

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

**PETITION NO. E154 OF 2021**

**KELVIN JUNIOR NDOSI.....PETITIONER**

**VERSUS**

**THE NATIONAL POLICE SERVICE COMMISSION.....1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL NATIONAL  
POLICE SERVICE.....2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL OF THE  
REPUBLIC OF KENYA.....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

The cause of action in this matter was stoppage of Petitioner's salary by the Respondents on or about 23/9/2021. The Petitioner remained in active service and was not under any disciplinary action or interdiction to warrant the abrupt action.

The Petitioner had no prior notice of the action and no information was provided to him prior about the stoppage.

That the action confers Article 35(1) by denying Petitioner access to information, read with section 4 of the Access to Information Act. Article 47(1) and (2) on fair administrative action. Article 27, 28, 29 and 30 by

impugning the dignity of the Petitioner, treating him in a cruel, inhuman and degrading manner and subjecting him to work without pay.

That the Petitioner has a right to property protected under Article 40 of the Constitution and is also entitled to fair labour practices protected under Article 41(1) of the Constitution which has been violated by the unlawful action by the Respondent and the said action is discriminatory and violation of Article 27.

The Petitioner seeks the following reliefs:

- i. A declaration that the Respondents violated Article 27 of the Constitution by acting in a discriminatory manner against the Petitioner and denying him equal protection of the law.
- ii. A declaration that the Respondent violated Articles 28, 29 and 30 of the Constitution by subjecting the Petitioner to acts of indignity, cruel and inhuman treatment and forced labour/slavery.
- iii. A declaration that the Respondents violated Article 35 of the Constitution and section 4 of the Access to Information Act by making a decision detrimental to the Petitioner but refusing to provide him with access to the decision or reasons therefore, prior to or even after the offensive decision.
- iv. A declaration that the Respondents violated Article 47 of the Constitution and sections 4 and 6 of the Fair Administrative Action Act by making a decision detrimental to the Petitioner without giving an opportunity to be heard or to make his representation and by unreasonably without information on the decision or

- reasons therefore thus denying him right of appeal or review of the decision.
- v. An order compelling the Respondents to immediately restore the Petitioner's name into the payroll and to pay all his unpaid salaries.
  - vi. A permanent order restraining the Respondents from taking any adverse decision against the Petitioner with respect to his employment without first complying with Article 47 of the Constitution.
  - vii. An order compelling the Respondents to disclose in writing to the Petitioner reasons for stoppage of his salary.
  - viii. An order that the Respondents jointly and severally bear the costs of the petition.

The petition is supported by Affidavit, statement of facts and documents attached thereto.

#### Replying Affidavit of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents

The Respondents replied to the petition vide affidavit sworn by Dr. Simon Mwangi, Wanderi, a Commissioner of Police sworn on 25/4/2022 in which he deposes in the main that he had authority of Director Criminal Investigation (DCI) to twelfth affidavit and had knowledge of all relevant facts in the matter. That the Petitioner was a DCI officer stationed at DCI Crime South within Kisii County. That he had previously served other stations. That he was arrested by officers from the then Flying Squad Unit on allegation that on 18/9/2018, while at Kilimani area, within Nairobi County, jointly with others they robbed Abdonleye Bathiby (Complainant) of USD

8,000; Kshs. 83,000; 3 Rolex watches valued at USD 15,000; Kshs. 30,000/= transferred from M-Pesa account of the complainant to one of the accused persons MPesa account, two mobile phone (sumsang duo) and (Huwidi) all valued at Kshs. 50,000.00, passports for credit cards all totalling Kshs. 5,463,000.00.

That the Petitioner was arraigned before Milimani Law Courts and charged with the offence of “Robbery with violence contrary to section 296 (2) of the Penal Code.

That upon being charged, the Petitioner was interdicted from duty as is the procedure with effect from 27/9/2018 pursuant to section 87(6)(a) of the National Police Service Act read with the National Police Service Commission (Discipline) Regulations 2015 and paragraph 47 Chapter 30 of the Service Standing Orders which provide that an officer under investigation may be interdicted by the Inspector General or an authorised officer to facilitate investigations.

The officer is then afforded opportunity to be exonerated from the allegations in terms of Chapter 21 of the Service Standing Orders on “Competent Procedure” guides on administrative insights while emphasizing the right to fair administrative action.

That the court proceedings did not go to full hearing as it was withdrawn under section 202 of the Criminal Procedure Code after the complainant withdrew the case.

The National Police Service regard the offence of Robbery with violence as a matter of grave concern due to the gravity and nature of the offence. The Inspector General, National Police Service approved the lifting of the Petitioners interdiction with effect to 27/9/2018 and further directed that removal proceedings be instituted against the Petitioner with a view to his removal from National Police Service under public interest.

The Petitioner was accordingly serve with a notice to show cause letter to that effect in terms of paragraph 52(e)m Cap 30 so as read with section 131(b) of the NPSA 2011. The Petitioner was informed of his right to submit representation in reply to the show cause letter within 7 days which he did on 29/6/2021.

That the explanation was weak and lacking in substance and the NPSC upheld the decision to remove the Petitioner from the service as per the recommendation by the Inspector General.

The NPSC at a meeting held on 11/6/2019 approved the removal from the numbers under public interest with effect from 9/8/2021.

The decision was communicated to the Petitioner and was struck off and removed from the nominal role as is the procedure.

The Petitioner appealed the decision to remove him from the service and the same was forwarded to the Inspector General.

That the outcome of his appeal was still awaited at the Inspector General's office and DCI is awaiting the appellate decision by the NPSC. The stoppage of the Petitioner's salary was based on his removal from the service and as such cannot draw any salary from the date of his removal.

That the Petitioner has ignored the conclusion of the Appellate process and prematurely come to court in violation of the doctrine of exhaustion of internal procedures and constitutional avoidance by elevating this matter to a constitution petition when it is a mere disciplinary process with the police service which has been followed to the letter.

That the petition lack merit and it be dismissed.

## **DETERMINATION**

The parties filed written submissions which the court has carefully considered together with the deposition by the parties and the issues for determination are:

- (a) Whether the Petitioner has disclosed any case of violation of his constitutional rights.
- (b) Whether the Petitioner is entitled to the reliefs sought

The offence of Robbery with Violence which the Petitioner was charged with before a criminal court and which he settled amicably with the complainant from the facts disclosed in this petition was of a very serious nature.

The settlement of the dispute, though preceded the final and left open the presumption of innocence does not by itself derogate from the need by the national police service, to take disciplinary measures against the Petitioner.

The Petitioner in his petition and supporting documents did not.....adduce any evidence to impugn the disciplinary process which was still underway at an appellate level by the time this petition was filed.

Indeed, the Petitioner does not deny the very serious allegation of robbery of violence committed against a person in Kenya in which that person was robbed equivalent of Kshs. 5,465,000.00 by armed persons and the Petitioner was directly implicated in it and was charged before a court of law but amicably settled the matter leading to the withdrawal of the charges.

The standard of prove in a disciplinary process is on a balance of probability and the Inspector General together with NPSC were within their mandate to require the Petitioner to show cause why he should not be retired in public interest despite having settled the criminal case outside the court process.

The NPSC found the explanation by the Petitioner, weak and wanting and it was just and reasonable to take the action they did of retiring the Petitioner in public interest.

The Petitioner not expect to be paid any salary upon such removal but is definitely entitled to be paid any unpaid arrear salary before the date of removal since the criminal offence was terminated before its conclusion.

Accordingly, the Petitioner has not proved that any of the constitutional rights he alleges were violated under Articles 27, 28, 29, 40, 41 and 47 of the Constitution were indeed violated by the Respondents.

The petition lacks any substance, is devoid any merit and is dismissed in its entirety.

For avoidance of doubt, the Petitioner is entitled to his full salary from the date of interdiction pending the conclusion of the Criminal case until the date he was formally removed from the police service. That arrear salary if not paid be computed and filed before this court within 60 days and paid accordingly, failing which the Petitioner tov compute the same and file in court within 30 days upon expiry of the 65 days aforesaid.

Each of the parties to meet their costs of the petition

Dated at Nairobi this **16<sup>th</sup> day of March 2026**

**Mathews Nduma**

**JUDGE**

**Dated, signed and delivered in open court at Nairobi this 9th day of March 2026**

**J.W KELI**  
**JUDGE**

**In presence of:**

M/s. Wambutia for the Petitioner

Ms. Rwenji for 1<sup>st</sup> Respondent

State counsel for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent

Mr. Kemboi – Court Assistant