by the learned trial Magistrate. The trial court is assailed for having ignored or disregarded evidence or misdirected itself in determining the suit before the court.

18. This being a first appeal, the court's role is to reconsider and re-evaluate the evidence on record a fresh and arrive at its own conclusions and determination. It is in essence a retrial as succinctly captured by the Court of Appeal in Gitobu Imanyara & 2 Others V Attorney General [2016] eKLR as follows:

> An appeal to this court from a trial by the High court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witness and should make due allowance in this respect".

19. See also Abok James Odera t/a A. J. Odera & Associates V John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR, Selle & Another V Associated Motor Boat Co. Ltd [1968] EA123 and Mwana Sokoni V Kenya bus Services Ltd [1985] KLR 931.

20. In his evidence in chief, in court, the respondent admitted that on 21st August, 2021, he was called by one Mr. Kinto and requested to travel to Nairobi for an undisclosed reason yet his written statement states that he was summoned on 23rd August, 2021.

21. Similarly, contrary to his testimony in court, 21st August, 2021 was a Saturday not Sunday.

22. From the evidence on record, the appellant's witness could not tell when the notice to show cause dated 23rd August, 2021 was served on the respondent. However, the respondent admitted having received and signed for it.

23. Although RWI testified that the letter was forwarded to him on 21st August, 2021 via email she admitted that she had no evidence of the alleged communication.

24. From the Record of Appeal, it is clear that the respondent received the notice to show cause on 23rd August, 2021 which accorded him 48 hours to respond, but on the same day was issued with an invitation to attend a hearing on 23rd August, 2021, the same day at 5:00pm.

> Attempts by the appellant's counsel to suggest that the notice to show cause was served earlier are not borne by facts for the simple reason that the letter is dated 23rd August, 2021, the date the alleged disciplinary hearing was to take place and it was signed by the respondent on the same day.

25. Equally, although counsel for the appellant faults the trial court for relying on the short duration between the notice to show cause and the invitation to attend the disciplinary hearing, the appellant's witness could not tell the court when and how any letter was served on the respondent.

26. In fact, the respondent admitted that he declined to sign the invitation letter on account that the 48 hours given by the notice to show cause had not lapsed, evidence RWI did not controvert.

27. The learned trial Magistrate did not err on this aspect.

28. Concerning termination of employment, the law is well settled as the provisions of Section 45 of the *Employment Act* are unambiguous that for a termination of employment to pass the fairness test it must be proved that the employer had a valid and fair reason to terminate the employee's employment, relating to the conduct, capacity or compatibility of the employee or operational requirements of the employer and conducted the process in accordance with a fair procedure.

29. Put differently, there must have been a substantive justification for the termination of employment and procedural fairness as exquisitely put by Ndolo J in Walter Ogal Anuro V Teachers Service Commission [2013] eKLR.

30. In Naima Khamis V Oxford University Press (EA) Ltd [2017] eKLR, the Court of Appeal stated:

> On the first issue, that is whether the termination was lawful, we wish to take note of the provisions of Section 43(1) of the *Employment Act*, which provides that in any claim arising out of termination of a contract, the employer is required to justify the reason or reasons for the termination, and where the employer fails to do so, the termination is deemed to have been unfair. Also Section 45(2) (c) requires a termination be done according to a fair procedure. From the foregoing, termination of employment may be substantively and/or procedurally unfair. A termination is also deemed substantively unfair where the employer fails to give valid reasons to support the termination. On the other hand, procedural unfairness arises where the employer fails to follow the laid down procedure as per contract, or fails to accord the employee an opportunity to be heard as by law required".

31. The court is bound and is in agreement with these sentiments.

Substantive justification

32. Both the notice to show cause and the invitation to the disciplinary hearing dated 23rd August, 2021 accused the respondent of having taken Kshs.21,000.00 without authorization.

33. In his written statement dated 15th January, 2022, the respondent made no reference to the accusation against him nor deny having taken the cash. On cross-examination 22nd January, 2024, the respondent admitted that the notice to show cause related to the theft of Kshs.21,000 belonging to the respondent.

24. Strangely, apart from testifying why he did not sign the invitation to the disciplinary hearing and the summary dismissal letter, the respondent was silent on whether he had planned or intended to respondent to the Notice to show cause or sought time to do so.

35. The dismissal letter dated 24th August, 2021 stated the reason for dismissal as the taking of Kshs.21,000.00 without authorization.

36. The respondent admitted having received the letter in the evening on 24th August, 2021, and further admitted on cross-examination that he did not write any letter to the appellant.

37. In sum, the respondent did not deny in writing having taken the appellant's money without authority.

38. Similarly, the respondent did not deny that he was the booking clerk at the time and had access to the alleged cash and was palpably silent on what transpired and having been on duty, the appellant had a reasonable basis to suspect that he was the culprit.

39. Regrettably, the appellant for unexplained reasons, did not file minutes of the hearing on 23rd August, 2021 as evidence of the proceedings.

40. The appellant relied on the provisions of Section 44(4)(c) and (g) of the *Employment Act* namely;

    (c) an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly.

    (g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.

41. In determining whether the appellant had a substantive justification to dismiss the respondent summarily, the court is guided by the provision of Section 43(2) of the *Employment Act* that –

42. The reason or reasons for termination of a contract are the matters that the employee at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.

43. The foregoing provision is fortified by the rendition of the Court of Appeal in Naima Khamis V Oxford University Press (EA) Ltd (Supra) thus:

> It is necessary to point out that reasons for termination of a contract are matters that an employer at the time of termination of a contract can genuinely support by evidence and which impact on the relationship of both the employer and employee in regard to the terms and conditions of work set out in a contract".

44. Further, in Galgalo Jarso Jillo V Agricultural Finance Corporation [2021] eKLR, B. O. Manani J. held as follows;

> ...In other words, it is not a requirement of the law that the substantive ground informing the decision to terminate must in fact be in existence. All that is required is for the employer to have a reasonable basis for genuinely believing that the ground exists. In my view, what the law is concerned with here is whether the circumstances surrounding the decision to terminate would justify a reasonable man on the street standing in the same position as the employer to reach a similar decision as his/her regarding the termination".

45. Finally, in Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 Others [2019] eKLR the Court of Appeal held that:

> ...the standard of proof is on a balance of probability not beyond reasonable doubt and all an employer is required to prove are the reasons that it genuinely believed to exist causing it to terminate the employee's services.
>
> That is a partially subjective test".

46. In addition, the court made reference to the guidelines in Halsburys Laws of England 4th Edition, Vol. 16 (1B) Para 642, the concept or principle of band of reasonable responses test adopted by Lord Denning in British Leyland (UK) Ltd V Swift [1981] I.R.L.R 91.

47. From the evidence on record and guided by the foregoing authorities, it is discernible that the appellant had reasonable grounds to genuinely believe that the respondent took or stole its money, as he was on duty at the time and handled the money on behalf of the appellant. The appellant had a reasonable basis for the suspicion that the respondent stole the money.

48. The trial court, is however faulted for having found that the respondent's summary dismissal was unfair.

49. Having demonstrated that a termination of employment may be substantively and/or procedurally unfair (See Naima Khamis V Oxford University Press (EA) Ltd (Supra), the finding by the trial court that the termination of the respondent's employment was unfair perse cannot be faulted. What is contestable is whether there was sufficient evidence to show that the process adopted by the appellant was procedurally wanting or flawed.

50. While the provisions of Section 45(2) of the *Employment Act* provide that the termination of employment must be conducted in accordance with a fair procedure, Section 41 of the *Employment Act* prescribes the tenets or precepts of procedural fairness and as held by the Court of Appeal in Pius Machafu Isindu V Lavington Security Guards Ltd [2017] eKLR the procedure set out in Section 41 of the *Employment Act* is mandatory and any termination of employment conducted in contravention thereof is flawed and irregular.

51. In Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR, the Court of Appeal stated:

Four elements must thus be discernible for the procedure to pass muster: -

i. an explanation of the grounds of termination in a language understood by the employee;

ii. the reasons for which the employer is considering termination;

iii. entitlement of an employee to another employer of his choice when the explanation of grounds of termination is made.

iv. Hearing and considering any representations made by the employee and the person chosen by the employee".

52. In the instant case, it is not in dispute that respondent was issued with and received a notice to show cause and an invitation to attend a disciplinary hearing and he attended but faulted the process in that his witness, one Brian Masinde was informed by Mr. Twana to wait outside a fact he confirmed during cross-examination by Mr. Kamande.

53. The respondent also testified that the disciplinary hearing panel did not listen to his defence.

54. In a nutshell, the respondent's case was that he was not given an opportunity to be heard.

55. Contrary to the appellant's counsel's argument, the notice to show cause, invitation for the hearing and attendance of the hearing does not necessarily translate to fairness or fair hearing as the operative standard is prescribed by law.

56. Fair hearing is an all-encompassing principle. The charges the employee faces must be communicated to the employee and opportunity accorded to him or her to respond in writing if the charges are documented and typically, it is only after reviewing the employee's response that the employer may decide to call the employee for a formal hearing to explain his/her case in the presence of a committee or panel constituted for that purpose and the employee is informed of his rights, including the right to adduce evidence and be accompanied by an employee of his choice.

57. Additionally, if the employer has any evidence or materials to rely on, the same must be availed to the employee in good time to enable the employee prepare his defence.

58. In this case, the employee was summoned to Nairobi from Kisumu on 21st August, 2023 to attend a disciplinary hearing on 23rd August, 2021. At the time, he had neither a notice to show cause nor written invitation to attend the meeting.

59. It is unclear to the court when the notice to show cause and the invitation for the disciplinary hearing were served upon the respondent on Monday 23rd August, 2021.

60. The notice to show cause accorded the respondent 48 hours to give reasons or show cause in writing why disciplinary action should not be taken against him.

61. Strangely, the respondent was issued with an invitation to attend a hearing on the same day slated at 5:00pm and as adverted to elsewhere in this Judgment, the claimant testified that he refused to acknowledge receipt of the letter because it was issued before the 48 hours given for a response had not lapsed.

62. Although the appellant's counsel faulted the trial court of having found that the process was rushed, he had no explanation as to why the two letters were issued on the same day and were patently contradictory in what they sought achieve.

63. Creditably, RWI, Gloria Destiny Mulanya confirmed on cross-examination that she did not produce minutes of the disciplinary hearing and having confirmed that she was not the appellant's employee then, and relied on the records in the office, she could not confirm whether indeed there were minutes of the hearing.

64. The absence of minutes is the waterloo of the appellant's case.

65. Minutes by their very nature show when the meeting was held, attendees, apologies and agenda of the meeting they also set out the proceedings of the meeting and constitute the best evidence of what transpired at the meeting.

66. Without minutes, the appellant could not demonstrate when the meeting was held, date and time or that it accorded the respondent a fair hearing or controvert his assertions.

67. The respondent testified that his witness was ordered to wait outside and the appellant appears to justify this action because the witness, Mr. Brian Masinde had a disciplinary hearing. Was the respondent aware of that fact and even if he was, Mr. Brian Masinde was accompanying the respondent as by law required and if the appellant disproved it, it had the option to accord the respondent time to

secure another colleague, before hearing continued, whether the respondent requested it or not unless he agrees to proceed without a colleague.

68. There is no evidence that the charges were read out to the respondent and in what language, obviously there was no colleague.

69. There is no evidence as whether or not the respondent was accorded time to present his defence and the same was considered in decision making.

70. Finally, the summary dismissal letter makes no reference to the right of appeal or issuance of Certificate of Service.

71. For the foregoing reasons, this court like the trial court is satisfied that the procedure adopted by the appellant did not meet the prescribed threshold.

72. The foregoing finding is fortified by the provisions of Section 45(5) of the *Employment Act*:

> (5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour Officer, or the Industrial Court shall consider-
>
> (a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;
>
> (b) the conduct and capability of the employee up to the date of termination;
>
> (c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;
>
> (d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and
>
> (e) the existence of any pervious warning letters issued to the employee.

73. Clearly, the appellant acted in contravention of the provisions of Section 41 and 45(2)(c) of the *Employment Act* as held by the Supreme Court in Gichuru V Package Insurance Brokers Ltd [2021] RSC 12 (KLR) cited by the trial court.

74. On fair hearing, the Supreme Court was emphatic that:

> No hearing was demonstrated to have been conducted and the only inference one can draw is that the dismissal was unfair and unlawful for failing to accord the appellant a fair hearing. The respondent was required to facilitate the termination in accordance with Section 41(1) of the *Employment Act* in order to come within the ambit of fairness. The allegations that the appellant faced would have been explained if an opportunity to respond was granted...
>
> Section 44(4) of the *Employment Act*, did not give an employer a blanket right to dismiss an employee at will. However grave the circumstances of the employee's conduct, the employee was entitled to be heard before he was dismissed...
>
> The right to be heard is the corner stone of fair labour practices. Where the circumstances do not allow a hearing before summary dismissal, the duty is upon the employer to set such out...

> In light of the above, we find that the appellant's summary dismissal was unfair, unjust for want of due process..."

75. These sentiments apply on all fours to the circumstances of the instant case.

76. Although the appellant faults the trial court for having found that the process was rushed it undoubtedly was and was concluded within 24 hours, a fact the respondent raised in paragraph 11(d) of the Statement of Claim.

77. The haste with which the process was taken, in the court's view, impeded the respondent's right to fair hearing.

78. He ought to have been accorded reasonable time to respond to the notice to show cause and prepare for the hearing.

79. In the court's view, the finding by the trial court that the termination of the respondent's employment was unfair cannot be faulted.

80. On the reliefs awarded, the trial court is faulted variously.

81. As regards pay in lieu of notice, the appellant urges that the respondent was summarily dismissed and was subjected to due process.

82. Having found that the appellant had a substantive justification to dismiss the respondent, the court is in agreement with the appellant that the learned trial Magistrate erred in awarding salary in lieu of notice. This is because Section 44(1) of the *Employment Act* permits the dismissal of an employee summarily without notice or with less notice, if circumstances justify it.

83. Concerning the 12 months salary award, the appellant urges that the respondent had a warning letter dated 30th September, 2020, and the termination was fair, money had been lost and the contract provided for summary dismissal.

84. As regards compensation, it is true that the trial court's discretion ought to have been guided by the provisions of Section 49(4) of the *Employment Act* and a wholistic approach of the case was necessary. For instance, the respondent did not express his wish to remain in the appellant's employment or appeal the appellant's summary dismissal, he substantially contributed to the dismissal by his conduct, could not account for the money yet was the custodian of the cashbox and had entered the receipt in the system and had served for almost 5 years which is not long.

85. Had the trial court taken these circumstances into consideration, the quantum of compensation would have been far less than awarded.

86. The foregoing justifies the court's interference with the exercise of the trial court's discretion.

87. In the court's view the equivalent of 3 months gross salary would have been fair compensation.

88. On burden of proof, the provisions of Section 47(5) of the *Employment Act* are clear that:

> For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving than an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee while the burden of justifying the grounds of termination of employment or wrongful dismissal shall rest on the employer.

89. Similarly, under Section 45(2) of the *Employment Act*, it is the duty of the employer to prove that it had a valid and fair reason to terminate the employee employment and that the employment was terminated in accordance with fair procedure.

90. Although the respondent did not vociferously argue that the appellant had no substantive justification to dismiss him from employment summarily, he availed evidence to show that the procedure employed by the appellant fell below the threshold of being a fair one as contemplated by Section 45(2)(c) of the *Employment Act*.

91. He thus discharged the burden of proof.

92. As regards the appellant, the court found that the evidence on record was sufficient to prove that it had a reason or reasons to summarily dismiss the respondent from employment as ordained by the provisions of Section 43 and 45(2) and (b) of the *Employment Act*, but failed to discharge the burden of demonstrating that the summary dismissal was conducted in accordance with a fair procedure as by law required.

93. Finally, the principles that govern the circumstances in which an appellate court may interfere with the exercise of direction by a trial court are well settled.

94. In Price and Another V Hilder [1996] KLR 95 the court stated:

> In considering the exercise of judicial discretion, as to whether or not to set aside a judgment the court considers whether in the light of all the facts and circumstances both prior and subsequent and of the respective merits of the parties, it would be just and reasonable to set aside or vary the Judgment. The court will not interfere with the exercise of discretion by an inferior court unless its satisfied that its decision is clearly wrong, because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters it should have taken into consideration and in doing so arrived at a wrong decision."

95. Similarly, in United India Insurance Co. Ltd, Kenindia Insurance Co. Ltd & Oriental Fire & General Insurance Co. Ltd V East African Underwriters (Kenya) Ltd [1985] Madan J A stated"

> The Court of Appeal will not interfere with a discretionary decision of the judge appealed from simply on the ground that its members, if sitting at first instance, would or might have given different weight to that given by the judge to the various factors in the case. The Court of Appeal is only entitled to interfere if one or more of the following matters are established: first, that the judge misdirected himself in law; secondly, that he misapprehended the facts; thirdly, that he took account of considerations of which he should not have taken account; fourthly, that he failed to take account of considerations of which he should have taken account, or fifthly, that his decision, albeit a discretionary one, is plainly wrong.

96. Having found that the provisions of the *Employment Act* permit summary dismissal of an employee without notice or by shorter notice and the trial court failed to take into account the provisions of Section 49(4) of the *Employment Act* in awarding the 12 months compensation for unfair summary dismissal, the court is satisfied that a case for interference with the trial court's exercise of discretion has been made out.

97. Accordingly, this appeal partially succeeds to the extent that:

    a. The award of one months salary in lieu of notice is set aside.

b. The award of 12 months salary as compensation is set aside and in its place, the equivalent of 3 months gross salary Kshs.44,598.00.

c. As the appeal is partially successful, each party shall bear their own costs.

98. For the avoidance of doubt other findings and awards by the trial court are affirmed.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 31ST DAY OF MARCH, 2025.

DR. JACOB GAKERI

JUDGE

order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court 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.