



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA AT NYERI

PETITION NO. 14 OF 2015

IN THE MATTER OF CHAPTER 4 OF THE BILL OF RIGHTS ARTICLES 1, 2, 3(1), 10, 19, 20, 21, 22, 23, 25, 27(1),(2) AND (3), 28, 41(1), 47(1), 48, 49, 50(1),(2)(a) AND (o), 159(2)(d), 258, 162 & 246(1), (2) & (3) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE EMPLOYMENT ACT

AND

IN THE MATTER OF THE NATIONAL POLICE SERVICE ACT, 2011

AND

IN THE MATTER OF THE FORCE STANDING ORDERS UNDER THE POLICE ACT CAP 84 LAWS OF KENYA

AND

IN THE MATTER OF DISCIPLINARY/ORDERLY ROOM PROCEEDINGS

AND

IN THE MATTER OF THE REMOVAL FROM THE POLICE SERVICE

(FORMERLY POLICE FORCE)

BETWEEN

POLICE CONSTABLE HENRY NYAKOE OBUBA.....PETITIONER/APPLICANT

VERSUS

NATIONAL POLICE SERVICE COMMISSION.....1ST RESPONDENT

INSP. GENERAL NATIONAL POLICE SERVICE.....2ND RESPONDENT

DEPUTY INSP. GENERAL NATIONAL POLICE SERVICE.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. The Petitioner/Applicant filed the application seeking review of the Judgment of the Court given by Ongaya J. in May 2016. The application is supported by the Petitioner’s affidavit sworn on 30th May 2018. In the suit before my brother, the Petitioner sought reinstatement and the Court granted reinstatement to take effect within 10 days of Judgment. The Petitioner also obtained relief in the form of an order awarding the Petitioner Kshs. 3,000,000/= as compensation for constitutional violations of the Petitioner’s rights. In the decree extracted and the order on the file, this award is indicated as an alternative to reinstatement granted in the preceding order. The couching of the prayer in the alternative is what prompted the review now sought. Pointedly, it is common ground that there is an appeal preferred by the Respondent herein to the Court of Appeal. Orders of stay were granted pending the hearing of the Appeal. Given the fact that the review

sought relates to a matter before the Court of Appeal and is on grounds that are going to be ventilated in that Court, the Petitioner's request for a review cannot fly. Under the Employment and Labour Relations Court (Procedure) Rules, 2016 Rule 33 provides as follows:-

33. (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling...

2. An appeal has been preferred and this Court has no jurisdiction to entertain any review. It would be a waste of judicial time to consider the motion beyond this point. The Review application is dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Nyeri this 21st day of September 2018

Nzioki wa Makau

JUDGE