



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW DIVISION**

**JR. MISC APPLICATION NO. 58 OF 2016**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF  
CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF: THE NATIONAL POLICE SERVICE COMMISSION AND IN THE  
MATTER OF POLICE VETTING**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**NATIONAL POLICE SERVICE COMMISSION.....RESPONDENT**

**EXPARTE: DOMINIC KAGUNGA MATE**

**JUDGEMENT**

**Introduction**

1. By a Notice of Motion dated 24<sup>th</sup> February, 2016, the ex parte applicant herein, **Dominic Kagunga Mate**, seeks an order of certiorari to quash the respondent's decision dated 25<sup>th</sup> January, 2016 dismissing the ex parte applicant's appeal. He also sought an order prohibiting the Respondent from implementing the same decision.
2. The said application was based on *inter alia* the fact that following the decision to remove and or dismiss the applicant from the National Police Service, he filed an application seeking a review of the same decision on 19<sup>th</sup> October, 2015.
3. However the said review was never heard. Instead the said review was dismissed vide a letter dated 25<sup>th</sup> January, 2016. Therefore the issue he raised in the said review application were never considered by the Respondent.
4. Although the application was initially opposed by the Respondent, when the matter came up before me on 14<sup>th</sup> November, 2016, there was no appearance for the Applicant and **Mr Odunga**, learned counsel for the Respondent informed the Court that following this Court's decision in **Republic vs. National Police**

Service Commission Exparte Daniel Chacha Chacha [2016] eKLR and Republic vs. Stephen Kiptanui Arap Soi JR. Misc Application No.51 of 2016, the Respondent was amenable to conducting the review afresh and had in fact communicated this position to the Applicant but the Applicant was adamant that this matter ought to proceed.

5. In Republic vs. Stephen Kiptanui Arap Soi (supra), this Court expressed itself *inter alia* as follows:

**“In this case, it is clear that after the Applicant filed his application for review, he was not invited to argue his case. Whereas he need not have appeared before the Tribunal in person, the law expected that the applicant would be heard on his case before a determination either way was made...In my view...the grounds set out are to be considered by the Commission in its determination whether or not to grant the request for review. The said grounds therefore cannot be a basis for determining whether or not the request for review is to be admitted to hearing. In other words the foregoing provisions do not admit for summary dismissal of the request for review...Unless the legal instrument provide for summary dismissal of a request for review, where the right to review is provided by statute, the said right ought not to be denied by introducing procedures which are inimical to a fair hearing and adjudication of the statutorily provided avenue for redress...In my view, an introduction of a procedure which does not permit the hearing of a party in his case whether orally or otherwise, may well amount to bad faith and constitute irrationality as one cannot be in a position to know what factors were considered by the authority in arriving at the decision. Such a decision may well be described as having been arbitrarily arrived at. This must necessarily be so because statutes are interpreted by reference to their purpose, and statutory powers must be exercised for the purpose for which they were conferred. Public authorities are required to promote, and not to frustrate, the legislative purpose. In my view the purpose of the procedure for review is to afford a person aggrieved by the decision made on his or her vetting an opportunity to challenge the same. To thwart that intention by blocking a person’s grievance from being agitated on the vague ground that the request for review is not merited amounts in my view to thwarting statutory or legislative intent and purpose...In my view the right of review can only be meaningfully enjoyed if the party requesting for review is heard before the decision is made. For an authority or tribunal entrusted with taking administrative decisions which affect the rights of a person to close itself in an office and by way of fiat dismiss a petition without procedurally and properly hearing the same and without indicating how the decision was arrived at whether by tossing a coin or otherwise thus leave the petitioner speculating as to the manner in which the determination was made, can be anything but fair. In my view the power given to administrative or executive authorities ought to be properly exercised and must not to be misused or abused...Having considered the foregoing, I am therefore not satisfied that the manner in which the request for review was determined met the standards of fairness.”**

6. Since the facts in the two cases are similar, I adopt the same reasoning and find that the Respondent’s decision was tainted with procedural improprieties and cannot be permitted to stand.

### **Order**

7. Accordingly I grant the following reliefs:

- a) **An order of Certiorari removing into this Court the decision of the Respondent dated 25<sup>th</sup> January, 2016 rejecting the Applicant’s vetting review application and the consequential orders which decision and orders are hereby quashed.**
- b) **An prohibiting the Respondent from dismissing the Applicant from Service and implementing the same decision dated 25<sup>th</sup> January, 2016.**

**c) An order of mandamus compelling the Respondent to proceed to hear the Applicant's vetting review application in accordance with the Constitution and the relevant law.**

**d) Each party will bear own costs of these proceedings in light of the Applicant's conduct in insisting to proceed with the application even after the Respondent had thrown in the towel and proposed to re-vet the applicant afresh.**

8. Orders accordingly.

**Dated at Nairobi this 21<sup>st</sup> day of November, 2016**

**G V ODUNGA**

**JUDGE**

***Delivered in the presence of:***

***Mr Kibet for Mr Gikunda for the applicant***

***CA Mwangi***