



REPUBLIC OF KENYA



KENYA LAW
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**Gesembe v Nyaribo Governor, Nyamira County & 2 others (Petition
011 of 2022) [2023] KEELRC 82 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 82 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 011 OF 2022**

S RADIDO, J

JANUARY 25, 2023

**IN THE MATTER OF ARTICLES 1, 2, 3(1), 10, 19, 21, 22, 27(1),(2) & (3), 28, 41(1),
47(1) & (2), 48, 50(1), 165(3)(B) AND 258(1) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS PURSUANT TO ARTICLES 27(1),(2) &
(3), 28, 41(1), 47(1), AND 50(1) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF RULES 4, 10, 11, 1,3 AND 20 OF THE CONSTITUTION
OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL)
HIGH COURT PRACTICE AND PROCEDURE RULES, 2013**

AND

**IN THE MATTER OF SECTION 31 OF THE COUNTY
GOVERNMENTS ACT, NO. 17 OF 2012 LAWS OF KENYA**

IN THE MATTER OF SECTION 45 OF THE EMPLOYMENT ACT

BETWEEN

JOB ONG'OMBE GESEMBE PETITIONER

AND

**AMOS KIMWOMI NYARIBO GOVERNOR, NYAMIRA COUNTY 1ST
RESPONDENT**

COUNTY GOVERNMENT OF NYAMIRA 2ND RESPONDENT

NYAMIRA COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT



RULING

1. For determination is a motion dated 23 November 2022 by the respondents seeking orders:
 - (1) That this honourable court be pleased to dismiss the petitioner's claim/petition as it discloses no reasonable cause of action.
 - (2) That the costs of this suit and application be borne by the petitioner.
2. The grounds in support of the motion were that the court in Kericho had in a ruling delivered on 16 March 2021 held that the petitioner's employment was tied to the tenure of the appointing Governor and consequently there was no contractual relationship with the 1st respondent who took office upon the demise of the appointing Governor.
3. The court gave directions on the application on 24 November 2022. None of the parties complied with the directions within the set timelines.
4. The court has looked at the record, motion and, affidavit in support.
5. The respondent lodged an application dated 21 March 2021 seeking similar orders to the ones now under examination.
6. The court sitting in Kericho heard arguments on the application and dismissed it in a ruling on the merits delivered on 21 September 2021.
7. This court, therefore declines the invitation by the respondents to revisit the issue. The application is not only an abuse of the court process but *res judicata*.
8. The motion is dismissed with costs to be paid personally by the respondents' advocate on record.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 25TH DAY OF JANUARY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioner Mwae & Associates Advocates

For Respondents Ligunya Sande & Associates

Court Assistant Chrispo Aura

