

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

Introduction

1. The Petitioner commenced this suit vide an Amended Petition dated 25th October 2025 seeking the following orders:-
 - a) *A declaration that the procedure adopted by the 3rd Respondent in downgrading the Petitioner's job rank and salary was irregular, unjustified and unlawful.*
 - b) *A declaration that the adverse decision taken by the 3rd Respondent in initiating and conducting administrative disciplinary proceedings against the Petitioner, based on a concluded criminal case, culminating in the removal of the Petitioner from the National Police Service is in breach of the Petitioner's constitutional rights and that the said decision is null and void ab initio for all intents and purposes.*
 - c) *An order quashing the 3rd Respondent's unfair administrative decision dated the 18th September, 2023 that effectively removed the Petitioner from the National Police Service.*
 - d) *An Order compelling the Respondents to reinstate the Petitioner to the National Police Service Job Group J or the correct job grade without loss of rank.*
 - e) *Payment of the Petitioner's salary arrears from the date of downgrading up to the date of reinstatement and all backpay salary from the date of removal to date.*
 - f) *Damages for the Respondents' decision to subject the Petitioner to unlawful and biased administrative disciplinary proceedings; damages for un-procedurally discharging the*

Petitioner from public duty and damages for failure to notify the Petitioner of the unlawful downgrade of the Petitioner's rank and damages for effecting an unlawful salary reduction.

- g) Implementation of this Honorable Court's determination within sixty (60) days of the decision of the Court.*
- h) The Respondents should further be made to bear the costs of this Petition as the same was provoked by their actions and omissions.*
- i) Any other relief that this Honorable Court may deem fit and just to grant.*

2. The Amended Petition was filed alongside the Supporting Affidavit of the Petitioner, sworn on 25th October 2025, and annexures thereto.
3. In response to the said Petition, the 1st Respondent filed a Replying Affidavit sworn by one JAMES NDUNA on 24th April 2025. The 2nd and 3rd Respondents neither entered an appearance in the matter nor filed responses.

The Petitioner's case in summary

4. The Petitioner's case is that he was employed by the National Police Service on 17th February 2001 as a Graduate Police Constable. He was appointed to the Directorate of Criminal Investigations on 8th February 2006 and deployed to the Banking Fraud Investigations Unit to act permanently in the rank of Inspector of Police, with effect from the 30th November 2005. He worked as such for twenty-four (24) years. It is the Petitioner's case that during his tour of service, the Petitioner diligently and conscientiously discharged his duties in various parts of the country.

5. It is averred that the Petitioner's woes began on 3rd July 2007 when he was arraigned in court and charged with the offences of corruptly soliciting for a benefit contrary to Section 39(3) (a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act 2003 as Count I, and corruptly receiving a benefit contrary to Section 39(3)(a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act 2003 as Count II, in Milimani Anti-corruption Court & Economic Crimes Case No. 18 of 2014 Republic vs Stephen Ouma Ambogo.
6. Subsequently, on 16th August 2007, the 3rd Respondent proceeded to interdict the Petitioner from duty on half pay with effect from 3rd July 2007. This decision was communicated through the Officer In-Charge of Banking Fraud Investigations Unit.
7. The Petitioner explains that the criminal case before the Anti-corruption & Economic Crimes Court proceeded to trial with Count I being dismissed on 20th September 2018. the court having found that the Petitioner had no case to answer. The Petitioner was convicted on Count II pursuant to a judgment delivered by Honorable Felix Kombo, Senior Principal Magistrate on the 28th February 2019. Immediately upon his conviction, the 3rd Respondent suspended him from duty without pay through a letter dated 18th March 2019.
8. On 14th March 2019, the Petitioner, being aggrieved with his conviction in the lower court, lodged an appeal Milimani Anti-corruption Court & Economic Crimes Appeal No. 8 of 2019 Stephen Ouma Ambogo vs Republic, seeking the quashing of his conviction and setting aside of his sentence. On 18th November 2021, the Court delivered its judgment allowing the Petitioner's

appeal on merit, quashing the Petitioner's conviction and setting aside his sentence. No appeal was preferred by the Respondents through the Office of the Director of Public Prosecutions against the decision of the Appellate Court.

9. The Petitioner states that after his acquittal, he wrote to the 3rd Respondent requesting for his suspension to be lifted in accordance with Section 62(3) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 which provides that “the public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted”. The 3rd Respondent verified the decision of the appellate court and lifted the Petitioner's suspension with effect from the date it had been imposed. Vide a letter dated 26th April 2022, the Petitioner was then deployed to Kibwezi as Deputy Sub County Criminal Investigations Officer through a letter dated 26th April 2022 and his full salary reinstated, but he noted that he had been demoted from Job Group J to Job Group F. No formal letter was issued to the Petitioner communicating the changes in his employment terms. The Petitioner formally sought an explanation from the Respondents on the downgrading of his rank, through his letters dated 13th July 2022 and 27th February 2023, but the Respondents failed to respond to the same.

10. On 8th November 2022 the Petitioner was served by the 3rd Respondent with a letter dated the same day forwarding a show cause letter dated the 14th April 2022 requiring the Petitioner to show cause why he should not be removed from the National Police Service for public interest reasons. The Petitioner takes issue with the service of the letter over six (6) months after it was purportedly authored, and considers this conduct to be intentional and in extremely bad faith.

No cogent, compelling, valid or legally acceptable reasons were advanced for the inordinate and inexcusable delay.

11. The above notwithstanding the Petitioner responded to the show cause letter vide his letter dated the 10th November 2022. It was not until 25th September 2023, more than ten (10) months later, that the Petitioner received a response from the 3rd Respondent dated 13th September 2023 sanctioning his removal from the National Police Service in the public interest with effect from the 1st September 2023.

12. Dissatisfied with the above decision, the Petitioner appealed against the same to the 1st Respondent on 6th October 2023. The 1st Respondent responded vide a letter dated 16th January 2025 disallowing his appeal and upholding the decision of the 3rd Respondent to remove the Petitioner from the National Police Service.

13. It is the Petitioner's view that the 3rd Respondent had no lawful justification to question, challenge and/or revisit the merits of the appellate court's decision, except by moving a court of competent jurisdiction by way of appeal. He states that the Respondents manifestly disregarded the principle of double jeopardy, by removing the Petitioner from service for the same reason he was tried and acquitted.

14. The Petitioner states the 3rd Respondent appears to have relied upon his own supposition that the quashing of the Petitioner's conviction did not wholly exonerate him from blame as it was based on a technicality, which is why they subjected him to subsequent show cause proceedings. The

Petitioner is adamant that the Respondents' actions were driven by extraneous motives and the disciplinary process that he was subjected to had a preconceived outcome.

15. Finally, the Petitioner complains that the Respondents have refused, ignored and/or failed to pay the Petitioner's remuneration as follows:

- a) His half salary of Kshs.19,950/= being the difference between Job Group J and Job Group F (Inclusive of half basic salary of Kshs.4,500/= and House allowance of Kshs.15,450/=) for 138 months beginning 16th August 2007 when he was interdicted up to 18th March 2019 when he was suspended by the 3rd Respondent;
- b) His full salary of Kshs.25,605/= being the difference between Job Group J and Job Group F (Inclusive of full basic salary of Kshs.10,155/= and House Allowance of Kshs.15,450/= all totaling to Kshs.25,605/= per month) for 36 months beginning 18th March 2019 when he was suspended up to 14th April 2022 when the suspension was lifted by the 3rd Respondent.
- c) His Job Group "J" salary of Kshs.25,605/= being the difference between Job Group J and Job Group F (Inclusive of basic salary of Kshs.10,155/= and House Allowance of Kshs.15,450/= all totaling to Kshs.25,605/= per month) for seventeen (17) months beginning 14th April 2022 when the suspension was lifted up to 1st September 2023 when he was removed from service.
- d) His Job Group J basic salary, House Allowance, Commuter allowance and Police allowance all totaling to Kshs.88,080/= per month since his removal from service on 1st September, 2023.

16. It is the Petitioner's contention that the 3rd Respondent's overall conduct was unlawful in that he was subjected to administrative disciplinary proceedings based upon similar or substantially similar allegations for which he had been acquitted in the criminal case against him, contrary to Articles 27(1) on equal protection before the law; 41(1) on fair labour practices; 47(1) on fair administrative action; 47(2) that requires that if a person has been or is likely to be adversely affected by an administrative action, the person has the right to be given written reasons for the action; 50(2)(a) on presumption of innocence of an accused person until the contrary has been proven; 50(2)(o) prohibiting the retrial of an individual for an offence in respect of an act of omission for which he has been previously acquitted or convicted; and 35 by failing to provide sufficient reasons for the dismissal from service, as well as disregarding the appellate court's findings. Further, they violated Section 4 of the Fair Administrative Act which birthed a legitimate expectation that the Petitioner would be treated fairly and impartially; and Sections 10 (1) and 139 (1) of the Employment Act which requires changes to terms of employment, such as the Petitioner's downgrade from Job Group J to F, to be made in consultation with the employee, and notified to him in writing.

1st Respondent's case in brief

17. The 1st Respondent states that it is mandated under Article 246(3) (a) of the Constitution to recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service. Further, under Article 246(3) (b) of the Constitution, it is mandated to observe due process, exercise disciplinary control over and remove persons holding or acting in offices within the service. It is emphatic that it has always discharged its mandate lawfully, and this case is no different.

18. The 1st Respondent admits that the Petitioner was enlisted in the National Police Service with effect from 17th February 2001 as a Police Constable via a Letter of Appointment dated 20th May 2001. His appointment was subject to all regulations applying to officers of the Public Service of Kenya which were in force then or which would be promulgated from time to time including transfer, deployment, promotions and disciplinary procedures. The Petitioner further agreed to be posted to any station within Kenya and to discharge his duties as a Police Officer and uphold the rule of law. On 8th February, 2006, the Petitioner was issued with an appointment letter to serve in an acting capacity in the rank of Inspector of Police awaiting appointment to the substantive rank of Inspector upon fulfilment of a particular training and display of some skills worth the position.

19. It is also admitted that on or about 3rd July 2007 while stationed at Marshall House, Harambee Avenue, Nairobi, the Petitioner was arraigned before the Nairobi Anti-Corruption Court and charged with two counts as particularized by him before this Court. On 3rd July 2007 the Petitioner was interdicted and placed on half salary, to pave way for the criminal case and any disciplinary action. As narrated by the Petitioner, he was acquitted of the first count, and convicted of the second, on 28th February 2019, whereupon he received a sentence comprising of a fine of KShs. 300,000/- or if unable to pay, six (6) months imprisonment. It is the 1st Respondent's case that following his conviction, the Petitioner was suspended from service without pay with effect from the date of conviction.

20. It is also admitted that the Petitioner lodged an appeal against his conviction and sentence, which was allowed. The High Court quashed the Petitioner's conviction and vacated his earlier sentence vide a decision of 11th November 2021 on technicality, owing to the fact that the video recorded by the Kenya Anti Corruption Officer which was produced as evidence in the case, failed to show the exact moment when the Petitioner received a bribe from the complainant.
21. The 1st Respondent confirms that the Petitioner's suspension was lifted after his successful appeal, but removal proceedings were commenced against the Petitioner through the issuance of a Notice to Show Cause dated 14th April 2022. The Petitioner responded to the said Notice to Show Cause vide a letter dated 10th November 2022, but owing to the seriousness of the Petitioner's offence, the 1st Respondent sanctioned his removal from service through letter REF: NPSC/SEC/1/8/1 VOL.VI (149) DATED 6TH September 2023. The 1st Respondent is adamant that they complied with the laid down removal procedure under the Service Standing Orders, and accorded the Petitioner a fair and expeditious hearing, and an opportunity to be heard both during the primary removal process and on appeal. After considering the Petitioner's appeal, the 1st Respondent upheld the removal, and communicated its decision to the Petitioner vide letter dated 16th January 2025.
22. It is the 1st Respondent's case that the removal proceedings were properly instituted pursuant to sections 52, 53, 54, 55 & 56 of Chapter 30 of the Service Standing Orders taking into account that the officer had ceased to be an efficient officer after having been out of service for a period of 15 years. Further, pursuant to section 88(1), (2) & (3) as read with section 89 of the National Police Service Act, all police officers could face disciplinary proceedings notwithstanding the fact that

previously they had been charged, convicted or acquitted in respect to any criminal offence. Once a criminal court returns a finding that an accused officer is guilty as charged and has been convicted and sentenced accordingly, the employer can rely on the findings of the criminal court and the employee can be punished or subjected to disciplinary proceedings on account of the conviction entered by the courts pursuant to Section 52 (1) (t) and (2) of Chapter 30, of the Service Standing Orders.

23. It is averred that prior to arriving at the decision to remove the Petitioner from the Service, the 1st Respondent took into consideration that the officer was acquitted by the High Court which quashed the conviction of the lower court on a technicality. It noted that the lower court had found the accused to have a case to answer under section 210 of the CPC and he was put to defense. However, the prosecution did not prove the case to the required standard of beyond any reasonable doubt, hence the acquittal. Administratively the same does not exonerate the officer from the accusations.
24. The 1st Respondent points out that the Petitioner has not tendered evidence to show that he requested more time to put in his defence during the disciplinary process. There is also no provision of the law or regulations that makes legal representation a prerequisite in the internal disciplinary processes in the National Police Service, nor did the Petitioner request for the same during his removal proceedings.
25. On the issue of the Petitioner's claim for unpaid salary, the Respondent states that the petitioner had not attained the Inspectorate Rank, hence the appointment to the substantive Rank of

Inspector and the salary thereto was subject to fulfilment of a particular training and display of skills worth the position as evidenced by the appointment letter issued to the Petitioner.

26. The 1st Respondent states that the Petitioner's prayer for an order of reinstatement is untenable as the Petitioner has been out of Service for more than fifteen (15) years, which is quite a long period for a Police officer to be out of service, hence less efficient. They also state that a Petitioner alleging procedural unfairness or violation of any fundamental human right must demonstrate clearly to the Court the instances or elements of unfairness and breaches of law but a general quoting of the statutory law without proof should not suffice.

DETERMINATION

27. Following the court's order that parties should submit written filings, the Petitioner complied.

Issues for determination

28. In his submissions dated 30th November 2025, the Petitioner submitted generally on the Petition.

29. The court having perused the pleadings by the parties and the submissions of the petitioner discerned the issues for determination in the petition were as follows-

- a. Whether there was a violation of the constitutional rights of the petitioner by the respondent.
- b. Whether the petitioner was entitled to relief sought.

Whether there was a violation of the constitutional rights of the petitioner by the respondent.

The Petitioner's submissions

30. The law- Anti-Corruption and Economic Crimes, No 3 of 2003 ‘‘62. Suspension, if charged with corruption or economic crime (1) A public officer or state officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case: Provided that the case shall be determined within twenty-four months. (2) A suspended public officer who is on half pay shall continue to receive the full amount of any allowances. (3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.’’ The petitioner on 3rd July, 2007, was arraigned in court and charged with the offences of Corruptly soliciting for a benefit contrary to Section 39(3) (a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 as Count I and Corruptly receiving a benefit contrary to Section 39(3)(a) as read with Section 48(1) of Anti-Corruption and Economic Crimes Act, 2003 as Count II. This was in Milimani Anti-corruption Court & Economic Crimes Case No. 18 of 2014 Republic vs Stephen Ouma Ambogo. Subsequently, on the 16th August, 2007, the 3rd Respondent proceeded to interdict the Petitioner from duty on half pay with effect from 3rd July, 2007. This decision was communicated through the Officer In-Charge of Banking Fraud Investigations Unit. The court finds the act of the employer was consistent with section 62. The case subsequently progressed to its logical conclusion with the Petitioner being convicted on the remaining active Count II pursuant to a judgment delivered by Honorable Felix Kombo, Senior Principal Magistrate on the 28th February, 2019. Immediately the Petitioner was convicted, the 3rd Respondent proceeded to suspend him from duty with no pay through a letter dated 18th March, 2019. The court finds that the action by the employer was in accordance with section 63 of ACECA TO WIT- ‘‘63(1) A public officer who is convicted of corruption or economic crime

shall be suspended without pay with effect from the date of the conviction pending the outcome of any appeals.’’

31. Thereafter, on the 14th March, 2019, the Petitioner being aggrieved and dissatisfied with the decision of the trial court lodged an appeal in Milimani Anti-corruption Court & Economic Crimes Appeal No. 8 of 2019 Stephen Ouma Ambogo vs Republic, seeking the quashing of his conviction and setting aside of his sentence. viii. ix. X. On the 18th November, 2021, Hon Lady Justice E.N. Maina delivered her judgment allowing the Petitioner's appeal on merit and thereafter quashed the Petitioner's conviction and set aside his sentence. After his acquittal, the Petitioner wrote to the 3rd Respondent requesting for the lifting of his suspension in accordance with Section 62(3) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 which provides thus, "The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted". The 3rd Respondent then proceeded to verify the decision of the appellate court and upon being satisfied that the Petitioner's conviction had been quashed, lifted the Petitioner's suspension with effect from the date it had been imposed and deployed him to Kibwezi as Deputy Sub County Criminal Investigations Officer through a letter dated 14th April, 2022 as follows-’’*The Inspector General, National Police Service vide letter Ref.NPS/IG/SEC/1/2/8/VOL.XIII/46 dated 28th February, 2022 has approved lifting of your suspension with effect from 28th February,2019 the date it was effected. By copy of this letter, proceed to the Quartermaster and draw the items of kit surrendered upon suspension. In addition to the above, you will report to Director Investigation Bureau, pending further instructions on your deployment.’’* The petitioner resumed duty but was served with notice to show cause. The petitioner submits - Upon the lifting of his suspension, the Petitioner resumed

to earn a full salary but noted to his dismay that he had been demoted and/or downgraded without notice from Job Group J to Job Group F. The Petitioner formally sought an explanation from the Respondents on the downgrading of his rank in the service through his letters dated 13th July 2022 and 27th February 2023, but the Respondents declined to respond to the same. Unfortunately, it was not until the 8th November, 2022 that the Petitioner received from the 3rd Respondent a letter dated the 3rd November, 2022 forwarding a show cause letter dated the 14th April, 2022 requiring him to show cause why he should not be removed from the National Police Service under the so called "Public Interest", this letter having been served upon him over six (6) months down the line from the date it was purportedly authored. It was the Petitioner's reasonable expectation that such sensitive communication should have been served upon him promptly without unreasonable delay, with the failure to serve him on time now being construed to be intentional if not in bad faith and did not in any way go towards advancing the interests of the administration of justice. Indeed, the 3rd Respondent never bothered to tender any cogent, compelling, valid or legally acceptable reasons for the inordinate and inexcusable delay. xvi. The above notwithstanding the Petitioner responded to the show cause letter vide his letter dated the 10th November, 2022. It was not until the 25th September, 2023, again more than ten (10) months down the line, that the Petitioner received a response from the 3rd Respondent dated the 13th September, 2023 sanctioning his removal from the National Police Service in the interest of the public with effect from the 1st September, 2023. It is the Petitioner's valid contention that the 3rd Respondent's overall conduct leaves a lot to be desired as the 3rd Respondent had in the letter dated the 14th April 2022 lifted the Petitioner's suspension after the appellate court quashed his conviction and 4 Page by the same stroke of the pen went ahead to issue him with a show cause letter as to why he should not be removed from office under public interest.

32. The petitioner challenged the subsequent process by the employer to remove him from office by response to the notice to show cause and submitted as follows- Unfortunately, the 3rd Respondent failed to recognize and uphold the constitutional imperatives under Article 50(2)(a) and (o) of the Constitution when the office decided to subject the Petitioner to administrative disciplinary proceedings based upon similar or substantially similar allegations for which he had been acquitted in the criminal case. Any subsequent adverse findings would be in violation of Article 50(2) (a) and (o) of the Constitution. The 3rd Respondent further violated the Petitioner's right to a fair administrative action as provided for under Article 47 of the Constitution when the office denied the Petitioner a speedy if not expeditious administrative action having served him with a show cause letter dated the 14th April, 2022 on the 8th November, 2022, over six (6) months down the line from the date it was purportedly authored. At the end of the day, the culpable delay ended up exposing the Petitioner to suffer fundamental and serious prejudice having been denied an opportunity to be heard at the earliest. Such a process ought to have been expeditious, lawful, reasonable and procedurally fair in the spirit of the tenets of natural justice and Fair Administrative Actions Act.

Decision

33. The court considered whether the respondent's subsequent disciplinary proceedings after the High Court's acquittal were fair. At the outset the court appreciated that the standard of proof in criminal cases is beyond a reasonable doubt, while in civil cases it is based on the balance of probabilities. The employer explained the reason for termination as follows: *“It was observed that the quashing of the conviction did not wholly exonerate you from blame, as it was based on a technicality. Consequently, it was demanded from you that you Show Cause Why you could*

not be removed from the Service under Public interest because your actions did not portray a professional police officer. I therefore wish to inform you that the National Police Service Commission, after examining the representations, has approved your removal from the National Police Service in the interest of the public, effective September 1, 2023, as per letter Ref.NPSC/SEC/1/8/1/VOL.VI/(149) dated September 6, 2023.” The technicality in the acquittal was explained in the Show Cause letter to the petitioner as follows: *“The quashing of the conviction was on a technicality, in that; the video taken by the KACC officer failed to show the exact moment when you received the money from the complainant. Nonetheless, the quashing of the conviction does not exonerate you from blame but gave a benefit of doubt due to the inconsistencies in the evidence: This being a disciplined service where officers are required to display a particular code of conduct, your behavior in this incident did not befit a professional police officer, thus tainting the name of the Directorate of Criminal Investigation in particular and the National Police Service in general. Be reminded that any misconduct or misbehavior outside these noble rules dents the image of the Service and erodes the good work done by other hardworking officers.”* The Employment Act provides for proof of reasons for termination of employment in section 43 as follows- *‘In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.(2)The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.’* Section 45(2) states as follows- *‘2)A termination of employment by an employer is unfair if the employer fails to prove —(a)that the reason for the termination is valid;(b)that the reason for the termination is a fair*

reason—(i)related to the employees conduct, capacity or compatibility; or(ii)based on the operational requirements of the employer; and(c)that the employment was terminated in accordance with fair procedure.’ The foregoing provisions of the law are consistent with the provisions of Article 41(1) of the Constitution of Kenya to wit- ‘41(1) Every person has the right to fair labour practices’ and Article 47(1&2) to wit- ‘(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.’”

34. Applying the foregoing provisions of the Constitution, the court finds that since the acquittal by the High Court was based on a higher standard of proof beyond reasonable doubt, appreciating that the petitioner had been put on case to answer by the trial court and was convicted, there was a valid basis for this court to conclude that the employer genuinely believed the petitioner had been involved in gross-misconduct. The petitioner did not seem to contest the process on any issue other than the delay in decision-making. The court agreed that the delay constituted unfair administrative action in violation of Article 47 of the Constitution—‘(1) *Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.*’” The Respondents violated the Petitioner's right to fair administrative action as provided under Article 47 of the Constitution when the office denied the Petitioner an expeditious administrative process by serving him with a show cause letter dated April 14, 2022, on November 8, 2022 which was over six months after it was supposedly issued. Ultimately, the

culpable delay caused the Petitioner significant prejudice by denying him the opportunity to be heard promptly and/or within reasonable timelines. Such a process should have been expeditious, lawful, reasonable, and fair in accordance with the principles of natural justice and Articles 41 and 47 of the Constitution. The court concluded that the delay violated the petitioner's rights to fair labor practices contrary to Article 41 and fair administrative action contrary to Article 47 of the Constitution.

Whether the petitioner is entitled to relief sought

35. The petitioner sought for the following reliefs-

- j) A declaration that the procedure adopted by the 3rd Respondent in downgrading the Petitioner's job rank and salary was irregular, unjustified and unlawful.*
- k) A declaration that the adverse decision taken by the 3rd Respondent in initiating and conducting administrative disciplinary proceedings against the Petitioner, based on a concluded criminal case, culminating in the removal of the Petitioner from the National Police Service is in breach of the Petitioner's constitutional rights and that the said decision is null and void ab initio for all intents and purposes.*
- l) An order quashing the 3rd Respondent's unfair administrative decision dated the 18th September, 2023 that effectively removed the Petitioner from the National Police Service.*
- m) An Order compelling the Respondents to reinstate the Petitioner to the National Police Service Job Group J or the correct job grade without loss of rank.*
- n) Payment of the Petitioner's salary arrears from the date of downgrading up to the date of reinstatement and all backpay salary from the date of removal to date.*

- o) Damages for the Respondents' decision to subject the Petitioner to unlawful and biased administrative disciplinary proceedings; damages for un-procedurally discharging the Petitioner from public duty and damages for failure to notify the Petitioner of the unlawful downgrade of the Petitioner's rank and damages for effecting an unlawful salary reduction.*
- p) Implementation of this Honorable Court's determination within sixty (60) days of the decision of the Court.*
- q) The Respondents should further be made to bear the costs of this Petition as the same was provoked by their actions and omissions.*
- r) Any other relief that this Honorable Court may deem fit and just to grant.*

36. Section 62 (2)Anti-Corruption And Economic Crimes Act(ACECA)provides that –‘A suspended public officer who is on half pay shall continue to receive the full amount of any allowances.’ The employer informed the petitioner- ‘the rank in which you were, by the time you were interdicted was abolished following the promulgation of the new constitution 2010 and subsequent enactment of the National Police Service Act No.11 of 2011.’” The petitioner vide letter dated 27th February 2023 lodged a complaint on his salary as follows-

‘I was enlisted in the Police Service on 17th February 2001 and upon pass out was assigned to Job Group J as a Graduate Constable. I was appointed to the rank of Acting Inspector on 30/11/2005 (see letter attached) and was maintained in the same Job Group J. Between 3/7/2007 and 28/2/2022, I was interdicted then reinstated to Service on 28th February 2022. During this time, the rank of Acting Inspector was scrapped and all those holding this rank were automatically moved to the rank of Inspector of Police. For reasons that are not clear, the IPPD salary section moved me to the lower rank of Constable of Police and have been erroneously

paying me the salary of Police Constable to date. This has been and is occasioning me a lot of financial, social and mental anguish. Upon reinstatement, I was also subsequently paid salary arrears for the period during interdiction and suspension based on the rank of Constable of Police. I am humbly requesting for the following; 1. My salary be moved to Job Group J and be paid as Inspector of Police. 2. Recalculation and payment of Salary arrears due from Interdiction and Suspension period as Inspector of Police.’’ The Respondents did not respond to this complaint. In replying affidavit, on the issue of rank , James Nduna stated as follows-‘*THAT on 8th February, 2006, the Petitioner was issued with an appointment letter to serve in acting capacity in the rank of Inspector of Police awaiting appointment to substantive Rank of Inspector upon fulfilment of a particular training and display of some skills worth the position. (Annexed and marked FLS2 is a copy of the Letter of Appointment.)’*’ The letter stated as follows- ‘*APPOINTMENT TO ACT IN THE RANK OF INSPECTOR OF POLICE I am pleased to inform you that you have been appointed to act permanently in the rank of Inspector of Police with effect from 30/11/2005. This Acting Appointment has been made to give you an opportunity of showing that you are in every respect suitable for promotion in due course to the Substantive rank of Inspector. If you have not yet passed all subjects in the Inspectorate Examinations, you must strive to attain these as soon as possible in order to qualify for this promotion. The Personnel Branch of this Headquarters will notify you within the next few days of the effect this appointment will have on your pay. By a copy of this letter your Provincial/Formation Commander is being asked to submit reports on your work and conduct at six monthly intervals until such time as he is able to recommend your promotion to Substantive rank,’*’ The court finds that the letter stated the petitioner was to act permanently. Letters of appointment are to be construed in favour of the employee where there is ambiguity,

under the doctrine of *contra proferentem*. The term *Contra proferentem* is defined in the Black Law Dictionary as, ‘*the doctrine that ,in the interpretation of documents, ambiguities are to be construed unfavourably to the drafter.*’ The doctrine is also termed as *the ambiguity doctrine*. (10th Ed Garner) The employer did not explain why it reduced the petitioner's rank and salary. The court finds the arbitrary decision by the 3rd Respondent amounted to unfair labour practice and the petitioner is entitled to the difference in payment between what he was paid and the salary at the time of interdiction. The court, having found as above, then awards the petitioner the following reliefs against the respondent jointly and severally, which it finds merited-

- a. A declaration that the procedure adopted by the 3rd Respondent in downgrading the Petitioner's job rank and salary was irregular, unjustified, and unlawful. The court further found the disciplinary process was tainted by a lack of fair administrative action contrary to Article 47 of the Constitution, and the Petitioner is awarded compensation for the violation of Kshs. 500,000 against the respondents.
- b. Payment of the Petitioner's salary arrears from the date of downgrading of job rank up to the date of termination.
- c. Implementation of this determination within sixty (60) days of the decision of the Court, failing which the awarded sums are to attract interest at the court rate from the date of the judgment.
- d. Costs of the Petition.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF MARCH, 2026.

J. W. KELI,
JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Petitioner:

Respondent: