



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

PETITION NO. 66 OF 2015

P.C. SAMWEL NJEGA

SGT PETER BARASA MACHI

CPL JACKSON KISOI

CPL FRANCIS OKUNGU

CPL (W) MARGARET KERUBO

CPL (W) RUTH NDINDA

CPL CHRISPINE ODHIAMBO OWUOR

PC JOHN BOSCO KYALO

PC SULEIMAN OMARI

PC MARTIN KIMARU

HUSSEIN GUYO

ALEX ORINA

PC EVANS MARANGA

PC DAVID MURUGU KANYUA

PC DAVID NDERITU

PC/W/D SUSAN KIGONYE

PC JOSHUA MWAKA

PC (R) ELKANA MWERI MURE

PC (R) KITUR KIPLANG'AT

PC (R) JULIUS WAMWEA MURIUKI

PC (W) ROSELYN KAWIRA

PC (W) JACKLINE OBONYO.....PETITIONERS/APPLICANTS

VERSUS

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

THE NATIONAL POLICE SERVICE COMMISSION.....2ND RESPONDENT

RULING ON PRELIMINARY OBJECTION

1. The 2nd respondent filed a preliminary objection to the petition filed on 4th August 2015 by 22 petitioners / applicants, being traffic police officers stationed at Kabete Police Station.
2. The petitioners seek to stop their deployment and transfer to various other stations within the Republic of Kenya by the Inspector General of Police (1st respondent) and the National Police Service Commission (2nd respondent).
3. The petitioners were transferred vide a police signal dated 30th July 2015.
4. They allege the transfers were arbitrary and without following established procedure. That same were triggered by other extraneous considerations and 2nd respondent did not participate in their transfer. The petitioners were required to report to their new postings on 7th August 2015. That it is the 2nd respondent who has the authority to transfer and not the 1st respondent.
5. That if temporary orders are not granted the suit will be rendered nugatory. Interim orders were not granted at the *ex parte* stage.

Determination

6. It has been demonstrated by the respondents that the issue in dispute in this petition was the subject of **Employment and Labour Relations Court, at Nairobi, Petition No. 10 of 2015**. Following that suit, the transfers were rescinded on 18th March 2015 and the suit was withdrawn before Justice Nzioki wa Makau on 20th April 2015 the grievances of the petitioners having been addressed.
7. That the petitioners did not disclose these material facts to the court in the papers filed. However, going by the submissions by the respondents, Petition No. 10 of 2015, was withdrawn by the petitioners and not heard and determined and therefore the plea of *resjudicata* does not arise at all.
8. The authorities cited by the respondents are not on point.
9. The preliminary objection is not upheld with the result that the petition may proceed to hearing on merits.

Dated and Delivered at Nairobi this 5th day of February 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE