



**Omumu v National Police Service Commission (Cause 181 of 2018)
[2025] KEELRC 898 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 898 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 181 OF 2018
S RADIDO, J
MARCH 20, 2025**

BETWEEN

JAIRUS OJANGO OMUMU CLAIMANT

AND

NATIONAL POLICE SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The National Police Service Commission (the Commission) was established under Article 246 of *the Constitution*. As it embarked on putting its structures in place, the Ministry of Public Service deployed several public officers to the Commission.
2. On 17 January 2013, the Commission requested the Ministry that the deployed officers be seconded to it and the Ministry replied on 24 January 2013 expressing no objection to the request.
3. On 28 January 2013, the Ministry wrote to Jairus Ojango Omumu (the Claimant) informing him of a ministerial transfer to the Commission. The Commission confirmed that the Claimant had reported on 28 January 2013, through a letter dated 27 February 2013.
4. On or around 7 October 2013, the Commission offered the Claimant the position of acting Commission Secretary/Chief Executive Officer. The Claimant accepted the offer on 8 October 2013.
5. The Public Service Commission gave its approval to the secondment of some named 21 public officers to the Commission through a letter dated 31 December 2013 for an initial period of 3 years.
6. On 3 January 2014, the Commission informed the Claimant of a confirmation and appointment as the Commission Secretary/Chief Executive Officer for a 5-year term with effect from 31 December 2013.
7. During its meeting on 6 October 2016, the Commission resolved that seconded staff would be given the option to join on permanent terms once vacancies were advertised.



8. The same day, the Claimant wrote to the Principal Secretary, Public Service informing him that the Commission was in the process of recruiting its own staff but before the conclusion of the recruitment, it still needed the services of some named 23 seconded officers whose contracts were set to lapse on 31 December 2016. The Claimant included his name in the list.
9. The Principal Secretary replied to the letter on 26 October 2016, approving the extension of the secondment for a further and final 3 years effective 1 January 2017.
10. Consequent to the approval, the Claimant issued an Internal Memo on 5 December 2016 to all staff on deployment advising them that pending the recruitment of its staff, the Commission had approved the extension of their secondment/deployment up to 30 June 2017 to ensure a smooth transition.
11. The Commission sought and got approval from the National Treasury to recruit its own staff, and the Claimant wrote to the Principal Secretary, Public Service on 6 December 2016 requesting the variation of the extension of contracts for seconded staff from 3 years to 6 months to expire on 30 June 2017.
12. On 24 April 2017, the Commission wrote to the Claimant to notify him of the termination of his appointment as Secretary/Chief Executive Officer effective 24 July 2017 and the reason given was that the Commission had started the recruitment process for its own staff including the position of Secretary/Chief Executive Officer.
13. On 29 June 2018, the Office of the Deputy President confirmed to the Commission that the Claimant had reported back on 25 July 2017, after the termination of his appointment.
14. The Claimant felt aggrieved and on 16 February 2018, he sued the Commission and he stated the Issue in Dispute as:

Unlawful dismissal of the Grievant.

15. The Claimant sought the following remedies:
 - i. General damages.
 - ii. Exemplary damages.
 - iii. Payment of lost wages, benefits, allowance and any benefits due to the Grievant.
 - iv. The Court to order for the Grievant to be paid in addition to the other prayers herein 12 months pay as compensation for wrongful loss of employment.
 - v. General damages for loss in career advancement.
 - vi. Damages for loss of employment protection.
 - vii. Damages for loss of pension rights.
 - viii. Costs of the suit.
 - ix. Interest on the above items.
 - x. Any other or further relief that this Honourable Court may deem just and fit to grant.
16. The Commission filed a Response on 30 July 2018, and the Claimant filed a Rejoinder on 16 August 2018.
17. An attempt by the Claimant to amend the Statement of Claim was declined on 14 October 2021, and the hearing was conducted on 7 October 2024, 21 January 2025 and 10 February 2025.



18. The Claimant and a Deputy Director with the Commission testified.
19. The Claimant filed his submissions on 21 February 2025 and the Commission on 7 March 2025.
20. The Claimant set out the Issues in contention in his submissions as:
 - i. Was the Claimant's termination fair and lawful?
 - ii. Is the Claimant entitled to the remedies sought?
21. The Commission identified the Issues for adjudication in its submissions as:
 - i. Whether the Claimant was seconded to the Respondent?
 - ii. What were the terms of the Claimant's secondment?
 - iii. Whether the Respondent was replacing its staff and whether it was proper to do so?
 - iv. Whether the Claimant's secondment was lawfully terminated?
 - v. Whether the Claimant is entitled to the orders sought?
22. The Court has considered the pleadings, evidence and submissions.

Whether the Claimant was seconded to the Commission?

23. The Claimant's formal engagement with the Commission began after the Principal Secretary, Office of the Prime Minister informed him of a ministerial transfer through a letter dated 28 January 2013. The transfer had been preceded by a request from the Commission through a letter dated 17 January 2013 to the Permanent Secretary, Public Service for the secondment of officers.
24. It is not in doubt that the relationship began as a secondment.

Terms of the secondment

25. The Commission's request dated 17 January 2013 recommended that the seconded officers be deployed for 3-years in terms of the prevailing Government Regulations.
26. On 31 December 2013, the Public Service Commission approved the secondment for an initial 3-year term.
27. On or around 7 October 2013, the Commission offered the Claimant a contract as acting Secretary/Chief Executive Officer. A copy of the contract was not placed before the Court.
28. However, on 3 January 2014, the Commission notified the Claimant of his confirmation as the Secretary/Chief Executive Officer for a 5-year term. The letter set out the Claimant's remuneration and duties. The notification referred to a meeting of the Commissioners held on 31 December 2013.
29. On the face of the confirmation, the Claimant's term was to expire on 30 December 2017.
30. The Commission produced a copy of the Code of Regulations for the Public Service, Revised 2006. The Code incorporated Terms and Conditions of Employment and Regulation E31 and E32 set out relevant provisions on transfers and secondment.
31. Nevertheless, the primary statutory anchor to secondment within the public service at the material time was set out in section 42 of the [*Public Service Commission Act*](#) (commenced 26 April 2017) wherein it is provided:



Secondment para_42
42}}.

1. The authority to second a public officer shall vest in the Commission and shall be carried out on the request of an authorised officer or a public officer.
 2. Unless there is an agreement to the contrary, the public body or the organization to which a public officer is seconded shall bear all the costs, remuneration, allowances and other benefits due to the officer during the period of secondment.
 3. Where it is no longer necessary for a public officer on secondment to remain seconded and the secondment period has not lapsed, the public officer shall be entitled to revert to the public office held before the secondment.
 4. The Commission shall not approve secondment of a public officer, if —
 - (a) the public officer to be seconded has not served in the public service for at least three consecutive years after the initial appointment;
 - (b) the public body or organization to which the public officer is to be seconded presents a conflict of interest with the public office held by the public officer or the core functions of the public body in which the public officer is employed;
 - (c) the public officer may be exposed to undesirable experience in view of the core functions of the organization to which the public officer is to be seconded; or
 - (d) the secondment, if permitted, would bring the public service or the public officer into disrepute.
 5. An authorised officer or other lawful authority shall not approve a request for secondment unless the Commission has approved the secondment in writing.
 6. The period of secondment shall vary from case to case depending on the overall assessment under this Act but shall not in any case exceed the prescribed period: Provided that a public officer who intends to remain on secondment after the expiry of six consecutive years, shall retire from the public service with accrued retirement and other terminal benefits in accordance with the relevant law or agreement.
32. The anchor statute, as can be seen does not set out explicitly how a secondment can be terminated despite contemplation of the termination of a secondment.
33. The Court, therefore, finds that the Claimant's contract on secondment was guided by the correspondences exchanged and approvals given, the letters of appointment and the Code of Regulations incorporating the Terms and Conditions of Employment.

Unfair termination of employment

34. The Commission through a letter dated 17 January 2013 requested the Ministry of Public Service to second to it public officers for 3 years.
35. The Ministry approved the request through a letter dated 24 January 2013, and the Claimant was one of the officers seconded.
36. The Public Service Commission also approved the terms of secondment through its letter dated 31 December 2013 to the Commission.



37. On or around 7 October 2013, the Commission offered the Claimant, the position of acting Secretary/Chief Executive Officer (a copy of the offer letter was not produced in Court). The Claimant accepted the offer on 8 October 2013.
38. The Court can, therefore, infer that the offer was subject to the 3-year secondment tenure.
39. On 3 January 2014, the Commission notified the Claimant of a confirmation to the position of Secretary/Chief Executive Officer effective 31 December 2013.
40. The appointment letter expressly set out the term as a 5-year contract. Mathematically, the contract would expire on 30 December 2017.
41. However, on 24 April 2017, the Commission gave the Claimant 3-months' notice of termination of the appointment effective 24 July 2017.
42. Naturally, the Claimant asserted unlawful termination of employment. According to the Claimant, his contract was for a period of 5 years and, therefore, the Commission ought to have granted him an opportunity to be heard before terminating the appointment.
43. The Claimant further contended that the termination of his appointment was not on any of the specified grounds.
44. The Claimant relied on section 15 and 16(1) of the [National Police Service Commission Act](#).
45. The sections provide:
- 15(1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Secretary to the Commission and to serve on such terms and conditions as the Commission may determine.
- 15(4) The Secretary shall hold office for a term of five years and shall be eligible for re-appointment for one further term.
- 16(1) The Secretary may be removed from office by the Commission for —
- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
 - (b) gross misconduct or misbehaviour;
 - (c) incompetence; or
 - (d) violation of [the Constitution](#).
46. However, the Commission took the view that the appointment was subject to the temporary secondment terms as approved by the parent Ministry and that the need to recruit its own permanent staff in accordance with its Strategic Plan, after approval by the Treasury necessitated the need to terminate the Claimant's appointment.
47. The Commission also asserted that the Claimant's secondment was coming to an end on 30 June 2017, but he irregularly caused the Ministry to extend the secondment to 2019 without consulting it (the Commission).
48. On the challenge of a hearing, the Commission responded that the Claimant's appointment was not terminated on disciplinary grounds to warrant a hearing or an opportunity to be heard.



49. The Court must at the outset indicate that under Regulation 37(8) of the Public Service Regulations, 2020, a public body intent on terminating a secondment must give the public body which seconded the public officer, and the public officer, a one-month notification.
50. Such a provision was not part of the Code of Regulations, Revised 2006.
51. The Claimant's relationship with the Commission started as a secondment and the Regulations in place then capped secondment to an initial period not exceeding 3 years (see Regulation E.32 of the Code of Regulations, Revised 2006).
52. The appointment letter did not clarify whether it was subject to the secondment regulatory framework or the Act establishing the Commission. However, the Commission's letter seeking approval indicated that the secondment would be subject to the prevailing regulatory framework.
53. The letter informing the Claimant of the termination of the appointment gave reasons. These were the recruitment of the Commission's staff to replace the seconded staff and the advertisement for the positions including that of Secretary/Chief Executive Officer.
54. Could the Claimant's appointment to a 5-year contract yield to the secondment terms? In other words, could the Claimant claim the protections assured a competitively recruited Secretary/Chief Executive Officer under section 16 of the [National Police Service Commission Act](#)?
55. Section 15(1) and (4) of the [National Police Service Commission Act](#) envisage an open transparent and competitively recruited Secretary/Chief Executive Officer. The Claimant was not competitively recruited.
56. The Commission confirmed the Claimant's acting appointment knowing fully well that he was serving on secondment.
57. The Claimant was also aware of the terms of appointment and this is brought out in his letter dated 6 December 2016 to the Principal Secretary, Ministry of Public Service wherein he requested the Principal Secretary to vary the extension of secondment/ renewal from 3 years to 6 months.
58. When putting in this request, the Claimant must have been alive to the fact that he was one of the 23 officers seconded to the Commission whose tenure would be impacted by the approval given to the Commission by the Treasury to recruit its own staff.
59. The reason given by the Commission to terminate the Claimant's contract was valid in the circumstances.
60. Upon the termination of the appointment, the Claimant moved back to the office of the Deputy President.
61. The Court finds that the termination of the Claimant's appointment was not unlawful, but was in line with the secondment legal framework which superseded his contract, and the need for the Commission to recruit its own staff.

Conclusion and Orders

62. In light of the above, the Court finds no merit in the Cause and it is dismissed.
63. Each party to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 20TH DAY OF MARCH 2025.



Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Kwengu & Co. Advocates

For Respondent Watako Kirui & Co. Advocates

Court Assistant Wangu

