



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

JUDICIAL REVIEW CAUSE NO. 5 OF 2016

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW
FOR ORDERS OF CERTIORARI**

AND

**IN THE MATTER OF THE NATIONAL POLICE SERVICE COMMISSION ACT NO. 30 OF
2011**

AND

**IN THE MATTER OF THE NATIONAL POLICE SERVICE COMMISSION (PROMOTIONS)
REGULATIONS, 2015**

AND

**IN THE MATTER OF ORDERLY ROOM DISCIPLINE OF CHARLES KAHINDI MWANGO
(CPL) NO. 71450 P.C**

AND

IN THE MATTER OF AN APPLICATION BY:-

CHARLES KAHINDI MWANGO

CLAIMANT/APPLICANT

v

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

PETER LIMO (PRESIDING OFFICER) ORDERLY

ROOM DISCIPLINARY COMMITTEE 2ND RESPONDENT

JUDGMENT

1. Corporal Charles Kahindi Mwango (applicant) was convicted after an orderly room proceeding for the offence of *being negligent in the performance of his duty contrary to section 88(2) Eighth Schedule 1(t) of the National Police Service Act, 2011 and was fined Kshs 2,000/-*.

2. Being aggrieved the applicant sought and got leave to commence judicial review proceedings on 22 March 2016.

3. The applicant filed a substantive motion on 30 March 2016 and when the motion came up for hearing on 5 May 2016, the Respondents sought for more time to file responses.
4. The Court granted the Respondents more time to respond to the motion and at the same time stayed the payment of the fine of Kshs 2,000/-.
5. The Respondents did not comply with the timelines for filing of responses and the Court extended the timelines severally (2nd Respondent did not file any response at all).
6. The applicant filed his submissions on 25 October 2016. Regrettably, the Respondents did not file submissions.
7. The Court has considered the material placed before it.

Natural justice

8. The applicant contends that the rules of natural justice were not observed by the Respondents during the orderly room proceedings in that there was no complainant, witness (ess) or judge during the proceedings. The authority of *Kenya Revenue Authority v Menginya Salim Mungani*, Civil Appeal No. 108 of 2009 was cited.
9. In the Court's view that assertion is baseless as the copies of the orderly room proceedings filed by the applicant himself indicate that the charge was read to him, witnesses were called and were cross examined in detail by the applicant and that the applicant and his witness also testified.

Internal processes not exhausted

10. The Respondents on their part maintained that the applicant had not exhausted the statutory mechanisms for dealing with disciplinary cases and offences by police officers.
11. The National Police Service Commission (Discipline) Regulations, 2015 have set out elaborate provisions for hearing of disciplinary cases and avenues of appeal in instances where an officer is not satisfied.
12. The applicant did not prefer any appeal or seek a review in terms of the Regulations.
13. The Court will therefore agree with the 1st Respondent that the applicant ought to have exhausted the statutory mechanisms set out in the National Police Service Commission (Discipline) Regulations, 2015 before rushing to Court.
14. In effect the Court finds that the instant judicial review application was not only premature but also unmerited and it is dismissed.
15. No order as to costs.

Delivered, dated and signed in Nakuru on this 9th December 2016.

Radido Stephen

Judge

Appearances

For applicant

Ms. Wachira instructed by Mongeri & Co. Advocates

For 1st Respondent

Mr. Odunga, Legal Officer, National Police Service Commission

For 2nd Respondent
filed)

Mr. Kirui, Litigation Counsel, Office of the Attorney General (no documents

Court Assistant

Nixon