



Nyangenya v National Police Service Commission & 2 others (Cause E695 of 2021) [2024] KEELRC 1917 (KLR) (25 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 1917 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E695 OF 2021
L NDOLO, J
JULY 25, 2024**

BETWEEN

KENNEDY MOMANYI NYANGENYA CLAIMANT

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

NATIONAL POLICE SERVICE 2ND RESPONDENT

THE COMMANDANT, GENERAL SERVICE 3RD RESPONDENT

JUDGMENT

Introduction

1. In his Memorandum of Claim dated 19th August 2021, the Claimant lists the following as issues in dispute:
 - a. Unfair, wrongful and unlawful removal from the Police Service;
 - b. Failure to consider the Claimant’s appeal for review of the vetting decision;
 - c. Unfair termination of employment.
2. The 1st Respondent filed a Reply dated 25th January 2022 and the 2nd and 3rd Respondents filed a joint Reply dated 4th December 2021.
3. At the trial, the Claimant testified on his own behalf, the 1st Respondent chose not to call any witness, while the 2nd and 3rd Respondents called Ibrahim Akhenda. All the parties filed final submissions.



The Claimant's Case

4. The Claimant was a Police Officer, employed by the National Police Service, in the rank of Senior Superintendent of Police in the General Service Unit. On 18th May 2015, the Claimant underwent a vetting interview conducted by the 2nd Respondent's Vetting Committee in accordance with Section 7(2) of the *National Police Service Act*.
5. During the vetting, an issue was raised regarding deposits made in the Claimant's bank accounts between January 2012 and October 2013. The Claimant was therefore asked to explain the source of these funds.
6. The Claimant states that he duly explained the source of the subject deposits. In its findings however, the Vetting Committee accused the Claimant of failing to produce documents to show the business transactions involved. The Vetting Committee stated that the Claimant could not explain his source of income, in relation to sale of motor vehicles, repair of radios, and sale of land in Kitengela.
7. The Vetting Committee concluded that failure by the Claimant to offer a plausible explanation regarding the deposits revealed lack of integrity on the part of the Claimant and therefore recommended his removal from the Police Service.
8. The Claimant appealed against the decision of the Vetting Committee in line with Regulation 33 of the National Police Service (Vetting) Regulations, 2013. He claims to have responded to all the issues raised against him, with respect to his sources of money. He adds that he supplied documentary evidence in respect of each transaction in his bank accounts.
9. The Claimant states that he explained that he did not provide documentary evidence during the vetting interview, because he was not asked to do so, nor was he supplied with the information questionnaire before the interview.
10. The Claimant avers that after filing his appeal for review on 15th October 2015, he did not receive any communication or decision on the vetting review. He states that the only document he received was a letter dated 23rd April 2021, with attachments comprising of general letters addressed to many interviewees.
11. The Claimant alleges that the letter dated 23rd April 2021, from which he learnt that his appeal for review was unsuccessful, was served on him on 3rd August 2021. By this letter, the Claimant was required to hand over all government property and vacate the government house he was occupying.
12. The Claimant asserts that the letter of 23rd April 2021 was irregular as it referred to a letter dated 5th July 2021 as part of correspondence being responded to. It also referred to another letter of 22nd October 2015.
13. The Claimant contends that the letter dated 23rd April 2021, which was served on him on 3rd August 2021, cannot be used as a basis to stop his monthly salary and remove him from government quarters as he was never served with the decision on his appeal.
14. The Claimant further contends that his appeal had merit as he had provided documentary evidence and proper explanation on the source of his income and the deposits in his bank accounts.
15. The Claimant's case is that the decision to remove him from the Police Service was wrongful, unlawful and unfair. He therefore seeks the following remedies:



- a. A declaration that the vetting decision of 9th October 2015, removing the Claimant from service, was wrongful, unconstitutional, unjustified and unlawful and ought to be quashed;
- b. A mandatory injunction compelling the Respondents to reinstate the Claimant to the position he held prior to his removal, without loss of salary, benefits and allowances;
- c. An injunction restraining the Respondents from stopping and/or interfering with the Claimant's salary and allowances as a Senior Superintendent of Police;
- d. Costs plus interest.

The Respondents' Case

16. In its Reply dated 25th January 2022, the 1st Respondent states that the Claimant, who was appointed to the National Police Service on 22nd August 1987, was rightfully classified in the category of persons to undergo mandatory vetting under Section 7 of the *National Police Service Act*.
17. The Claimant went through his vetting interview on 18th May 2015. The 1st Respondent states that the criteria of evaluation for fitness was set out in the National Police Service (Vetting) Regulations, 2013 whose Regulation 13 and 14 required the Claimant to submit specified documents.
18. The 1st Respondent avers that during the vetting, the Claimant was interviewed on whether he met the threshold for appointment as an officer, past record including conduct, discipline, integrity, financial probity, identity card, academic certificates, declaration of assets and liabilities, personal and business bank statements and spouse and dependants.
19. The 1st Respondent claims that during the vetting, the Claimant failed to give a convincing account on many issues, citing the following instances:
 - a. That the Claimant failed to declare that he was engaged in other business engagements other than his employment;
 - b. That he fraudulently affirmed that he had disclosed all his sources of income and liabilities;
 - c. That he claimed to work without written contracts, for companies that had won tenders and tour companies which he did not name, indicating that he was paid Kshs.200,000 and 300,000 by cash only;
 - d. That he admitted that he did not have a contract on account of a salvage motor vehicle valued at Kshs.1.8 million;
 - e. That he purported to have sold land without a contract, on account of which he received Kshs.290,000.
20. The 1st Respondent avers that following the Claimant's interview, the National Police Service Commission released his results on 9th October 2015, which were relayed to the Claimant on 14th October 2015.
21. The 1st Respondent asserts that the Claimant failed the vetting and the outcome was clearly communicated to him, pointing out that he could not explain nor account for his sources of income, sale of salvage motor vehicles and sale of land.
22. The Claimant appealed against the vetting outcome under Regulation No 33 of the National Police Service (Vetting) Regulations, 2013 and was granted a review hearing on 4th February 2016. The 1st



Respondent states that during the review hearing, the Claimant substantially changed his explanation on his sources of income as follows:

- a. When asked for the source of money which he used to buy salvage motor vehicles, he stated that he had sold another vehicle which he did not mention in his vetting interview on 18th May 2015;
 - b. When asked to clarify any other source of income other than salvage motor vehicles, he stated none, which greatly differed from his submission on repair of radios for which he was paid Kshs.200,000 and 300,000;
 - c. He was tasked to explain the source of the receipts he produced at the review hearing, yet he had stated that he was paid in cash only;
 - d. He could not explain why he had declared that he was not in any other gainful employment yet he submitted that his source of income was business related;
 - e. He changed his explanation of a deposit of Kshs. 1,000,000 from payment by a niece to sale of salvage motor vehicle.
23. The 1st Respondent states that the Claimant was evasive during the vetting review hearing and failed to convince the Vetting Review Panel which upheld the decision that he had failed the vetting.
24. According to the 1st Respondent, this decision was released on 5th May 2016 and relayed to the National Police Service, through the Inspector General on 9th May 2016.
25. The 1st Respondent maintains that this outcome was communicated to the Claimant through the National Police Service which, is under the command of the Inspector General. The 1st Respondent adds that this is the recognised channel of communication in the disciplined service.
26. The 1st Respondent avers that the Claimant, on his own volition, filled his vetting questionnaire as well as the declaration of truth on 21st February 2014, 1 year and 3 months before the vetting exercise.
27. The 1st Respondent submits that the Claimant's claim was filed 6 years after the vetting decision and is therefore an abuse of the court process.
28. In their Reply dated 4th December 2021, the 2nd and 3rd Respondents state that the Claimant was enlisted in the Kenya Police Service (General Service Unit) on 22nd August 1987.
29. In May 2015, the Claimant appeared before the Vetting Panel of the National Police Service Commission, for evaluation of his suitability and competence, in accordance with the National Police Service (Vetting) Regulations, 2013.
30. The 1st and 2nd Respondents aver that the vetting exercise revealed that even though the Claimant held the required educational qualifications, his financial probity and integrity were questionable, as there were substantial deposits in his bank accounts, which he could not account for. The Claimant was thus found unfit to continue serving and was removed from service.
31. Vide his letter dated 23rd October 2015, the Claimant appealed against his removal but his appeal was dismissed. This decision was communicated by letter dated 9th May 2016.
32. The 2nd and 3rd Respondents state that following the appeal decision, the Deputy General Inspector of Police directed that the Claimant, among other officers, be traced and informed to collect their re-vetting results from the Director of Personnel-Police Headquarters on 13th May 2016. It is said that contact was made on 12th May 2016, and the Claimant was accordingly notified via his mobile phone.



33. The 2nd and 3rd Respondents deny the Claimant's allegation that he was not served with the outcome of his appeal until sometime in 2021. They allege that despite notification, the Claimant deliberately refused to collect his re-vetting results, and continued serving even after being instructed to hand over all government property, monies, arms and ammunition, among other items.
34. On 30th April 2021, the 3rd Respondent wrote to the Deputy Inspector General-Kenya Police Service, seeking clarification on whether the Claimant was still serving, despite having been removed from service, as he was still occupying a government house and had not been cleared. The Deputy Inspector General responded vide letter dated 5th July 2021, indicating that the Claimant had been removed from service.
35. The 3rd Respondent is said to have communicated to the Claimant by a letter erroneously dated 23rd April 2021 instead of 23rd July 2021, directing him to clear and vacate the government house he was occupying.
36. The 2nd and 3rd Respondents maintain that the Claimant's removal from service was executed in accordance with the law. They therefore ask the Court to dismiss the claim.

Findings and Determination

37. There are two (2) issues for determination in this case:
 - a. Whether the Claimant's removal from the National Police Service was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Removal

38. Pursuant to a vetting exercise conducted on 18th May 2015, the Vetting Panel reached a finding that the Claimant had failed to account for substantial deposits in his bank accounts. On this ground, the Claimant was removed from the National Police Service.
39. Being dissatisfied with the decision of the Vetting Panel, the Claimant sought a review and he attended a review hearing on 4th February 2016. In his claim, the Claimant raised the issue of the composition of the Vetting Panel and the Review Panel, stating that it was a travesty of justice to have the same persons sit in both Panels.
40. The only thing to say on this is that the review process was not an appeal; rather, it was an opportunity for the Claimant to provide further information on issues arising from the vetting. The Claimant appears to have been aware of this because he did not object to the composition of the Review Panel, when he appeared before it. That is all I will say on this issue.
41. The parties presented divergent positions as to when the Claimant received communication on the outcome of the review. According to the Respondents, the decision by the Review Panel was communicated by letter dated 9th May 2016 and the Claimant informed to collect his review results, which he deliberately failed to do. On his part, the Claimant claims that he only learnt of the outcome of his review on 3rd August 2021, when he was instructed to hand over and vacate the government house he was occupying.
42. From the record, there appears to have been some communication lapses on the outcome of the Claimant's review. What is clear however is that as at 3rd August 2021, the Claimant was aware that his removal from the National Police Service had been confirmed on review. I will therefore proceed to examine the substance of the decision for removal and its confirmation on review.



43. The main ground for the Claimant’s removal was his failure to account for substantial deposits in his bank accounts. On this issue, the verbatim report of the Claimant’s vetting records the Claimant as follows:
- “...I am an Engineer by profession, during my free time I normally join the jua kali in the Telecommunication industry so that if they have extra work I go there I repair some telecommunication I get some money...Because I am no hands on when I am doing my private work. I don’t have a company they have, so when they get their work and they become overwhelmed they call me because we were colleagues we were in school together...”
44. Upon being asked about a cash deposit of Kshs. 700,000 in his bank account at Cooperative Bank, the Claimant stated thus:
- “ This money I sold a motor vehicle a KBB 777F at a cost of 1.8 million and this vehicle was salvaged I bought it from the insurance company.”
45. The Claimant was further questioned about a cash deposit of Kshs.2 million and this is what he had to say:
- “ Again this money, I sold a vehicle this again a Toyota Prado I bought from an Insurance company it belonged to a UN Company. I repaired it then I sold it.”
46. The Claimant was also questioned about his propensity for cash transactions and his answer was that he wished to avoid the inconvenience of dishonoured cheques.
47. The Vetting Panel took issue with the lack of documentation to support business transactions that the Claimant claimed to be the source of funds deposited in his bank accounts. In addition, the Panel was concerned that the Claimant had not declared these sources of income in his Income, Assets and Liabilities Declaration Form.
48. At the review hearing, the Claimant availed copies of motor vehicle log books and affidavits in a bid to explain some of the deposits in his bank accounts. He however did not produce any documents to support his acquisition of what he claimed to be salvage motor vehicles. This would have been an important piece of evidence in light of the Claimant’s statement during vetting that he made substantial profits because the motor vehicles were in serviceable condition.
49. Further, the Claimant did not avail any transaction documents relating to the sale of land, which curiously remained in his possession even after he received a substantial amount of the sale price.
50. Regarding his failure to declare his multiple sources of income in his Income, Assets and Liabilities Form, the Claimant gave the reason that the income streams were not consistent. The Court found this explanation wanting in substance.
51. Having looked at the verbatim record of both the vetting and review proceedings, it is evident that the Claimant not only engaged in questionable activities, which he was unable to adequately explain, he also concealed crucial information both at the vetting and at the review.
52. For the foregoing reasons, I find no reason to interfere with the outcome of the Claimant’s vetting. His entire claim therefore fails and is dismissed with an order that each party will bear their own costs.
53. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY JULY 2024



LINNET NDOLO

JUDGE

Appearance:

Mr. Muia for the Claimant

Ms. Rwenji for the 1st Respondent

Mr. Mulili for the 2nd and 3rd Respondents

