



Njue v National Police Service Commission & 2 others (Employment and Labour Relations Petition E137 of 2023) [2024] KEELRC 2128 (KLR) (26 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 2128 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E137 OF 2023**

**AN MWAURE, J
JULY 26, 2024**

BETWEEN

LAWRENCE MUNENE NJUE PETITIONER

AND

THE NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

**THE INSPECTOR GENERAL OF THE NATIONAL SERVICE
COMMISSION 2ND RESPONDENT**

**THE DEPUTY INSPECTOR OF THE NATIONAL POLICE
SERVICE 3RD RESPONDENT**

JUDGMENT

1. The Petitioner filed a Petition dated 6th July 2023.

Petitioner’s Case

2. The Petitioner avers that he was employed by the National Police Service in 2006 and worked at various police stations.
3. The Petitioner avers that in 2010, while serving at Usenge Police Station he was involved in a serious road traffic incident in the course of duty, where he sustained serious back injuries in particular fracture of the left lumbar.
4. The Petitioner avers that in 2019, while serving at Liboi Police Station, he was involved in a second road traffic accident while on duty when the vehicle he was driving hit an improvised explosive device (I.E.D) which worsened his back.
5. The Petitioner avers that due to these injuries, he was transferred on medical grounds from Liboi Police Station to Mlolongo Police Station to allow him easy access to medical facilities and treatment. Since



then he has been attending medical treatment and physiotherapy at Kenyatta National Hospital and Komarock Modern Hospital, Utawala.

6. The Petitioner avers that he has been unfairly targeted by his superiors, the OCS SNP Police Station and the OCPD Mavoko Sub-county Police Commander for reasons not known to him. In an effort to tarnish the Petitioner's character as a bad police officer to the extent of locking him up in the cells from 17/03/2023 to 20/03/2023 on trumped up charges of preparation to commit a felony. He was released from the cells and to date no formal charges were preferred against him.
7. The Petitioner avers that on 5/4/2023, he was assaulted by people known to him; he reported the incident at SNP Police Station but was denied the chance to have his report recorded at the occurrence book. Following these two incidents, the said seniors verbally told him the would make sure he is transferred.
8. The Petitioner avers that he reported the incident to the Internal Affairs Unit of the National Police Service vide a letter dated 17/4/2023 but to date no action was taken against his complaint.
9. The Petitioner avers that his wife gave birth prematurely to triplets on 26/4/2023; he informed his seniors the same and the need to take care of his family especially the delicate children, however, this was ignored and he was ordered to decide and proceed to the new station.
10. The Petitioner avers that on 29/4/2023 he was transferred to Kathwana Police Station, Tharaka Nithi County despite his health condition and family situation.
11. The Petitioner avers that the transfer is punitive and in contravention of Section 3 (2) of the *National Police Service Commission (Transfer & Deployment) Regulations, 2015*

2nd and 3rd Respondents' Case

12. In opposition to the Petition, the 2nd and 3rd Respondent filed a replying affidavit dated 29th November 2023.
13. The Respondents aver that the Petitioner is a police officer subject to terms of service and laws governing policing in Kenya. Prior to this petition, the Petitioner was stationed at Machakos Police Station with effect from August 2019, therefore he served at the station for over 4 years.
14. The Respondents aver that vide the Eastern Regional Police Commander circular ref: KPS/DIG/EST/SEC/HRM/7/VOL.VI/113 of 29/3/2023, the Petitioner was deployed to Kathwana Police Station, Tharaka Nithi County pursuant to section 10(1)(g) of the *National Police Service Act*; a mandate reaffirmed by section 8 of the *National Police Service Commission (Transfer & Deployment) Regulations 2015*.
15. It is the Respondents' case that paragraph 8(2) of *National Police Service Commission (Transfer & Deployment) Regulations 2015* provides that deployments are conducted from time to time and on a need basis by the Inspector General or an authorised officer, therefore, they are strangers to the allegation of 3rd party influence in the deployment process and puts the Petitioner to strict proof.
16. The Respondents aver that the Petitioner has not internally raised any concern in respect to his deployment and has no pending appeal despite their mandate to hear and determine appeals from its members on disciplinary matters relating to transfers, promotions and appointments as provided under section 10(1)(k) of the *National Police Service Commission Act*.



17. It's the Respondents case that medical grounds do not constitute a ground that an officer serves a specific station for the duration of his employment. further, the Petitioner has not availed any written notification in support of his objection to the transfer.
18. The Respondents aver that the Petitioner prematurely instituted this suit avoiding internal review process provided for in law.
19. The Respondents aver that the Petitioner was on a 45 days annual leave between 17/2/2023 and 28/4/2023 through the OCS and requested for a 15-days extension to enable him follow up on his medication which was granted for 5 day requiring the Petitioner to report to his deployed station thereafter.
20. The Respondents aver that the Petitioner exceeded the aforementioned leave days and was absent from duty and requested for a further 20 days extension to help on paternity duties which was not granted since the request was unsupported and non-compliant to chapter 48 of the Service Standing Order. Reference to OCS Muungano signal ref A/EST/2/16/VOL.1/04 of 19/5/2023.
21. The Respondents aver that pursuant to paragraph 6(2) of the Chapter 48 of the Service Standing Orders the Petitioner is entitled to 30 days annual leave and is not entitled to any extension after exhausting his maximum leave days of 45 days.

Petitioner's Submissions

22. The Petitioner submitted that his transfer was unfair considering his health status and this can only viewed as unfair treatment in contravention to his right to fair labour practices under Article 41 of the [Constitution](#).
23. It is the Petitioner's submission that regulation 2 of [National Police Service Commission \(Transfer & Deployment\) Regulations](#) 2015 defines deployment as temporary movement of an officer from one station to another to undertake a specific assignment. He has not been notified of the specific assignment he was to undertake and thus the deployment was as unfair and disciplinary as he complained against the Sub County Police Commander.
24. The Petitioner submitted that regulation 8(3) provides that deployment shall not be used as a disciplinary sanction or a reward measure; this was defined by the Respondent.
25. The Petitioner submitted that despite submitting supporting documents that his wife had delivered triplets; his leave was not allowed without reason. Persons serving under the National Police Service are entitled to paternity leave and denial of paternity leave was unfair and amounts to unfair labour practice.
26. It is the Petitioner's submission that from July 2023, the Respondents have not paid his salary without reason. He has not been interdicted on any grounds neither has he been informed why his salary has been withheld.
27. The Petitioner submitted that he made an official complaint vide a letter dated 21/3/2023, however to date, the letter has not been acted upon as the issue has never been addressed. The deployment came after the letter and it is unfair for the Respondent to claim that he did not exhaust internal written procedures prior to filing this suit.
28. The Petitioner submitted that the Respondents feign ignorance of the letters yet the same have the Respondents official stamps. It's the Respondents' onus to show this court the stamps are a forgery and they did not receive any letters, in the absence of the same, the Respondent failed to act on the same.



29. The Petitioner submitted that he has shown how his immediate boss treated him unfairly only for the same to culminate to his deployment regardless of his medical condition.
30. The Petitioner submitted that he has articulated the constitutional breaches committed by the Respondents in his deployment. He has illustrated the unmitigated harassment through frequent and unjustified deployment by his seniors. The Respondents conduct in dealing with his employment as a police officer is unlawful, unconstitutional and a violation of his constitutional rights.

2nd and 3rd Respondents' Submissions

31. The Respondents submitted that the Petitioner has not in specific manner laid out the constitutional breaches alleged to have been committed against him.
32. The Respondents submitted that deployments are conducted from time to time on a need basis by the Inspector General or an authorised officer pursuant to paragraph 8(2) of the National Police Service Commission (Transfer & Deployment) Regulations 2015.
33. Further, the Petitioner has not internally raised any concern in respect to his deployment and has no pending appeal despite their mandate to hear and determine appeals from its members on disciplinary matters relating to transfers, promotions and appointments as provided under section 10(1)(k) of the [*National Police Service Commission Act*](#).
34. It's the Respondents submission that objections to transfers and deployments on medical grounds are required to be supported by written notification for the employer's consideration, however, none has been availed by the Petitioner.
35. The Respondents submitted that medical grounds do not constitute a ground that an officer serves a specific station for the duration of his employment in view of the availability of medical facilities across the country considering health is a devolved function.
36. It's the Respondents' submission that the Petitioner as a police constable is entitled to 30 days annual leave as provided under paragraph 6(2) of Chapter 48 of the Service Standing Orders on Leave and was therefore not entitled to any extension after exhausting his maximum leave days.
37. The Respondent submitted that the Petitioner's request for paternity leave was not granted since it was unsupported with documents and noncompliant in reference to the conditions set out in Chapter 48 of the Service Standing Orders on "Leave".

Analysis and Determination

38. The main issue for this court's determination is whether the Petitioner's right to fair labour practices under Article 41 of [*Constitution*](#) has been infringed/violated by the Respondents.
39. In the court [*Augustine Gakure Monyo v County Government of Murang'a*](#) [2016] eKLR held as follows:

“It is now settled law that a party who alleges that his rights have been violated or threatened with violation must with reasonable precision state the relevant Articles of [*Constitution*](#) stated to have been violated or to be under threat of violation. He must also outline with reasonable clarity the manner in which the respondent has purportedly infringed on the rights: *Anarita Karimi Njeri –V- R* (1979) KLR 154, *Koinange –V- A.G* (2007) 2 EA 256, *The Attorney General –V- Butambala* (1992) LRC 496, *Matiba –V- Attorney General* (1990) KLR 666 and lately, *Mumo Matemu –V- Trusted Society of Human Rights Alliance*



§ 5 others Civil Appeal No. 290 of 2012 (2012) eKLR, where the court of Appeal drove home the import of the principle as to precision in litigation in the following words:

However, our analysis cannot end at that level of generality. It was the High Court's observation that the petition before it was not the "epitome of precise, comprehensive, or elegant drafting." Yet the principle in *Anarita Karimi Njeru (supra)* underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *Constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru (supra)* that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle."

40. It is to be noted that the above principle is besides the fact that the burden of proof is still resident in the Petitioner who must satisfy the court accordingly. As was stated in the case of *Stephen Nyarangi Onsuma & Another -V- George Magoba & 7 others* (2014) eKLR

"... This court has in the past expressed its concern about the manner in which parties coming before the court and alleging a violation to constitutional rights have presented these cases. As a basic minimum a Petition is required to cite the provisions of *Constitution* which have allegedly been violated, and the manner in which they have been violated and the remedy which he seeks, for that violation. In demonstrating the manner in which they have been a violated, a Petitioner should present before the court evidence of the factual basis upon which the court can make a determination whether or not there has been a violation." (emphasis added)

Where the threshold is not met, then the Petition must fail: see, for example, *Peter Muneria Ole Muya -v- Principal Magistrate Narok & 6 others* [2014]eKLR and *Samson Otieno Bala t/a Nissan Enterprises -v- Kenya Bureau of Standards & 4 Others* [2015]eKLR.

41. However, as was held by this court in *Fazleabbas Mohammed Chandoo -V- A. I. Hussein - Kadbi, Kadbis' Court & 4 Others* [2015] eKLR:

"[30]caution must however be exercised when invoking the ratio decidendi in *Anarita Karimi Njeri (supra)*. The court must not be in a hurry to declare petitions fatally defective. Attempts to ensure the ends of justice are met must be made"

42. It is the Petitioner's case that his transfer to Kathwana Police Station, Tharaka Nithi County despite his health condition and family situation was unfair and discriminatory as it was based on his complaint against his immediate supervisor, Anderson Njagi. The complaint was allegedly filed with the Respondents Director of Internal Affairs on 21/3/2023. However, the Respondents deny the correspondences referred to by the Petitioner addressed to the 1st Respondent and the Internal Affairs Unit.



43. It is trite law that he who alleges must prove. This is well established under sections 107, 108 and 109 of the Evidence Act which reads as follows:

“ 107. Burden of proof.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

44. As submitted by the Respondent, medical grounds do not constitute a ground that an officer serves a specific station for the duration of his employment in view of the availability of medical facilities across the country considering health is a devolved function.

45. The Petitioner failed to show this court that he will not be able to access medical care at his new station and that the medical care required can only be obtained at Kenyatta National Hospital and Komarock Modern Hospital, Utawala.

46. A transfer and any other internal functions of an employer cannot be legislated against by the courts otherwise it will be very difficult for an employer to manage its staff and it will be unfair to expect the court to manage the internal organisations of an employer. In that case there is no breach proved by the petitioner that his constitutional rights were violated by the respondent merely by the respondent acting within his right to transfer one of its employees as mandated by their regulation.

47. The National Service Commission (transfer and deployment) regulation provide that mandate to deploy an officer lies with the inspector general. It further states “ the Inspector General shall from time to time on a need basis determines the deployment of officers in the service. The respondent acted within its mandate.

48. The petitioner furthermore did not annex documents to support medical impediment to his transfer as would be the requirement., in the absence of proof that he would not get medical care in his new stations the allegations of unfair transfer would not stand. In view of the foregoing, the allegations that the petitioner’s deployment was unfair and was precipitated by his complaint against his boss was not supported by an evidence and so is not upheld.

49. Now, in respect to paternity leave, it is clear from the birth notification produced in court, the triplets were born on 26/4/2023 whereas the official statement of his redeployment was on 25/4/2023 before the birth of the babies. Therefore, there was no correlation between the two incidences.

50. Additionally, the Petitioner did not prove that when he applied for the said paternity leave he included the birth notifications as provided under Chapter 48 of the Service Standing Orders on “Leave’. His



letter is not clear in the court file but there is a request to sub county pol to grant him 20 days to take care of his children hence there was no proof of denial of the petitioner's rights.

51. In conclusion, the court is persuaded by the courts decision in the case of *Geoffery Mworira vs Water Resources Management Authority and 2 Others* (2015) eKLR where the court held:

“the court will very sparingly interfere in the employer's entitlement to perform any of the human resource functions such as recruitment, promotion, transfer disciplinary control, redundancy or any other human function. To interfere the applicant must show that the employer is proceeding in a manner that is contravention of the provision of *Constitution* or legislation: or in breach of the agreement between the parties; or in a manner that is manifestly unfair in the circumstance of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employers' internal process”

52. In view of the foregoing, the court finds the respondent in performing its human resource functions did not violate the petitioner's constitutional rights and so the prayers in the petition dated 6th July 2023 are not merited and are therefore not granted.

53. Each party will meet the costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 26TH DAY OF JULY, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

