



**Oboge v Judicial Service Commission (Cause E145 of 2021)
[2022] KEELRC 321 (KLR) (24 March 2022) (Judgment)**

Fred Oboge v Judicial Service Commission [2022] eKLR

Neutral citation: [2022] KEELRC 321 (KLR)

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

CAUSE E145 OF 2021

JK GAKERI, J

MARCH 24, 2022

BETWEEN

FRED OBOGE PETITIONER

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Petitioner, Fred Oboge, filed a petition dated 13th September 2021 seeking the following orders:
 - a) A declaration that the action to dismiss the Petitioner was in breach of natural justice, unproportioned, unreasonable, unfair, unlawful, unconstitutional, null and void ab initio and lacks merit and is hereby quashed and set aside.
 - b) Declaration that the action to dismiss the Petitioner was in violation of Rule 25 [1-11] of the Third Schedule of the Judicial Service Act, Sections 106, 107, 108 and 109 of the Evidence Act, Section 4[1][c] and 4[4][c] and 4[3][g] of the Fair Administrative Action Act, Article 2[2][4]; 10[2][a][c], 27[1], 28; 41, 47[1][2]; [50] [1]; 172[1][c], 236[b] and 259[11] hence null and void ab initio.
 - c) Compensation for violation of the Petitioner's fundamental rights and freedoms as pleaded under Article 27[1], 28; 41, 47[1][2]; [50][1];
 - d) The Honourable Court be bound by the Supreme Court edit under article 163(7) in *Alnashir Popat & 7 others v Capital Markets Authority [2020] eKLR*, that were a statute delegates investigation such delegation must be strictly complied with, Natural Justice [subsumed under article 47(1) and 50(1) and rule of law [Article 10(2)(a)] cannot be sacrificed against any interest or reason, and such action was null and void ab initio and lawfulness of an action under Article



47 goes to the substance justice Martin Wanderi & 106 others v Engineers Registration Board & 10 others [2018] eKLR (par 125-129).

- e) The Court uphold the persuasive precedent of ELRC in Eric Michael Karanja Kamande v Judicial Service Commission [2021] eKLR involving the same action and transaction.
- f) An order for reinstatement to his post or deployment within the judicial service without loss of accrued benefits, allowances and back salaries.
- g) A declaration that the ELRC jurisdiction as a judicial review Court is circumscribed under Article 162(2)(a) and (3) and 165(3), (5)(b) & (6) of the Constitution as read with the Fair Administrative Action Act. Has no jurisdiction of retrial over discipline of a judicial staff or officer and to this end the court cannot accept fresh new evidence and documents not furnished at the disciplinary floor for its determination and if filed by the Respondent the same be expunged from the record and or disregarded.
- h) Cost of the suit and interest.

Background

2. The Petitioner avers that he was employed by the Respondent in the 2009 under permanent and pensionable terms as an I.C.T Officer, Human Directorate until 27th March 2019 when he was unfairly terminated.
3. He states that he has a clean record of service save for the impugned disciplinary case and has never had any performance related issues. However, his services were terminated on accusations of conflict of interest were levelled against him in relation to his duties.
4. The Petitioner avows that on 24th November 2016 he was appointed as a member of the Tender Committee on provision of security for the Judiciary, Tender No. Jud/028/2016-17. That at all times as a member of the committee, he adhered to all applicable procedures and the law.
5. He avers that one disgruntled bidder, Mr. Eric Okeyo T/A Bedrock Security Service Limited filed for review of the tender at the Public Procurement Administration Review Board (PPARB), Application No. 111 of 2016 and the Board recommended that the tender be re-advertised and investigation of officers who were in the Evaluation Committee.
6. The Petitioner avers that the Respondent was aware of the fact that Bedrock Security Services Limited was a continuing service provider with the Respondent for security services and one Eric Kamande (Principal Officer, Human Resource Management) was involved in supervision and handling of complaints and welfare from January 2015.
7. The Petitioner maintains that he did not solicit for a meeting with the bidder and that it was Mr. Okeyo who forced himself into a pre-arranged dinner, the Petitioner and his friend, Mr. Kamande had. That Mr. Kamande recorded the conversation that took place and shared the same with the Respondent, proving that the Petitioner did not engage Mr. Okeyo.
8. It is further averred that the circumstances of the meeting were disclosed to the Chairperson of the Evaluation Committee, one Mr. Rapando who did not see anything wrong as the bid had already been awarded and were just awaiting signature by the Chief Registrar.
9. As such, the Petitioner contends that it was unfair and unreasonable to accuse him of any wrongdoing and/or conflict of interest.



10. It is the Petitioner's case that on the 3rd February 2017, he received a letter from the Chief Registrar for his response. The allegations therein were based on the recommendation of Public Procurement Administration Review Board.
11. The Petitioner contends that this is despite the fact that the Chief Registrar of the Judiciary has no role in the discipline of Judiciary staff and officers, a role vested in the Chief Justice under Rule 25(1) of the Third Schedule of the Judicial Service Act.
12. The Petitioner states that he submitted a detailed response to the Chief Registrar dated 7th February 2017. He further states that the disciplinary proceedings were flawed as no investigations were carried out prior to the hearing other than the response he had given. He contends that during the hearing he was denied an opportunity to cross examine his accuser and that the Respondent did not avail documents to enable him to prepare his responses or rebuttal.
13. It is further averred that the Petitioner did a response to the charge vide letter dated 2nd May 2017. That he was interdicted on 12th April 2017 until 27th March 2019 when he was terminated.
14. The Petitioner avers that during the disciplinary proceedings, the Respondent failed to secure a statement from Mr. Okeyo, the complainant herein. He states that owing to Mr. Okeyo's absence and the lack of investigation, the Respondent became the complainant, prosecutor, judge and jury.
15. In addition, the Petitioner avers that the Respondent called upon witnesses who were not relevant to the proceedings. That Mr. Nthusi was newly appointed to the Judiciary and as a result was not privy to the context and content of the meeting. That Mr. Kigen of Lavington Security, wrote his statement 8 days to the hearing, a clear violation of Rule 25(4) of the Third Schedule of the Judicial Service Act. That Mr. Kigen confirmed to the Respondent's Human Resource Committee that the allegations of Mr. Okeyo were false.
16. The Petitioner states that Respondent's inaction, taking 23 months to conclude the disciplinary process was inexpedient, in-efficient, and contravened Article 47(1) of the Constitution taking into account that the Judicial Service Commission and Judiciary have an internal policy to conclude disciplinary proceedings within six months. That the delay subjected the Petitioner to an unlawful administrative action.
17. The Petitioner maintains that the sanction meted on him given the circumstances was excessive, harsh and unfair in light of the clean and unblemished record of service during his 6 year tenure at the Respondent.
18. As a result of the foregoing, the Petitioner contends that his rights under Articles 2(4), 10(2)(a)(c), 27(1), 28; 41, 47(1)(2), 50(1), 172(1)(c), 236(b) and 259(11) of the Constitution, and Rule 25(1), (2) and 5 of the Third Schedule to the Judicial Service Act were violated culminating in the petition.

Respondent's Case

19. The Respondent filed a Replying Affidavit sworn on 24th November 2021 by Anne. A. Amadi, Chief Registrar of the Judiciary and Secretary to the Judicial Service Commission. The Respondent confirms that the Petitioner was employed as an ICT Officer from 30th September 2008 until his interdiction on 12th April, 2017.
20. That on 24th November 2017, the Petitioner was appointed a member of the Evaluation Committee representing the ICT Directorate.



21. The Respondent further avers that the task of the Technical Evaluation of the tender entailed establishing whether the bidders had complied with submission of the mandatory documents. Upon completion of the technical evaluation, the Evaluation Committee reported that only two bidders, being M/s Bedrock Security Limited and M/s Lavington Security Limited had attained the minimum pass mark.
22. The Affiant further avers that upon carrying out background checks to confirm the information provided, the committee established that Bedrock Security Limited had provided inaccurate or falsified information and was subsequently disqualified and the tender awarded to Lavington Security Limited.
23. Dissatisfied with the decision of the Judiciary on the award of the subject tender, the Affiant states that Bedrock Security Limited filed an application for review of the tender before the Public Procurement Administrative Review Board. The Affiant further states that among the documents filed by Bedrock Security Limited was an affidavit sworn by its Managing Director, Mr. Eric Okeyo as quoted below:

“Mr. Okeyo avers that he met with the Petitioner and Mr. Kamande and had discussed the evaluation process of the tender. He states that the Petitioner had mentioned that he had full control over the tender and that they could guarantee an award to his company subject to payment of consideration equal to one month’s invoice under the award.

That he protested the figure upon which they informed him that his competitor was offering more and they were willing to work with them as Mr. Okeyo was becoming difficult. He states that he declined the request and left the meeting.

Mr. Okeyo avers that he was subsequently informed his company had lost the tender. He concluded that his bid for the tender was rejected solely because he refused to give money as demanded by the Petitioner and Mr. Kamande. That this rendered the tender process unfair and shrouded with external interest and influence as members engaged in fraudulent and corrupt activities to secure the award.”

24. The Respondent also avers that the Petitioner and Mr. Kamande had admitted to meeting with Mr. Okeyo and that the Petitioner had failed to disclose to the Evaluation Committee that he had been approached by the bidder, despite the Public Procurement and Asset Disposal Act requiring such disclosure.
25. The Affiant states that the Public Procurement Administrative Review Board concurred with the evidence presented that the two judicial staff who were members of the committee had met with an employee of Bedrock Security Limited and as a result annulled the award to Lavington Security Limited. The Board also ordered the procuring entity to carry out investigations into the conduct of its officers who were in the committee.
26. The Affiant states that following the findings and recommendations of the PPARB, the Respondent initiated disciplinary proceedings against the Petitioner. A show cause letter dated 3rd February 2017 was issued requesting the Petitioner to explain his role in relation to the subject tender arising from the issues that came up before the PPARB.
27. The Affiant further states that the Petitioner responded on 21st February 2017. That the Show cause letter and the Petitioner’s response were presented to the Chief Justice who upon review made a decision to interdict the Petitioner from employment on account of gross misconduct which, if proved would justify dismissal.
28. The Affiant avers that contemporaneous to the letter of interdiction, the Petitioner was served with a charge for “Gross Misconduct” dated 12th April 2017 drawn by the Chief Justice, the particulars of



- which highlighted the Petitioner's conduct during the tender process which in turn raised questions on his integrity.
29. The Respondent states that the Petitioner responded to the charge by letter dated 28th April 2017 where he denied soliciting or planning a meeting with Mr. Okeyo. He maintained that Mr. Okeyo joined their meeting and tried to bring up the tender issue but he and Mr. Kamande advised him to patiently wait for communication from the Judiciary and let the process proceed to its conclusion.
 30. The Respondent further avers that upon receipt of the Petitioner's response, the Chief Justice formed the opinion that he had failed to exculpate himself and forwarded copies of the charge and the response to the Respondent for consideration and determination whether disciplinary proceedings should continue.
 31. The Affiant avers that the Respondent made a decision to commence disciplinary proceedings against the Petitioner. The proceedings were committed to its Human Resource Committee for investigations. The Committee invited the Petitioner, Mr. Erick Okeyo, Mr. Jeremiah Nthusi and Mr. David Kigen for hearing by letter dated 28th February 2018. The hearing was scheduled for 6th March 2018.
 32. The Affiant avers that the proceedings were adjourned to allow the Respondent procure the attendance of Mr. Okeyo. On 6th June 2018, both Mr. Jeremiah and Mr. Kigen appeared before the Human Resource Committee but Mr. Okeyo did not turn up.
 33. Contrary to the Petitioner's claim that he was not allowed to cross examine witnesses, the Affiant avers that he did cross examine the witnesses who were present and that the proceedings were closed after he had made his representations.
 34. The Affiant states that the Human Resource Committee submitted its Report to the Respondent in relation to the findings arising out of investigations on 2nd October 2018. That inter alia, the committee found the Petitioner guilty of the charge levelled against him as it was satisfied that gross misconduct had been disclosed against the Petitioner.
 35. The Respondent further avers that the Committee recommended that the Respondent should mete out an appropriate punishment as per the Judicial Service Act. The Respondent considered the recommendation in its meeting held on 12th March 2019. That the meeting inter alia deliberated the disciplinary case against the Petitioner together with the evidence as contained in the Report by the Human Resource Committee and a decision was made that "the grounds of misconduct against the Petitioner as disclosed in the Charge" had been proved. That the Respondent resolved to dismiss the Petitioner. The Petitioner was served with a letter of dismissal from employment dated 27th March 2019.
 36. The Affiant avers that the dismissal letter intimated that the Petitioner had a right to file for review of the decision within six months from the date of the letter but the Petitioner elected not to exercise this right.
 37. Further, the Respondent maintains that the disciplinary proceedings were lawful and fair given that they were as a result of the recommendations of the PPARB and that the Respondent was by law obligated to conduct an inquiry as directed even in the absence of a formal complaint. This is to counter the Petitioner's argument that he was subjected to the proceedings in the without a complaint as Mr. Okeyo was absent.
 38. The Affiant further maintains that the Petitioner had indeed participated in the proceedings before the PPARB and even cross-examined witnesses during the disciplinary process based on the witness statements that had been provided to him.



39. Regarding the alleged denial of documents, the Respondent avers that the Petitioner never requested the Respondent to provide him with any documents upon dismissal from employment.
40. In response to the Petitioner's allegation that the Respondent violated Paragraph 25 (1) of the Regulations regarding conducting investigations, the Respondent avers that there is no legal obligation placed upon the Chief Justice or the Respondent to conduct investigations before the charge.
41. It is also averred that despite there being no legal obligation, the Chief Justice nonetheless conducted an inquiry through the letter dated 3rd February 2017 issued by the Chief Registrar. That the letter requested the Petitioner to explain his role in the impugned tender process. She therefore concludes that the proceedings were in full compliance with the requirements of natural justice and all procedural fairness requirements.
42. In response to the Petitioner's allegations of non-satisfaction of the burden of proof, the Respondent avers that there was sufficient reasons and evidence before it to sustain the charge against him. That the Petitioner admitted the charge of having met with the bidder in both the Response to the charge and his affidavit.
43. Regarding the Petitioner's allegation of delay in determining the disciplinary process, the Respondent states several factors that caused the delay. That the Respondent was forced to operate with a limited number of members owing to the delay in appointment and swearing in of four members due to prolonged litigation as well as limitation of the number of meetings the Respondent could meet in a month.
44. That despite the foregoing, the Respondent was in compliance with the requirement of paying an officer on interdiction half basic pay and full medical and house allowance.
45. The Affiant further avers that the delay of the disciplinary proceedings was also occasioned by the adjournment due to the non-attendance of Mr. Okeyo on 6th June 2018. That given the circumstances, the Affiant believes that the Respondent did not in any way violate the Petitioner's rights in respect to the obligations placed on it by the law.
46. The Affiant concludes by urging the Court to dismiss the Petition with costs to the Respondent on the ground that it lacked substance.
47. This matter came before the court on 16th December 2021 and parties were directed to file submissions.

Petitioner's Submissions

48. The Petitioner submits that the Respondent was in contravention of the provisions of Article 172(1)(c) of the Constitution of Kenya 2010 on the appointment, receiving of complaints against, investigation and removal from office of magistrates, judicial officers and other staff of the Judiciary.
49. In addition to the above, it is submitted that the absence of an investigation by the Respondent was contrary to the provisions of Rule 25(1) of the Third Schedule of the Judicial Service Act. That the Respondent's act was also in contravention to the provisions of Article 47 of the Constitution which was enough to invalidate the proceedings. Reliance is made on the decision in *Daniel Mudanyi Ochenja v Judicial Service Commission (2019) eKLR*.
50. Reliance is also made on the Supreme Court decision in *Alnashir Popat & 7 others v Capital Markets Authority (2020) eKLR* to urge that where the constitution or a statute delegates a function of investigation, such delegation must strictly conform and mixing of such functions of hearing and investigation was a breach of natural justice.



51. The Petitioner submits that the consequence of non-attendance of Mr. Okeyo was to render the proceedings unfair and that for the Respondent to backtrack and state that he was not needed amounted to double speak. It is submitted that the non-attendance of Mr. Okeyo was in breach of Rule 23(1) requiring evidence, Rule 25(5) of the Third Schedule of the Judicial Service Act and Section 4 of the Fair Administrative Action Act.
52. The Petitioner makes reference to the decision in *Evans Odhiambo Kidero & 4 Others v Ferdinand Ndungu Waititu & 4 Others* (2014) eKLR to reinforce the submission.
53. Regarding dismissal, the Petitioner submits that the same was unreasonable, irrational and failed to take into account relevant considerations of the law. That given that the action was in contravention to the Constitution, there cannot be merit substance, fidelity or fairness of an action that is held to be unconstitutional hence rendering it null and void.
54. On whether the orders sought are warranted, the Petitioner relies on the decision in *Eric Michael Karanja Kamande v Judicial Service Commission* [2021] eKLR where Rika J. set aside the dismissal of the Petitioner on the ground that it was unfair, unlawful and unconstitutional. The Petitioner urges the Court to rely on the above decision given that the facts are similar.
55. Further, the Petitioner submits that given that the action was in contravention of the constitution and was in turn null and void, the de jure position is that his employment with the employer subsists. Reference is made to the decision in *Macfoy v United Africa Company Limited (UK)* (1962) AC 152.
56. Further reliance is made on the decision in *Judicial Service Commission & another v Lucy Muthoni Njora* [2021] eKLR where the Court of Appeal held that once a dismissal decision involving a state officer is adjudicated unlawful null and void, reinstatement is an automatic remedy. It is further submitted that the Petitioner did not contribute to his dismissal but was used as a pawn by an unscrupulous business man and is still able and willing to work for the Respondent.
57. The Petitioner submits that given that he was subjected to unfair administrative action, he is entitled to the reliefs sought such as damages, back salaries and costs of the suit. He urges the court to uphold the petition and the prayers sought.

Respondent's Submissions

58. In its submissions, the Respondent maintains that there is no legal requirement for an inquiry or investigation to be conducted by the Chief Justice before interdicting and charging a judicial officer or staff contrary to the assertions of the Petitioner.
59. It submitted that based on the plain wording of paragraph 25(1) of the Third Schedule, and in particular the use of the word "may", there was no mandatory requirement placed on the Chief Justice to conduct investigations. The Respondent placed reliance on the decision in *Parliamentary Service Commission v Martin Nyaga Wambora & Others* (2018) eKLR and *Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others* (2021) eKLR to support this position.
60. Further the Respondent submits that the only investigation contemplated in the disciplinary process is provided for under paragraph 25(3) of the Third Schedule to the Judicial Service Act, which it had complied with. Reliance is made on the Court of Appeal decisions in *Judicial Service Commission v Gladys Boss Shollei & another* (2014) eKLR and *Judicial Service Commission v Daniel Ochenja* (2020) eKLR. The Respondent therefore urges the Court to find that the above law provides for an inquiry and not an investigation that the Chief Justice is required to conduct contrary to the averments of the Petitioner.



61. The Respondent further submits that the Petitioner was given a fair trial and that it had complied with Sections 41, 43 and 45 of the Employment Act, 2007 and paragraphs 23 and 25 of the Third Schedule to the Judicial Service Act.
62. To buttress this submission, the Respondent makes reference to the decision in *National Bank of Kenya v Samuel Nguru Mutonya* (2019) eKLR, cited with approval in *Janet Nyandiko v Kenya Commercial Bank Limited* (2017) eKLR.
63. Based on the foregoing, the Respondent submits that the Petitioner was accorded all the elements of a fair hearing in accordance with the existing legal framework.
64. On the validity of the reason that led to the Petitioner's termination, it submitted that the Petitioner's conduct was in violation of the provisions of Article 227 of the Constitution and Section 65 of the Public Procurement and Asset Disposal Act, 2015 and divergent with his duties as an employee of the Judiciary.
65. Reference is made to the decisions in *Revital Health (EPZ) Limited v Public Procurement Oversight Authority & 6 others* (2015) eKLR and *Republic v Public Procurement Administrative Review Board & another Ex parte SGS Kenya Limited* (2017) eKLR. It is urged that the actions of the Petitioner were inversely proportional to the requirements of the law and his termination was based on a valid reason.
66. On non-attendance of Mr. Okeyo at the disciplinary proceedings, the Respondent submits that his affidavit at the PPARB should not be struck out merely for non-attendance. The Respondent maintains that the Petitioner had participated in the proceedings before the Review Board and that he was also furnished with all documents inclusive of the affidavit by Mr. Okeyo.
67. The Respondent further submits that the non-appearance is not a ground for striking out the affidavit. Reference is made to the decision in *Republic v Kenya Revenue Authority exparte, Althaus Management & Consultancy Limited* (2015) eKLR where the court stated that cross examination on the affidavit is a discretionary power conferred upon the court by the provision of Order 19 Rule 2 of the Civil Procedure Rules. That it is not given as a matter of right and therefore any party who wishes to cross examine a deponent ought to satisfy the court that there is a good reason for the purpose of examination.
68. As such, the Respondent urges the court to find that the affidavit by Mr. Okeyo met the statutory muster which all affidavits must comply with.
69. Finally, the Respondent submits that the Petitioner is not entitled to the orders sought on the ground that his termination was substantively and procedurally fair and urges the Court to dismiss the petition with costs to it. The decision in *Republic v Rosemary Wairimu Munene, Ex Parte Applicant Ihururu Diary Farmers' Co-operative Society Limited* JR. No. 6 of 2014 cited with approval in *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* [2016] eKLR is relied upon to buttress the submission.

Analysis and Determination

70. The issues for determination are as follows:
 - (i) Whether there is a legal requirement for inquiry or investigation by the Chief Justice;
 - (ii) Whether the Petitioner's dismissal was fair or unfair/unlawful;
 - (iii) Whether the nonattendance of Mr. Okeyo was fatal to the disciplinary proceedings;
 - (iv) Whether the Petitioner is entitled to the reliefs sought.



71. As to whether there is a legal obligation on the part of the Chief Justice to conduct an inquiry, the parties adopted diametrically opposed positions.
72. Rule 25(1) of the Third Schedule to the Judicial Service Act provides that where the Chief Justice after such inquiry as they may think fit to make, considers it necessary to institute disciplinary proceedings against an officer on the ground of misconduct which, it proved would in the Chief Justice's opinion, justify dismissal, he shall frame charge or charges against the officer and shall forward a statement of the said charge or charges to the officer together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, on which each charge is based, and shall invite the officer to state, in writing should he so desire, before a day to be specified, any grounds on which he relies to exculpate themselves.
73. While the Petitioner contends that this provision was violated, the Respondent submits that there was no legal obligation on the Chief Justice to conduct an inquiry but required the Petitioner to provide an explanation on the tender in question. The Respondent submits that the term "may" in the provision is a signification that an inquiry was not mandatory but permissive and relies on the decision in *Parliamentary Service Commission v Martin Nyaga Wambora* (supra) cited with approval by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* (supra) where the Court stated that –
- “Hence, this Court by virtue of rule 53 of the Supreme Court Rules has discretionary powers to extend time within which certain acts can be undertaken. This can be perceived by the use of the word “may” in crafting of the rule. This discretion is a very powerful tool which in our view should be exercised with abundant caution, care and fairness; it should be used judiciously and not whimsically to ensure that the principles enshrined in our Constitution are realised.”
74. Reliance is also made on the decision of Mativo J. in *Synergy Industrial Credit Limited v Oxyplus International Limited & 2 Others* [2021] eKLR on the discretionary and permissive commutation of the word “may”.
75. It is instructive that whereas Rule 25(1) of the Third Schedule uses the term “inquiry”. Rule 25(3) uses the term “investigation” and such investigation is mandatory if the Judicial Service Commission decides that disciplinary proceedings should continue.
76. Black's Law Dictionary (10th Edition, 2014) defines “inquiry” as a request for information either procedural or substantive.”
77. Investigation on the other hand is defined as “the activity of trying to find out the truth about something, such as a crime, accidental or historical issue especially, either an authoritative inquiry into certain facts.”
78. Paragraph D. 7.3 of the Judiciary Human Resource Policies and Procedures Manual states as follows as regards interdiction and suspension –
- “These actions will be undertaken to allow for full Investigation of gross misconduct.”
79. Typically, whereas an inquiry would involve the search for knowledge or information about an issue, investigation is a systematic or organised process of inquiring about an issue.
80. None of the decisions relied upon by the parties address what an inquiry under Rule 25(1) of the Third Schedule entails. But more importantly the use of word “may” by the provision suggests that the Chief



Justice is not obligated to conduct an inquiry and seeking information from the Petitioner as was the case herein would amount to an inquiry, the Court so finds.

81. As regards, the character of the Petitioner's termination or dismissal, it is noteworthy that the pith and substance of the petition is the dismissal of the Petitioner. The dispute is in the Court's view a dispute between an employee and an employer.
82. In a typical employment dispute, termination must pass the substantive justification and procedural fairness tests encapsulated by Sections 41, 43, 45 and 47(5) of the Employment Act which equally apply to this petition as is Article 47 of the Constitution of Kenya, 2010, provisions of the Fair Administrative Actions Act, 2015 and the Third Schedule to the Judicial Service Act, 2011 and as underscored in legions of decisions such as Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR, Naima Khamis v Oxford University Press (EA) Limited [2017] eKLR, Kenafric Industries Limited v John Gitonga Njeru [2016] eKLR as well as Walter Ogal Anuro v Teachers Service Commission [2013] eKLR where Ndolo J. expressed herself as follows:

“However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness.”

Substantive Justification

83. Section 45 of the Employment Act, 2007 provides that for termination of a contract of employment to be deemed fair, the employer must prove that it had a valid and fair reason to terminate the contract and conducted the termination under a fair procedure. Failure to establish these two factors renders the termination unfair.
84. There was only one charge against the Petitioner under the reference gross misconduct. The charge reads as follows: -

“That while you were a member of the Committee evaluating the institution's provision for security services Tender No. JUD/028/2016-2017, you met with one of the bidders on 16th December 2016 at a restaurant contrary to Article 227 of the Constitution of 2010 and Section 65 of the Public Procurement and Asset Disposal Act, 2015 actions which raise questions on your integrity.”
85. The Petitioner was required to provide written response within 21 days effective 12th April 2017. The Petitioner was interdicted on the same date by letter of even date.
86. Similarly, paragraph 3 of the dismissal letter dated 27th March 2019 substantially replicates the charge as the ground for dismissal but omits reference to the Constitution, 2010 and the PPAD Act, 2015 used in the charge.
87. The Petitioner responded to the charge vide letter dated 28th April 2017 received by Chief Registrar on 2nd May 2017. The Petitioner maintained that he neither initiated the meeting nor invited the bidder and the meeting was unplanned. At any rate, the Petitioner states the evaluation process concluded on 15th December 2016 and the meeting took place on 16th December 2016.
88. The Petitioner stated that both Mr. Erick Kamande (who was also a member of the Evaluation Committee) and the bidder Mr. Okeyo joined him at the restaurant where he was having a meal with a friend. That Mr Okeyo (the bidder) arrived about 20 minutes after Mr. Eric Kamande. That Mr. Okeyo requested to speak to Mr. Kamande about striking guards at various courts and pending payment



voucher. That attempts by Mr. Okeyo to introduce the evaluation process were rebuffed and advised to await the outcome from the Judiciary.

89. The Petitioner was invited for a disciplinary hearing by letter dated 27th January 2018, the hearing date would be communicated later. Hearing before the Judicial Service Commission Human Resource Management Committee was held on 6th March 2018 from 1:24 pm and only two witnesses appeared Mr. Jeremiah Nthusi and Mr. David Kigen. While Mr. Nthusi was the Director, Supply Chain Management, Judiciary, Mr Kigen was the Operations Manager of Lavington Security Guards Limited. None of the witnesses intimately related to the meeting in question. Mr. Nthusi's evidence was simply to confirm who the Petitioner was, the tender in question and year. On his part Mr. Kigen denied having met the Petitioner other than during the proceedings before the PPARB as alleged by Mr. Okeyo in his affidavit to the review Board, which the Respondent relied upon in its response.
90. The one critical witness whose attendance would have cracked the case was a no show and proceedings had to be adjourned at 2.20 pm.
91. There is no documentary evidence on the proceedings scheduled for 31st May 2018 when the hearing was allegedly closed. The Chair of the committee had indicated that the Petitioner would be notified of the new date after Mr. Okeyo's attendance was secured. Neither the Committee's report dated 2nd October 2018 nor the replying affidavit dated 24th November 2021 advert to the conclusion of the proceedings or when the hearing resumed.
92. Although the replying affidavit indicates that the hearing was adjourned on two occasions due to nonattendance of Mr. Okeyo, which shows that the Respondent understood the critical nature of his evidence, the Respondent furnished no evidence of the specific dates and whether the Petitioner had been invited and whether the Petitioner attended or not including when the Committee resolved to conclude the proceedings without Mr. Okeyo's evidence.
93. Strangely, Mr. Okeyo did not provide any statement or affidavit to the committee.
94. When it became clear that proceedings would be adjourned on 6th March 2018, and in response to the decision to adjourn the proceedings the Petitioner expressed himself as follows:
- “Yeah, it would be okay but very traumatising because of the anxieties. I would have wished to make my submissions and now the direction this thing is taking because it is really taking a toll on me. I would have really wished to present my case and clear my name the best I could”
- Chair: You understand the principal person who was complaining is Mr. Okeyo
- Petitioner: yes
- Chair: ... and it only makes sense that we give him a chance to be heard.
- Petitioner: yes
- Chair: That is okay with you now?
- Petitioner: Yeah, yeah, I understand, I understand. There is nothing we can really do about it. That was just my wish.
- Chair: Yes. The end goal is a fair hearing.
95. As the transcript shows, the evidence of Mr. Okeyo would have been determinative as neither Jeremiah Nthusi nor David Kigen implicated the Petitioner in any act of gross misconduct.



96. The Respondent relies on Section 65 of the Public Procurement and Asset Disposal Act 2015 which provides for disciplinary action against public officers to whom unsolicited communication is made by a person who has submitted a tender.
97. The Petitioner's uncontroverted evidence is that his colleague, Mr. Eric Kamande and Mr. Okeyo found him having a meal at a restaurant along Kimathi Street and the meeting was unplanned and the tender was not addressed.
98. It is not in dispute that Mr. Okeyo's company Bedrock Security Services Limited was serving the Judiciary at the time and Mr. Eric Kamande, the Principal Administrative Officer of the Respondent had routine communication with Mr. Okeyo on the running contract.
99. In the absence of Mr. Okeyo's evidence, the charge on lack of integrity could not be sustained. He was the core or principal witness and the Petitioner would have had the chance to cross examined him.
100. Attempts by the Respondent to rely on the affidavit filed by Mr. Okeyo t/a Bedrock Security Limited in support of the review before the Public Procurement Administrative Review Board is disingenuous in the Court's view as is the submission that the Petitioner was involved in the appeal. The capacity in which the Petitioner was involved in the case was undisclosed nor his actual involvement.
101. Relatedly, the affidavit was not given by Mr. Okeyo as an exhibit for purposes of the disciplinary hearing on 6th March 2018 or any other time thereafter.
102. Finally, Mr. Okeyo did not record a statement with the Committee.
103. The disingenuity was exacerbated by the nonappearance of Mr. Okeyo as a witness.
104. For the foregoing reasons, it is the finding of the Court that the Respondent has not on a balance of probabilities shown that it had a valid and fair reason to dismiss the Petitioner from employment on 27th March 2018.

Procedural Fairness

105. As affirmed by the Supreme Court in *Shollei v Judicial Service Commission & another* (Petition 34 of 2014) [2022] KESC 5 (KLR) (Civ) in its judgment delivered on 17th February 2022, the guiding principles on disciplinary proceedings before the Judicial Service Commission encompass Article 47 of the Constitution of Kenya, 2010 and the Fair Administrative Actions Act among other laws.
106. Article 172(1)(c) of the Constitution provides that the Judicial Service Commission shall promote and facilitate the independence and accountability of the Judiciary and the efficient effective and transparent administration of justice and shall –
 - (a)
 - (b)
 - (c) appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the Judiciary, in the manner prescribed by an Act of Parliament;
107. On procedural aspects, Article 47 of the Constitution of Kenya 2010 leads the que. Sub Article (1) is unequivocal that "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair."



108. Relatedly, Section 4 of the Fair Administrative Actions Act 2010⁵ sets out the procedural precepts to be complied with. Section 4(1) of the Act rehearses the provisions of Article 47(1) of the Constitution.
109. The basic procedural precepts include notice of the basis of the complaints(s) or who the accuser is for purposes of preparation, details of the allegations against the employee whether the issue is investigatory or disciplinary, employee must be accorded reasonable time to defend him/herself public hearing if the employee so requires, relevant documents should be given or made accessible to the employee, opportunity to attend the proceedings in person or in the company of an expert of his/her choice, opportunity to call witnesses, be heard, cross examine witnesses, request for adjournment of proceedings upon providing good reasons, detailed reasons for any administrative action/decision taken by the employer and finally right of appeal or review.
110. As mentioned elsewhere in this judgment, the procedure of removal of registrars, magistrates and other staff of the Judiciary is also governed by the provisions of the Judicial Service Act and more specifically Section 32 as well Rule 25 of the Third Schedule to the Act.
111. According to the provisions of the Rule 25(1) and as reiterated by the Court of Appeal in its decisions in *Judicial Service Commission v Gladys Boss Shollei & Another* (supra) and *Judicial Service Commission v Daniel Ochenja* (supra), disciplinary proceedings are initiated by the Chief Justice who frames the charge or charges which must be forwarded to the concerned officer.
112. Under Rule 25(3) provides that:
- “If it is decided that the disciplinary proceedings shall continue, the Commission shall appoint committee or panel to investigate the matter ...”
113. The Court shares the views of Rika J. in *Eric Michael Karanja Kamande v Judicial Service Commission* [2021] eKLR that Rule 25(3) of the Third Schedule is problematic in that it requires the Commission to appoint a committee or panel to investigate the matter which would appear different from a committee or panel to conduct a hearing. As adverted to elsewhere, paragraph D.7.3 of the Respondent’s Human Resource Policies and Procedures Manual provide for suspension or interdiction of staff “to allow for full investigation of gross misconduct.”
114. The fact that Rule 25 uses the words “inquiry” and “investigation” distinctly means that they were intended to have distinct meanings. Similarly, whereas Rule 25(1) makes an inquiry by the Chief Justice optional, Rule 25(3) makes an investigation mandatory if disciplinary proceedings continue.
115. The pertinent question is whether a disciplinary hearing by a committee or panel is an investigation as contemplated by Rule 25(3) of the Third Schedule.
116. The Court is of the view that a disciplinary hearing is not an investigation as envisioned by Rule 25(3).
117. In contradistinction, Section 41 of the Employment Act requires a hearing not an investigation.
118. Both the provisions of the Rule 25(3) of the Third Schedule to the Act and paragraph D.7.3 of the Respondent’s Human Resource Policy and Procedures Manual are consistent on the essence of an investigation of gross misconduct before a decision is made on way forward. There is no gainsaying that an investigation brings to the fore the factual circumstances of the case.
119. I will now proceed to apply the foregoing provisions and principles of law to the facts of the instant case.



120. It is not in dispute that the Chief Justice initiated disciplinary proceedings against the Petitioner under Rule 25 of the Third Schedule to the Judicial Services Act, 2011 and the Petitioner was interdicted by letter dated 12th April 2017 and a single charge was drafted and dispatched to the Petitioner vide letter dated the same day. The Petitioner responded to the charge by letter dated 28th April 2017 and was invited for an oral hearing by letter dated 26th January 2018 and the hearing took place on 6th March 2017.
121. The hearing was conducted by the Respondent's Human Resource Management Committee comprising the Vice Chair of the Respondent and two other Commissioners appointed by the Chief Justice pursuant to Section 32 of the Judicial Service Act, 2011. The Committee was required to comply with the provisions of the Third Schedule to the Act.
122. Intriguingly, the mandate of the committee was not captured in its unsigned report dated 2nd October 2018 and from the transcription record, the Committee heard two witnesses only on 6th March 2018. There is no evidence of what transpired thereafter other than a dismissal letter dated 27th March 2019 which intimated that the Respondent had deliberated the matter during its meeting held on 12th March 2019 and considered the Petitioner's representations and evidence tendered before the Judicial Service Commission Human Resource Management Committee during the disciplinary hearing of the case.
123. The Rules require the committee or panel to accord the person charged written notice of at least 14 days indicating the date on which he/she will be required to respond to the charge.
124. The Petitioner's submissions that there was neither an inquiry nor investigation before the disciplinary proceedings on 6th March 2018 has not been responded to by the Respondent substantially.
125. Needless to emphasise, the Public Procurement Appeal Review Board had directed the Respondent "to carry out investigation on the conduct of its officers who were in the evaluation committee of tender no. JUD/028/2016-17 ..."
126. There is no evidence on record that the Respondent conducted an investigation other than the 56 minutes disciplinary hearing by the Respondent's Human Resource Management Committee.
127. The essence of investigations in disciplinary cases has been emphasised in several decisions including *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR and *Timothy Nchoe Sironka v Judicial Service Commission* [2020] eKLR.
128. As to whether the Respondent accorded the Petitioner a fair trial, the Petitioner relies on the Supreme Court decision in *Anuar Loiptip v Independent Electoral & Boundaries Commission & 2 others* [2019] eKLR as well as *Evans Odhiambo Kidero & 4 others v Ferdinand Ndung'u Waititu & 4 others* [2014] eKLR to underscore the right of a party to adduce and challenge evidence, as well as the proposition that:
- “... no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used.”
129. The Court is in agreement with these sentiments as well as those of the Supreme Court of India in *Union of India v Varma* [1958] SCR 499 where the Court stated as follows:
- “When a document is produced in a Court or a Tribunal, the question that naturally arises is: is it a genuine document, what are its contents and are the statements contained therein true..... If a letter or other document is produced to establish some fact which is relevant



to the inquiry, the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accordance with the principles of natural justice ...”

130. From the transcript of the proceedings on record, it is decipherable that the Respondent considered the evidence of Mr. Okeyo crucial. He was the premium witness. The evidence of Mr. Jeremiah Nthusi and Mr. David Kigen did not address the salient issue which is whether the allegations made by Mr. Okeyo in the affidavit to the PPARB touching on the integrity of the Petitioner were true. Nevertheless, the Petitioner cross examined the witnesses at the hearing and Mr. David Kigen confirmed that he did not meet the Petitioner at the Sagret Hotel on 29th or 30th December 2017 as alleged by Mr. Okeyo’s affidavit.
131. No doubt the Respondent regarded Mr. Okeyo critical to its case against the Petitioner and disciplinary proceedings were adjourned on 6th March 2018 to secure his attendance but he did not attend.
132. Other than the words attributed to Commissioner Muchelule in *Eric Michael Karanja Kamande v Judicial Service Commission* (supra), who was the Chair of the Committee on 6th June 2018 as follows:

“Today we are expecting a witness from Bedrock Security Services and we were made to believe that he is unobtainable. Is that the position? We were the ones who were calling him but he has gone undergrounds. So, we will dispense with his attendance unless there is something you wish to say ...?”
133. There is no factual narration on why the witness did not and could not attend the hearing yet his evidence was the only link between the Petitioner and the allegations made against him.
134. The Respondent ought to have appreciated the far-reaching implications of its decision to dispense with the attendance of Mr. Okeyo without a cogent factual background on why its core witness and the complainant could not honour its invitation. Why was he so afraid to testify against persons he had accused in an affidavit? Is it farfetched to surmise that Mr. Okeyo could have misrepresented facts to the PPARB?
135. It is not in contest Mr. Okeyo neither recorded a statement before the disciplinary committee nor file an affidavit. The veracity of his allegations against the Petitioner were not tested by cross examination and remain as such, allegations.
136. It is unclear to the Court why the Respondent did not issue summons to Mr. Okeyo as mandated by the Constitution. The Committee or panel provided no evidence of why a person who had previously been contracted by the Judiciary to render services could not avail himself for an internal disciplinary hearing.
137. The Court is not satisfied that the Respondent applied itself as it should have to procure the witness’s attendance and his nonattendance invariably impacted negatively on its case against the Petitioner.
138. In sum, the absence of Mr. Okeyo’s evidence as well as an investigation as mandated by Rule 25(3) of the Third Schedule to the Act presupposes that the allegations against the Petitioner had no substratum. The absence of these two elements denied the disciplinary process the essential procedural propriety.
139. For the above reasons, it is the finding the Court that the Petitioner’s dismissal on 27th March 2010 was procedurally unfair.



140. It is also noteworthy that the Petitioner was on interdict from 12th February 2017 to 27th March 2019 when he was dismissed, a duration of about two years which is inordinately long. The Respondent's contention that in its circumstances the delay was reasonable is unpersuasive and inconsistent with the provisions of Article 47(1) of the Constitution of Kenya, 2010 as well as Section 4(1) of the Fair Administrative Actions Act which provide that:

“Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.”

141. The Petitioner contemplated a timeous process which he did not get.

Reliefs

142. Having found that the Petitioner's dismissal from employment was unfair and unlawful for want of substantive justification and procedural fairness as ordained by law, I now proceed to determine the reliefs available to the Petitioner.

143. The Petitioner prays for declarations compensation and reinstatement or deployment

(a) Having found that the Petitioner's dismissal on 27th March 2019 was unfair and unlawful for noncompliance with the provisions of the Constitution of Kenya, 2010, Fair Administrative Actions Act and the Employment Act, a declaration to that effect is hereby issued.

(b) Compensation for violation of fundamental rights and freedoms

144. The Respondent submits that it would be improper to award compensation and order reinstatement simultaneously and relies on the Court of Appeal decision in Kenya Broadcasting Corporation v Geoffrey Wakio [2019] eKLR. The Court is in agreement with the sentiments of the Court of Appeal.

144. The Petitioner on the other hand relies on the decisions in William Musembi & 13 others v Moi Educational Centre Co. Ltd & 3 others [2021] eKLR, Martin Wanderi & 106 others v Engineers Registration Board & 10 others [2018] eKLR as well as Daniel Mudanyi Ochenja v Judicial Service Commission (supra) among others to urge the Court to award compensation.

145. Other than the delay in concluding the disciplinary process to which the Respondent offered a plausible explanation, the Petitioner suffered no other prejudice.

146. In Hema Hospital v Wilson Makongo Marwa [2015] eKLR the Court of Appeal adopted with approval the holding of the Labour Court of South Africa in Le Monde Luggage cc t/a Pakwells Petze v Commissioner G. Dun and others, Appeal Case No. JA 65/205 as follows:

“The compensation which must be made to the wronged party is a payment to offset the financial loss which has resulted from a wrongful act. The primary enquiry for a court is to determine the extent of that loss, taking into account the nature of the unfair dismissal and hence the scope of the wrongful act on the part of the employer. This Court has been careful to ensure that the purpose of the compensation is to make good the employee's loss and not to punish the employer.”

147. As the Court of Appeal confirmed in the case, the Labour Relations Act of South Africa at Sections 193 and 194 are worded in similar terms to Section 49(1)(c) of the Employment Act.

148. The Court is also guided by the Court of Appeal decisions in Judicial Service Commission & another v Lucy Muthoni Njora [2021] eKLR on the award of compensation and reinstatement simultaneously.



149. The Court is disinclined to award compensation in this case.

(c) Reinstatement to the previous post or deployment

150. Reinstatement is one of the remedies/reliefs provided by Section 49(3)(a) of Employment Act in cases of unfair summary dismissal or termination of employment subject to compliance with Section 49(4) of the Act.

151. In addition, Section 12(3)(vii) of the Employment and Labour Relations Court Act provides that –
In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders —

(i) ...;

(ii) ...;

(iii) ...;

(iv) ...;

(v) ...;

(vi) ...;

(vii) an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; ...

152. As explained by D. K. Maraga JA (as he then was) in *Kenya Airways Ltd v Aviation and Allied Workers Union Kenya & 3 Others* [2014] eKLR

“As I have said, in Kenya, reinstatement is one of the remedies provided for in Section 49(3) as read with Section 50 of the Employment Act and Section 12(3)(vii) of the Industrial Court Act that the court can grant. Reinstatement is, however, not an automatic right of an employee. It is discretionary and each case has to be considered on its own merits based on the spirit of fairness and justice in keeping with the objectives of industrial adjudication.”

153. The Petitioner urges the Court to order reinstatement and relies on the decisions in *Narok County Government & another v Richard Bwogo Birir & another* [2015] eKLR but persuades the Court not to rely on it on the question of damages or compensation.

154. The Respondent on the other hand contends that the Petitioner should not be reinstated as his termination was lawful and the remedy should be awarded in exceptional circumstances based on Section 49(4) of the Employment Act. That the remedy was not practical because of the Petitioner’s conduct which led to termination. The Court is urged to uphold the common law principle on specific performance in contracts of personal service.

155. The issue of practicability of reinstatement was discussed by Murgor JA in *Kenya Airways Ltd v Aviation and Allied Workers Union Kenya & 3 Others* (supra) where the Judge cited with approval the sentiments of the New Zealand Court of Appeal in *New Zealand Educational Institute v Board of Trustees of Auckland Normal Intermediate School* [1994] 2 ERNZ 414 (CA), as follows:

“Whether ... it would not be practicable to reinstate [the employee] involves a balancing of the interests of the parties and the justices of their cases with regard not only to the past but more



particularly to the future. It is no uncommon for this Court or its predecessor, having found a dismissal to have been unjustified, to nevertheless conclude on the evidence that it would be inappropriate in the sense of being impracticable to reinstate the employment relationship. Practicability is capability of being carried out in action, feasibility or the potential for the re-imposition of the employment relationship to be done or carried out successfully. Practicability cannot be narrowly construed in the sense of being simply possible irrespective of consequence.”

156. The Court is in agreement with these sentiments.
157. Other than the allegations that led to the dismissal of the Petitioner, the Respondent tendered no other evidence that its relationship with the Petitioner was strained or he had a previous record of misconduct. His uncontroverted evidence is that he had a clean record before dismissal, evidence the Respondent did not puncture.
158. In addition, the Petitioner has intimated his wish to continue serving by praying for reinstatement or deployment within the Judiciary and had been an employee of the Judiciary for about nine years which is a long time.
159. Significant to these proceedings, the Petitioner’s case is within the three (3) year limit prescribed by Section 12(3)(vii) of the Employment and Labour Relations Court Act, 2011, within which the Court may exercise discretion and order reinstatement.
160. Finally, the Judiciary is a big institution in serious need of human capital and the Petitioner maybe posted to any part of this Country to render services as he did for nine years.
161. For the foregoing reasons, the Court is satisfied that the Petitioner is deserves the remedy of reinstatement to his former position or deployment within the Judiciary.

Conclusion

162. In the final analysis judgment is entered for the Petitioner as follows:
 - (i) The proceedings and determination to dismiss the Petitioner on 27th March 2019 were in contravention of the provisions of Constitution of Kenya 2010, Fair Administrative Actions Act and the Employment Act and were therefore unlawful and are hereby set aside.
 - (ii) The Respondent is ordered to reinstate the Petitioner to his employment with immediate effect to the Office of ICT Officer in the ICT Directorate without loss of back pay salary and or benefits.
 - (iii) In the alternative, the Respondent shall deploy the Petitioner to a position equivalent to ICT Officer without loss of back pay salary and/or benefits.
 - (iv) There shall be no order as to costs.
163. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 24TH DAY OF MARCH 2022

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

