

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. E092 OF 2025**

**IN THE MATTER OF ARTICLES 1, 2, 3(1), 10, 19, 21, 22, 27(1),  
(2) & (3), 28, 41 (1), 47, 48 & 258 OF THE CONSTITUTION OF  
KENYA 2010**

**AND**

**IN THE MATTER OF RULE 4, 10, 13 & 20 OF THE  
CONSTITUTION OF KENYA (SUPERISORY AND  
PROTECTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS OF THE INDIVIDUAL) HIGH COURT  
PRACTICE & PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF AN ALLEGED CONTRAVENTION OF  
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER  
ARTICLES 27(1), (2) & (3), 28, 41(1) & (2) AND 50(2)**

**AND**

**IN MATTER OF SECTIONS 88(3) OF NATIONAL POLICE**

**SERVICE ACT (11A OF 2011)**

**AND**

**IN THE MATTER OF THE NATIONAL POLICE SERVICE  
COMMISSION DISCIPLINE REGULATIONS 2015 (LEGAL  
NOTICE NO.90 OF 2015)**

**-BETWEEN-**

**JOYFRED GITHONGO MAINA.....PETITIONER**

**- VERSUS -**

**INSPECTOR GENERAL OF POLICE.....1<sup>ST</sup> RESPONDENT**

**NATIONAL POLICE SERVICE**

**COMMISSION.....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL .....3<sup>RD</sup> RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Wednesday 17<sup>th</sup> December,  
2025)*

**JUDGMENT**

1. The petitioner filed the petition and supporting affidavit dated 14.05.2025 and filed through J.O. Magolo & Company Advocates.

The petitioner prayed for the following orders:

- a) A declaration that the removal letters dated 8<sup>th</sup> October 2024 are in breach of the petitioner's rights under Articles 41, 47, and 50 of the Constitution and the same be declared null and void for all intents and purposes.
- b) A declaration that the removal of the petitioner from the service was unfair, unlawful and unconstitutional.
- c) An order compelling the respondents to henceforth reinstate the petitioner into his position in employment of the National Police Service and accord him his rights to promotion and other rights that he missed out on as a result of removal from the service.
- d) An order prohibiting the respondents from initiating any further disciplinary action against the petitioner based on the same facts.
- e) An order that the respondents jointly and severally bear the costs of the petition.

2. The petitioner pleaded s follows:

- a) The 1<sup>st</sup> respondent employed the petitioner on 18.04.2008 and was stationed at different police stations and as at dismissal was stationed at Riruta Police Station.
- b) On 19.07.2024 there were countrywide demonstrations and the petitioner was deployed as the station guard together with his colleagues.
- c) The functions of police include to investigate offences and to prevent commission of offences. In the circumstances the petitioner logged into his social media platform TIK TOK and started a live stream wherein other users were commenting on several issues among which was the ongoing demonstration. The petitioner pleads that some users started commending thus “RUTO MUST GO” together with other slogans. He further pleads that on his part he started reading aloud some of the comments while also trying to caution the live users from using such language. Further, his activities on the live stream went viral in other social media platforms and was edited by unknown persons to make it appear as if he was in support of the said demonstrations. He received phone

calls from family members and friends inquiring about the video and asking whether it was him in the video.

d) It is pleaded that later on that material day the petitioner was disarmed per orders of the Officer – In – Charge of the Station and on 20.07.2023 he received a letter to show cause signed by the Regional Police Commander. The letter stated that on 19.07.2023 the petitioner had committed disciplinary offences including making false statements against other person affecting the character of such person or wilfully suppressing material facts contrary to section 88(2) as read with the 8<sup>th</sup> schedule 1(dd) of the National Police Service Act No.11a of 2011; committing an act amounting to hate speech under section 13 and 62 of the National Cohesion and Integration Commission Act and contrary to section 88(2) as read with 8<sup>th</sup> schedule 1(II) of the National Police Service Act No.11A of 2011; being negligent in the performance of his duty contrary to section 88(2) as read with 8<sup>th</sup> schedule 1(r) of the National Police Service Act No.11A of 2011; being in improper possession of any public property contrary to

section 88(2) as read with the 8<sup>th</sup> Schedule 1 of the National Police Service Act No.11A of 2011; wilfully disobeying any lawful command or order contrary to section 88(2) as read with the 8<sup>th</sup> schedule 1(dd) of the National Police Service Act No.11A of 2011. The letter concluded thus “You have been granted 3 (three) calendar days (as per sec.9 (3) NPSC Act No. 30 of 2011) to submit your replies beginning today 20<sup>th</sup> July, 2023. The replies should be received before the end of 22<sup>nd</sup> July, 2023.” It was signed by Sadiq William for Regional Police Commander, Nairobi.

- e) The petitioner replied to the letter to show cause on 23.07.2023 and he received an interdiction letter dated 20.07.2023 and later a suspension letter dated 07.09.2023 and effective 04.09.2023 in view of the allegations levelled. The suspension letter further stated “Upon completion of the Orderly Room Proceedings, the committee found the powers to award sentence inadequate and proceedings were forwarded to the Regional Police Commander for determination.” The suspension was therefore imposed in

view of that committee finding. The petitioner has pleaded that the Orderly Room Proceedings had been conducted on 28.07.2023 and a sentence passed against him per the letter dated 16.05.2024 by the Deputy Inspector General and published in the weekly order of 23.05.2024

f) On 08.10.2024 and by letter through the County Commissioner from the National Police Service Commission, the 2<sup>nd</sup> respondent dismissed the petitioner from the service effective 04.09.2023 being the effective date of the suspension as had been imposed. The dismissal letter advised the petitioner he could appeal through the service channels against the dismissal with a copy to the 2<sup>nd</sup> respondent's chairperson and within 14 days of receipt of the letter.

g) The petitioner states that he appealed against the dismissal but he was not given an opportunity to present his case or to be heard.

3. The petitioner has further pleaded as follows:

a) The functions of the 2<sup>nd</sup> respondent Commission per Article 246 3(b) of the Constitution include observing due process,

exercising disciplinary control over and remove persons holding or acting in offices within the Service; and, performing any other functions prescribed by national legislation.

- b) Section 10 of the National Police Service Commission 2011 provides for additional powers of the 2<sup>nd</sup> respondent including to develop fair and clear disciplinary procedures in accordance with Article 47 of the Constitution and to promote values and principles referred to in Article 10 of the Constitution.
- c) The petitioner alleges that he was not accorded due process per the letter to show cause and was also subjected to two processes at the same time. It is his case that he was not served 7 days' notice per regulation 11 (5) of the National Police Service Commission (Discipline) Regulations and the requirements for waiver of such notice were not complied with. In the circumstances, the petitioners case is that the dismissal amounted to unfair administrative action contrary to Article 47 of the Constitution. It is his case that the 2<sup>nd</sup>

respondent dismissed him without hearing him. Further, it is urged that the 2<sup>nd</sup> respondent failed to hear him per regulation 22 (4) of the National Police Service Commission (Discipline) Regulation that an appeal be dealt with by way of written submissions or by oral hearing of the parties or both.

d) The petitioner further pleaded that his rights as an individual must be considered and his right right to communicate and have interactions should not be limited on account that he is a police officer and that the right was violated.

4. The 1<sup>st</sup> and 3<sup>rd</sup> respondents filed the replying affidavit of No. 232271 Mr. Silas Andiema Commissioner of Police and Staffing Officer Personnel 3 based at Kenya Police Service Headquarters in Nairobi. Learned Principal State Counsel Ms. Lorna Orege for the Attorney General appeared for the two respondents. The 1<sup>st</sup> and 3<sup>rd</sup> respondents' case was urged as follows:

a) The petitioner, was an officer of the National Police Service (NPS), having been appointed as an Administration Police Constable on probation on 18th April 2008 and subsequently

confirmed on 14th December 2010. At the time of the impugned events, he was stationed at Riruta Police Station.

- b) On 19th July 2023, during a period of heightened national tension marked by widespread demonstrations, the petitioner, while in full police uniform and actively deployed on duty, initiated a live broadcast on a public social media platform (TikTok). During the livestream, politically charged commentary was permitted and recited by the Petitioner, including inflammatory slogans such as —Ruto Must Go,, thereby breaching the NPS Code of Conduct, the Leadership and Integrity Act, and the strict obligation of political neutrality required of serving police officers.
- c) The video was widely disseminated and edited across various digital platforms, generating public uproar and tarnishing the image, integrity, and professionalism of the National Police Service. Consequently, the Petitioner was promptly served with a Notice to Show Cause dated 20<sup>th</sup> July 2023. He responded on 23<sup>rd</sup> July 2023. Given the gravity of the misconduct, he was interdicted on the same date, and a

Waiver Notice was issued under Regulation 11(5) of the NPSC (Discipline) Regulations, 2015, permitting the disciplinary hearing to proceed without the standard seven-day notice.

- d) A Subordinate Disciplinary Committee, duly constituted by the Regional Police Commander Nairobi, conducted orderly room proceedings on 26<sup>th</sup> July 2023. The petitioner participated in the proceedings, and due process was observed. Taking into account both the nature of the misconduct and the petitioner's previous disciplinary infractions—including an incident of desertion, the Committee recommended his dismissal from service, which was formally approved by the National Police Service Commission and communicated to him via letter dated 20<sup>th</sup> September 2024.
- e) The petitioner subsequently lodged an appeal against the dismissal in accordance with the disciplinary framework established under the National Police Service Commission (Discipline) Regulations. As of the filing of this Petition, that

appeal remains pending before the 2<sup>nd</sup> Respondent. The petitioner has neither been denied a hearing nor furnished with a final determination of the appeal.

- f) Notwithstanding the availability of a statutory appeal process and his own invocation thereof, the petitioner has moved the Honourable Court by way of a Constitutional Petition, alleging violations of his rights under Articles 27, 41, 47, and 50 of the Constitution. He seeks, inter alia, declarations of constitutional violation, reinstatement into the Service, and compensatory damages.
- g) It is the respondents' respectful position that the present petition is not only procedurally premature but also an improper attempt to convert an employment dispute into a constitutional matter. The petitioner has failed to demonstrate exceptional circumstances to justify bypassing the statutory dispute resolution mechanisms. The invocation of this Court's jurisdiction at this stage is therefore misplaced, untenable in law, and constitutes an abuse of the judicial process.

5. The 2<sup>nd</sup> respondent did not participate in the proceedings as no papers were filed and no counsel attended in that regards.
6. Submissions were filed respectively for the petitioner, and, the 1<sup>st</sup> and 3<sup>rd</sup> respondents. The Court has considered the material on record. The Court returns that petition must fail upon the following findings:

- a) There is no dispute that the petitioner has invoked the internal and prescribed appellate procedure by appealing to the 2<sup>nd</sup> respondent against the dismissal. While the appeal is pending and with no shown good reason or justification to move the Court prior to hearing and determination of that appeal, the petitioner moved and filed the instant petition. As urged and submitted for the 1<sup>st</sup> and 3<sup>rd</sup> respondent's the instant petition is indeed liable to striking out for want of exhaustion of the prescribed and already invoked appellate procedure.

- b) At paragraph 17 of the replying affidavit it is stated thus "17. That the Subordinate Disciplinary Committee was constituted on 26/7/2025 by the Regional Police Commander

Nairobi to conduct the disciplinary process. The Sub County Police Commander Dagoretti served the Petitioner with a Waiver Notice so that the proceedings could commence with immediate effect in accordance with Paragraph 15(2) & (b), Chapter 30 of the Service Standing Orders. (Annexed hereto and marked “SA4” is a copy of the “Waiver Notice” dated 26/7/2023.)” The petitioner has offered no evidence to rebut that position that the waiver notice was duly issued and served for prompt commencement of the Orderly Room Proceedings without need to await the 7 days. He also admits that he did reply to the letter to show cause. By that evidence and findings, the Court returns that the petitioner’s lamentations in that respect unfounded and that the disciplinary proceedings had continued with due waiver of the 7-days’ notice.

c) By the foregoing findings the Court finds that the petitioner has failed to establish his case about violation of rights as was alleged. The Court has considered the pending administrative appeal to the 2<sup>nd</sup> respondent and will not delve

into other factual considerations of the petitioner's case on merits which may be considered, heard and determined in the pending appeal. In that consideration, the Court further returns that each party will bear own costs in this matter that there exist a live administrative appeal. In view that the merits of the case have not been delved into, the petition will be struck out rather than dismissed.

In conclusion, the petition is hereby struck out and each party to bear own costs of the proceedings.

**Signed, dated and delivered by video-link and in court at Nairobi  
this Wednesday 17<sup>th</sup> December, 2025.**

**BYRAM ONGAYA,  
PRINCIPAL JUDGE**