



**Gachuhi v Malster International (Cause E406 of 2020)
[2022] KEELRC 3822 (KLR) (18 August 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3822 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E406 OF 2020
AN MWAURE, J
AUGUST 18, 2022**

BETWEEN

PATRICK MAINA GACHUHI CLAIMANT

AND

MALSTER INTERNATIONAL RESPONDENT

JUDGMENT

1. By statement of claim dated the August 19, 2020 and filed on the same day, the claimant is seeking the following reliefs from court;
 - a. A declaration that the termination herein was unfair and unlawful
 - b. 12 months salary for unfair and unlawful termination of employment pursuant to section 49 (1) (c) of the [Employment Act, 2007](#) amounting to Kshs 3,444,000.00
 - c. Costs of the suit;
 - d. Interest on (b) above at court rates from the date of filing suit until payment in full
 - e. Any other relief the honourable court may deem fit to grant in the circumstances.
2. The claimant avers that he was employed by the respondent on the December 1, 2018 as the Country Finance and Partner Coordinator of the respondent. The contract was to run for a period of 13 months effective the December 1, 2018 with a monthly salary of Kshs 280,000/=.
3. As per the contract, he was expected to report to the country representative of the respondent in Kenya. Upon the lapse of the 3 months probationary period, and due to his hard work, discipline and exemplary performance, the contract was confirmed to run its full course upon an evaluation being carried out.



4. He worked for the respondent for entirety of the contract being 13 months which lapsed on the December 31, 2019. Due to the satisfactory performance in his duties, he continued working even after the December 31, 2019 at an increased salary of Kshs 287,000/= He diligently carried out his duties at the respondent organisation to the best of his abilities and complied with the terms of his employment and the company regulations and at all times observed high levels of professionalism at the work place.
5. On or about the June 8, 2020, however, the claimant received a copy of ‘a contract termination notice’ formally terminating his employment with the respondent for the alleged reasons that he did not meet the expected requirements of the position and on matters relating to an employment notice from the respondent which was dated March 9, 2020 and his subsequent response on March 11, 2020.
6. The claimant says he was never warned or sanctioned at any time for unsatisfactory or below performance and that in fact, he was competent in his employment, an observation made by the respondent’s Country Coordinator Kenya one Martin Schaumburg in his letter dated July 20, 2020 in reference to the claimant.
7. It is the claimants averment that the termination letter fails to state clearly what his transgressions were and their gravity to warrant such a punitive action as termination of his employment and the Respondent failed and/ or neglected to abide by fair labour practices and give a hearing on the same, communicate the result of such hearing and in the event of adverse finding mechanisms give claimant a chance to challenge such a decision.
8. He says in relation to the employment notice dated March 9, 2020, he only shared his curriculum vitae with a friend who intended to bid for a consultancy. The claimant was in no way involved with, working for and/ or directly engaged in the consultancy for the same to amount to any breach of the respondent’s HR policies and that it was clearly communicated to the respondent vide the claimant’s letter dated the March 11, 2020.
9. The claimant further avers that two of his colleagues at the respondent company similarly shared their CVs but were only warned of the same and continue working for the respondent. The termination was unlawful and unfair as it was contrary to the provisions of the *Employment Act*, No 11 of 2007 and further that it was in breach of his constitutional right guaranteed under article 41 (1) of *Constitution of Kenya 2010* which espouses a right to fair labour practices.
10. The respondent entered an appearance through the firm of Ligunya Sande and filed a memorandum of response on the May 6, 2021. The respondent says that the claimant was issued with an employment contract which was signed by him and the respondent on December 3, 2018. The job description was fully set out as part of the employment contract. Key expectations of the employment contract were that the claimant avoids instances of conflicts of interest and observes confidentiality.
11. The respondent says that subsequent to confirmation, it was noted that the claimant showed non responsiveness and poor work output necessitating intervention by his colleagues. The increment in the claimant’s salary was in no way related to his performance but was merely a nominal increment extended generally to members of the respondent’s staff. The claimant breached various obligations of his employment contract including those relating to confidentiality and conflict of interest. The claimant therefore demonstrated a lack of professionalism and integrity in his dealings with the respondent.
12. The respondent further says that the claimant conducted himself in a manner that was detrimental to the respondent’s interests, thereby necessitating disciplinary action against him following diligent investigations and having accorded the claimant the opportunity to be heard. The respondent says that the claimant while still in employment of the respondent presented a bid to Africa Inland Health



- Ministries in January 2020 to conduct a feasibility study on reverse osmosis technology and drip irrigation in Nasinyono, Turkana West.
13. The claimant disclosed confidential and proprietary information relating to the respondent whilst presenting the aforesaid bid such information having come into his custody through his employment with the respondent. Such disclosure was contrary to clause 8 of the employment contract and paragraph 3.6 of the staff guidelines.
 14. The respondent further avers that the claimant held another position whilst being in the employ of the respondent contrary to clause 3.1 of the staff guidelines and specifically being a consultant with Africa Health Survey Consultancy, which was the entity through which he and others presented the aforementioned bid.
 15. The respondent finds fault with the claimant for failing to uphold the respondent's interest's contrary to clause 2 (b) of the employment contract, by presenting a bid to Africa Inland Church Health Ministries knowing fully well the pre-existing and ongoing relationship between the respondent and Africa Inland Church Health Ministries.
 16. The claimant knowingly entered into a position of conflict-of-interest contrary to clause 9 of the employment contract by purporting to provide services that were provided by the Respondent as part of its humanitarian relief and health support activities. Generally failing to uphold professionalism, trust, integrity and honesty by submitting a bid to a third party and proposing to provide services whilst in the employ of the respondent.
 17. The respondent says that having concluded its preliminary investigations, the respondent issued a notice to the claimant clearly highlighting the alleged breaches of the employment contract and seeking a written explanation from the claimant. The claimant in response admitted to having participated in the bid and acknowledged his violation of the staff guidelines.
 18. The respondent being cognizant of its legal obligations convened a meeting with the claimant to further discussion on alleged breaches of the contract and guidelines. The meeting took place and minutes were generated pertaining to the deliberations. Thereafter Respondent resolved to terminate the employment of the claimant and the staff guidelines and having complied with all the applicable provisions of the law. The respondent also says the claimant was informed of several instances of unsatisfactory performance but he did not improve. The respondent says it followed all the applicable laws in terminating the contract relating to notice and the hearing. The claimant was given the notice to show cause and put a response on March 11, 2020. He was terminated on June 8, 2020.
 19. By way of a counterclaim, the respondent claims US \$ 2,000 as general damages for breach of confidentiality pursuant to the employment contracts and staff guidelines respectively. The claimant undertook in his letter of appointment to pay US \$ 1,000 for violation of his obligations of confidentiality. The respondent states that the claimant was subject to clause 5.1 of his contract. Paragraph 3.6 of the said guidelines provides that a penalty of US \$ 1000 would become payable in the event of an employee violating his obligations of confidentiality as per the staff guidelines.
 20. The respondent therefore says that the claimant participated in a bid wherein reference was made to Malteser International. The claimant as a participant in the bid provided information to a third party in violation of his obligations of confidentiality to the respondent which occasioned injury to the reputation of the respondent and standing before AIKC health ministries and others.



Claimant's Case

21. CW1 Patrick Maina Gachuhi gave sworn testimony and adopted the witness statement dated the August 19, 2020 as part of his evidence in chief. He testified that he was employed by the Respondent as the Country Finance Coordinator. He started working with the respondent on December 1, 2018.
22. The claimant says that prior to this notice, he had never received warning or disciplinary notice pertaining to his deliverables. He says the bid he was accused of tendering was forwarded by Africa Health Survey Consultant and it was a survey to be carried out in Turkana. It was about rivers and irrigation. The bid was not for Malteser International and was not directed to the respondent and so he sees no conflict there.
23. The claimant states that a friend of his told him about consultancy research in Turkana. He did not have that kind of survey skill and asked the project manager, David Owino if he knew anybody who could bid for that consultancy. Africa Health Survey Consultant was identified. The said David Owino was project Manager of the respondent. David asked him to give his CV to justify winning the bid which he did.
24. The claimant said he was not a director of Africa Health and was not an employee. He is not familiar with who the directors of Africa Survey were. He was summoned for a meeting on the June 5, 2021 by Martin Choba, Country Director of respondent and was asked to explain about the bid of Africa Health. He admitted he was aware of the proposal and provided his CV to assist in the tendering but was not party to other documents used thereto.
25. The claimant admitted he was aware of the respondent's staff guidelines and conflict of interest.
26. The claimant says that Africa Health services were not clients of Malteser Inter and had no relation with respondent. They were not performing activities similar in their scope of work. Malteser is a humanitarian relief organisation and activities of livelihood in low-income settlements which was not the scope of African Health Services.
27. The claimant was not employed by Africa Health Service but nevertheless he had no reasons to prohibit him from looking for job outside the respondent. The CV issued to David was about his professional qualifications and his work. He did not disclose any work related to the Respondent and their working. He did not give Africa Health Services any document except the CV he avers.
28. During the meeting the three employees who provided their CV in the tender were summoned including David Owino, Joy the Programme Manager and the claimant.
29. Claimant, says his name appeared on the tender of that document because the team that assembled the bid wanted to give him a fee as he referred them to that consultancy. The other two employees David and Joy were not terminated. After the disciplinary meeting he was told his contract would be terminated. Recommendation letter to terminate his contract was given by Martha Choba on June 8, 2020.
30. Claimant insist there was no conflict of interest. Malteser did humanitarian work worldwide. Whereas bid submitted by Africa Health Consultancy was to do with drip irrigation in Turkana. He however admits clause 4 (e) he was subject to Malteser staff guidelines. According to the guidelines he was not stopped from applying for other jobs.
31. The claimant was asked in a meeting in March 2020 to show cause. The show cause letter was dated March 11, 2020 and no action was taken. After March 2020 he got a termination letter on the June 8, 2020. This was two and a half months after notice to show cause. He was working in 2020 even though



he got no extension in writing. His contract was expiring on the December 31, 2019. He saw the letter of extension of his contract with his advocates after filing the suit and the said contract was extended for 6 months and was to end on June 30, 2020. He said he had not seen it before.

32. He says he was terminated on the June 8, 2020 and at the same time he received his renewal of his contract. He says there was no demand for the amount claimed for in the counterclaim. He was not informed in the termination he breached confidentiality.
33. The respondent did not call a witness despite being given several opportunities to do so.

Claimant's Submissions

34. The claimant submits that pleadings in a suit does not amount to evidence and relies on the case of *CMC Aviation Ltd v CrusAir Ltd (No 1)* [1987] KLR 103 for the proposition that pleadings in a suit are not normally evidence. They may become evidence if they are expressly or impliedly admitted as then the admission itself is evidence. Evidence is usually given on oath. Averments depend upon evidence for proof of their contents.
35. The claimant submits that there is no proof of breach of confidentiality and instead says respondent only produces the CV of the claimant which was not adduced in evidence to allege breach of confidentiality. The claimant relied on the case of *Mbi'ta Ntiro v Mbae Mwirichia and another* [2018] eKLR where the court held that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove the existence of such facts and failure to do so would leave the court with be left with no choice but to dismiss the claim therein.
36. The claimant submits that under the circumstances, his dismissal contravenes the provisions of section 45 of the *Employment Act*, as the reason proffered for breach of confidentiality is not substantiated and is thus not valid, neither was it fair in line with his conduct as an employee.
37. The claimant submits that he was neither aware of a complaint of poor performance from the respondent nor was he given an opportunity to be heard on the allegation of poor performance, which is stated to be the first reason for the termination and that the only time he was called to answer to allegations levelled as against him was in line with the employment notice of March 9, 2020 which pertained to issuance of his curriculum vitae to which he responded effectively.
38. The claimant further submits that in complete violation of the provisions of section 41 (1) of the *Employment Act*, the respondent failed equally to afford him an opportunity to have another employee of his choice during the hearing of June 5, 2020. Thus, the hearing cannot be said to be proper, fair and in accordance to the laid down labour rules.

Section 41 of the *Employment Act* provides as follows:-

Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

- (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.
39. The claimant submits that in terminating his employment as it did, without any plausible or viable reasons being given to him and equally failure to accord him a proper hearing before such dismissal was not only unfair but equally unlawful and in breach of sections 43 and 45 of the Employment Act.
40. The claimant submits that the termination was unfair as provided for under section 43 of the Employment Act. The respondent did not at the time of his termination afford him any reason or reasons for the termination whether verbally at the time of the termination or in the termination letter itself, with regards to the allegations of poor performance.
41. The claimant urges the court to so hold that his termination was and remains unfair for want of both substantive and procedural justification on the part of the respondent and urged the court to be guided by the findings of Justice Linnet Ndolo in the case of John Ngatia v Kenya Commercial Bank Limited [2014] eKLR and that the respondent did not act in accordance with justice.

Respondent's Submissions

42. The respondent submits that whereas it did not call its witness to the stand, this does not exonerate the claimant from its strict legal obligations to prove its case on balance of probabilities. The Respondent relies on the case of Daniel Toroitich Arap Moi v Mwangi Stephen Murithi and another [2014] eKLR where the Court of Appeal said that the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case on a balance of probabilities, does not change even in the absence of rebuttal by other side.
43. The respondent invites the court to consider all the evidence tendered by the claimant including claimant's response during cross examination so as to establish whether indeed he has met the legal standard of proof.
44. The respondent relied on the case of Walter Ogal Anuro v Teachers Service Commission on the requirement of justifiability and procedural fairness and argue that breach of duties of personnel and breach of confidentiality, undeclared conflict of interest amount to gross misconduct. The respondent submitted that the claimant was unable to explain his claim of unfair termination in the context of
- (a) his acknowledgement of violation of the staff guidelines applicable to him and
 - (b) his request that no further disciplinary action should be taken against him.
45. The respondent submits that the above sequence of events is sufficient to show that the termination of the claimant's employment was both fair and lawful with reference to matters set out in the employment notice of March 9, 2020. The claimant was informed of the breaches and admitted to a violation of staff guidelines and made a plea that no further disciplinary action be taken against him. The claimant also testified to attending a disciplinary hearing convened by the respondent.
46. The respondent submits that the letter of March 11, 2020 amounts to an admission within the meaning of section 17-24 of the Evidence Act. The respondent relied on the case of Synergy Industry Credit v Oxyplus International Limited & 2 others [2021] eKLR for the proposition that a clear and unequivocal admission of fact is conclusive, rendering it unnecessary for the one party (in whose favour the admission was made) to adduce evidence to prove the admitted, and incompetent for the other



party, making the admission to adduce evidence to contradict it. The rationale for this principle is confirmed by order 13 rule 2 of the *Civil Procedure Rules*. A reading of this rule leaves no doubt that admissions made either in pleadings or otherwise are binding on the other party in respect of those facts admitted and the court can and should make an order purely based on those admissions.

47. The respondent argues that the claimant through the letter of March 9, 2020 admitted to violation of staff guidelines. On the claimant's own admission, the grounds for termination have been proven without the need for the respondent to adduce further evidence.
48. The respondent further submitted that standards of procedural fairness provided for in section 41 of the *Employment Act* was adhered to as the respondent informed the claimant of his breaches and afforded him the opportunity to respond. Having received the claimant's response the respondent convened a disciplinary hearing which the claimant had almost three (3) months to prepare for owing to the delays occasioned by the Covid 19 pandemic.
49. After the disciplinary hearing the Respondent issued the termination notice clearly setting out the grounds for termination. It is the respondent's submissions that the procedure adopted in effecting the claimant's termination was fair and in keeping with the law. The respondent cited the case of *Anthony Mkala Chitavi v Malindi Water and Sewerage Co Ltd* [2013] eKLR on the requirements of procedural fairness in submitting that the respondent complied with the procedure under section 41 of the *Employment Act*.
50. The respondent further submits that even though the respondent did not call a witness to substantiate the matter of poor performance, this matter is equally proven by a direct admission of the claimant. The respondent also made submissions on the remedies which I have had the opportunity of going through.

Decision

51. Issues for Determination;
 - a. Whether the claimant was unlawfully terminated
 - b. Whether the respondent followed fair procedure in terminating the claimant.
 - c. The remedies, if any, the claimant is entitled to.
52. Section 45 (1) and (2) of the *Employment Act, 2007* provides that—
 - “(1) No employer shall terminate the employment of an employee unfairly.
 - (2) A termination of employment by an employer is unfair if the employer fails to prove—
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and



(c) that the employment was terminated in accordance with fair procedure.”

53. Section 47(1)(5) of the *Employment Act, 2007* provides that ‘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.
54. In *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR Ndolo, J held that –
“However, for a termination of employment to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness.
55. The Court of Appeal in *Naima Khamis v Oxford University Press (EA) Limited* [2017] eKLR observed that
‘On the first issue, that is whether the termination was lawful, we wish to take note of the provisions of section 43(1) of the *Employment Act*, which provides that in any claim arising out of termination of a contract, the employer is required to justify the reason or reasons for the termination, and where the employer fails to do so, the termination is deemed to have been unfair. Also, section 45(2)(c) requires a termination be done according to a fair procedure. From the foregoing, termination of employment may be substantively and/or procedurally unfair. A termination is also deemed substantively unfair where the employer fails to give valid reasons to support the termination. On the other hand, procedural unfairness arises where the employer fails to follow the laid down procedure as per contract, or fails to accord the employee an opportunity to be heard as by law required.
56. I have considered the pleadings herein, the submissions and the evidence of the claimant in the case. The claimant claims there was no valid reason leading to his termination from employment. The claimant’s contract expired on the December 13, 2019, but he continued working for the respondent up to June 2020 and even had a salary increment. The court therefore finds that he was on an open-ended contract and was entitled to be subjected to the provisions of the *Employment Act* for fair hearing and valid reasons for termination.
57. The respondent’s notice of termination dated the June 8, 2020 listed two reasons as leading to the decision to terminate the employment contract.
58. The notice issued to the claimant charged him with violation of staff guidelines and confidentiality and conflict of interest. He was accused of violation of failure to uphold professional ethics for example in using Maiteser International Projects as part of his achievements and using Malteser data and knowledge.
59. The claimant responded to the notice dated 11th March and in particular in reference to a proposal to African inland Church Health Ministries and he admitted he provided his curriculum vitae. He apologised for participating in that proposal and requested there would be no disciplinary action taken against him.
60. A disciplinary meeting took place nevertheless on June 5, 2020 and once again the claimant gave his presentation and was then given a termination letter dated June 8, 2020. The reason given for the termination was that he had not met the expected requirements of his position even after follow up from the administration unit in headquarters and country coordinator Kenya.



61. The second reason given by the respondent was on matters pertaining to an employment notice dated March 9, 2020 and his subsequent response dated March 11, 2020.
62. The court has scrutinised the reasons given in the notice to show cause and termination letter. The reasons are rather general about conflict of interest and are not verified. Furthermore the reason given in the termination letter was not in the notice to show cause i.e not meeting the expected requirements of his position. This again is a general statement in any event that reason is not clear or specific and so does not pass the test of being valid reason if at all it is not clear what the charge is.
63. The respondent has asked the court to consider that claimant in his response to the notice said he regretted having considered to undertake a support role in a consultancy and which is a violation of their staff guidelines. And so the respondent would have the court have this regarded as a valid reason. The claimant did accept he had given out his CV but he was not informed that he was in a disciplinary hearing. He was not informed the said meeting could lead to termination of his employment, so the court finds it is not reasonable to accept his statement as an admission of conflict under the circumstances.
64. The respondent alleged also that claimant failed to meet the requirement of his position in performance. The claimant disputed that he had issues of poor performance but that there were only issues raised relating to management. In the absence of evidence led by the Respondent on poor performance, the court is inclined to believe the claimant's account and finds that the respondent cannot rely on the said ground of poor performance as a basis of terminating the contract.
65. To support this is the case of *Jane Wairimu Machira v Mugo Waweru & Associates* [2012] eKLR where the court held that the proper procedure once poor performance of an employee is noted is to point out the short comings to the employee and give an employee an opportunity to improve over a reasonable length of time. In other words the employer cannot just cite poor performance of an employee without proof of evaluation and records of poor performance. That allegation of poor performance without records cannot be sustained.
66. The second ground listed in the termination notice of June 8, 2020 pertains to an employment notice dated the March 9, 2020 and the subsequent response dated March 11, 2020 by the claimant. The contract of employment dated the December 3, 2018 clause 5.1 made the Staff rules part of the employment contract. The Respondent's staff guidelines were to be adhered by the employees.
67. The claimant in the notice of March 9, 2020 is said to have breached the staff guidelines on confidentiality and conflict of interest and was given opportunity to respond to the claim by the respondent. He conceded to the findings of the respondent and asked not to be taken through disciplinary proceedings.
68. The matter does not, however, end there. The claimant led evidence on oath that two other employees of the respondent had participated in the said endeavour but were only cautioned rather than being dismissed. This evidence was as well brought up during the meeting held up on June 5, 2020 where the other two employees were found culpable of having given out their CVs for the same consultancy but retained their jobs. These were David Owino and Joy. The impression created is that is contrary to what is stipulated is alleged by the respondent, the respondent really did not deem the issue of bidding in the consultancy serious enough to warrant the termination and to be cited for conflict and confidentiality breach. The only plausible conclusion therefore is that the respondent discriminated against the claimant against the meaning of section 45 (2) of the *Employment Act, 2007*. The termination of the claimant was therefore without a valid reasons and was therefore unfair under section 45 of the Act.



69. Finally on the issue on whether the respondent followed the requisite procedure as laid down in section 41 of the employment act the court has considered the whole process adopted by the respondent. First the respondent sent a notice to show cause which the claimant responded to. The respondent then held disciplinary hearing but it is not clear that the claimant was formerly invited for the hearing and informed of the charges he was accused of. He was not asked as required by the law to present a witness of his choice being a fellow workmate or a shop floor representative to be present during his hearing. In that front the respondent failed the fairness test which was earlier noted in the case of Walter Onuro Ogal v Teachers Service Commission (*supra*).
70. In conclusion and having carefully considered the entire evidence before the court the court is satisfied that claimant proved his case on the balance of probability and so judgement is entered in his favour and he is found to have been unfairly and unlawfully terminated.
71. The claimant is awarded compensation for unlawful termination equivalent to 2 months totalling Kshs 574,000/=.
72. Interest will accrue at court rates from the date of judgement till full payment.
73. The court having found the claimant was unlawfully terminated and that breach of confidentiality is not proved finds the claim for counterclaim payment of US\$2000 is not proved and so is declined. Each party will bear their costs due to the past long relationship between the parties.
- Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 18TH AUGUST, 2022

ANNA NGIBUINI MWAURE

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 March 15, 2020 and subsequent directions of April 21, 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 had 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.

ANNA NGIBUINI MWAURE

JUDGE

