



**Kisa & another v National Police Service Commission & 3 others (Cause E931 of 2023) [2025] KEELRC 1601 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1601 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E931 OF 2023**

**SC RUTTO, J**

**MAY 30, 2025**

**BETWEEN**

**SILAS KIMTAI KISA ..... 1<sup>ST</sup> CLAIMANT**

**KENNEDY KATEMBU KISO ..... 2<sup>ND</sup> CLAIMANT**

**AND**

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

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

**DEPUTY INSPECTOR GENERAL ADMINISTRATION POLICE  
SERVICE ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. It is common ground that the Claimants were appointed as Administration Police Constables to the National Police Force on 8<sup>th</sup> November 1999. It is also not in dispute that at the material time, the Claimants were part of the security detail of the former Member of Parliament for Mt. Elgon, Hon. John Serut.
2. It is also common cause that the Claimants were arrested on 16<sup>th</sup> April 2008 and charged with the offence of murder at Bungoma High Court.
3. Subsequently, the Claimants were found guilty of the offence of murder and convicted on 14<sup>th</sup> November 2011. Accordingly, they were each sentenced to 15 years' imprisonment.
4. The Claimants aver that they served their terms at Kibos main prison and Eldoret prisons until 14<sup>th</sup> November 2021.



5. It is the Claimants' case that throughout the period they served their respective prison terms, they were neither interdicted nor terminated and or removed from active police service in accordance with the Police Force Standing Orders(repealed) or the National Police Service Standing Orders (now in force) and up to date, they have never received any communication from the Respondents regarding their employment status.
6. It is on account of the foregoing that the Claimants have sought the following reliefs against the Respondents;
  - a. A Declaration that the Claimants are still employees of the Respondents and/or they are still in active police service and are therefore entitled to withheld salaries, allowances and benefits and without any loss of benefits or earnings.
  - b. A Declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' unresponsive conduct infringes on the Claimants' right to access to information guaranteed under Article 35 of the Constitution of Kenya, 2010.
  - c. An Order of Mandamus directing the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents to allocate duties and responsibilities as well as facilitating the Claimants with necessary tools to enable them efficiently undertake their roles as officers of the national police service.
  - d. In the Alternative and without prejudice to prayers No. (a), (b), and (c) above:
    - i. For the 1<sup>st</sup> Claimant, gross salary at Kshs.9,330.00 per month, from September 2011 to date.
    - ii. For the 2<sup>nd</sup> Claimant, gross salary at Kshs.14, 635.00 per month, from September 2011 to date.
    - iii. For both Claimants, accrued pension and/or social security benefits and/or gratuity benefits up to retirement age of 60 years.
  - e. Interests of (d) above at court rates.
  - f. Costs of this suit be borne by the Respondents.
  - g. Any other just and expedient order that this Honourable Court would wish to grant.
7. The 1<sup>st</sup> Respondent opposed the Memorandum of Claim through its Response dated 19<sup>th</sup> April 2024, in which it avers that following the conviction of the Claimants, their salaries were stopped by a letter dated 5<sup>th</sup> April 2012.
8. The 1<sup>st</sup> Respondent further avers that the 1<sup>st</sup> Claimant was dishonorably dismissed from service vide a letter dated 27<sup>th</sup> April 2020 while still serving his 15 years sentence. That similarly, the 2<sup>nd</sup> Claimant was dismissed from service vide a letter dated 14<sup>th</sup> June 2012.
9. According to the 1<sup>st</sup> Respondent, the Claimants' dismissal was lawful, substantially and procedurally, and was on account of their conviction and subsequent sentence of 15 years imprisonment.
10. The 1<sup>st</sup> Respondent contends that given the Claimants' conviction, they violated the principles of public trust and integrity and are unfit for service.
11. It is the 1<sup>st</sup> Respondent's assertion that the Claimants have not been in active service since their dismissal and lack the core values of the National Police Service.



12. That the Claimants' case was procedurally handled before the establishment and operationalization of the 1<sup>st</sup> Respondent, and no evidence has been proffered indicating any violation committed by the 1<sup>st</sup> Respondent. Consequently, the 1<sup>st</sup> Respondent has asked the Court to dismiss the suit with costs.
13. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a joint Response to the Memorandum of Claim in which they aver that on 16<sup>th</sup> April 2008, the Claimants were interdicted following their arrest and arraignment in Court for the offence of murder.
14. That following the conviction of the Claimants on 15<sup>th</sup> November 2011, a decision was reached that they be dismissed from service and deleted from the payroll.
15. According to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, the Claimants are not entitled to any benefits. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents further contend that the matter is belated and cannot be entertained by this Court due to lapse of time.
16. Accordingly, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have asked the Court to dismiss the Claimants' suit with costs.
17. In a rejoinder to the Respondents' Responses to the Claim, the Claimants filed a Reply dated 25<sup>th</sup> April 2024, in which they aver that their alleged interdiction was and remains unlawful, irregular and improper as they were never given any particulars of the allegations for interdiction and reasonable opportunity to respond to the said allegations.
18. The Claimants further aver that the action of stopping their salaries and subsequently purporting to dismiss them from active police service in the years 2012 and 2022 respectively, were administrative decisions which were reached without them being accorded their right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, hence, a clear violation of Article 47 of the *Constitution* of Kenya, 2010.
19. According to the Claimants, they were never dismissed and/or removed from active police service.
20. The Claimants have maintained that by virtue of being public officers under the police service, they have an absolute right to pension and gratuity which right can only be limited in exceptional circumstances with justifiable reason(s) upon communication to them and an opportunity accorded to them to impugn the said reasons.
21. Accordingly, the Claimants have asked the Court to strike out the Respondents' Responses and enter judgment as prayed in the Memorandum of Claim.
22. The matter proceeded for hearing on 20<sup>th</sup> November 2024 and 17<sup>th</sup> February 2025, during which the Claimants as well as the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents called oral evidence.
23. The 1<sup>st</sup> Respondent elected not to call oral evidence.

#### **Claimants' Case**

24. The 1<sup>st</sup> Claimant testified on his own behalf and on behalf of the 2<sup>nd</sup> Claimant. At the outset, the 1<sup>st</sup> Claimant sought to adopt his witness statement and the 2<sup>nd</sup> Claimant's witness statement to constitute his evidence in chief. He further produced the initial list and bundle of documents and the supplementary list and bundle of documents filed on their behalf as exhibits before Court.
25. The 1<sup>st</sup> Claimant told the Court that they have never received the letters of interdiction and the letters dismissing them from service.



26. It was his evidence that since the start of the year 2022, and on the strength of his non-dismissal and/or non-removal from active police service, he has been following up on allocation of duties from his last work station, being Mt. Elgon. That the said exercise has since proven futile, necessitating the institution of the instant suit.
27. According to the 1<sup>st</sup> Claimant, the Respondents' unresponsive conduct has condemned and continues to condemn them to indefinite and endless psychological torture, anxiety and untold economic suffering.
28. To this end, the 1<sup>st</sup> Claimant maintained that they are still in service.

### **2<sup>nd</sup> and 3<sup>rd</sup> Respondents' Case**

29. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents called oral evidence through Mr. Samuel Oduor Ooko who testified as RW1. Mr. Oduor identified himself as the Assistant Director, Human Capital Management at the Administration Police Service. Similarly, RW1 adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents, filed on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to constitute his evidence.
30. It was RW1's evidence that following the arrest and arraignment of the Claimants in Court, they were placed on interdiction and issued with interdiction letters as provided for by the Code of Regulations and Human Resources Manual for Public Officers while awaiting the verdict of the court.
31. RW1 averred that the Claimants' interdiction was communicated to them through their respective commanders, being the Bungoma County Administration Police Commander and the Commandant, Security of Government Buildings (SGB) and VIP Protection Unit, Nairobi.
32. RW1 further stated that pursuant to the Claimants being found guilty of the offence of murder, they were summarily dismissed from service and their salaries stopped.
33. RW1 further averred that communication of the Claimants' dismissal was also made through their respective commanders.

### **Submissions**

34. It was submitted by the Claimants that they were never dismissed and/or removed from active police service. They urged the Court to find as much.
35. The Claimants further posited that Chapter 30 of the Standing Orders is not applicable in this case since commission of a criminal offence by an officer is not amongst the offences against discipline.
36. In the same vein, the Claimants submitted that pursuant to Paragraph 7 Sub-paragraph 2 of Chapter 30 of the Standing Orders, dismissal from the service shall only take effect on approval and confirmation by the Commission.
37. It was further submitted by the Claimants that they were not subjected to any disciplinary committee proceedings pursuant to Chapter 30 of the Standing Orders, before a decision on their alleged dismissal was made.
38. To this end, the Claimants submitted that their dismissal and/or removal, if any, as alleged by the Respondents, was unconstitutional, unlawful, and illegal.



39. It was further submitted by the Claimants that in the absence of a clear and proper channel of communication on the face of the alleged dismissal letters, the only inference that can be drawn is that the said alleged letters of dismissal were never communicated to them.
40. The Claimants further argued that their Claim is not belated and is right before this Court as there has never been any communication whatsoever of their alleged dismissals. In support of the Claimants' position, the Court was urged to consider the determination in *Ezekiel Nyangoya Okemwa v Kenya Marine & Fisheries Research Institute* [2016] eKLR.
41. The 1<sup>st</sup> Respondent submitted that it is a clear misapprehension of the law and regulations guiding the disciplinary process of officers and an abuse of court process for the Claimants to allege procedural unlawfulness before making a formal appeal to the Commission.
42. It was the 1<sup>st</sup> Respondent's further submission that the process leading to the dismissal of the Claimants was conducted in the most procedural, fair and lawful manner with utmost fidelity to the Constitution, the National Police Service Act, National Police Service Standing Orders and all other relevant laws.
43. The 1<sup>st</sup> Respondent further submitted that the Claimants have violated clear statutory provisions on limitation of time. According to the 1<sup>st</sup> Respondent, the Claim ought to have been filed within three (3) years as prescribed by Section 3(2) of the Public Authorities Limitations of Actions Act. That the lapse of time has in turn rendered this Court without jurisdiction to adjudicate over the matter and the court has no option but to down its tools.
44. On the part of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, it was submitted that the Police Service Regulations dictate that a conviction for a serious offense leading to imprisonment is a valid ground for automatic dismissal. In the Respondents' view, the Claimants cannot seek refuge under Article 47 of the Constitution while conveniently ignoring their own breach of law.
45. It was further submitted by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents that the Claim before this Court is fatally defective as it offends Section 90 of the Employment Act, 2007, which limits the period for filing employment-related claims to three (3) years from the date the cause of action arose. In support of this position, reliance was placed on the case of *David Mwangala v Dodhia Packaging Limited* [2021] eKLR.

### **Analysis and Determination**

46. Flowing from the record, the Court has singled out the following issues for determination:
  - a. Whether the suit by the Claimants is time-barred;
  - b. Depending on (a), whether the dismissal of the Claimants from the police service was unfair and unlawful;
  - c. Whether the Claimants are entitled to the reliefs sought?

### **Whether the suit is time-barred**

47. The Respondents have contended that the suit herein is time-barred. Indeed, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a Notice of Preliminary Objection to this effect.
48. Pursuant to a Ruling delivered on 25<sup>th</sup> October 2024, the Court overruled the Preliminary Objection on the basis that it did not raise a pure point of law in view of the fact that the Claimants and the Respondents have taken different positions with respect to the Claimants' status of employment. As



- such, this issue was reserved for determination upon hearing all parties and evaluation of the evidence on record.
49. On this issue, the Claimants have maintained that they are still in service as they have never been dismissed or removed from the police service. As a matter of fact, they have denied receiving the letters of interdiction and letters of dismissal exhibited in Court by the Respondents.
50. On the other hand, the Respondents hold that the Claimants were dismissed from the police service following their conviction and imprisonment. According to the Respondents, the Claimants' interdiction and dismissal from service was communicated to them through their respective commanders.
51. In support of this position, the Respondents exhibited a copy of a letter of dismissal dated 14<sup>th</sup> June 2012 addressed to the 2<sup>nd</sup> Claimant through the Commandant SGB unit. Through the said letter, the 2<sup>nd</sup> Claimant was "notified" of his dismissal from the police force.
52. Equally, the Respondents exhibited a letter dated 27<sup>th</sup> April 2020, addressed to the 1<sup>st</sup> Claimant through the CIPU County Commander, Bungoma County, in which the 1<sup>st</sup> Claimant was "notified" of his dismissal from service.
53. Relevant to this dispute is Section 3(2) of the Public Authorities Limitations Act, which provides as follows:
- [3](2) No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.
54. It is instructive to note that under Section 2 (2)(a), proceedings against the Government include proceedings against the Attorney-General or any Government department or any public officer as such.
55. The import of the foregoing statutory provision is that a suit founded on contract, including an employment contract as the one herein, cannot be sustained in Court against the Government or for that fact, the Attorney General or a Government department after the lapse of three (3) years from the date the cause of action arose.
56. In defining what constitutes a cause of action, the Court of Appeal in the case *Attorney General & another v Andrew Maina Githinji & another* [2016] eKLR, cited with approval the case of *Read v Brown* (1889), 22 QBD 128, thus;
- “Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court”.
57. And further, in the case of *Letang vs Cooper* [1964] 2 All ER 929 at 934, a cause of action was defined to mean;
- “A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”
58. To this end, a cause of action would ordinarily arise at the time a litigant had a cause to complain.
59. Flowing from above, the logical question to ask is when did the cause of action arise in this case?
60. In an employment dispute as the one herein, a cause of action would ordinarily arise when an employee's employment is terminated, and the employee believes the termination was unfair or unlawful.



61. As such, the cause of action would only arise at the time when an employee is notified that his/her employment has been terminated. It is at that time that the employee acquires the right to approach the court.
62. With that being said, the question that begs for an answer is when were the Claimants herein notified of their dismissal from service?
63. I say so bearing in mind that, as of 14<sup>th</sup> June 2012 and 27<sup>th</sup> April 2020, when the Claimants were said to have been dismissed from the police service, they were serving their respective sentences in prison, having been convicted of the offence of murder.
64. If I may say, beyond exhibiting the Claimants' letters of dismissal, the Respondents did not tender evidence in any form or manner to prove that the said letters were transmitted to the Claimants in prison by their respective commanders.
65. As it is, the Respondents were well aware that the Claimants were not in their respective stations but rather, were in prison serving their sentences. Therefore, one wonders how the Respondents expected the Claimants to receive the said letters of dismissal?
66. In the circumstances, it is doubtful whether the Claimants were aware of their dismissal from the police service at the time their letters of dismissal were transmitted to their respective commanders.
67. Therefore, the fact that the Claimants' letters of dismissal were transmitted through their respective commanders is not sufficient proof that the Claimants were aware of their dismissal from service. As stated herein, the Respondents did not adduce any evidence confirming that the Claimants' respective commanders notified them of their dismissal from service.
68. On this issue, the Court adopts to the position taken by the Court (Rika J) in the case of *Alice Njambi Mutura v Principal Secretary, Ministry of Health & another* [2021] eKLR in which the Court found that termination does not take effect until the letter is in the hands of the employee. The termination cannot be retroactive.
69. Accordingly, the Court finds that the Claimants' dismissal took effect on the date they became aware of their dismissal from service and not the dates appearing on the letters of dismissal. Indeed, it is illogical to expect the Claimants to have taken any legal action prior to being notified of their dismissal from the police service.
70. Therefore, it is inaccurate for the Respondents to contend that the Claimants' case is time-barred, yet there is no evidence that they were notified of their dismissal from service.
71. That said, was the Claimants' dismissal from the police service unfair and unlawful?

#### **Unfair and unlawful dismissal from service?**

72. The general rule is that an employee's termination from employment ought to be fair in substance and procedure.
73. As can be discerned from the Claimants' letters of dismissal exhibited by the Respondents, the Claimants were dismissed from service on the basis that they were found guilty of the offence of murder and both of them sentenced to serve 15 years in prison.
74. It is common cause that the Claimants were arrested and arraigned at the Bungoma High Court for the offence of murder. It is also not in dispute that the Claimants were subsequently convicted and sentenced to serve 15 years in prison.



75. Having been employed to serve in the police service, the Claimants were bound by the [National Police Service Act](#) and the relevant Standing Orders. Indeed, paragraph 5, Chapter 30 of the Standing Orders provides as follows:

“A police officer, being a guardian of the peace, shall at all times set a good example to the general public by conducting himself or herself in an irreproachable manner, both on and off duty.”

76. By virtue of their positions, the Claimants were expected to uphold the law, protect citizens, maintain order, act with self-control, and only use necessary force when lawful.

77. From the record, the actions of the Claimants leading to their conviction and subsequent imprisonment were without a doubt incompatible with the conduct expected of an officer serving in the police service.

78. Indeed, the action taken by the Respondents against the Claimants meets the ‘reasonable responses test’ which is applied in determining whether an employer’s decision to dismiss an employee from employment was within a reasonable range of options.

79. In the case of *British Leyland UK Ltd. v Swift* [1981] IRLR 91, Lord Denning analyzed the ‘reasonable responses test’ as follows:

“The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which an employer might reasonably take one view: another quite reasonably take a different view. One would quite reasonably dismiss the man. The other quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him.”

80. It is this Court’s considered view that a reasonable employer in the Respondents’ position would have let go of the Claimants if faced with a similar set of circumstances.

81. For the foregoing reasons, the Court finds that the reasons for the Claimants’ dismissal from the police service were reasonable and justifiable.

82. On the aspect of procedural fairness, Section 89 (3) and (4) of the [National Police Service Act](#), which provides for the manner in which disciplinary proceedings in the police service are to be conducted, is couched as follows:

(3) All disciplinary proceedings under this Part shall be in accordance with the Service Standing Orders as approved by the Commission and shall comply with Article 47 of the [Constitution](#).

(4) A police officer facing disciplinary action may be accompanied by another police officer of his choice for assistance and support.

83. In view of the foregoing provision, it was expected that at the very least, the Respondents would accord the Claimants prior adequate notice of the reasons for the proposed action, opportunity to be heard and make representations and appeal. Evidently, these elements were lacking in the case herein. This is



further confirmed by the evidence of RW1 during cross-examination, as he admitted that the Claimants were dismissed from service without being given an opportunity to be heard.

84. It is apparent from the record that following the Claimants' conviction and sentencing, the Respondents moved with haste and without further ado, proceeded to dismiss the Claimants from the police service.
85. For the aforementioned reasons, the Court is satisfied and finds that the dismissal of the Claimants from the police service, although reasonable and justified in substance, was inconsistent with the procedural requirements prescribed by the *National Police Service Act*.

### **Reliefs?**

86. The declaratory reliefs sought by the Claimants do not avail as the Court has found that the reasons for which they were dismissed from the police service were reasonable and justified. In any event, it would be contrary to public policy to order reinstatement of the Claimants into the police service, bearing in mind the circumstances leading to their dismissal.
87. The claim for salary with effect from September 2011 is similarly declined for the reason that during the said period, the Claimants were in prison and did not render any service to the public to warrant payment of salary.
88. What's more, Section 18(6) of the *Employment Act* prohibits payment of wages to an employee in respect of a period during which the employee is detained in custody or is serving a sentence of imprisonment imposed under any law.
89. In view of the procedural lapse in dismissing the Claimants from service, the Court would have awarded the Claimants nominal damages. However, as the Claimants did not seek compensatory damages, the Court cannot grant the same, as it is trite that parties are bound by their pleadings.
90. With that being said, the only remedy this Court is inclined to grant is with respect to the Claimants' accrued pension benefits.

### **Orders**

91. In the final analysis, the Claim only succeeds to the extent that the 1<sup>st</sup> Respondent is hereby directed to process the pension benefits accruing to the Claimants.
92. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY 2025.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimants Ms. Echom

For the 1<sup>st</sup> Respondent Ms. Ombui

For the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents No appearance

Court Assistant Millicent Kibet

Order



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

