

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
OF KENYA AT NAIROBI
PETITION NO. E131 OF 2025
IN THE MATTER OF ARTICLES 22(1), 23(1), 41, 43 OF THE
CONSTITUTION
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS UNDER
ARTICLE 19, 20, 25, 27, 28, 41, 47, 50 AND 246 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF SECTIONS 3(C), 4 AND 7 OF THE FAIR
ADMINISTRATION ACTION ACT NO. 4 OF 2015
AND
IN THE MATTER OF THE NATIONAL POLICE SERVICE
COMMISSION ACT
BETWEEN
GODFREY JOHN OMUTEREPETITIONER

- VERSUS -

NATIONAL POLICE SERVICE

COMMISSION1ST RESPONDENT

THE INSPECTOR GENERAL,

NATIONAL POLICE SERVICE2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

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

JUDGMENT

1. The petitioner filed the petition and supporting affidavit dated 03.06.2025 through K. Michuki Law Advocates. He prayed for orders as follows:

A. A declaration be and is hereby issued that:

- i) the dismissal of the petitioner from the National Police Service without due process, without notice, and without a fair hearing is unconstitutional, unlawful, and null & void *ab initio* as it contravenes Articles 41(1), 47(1), 50(1), 28, 232(1) & 246 of the Constitution of Kenya, 2010;

- ii) the failure by the 1st and 2nd respondents to provide the petitioner with reasons for his dismissal, or to subject him to any known disciplinary process, constitutes a violation of the petitioner's rights to fair administrative action, fair labour practices, and fair hearing under Articles 47, 41, and 50 of the Constitution;
- iii) the continued refusal by the 1st and 2nd respondents to reinstate the petitioner or pay him the salary and benefits due to him from the date of discharge, despite the withdrawal of the criminal case, constitutes a breach of the petitioner's constitutional rights and is therefore null and void;
- iv) the respondents' conduct of withholding the petitioner's personal file, failing to provide any records or communication regarding his suspension and/or dismissal, and denying him access to information is a violation of his right under Article 35 of the Constitution and the Access to Information Act; and,

v) all the actions and decisions of the 1st and 2nd respondents resulting in the petitioner's suspension and/or removal from service were made in bad faith, in abuse of power, and in violation of Articles 10, 27, 28, 41, 47, 50, 232 and 246 of the Constitution and are hereby declared unconstitutional, unlawful and void.

B. An order of *Mandamus* be and is hereby made:

i) directing the 1st and 2nd respondents to reinstate the petitioner to the National Police Service in a position commensurate with his experience and rank, together with all rights, benefits, promotions and privileges due to him;

OR IN THE ALTERNATIVE,

i) directing the respondents to pay the petitioner all salaries, allowances, terminal dues, and benefits owed to him from the date of his unlawful suspension and/or dismissal in 2012 up to his expected retirement age, in accordance with the National Police Service pay structure and relevant employment regulations;

ii) directing the respondents to provide the petitioner with certified copies of his entire personal file, including but not limited to his enlistment records, disciplinary history (if any), discharge letters, and any recommendations for removal; and,

iii) directing the respondents to issue the petitioner with a certificate of service.

C. Constitutional, general and/or aggravated damages for violation of the petitioner's rights.

D. Costs of the petition.

E. Any other relief that this Honourable Court may deem fit and just to grant.

2. The petitioner's case was as follows:

a) He was formerly employed in 2006 as a police constable under the National Police Service (NPS), Force No. 87862, whose personal file is referenced as No. 2006009507.

b) He was suspended from service in 2012 pursuant to the institution of **Criminal Case No. 50 of 2012 - Republic vs. Godfrey John Omutere**, in circumstances that were not

communicated to him formally, clearly or procedurally. The case was withdrawn on 28.01.2014 under Section 87(a) of the Criminal Procedure Code, thereby conclusively terminating the criminal proceedings without any adverse finding against the petitioner.

- c) Despite several efforts to access his personal file to understand the reasons and process of his discharge, the 1st and 2nd respondents have failed, neglected or refused to provide his employment records, including disciplinary documents and any correspondence on his removal. Through his advocates, he issued a formal request dated 02.04.2025 pursuant to Article 35 of the Constitution of Kenya and the Access to Information Act, requesting certified copies of his personal file, but the respondents failed to respond.
- d) He has variously sought to be reinstated to service by the 1st and 2nd respondents. On 06.09.2025, his advocates sent a formal letter to the 1st respondent demanding his reinstatement to the police service, payment of his emoluments and any other

benefits due and accruing to him. However, the 1st respondent neither responded nor made good on the demands.

- e) The continued silence by the 1st and 2nd respondents has left him without employment, pay or benefits for over a decade, without any lawful explanation, process or hearing, despite the criminal charges that triggered his suspension being withdrawn over 11 years ago. Since his suspension, he has neither been served with any letter of termination or dismissal nor given a chance to be heard in any disciplinary process regarding his employment status.
- f) His constitutional rights to fair labour practices, fair administrative action, fair hearing, access to information, dignity, equality, and the values of transparency and accountability in public service have been violated by the respondents.

3. The petitioner particularized the violation of the Constitution as follows:

- i) The 1st and 2nd respondents violated the petitioner's right to fair labour practices as guaranteed under Article 41(1) through the following actions:
- a) Arbitrarily suspending him from the NPS without a fair hearing.
 - b) Denying him an opportunity to be heard or to challenge any allegations before his suspension or removal from service.
 - c) Treating him in a manner inconsistent with the standards applicable to other public officers in disciplinary proceedings.
 - d) Discharging him from the NPS without instituting or concluding any formal disciplinary process.
 - e) Failing to issue any written communication, notice of intention to dismiss, or reasons for his discharge.
 - f) Failing to pay him his emoluments, benefits and any other dues accruing to him.
- ii) The 1st and 2nd respondents breached the petitioner's right to fair administrative action as guaranteed under Article 47 through:
- a) Making an administrative decision to suspend and/or discharge him from service without notice, hearing or justification.

- b) Failing to provide any written reasons for the suspension and/or discharge as required under Article 47(2) and Section 4(2) of the Fair Administrative Action Act.
 - c) Ignoring a formal written demand dated 06.09.2024 seeking reinstatement and payment of dues.
 - d) Failing to respond to the petitioner's Access to Information request dated 02.04.2025, thereby compounding the denial of procedural fairness.
 - e) Subjecting him to an unlawful and unreasonable process that was arbitrary, opaque, and in breach of natural justice.
- iii) The respondents infringed the petitioner's right to a fair hearing as enshrined in Article 50(1) by:
- a) Failing to provide him with a forum to be heard or defend himself before his suspension and/or termination of employment.
 - b) Suspending and/or discharging him on the strength of criminal charges that were later withdrawn without any attempt to revisit the basis of his removal.
 - c) Ignoring requests for clarification, thereby depriving him of an opportunity to contest the legality of the administrative decision affecting his livelihood.
 - d) Failing to constitute or refer the matter to a disciplinary body or tribunal capable of determining the dispute impartially.

iv) The respondents undermined the petitioner's right to dignity under Article 28 by:

- a) Subjecting him to economic deprivation and reputational harm through an unexplained discharge.
- b) Denying him the basic decency of a proper explanation or opportunity to be heard.
- c) Ignoring his service record and failing to treat him with respect due to a former officer who had served the country.
- d) Withholding official records and disengaging communication with him in a manner calculated to frustrate and humiliate.

v) The petitioner's right to equal protection and benefit of the law under Article 27(1) was violated by the respondents through:

- a) Discriminating against him by arbitrarily discharging him without a hearing, unlike other similarly placed officers who have either been reinstated or taken through formal disciplinary hearings.
- b) Failing to subject him to a uniform standard of disciplinary treatment available under the Police Service Standing Orders and the National Police Service Act.

c) Treating him differently and unfairly despite his willingness to return to service and despite the withdrawal of the charges that precipitated his discharge.

vi) The respondents violated the principles of public service under Article 232(1)(f) and (g) through:

a) Refusing to respond to formal correspondence requesting reinstatement and settlement of dues.

b) Failing to exercise transparency and accountability by not disclosing the reasons for the discharge of the petitioner.

c) Denying access to his employment records, which are critical to understanding and defending his service history.

d) Acting in disregard of the professional standards and ethical values expected of public institutions handling employment matters.

4. The respondents filed their replying affidavit, sworn by Asha Wario on 22.08.2025, through the Hon. Attorney General and State Counsel E.S Karbolo appeared in that behalf. They averred as hereunder:

a) Asha Wario is a Senior Superintendent of Police in rank and working for the Kenya Police Service Headquarters as a Staffing Officer Personnel and is conversant with facts in the

case as is authorised to make the affidavit in response to the petition.

- b) Upon the petitioner's appointment and execution of the letter of appointment, he voluntarily subjected himself to be bound by the terms of service and all laws, regulations and orders promulgated from time to time affecting his service in the Police Service.
- c) Upon completing his initial training, the petitioner was posted to various police stations, including the Londiani Police Station and Lokichar Police Patrol Base under Kainuk Police Station, performing general duties where he worked from 2007 to 2011 before he deserted from the Service. He did not earn any awards, commendations or promotion during his period of service,
- d) While stationed at Lokichar Police Patrol Base under Kainuk Police Station, the petitioner was granted off duty and was to report back to the station on 12.12.2011, but failed to do so, and his whereabouts remained unknown. He was declared a deserter from the Service with effect from 02.01.2012 after

absenting himself from duty for more than 21 days, contrary to the Force Standing Orders. The Police Headquarters was notified of the desertion through a signal dated 02.01.2012, and was subsequently notified, through another signal sent on 03.02.2012, that the petitioner had been struck off and execution of the warrant of arrest against him was underway.

- e) As a matter of procedure, the petitioner was removed from the payroll by being struck off strength after the expiry of 30 days from the date he absented himself from duty. His salary was stopped on 29.02.2012 on account of absence from duty and pending determination of the criminal case, as contemplated by the Police Standing Orders. The said administrative action was undertaken because of the petitioner's truancy and did not require a hearing or proceedings.
- f) On 17.04.2012, the petitioner resurfaced after absenting himself from duty without reasonable cause and deserting the Service for 156 days from 12.12.2011. He was arrested and arraigned before the court as his warrant of arrest was still in force. The 2nd respondent initiated lawful processes as

prescribed by law, and whereas the criminal case was withdrawn, such withdrawal is not a bar to other proceedings on the same facts being commenced against the petitioner.

- g) The petitioner was not suspended from duty as alleged upon institution of the criminal proceedings, as he was a deserter from the Service. After the criminal case was withdrawn, no disciplinary proceedings were conducted against him, and neither was he dismissed, removed, discharged or suspended from the Service as alleged.
- h) The petitioner did not report back to the station or the Service after his arraignment before the court in 2012. On 05.08.2019, his name and 679 other officers' names were expunged from the payroll to prevent loss of government funds through insurance premiums paid by the Service to all officers in the payroll.
- i) Police officers are not allowed to access or get copies of their entire personal employment files, which contain confidential information and other records that may be tampered with if access is granted to them. The Service, however, provides non-

confidential information upon request, including employment details such as date of enlistment, rank, stations served, and disciplinary records. In any case, the petitioner never requested any documents or information from the 2nd respondent as alleged.

- j) The petitioner has not provided any evidence to establish that the stoppage of his salary and his non-reinstatement to the Service were unlawful or unreasonable. As evidenced by his conduct, he lacked the requisite discipline required in the Service.
- k) The petitioner is ineligible for issuance of the certificate of discharge as he has not surrendered his police uniform, certificate of appointment and other government property issued to him. Further, he has not been cleared by his immediate commander as he remains missing and his whereabouts are unknown. He is also not entitled to payment of salary, benefits and reinstatement to the Service as he is still considered a deserter for failing to report back to the Service.

Further, he did not work for the period stated and should therefore not be unjustly enriched.

l) The petitioner is seeking to circumvent statutory time limitations by filing the employment claim cloaked as a constitutional petition. The petition raises no constitutional issue for determination, and the Petitioner is merely using the court's process for his convenience to frustrate the lawful functions of the respondents.

m) Article 41(1) of the Constitution on the right to fair labour practices does not apply to members of the NPS by virtue of Article 24 (5) (d) of the Constitution, which limits its application. The limitation of this right is further enunciated under Section 47 of the National Police Service Act. Further, Article 47 of the Constitution does not apply to the petitioner because the respondents did not make any administrative decisions in relation to his desertion matter, save for the stoppage of his salary after he absented from duty without reasonable cause.

n) The respondents did not in any way violate the constitutional rights of the petitioner and he is not entitled to any of the orders sought. The petitioner is an abuse of the court process and without merit, and should hence be dismissed with costs to the respondents.

5. The petitioner filed a supplementary affidavit, sworn on 27.11.2025, averring that no evidence has been produced to show that he was ever issued with a notice to show cause, summoned for a disciplinary hearing, or notified in writing of any intention to declare him a deserter. Desertion is a disciplinary and criminal allegation that cannot be concluded without due process. He asserted that the respondents' claim that he was struck off strength does not amount to a lawful termination of employment and cannot extinguish his rights without due process. Striking off strength is an internal administrative step and cannot replace the constitutional requirement of a fair hearing. Contrary to the respondents' allegation that he made no effort to return to work, he issued a formal demand for reinstatement dated 06.09.2024, which they neither acknowledged nor responded to. He also issued a

formal access to information request dated 02.04.2025 seeking his personal employment file, but it was not responded to. He argued that confidentiality cannot be invoked to deny an employee access to their own records, particularly where such records form the basis of employment status. Further, he was never issued with any letter of suspension, termination, dismissal or instructions to return government property to warrant his disentanglement to a discharge certificate. He also pointed out that the respondents' memo dated 05.08.2019 confirms that his name remained on the payroll seven years after the alleged desertion, which contradicts the respondents' assertion that he ceased being an officer in 2012. He maintained that the petition raised constitutional issues regarding the violation of his rights, which cannot be limited to a simple contractual dispute. That the limitation of his right to fair labour practice, as noted by the petitioner, only applies if it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

6. The petitioner and the 2nd and 3rd respondents filed their written submissions. While the 1st respondent entered appearance dated

31.07.2025 through learned Counsel Valerie Kasaiyan, it filed no opposing papers or submissions. It was submitted for the petitioner that by that failure, the petitioner's case as pleaded should be deemed admitted. However, the Court finds that no material allegations were made against the 1st respondent and the 2nd respondent traversed all the allegations and filed a replying affidavit. It cannot therefore be true that the petitioner's case can be deemed admitted as was urged and submitted for the petitioner.

7. The Court has considered the pleadings, the affidavit evidence and the submissions for the petitioner and the 2nd and 3rd respondents.

The Court returns as follows.

8. To answer the **1st issue**, the Court returns that there is no dispute that parties were in employment relationship.
9. To answer the **2nd issue**, the evidence is that the petitioner misled the Court in alleging that the respondent had removed, suspended or otherwise unfairly or unlawfully terminated the petitioner from the National Police Service. The petitioner has not disputed that he resurfaced after absence of about 156 days from 12.12.2011 and that he was charged but the case was withdrawn under section

87(a) of the Criminal Procedure Code Cap. 75. The letter by the Senior Resident Magistrate Court at Lodwar confirmed receipt of the petitioner's letter of 19.07.2023 requesting for proceedings in the criminal case No. 50 of 2017, Republic –Versus- Godfrey John Omutere. The letter by the Court stated that the case file had been searched but in vain, and, further that from the Court Register records it was shown that the case against the accused person had been withdrawn under section 87(a) of the Criminal Procedure Code on 28.01.2014. It appears that before or after the withdrawal of the case there was no communication between the parties until the petitioner's Advocates wrote to the National Police Service the demand letter of 06.09.2024. The Court finds that the petitioner took no steps with the respondents or by instituting appropriate legal proceedings between 28.01.2014 (upon withdrawal of the criminal case) to 05.08.2019, when his name and 679 other officers' names were expunged from the payroll to prevent loss of government funds through insurance premiums paid by the Service to all officers in the payroll. The petitioner has not rebutted the respondents' case that he never asked for his

employment record throughout the period he was not at work from 12.12.2011. The Court returns that the petitioner was the sole author of his loss of employment by deserting duty and thereafter not taking steps to seek reliefs from his employer or the Court. He fully and completely contributed to his predicament by ending his employment through desertion effective 12.12.2011. The respondents never terminated his employment. By that finding, it should be obvious that the respondents are not liable for breach of the Bill of Rights and other provisions of the Constitution and law as was pleaded and submitted for the petitioner. The petitioner must consider that he terminated the employment by himself effective the date of desertion on 12.12.2011, a destiny he designed and perfected by himself. The petition is found to be a misguided afterthought.

10. The Court finds that the 2nd respondent has established that paragraph 58 of the Force Standing Orders applied and the petitioner has provided no material to defeat that position. The paragraph on desertion provides as follows,

“58. Desertion.

(1) Section 94 (1) of the National Police Service Act (Cap. 84) provides that any police officer, who is absent without leave, or who overstays any period of leave, for more than 10 days shall, unless the contrary is proved, be deemed to have deserted from the Service. (2) Where a police officer deserts service, the respective Service Headquarters or Directorate shall be notified immediately, a case file shall be opened and a warrant of arrest obtained. Full particulars, including the case file number shall be forwarded to Directorate of Criminal Investigation Headquarters for publication in the Police Gazette.

(3) If at the expiry of 30 days of absence the deserter has not been arrested—

(a) a further report, together with his records of service for disposal, shall be submitted to respective Service Headquarters or Directorate and shall contain details of action taken to trace him;

(b) the deserter shall be struck off strength, but the relevant entry in the Police Gazette shall not be cancelled and no matter the outcome of the court case, the officer shall not be eligible for reinstatement into the respective Service; and,

(c)where a period of three months has elapsed from the date when the officer first absented and if he has not been arrested, the warrant shall be transferred to the Register of Wanted Persons and further inquiries shall be conducted in accordance with the instructions for keeping that record.”

11. The 3rd **issue** is answered accordingly and in view of the foregoing findings, that the petitioner is not entitled to any of the reliefs as prayed for.

12. Paragraph 59 of the Force Standing Orders provides thus,

“... 59. Deserter.

(1)A police officer is declared to be a deserter after intentionally being away from duty for ten days.

(2)A police officer shall be struck off strength after a period of thirty days.

(3) After ninety days, the police officer shall be entered in the Register of wanted persons.

(4) Where a police officer returns to his station even after being treated as a deserter disciplinary action for being absent without leave shall be instituted.”

13. In the instant case the petitioner for no lawful cause or reasonable cause and without permission was absent for 156 days. He has not offered any plausible explanation for such long absence. Upon return he was charged and upon withdrawal of the case he has not suggested that he went back promptly or in any event to reclaim his job this way or that way. He must have known the consequence of resurfacing after the acquittal were to be subjected to a disciplinary process and the material before the Court do not suggest that the petitioner had any material justification to exculpate himself from the absence as had happened. The evidence is that the petitioner was unavailable after the withdrawal of the criminal case and it is crocodile tears for him to lament that he was discriminated contrary to Article 27 of the Constitution when he was not subjected to disciplinary proceedings or treated fairly in that regard. It is that he made it impossible to be so subjected by keeping away or that even if such disciplinary proceedings were commenced, he appears not to have had any exculpating case in that regards.

14. The Court has considered all the material on record and the background to the case as found herein and each party to bear own costs of the petition. In conclusion the petition is hereby dismissed with orders each party to bear own costs of the petition.

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

BYRAM ONGAYA, PRINCIPAL JUDGE