



**Nyaga v National Police Service Commission & another (Petition  
130 of 2018) [2022] KEELRC 4004 (KLR) (18 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4004 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION 130 OF 2018  
AN MWAURE, J  
AUGUST 18, 2022**

**BETWEEN**

**LAWRENCE NJUE NYAGA ..... PETITIONER**

**AND**

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

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

**RULING**

1. The application here is filed by the applicant and is dated February 14, 2022 and it is for orders that:-
  - (a) Spent.
  - (b) The honourable court to cite and declare the 1<sup>st</sup> and 2<sup>nd</sup> respondent are in contempt of court for failing to comply with court orders issued on February 9, 2019.
  - (c) The honourable court to commit the 1<sup>st</sup> and 2<sup>nd</sup> respondent to a civil jail for contempt of court orders for a period of six(6) months and or until they purged the said contempt and comply with the said orders issued on February 9, 2019.
  - (d) The costs of this application be borne by the 1<sup>st</sup> and 2<sup>nd</sup> respondent.
  - (e) Any other remedies this honourable court would deem just and fit to grant in the circumstances.

**Facts of The Case**

2. The claimant/applicant sued the 1<sup>st</sup> and 2<sup>nd</sup> respondent and judgement was entered in his favour against the respondent.



3. The claimant/applicant thereafter sought to have orders executed through his former advocates on record and the same did not bear fruits.
4. He says since the issuance of the orders on February 8, 2019 the same have never been obeyed by the respondent.
5. The applicant says he was working as administrative police corporal from 2006 under No 200660634.
6. He says he was accused of committing some heinous crime and was sent to North Horr. He says that however before the deployment could take place he was subjected to disciplinary proceedings which were not conducted procedurally.
7. He was suspended on December 30, 2016 where he was informed would receive house allowance and medical allowance but no salary. He says he never received the above allowances. He says he raised complaints but was not acted on. Thereafter he filed suit and judgement was entered in his favour. Justice Radido ordered prayers a, b & c of his petition be granted and his suspension was lifted.
8. He says he was not awarded costs due to the long relationship between him and the respondent. He says he was never reinstated to his employment or given his dues. He says he wrote the respondent and got a response that he would be reinstated.
9. He says despite making efforts to follow up on his reinstatement and payment of his dues the same bore no fruits and hence this application.
10. The 2<sup>nd</sup> respondent in his replying affidavit depones an affidavit through Deputy Director human capital management in administrative police service Hesborn M Lusweti. The respondent's replying affidavit dated May 18, 2022 says the order of the court dated February 5, 2019 was served on the office of Inspector General on November 13, 2020 and forwarded to the Administration Police Service on December 1, 2020.
11. He says the office of Inspector General and the National Police Service Commission *vide* its letters reference NPS/IG/B/EST/1/14/1/VOL.XXXVI/49 and dated December 23, 2020 and December 20, 2020 respectively advised the administration police officer to comply with the order and avert cited contempt.
12. That pursuant to the advice the administration police service complied with the order by its letter dated April 19, 2021. The said letter was apparently forwarded to the applicant through his commanding officer commander Marsabit county and was advised to report to his former station North Horr sub-county to undergo biometric exercise and be deployed as appropriate – (letter dated April 19, 2021 herein before referred hereto).
13. The administration police service human resource department confirmed from Marsabit commander the letter was received but they could not trace the applicant. He says the applicant's salary will be reinstated once he reports to his station and hence 2<sup>nd</sup> respondent says he cannot be cited for contempt as they have complied with the court order and responsibility lay with the applicant to report to work.

### **Applicants submissions**

14. The applicant in his submissions depends on the case of *Samuel M. N. Umoria & Others vs National Land Commission & Others* [2020]eKLR which underlined importance of obeying court order. He says the respondents failed to heed to court orders and yet authorities provide court orders should be adhered to unless are discharged.



15. The applicant also prays that as per *Kenya Human Rights Commission vs The Attorney General & Another* [2018]eKLR the court has inherent powers to enforce its orders under articles 159 of the *constitution*. Article 159 provide that courts and tribunals exercise their authority on behalf of its people. The applicant prays therefore that since the respondents have failed to honor the court orders they should be cited for contempt.

### **Respondents Submission**

16. The 2<sup>nd</sup> respondent on the other hand in his submission says the applicant was asked by the 2<sup>nd</sup> respondent to report on duty and there is no evidence that he obeyed and reported to work. In the case of *Ben Nandasaba Muiyundo vs Ideal Security Services* [2018]eKLR the court decided that a claimant is under duty to prove that he reported back to work immediately he was reinstated.
17. In the case of *Peter K Yego & Others vs Pauline Wekesa Kode* Acc No 194 of 2014 the court stated that it must be proved that one actually disobeyed court order before he can be cited for contempt.

### **Decision**

18. In view of the order by this honourable court issued on November 4, 2019 which reinstated the applicant to his employment there is on record letters to demonstrate the respondents' were aware of the said court order. A letter dated December 17, 2020 from National Police Service Commission addressed to the Inspector General the Inspector General was advised to comply with the court order.
19. There is a letter dated April 19, 2021 by administration police service asking the applicant to report to his station in North Horr for deployment.
20. The applicant says he did not see that letter and in an interesting turn of events the commandant of Marsabit said they could not trace the applicant. This does not make sense that the police officer who are mandated with power to trace all kinds of people including criminals could not trace their own to serve him with a reinstatement letter. That I find unbelievable.
21. The applicant says he wrote another letter dated May 4, 2021 to the respondent but got no response. That is exactly why I am saying I find it unbelievable that the respondents could not trace the applicant. Either it was a deliberate omission not to serve him or somebody slept on his job.
22. Having said so I will consider that the respondents though very late in the day have demonstrated they are willing to reinstate the applicant. I will rely on the case of *Kiatsuri limited VS Kapurchand Depar Shah* [2016]eKLR where court held that such an order ought to be granted in the clearest circumstances. The case of *Ben Nandasaba Muiyundo vs Ideal Security Services Limited* [2018]eKLR the court stated that a claimant is under a duty to prove that he reported back to work once he was reinstated.
23. The court will record that it is displeased with the delay by the respondents to obey the court orders as per decree issued on November 4, 2019. That delay is unacceptable. Nevertheless, the respondents will not be cited for contempt of court but are both ordered to reinstate the applicant to his former employment within 30 days from today's date and process all his dues from the date he was suspended from employment December 30, 2016 upto the date of payment failure of which both respondents' will be guilty of contempt and will be committed to civil jail for one month each.
24. Each party will bear their own costs.
25. Orders accordingly.



**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 18TH AUGUST, 2022**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**ANNA NGIBUINI MWAURE**

**JUDGE**

