



**Toromo v Baringo County Government & 2 others (Employment and Labour Relations
Petition E002 of 2021) [2025] KEELRC 118 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 118 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS PETITION E002 OF 2021**

MA ONYANGO, J

JANUARY 23, 2025

**IN THE MATTER OF CONTRAVENTION OF ARTICLE 43(1)(F)
OF THE CONSTITUTION OF KENYA OF 2010**

AND

**IN THE MATTER OF CONTRAVENTION OF SECTION 76(B)
AND (C) OF THE LABOUR RELATIONS ACT, 2007**

BETWEEN

GIDEON KIBET TOROMO PETITIONER

AND

BARINGO COUNTY GOVERNMENT 1ST RESPONDENT

GOVERNOR BARINGO COUNTY 2ND RESPONDENT

BARINGO COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

JUDGMENT

1. The Petitioner describes himself in the petition as a resident of Kabarnet Town within Baringo Central in Baringo County. He states that he was employed by Baringo County Government as Chief Officer Health Services vide a letter of appointment dated 29th June 2018 which he accepted and commenced his services on 2nd July, 2018.
2. The 1st Respondent is established under Chapter 11 of the *Constitution* of Kenya 2010. The 2nd Respondent is the Governor of the 1st Respondent and Chief Executive Officer of Baringo County.
3. The 3rd Respondent is established under Article 235 of the *Constitution* of Kenya 2010. Its role is the staffing of the county government.



4. In his petition dated 26th January, 2021 the petitioner seeks the following reliefs:
 - a. A declaration that the respondents engaged in a malicious scheme of orchestrating the irregular and the unlawful termination of the appointment of the petitioner and removal from office of the Chief Officer of Baringo County Government and that the actions of the respondents are malicious, illegal, unfair, unlawful and therefore null and void
 - b. A declaration that the letter dated 8th December 2020 amounted to constructive dismissal of the petitioner and all its contents altering the employment status of the petitioner be declared null and void.
 - c. That this Honourable court issue an order of CERTIORARI and quash the decision by the respondents un-procedurally terminating the services of the petitioner as the Chief Officer Health Service Baringo County.
 - d. That this court issue an order compelling the respondents to pay the petitioner punitive damages for breach of contract, damages for unfair termination.
 - e. An order of compensation, costs and interest from the date of filing of this petition and any other relief that the court may deem fit to grant and expedient in the circumstance.
5. The Petition is anchored on Articles 1, 2(1), 27, 41, 47, 48, 165(7) and 258 of the Constitution of Kenya, 2010.
6. It is the Petitioner's case that his services were terminated vide letter dated 8th December, 2020 titled "Ref: Secondment to Baringo County Government".
7. Before his engagement by the County Government of Baringo the Petitioner was an employee of the National Government. He was seconded to the County Government of Baringo. During the pendency of his secondment he applied for and was employed as
8. He thereafter applied for extension of his secondment for the period between 1st July 2018 and 30th June 2020. The approval of the secondment was communicated to the Petitioner by letter dated 4th November, 2020 titled "Re: Belated Extension of Secondment"
9. It is this letter, which was addressed to the Petitioner and copied to the County Secretary and County Government of Baringo that prompted the Respondents to issue the letter dated 8th December, 2020, communicating to the Petitioner the decision to transfer his services back to the Ministry of Health with immediate effect.
10. In their responses to the petition vide the Response to Petition dated 25th June, 2021, the Replying Affidavit of Francis C. Komen, the 1st Respondent's County Secretary, sworn on 26th February, 2021 and the Affidavit in Response to Petition sworn by Samson Kibii, the Secretary/CEO to the 3rd Respondent on 19th March, 2021, the Respondents state that the Petitioner was on secondment to the County Government and he was released back to the Ministry of Health, his principal employer, following the communication by the Principal Secretary to the Respondents that secondment was for the period 1st July 2018 and 30th June, 2020 which had lapsed.
11. It is the Respondents' case that the Petitioner did not secure an extension of his secondment thereby necessitating his release back to the Ministry of Health.
12. The Petition was disposed of by way of written submissions.



Petitioners Submissions

13. In his submissions in support of the Petition, it is submitted for the Petitioner that his employment by the National Government was independent from his employment by the County Government through a contract signed by the Governor. He states that he applied for the job in the County Government which had been advertised, was interviewed and competitively appointed under a new contract.
14. The Petitioner submitted that after securing employment by the Respondents he applied for extension of his secondment on 23rd July, 2018 from his primary employer, which was granted on 4th November, 2020. That the secondment was extended to 30th June 2020.
15. The Petitioner states that he should have been given an opportunity to explain why his services should not be terminated and to choose to vacate his employment with the National Government. That he was not invited to either regularize his employment or defend himself before termination.
16. The Petitioner submitted that the process for removal of a county executive is anchored in law under section 31(b) of the County Government Act as read with section 40(20, (3), (4), (5) and (6) which require that a resolution is passed by the county assembly recommending termination.
17. He submits that the other avenue for removal is by the Governor under section 31(a) of the County Government Act.
18. The Petitioner submitted that he was dismissed in contravention of Article 236 of the *Constitution* and the *fair Administrative Action Act*.
19. The Petitioner submitted that the process of termination of his appointment was hurried and exposes ulterior motive, relying on the decision in *Evalyne Rono v County Government of Bomet and Others No. 11 of 2020* and *Elisabeth Chepkoech Lagat v Bomet County Government and 2 others [2016]*.
20. In concluding the petitioner submitted that he had elaborated the manner in which he was unfairly and unprocedurally terminated and provided the provisions of the law infringed and the manner as well as the remedy sought as held in *Anarita Karimi Njeru v Republic No. 1 of 1979 KLR 154*.

Respondents' Submissions

21. For the Respondents it was submitted that the Petitioner was appointed on 29th June, 2018 by the 2nd Respondent as County Chief Officer Department of Health Services on a four (4) year contract with effect from 1st July, 2018 until the 1st Respondent was able to find a substantive Chief Officer. That the Petitioner was an employee of the Ministry of Health and his belated secondment categorically stated that it was for the period 1st July, 2018 to 30th June, 2020.
22. The Respondents submit that the Petitioner's secondment having lapsed on 30th June, 2020, so did the contract between him and the 1st Respondent. That it was on this basis that on 8th December, 2020, the County Secretary of the 1st Respondent communicated to the Petitioner that he had been released to his principal employer the Ministry of Health.
23. The Respondents relied on the decision in *Margaret Ochieng v National Water Conservation and Pipeline Corporation (Cause No. 23 of 2012)* and *Evans Kipchumba Lokabei v County Public Service Board Baringo County Government & Another* where the court held that fixed term contracts lapse upon effluxion of their term and that the same does not amount to unfair termination.



24. It was further the submission of the Respondents that the petition was incompetent as the Petitioner failed to state with clarity the constitutional rights and freedoms violated by the Respondents. They rely on the decisions in *Anarita Karimi Njeru v Republic (No. 1) (1979) KLR 154* and *Mumo Matemu v Trusted Society of Human Rights Alliance (2014) eKLR*. They further rely on the decision in *Center for Human Rights and Mediation v County Government of Uasin Gishu & 3 Others* where the court relied with approval on the judgment in *Bernard Murage v Fine Serve Africa Limited & 3 Others [2015] eKLR*. In the case the court held that not each and every violation of the law must be raised before the High Court as a constitutional issue and that where there exists an alternative remedy through statutory law it is desirable that such statutory remedy be pursued first.
25. The Respondents further relied on section 10(2)(c) of the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 which states “The Petition shall disclose the constitutional provision violated.”

Analysis and Determination

26. I have considered the pleadings on record together with the submissions by the parties. The issues that arise for determination are the following:
- a. Whether the petition herein is competent;
 - b. Whether the Respondents violated the Petitioners fundamental rights and freedoms
 - c. Whether the Petitioner is entitled to the reliefs sought in her petition.
27. It is the submission of the Respondents that the Petitioner did not particularize the violations of his constitutional rights and the provisions of the *Constitution* that he relied on.
28. In the case of *Anarita Karimi Njeru v Republic (supra)* the court stated:
- “...if a person is seeking redress from the High Court on a matter which involves a reference to the Contestation, it is important (if only to ensure justice is done in his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
29. The same was reiterated in *Mumo Matemu v Trusted Society of Human Rights Alliance (2014) eKLR* where the court stated:
- “...the principle in *Anarita Karimi Njeru (supra)* underscores the importance of defining the dispute to be decided by the court... Procedure is also handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the tunet of substantive justice, as they give fair notice to the other party. This principle in *Anarita Karimi Njeru* that established the rule that requires reasonable precision in framing of issues in constitutional petition is an extension of this principle.”
30. In the petition the Petitioner averred that the abrupt termination of his employment by the Respondents was unfair labour practice as he was not subjected to due process as provided in the law. He further averred that his rights to fair labour practice, the rules of natural justice and rights enshrined in both local and international instruments were violated by the Respondents.
31. The Petitioner cited articles 1, 2(1), 27, 41, 47, 48, 165(7) and 258 as the basis for the petition. He however did not demonstrate or specify how each of the provisions cited were violated by the Respondent.



32. I agree with the Respondents that the Petitioner failed to state with precision how each of the provisions of the Constitution he relied on were violated by the Respondents. As was stated in *Bernard Murage v Fine Serve Africa Limited & 3 Others* (supra) not every violation of the law constitutes a constitutional violation for which the aggrieved party should file a petition, especially where there are statutory provisions that would adequately remedy such violations.
33. In the instant case the Employment Act and the Employment and Labour Relations Court Act adequately provide for the remedies sought by the Petitioner in the petition which include compensation for unlawful termination, an order of certiorari and damages.
34. The fact that the Petitioner failed to meet the threshold for a constitutional petition does not mean that this court would send him home empty handed if his statutory rights were infringed by the Respondents. Article 159 of the Constitution and section 20 of the Employment and Labour Relations Court Act, which enjoin the court to apply substantive justice without undue regard to technicalities, would come to his rescue.
35. The Petitioner's letter of appointment dated 3rd September, 2018 stated that the appointment was for a term of four years from 1st July, 2018. The letter is reproduced below:

Baringo County Government

Our Ref: BCG/APP/69/VOL.1/2018

Date: 3rd September, 2018

Dr. Gideon Kibet Toromo

Box 832

Eldama Ravine

Dear Sir

Re: Appointment as County Chief Officer Job Group "s"

Reference is made to the letter Ref. No. BCG/APP/69/VOL.1/203 of 29th June, 2018 on the above subject matter. I hereby revise your contract period as the Country Chief Officer Department of Health Services from one year to four years with effect from 1st July, 2018.

The position calls for high level of integrity, commitment and self drive. You will be expected to take charge of the docket by executing policies, monitoring and supervising implementation of projects, programmes as well as service delivery.

Duties and Responsibilities

- i. Administration of County Department of Health Services;
- ii. Formulation and implementation of policies and laws;
- iii. Development and implementation of County's Strategic and Integrated Development plan;
- iv. Formulation and implementation of effective programmes to attain Vision 2030 and Sector goals;
- v. Promotion of National values and principles of the County Public Service.
- vi. Performing any other duty as assigned by the Supervisor.

The salary and allowances attached to this position is indicated below:-



Basic Salary Ksh.130,420 p.m

House Allowance Ksh. 52,000 p.m

Hardship Allowance Ksh.45,000 p.m

Other Allowances Ksh. 20,000 p.m

Other terms of service is as per the SRC Policy guidelines.

Please signify your acceptance of this appointment in writing within seven days from the date of this letter.

If you accept this appointment, please indicate by signing appropriately here below and return the signed copy to Human Resource Department for further action.

On behalf of the County Government of Baringo, I take this opportunity to congratulate you for your new appointment and I wish you the best as you perform your duties.

Yours faithfully

Signed

H.E. Hon. Stanley K. Kiptis

Governor

Baringo County Government

I accept/do not accept

Signature signed Date:4/9/2018

Cc H.E. The Deputy Governor

CEC Members

36. At the time the Petitioner was issued with the letter of appointment he did not have a letter of extension of secondment. Secondment is not mentioned in the appointment letter. Secondment was therefore not a term or condition of his employment.
37. From evidence on record, the Petitioner applied for extension of secondment by his letter dated 23rd July 2018 which none of the parties produced before the court but which is referred to in the letter dated 4th November, 2020 which was a belated approval of extension of the Petitioner's secondment. The letter of extension of secondment is reproduced below:

Ministry of Health

Ref No. 1993061605(210)

Mr. Gideon Kibet Toromo

Deputy Director, Medical Services

Re: Belated Extension of Secondment

Reference is made to your letter dated 23rd July, 2018 in which you requested for secondment to the County Government of Baringo following your appointment as the Chef Officer of Health.

I wish to inform you that the Public Service Commission has granted approval for belated extension of secondment to the County Government of Baringo with effect from 1st July, 2018 up to and including 30th June, 2020 vide letter Ref. No. PSC/GEN/13/XII/(60) dated 14 October, 2020.



S.W.Khaemba

For: Principal Secretary

CC: County Secretary

County Government of Baringo

38. The appointment letter does not make any reference to secondment. It makes reference to an earlier letter dated 29th June 2018 of the same subject matter. This can only imply that the Petitioner was initially appointed by letter dated 29th June, 2018 for a term of one year which by the letter of appointment dated 3rd September, 2018 was revised to a term of four years.
39. The Petitioner's averment that he was competitively recruited was not controverted by the Respondents. Indeed, the Respondents do not mention the same at all in their pleadings meaning that they did not contest that fact.
40. Section 45 of the [County Governments Act](#) provides for appointment of county chief officers as follows:
45. Appointment of county chief officers
- (1) Whenever a vacancy arises in the office of a county chief officer, the respective governor shall within fourteen days —
 - (a) nominate qualified and experienced county chief officers from among persons competitively sourced and recommended by the County Public Service Board; and
 - (b) with the approval of the county assembly, appoint county chief officers.
 - (2) The office of a county chief officer shall be an office in the county public service.
 - (3) A county chief officer shall be responsible to the respective county executive committee member for the administration of a county department as provided under section 46.
 - (4) The county chief officer shall be the authorized officer in respect of the exercise of delegated power.
 - (5) The governor may re-assign a county chief officer.
 - (6) The office of the county chief officer shall become vacant if the officer—
 - (a) dies;
 - (b) resigns by notice in writing addressed to the governor; or
 - (c) is removed from office in accordance with the terms of service or any other written law applicable to the officer.
41. This is an amendment of the original provision in the section of the Act effected on 13th July, 2020. Before that date the section 45 of the Act provided as follows:
1. The governor shall-
 - a. Nominate qualified and experienced county chief officers from among persons competitively sourced and recommended by the County Public Service Board; and
 - b. With the approval of the county assembly, appoint county chief officers.



2. The office of a county chief officer shall be an office in the county public service.
 3. A County chief officer shall be responsible to the respective county executive committee member for the administration of a county department as provided under section 46.
 4. The county chief officer shall be the authorized officer in respect of exercise of delegated power.
 5. The governor may re-assign a county chief officer.
 6. A county chief officer may resign from office by giving notice, in writing, to the governor.
42. The Petitioner having been initially appointed by letter dated 29th June, 2018, the appointment was before the amendment of section 45.
43. At the time of his removal from office the applicable provision was as per amendment of 2020. The same does not have any specific provision for removal from office of chief officers. The offices being in the public service, are subject to section 59 of the County Governments Act which provides for the functions and powers of a County Public Service Board, including removal of staff from office.
44. Section 73 of the County Governments Act provides for secondment as follows:
73. Secondments
 - (1) The national government shall put in place measures to protect its public officers on secondment to the counties from loss or disadvantage with respect to pension benefits, gratuity or other terminal benefits.
 - (2) Unless there is an agreement to the contrary, it shall be the responsibility of the national government to pay the salaries, remuneration, allowances and other benefits due to the staff seconded to a county government during the transition period.
 - (3) If for any reason it is not necessary for an officer on secondment to remain seconded and the secondment period has not lapsed, the officer shall be entitled to revert back to the public office held before secondment.
 - (4) The County Public Service Board shall not allow a public officer to proceed on secondment if it is not in the interest of the public officer or the concerned county public service.
 - (5) The County Public Service Board making a decision on secondment shall not allow the secondment unless it has considered the representation by the concerned authorized officer or head of department.
45. As provided in sub-section 73(5) of the Act, only the County Public Service Board may make a decision in respect of secondment and only after hearing representations by the concerned officer or his head of department.
46. In the instant case, the Respondents unilaterally decided to transfer the Petitioner back to the National Government without complying with section 73(5) of the Act. The letter of transfer is reproduced below:
- Baringo County Government
 BCG/1993061605/VOL.1/24
 DATE: 3rd September, 2018



Dr. Gideon Kibet Toromo

County Chief Officer

Health Services

Box 21 – 30400

Kabarnet

Throu'

County Executive Member, Health Services

Dr. Toromo

Re: Secondment to Baringo County Government

Reference is made to the letter REF:1993061605(210) Dated 4th November, 2020 from Ministry of Health on the above subject matter indicating that your secondment to Baringo County expired on 1st July, 2020.

It has been decided that you be transferred back to the Ministry of Health with immediate effect since your secondment to Baringo has not been extended. Please ensure that you do a comprehensive handing over to Mr. David Cherop, County Chief Officer for Preventive & Promotive Health Services, before being released to your new station.

By copy of this letter the County Executive Member for Health Services should inform this office the date you handover.

On behalf of Baringo County Government I wish to thank you for the service you rendered to during the period you worked for the County Government.

Signed

Francis C. Komen

County Secretary Head of Public Services

Cc. -He. Governor

-H.E Deputy Governor

-CEC Health Services

-Chief Officer Preventive Health Services

47. Further, the Petitioner's appointment letter did not refer to secondment. The Petitioner was therefore at liberty to either seek further extension from the National Government or to resign so as to continue working for the County Government.
48. The letter dated 8th December, 2020 was thus an unfair termination of the Petitioner's appointment as Chief Officer, Baringo County in several senses. First, it was not done by the County Public Service Board. Second, it was without seeking the Petitioner's representations. Third, it was in contravention of the Petitioner's letter of appointment.
49. For the foregoing reasons, I find that the Respondents unfairly terminated the Petitioner's employment contract.



Remedies

50. The Petitioner prayed for several remedies as set out herein above. He prayed for a declaration that the termination of his appointment was malicious, illegal, unfair, unlawful and therefore null and void.
51. I do declare the termination unfair and unlawful. I however do not agree with the Petitioner that it was null and void for reasons that it is a factual situation that the appointment came to an end by virtue of the letter dated 8th December, 2020, a situation that is irrevocable.
52. The Petitioner further prayed for a declaration that the letter dated 8th December, 2020 amounted to constructive dismissal. Having found the termination unfair, this prayer is redundant.
53. The Petitioner prayed for an order of certiorari to quash the decision of the Respondents as communicated by letter dated 8th December, 2020. The termination having taken place on the date the letter was issued and the contract which is the subject of the letter having long lapsed, this remedy is unavailable to the Petitioner.
54. The Petitioner prayed for punitive damages for breach of contract and for damages and compensation for unfair termination. I do not think the Petitioner's case meets the threshold for punitive damages as set out in the case of *Rookes v Benard*. I however find the manner in which the termination happened to be an orchestrated malicious scheme by the Respondents based on the manner in which it was handled.
55. Having found that the Respondents unfairly terminated the Petitioner's appointment, he is entitled to compensation. In view of the manner in which the termination occurred which as I have pointed out appears to have been deliberately orchestrated and hence an element of malice, and taking into account the factors set out in section 49(4) of the *Employment Act* and the totality of this case, I award the Petitioner compensation equivalent to 10 months salary in the sum of Kshs. 4,005,610.
56. The Respondents shall bear the Petitioner's costs of this suit.
57. Interest shall accrue from date of judgment.

DATED, DELIVERED VIRTUALLY AT ELDORET THIS 23RD DAY OF JANUARY, 2025.

M. ONYANGO

JUDGE

