



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**PETITION NO. 18 OF 2016**

**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),258,162 &  
246(1), (2) & (3) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT 2007**

**AND**

**IN THE MATTER OF NATIONAL POLICE SERVICE ACT, 2011**

**AND**

**IN THE MATTER OF 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 DISMISSAL FROM THE NATIONAL POLICE SERVICE (FORMERLY  
POLICE FORCE)**

**BETWEEN**

**CORPORAL ANDREW ARISA**

**PETITIONER**

**v**

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

**INSPECTOR GENERAL NATIONAL**

**POLICE SERVICE**

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

**DEPUTY INSPECTOR GENERAL, KENYA**

RULING

1. The Petitioner was dismissed from the Police on 4 October 2008 after which he appealed internally against the dismissal. The appeal was also dismissed on 16 December 2011.
2. The dismissal of the appeal did not deter the Petitioner for he made a further appeal on 15 January 2013 which the Respondents acknowledged and told him to wait for a response which was not forthcoming forcing him to move to Court.
3. In Court, the Petitioner alleges that his dismissal was unconstitutional, unfair and illegal.
4. The Petitioner filed together with the Petition a motion under certificate of urgency seeking
  1. ....
  2. *THAT the Honourable Court be pleased to issue interim conservatory orders against the respondents either by themselves and or their agents, servants and or any other officer acting under their command to stay any further dismissal proceedings and or approval and or confirmation of dismissal dated 4<sup>th</sup> October 2008 based on purported orderly room proceedings 4<sup>th</sup> October 2008 and or terminating the petitioners employment with the first respondent commission pending hearing and determination of this application.*
  3. *THAT the Honourable Court be pleased to issue interim conservatory orders against the respondents either by themselves and or their agents, servants and or any other officer acting under their command to stay any further dismissal proceedings and or approval and or confirmation of dismissal dated 4<sup>th</sup> October 2008 based on purported orderly room proceedings 4<sup>th</sup> October 2008 and or terminating the petitioners employment with the first respondent commission pending hearing and determination of this Petition.*
  4. *THAT the Honourable court be pleased to issue an order reinstating the Petitioner to his position in employment and payment of his salary and allowances from 4<sup>th</sup> October 2008 to date amounting to Kshs 5,347,200/- pending hearing and determination of this petition.*
  5. *THAT such further and other relief be granted to the applicant as this court deems fit.*
  6. *THAT cost of the application be borne by the respondents.*
5. The Respondents, represented by the Honourable Attorney General filed Grounds of Opposition to the application on 22 September 2016, and the motion was urged the same day.
6. The Court has given due consideration to the material placed before it and has come to the conclusion that none of the orders sought are merited.
7. For one, reinstatement is generally a final remedy after a hearing on the merits and therefore cannot issue in this case at the interlocutory stage.
8. Two, the employment relationship sought to be conserved was brought to an end more than 8 years ago and therefore, it would not be legally prudent to reverse the wheel through an interlocutory motion.
9. Lastly, the unconstitutionality or unfairness of the dismissal ought to be determined after hearing the positions advanced by both the Petitioner and Respondents at the hearing of the Petition on the merits.

10. The Court therefore declines to exercise its discretion in favour of the Petitioner and dismisses the motion filed in Court on 15 April 2016 with costs to the Respondents.

**Delivered, dated and signed in Nakuru on this 2<sup>nd</sup> day of November 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner

Mr. Mageto instructed by M’Njau & Mageto Advocates

For Respondents

Mr. Kirui, Litigation Counsel, Office of the Attorney General

Court Assistant

Nixon