



**Odhiambo & 4 others v National Police Service Commission & 3 others (Petition E197 of 2022) [2022] KEELRC 13579 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13579 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E197 OF 2022  
B ONGAYA, J  
DECEMBER 20, 2022**

**BETWEEN**

**BOB ONYANGO ODHIAMBO ..... 1<sup>ST</sup> PETITIONER  
PAULINE NJERI NGENDO ..... 2<sup>ND</sup> PETITIONER  
TIMOTHY TIETIE ..... 3<sup>RD</sup> PETITIONER  
HENRY MUGUNA MUGAMBI ..... 4<sup>TH</sup> PETITIONER  
EMMA CHEPKEMBOI SIGILAI ..... 5<sup>TH</sup> PETITIONER**

**AND**

**NATIONAL POLICE SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT  
INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT  
CABINET SECRETARY, MINISTRY OF INTERIOR ..... 3<sup>RD</sup> RESPONDENT  
HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The petitioners filed an application on November 17, 2022 by way of a notice of motion and through Musyoka Mrambi & Associates Advocates. It was brought under articles 3, 10, 19(1), 20, 22, 23, 27, 41, 43, 47, 159, 162, 246, 249, 258, and 259 of the Constitution of Kenya, 2010, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and other enabling provisions of the law. The petitioners prayed for orders:
  - a. .... (spent).
  - b. .... (spent).



- c. That pending the hearing and determination of the petition, the 1<sup>st</sup> and 2<sup>nd</sup> respondents, their agents, employees, nominees, assigns, agents or any other persons or authority connected therewith be restrained by a temporary injunction from receiving, accommodating and or in way whatsoever executing the directions of the 2<sup>nd</sup> respondent's letter dated November 15, 2022 directing one thousand and forty-eight (1048) graduate Police Constables who were shortlisted to undertake the Special Soip Graduate Course commencing on Friday 1 November 8, 2022.
    - d. That costs of the application be provided for.
  2. The application is based on the grounds that the 2<sup>nd</sup> respondent has on November 15, 2022 submitted 1048 officers for training without approval of the 1<sup>st</sup> respondent as prescribed under the National Police Service Standing Orders. Further, some officers shortlisted for training are deceased, already in the rank of inspector of Police for which the training is to qualify the officers for promotion, some are on peace keeping missions and unable to attend, others left service, and others are pregnant, or subject to medical procedures hence unable to attend. Further, the training selection is based upon favouritism and 3, 739 eligible officers have been left out of the training. It is therefore just that the orders are granted.
  3. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed the replying affidavit of Benjamin Mwathi, Commissioner of Police and being Head of Staff Officer Human Capital Development 1 (SO HCD1) and through learned Chief State Counsel, Oscar M. Eredi for Attorney General. The application is opposed upon the following grounds. Based on the time of enlistment, police officers are bound by the terms and conditions of service. Article 244 of the Constitution mandates the 2<sup>nd</sup> respondent to train staff to the highest standards of competence and integrity for, highest professionalism and discipline. The petitioners have not shown by evidence that the persons going for training by circular of November 15, 2022 are deceased, selected based on favouritism, or ghost officers as alleged. The 1048 officers commenced training on November 18, 2022. The petition and the application is premature because the petitioners have not exhausted section 10(1) (k) of the National Police Service Commission Act by appealing to the 1<sup>st</sup> respondent. The petitioners do not fall under the category due for training and they know as much. Further, the application has been overtaken by events because the 1048 officers have already commenced the training.
  4. The 1<sup>st</sup> respondent opposed the application by filing the replying affidavit of Silas Oloo MC'Opiyo, the Chief Executive Officer and Secretary. The affidavit states that the training of the 1048 Police Officers in issue commenced on November 18, 2022 and their shortlisting was based on the decision given on September 29, 2022 in Nairobi ELRC Petition No. 41 of 2021 John Kariuki & Another Vs. IG, NPSC & AG consolidated with Nairobi ELRC JR No. E032 of 2021 Ayub Gikonyo & 2 others vs. IG, NPSC and AG finding that reduction of the salaries payable to the officers was unconstitutional and be reinstated. The petitioners were not parties to the suits and they were not earning salaries for Job Group J as was for the officers in the decided cases. The application should therefore fail.
  5. The parties' respective counsel made oral submissions on December 15, 2022. The common ground was that the training subject of the prayer for a temporary injunction had already commenced. The Court returns that the application is indeed overtaken and in such circumstances, there exists no established prima facie case with a likelihood of success. The Court further considers that the submissions for the respondents that training is a continuing process and that the internal appeal or other mechanisms have not been exhausted has not been rebutted by the petitioners. The parties should be at liberty to pursue such internal mechanisms towards resolving the dispute as may be appropriate. The Court has also considered that the applicants have not shown that they are in exact circumstance as the officers' subject of the impugned training. It could be that the applicants will have to provide



further evidence at the full hearing to establish the alleged unfair treatment or discrimination in that regard.

6. In conclusion the petitioners' application dated 17.11,2022 is hereby determined with orders:

- a. That the application is hereby dismissed with costs in the cause.
- b. That pending the hearing and determination of the main petition, the parties at liberty to invoke the prescribed internal mechanisms towards resolving the dispute and with a view of recording a consent as may be appropriate.
- c. Parties to take a date for further steps towards the expeditious disposal of the main petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS TUESDAY 20<sup>TH</sup> DECEMBER, 2022**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

