



REPUBLIC OF KENYA



KENYA LAW
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**Wangari v National Police Service & 2 others (Petition E049 of 2025)
[2025] KEELRC 2139 (KLR) (21 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2139 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E049 OF 2025**

**HS WASILWA, J
JULY 21, 2025**

BETWEEN

BENSON MANG'ARA WANGARI PETITIONER

AND

THE NATIONAL POLICE SERVICE 1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

**THE DIRECTOR, DIRECTORATE OF CRIMINAL INVESTIGATIONS 3RD
RESPONDENT**

JUDGMENT

Petitioner's Case

1. By a Petition dated 27th March 2025, the Petitioner sought for the following reliefs; -
 - a. A Declaration that the Respondents' actions, including repeated unwarranted transfers and the harassment of the Petitioner, constitute violations of Articles 27, 28, and 41 of *the Constitution* of Kenya, 2010, and the *National Police Service Act*, 2011.
 - b. A Declaration that the transfer of the Petitioner back to the General Service Unit (GSU) is unlawful, irregular, and in violation of the National Police Service Commission (Transfers and Deployments) Regulations, 2015.
 - c. An order of Certiorari quashing the unlawful transfer of the Petitioner and reinstating him to his current position at the Directorate of Criminal Investigations (DCI).
 - d. An order restraining the Respondents, whether by themselves, their agents, or any persons acting under their direction, from further transferring, harassing, victimizing, or subjecting the Petitioner to unfair labour practices without justifiable cause and due process.



- e. An order of general damages directing the Respondents to compensate the Petitioner for the psychological distress, mental anguish, and professional harm suffered as a result of their unconstitutional and unlawful actions.
- f. An order for the costs of this Petition to be borne by the Respondents.
- g. Any other relief that this Honourable Court may deem just and fit to grant in the interest of justice.

Petitioner's Case

2. The Petitioner avers that he was enlisted into the National Police Service on 12th January 2013 under the General Service Unit (GSU) and served diligently for 10 years, with a clean disciplinary record. During his service under the GSU, he served in various forward areas, including Todonyang, Jokichogio, West Pokot, Garissa, and the VIP Protection Unit.
3. The Petitioner avers that despite the Force Standing Orders stipulating that an officer should serve in the GSU for a maximum of 7 years, he served for 10 years before being transferred to the DCI on 28th December 2022, where he was attached to the Operation Support Unit under the command of Mr. Zachary Kariuki, (CP).
4. It is the Petitioner's case that Mr. Zachary Kariuki, (CP) subjected him to unfair treatment, harassment, and discrimination without any justifiable reason. Mr. Kariuki openly expressed his dislike for the Petitioner and consequently threatened to transfer him to a remote and undesirable posting, in violation of Article 27 of *the Constitution* which guarantees equality and freedom from discrimination.
5. The Petitioner avers that despite his exemplary performance and high discipline, Mr. Kariuki ensured that he was assigned to guard duties at the main entrance gate for a period of not less than six months, which was a punitive measure aimed at humiliating the Petitioner, in violation of Article 28 of *the Constitution* which protects human dignity and Section 46 of the *National Police Service Act* which guarantees the rights of police officers.
6. Additionally, Mr. Kariuki further threatened to transfer him back to the GSU and ensure that he was posted to forward areas until his retirement. Acting on this threat, Mr. Kariuki instigated the Petitioner's unlawful transfer back to the GSU on 27th July 2024, despite the Petitioner having served in the DCI for only one and a half years with no adverse record or disciplinary action against him.
7. It is the Petitioner's case that transfer back to the GSU was irregular, illegal, and unprocedural, as the Force Standing Orders stipulate that once an officer has served in the GSU for 7 years, they can only be transferred back to the GSU in a leadership position as a gazetted officer. The Petitioner was not transferred to any leadership position, as he was not a gazetted officer with the rank of ASP (Assistant Superintendent of Police) and above.
8. The Petitioner avers that due to the irregularity of the transfer, he was transferred back to the DCI on 3rd March 2025, however, a month later, Mr. Kariuki once again directed for his transfer back to the GSU irregularly, without any just cause, due to the personal vendetta he holds against him in violation of Regulations 3, 4 and 5 of the National Police Service Commission (Transfers and Deployments) Regulations, 2015.
9. The Petitioner avers that his family has suffered immense psychological torture due to the constant transfers and threats, forcing him to move his children from one school to another, causing disruption



- to their education and family life, in violation of his right to fair labour practices enshrined under Article 41 of *the Constitution*.
10. The Petitioner avers that the continued victimization and harassment by Mr. Zachary Kariuki, with the consent of the Respondents constitutes a violation of his rights to equality and freedom from discrimination; human dignity; and fair labour practices enshrined under Articles 27, 28 and 41 *the Constitution*.
 11. The Petitioner avers that the transfer is imminent, and once effected, it will cause irreparable harm to his career, family life, and mental well-being. The practice of the National Police Service is such that once a transfer letter is issued, the officer is required to report to the new station immediately, leaving no room for redress.
 12. It is the Petitioner's case that if the court does not intervene, the Respondents will proceed with the transfer, rendering this petition nugatory and causing irreparable harm to him.

Petitioner's Submissions

13. The Petitioner submitted on five issues: whether the petition meets the competence threshold; whether the transfers effected and/or threatened against the Petitioner are unreasonable and irrational; whether the Petitioner's rights under Articles 27, 28 and 41 of *the Constitution* have been violated; whether the Petitioner is entitled to the reliefs sought; and who is entitled to costs of the petition.
14. On the first issue, the Petitioner submitted that he pleaded with clarity his complaint about frequent transfers, the provisions of *the Constitution* namely Article 27, 28 and 41 of *the Constitution* which have been infringed or threatened and the manner in which they have been infringed. He relied in the case of *Anarita Karimi Njeru v Republic* [1979] KECA 12 (KLR), where the court held that: "If a person is seeking redress from the High court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."
15. On the second issue, the Petitioner relied in *Namu v National Police Service Commission & 2 others (Employment and Labour Relations Petition E005 of 2023)* [2023] KEELRC 1231 (KLR) (25 May 2023) (Judgment), Makau J held that: "Accordingly, Article 3 (1) of *the Constitution* enjoins the respondents to uphold all the tenets of *the Constitution* including recognition and protection of the family. Failure to consider the effects of the purported deployment on the Petitioner's family and especially the minor children under her custody was failure to consider a relevant factor in the decision to deploy her."
16. The Petitioner submitted that the Respondents' decisions to arbitrarily and without just cause transfer him back to the GSU for a third stint were irrational and unreasonable. Whereas the Petitioner could properly be transferred from one station to another such transfer ought to have considered all relevant factors including family obligations and its protection. Therefore, the transfers were irrational and unreasonable as the Respondents did not consider the strain being imposed on the Petitioner's family.
17. It is the Petitioner's submission that the transfer was not based on staffing needs or service objectives but was motivated by personal hostility from a superior officer (Mr. Zachary Kariuki) contrary to Regulation 3(2) of the National Police Service Commission (Transfers and Deployments) Regulations, 2015 which provides that a transfer shall not be used as a disciplinary sanction or reward measure.
18. The Petitioner submitted that the Respondents have not offered any operational rationale or documentation to explain the repeated transfers. This is in breach of Regulation 4(4) of the



National Police Service Commission (Transfers and Deployments) Regulations which provides that the Commission must consider the justification for the transfer, disruption to police work, availability of transfer allowance, and ethnic and gender balance.

19. The Petitioner further submitted that his family life and children's education have been repeatedly unsettled, contrary to Regulation 5(2) which provides that transfers shall be based on necessity and shall be carried out in a manner that shall not disrupt the operations of the concerned service.
20. It is the Petitioner's submissions that the irrational and unreasonable transfers were issued without notice, or consideration of his past work stations, career progression while contravening the provisions of Article 41 of *the Constitution* and the National Police Service Commission (Transfers and Deployments) Regulations.
21. The Petitioner's further submitted that the Respondents' actions violate regulations 5 of the National Police Service Commission (Transfers and Deployments) Regulations which requires that all transfers be justified, fair, and objective. There is no evidence that the Respondents followed the procedure or considered operational necessity or fairness. The repeated and irregular transfer attempts serve no administrative logic and appear to be motivated by personal bias from the Petitioner's superior.
22. On the third issue, the Petitioner submitted that he was singled out for punitive treatment by a superior officer; other officers in similar roles have not been subjected to the same level of harassment or reassignment. This selective treatment amounts to discrimination as the transfers are not premised on any logic, fairness or administrative need in contravention of Article 27 of *the Constitution* which provides that equality and freedom from discrimination. He relied in *Kariuki & another v Attorney General & 2 others* [2024] KEELRC 13501 (KLR) where the court stated: "While making the findings, the Court has as well considered the provisions of ILO C156 - Workers with Family Responsibilities Convention, 1981 (No. 156). The ILO C156 applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. It provides in Article 3 provides "1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. 2. For the purposes of paragraph 1 of this Article, the term discrimination means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958." 15. Article 6 provides "The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems."

The Court holds that the respondents and all employers ought to take necessary steps to ensure that men and women workers with family responsibilities are adequately protected against discrimination and unfair treatment in policy and practice. Such discrimination must be visited with adequate compensation for victims."

23. The Petitioner submitted that the Respondents' act of assigning him prolonged gate duties, ordinarily reserved for junior staff, as a means of humiliating him, and threatening perpetual banishment to remote stations, constitutes degrading treatment. Furthermore, the Respondents irregularly, irrationally and unreasonably transferred the Petitioner to different stations in a discriminatory fashion based on personal biases in violation of his dignity provided under Article 28 of *the Constitution*.



24. The Petitioner submitted that when transfers interfere with an officer's family, as in his case where his children have had to move schools and the family has endured disruption and distress, contrary to Article 45 on protection of family, Article 53 on the rights of the child and Article 41 on the right to fair labour practices.
25. On the fourth issue, the Petitioner submitted that the transfers were not administrative but punitive; the Respondents did not follow transparent or fair process was followed; the transfer violated binding statutory regulations and *the Constitution*; and there is demonstrable psychological harm to the officer and his family. Based on this, the Petitioner's prayer for orders of certiorari, injunctions, and compensatory damages are merited under Articles 23 and 165 of *the Constitution*.
26. On the final issue, the Petitioner placed reliance in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others*, SC. Petition No. 4 of 2012; [2013] eKLR where the courts stated that costs follow the event but the court may in appropriate cases exercise discretion and with good reason, order otherwise.
27. The Petitioner concluded by submitting that he is not resisting lawful deployment, but the abuse of institutional power for personal vendetta and without regard for constitutional and regulatory safeguards. The transfers are not rooted in fairness, or administrative need; they are symptomatic of unchecked impunity that this court has the power and duty to remedy.
28. I have examined all the averments and submissions of the parties herein. This petition proceeded ex parte the respondents having been served and having failed to enter an appearance or file any responses.
29. The petitioner submitted that he has been unfairly treated by being kept within the GSU for over 10 years in spite of the force standing orders that provide that an officer should not serve in the GSU for over 7 years.
30. The averments of the petitioner and submissions thereafter remained uncontroverted by the failure of the respondents to respond accordingly.
31. The frequent transfer of the petitioner was also explained which infringed and threatened his labour rights and even human dignity under article 28 of *the Constitution*.
32. It is my finding that the petitioner has been unfairly treated and the petition is found with merit. I therefore find for the petitioner and grant him reliefs as follows:
 - (a) A declaration that the Respondents' actions, including repeated unwarranted transfers and the harassment of the Petitioner, constitute violations of Articles 27, 28, and 41 of *the Constitution* of Kenya, 2010, and the *National Police Service Act*, 2011.
 - (b) A declaration that the transfer of the Petitioner back to the General Service Unit (GSU) is unlawful, irregular, and in violation of the National Police Service Commission (Transfers and Deployments) Regulations, 2015.
 - (c) An order of Certiorari quashing the unlawful transfer of the Petitioner and reinstating him to his current position at the Directorate of Criminal Investigations (DCI).
 - (d) An order restraining the Respondents, whether by themselves, their agents, or any persons acting under their direction, from further transferring, harassing, victimizing, or subjecting the Petitioner to unfair labour practices without justifiable cause and due process.
 - (e) An order directing the respondents to pay the petitioner damages equivalent to 500,000/- for infringement of his constitutional rights.



(f) There shall be on order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

