



**Republic v National Police Service & another; Nyachiro (Exparte Applicant) (Judicial Review Application E066 of 2020) [2024] KEELRC 1519 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1519 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW APPLICATION E066 OF 2020**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

**ATTORNEY - GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENNEDY MONG'ARE NYACHIRO ..... EXPARTE APPLICANT**

**RULING**

1. The Respondents have applied to the Court for review and setting aside orders, against the Judgment of the Court, granted in favour of the *Ex-Parte* Applicant, on 31<sup>st</sup> May 2023.
2. The Application is founded on the Affidavit of Assistant Superintendent of Police, Henry Gitonga, sworn on 27<sup>th</sup> October 2023.
3. Gitonga narrates that he was the Presiding Officer, in the disciplinary proceedings which culminated in dismissal of the *Ex-parte* Applicant.
4. The decision was quashed in the Judgment of the Court.
5. Review is sought on the ground that Judgment was given without the benefit of crucial evidence, which was not at the time of the hearing, available to the Respondents. It is stated that there was material non-disclosure by the *Ex-Parte* Applicant. It is further submitted that the 1<sup>st</sup> Respondent, stand the risk of being limited in discharge of its constitutional mandate, if the Judgment is upheld. Tax payers stand to lose, if the Judgment is executed.



6. The *Ex-Parte* Applicant relies on his Replying Affidavit, sworn on 20<sup>th</sup> November 2023. He states that there is no new evidence that would warrant the Court to interfere with its Judgment. The same evidence alleged to be new, was considered by the Court.
7. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submission on record. They confirmed filing and service of their Submissions on 8<sup>th</sup> February 2024.

**The Court Finds: -**

8. The Respondents relied on Grounds of Opposition and a Notice of Preliminary Objection, in their response to the Judicial Review Application, filed by the Ex –parte Applicant.
9. The Grounds and Notice of Preliminary Objection were both dealt with in the Judgment.
10. The Application for review, introduces the Affidavit of Henry Gitonga, who presided over the disciplinary proceedings, leading to the decision against the *Ex-parte* Applicant, subject of the quashing orders made by the Court in its Judgment.
11. There is no reason given by the Respondents, why Gitonga did not file his Replying Affidavit and the annexures in it, in response to the substantive Application. The Respondents opted to rely on bare Grounds of Opposition and Notice of Preliminary Objection.
12. The documents annexed to the Affidavit sworn by Gitonga, were always accessible to the Respondents. It cannot be accepted that the documents were not accessible or in the knowledge of the Respondents, at the time of the hearing. The 1<sup>st</sup> Respondent was the *Ex-parte* Applicant’s Employer, with the statutory duty of custody of personnel records. It had access to all the records from the inception of the proceedings.
13. The documents exhibited by Gitonga are not fresh evidence, that would affect the Judgment of the Court. The *Ex-Parte* Applicant exhibited in his Application, orderly room proceedings, defaulter’s sheet, termination of commanders’ course, his request to retire under twenty-year rule, his job offer by Seventh Day Adventist Church, and Judgment of the Court in C.M.C Criminal Case No.2956 of 2014 acquitting him.
14. The documents exhibited by Assistant Superintendent of Police Gitonga, are basically the same documents exhibited by the *Ex-Parte* Applicant, and the assertion by the Respondents, that the *Ex-Parte* Applicant is guilty of material non-disclosure, has no foundation. The Respondents’ Application for review, is no more than a rehash of their response to, and submissions on, the Application for Judicial Review. There is no newly unearthed smoking gun presented by the Respondents to the Court, to warrant review of Judgment.
15. There is no merit to the submission by the Respondents, about the Judgment interfering with the 1<sup>st</sup> Respondent’s constitutional mandate, and the execution of Judgment being burdensome to public resources. What the Judgment does is to require the Respondents to honour its constitutional obligations. Any burden imposed on public resources is a consequence of the Respondents’ constitutional delinquency. It cannot be blamed on the *Ex-Parte* Applicant or the Court.

It is ordered: -

- a. The Application by the Respondents dated 27<sup>th</sup> October 2023 is declined.
- b. No order on the costs.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,  
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT  
PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.

JAMES RIKA

JUDGE

