



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**PETITION NO. 11 OF 2019**

**IN THE MATTER OF: ARTICLES 10, 41, 47, 50, 176, 179, 232 AND 236 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 28, 41, 47 AND 50 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF: THE COUNTY GOVERNMENTS ACT, 2012 NO. 17 OF 2012**

**AND**

**IN THE MATTER OF: SECTIONS 45, 47, 49 AND 50 OF THE EMPLOYMENT ACT, 2007**

**AND**

**IN THE MATTER OF: THE UNLAWFUL AND UNFAIR TERMINATION OF THE PETITION**

**BETWEEN**

**DR. BENJAMIN KIPKOECH KOSKEI.....PETITIONER**

**v**

**HIS EXCELLENCY**

**THE GOVERNOR, NAKURU COUNTY.....1<sup>st</sup> RESPONDENT**

**THE COUNTY SECRETARY,**

**COUNTY GOVERNMENT OF NAKURU.....2<sup>nd</sup> RESPONDENT**

**COUNTY GOVERNMENT OF NAKURU.....3<sup>rd</sup> RESPONDENT**

**RULING**

1. The Petitioner moved the Court sitting in Nakuru on 15 May 2019 under certificate of urgency and because the Resident Judge, Employment and Labour Relations Court was not sitting on that day, the Deputy Registrar forwarded the application to Nairobi to be placed before the Duty Judge.
2. The Duty Judge heard the Petitioner *ex parte* on 17 May 2019, and upon being satisfied that the application was urgent, directed that it be served on the Respondents for *inter partes* hearing in Nairobi on 27 May 2019.
3. The Respondents filed a replying affidavit in opposition to the application on 24 May 2019, and the Court took arguments as scheduled on 27 May 2019.
4. The Petitioner was appointed as Chief Officer, Department of Youth and Sports with effect from 26 April 2018. The contract was to lapse

on 30 November 2022.

5. Barely 4 months later, the employment relationship hit turbulence as the Petitioner was accused of breaching confidentiality, leading to suspension.

6. The Petitioner felt aggrieved with the suspension and he moved the Employment and Labour Relations Court in Nakuru (Nakuru Petition No. 19 of 2018) alleging breach of contract and unfair labour practices.

7. The Court delivered judgment on 29 April 2019 dismissing the suit. Soon thereafter, the Petitioner was subjected to a disciplinary process.

8. The Petitioner again moved the Court (Nakuru Cause No. 64 of 2019) seeking a conservatory order interdicting the recruitment process for the position of Chief Officer, Youth and Sports.

9. Makau J by consent of the parties granted an order interdicting the recruitment process on 5 April 2019. The order was extended on 24 April 2019 pending *inter partes* hearing.

10. Despite the consent order, the Respondents informed the Petitioner of the termination of his employment on 7 May 2019.

11. It is the termination of employment which was the immediate genesis of the instant Petition/application in which the Petitioner is seeking orders

(a) ...

(b) ...

(c) THAT pending the hearing and determination of the substantive Petition filed herewith, this Honourable Court be pleased to issue a conservatory order restraining and/or prohibiting the Respondents, their officers, staff, agents, servants and/or any other persons acting at their behest howsoever from appointing any officer to the Petitioner's employment position.

12. The Petitioner was serving in a public office and was thus afforded protections assured all public officers by Article 236 of the Constitution, before termination of employment.

13. Apart from the constitutional protection, the Petitioner's employment was governed by the provisions of the County Governments Act.

14. Under section 59(1)(c) as read with section 55(4)(iv) of the Act, disciplinary control over the Petitioner was the mandate of the County Public Service Board.

15. It appears that the 12 persons who handled the Petitioner's disciplinary case were not members of the County Public Service Board. If they were acting pursuant to delegated authority, the same was not disclosed (should be in writing).

16. Although the Court should approach with caution disputes where a termination of employment has already taken place, more so in ordinary employment where there are no special statutory or constitutional protections, the egregious nature of the termination of the Petitioner's employment herein does not augur well in terms of principles governing public service (disciplinary committee).

17. The Court is in the circumstances satisfied that an order in terms proposed by the Petitioner in paragraph (c) of the motion dated 15 May 2019 is warranted.

18. But because there are subsisting orders in Nakuru Cause No. 64 of 2019, the Court will not make any substantive order but direct that this Petition be placed before the Court sitting in Nakuru for further orders/directions.

19. The Deputy Registrar to transmit this file to Nakuru for hearing and determination of the Petition. Parties to appear before Deputy Registrar, Nakuru on 3 June 2019 at 9.00am.

20. Costs in the cause.

**Delivered, dated and signed in Nairobi on this 29<sup>th</sup> day of May 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner                      Ms. Matasi instructed by Gordon Ogola, Kipkoech & Co. Advocates

For Respondents                    Mr. Kibet instructed by Mirugi Kariuki & Co. Advocates

Court Assistant

Lindsey