



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**PETITION NO. 17 OF 2013**

**(Formerly Nairobi HC Petition No. 383 of 2008)**

**MOSES MOKOIT.....APPLICANT**

**VERSUS**

**THE DEFENCE COUNCIL.....1ST RESPONDENT**

**ATTORNEY GENERAL.....2ND RESPONDENT**

**R U L I N G**

1. The notice of motion dated 12/6/2009 seeks to strike out the petition herein. The same is supported by the affidavit of Brigadier Francis Maina Murgor sworn on 25/2/2009. The substance of the said motion is the attached affidavit, annexure FMMI by the petitioner disowning this petition.
2. The petitioner on the other hand vide his replying affidavit dated 5/3/2018 denied the same. I have equally perused the grounds of opposition dated 1/03/2018.
3. Without delving into the details of the annexures and specifically whether the petitioner recanted his affidavit and the entire petition, I find that the issue is so weighty that the same cannot be simply decided by way of affidavits.
4. The proper recourse is to have this petition determined fully by way of oral evidence. Should one of the issues raised in recanting of the petition then evidence should be led to that effect.
5. It is premature in my view to have the petition simply struck out based on some contested facts especially based on oath. Striking out is of course one of the measures provided where the suit is hopeless and on the face of it unmeritorious.
6. The notice of motion is therefore dismissed. The costs shall abide the outcome of the petition.

**Delivered, signed and dated at Kitlae this 20<sup>th</sup> day of December, 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**20/12/2018**

**In the presence of:**

**Mr. Kakoi for State**

**Abari for the Respondent**

**Court Assistant – Kirong**

**Ruling read in open court.**