



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NYERI**

**PETITION NUMBER 116 OF 2013.**

**IN THE MATTER OF ARTICLES 10, 20,21,22, 23, 73, 75, 232, 235, 258 AND 259 OF THE  
CONSTITUTION OF KENYA, 2010.**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICES 27, 28, 41, 47 AND 50 OF THE CONSTITUTION.**

**AND**

**IN THE MATTER OF COUNTY GOVERNMENT ACT, 2012 (ACT NO. 17 OF 2012)**

**AND**

**IN THE MATTER OF SECTION 3, 4, 7, 8, 9, AND 10 OF THE PUBLIC APPOINTMENTS  
(PARLIAMENTARY APPROVAL) ACT, ACT NO. 33 OF 2011 LAWS OF KENYA.**

**AND**

**IN THE MATTER OF THE PURPORTED REVOCATION OF THE ENGAGEMENT OF THE  
PETITIONER TO AND/OR  
REMOVAL OF THE PETITIONER FROM THE OFFICE OF THE CHAIRMAN OF EMBU  
COUNTY PUBLIC SERVICE BOARD.**

**BETWEEN**

**MUNDIA NJERU GETERIA..... PETITIONER**

**VS**

**EMBU COUNTY GOVERNMENT..... 1ST RESPONDENT**

**HIS EXCELLENCY;**

**THE GOVERNOR, EMBU COUNTY..... 2ND RESPONDENT**

**THE COUNTY PUBLIC SERVICE BOARD,**

**EMBU COUNTY..... 3RD RESPONDENT**

**HONOURABLE THE ATTORNEY GENERAL.....4TH RESPONDENT**

**JUDGMENT**

**a) The petition, the grounds and arguments in support.**

1. 1. By a petition dated 16th September, 2013 and filed before this Court on the same day under certificate of urgency, the petitioner, allegedly anchored by several provisions of the Constitution and the County Government Act, sought to move the Court for the grant of several orders:

(a) THAT a declaration be issued to declare that the revocation of the Petitioner's appointment as chairman of Embu County Public Service board vide the Second Respondent's letter dated 5th September, 2013 is unlawful on account of violation of section 58(5) of the County Government's Act read with Articles 476 and 251 of the constitution of Kenya, 2010.

(b) THAT a declaration be issued to declare that the grounds or reasons specified in the 2nd Respondent's letter to the Clerk or Speaker of the County Assembly of Embu dated 30th August, 2013 are *ultra vires* Section 58(5) of the County Governments Act, 2012 and do not constitute grounds for removal of the Petitioner as Chairman of the Embu County Public Service Board under Article 251(1) of the Constitution.

(c) THAT an order of certiorari be issued to bring into this Honourable court for purposes of being quashed the decision of the first and second Respondents contained in the second respondent's letter dated 5th September, 2013 revoking the petitioner's appointment as Chairman of the Embu County Service Board for being in contravention of Section 58(5) of the County Governments Act, 2012 read with Articles 47 and 251 of the Constitution.

(d) THAT an order of certiorari be issued to bring into this Honourable Court for purposes of being quashed the Resolution of the county assembly of Embu made on 4th September, 2013 and contained in the letter of the Speaker of the County Assembly of Embu to the Second Respondent dated 4th September, 2013 to rescind the County Assembly decision appointing the Petitioner as the Chairman of the Embu county Public Service Board for being in contravention of Section 58(5) of the County Governments Act, 2012 read with Article 251 of the Constitution.

(e) THAT a declaration be issued to declare that under Section 58 of the County Governments Act, 2012 read with Article 251 of the Constitution the Petitioner remains the lawful holder of the position of the Chairman of the Embu County Public Service Board.

(f) THAT an order of mandatory injunction be issued to compel the First and Second Respondents to give the Petitioner his letter of appointment as chairman of the Embu County Public Service Board and to execute a contract of service with the Petitioner in accordance with Section 58 of the County Governments Act, 2012 and other applicable laws.

(g) THAT a declaration be issued to declare that the decisions, actions and omissions of the 1st, 2nd and 3rd Respondents in respect of the removal of the Petitioner as the Chairman of the Embu County Public Service Board have violated the Petitioner's human rights and fundamental freedoms secured and guaranteed under Articles 27, 28, 41, 47 and 50 of the Constitution.

(h) THAT the Honourable Court be pleased to issue an order of the permanent injunction to restrain the First and Second Respondents from interfering with the Petitioner's exercise of his functions as the Chairman of the Embu County Public service board.

(i) THAT a declaration be issued to declare that any appointment made by then third Respondent in the absence of a substantive Chairperson is null and void *ab initio*.

(j) THAT the Honourable Court be pleased to find and uphold that the decisions, actions and omissions of the Second Respondent in respect of the revocation of the Petitioner's appointment constitute conduct that violates Article 10, 73 and 75 of the Constitution.

(k) THAT a declaration be issued to declare that Section 58 of the County Governments Act is inconsistent with Article 251 of the Constitution to the extent that it does not provide for a legal framework for removal from office of a Chairman of the County Public Service Board.

2. In support of the petition, the petitioner contended through his Counsel Mr. Kibe Mungai, that:

a) That in the **Sunday Nation** of 12th May, 2013 the First and Second Respondents re-advertised several posts seeking qualified persons to fill various positions in the Embu County Public Service Board. Pursuant to the said Re-Advertisement the Petitioner successfully applied for the position of Chairperson and he was duly appointed by the Second Respondent and thereafter sworn as the Chairman of the Embu County Public Service Board on 11th July, 2013.

b) Counsel argued that by dint of Section 58(4) (a) of the County Government Act, 2012, the petitioner upon being appointed and sworn as the Chairman of the Embu County Public Service Board he was entitled to hold office for a non renewable term of six years.

c) Counsel further argued that by dint of Section 58(5) of the County Governments Act, 2012 members of the county Public Service Board may only be removed from office-

i) on grounds set out for the removal of members of a constitutional commission under Article 251(1) of the constitution; and

ii) by a vote of not less than seventy five per cent of all the members of County assembly.

d) According to him the grounds set out under Article 251(1) of the constitution for removal are as follows:-

i) serious violation of this Constitution or any other law, including a contravention of chapter six;

ii) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;

ii) physical or mental incapacity to perform the functions of office;

iii) incompetence; or

iv) bankruptcy.

e) Mr. Mungai submitted that the foregoing provisions notwithstanding, by a letter dated 30th August, 2013 the Second Respondent wrote to the Clerk of County Assembly of Embu requesting it to revoke its recommendation in respect of the appointment of the

Petitioner as chairman, Embu County Public Service Board on the grounds that he had demanded higher salary, remunerations and benefits outside statutory provisions by Salaries and Remuneration Commission Circular No. SRC/TS/CGOVT/3/61 and that he had verbally rejected the letter of appointment to office dated 19th July, 2013.

f) According to Counsel for the Petitioner, the aforesaid request to the County Assembly was null and void *ab initio* since the the Petitioner having been nominated and appointed by the County Governor with the approval of the County Assembly pursuant to Section 58(1)(a) of the County governments Act, 2012 there ceased to be any recommendation which the Assembly could be asked to revoke

g) In the alternative he submitted that even assuming that such a recommendation existed, the County Assembly became *functus officio* after the same was acted upon by the Governor as signified by the appointment of the Petitioner and subsequent swearing in as the Chairman of the Embu County Public Service Board on 11th July, 2013.

h) According to Counsel therefore, the petitioner's removal could only be in accordance with section 58(5) of the County Governments Act.

i) Regarding the motion passed by the Assembly to rescind the petitioner's appointment, Counsel submitted that such resolution was unlawful, invalid, null and void *ab initio* on the grounds that, since the Assembly was not the body that made the decision to appoint the petitioner, they could not validly in law make a decision to rescind the appointment. Further, the Assembly could only act to approve a motion seeking removal of the petitioner predicated on a finding by the first and second respondents as envisaged under Section 58(5)(a) of the County Governments Act, 2012. In the instant case there was no such finding or decision by the first or second respondent seeking removal of the petitioner or any of the grounds set out under article 251(1) of the constitution.

j) According to Mr. Mungai the grounds upon which the petitioner was purportedly removed do not constitute grounds for removal set out in section 58(5)(a) of the county Governments Act, 2012.

h) The Petitioner averred in his affidavit in support of the petition that the grounds upon which the County Assembly of Embu revoked his engagement or approval of the same were false, malicious and misleading information. He argued that given that he had not been given the alleged letter of appointment dated 19th July, 2013 whose existence has said he was unaware, he could not, reject the same verbally.

k) The Petitioner contended that the process, grounds and mode of his removal as the Chairman of the Embu County Public Service Board constituted a gross violation to the 2nd and 3rd Respondents of the National Values and Principles of Governance set out in article 10 of the Constitution and further that the Second Respondent's decision, actions and omissions offend the rule of law and violated his human dignity and rights as protected by articles 27, 28, 41, 47 and 50 of the constitution.

l) According to him the purported removal had been actuated by apparent malice and ill-will against him on the part of the second respondent which has been occasioned by the latter's aversion towards the petitioner's unwillingness to overlook or skew the law and recruitment of staff process to rubber-stamp appointment of the 2nd respondent's preferred candidate for position of the County Secretary.

m) The Petitioner argues that the actions by the 1st and 2nd respondents violated his human rights and fundamental freedoms in that under under article 27 of the Constitution, he has a right to equal protection and equal benefit of the law which enjoins the first and second respondents to remove him from the office through due process of law and

simultaneously prohibited them from terminating his tenure unless the petitioner became or was found unqualified on the grounds set out in Article 251(1) of the Constitution.

n) The petitioner complained that the first and second respondents' false allegations contained in the second respondent's letter dated 30th August, 2013 violated and negated his human dignity as they cast him as a greedy and irresponsible person who has violated his oath of office and even declined his letter of appointment purportedly dated 19th July, 2013.

o) He further complains that the refusal, negligence and failure of the first and second respondents to prepare and execute a six-year contract with the petitioner and furnish him with a letter of appointment is not only discriminatory against him but also violates his right to fair labour practice secured and guaranteed under Article 41 of the Constitution.

**b) Respondent's response and submissions.**

3. In opposition to the petition, the 1st, 2nd and 3rd respondents filed a replying affidavit through Margaret Lorna Kariuki which set the respondents' position on the dispute as follows:
  - a. THAT **Section 67 of the County Government Act No. 17 of 2012** stated in a mandatory term that, no appointment or assignment of a duty in a County Service shall be valid unless it was evidenced in writing, and that the requirement was further buttressed in the **Public Service Commission Regulations under Regulation 23** which stated that public appointments shall be in writing. This regulation, she deponed was applicable to County Public Service.
  - b. That the petitioner having not satisfied these mandatory provisions of the law could not claim violation of his rights as envisaged in article 251 of the Constitution. According to her, the petitioner was not duly appointed as a County servant.
  - c. THAT the applicant was merely recommended by the County Assembly for the position of Chairman of the 3rd respondent a process which had not completed before he declined the terms and conditions as provided by the SRC.
  - d. THAT the terms and conditions and the rules of engagement in the County Public Service have always been very clear to all and sundry including the petitioner, right from the time of placing advertisement to the position yet he rejected them after recommendation for appointment.
  - e. THAT the County Government was bound in law to implement the remuneration structure as dictated by the Salaries and Remuneration Commission without any alteration whatsoever.
  - f. THAT the petitioner being dissatisfied with the proposed remuneration by the SRC, declined to take up the appointment letter and or sign the contract of service demanding a to start at the apex of the remuneration matrix against the directives as given by the commission.
  - g. THAT thereafter the petitioner unilaterally, illegally and to the detriment of hampering the boards' functions absconded duty after being sworn in and never performed his role due to the impending standoff whereas the other board members had all accepted and signed their respective contracts of service.
  - h. Mr Njoroge who appeared for the 1st, 2nd and 3rd respondent submitted along the above lines emphasizing on the main that section 58(5) of the County Governments Act relied on by the petitioner only applied to duly appointed county servants. According to counsel, the petitioner was not a duly appointed county servant since the circle of appointment was not complete. It was his submission that the circle becomes complete when letter of appointment is issued and gazettelement is done.

- i. Counsel submitted further that under section 58(5)(b) of the County Governments Act, by a vote of 75% of the County Assembly members, a removal can be done. So that if the petitioner was properly appointed, then he was properly removed. He submitted that subsection 5(a) was applicable to national and not county commissions.
- j. Regarding the issue of functus officio, Mr. Njoroge submitted that the County Assembly in its legislative duty plays watchdog to the County government and cannot be functus officio. In that capacity they work any time .

**c) Issues for determination.**

4. I have endeavoured to outline as extensively as possible the complaints by the petitioner and submissions by his counsel vis-a-vis rejoinder thereto by the counsel for the respondent and become of the view that the issues for determination in this petition can be collapsed into four as follows:
  - a. Whether the petitioner's appointment as the Chair of the Embu County Assembly Service Board was complete upon his being sworn in, without his gazettment and issuance with a letter of appointment.
  - b. Whether the disputed removal of the petitioner as the chair of 3rd respondent violated the constitutional and statutory provisions and procedure. That is to say: did the disputed removal comply with the provisions of section 58(5) of the County Government Act in terms of grounds and procedure?
  - c. Among the fleet of remedies sought by the petitioner which is the most appropriate in the event that the court reaches the conclusion the petition is successful?
  - d. What is the appropriate order as to costs?

**The decision.**

5. On the question whether the petitioner's appointment as the Chair of the Embu County Assembly Service Board was complete upon his being sworn in, without his gazettment and issuance with a letter of appointment, the court would like to observe that there seems to be a contradictory scenario where the respondents' counsel contend that the appointment was incomplete yet on the other hand a removal process reserved for a duly appointed officer was apparently used. That notwithstanding, in order to determine this first question, the court draws reference to section 58(2) read together with section 58(3) which provides that the appointment of members of the County Public Service Board shall be through a competitive process and a person shall be qualified for such appointment if that person satisfies the provisions of chapter six of the constitution; is not a state public officer; in the case of chairperson or vice-chairperson, possess a minimum qualification of a bachelor's degree from a recognized university and working experience of not less than five years, is professional, demonstrates absence of breach of the relevant professional code of conduct.
6. There was no dispute that the petitioner met the criteria set out above. The dispute was rather how his appointment could in law, be validly signified.
7. Section 67 of the County Governments Act provides that no appointment of a duty in a county public service shall be valid unless evidenced in writing. Further section 58(4)(a) of the Act provides that a member of the Board shall hold office for a non- renewable term of six years. Stopping here for a moment, section 67 referred to above states that the appointment shall be *evidenced in writing (italics supplied)*. **Black's Law dictionary** defines evidence as “...**something that tends to prove or disprove the existence of an alleged fact.** Whereas Mr. Kibe Mungai for the petitioner contended that the swearing in of the petitioner was sufficient proof of his

- appointment, Mr. Njoroge for the first three respondents submitted that the fact of non-signing of the letter of appointment by the petitioner and eventual non-gazettment by the 2nd respondent meant that the petitioner's appointment was incomplete.
8. The document marked 'MNG2" attached to the petitioner's affidavit is titled **“Oath of office of the chairman of the Embu County Public Service Board”**. In it the petitioner is recorded to swear to serve the people of of the Republic of Kenya in the office of member of the County Public Service Board of Embu County and that he shall discharge his duties and perform his functions in the said office, to the best of his judgment. The document is signed by the Governor, County Secretary and the petitioner.
  9. Section 67 of the County Governments Act provides that an appointment shall be evidenced in writing as opposed to being in writing. What this means is that an appointment may be contained in a letter of appointment or evidenced from a document or a series of documents in writing. It would therefore seem to me that the petitioner's appointment was evidenced in writing by the document titled **“Oath of office of the chairman of the Embu County Public Service Board”** signed by the Governor, County Secretary and the petitioner. In any event the oath would be superfluous and of no effect if taken by a person whose appointment was still under process.
  10. Regarding the issue of gazettment of the appointment, the Court of Appeal, albeit indirectly, recently dealt with the issue in the case of **Nderitu Gachagua vs Dr. Thuo Mathenge & 2 others Civil Appeal No. 14 of 2013 (Nyeri)**. The question there was whether the requirement by section 76(1)(a) of the Election Act which requires election results to be gazetted for them to be valid was inconsistent with article 87(2) of the Constitution. While holding that the provision was not unconstitutional, the court observed that the Gazette is an official document of the Government of Kenya in which official matters including official notices by the Government are published. Any notice published in the Gazette is deemed as notice to the general public and one is barred from pleading ignorance of the same.
  11. Besides section 85 of the Evidence Act provides (in paraphrase) that **“...the production of a copy of the Gazette containing any notice purporting to be made in pursuance of a written law...shall be prima facie evidence in all courts and for all purposes whatsoever of making and tenor of such...notice.”** What this implies is that, in absence of proof to the contrary, the Gazette notice becomes a formal expression of the existence of the notice or law in question. The Gazette does not as it were constitute the notice or the law itself but rather the official announcement of its existence or coming into force. Such that the validity or otherwise of a law or notice is not resident in the Gazette but the persons or bodies tasked with the responsibility to make such laws or issue such notices in accordance with the law and the Constitution. The Gazette merely confers a seal of authority or officialdom to existence of the notice or the law.
  12. Concerning the issuance of a letter of appointment, Mr. Kibe Mungai submitted that the petitioner was never issued with a letter of appointment for him to be accused of declining to sign the same. Mr. Njoroge on his part did not offer any evidence to the contrary. The only attachments in the affidavit of Margaret Lorna Kamau in opposition to the petition which could be said to be close to dealing with the petitioner's terms of service were, the notice of advertisement of the position of the Chair of the County Assembly (MLK1), a letter on remuneration structure for the County Public Service Board addressed to Mr. Kinuthia Mwangi of Transitional Authority(MLK2), Advisory on Human Resource Management from Transitional Authority(MLK3), internal Memo on County Book from County Coordinator (MLK4) and a letter dated 3rd September, 2013 by the petitioner to the Governor concerning contract of service for the Chairperson of the County Public Service Board (MLK5). The rest of the attachments concern the reason and the process of removal of the petitioner. In fact the import of the relevant depositions in the affidavit of Margaret Lorna Kamau in opposition to the petition were that no such letter was issued as according to her, the petitioner asked for a higher entry level pay than was authorized by the Salaries and Remuneration Commission, the reason for which his removal was done.

13. In concluding this issue, the court observes that the relationship between the petitioner and the 1st respondent is that of an Employer and employee hence principally governed by Employment Act and other relevant legislation. Section 9 (2) of the Employment Act provides that **“...an employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of the employment and that the contract is consented to by the employee...”** Section 10 further provides that **“...a written contract of service specified in section 9 shall...be given not later than two months after the beginning of employment.**
14. From the foregoing, the duty was cast upon the 1st respondent to issue the petitioner with a letter of appointment hence it is contradictory for it argue that because the petitioner declined to approve of the sums set by the SRC as salary, no such letter could be issued and further that his appointment was incomplete for want of letter of appointment and or Gazettment. It would have been tidier for the respondent to draw the letter of appointment and confront the petitioner with it for him to decline instead of declining to issue one simply because in their opinion the appointment process was incomplete.
5. The next question to be dealt with at this stage is whether the disputed removal of the petitioner as the chair of 3rd respondent violated the constitutional and statutory provisions and procedure. That is to say: did the disputed removal comply with the provisions of section 58(5) of the County Government Act in terms of grounds and procedure?
6. Section 58(5) provides that the members of the Board may be removed from office on grounds set out for the removal of members of a constitutional commission under article 251(1) of the Constitution; and by a vote of not less than 75% of all the members of the County Assembly.
7. Article 251. (1) provides: A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for—
- (a) serious violation of this Constitution or any other law,  
including a contravention of Chapter Six;
  - (b) gross misconduct, whether in the performance of the  
member’s or office holder’s functions or otherwise;
  - (c) physical or mental incapacity to perform the functions of office;
  - (d) incompetence; or
  - (e) bankruptcy.
8. By a letter dated 2nd September, 2013 (MLK6) the 2nd respondent wrote to the County Assembly speaker requesting for the revocation of the petitioner's appointment for the reasons:
- a) the petitioner demanded a higher salary, remuneration and benefit outside statutory provisions by SRC's circular no. SRC/TS/CGOVT/3/61
  - b) The petitioner verbally rejected the letter of appointment to office dated 19th July, 2013 caused by (1) above.
9. As a consequence of the 2nd respondent's request, the County Assembly on 4th September, 2013 approved the motion to the effect that:

“...Pursuant to standing order No. 47(2)(a) of the standing orders of the County Assembly of Embu and upon the advise of H.E the Governor vide letter ref: EBU/CG/CEC/Col.1/5

dated 2nd September, 2013, this Assembly rescinds its decision of 10th July, 2013 at 2.30 pm, Order No. 9 in respect of recommendation 1(i). (this motion has been approved by the Committee on Appointments).

10. This resolution was communicated to the 2nd respondent by the Speaker of the Assembly through a letter dated 4th September, 2013 and who in turn communicated to the petitioner through a letter dated 5th September, 2013.
11. Whereas the Constitution and the County Government Act talks of removal, the 2nd respondent's letter asked the Assembly to rescind its decision to appoint the petitioner as the Chair of Embu County Public Service. In order to avoid technicalities and absurd results, the Court will for the purposes of doing justice to this dispute, construe rescission to mean removal.
12. As stated above article 251. (1) provides that a member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office **only** for a serious violation of the Constitution or any other law, including a contravention of Chapter Six; gross misconduct, whether in the performance of the member's or office holder's functions or otherwise; physical or mental incapacity to perform the functions of office; incompetence; or bankruptcy.
13. This provision unlike other provisions circumscribe the reasons for removal of a member of a commission other than an ex officio member. To this extent, the reason for removal must be strictly be within the parameters set by article 251(1).
14. What the foregoing implies is that it was the duty of the 1st and 2nd respondent to demonstrate that the reasons cited in the 2nd respondent's letter dated 30th September, 2013 fitted within one or more of the parameters set under article 251(1) of the Constitution. That is to say whereas article 251(1) may be exclusive in terms of parameters for removal, the factual fit or justification for such removal is left to the body or persons tasked with such removal to align them with the exclusive parameters set by the constitution.
15. Neither the 2nd respondent's letter dated 30th September, 2013 nor the resolution of the Assembly passed on 4th September, 2013 can be said to have at least attempted the factual fit or justification contemplated by article 251(1) of the Constitution. In fact the Assembly merely regurgitated the 2nd respondent's letter without showing in what was the petitioner violated the provisions of article 251(1). This far, the Court reaches the inevitable conclusion that the removal of the petitioner was for reasons outside the contemplation of article 251(1) of the constitution hence null and void to that extent.
16. On the question of procedure, no evidence was exhibited either by the petitioner or the any of the respondents that the purported removal was in accordance with section 58(5)(b) which provides that such removal shall be conducted by not less than 75% of the members of the County Assembly. The court will therefore delve no further.
17. The next issue will now be: among the fleet of remedies sought by the petitioner which is the most appropriate in the event that the court reaches the conclusion that the petition is successful? Before delving into the issue, the Court expressed concern at the hearing about the number and possible duplicity of issues and prayers by the petitioner. The Court recalled asking Mr. Mungai to collapse the issues and prayers into a manageable number which he graciously agreed. However the Court would like to sound a caution to litigants and their advocates to resist the rapidly growing tendency to bombard the Court with lengthy and voluminous pleadings even where such elaborate and voluminous paper work is not necessary. Good pleadings are those that are lean, concise and to the point. It may be enough to say that a time has come when the Court should exercise an order for exemplary costs in cases where litigants file inordinately lengthy and or voluminous pleadings.

18. The above having been said, the 1st and 3rd respondents are public bodies while the 2nd respondent is a public official. The 2nd respondent exercises some of his power with the approval of the County Assembly which is a component of the Embu County Government. To this extent the remedy as against the 1st respondent and ipso facto the County Assembly in so far as its resolution passed on 4th September, 2013 is concerned is that of certiorari while as against the 2nd and 3rd respondent is an order of injunction.
19. However in granting the reliefs whose consequence is to keep in service, an employee in a strained relationship with an employer, the Court is very much conscious of the common law principle against specific performance in employment contracts unless in exceptional cases. The principle against specific performance in employment contracts is premised on the fact that employment relationships are in most cases personal in nature. Therefore the moment the minimum necessary confidence between the parties has been severely eroded, that relationship cannot reasonably continue without a considerable degree of awkwardness.
20. The common law principle against specific performance in employment contracts must however align itself to the law and the constitution. Section 58(5)(a) read together with article 251(1) provides for the procedure and reasons for which a County Public Service Commission member may be removed from office. In fact article 251(1) if read strictly appears to provide an exclusive compendium of grounds only for which a member of a commission may be removed. To this extent a court of law will not shy away from decreeing that an employee cannot be removed otherwise as provided by law and more so the constitution simply because that would be against the common law principle leaning against specific performance in employment contract.
21. Removal from office or loss of employment for that matter is a very drastic step especially in a country like ours where jobs are hard to come by. But it can be done where circumstances demand so. However those tasked with such responsibility are enjoined both by law and good conscience to act in good faith and in accordance with the law. To this Lord Denning observed in the case of **Abbot vs. Sullivan (1952) 1 KB 189 at p198** that:
- “... bodies which exercise a monopoly in important sphere of human activity with power of depriving a man of his livelihood must act in accordance with elementary rules of justice. They must not condemn a man without giving an opportunity to be heard in his own defence and any agreement or practice to the contrary would be invalid.**
22. Therefore having found that the purported removal of the petitioner contravened, in terms of reasons for removal, article 251(1) of the Constitution, this Court declares such removal null and void and proceeds to issue an order of certiorari to quash the resolution of the County Assembly passed on 4th September, 2013 rescinding its earlier decision appointing the petitioner as the Chair of the Embu County Government.
23. The Court further issues an order of certiorari to quash the decision of the 2nd respondent rescinding the appointment of the petitioner as the Chair of the Embu County Government contained in the letter dated 5th September, 2013.
24. The Court will also issue an order of injunction restraining the 1st, 2nd and 3rd respondent's, their servants, agents or otherwise howsoever from removing from office as the Chair of the Embu County Public Service Board, the petitioner by any other manner howsoever or grounds that contravene article 251(1) of the Constitution.
25. This being a petition concerning interpretation and implementation of devolution as contemplated in the Kenya Constitution, 2010 is novel and noble hence there will be no order on costs.

***Dated and delivered at Nyeri this 19th day of December , 2013.***

**ABUODHA NELSON. J.**

**JUDGE**

*Delivered in open Court in the presence of Ms Mbijire for the Petitioner and Mr. Mungai for the 1st Respondent.*

*N/A for the Second respondent N/A for the 3rd Respondent.*

**ABUODHA NELSON J.**

**JUDGE**