



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**

Miscellaneous Civil Application No. 263 Of 2010

**JULIUS KIPKURUI BETT.....APPLICANT**

**AND**

**THE COMMISSIONER OF POLICE.....1<sup>ST</sup> RESPONDENT**

**THE OFFICER COMMANDING POLICE DIVISION THE ATTORNEY  
GENERAL.....4<sup>TH</sup> RESPONDENT**

Through a notice of motion dated 16<sup>th</sup> August, 2010 brought under Order LIII Rule 3 of the Civil Procedure Rules Julius Kipkirui Bett (the Ex-parte Applicant) seeks orders against the Commissioner of Police (the 1<sup>st</sup> Respondent), The Provincial Police Officer Central Province (2<sup>nd</sup> Respondent), The Officer Commanding Police Division Gatundu Division (3<sup>rd</sup> Respondent) and the Honourable Attorney General (the 4<sup>th</sup> Respondent) as follows:-

**2. THAT this Honourable court do issue any other or further orders which it may deem just and expedient.**

The respondents opposed the application through grounds of opposition dated 14<sup>th</sup> October, 2010 and which grounds of opposition are as follows:-

**2. That the application lacks merit.**

**4. That the Applicant was afforded an opportunity to be heard by way of a "show cause" letter to which he aptly responded.**

From the papers filed in court, it emerges that the Applicant joined the Kenya Police Force on 26<sup>th</sup> August, 1995. In 2003 the Applicant was together with other police officers charged in Mombasa Chief Magistrate's Court Criminal Case No. 1791'A' of 2003. In 2004 he was acquitted of the charges under Section 210 of the Criminal Procedure Code. After the acquittal the Applicant who was on interdiction during the trial had his interdiction lifted. Thereafter the Applicant continued discharging his duties but through a letter dated 19<sup>th</sup> March, 2010 he was asked to show cause why he should not be removed from the Police Force. The Applicant responded to the show cause letter through his letter dated 4<sup>th</sup> July, 2010 but by a letter dated 9<sup>th</sup> July, 2010 the Applicant was informed inter alia :-

That is when the Applicant moved to court and obtained leave to commence judicial review proceedings. It is the Applicant's case that his removal was unlawful, unprocedural and made in bad faith.

After looking at the papers filed in this cause, I am of the view that the issues for determination can be framed using the grounds of opposition filed by the respondents. The issues for determination are therefore as follows:-

2. Whether the application is merited.
4. Whether the rules of natural justice were complied with.
6. Whether the remedies sought are available to the Applicant.

I believe the starting point is to determine whether this is a matter for the private law realm or the public law province. Matters of employment are matters of contract which fall into the private law arena. Sometimes however the termination of the contract of an employee raises public law issues. Compliance with the rules of natural justice for example is a matter for public law. G.B.M. Kariuki, J clearly captured the law in the already cited case of **REPUBLIC V JUDICIAL SERVICE COMMISSION & ANOTHER** when he stated that:-

In electing to look for a remedy through public law, an employee should always carefully weigh whether the remedies available in public law are the most efficacious remedies. The courts will not usually want to force an employee and an employer into an unenforceable contract by dangling a judgment at them. Where an employee believes that his/her employment has been terminated without the procedure provided by the contract being followed, the best remedy is to sue for damages.

Were the rules of natural justice complied with in the case of the Applicant? The answer is in the affirmative. The letter asking the Applicant to show cause why he should not be removed from the police force and his reply to that letter amounted to a hearing in the circumstances of this case.

The last question is whether the application is competent. Ringera, J (as he then was) clearly brought out the procedures to be followed in judicial review proceedings in the case of **WELAMONDI VS. THE CHAIRMAN, ELECTORAL COMMISSION OF KENYA [2002] KLR, 406**. In judicial review proceedings the nominal applicant is always the Republic. The actual applicant is however the person filing the application. The Applicant's application is therefore wrongly titled but in the spirit of Article 159 (2) (d) of the Constitution, I think the manner in which the Ex-parte Applicant has titled his application should not be used to deny him access to justice. In the interests of justice I will therefore find that the Applicant's application is not bad in law.

Dated and signed at Nairobi this 2nd day of May, 2012

**JUDGE**