



**Nyakundi v Sasini Coffee House Limited (Employment and Labour Relations Cause 122 of 2017) [2024] KEELRC 1758 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1758 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 122 OF 2017**

**K OCHARO, J**

**JUNE 28, 2024**

**BETWEEN**

**EMILY MOKEIRA NYAKUNDI ..... CLAIMANT**

**AND**

**SASINI COFFEE HOUSE LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By a Statement of Claim dated 24<sup>th</sup> January 2017, the Claimant seeks: -
  - a. A declaration that the termination of the Claimant's employment was unlawful and illegal.
  - b. An order compelling the Respondent to pay the Claimant a sum of Kshs. 639,639.50 made up as follows:
    - i. Twelve (12) months' salary for unfair Termination Kshs.341,124/-
    - ii. Three (3) months' salary in lieu of notice Kshs. 85,281/-
    - iii. Salary for the month of July 2012 Kshs. 28,427/-
    - iv. Service gratuity @ 15 days for each year Kshs. 184,762.50
  - c. An order compelling the Respondent to pay the Claimant for leave days earned but not given.
  - d. An order compelling the Respondent to pay the Claimant interest on the above at the rate of 25% from the date of termination of employment until payment in full.
  - e. An order compelling the Respondent to issue the Claimant a Certificate of Service.



2. In response to the Statement of Claim, the Respondent filed a Response dated 10<sup>th</sup> July 2017 denying the Claimant's cause of action and her entitlement to the reliefs sought.

### **Claimant's case**

3. At the hearing, the Claimant adopted the contents of her witness statement herein filed dated 24<sup>th</sup> January 2017 as part of her evidence in chief and tendered all those documents under the list dated the even date as her documentary evidence.
4. It is the Claimant's case that she was employed by the Respondent as a Cashier on 7<sup>th</sup> January 2010 earning a monthly salary of Kshs. 28,427/-. Despite working diligently and professionally, the Claimant's employment was terminated on 8<sup>th</sup> July 2016. The Claimant contends that the Respondent did not have a sufficient or credible reason for the termination. Further, the termination was not preceded by any notice. It lacked procedural fairness.
5. On the 24<sup>th</sup> of June 2016, she was on duty and worked up to the end of her shift. Before she broke off, she prepared the day's report and balanced the accounts. She handed over the same to her supervisor, Jane Gathenga. The supervisor confirmed the documents and the cash. Both the supervisor and she signed the documents.
6. The Claimant testified that after two weeks of the above-stated date, she was informed that she had an unexplained deficit of Kshs. 3,100. The Human Resources Manager instructed her that she could be excluded from work for one week. However, before she could the Respondent's premises, she was issued with a show cause letter. The letter required her to give a response. Indeed, she did.
7. On the 8<sup>th</sup> of July 2016, the Respondent served her with a termination letter. She didn't sign the letter in acknowledgement of the same as the Respondent hadn't paid her terminal dues.
8. She contended that the termination occurred before the Respondent first allowing her to explain herself. Further, she had worked for the Respondent for five and half years without an incident or allegation of malpractice.
9. Cross-examined by Counsel for the Respondent, the Claimant testified that the termination letter was a result of her response to the show cause.
10. The Claimant confirmed that the Respondent used to make and remit statutory deductions to the relevant Agencies.

### **Respondent's case**

11. The Respondent presented two witnesses. Benjamin Mwaro [RW1] and Vincent Odhiambo Onyango [RW2], to testify on its behalf in this matter. RW 1 testified that the Claimant's employment was terminated with effect on 8<sup>th</sup> July 2016, following an incident on 24<sup>th</sup> June 2016 at the Respondent's Sasin House Outlet, when she failed to account for Kshs. 3,100 in respect of orders that had been served.
12. The witness stated that upon receiving a complaint from Vincent Onyango – the Respondent's Revenue Controller, the Claimant was summoned to the HR and Administration Office on 29<sup>th</sup> June 2016 and the matter was discussed with her. In the discussion, she admitted to having received KShs. 3,100 from waiters and failed to account for the same.
13. On 31<sup>st</sup> June 2016, she was issued with a show cause letter dated 30<sup>th</sup> June 2016. She was required to offer a response by 4<sup>th</sup> July 2016 at 8.30 am. The Claimant responded through her letter dated



- 4<sup>th</sup> July 2016. In the response, she admitted to the fault, informing the decision to dismiss her from employment on 8<sup>th</sup> July 2016. The decision to dismiss the Claimant from employment was made in light of the fact that the Claimant had a history of impropriety while working with the Respondent.
14. Cross-examined by Counsel for the Claimant, the witness testified that at the material time, he was the Respondent's Assistant Human Resource Manager. The complaint was made by Mr. Onyango, first verbally, and then by email.
  15. After the complaint was made, investigations were conducted. Statements were obtained from staff with relevant information. An investigation report was prepared, as a result.
  16. In the meeting of 29<sup>th</sup> June 2016, the matter of the deficit was discussed. The waiters responsible asserted that they gave the money to the Claimant. She was consequently asked to own up and admit liability, but she declined to.
  17. The witness testified that a disciplinary hearing was held on the 29<sup>th</sup> and 30<sup>th</sup> of June 2016. The 1<sup>st</sup> disciplinary hearing was given on the day she was issued with the show cause letter. He was present during the hearing. Minutes were taken, but the Respondent didn't tender them in evidence. The Claimant had responded to the show cause.
  18. RW2 testified that he is the Finance/ Revenue Controller at the Respondent's. On 29<sup>th</sup> June 2016, he was at the Respondent's Restaurant carrying out daily stock verification when he noted a shortage of Kshs. 3,100 on the banking for the 24<sup>th</sup> of June, 2016.
  19. The Witness testified that with the help of the Cashier on duty for the 29<sup>th</sup> of June 2016, he logged on to reports and generated all the Cashier's Periodic Sales for the 24<sup>th</sup> of June, 2016, to ascertain whether the said sales tallied with the Cashier shift summary. Upon generating the Cashier's Periodic Sales for the 24<sup>th</sup> June 2024, he noted the variance of KShs. 3,100 which had been cleared using his log-in code.
  20. The witness testified that he asked the concerned waiters to write a report on what happened to the cash that was paid on the bills. The Claimant was equally asked to.
  21. The witness asserted that this wasn't the first incident that the Claimant was involved in. She had been involved in earlier incidents of a similar nature upon which she was reprimanded. The Respondent hoped that she could change but she didn't.
  22. In his evidence under cross-examination, the witness testified that in his position, his duties entailed spot-checking both financials and stock movement.
  23. The witness testified that the incident that led to the Claimant's happened on the 24<sup>th</sup> of June 2020, but he reported the same 5 days after. The incident was less banking by the cashier. He reported the incident after that long because the accountant who was to do verification was off duty. Reconciliation could only be done in his presence.
  24. The Claimant admitted that there was a deficit. There was a report to the effect, which was placed before this Court. The concerned waiters were asked to record statements, which they did. The Claimant was also asked to give her statement as a matter of fair hearing.
  25. The witness asserted that a disciplinary hearing was conducted. However, he didn't attend the proceedings.



## Claimant's Submissions

26. In her submissions dated 6<sup>th</sup> November 2023, the Claimant states that Section 45 of the [Employment Act](#) 2007 sets out the legal foundation for fair termination. Termination of an employee's employment can only be found to be fair if, it is upon the basis of a fair and valid reason, and procedural fairness seen to be present. To support this point reliance was placed on the Court Appeal decision in the case of *Naima Khamis vs Oxford University Press (E.A) Ltd [2017]* eklr.
27. Counsel submitted that fairness contemplated by the law embodies two elements- substantive fairness and procedural fairness. Section 43 of the [Employment Act](#) is one of those provisions that speak to substantive fairness. The provision places a duty upon the employer to prove the reason[s] for the termination. In the instant matter, in its pleadings and evidence, the Respondent provided a reason for the termination. Having done so, he bore a further burden to prove that the reason was valid and fair.
28. It was further submitted that the reason for the termination was given as loss of funds while the Claimant was on duty as a cashier. Considering the evidence of Vincent Onyango [RW2] who testified that he is the one who unearthed the loss it cannot be difficult for one to conclude that the allegation of loss of funds was not proved. The witness never presented documentary evidence to support his assertions. Specifically, no evidence was produced to prove the alleged variance between the cashier's periodic sales for 24<sup>th</sup> June 2016 and the cashier shift summary for the same day; no evidence was produced to demonstrate that the bills were cleared through the two waiters; and the alleged report of the two waiters which implicated the Claimant was not produced. Further, the two waiters were not presented as witnesses in the case.
29. The Claimant submitted further that the testimony of RW2 was full of inconsistencies. For instance, it was not clear as to whom discovered the shortfall, was it he or one Sylvia Apiyo? Is it he who logged on to the reports and generated the cashier's periodic sale, or the cashier on duty? The inconsistencies point to a fabricated case.
30. Counsel submitted that the element of procedural fairness is governed by Section 41 of the [Employment Act](#) 2007. The fair procedure contemplated in the provision encapsulates three components, notification, a hearing and consideration of the employee's and his co-worker's representations. To buttress this position, reliance was placed on the case of *Godfrey Barasa Ochieng vs Security Guards Services Limited [2022]* eklr.
31. It was submitted that the Claimant was summoned alone to the Human Resource Office on 30<sup>th</sup> June 2016 and presented with the allegations of loss of funds. She was then issued with a Notice to Show Cause on 31<sup>st</sup> June 2016, a Thursday, and directed to respond to the same by 4<sup>th</sup> July 2016, the following Monday. She did indeed submit a response dated 4<sup>th</sup> July 2016. She received no further communication from the Respondent until she was furnished with the termination letter dated 8<sup>th</sup> July 2016. The entire process took one week, weekends inclusive.
32. Considering the time taken for the entire process to be completed, it becomes clear that the notice that was issued to her to respond to the show cause letter was not adequate. Further, she was not heard before the decision to terminate her employment was reached. What happened cannot be held to be a disciplinary hearing. To support this submission Counsel cited the case of *Geoffrey Gikonyo Mathu V Intex Construction Company Ltd [2017]* eklr.
33. Owing to the absence of a valid and fair reason for the termination, and of procedural fairness, the Claimant submits that she was unlawfully and unfairly terminated from employment, and urges the Court to award her compensation for unfair termination equivalent to 12 months' gross salary under



Section 49 (1) (c) of the Act. The Claimant relies on the case of Benjamin Langwen vs National Environment Management Authority [2016] eklr to buttress this submission.

34. The Claimant submits that she is entitled to; gratuity under Section 35 (5) of the Act; one month's pay in lieu of notice and 21 days annual leave pay per her contract of employment; her unpaid salary for July 2012 which the Respondent has not disputed; and a Certificate of Service under Section 51 of the *Employment Act* 2007.

### **Respondent's Submissions**

35. The Respondent's Counsel submitted that the evidence of the Respondent's witnesses looked at as a whole, demonstrates that the Claimant was involved in the loss of the funds. Further, in fact, she did admit at one point that she received the cash from the waiters but could not account for the same. Section 44 of the *Employment Act* 2007, provides for summary dismissal of an employee on grounds of gross misconduct. The grounds that can be characterized as gross misconduct include careless and improper performance of any work or behaving in a manner insulting to the employer or a person placed in authority over the employee by his/her employer.
36. While Sections 43 and 45 of the Act require an employer to prove that the reasons for termination were valid and fair, that obligation does not demand absolute proof as if it were a criminal case. The employer is only required to prove that the reasons were well-founded in the circumstances.
37. In the present case, the Claimant admitted to receiving the sum of Kshs. 3,100/- but could not account for it. The charges of improper and unethical dealings, failure to uphold the required standard of honesty in the discharge of her duties, were fair and valid, considering that employment relations are founded on trust and confidence, especially, in jobs of the nature where employment duties entail handling of money and financial recording. The termination was substantively justified, therefore.
38. On the procedural fairness aspect, Counsel submitted that the Claimant was afforded ample and reasonable opportunity to make her representation as per the show cause letter. She Responded, albeit not satisfactorily thus leading to the summary dismissal. The show cause letter had sufficient details put forth on the grounds of misconduct. To buttress this submission, reliance was placed on *Stephen Barasa Wandera vs Watchdog Limited Cause No. 1588 of 2014* and Kenya Revenue Authority vs Menginya Salim Murgani [2010] eklr.
39. The Respondent concludes that the Claimant is not deserving of the remedies sought as her termination from employment was valid, fair and lawful. However, should the Court take a contrary view, the Claimant should not be granted the compensatory relief to the extent sought, 12 months' gross salary, as the circumstances of this matter cannot justify.
40. Notice pay was made to the Claimant at her dismissal. The same cannot again be availed to her in this claim. Further, having been dismissed at the beginning of July 2016, the Claimant is not entitled to a salary for July 2016. She is not entitled to gratuity, she was a member of the National Social Security Fund (NSSF) and therefore excluded from receiving service pay under Section 35 (6) of the Act. In any event, her contract didn't provide for gratuity. Finally, the Claimant was paid for her untaken leave days and is therefore not entitled to an award under this head.

### **Issues for Determination**

41. I have reviewed the parties' pleadings, oral and documentary evidence, and submissions as well as authorities cited, and the following issues emerge for determination: -
- a. Whether the Claimant's employment was unfairly terminated.



- b. Whether the Claimant is entitled to the remedies sought.

**Whether the Claimant's employment was unfairly terminated.**

42. Section 47 (5) of the *Employment Act* 2007 imposes an initial burden on the Claimant to prove that an unfair termination occurred. It is only then, that the evidential burden shifts to the employer to justify the grounds for termination or dismissal. The section It provides that:-

“(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

43. Under the provision, the employee is supposed to establish prima facie that an unfair termination or wrongful dismissal occurred. Considering that the whole unit of fairness is made up of procedural fairness and substantive justification, I have carefully considered the events leading up to the dismissal of the Claimant, including that there was no proven disciplinary hearing and the fact that the Respondent didn't put forth some documents which this Court holds were very vital to help it discharge its burden under section 43 of the Act, and hold that prima facie she has demonstrated that the dismissal was unfair. She has discharged her burden under Section 47[5], therefore.

44. The termination letter dated 8<sup>th</sup> July 2016, expressly indicated that the Claimant's employment “with effect from 8<sup>th</sup> July 2016”. She was therefore dismissed without notice. No doubt therefore, this was a summary dismissal

45. Section 44 of the *Employment Act* 2007 contains provisions on summary dismissal. It states that:

“ 44. Summary dismissal

- (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) Subject to the provisions of this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.
- (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, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same,



or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if:—

- (a) without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;
- (b) during working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable to perform his work properly;
- (c) an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;
- (d) an employee uses abusive or insulting language, or behaves in a manner insulting to his employer or to a person placed in authority over him by his employer;
- (e) an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer;
- (f) in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within fourteen days either released on bail or on bond or otherwise lawfully set at liberty; or
- (g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.”

46. Therefore, duty lay upon the Respondent to prove that the infraction complained of against the Claimant falls under the category of those in the catalogue set out in the provision or that the same was of gravity like those listed. It is only by so doing, that it can be said that the burden under section 45[2]- proving that the reason was fair and valid, has been discharged.

47. Section 43 of the *Employment Act* enjoins the employer in a dispute regarding the termination of an employee's employment to prove the reason for the termination. It is important to state that a mere assertion that the employee's employment was terminated for this or that reason cannot suffice to aid the employer in discharging the burden. Sufficient evidence must be placed before the Court to demonstrate that the reason existed. Loss of funds, by a cashier, if proved can be held to be a ground that



can genuinely attract a sanction of summary dismissal. The infraction can perfectly fit the description of “gross misconduct.”

48. As stated hereinabove, the reason for termination was loss of funds while the Claimant was on duty as a cashier. The Respondent postulates that the cashier period sales for 24<sup>th</sup> June 2016 were at variance with the cashier shift summary for the same day, by an amount of Kshs. 3,100/-. This variance was discovered on 29<sup>th</sup> June 2016, and the amounts missing were traced back to the bills paid in cash for tables 24 and 45. The waiters serving these two tables, Josephine and Stephen, were summoned and requested to explain the variance. It was asserted that the waiters implicated the Claimant, through reports that they did.
49. This Court notes that the Respondent didn't tender in evidence a printout of the cashier period sales for 24<sup>th</sup> June 2016, the cashier shift summary for the same day, the reports prepared by the two waiters involved, and/or calling the two waiters as witnesses. This Court hasn't lost sight of the fact that the Respondent's witnesses asserted in their evidence that these documents were placed before the court, knowing very well that they hadn't. The absence of this critical evidence leads me to the conclusion that the Respondent has not established that indeed the reason for the dismissal existed.
50. As a result, I come to an inescapable conclusion that the summary dismissal of the Claimant was not substantively fair.
51. The Claimant asserted that the Respondent's decision to summarily dismiss her lacked procedural fairness. She was not accorded any hearing and right of accompaniment as contemplated under Section 41 of the *Employment Act*. The Respondent on the other hand contended that the Claimant was subjected to a disciplinary hearing where she was heard before her dismissal. The Respondent's witnesses contended that the hearing took place in a meeting that was held on the 29<sup>th</sup> and 30<sup>th</sup> of June 2016. I am not persuaded that there was any disciplinary hearing as alleged by the Respondent for two reasons; the Respondent didn't tender any minutes from which it can be discerned that there was any such hearing; and in my view, a mere meeting, which has not been expressly indicated to an employee to be a disciplinary hearing meeting, cannot be held to be one. This position finds support in the Court of Appeal case of *Standard Group Limited v Jenny Luesby* [2018] eKLR, where the Court considered the issue of whether a meeting will amount to a disciplinary hearing, and held that:

“With respect, we think the trial court was on firm ground in such finding. As stated above, the procedure under section 41 of the Act is mandatory. Apart from a mere assertion that there was an attempt made on 14th November 2013 in a meeting with the HR Director and respondent in the CEO's office, where the incident was discussed and the respondent is said to have apologized, there was nothing on record to show that the requirements of section 41 were complied with...

It follows that the act of summarily dismissing the respondent without giving her an opportunity to be heard amounted to unfair termination as defined in section 45 of the Act. The burden was on the appellant to prove 'that the employment was terminated in accordance with fair procedure.' See *Kenfreight (E. A) Limited vs Benson K. Nguti*, [2016] eKLR.”

52. In the upshot, I am convinced that the dismissal was procedurally unfair, and I so hold.

#### **Whether the Claimant should be awarded the reliefs sought.**

53. I have considered the Employment Contract, it provided for a month's termination notice during the period of probation and training. It also provides that no notice could be issued in the event of



- misconduct on the part of the Claimant. However, I note, that it doesn't expressly provide for the notice applicable after the Claimant got confirmed into employment. This gap is easily filled by Section 35 of the Employment Act 2007, which provides for the issuance of one month's termination notice, where an employee receives a monthly salary. Having found that the Claimant was unfairly summarily dismissed, I cannot hesitate to conclude that she is entitled to notice pay.
54. The Respondent contended that as evidenced by the breakdown of the terminal dues in its Termination Letter dated 8<sup>th</sup> July 2016, notice pay was made to the Claimant. In my view, this cannot be sufficient evidence for the alleged payment that has been denied by the Claimant.
  55. With regard to the claim for salary for July 2012, the Respondent, as the keeper of employment records under Section 74 of the Employment Act 2007 had a duty to produce evidence to controvert the Claimant's averment that she was not paid her wages for this month. They did not. For this reason, I grant this prayer.
  56. On service gratuity, I deduce that the Claimant's claim was for service pay as they rely on Section 35 (5) of the Employment Act 2007 to support it. From the copies of pay slips produced by the Claimant before the Court, it is evident that NSSF deductions of Kshs. 200/- per month were made from her salary. As a member of the National Social Security Fund (NSSF), she is precluded from claiming the benefit of service pay under Section 35 (6) of the Employment Act 2007. I therefore decline to grant this prayer.
  57. On leave days earned but not given, I note that the Claimant's Employment Contract entitled her to 21 days of annual paid leave. However, I note this was a claim that was just thrown to Court. No evidence was laid to support it. For instance, for which year the Claimant didn't proceed with the earned leave? This relief sought is for rejection, it is hereby rejected.
  58. I now turn to the prayer for compensation for unfair termination. Under Section 49 (1) (c) of the Employment Act 2007, this Court has the discretion to award compensation up to a maximum of 12 months' gross salary, for unfair termination or wrongful dismissal. The discretion is to be exercised depending on the justice of each case.
  59. The Claimant prays for 12 months' gross salary as compensation. The Respondent vehemently opposes this, contending that the circumstances of this case cannot allow an award, to the maximum extent contemplated under the Act.
  60. Taking into account how the Claimant was dismissed from employment whereby she was dismissed without being heard when it was legally necessary that she be, the hurried manner in which the Respondent handled the dismissal process bringing it out as an employer who was in a hurry to dismiss an employee without much care of the requirements of the law, and the length of her service, six and half years, I find that Claimant is entitled to the compensatory relief and the extent of 7 months gross salary. compensation. Per the copy of the pay slip for June 2016 produced by the Claimant as her evidence before the Court, the Claimant's gross salary at the time of termination was Kshs. 28,427.83/-.
  61. It is trite law that per Section 51 of the Employment Act 2007, the Claimant should be issued with a Certificate of Service.
  62. In the upshot, judgment is hereby entered for the Claimant in the following terms: -
    - a. A declaration that the dismissal of the Claimant from employment was unfair and unlawful.
    - b. The Claimant be paid the following;
      - i. One month's salary in lieu of notice Kshs. 28,427.83



- ii. Salary for July 2012 Kshs. 28,427.83
- iii. Compensation for unfair termination, tabulated at Kshs. 198,994/- (Kshs. 28,427.83/- x 7 months)  
Total Kshs. 255,849.66/-
- c. The Claimant be issued with a Certificate of Service within 30 days of this Judgment.
- d. Interest on (b) above at Court rates from the date of this Judgment until payment in full.
- e. The Respondent shall bear the costs of this suit.

**READ, DELIVERED AND SIGNED THIS 28<sup>TH</sup> DAY OF JUNE, 2024.**

**OCHARO, KEBIRA**

**JUDGE**

In the presence of:

Mr. Mwanza holding brief for Mr. Ondabu for the Claimant

Ms Otukho for Respondent

**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 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.

A signed copy will be availed to each party upon payment of Court fees.

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**OCHARO, KEBIRA**

**JUDGE**

