

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

ELRC PETITION NO. E130 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

CPL PETER MWANGI GITHENDU.....
PETITIONER

VS

ATTORNEY GENERAL.....1ST
RESPONDENT

NATIONAL POLICE SERVICE COMMISSION.....2ND
RESPONDENT

THE INSPECTOR GENERAL OF THE
NATIONAL POLICE SERVICE.....3RD
RESPONDENT

THE DEPUTY INSPECTOR GENERAL,
KENYA POLICE SERVICE.....4TH
RESPONDENT

RULING

1 The Petitioner/Applicant filed a Notice of Motion dated 26th June 2025 seeking orders that: -

- 1) *spent*
- 2) *pending inter parties hearing of this application, temporary injunctive orders be issued restraining respondents by themselves, their agents, servants and or any person acting under their authority from transferring or effecting the transfer of the petitioner/Applicant from his current station of*

Ongata Rongai police station pending the hearing and determination of this application and petition filed herewith.

- 3) interim Orders be issued inhibiting, halting, stopping and barring Respondents by themselves, their agents, servants and or any person acting under their authority from effecting the transfer of the petitioner/Applicant to either Naishi Police Station in Nakuru County or Kariene Police Station in Meru County until this application and petition filed herewith is heard and determined.*
- 4) costs of this case be provided for.*
- 5) any further additional, alternative and or incidental orders as the Honourable Court may deem appropriate just and expedient.*

Petitioner/Applicant's Case

- 2 The Petitioner avers that vide a letter dated 13th November 1992 he was appointed as a police constable in the service of the Kenya Government and has served diligently in various regions of the county.
- 3 He avers that he has a 7-year-old child by the name Rishan Wambui Githendu who was diagnosed with congenital condition of cerebral palsy with epilepsy rendering her physically and mentally disabled.
- 4 He avers that the minor is currently undergoing specialized neurology treatment at Nairobi West Hospital Langata, Specialized Clinics at Getrudes Children Hospital

Muthaiga, Nairobi Hospital and Kenyatta Hospital for brain, speech development and occupational therapy.

- 5 He avers that the minor is still under her developmental stage thus requires frequent scans to monitor the development of her cerebral capacity and that all medical services, care monitoring and occupational and physical therapy should be routinely accorded to the minor and are readily available in Nairobi and its environs.
- 6 The Petitioner avers that he received communication from the 3rd and 4th Respondents purporting to transfer him to both Naivasha Police Stations in Nakuru County and Kariene Police Station in Meru county.
- 7 The Petitioner avers that he is 55 years of age and in the year 2011, he was diagnosed with chronic high blood pressure which has escalated to severe blood pressure. He also suffers from arthritis and other related ailments.
- 8 The Petitioner avers that the chronic ailment has elevated the level of hospital admissions the latest being in February 2025 at Central Memorial Hospital where his doctors advised him to avoid strenuous activities, avoid night shift duties, take sick leave, rest and use proper hypertensive drugs.
- 9 He avers that he presented the doctors recommendations to the Respondents vide a letter dated 9th February 2025 hence they are aware of his medical history and diagnosis.

- 10 It is the Petitioner's case that by transferring him to remote regions of Kenya away from where he can easily get medical care including better nutrition is unfair and in contravention to the doctor's advisory.
- 11 The Petitioner avers that the transfer will cause him to suffer from unfair labour practices as he will have served six different police stations in four different counties for a duration of four years which is unfair, unlawful and contrary to Legal Notice 89 of 2015 issued by the 1st Respondent which states that a transfer should occur at a period not less than three years to a particular police officer.
- 12 The Petitioner avers that during his placement at Forttarnan Police Station in Kericho County greatly affected him as he had to make numerous trips to Nairobi to attend to the minor for her routine therapy sessions and it was too expensive as he was not accorded extra financial support by the 2nd, 3rd and 4th Respondents further draining his resources which could have been used towards the wellbeing of the minor.
- 13 The Petitioner avers that his transfer has been instigated by the ulterior motive from OCS CI Mwangi from Rongai Police station who wrote a malicious falsified report to the 4th Respondent portraying him as a person of bad morals in the society and based on those allegations the OCS recommended his transfer.

- 14 The Petitioner avers that the transfer contravenes the transfer and deployment regulations Legal Notice 89 of 2015 paragraph 3(2) which states that a transfer shall not be used as disciplinary sanction or for rewards measures.
- 15 The Petitioner avers that he appealed his recent transfer through a letter dated 20th June 2025 on the grounds that his daughter would be exposed to extreme hardships and contraventions of rights expressed in the petition. The letter was presented to the OCS C.I. Mwangi of Rongai Police Station for onward transmission to the senior officers and relevant department for consideration, however, he refused to acknowledge the appeal unless the petitioner removes ground (vi) that directly implicates him with violation of his rights and contravention of transfer and deployment regulations Legal No. 89 of 2015.
- 16 The Petitioner avers that he opted to seek audience with the Quality Assurance Department formerly the complaint office and had audience with SSP Mr. Bwagi on 23rd June 2024 and was instructed to seek audience with the Deputy Inspector General (DIG), Director of HR, Kenya Police Service, Mr. Rotich.
- 17 He thus presented the appeal letter to the DIG, Mr. Rotich, on 24th June 2025, the 4th Respondent through the Office of Deputy Inspector General, Director of HR, Kenya Police Services who rejected the appeal and directed that he reports to Kariene Police Station in Meru County.

18 The Petitioner avers that having exhausted all tangible internal avenues of dispute resolution, he had no other option but to seek relief from this court.

2nd Respondent's Case

19 In opposition to the application, the 2nd Respondent filed a ground of Opposition dated 24th September 2025 on the following grounds:

1. *THAT the Petitioner/Applicant was deployed which is the temporary movement of an officer from one station to another station to undertake a specific assignment which is the mandate of the Inspector General of Police as prescribe under National Police Service S. 10 (1)(g), National Police Service Commission (Transfers and Deployments) Regulations regulation 8 (1) and National Police Service Standing Orders Chapter 72 12 (1)(2).*
2. *THAT the Petitioner/Applicant was deployed in line with National Police Service S. 10 (1)(g) and was not transferred as alleged by the Petitioner/Applicant.*
3. *THAT the Petition and Notice of Motion dated 26th June 2025 offends the doctrine of exhaustion of internal mechanisms as set out by the Court of Appeal in **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] eKLR**. The Petitioner/Applicant has not lodge and appeal with the 2nd Respondent, who have the mandate of handling appeals within the National Police Service.*
4. *THAT the Petition/Applicant herein has omitted to frame its case with reasonable precision against the 2nd Respondent as required under the High Court's pronouncement in the*

case of **Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272**, hence the Petition as against the 4th Respondent fails. The petition fails the requirement as;

- i. It does not enumerate the alleged constitutional provisions infringed or violated by the 2nd Respondent;
- ii. It does not set out the manner in which the 2nd Respondent has infringed or violated the Petitioner's rights.

5. THAT therefore the Petition/Applicant herein filed is an abuse of the Court process.

1st, 3rd and 4th Respondents' Case

- 20 In opposition to the application, the Respondents filed a replying affidavit sworn by Silas Andiema, a Commissioner of Police in rank and working at the Kenya Police Service Headquarters as a Staff Officer Personnel III.
- 21 The Respondents aver that the Petitioner/Applicant was enlisted into the Service with effect from 28th May 1992 as recorded on his letter of appointment that he personally signed and dated 13th November 1992.
- 22 By signing the letter of appointment, he agreed to abide by the terms and conditions appertaining to job among them is paragraph 6 which provides that he is liable to be posted to any station within Kenya to discharge the usual duties of his office.

- 23 It is the Respondents' case that the Petitioner has not served diligently as he was interdicted from duty on 29th November 2010 upon being arraigned before the Chief Magistrate Court at Machakos for assaulting one Nancy Muthoni Mwaniki. However, the Court discharged him on 29th March 2011 when the complainant forgave him and withdrew the criminal case during which period the Applicant did not render any service to the public by reason of being interdicted.
- 24 They aver that in 2018, the National Police Service undertook national wide Staff Head Count to audit and determine the number of police officers where the Petitioner/Applicant entered Irene Wairimu Muiruri as his spouse and the next of kin. The Certificate of Birth annexed to the application indicate that the mother of the minor is Irene Wairimu Macharia.
- 25 The Respondents aver that the Regional Police Commander - Rift Valley through a letter Ref. KPS/DIG/RVR/HRM/27/ VOL.IX/ 200) dated 26th February 2025 forwarded to the DIG, the Petitioner's a self-explanatory letter updating his personal record in regard to his next of kin particulars where he deponed that he is married to Anna Nduta Wanjiru and the marriage is blessed with two issues namely Frank Githendu Mwangi and Juliet Wangui both who have reached the aged of majority.

- 26 It is the Respondents' case that transfers and deployments are initiated by Regional Police Commanders or the Deputy Inspector General under Section 10 of the National Police Service Act for proper distribution of police officer to enhance service delivery. Further, the Regional Police Commanders propose deployment of officers within their geographical jurisdiction and seek approval from the Deputy Inspector General. In the instant case, the Regional Police Commander's proposal is overtaken by subsequent release of deployment by the Deputy Inspector General.
- 27 The Respondents aver that there is no communication on sickness that has been received in terms of the Service Standing Orders, Chapter 68(1)(b) and available record show the Applicant/Petitioner as an officer who has enjoyed good health save vide Kasarani Police Station OB 09/8/5/2020 when it was reported that he accidentally shot himself in the left palm.
- 28 The Respondents aver that Kariene Police Station is in Imenti Central Sub-County within Meru Country being one of the most endowed counties in the Country where his condition can be addressed at any private or level IV hospital.
- 29 It is the Respondents' case that Article 24(5)(d) of the Constitution contemplates limitation of Labour Relation Rights of members of the National Police Service in appreciation of the dynamic nature of the security sector.

- 30 The Respondents assert that the Petitioner's letter dated 25th November 2021 was not an appeal against transfer but a complaint against the Kasarani Sub- County Police Commander Mr Peter Mwanzo, SSP addressed to the Independent Police Oversight Authority and copied to the Internal Affairs Unit.
- 31 The Respondents aver that the Applicant/Petitioner has not adduced any evidence in proof of his misunderstandings with the OCS Ongata Rongai Police Station CI Mwangi but instead refers to a document that is procedurally issued to an officer on transit to another command. Further, if at all, it will serve public interest if the Applicant/Petitioner is transferred since he will not be effective due to his strained relationship with his commanders.
- 32 The Respondents aver that it is an established norm to transfer officers upon being promoted to avoid familiarity with officers of his former rank so that he may exert authority. The Petitioner was among Corporals who were transferred out. He was deployed to Karaine Police Station vide a letter Ref. KPS/DIG/SEC/HRM/5/2/VOLXXIII/33 dated 13th June 2025 after he was promoted on merit with effect from 22nd August, 2024.
- 33 The Respondents aver that the Petitioner/ Applicant has not demonstrated that the minor's mother is his wife, she is incapacitated and unable to take care of the minor as to

require his physical presence especially after appointing another woman as spouse and next of Kin.

34 The Respondents contend that the Petitioner/Applicant is inconsistent and dishonest in his representations as shown from the personal documents the Applicant/Petitioner has submitted to Kenya Police Headquarters to update his personal file as well as in the present application.

35 It is the Respondents' case that it is immoral and in bad taste for the Petitioner to exploit the disability of a minor when he updated his personal records leaving out the same minor. Further, in the Affidavit dated 30th January, 2025 in Support of Marriage, the Petitioner indicated that he has since 2002 cohabited in Juja within Kiambu County with Anna Nduta Wanjiru and not as now being claimed in the present matters.

36 The Respondents aver that they are amenable to and frequently receive and process requests to rescind or divert deployments/transfers on medical, compassionate, age or any other ground where every case is considered on its own merit and response given.

37 The Respondents assert that the Petitioner/Applicant has not demonstrated any constitutional rights that they have violated and the cited Article 41 of the Constitution is inapplicable to members of the National Police Service. They therefore contend that the application is ill-conceived, an abuse of the court process and without

merit and hence it is just that it be dismissed with costs to them.

Petitioner/Applicant's Submissions

- 38 The Petitioner submitted on two issues: whether the Applicant has a serious and arguable case in his Petition that has a reasonable chance of succeeding at trial; and whether the Applicant will suffer injury that cannot be adequately compensated with money damages if the injunction orders are not granted.
- 39 On the first issue, the Petitioner submitted that he has opposed the impending transfer directives from the 3rd and 4th Respondents on the grounds that he is a father to a seven-year daughter, Rishan Wambui Githendu, who is diagnosed with a congenital condition of cerebral palsy with epilepsy rendering her physically and mentally disabled. He has provided evidence proving that he is the minor's father and that the minor is under his care, listed under his medical cover with the provided by the 2nd, 3rd and 4th Respondents and she is totally dependent on him for her wellbeing, both physically, emotionally, socially and financially. He further demonstrated that the minor is under his personal care as her father and that he owes direct parental responsibility to the child by ensuring that her well-being is well taken care of and that all her rigorous medical needs and upkeep are all met.
- 40 The Petitioner further submitted that he has pleaded and demonstrated, and which position has not been

contravened by the Respondents, that as his child is still under developmental stages and due to her disability, she routinely requires cerebral scans to monitor her cerebral development and capacity which are readily available at Kenyatta Hospital in Nairobi. Additionally, she requires occupational and physical therapy services for her development to be routinely provided which are also readily available in Nairobi and its environs which is ideal for the minor's development as she currently resides with the Applicant in an area where all the said facilities and services are readily available to her.

- 41 It is the Petitioner's submission that the transfer will force the minor to relocate with him as her main dependant, this will greatly prejudice her and deprive her quality medical care. He submitted that the minor's condition requires a Level Six (6) Hospital which she routinely visits as proven, whereas, Kariene in Imenti Central only has a level four (4) Hospital.
- 42 The Petitioner submitted that the transfer will not be in the best interest of his disabled child and cited ***Kariuki & another v Attorney General & 2 others [2024] KEELRC 13501 (KLR)*** wherein this court took cognisance to Article 53 of the Constitution that provides for the best interest of a child and Article 54 on rights of persons with disability which also protects the child. In the cited case, the Court instructed the Respondents herein to develop a policy that regulates the transfer of Police officers whose dependents are suffering from extreme

forms of physical and cognitive disability. The Respondents are therefore aware that the directive to transfer him violated the law and directives as pronounced by this court.

- 43 The Petitioner submitted that based on the similarity of facts in ***Kariuki & another v Attorney General (supra)*** and the decision of the said court; he has proven and demonstrated that he has a serious and arguable case in his petition that has a reasonable chance of succeeding at trial he should be granted the injunctive and inhibitory prayers under the application.
- 44 On the final issue, the Petitioner submitted that if the injunctive and inhibitory Orders prayed for are not granted, his child will suffer irreparable loss to her development, health. All the gains achieved towards her personal development will swiftly be eroded. He reiterated that his child's disability diagnosis is not speculative, and she is registered as a person living with disability.
- 45 He submitted that the child will lack the required medical facilities and services together with the occupational and therapy services she has been accustomed to in Nairobi and its environs which will render her to derail in her mental development and physical wellbeing. The loss of developmental growth gains by the Applicants child will be irreversible and thus cannot be compensated with money in form of damages if the injunction orders are not granted.

- 46 The Petitioner further submitted that transferring him to a remote region of Meru County where there are difficult and strenuous activities and no proper medical facilities will expose him to health deterioration, which cannot be monetary compensated to return him to his original position.
- 47 It was submitted that the harm the Petitioner and his disabled daughter and himself will suffer without issuance of the injunction orders restraining his transfer outweighs the harm they will individually suffer if they are not granted.

2nd Respondent's Submissions

- 48 The 2nd Respondent submitted on two issues: whether the 2nd Respondent is the proper party before this court; and whether the petition adheres to the principles in *Anarita Karimi Njeru* case requiring constitutional petitions be pleaded with reasonable precision.
- 49 On the first issue, the 2nd Respondent submitted that the Petitioner's challenge is fundamentally flawed as it contests a deployment decision and deployment mandate squarely falls within the purview of the Inspector General of police and not the National Police Service commission.
- 50 It was submitted that the National Police service commission does not have mandate to deploy officers within the National Police Service its role is primarily in

recruitment, promotions, transfers but not in operational deployments.

- 51 It is the 2nd respondent's submission that the petitioner has instituted proceedings against it without demonstrating any specific action or omission attributed to it. It cited the Court of Appeal in ***Bethwell Allan Omondi Okal v Telkom (K) Ltd (Founder) & 9 others [2017] KECA 743 (KLR)***: *"We have keenly and painstakingly gone through the said petition, the responses thereto by the several respondents and the reply to those responses. Even after going through the said petition, we must say that we are unable to fathom why most of the named respondents were sued at all. There is no clearly defined cause of action against them."*
- 52 On the second issue, the 2nd Respondent submitted that ***Anarita Karimi Njeru v Republic [1979]eKLR*** sets out the threshold for filing of constitutional petitions as follows: *"We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."*
- 53 The 2nd Respondent submitted that the petition alleges violations it committed however Annexure PMG- 9 clearly demonstrates that the deployment letter originated from

the Kenya Police Service and not the National Police Service Commission.

54 It was submitted that precision in pleadings requires that a petitioner be specific about the actions complained of and the party responsible. In this instance, the failure to accurately attribute any alleged violations has prejudiced the 2nd Respondent, making it difficult to provide a substantive response and hindering the Court's ability to justly adjudicate the matter.

55 The 2nd Respondent submitted that Petitioner has alleged that the 1st Respondent breached Article 10, 19, 27, 41, 43, 47 yet the same is not supported with specificity and no particulars have been given on how the 1st Respondent violated the said right. It cited **David Mathu Kimingi v SMEC International PTY Limited [2021] eKLR** wherein the court stated that it is not enough to claim breach of provisions of the Constitution and not substantiate on how the Respondent has breached the said provisions.

56 It is the 2nd Respondent's submission that the petition lacks specificity particularly regarding the party responsible for the alleged violations of the petitioners' rights which has made it difficult to adequately respond as the alleged violations are not supported by clear factual references.

57 The 2nd Respondent submitted that it neither features in the impugned decisions nor bears responsibility for the

grievances alleged. The Petition, on its face, attributes the contested acts to the 3rd and 4th Respondents, who exercise command and control over deployment within the Kenya Police Service. Thus, its inclusion in these proceedings, without any specific allegation or evidence of its involvement, offends the principle of precision in pleadings as emphasized by the Court of Appeal in ***Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR.***

58 It was submitted that it would be unfair and legally unsound to issue blanket declarations or orders “compelling the Respondents” collectively, when the Petition fails to distinguish the specific roles or responsibilities of each Respondent. As established under Article 246(3) of the Constitution, the 2nd Respondent performs distinct human resource management functions over the National Police Service, but does not engage in operational or deployment decisions of individual officers. The prayers sought particularly those concerning transfer, working environment, and damages fall squarely within the operational mandate of the 3rd and 4th Respondents, not the 2nd Respondent. Therefore, the petition as framed discloses no cause of action against the 2nd Respondent and it would be improper for the court to issue orders or declaration against it in the absence of any demonstrated act or omission on its part.

59 On the second issue, the 2nd Respondent submitted that it has no legal authority over deployments, and as such, cannot be held liable for a decision it did not make. Further, the Petitioner has failed to demonstrate any violation of his constitutional rights by the 2nd Respondent, thus, the petition as against it should be dismissed with costs.

1st, 3rd and 4th Respondents' Submissions

60 The Respondents submitted on two issues: whether the instant Petition/Application is premature and offends the Doctrine of ripeness; and whether the Petitioner/ Applicant is entitled to the reliefs sought.

61 On the first issue, the Respondents submitted that the instant petition and Application is premature on the grounds that it offends the statutory provision of Section 9(2)(3) The Fair Administrative Action Act on the principle of exhaustion of alternative dispute resolution / internal mechanisms for appeal or review.

62 The Respondents submitted that the Petitioner/Applicant chose to ignore the laid down mechanisms and it is trite law that courts should not interfere especially where there exists sufficient avenue to resolve a dispute as was held in the case of ***Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2016] eKLR.***

63 On the second issue, the Respondents submitted that the Petitioner/Applicant is not entitled to the reliefs sought for

reason that in National Police Service undertook a national wide Staff Head Count to audit and determine the number of police officers where he entered Irene Wairimu Muiruri as his spouse and the next of kin and further the Certificate of Birth annexed to the Application indicate that the mother of the minor is Irene Wairimu Macharia. However, he later updated his next of kin through the Regional Police Commander -Rift valley vide a letter Ref.KPS /DIG/RVR/HRM/27/VOL.IX (200) dated 26th February 2025 whereby he deponed that he is married to Anna Nduta Wanjiru and the marriage was blessed with two issues; namely Frank Githendu Mwangi and Juliet Wangui both who have reached age of majority.

64 It is the Respondents' submission that the Petitioner/Applicant is inconsistent and dishonest in his representation as demonstrated in his submitted documentation to the Kenya Police Headquarters. Thus, his hands are tainted with illegalities contravening the equitable maxim "*He who comes to equity must come with Clean hands.*" They cited Caliph properties limited v Barbel Sharma & another [2015] eKLR where the Court stated: "*Secondly, the injunction sought is an equitable remedy. He that comes to equity must come with clean hands and must also do equity. The conduct of the Plaintiff in this case betrays him. It does not endear him to equitable remedies. ... He who comes to equity must fulfil all or substantially all his outstanding obligations before*

insisting on his rights. The Plaintiff has not done that. Consequently, he has not done equity.”

- 65 The Respondents urged the court to decline the Petitioner/Applicant’s invitation to interfere with constitutional and statutory administrative functions of the 3rd and 4th Respondents and dismiss the application with costs.
- 66 I have examined all the averments and submissions of the parties herein. The applicant seeks order to stay orders transferring him from his current station to Meru or any other station. The reason for the prayers sought emanate from the averment that the petitioner applicant’s child is unwell and would require specialized treatment which she can only receive within Nairobi.
- 67 The respondents aver that from the record supplied by the applicant, the alleged child has not been so declared and so the application has no basis.
- 68 I have looked at the documents before court. I note the certificate of birth of one RW daughter of Peter Mwangi Githendu the petitioner applicant herein was born on 31/1/2018. It is also true that the said child has been registered for disability. The respondents have submitted that though the applicant has averred that the child is alleged to be the applicant’s, the applicant filed his employment records in 2018 and the applicant entered Irene Wairimu Muiruri as his spouse and next of kin and

the certificate of both show that the mother of the minor is Irene Wairimu Macharia.

- 69 However on 26th February 2025, the applicant is said to have updated his personal records with regard to his next of kin and deponed that he is married to Anna Nduta Wanjiru and the marriage is blessed with two issue namely Frank Githendu Mwangi and Juliet Wangui both who have reached the age of majority.
- 70 It is worth noting at this stage there is a difference between next of kin as compared to being a father of an issue. In this case, the issue of the employment records of the applicant are different to the fact that there is a child fathered by the applicant in 2018 and she is unwell. This fact has not been disputed by the respondents. It also emerges that the applicant has submitted some evidence showing he has health issues.
- 71 On the face of it, the applicant has established that he has a prima facie case with a probability of success on account of his poor health and also having a sick child. These are reasons that would be in favour of the applicant and for which this court finds able to warrant issuance of orders staying the applicants transfer from Ongata Rongai police station pending the final determination of this petition.
- 72 I find the application then has merit and I allow it and grant orders staying transfer of the applicant from Ongata

Rongai pending the hearing and determination of this petition. Costs in the petition.

Dated, Signed and Delivered Virtually at Nairobi this 19th Day of November 2025.

**HELLEN WASILWA
JUDGE**

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ORIGINAL