



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

(Before Hon. Lady Justice Maureen Onyango)

CAUSE NO. 861 OF 2019 AS CONSOLIDATED WITH
KISUMU CMELRC 408 OF 2019

KENYA UNION OF COMMERCIAL FOOD AND

ALLIED WORKERS.....1ST CLAIMANT

CLAIMANTS IN KISUMU CHIEF MAGISTRATES COURT IN

EMPLOYMENT CASE NO. 408 OF 2019.....2ND CLAIMANT

VERSUS

CHOPPIES ENTERPRISES KENYA LIMITED.....1ST RESPONDENT

MR. PARIN BHARATKUMAR PATEL.....2ND RESPONDENT

MR. ASHWIN KSHEMENDRAN.....3RD RESPONDENT

MR. MITHUN CHULLIPARAMBIL GOPALAKRISHNAN....4TH RESPONDENT

JUDGMENT

The 1st Claimant, the Kenya Union of Commercial, Food and Allied Workers filed a Memorandum of Claim against the Respondents on 19th September, 2020. The 2nd Claimants, being 22 Claimants, filed Memorandum of Claim on 8th November 2019 and amended on 16th December, 2019 against the 1st Respondent, in Kisumu Chief Magistrates Employment and Labour Relations Court Cause No. 408 of 2019. On 5th May, 2020 the Court ordered that CMELRC 408 of 2018 be consolidated and heard under Cause 861 of 2019.

Cause 861 of 2019

The Claimant a trade union registered in Kenya to represent employees in the sectors set out in its Constitution, avers that on 31st August, 2019 the 1st Respondent issued a redundancy notice to the Claimant and the Ministry of Labour which affected 188 employees. It avers that on 15th November, 2019, the 1st Respondent issued another redundancy notice targeting a further 543 employees.

It avers that its efforts to secure payments of redundancy benefits for the employees declared redundant have been futile and that there are no plans to pay the redundancy benefits yet the affected employees are already out of employment.

The Claimant seeks the following reliefs:

(i) The Court do order the Respondent to pay the affected employees:-

(a) Leave travelling allowance where applicable

(b) One month's pay in lieu of notice

(c) 18 days severance pay for each year of service totalling to Kshs. from their own funds or from the deposited funds or from the bank as per the Exhibit 6 attached to the claim.

(d) Pending leave days.

(ii) That the Respondents be ordered to calculate notice pay for the remaining employees and any other benefit due and not paid and avail the same in court for payment.

(iii) Consider awarding employees compensation as the Court may consider under section 49 and 50 of the Employment Act, 2007 for the unreasonable delay and subjecting employees to unlawful suffering.

(iv) Order the Respondents herein to clear all outstanding terminal benefits due and owing to 46 employees who have exited employment and whose benefits have not been cleared.

(v) Order the Respondent to pay redundancy benefits to all the remaining 233 employees should they be declared redundant.

(vi) Order the Respondent to pay costs of the suit to the Claimant.

(vii) In default interest at court rates follow.

(viii) Any other relief this Court may deem fit to grant to meet the ends of justice.

(ix) Direct that the 2nd -4th Respondents should not access their passports and travelling documents until after settling all benefits due and owing to employees.

Cause No. 408 of 2019

The Claimants aver that in September 2019 the Respondent terminated their services on the basis of redundancy. They aver that according to Clauses 19(d) and 30 of the Collective Bargaining Agreement they were entitled to both service pay at the rate of 18 days' pay for each completed year of service and gratuity at the rate of 18 days' pay for each completed year of service.

They aver that Clause 1B of the Collective Bargaining Agreement provides that all the employees were to receive a salary increment at the rate of 8% from 1st September, 2018 yet the Respondent only implemented the changes in October 2018 thus the Respondent owes the applicants the September 2018 increment. They further aver that the Respondent failed to implement the changes on house allowance after the increase in basic pay.

They contend that the Respondent never provided them with 1 kilogram of soap being the equivalent of Kshs.157 per month pursuant to clause 16 of the CBA. It also failed to pay leave allowance, travelling allowance and one month's salary in lieu of notice. They however aver that they were paid Kshs.1,573,322 which amount is less by the contested sum of Kshs.1,246,452.

Their case is therefore that their termination was not in compliance with the Employment Act for reasons of failure to issue a notice as required by the law; failure to make payments as required by the law and failure to involve all the parties before the termination as required by law.

The Claimants seeks the following prayers:

- a) Payment as prayed in the total sum of Kshs.10,562,444.40
- b) Certificate of Service
- c) Interest on (a) above from September 2019 until payment in full at court rates.
- d) Costs of the suit.
- e) Any other or further relief that the court may deem just and fit to grant.

Respondent's case

The 1st Respondent filed Memorandum of Response on 20th December, 2019 in Cause 408 of 2019. It avers that the suit as drawn and filed is anchored on non-disclosure of material facts, suppression of facts, misrepresentation and downright fraud.

It avers that the Claimants are untruthful in stating that they did not receive any monies or terminal dues after the redundancy. It avers that on 7th October, 2019 there were several meetings with the Union which culminated into an agreement to pay terminal benefits on redundancy. It avers that after a meeting held on 11th September 2019 and further meetings, it made payments to the Claimants amounting to a net of

KShs.686,485 after statutory and Sacco deductions.

It avers that the workings relating to the Claimants terminal dues as agreed with the union were for every employee. It contends that it is fraudulent for the Claimants to seek or demand for additional amounts over and above the amounts worked out and agreed on by the Union and the Claimants and paid by the Respondent. It disputes the tabulation of dues by the Claimants and avers that the same violate Section 49(c) of the Employment Act.

It contends that it is fraudulent for Said Abuka to claim redundancy benefits whilst he left employment on termination on gross misconduct after a disciplinary hearing. It contends that it has several branches in Kenya and has a solid asset base in Kenya and should not be condemned unheard and forced to deposit funds that it is using to run its business in Kenya.

It avers that the Memorandum of Claim raises no reasonable claim against it.

The Claimants filed a Reply to the Memorandum of Response on 13th January, 2020. They reiterated that the Respondent has not fully settled their terminal dues as provided in the Collective Bargaining Agreement. They further deny lying on oath and aver that they have not been paid their dues. They allege that if any payments were made, the same were not as provided in the CBA.

The suit was disposed of by way of written submissions.

1st Claimant's submissions

The 1st Claimant submitted that there is no evidence that the procedure set out under section 40 of the Employment Act and Clause 19 of the CBA were breached. It submitted that though redundancy is lawful as long as procedure is compliant, the present case was a rational commercial and operational decision taking into account that the business was collapsing and it finally closed down.

It submitted that it was satisfied that the decision to declare redundancies was within the law and the parties' CBA. That it is aware that the 2nd Claimants together with other redundant employees were paid redundancy benefits including 18 days' pay for each year worked on account of severance pay.

It submitted that Clauses 30 and 31 of the CBA provide that gratuity is payable to employees who exit employment by way of normal termination of service and upon retirement. It submitted that neither the CBA governing the terms of service for the 1st Respondent's employees nor the Employment Act entitle the employees to a double benefit of severance pay and gratuity.

It submitted that the redundant employees were paid in lieu of notice, days worked, pending leave, leave travelling allowance for deserving cases and severance pay as per the CBA. It submitted that it is not aware of any outstanding salaries as all wages were paid. It submitted that the soap allowance should have been brought to the attention of the 1st Claimant for action which was not done and that leave travelling allowance is applicable to employees who proceed on leave only and not all employees.

It further submitted that the redundancy was lawful and compensation is not a rightful claim. It claims that having represented the interests of all unionisable employees who were paid their dues, there was no need for the 2nd Claimants to file the claim.

It submitted that close to 800 employees were paid severance pay as per the CBA and should the Court award service pay or gratuity the larger number of employees should also benefit.

2nd Claimants' Submissions

The 2nd Claimants submitted that the terminal dues were paid to them based on the basic pay and not on gross pay. They argued that terminal benefits whether severance pay, notice pay or gratuity should have been based on gross pay and not basic pay. They relied on the case of **Peter Mbugua Kanoi & 5 Others v Coffee Board of Kenya [2014] eKLR** where the Court held that Section 49(1) of the Employment Act provides that payment is based in gross monthly wage on salary. They further relied on the cases on **Benjamin Langwen v National Environment Management Authority [2016] eKLR** and **Japheth Kathungumi v Njuca Consolidated Co. Ltd [2017] eKLR** that terminal dues are based on gross salary.

They therefore urged the Court to allow the claim for gratuity and notice pay to be calculated based on gross pay.

They argued that the Claimants were paid service gratuity but such service gratuity is unknown in law. They submitted Section 40(1)(g) of the Employment Act provides that an employee who is declared redundant is to be paid severance pay. They submitted that this is also provided for under Clause 19 of the CBA. It was their submission that they are entitled to severance pay.

They further submitted that Clause 30 of the CBA provided that they are entitled to payment of gratuity. They relied on the case of **Pathfinder International Kenya Limited v Stephen Ndegwa Mwangi [2019]** where the Court held that there is a difference between severance pay and gratuity.

They submitted that the Respondents did not comply with the requirement of the law on redundancy as section 40 of the Employment Act is couched on mandatory terms. They submitted that the conditions under this section must be complied with by the employer before terminating employment contract include payment of leave due in cash, payment of not less than one month's wages in lieu of notice, notification of the labour officer in charge of the area where the employee is employed and making severance pay as well as complying with

terms of the CBA where such exists.

They submitted that the tabulation on terminal dues and payment slips shows that the payments were made in October 2019 after termination of employment and not before as required by law. They further submitted that the Respondents did not inform the labour office as required by law. In support of the requirement to adequately inform a Union, they relied on the case of **Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Mombasa Sports Club [2014] eKLR**.

They submitted that they were entitled to soap and leave allowance which were never paid. They submitted that Clause B-1 of the CBA provided that they were entitled to salary increment of 8% which was effective from 1st September 2018 but this was never effected.

They submitted that house allowance was calculated by the Respondent as per the letter dated 11th March, 2020 which they agreed to. They submitted that payment under this head was captured for each of them in the submissions.

They submitted that the Respondents deducted loss of money from each Claimant on the basis that they were absent from work and had not returned company property. They therefore submitted that these deductions should not be allowed thus they should be refunded the unlawful deductions.

The Claimants tabulated each of their specific claims in the submissions. They also prayed for costs and interest of the suit.

Respondents' submissions

The Respondents submitted that it was a gross abuse for the 2nd Claimants to allege and file a claim on terminal benefits already agreed upon and payments effected and acknowledged. They relied on the **Southern Engineering Company (SECO) v David Anzani Ombeba [2015] eKLR** that there is no justification for intervention of the Court in a matter where parties have freely agreed.

They cited the case of **Kenya Airways Corporation Limited v Tobias Ogaya Auma & 5 Others [2007] eKLR** and submitted that an employer cannot be denied its right to reorganisation or declaring a redundancy if the situation arises.

They argued that factors beyond the 1st Respondents control led to it declaring its employees redundant. It relied on the case of **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & Others [2014] eKLR** that the loss of employment in redundancy has to be involuntary and at the initiative of the employer. They further relied on the cases of **Lucas O. Ondoya & 43 Others v Rift Valley Railways Kenya Limited HCCC No. 33 of 2009, Kavutha Ngonzi & 11 others v Kapric Apparels (EPZ) Ltd [2017] eKLR** and Labour Appeal Court of South Africa's decision in **South African Clothing and Textile workers Union & Others and Discreto** which all held that employers have a right to make the ultimate decision on redundancy/retranchment.

They submitted that the reason for declaring the 2nd Claimants redundant was rational, commercial or an operational decision.

They further submitted that the termination was procedural and was done in accordance with Sections 40, 43 and 45 of the Employment Act and as provided in the CBA. They submitted that it notified the 1st Claimant of the redundancy under Section 40(1) (a) of the Employment Act and paid its employees one month's salary in lieu of notice as provided under Section 40(1)(f) of the Employment Act.

With respect to consultations, it cited Article 13 of Recommendation 66 of the ILO Convention No. 158 and submitted that the 2nd Claimants through the 1st Claimant were involved in meetings leading to the declaration of redundancy. It referred to the minutes of the meeting held at the 1st Respondent's office on 11th September, 2019.

They submitted that the Claimants' terminal dues were properly calculated based on their basic salaries, tabulations which were agreed upon by the 1st Claimant and paid to the 2nd Claimants. They submitted that the acknowledged the payments by confirming that they had received all their dues.

They submitted that the claimants had the benefits of union representation at the time of computation of payment made to them thus there is no justification for the intervention of the Court in a matter where the parties through the 1st Claimant and the 2nd Respondent had freely agreed.

They submitted that the redundancy notices were issued on 31st August by the respondent and payments in lieu were made to the employees who did not receive sufficient notice. They argued that the tabulation of final dues was based on the computation of service/gratuity pay pursuant to Clause 30 of the CBA. They further submitted that computation was done on a higher rate of 18 days' pay for each completed year of service as stated in the CBA as opposed to the 15 days' pay under Section 40(1)(g) of the Employment Act.

They submitted that soap allowance was to facilitate performance and can only be paid when an employee is at work and does not form part of redundancy claim. They further submitted that the Claimants have not adduced any evidence in support of this claim. They relied on the case of **Frederick Ngari Muchina, Howoard Kipkoeach Korir & 98 Others v Pyrethrum Board of Kenya [2014] eKLR** cited in **Kenya Union of Commercial, Food an Allied Workers & 5 Others v Alliance One Tobacco (Kenya) Ltd [2015] eKLR** that expenses facilitative of labour do not constitute wage or salary even where the employer seeks to achieve administrative efficiency and effectiveness.

They relied on Clause 8 of the CBA and submitted that leave travelling allowance was paid to the Claimants as evidenced in the calculation of dues. They submitted that the claim for house allowance was agreed upon by consent thus it is settled.

They submitted that the 2nd Claimants have not introduced any evidence indicating there were unlawful deductions. On the claim for September salary arrears, they submitted that the payroll month and the last working month of September are different. They maintained that the final dues were paid to the Claimants.

They argued that they had demonstrated that the procedure under section 40 of the Employment Act was followed thus the redundancy cannot be said to be unprocedural and unfair termination. They reiterated that the 2nd Claimants have moved to Court with unclean hands having received their terminal dues as agreed with the union collectively.

They submitted that the Claimants are not entitled to the reliefs sought as the claim is unreasonable. They argued that they have demonstrated good grounds for not awarding costs. They relied on the decision in **Party of Independent Candidates of Kenya v Mutula Kilonzo & 2 Others HC EP No. 6 of 2013** that costs are discretionary and that judicial discretion must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. They relied on the Court of Appeal decision in **Robric Limited & another v Kobil Petroleum Ltd & another Nairobi CA No. 109 of 2015**.

Analysis and Determination

The issues in contention in both claims is that the grievants and claimant's termination was unlawful for the failure of the Respondents to make payments as required by law and the CBA. The parties do not contest that a redundancy situation did arise. In fact, the 1st Claimant submitted that it was satisfied that the decision to declare redundancies was in compliance with the law and the CBA.

The 1st Claimant's submissions were that the termination was lawful within the meaning of Section 43, 45, 49 and 50 of the Employment Act. The 1st Claimant's claim was settled pursuant to the Consent entered into between the Respondents and itself. The consent dated 21st February 2020 between the 1st Claimant and the Respondents provided that the various employees would be paid their redundancy dues as per the schedule of payments annexed to the Consent. Clause 3(iii) of the consent stated:

“This consent does not cover claims under Cause 408 of 2018, now consolidated with this cause”.

The 1st Claimant maintained that the grievants and 2nd Claimants were paid all their dues and that there was no reason for the 22 Claimants to move this court on separate claims the 1st claimant having represented their interest in the discussions held before September, 2019.

In the meeting held on 11th September, 2019 between the 1st Claimant and the Respondent, it was agreed that the 1st Respondent's employees would be paid one month's salary as pay in lieu of notice and all payments in the CBA as well as all other benefits, in the first week of October. In the meeting held on 23rd September, 2019 it was resolved that the terminal dues tabulation would be submitted on 30th September, 2019 for confirmation and verification by the union and the affected employees.

The 2nd Claimants in their Amended Claim filed on 16th December 2019 state that they were paid a sum of Kshs.1,573,222/- as their terminal dues but this amount was less the contested amount by Kshs.1,246,452/-.

Section 19 of the CBA and Section 40 of the Employment Act set out the dues payable when termination is occasioned by redundancy. Clause 19 of the CBA provides:

“Where the employment of an employee is to be terminated on account of redundancy, the following shall apply: -

- a) All matter concerning redundancy shall be subject to the procedures stipulated in the Labour Relations Act, 2007.*
- b) The Company in selection of employees to be declared redundant shall have due regard to seniority in time, skill, ability and reliability of each employee belonging to the particular category of employees affected by the redundancy shall be considered.*
- c) The redundant employee (s) shall be entitled to notice or pay in lieu of such notice as outlined in Clause 22.*
- d) An employee declared redundant shall be entitled to severance pay at the rate of 18 days pay for each completed year of service.”*

Section 40 of the Employment Act provides:

(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—

(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.

The 2nd Claimant's pay slips for the month of October 2019 produced by the Respondents indicate that the Respondents paid the 2nd Claimants their terminal dues. For instance, the following Claimants who recorded witness statements with respect of the main claim received amounts as follows;

a) Stephen Juma Wangira – Kshs.80,716.00,

b) Jackline Atieno Oduor – Kshs.92,926.00

c) Richard Akoko Owidi – Kshs.117,160.00

These amounts paid to the Claimants included notice pay, service gratuity pay, leave encashment and leave travelling allowance. The computation of the dues produced by the Respondents indicate that the Claimants dues were computed using their basic pay.

These dues were paid after negotiations between the Union, the 1st Claimant herein. In spite of the parties having resolved in the meeting held on 23rd September, 2019, that the terminal dues tabulation would be submitted on 30th September, 2019 for confirmation and verification by the union and the affected employees, the Respondent did not prove that the 2nd Claimants, who are the affected employees, verified the tabulation.

As rightfully submitted by the 2nd Claimants, the tabulation of their dues was incorrect for using their basic pay as opposed to their gross pay. The result of the tabulation using the Claimant's basic pay was that the Claimants were denied some amounts due to them based on their actual monthly remuneration.

Section 49(1)(c) of the Employment Act provides that payment of 12 months' salary is based on gross monthly wages. The Section also provides that pay in lieu of notice is based on gross pay. In the **Peter Mbugua Kanoi case**, cited by the 2nd Claimants the Court held:

“On the Contrary, Section 36 and 38 provide for payment of notice based on remuneration while Section 49 (1) provides for payment based on gross monthly wage on salary. Since redundancy pay is at a terminal benefit which courts have generally granted based on gross pay and since the law does not provide for payment based on basic pay I do not see any chances of success of that ground appeal.”

It is immaterial for the Respondent to state that the 2nd Claimants had the benefit of union representation at the time of computation of their dues. Section 3(6) of the Employment Act provides:

Subject to the provisions of this Act, the terms and conditions of employment set out in this Act shall constitute minimum terms and conditions of employment of an employee and any agreement to relinquish, vary or amend the terms herein set shall be null and void.

The CBA did not provide for the basis of computation of dues. Nevertheless, the Claimants are entitled to the most favourable terms and conditions provided in law. Section 26(2) of the Employment Act provides:

Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee than the terms provided in this Part and Part VI, then such favourable terms and conditions of service shall apply.

On the specific claims, I find that the claim for computation based on gross pay succeeds. However, since the claimants received their dues, they are entitled to the difference between the gross salary and their basic pay for each of the dues paid to them.

With regard to service/gratuity pay that was paid to the Claimants, the claim was paid at the rate of 18 days. Clause 19(d) of the CBA provided that what was payable was severance pay at the rate of 18 days. All in all, the 22 claimants still received 18 days' pay for each year of service.

Clause 30 of the CBA provides:

“Where employment is terminated by either party, the company shall pay to the employee gratuity at the rate of 18 days for each completed year of service.”

The payment of gratuity is provided for upon termination by either party. This payment is not provided for under Clause 19 of the CBA where termination is on account of redundancy. It is my finding that this claim for gratuity fails. The separate claim for service pay also fails. These two claims were mixed up in the payment made to the Claimants yet the only pay available to the employees under Clause 19 of the CBA and under section 40 of the Employment Act is severance pay. Accordingly, severance pay was paid but on a different heading as service gratuity which the 2nd Claimants submitted is an unknown relief.

The 2nd Claimants submitted that no notice was issued to the labour office as required by law and that since they were working in the Respondents’ branches in Kisumu, no letter was produced confirming that the labour office in Kisumu was informed of the intended redundancy. The Respondent produced a redundancy notice dated 31st August, 2019 addressed to the Ministry of Labour and Social Protection.

The notice was received in September 2019 and is copied to various county labour offices including Kisumu, where the 2nd claimants were based. Section 40(1)(a) of the Employment Act provides that the employer is to notify the labour officer in charge of the local area where the employee is employed. However, the notice was not issued one month prior to the redundancy as it was received in September, the same month the redundancy was to take effect.

I therefore find that although notice was issued as stipulated under Section 40(1)(a) of the Employment Act, the same did not meet the provisions as to timelines.

The claim for September salary arrears on basic pay which the 2nd claimants submitted as being based on the salary increment of 8% fail. The Claimants did not produce their pay slips for the month of September 2019 to prove that they received September salary without the increment.

The claim for house allowance fails as the same was settled in the sum of Kshs.59,426 paid to the 2nd Claimant’s advocates. This is confirmed in the submissions.

The claim for soap allowance succeeds. The Respondent did not prove that it provided the same during the course of the CBA. I however award the same at Kshs.100 per month as no proof was adduced on the value assigned by the 2nd claimants.

On leave travelling allowance, the Respondent submitted that this amount was only payable to employees travelling on annual leave. This is indeed provided for under Clause 8 of the CBA. The Claimants seeking this relief who include the 3rd Claimant did not prove their entitlement to this relief.

The claim for unfair termination fails as the redundancy was in accordance with Section 40 of the Employment Act, save for the tabulation and the notice to Labour Officer which was sent late.

The claimants are also entitled to the unexplained deduction of absent days and company property not returned. The Respondent is directed to refund the same as no proof was adduced to justify the deductions.

With respect to Said Abuka, the Respondent submitted that he had been terminated due to gross misconduct. However, the Claimant’s produced a letter of termination dated 31st August, 2019 on account of redundancy. He is therefore entitled to all payments as above.

The Claimants are awarded costs of the suit.

Parties are directed to make the tabulations on the basis of the foregoing and report back to court on 18th January 2021 with the final figure for adoption.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 13TH DAY OF NOVEMBER 2020

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, the 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 the 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