

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 40 OF 2018

(Before Hon. Justice Mathews N. Nduma)

PETER KATAKA.....PETITIONER

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

RULING

1. The suit was commenced by a petition dated 23rd March 2018 on 1st May 2018. The petitioner has sued his employer with regard to continuous deduction of Kshs. 5,000 per month from his salary to date. The petitioner also claims general damages for violation of his constitutional right under *Article 41 of the constitution of Kenya 2010*.

2. The respondent has not filed a substantive response to the petition but instead filed a preliminary objection to the petition couched in the following terms:

(i) The Honourable court lacks jurisdiction.

(ii) That this claim raises no reasonable cause of action against the 1st and 2nd respondent.

(iii) The suit be dismissed with costs.

3. The court has carefully considered the preliminary objection raised by the respondent and the submissions filed by the 1st and 2nd respondents and by the petitioner on the preliminary objection. The court is satisfied that there are triable issues of law and fact raised by the petitioner in the petition which require substantive response by the respondent.

4. That the cause of action arose from an employer employee relationship and the court has jurisdiction to entertain the matter in terms of *Article 162 (2) (a) of the constitution of Kenya 2010, read with Section 12(1) of the Employment and Labour Relations Court Act, 2011 as amended*.

5. The preliminary objection lacks merit and is dismissed with costs in the cause.

Ruling Dated, Signed and delivered this 5th day of March, 2020

Mathews N. Nduma

Judge

Appearances

Lore Orege – Senior Litigation Counsel, A.G’s Chamber for the Objector

M/S Momanyi for Petitioner

Chrispo – Court Clerk