

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT GARISSA

ELRC PETITION NO. E006 OF 2024
(Before Hon. Lady Justice Hellen Wasilwa, J)

ABASS	ABDULLAHI PETITIONER	ABDI.....
VS		
NATIONAL POLICE SERVICE RESPONDENT	1ST
NATIONAL POLICE SERVICE RESPONDENT		COMMISSION.....2ND
INSPECTOR GENERAL OF POLICE RESPONDENT	3RD
REGIONAL POLICE COMMANDER NORTH EASTERN REGION RESPONDENT	4TH
COUNTY POLICE COMMANDER GARISSA COUNTY RESPONDENT	5TH
SUB-COUNTY POLICE COMMANDER GARISSA COUNTY RESPONDENT	6TH
THE HON ATTORNEY GENERAL RESPONDENT	7TH

JUDGMENT

1. By a Petition dated 26th June 2023, the Petitioner sought for the following reliefs; -

- a) A *DECLARATION* that the impugned Letter dated 4th August, 2022 and the impugned Signal No. C/ORG/5/44/VOL.II/29 dated 22nd May, 2015 were illegally, unlawfully and un-procedurally issued and tantamount to: -
- i. A violation of the Petitioner's right to sick leave with full pay;
 - ii. Unfair and un-procedural suspension of the Petitioner's salaries;
 - iii. Unfair, unprocedural and wrongful suspension/dismissal and/or termination of the Petitioner's employment;
- b) An Order of Judicial Review of Certiorari to quash the Letter dated 4th August, 2022;
- c) An Order of Judicial Review of Certiorari to quash Signal No. C/ORG/5/44/VOL.II/29 dated 22nd May, 2015;
- d) An order of Judicial Review of Mandamus to compel the Respondents to reinstate the Petitioner to the National Police Service without loss of benefits, rank or position;
- e) An order do issue compelling the Respondents to update the payroll and reinstate and pay the Petitioner's salaries from April 2015 to date.
- f) An order do issue directing the Respondents to compensate the petitioner for violation of his rights under articles 25, 41, 47 and 50 of the Constitution, loss of livelihood and mental stress and anguish assessed at Kshs. 500,000/-;
- g) An order for general damages.

Or in the alternative: -

*h) An order compelling the 1st and 2nd Respondents to pay the Petitioner's terminal dues of **Kshs 4,166,580/-** computed as follows:*

*i. One month's salary in lieu of termination notice - **Kshs. 35,310/-***

*ii. Unpaid annual leave for 126 days (at 21 days for 6 years) (**Kshs. 35,310/- X6 = Kshs. 211,860/-**)*

*iii. Service Pay for 6 years worked (**Kshs. 35,310/- X1/2X6) = Kshs. 105,930/-***

*iv. Compensation for loss of employment equivalent to 12 months' salary (**Kshs. 35,310/- X12) = Kshs. 423,720/-***

*v. Unpaid salaries from April 2015 to August 2022 (**Kshs. 35,310/-X96) = Kshs. 3,389,760/-***

i) Costs of this Petition;

j) Payment (h) hand (i) above together with interests thereon at Court rates from the date of Judgment until payment in full.

Petitioner's Case

2. The Petitioner avers on 26th July 2006, he was appointed as Police Constable No. 88275, and as at April, 2015, he was earning a gross salary of Kshs. 35,310 which is the last payment he received while on sick leave.

3. The Petitioner avers that due to the periodic salary increments which he is entitled to, his salary has appreciated severally and that as at February 2019, his monthly gross salary ought to have been Kshs. 49,650.
4. The Petitioner avers that he served as a Police Constable diligently until sometime in July 2013, when he fell sick while deployed at Iftin Police Station, Garissa County. He was taken to the Kenyatta National Hospital (KNH) where he was diagnosed with psychotic depression and put on antipsychotics and the doctor recommended close follow up and one month rest from 25th July 2013.
5. The Petitioner avers that the 1st Respondent has a base/police post at KNH for the sole purpose of taking and/or keeping a roll call and thereafter informing the 1st, 3rd, 4th, 5th and 6th Respondents by sending alerts to various police posts where any in-patients who are members of the service are stationed.
6. Following his admission at KNH, he was duly registered and the KNH Police Post sent a signal to his work station at Iftin Police Station indicating his condition and the requisite month's rest prescribed by the doctor.
7. The Petitioner avers that despite the doctor's prescription of a month's rest, his condition did not improve, therefore, he was subjected to further treatment and remained admitted at KNH until early 2014. Having significantly improved, he was

discharged and advised to attend outpatient clinics with scheduled appointments.

8. His family took him to his rural home in Rhamu, Mandera County, where he continued with his scheduled outpatient clinics. Unfortunately, he did not get better. On 21st May 2015, while attending a scheduled clinic, the doctors recommended his re-admission to the hospital in order to closely monitor the unrelenting condition.
9. The Petitioner avers that though he was incapacitated and unable to directly communicate, he made reports severally at his workstation and at the KNH Police Post through his family members. When a report was given through KNH, the KNH Police Post would in turn forward these signals to his workstation at Iftin Police Station in Garissa.
10. The Petitioner avers that on 22nd July, 2014, his brother passed by his workstation and issued an update of his medical progress. Subsequently, his workstation dispatched a Signal No. C/ORG/5/44/VOL.IV/66 to KNH Police Post indicating that he was still attending clinics and was on treatment.
11. Further, on 21st May, 2015, a report vide Signal No. C/ORG/5/44/VOL.III/5/2015 was sent to his workstation from KNH Police Post indicating that the doctors had recommended further inpatient admission for close monitoring and treatment.

12. It is the Petitioner's case that on 22nd May 2015, the Sub-County Police Commander, Garissa County vide a Signal No. C/ORG/5/44/VOL.II/29 (hereinafter "the impugned signal") arbitrarily and unfairly directed that the Petitioner's pay be stopped and/or suspended immediately without confirming his health status and whereabouts. Consequently, from April 2015 to date, he has not received his salaries.
13. The Petitioner avers that he fully recovered in 2022 and was discharged from KNH on 5th July, 2022. Thereafter, he reported back to his workstation at Iftin Police Station in Garissa on 13th July, 2022 where he was taken through the normal orderly of filling out the Occurrence Book to give a detailed report of his whereabouts. He further submitted his Staff Headcount Form and a Declaration of Income, Assets and Liabilities form.
14. The Petitioner avers that despite his reasonable explanation, the Officer Commanding Iftin Police Station declined to admit him back to work and instead referred him to the Sub-County Police Commander - Garissa County, who in turn referred him to the County Police Commander - Garissa County and further to the Regional Police Commander - North Eastern Region.
15. The Petitioner avers that on request of the 5th Respondent, the 4th Respondent vide a letter dated 4th August 2022 illegally and unfairly recommended the following against the Petitioner: That a signal of long absence be sent out and that he be struck off strength; He is summoned and his full kit be withdrawn; He is summarily charged for the period he has been absent and that

a Committee should be appointed in advance and a waiver notice be ready on appearance; That the Petitioner failed to appear or disrupt the proceedings, a trial in absentia be conducted and a proposal for dismissal be floated.

16. The Petitioner avers that despite the recommendations against him, no committee has been appointed to date to hear his case and he has not had an opportunity to be heard yet he remains on suspension without any form of pay.
17. It is the Petitioner's case that 4th and 6th Respondents actions, vide the impugned letter dated 4th August 2022 and the impugned Signal No. C/ORG/5/44/VOL.II/29 dated 22nd May 2015 violated his rights to fair labour practices under Article 41 of the constitution which includes the right to sick leave with pay was arbitrarily violated.
18. The Petitioner avers that unless the court intervenes, an irreparable violation of the Petitioner's fundamental rights will continue to prevail since the Respondent has terminated her employment using unfair labour practices.
19. It is the Petitioner's case that the 4th Respondent's recommendations were made without due regard to his right to fair administrative action which includes the right to a procedurally fair administrative action and the right to be given written reasons whenever an administrative action taken that is likely to affect a person's rights or fundamental freedoms.

20. The Petitioner avers that the Respondents unfairly treated him as a deserter in the face of all the signals sent during his long absence on account of sickness in gross violation of his right to human dignity under Article 28 of the Constitution.

21. It is the Petitioner's case that the Respondents failed to adhere to the National Police Service Standing Orders on disciplinary proceedings even assuming that he had committed an offence against the service, which is denied. Further, the Respondents suspended him from the Service without following due process as provided for in the National Police Service Commission Act.

3rd - 7th Respondents' Case

22. In opposition to the Petition, the Respondents filed a Replying Affidavit dated 26th May 2025 sworn by Amos O. Ombasa, the County Police Commander, Garissa County.

23. The Respondents aver that the Petitioner was stationed at Iftin Patrol Base and was reported to be sick vide KNH Polpost, Nairobi signal ref: C/ORG/5/44/VOL.III/16/2013' dated 13th July 2013.

24. The Respondent avers that several signals were written from Polpost, Iftin and Stapo Garissa requesting for information on the whereabouts and/or health situation of the Petitioner, being ref: C/ORG/5/44/VOL.I/30 dated 28th August 2013; C/ORG/5/44/VOLV1/39 dated 13th November 2013; C/ORG/5/44/VOL.VI/41 dated 5th December 2013;

C/ORG/5/44/VOLV1/60 dated 15th May 2014;
C/ORG/5/44/VOLIV/61 dated 16th May 2014;
C/ORG/5/44/VOLIV/65 dated 10th July 2014; and
C/ORG/5/44/VOL.IV/66 dated 22nd July 2014.

25. It is the Respondent's case that these signals were not answered until 21st May 2015, two (2) years later when the Petitioner sent a signal referenced C/ORG/5/44/VOL.111/5/2015 indicating that he was still attending treatment at Kenyatta National Hospital (KNH).
26. The Respondent avers that the Petitioner in the said signal failed to provide any documentation indicating that he was sick and/or admitted at any clinic in the said facility.
27. The Respondent avers that *Sub County Police Commander Garissa* being in receipt of the KNH Polpost *vide* a signal dated 22nd May 2015 referenced C/ORG/5/44/VOL.11/29, to *County Commissioner, Nairobi Area* while noting the absence of the Petitioner, requested for the stop of the Petitioner's pay as he was in contravention of section N 8(3) Code of Regulation for Civil Servants in relation to health.
28. The Respondent avers that *vide* a letter dated 13th July 2022 to the Deputy Inspector General of Police, the Petitioner requested for the reinstatement of his salary *and he* explained why he failed to register on the Biometric System (IMN).
29. The Respondent avers that despite the Petitioner being admitted sometime in 2013, all efforts to trace him thereafter

remained futile. Further, the telephone number he provided belonging to his brother Abass Abdi 0722108355 was inaccessible and the Petitioner failed to avail any other number by which he can be reached.

30. It is the Respondent's case that the Petitioner absented himself from duty with effect from 2015 as he was well aware that he ought to have been in consistent communication with his work station regarding his medication and health progress and he was consequently cited for desertion of duty.

31. I have examined all the evidence and submissions filed herein. From the evidence before the court the petitioner had been unwell suffering mental incapacity. This had been ongoing since 2015 and he continued for treatment on and off.

32. From the letter from the regional police commander North eastern region dated 4th August 2022, the officer blamed various offices for not updating and sending signals about the petitioner on his condition and whereabouts. He even recommended disciplinary action against them and also dismissal of the petitioner.

33. Prior to this, it was recommended that a medical board be set up for the petitioner and the letter is dated 31/12/2019. The petitioner had been attending periodic hospital at KNH from 2013 to 2024. Several signals were also sent concerning his illness the last one being on 22/5/2015. The petitioner however appeared in Gamma police station duty roster but was last seen in the sub county nominal roll of 4th February 2018. The

petitioner however stopped communicating with the police station and re appeared on 12/7/22 requesting to be reinstated on the payroll.

34. Despite the adverse recommendations made vide the letter of 4/8/22 against the petitioner, no committee has been appointed to hear his case to date and he has not been returned to the payroll to date.

35. The respondents have filed a replying affidavit in this matter indicating that the petitioner absented himself from duty and that is why his salary was stopped. The respondents should have demonstrated that they tried to trace the petitioner and found he was well and capable of being at work having had prior information that the petitioner was unwell and suffering from mental illness.

36. The stoppage of salary notwithstanding, the respondent did not proceed to subject the petitioner to any disciplinary process as expected but kept him on suspension without pay since 2015. They only revisited the issue in 2022 when he sought to be reinstated to the payroll. It was indeed a grievous omission from the respondents to keep the petitioner at limbo all this while whilst knowing of his medical condition.

37. In the circumstances of this case, I find for the petitioner and direct that:

- (1) He be paid all his salary not paid, from 2015 to 4th August 2022 when he was finally cited for desertion Ksh 3,389,760/-.

(2) I direct he also be paid 1 months' salary in lieu of notice kshs 35,310/-.

(3) I also award him damages for breach of his constitutional rights being kshs 500,000/-

TOTAL Kshs 3,925,070/- less statutory deductions.

38. In view of the length of period that the petitioner has not been on duty, prayer for reinstatement is not tenable.

39. The respondents will pay costs of his suit plus interest at court rates with effect from the date of this judgement.

Dated, Signed and Delivered Virtually at Nairobi this 23rd Day of September 2025.

**HELLEN WASILWA
JUDGE**