



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 142 OF 2017**

**PHILIP THEURI.....CLAIMANT**

**VERSUS**

**NATIONAL POLICE SERVICE COMMISSION.....RESPONDENT**

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

**RULING**

1. On 4 March 2020, the Inspector General of Police filed a motion seeking an order that the Cause be dismissed for want of prosecution.
2. The primary grounds/reasons advanced in support of the application were that despite obtaining interim orders, the Claimant had failed to take any steps to prosecute the Cause from 28 November 2017 and therefore there had been an inordinate delay and that the Respondents stood to be prejudiced by the delayed prosecution of the Cause.
3. When the application was placed before the Court on 12 May 2020, it directed the parties to file and exchange responses and submissions.
4. The Claimant filed his replying affidavit on 15 June 2020 (should have been filed and served before 9 June 2020).
5. The Respondents filed their submissions electronically on 18 June 2020 (should have been filed/served before 26 May 2020).
6. The Court has considered the material on record.
7. The Claimant, a Police Officer, secured an order restraining the Respondents from deploying him to a Police Station within Taita Taveta on 27 January 2017.
8. On 28 March 2017, the parties requested the Court to allow them to attempt out of court settlement, but there is nothing on record to show what happened to the negotiations.
9. It is not in doubt that the Claimant has been enjoying an injunctive order for over 3 years.
10. In terms of Order 40 Rule 6 of the Civil Procedure Rules, such an injunction automatically lapses after 1 year, unless the Court determines otherwise.
11. The Claimant has not moved the Court to give any directions on the extension of the injunctive order after the lapse of the 1 year. He has also not taken any steps to prosecute the Cause. He has been indolent.
12. The Court is, of course, aware as should the parties, that suits filed in 2017 have not been scheduled for hearing due resource constraints. But that should not excuse the indolence on the part of the Claimant.
13. In lieu of dismissing the Cause, the Court will discharge the injunctive orders given on 27 January 2017 and extended on 18 October 2017.
14. Costs in the cause.

**Delivered through Microsoft teams/email, dated and signed in Nairobi on this 19<sup>th</sup> day of June 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Wokabi Mathenge & Co. Advocates

For 1<sup>st</sup> Respondent Paul Ojwang, Litigation Counsel, National Police Service Commission

For 2<sup>nd</sup> Respondent Wangeci Gichangi, Senior State Counsel, Office of the Attorney General

Court Assistant Judy Maina