

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. E149 OF 2025

**IN THE MATTER OF ARTICLES 2(1), 10(2) (b), 20, 22(1),
23(1), 27(1), 41, 47, 73 AND 236 OF THE CONSTITUTION OF
KENYA, 2010**

AND

**IN THE MATTER OF VIOLATION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER THE CONSTITUTION OF
KENYA**

AND

**IN THE MATTER OF SECTIONS 4 AND 7 OF THE FAIR
ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015**

**IN THE MATTER OF THE UNFAIR, UNLAWFUL AND
MALICIOUS TRANSFER AND COMPULSORY LEAVE OF
FREDRICK OMONDI OWALLA**

BETWEEN

FREDRICK OMONDI OWALLA.....PETITIONER

- VERSUS -

THE DIRECTOR GENERAL,

NATIONAL TRANSPORT AND

SAFETY AUTHORITY (NTSA).....1ST RESPONDENT

NATIONAL TRANSPORT AND

SAFETY AUTHORITY (NTSA).....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday 26th November, 2025)

JUDGMENT

1. The petitioner filed the petition and supporting affidavit dated 25.07.2025 through Mutuku Munyao & Company Advocates. He prayed for:

- a) An order of declaration declaring that the petitioner’s rights under Articles 41, 47, 50 and 236 of the Constitution have been violated by the respondents.
- b) An order of declaration declaring that the letters dated 24th July 2025 purporting to transfer the petitioner and compel him to proceed on leave are unconstitutional, unlawful, null and void *ab initio*.

- c) An order of *certiorari* quashing the transfer and compulsory leave decisions dated 24th July 2025.
- d) An order of prohibition restraining the respondents from implementing or acting upon the said letters, or otherwise interfering with the petitioner's employment, pending due process.
- e) An order of *mandamus* compelling the respondents to reinstate the petitioner to his previous station in Kisii, without loss of benefits or status.
- f) An order that the respondents be directed to pay the petitioner's due baggage and transfer allowance, if any future transfer is to be lawfully effected.
- g) Costs.
- h) Such other or further relief as this Honourable Court may deem just and fit to grant.

2. The petitioner's case was as follows:

- a. The petitioner is a career public servant employed as a Principal Motor Vehicle Inspector by the 2nd respondent,

under Personal No. 2014229 and currently based at the Kisii NTSA Regional Office.

- b. On or about 17.07.2025, the petitioner was verbally informed by his immediate regional manager, Mr. Aden Adhow, to appear before the DCI (NTSA Division) offices in Nairobi in relation to certain undisclosed audit queries. He duly appeared on 18.07.2025 as instructed and voluntarily recorded a statement regarding audit-related matters. He was thereafter directed to the Office of the Director General, Mr. George Njao, who verbally accused him of having demanded a facilitation fee of Kshs. 100,000 from the owner of Motor Vehicle KDR 238X, yet no written complaint or evidence was provided to substantiate the claim.
- c. Without following due disciplinary process or any written report, the Director General ordered the arbitrary arrest of the petitioner and directed that he be detained at Capitol Hill Police Station. He was subsequently unlawfully detained at the station from 18.07.2025 to 20.07.2025, and no charges were ever preferred against him. The OCS and DCI officers

at the station informed him that they were under instructions from the Director General not to release him on police bail.

- d. The petitioner filed *Milimani High Court Misc. Application No. E192 of 2025*, in which he was admitted to anticipatory bail of Kshs. 50,000 on 24.07.2025, to forestall further arbitrary arrests by the respondents.
- e. On 24.07.2025, the petitioner received two letters from the respondents: one purporting to transfer him from the Kisii Regional Office to Likoni Road Office; and the other compelling him to proceed on 20 days of annual leave, allegedly on disciplinary grounds. The transfer letter further indicated that he would not be entitled to transfer or baggage allowance, which was punitive.
- f. According to the petitioner, he has never been informed of any disciplinary charges, issued a show cause letter, subjected to any hearing or administrative inquiry, received any complaint in writing, and never received any decision or recommendation by any disciplinary panel. He contends that no disciplinary hearing was ever conducted against him.

- g. The petitioner, through a letter dated 22.07.2025, notified the Director General of his medical condition stemming from his unlawful arrest and his inability to attend further verbal summons issued for 23.07.2025. However, his notice was ignored.
- h. The respondents' actions are a continuation of a personal vendetta by the Director General, who expressly told the petitioner on 18.07.2025 that, "Before I retire in November, I will make sure you go down."
- i. The petitioner contends that his right to fair administrative action under Article 47 of the Constitution was breached as he was never informed, heard or notified of any disciplinary process.
- j. The petitioner contends that his right to fair labour practices under Article 41 was breached because the purported transfer and leave without due process amounts to constructive punishment and violates his employment rights.
- k. The petitioner's arbitrary unrest and incommunicado detention were unlawful and traumatic. The unlawful abuse

of administrative power by the Director General amounts to malice, procedural impropriety and misuse of discretion. In addition, his rights under Article 28 on the right to human dignity and under Article 236 on the protection of public officers from victimization were violated.

1. This Court should intervene to protect the petitioner's rights, dignity and employment, and to nullify the unlawful decisions made against him.
3. The petitioner filed a further affidavit, sworn on 24.09.2025, averring that despite the express directions of this Honourable Court on 05.08.2025, the respondents have wilfully failed, refused and/or neglected to comply with the said orders and have not filed any responses or affidavits in opposition to his petition. The petition consequently remains unopposed and uncontroverted and therefore admitted by default. The petitioner further averred as hereunder:
- (i) The letter dated 24.07.2025 was framed "transfer" but was in fact premised on alleged disciplinary grounds, as evidenced

by the tone, language and circumstances surrounding its issuance.

- (ii) The terms and procedures governing his employment, including disciplinary processes, are subject to the Public Service Commission (PSC) Human Resource Policies and the Circular dated 25.03.2025, which outlines the mandatory procedure for handling disciplinary matters in the public service. However, the 1st respondent acted in disregard of the said Circular and of due process, by directing his arbitrary arrest and detention in gross abuse of office and in violation of the petitioner's constitutional rights.
- (iii) Further, the 2nd respondent, through its Director General, misused its administrative prerogative of transfer as a tool of punishment rather than as a lawful human resource management measure, thereby violating the principles of fairness, proportionality, and reasonableness enshrined in Article 47(1) of the Constitution.

4. The petitioner filed written submissions in court. The Court has considered all material on record and returns that the petition must succeed upon the following findings:

a) Despite service, the respondents failed to enter appearance or to file a response and replying affidavit to the petition. On 05.08.2025, Mr. Mutuku Advocate for the petitioner was in court when Ms. Kihamba Advocate attended and informed the Court (Radido J) that she had not managed to file a notice of appointment and responses. Upon listening to both Counsel present, the Court made directions including that the responses to the petition be filed and served by 29.08.2025. The case was mentioned on 14.10.2025 and the respondents did not attend the Court. Directions were made on filing of final submissions and mention on 12.11.2025. The case was mentioned as scheduled and the Court directed physical service of all documents filed for the respondent. In that way the respondent was given another chance to attend a mention on 18.11.2025 but failed to attend or to enter appearance. The affidavit of the physical service by Mr. Brian Mutuku

Munyao Advocate was sworn on 17.11.2025. The Court therefore returns that despite repeated opportunities for the respondents to enter appearance and to oppose the petition, they have failed to do so. The petition is therefore not opposed and the petitioner's submission in that respect is upheld. By that finding, the facts of the case as urged for the petitioner are upheld as true and on a balance of probability.

b) The submissions for the petitioner are upheld that the respondents' actions as pleaded and viewed cumulatively were actuated by malice, ill motive and disregarded the rule of law. The letter on leave dated 24.07.2025 was issued concurrently with the other impugned letter also of 24.07.2025 alleging a transfer upon imaginary disciplinary grounds. The letter imposing leave stated, "This is to inform you that you are required to proceed on 20 days' annual leave with immediate effect. Please note that the leave days will be deducted from your annual leave entitlement for the current year." The letter was personally signed by George Njao, EBS, the 1st respondent. The Court finds that as urged

for the petitioner, the actions were not aimed at achieving legitimate administrative objective but were calculated to disregard the rule of law, victimizing, embarrassing, and punishing the petitioner contrary to fair administrative action, fair labour practices, and natural justice as enshrined in Articles 27, 41, 47, 50 and 236 of the Constitution. The submissions and the case as urged are upheld.

- c) The letter of transfer dated 24.07.2025 alleged disciplinary grounds but no disciplinary process had been commenced and continued in accordance with applicable law, service regulations, policies and the terms and conditions of the parties' contract of service. The letter stated in part, "Note that you will not be eligible for payment of baggage and transfer allowance, as this has been done on disciplinary grounds." The transfer was also in circumstances that the petitioner was unfairly arrested and held in police custody at Capitol Hill Police Station from 18.07.2025 to 20.07.2025 and the Court finds that as urged for the petitioner, the 1st respondent set out to intimidate and frustrate the petitioner.

The transfer decision required the petitioner to report at Likoni Road Office immediately and to proceed on twenty days annual leave. The transfer was without due regard to handing over procedures and the leave was free from agreement from parties as envisaged in the Employment Act. Further, the baggage and transfer allowance per the terms of service and policies appear to have been disregarded by the respondents. The Court finds that the petitioner's rights were indeed violated as urged and submitted and the Respondents' actions amounted to punishment imposed without due process as was contrary to Article 236 of the Constitution as pleaded and as submitted for the petitioner.

d) In the circumstances the Court finds that the petitioner has established the justification for grant of the reliefs prayed for. He has as well succeeded and the respondents will jointly or severally pay the costs of the petition.

e) While allowing the unopposed petition, the Court has considered that the Court's decision to grant a non-opposed petition depends on its discretion and a review of the facts

and legal arguments urged for the petitioner. The Court has reviewed the facts, the affidavit evidence as well as the applicable law and constitutional provisions as pleaded. The Court has returned that the petition is merited. The Court has also considered the nature of the reliefs sought and found that there are no bars to grant of the reliefs in view of the material on record. The Court has also considered and found that there are no apparent jurisdictional impairments to defeat the grant of the petition in which the petitioner has established violations of rights and constitutional provisions as was urged and submitted for the petitioner. Accordingly, the petition will be allowed as merited.

In conclusion, judgment is hereby entered for the petitioner with orders as follows:

- a) The declaration that the petitioner's rights under Articles 41, 47, 50 and 236 of the Constitution have been violated by the respondents as found herein.
- b) The declaration that the impugned letters on leave and transfer both dated on 24th July 2025 purporting to transfer the petitioner and

compelling him to proceed on leave are unconstitutional, unlawful, null and void *ab initio*.

c) The judicial review order of certiorari hereby issued and quashing the transfer and compulsory leave decisions conveyed in the letters both dated 24th July 2025.

d) The judicial review order of prohibition hereby issued and restraining the respondents from implementing or acting upon the said two impugned letters, or otherwise interfering with the petitioner's employment, pending due process, as, any processes and decisions flowing from the impugned letters are set aside.

e) The judicial review order of mandamus hereby issued and compelling the respondents to reinstate or revert the petitioner to his previous station of deployment in Kisii and to continue in service without a break, loss of benefits or status.

f) The order that the respondents to pay the petitioner's due baggage and transfer allowance, or, to take annual leave, as per the contract of service and prevailing public service regulations and policies in event of any future transfer lawfully effected or as the annual leave will fall due.

g) The respondents to jointly or severally pay the petitioner's costs of the petition.

Signed, dated and delivered by video-link and in court at Nairobi this Thursday 26th November, 2025.

BYRAM ONGAYA, PRINCIPAL JUDGE