



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**CONSTITUTIONAL PETITION NO.32 OF 2015**

**ZELEA JAKAA AKIRU .....PETITIONER**

**VERSUS**

**1. THE COUNTY COMMANDER**

**KENYA POLICE – MOMBASA ..... 1ST RESPONDENT**

**2. REGIONAL CO-ORDINATOR**

**KENYA POLICE SERVICE**

**COAST ..... 2ND RESPONDENT**

**3. INSPECTOR GENERAL OF KENYA**

**POLICE SERVICE ..... 3RD RESPONDENT**

**4. THE HONOURABLE ATTORNEY**

**GENERAL ..... 4TH RESPONDENT**

**RULING**

In my ruling dated 14th June, 2015 I did note that in his Judgment dated 20th January, 2015 Muriithi, Judge did state that the police have authority to commence disciplinary action under section 88 (4) of the National Police Service Act notwithstanding Criminal Prosecution for the conduct which is against the law and also constitutes an offence against discipline. He proceeded to discharge the interim orders restraining the conduct of orderly room proceedings against the ex parte applicant.

In the interpartes hearing I invited the parties to address me on the relevance of a decision made by Justice Byram Ongaya in Nyeri on 5th June, 2015 whereby he declared section 88 (4) of the National Police Service as un constitutional as it was inconsistent with article 50(2) of the Constitution. The Court was urged to find that even if the declaration by the Judge was proper it would not operate retrospectively.

Justice Muriithi did determine the issue of orderly room proceedings. In this matter. It was open to the applicant to have lodged an appeal against the decision and orders that flowed from Justice Muriithi's ruling.

This is a Court with concurrent jurisdiction to that of Justice Muriithi. It cannot sit on appeal against the decision of my brother Judge. Justice Byron Ongoya did declare section 88 (4) of the National Police Service as un constitutional. That declaration cannot be held to operate retrospectively.

Before me are two preliminary objections one dated 4th June, 2015 and another dated 3rd June, 2015. I have anxiously gone through them and I am satisfied that I lack jurisdiction to entertain and grant the orders sought in the application. I uphold the preliminary objection. No orders as to costs.

Ruling delivered, dated and signed this **10th** day of **July, 2015**.

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**M. MUYA**

**JUDGE**

**10TH JULY, 2015**

**In the presence of:-**

Ananda holding brief Magolo

Mr. Ngare for Attorney General

Masila holding brief Wamotsa for Director of Public Prosecution

**M. MUYA – JUDGE**