



Kithute v National Police Service Commission & 2 others (Employment and Labour Relations Petition E005 of 2025) [2025] KEELRC 2333 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2333 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E005 OF 2025**

**MN NDUMA, J
JULY 31, 2025**

BETWEEN

KENNETH MWENDA KITHUTE PETITIONER

AND

THE NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The Petitioner vide the petition dated 13th January 2015, seeks for an order in the following terms: -
 - a. That this petition be allowed.
 - b. That the purported deployment of the Petitioner vide letter reference number KPS/ DIG/ SEC/ HRM/ 5/ 2/ VOL. XIX/39 dated 2nd January 2025 to Machakos Police Station be and is hereby quashed.
 - c. That an order be issued compelling the 1st Respondent not to deploy the Petitioner to working stations where Petitioner's health is at risk in line with doctor's recommendations.
 - d. That the 1st and 2nd Respondents be compelled to bear the costs of this petition.
2. The facts of the petition are that the Petitioner is a Police Constable number 67857 based previously at Traffic Dagoretti Base.
3. The Petitioner is aggrieved by a letter of transfer reference number KPS/DIG/SEC/HRM/5/2/ VOL.XIX/39 dated 2nd January 2025 transferring him to Machakos Police Station to conduct general duties.



4. The Petitioner vide a letter written by his advocates, Ekons Law, dated 8th January 2025, contested the said transfer demanding that it be rescinded because the same was not a normal transfer but was a disciplinary action taken against him by the Base Commander, Dagoretti in that in the month of November 2024, the Petitioner had received an invitation by the Base Commander for a disciplinary meeting for an alleged undisclosed mis-conduct at OC Traffic Nairobi Area's offices.
5. That a subsequent meeting was held regarding the same issue but in both occasions, the Petitioner was not informed of the alleged mis-conduct as required by law and regulations.
6. That on or about 20th November 2024, the Petitioner was sent on compulsory leave for two [2] weeks even though no mis-conduct was levelled against him. That this was followed by the impugned transfer. The Petitioner has not attached to the petition any documentation regarding the said disciplinary action.
7. The Petitioner relies on a medial report/referral notice dated 13th January, 2025, written by one Prof. C.F Otieno FRCPC [Edin], attending consultant physician written to whom it may concern stating that the Petitioner is under the care of Mater Misericordia Hospital, Nairobi, since 2017 with diabetes mellitus and hypertension. Details of the treatment undertaken are given in the letter and the Doctor concludes: -

“Any assistance extended to him to optimize his output as an employee would be highly appreciated.”
8. The Petitioner states that National Police Service are governed by the National Police Standing Orders [SSO] specially Chapter 72 that provides that transfers shall not be used as a disciplinary sanction or reward measure. That the standing orders also bestow the 1st Respondent, The National Police Service Commission with powers to take remedial action where transfers have been abused like in this case where the Petitioner is not only being punished for a non-existent misconduct but also victim of high handedness by his seniors. That the Petitioner had hardly worked in his current station for one year and thus the transfer is not in good faith as the same is not yet due.
9. That the demand letter written to the 1st and 2nd Respondents among others requesting for their intervention was not responded to hence this suit.
10. The Petitioner under paragraph D of the petition [paragraphs 21 to 26] titled ‘particulars of violations’ does not expressly name any provision of *the Constitution* or statute that has been violated by the Respondents.
11. The Petitioner does not also under part E of the petition titled ‘reliefs sought’, disclose any provision of *the Constitution* that has been violated as the basis of any relief sought by him.
12. The Petitioner however seeks the court to quash the letter of transfer and compel the 1st Respondent not to deploy the Petitioner to working stations where Petitioner's health is at risk in line with the doctor's recommendations.

Response

13. The Respondent filed a replying affidavit sworn to by Chief Inspector Wambani Victoria on 25th January 2025, where they denied the Petitioner's allegations in totality regarding alleged disciplinary action. The Respondents maintain that the Petitioner's transfer from Traffic Kabete Base to Machakos County, Ndiithu Police Station, was lawful, procedural and was carried out in accordance with applicable laws and regulation.



14. The Respondents aver that the transfer was done through a letter from the Deputy Inspector General referenced KPS/DIG/SEC/HRM/5/2/VOL. XIX/39 dated 2nd January 2025. That the transfer formed part of a wider administrative exercise involving 14 other officers, none of whom lodged complaints.
15. That these transfers were accepted as routine and many officers are yet to report to their new stations due to ongoing promotional interviews.
16. The Respondents deny that the transfer was disguised disciplinary sanction and point to Chapter 72 of the service standing orders [SSO] which stipulate that all officers, with the exception of the Inspector General, Deputy Inspector General and the Director of Criminal Investigations may be transferred to serve in any part of the country. Those disciplinary proceedings, had been initiated under Chapter 30 of the SSO and the transfers are not recognized as disciplinary actions under the said regulation.
17. On the issue of health, the Respondents state that the Petitioner did not make any formal application for reversal or objection to the transfer on medical or compassionate grounds. That such objections are mandated under paragraph 5[1] of Chapter 72 of the SSO and that the same are to be made in writing through appropriate channels accompanied by relevant documentation. That the Petitioner did not comply with the requirement.
18. Moreover, the medical report dated 13th January 2025 outlines the Petitioner's health condition but fails to specify the environmental or occupational limitations applicable, contrary to paragraph 14 of Chapter 72 of the SSO.
19. The Respondents also deny allegation of disciplinary meeting at the office of the Officer Commanding Traffic Nairobi Area, noting that no evidence has been adduced to substantiate the same. That the same are baseless and they be treated with the contempt they deserve.
20. That under Article 245 of *the Constitution* of Kenya 2010 and section 110[1][r] of the *National Police Service Act* 2011, the Inspector General is vested with constitutional and statutory authority to effect transfers and deployment of traffic officers throughout the county.
21. That the petition discloses no cause of action and it be dismissed with costs.

DETERMINATION

22. The parties filed written submissions which the court has considered along depositions by the parties and the issues for determination are: -
 - i. Whether the petition discloses any cause of action.
 - ii. Whether the Petitioner is entitled to the reliefs sought.
23. In the present matter, the Petitioner received a letter of transfer from Dagoretti Traffic Base to Machakos dated 2nd January 2025.
24. It is not in dispute that the Petitioner did not upon receipt of the letter invoke the provision of paragraph 6[2] Chapter 72 of the service standing orders [SSO] which provide.

“An officer may make an application in writing and in accordance with the requirements, set out in the standing orders requesting for a transfer or raising an objection to an intended transfer on medical or compassionate grounds, for consideration by the commission.”



25. The court therefore rules out the medical condition of the Petitioner as a bar to the transfer made from Nairobi to Machakos.
26. The demand letter written to the 1st Respondent by the advocates of the Petitioner dated 8th January 2025, did not refer to any medical conditions as a reason for reviewing the transfer of the Claimant.
27. Instead, the letter refers to alleged disciplinary meetings to which the Petitioner was summoned to without attaching any documentary evidence to substantiate the same.
28. The petition itself does not with precision disclose which provisions of *the Constitution* have been violated by the Respondents in effecting the transfer of the Petitioner from Nairobi to Machakos counties which are proximate to each other.
29. In Khan Khan’s Mburu v Inspector General Police Service and 3 others [2019] eKLR, the High Court held: -

“One of the cardinal principles in constitutional litigation is that a party who claims that a right or fundamental freedom has been violated, is being violated or is threatened, must plead with accuracy and precision demonstrating the right violated, or infringed, the article of *the Constitution* violated and the jurisdictional basis for it. That is; it is now an established principle of law that anyone who wishes the court to grant a relief for violation of a right or fundamental freedom must plead in a precise manner the constitutional provisions said to have been violated or infringed, the manner of infringement and the jurisdictional basis for it.”
30. This petition fails this test and does not disclose any constitutional cause of action warranting the court to grant the remedies set out under Article 23 of *the Constitution* of Kenya 2010.
31. In the end, the petition lacks merit and is dismissed with no order as to costs to encourage the parties to mutually co-exist till the retirement date of the Petitioner from service since the Petitioner had served for a period of over 31 years

DATED AT NAIROBI THIS 31ST DAY OF JULY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Omenge for Petitioner

Ms. Aluoch for the Respondents

Mr. Kemboi – Court Assistant

