



REPUBLIC OF KENYA



**Mjoki v Veev Distributors Ltd (Petition E220 of 2022)
[2024] KEELRC 597 (KLR) (12 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 597 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E220 OF 2022
JK GAKERI, J
MARCH 12, 2024**

BETWEEN

PETER KENNETH CHEGE NJOKI PETITIONER

AND

VEEW DISTRIBUTORS LTD RESPONDENT

JUDGMENT

1. The Petition herein was filed on 8th December, 2022 and the Petitioner invokes the court’s jurisdiction under Article 162(2)(a) of *the Constitution* of Kenya, 2010 and Section 12 of the Employment and *Labour Relations Act*, 2011.
2. The Petitioner cites Articles 2(1) and (2), 10(2), 19(1), 20(1) and (2) and 22(1) of *the Constitution* of Kenya, 2010 as the foundation of the Petition.
3. The petition is supported by the Petitioner’s Affidavit sworn on 8th December, 2022 which rehashes the contents of the Petition.
4. The Petition is also supported by the Affidavit of one Nelly Wanjiru Gatoto who deposes that she is the Petitioner’s wife and they have 2 children, Alexia Wamaitha and Jason Njau.
5. It is the Petitioner’s case that he was employed by the Respondent on 1st July, 2022 as a Van Sales man at Kshs.25,257.50 after deductions and his duty entailed sale and delivery of beer and alcoholic spirits to customers in the Nairobi County for one (1) month renewable by mutual consent and he was assigned motor vehicle Reg No. KBE 724V truck and was assigned a turn boy whose work was to offload crates of beer and boxes of spirits.
6. It is the Petitioner’s case that on 25th September, 2022, they were assigned a pick up Reg No. KBP 7229K to sell alcoholic spirits around Mathare Area.
7. That later that afternoon, the Petitioner realized that he had a deficit of about Kshs.12,000/=.



8. That he called the customers he had sold drinks to and 3 confirmed having paid cash to the turn boy which was contrary to company policy.
9. The Petitioner alleges that at the Respondent's premises, he and turn boy could not obtain a gate pass until they had handed over the money received from sales and the remaining stock to the Sales Manager and the turn boy had already left the premises and he was denied a gate pass and one Mr. Geoffrey Okeyo instructed security not to allow the Petitioner out until he paid the deficit of Kshs.12,000/= and he was allegedly detained for 48 hours and was denied food, shelter or opportunity to change his clothes, brush or toilet but some colleagues brought him milk and bread.
10. That efforts to convince the Human Resource to deduct the deficit from his monthly salary were unsuccessful.
11. That he spent 48 hours at the Respondent's depot away from his family and without food and was released on 27th September, 2022 at 13.45 pm.
12. The Petitioner argues that the one month fixed term contract violated the provisions of the [Employment Act, 2007](#).
13. That the detention violated Article 25 of [the Constitution](#) of Kenya, 2010 as he was treated inhumanly, was given 2 days leave and when he returned on 3rd October, 2022, he was dismissed from employment and given a cheque of Kshs.7,000/=.
14. The Petitioner prays for;
 - i. Compensation and aggravated damages for violation of the rights under Articles 25, 28, 30 and 41 of [the Constitution](#) of Kenya, 2010.
 - ii. A declaration that the Petitioner was underpaid under the Regulation of Wages (General) (Amendment) Order, 2022 under which the minimum pay was Kshs.28,487.40.
 - iii. Kshs.329,844/= as 12 months compensation.
 - iv. Salary in lieu of notice Kshs.25,257/=.
 - v. Punitive and aggravated damages for violation of Article 25 of [the Constitution](#).
 - vi. Costs of the petition.

Response

15. In the Replying Affidavit sworn on 11th October, 2023, Patrick Waweru, the Respondent's Operations Manager, deposes that the Respondent engaged the Petitioner as Sales person on 1st July, 2022 for a one (1) month fixed term contract with a possibility of renewal and his job entailed receiving orders and delivery of the same and ensuring that payment was effected on delivery and on 1st August, 2022, the contract was renewed until 30th September, 2022 and a notice of termination was issued on 1st September, 2022 that the contract would end on 30th September, 2022.
16. That on 25th September, 2022, the Petitioner had a deficit of Kshs.12,000/= as alleged, which he could not account for and refused to provide the sales delivery record for the day and left with the turn boy at 5.05 pm and did not report to workplace on the following day until 27th September, 2022 when he asked for 2 days leave which the Respondent granted and on 30th September, 2022, he did not show up to collect his dues or settle his accounts as advised and was thus guilty of theft by servant.



17. That the Petitioner reported on 3rd October, 2022 and instructed accounts to deduct the deficit from his pay and was paid the balance of Kshs.7,120.00.
18. That the Respondent opted not to pursue criminal charges against the Petitioner as his accounts were settled.
19. The Respondent denies having detained the Petitioner as it lacked the mandate to do so.
20. The Respondent prays for dismissal of the petition with costs.

Evidence

21. The Petitioner attached a copy of the Employment Contract dated 1st July, 2022, Employee Gate Pass dated 27th September, 2022 signed by the employee and the H.O.D with a time-in of 13.45 pm, copy of a Leave Request Form dated 29th September, 2022 from 28th September to 3rd October, 2022 duly approved by the supervisor and a copy of a cheque for Kshs.7,120/= dated 3rd October, 2022.
22. The Respondent on the other hand availed copies of original contract dated 1st July, 2022 and its extension to 30th September, 2022, notice of termination of employment dated 1st September, 2022 and a gate pass dated 25th September, 2022, time-out at 5.05 pm and time-in at 4.15 pm.

Petitioner's submissions

23. Counsel identified no specific issues but faulted the Replying Affidavit on the Gate Pass dated 25th September, 2022 which has an entry of 4.15 pm and exit at 5.05 pm.
24. Counsel also faults the termination notice dated 1st September, 2022 which he alleges the Petitioner did not receive.
25. Counsel cites Order 4 Rule 1(4) of the Civil Procedure Rules, 2010 to urge that the deponent of the Replying Affidavit had not annexed authority to do so and cited Victor Mabachi & another V Nutrition Bates.
26. That the deponent had not attached letter of authority to swear the affidavit to urge that the affidavit be expunged.
27. Similarly, counsel cites the provisions of Section 107(1) and 112 of the Evidence Act on the burden of proof.
28. Reliance was made on the decisions in Republic V Registrar General & 13 others Mis App No. 67 of 2005 and Leo Investment Ltd V Trident Insurance Ltd Co. HCCC 893 of 2010 (2014) eKLR on the filing of a resolution of the Board of Directors.
29. On the reliefs sought, counsel cited the decisions in Obongo & another V Municipal Council of Kisumu (1971) 1 EA 91 and Miguna Miguna V Standard Group Ltd & 4 others CA 164 of 2016 on damages to urge that the Petitioner ought to be awarded aggravated damages of Kshs.2 million and Kshs.1.5 million as general damages.
30. It is counsel's submission that the salary of a sales person in Nairobi was Kshs.34,302.75 and was thus paid Kshs.7,302.75 less.
31. Counsel prays for Kshs.411,633/= as compensation for unlawful dismissal of the Claimant.
32. Finally, on punitive damages, counsel cited Barclays Bank of Kenya Ltd V Mema (2021) KEHC to urge that the one-month contract was unlawful and the Petitioner was entitled to punitive damages.



Respondent's submissions

33. Counsel isolated four (4) issues for determination including costs.
34. As to whether the Petitioner's rights under Articles 25, 28, 40 and 41 of *the Constitution* of Kenya were violated, counsel urged that the Petitioner had not placed before the court evidence of the alleged violations as he who alleges must prove as ordained by the provisions of the *Evidence Act*.
35. Counsel cited the decisions in *China Wuyi & Co. Ltd V Samson Metto* (2014) eKLR and *Irene Wambui Muchai & 5 others V Attorney General* (2017) eKLR on the burden of proof by availment of evidence and cited Section 4 of the *Prevention of Torture Act* to submit that having alleged violation of rights, the Petitioner is duty bound to plead particulars of the alleged violations.
36. Counsel submitted that the instant petition does not meet the threshold in *Anarita Karimi Njeru V Republic* (1979) eKLR as emphasized in *Mumo Matemu V Trusted Society of Human Rights Alliance & 5 others* (2013) eKLR.
37. It is counsel's submission that the petition provides little or no particulars of the alleged violations of *the Constitution* such as the alleged confinement for 48 hours yet there is no evidence of the alleged confinement, visit to a health facility or the police for the alleged torture as if the alleged confinement had no effect on Petitioner.
38. Counsel submitted that the Petitioner's wife's evidence was hearsay as she was not present at the alleged detention centre and took no action, not even report the matter to the police and waited for 3 days. That her alleged behaviour was curious.
39. Counsel submitted that the Petitioner's allegation of unlawful detention, slavery and servitude, human dignity and torture have not been substantiated.
40. That the Petitioner and his turn boy signed in and out on 25th September, 2022.
41. Counsel urged that even assuming the allegations were true, the Petitioner had not availed evidence to show that the Respondent or a person acting under it perpetrated the violations as inter alia the Petitioner has not named any person or colleague at the workplace.
42. On termination, counsel submitted that the Petitioner was engaged under a one (1) month fixed contract of service which was extended till 30th September, 2022 and was given a termination notice on 1st September, 2022 yet they had agreed 7 days.
43. That after the Petitioner failed to account for the deficit, he still left in the company of the turn boy but did not return on 26th September, 2022 and only showed up on 27th September, 2022 and applied for 2 days leave which was granted.
44. Counsel submitted that the Respondent did not terminate the Petitioner's employment unfairly and cited the Court of Appeal decision in *Transparency International-Kenya V Omondi* (2023) KECA 174 to urge that there is no obligation on the part of the employer to extend a fixed term contract.
45. That the Respondent did not underpay the Petitioner and attempts by the Petitioner's counsel to amend the pleading through submissions was untenable.
46. Counsel submitted that the Petitioner had not proved unfair termination of employment.
47. On the reliefs sought, counsel submitted that having failed to establish the alleged violations of constitutional rights, the Petitioner had not attained the threshold for the award of exemplary and



aggravated damages and cited the decisions in *D K Njagi Marete V Teachers Service Commission (2020) eKLR* and *Godfrey Julius Ndumba Mbogori & another V Nairobi City County (2018) eKLR* on circumstances in which exemplary damages may be awarded.

48. Finally, counsel urged that the costs should follow the event.

Determination

49. It is common ground that the Petitioner was an employee of the Respondent from 1st July, 2022 under one (1) month fixed term contract renewable by mutual consent and the same was renewed on 1st August, 2022 and was due to lapse on 30th September, 2022.

50. The Petitioner alleges that he was detained by the Respondent at its premises for 48 hours without food and other amenities, was tortured and treated in an inhumane manner and alleges to have been unfairly dismissed on 3rd October, 2020.

51. The issues that commend themselves for determination are whether;

- i. This petition raises constitutional issues.
- ii. This petition meets the threshold in *Anarita Karimi Njeru V Republic (Supra)* and the Petitioner has proved his case.
- iii. The Petitioner was underpaid.
- iv. Termination of the Petitioner's employment was unfair.
- v. The Petitioner is entitled to the reliefs sought.

52. The crux of the Petitioner's case is that his rights under Articles 25, 28, 30 and 41 of *the Constitution* of Kenya, 2010 were violated in that he was detained by the Respondent for 48 hours, was subjected to torture, inhuman and degrading treatment and his right to human dignity was violated.

53. To the extent that the foundation of the Petitioner's case is the unlawful confinement and infringement of other constitutional rights and fundamental freedoms, it is arguable that the Petition herein raises constitutional issues.

54. However, the matter is substantially an employer/employee issue and could have been filed as an ordinary cause or claim.

55. As to whether the Petitioner herein meets the threshold of a constitutional petition, it is essential to highlight that the Petitioner's case is grounded on alleged violations of *the Constitution* of Kenya, 2010, principally Articles 25 on the non-derogable rights and fundamental freedoms, Article 28 on human dignity, Article 30 on slavery, servitude and forced labour and Article 41 on unfair labour practices.

56. In *Anarita Karimi Njeru V Republic (Supra)* Trevelyn and Hancox JJ stated as follows;

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they were alleged to be infringed.”

57. The foregoing threshold has been re-emphasized in legions of decisions.



58. In the instant petition, the Petitioner alleges that he was “tortured, subjected to cruelty and treated inhumanely by the Respondent.”
59. Strangely, the Petitioner has not provided the relevant particulars to demonstrate how his rights were violated.
60. First, the alleged unlawful imprisonment or detention tops the list.
61. In his supporting affidavit, the Petitioner states that he was detained after he failed to account for Kshs.12,000/= of the days sales.
62. The Petitioner states that Mr. Geoffrey Okeyo told him that he would not leave until he paid the Kshs.12,000/= and his pleas fell on deaf ears. He does not disclose with whom it was pleading as people have names or designation.
63. He did not even know the security person at the gate or who gave him instructions not to let him out, if that was the case.
64. Similarly, the Petitioner is silent on the actual place of detention.
65. Was he detained in a room, verandah or an open space? Was there a security person to ensure he did not escape? Who gave him bread in the morning whom he could not call as a witness?
66. Intriguingly, the Petitioner’s Supporting Affidavit makes no reference to the not less than the 5 phone calls the wife allegedly made to him and they talked. Not even his alleged call at 3.45 pm on 27th September, 2022.
67. For unexplained reasons, the Petitioner had a phone and allegedly talked to the wife at least 6 times from the evening of 25th to the afternoon of 27th September, 2022, could not recall using the phone and did not seek help or attempt to leave.
68. The Employee Gate Pass dated 27th September, 2022 indicating time-out merely shows that the Petitioner exited the Respondent’s place of work. It does not demonstrate anything else, as does the leave application form of even date.
69. More puzzling is the Petitioner’s conduct after the alleged unlawful detention. He went home and did nothing about the alleged violations until the instant suit was filed in December 2022, 2¹/₂ months later.
70. He did not report to the police or seek medical attention for the alleged torture or inhuman treatment or tell anyone else other than the wife perhaps.
71. Surprisingly, the Petitioner’s wife attached no evidence to show that the alleged calls were indeed made. Phone records would have shown that her phone number, which is unknown communicated with that of the Petitioner which is also unknown to the court.
72. Relatedly, the wife’s conduct as discernible from the affidavit is rather curious.
73. She allegedly talked to her husband, the Petitioner after 8.00 pm and he responded desperately and told her that he had been detained by the employer and the Petitioner repeated the same story in the morning of 26th September, 2022 and later in the day and at 3.00 pm and was worried about him at night but did nothing about it, something untypical to the behaviour of a spouse in the alleged such circumstances.



74. It is unclear why the Petitioner's wife who acknowledges that the husband sounded desperate could not seek help from the police or any other person or institution. This greatly weakens her deposition.
75. In sum, the court finds the Petitioner's wife Affidavit not less believable.
76. According to Harry Street in *The Law of Tort* (5th Edition), 1972;
- “False imprisonment is defined as an act of the defendant which directly or intentionally or negligently causes the confinement of the plaintiff within an area delimited by the defendant.”
77. Winfield and Jolowicz on *Tort* (13 Edition, 1990) defines false imprisonment as;
- The infliction of bodily restraint which is not expressly or impliedly authorised by the law.
78. This tort protect a person's right of liberty.
79. To amount to false imprisonment, the party at fault must have acted intentionally and positively, which leads to the confinement which can be in a prison, private house or forcibly in a public place or vehicle but the restraint must be complete with no means of escape. In this case, the Petitioner provided no evidence of the character of the alleged detention and in particular the venue or how it was enforced and by who.
80. As regards the alleged torture, cruelty and inhumane treatment, the Petitioner provided no particulars of the alleged violations. Torture is a grave violation of human rights and an allegation of torture must be supported by relevant particulars and supportive evidence.
81. What forms did the cruelty or inhumane treatment assume?
82. Finally on the alleged violation of the fundamental freedom from slavery, servitude and forced labour, the Petitioner provided neither the particulars nor supportive evidence.
83. As regards burden of proof, the provisions of the *Evidence Act* are clear.
84. Section 107 provides that;
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts.
 2. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
85. In addition, Section 108 of the Act provides;
- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
86. Paragraphs 13 and 14 of the Halsbury's *Laws of England*, 4th Edition, Volume 17 states thus;
- “The legal burden is the burden of proof which remains constant throughout a trial. It is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a Claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon



the party for whom substantiation of that allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.

The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal . . .”

87. Finally, in *Mary Wambui V Kenya Bus Services Ltd (1997)* eKLR, the Court of Appeal stated as follows;

“The age long principle of law is that he who alleges must prove . . .”

88. It requires no belabouring that the standard of proof is on a preponderance of probabilities.

89. In *Re H and others (minors) Sexual Abuse; The Standard of proof (1969)*, Lord Nichol of the House of Lords stated as follows;

“The balance of probability means that a court is satisfied that an event occurred if the court considers that, on the evidence, the occurrence of that event was more likely than not. When assessing the probability, the court will have in mind as factors, to whatever extent is appropriate in the particular case, that the more serious allegation the less likely it is that the event occurred and, hence the stronger should be the evidence before the court concludes that the allegation is established on a balance of probabilities.”

90. The court expressed similar sentiments in *Miller V Minister of Pension (1947)* ALL ER 373.

91. As adverted elsewhere in this judgment, other than the Employee Gate Pass Card, the Leave Request Form on record, the Petitioner availed no other verifiable evidence of there having been an unlawful detention or imprisonment by the Respondent as alleged.

92. Documentary evidence of the Petitioner having reported the matter to the police, demand letter written immediately thereafter or evidence of having sought medical attention would have gone a long way in establishing that something happened on 25th September, 2022.

93. Similarly, evidence of attempts made to leave the premises, calls made and any other action taken to expose the alleged injustices would have demonstrated clear state of affairs.

94. As matters stand, it is the Petitioner’s word against that of the Respondent.

95. In the court’s view, the Petitioner has failed to discharge the burden of proof to the required standard as he bore the burden of proof.

96. The court find nothing on which to ground a reasonable degree of probability that the alleged unlawful detention or violation of other freedoms occurred.

Whether the Petitioner was underpaid

97. It is common ground that under the original contract of employment dated 1st July, 2022, the Petitioner’s monthly salary was Kshs.27,000/= which remained unchanged after the renewal.

98. The Petitioner’s Supporting Affidavit makes no reference to the allegation of underpayment or how much he was entitled to.

99. It is also not in contest that the Petitioner was employed as a Van sales man.



100. Under the Regulation of Wages (General) (Amendment) Order, 2022, effective 1st May, 2022, the minimum salary for a Salesman in Nairobi was Kshs.28,487.40 + 15% house allowance Kshs.4,273.11 = Kshs.32,760.51 minus Kshs.27,000/= Kshs.5,760.51.
101. The foregoing computation reveals that the Petitioner was indeed underpaid by Kshs.5,760.51 which he is entitled to for the 2 months he worked for the Respondent, Kshs.11,521.02.
102. As to whether termination of the Petitioner’s employment was unfair, it is common ground that the Petitioner’s employment was a fixed term contract renewable by mutual agreement and on mutually agreed terms and conditions and the Petitioner executed it. The contract had a commencement date and an end date.
103. The renewal letter dated 1st August, 2022 was unambiguous that the contract would subsist until 30th September, 2022.
104. Although counsel for the Petitioner faulted the Respondent for having given the Petitioner a one (1) month fixed term contract, counsel cited no law which prevents an employer from entering into a contract of employment with an employee for one (1) month. To his advantage perhaps, the Petitioner was not subjected to a probationary contract.
105. In his Supporting Affidavit dated 8th December, 2022, the Petitioner makes no allegation that his employment was unfairly terminated during its subsistence.
106. He alleges that he was informed of the dismissal on 3rd October, 2022, about 3 days after the contract had lapsed.
107. In *Keen Kleeners Ltd V Kenya Plantation and Agricultural Workers Union (2021) KECA 352 (KLR)*, the Court of Appeal expressed itself as follows;
- “The general position on the consequences of expiry of a fixed term contract as can be gleaned from various decisions of this court and that of the Employment and Labour Relations Court, is that once a fixed term contract is at an end, the employer has no obligation to justify termination on other grounds beyond the lapse of the fixed period. (See *Trocaire V Catherine Wambui Karuno (2018) eKLR*, *Oshwal Academy (Nairobi) & another V Indu Vishwanath (2015) eKLR*, *Wanjohi Muriuki V Kirinyaga Water and Sanitation Co. Ltd & another (2012) eKLR*, *Registered Trustees of the Presbyterian Church of East Africa & another V Ruth Gathoni Ngotho-Kariuki (2017) eKLR*) . . .
- There may however, be instances where the unique circumstances of the employment relationship may create a legitimate expectation that a fixed term contract would be renewed. In the *Oshwal Academy Case (Supra)*, for instance, this court upheld the trial court’s determination that despite the fixed term contract lapsing by effluxion of time, the Respondent had a legitimate expectation of continuity from the conduct of the parties in the course of the employment relationship and that the Respondent was in employment for over 23 years and had developed a bond to expect to work until retirement.”
108. The Petitioner has not proved that he had a legitimate expectation that the contract would be renewed.
109. Although counsel for the Petitioner faulted the Respondent’s termination notice dated 1st September, 2022, in law, the Respondent was under no obligation to give a termination notice as the duration of the engagement was for one (1) month, it merely put the Petitioner on notice that there would be renewal. The Petitioner did not allege that he did not receive the letter.



110. From the foregoing, it is the finding of the court that the Petitioner has failed to prove that the Respondent terminated his employment unfairly.
111. The Petitioner failed to discharge the burden of proof under Section 47(5) of the *Employment Act*, 2007.

Reliefs

i. Compensation and aggravated damages for violation of constitutional rights

112. Having found that the Petitioner had failed to prove that he was unlawfully detained or imprisoned, tortured or treated inhumanely or held in slavery or servitude by the Respondent, this prayer is unsustainable and is declined.

ii. Declaration that the Petitioner was underpaid

113. Having found that the Petitioner's salary was less than the prescribed minimum salary, a declaration that he was underpaid by the Respondent is merited.

iii. Kshs.329,844 for unlawful termination of employment

114. Having found that the Petitioner's contract ended by reason of effluxion of time as agreed and the Petitioner failed to establish that termination of the contract occurred before 30th September, 2022, the claim for compensation under Section 49(1)(c) of the *Employment Act*, 2007 is unmerited and is dismissed.

iv. Salary in lieu of notice

115. Even assuming that a termination letter was necessary in this case, which is not a legal requirement in fixed term contracts, the Respondent gave a notice and the prayer is declined.

v. Punitive damages for violation of Article 25 of *the Constitution*

116. The Petitioner availed no evidence to prove violations of Article 25 of *the Constitution* of Kenya, 2010.

The prayer is declined.

117. In the upshot, judgment is entered for the Petitioner in the following terms;
- a. Declaration that the Respondent underpaid the Petitioner.
 - b. Sum of Kshs.11,521.02 for underpayment.
 - c. In the circumstances, it is only fair that parties bear own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 12TH DAY OF MARCH 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

