



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MALINDI**

**PETITION NUMBER 1 OF 2018**

**IN THE MATTER OF: ARTICLE 22, 23, 15, 59 AND 249 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: AN ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS UNDER ARTICLE 47 (1) & 50 OF THE CONSTITUTION.**

**AND**

**IN THE MATTER OF: SECTIONS 6 & 12 OF THE FAIR ADMINISTRATIVE ACTION ACT OF 2015.**

**AND**

**IN THE MATTER OF THE NATIONAL POLICE SERVICE ACT & NATIONAL POLICE SERVICE COMMISSION ACT**

**BETWEEN**

**SAMSON RAGIRA NYAMWEYA.....PETITIONER**

**VERSUS**

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

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

Rika J

Court Assistant: Benjamin Kombe

Richard O. & Company Advocates for the Petitioner

Attorney General for the Respondents

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**JUDGMENT**

1. In this Petition filed on 5<sup>th</sup> December 2018, the Petitioner states he was employed by the 1<sup>st</sup> Respondent as a Police Constable.
2. His force number was 65954, and payroll number 19\*\*\*\*\*. He was last posted to Kilifi Police Station, where he served as a Police Officer, until 6<sup>th</sup> December 2016.
3. His service was discontinued after he was vetted by the Vetting Board on 2<sup>nd</sup> June 2016. It was alleged that there were suspicious m-pesa transactions, involving the Petitioner and his Senior Officers. His service was discontinued on two main grounds – suspicious m-pesa transactions and lack of financial probity.

4. The Petitioner argues the Panel which vetted him was not properly constituted; his seniors who allegedly received money from him were vetted and absolved of any offence; he was denied adequate facility to conduct his defence; and consequently, his constitutional rights and freedoms were violated.

5. He prays the Court to grant the Petition on the following terms:-

- a. Declaration that the decision of the Commission of the 6<sup>th</sup> December 2016, which based its finding upon m-pesa transactions and financial probity without according the Petitioner a chance to call Witness was in violation of the Petitioner's constitutional rights and freedoms.
- b. An order of certiorari quashing the Commission's decision of the 6<sup>th</sup> December 2016, and reinstatement of the Petitioner to employment with immediate effect.
- c. An order for general damages and special damages for all lost income.
- d. Costs of this Petition.
- e. Interest.

6. The Respondents have not filed any reply to the Petition. Directions issued on 26<sup>th</sup> February 2019. The Petitioner undertook to give oral evidence. Hearing was scheduled for 26<sup>th</sup> June 2019. There is a Hearing Notice on record, indicating to have been served upon the Respondents. There was no appearance on the part of the Respondents.

7. The Petitioner's Counsel appeared. The Petitioner however, did not appear and give oral evidence, as was directed on 26<sup>th</sup> February 2019.

8. His Counsel told the Court that the Petitioner wished to adopt his Petition, his statement and affidavit on record. He undertook to file Submissions, to underscore his Petition, within 7 days of 26<sup>th</sup> June 2019.

9. No Submissions have been placed on record, at the time of writing this Judgment, in late July 2019.

**The Court Finds:-**

10. The Petition is quite sketchy. The Petitioner seeks the primary remedy of reinstatement, to the National Police Service. He alleges serious violation of his fundamental rights, under the Constitution of Kenya.

11. He has not filed with his Petition, any employment documents. There is not a solitary document, showing he was employed as a Police Officer by the 1<sup>st</sup> Respondent.

12. We do not have the instrument by which he became a Police Officer. He has not supplied pay slips. He has not provided the Court with vetting proceedings, or even the letter which communicated to him the outcome. He complains that he was damned, because of suspicious m-pesa transactions. He made no attempt to supply the Court with m-pesa statements, and persuade the Court that these transactions, were unfairly used in sending him home. He alleges he was denied a chance to call Witnesses. He has not named these Witnesses, or disclosed the nature of their evidence that would have aided his cause at vetting. He faults composition of the Panel which vetted him, without pointing out which laws or regulations were flouted.

13. The Petition, and Affidavits upon which the Petition is based, are insufficient to enable the Court grant the orders sought.

IN SUM, IT IS ORDERED:-

**a. The Petition is declined.**

**b. No order as the costs.**

**Dated and signed at Mombasa this 1<sup>st</sup> day of November 2019.**

**James Rika**

**Judge**