



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 1066 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

PHYLIS WANGARI NGANGA..... CLAIMANT

VERSUS

INTRA AFRICA ASSURANCE COMPANY LIMITED RESPONDENT

JUDGEMENT

The Claim herein was filed by the Claimant against her former employer, the Respondent on 27th June 2018. She avers that she was employed by the Respondent on 2nd January 2005 as an Office Assistant/Secretary, and was based in the Eldoret Branch. Her monthly salary was for Kshs.42,252.00. That the Claimant worked diligently and competently until 2nd March 2018 when her employment was unlawfully, unfairly and unprocedurally terminated by the Respondent. Prior to this, the Claimant was issued with a Certificate of Service in recognition of her loyal and faithful service.

The Claimant avers that she was on a 2-day sick off when she received a call from her colleague that she had been terminated. The reason for termination as per the letter was that the Respondent had lost confidence in her, which meant she was terminated on grounds of misconduct. No particulars and/or explanation was given. She was neither taken through the due process nor granted a hearing on the same.

The Respondent made payments as terminal benefits amounting to Kshs.174,524/= which although received, the Claimant avers was not the correct amount given that the calculations were based on her basic salary and not gross pay. On 31st May 2018, the Claimant caused a demand letter and notice of intention to sue to be sent to the Respondent upon which the Respondent through its advocates responded that the Claimant was terminated on 28th February 2018 following a change of the Respondent’s operational model which rendered her redundant. However, the Respondent had not issued a notice of redundancy giving the reasons for and the extent of redundancy to the Claimant and the local labour office as required under Section 40(1) of the Employment Act.

She prays for orders against the Respondent as follows: -

- a) A declaration that the said termination of the Claimant by the Respondent, by way of misconduct or redundancy was unfair and unlawful.
- b) An order compelling the Respondent to pay the Claimant her terminal dues including maximum compensation, amounting to **Kshs.979,310.25** as tabulated below
 - i. 3 month’s salary in lieu of notice Kshs.126,756.00
 - ii. Leave allowance..... Kshs.31,457.00
 - iii. Leave days outstanding (28 days) Kshs.39,435.25
 - iv. Severance pay ((42252/30) x 15 x 13 years)..... Kshs.274,638.00
 - v. 12 months’ salary as compensation..... Kshs.507,024.00

Total Kshs.979,310.00

c) Costs of the suit and interest.

The Claimant avers that towards the end of 2017, the Respondent made certain changes that adversely affected the employees, including the claimant. That the leave days were reduced from 28 to 24 days. That again in January 2018, leave allowance was scrapped off without notice or consultation.

Respondent's Case

The Respondent filed a Memorandum of Reply on 21st August 2020 together with the Respondent's Witness Affidavit sworn by Priti Patel, the Respondent's Operations Manager. It avers that there was no written agreement between the Claimant and itself with respect to her employment as the Office Assistant/Secretary but her Performance Appraisal forms which clearly indicated her job title and employment status were on record.

Ms. Patel further avers that contrary to the Statement of Claim, the Claimant failed to perform her duties diligently and to the standard required of her by the Respondent which justified her termination. That her termination was on account of loss of confidence and not redundancy as claimed by the Claimant. She denied that the Claimant was not taken through the due process and given a fair hearing.

On leave days and allowances, the Respondent avers that in 2017, its Board of Directors reached and approved the inevitable decision to reduce leave days and allowances which decision was implemented through its Human Resource Policy. That the leave allowance was discontinued to allow for implementation of performance based scheme. These changes were brought to the attention of all staff by way of an internal memorandum dated 1st February 2018.

The Respondent denies that the terminal dues paid out to the Claimant were not correct and states that the amounts paid were properly computed as per its human resource policy.

With the consent of the parties, the court directed that the matter be disposed of by way of written submissions in view of COVID-19 restrictions on open court hearings.

Claimant's Submissions

The claimant relied on her memorandum of claim, witness statement dated 18th June 2018 and witness affidavit sworn on 25th August 2020 as evidence. The issues outlined in the submissions were:

1. Was the claimant declared redundant or was she terminated for gross misconduct?

The claimant produced two contradictory letters that she had received from the Respondent and its advocates. One was the letter of termination dated 1st March 2018 and the second was a letter dated 14th June 2018 in response to the demand letter her advocates had sent to the Respondent two months after her termination.

The claimant submitted that, there was no dispute that the termination was vide the letter dated 1st March 2020. However, she argues that she was given no reason when and how the alleged loss of confidence occurred or what she did to warrant her termination. That due process as laid down in the Employment Act was not adhered to.

The claimant relied on the case of **Joseph Ouko Lwambe v Royal Garment Industries EPZ Limited (2018) eKLR** which places the burden of proving unfair termination or wrongful dismissal on the employee while the burden of justifying the grounds for the termination of employment or wrongful dismissal rests on the employer. It also describes an unfair termination as one where no reasons were given or because the employee was not afforded a hearing as required by section 41 of the Act. The reasons can be various based either on failure to comply with the statute or the terms of the actual employment contract.

The claimant further relied on the case of **Walter Ogal Anuro v Teachers Service Commission (2013) eKLR** where the Court held that for termination to pass the fairness test, it must be shown that there was not only substantive justification for termination but also procedural fairness. The claimant further relied on the case of **David Njoroge Muiru v Elsa Limited (2014) eKLR** where the court found that dismissal under Section 41 of the Employment Act where a reason for removal had not been shown to have been established to exist at the time of termination was unfair.

On redundancy, the Claimant indicated that the Respondent did not adhere to the provisions of Section 40 of the Employment Act, hence rendering it unfair. That in addition, the Respondent had not proved that the claimant was taken through the required procedure. It was submitted that there are no minutes of any meeting held regarding the redundancy nor is there a redundancy notice reflecting the same.

The Claimant relied on the case of **Godfrey Andabwa Ashiono v Coconut (K) Limited (2019) eKLR** where the court held that despite being recognised as a legitimate mode of separation, redundancy must be carried out in accordance with the mandatory procedure set out under Section 40 of the Employment Act, 2007. The claimant urged the court to find the redundancy unfair where the Respondent had failed to issue the statutory one (1) month redundancy notice as required by the Employment Act. The same was held in **Paul Ngeno v Pyrethrum Board of Kenya Limited (2013) eKLR**.

The claimant further relied on case of **Angela Shiukuru Ilondanga v Airtel Networks Kenya Limited (2018) eKLR** where the court placed reliance on the Court of Appeal decision in **Thomas De La Rue (K) Ltd v David Opondo Omutelema (2013) eKLR** in which the court stated that:

“It is quite clear to us that section 40(a) and 40(b) provide for two different kinds of redundancy notifications depending on whether the employee is or is not a member of a trade union. Where the employee is a member of a union, the notification is to the union and the local labour officer at least one month before the effective redundancy date. Where the employee is not a member of the union, the notification must be in writing and to the employee and the local labour officer. Section 40(b) does not stipulate the notice period as is the case in 40(a), but in our view, a purposive reading and interpretation of the statute would mean the same notice period is required in both situations. We do not see any rational reason why the employee who is not a member of a union should be entitled to a shorter notice.”

2. Should the claimant be paid reliefs prayed for?

The Claimant argues that despite being paid her terminal dues amounting to Kshs.174,524/= on 26th April 2018, the amounts were not the correct final dues or terminal benefits and or amounts for terminal benefits as the calculations were based on her basic salary and not gross pay. She was not given a copy of the contract of employment. She relied on Section 10(7) of the Employment Act which places an evidential burden on the employer to produce in legal proceedings a written contract of employment specifying the prescribed particulars, terms and conditions of employment to prove and disprove an alleged term of employment. She further relied on Section 74 of the Act which requires an employer to produce the records in cases of legal challenges.

The claimant submitted that the claims that were made in the demand letter dated 31st May 2018 were not contested by the Respondent in terms of calculations in the advocate’s response on 14th June 2018.

On notice, the Claimant relied on **Mary Nyawira Karimi v Pure Circle (K) Limited (2018) eKLR** where the court held:

“Even where an employer intends to pay for the notice period, the notice of intended redundancy must issue to the employees noting the extent and reasons leading to the same. It does not simply suffice that an employer picks on a specific employee and proceeds to attach a reason of redundancy for termination of employment...”

She further relied on the case of **Judith Atieno Owuor v Sameer Agriculture and Livestock Limited (2020) eKLR** where the court found the Claimant’s termination was unlawful and unfair and was thus entitled to compensation as laid down under section 49 of the Employment Act based on the facts surrounding her dismissal, the failure of the Respondent to pay her terminal benefits, her length of service and the value of total compensation payable to her.

The claimant further claimed the costs of the claim and interest from the date of filing of the suit.

Respondent’s Submission

The Respondent filed submissions in response to the Claimant’s submissions. It relied on the Memorandum of Reply dated 21st October 2020, the Respondent’s witness affidavit and the documents annexed to the Respondent’s witness affidavit.

The respondent argues that the leave days of all members of staff were reviewed by its Board of Directors from 28 days to 24 days. All employees were notified of the changes and its Human Resource Policy revised to reflect the change. It submits that the Claimant had not raised a complaint on the revision when it occurred which resulted in the reduction of her leave days. It was therefore argued that the issue being raised in the claim is an afterthought.

Further, the Respondent submitted that an internal memorandum to all staff was issued communicating that from 1st January 2018, the component of leave allowance was discontinued to allow for the implementation of the performance based bonus scheme. It submitted that the claimant raised no issue with the new change at the time and only brought it in the claim as an afterthought.

The Respondent submitted further that the Claimant’s services were terminated vide the termination letter dated 1st March 2018 with her last working day being 2nd March 2018. The reason for termination as per the letter was due to the loss of confidence.

Regarding her final dues, the Respondent submitted that the Claimant did not dispute the computation of the dues and it was only raised in the Claim as an afterthought. It further submitted that any further claims being made amount to approbating and reprobating, a conduct frowned upon by the Court as stated in the case of **Republic v Institute of Certified Public Secretaries of Kenya ex parte Mundia Njeru Geteria (2010) eKLR**.

The Respondent relied on the court’s decision in the case of **Simon Karuga Waweru v Twiga Stationers Limited (2019) eKLR** in which it was held that where the Claimant signed accepting her final dues with no further claim whatsoever, she was disentitled from award of any further benefits.

The Respondent further argued that the termination was in line with its Human Resource manual under the separation notice which provides that the company could terminate the services of an employee by giving one month’s notice in writing. It relied on the court of appeal decision in **Kenyatta University & Another v Fred Obare (2017) eKLR** where the court stated that an employment relationship is based on mutual trust and confidence and where confidence is lost by one party, then it is a justification for termination of an employee’s services.

Payment Claims

The Respondent argued that claims for 3 month’s salary in lieu of notice failed on grounds that its Human Resource Manual provides for one

month's notice and not 3 months as claimed by the Claimant and that the 1 months' notice was computed as item 3 in the Claimant's computation of her final dues and paid out to her which amounts she had admitted receiving.

On leave allowance, the Respondent argued that her claim failed for the reason that it was discontinued as per the internal memorandum dated 1st February 2018. Regarding leave days outstanding, the Respondent had reduced the days to 24 and the Claimant's claim for leave days outstanding was not payable because it was computed under item 4 in the Claimant's computation of final dues and paid out to her which she admitted receiving.

Severance pay was also not payable as the Respondent contended that it was computed as item 2 in the claimant's computation of final dues and paid out to her which she admitted receiving. On the 12 months' salary as compensation, the Respondent argued that it failed on grounds that the termination of the Claimant's services was fair.

In conclusion, the Respondent submitted that the court ought to dismiss the claim with costs to the Respondents.

Claimants supplementary submissions

In response to the Respondent's memorandum of reply, the witness affidavit sworn on 21st October 2020 together with the Respondent's written submissions, the Claimant filed supplementary submissions on 2nd November 2020. She responded as follows:

On termination, the Claimant stated that the Respondent's averment that the Claimant failed to perform her duties diligently and to the standard required of her by the Respondent was contradictory to its position in the response to the demand letter where it was stated that the claimant's employment was terminated on redundancy grounds. In addition to this, the Respondent had not made any attempts to repudiate or explain the contradiction in its position and responses.

The claimant therefore argued that the Respondent was lying to and misleading the court because if there was no redundancy, then the Respondent was unable to explain why the company was paying the Claimant severance pay. She therefore urged the court to hold that the claimant was declared redundant in the absence of a proper explanation of the aforesaid letter and the aforesaid payment of severance pay.

The claimant further contended that even if the court was to assume that the claimant was terminated due to poor performance, the said termination would still be unfair for want of a valid reason and for want of a substantive process as per sections 41 and 45 of the Employment Act. This is because the instances of poor performance were not given and in making reference to her performance appraisals done in 2009, 2013 and 2014. The comments from the above appraisals indicated that her overall performance was very good. The Respondent, in the 2009 appraisal stated that "... her work is outstanding as the only lady in the Eldoret branch she does a lot even in welcoming the few customers." No appraisals were done from 2015 to 2018 to indicate any change in her work. Therefore, the Claimant argued that this was not the picture of a poor performer rather a very good if not excellent and outstanding employee.

The Claimant added that the Respondent had neither shown that the Claimant did not adhere to the performance management policy nor that it took any efforts to help her improve her performance, if need be, based on the same policy. In addition, the Claimant submitted that due process was not followed despite the Respondent's claim that the claimant was afforded a fair hearing and that due process was followed leading to her termination.

The case relied on in the above was **Banking Insurance and Finance Union v National Bank of Kenya Limited (2020) eKLR** which laid down the termination procedure and the reasons. On poor performance, the claimant relied on **Jane Samba Mukala v Ol Tukai Lodge Limited Industrial Cause Number 823 of 2010; (2010) LLR 255 (ICK) (September, 2013)** where the court observed that the employer is placed at a high level of proof as outlined in section 8 of the Act. The employer must also show that in arriving at the decision of noting the poor performance of an employee, they had in place an employment policy or practice on how to measure good performance as against poor performance. Beyond evaluation and before termination on the ground of poor performance, an employee must be called and an explanation on their poor performance shared where they would be allowed to defend themselves or given an opportunity to address their weaknesses. In the event a decision to terminate on poor performance is made, an employee must be called again and in the presence of an employee of their choice, the reasons for termination shared with them. The judge therefore found the termination of the employment of the grievant unfair both procedurally and substantively. This was also held in **Kenya Science Research International Technical and Allied Workers Union (KSRTAWU) v Stanley Kinyanjui and Magnate Ventures Ltd (Cause No. 273 of 2010)**.

Further, in **Lilian O. Ochang v Kenol Kobil Limited (2015) eKLR**, the court held that disciplinary action based on poor performance must be preceded by a capability hearing, within the parameters set out in Section 41 of the Employment Act.

The Claimant argued that the reduction in leave days and the scrapping of the allowance was not communicated to her and that her consent was not sought or obtained prior to making the said changes. In addition, she contended that it was the duty of the Respondent to reduce the employment contract into writing as per section 7 and 8 of the Employment Act. That there ought to have been a statement of Initial Particulars as per sections 10 and 11 of the Act. The claimant was not given any and that the alleged notice to all employees on the said reductions and or changes was not exhibited by the Respondent.

Analysis and determination

Having carefully considered the claim, the parties' evidence together with the submissions, and the authorities cited; the issues for determination before this Court are:

1. Whether it was termination or redundancy

2. Whether the termination was valid and lawful

3. Whether the Claimant is entitled to the reliefs sought

1. Whether it was termination or redundancy

There are two grounds of termination on the claimant's employment on record, one terminating the client on grounds of no confidence and the other on grounds of redundancy.

The claimant's initial letter of termination dated 1st March 2018 stated:

"Miss Phylis Wangari Ng'ang'a *1st March 2018*

P. O BOX 43241-00100

NAIROBI

Dear Emily,

RE: TERMINATION OF EMPLOYMENT

The above subject and your appointment effective 1st April 2006 refers.

The Company has deemed it untenable for you to continue working with us due to loss of confidence. Consequently, the company will be paying you a one (1) month's salary in lieu of the contractual 30 days' notice so that your last working day will be 2nd March 2018.

In appreciation of the service rendered to the company, we shall also pay you a one half (½) month's basic salary for every year worked.

Please clear with HR & Administration department by completing the necessary clearance forms to enable us to compute your terminal dues.

On behalf of Intra Africa Assurance, I take this opportunity to thank you for your input and contribution during the period of service and also to wish you the very best in your future endeavours.

Yours Faithfully,

SIGNED

Archibald Githinji

Chairman"

The Claimant sought legal advice which led to the issuance of a demand letter to the Respondent on 31st May 2018 upon which a response was sent by its advocates on 14th June 2018 as follows:

"REF: DOR/E&LR /M.K. O/06/18 IAA1.6 14 June 2018

Dear Sir,

RE: TERMINATION OF PHYLIS WANGARI NG'ANG'A ON 28TH FEBRUARY 2018

WE refer to your letter dated 31st May 2018 addressed to our client, Intra Africa Assurance Company Ltd, on whose instructions we respond to the said letter hereunder.

Your client's employment was lawfully terminated on 28th February 2018 in accordance with provisions of her contract of employment and the Employment Act, 2007 following a change in the company's operational model, which was communicated to your client in advance; your client's position became redundant.

Throughout the redundancy process, your client was fully aware of the changes ongoing in the company, intended declaration of redundancy and reasons surrounding the redundancy. Our client provided all the necessary information and support to your client through the process.

Our client hereby denies any liability for wrongful and/or unlawful termination as alleged and consequently declines to engage in any negotiations as to quantum of damages payable which have no factual or legal basis. Your client was paid her terminal dues and computed the clearance process in full and final settlement of all terminal dues.

Take NOTICE that our instructions hereby are to strenuously oppose any precipitate legal proceedings and our client will hold yours wholly liable for the costs thereby incurred and other consequences ensuing therefrom.

Yours Faithfully,

ORARO & COMPANY ADVOCATES

SIGNED

G. OGALO-OMONDI

georgina@oraro.co.ke”

It is evident that even the Respondent was not sure whether the termination of the claimant’s employment was due to gross misconduct or as a result of redundancy. The breakdown of the claimant’s terminal dues is as follows: -

“PHYLLIS WANGARI NGANGA

FINAL DUES

Item	Kshs.
Basic Salary	31,457
<u>No. of completed years of service</u>	<u>13 years</u>
<u>Total Severance based on half of basic pay (31,457/2) x 13 years</u>	<u>204,471</u>
Add one month’s gross pay in lieu of notice	42,795
Add accumulated leave days not taken – 24 days	25,166
24 x (31475/30)	272,432
Gross Pay	272,432.00
NSSF Contribution	0.00
Taxable Pay	272,432.00
Personal Relief	1,408.00
Insurance Relief	0.00
PAYE	74,385

	.85
<i>NHIF Contribution</i>	0.00
<i>Net Pay</i>	198,04 6.15
<i>Less Premium due to Clients</i>	<u>23,523</u> <u>.00</u>
TOTAL DUES	174,52 4

Having been paid severance pay, it is clear that the intention of the Respondent was to declare the claimant redundant. It however did not comply that the statutory procedure and instead termed the unlawful redundancy a termination.

2. Whether the termination was valid and lawful

The Respondent stated that the Claimant failed to perform her duties diligently and to the standards required of her which led to her termination on loss of confidence. This amounts to gross misconduct as provided for under Section 41 of the Employment Act. For termination to be valid and lawful on grounds of misconduct, the Respondent must prove that there were valid reasons in terms of Section 43 of the Employment Act and fair procedure in terms of Section 41 of the Act. Where there is an internal disciplinary policy, the employer must in addition prove that it complied with its own internal disciplinary process. The Respondent did not comply with Section 41 of the Act.

Was the Claimant given sufficient reason or reasons for termination as per the Act?

The Court in **Walter Ogal Anuro v Teachers Service Commission (2013) supra** did provide a fairness test to prove whether the termination was lawful and valid. While the Respondent might have had substantive justification for termination, it did not comply with the procedural requirements to legitimise its decision.

In **Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] eKLR** Mbaru J. held:

“Section 41 of the Employment Act is couched in mandatory terms. Where an employer fails to follow these mandatory provisions, whatever outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing in the presence of their union representative or in the presence of a fellow employee of their own choice. The situation is dire where such an employee is terminated after such a flawed process without a hearing as such termination is ultimately unfair. The employee must be informed through a notice as to the charges and given a chance to submit a defence followed by a hearing in due cognisance of the fair hearing principles as well as natural justice tenets.”

The court further proceeded to lay down the procedure that guides an employer before it can exercise its right to terminate.

In addition, the appraisal forms furnished prove that the claimant’s performance was good enough to warrant a certificate of long service which recognized her loyal faithful service. Had the Respondent taken issue with her performance, the right thing to do was to bring it to her attention and allow room for improvement before the process of termination was initiated. The guidelines of assessing performance have been laid down by the decision of this court in **Banking Insurance and Finance Union v National Bank of Kenya Limited [2020] eKLR**.

Despite arguing that the Respondent had followed the required procedure, this court has not been furnished with evidence to prove the same.

From the foregoing, I find that the Claimant’s termination was unfair and unlawful both procedurally and substantively.

3. Whether the Claimant is entitled to the reliefs sought

The Claimant sought the following reliefs:

- i. 3 month’s salary in lieu of notice.....Kshs.126,756.00
- ii. Leave allowance..... Kshs.31,457.00
- iii. Leave days outstanding (28 days) Kshs.39,435.25
- iv. Severance pay ((42252/30) x 15 x 13 years)..... Kshs.274,638.00
- v. 12 months’ salary as compensation.. Kshs.507,024.00

Total Kshs.979,310.00

She argues that despite being given her terminal dues, the amounts tabulated were erroneous. The Respondent on the other hand argued that the claimant had received her dues as owed to her and she did not raise an issue during the point of collection. This court has not been furnished with an employment contract for reference purposes and to that note, the court shall use the provisions of the Employment Act.

The claimant's letter of termination indicated that she would be paid one (1) month's salary in lieu of the contractual 30 days' notice and a one half (½) month's basic salary for every year worked in appreciation of the service rendered to the company.

On 26th April 2018, the Claimant's final dues were tabulated as follows:

"PHYLLIS WANGARI NGANGA

FINAL DUES

Item	Kshs.
<i>Basic Salary</i>	31,457
<i>No. of completed years of service</i>	13 years
<i>Total Severance based on half of basic pay (31457/2) x 13 years</i>	204,471
<i>Add one month's gross pay in lieu of notice</i>	42,795
<i>Add accumulated leave days not taken – 24 days</i>	25,166
<i>24 x (31457/30)</i>	272,432
<i>Gross Pay</i>	272,432.00
<i>NSSF Contribution</i>	0.00
<i>Taxable Pay</i>	272,432.00
<i>Personal Relief</i>	1,408.00
<i>Insurance Relief</i>	0.00
<i>PAYE</i>	74,385.85
<i>NHIF Contribution</i>	0.00
<i>Net Pay</i>	198,046.15
<i>Less Premium due to Clients</i>	<u>23,523.00</u>
TOTAL DUES	174,523.15

Despite her termination being unfair, this court dismisses the Claimant's claim for salary in lieu of notice, leave allowance, leave days accrued and severance pay on grounds that she had been paid the same by the Respondent as indicated above. The claimant did not prove that she protested the reduction of leave days and leave allowance.

With respect to compensation, the Claimant is entitled to compensation for unfair termination under Section 49 of the Employment Act. Taking into account the provisions of Section 49(4) and specifically the circumstances under which her employment was terminated, her duration of work at the Respondent and her work ethic as shown in her performance appraisals, I award her 8 month's salary as compensation in the sum of **Kshs.338,016.00**.

The Claimant be issued with a certificate of service as provided under Section 51 of the Employment Act.

The Claimant is awarded costs of the suit and interest shall accrue at court rates from date of judgment till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 29th DAY OF JANUARY 2021

MAUREEN ONYANGO

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.

MAUREEN ONYANGO

JUDGE