



**Opap v Tata Chemicals Magadi Limited (Cause E686 of 2021)
[2024] KEELRC 1286 (KLR) (27 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1286 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E686 OF 2021**

JK GAKERI, J

MAY 27, 2024

BETWEEN

WALTER OTIENO OPAP CLAIMANT

AND

TATA CHEMICALS MAGADI LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this suit on 18th August, 2021 alleging unlawful termination of employment by the Respondent.
2. The Claimant was employed by the Respondent on 18th February, 2008 and confirmed on 1st June, 2008 at Kshs.68,985/= as a Draughtsman and as Drawing Office Team Leader on 18th April, 2013 at Kshs.135,000/= per month.
3. The Claimant served for a duration of 17 years 2 months and 1 day.
4. The Claimant further avers that on 3rd June, 2021, he received a notice to show cause and responded vide letter dated 7th June, 2021 and clarified as requested by a letter dated 15th June, 2021.
5. The Claimant avers that he was invited for a disciplinary hearing on 18th June, 2021, attended and was dismissed from employment vide letter dated 13th July, 2021.
6. It is the Claimant's case that the termination of employment was unfair.
7. The Claimant prays for;
 - a. A declaration that termination of employment was unfair, unlawful and illegal.
 - b. Terminal dues comprising;
 - i. 12 months compensation Kshs.2,707,979.76



- ii. Salary for July.
- iii. Irregular deductions (July 2021 payslip) Kshs.556,443.20
- iv. 3 months' salary in lieu of notice Kshs.676,994.94
- v. Leave days earned (15) Kshs.112,832.49
- vi. Long service award as per contract.
- vii. Pension
- c. Certificate of service.
- d. Costs of this suit.
- e. Any other orders and/or reliefs as the court may deem fit and just to grant.

Respondent's case

- 8. In its Memorandum of defense dated 26th November, 2021, the Respondent denies having terminated the Claimant's employment unfairly and avers that the Claimant violated the Respondent's Code of Conduct and Policy on Data Protection and Confidentiality resulting in loss of confidence in him as an employee.
- 9. The Respondent admits that the Claimant was employed in May 2004 and rose through the ranks to become the acting team leader Civil Works and was required to keep secrets of the company.
- 10. It is the Respondent's case that sometime in June 2021, it learnt that the Claimant had confidential company information and shared it without authorisation or following due process thereby violating the Code of Conduct.
- 11. That the Claimant was issued with and responded to a notice to show cause and was dismissed from employment by letter dated 13th July, 2021.
- 12. It is the Respondent's case that the Claimant's terminal dues of Kshs.606,443.35 was not in dispute but he did not clear with the Respondent and the payslip read zero.
- 13. That the Certificate of service was also available for collection.
- 14. That the sum of Kshs.606,443.35 is available as soon as the Claimant clears with the Respondent.
- 15. The Respondent urges the court to dismiss the Claimant's case with costs.

Claimant's evidence

- 16. On cross-examination, the Claimant confirmed that he was the Head of Maintenance, Civil Engineering and not in human resource and did not deal with human resource matters.
- 17. That his supervisor was one Mr. Gerald Odhiambo.
- 18. That he reported to Mr. Odhiambo on day to day matters.
- 19. CWI confirmed that the contract of employment had a Secrecy Clause and he was aware of it having signed the document on 18th April, 2013 and covenanted to keep company secrets except in normal company business.



20. The witness admitted that he signed the Respondent's Data Protection and Confidentiality Policy Statement.
21. That the charges as per the notice to show cause were unprocedurally obtaining and sharing information and did not deny having spoken to a director of the company about an on-going appraisal and referred to them as rumours in his response.
22. The witness confirmed that the director in question was the Vice-President of the company and was in management but had not stated so having acknowledged that he was a director of the Respondent.
23. It was the Claimant's testimony that Human Resource appraised all employees.
24. The witness admitted that he was raising the issue of appraisal ratings of employees in Production but did not share it with Human Resource, Manager Operations or the Chief Executive Officer preferring a director.
25. The witness confirmed that he could not see the Managing Director's rating on the portal and could not tell whether the appraisal was on-going or not but acknowledged in writing that it was on-going but the line managers had concluded their part.
26. It was his testimony that employees could only see their final rating and appraisal.
27. That he did not see the ratings of employees in Production but people were discussing them.
28. According to the witness, sharing appraisals and rating was not confidential and he did not request for more time to respond to the notice to show cause. He admitted that he had time to respond and did not raise the issue.
29. The Claimant admitted that he did not state in his response that the appraisal were matters in the public domain but stated that they were rumours having talked to the Director about it.
30. That he did not state that he followed the procedure but was aware that the Respondent had a whistle blower policy.
31. The Claimant further admitted that he was invited, participated in the disciplinary proceedings, had a representative, one Mr. Joseph and signed the minutes.
32. The witness confirmed that he was not terminated from employment on account of redundancy.
33. The Claimant further admitted that he received a letter on salary review and bonus pay among others and the letter made no reference to redundancy, though the letter dated 12th July, 2021 was on restructuring of company operations but his separation with the Respondent was not based on redundancy.
34. The witness admitted having received a Certificate of service.
35. It was the Claimant's testimony that he did not particularize the alleged deductions.
36. On re-examination, the Claimant testified that he could share the information with Titus Naikuni only, and having worked for 18 years, he could approach any Senior Management of the company as the board would protect him and the Managing Director was new.
37. He testified that the Respondent's portal was accessible by password only and employees could only see their own appraisals.



Respondent's evidence

38. RWI, Mr. Nicholas Mwanyalo confirmed that he was the Head of Human Resource and knew the Claimant.
39. The witness confirmed that the Claimant's employment was terminated on account of breach of confidentiality and it was unclear as to how he obtained the information.
40. The witness further confirmed that the Claimant shared the information with the Vice-Chairperson of the board who was not a stranger to the Respondent.
41. That the Vice-Chairman was not invited as a witness nor record a witness statement.
42. On re-examination, the witness testified that the Claimant had the information on performance appraisal and the process was ongoing yet he was not in human resource.
43. It was RWI's testimony that the Respondent's board of directors was not involved in the day to day affairs of the company and the Vice-Chair of the board was not a member of management.
44. That the Claimant had a discussion with the Vice-Chairman of the board of directors.
45. Finally, the witness testified that the sum of Kshs.595,872.95 was deposited in the Claimant's Sacco account No. 011200005729.

Claimant's submissions

46. As to whether termination of the Claimant's employment was unfair, counsel relied on the sentiments of the court in Pamela Nelima Lutta V Mumias Sugar Co. Ltd (2017) eKLR and Joseph Mwaniki Nganga V United Millers Ltd (2022) eKLR to submit that Claimant did not seek the information on employee ratings and had been approached by employees who had the information and the disciplinary hearing did not unearth the source and in any case the information was only shared with the Respondent's Vice-Chairperson as he admitted in evidence, who was not an outsider and it was an internal way of ventilating the information.
47. According to counsel, the test of reasonableness was not met.
48. Counsel further submits that the Respondent wanted by its letters to accord the Claimant a soft landing and the Respondent had not demonstrated that it had a valid and fair reason to terminate the Claimant's employment as he only received unsolicited information.
49. Concerning the reliefs sought, counsel urges that the Claimant was one of the oldest serving employees of the Respondent (17 years) and had had no disciplinary issue attributed to him and employees could view scores of other employees and reviews by management.
50. Finally, counsel submits that the Claimant was entitled to 12 months compensation, irregular deduction, one (1) day(s) leave, pension and costs.

Respondent's submissions

51. As to whether termination of the Claimant's employment was lawful and justified, counsel submitted that the Claimant had failed to prove his claim to the required standard citing the sentiments of B.O. Manani J. in Galgalo Jarso Jillo V Agricultural Finance of Kenya (2021) eKLR on Section 47(5) of the [Employment Act, 2007](#), to submit that the Claimant breached the contract of employment by sharing information with the Respondent's Vice-Chairman without following due process thus violating the Respondent's policy as the board is a different entity not involved in management functions.



52. That he sought intervention of one Stephen Moike and James Siele to seek forgiveness on his behalf.
53. Counsel submits that the Respondent complied with the requirements of due process and cited the sentiments of Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission (2013) eKLR* and Section 45(2)(c) of the *Employment Act, 2007* as the Claimant was given a notice to show cause, responded, was invited for a disciplinary hearing, attended with a witness, participated in the proceedings and signed the minutes.
54. That the provisions of Section 41 of the *Employment Act, 2007* were complied with.
55. Concerning the reliefs sought, counsel submits that the Claimant is not entitled to any as the termination of employment was fair, terminal dues were paid and he declined to collect the certificate of service.

Findings and determination

56. It is common ground that the Claimant was employed by the Respondent on 12th May, 2004 and confirmed as a Draughtsman from 1st June 2008 having been appointed as such effective 1st March, 2008 at Kshs.68,985.00 per month, Grade USG 14 and accommodation was provided.
57. By letter dated 18th April, 2013, the Claimant was appointed the Drawing Office Team leader at Kshs.135,000/= coupled with a car allowance, car loan, 75% insurance cover for the car and leave travelling allowance.
58. The terms and conditions of service which the Claimant executed on 18th April, 2013 required him to be a member of the Staff Pension Fund and was obligated to keep secrets of the Respondent and not communicate to any person, firm or company, or acknowledge any information relating to the business or interest except in the normal company business.
59. Relatedly, the Claimant executed and admitted that he was aware of Respondent's Code of Conduct 2015 which was explicit on employer's right to privacy.
60. It is also not in contest that the Respondent issued a notice to show cause dated 3rd June, 2021 on account that the Claimant had accessed confidential information on staff grades without due process and had disclosed the same without approval from management. The Claimant responded by letter dated 7th June, 2021, further clarification was sought vide letter dated 10th June, 2021 and the Claimant responded by letter dated 15th June, 2021.
61. Equally, by letter dated 18th June, 2021, the Claimant was invited for a hearing slated for 22nd June, 2021 at 2.00 pm and was informed of his right to be accompanied by a colleague at the workplace.
62. The Claimant participated at the hearing and his employment was terminated vide letter dated 13th July, 2021.
63. The Claimant faults the termination as unfair and unlawful.
64. The issues for determination are;
 - i. Whether termination of the Claimant's employment by the Respondent was unfair.
 - ii. Whether the Claimant is entitled to the reliefs sought.
65. As regards termination, while the Claimant urges that it was unlawful, the Respondent submits that it was fair as the Claimant breached the Respondent's Code of Conduct and Policy on Data Protection and Confidentiality.



66. The provisions of the *Employment Act*, 2007 are unambiguous that for a termination of employment to pass the fairness test ordained by Section 45 of the Act, it must be demonstrated that the employer had a valid and fair reason to terminate the employment and conducted it in accordance with a fair procedure.
67. In other words, the employer must prove that there was a substantive justification for the termination and procedural fairness as expressed by the Court of Appeal in *Naima Khamis V Oxford University Press (EA) Ltd* (2017) eKLR as well as *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR.
68. Under Section 43 and 47(5) of the *Employment Act*, 2007, it is the duty of the employer to show that it had a valid and fair reason to terminate the employment.

Reason for termination

69. The notice to show cause accused the Claimant of unprocedurally accessing confidential information on on-going appraisal and specifically final grades given to staff and disclosing the same without approval from management.
70. In his response, the Claimant disclosed that on 31st May, 2021, he talked to Mr. Titus Naikuni, the Vice-Chair of the Respondent's board of directors on feedback meant for the Managing Director of the Respondent as well as one Mr. Subodh "to navigate through rumours emanating from colleagues on the ongoing end year performance appraisal."
71. According to the Claimant, majority of Production Staff were rated 2 because their boss was rated low by his supervisor and he was "representing general feedback from what he heard while on duty."
72. That he did not release any confidential information as the HR Portal on appraisal allowed all employees to see the final review of their ratings and employees discuss the same.
73. From the Claimant's response and if believable, the Claimant shared rumours with the Vice-Chair of the Respondent's Board of directors as he alleges that he had no document or other evidence of anyone's rating yet he called the Vice-Chair and talked to him about it. However, in his response, the Claimant is explicit that he gave the information to help the Managing Director and Mr. Subodh to see through the rumours.
74. What information is this that he shared or provided which was itself not what he had heard?
75. The Claimant creates the impression that he knew more than the rumour mongers at the work place but does not disclose what it was or how he accessed it.
76. On cross-examination, the Claimant admitted that he could not see the ratings of the Managing Director in the portal and the ratings were not accessible to everyone with access to the portal. He also admitted that the appraisal process was on-going at the time and line managers had concluded their part.
77. Significantly, the Claimant admitted that he had not seen ratings of employees in Production and did not verify the truthfulness of the allegations.
78. The Respondent's letter on clarification does not ameliorate the circumstances as it makes reference to a Moderation Committee which had not finalized the ratings and that the discussion with the Vice-Chair were on specific staff ratings such as one Lucy Kaburia.



79. Strangely, the Respondent tendered no evidence of the Vice-Chair's version of the discussion or the circumstances in which M/s Lucy Kaburia was mentioned.
80. A statement from the Vice-Chair of the Respondent's Board of Directors would have cleared the issues before the court sufficiently.
81. Since the Claimant and the Vice-Chair communicated by word of mouth and the discussion was not followed up with email communication on the alleged ratings and the Respondent tendered no evidence on what was disclosed by the Claimant, the totality of the Claimant's response to the notice to show cause and the clarification and the proceedings of the disciplinary committee, it is clear that the Claimant shared rumours with the Vice-Chair of the Respondent's Board of directors.
82. If the information the two discussed was specific, the Respondent ought to have availed clear evidence on the specificity but its witness made no reference to any staff ratings or any specific member of staff.
83. Similarly, although the Board of Directors of a company or organization is not part of management, it is the policy and decision making body of the company or organization and supervises the management. It is not a different legal entity but is placed above the management and management is accountable to the board of directors, a fact the Claimant admitted on cross-examination.
84. A reading of the secrecy clause in the Terms and Conditions of Employment for Senior Staff, would appear to suggest that its focus are persons , firms and companies other than Tata Chemicals Magadi Ltd and Tata Group as it refers to a person "having been in the companies service."
85. The Claimant admitted that having worked for the Respondent since 2004, he knew the Vice-Chair and had communicated with him previously in 2018 and the issue was resolved and was relying on the supposedly good will this time round.
86. Similarly, the Claimant admitted that he could not share the rumours with the Managing Director as he was unapproachable and could not tell how he would react.
87. Finally, the Claimant stated that he shared the information in good faith.
88. It is notable that during the hearing, the Claimant challenged the allegation of possession of confidential information on appraisal ratings as he had none on email, facebook WhatsApp or in any other device and the Respondent adduced no evidence to demonstrate how and from whom or where the Claimant obtained the confidential information.
89. The Claimant testified that on 31st May, 2021, he was at the workplace and heard the rumours on appraisal ratings from employees in Production and talked to Mr. Titus Naikuni on the same day which would appear to suggest that he got the information on the same day and consented that the information could be shared with the Managing Director.
90. The alleged confidential information was exclusively passed from one person to the other by word of mouth and the Claimant communicated it the way he received it.
91. Of importance in his response to the notice to show cause, the Claimant made an important recommendation which the Respondent may or may not have taken seriously i.e the Human Resource Portal be modified so as not to allow employees to view their ratings and comments before the process was concluded.
92. From the evidence on record, it is clear that the appraisal process was on-going but employees could view comments and ratings by their supervisors.



93. Finally, and most significantly, the Respondent conducted no demonstrable investigation to ascertain the truth.
94. This is vividly exemplified by the fact that no witness statements or documentary evidence was adduced at the disciplinary hearing and no witness testified.
95. The Respondent's key witness, the Vice-Chair of the Board of directors neither recorded a statement nor testify.
96. An attempt by the Claimant's witness to provide additional information was thwarted by the Committee on the premise that his role was only to confirm that the process was fair, which is not the case.
97. The provisions of Section 41 of the [Employment Act](#), 2007 confer upon the representation of the employee at the disciplinary hearing a right to make representations. The representative is not required to give an opinion as to whether the process was fair or not. His or her role is more fundamental at the hearing. He or she is free to give evidence.
98. In sum, the Respondent denied the Claimant's evidence and/or representations the Claimant was entitled to for purposes of the hearing.
99. In determining whether the Respondent has proved that it had a fair and valid reason to terminate the Claimant's employment, the court is guided by Section 43(2) of the [Employment Act](#) and case law.
100. Section 43(2) of the [Employment Act](#), 2007 provides that;

“The reason or reasons for termination of a contract are the matters that the employer at the time of the termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.”
101. As correctly submitted by counsel in *Galgalo Jarso Jillo V Agricultural Finance Corporation (Supra)*, B.O. Manani J. observed that;

“In other words, it is not a requirement that the substantive ground informing the decision to terminate must be in existence. All that is required is for the employer to have a reasonable basis for genuinely believing that the grounds exists.
102. Although the burden of proof is on a balance of probabilities and the test is partly subjective as held by the Court of Appeal in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others* (2019) eKLR, the employer ought to show that it had a reasonable basis for the genuine believe under Section 43(2) of the [Employment Act](#), 2007.
103. The court is further guided by the sentiments of Lord Denning MR in *British Leyland (UK) Ltd V Swift* (1981) I.R.L. R 91 as follows;

“The correct test is; was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer would have dismissed him the dismissal was fair. It must be remembered that in all these cases there was a band of reasonableness within which an employer might reasonably take one view; another quite reasonably take a different view . . .



If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair though some other employer may not have dismissed him.”

104. In the instant case, the Respondent availed no evidence to demonstrate the actual information the Claimant obtained unprocedurally, from whom or where. Indeed, the Respondent failed to demonstrate that the alleged information was confidential. There is no witness statement or allegation explaining how the alleged information was obtained.
105. The Claimant’s uncontroverted evidence is that employees could view their raw ratings and supervisor’s comments on the Human Resource Portal and discuss their scores before the process was concluded.
106. RWI did not controvert this evidence or deny it or demonstrate how the Claimant could have accessed raw ratings and comments of other staff.
107. This far, the Respondent has failed to prove that the Claimant was in possession of or had unprocedurally accessed confidential information on staff appraisal ratings.
108. Second, the Claimant spoke to the Vice-Chair of the Respondent’s board owing to his association with him in the past and trusted him that action would be taken as had happened in the past.
109. Needless to gainsay, the Respondent has an established chain of communication but the Claimant opted to use a member of the board.
110. Although members of boards seldom interact with the employees’, nothing prevents them from doing so other than the fact that they are not full-time employees and seldom visit company premises.
111. In the court’s view, the Claimant breached the company’s protocol by communicating concerns raised by employees to the Vice-Chair of the board of directors in lieu of his supervisor or the Managing Director of the Respondent.
112. From the foregoing, it is the finding of the court that the Respondent has failed to prove on a balance of probabilities that the Claimant breached the Code of Conduct and Policy on Data Protection and Confidentiality.
113. The court is not persuaded that a reasonable employer in possession of the materials the Respondent had, which was not adduced as evidence in court or at the hearing would have dismissed the Claimant from employment.
114. In the court’s view, a reprimand or warning would have been sufficient.

Procedure

115. Although the Claimant faulted the process employed by the Respondent in terminating his employment, his written statement makes no reference on how the procedure was violated.
116. The Claimant received the notice to show cause on 3rd June, 2021 and responded vide letter dated 7th June, 2021. The letter accorded him four working days to respond, which in the court’s view was not unreasonable.
117. The notice to show cause articulated the charges.
118. As adverted to elsewhere in this judgment, the Respondent sought clarification vide letter dated 10th June, 2021, received by the Claimant on 11th June, 2021 and he responded by letter dated 15th June, 2021.



119. The witness confirmed on cross-examination that he had sufficient time to respond to the issues raised in the notice to show cause.
120. Finally, by letter dated 18th June, 2021, the Claimant was invited for a disciplinary hearing slated for 22nd June, 2021, attended with a witness and participated on the proceedings and signed the minutes.
121. The totality of the evidence adduced by the parties is that the Respondent has demonstrated that it complied with the mandatory provisions of Section 41 of the Employment Act, 2007 as held in Pius Machafu Isindu V Lavington Security Guards Ltd (2017) eKLR.
122. In sum, the court finds no evidence on which to fault the termination procedure adopted by the Respondent.

Whether the Claimant is entitled to the reliefs sought

a. Declaration that termination of employment was unfair and unlawful

123. Having found that the Respondent failed to prove that the Claimant accessed any confidential information unprocedurally or breached the Code of Conduct or the Data Protection and Confidentiality Policy, a declaration that the termination of employment was unfair and unlawful is merited.

b. Terminal dues

i. Salary for July 2021

124. Although the Claimant alleged that he worked for the entire month of July 2021, the termination letter dated 13th July, 2021 was received on the same day and the termination of services was effective on even date.
125. The Claimant adduced no evidence of having rendered services thereafter and in what capacity.
126. Relatedly, the computation of dues on record, which the Claimant did not contest reveal that salary for 13 days worked in July 2021 was computed at Kshs.74,173.89/=
127. The prayer is dismissed.

ii. Irregular deductions Kshs.556,443.20

128. The Claimant tendered no evidence as to what the alleged deductions were and why they may have been made and why he did not raise the issue with the Respondent.
129. He admitted on cross-examination that he had not particularised the deductions.
130. This is a claim of special damages that require proof.
131. RWI confirmed on cross-examination that the sum of Kshs.595,872.95 was transferred to the Claimant's Sacco account on 18th May, 2022.
132. Regrettably, none of the counsels addressed this issue specifically.
133. In the absence of any evidence to show that the alleged deductions were irregular or unjustifiable, the court is not persuaded that the same is merited.
134. The prayer is declined.



iii. Three months' salary in lieu of notice Leave days earned not taken Long service Award

135. During the hearing, the court was notified that the foregoing claims were paid and neither party adduced evidence on them.

The claims are declined.

iv. Pension

136. As the Memorandum of Claim states, the pension due to the Claimant is dependent on the Scheme Rules and it is not for the court to award.

137. It is not in dispute that the Claimant was a member of the Respondent's contributory provident fund. The prayer is declined.

v. 12 months' salary

138. Having found that termination of the Claimant's employment was substantively unjustifiable, the Claimant is entitled to compensation for the unfair termination in accordance with the provisions of Section 49(1)(c) of the *Employment Act*, 2007, subject to due consideration of the relevant parameters under Section 49(4) of the Act.

139. The court has taken into consideration that the Claimant was an employee of the Respondent for about 17 years which is fairly long and had no recorded misconduct or warning. The Claimant substantially contributed to the termination of employment by sharing rumours with the Vice-Chair of the Respondent's board of directors yet he had no concrete and credible evidence on the ratings the employees were concerned about and at any rate the process was on-going.

140. The Claimant did not appeal the Respondent's decision or express his wish to remain in the Respondent's employment. Finally, the Respondent paid the bulk of the Claimant's claim in 2022.

141. In the circumstances, the court is satisfied that the equivalent of 3 months' salary is fair.

c. Certificate of service

142. The Claimant is entitled to a certificate of service by dint of Section 51 of the *Employment Act*, 2007.

143. In the upshot, judgment is entered in favour of the Claimant against the Respondent as follows;

- a. Declaration that termination of the Claimant's employment was unfair.
- b. Equivalent of 3 months gross salary.
- c. Certificate of service.
- d. 50% of the costs of this suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27TH DAY OF MAY 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.

