



Nyangenya v National Police Service Commission & 2 others (Cause E695 of 2021) [2023] KEELRC 407 (KLR) (16 February 2023) (Ruling)

Neutral citation: [2023] KEELRC 407 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E695 OF 2021
L NDOLO, J
FEBRUARY 16, 2023**

BETWEEN

KENNEDY MOMANYI NYANGENYA CLAIMANT

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

NATIONAL POLICE SERVICE 2ND RESPONDENT

COMMANDANT, GENERAL SERVICE 3RD RESPONDENT

RULING

1. By his Notice of Motion application dated August 19, 2021, the claimant seeks the following orders:
 - a. An interim conservatory order restraining and prohibiting the respondents either by themselves, their servants and/or officers acting under their command from removing the claimant from employment, stopping, suspending and/or interfering with the monthly payment of the claimant's salary and allowances and/or evicting the claimant from the government house that he occupies;
 - b. An interim conservatory order restraining the respondents and/or their servants or agents from removing and/or terminating the claimant from employment and/or withdrawing government kits in possession of the claimant by virtue of his employment;
 - c. An order directing the respondents to ensure the personal safety and enjoyment of constitutional rights of the claimant wherever he is deployed.
2. The application is supported by the claimant's own affidavit and is based on the following grounds:
 - a. The claimant is an employee of the National Police Service at the rank of Senior Superintendent of Police (SSP) serving under the General Service Unit;



- b. On August 3, 2021, the claimant was served with a letter dated April 23, 2021, through the 3rd respondent, under reference 'Vetting Review Decision' informing the claimant to hand over all government properties and to vacate the government house which he still occupies;
 - c. The 1st respondent made a decision to remove the claimant from service, which decision was wrongful and unlawful and in breach of the claimant's constitutional rights and labour laws. The claimant appealed against the vetting decision and asked for review of the decision;
 - d. The claimant was never served with the decision or ruling on his appeal and/or application for review of his removal from service and was only served with letter dated April 23, 2021 on August 3, 2021, which letter purported to respond to a letter dated October 22, 2015 and another one of July 2021;
 - e. The claimant is apprehensive that the said letter is malicious and the respondents will act on the same to his detriment and suffering;
 - f. Removal from office was unjustified and unlawful contrary to the rules of natural justice, the Constitution and employment laws;
 - g. There will be no prejudice if orders are granted and the claim heard on its merit.
3. In his affidavit in support of the application, the claimant states that on May 15, 2015, he went through the police vetting exercise. On October 9, 2015, he received the decision of his vetting; being that he be removed from the National Police Service.
 4. The claimant states that his last station was the General Service Unit at Ruaraka Headquarters where he served as the Unit Communications Officer.
 5. The claimant takes issue with the delay in communication on the outcome of his appeal and application for review. He points out that he received the letter dated April 23, 2021 on August 3, 2021.
 6. The claimant states that during the vetting exercise, the vetting committee dealt with mainly one issue; being money deposited in his account, alleging that the claimant could not account for the sources of the money.
 7. He adds that during the vetting interview, he gave an account of the sources of the deposits in his account but points out that he had no prior information that he would be required to provide documentary evidence.
 8. The claimant accuses the vetting committee of failure to take into account his response to the allegations. He adds that the vetting committee did not accord him time to provide documentary evidence.
 9. The claimant claims to have supplied documentary evidence in his appeal. His case is that he was not afforded a fair hearing on appeal.
 10. The 1st respondent responded to the Claimant's application by way of a replying affidavit sworn by its Chief Executive Officer, Joseph Vincent Onyango on November 18, 2021.
 11. Onyango depones that the vetting of the claimant was conducted on May 18, 2015, in accordance with the National Police Service Act and the National Police Service (Vetting) Regulations, 2013.
 12. Onyango further depones that during the vetting, the claimant was asked questions within the standards of Vetting Regulations 13 and 14 and not just questions on the substantial deposits in his accounts, as alleged by the claimant. He points out that the vetting panel took the claimant to task



- on concealment of information by not declaring the transactions through which he had received the money, in his wealth declaration form.
13. Onyango avers that the claimant's explanation regarding the cash deposits in issue varied materially at the vetting and review proceedings. Further, the claimant is said to have declined to respond to the question whether he had remitted taxes on the business dealings to which he attributed the cash deposits.
 14. Onyango reiterates that the claimant had been duly notified to collect the results of his review.
 15. For the 2nd and 3rd respondents, a replying affidavit was sworn by Ibrahim Akhenda on December 4, 2021.
 16. Akhenda, who describes himself as a Senior Superintendent of Police working as a Staffing Officer with the 2nd respondent depones that sometime in May 2015, the claimant appeared before the vetting panel of the 1st respondent for evaluation of his suitability and competence in accordance with the [National Police Service \(Vetting\) Regulations, 2013](#).
 17. Akhenda states that even though the vetting exercise revealed that the claimant held the required educational qualifications, his financial probity and integrity was questionable as there were substantial deposits in his bank accounts which he could not account for. The claimant was thus found unfit to continue serving and was removed from service.
 18. The claimant is said to have appealed against the vetting decision by his letter dated October 23, 2015; his appeal was dismissed, with the Commission, vide its letter dated May 9, 2016 upholding its prior decision and confirming that the Claimant stood dismissed with effect from May 5, 2016.
 19. Akhenda further depones that following the decision, the Deputy Inspector General-Kenya Police Service, directed that the Claimant, among other officers, be traced and informed to collect their re-vetting results from the Director of Personnel-Police Headquarters by Friday, May 13, 2016 at 10.00 am. Contact is said to have been made with the claimant on May 12, 2016 with the claimant being notified accordingly via his mobile phone.
 20. Akhenda therefore denies the claimant's allegation that he was not notified of the outcome of his appeal until sometime in 2021.
 21. He accuses the claimant of deliberately refusing to collect his re-vetting results and continuing to serve even after he was instructed to hand over all government properties, moneys, records, arms and ammunition, among other items.
 22. It is further deponed that on April 30, 2021, the 3rd respondent wrote to the Deputy Inspector General-Kenya Police Service, seeking clarification on whether the claimant was still serving despite having been removed from service, as he was still occupying a government house.
 23. The Deputy Inspector General-Kenya Police Service responded by letter dated July 5, 2021, indicating that the claimant had been removed from service since the Commission had upheld its decision from the vetting process.
 24. Akhenda seeks to clarify that the letter directing the claimant to clear and vacate the government house he was occupying was erroneously dated April 23, 2021 instead of July 23, 2021.
 25. In reaction to the two replying affidavits filed by the Respondents, the claimant swore a further affidavit on 2nd March 2022, in which he denies having been called on his mobile phone to inform him of the decision on his appeal. He reiterates that he only learnt of the decision on August 3, 2021.



26. The claimant denies the accusation made by the respondents that he had deliberately failed and/or refused to collect the results of his review.
27. He further denies the allegation that he had concealed information by not declaring it in his wealth declaration form.
28. The claimant points out that he had been drawing his salary until July 2021, which would not have been the case if he had been removed from service in 2015, as alleged by the Respondents.
29. A supplementary affidavit was sworn on behalf of the 1st Respondent by Silas Oloo MC'Opiyo on July 14, 2022.
30. MC'Opiyo, who describes himself as the Acting Chief Executive Officer of the 1st respondent states that during the claimant's vetting, the vetting questionnaire listed the documents to be availed by all police officers undergoing the vetting process to include; completed Income and Liabilities Declaration Form, bank statements for all accounts (personal and business) for the last two years held by the officer, their spouse(s) and dependants below the age of 18 years as well as Tax Clearance Certificate.
31. On the face of his application, the claimant seeks interim conservatory orders. However, a reading of the pleadings filed by the parties reveals that what the claimant seeks is in fact a reinstatement. I say so because at paragraph 3 of the affidavit in support of his application, the claimant depones:

“That I have served the Kenya Police service in different stations, formations and ranks and my last station was at the General Service Unit at Ruaraka Headquarters where I served as the Unit Communication Officer at the rank of senior superintendent of Police (SSP).”
32. Further, among the prayers sought by the claimant in his claim is a mandatory injunction compelling the respondents to reinstate him to the Police Force in the position held prior to his removal.
33. By his own admission therefore, at the time he came to court, the claimant had been removed from service and was not deployed anywhere within the Police Force. The fact that the claimant continued to earn a salary, which itself is a matter meriting inquiry, did not alter this position. In the circumstances, the claimant's removal which is the act complained of having already occurred, no conservatory orders can issue.
34. As held by Rika J in *Alfred Nyungu Kimungui v Bomas of Kenya* [2013] eKLR reinstatement is a substantive remedy that can only be granted after a full trial and not at the interlocutory stage. In this case, the issues raised by the claimant with respect to the vetting and review process can only be addressed at the hearing of the main claim.
35. In the result, the claimant's application dated August 19, 2021 is disallowed with costs in the cause.
36. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF FEBRUARY 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Muia for the Claimant

Ms. Rwenji h/b Mr. Opiyo for the 1st Respondent



Mr. Mulili for the 2nd and 3rd Respondents

