



**Apudo v Azure Hotel Limited (Cause 816 of 2018)  
[2024] KEELRC 321 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 321 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 816 OF 2018  
JK GAKERI, J  
FEBRUARY 22, 2024**

**BETWEEN**

**SHARON APUDO ..... CLAIMANT**

**AND**

**AZURE HOTEL LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant commenced the instant suit by Statement of Claim filed on 29<sup>th</sup> May, 2013 alleging that she was forced to resign by the Human Resource Manager on 4<sup>th</sup> April, 2018 after he summoned her to his office.
2. It is the Claimant’s case that she was technically terminated from employment by the Respondent but secured employment elsewhere.
3. The Claimant further avers that after leaving employment, the Respondent’s Human Resource Manager called the new employer to notify them the circumstances in which she had been dismissed from employment.
4. That he requested the new employer to force her to go clear with the Respondent.
5. It is the Claimant’s case that the Respondent’s actions were malicious, arbitrary and without lawful justification.
6. The Claimant prays for;
  - i. Accrued leave Kshs.127,998/=
  - ii. 4 days worked in April 2018 Kshs.19,707/=.
  - iii. Salary in lieu of notice Kshs.128,100/=.



- iv. 12 months salary for summary dismissal Kshs.1,537,200/=.
- v. Permanent injunction barring the Respondent from persecuting the Claimant at her new employment.
- vi. Certificate of service.
- vii. General damages.
- viii. Costs of this suit.
- ix. Interest on (i), (ii), (iii), (iv) above at court rates.

### **Respondent's case**

7. The Respondent admits that the Claimant was its former employee but denies having terminated her employment summarily. It maintains that the Claimant resigned on her own volition vide letter dated 4<sup>th</sup> April, 2018 (wrongly stated as 4<sup>th</sup> April, 2017) written in the Human Resource Manager's Office where she had been summoned for a meeting.
8. It is the Respondent's case that on the material day, the Claimant was extremely rude.
9. That the Respondent accepted the resignation, agreed to pay notice and requested the Claimant to clear but she did not.
10. The Respondent avers that after the Claimant resigned, she continued patronising the Respondent's clients and directed them to competitors and the Respondent wrote to her to cease and desist.
11. The Respondent prays for dismissal of the Claimant's suit with costs.

### **Claimant's evidence**

12. The Claimant's short written statement rehashes some of the contents of the statement of claim.
13. On cross-examination, the Claimant alleged that she was given the paper to write down her resignation by Mr. Lawrence Wanjau, the Respondent's Human Resource Manager and he dictated the contents under threats that if she did not do so, she would not leave the place.
14. The witness admitted that the written statement did not mention or explain the force used by Mr. Wanjau yet it was written less than 2 months after the alleged force.
15. The witness admitted that she was paid the sum of Kshs.144,929/= as 12 days leave 2017, 14 days leave 2018 and 4 days worked in April 2018.
16. Although the witness testified that she did not take leave at all, she admitted, on re-examination, that she applied for leave in 2017 but could not recall the number of days and did not serve the notice period.
17. The Claimant further admitted that the reason for resignation was personal.
18. The witness admitted having received the cheque on record of Kshs.144,929/=.
19. On re-examination, the Claimant testified that Mr. Wanjau had told her that if she did not co-operate, he would call security.
20. That according to her, she was supposed to receive Kshs.280,090/= as opposed to Kshs.144,929/=.
21. It was her testimony that Mr. Wanjau summoned her to his office via a WhatsApp message.



### **Respondent's evidence**

22. On cross-examination, RWI confirmed that the Claimant was calling the Respondent's clients to discourage them from visiting the hotel and the Respondent called her to clear with it.
23. That the Claimant's resignation letter was accepted by letter dated 6<sup>th</sup> April, 2018 sent by email and the Claimant did not clear with the Respondent to obtain a hard copy of the letter.
24. RWI testified that he summoned the Claimant to his office because the Head of Department had complained about her performance and the Claimant wrote the resignation letter when he was outside the office. He denied having given her paper to do so.
25. On re-examination, the witness testified that the Claimant was not coerced to resign and was alone in the office when she wrote the letter and was paid all her dues.
26. The witness maintained that the Claimant resigned voluntarily as evidenced by the contents of her letter that she had enjoyed her working with the Respondent.

### **Claimant's submissions**

27. As to whether the Claimant was constructively dismissed by the Respondent, counsel relied on the definition of constructive dismissal and sentiments of the court in *Joseph Aleper & another V Lodwar Water & Sanitation Co. Ltd* (2015) eKLR to urge that the Respondent constructively dismissed the Claimant when Mr. Wanjau summoned her to his office, which meeting led to her resignation under duress as her place of work was unbearable.
28. Reliance was also made on the decisions in *Western Excavating (ECC) Ltd V Sharp* (1978) ICR 221, *Anthony Mkala Chitavi V Malindi Water & Sewerage Co. Ltd*, *Milton M. Isanya V Agha Khan Hospital Kisumu* (2017) eKLR, among others to urge the court to embrace the principle of constructive dismissal.
29. Counsel further submitted that the Claimant's resignation was unwilful and that was why she consulted a lawyer immediately and refused to clear.
30. Reliance was made on the sentiments of the court in *William Kariuki V Civil Aviation* (2008) eKLR to urge that acceptance of resignation did not bar the employee from revoking it if there was evidence to show that it was made on the spur of the moment and submit that the circumstances in which the Claimant wrote the resignation letter show that it was against her will and revoked it by a demand letter from the counsel.
31. Counsel invited the court to find that the Claimant's employment was constructively terminated by the Respondent.
32. As to whether termination of the Claimant's employment was unlawful, counsel cited the provisions of Section 44(1) of the *Employment Act, 2007* to submit that the Respondent summarily dismissed the Claimant on 4<sup>th</sup> April, 2018 and later forced her to write a resignation letter as a cover up.
33. According to counsel, the Claimant was summarily dismissed by the Respondent without notice and thereafter forced to draw a resignation letter as a cover up.
34. That the Claimant was dismissed from employment without a hearing as required by Section 41 of the *Employment Act, 2007*.
35. Counsel urged the court to find that the Claimant was summarily terminated by the Respondent.



36. As regards the reliefs sought, counsel submitted that the Claimant is entitled to 11 leave days accrued in 2017, 14 days leave in 2018, 12 months compensation for summary dismissal and general damages, in addition to salary in lieu of notice and 4 months' salary for the remaining period of the contract.

### **Respondent's submissions**

37. Counsel submitted on whether the Claimant resigned or was constructively dismissed and the Claimant's entitlement to the reliefs sought.
38. On the first issue, counsel submitted that the Claimant was not constructively dismissed and relied on the sentiments of the Court of Appeal in *Coca Cola East & Central Africa Ltd V Maria Kagai Ligaga* (2015) eKLR to urge that the Claimant had not established the elements of constructive dismissal as she had not discharged the burden of proof as required by Section 107(1) of the *Evidence Act* and emphasized by judicial pronouncements as underscored in the Ugandan case of *Sheikh Ali Senyong & 7 others V Shaikh Hussein Rajab Kakooza & 6 others SCCA No. 9 of 1990*.
39. Counsel submitted that the Claimant adduced no evidence to substantiate allegations of constructive dismissal.
40. Counsel submitted that the Claimant voluntarily resigned by letter dated 4<sup>th</sup> April, 2018.
41. Reliance was made on the sentiments of the court in *Ayonga V Falcon Signs Ltd* (2023) eKLR and *Sophie Muthoni Njagi V Rift Valley Railways Ltd* (2020) eKLR to reinforce the submission.
42. On the reliefs sought, counsel submitted that the Claimant was only entitled to pay in lieu of notice, 4 days worked in April 2018, 11 days accrued leave and leave travelling allowance.
43. Counsel submitted that the Claimant did not object to the Respondent's proposal on her entitlements after the resignation and was paid net of all statutory deductions.
44. Finally, counsel submitted that the Claimant was not entitled to compensation as the Respondent did not terminate her employment, had not made a case for a permanent injunction as the Respondent company does not exist, a certificate of service was issued and was not entitled to general damages.

### **Findings and determination**

45. The issues that commend themselves for determination are;
- i. Whether the Claimant resigned or was summarily or constructively dismissed by the Respondent.
  - ii. Whether the Claimant is entitled to the reliefs sought.

### **Was the Claimant summarily dismissed by the Respondent?**

46. Section 44 of the *Employment Act*, 2007 entitled 'summary dismissal' sets out what constitutes summary dismissal and exemplifies the grounds on which it may be justified in law. The section provides inter alia;
1. Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.
  2. . . .



3. Subject to the provisions of this Act an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.
4. Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause . . .”
47. The Claimant’s counsel submitted that the Respondent dismissed the Claimant summarily on 4<sup>th</sup> April, 2018 and then forced her to write a resignation letter as a sign of cover up.
48. At this juncture, it is important to interrogate the point at which the alleged termination of employment took place as this is a highly contested issue and only the Claimant and Mr. Wanjau were involved.
49. In her written statement dated 20<sup>th</sup> May, 2018, the Claimant states that on 4<sup>th</sup> April, 2018, the Respondent’s Human Resource Manager, (Mr. Lawrence Wanjau) summoned her to his office and forced her to write a resignation letter and directed her to leave the hotel premises.
50. The foregoing statement was written 47 days after the alleged event.
51. Evidently, the letter makes no reference to what transpired before the letter was written or how the alleged force was exerted.
52. The Claimant’s counsel’s demand letter dated 4<sup>th</sup> April, 2018 states that due to the duress and pressure on being called via a WhatsApp message, Mr. Wanjau directed her to write a resignation letter.
53. Analogous to the Claimant’s witness statement, the advocates demand letter make no reference to how the alleged summary dismissal took place prior to the resignation letter on record.
54. On cross-examination, the Claimant testified that Mr. Wanjau gave her a pen and paper and dictated to her what to write under the threat that if she did not do so, she would not leave the office.
55. Mr. Wanjau testified that the Claimant picked writing paper from the printer and wrote the letter while he was outside the office.
56. On re-examination, the Claimant changed her testimony and testified that Mr. Wanjau threatened to call security if she did not write the resignation letter.
57. It is noteworthy that neither the Claimant’s witness statement nor the counsel’s demand letter of even date particularise the nature of the alleged force or duress exerted on the Claimant when she wrote the resignation letter.
58. Similarly, Mr. Wanjau testified that the Claimant’s Head of Department had indicated that the Claimant’s performance was wanting and that was the reason for the summoning of the Claimant by a WhatsApp message.
59. Neither of the parties adduced evidence of animosity between the two or previous dealings or how they related and none of them availed the phone message which both acknowledged.
60. In the circumstances, it is surmisable that the message was an ordinary one in the course of an employment relationship.
61. In any case, the Claimant and the Respondent’s Human Resource Manager were Managers in the organization with different roles, typical in organizations.



62. What the court finds perplexing is that the Claimant, a Manager who had worked for the Respondent for about 14 months, is inviting the court to believe and find that she was forced to write a resignation letter and its contents dictated to her and sign the same by a fellow manager who was unarmed, the door was not closed, and in a hotel establishment typically associated with other employees, a General Manager, directors and guests.
63. Relatedly, the court is grappling with the alleged factual situation, that the Claimant was ordered to leave the hotel premises and did so without calling or talking to any person, including her supervisor, the General Manager or colleague to express her anger or revulsion of Mr. Wanjau's conduct.
64. In a similar vein, the Claimant adduced no evidence of any confrontation or altercation or verbal exchange between her and Mr. Wanjau before the letter was written.
65. The Claimant's counsel's submission that the resignation letter was a cover up of a summary dismissal, is not borne by any evidence.
66. Finally, the Claimant's letter dated 4<sup>th</sup> April, 2018 is drafted on a plain sheet of paper and is directed to the Human Resource, abbreviated as HR and the reference is one month notice resignation.
67. The Claimant registers her appreciation for having been given the opportunity to work for Respondent from 6<sup>th</sup> February, 2017 to "4<sup>th</sup> February", 2018 in lieu of 4<sup>th</sup> April, 2018.
68. The Claimant expresses her appreciation that she had learnt a lot and would miss her colleagues.
69. The Claimant admitted having signed the letter.
70. From the evidence adduced by the Claimant, it is unclear to the court as to the form the alleged force or duress took and how it was exerted.
71. The dearth of evidence as to what transpired prior to the writing of the letter or thereafter is baffling to the court.
72. A cursory look at the letter reveals that the Claimant's handwriting is consistent from the beginning to the end and reveals nothing from which the circumstances in which it was written may be decoded.
73. At common law, duress is one of the vitiating elements of a contract and renders a contract or signature voidable at the option of the innocent party.
74. According to William R. Anson, *Principles of the Law of Contract* (26<sup>th</sup> Ed. 1984) at page 261 – 62  

“Duress consists in actual or threatened violence or imprisonment, the subject of it must be the contracting party himself or his wife, parent or child and it must be inflicted or threatened by the other party to the contract or else by one acting with his knowledge or for his advantage.”
75. Evidently, the party pleading duress bears the burden of proof to demonstrate want of free agency in the circumstances.
76. From the evidence on record, the court is unable to find that the Claimant has demonstrated that she was forced to draft and sign the resignation letter dated 4<sup>th</sup> April, 2018.
77. An allegation that the other party threatened to call security or that the Claimant would not leave the hotel akin to imprisonment, yet both the Claimant and the Respondent were Managers and employees of the hotel is insufficient without supportive evidence, the contradictory nature of the evidence notwithstanding.



78. Equally, for a threat to amount to duress, it must be established the party making the threat had the capacity to put the threat into effect, evidence the Claimant did not adduce to reinforce the allegation of any of the two threats allegedly made by RWI.
79. To the question whether the Claimant was forced to draft a resignation letter, the court returns that the Claimant has evidentiary failed to prove that her resignation letter was written under duress.

### **Did the Claimant resign from employment?**

80. Having found that the Claimant has failed to prove that the letter dated 4<sup>th</sup> April, 2018 was vitiated by duress, it is surmisable that the Claimant resigned from employment.
81. Resignation is a unilateral act which terminates an employment relationship between employer and an employee.
82. In *Ayonga V Falcon Signs Ltd (Supra)*, cited by the Respondent's counsel, Manani J. stated as follows;
- “Resignation is one of the modes of terminating the employer-employee relationship. It is a tool that is available to an employee to trigger his separation from the employer.
- Being a unilateral act, the employee who wishes to sever the employer-employee relation can elect to serve the employer with a resignation. The resignation may be expressed to take effect either immediately or at a later date as indicated by the employee. Once an employee communicates the decision to resign from employment, the contract of employment is effectively terminated. The validity of the resignation is not dependent on the employer accepting it.” (See *Herbert Wafula Waswa V Kenya Wildlife Services (2020) eKLR.*)
83. The court is in agreement with the foregoing sentiments.
84. Significantly, in *William Kariuki V Kenya Civil Aviation (Supra)*, cited by the Claimant's counsel on revocation of a resignation, Nambuye J. (as she then was) was equally unambiguous that;
- “In the court's opinion, the plaintiff having resigned from the defendant's employment and the defendant having accepted that resignation which fact was being acknowledged in the letter complained of, the relationship of employer/employee had been thereby severed. As such the plaintiff having ceased being an employee of the defendant from 31.03.2005 he was incapable of being dismissed . . .”
85. The emerging jurisprudence of the Employment and Labour Relations Court is that a resignation by an employee does not require acceptance by the employer. Being a unilateral act and available to the employee at all times without any limitation save for notice, it becomes effective as soon as it is handed over to the employer who has no mandate to reject it.
86. The employment relationship comes to an abrupt end and the decision is irrevocable at the instigation of the employee.
87. An employer may however take back an employee who has tendered a resignation on its volition and terms.
88. Counsel's submission that the Claimant revoked the resignation letter on the same day lacks a supportive legal basis for sustainability.
89. Flowing from the foregoing, it is the finding of the court that the Claimant has on a preponderance of probabilities failed to demonstrate that the letter dated 4<sup>th</sup> April, 2018 was not resignation letter.



### **Was the Claimant constructively dismissed by the Respondent?**

90. Although the Claimant did not plead or allege that she was constructively dismissed by the Respondent, counsel isolated it as the first issue for determination and submitted on it substantially and urged the court to find that the Claimant was constructively dismissed by the Respondent.
91. That the Respondent's behaviour of insulting, harassing and the forced resignation and pushing the Claimant out of the office amounted to constructive dismissal.
92. Counsel for the Respondent, on the other hand submitted that the Claimant had not tendered evidence to demonstrate that she was constructively dismissed by the Respondent.
93. The locus classicus exposition of the principle of constructive dismissal are the sentiments of Lord Denning MR in *Western Excavating (ECC) Ltd V Sharp (1978) Q.B 761* where the judge stated as follows;

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract”.

94. In Kenya, the principle of constructive dismissal was explained and domesticated by the Court of Appeal in *Coca Cola East and Central Africa V Maria Kagai Ligaga (Supra)* as follows;

“The key element in the definition of constructive dismissal is that the employee must have been entitled or have the right to leave without notice because of the employer's conduct. Entitled to leave has two interpretations which gives rise to the test to be applied. The first interpretation is that the employee could leave when the employer's behaviour towards him was so unreasonable that he could not be expected to stay – that is the unreasonable test. The second interpretation is that the employer's conduct is so grave that it constituted a repudiatory breach of the contract of employment – this is the contractual test. The contractual test is narrower than the reasonable test. The dicta in *Western Excavating (ECC) Ltd V Sharp (1978) ICR 222* adopts the contractual approach test and we are persuaded that the test is narrow, precise and appropriate to prevent manipulation or overstressing the concept of constructive dismissal. For this reason, we affirm and adopt the contractual test approach. This means that whenever an employee alleges constructive dismissal, a court must evaluate if the conduct of the employer was such as to constitute a repudiatory breach of the contract of employment . . .”

95. The Court of Appeal went further and enumerated the relevant legal principles in the determination of constructive dismissal such as the fundamental and essential terms of the contract of employment, whether a repudiatory breach of contract had taken place, whether the employer's conduct runs to the root of the contract, objectivity, causal link between employer's conduct and reason for terminating the



contract, leaving with or without notice, no evidence of acceptance, waiver, acquiescence or conduct implicating estoppel and establishment of constructive dismissal by the employee.

96. The court is guided accordingly.
97. The gravamen of constructive dismissal is that the employee is required to evidentiary demonstrate that the Respondent has committed a repudiatory breach of the contract of employment by acts or omissions whose effect is to render the existence of an employer/employee untenable to the employee.
98. The employee must show that the employer's conduct has made it practically impossible for the employee to perform the contract of employment and thus leaves immediately.
99. In a nutshell, the plea of constructive dismissal exclusively hinges on the employer's conduct which must be sufficiently frustrating to justify the employee's resignation.
100. The decisions in *Benuel Mariera V Award Enterprises Ltd* and *Emmanuel Mutisya Solomon V Agility Logistics* cited by the Claimant's counsel as well as the decision in *Sophie Muthoni Njagi V Rift Valley Railways (Kenya) Ltd (Supra)* expounding on the principle of constructive dismissal are of a persuasive nature in this case.
101. Contrary to counsel's submission that the Claimant was verbally insulted, harassed and pushed out of the office, the Claimant tendered no evidence to that effect.
102. Indeed, the Claimant's evidence makes no reference to any discussion preceding the drafting of the resignation letter. She adduced no evidence of what transpired after the letter other than being directed to leave the hotel premises immediately.
103. The Claimant adduced no evidence of any act or omission of the Respondent which frustrated her or rendered her employment by the Respondent untenable. Her oral evidence in court made no reference to any repudiatory breach of the contract of employment by the Respondent.
104. From the evidence on record, there is nothing to suggest that the Respondent constructively terminated the Claimant's employment on 4<sup>th</sup> April, 2018.
105. In sum, it is the finding of the court that the Claimant has failed to discharge the burden of proof under Section 107(1) of the *Evidence Act*, to show that her resignation was occasioned by the Respondent's conduct.

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

106. It is common ground that the Claimant was paid the sum of Kshs.144,929.00 via cheque dated 25<sup>th</sup> July, 2018 and she acknowledged receipt.
107. The amount comprised;
  - i. One month's salary in lieu of notice
  - ii. 4 days worked in April 2018
  - iii. 11 days accrued leave and
  - iv. Leave travelling allowance.
108. Strangely, the Claimant's written statement makes no reference to any of the prayers in this claim.
109. In her oral evidence, on re-examination, the Claimant claimed that she was not paid one month notice pay and 1<sup>1</sup>/<sub>2</sub> days worked in April 2018, a total of Kshs.135,484/=.



110. However, as correctly submitted by the Respondent's counsel, terminal dues payable to an employee are subject to all statutory deductions including Pay As You Earn.
111. On leave, the Claimant adduced no evidence on the outstanding leave days but Leave Application Forms on record reveal that the Claimant was on leave for 18 days and thus had 8 days pending out of an entitlement of 26 per year.
112. The Respondent paid for 11 days for the year 2018 since the Claimant had worked for only 2 months. She was entitled to pro rata leave for 2 months only as leave is computed per 12 months having joined on 4<sup>th</sup> February, 2017.
113. In the court's view, the 11 days paid covered all outstanding leave days.
114. The Claimant's prayer for leave of Kshs.127,998/= comprising 56 days is patently unrealistic as the Claimant worked for only 14 months, a year and 2 months and her leave entitlement in total was about 30 days only for the entire duration.
115. Similarly, the 4 days worked in April 2018 was paid for via the cheque as is the salary in lieu of notice.
116. As regards 12 months salary for summary dismissal, the prayer is unsustainable in light of the findings that the Claimant was neither constructively nor summarily dismissed by the Respondent.

**Permanent injunction barring the Respondent from persecuting the Claimant at her new employment**

117. Neither the Claimant's written statement, nor the oral testimony adduced in court make reference to the conduct complained of. Without supportive material, the prayer is unmerited and it is dismissed.

**Certificate of service**

118. The Claimant is entitled to a certificate of service by dint of Section 51 of the [Employment Act, 2007](#) and the same must be furnished within 30 days unless already issued.

**General damages**

119. This prayer is incomplete and thus inconsequential.
120. The Claimant is praying for general damages for an unspecified tort or claim. Although, the Statement of Claim makes reference to a "defamatory malicious" letter accompanied by a phone call to the Claimant's new employer, the Claimant adduced no evidence of the alleged letter or contents of the alleged phone call.
121. In a nutshell, the Claimant tendered no evidence to demonstrate how and when she was defamed by the Respondent.

**The prayer is dismissed.**

122. Flowing from the foregoing, it is clear that the Claimant has failed to establish her case against the Respondent or establish entitlement to the reliefs prayed for and it is accordingly dismissed.
123. The Respondent to issue a certificate of service within 30 days.
124. In the circumstances of this case, it is only fair that parties bear their own costs.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22<sup>ND</sup> DAY OF FEBRUARY 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 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.

**DR. JACOB GAKERI**

**JUDGE**

