



**Nkanda v National Police Service Commission & 2 others (Petition E001 of 2020) [2025] KEELRC 2383 (KLR) (13 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2383 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
PETITION E001 OF 2020  
ON MAKAU, J  
AUGUST 13, 2025**

**BETWEEN**

**CPL ALEX MURIITHI NKANDA ..... APPLICANT**

**AND**

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

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

**THE DEPUTY INSPECTOR GENERAL, KENYA POLICE SERVICE ..... 3<sup>RD</sup> RESPONDENT**

*(Before Hon. Justice Onesmus N Makau on 13th August, 2025)*

**RULING**

**Introduction**

1. This ruling relates to the Petitioner's Notice of Motion dated 18<sup>th</sup> December 2024 brought under section 5 of the [Judicature Act](#) and section 12 and 13 of the ELRC Act. The motion seeks the following orders: -
  - a. That this application due to its urgency be certified urgent and be heard *ex parte* in the first instance and *ex parte* orders be issued.
  - b. That pending hearing and determination of this application *inter partes* the deployment of the Applicant/Petitioner from Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base, Nakuru County to Maganda police station, Mombasa County be immediately suspended and the Petitioner do continue with his duties at Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base and the Respondents be prohibited from interfering in any way with the discharge of the petitioner's duties at Mai Mahiu Traffic Sub-Base Naivasha Traffic Base.



- c. That the deployment of the Applicant/Petitioner from Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base, Nakuru County to Maganda Police station, Mombasa County be immediately suspended and or vacated and the claimant do continue with his duties at Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base and the Respondents be prohibited from interfering in any way with the discharge of the petitioner’s duties at Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base.
  - d. That the third respondent, the Deputy Inspector General Kenya police service be committed to civil jail for a period not exceeding six (6) months or impose such other penalty as the Honourable court may deem fit for contempt of court for disobeying the decree of this Honourable Court dated 26<sup>th</sup> July 2021 by continuing to frequently and speedily deploying the Applicant/petitioner from one police station to another.
  - e. That the costs of this application be provided for.
2. The motion is supported by the petitioner’s Affidavit sworn on 18th December 2024 and it is opposed by the 1<sup>st</sup> respondent vide a Replying Affidavit sworn on 22<sup>nd</sup> January 2024(sic) by its Chief Legal Counsel /Director Appeals Policy and Legal Affairs. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondent did not file any response to the motion. On 15<sup>th</sup> January 2025, the counsel for the petitioner, 1st Respondent, and 2<sup>nd</sup> and 3<sup>rd</sup> respondents attended court and recorded consent to the effect that the deployment of the petitioner from Mai Mahiu Traffic Sub-base, Naivasha would be suspended and the petitioner would continue with his duties at Mai Mahiu Traffic Sub-base, Naivasha Traffic Base, and the respondents would not interfere with his discharge of duties in the said Traffic Sub-Base pending hearing on 6<sup>th</sup> February 2025.

## Background

3. The petitioner sued the respondents seeking protection from frequent and speed deployment from one station to another and the transfer from his station then being Mugumu Traffic Sub-base, Nyandarua County to Kizingitini Police station in Lamu County. He contended that such frequent deployments and transfers amounted to breach of his rights under Article 27(1), (2) & (3), Article 41 and 47 of *the Constitution* and the National Police Service Commission (Transfer and Deployment) Regulations, 2015. Consequently, he prayed for the same to be quashed for being a nullity. He further prayed for an order directing the respondents not to interfere with his discharge of duties at Magumu Traffic Sub-Base, or charge him or discriminate him in any way.
4. The petition was opposed but in the end, judgment was entered in favour of the petitioner on 26<sup>th</sup> July 2021. In particular Marete J made the following orders in his Judgment:
  - i. “A declaration be and is hereby issued that the acts of the Respondents in frequently and speedily deploying the petitioner from one station to another and currently transferring him from Magumu Traffic Sub-Base, Nyandarua County with a time frame of three weeks to Kizingitini station, Lamu County is in breach of the petitioner’s Constitutional rights under Articles 27 and 47 of *the Constitution* and the National Police service Commission (Transfer and Deployment) Regulation, 2015.
  - ii. That this transfer is null and void for all interests and purposes and the same is quashed.
  - iii. That the respondents be and are hereby prohibited from interfering in any way with the discharge of the petitioner’s duties at Magumu Traffic Sub-Base.



- iv. That these orders of court are not an immunity to the petitioner to override the rules and regulations appurtenant to his employment obligations.
  - v. That these orders are not in any way a limitation to the respondents in dealing and effecting normal work relations on the petitioner.
  - vi. That the costs of this petition shall be borne by the Respondents.”
5. A decree was extracted and issued by the Deputy Registrar of the Court on 6<sup>th</sup> August 2021. By separate letters dated 16<sup>th</sup> August 2021, the respondent through the OCS Nyeri and Attorney General sought copy of the judgment. On 18<sup>th</sup> August 2021, the Attorney General filed Notice of Appeal on behalf of the respondents challenging the said judgment and applied for certified typed proceedings. The typed proceedings were certified by the Deputy Registrar on 15<sup>th</sup> November 2021. A certificate of Delay of the proceedings was then issued by the Deputy Registrar on 20<sup>th</sup> January 2022. Nothing was mentioned about the intended appeal in the instant motion.
  6. On 18<sup>th</sup> December 2023, the petitioner filed a Notice of motion dated 16<sup>th</sup> December 2023 which was identical to the one before the court now, seeking the following orders: -
    - a. That this application due to its urgency be certified urgent and be heard *ex parte* in the first instance and *ex parte* orders be issued.
    - b. That pending hearing and determination of this application *inter partes* the deployment of the Applicant/Petitioner from Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base, Nakuru County to Maganda police station, Mombasa County be immediately suspended and the Petitioner do continue with his duties at Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base and the Respondents be prohibited from interfering in any way with the discharge of the petitioner’s duties at Naivasha Traffic Base.
    - c. That the deployment of the Applicant/Petitioner from Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base, Nakuru County to Maganda Police station, Mombasa County be immediately suspended and or vacated and the claimant do continue with his duties at Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base and the Respondents be prohibited from interfering in any way with the discharge of the petitioner’s duties at Naivasha Traffic Base.
    - d. That the third respondent, the Deputy Inspector General Kenya police service be committed to civil jail for a period not exceeding six (6) months or impose such other penalty as the Honourable court may deem fit for contempt of court for disobeying the decree of this Honourable Court dated 26<sup>th</sup> July 2021 by continuing to frequently and speedily deploying the Applicant/petitioner from one police station to another.
    - e. That the costs of this application be provided for.
  7. From the said motion, it was clear that after the said judgment, his transfer to Kizingitini Lamu was stopped and instead he was deployed (transferred) to Kamulu Nairobi on 29<sup>th</sup> May 2023, then on 15<sup>th</sup> August 2023 he was moved to Kacheliba police station West Pokot County, on 9<sup>th</sup> October 2023 he was moved to Naivasha police station, Nakuru County and on 30<sup>th</sup> December 2023 he was moved back to Kacheliba West Pokot County. He contended that the said frequent deployments/transfers amounted to contempt of the court decree passed on 26<sup>th</sup> July 2021.
  8. In response to the motion dated 16<sup>th</sup> December 2023, 2<sup>nd</sup> and 3<sup>rd</sup> respondents contended that the Judgment and decree of passed herein did not bar them from transferring or deploying the petitioner



in future. They maintained that the said decree did not give the petitioner's immunity from future transfers and deployments to other stations. They further averred that the petitioner signed his appointment accepting to serve anywhere in the Country. Finally, they averred that the deployments/transfers complained of constituted new cause of action and not contempt of court.

9. The parties requested the court to negotiate amicable settlement before determining the contempt motion dated 16<sup>th</sup> December 2023. On 2<sup>nd</sup> October 2024, Mr. Wahome Gikonyo, learned counsel for the petitioner appeared in court in the absence of the other parties and told the court that there was change of reigns in the National Police Service and that the matter had been fully settled. The terms of settlement were not disclosed and the court marked the case as fully settled as requested and closed the file.
10. Surprisingly, the petitioner came back to court with the current motion challenging another transfer from Mai Mahiu Traffic Sub-Base, Naivasha Traffic Base Nakuru County to Maganda Police station Mombasa County. He also prayed for the respondents to be punished for contempt of court for disobeying the decree dated 26<sup>th</sup> July 2021.
11. The 1<sup>st</sup> respondent denied involvement in the deployment of the petitioner and averred that such mandate vests with the Inspector General of Police by dint of section 10(1) (g) of the National Police Service Act and section 8 of the Transfer and Deployment Regulations, 2015. It further averred that, deployment is allowed under section 9 of the Regulations for 3 months, which may be extended. However, if the deployment exceeds a period of one year, the commission shall transfer the officer. It clarified that its role in deployment is only limited to giving approval for further deployments under section 9(3) of the Regulations.
12. The motion was canvassed by written submissions. I have considered the motion dated 18<sup>th</sup> December 2024, the Affidavits and submissions filed. The only issues for determination is whether the application herein should be allowed as prayed.

### **Analysis**

13. There is no denial that the court rendered judgment on 26<sup>th</sup> July 2021 quashing the transfer of the petitioner from Magumu Traffic Sub-base, in Nyandarua County to Kizingitini police station, Lamu County. The court further declared the respondents' act of frequent and speedily deploying of the petitioner from one station to another as a breach of his rights under Article 27 and 47 of the Constitution. However, the court clarified in the judgment that the petitioner was not granted immunity from rules and regulation of his employment and therefore the respondent had the liberty to deal with petitioner and effect on him normal work relations.
14. My understanding of the said judgment is that the court quashed the impugned transfer from Magumu Traffic Sub-base in Nyandarua to Kizingitini police station Lamu County, and then declared deployments/transfers a violation of the petitioner's right to fair administrative action and fundamental freedom from discrimination. I would say that the court was in effect directing the respondents to act fairly when deploying/transferring the petitioner. I agree with the findings and the said judgment of my brother Judge.
15. However, regarding the instant motion, I am concerned with the petitioner's selective enforcement of the judgment of 26<sup>th</sup> July 2021. I say so because after the judgment, he remained silent when he was deployed from Magumu Traffic Sub-base, Nyandarua to Kamulu police station in Nairobi County, Mai Mahiu in Nakuru County. He only protested when he was moved from Naivasha police station, Nakuru County to Kacheliba police station in West Pokot County and again from Naivasha to Maganda police station, Mombasa County.



16. Whereas I still hold the view that frequent movement of an officer from one station is unfair labour practices, I must also state that the officer should demonstrate willingness to serve in every corner of the Country.
17. At this point, I must also state that the petitioner's case herein was heard and determined. Further that the petitioner's counsel told the court that, on 2<sup>nd</sup> October 2024, that new sheriffs had taken over the reigns in the National Police Service and resolved the petitioner's matter. He also asked the court to mark the matter as resolved and the court did as requested. It follows that any new and offending deployments/transfers of the petitioner amounts to new cause of action which cannot be sneaked into this closed file as contempt proceedings. Litigation must have start and an end. They cannot be entertained externally through contempt applications instead of filing fresh suits to address new violations.
18. By now it must be clear that, the court is functus officio in the petition herein since the petitioner accepted transfer to Kamulu and other stations and on 2<sup>nd</sup> October 2024 his counsel asked the court to mark the matter as settled. Consequently, I find no merits in the Notice of Motion dated 18<sup>th</sup> December 2024 and dismiss it with costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 13TH DAY OF AUGUST, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**onesmus n makau**

**judge**

