



**REPUBLIC OF KENYA**

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

**EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**

**CAUSE NO 1 OF 2019**

**EVANS KIPCHUMBA LOKABEI ..... CLAIMANT**

**VERSUS**

**THE COUNTY PUBLIC SERVICE BOARD**

**BARINGO COUNTY GOVERNMENT**

**THE COUNTY GOVERNMENT OF BARINGO .....RESPONDENTS**

**J U D G E M E N T**

1. By a Memorandum of claim filed on 17<sup>th</sup> January, 2019 the Claimant averred that he joined Public Service in 2008 when he was employed as an Economist/Statistician in the Ministry of Planning.
2. According to the Claimant he was on 20<sup>th</sup> January ,2014 employed by the respondent as an economic advisor and personal assistant to the Governor of Baringo County under job group P on a five-year contract at a basic salary of Kshs. 77,527 per month, a house allowance of Kshs. 40,000/= and Commuter allowance of Kshs. 12,000/= per month.
3. It was a term of the contract that the position as an Economic advisor and personal assistant would be for a period of 5 years and thereafter upon completion the Claimant would revert to his permanent and pensionable terms.
4. The Claimant averred that his aptitude and competence was recognized by the respondent leading to his appointment through deployment to the Department of Treasury and Economic Planning as the Director Economic Planning Monitory and Evaluation from 25<sup>th</sup> January, 2016. According to the Claimant the employment as a Director Economic Planning from 26<sup>th</sup> January, 2016 in job group R was on permanent and pensionable terms at a salary of Kshs. 126,172 per month exclusive of allowance.
5. The Claimant contended that his appointment to the position of Director Economic Planning effectively terminated his contractual appointment of 20<sup>th</sup> January, 2014 as the Economic advisor and personal assistant to the Governor. The Claimant further averred that the respondent without compliance with provisions of the Constitution, Employment Act, Human Resource Policies and Procedures Manual for Public Service purported to terminate his service illegally and without any reasonable cause effective from 20<sup>th</sup> January, 2019.
6. The respondent in response to the claim averred that the Claimant was engaged on a 5-year contract which contract was not renewable. On 17<sup>th</sup> February, 2016 the Claimant was deployed from the Governments' office to the Department of Treasury as County Director - Economic Planning following the Claimants request.
7. On 23<sup>rd</sup> June, 2016 the Claimant's terms of appointment were reviewed and his salary increased and his five-year contract maintained. The said letter did not convert the Claimant's fixed term contract to a permanent and pensionable job.
8. According to the respondent, the Claimant's claim that his appointment to the position of Director Economic Planning effectively terminated his contractual appointment of 20<sup>th</sup> January ,2014 was without basis. The respondent contended that a deployment was not synonymous with fresh appointment Deployment was an internal staff restructuring process which did not require the direct involvement of the County Public Service Board. However, appointment of any person to hold on office in the County Public Service was the exclusive mandate of the 1<sup>st</sup> respondent proceeded by an appointment letter. In the Claimant's case, the only appointment letter was the one dated 15<sup>th</sup> January,2014 appointing the Claimant for a fixed term of five years with effect from 20<sup>th</sup> January, 2014 up to January, 2019. During the said period, the respondent was entitled to deploy the Claimant to another position to promote efficient service delivery and that did not connote that the Claimant would be automatically converted from a fixed term contract to a permanent and pensionable term.

9. According to the respondent, there was no letter of appointment to the Claimant varying his term to permanent and pensionable terms. In terms of section 67 of the County Government Act, no appointment or assignment of a duty in County Public Service shall be valid unless evidenced in writing.
10. The respondent further contended the Claimant's proposition that the post of Director Economic Planning was permanent and pensionable was untenable as the 1<sup>st</sup> respondent had powers to establish or abolish any office in the County service by dint of section 62 of the County Government Act. Appointments on permanent and Pensionable terms or fixed terms contract were made to respective employee not the position and further that even constitutional or statutory offices though may be permanent and pensionable, the employees can be designated to serve on temporary terms.
11. According to the respondent the Claimant had not been terminated for any other reason than effluxion of time on his contract. The single issue to be decided in this claim seem to be whether the claimant ought to have left office upon termination of his fixed term contract of not. The parties herein agreed to dispose of the issue by way of written submissions without calling oral evidence.
12. It was common ground that the Claimant was on 20<sup>th</sup> January, 2014 employed by the respondent as an economic advisor and personal assistant to the Governor of Baringo County on a 5-year contract. Upon expiry of the Claimant's contract he would revert to his employment in public service on permanent and pensionable terms.
13. By a letter dated 21<sup>st</sup> January, 2016 the Claimant requested to be deployed to the department of Treasury and Economic Planning. This request was approved by the respondent by a letter dated 17<sup>th</sup> February, 2016. The letter however, informed the Claimant that despite deployment he would remain in -charge for speech writing for the Governor.
14. In his request for deployment letter, the Claimant observed that the position of Director Economic Planning under department of Treasury and Economic Planning had remained vacant since inception of the County Government.
15. Part VII of the County Government Act establishes the County Public Service. One of the Objectives of the Service is to create a framework of uniform norms and standards to be applied in all counties in respect of appointments of persons to hold or act in those offices or confirming appointments. The County public Service Board comprises of Chairperson, not less than three but not more than five other members nominated and appointed by the Governor with approval of the County Assembly and a certified Secretary. Under section 59 of the Act one of the functions of the Board is to appoint persons to hold or act in offices of the County Public Service. Further the Board is required to promote public service values and principles referred to in article 10 and 232 of the Constitution.
16. Under Section 67 of the Act no appointment or assignment of duty in the County Public Service shall be valid unless evidenced in writing.
17. Concise Oxford English Dictionary defines the word appoint as assignment of a job or role. Deployment on the other hand is defined as the bringing into position or effective action. Black's Law Dictionary on the other hand defines the word "appoint" as to choose or designate someone for a position or job.
18. As observed earlier under Part VII of the County Government Act, the Public Service Boards are enjoined to observe the values contained in article 10 and 232 of the Constitution. Article 10 of the Constitution is concerned with national values and principles of governance while article 232 is concerned with values and principles of public Service one of which is fair competition and merit as basis of appointments and promotions.
19. By a letter dated 10<sup>th</sup> December, 2013 the Claimant applied to be appointed to the post of economic advisor and personal assistant to the Governor. This application was successful and the Claimant appointed through a letter dated 15<sup>th</sup> January, 2014.
20. n January, 2016 the Claimant applied to be deployed as opposed to appointment to the position of Director Economic Planning in the Department of Treasury and Economic Planning. This was accepted with a rider that the Claimant would continue to be in charge of speech writing for the Governor.
21. From the foregoing it would therefore seem that the Claimant was clear in his mind about the difference between appointment and deployment. He knew that his movement from his position as Economic Advisor and Personal Assistant to the Governor to Director Economic Planning in the Department of Treasury was not an appointment but a deployment. It is therefore erroneous for the Claimant to contend that his deployment as such amounted to constructive employment.
22. The respondent is a County Government and as such bound by the provisions of the County Government Act and the Constitution referred to above. To inter that the deployment of the Claimant as Director Economic Planning in the Treasury Department amounted to constructive employment would hand to the Claimant an appointment to the Baringo County Public Service without compliance with the provisions of the County Government Act and article 232 of the Constitution.
23. The Court therefore finds and holds that Claimant's deployment as Director Economic Planning was conterminous with his 5-year appointment as the Economic Advisor and Personal Assistant to the Governor and ought to have left office upon expiry of his contract unless the same was renewed. A case for unfair termination of contract has therefore not been made out and the claim is therefore hereby dismissed.
24. On the issue of costs, the Court will not issue any order on costs since the Claimant served the respondent diligently and his exit was not out of any disciplinary matter. Further the Claimant sought intervention of the Court in good faith seeking the interpretation of the status of his fixed term contract when he got deployed as Director Economic Planning.

25. It is so ordered.

**Dated at Eldoret this 30th day of January 2020**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 30th day of January 2020**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**