Transport Workers Union v Guardian Coach Ltd (Cause 554 of 2017)
[2022] KEELRC 13221 (KLR) (11 November 2022) (Judgment)

Neutral citation: [2022] KEELRC 13221 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 554 OF 2017

SC RUTTO, J

NOVEMBER 11, 2022

BETWEEN

TRANSPORT WORKERS UNION ..... CLAIMANT

AND

GUARDIAN COACH LTD ..... RESPONDENT

JUDGMENT

1. The claimant union brought the instant suit on behalf of seven grievants who it avers, are its members. It is the claimant's case that it recruited a simple majority of the employees of the respondent as its members. That subsequently, it forwarded the signed check off system forms to the respondent to effect monthly trade union dues deductions in accordance with section 48 and 50 of the *Labour Relations Act*, 2007. That the respondent immediately started to victimize/intimidate the unionized employees and at the time of filing the suit, had unfairly terminated/declared redundant seven employees, who are the grievants herein.

2. The claimant further avers that the respondent failed to follow the process under section 40 of the *Employment Act*. That the respondent further forced the existing employees to reapply for their existing jobs. The claimant terms the foregoing events as a machination by the respondent to deny the unionized employees their constitutional rights and freedoms within article 41 of the *Constitution*. Consequently, the claimant seeks the following reliefs against the respondent, reinstatement of the seven grievants and in the alternative payment of their terminal benefits and compensatory damages, an order that the respondent effects union dues from the claimant's members as well as an order of protection from unfair dismissal of its members.

3. On June 16, 2022, when the matter came up for hearing, the respondent sought the court's leave to adopt its replying affidavit sworn on March 27, 2017, by Mr Henry Ong'era David to comprise its defence. The said leave was granted.

4. On June 16, 2022, the parties agreed to have the matter determined by way of documentary evidence pursuant to rule 21 of the *Employment and Labour Relations Court Rules (2016*).

Claimant's Case

5. On January 20, 2022, the claimant notified the court that the 4th grievant by the name Zachariah Omari had since passed on hence indicated that it will only be proceeding with the suit in respect of the remaining six grievants.

6. The claimant's case is anchored on the statements of the individual grievants through which they aver that they were employed as bus drivers by the respondent, on various dates. That they were locked out of employment from March 1, 2017 and later declared redundant on March 10, 2017. That this was on account of joining the claimant union. They further aver that their performance at work was satisfactory.

Respondent's Case

7. As stated herein, the respondent's case is as per the replying affidavit of Henry Ong'era David, sworn on March 27, 2017. In the said affidavit, Mr Ong'era identifies himself as the operations manager of the respondent. He admits that the grievants were the respondent's employees. He further avers that the claimant has never engaged the respondent regarding the grievants and that they are not members of the said union as alleged. The respondent further state that there has never been any communication, meeting or agreement capable of authentication between itself and the claimant regarding the said union membership.

8. The respondent further contends that the claimant is devoid of capacity or interest to sue or commence any action on behalf of the grievants. That it was a germane and fundamental term of the grievants' contracts that the same was amenable to termination within the ambit of clause 13.

9. That on or about the March 10, 2017, the respondent served the 1st, 2nd, 3rd, 4th, 5th and 6th grievants with termination notices whose crux was that the contract stood terminated taking into account the one month termination notice. That the notice period was to commence on March 10, 2017.

10. That upon service and receipt of the notice, the said grievants jointly and severally disengaged and or elected not to report to duty pending expiry of the notice period.

11. It is the respondent's case that the said notice of termination was not served or extended to the 7th grievant as he had voluntarily disengaged from service and or absconded duty to avoid issues pertaining to impropriety at the place of work.

12. The respondent further denied the claimant's contention in regards to victimization and harassment of the grievants. The respondent further denied being aware of the existence of the check-off forms exhibited by the grievants and termed the same as strange.

13. It was the respondent's further contention that the termination notices were in tandem with the contracts and terms governing its employment with the grievants. That the clause for one month's notice or salary in lieu of one month's notice of termination is contractual and lawful and that the respondent properly exercised that option.

Submissions

14. The claimant submitted that the respondent failed to follow due process under section 40 of the *Employment Act*, when declaring the grievants redundant. That the said grievants are entitled to

severance benefits and the respondent has refused to pay the same. In further submission, the claimant submitted that the respondent's actions are contrary to the provisions of section 46 (c) of the *Employment Act* and sections 4 and 5 of the *Labour Relations Act*.

15. Terming the claimant as a busy body, the respondent submitted that the said union had never engaged it in regards to the grievants. That the said grievants are not members of the claimant hence had not established capacity to warrant the prayers sought against the respondent.

16. It was further submitted by the respondent that it acted in accordance with justice and equity by giving the grievants a notice period in advance. That the reasons stated in the termination notice were clear to the effect that it was to commence on March 10, 2017. That upon receiving the notice, the grievants disengaged from employment. That therefore, the argument of unfair termination is not available to them as they clearly reneged on the contract of employment recklessly and without justification.

17. In further submission, the respondent submitted that the claimant had failed to establish a case of unlawful termination of employment in tandem with section 47(5) of the *Employment Act*. That it carried out the said termination within the ambit of clause 13 of the contract of employment. That the notice was not extended to the 7th grievant as he had absented himself on or about January, 2017. In support of its arguments, the respondent invited the court to consider the decision in *Communication Workers v Safaricom Limited* (2014) eKLR.

Analysis And Determination

18. From the pleadings on record as well as the evidentiary material placed before me, this court is being called to determine the following issues:

    a. Whether the claimant union has *locus standi* to bring the instant suit on behalf the grievants.

    b. If the answer to (a) is in the affirmative, whether the grievants' termination from employment was unfair and unlawful.

    c. Are the grievants entitled to the reliefs sought?

Locus Standi Of The Claimant Union

19. The respondent has raised this issue in its response and submitted on the same extensively. It is worth mentioning that the claimant neither addressed the issue by way of a reply nor in its submissions.

20. As regards the membership of the grievants to the claimant union, the claimant exhibited form "S" which contains the names of the employees of the respondent who had expressed commitment and consent to have union dues deducted from their salaries and remitted as appropriate. Through the said form "S", the employees of the claimant, among them the grievants, declare thus: "We the undersigned, hereby acknowledge that we are members of the Transport Workers Union-K."

21. Therefore, by executing the said form "S", the employees whose names appear on the list, expressly indicated their membership to the claimant union.

22. It is noteworthy that the respondent's contention is that it has not recognized the claimant union and that it has never engaged with it in regards to the grievants.

23. Section 54 of the *Labour Relations Act* is relevant as it provides for recognition of trade unions. It is couched as follows:

> "54. Recognition of trade union by employer (1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees."

24. My construction of the above provision is that recognition of a trade union is only for purposes of collective bargaining. As such, the absence of a recognition agreement cannot deny an employee membership to a trade union. Put another way, membership to a trade union is not pegged on the existence of a recognition agreement.

25. As a matter of fact, pegging trade union membership on recognition of a trade union is tantamount to curtailing an employee's constitutional right under article 41(2)(c) of the *Constitution*, to form, join or participate in the activities and programmes of a trade union.

26. It is also noteworthy that remittance of trade union dues need not be through an employer's payroll in the form of a check off system. Quite to the contrary, an employee may make direct remittance of dues to the union without reference to the employer.

27. In light of the foregoing, the respondent's argument that the claimant lacked *locus standi* to move the court on behalf of the grievants owing to lack of a recognition agreement does not hold water.

28. I find useful guidance in the decision by the Court of Appeal in the case of *Modern Soap Factory v Kenya Shoe and Leather Workers Union* [2020] eKLR, where the learned judges held that:

> "In our judgment, we can see no reason why a registered union, whose constitution so empowers, should not have standing to institute a claim on behalf of its members and to represent its members in court.... We can see no reason therefore to fault the conclusion by the judge that the respondent has locus standi to institute the claims on behalf of its members. That said, whether an employee is a member of a union is a question of fact. Where there is a contest as to whether an employee is a member of a union, evidence would be required to settle that question...A recognition agreement is defined under section 2 of the *Labour Relations Act* as an agreement in writing made between a trade union and an employer, group of employers or employers' organisation regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers' organisation. It is a bilateral agreement between a trade union and an employer on the basis of which the trade union engages with the employer regarding the terms and conditions of employment of its members. It is not the basis upon which the trade union represents its members in court.."

29. I wholly adopt and reiterate the determination in the above case and apply the same to the case herein.

30. More importantly, it bears to note that pursuant to articles 22(2) and 258(2) (d) of the *Constitution*, it is evident that post the *Constitution* 2010, the principle of *locus standi* has been broadened and there is a wide latitude as to who can move the court to enforce the *Constitution* and the bill of rights.

31. Indeed, the Supreme Court in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR held as follows in regards to the question of locus standi:

> "(67) It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of locus standi, in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the courts, contesting any contravention of the bill of rights, or the Constitution in general. In *John Wekesa Khaoya v Attorney General*, petition No 60 of 2012; [2013] eKLR the High Court thus expressed the principle (paragraph 4):
>
> "...the *locus standi* to file judicial proceedings, representative or otherwise, has been greatly enlarged by the Constitution in articles 22 and 258 of the Constitution which ensures unhindered access to justice..."

32. In light of the foregoing, I am satisfied that the claimant union has *locus standi* to represent the grievants as it has in the instant case.

33. That said, I now move to determine whether the grievant's termination was unfair and unlawful.

Unfair And Unlawful Termination?

34. The legal parameters in determining whether an employee's termination from employment was fair are to be found under sections 41, 43, 45 and 47(5) of the *Employment Act*. The thread running through these provisions is that a termination ought to be substantively and procedurally fair.

35. In a nutshell, substantive fairness entails proof of reasons for which an employee was terminated, while procedural fairness is the process applied in effecting such termination. I will start with substantive fairness.

i. Substantive fairness

36. The reasons for which the 1st to the 6th grievants were terminated, can be discerned from their letters of termination which are worded uniformly. I will reproduce the same hereunder;

> " Re: termination of employment
>
> We refer to the above matter and your contract whereupon you were employed as a driver working on shifts as determined by the company and based on availability of work.
>
> It is with regret that I have to inform you that your role of driver with the company has become untenable. This decision has been made as a result of:
>
> The company's business fortunes have dwindled due to reduced passenger traffic and increased liabilities. As a result most of our buses are grounded making increasingly difficult for the company to sustain your services.
>
> This letter serves as notice of termination of your services, taking into account your notice period of one month as per you contract of employment. The notice takes effect from March 15, 2017. Please note that you are required to contact the office for payment of your outstanding dues, if any. I am happy to answer any queries or questions you may have.
>
> I want to take this opportunity to thank you for your service with the company and to wish you all the very best in your future endeavours.
>
> Yours sincerely,

Director

The Guardian Coach."

37. From the above letters, it is evident that the reason for the grievant's termination was based on availability of work. The respondent further cited dwindling business fortunes as a reason for the termination. Essentially, this places the reason for termination within the meaning of section 45(2) (b) (ii) of the *Employment Act*, which provides as follows: -

> " 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) .....; or
>
> (ii) based on the operational requirements of the employer; and..."

38. In essence, such termination is by way of redundancy. Section 2 of the *Employment Act* defines the term "redundancy" to mean "the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment".

39. Taking into account the provisions of section 45(2) (b) (ii) of the *Employment Act* as well as the statutory definition of the term redundancy, an employer is bound to prove that the redundancy situation was effected on valid and fair reasons that were based on its operational requirements. In terms of section 43(1), 45 (2) and 47(5) of the *Employment Act*, the burden of proof lies with the employer.

40. Revisiting the reasons given by the respondent for termination, it had the burden to prove its assertion that it was running low on business hence could not sustain the grievants in its employment. That is to say, it had to prove that the reason advanced was substantively justified in that it was fair, valid and related to its operational requirements.

41. In this case, the respondent did not produce any evidence in whatever form or manner, to support its assertion that it was running low on business. There was nothing besides the averments contained in the replying affidavit of Mr Ong'era. The reason for declaring redundancy was therefore not substantiated.

42. It is not in doubt that section 40(1) of the *Employment Act*, entitles an employer to declare a redundancy situation. Even so, the same should not be construed as a through pass for an employer to lay off employees without basis. It is for this very reason that the provisions of sections 43(1) and 45(2) (a) and (b) of the *Employment Act* come into play.

43. It is therefore my finding that the respondent in this case failed to discharge its evidentiary burden under sections 43(1) and 45(2) (a) and (b) of the *Employment Act* by proving that it had a valid and fair reason to terminate the employment of the grievants on grounds of redundancy.

44. Concluding on this issue, the following expression by Githinji JA (as he then was) in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* (supra), comes to mind:

> " Thus, redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer

and the termination is in accordance with a fair procedure. As section 43(2) provides, the test of what is a fair reason is subjective. The phrase "based on operational requirements of the employer" must be construed in the context of the statutory definition of redundancy. What the phrase means, in my view, is that while there may be underlying causes leading to a true redundancy situation, such as reorganization, the employer must nevertheless show that the termination is attributable to the redundancy – that is that the services of the employee has been rendered superfluous or that redundancy has resulted in abolition of office, job or loss of employment."

45. In view of the foregoing, I cannot help but find that the respondent has not proved that it had a justifiable reason to declare the 1st, 2nd, 3rd, 5th and 6th grievants, redundant.

46. With regards to the 7th grievant, the respondent has averred that he had voluntarily disengaged from service and absconded duty to avoid issues pertaining to impropriety at the place of work.

47. Despite the respondent's assertion, there was no evidence at all to prove the same hence the claim remained unsubstantiated.

48. Pursuant to sections 43(1) and 45(2) (a) and (b) of the *Employment Act*, the respondent was bound to prove that that indeed, the 7th grievant had absconded work as alleged. Without such evidence, the reason for termination cannot be determined to be fair and valid.

ii. Procedural fairness

49. The requirements of procedural fairness in respect of redundancy, are to be found under section 40(1) of the *Employment Act*. The provision is in the following manner:

a. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

b. where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

c. the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

d. where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

e. the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

f. the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

g. the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service.

50. It is noteworthy that the aforestated conditions from (a) to (g) are mandatory and it is not open for the employer to cherry pick and apply the same selectively.

51. The first requirement is on issuance of notice. In this regard, the respondent avers that it issued notices of the redundancy to the 1st to 6th grievants. Indeed, the letters of termination dated March 10, 2017, issued to the said grievants provide for one months' notice. Further, the claimant union conceded before court that the grievants were each paid one month's salary in lieu of notice. As a matter of fact, the respondent exhibited discharge vouchers in which the grievants acknowledged receiving payment of money in respect of notice pay.

52. Therefore, I am led to conclude that the respondent complied with the provisions of section 40(1)(b) and (f) of the *Employment Act*.

53. Section 40(1) (c) of the *Employment Act* requires an employer to have regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy. This is basically the selection criteria that ought to be followed by an employer in effecting a redundancy process.

54. On the issue of the selection criteria, the respondent did not lead evidence, let alone suggest that it applied a particular criterion in earmarking the grievants for redundancy. It is therefore evident that there was no compliance in regards to the provisions of section 40 (1) (c) of the *Employment Act*.

55. The last requirement is in regards to severance pay. Pursuant to section 40 (1) (g) of the *Employment Act*, an employer is required to pay an employee declared redundant, severance pay at the rate of not less than fifteen days' pay for each completed year of service. In this case, there is no evidence on record to prove that the respondent paid the grievants severance pay upon being declared redundant.

56. The total sum of the foregoing is that the court finds that the respondent substantively failed to prove that it complied with the procedural requirements stipulated under section 40 (1) of the *Employment Act*.

57. As I have stated herein, compliance with the provisions of section 40 (1) of the *Employment Act* is mandatory and having found that the respondent failed to prove compliance, the grievants' termination was procedurally unfair.

58. It is also instructive to note that the respondent has averred that the grievants absconded duty upon receiving the notices of termination. Be that as it may, it did not tell the court what steps it took upon realizing that the grievants had absconded duty. This applies to the respondent's contention against the 7th grievant.

59. Seeing that the grievants were serving notices, they were still employees of the respondent and were subject to its command and disciplinary control. As a matter of fact, abscondment of duty is a ground for summary dismissal under section 44 (4) (a) of the *Employment Act*. If that were the case, then nothing stopped the respondent at that juncture from invoking the provisions of section 41 of the *Employment Act* which require an employer to notify an employee of the intended termination. In this regard, an employee is to be notified of the reasons thereof in a language he or she understands and in the presence of another employee or a shop floor union representative.

60. Despite the respondent citing the grievants for abscondment of duty, it failed demonstrate the steps it took against them, for instance requiring them to explain their whereabouts and show cause why they should not be terminated from employment for abscondment of duty. In absence of evidence to that effect, it is therefore apparent that the respondent failed to prove that it complied with the requirements of fair process.

61. The total sum of my consideration is that the termination of the grievants did not met the legal threshold hence was unfair and unlawful.

62. Having found as such, I now turn to consider the reliefs available to the grievant.

Appropriate Reliefs

63. Having found that the grievants' termination was unfair and unlawful, I will award them compensatory damages bearing in mind their respective years of service with the respondent.

64. Further, the 1st, 2nd, 3rd, 5th and 6th grievants are awarded severance pay as it is their entitlement under section 40 (1) (g) of the *Employment Act*.

65. The 1st, 2nd, 3rd, 5th and 6th grievants are further awarded salary for 10 days for the month of March, 2017, as the respondent did not prove that it paid the same.

66. The claim for salary underpayment is allowed as it is evident that the grievants were paid below what was stipulated in the relevant minimum wage order which is Kshs 24,719.50 noting from their respective contracts of employment, that they were based in Nairobi.

Orders

67. In the end, I enter judgment in favour of the claimant against the respondent and the court makes the following award:

1st Grievant

a. Compensatory damages in the sum of Kshs 113,709.60 which sum is equivalent to 4 months of his gross salary calculated at the rate of Kshs 28,427.40 per month (Kshs 24,719.50 plus house allowance at the rate of 15% hence Kshs 3,707.90).

b. Underpayment in the sum of Kshs 4,719.50 for 22 months totaling the sum of Kshs 103,829.00

c. Salary for 10 days in March, 2017 being Kshs 947.58 per day totaling the sum of Kshs 9,475.80.

d. Severance pay for 2 years being Kshs 28,427.40.

e. The total award is Kshs 255,441.80.

f. Interest on the amount in (e) at court rates from the date of judgement till payment in full.

2nd Grievant

a. Compensatory damages in the sum of Kshs 85,282.20 which sum is equivalent to 3 months of his gross salary calculated at the rate of Kshs 28,427.40 per month (Kshs 24,719.50 plus house allowance at the rate of 15% hence Kshs 3,707.90).

b. Underpayment in the sum of Kshs 4,719.50 for 16 months totaling the sum of Kshs 75,512,00.

c. Salary for 10 days in March, 2017 being Kshs 947.58 per day totaling the sum of Kshs 9,475.80.

d. Severance pay for 1 year being Kshs 14,213.70.

e. The total award is Kshs 184,483.00.

f. Interest on the amount in (e) at court rates from the date of judgement till payment in full.

3rd grievant

a. Compensatory damages in the sum of Kshs 142,137.00 which sum is equivalent to 5 months of his gross salary calculated at the rate of Kshs 28,427.40 per month (Kshs 24,719.50 plus house allowance at the rate of 15% hence Kshs 3,707.90).

b. Underpayment in the sum of Kshs 4,719.50 for 22 months totaling the sum of Kshs 103,829.00

c. Salary for 10 days in March, 2017 being Kshs 947.58 per day totaling the sum of Kshs 9,475.80.

d. Severance pay for 3 years being Kshs 42,641.10.

e. The total award is Kshs 298,082.80.

f. Interest on the amount in (e) at court rates from the date of judgement till payment in full.

5th grievant

a. Compensatory damages in the sum of Kshs 85,282.20 which sum is equivalent to 3 months of his gross salary calculated at the rate of Kshs 28,427.40 per month (Kshs 24,719.50 plus house allowance at the rate of 15% hence Kshs 3,707.90).

b. Underpayment in the sum of Kshs 4,719.50 for 16 months totaling the sum of Kshs 75,512,00.

c. Salary for 10 days in March, 2017 being Kshs 947.58 per day totaling the sum of Kshs 9,475.80.

d. Severance pay for 1 year being Kshs 14,213.70.

e. The total award is Kshs 184,483.00.

f. Interest on the amount in (e) at court rates from the date of judgement till payment in full.

6th grievant

a. Compensatory damages in the sum of Kshs 85,282.20 which sum is equivalent to 3 months of his gross salary calculated at the rate of Kshs 28,427.40 per month (Kshs 24,719.50 plus house allowance at the rate of 15% hence Kshs 3,707.90).

b. Underpayment in the sum of Kshs 4,719.50 for 16 months totaling the sum of Kshs 75,512.00.

c. Salary for 10 days in March, 2017 being Kshs 947.58 per day totaling the sum of Kshs 9,475.80.

d. Severance pay for 1 year being Kshs 14,213.70.

e. The total award is Kshs 184,483.00.

f. Interest on the amount in (e) at court rates from the date of judgement till payment in full.

7th grievant

a. Compensatory damages in the sum of Kshs 85,282.20 which sum is equivalent to 3 months of his gross salary calculated at the rate of Kshs 28,427.40 per month (Kshs 24,719.50 plus house allowance at the rate of 15% hence Kshs 3,707.90).

b. Underpayment in the sum of Kshs 4,719.50 for 16 months totaling the sum of Kshs 75,512.00.

c. The total award is Kshs 160,794.20.

d. Interest on the amount in (c) at court rates from the date of judgement till payment in full.

68. As the employment relationship has not been disputed, the grievants are entitled to certificates of service in accordance with section 51 of the *Employment Act*.

69. The respondent shall bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF NOVEMBER, 2022.

STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Ndege

For the Respondent Mr. Nyambenga

Court Assistant Abdimalik Hussein

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 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.

STELLA RUTTO

JUDGE