



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 403 OF 2014**

**GEOFFREY RONO**

**CLAIMANT**

**V**

**NAKURU COUNTY AP COMMANDER**

**1<sup>ST</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE**

**2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL**

**3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Geoffrey Rono (Claimant) commenced legal proceedings against the Respondents on 8 September 2014 alleging *unlawful dismissal* and seeking a declaration to the effect that the dismissal was wrongful and in breach of the law and other remedies.
2. The Respondents filed a Joint Response on 16 October 2014 and on 28 May 2015, the Cause was fixed for hearing on 19 November 2015. Present when the hearing date was fixed were Ms. Kibiriu for the Claimant and Mr. Kirui holding brief for Mr. Mbaka for the Respondents.
3. When the Cause was called out for hearing, the Respondents were not in attendance and neither were they represented.
4. The Court allowed the hearing to proceed and reserved judgment to 18 March 2016.
5. However, before the judgment could be delivered, the Respondents moved Court through a certificate of urgency on 10 March 2016 seeking to arrest the judgment and to be granted leave to defend.
6. In a ruling delivered on 23 September 2016, the Court allowed the hearing to be reopened on certain conditions which included the Respondents filing and serving witness statements before 30 September 2016.
7. The Respondents did not comply and the Claimant, through a letter dated 5 October 2016 addressed to the Deputy Registrar and copied and acknowledged by the Respondents sought to have directions given as to the judgment.
8. The record shows that by 5 October 2016, the Respondents had not complied with the conditions and therefore the Court directed that it would deliver a judgment today.

9. In an unprecedented move unknown in practice or procedure, the Respondents purported to file a witness statement and documents sought to be relied on 6 October 2016, and submissions on 20 October 2016 (without leave considering the directions on 6 October 2016).

10. The Court has considered the pleadings, evidence and submissions and identified the issues for determination as, *whether the dismissal of the Claimant was unlawful and if so, appropriate remedies.*

### **Whether dismissal was unlawful**

11. The Claimant was appointed as an Administration Police Constable on 2 March 2005 and was posted to Isiolo, Laikipia and Kakamega.

12. According to the Claimant, he was dismissed through a letter dated 21 December 2010 before, and or without a hearing.

13. However, after an appeal, the Claimant asserted that he was reinstated through a letter dated 23 November 2012, and was taken for retraining and after which retraining he was posted to Nakuru through a letter dated 4 June 2013.

14. On reporting to Nakuru, the Claimant stated that he was assigned on guarding duties within Nakuru (banks and the District Commissioners office), but without payment of wages.

15. As a result, the Claimant stated that he lodged complaints with the County Administration Police Commander, but instead of getting the wages, he was sent on a disarmament assignment to Baringo 10 October 2013, where he served until 23 December 2013.

16. But come 24 December 2013, the County Administration Police Commander dismissed him after the morning parade and no reasons were given.

17. The Claimant's testimony was not challenged or controverted as the Respondents failed to turn up for the hearing.

18. But the Respondents case as gleaned from the documentation filed is that the Claimant forged the letter dated 26 June 2013 purporting that he had been reinstated to work on condition he undergo training; that the Claimant's appeal/review against dismissal was rejected by the Public Service Commission and that a hearing was conducted before the dismissal.

### *Hearing*

19. Although the Claimant contended that he was not afforded a hearing before the dismissal, there is material filed in Court to suggest that hearing/orderly room proceedings were conducted on 8 December 2010.

20. The Court watched the Claimant carefully during his testimony. He appeared to be withholding material information which was within his knowledge. For instance, he did not even bother to explain whether he made an appeal to the Public Service Commission after the dismissal or at the very least comment on the appeal letter purportedly authored by him.

21. But ultimately, Court's determine disputes on the basis of relevant material placed at their disposal.

22. In the present case, although the Claimant contended that he was not heard before the dismissal, there is material to show that a hearing was conducted in 2010.

23. The Court is therefore unable to find that the dismissal in 2010 was tainted with procedural irregularities.

### *Lawfulness of dismissal/validity*

24. The Employment Act, 2007 is not applicable to the members of the Administration Police Service, but Article 236 of the Constitution protects all public officers from disciplinary action without due process of the law.

25. Assuming that the Claimant forged letters reinstating him to the service, the Respondents ought to have followed due process and also preferred criminal charges against him, if there was merit to the allegations.

26. Or appeared in Court to demonstrate the forgery.

27. Regrettably, the Court finds that based on what was placed before it, the purported dismissal of the Claimant in 2014 was unlawful as the forgery was not proved.

### **Appropriate remedies**

#### ***Wages from 6 December 2010 to 24 April 2014***

28. The Claimant's testimony that he was not paid wages during the period being unchallenged, the Court finds for him as claimed.

#### ***Allowances***

29. The Claimant did not disclose the nature of the allowances sought except to contend that leave allowance was not paid from 2010.

30. If the allowances related to leave, the Claimant did not provide the contractual or legal basis for the same, as distinct from the entitlement to annual leave, and the Court declines to find for the Claimant under this head of relief.

#### ***Compensation***

31. The Employment Act, 2007 does not apply to the Claimant and therefore he cannot benefit from the compensatory remedy envisaged under section 49(1)(c) of the Employment Act, 2007.

32. The Claimant did not also lay any other contractual or legal foundation for the Kshs 297,060/- he sought as compensation. The relief is declined.

#### ***Income up to retirement***

33. Similarly no contractual or legal basis for this head of relief was disclosed. It is declined.

#### ***Reinstatement***

34. As an alternative to the lost prospective income, the Claimant sought reinstatement.

35. Reinstatement is a statutory remedy under the Employment Act, 2007.

36. The Claimant did not outline whether he was pursuing reinstatement under contract or the common law. But considering the nature of the duties he was carrying, the Court is of the view that reinstatement, in any case, would not be an appropriate remedy.

37. Before concluding, the Court observes that in the context of the current constitutional dispensation and national values, public officers who have the responsibility for protection of the public interest but do not bother to protect that interest in litigation may attract individual and or personal sanctions.

38. The behavior of the public officials involved in this case (and or the Respondents) leaves a lot to be desired.

39. Such persons should not leave the office of the Attorney General to carry the burdens of defending the public interest without proper instructions, as the Attorney General is but just their legal mouthpiece.

### **Conclusion and Orders**

40. From the foregoing, the Court finds and holds that the dismissal of the Claimant was unlawful and awards him and orders the Respondents to pay him

a. Wages 2010 to 2014 **Kshs 1,014,955/-**

41. All other heads of relief are dismissed.

42. The Claimant to have costs.

**Delivered, dated and signed in Nakuru on this 11<sup>th</sup> day of November 2016.**

**Radido Stephen**

**Judge**

### **Appearances**

For Claimant Mr. Kanyi instructed by Kanyi Nguni & Co. Advocates

For Respondents Mr. Nguni Wachira, Senior Litigation Counsel, Office of the Hon. Attorney General

Court Assistant Nixon