



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION 12 OF 2016 & PETITION 17 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 18th September 2019)

LAWRENCE MWAURA NJOROGE.....PETITIONER

VERSUS

THE NATIONAL POLICE SERVICE COMMISSION....RESPONDENT

RULING

1. The Applicant/Petitioner, Lawrence Mwaura Njoroge filed a Notice of Motion application dated 7th March 2019 for orders that this Honourable Court be pleased to stay its orders in paragraph 48 of its Judgment delivered 11th February 2019 and further review and set aside the orders in the said paragraph. He also seeks for the prayers sought in the Amended Petition dated 8th June 2018 to be granted and that the costs of this Application be provided.
2. The Application is based on the grounds that after judgment was delivered, the Applicant moved the court for the interpretation of paragraph 48 of the Judgment. That when the application dated 18th February 2019 came up for hearing on 27th February 2019, the Court informed the parties that it arrived at that decision since it was over 3 years and it could not issue an order for reinstatement.
3. That the parties had entered into a consent on 6th June 2018 for the Respondent not to remove the Applicant from its service pending the hearing and determination of the amended Petition. That from this consent, it is clear that the Applicant was still in employment and the reason for the Court not to grant the prayers sought in the Amended Petition is an error on the face of the record because the issue of 3 years only arises when a party is not in employment and seeks reinstatement. That this error requires review and to be set aside and that this Application is merited, brought in good faith and within reasonable time after seeking interpretation.
4. The Applicant also filed a Supporting Affidavit dated 7th March 2019 where he avers that this court has jurisdiction to hear and determine the issue of the error on the face of the record. He annexes documents marked **LMN 1** in support of his Application and avers that no prejudice will be occasioned to the Respondent as the Honourable Court has already determined at paragraph 47 that the Respondent's decision to declare the Applicant unfit is null and void.
5. The Respondent, National Police Service Commission filed its Grounds of Opposition dated 3rd April 2019 opposing the Application herein on the grounds that:
 - a) *The entire application as framed is evidently misconceived.*
 - b) *The Application is brought in bad faith and is clearly an abuse of the court process.*
 - c) *It is only just and fair that the Application be dismissed with costs to the Respondent.*
6. The Applicant submits that he seeks for orders 3, 4 and 5 in his Application since 1 and 2 have been dispensed with and that he has annexed the consent order to the application to prove the abovementioned on the face of the record. That the Respondent having not filed an affidavit means that the facts he raised are admitted and that what he needs to address the Court on are the points of the law. He prays for the application to be allowed.
7. The Respondent never filed its submissions.
8. I have examined all the averments before me. I note that indeed on 6th June 2018 the parties herein entered a consent before this Court and

agreed not to remove the Applicant from the services of the Respondent pending hearing and determination of the Petition.

9. It was therefore an error on the part of this Court to assume that the Petitioner had already been terminated at the point of delivery of the judgment on 11th February 2019. It is based on this understanding that I made an order that the Petitioner be considered to have served in the police service and be retired accordingly in the normal course of service with effect from the date of the judgment.

10. Given that obvious error, I review my judgment at paragraph 48 and substitute with a finding that the Petitioner continues to serve in the National Police Service until he reaches his retirement age or unless removed lawfully for any other reason.

11. Costs to the Petitioner.

Dated and delivered in open Court this 18th day of September, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Oduor for Petitioner – Present

Respondent – Absent