

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**ELRC PETITION NO. E029 OF 2024**

**MOSES MUMO MUTHUVI.....PETITIONER**

**VERSUS**

**NATIONAL POLICE SERVICE COMMISSION.....1<sup>st</sup> RESPONDENT**

**THE INSPECTOR GENERAL,  
NATIONAL POLICE SERVICE.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

The Petitioner was employed as an Administration Police Constable on 10/7/1982. The Petitioner served the police service until 30<sup>th</sup> June 2021 when he was retired from service at the age of 60 years.

This information was conveyed to him by a letter dated 4<sup>th</sup> May 2020, which notified the Petitioner that from the records maintained in the office of Deputy Inspector General, the Petitioner having been born in 1961, was due to retire with effect from 30/6/2021. The Petitioner was advised that he would be paid his salary and retired from service with effect from 1/7/2021.

At that time, the Petitioner earned a gross salary of Kshs. 110,890.00 according to the pay slip of June 2020. The pay slip before court indicates clearly that the retirement date of the Petitioner is 30<sup>th</sup> June 2025. It is a practice in the public service to maintain the retirement date of every officer in the pay slip as in this case as follows “RoD: 30-JUN-2025.”

The Petitioner adduced clear evidence vide the petition, supporting affidavit and further affidavit that in the year 2011, the Petitioner was involved in a road traffic accident in which he sustained various bodily injuries leaving him with permanent disability characterized by shortening of the right leg, limited hip joint movement and difficulty toileting and has to use clutches in walking.

Medical reports evidencing these developments are attached to the supporting affidavit of the Petitioner including police abstract from Thika police, traffic Division dated 15/8/2021, Discharge Summary from PCEA Kikuyu Hospital; Discharge Summary from AIC Cure International Hospital Kijabe; Discharge Summary for Mary super specialty hospital among other medical reports attached.

Consequently, the Petitioner applied for registration as a person with disability with the National Council for Persons with Disability; exemption of payment of income tax from Kenya Revenue Authority (KRA) which application was granted in 2015 and extended in 2020 up to 2025.

The Petitioner had forwarded his medical reports and registration card with the National Council for Persons with Disability and his income tax exemption certificate from KRA in 2015 to his employer, his retirement age was adjusted to December 2024 and then to June 2026 which gave the Petitioner the proper disability status and his proper retirement age adjusted as reflected in his pay slip. (Emphasis added)

The Petitioner was shocked to receive the notice dated 4<sup>th</sup> May 2020 that his retirement was due with effect from 1<sup>st</sup> July 2021.

The Petitioner wrote numerous letters himself and through the National Council for Persons with Disability as well as vide the office of the Ombudsman but the Respondents remained mum and/or declined to reinstate the Petitioner's proper retirement age to be 30<sup>th</sup> June 2026 hence this petition.

The Petitioner relies on section 21(6) of the Persons with Disability Act 2025 which provides,

***“For the purposes of sub-section (5), the age of retirement for persons with disabilities shall be five (5) years above the mandatory age of retirement set by the government.”***

The Petitioner's retirement age was therefore in his testimony due on 1st July, 2026.

The Petitioner has averred and has adduced evidence in support of the pleadings, that the Respondents have violated his constitutional rights protected under Articles 27 which guarantees the Petitioner the right to equality before the law and the right to equal protection and benefit of the law as provided under section 21(6) of the Persons with Disability Act 2003 as (amended) in 2025, which law was in place in 2015 when the Petitioner was certified a person with disability and exempted from income tax payment and his retirement age extended by 5 years.

That the conduct by the Respondents of not respecting the law protecting persons with disability and prematurely retiring the Petitioner was an unlawful and unreasonable action and done without following a fair procedure in violation of Article 47 of the Constitution of Kenya 2010.

Furthermore, that action violated the dignity of the Petitioner as a person with disability by denying him the protection accorded to the Petitioner by the law in violation of Article 28 of the Constitution.

That Article 48 of the Constitution mandates the state to ensure that all persons including the Petitioner had access to justice and by denying the Petitioner the right to retire at age 65 in disregard of express provision of the law and without affording the Petitioner a hearing, the Respondent violated Articles 48 and 50(1) of the Constitution.

The Petitioner prays for the reliefs set out in the petition as follows: -

- a) A declaration that the conduct of the Respondents is contrary to and inconsistent with the provisions of Articles 10 of the Constitution of Kenya, 2010.
- b) Declaration that the Respondents violated the constitutional rights of the Petitioner and in particular. Articles 20(1) and (2), 24(1), 25(c), 29(d), 41(1), 43(e) and 50(1), of the Constitution of Kenya, 2010.
- c) An order of certiorari calling to this court and quashing the decision of the 1<sup>st</sup> Respondent to send the Petitioner to retirement before his attainment of 65 years of age.
- d) An order of certiorari calling to this court and quashing the decision of the 1<sup>st</sup> Respondent to cut off the Respondent from the payroll.

- e) A declaration that the Petitioner is entitled to all the rights and privileges accorded to a civil servant living with disability including the 5 years extension of retirement age to 65 years.
- f) An order of mandamus compelling the Respondents to reinstate the Petitioner to employment at the rank he was at immediately before the discontinuation of his employment by the Respondents.
- g) An order of mandamus compelling the 1<sup>st</sup> Respondent to restore the Petitioner to the payroll.
- h) An order of mandamus compelling the 1<sup>st</sup> Respondent to pay all unpaid dues owed to the Petitioner in arrears including salary, allowances and other benefits entitled to him by dint of his employment from the time the Petitioner's employment was discontinued.
- i) An order for compensation for violation of the Petitioner's constitutional rights.
- j) An order of refund of Kshs. 38,982.40 illegally deducted as income tax (PAYE) from Petitioner's salary for April and May 2018 when he had in force a valid Income Tax Exemption certificate from Kenya Revenue Authority.
- k) Any other order that the honourable court may deem fit to grant for the ends of justice to be met
- l) Costs of this petition and interest.

The Respondents filed a notice of preliminary objection dated 16/6/2025 to the petition to wit:

1. Pursuant to Article 234(3)(c)(iv) of the Constitution of Kenya, 2010, the applicable law is the National Police Service Commission Act and

its regulations and procedures and not the Public Service Act as relied upon by the Petitioner.

2. The petition is statute-barred and offends the provisions of section 3(2) of the Public Authority Limitation Act, Cap 39 Laws of Kenya.
3. Costs to be borne by the Petitioner.

The Respondents submitted that the suit filed on 6/8/2024 was time barred as it offends the provisions of section 3(2) of the Public Authority Limitation Act, Cap 39 Laws of Kenya.

That section 3(2) of the Employment Act exempts the application of the Act on several groups of people and provides: -

“(2) This Act shall not apply to –

- (a) The Kenya Defence Forces or the reserve as respectively defined in the Kenya Defence Forces Act (Cap 199);
  - (b) The Kenya Police, the Kenya Prisons Service or the Administration Police Force;
    - a) The Kenya Coast Guard Service;
    - b) The National Intelligence Service
    - c) The National Youth Service; and
    - d) an employer and the employer’s dependents where the dependents are the only employees in a family undertaking.”
- (Emphasis done),

That section 42(1) (c) of the Limitation of Actions Act provides that the Act does not apply in several scenario being the following:

**“(1) This Act does not apply to:**

- (a) Criminal proceedings; or***
- (b) Matrimonial proceedings; or***
- (c) An action to recover possession of Trust Land; or***
- (d) Proceedings by the Government to recover possession of Government land or to recover any tax or duty, or the interest or any tax or duty or any penalty for non-payment or late payment of any tax on duty, or any costs or expense in connection with any recovery; or***
- (e) proceedings to which the Public Authorities Limitation Act (Cap 39 applies or...***

That in the present petition, the applicable statute is the Public Authorities Limitation Act, Cap 39 Laws of Kenya which under section 3(2) caps causes of action in contract against the government at three years as follows: -

***“(2) No proceedings founded on contract shall be brought against the government or a tax authority after the end of three years from the date on which the cause of action accrued.”***

That the cause of action accrued on 4<sup>th</sup> May 2020 and the petitioner filed the present suit on 7<sup>th</sup> March 2024, 10 months after/after than the period stipulated by statute.

The Petitioner in response has submitted that the petition is brought under Articles 10, 27, 41, 43 and 47 of the Constitution of Kenya 2010 and not under the said statutory provisions. That reference to the statutes in the matter and in particular, National Police Service Commission Act, Fair

Administrative Actions Act and the Persons Living with Disability Act are only but relevant statutes to this constitutional dispute.

That Article 54(1) of the Constitution in particular protects Persons with any disability as follows: -

**“54(1) A person with any disability is entitled –**

**a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning.”**

That failure to apply the law on persons with disability to the Petitioner so as to deny him five (5) years of service and therefore access to salary and income is a violation that is properly addressed under a constitutional petition which right is not limited by the three-year limitation period.

That in any event, this suit was brought within the five (5) year period the Petitioner is entitled to serve and upon fully following the internal grievance resolution mechanisms including with the office of the Ombudsman and so there is no inordinate delay in filing the suit.

That the retirement age was with effect from 1/7/2021 as per the notice dated 4/5/2020 and so the cause of action even if it was a *strictu sensu* contractual dispute started running from 1/7/2021 and the petition was filed on 6<sup>th</sup> August 2024 which was three (3) years, one month and five days from the day of the notice.

The cause of action in the petition is however that the Petitioner is entitled to serve up to 1<sup>st</sup> July 2026 when he attains the age of 65.

**The cause of action is well and alive and has not expired therefore since the Petitioner still has statutory and constitutional right to go back to office as we speak.**

That the objection is mis-conceived and it be dismissed.

The court is of the solid view that this dispute is ongoing and will persist until the expiry of the period of five (5) years which the Petitioner claims has a statutory and constitutional right to work as a person with disability. This objection is therefore mis-conceived. The suit is not time barred and the objection is dismissed.

The second objection is that the Petitioner is a police officer and not a public officer to whom the Public Service Commission Act and section D.21 of the Human Resource Policies and procedures Manual for the Public Service, 2016 do not apply.

The question whether a police officer with disability is a public officer who is entitled to the benefit of equality before the law and has equal protection and benefit of the law and in this case to the entitlement of all public officers with disability to retire 5 years after the established retirement age is a serious statutory and constitutional issue that falls to be determined in this matter.

Other issues that fall for determination is whether failing to accord police officers with disability same work terms and conditions of service with other

public officers with disability amounts to discrimination within the meaning of Article 27(4) of the Constitution.

Furthermore, other issues for determination herein is whether the conduct by the employer herein amounts to unfair labour practice and in violation of Article 41, of the Constitution and whether that conduct done without affording the Petitioner due process violates the Petitioner's right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair protected under Article 47(1) of the Constitution read with section (4) of the Fair Administrative Action Act of 2015.

To this extent, the objection as to the application of section D.21 of the Human Resource Policies and Procedures Manual for the Public Service 2016, is only but a side issue in the real dispute for determination before the court.

The Respondent refers to Article 234(3)(c)(iv) of the Constitution which provides that clause (1) and (2) shall not apply to any of the following offices in the public service: -

- (a)---
- (b)---
- (c) An office or position subject to-
  - (i)
  - (ii)
  - (iii)
  - (iv) The National Police Service Commission

It is the respondents' submission that the function and powers of the Public Service Commission do apply to the National Police Service Commission established under Article 246 of the Constitution which under Article 346(3) is mandated to:-

- (a) Recruit and appoint persons to hold or act in offices in the service, confirm appointments and determine promotions and transfers within the National Police Service
- (b) Observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the service; and
- (c) Perform any other function prescribed by national legislation.

Additionally, section 10 of the National Police Service Commission Act provides as follows: -

***“In addition to the functions of the commission under Article 246(3) of the Constitution, the Commission shall –***

- a) On the recommendation of the inspector General develop and keep under review all matters relating to human resources policies of members of the service;***
- b) review and make recommendation to the national government in respect of conditions of service, code of conduct and qualification of officers in the service.”***

The Respondents submit that the National Police Service Commission oversees the human resource function of the National Police Service. That the Petitioner falls within the mandate of the National Police Service Commission by virtue of the transitional clause espoused in section 7(1) and (2) of the National Police Service Act which provides: -

“(1) All persons who were immediately before the commencement of this Act, officers or employees of the Kenya Police Force and the Administration Police Force, established under the Police Act (Repeated) and the Administration Police Act (Repeated) respectively, become members of the service in accordance with the constitution and this Act. This position was affirmed in the case of ***Mwanja versus National Police Service Commission [2025] KECA 317 (KLR)***.

The Respondents therefore submit that the Petitioner is bound by the National Police Service Commission Act and its regulations therein and is therefore not subject to the provisions of the Public Service Act and the regulations thereunder.

That section 76 of the National Police Service Act provides for the retirement age of police officers. It provides as follows: -

***“(1) A police officer below the rank of Deputy Inspector General shall retire from the service on attaining the age of sixty years but may, with the approval of the commission be permitted to retire on attaining the age of fifty years.”***

Regulation 25 of the NPSC (Recruitment and Appointment) Regulations provide as follows: -

- (1) On appointment, the commission shall provide to the officers and other staff with a document containing the terms and conditions of service.
- (2) The terms and condition of service under paragraph (1) shall include information relating to

- (a) Service number;
- (b) Probation period;
- (c) Salaries and allowances;
- (d) Other benefits, including insurance, medical scheme, if any; leave days;
- (e) Performance management and expectations;
- (f) Transfers;
- (g) Retirement;
- (h) Pensions and
- (i) bonding services.

The Respondents submit in conclusion that the retirement age is a term and condition that is subject to the NPSC regulation and procedure.

The Petitioner in the further affidavit objected to the legal analysis posited by the Respondent and reiterates that the provisions of the Persons with Disability Act, apply to all persons including police officers.

**The Petitioner adduced a memo dated 13/10/2020 written by the Chief Executive Officer of the NPSC to the Inspector General of Police stating that the commission had sought advice from the Head of Public Service and his recommendations were that disability occurs in the officers in line of duty which makes it more compelling to retain circular no. MSPS/HRM/2/2/2VOL.II(21) dated 29/5/2012 and exempting police officers from its contents would be discriminative and unfair administrative practice.**

The CEO advised inter alia;

***“(i) The seventy-one (71) officers registered with the National Council for Persons with Disability be allowed to enjoy the benefits accruing for persons with disabilities in accordance with PWD Act, 2003.”***

The Petitioner submitted that he is registered with the National Council for Persons with Disability and that he be allowed to enjoy the benefit to retire at 65 years of age and the court grant the reliefs sought.

## **DETERMINATION**

The Respondents did not file any replying affidavit to the petition. The Petitioner has by the averments in the petition, the supporting affidavit and further affidavit and the documents attached to the supporting and further affidavit proved that he was employed by the Respondent as an administration police officer No. 19820JO714 in 1982.

That in the year 2011 he suffered a road traffic accident and incurred permanent physical disability. That the Petitioner applied and was registered as a person with disability by the Council of Persons with Disability together with a tax exemption certificate granted by KRA in the year 2015. That he has enjoyed tax exemption as a person with disability which exemption was granted by KRA to the year 2025. The Petitioner communicated the registration with NCPWD with his employer and his Income Tax (PAYE) was adjusted to 0.00 and his year of retirement was adjusted forward.

The Petitioner has proved that retirement age of civil servants including police officers living with disability is 65 years in terms of section D.21 of the Human Resource Policies and Procedures Manual in the Public Service 2016.

That his own employer the 1<sup>st</sup> Respondent embraced this policy as evidenced in the memorandum from the CEO of the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent dated 13/10/2020 in which the Police Service Commission noted that it had taken the advice of the Head of Public Service to apply the provisions of the persons with disabilities Act to the police officers and recommended that all officers registered with CPWD to be retired at 65 years of age.

The Petitioner has proved that he has a legitimate expectation to be retired at the age of 65 years. That by retiring the Petitioner at age 60 instead of 65 years, without any due process, that Respondents violated Article 10, 20(1) and (2), 24(1), 25(i), 29(d), 41(1), 43(e), 47(1) and 50(1) of the Constitution of Kenya 2010.

That the early retirement violated the provisions of persons with disability Act, 2003 read with section D. 21 of the Human Resource Policies and Procedure Manual for the Public Service 2016 as embraced by the 1<sup>st</sup> Respondent in its memo dated 13/10/2020.

The fact that the Petitioner was exempted from PAYE and had notified the 1<sup>st</sup> Respondent of his registration with CPWD in 2015 cemented his

legitimate expectation that the provisions of the Act were applicable to him and that he would be retired at age 65 and not 60.

The preliminary objection by the Respondent is clearly without merit and is an exercise in clutching on straws.

Rika J. in ***Getonto versus National Police Service Commission and another (Petition E168 of 2021) [2023] KEEKLR 174 (KLR)*** stated

***“The retirement age circular dated 29<sup>th</sup> May 2012 authored by Titus Ndambuki, Permanent Secretary in the Ministry of Public Service, states that retirement age for officers with disability would be 65 years. This would ensure the affected officers have guaranteed earnings as a way of cushioning them against uncertainties usually associated with retirement from formal employment. The circular is about social protection and security. It is in recognition of Article 43 of the Constitution on economic and social rights. The Petitioner’s right to social security under Article 43(1)(e) of the Constitution was severely impaired.”***

The Petitioner has clearly demonstrated on a balance of probability that his rights set out in the petition were violated by the Respondents.

***“It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of human kind. It was ordained by the divine hand of the Lord God hence the rule enjoy superiority over all laws made by human kind and that any law that contravenes or offends against any of the rule of natural justice***

***is null and void and of no effect,”*** so said the Supreme Court of Uganda in ***The Management Committee of Mothondo Primary School and another versus Uganda National Examinations Board, Civil Misc. Application/No. 13 of 2010***, which was followed with approval by Lenaola J, as he then was in ***Mandeep Chanhaun versus Kenyatta National Hospital and 2 others [2013] eKLR***.

In ***Communication Commission of Kenya and 5 others versus Royal Media Services Ltd and 5 others [2014] eKLR***, the Supreme Court stated: -

***“In proceedings for judicial review, legitimate expectation applies the principles of fairness and reasonableness, to the situation in which a person has an expectation, or interest in public body retaining a long-standing practice or keeping a promise.***

***An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfill. A party that seeks to rely on the doctrine of legitimate expectation has to show that it has locus standi to make a claim on the basis of legitimate expectation.”***

***“...The emerging principles may be succinctly set out as follows:***

- a. There must be an express, clear and unambiguous promise given by a public authority;***
- b. the expectation itself must be reasonable.***
- c. the representation must be one which it was competent and lawful for the decision maker to make; and***

***d. there cannot be a legitimate expectation against clear provisions of the law or the Constitution.”***

From 2015, when the Petitioner was registered as a person with disability and exempted by the 1<sup>st</sup> Respondent from paying income tax, and the extended retirement age reflected in his pay slips subsequently, he had legitimate expectation that, he would be retired at age 65 in terms of the same legislation and regulations applied with respect to his taxation. The Respondents are estopped from reneging from that promise. The inviolable doctrine of estoppel is applicable in the present case.

**The protection to persons with disability promised by the people of Kenya under Article 43(1)(e) of the Constitution is not an empty voice in the wind, it is real, with life changing armour, to shield and ameliorate the relative disadvantage suffered by persons with disability faced with retirement, and serves as a universal and equal protection to all persons with disability in the public service without any differentiation not provided in the Persons with Disability Act, 2003, itself or the Constitution of Kenya 2010.**

Accordingly, the opposition and objections by the Respondents to the Petition are without merit. The court grants the Petitioner all the reliefs set out in the petition as follows:

- a) A declaration that the conduct of the Respondents is contrary to and inconsistent with the provisions of Articles 10 of the Constitution of Kenya, 2010.

- b) Declaration that the Respondents violated the constitutional rights of the Petitioner and in particular. Articles 20(1) and (2), 24(1), 25(c), 29(d), 41(1), 43(e), 47(1) and 50(1), of the Constitution of Kenya, 2010.
- c) An order of certiorari calling to this court and quashing the decision of the 1<sup>st</sup> Respondent to send the Petitioner to retirement before his attainment of 65 years of age.
- d) An order of certiorari calling to this court and quashing the decision of the 1<sup>st</sup> Respondent to cut off the Respondent from the payroll.
- e) A declaration that the Petitioner is entitled to all the rights and privileges accorded to a civil servant living with disability including the 5 years extension of retirement age to 65 years.
- f) An order of mandamus compelling the Respondents to reinstate the Petitioner to employment at the rank he was at immediately before the discontinuation of his employment by the Respondents.
- g) An order of mandamus compelling the 1<sup>st</sup> Respondent to restore the Petitioner to the payroll.
- h) An order of mandamus compelling the 1<sup>st</sup> Respondent to pay all unpaid dues owed to the Petitioner in arrears including salary, allowances and other benefits entitled to him by dint of his employment from the time the Petitioner's employment was discontinued.
- i) An order to refund to the petitioner Kshs. 38,982.40 illegally deducted as income tax (PAYE) from Petitioner's salary for April and May 2018 when he had in force a valid Income Tax Exemption certificate from Kenya Revenue Authority.
- j) Costs of the suit.

Dated at Nairobi this **13<sup>th</sup> Day of November 2025.**



**Mathews Nduma**

**JUDGE**

**Appearance:**

Mr. Mureithi for the Petitioner

Mr. Adan for 1<sup>st</sup> Respondent

M/s. Karbolo for 2nd Respondent

Mr. Kemboi – Court Assistant

ORIGINAL