



failed the vetting process and recommended that the Petitioner be discontinued from police service.

The Petitioner sought to review the decision made in line with Regulation 33 of the National Police Service (vetting) Regulations 2013. The review application was submitted on 2017/2016 and was slated for hearing on 25/7/2016.

The 3<sup>rd</sup> Respondent did not communicate to the Petitioner the decision of the review panel until 19/12/2018 when by a letter of that date the Directorate of Criminal Investigation (DCI) informed the Petitioner that it had dismissed the review application and upheld the decision of the vetting Board. The effective date of removal from service was said to be 6/12/2016.

That meanwhile the Petitioner had continued to draw a salary from the service and remained an active member of the police service as a police officer and dutifully attended to such services as were assigned to him from time to time.

That the 3<sup>rd</sup> Respondent did not at all communicate to the Petitioner the decision of the review panel and the DCI lacked the legal mandate to convey the verdict of the 3<sup>rd</sup> Respondent on the Petitioner's review process and so the letter from DCI dated 19/12/2018 was illegal and invalid ab initio.

The Petitioner contends that as a consequence of the letter from DCI dated 19/12/2018, the Petitioner was retired from National Police Service

and his pension gratuity was tabulated and deducted a sum of Kshs. 2,992,254.00 from his terminal benefits, the amount deducted being salary earned for the period between 20/7/2016 and 18/12/2018 during which time the Petitioner was in active service pending the communication of the verdict by the 3<sup>rd</sup> Respondent. The Petitioner posits that the deduction was unlawful.

### **Violation of Rights**

The Petitioner deposes that the Respondent violated his constitutional rights under Articles 28, 41, 47 in that the failure by the 3<sup>rd</sup> Respondent to communicate to the Petitioner the decision of the vetting review panel for a period of about 2 years after the hearing, had amounted to unfair labour practice in violation to Article 1 of the Constitution; that the delay violated the Petitioner's right to a fair, expeditious, lawful administrative action in violation of Article 47 of the constitution and the conduct which resulted in loss of substantial income earned robbed the Petitioner of his human dignity in violation of Article 28 of the Constitution.

That the Petitioner having worked during the period of two years was entitled to payment of the salary of Kshs. 2,992,254.00 he had already received on a monthly basis and the subsequent deduction from his terminal benefits robbed him of his legitimate expectation that he was entitled to earn and keep the said amount of his earned salary.

That the Petitioner prays for the reliefs set out in the amended petition as follows:

- a) This Honourable Court be pleased to make a declaration that the decision of the 3<sup>rd</sup> Respondent to deduct the Petitioner's salary for

- the period between 2016 and 2018 is in contravention of the Petitioner's rights as enshrined under Article 41(1) and 47 of the Constitution of Kenya and the same be and is hereby quashed and
- b) This Honourable Court be pleased to make a declaration that the delay by the 3<sup>rd</sup> Respondent in communicating the vetting review verdict to the Petitioner for a period of two years was in violation of the Petitioner's fundamental rights as enshrined under Articles 25(c), 28, 41(1) and Article 47 of the Constitution of Kenya and the same be and is hereby quashed and/or set aside.
  - c) This Honourable Court be pleased to make a declaration that the actions of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in terminating the employment services of the Petitioner which termination was through the Directorate of Criminal Investigation and communicated two years after the 3<sup>rd</sup> Respondent rendered its verdict in violation of the Petitioner's constitutional rights as enshrined under Article 28, 41(1) and 47 of the Constitution.
  - d) The Respondents be and is hereby directed by an order of mandamus to refund/pay back the Petitioner's salary deducted from the period between 2016 and 2018 without any loss of benefits.
  - e) This Honourable Court be pleased to award the Petitioner compensation for the losses caused by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent herein on account of violation of his fundamental rights and freedoms.
  - f) That on account of the Petitioner's removal from the National Police Service in violation of his constitutional rights, the Honourable Court be pleased to order that the Petitioner be deemed to have been in active service till his retirement age

without any loss of salary and/or other employment benefits and the Respondents be ordered to pay the Petitioner such sums equivalent to his salary and benefits from the date of termination till retirement.

g) Costs of this petition be awarded to the Petitioner

### **Notice of Preliminary Objection**

By a ruling dated 19/12/2024, the court dismissed a preliminary objection by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that objected to the filing of the amended petition on the basis that the same was time barred by dint of section 3(2) of the Public Authorities Limitation Act.

### **Replying Affidavit dated 8/4/2025**

The Respondent opposed the petition vide a replying affidavit in which the Respondent deposes that the vetting and review process conducted in respect of the Petitioner complied fully with the provisions of Articles 41, 47 and 50 of the Constitution of Kenya 2010

The Respondent vide the affidavit of Peter Kiptanui Leley deposes that the Petitioner having served in the police force prior to the promulgation of the Constitution 2010 and the enactment of the National Police Service Act was subject to vetting. Accordingly, the Petitioner completed the vetting questionnaire and declaration of income, assets and liabilities.

That the 3<sup>rd</sup> Respondent as a result of the vetting found that the Petitioner had failed to disclose significant business dealings and additional income streams in the wealth declaration form and found explanation given by the Petitioner that there was a dispute regarding

the land whose income was in question unconvincing as the dispute pertained to the land itself but not the income. The Petitioner also had several bank deposits in his Co-operative Bank Account which passes off as deposits from a bank loan and deposits from his son who was in Qatar. As result 3<sup>rd</sup> Respondent found that the Petitioner lacked financial probity and was subsequently discontinued from service.

That the Petitioner dissatisfied with the removal decision applied to review the decision and submitted further explanation of his bank deposits as a loan from Harambee Sacco without providing supporting documentation to substantiate. That this clarification called into question the Petitioner's earlier statements. The Petitioner was nonetheless invited for review hearing and was invited to give additional evidence or information he wished to rely on vide letter dated 20/7/2016 and appeared for hearing on the 27/7/2016.

The 3<sup>rd</sup> Respondent further found that there were other sources of income which were un-disclosed enumerated under paragraph 16 of the response. That the Petitioner's inability to provide a clear and truthful account of his assets, liabilities and earnings raised significant concerns about his suitability for continued service. The Respondent says that it promptly communicated the review decision which was made on the 6/12/2016 and conveyed on 16<sup>th</sup> /12/2016 just 10 days later and therefore there was no delay or negligence on its part. The 3<sup>rd</sup> Respondent followed the hierarchical chain of commands and communication protocols within the service. That the heavily hierarchical nature of the communication protocols within the National Police Service explains why the 3<sup>rd</sup> Respondent duly communicated on 16<sup>th</sup> December 2016 to the Inspector General of Police for onward transmission to the Petitioner.

## **DETERMINATION**

The parties filed written submissions which the court has carefully considered together with the evidence adduced in the depositions and has delineated the following issues for determination:-

- (a) Whether the 3<sup>rd</sup> Respondent failed to communicate to the Petitioner the decision of the review panel for a period of about 2 years and whether that failure and the subsequent decision of the salary earned by the Petitioner during that period violated the Petitioner's right to legitimate expectation and fundamental rights under Article 41 and 47 of the Constitution of Kenya 2010.
- (b) Whether the Petitioner is entitled to the reliefs sought

It is not in dispute that the Petitioner appeared before the vetting Board pursuant to the National Police Service (vetting) Regulations 2015 promulgated under section 7 of the National Police Service Act on 3/6/2015 wherein the Petitioner was found guilty of having unexplained income and failure to disclose significant business dealings and therefore lacked financial probity. It is a fact, that the removal of the Petitioner from service which decision the 3<sup>rd</sup> Respondent.....on 14/1/2016.

It is also not in contention that the Petitioner was dissatisfied with that decision and applied for review and was granted opportunity to appear again before the review panel of the 3<sup>rd</sup> Respondent by a letter dated 20/7/2016 and duly appeared on 27/7/2016 and was given a hearing.

The Petitioner deposed, which deposition has not been adequately rebutted by the Respondents that upon attending the hearing conducted by the review panel on 27/7/2016, the Petitioner continued serving the police service and earned a monthly salary until 19/12/2018, having not received any communication of the verdict by the review panel.

The Petitioner has also proved that the 3<sup>rd</sup> Respondent did not communicate to him the verdict of the panel at all, but only received a letter dated 19/12/2018 from the DCI informing him that his application for review had been dismissed and that his service was terminated with effect from 14/1/2016 despite having served the police service upto 19/12/2018 and received his full salary.

The Respondents have not been obliged to rebut this compelling evidence by the Petitioner in their replying affidavit and indeed avoided the whole issue altogether in their written submissions.

The Petitioner has also proved that the Respondents subsequently deducted from his terminal benefits in the sum of Kshs. 2,992,254.00 being the salary he had legitimately earned, from his rendered service while awaiting the verdict of the review panel and the 3<sup>rd</sup> Respondent for a period of over 2 years. The Respondents have failed to adequately rebut this compelling evidence by the Petitioner which evidence is the basis for the alleged violation of the Petitioner's right to human dignity, fair labour practices and fair administrative action. The Respondents having made no reasonable defence to these facts adduced coherently by the Petitioner, the court finds that indeed the Petitioner has established on a balance of probabilities, that the Respondent violated

the Petitioner's rights enshrined under Articles 28, 41 and 47 of the Constitution of Kenya 2010 by failing to communicate to him an adverse decision of the review panel, for a period of over two (2) years to his loss and detriment established in this petition.

The Supreme Court of Kenya in the case of ***Kenya Ports Authority versus Munyao and 4 others (Petition E008 of 2023 [2003] KESC 112 (KLR)*** held as follows while discussing the rights of an employee:-

***“The constitution provided for labour relations under Article 41. Unfair labour practice encompassed all conduct prior to, in the course of employment, during and after termination of employment. The provisions of Article 41 encompassed the full spectrum of labour practices. The provision of Article 41 were borne from the realization that employment and/or right to work was a human right. The right was also linked to other rights in the bill of rights more so the protection of life and the dignity of a person. The right was therefore a principle with legal obligations.”***

In the case ***Karanja versus Sikalieh Chairman, Karen Langata District Associates (KLDA) (Constitutional Petition E387 of 2022) [2022] KEHC***, the High Court per Thande J. held:-

***“The right to fair administrative action cannot be gainsaid. This right encompasses action that is expeditious, efficient, lawful, reasonable and procedurally fair. Further where a person's right or fundamental freedom has been or is likely to be adversely affected by administrative action, such person must be given reason in writing for such action. This***

***requirement ensures that administrative bodies discharge their mandate within constitutional and statutory confines.”***

This court holds therefore unequivocally that the Respondents violated the Petitioner’s rights under Articles 28, 41, and 47 of the Constitution and that the deduction of the hard earned salary was a furtherance of the said violations and a serious aggravating circumstance in this matter.

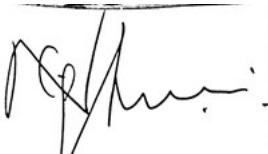
Accordingly, the court makes judgment in favour of the Petitioner against the Respondents and issues an order in the following terms:-

- (a) The 3<sup>rd</sup> Respondent violated the rights of the Petitioner protected under Articles 28, 41 and 47 of the Constitution.
- (b) The decision of the 3<sup>rd</sup> Respondent to deduct the Petitioner’s salary for the period between 14/1/2016 and 19/12/2018 was in furtherance of the aforesaid constitutional rights violations under Articles 28, 41 and 47 of the Constitution and was therefore illegal and void ab initio
- (c) An order of mandamus is issued directed at the Respondent to refund to the Petitioner the sum of **Kshs. 2,992,254.00** deducted from his salary despite having rendered full service during the period from 14/1/2016 to 19/12/2018.
- (d) The court finds that the Petitioner is entitled and is granted compensation and vindicatory general damages to mitigate the violation of his rights by the 3<sup>rd</sup> Respondent aforesaid, assessed at the equivalent of Kshs. 2,000,000.00 within the case of SC Petition 13-015 of 2022 **Charles Muturi Macharia and 6 others vs Standard Group & 4 others 2022 eklr** where it was held that;

**“To answer directly the question posed by this issue, under common law principles, it is settled that an injured party is entitled to damages for the loss injury suffered under private law causes of action, like in tortious claims. In situations like those, compensation for personal loss depends on proof of such loss or damage. However, arising out of the violation of constitutional rights and fundamental freedoms of an individual under public law, the nature of the damages awardable are broadly compensatory or vindicatory, as should be apparent from the list of examples of reliefs in Article 23. While it is not necessary to prove loss or damage in cases of constitutional rights violations, the court may consider the extent, nature, gravity and immensity of harm suffered by the aggrieved party when determining the appropriate remedy. In deserving cases, the redress may be in the form of an award of damages to compensate the victim. In some cases, a suitable declaration, an injunctive or conservatory order, or an order of judicial review will suffice to vindicate the right.”**

- (e) The awards in (c) and (d) above to be paid with interest from date of judgment till payment in full.
- (f) Costs to follow the outcome

Dated at Nairobi this **1<sup>st</sup> day of March 2026**



**Mathews Nduma**

**JUDGE**

**Dated, signed and delivered in open court at Nairobi this 11<sup>th</sup> day of  
March 2026**

**J.W KELI**

**JUDGE**

**In presence of:**

Mr. Muriuki for Petitioner

Mr. Kioko for 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Ms. Chebet for 3<sup>rd</sup> Respondent

Mr. Kemboi – Court Assistant