



**Awiti v National Police Service Commission & 3 others (Petition E151 of 2021) [2022] KEELRC 3800 (KLR) (14 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3800 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E151 OF 2021  
NZIOKI WA MAKAU, J  
JUNE 14, 2022**

**IN THE MATTER OF: ARTICLES 2(4), 10, 19, 20, 21(1), 22, 23, 25, 27, 28, 29, 30, 35,40, 41(1) & 41(2), 43, 47, 48, 258 & 259(1) OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS ENSHRINED IN ARTICLES 27,28, 29, 30, 35, 40, 41, 43, 47 & 48 OF THE CONSTITUTION**

**IN THE MATTER OF: CONTRAVENTION OF SECTIONS 46 & 48 OF THE NATIONAL POLICE SERVICE ACT, 2011**

**IN THE MATTER OF: CONTRAVENTION OF SECTIONS 4 & 6 OF THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015**

**IN THE MATTER OF: CONTRAVENTION OF SECTIONS 4 OF THE ACCESS TO INFORMATION ACT, 2016**

**IN THE MATTER OF: CONTRAVENTION OF SECTIONS 17(10), 18, 26 & 45 OF THE EMPLOYMENT ACT, 2007**

**AND**

**IN THE MATTER OF: STOPPAGE/NON-PAYMENT OF SALARY AND UNLAWFUL/UNFAIR TERMINATION BY THE NATIONAL POLICE SERVICE COMMISSION TO PC. GEORGE OTIENO AWITI (SERVICE NUMBER XXXXX)**

**BETWEEN**

**GEORGE OTIENO AWITI ..... PETITIONER**

**AND**

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

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

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**



## JUDGMENT

1. This decision relates only to Petition No. E151 of 2021. By an amended Petition, the Petitioner herein asserts that he was at all material times is a serving police officer in the employ of the National Police Service Commission, the 1<sup>st</sup> Respondent, and is currently stationed at Rhamu North Sub-County of Mandera County, in the Directorate of Criminal Investigations, the 3<sup>rd</sup> Respondent. The Petitioner asserts that in his day-to-day duties he is under the control and command of the Inspector General of the National Police Service Commission, the 2<sup>nd</sup> Respondent and the Director of Criminal Investigations, the 3<sup>rd</sup> Respondent. He avers that on or about 22<sup>nd</sup> September 2021, he learnt that his payslip had not been made available contrary to the usual practice where his salary would be credited by the 21<sup>st</sup> day of the month and the payslip made available prior to or immediately after. The Petitioner avers that he has further learnt that his salary has had not been paid and upon making enquiries within the 3<sup>rd</sup> Respondent, he was informed that a decision has had been made by the Respondents to stop his salary. He asserts that at the time of the stoppage of salary, he was is in active service and diligently carrying out his duties in harsh hardship area and the decision to stop his salary, abruptly and without notice, amounts to a violation of his Constitutional Rights to fair labour practice, fair administrative action, and access to information among others. The Petitioner asserts he was is not under any disciplinary action or interdiction to warrant the abrupt and unconstitutional action of stopping his salary. The Petitioner asserts he has not been provided with any information in writing regarding the stoppage of his salary and was has not been subjected to any administrative or disciplinary procedure to warrant the stoppage and the action was is therefore a contravention of, among other laws, Article 47 of *the Constitution* on fair administrative action. He asserts that he moved the Court and immediately upon filing and serving the court summons upon the Respondents, the Petitioner was on 18<sup>th</sup> October 2021 served with a letter issued by the 1<sup>st</sup> Respondent informing him that he had been removed from the police service on the “grounds of public interest”. The Petitioner submits that he was not, prior to the termination of his employment, subjected to any disciplinary action or lawful process, and avers that his termination was unlawful, unfair and contrary to the constitutional provisions, the Employment Act, and the *National Police Service Act*, among other laws.
2. The Petitioner asserts that he proceeded to lodge an administrative appeal to the unlawful and unfair termination, vide his letter of 22<sup>nd</sup> October 2021, but the appeal has neither being heard nor concluded at all thus raising reasonable conclusion that the Respondents are not interested in the process and that they are not keen to grant the Petitioner fair administrative action. The Petitioner asserts that the action of the Respondents stopping the payment of the Petitioner’s salary as well as of unlawfully and unfairly terminating his employment has rendered him unable to meet his obligations of providing for care, food, housing, education, and healthcare to his family and has exposed him to destitution all without justification and in a manner violating his right to human dignity under *the Constitution*. He asserts that the only time he was subjected to disciplinary action, he was taken through a criminal trial and was acquitted on lack of evidence and subsequently reinstated into service, the said process having come to an end and could not have formed a reasonable basis for the impugned decision. The facts of that earlier acquittal are set out below.
  - a. On 18<sup>th</sup> April 2018, the Petitioner was arraigned before the Anti-Corruption Court at Nairobi in the said criminal case, accused of criminal solicitation and receipt of bribe contrary to section 6 of the Anti-Corruption and Economic Crimes Act; he pleaded not guilty to the charges and the matter was set down for trial on merit.



- b. Following the commencement of the criminal proceedings, the Petitioner was interdicted pending conclusion of the criminal case and directed to hand over the Government Kit and all items of official nature in his custody. It was a fact that the interdiction would remain in place until the criminal case was concluded.
  - c. The criminal case was tried and determined on merit, when the court made a favourable determination and found in the Petitioner's favour. The court dismissed all the charges against the Petitioner, and specifically found that:
    - a) There was no evidence of the Petitioner having solicited for a bribe as alleged;
    - b) There was no evidence that the Petitioner received a bribe or treated money as alleged;
    - c) The charges of corruption and violation of the law were not proved against the Petitioner.
  - d. In addition to the acquittal, the court recommended that the Petitioner together with six other officers be investigated for crimes of robbery with violence in relation to the facts of the above Anti-Corruption Case.
  - e. The investigations were done following the judgement and DCI Inquiry File Number 34/2021 (Serious Crime Unit) to establish whether the Petitioner and his co-officers had been involved in robbery with violence; the enquiry concluded that there was no facts or evidence to support charges of robbery with violence and recommended that the file be closed with no further police action.
3. Upon receipt of the judgement as well as the recommendations of the above Inquiry, the Director of Criminal Investigations issued the Petitioner with a Notice to Show Cause why he should not be removed from service. The Petitioner avers he promptly provided a reasoned response to the show cause letter and established that he had been subjected to a rigorous criminal trial and an internal investigation and found innocent of all accusations against him, and the letter to Show Cause was therefore not merited. The Petitioner avers he was therefore absolved of blame, and restored to service, with his interdiction lifted and his fully salary restored until the impugned decision was made. The Petitioner asserts that unless the Honourable Court intervenes without unreasonable delay, urgently, the Petitioner is at the verge of economic destitution and his family is already facing economic hardships as a result of the actions complained herein and he will be subjected to irreparable injury and to life of indignity contrary to the Constitutional provisions and rights.
4. The Petitioner asserts that by proceeding stealthily and even keeping the decision away from him for nearly two months, the entire action violated his Fair Administrative Actions rights and should not stand. The Petitioner asserts he only learnt of the decision to remove him from service on 18<sup>th</sup> October 2021, when in fact it was made on 9<sup>th</sup> August 2021. The Petitioner submits that had by letter dated 30<sup>th</sup> April 2021 demonstrated why he should not be removed from service. It is argued that as natural justice dictates and as required by the processes of fairness, the Petitioner expected that he would be granted a response to his said reply. Until this date, the Petitioner has not received any response or acknowledgment to his said letter and was therefore under legitimate expectation that the same had been accepted as sufficient and the matter had been concluded in his favour, due to the silence and the subsequent conduct of the Respondents. The Petitioner asserts the surprising turnaround decision to remove him from service offends the natural order of justice and his rights to fair labour practices as an employee.
5. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed a replying affidavit sworn by the Director of Personnel in the Directorate of Criminal Investigation Dr. Simon Mwangi Wanderi OGW, a Commissioner



of Police. He stated that the Petitioner had been interdicted as pleaded in the Petition and that due to the circumstances, gravity and nature of the offence, by letter Ref: NPS/IG/B/EST/1/14/1NOL.XXVII/46 dated 21<sup>st</sup> April, 2021 the Inspector General, National Police Service approved the lifting of his interdiction with effect from 18<sup>th</sup> April, 2018 and further directed that removal proceedings be instituted against the Petitioner with a view of removing the Applicant from National Police Service under public interest. He stated that the Petitioner was served with a show cause letter why he should not be removed from the National Police Service under public interest and that of the Service as per Para 52(e) Cap 30 Service Standing Order as read with Section 131(b) of the *National Police Service Act* 2011. In addition to which he was informed accordingly that he had a right to submit his representation in reply to this show cause letter within seven (7) days from the date of the receipt of the same, failure to which removal proceedings was to be instituted without further reference to him. He stated that a representation in reply to show cause letter was forwarded to Inspector General, National Police Service and that this representation was weak and lacking in substance hence the National Police Service Commission upheld the decision to remove him from the service as recommended by the Inspector General. He stated that the Petitioner later appealed against the decision to remove him from the service and the same was forwarded to Inspector General, National Police Service in December 2021. He stated that the outcome of his appeal is still at the Inspector General's office and the DCI is awaiting the appellate decision by the National Police Service Commission. He asserts that the stoppage of the Petitioner's salary was based on his removal from the service and as such he cannot draw any salary with effect from the date of his removal.

6. In response to the Petition, the 1<sup>st</sup> Respondent filed an affidavit sworn by Silas Oloo Mc'Opiyo the Acting Executive Officer of the 1<sup>st</sup> Respondent. He stated that the Petitioner though acquitted by the Anti-Corruption Court for the alleged solicitation of a bribe received a recommendation from the Court to investigate the Petitioner for the offence of robbery with violence which the Court found had been exhibited by the allegations in the matter before it. He stated that as a result of the investigations the Petitioner was interdicted and the inquiry undertaken was unable to obtain sufficient evidence to sustain the robbery with violence charge but a decision was taken to initiate a removal of the Petitioner from service in the public interest through the internal disciplinary process of the Respondent. He states the removal proceedings were conducted within the law and that the recommendation made was to the effect that the Petitioner be removed from the service. He states the removal did not amount to double jeopardy as this is founded in law and bolstered by the decision of the Court of Appeal in *Attorney General & Another v Andrew Maina Gitthinji & Another* [2016] eKLR. He stated that the 1<sup>st</sup> Respondent asserts this petition is premature as the Petitioner is yet to exhaust the internal mechanisms of appeal accorded to him by law. He further deponed that the Petition was malicious as the 1<sup>st</sup> Respondent has always acted in accordance with the law when executing its functions.
7. The parties filed extensive bundles of authorities and submissions but these are not for consideration as the sole issue the Court has distilled for determination is whether the matter is ripe for hearing and determination by this Court. From the Petitioner's own pleadings and the responses by the Respondents, it is clear there is an appeal pending determination by the Inspector General of Police in respect to the removal from service. A claim is "ripe" when the facts of the case have matured into an existing substantial controversy warranting judicial intervention. Under this doctrine of ripeness, it is premature for this Court to adjudicate on the merits or demerits of the Petitioner's removal from service. As such, the claim not being ripe the inevitable option is strike the Petition out with no order as to costs given the strict time lines granted for Petitions. The Petitioner will be at liberty to approach the Courts once the Appeal pending before the Inspector General is determined. As an obiter, it is imperative that the Inspector General is advised by the Court to ensure the determination



of the Appeal by the Petitioner is made with dispatch given the requirement of Section 4 of the Fair Administrative Actions Act and Article 47 of *the Constitution* of Kenya.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF JUNE 2022**

**NZIOKI WA MAKAU**

**JUDGE**

