



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 129 OF 2015

ELIZABETH GATHONI MURIMI **1ST CLAIMANT**

DAVID KIKENYII **2ND CLAIMANT**

v

THE DCIO NAKURU RAILWAYS POLICE STATION 1ST RESPONDENT

NATIONAL POLICE SERVICE **2ND RESPONDENT**

THE OCPD NAKURU RAILWAYS POLICE

STATION **3RD RESPONDENT**

DEPARTMENT OF PUBLIC PROSECUTION

NAKURU **4TH RESPONDENT**

JUDGMENT

1. Elizabeth Gathoni Murimi (1st Claimant) was appointed as a Police Constable with effect from 11 December 1999 while David Kikenyii (2nd Claimant) was also appointed on the same date. At the material time to this Cause, the 1st Claimant had risen to a Police Corporal.
2. Through letters dated 9 April 2015, Justina N. Nzivo, Officer Commanding Police Division (Railways) Nakuru informed the Claimants that they were being interdicted from duty because they were suspects in a case of stealing of goods on transit.
3. The OCPD stated in the interdiction letters that she was acting pursuant to Cap. 20 Paragraph 25(i) of the Service Standing Orders.
4. The Claimants felt aggrieved and on 5 May 2015, they jointly filed a Memorandum of Claim against the Respondents alleging that the suspension (*interdiction*) was unlawful and in breach of the Employment Act and other applicable statutes. The Claimants sought various declarations and orders.
5. Together with the Memorandum of Claim, the Claimants filed a motion under urgency seeking several temporary injunctive reliefs. Although the Court certified the motion urgent and directed that it be served for *inter partes* hearing, on 2 July 2015, the Court directed that the main Cause be heard on the merits.
6. In this regard, the 1st to 3rd Respondents filed a Joint Reply to Claim on 29 July 2015 and the Cause was heard on 30 July 2015. It is worth mentioning that attempts to resolve the dispute out of court did not succeed.

7. The Court has considered the pleadings, evidence and submissions and identified one main issue for determination. That issue is *whether the 3rd Respondent had the power or authority to interdict the Claimants.*
8. Because the issue is mainly legal, a narration of the testimonies is not necessary as the facts as outlined hereinabove are not in dispute.
9. The promulgation of the Constitution 2010 brought in a new legal architecture in the organisation of what used to be called the Kenya Police Force.
10. Under Article 246(1) and (3) of the Constitution, a National Police Service Commission was established and among the functions it was given were *observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service.*
11. And consequent upon the new legal architecture, Parliament enacted the National Police Service Act, 2014 (it was amended in 2015).
12. Part X of the National Police Service Act has provided for offences against discipline by Police Officers. Pursuant to Section 87 of the Act, a unit known as the Internal Affairs Unit has been given the function of investigating misconduct and complaints against Police Officers and thereafter making recommendations including interdiction of Police Officers.
13. It is apparent from the provisions of Article 246(3)(b) of the Constitution and section 87(6) of the National Police Service Act, that the power to interdict a Police Officer is reserved to the National Police Service Commission, which unfortunately was not made a party to these proceedings.
14. It was not suggested during the hearing that the National Police Service Commission had delegated to the 3rd Respondent or any other officer, the power to interdict the Claimants or any other junior police officers.
15. In their belated submissions filed in Court on 6 November 2015, the Respondents urged that the 3rd Respondent was an '*authorised officer*' for purposes of interdicting officers facing disciplinary investigations such as the Claimants.
16. And for the proposition, the Respondents cited Regulation 14(1) of the National Police Service Commission (Discipline) Regulations, 2015 gazetted as Legal Notice No. 90 of 2015.
17. The said Regulations were gazetted on 22 May 2015 long after the 3rd Respondent had purported to interdict the Claimants and it is doubtful whether she had such authority.
18. I say so because the Respondents did also not draw my attention to the particular regulation or statute generally designating certain rank of officers as '*authorised officers*' for purposes of interdicting officers facing disciplinary investigations.
19. The delegation as suggested could be a general delegation expressed in a statutory instrument or specific delegation to a named officer as an *authorised officer.*
20. Although I did not hear addresses from the parties, it also appears that there are inconsistencies between the statutory role given to the Internal Affairs Unit to recommend interdiction of officers facing disciplinary action (section 87(6) of the National Police Service Act), and the role of '*authorised officers*' arising out of the Regulations. But that discussion should wait an appropriate case.
21. In the present case, there is no iota of evidence that the Internal Affairs Unit recommended the interdiction of the Claimants. Such a recommendation would have been a *sine qua non* for the Commission itself or any of its delegates to purport to exercise the power to interdict.
22. Therefore in so far as the 3rd Respondent was purporting to interdict the Claimants, she was exercising a power not bestowed on her. She was equally not exercising delegated authority and in this respect the interdictions were unlawful.
23. But that is not all.
24. The finding herein is not to suggest that the National Police Service has been divested of the primary mandate of investigating complaints of criminal offences even against Police Officers.
25. Where there are allegations of commission of an offence(s) against an officer, the National Police Service reserves the right to carry out investigations into those allegations and where the evidence suggests that criminal charges should be preferred, that would be the correct way to move in accordance with the applicable statutory provisions.
26. But at the same time, the Internal Affairs Unit may make inquiries into the same allegations if there are disciplinary actions intended to be carried. The carrying out of parallel investigations in such circumstances may not be tardy and duplicitous but the National Police Service Commission and the National Police Service must find modalities of dealing with such situations for optimum

- utilisation of resources and time.
27. The parties did not address this ancillary issue but there may be as well other statutory provisions regarding Police Officers who have been charged with criminal offences in a Court of law.
28. The Court notes that it dealt with a similar issue arising from this region recently in Nakuru Petition No. 6 of 2014, *Kazungu Ngumbao Jeremiah & 3 Ors v the Attorney General & 2 Ors* (2015) eKLR.

Conclusion and Orders

29. In conclusion, the Court finds and declares that the interdiction of the Claimants by the 3rd Respondent was unlawful and in contravention of the Constitution and National Police Service Act.
30. The Court orders the Respondents to restore the Claimants to their offices without loss of any benefits from date of interdiction.
31. As a parting shot, should the National Police Service Commission wish to pursue disciplinary action against the Claimants it should comply with the law.
32. Each party to bear own costs.

Delivered, dated and signed in Nakuru on this 13th day of November 2015.

Radido Stephen

Judge

Appearances

For Claimants Mr. Mongeri instructed by Mongeri & Co. Advocates

For 1st to 3rd Respondents Mr. Kirui, Litigation Counsel, Office of the Attorney General

Court Assistant Nixon