



Motaung v Samasource Kenya Epz Ltd t/a Sama & 2 others; Kenya National Human Rights and Equality Commission & 9 others (Interested Parties) (Petition E071 of 2022) [2024] KEELRC 7 (KLR) (23 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 7 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E071 OF 2022
JK GAKERI, J
JANUARY 23, 2024**

BETWEEN

DANIEL MOTAUNG PETITIONER

AND

SAMASOURCE KENYA EPZ LTD T/A SAMA 1ST RESPONDENT

META PLATFORMS INC 2ND RESPONDENT

META PLAFORMS IRELAND LTD 3RD RESPONDENT

AND

KENYA NATIONAL HUMAN RIGHTS AND EQUALITY COMMISSION INTERESTED PARTY

CENTRAL ORGANIZATION OF TRADE UNIONS KENYA INTERESTED PARTY

THE ATTORNEY GENERAL INTERESTED PARTY

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES ... INTERESTED PARTY

EXPORT PROCESSING ZONE AUTHORITY INTERESTED PARTY

MINISTRY OF HEALTH INTERESTED PARTY

OFFICE OF THE DATA PROTECTION COMMISSIONER INTERESTED PARTY

MINISTRY OF FOREIGN AFFAIRS INTERESTED PARTY

KENYA REVENUE AUTHORITY INTERESTED PARTY

KATIBA INSTITUTE INTERESTED PARTY



RULING

1. Before the court for determination is the Applicant/Petitioner's Notice of Motion dated 6th February, 2023 seeking ORDERS THAT:
 - a. Spent.
 - b. Spent.
 - d. The Honourable Court be pleased to grant leave to the Petitioner to effect service of the petition dated 9th May, 2022 on the 2nd and 3rd Respondents in their Principal offices located in the United States and Ireland respectively.
 - e. The Honourable Court be pleased to issue directions on the manner in which service of the petition ought to be effected on the 2nd and 3rd Respondents.
 - f. The Honourable Court be pleased to give directions that such service on the 2nd and 3rd Respondent be effected in accordance with Order 5 Rule 22A (Internationally registered and recognized courier services) and Order 5 Rule 22B (Electronic Mail Services).
 - g. The Honourable Court be pleased to issue directions on the time limit within which the 2nd and 3rd Respondent ought to enter appearance after the said service.
 - h. The costs of this application be in the cause.
2. The Notice of Motion, filed under Certificate of Urgency is expressed under various provisions of *the Constitution* of Kenya, 2010, *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Section 3(1) and (2) of the *Employment and Labour Relations Court Act*, 2011 and Sections 1A and B of the *Civil Procedure Act* and Order 5 Rules 21, 22, 22A, 22B, 25 and 26 of the Civil Procedure Rules, 2010.
3. The Notice of Motion is based on the grounds set out on its face and the Supporting Affidavit of Mr. Daniel Motaung, the Petitioner sworn on 7th February, 2023.
4. It is the applicant's case that as the petition filed on 9th May, 2022 names the 2nd and 3rd Respondents as violators of his rights and fundamental freedoms, and the two companies though carrying on operations in Kenya, their physical address is unknown, the most appropriate way to effect service is through their Principal offices in the United States of America and Dublin, Ireland, via internationally registered and recognized courier services and via email as these methods are verifiable.
5. That service will facilitate the hearing and determination of the petition.

Response

6. In a Replying Affidavit sworn by Joanne Redmond on 16th February, 2023 at Menlo Park CA USA, the affiant states that the Application is misconceived and should be struck out of the court record in that the court can only assume jurisdiction over the two Respondents after granting the Petitioner leave under Order 5 Rule 21 of the Civil Procedure Rules, 2010 and the Petitioner had not met the conditions for the court to exercise discretion favourably.
7. The affiant deposes that the alleged constitutional infringements arose out of the Petitioner's employment with the 1st Respondent with which he had a written contract of employment and



there was no basis for this court to grant leave to the Petitioner to serve summons on the 2nd and 3rd Respondents out of jurisdiction based on the allegations or at all.

8. The affiant further deposes that the law required the applicant to demonstrate that he had a good case against the Respondents and set out the grounds relied upon for leave to issue and the applicant had not demonstrated that this is a case for service out of jurisdiction of the court.
9. That the 2nd and 3rd Respondents are foreign corporations not registered in Kenya and do not trade in Kenya, the applicant's allegation notwithstanding and no evidence had been adduced to show compliance with the provisions of the Companies Act, 2015 to enable them trade in Kenya.
10. That imposition of Laws of Kenya on the two Respondents would constitute a gross breach of sovereignty of the Laws of the 2nd and 3rd Respondents domicile and an unlawful interference with the exclusive territorial jurisdiction of their respective states.
11. It is the affiant's deposition that the court ought not to arbitrarily and forcibly subject the 2nd and 3rd Respondents to Kenyan law as they are not present in Kenya and they are not necessary parties to the petition and a proper case for service on them has not been made out as by law required.
12. That the Notice of Motion lacks merit and ought to be dismissed with costs.

1st Respondents response

13. On 30th October, 2023, counsel for the 1st Respondent sought for 4 days to file and serve its Replying Affidavit and submissions and the same was granted. However, on 20th November, 2023 the date reserved for highlighting of submissions, counsel for the Petitioner informed the court that the 1st Respondent had filed its response late on 17th November, 2023 and the same ought to be struck off the courts record.
14. Counsel for the 1st Respondent admitted late service and apologized to the court. He persuaded the court to allow the 1st Respondent participate in the application as an affected party.
15. Counsel for the 2nd and 3rd Respondent expressed the view that the documents be allowed.
16. After hearing all counsels present and a response from the Petitioner's counsel, the court was persuaded that having granted the 1st Respondent its request for 4 days and the 1st Respondent having failed to provide a reason for non-compliance with the court's directions, it was only fair that the documents filed late be expunged from the record.
17. Needless to belabour, hearing of the petition has been pending since May 2022 owing to applications and counter-applications and attempts to resolve the matter out of court failed for want of good faith in the negotiations.
18. As a consequence, counsels for the Petitioner and the 2nd and 3rd Respondents proceeded to highlight their submissions.

Applicant's submissions

19. Counsel for the applicant addressed several issues.
20. As to whether the 2nd and 3rd Respondents' Replying Affidavit was incurably defective for want of authentication, counsel submitted that Section 88 of the Evidence Act required documents notarized outside the Commonwealth to be authenticated for purposes of admissibility and cited the decision in *Pastificio Lucio Garofalo Spa V Security & Fire Equipment Co. & another* (2001) eKLR as authority



for the proposition that an affidavit sworn outside the Commonwealth had to be proven by affidavit or otherwise to have been taken to a Notary Public in that country and the signature and seal of attestation affixed by the Notary Public.

21. Counsel submitted that the 2nd and 3rd Respondents Replying Affidavit sworn Joanne Redmond was notarized in California, USA and the certificate attached had no evidence that the Notary was qualified to notarize the affidavit and did not confirm that the signature and seal was of the Notary.
22. Counsel submitted the Replying Affidavit was not compliant with the provisions of Section 88 of the *Evidence Act* and was thus incompetent and the application ought to be considered as undefended.
23. As to whether the Petitioner ought to be granted leave to serve, counsel addressed the requirements of Order 5 Rule 25 of the Civil Procedure Rules, 2010 as confirmed in *Misnak International (UK) Ltd V 4MB Mining Ltd C/O Ministry of Mining Juba Republic of South Sudan & 3 others* (2019) eKLR, namely good cause, location of Principal offices, whether the 2nd and 3rd Respondents are in the Commonwealth and whether the case is a proper one for service out of Kenya.
24. Counsel urged that the applicant had disclosed a good cause of action against the 2nd and 3rd Respondents.
25. On location of the Respondents' principal offices, counsel submitted that exhibit DMI and DMII was conclusive proof of the physical locations of the 2nd and 3rd Respondents' Principal offices.
26. As to whether the 2nd and 3rd Respondents are part of the Commonwealth, counsel submitted that they were not and following the deletion of Order 5 Rule 28, Rule 29 was no longer applicable and the manner of service is left to the court's discretion as held in *Carol Construction Engineers Ltd V Naomi Chepkorir Langat* (2019) eKLR.
27. Counsel urged that service via an internationally recognized courier service provider and email was fast and verifiable, that the contract that gave rise to the suit was entered into in Kenya and is governed by the law of Kenya and the violations took place in Kenya and the tort was committed in Kenya. That the petition is a proper case for service out of Kenya, counsel submitted.
28. Counsel urged that the applicant had satisfied the conditions set out in Order 5 Rule 25 of the Civil Procedure Rules, 2010.
29. Finally, counsel submitted that the 2nd and 3rd Respondents ought to be accorded the shortest time possible to enter appearance for expeditious disposal of the suit.

2nd and 3rd Respondents' submissions

30. As regards the applicable law, counsel cited Order 5 Rule 25 of the Civil Procedure Rules, 2010 and the decisions in *Premier Hospital Ltd V Meditec Systems Ltd & another* (2021) eKLR, *Misnak's case* (Supra), *Raytheon Aircraft Credit Corporation & another V Air Al-Faraj Ltd* (2005) eKLR and *National Social Security Fund V Kenya Tea Growers Association & 14 others* (2023) eKLR to urge that for the court to exercise discretion to grant leave for service out of Kenya, a good cause of action must be established as the discretion was not automatic.
31. Counsel submitted that leave is so critical as it enables the court to assume jurisdiction over a foreign respondent.
32. As to whether the Petitioner had made out a proper case for service of the petition on the 2nd and 3rd Respondents, counsel submitted that the Petitioner had failed to do so as the alleged violations of rights and freedoms arose in the course of an employment relationship with the 1st Respondent with whom



- the Petitioner had a written contract and outsourcing is a management prerogative as held in *Kenya Ferry Services Ltd V Dock Workers Union Ltd* (2015) eKLR and an accepted business concept.
33. Counsel urged that the court is bound by its ruling delivered on 6th February, 2023 and no prima facie evidence had been adduced to show that the 2nd and 3rd Respondents were privy to the contract and there was no basis on which the court could grant the leave sought as the Petitioner had not met the threshold.
 34. According to counsel, there must be weighty grounds for the court to exercise its discretion yet the Petitioner had only made “factual allegations”.
 35. That the allegations made in paragraphs 57, 61, 135, 137, 138, 139, 182, 242, 243 and 244 of the petition are not substantiated.
 36. Counsel urged that having found that the Petitioner had failed to show that the Respondents were carrying on business in Kenya, the court is bound by its decision and cannot seat on appeal on its finding nor review it suo motu as held in *Kivandi Mukusya V Mutunga Matheka* (1996) eKLR.
 37. As regards sovereignty, counsel relied on the decision in *Samuel Kaunda & others V The President of the Republic of South Africa & others* where the court echoed the sentiments of the Permanent Court of International Justice in *S.S Lotus (France V Turkey)* (1927) PCIJ Series A, No. 10, to urge that as the Respondents are foreign corporates, they are not subject to the law of Kenya and there was no contract between the parties to allow the court assume jurisdiction over the 2nd and 3rd Respondents.
 38. That the 2nd and 3rd Respondents have denied that the 1st Respondent is their agent as alleged by the Petitioner and the court could not make an order for leave on an unsubstantiated allegation.
 39. Finally, counsel submitted that since the alleged violations of the Petitioner’s rights are grounded on an employment relationship and the 1st Respondent, a company trading in Kenya had not denied that the Petitioner was its employee, it ought to be the Petitioner port of call.

Determination

40. The issues for determination are;
 - i. Whether the 2nd and 3rd Respondents Replying Affidavit is defective for want of authentication.
 - ii. Whether the Petitioner’s Notice of Motion dated 6th February, 2023 is merited.
41. On the 1st issue, which the 2nd and 3rd Respondents did not address, counsel for the Petitioner urges that based on the provisions of Section 88 of the *Evidence Act* and the decision in the *Pastificio* case (*Supra*), the 2nd and 3rd Respondents Replying Affidavit lacked authentication and was thus fatally defective.
42. It is common ground that the Replying Affidavit in question was sworn by Joanne Redmond, the Director and Associate Counsel, Labour and Employment EMEA of 3rd Respondent at Menlo Park, CA USA on 16th February, 2023, before one Srira Zadmehran.
43. The Petitioner’s counsel faults the certificate attached to the Replying Affidavit on the ground that it does not show that the Notary was qualified to notarize the affidavit nor does it confirm the signature and seal of the said Notary.
44. A perusal of the certificate shows that it is explicit that it may be completed by a Notary Public or other officer and its completion only verifies the identity of the individual who signed the document in this case the Replying Affidavit, and not its truthfulness accuracy or validity.



45. The certificate identifies the deponent and the date the Replying Affidavit was sworn.
46. Relatedly, the certificate contains the signature of one Srira Zadmehran and a seal identifying the signatory as Notary Public in California, Los Angeles County Comm #2330328 due to expire on July 12, 2024.
47. Finally, the certificate identifies the document notarized as a Replying Affidavit.
48. Section 88 of the [Evidence Act](#) provides that;

When any document is produced before any court, purporting to be a document, which by the law in force for the time being in England, would be admissible in proof of any particular in any court of justice in England, without proof of the seal or stamp or signature authenticating it or of the judicial or official character claimed by the person by whom it purports to be signed –

- a. the court shall presume that such seal, stamp or signature is genuine and that the person signing it held, at the time when he signed it the judicial or official character which he claims in such document; and
 - b. the document shall be admissible for the same purpose for which it would be admissible in England.
49. In *Pastificio Lucio Garofalo Spa V Security & Fire Equipment Co. & another* (Supra) cited by the Petitioner’s counsel, Ringera J. expressed himself as follows:

“As regards whether the affidavit is taken before a Notary Public, there is no specific statute in Kenya or rules of court dealing with the formalities and admissibility in court of affidavits taken abroad. However Section 88 of the [Evidence Act](#), Cap 80 of the Laws of Kenya provides that documents which would be admissible in English courts of justice are admissible in Kenyan courts without proof of the seal or stamp or signature authenticating it or of the judicial or official character claimed by the person by whom it purports to be signed. In England by virtue of Order 41 Rule 12 of the Rules of the Supreme Court, affidavits taken in Commonwealth countries are admissible in evidence without proof of the stamp and seal or the official position of the person taking the affidavit. It accordingly follows that the same position obtains in Kenya.

As there is no such presumption in favour of documents made outside the Commonwealth, it follows that the affidavit in the instant case which was taken in Napoli, Italy has to be proved by affidavit or otherwise to have been taken by a Notary Public in Italy and that the signature and seal of attestation affixed thereto was that of such Notary Public. There is no such proof here. It may well be that the certificates in Italian and other writing in Italian was meant to do that. However, as there was no translation of the same into English, which is the official language of the High Court, this court cannot and will not know the position.”

50. The learned Judge found the Verifying Affidavit inadmissible and struck it out.
51. Counsel for the Petitioner relies on the opening sentence of the Jurat to underscore the fact that the certificate verifies the identity of the individual who signed the document only and not its accuracy, truthfulness or validity.
52. In the final analysis, the issue is whether the certificate was signed and sealed by a Notary Public as required by the second limb of the sentiments of Ringera J. cited above.



53. Prima facie, the certificate attached to the Replying Affidavit of Joanne Redmond dated 16th February, 2023 contains the essential elements of the person who notarized it, namely signature of the Notary Public and his seal which is valid till 12th July, 2024.
54. In the courts view, the certificate is prima facie proof that the Replying Affidavit was taken by a Notary Public in California, USA.
55. In the circumstances, the court is persuaded that the Replying Affidavit on record is admissible and the Petitioner's Notice of Motion dated 6th February, 2023 is thus defended.
56. As to whether the Petitioner's Notice of Motion is merited, parties have adopted contrasting positions with the 2nd and 3rd Respondents submitting that the petitioner had not made out a case for the court to grant leave for service outside Kenya. According to the 2nd and 3rd Respondents, the Petitioner's application is unsustainable.
57. In its ruling delivered on 6th February, 2023, the court was unambiguous that lack of service on the 2nd and 3rd Respondents was not fatal to the Petitioner's case and accorded the Petitioner's counsel opportunity to comply with the provisions of Order 5 Rule 21 of the Civil Procedure Rules, 2010.
58. Order 5 Rule 21 of the Civil Procedure Rules, 2010 donates to the court discretion to allow service out of Kenya in numerous circumstances including where any person out of Kenya is a necessary or proper party to a suit properly brought against some other person duly served in Kenya, by granting leave.
59. For purpose of the Petitioner's Notice of Motion, the operative provision is Order 5 Rule 25 of the Civil Procedure Rules, 2010 which provides that;

Every application for leave to serve such summons or notice on a defendant out of Kenya shall be supported by affidavit or other evidence, stating that in the belief of the deponent, the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a Commonwealth Citizen or a British Protected Person or not and the grounds on which the application is made; and no such leave shall be granted unless it is made sufficiently to appear to the court that the case is a proper one for service out of Kenya under this Order.
60. Order 5 Rule 25 is unambiguous as to the elements the applicant must demonstrate for the court to exercise discretion favourably.
61. The requirements are embellished by the emphasis on what the applicant must satisfy the court, namely a proper case for service out of Kenya has been shown.
62. As correctly submitted by counsel for the 2nd and 3rd Respondents and underscored by Chepkwony J. in Premier Hospital Ltd V Meditec Systems Ltd & another (Supra), this court has no jurisdiction over the 2nd and 3rd Respondent as they are foreign corporations and the only way to assume jurisdiction over them is to grant leave to the Petitioner who must then serve the petition as directed by the court.
63. This position finds support in the sentiments of the Court of Appeal in the Misnak case (Supra) as follows:

“ Additionally, summons to enter appearance also plays another pivotal role when it comes to a defendant who is outside the court's jurisdiction. The supplemental but equally important role is that it empowers the court in question to assume jurisdiction over such party . . .

The manner in which such jurisdiction is assumed by the court is that firstly the plaintiff has to seek leave of the court to serve such summons outside the court's jurisdiction. The



purpose of seeking leave is to enable the court to weigh the reasons adduced by the plaintiff and determine whether a proper case has been made out for service of summons outside its jurisdiction. The principles which govern the court in determining whether or not to grant leave are set out, though not exhaustively under Order 5 Rule 25 . . . Second, upon such leave being granted, the summons has to be served upon such defendant. It is only upon such service of the summons that a court assumes jurisdiction over a foreign defendant and not a moment sooner. This Court in *Raytheon Aircraft Credit Corporation & another V Air Al-Faraj* (Supra) appreciated as much stating that . . .”

64. The court is guided accordingly.
65. As regards good cause of action, it is common ground that the Petitioner has identified and relies on various articles of *the Constitution* of Kenya, 2010 as the foundation of his petition and alleges that the 2nd and 3rd Respondents were an integral part of the alleged violations.
66. Additionally, the Petitioner has made significant attempts to state the provisions he is relying on and has set out the manner in which the rights were allegedly violated and has also filed a Notice to Produce directed at the Respondents.
67. As correctly submitted by the Petitioner’s counsel, Article 22(1) of *the Constitution* of Kenya, 2010 is explicit as to what cause of action entails. It provides that;

“Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.”
68. The mode of filing the suit is prescribed by *the Constitution* of Kenya (Protection of Rights and Fundamental Freedom) Practice and Procedure Rules, 2013.
69. While the Petitioner acknowledges that he had a written contract of service with the 1st Respondent, he concomitantly argues that the 2nd and 3rd Respondents were actively involved in the employment relationship and supervised the performance of his duties among other matters. These are factual allegations whose veracity can only be ascertained at the hearing of the petition.
70. In sum, the court is persuaded that the Petitioner has on a preponderance of probabilities demonstrated that he has a good case for service out of Kenya.
71. Relatedly, although the Petitioner has not expressed doubts as to the real Respondents in the instant petition, Rule 5(a) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 allows the Petitioner to join two or more respondents in order that the question as to which of the respondents is liable, and to what extent, may be determined as between all parties.
72. As regards the location of the 2nd and 3rd Respondents, the Petitioner relies on exhibit DMI and DMII annexed to the Replying Affidavit sworn on 7th February, 2023 as evidence of the physical location of the 2nd and 3rd Respondents as follows:
 1. Meta Platforms, Inc.
1601 Willow Road, Menlo Park,
California 94025
Telephone no. (650) 543 4800



2. Meta Platforms Ireland Limited
4 Grand Canal Square
Grand Canal Harbour
Dublin
Ireland
DO 2X525
73. The 2nd and 3rd Respondents did not contest this requirement.
74. As to whether the Respondents are Commonwealth Citizens or British Protected Persons, it is common ground that the 2nd and 3rd Respondents do not fall in any of the categories as they are registered in California USA and Ireland respectively which are not Commonwealth jurisdictions.
75. As regards the grounds on which the application is founded, the Petitioner argues that the petition is grounded on alleged violations of rights and fundamental freedoms by the Respondents jointly and severally and the 2nd and 3rd Respondents are therefore necessary parties to the suit.
76. Contrary to the submission that the Petitioner must demonstrate his case by “weighty evidence” for the court to exercise its discretion favourably, Order 5 Rule 25 makes no reference to the nature or character of the evidence to be adduced by the applicant. However, the deponent must satisfy the court that in his belief he has a good case.
77. Counsel for the 2nd and 3rd Respondent submitted vociferously that having found that the Petitioner was employed by the 1st Respondent and there was no prima facie evidence that the 1st and 2nd Respondents were privy to the contract of employment and as the finding had not been challenged by the Petitioner, it is binding on the court and the parties herein.
78. Admittedly, the Petitioner is not challenging the fact that he had a written contract of service with the 1st Respondent. His case is based on allegations beyond the written contract of service on record and is seeking an opportunity to demonstrate evidentially that the 2nd and 3rd Respondents were significant actors and are therefore part of the matrix on liability issues.
79. As correctly submitted by counsel for the 2nd and 3rd Respondents, the common law doctrine of privity of contract is to the effect that a contract cannot confer rights or impose obligations on a person who is not party to that contract.
80. Put in alternative terms, a stranger to a contract cannot sue or be sued on it. (See *Tweddle V Atkinson* (1861) EWHC J57 (QB) (1861) 1B85 339, *Dunlop Pneumatic Tyre Co. Ltd V Selfridge and Co. Ltd* (1915) AC 847).
81. Needless to belabour, the doctrine of privity of contract is subject to several exceptions which a party may establish by availment of evidence for the court to render a finding.
82. The law places the onerous burden on the Petitioner.
83. On the applicability of Kenya law to the 2nd and 3rd Respondents, the sentiments of the Court in *S. S Lotus (France V Turkey)* (Supra) restated in *Samuel Kaundo & Others V The President of the Republic of South Africa & others* are less persuasive as the cases related to nation states as opposed to corporations.



84. Finally, it requires no gainsaying that one of the basic principles of international law is sovereignty of states. States negotiate treaties or bilateral agreements. Corporates on the other hand are free to contract with persons of their choice in any part of the world unless national laws provides otherwise and are thus exposed to a wider spectrum of liability unlike nation states.
85. For the foregoing reasons, the court is persuaded that the Petitioner has demonstrated that this is a proper case for the grant of leave for service out of Kenya and it is accordingly granted as follows:
- a. The Petitioner to serve the petition on the 2nd and 3rd Respondents at their Principal offices in the United States of America and Ireland respectively.
 - b. Service be effected through an internationally recognized Courier Services Provider and by Electronic Mail Services.
 - c. The 2nd and 3rd Respondents are at liberty to enter appearance within 21 days from the date hereof.
 - d. Costs of this application shall abide the outcome of the suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 23RD DAY OF JANUARY 2024

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.

DR. JACOB GAKERI

JUDGE

