



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 858 OF 2003**

**MYEKHO BURUDI.....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL..... DEFENDANT**

**R U L I N G**

1. The Plaintiff/Applicant seeks that the Defendant's Defence be struck out under Order VI Rule 13(1) (b) (c) (d) as the same does not disclose any reasonable defence, is scandalous, frivolous and vexatious and is fatally defective.

2. I have looked at the Plaintiff and the Defence. The Applicant's sole quarrel with the Defence is that it denies that the Applicant was ever employed by the Government of Kenya. Exhibits "MBI" and "MBII" are a Letter of Appointment and a Kenya Police Certificate of Appointment respectively and they are annexures to the Supporting Affidavit. Exhibit MBIII is a copy of the Applicant's payslip. I am told that on the basis of these documents, there cannot be a denial that the Applicant was employed.

3. I have come to a simple conclusion that the circumstances of the Applicant's alleged dismissal ought to go to trial. The Defendant's claim that he was never employed ought to go to trial.

As I understand it, once a triable issue is seen in a Defence then the same cannot be struck out.

4. In the instant case, I find that the Application to strike out the Defence is not merited, and all the issues raised should be canvassed at the trial and not on affidavit evidence.

5. The Application dated 6th November 2003 is hereby dismissed with costs.

**Dated and delivered at Nairobi this 12th day of February 2004.**

**I. LENAOLA**

**Ag. JUDGE**

**12.2.04**

**By Lenaola, Ag. J**

**Amos CC**

**Ruling delivered in the presence of:**

**Mr. Meso for the Defendant/Respondent**

**No appearance for Plaintiff/Applicant**

**I. LENAOLA**

**Ag. JUDGE**