



**REPUBLIC OF KENYA**

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

**PETITION NO. 40 OF 2016**

**(Originally Nakuru High Court Petition No. 56 of 2016)**

**ELIJAH LEIRO LETANGULE.....PETITIONER**

**v**

**COUNTY GOVERNMENT OF BARINGO.....1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF ELGEYO MARAKWET.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Petitioner moved the High Court on 11 November 2016 through a Petition contending that the Respondents breached his contract of employment by terminating the contract without any justification on 1 July 2010.
2. Among the reliefs the Petitioner sought in the Petition were a declaration that the termination of employment was unfair, salary arrears, house allowance, gratuity, leave pay and damages.
3. On 9 December 2016, the High Court transferred the Petition to this Court due to jurisdictional concerns.
4. The parties appeared before this Court on 17 July 2017 when the Court gave directions as to the hearing and determination of the Petition.
5. When the Petition was mentioned on 22 September 2017 to confirm compliance and for further directions, it turned out that the Petitioner had filed his submissions while the Respondents had filed a preliminary objection instead.
6. The Court invited the parties to make brief oral submissions but the Petitioner indicated it would rely on the written submissions.
7. The Respondent made brief submissions and urged that the Petition should be struck off because the Petitioner was attempting to avoid the law of limitation by taking the route of a Petition instead of an ordinary Cause.
8. It is trite law that where a cause of action can be determined on the basis of statutory law without reaching a constitutional issue, that is the approach which should be taken so as not to devalue the reach of the Constitution.

9. The cause of action presented by the Petitioner lies squarely within the province of law of contract, and more specifically the Employment Act, 2007.

10. That statute at section 90 provides for a limitation of 3 years.

11. It is clear that the Petitioner, alive to the limitation provision, was attempting to short-circuit the limitation provision by camouflaging his cause as Constitutional.

12. The Court cannot allow that and in that regard, the Court upholds the preliminary objection and strikes out the Petition.

13. No order as to costs as the Respondents should have given indication of the preliminary objection when directions were given.

**Delivered, dated and signed in Nakuru on this 17<sup>th</sup> day of November 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner Ms. Moenga instructed by Mongeri & Co. Advocates

For Respondents Mr. Kandie instructed by Mwaita & Co. Advocates

Court Assistants Martin/Nixon