

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

**AT NYERI**

**JUDICIAL REVIEW APPLICATION NO E003 OF 2025**

REPUBLIC.....APPLICANT

VS

THE INSPECTOR GENERAL  
NATIONAL POLICE SERVICE.....1<sup>ST</sup> RESPONDENT

THE DEPUTY INSPECTOR GENERAL  
KENYA POLICE SERVICE.....2<sup>ND</sup> RESPONDENT

NATIONAL POLICE SERVICE COMMISSION.....3<sup>RD</sup> RESPONDENT

THE HON ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT

AND

POLICE CONSTABLE HENRY NYAKOE OBUBA.....EX PARTE APPLICANT

**J U D G M E N T**

1. Pursuant to an Ex Parte Chamber Summons dated 27<sup>th</sup> March 2025, the Ex Parte Applicant was granted leave to apply for a judicial review order in the nature of mandamus, to compel the Respondents to pay the Ex Parte Applicant the sum of Kshs. 16,600,710 being withheld salary and allowances for the period 31<sup>st</sup> August 2000 to 18<sup>th</sup> August 2020, together with interest from 1<sup>st</sup> October 2016.
2. The Ex Parte Applicant filed a substantive Motion dated 16<sup>th</sup> April 2025 to which the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents responded by a replying affidavit dated 30<sup>th</sup> May 2025.

3. The 3<sup>rd</sup> Respondent filed its own replying affidavit sworn by its Chief Executive Officer on 30<sup>th</sup> June 2025. In addition, the 3<sup>rd</sup> Respondent filed a Notice of Preliminary Objection stating that the application is premised on misinterpretation of the judgment by Ongaya J dated 13<sup>th</sup> May 2016, which decreed that the time the Petitioner was away be treated as leave without pay.
4. The 1<sup>st</sup> Respondent's case is that it has fully complied with the judgment dated 13<sup>th</sup> May 2016, by reinstating the Applicant.
5. The substantive Motion dated 16<sup>th</sup> April 2025 is brought on the following grounds:
  - a) On 13<sup>th</sup> May 2016, the Court in Nyeri ELRC Petition No 14 of 2015 gave the following remedies:
    - i) *A declaration that the Respondents, in serving the Petitioner with a notice to show cause and initiating removal proceedings from the Kenya Police Service (formerly the Kenya Police Force) based on the concluded Meru Chief Magistrate's Court Criminal Case No 1764 of 2000 and 696 of 2000 was in breach of the Petitioner's constitutional rights and protection under Articles 47(1), 236(b) and 41(1) of the Constitution, 2010;*
    - ii) *A declaration that the Petitioner is entitled to reinstatement in the service of the Kenya Police Service with effect from 31.08.2000 with orders that the period between 31.08.2000 and the date the Petitioner reports to the 3<sup>rd</sup> Respondent to*

*resume work being not more than 10 days from the date of the judgment be treated as leave without pay so that there is no break in the Petitioner's service;*

*iii) In the alternative to (b) above the Respondents to pay the Petitioner a sum of Kshs. 3,000,000 being compensation under Article 23(3)(e) of the Constitution, for violation of the Petitioner's constitutional rights and protections per order (a) above; and to pay by 01.10.2016, failing interest at court rates to be payable thereon from the date of the judgment until payment in full;*

*iv) The Respondents to pay the Applicant costs.*

- b) Order (c) of the decree required the 3<sup>rd</sup> Respondent to admit, deploy and allocate the Petitioner duties and responsibilities as an employee of the 1<sup>st</sup> Respondent, upon the Petitioner reporting for duty within 10 days from 13<sup>th</sup> May 2016 and pay him salary and allowances from 31<sup>st</sup> August 2000;
- c) Upon delivery of the judgment, the Respondents filed a Notice of Appeal but failed to formally file an appeal and the Notice of Appeal was eventually struck out with costs, in a ruling dated 21<sup>st</sup> February 2018;
- d) The Applicant subsequently taxed costs of both the ELRC and the Court of Appeal and certificates of taxation were issued together with the certificate of order;

- e) On 7<sup>th</sup> July 2000 after a period of more than four years after the decree was issued, the Applicant received a letter of even date, from the 3<sup>rd</sup> Respondent, reinstating him into employment, with a proviso that he be paid salary from 31<sup>st</sup> August 2000;
- f) Upon the Applicant's reinstatement, the 3<sup>rd</sup> Respondent tabulated the Applicant's entitlement in terms of arrears in salary and allowances from 31<sup>st</sup> August 2000 until 18<sup>th</sup> August 2020;
- g) Despite reinstating the Applicant into service and tabulating the amount due in salary and allowances arrears, the Respondents have, with impunity, refused and/or neglected to fully comply with the decree issued on 13<sup>th</sup> May 2016, by paying the Applicant's salary and allowances arrears from 31<sup>st</sup> August 2000 until 18<sup>th</sup> August 2020 amounting to Kshs. 16,600,710 inclusive of taxed costs and interest from 1<sup>st</sup> October 2016;
- h) On 8<sup>th</sup> July 2019, the Applicant wrote to the 4<sup>th</sup> Respondent seeking payment of arrears of salary from 31<sup>st</sup> August 2000 until 18<sup>th</sup> August 2020, inclusive of costs and interest from 1<sup>st</sup> October 2016, but there was no reply to the Applicant's letter;
- i) On 15<sup>th</sup> January 2025, the Applicant wrote to the Hon Attorney General seeking intervention to have the subject money paid;
- j) By a letter dated 16<sup>th</sup> October 2024 addressed to the 1<sup>st</sup> Respondent, the Solicitor General advised the Inspector General of National Police Service to calculate and pay the Applicant his salary arrears;

- k) The Respondents' refusal to pay the Applicant his salary and allowances from 31<sup>st</sup> August 2000 until 18<sup>th</sup> August 2020 is unconstitutional and unlawful;
- l) As a result of the action by the Respondents, the Applicant has suffered loss and damage.
6. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents filed a replying affidavit sworn by Silas Andiema on 30<sup>th</sup> May 2025.
7. Andiema, who describes himself as a Commissioner of Police working at the Kenya Police Service Headquarters as Staff Officer Personnel III depones that the Applicant is a Police Officer enlisted on 31<sup>st</sup> August 1996.
8. Andiema further depones that the Applicant worked in various Police Stations, including Meru Police Station where he was working prior to his removal from the Police Service.
9. According to Andiema, the Applicant deserted the service on 26<sup>th</sup> February 2000. The Applicant was charged with the offence of desertion in Meru CMC Criminal Case No 695 of 2000. His salary was stopped on 1<sup>st</sup> May 2000 and his particulars deleted from the payroll.
10. During the pendency of the desertion case, the Applicant was also charged with murder in Meru High Court Criminal Case No 1764 of 2000 after a teacher who had been arrested by the Applicant died; this charge was later reduced to manslaughter.

11. Andiemba states that the Applicant was acquitted of both charges and his interdiction was lifted on 24<sup>th</sup> July 2002. He was paid salary arrears from 1<sup>st</sup> May 2000 to 30<sup>th</sup> June 2005.
12. It is deponed that under Section 108 of the repealed Constitution, the Commissioner of Police had powers to remove Police Officers below the rank of Assistant Commissioner and this is how the Applicant was removed from service effective 30<sup>th</sup> June 2004, on grounds that he had ceased to be an efficient Police Officer.
13. Andiemba states that upon his removal from service, the Applicant was paid salary up to 30<sup>th</sup> June 2005, resulting in salary overpayment of Kshs. 220,243.50 which was recovered from his interdiction arrears and pension benefits.
14. The Applicant challenged the constitutionality of his removal from the service in Nyeri ELRC Petition No 14 of 2015 on grounds that the removal was based on already concluded criminal cases where he had been acquitted and he was therefore subjected to double jeopardy.
15. In a judgment dated 13<sup>th</sup> May 2016, the Court in Nyeri ELRC Petition No 14 of 2015 gave the following remedies:
- a) A declaration that the Respondents, in serving the Petitioner with a notice to show cause and initiating removal proceedings from the Kenya Police Service (formerly the Kenya Police Force) based on the concluded Meru Chief Magistrate's Court Criminal Case No 1764 of 2000 and 696 of 2000 was in breach of the Petitioner's constitutional*

*rights and protection under Articles 47(1), 236(b) and 41(1) of the Constitution, 2010;*

*b) A declaration that the Petitioner is entitled to reinstatement in the service of the Kenya Police Service with effect from 31.08.2000 with orders that the period between 31.08.2000 and the date the Petitioner reports to the 3<sup>rd</sup> Respondent to resume work being not more than 10 days from the date of the judgment be treated as leave without pay so that there is no break in the Petitioner's service;*

*c) In the alternative to (b) above the Respondents to pay the Petitioner a sum of Kshs. 3,000,000 being compensation under Article 23(3)(e) of the Constitution, for violation of the Petitioner's constitutional rights and protections per order (a) above; and to pay by 01.10.2016, failing interest at court rates to be payable thereon from the date of the judgment until payment in full;*

16. The Applicant's review application to have remedies (b) and (c) combined was rejected by the trial court. The Applicant's Notice of Appeal on this issue was later withdrawn.

17. According to Andiema, the Applicant's indecisiveness resulted in his failure to report to work within the 10 days given in the judgment. Andiema takes the view that the present application is another pursuit for compensation.

18. It is deponed that the Applicant was reinstated upon his reporting to duty at Kibwezi Sub-County on 18<sup>th</sup> August 2020.

19. Andiena avers that any advice by the Solicitor General to pay the Applicant salary arrears amounting to Kshs. 16,600,710 was in contravention of the judgment of the Court.
20. The 3<sup>rd</sup> Respondent's response is contained in a replying affidavit sworn by its Chief Executive Officer, Peter Leley on 30<sup>th</sup> June 2025.
21. Leley depones that the Applicant was enlisted in the then Kenya Police Force on 31<sup>st</sup> August 1996. He adds that between 26<sup>th</sup> February 2000 to 30<sup>th</sup> August 2000, the Applicant, who was then stationed at Meru Police Station, absented himself from duty without official leave.
22. Leley further depones that the Applicant was charged with murder contrary to Section 204 of the Penal Code vide Meru Criminal Case No 461/84/2000. The charge was later reduced to manslaughter and the Applicant and his co-accused were subsequently acquitted under Section 215 of the Criminal Procedure Code.
23. The then Commissioner of Police is said to have recommended the Applicant's removal from the Kenya Police Force in accordance with the obtaining Force Standing Orders Chapter 20 paragraph 30(b).
24. By letter dated 1<sup>st</sup> March 2004, the Applicant was required to submit his written representations as to why he should be retained in the Force.
25. According to the 3<sup>rd</sup> Respondent, the Applicant's representations were not satisfactory and the Applicant was notified of the decision to remove him from the Kenya Police Force with effect from 30<sup>th</sup> June 2004, with a right of

appeal within 7 days. The Applicant's appeal was unsuccessful and the decision to remove him from the Force was upheld.

26. Leley claims that the Applicant was paid his interdiction arrears which resulted in an overpayment of Kshs. 72,217.35

27. The 3<sup>rd</sup> Respondent acknowledges the outcome of the Applicant's claim in Nyeri ELRC Constitutional Petition No 14 of 2015 and confirms that an appeal by the 4<sup>th</sup> Respondent was dismissed by the Court of Appeal on 21<sup>st</sup> February 2018.

28. Vide letter dated 15<sup>th</sup> June 2020, the 3<sup>rd</sup> Respondent directed the 1<sup>st</sup> Respondent to reinstate the Applicant. By a subsequent letter dated 7<sup>th</sup> July 2020, the 2<sup>nd</sup> Respondent directed that the Applicant be reinstated and be paid from the date that he reports, with the days of absence being treated as leave without pay.

29. The 3<sup>rd</sup> Respondent contends that the Applicant failed to report for duty within 10 days as provided in the judgment, instead opting to report on 18<sup>th</sup> August 2020. The 3<sup>rd</sup> Respondent asserts that the 2<sup>nd</sup> Respondent should pay the costs awarded to the Applicant, amounting to Kshs. 1,054,660.

30. The 3<sup>rd</sup> Respondent accuses the Applicant of misinterpreting the judgment by Ongaya J dated 13<sup>th</sup> May 2016. It is deponed that the period the Applicant was away ought to be treated as leave without pay, as directed in the judgment.

31.The 3<sup>rd</sup> Respondent maintains that the Applicant's claim that he be paid salary and allowances from 31<sup>st</sup> August 2000 until 18<sup>th</sup> August 2020 is contrary to the judgment dated 13<sup>th</sup> May 2016.

32.In addition to its replying affidavit, the 3<sup>rd</sup> Respondent filed a Notice of Preliminary Objection dated 17<sup>th</sup> May 2025 stating that:

- a) The application as framed is premised on misinterpretation of the judgment by Ongaya J dated 13<sup>th</sup> May 2016 which decreed that the time the Applicant was away be treated as leave without pay;*
- b) The matter is res judicata;*
- c) The matter is frivolous, vexatious and an abuse of the court process;*
- d) The 3<sup>rd</sup> Respondent has not violated the Applicant's right as alleged or at all and has fully complied with the decree.*

33.In response to the replying affidavit sworn by Silas Andieme, the Applicant swore a supplementary affidavit on 23<sup>rd</sup> June 2025, stating that while the Commissioner of Police had power to remove him from service, he did not properly exercise that power as the Applicant had been acquitted of the charges forming the basis of the removal.

34.The Applicant denies having been paid any salary arrears or any overpayment.

35.The Applicant further denies the allegations of failure to report to work, stating that he reported to the 2<sup>nd</sup> Respondent's office for deployment on 19<sup>th</sup> May 2016, within the 10 days given by the Court but the 2<sup>nd</sup> Respondent declined to reinstate him prompting him to file a contempt application on 31<sup>st</sup> May 2016.

36. In response to the replying affidavit filed by the 3<sup>rd</sup> Respondent, the Applicant swore a supplementary affidavit on 13<sup>th</sup> October 2025, reiterating that he reported to the 2<sup>nd</sup> Respondent's office on 19<sup>th</sup> May 2016 for deployment but he was not deployed.

37. The Applicant depones that he was belatedly reinstated on 29<sup>th</sup> September 2020, contrary to the directions given by the Court in the judgment dated 13<sup>th</sup> May 2016. He availed copy of a letter dated 19<sup>th</sup> April 2016 from his Advocates, addressed to the Deputy Inspector General, Kenya Police Service confirming that he had reported for deployment and allocation of duties.

38. The substance of the Respondents' response to the Applicant's Motion stems from their interpretation of the judgment dated 13<sup>th</sup> May 2016 which the Applicant seeks to enforce. According to the Respondents, the Motion is premised on a misinterpretation of the judgment.

39. First, I must state that in an application for an order of mandamus it is not open for the parties or even the enforcement Judge, to engage in interpretation of a judgment delivered by another Judge. If there was any need for clarification of the judgment by **Ongaya J**, it ought to have been sought from him soon after delivery of the judgment.

40. In *Republic v Attorney General & another Ex Parte James Alfred Koroso* [2013] KEHC 90 (KLR) it was held that:

***"In an application for mandamus the Court can only compel the Respondent to undertake the duty imposed by the judgment and not anything else. It is not upon the Court determining an application for an order of mandamus to determine the intention of the Judge who granted the decree being enforced. Any such determination ought to***

***be sought in the original suit and not in the application for enforcement thereof.”***

41. The specific order which the Respondents seek to interpret is number (b) which states as follows:

*(b) A declaration that the Petitioner is entitled to reinstatement in the service of the Kenya Police Service with effect from 31.08.2000 with orders that the period between 31.08.2000 and the date the Petitioner reports to the 3<sup>rd</sup> Respondent to resume work being not more than 10 days from the date of the judgment be treated as leave without pay so that there is no break in the Petitioner’s service.*

42. From the pleadings filed by the parties, it is evident that the Applicant was not reinstated within the period of 10 days allowed by the trial Judge as leave without pay. The 2<sup>nd</sup> Respondent who was named as the duty bearer in implementation of this order did not adduce any evidence of steps taken to comply with the order within the set timeline.

43. What is more, the 4<sup>th</sup> Respondent, in a letter dated 16<sup>th</sup> October 2024, addressed to the 1<sup>st</sup> Respondent advised as follows:

***“Noting that the Court issued a declaration that the Petitioner is entitled to reinstatement in the service of the Kenya Police Service with effect from 31<sup>st</sup> August 2000 with orders that the period between 31<sup>st</sup> August 2000 and the date the Petitioner reports to the 3<sup>rd</sup> Respondent to resume work being not less than 10 days from the date of this judgment be treated as leave without pay so that there is no break in the Petitioner’s service, failure to pay the Petitioner’s salary arrears***

***will amount to a break in the Petitioner's service and a violation of the court order."***

44. The order issued by the Court was therefore clear and what emerges is that for a record 4 years, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents chose to ignore a clear order of the Court, which they now purport to interpret to suit their preference.

45. By this move, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents not only seek to sanitise their disobedience of a court order but also to benefit from that disobedience. This is a blatant abuse of the court process, which this Court cannot countenance. This finding dispenses with the Preliminary Objection raised by the 3<sup>rd</sup> Respondent.

46. I will now consider the Judicial Review application on merit. Order 53 Rule 1 of the Civil Procedure Rules provides as follows:

***(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule.***

***(2) An application for such leave as aforesaid shall be made ex parte to a judge in Chambers, and shall be accompanied by-***

***(a) a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and***

***(b) affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject***

*matter and that the cause of action relates to the applicants named in the application.*

- (3) The judge may, where leave denotes stay, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.*
- (4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the Judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:*

*Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.*

47. It is also well settled in law that an application such as the one now before me, ought to be preceded by a certificate of order served on the defaulting government agency. In this regard, Section 21 of the Government Proceedings Act provides as follows:

#### **21. Satisfaction of orders against the Government**

*(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the*

*court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:*

*Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.*

*(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.*

*(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:*

*Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may*

*direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.*

*(4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.*

*(5) This Section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.*

48. In *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR* it was held that the only requirement as a condition precedent for enforcement of a money decree against the Government is found in Section 21(1) and (2) of the Government Proceedings Act, which provides for a certificate of costs and certificate of order.

49. In *Republic v County Government of Vihiga Ex Parte Global Exhibitions Incorporated Ltd [2021] eKLR* it was held as follows:

***“A party wishing to realize the fruits of a judgment or decree against the Government must obtain a certificate of order against the Government. The Government pays against the certificate of order against it. It is a critical accounting instrument for the purpose of Government finances and accounts. The centrality of the certificate of order against Government, with respect to enforcement of money decrees against the Government, whether at the national or at the county level, has been the subject of pronouncement by the courts.”***

50. Having rejected the Respondents' line of defence to the Applicant's application I proceed to issue an order of mandamus directing the Respondents to pay to the Ex Parte Applicant the sum of Kshs. 16,600,710 being arrears in salary and allowances for the period 31<sup>st</sup> August 2000 to 18<sup>th</sup> August 2020, together with accrued interest.

51. The Ex Parte Applicant will have the costs of the application.

52. Orders accordingly.

**DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY DECEMBER 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Mageto for the Ex Parte Applicant

Mr. Gisemba for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents

Ms. Opiyo for the 3<sup>rd</sup> Respondent