



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. 12 OF 2016**

(Before Hon. Justice Hellen S. Wasilwa on 8<sup>th</sup> March, 2018)

**LAWRENCE MWAURA NJOROGE.....APPLICANT/PETITIONER**

**-VERSUS-**

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

**RULING**

1. The Application before the Court is one dated 17.1.2017 brought under Rule 23(1) of the Constitution of Kenya Practice & Procedure Rules 2013 seeking for orders:

- 1. That this application be certified urgent and be heard ex-parte in the first instance.*
- 2. That there be a stay of removing the Applicant from the payroll and stay of the decision of the Respondent dated 16.11.2016 pending hearing and determination of this Application.*
- 3. That the Respondent be compelled to supply the Applicant with the minutes of its board meeting held on 6.12.2016.*
- 4. That the Applicant be granted leave to amend his Petition dated 5.2.2016.*
- 5. That there be a stay of removing the Applicant from the payroll and a stay of the decision of the Respondent dated 16.12.2016 pending hearing and determination of amended Petition.*
- 6. That pending the inter parties hearing and determination of this Application and the Amended Petition there be stay of removing the Applicant from National Police Service or his current posting or from withdrawing privileges, rights or benefits accruing to the Applicant.*
- 7. That the Honourable Court do grant any order it deems fit to grant for the interest of justice.*

2. The application is premised on the grounds:

- 1. That the Applicant is a Senior Superintendent of Police.*
- 2. That the Applicant attended vetting Review interview before the Respondent on 19.10.2016 and the Respondent by its decision dated 6.12.2016 found the Applicant had failed the vetting*

*Review and thus upholding its earlier decision of removing the Applicant from its service.*

**3. That the process of vetting Review of the Applicant was full of intimidation form the Respondent on the following grounds:**

*a) That the Applicant was being compelled to withdraw the Petition he had filed in Court, which the Applicant was only ready to withdraw if the Respondent paid the cost.*

*b) That despite the health condition of the Applicant which was within the knowledge of the Respondent the had to attend the Vetting Review which was full of intimidation in regard to his health.*

*c) That during the Vetting Review the Applicant was being compelled to provide documents and information which were beyond his reach and access.*

**4. That it was not fair for the Respondent to make the decision of 6.12.2016, as the same was biased and against the principles of equity.**

**5. That the Respondent violated the Constitutional rights of the Applicant by failing to grant the Applicant a fair hearing.**

**6. That unless the Orders sought are granted at the first instance the Applicant stands to be prejudiced and the Petition will be rendered nugatory.**

3. The Application is supported by the Petitioner's affidavit wherein he reiterates the grounds on the face of the Application and adds that he was vetted on 31.3.2015 and he responded to questions asked by the panel. That on 9.10.2015, the Respondent communicated to the Applicant that he had failed the vetting prompting him to file for a review, which was rejected by the Respondent only for the Respondent to agree to review the decision after the Applicant had moved to Court.

4. The Applicant further states that on the day of hearing the Review on 19.10.2015, he informed the Respondent of his medical condition as he had been involved in an accident but the Respondent would hear none of and the hearing proceeded. At the hearing, the Commissioners made fun of the Applicant's medical condition thereby intimidating him.

5. The Applicant is of the view that the vetting was biased and was with ill motive to remove him from the service on flimsy grounds that he could not supply bank statements of his wife which he did not have access to.

6. Further, the Petitioner/Applicant avers that he was never called for the hearing of his application for review but was served with a letter dated 25.1.2016 informing him that his appeal had been dismissed.

7. That the entire process of vetting was flawed and contrary to the principles of natural justice and as such the proceedings ought to be quashed.

8. The Respondents filed their replying affidavit on 31/3/2017. The affidavit was sworn by the Respondent's Chairman who stated that he was reiterating the averments in his replying affidavit dated 14<sup>th</sup> April 2016 and filed in Court on 2/11/2015 in response to the Petition.

9. He deponed that the Respondent took note of the decision in **JR No. 1 of 2016 Margaret Nyaruai Theuri vs National Police Service Commission, JR No. 36 of 2016, Daniel Chacha Chacha vs National Police Service Commission and JR No. 51 of 2016 Stephen Kiptanui Arap Soi** where the Court decided that the Commission consider the said officers review applications that were summarily rejected to come for the hearing of their review.

10. That in consideration of this the Respondent invited the Petitioner for review via letter dated

21.7.2016 for the review to be held during the first week of August 2016. That they also invited the Petitioner for the review hearing on 19/10/2016 following telephone conversation with a member of the Commission Secretariat after he informed the Commission that he was unwell.

11. They aver that the review application was heard on 19<sup>th</sup> October 2016 during which the Petitioner was asked several times if he had any objection on account of his ill health to which he replied he had no objection at all and was competent and willing to proceed with the hearing.

12. That after the review hearing, the Commission still found the Petitioner unfit to serve in the force. The Respondent depones that in considering the review, they were guided by Regulation 4(e) (g) with principles and standards of impartiality, natural justice and international best practice.

13. The Respondent aver that they considered the Petitioner's affidavit, records, conduct and performance throughout the service and found him unfit to serve because of financial probity in accordance with Regulation 14(c).

14. The Respondents want the application dismissed accordingly.

### **Submissions**

15. It is submitted on behalf of the Claimant that the Respondent's findings from the first vetting of the Applicant and the Review of the Vetting of the Applicant were not based on any investigations as required by Regulations 9 and 28 of the National Police Service (Vetting Regulations) 2013. The Regulations give the Respondent wide powers to carry out investigations and despite the Applicant pleading with the Respondent to carry out investigation and confirm that he was telling the truth.

16. Counsel for the Applicant urges that the first vetting was conducted by 2 Commissioners but the decision was signed by 6 Commissioners same as the Review Application which was heard by 2 Commissioners and the decision signed by 7 Commissioners. He also submits that the Applicant was not served with the recommendations of the Commissioners in the first vetting nor the review contrary to Regulations 18(2) and 34 of the National Police Service (Vetting Regulations) 2013. This is also contended to be contrary to Article 35 of the Constitution of Kenya 2010.

17. It is submitted that given that the whole process, vetting of the Applicant was flawed, the Court should so hold and allow the Application as prayed.

18. On behalf of the Respondent, it is submitted that vetting is a legal requirement under Section 7 of the National Police Service Act and founded in the Constitution of Kenya 2010. The purpose of this process is to ensure that all officers serving in the National Police Service comply with the requirements of Article 10, Article 232 and Chapter 6 of the Constitution.

19. Counsel for the Respondent submits that the Applicant was removed fairly and procedurally from service as guided by Regulation 14 of the Vetting Regulations, which requires the Commission to look at the entry criteria, past record, integrity, financial probity and human rights record of the officer. That the Petitioner herein was found unsuitable to continue to serve in the National Police Service on account of financial probity as he could not account for the sources of his frequent cash and cheque deposits in his bank account statements.

20. That in addition to the above the Respondent demonstrated fairness as they received an application for review which they duly considered as they are bound to do and the said review was dismissed. That at no point during the vetting process did the Petitioner/Applicant raise concern on the proceedings of the vetting.

21. As to constitution of the Vetting panel it is submitted that the under Regulation 10(1) of National Police Service (Vetting Regulations) 2013 and Section 10 the National Policer Service Commission Act, the Respondent is authorized to constitute such number of panels and comprising such persons as the

Commission shall determine in order to ensure expeditious disposal of matters. Further that the Commission is empowered to establish panels comprising of co-opted persons as it may deem necessary for the purposes of determining applications for review under Section 33. This it is submitted was buttressed in the case of **Immanuel Masinde Okutoyi & Others V National Police Service Commission & Another (2014) eKLR.**

22. It is submitted that the vetting panel as constituted was legal and that the Respondent has proved that it accorded the Applicant the utmost procedural fairness as contemplated in the Constitution and other guiding laws.

23. On violation of the Applicant's rights, it is submitted that the law is unequivocal that whoever alleges procedural unfairness must demonstrate clearly to the Court the instances or elements of unfairness and breaches of the law. That a general quoting of the constitutional provisions and the statutory law without proof should not suffice as was held in the case of **Anarita Karimi Njeru vs The Republic (1976-1980) KLR 172.**

24. That Regulation 18 of the National Police Service (Vetting Regulations) 2013 mandates the Respondent to supply a summary of the complaint where there is a complaint or any adverse information received by the Commission against an officer including any relevant information received. It is submitted that the Applicant was not denied any such information because the Applicant did supply bank statements, which had a discrepancy forming the basis of his complaint herein.

25. That the Applicant is not entitled to any of the prayers sought and as such seeks for the Application to be dismissed with costs.

26. I have examined the averments of both parties. The main prayer by the Applicant is to stay the Respondent's decision to remove him from the pay role and also supply her with minutes of Respondent's Board meeting held on 6.12.2016. He also seeks stay of the Respondent's decision dated 16.12.2016 removing him from the payroll pending the hearing and determination of the Amended Petition.

27. The Respondents opposed this application but they have submitted on matters concerning the main Petition. The application before me however is an interlocutory application, which seeks some interim relief.

28. In considering whether to grant the prayers sought or not, the Court is guided by the principles for granting interlocutory orders as enunciated in case law. 3 principles govern the grant of interlocutory injunction in **Giella vs Cassman Brown (1973) E.A 358.** These principles were set out as follows:-

***“the Applicant must establish a prima facie case with a probability of success at the trial, secondly, that an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and thirdly that if the court is in doubt, it will decide the application of convenience”.***

29. In determining this Application, I note that the main contention by the Applicant is that the vetting process was flawed and that he was not given an adequate opportunity to present his case.

30. This is a triable issue and if established then the Court would determine the matter for the benefit of the Applicant. This aspect cannot be established at this interlocutory stage without hearing the Applicant. Since I am unable to determine this aspect, I can only determine this application on a balance of probabilities.

31. The Applicant seeks to be allowed to amend his Petition. This in my view is an allowable prayer since no party should be denied the right to present his case. I allow that prayer.

32. On the prayers for removal from the pay roll being stayed, I note that there is nothing to stay as the Applicant has already been removed from the pay roll.

33. The Respondents want the application dismissed accordingly.

34. In the circumstances, I allow the application in part and direct that the Applicant/Petitioner to Amend his Petition. The other prayers are declined.

Dated and delivered in open Court this **8<sup>th</sup> day of March, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Parties