



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**  
**AT NAIROBI**  
**MISC. JUDICIAL REVIEW NO. 6 OF 2014**  
**(FORMERLY NRB H.C. J.R. NO. 228 OF 2013)**

**RICHARD OMBWAYO NERIMA.....CLAIMANT**

**-VERSUS-**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE POLICE SERVICE COMMISSION.....2<sup>ND</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE.....3<sup>RD</sup> RESPONDENT**

Mrs. Owino for the Applicant

Mrs Chiraka for the Respondent

**JUDGMENT**

1. The Applicant sought leave to apply for the following orders of judicial review:

- a) an order of *madamus* to compel the 3<sup>rd</sup> Respondent to reinstate the Applicant on duty or in the alternative pay terminal benefits as follows:
- b) one month notice or salary in lieu thereof of Kshs.9,182.00;
- c) leave for one year worked at Kshs.9,187.00;
- d) retirement benefits worked for seventeen (17) years at seventeen (17) days salary per year Kshs.88,501.00;
- e) that costs of this application be borne by the Respondents.

Leave was granted by Korir, J. on 19<sup>th</sup> September, 2013.

2. The substantive application dated 27<sup>th</sup> June, 2013 was deemed duly filed and seeks similar orders set out herein above.

3. **Facts relied upon**

On 22<sup>nd</sup> November, 1986, the 3<sup>rd</sup> Respondent herein, the Inspector General of Police (IG) employed the Applicant as a Police Officer at a salary of £55p.a.

The Applicant served as a Traffic Officer based at Thika Traffic base between September 2002 and 24<sup>th</sup> January, 2003.

That the Applicant was charged and subjected to orderly room proceedings on allegations of receiving bribes from motorists and lifting and turning a G3 Rifle towards passengers in a public service vehicle. The Applicant was summarily dismissed.

4. It is alleged by the Applicant that the said orderly room proceedings were irregular and unlawful in that:-

- a) the Applicant was not given a fair hearing as required by law;
- b) the panel constituted to hear the orderly room proceedings of the Applicant's case were illegal and irregular;
- c) the allegations were not booked in the Police Occurrence Book as required by the law;
- d) the procedure adopted by the orderly room Panel was irregular and illegal;
- e) there was no complainant or witness who testified against the Applicant;
- f) the finding by the said orderly room proceedings were unfair, unjust and unlawful;
- g) that the Applicant's appeal was not lawfully done; and
- h) that the right procedure in the appeal to the Commissioner was not adopted.

5. That the Applicant subsequently sued the Respondents in Civil Suit No. 6935 of 2004 at Milimani where the court ordered that the Applicant be paid terminal dues, costs and interest for the unlawful termination.

6. That subsequently the Honourable Attorney General, 1<sup>st</sup> Respondent herein, the National Assembly and the Office of the President, Ministry of Internal Security and the former Prime Minister's office all wrote and communicated to the Commissioner of Police, (now the (IG) the 3<sup>rd</sup> Respondent herein to reinstate the Applicant but the IG has adamantly refused and or neglected to do so.

7. The Applicant has severally petitioned the 3<sup>rd</sup> Respondent, the IG for reinstatement and/or payment of his terminal benefits in vain.

8. Furthermore the Applicant was not served with a dismissal letter to date, nor given opportunity to surrender Government equipment as required by the law nor was he issued with government liability certificate and kit clearance certificate of discharge.

9. In the **Milimani Civil Case No. 6935 of 2004**, the court ordered that the Applicant be paid Ksh.36,748.00 plus interest and costs but a cheque sent to the Applicant by the 3<sup>rd</sup> Respondent did not include the total dues, interest and costs.

10. The Court notes at this juncture that the Applicant has not provided full details of the amount paid to him by the 3<sup>rd</sup> Respondent.

11. It is alleged that the 3<sup>rd</sup> Respondent has disobeyed lawful orders of the Court, Parliamentary Committee on justice, Ministry for Internal Security, the Honourable Attorney General and the former Prime Minister's office.

12. The Applicant prays for:-

a) an order of mandamus to compel the 3<sup>rd</sup> Respondent to reinstate the Applicant on duty or in the alternative terminal benefits as follows;

b) one month notice or salary in lieu thereof of Kshs.9,187.00;

c) leave for one year worked at Ksh.9,187.00;

d) retirement benefits worked for 17 years at 17 days per year in the sum of Kshs.88,501.00.

13. The Judgment of the Chief Magistrate's Court, at Nairobi **Milimani Commercial Court, Civil Case No. 6935 of 2004** is attached to the Application.

14. The Honourable Chief Magistrate awarded the Applicant;

(1) Kshs.9,187.00 in lieu of Notice;

(2) payment in lieu of leave for 3 years calculated at a month's salary for each year in the sum of Ksh.27,561.00.

15. The Claim for payment of pension was dismissed by the Magistrate observing that this is not a claim against the Government. In this regard the Court observed that the claim remain valid against the appropriate pension authority.

16. A claim for travelling allowance was dismissed since the claimant did not proceed on leave but was paid in lieu thereof.

17. The Chief Magistrate entered judgment for the plaintiff in the sum of Ksh.36,748.00 plus interest and costs of the suit.

### **Response**

18. The 3<sup>rd</sup> Respondent filed a Replying Affidavit of James Onyango dated 12<sup>th</sup> November, 2013 on 13<sup>th</sup> November, 2013.

19. The Respondent denies that it acted in an unlawful and unprocedural manner in the conduct of the orderly room proceedings and the summary dismissal of the Applicant.

20. The 3<sup>rd</sup> Respondent submits that the Applicant was properly dismissed via a letter of dismissal marked "JO 1". That he was cleared and discharged from the force.

21. That the Applicant on 1<sup>st</sup> January, 2002, solicited for and received a bribe and lifted and aimed a gun at passengers in a public transport vehicle.

22. That the full decretal sum in the judgment of the Court in Cause Number 6935 of 2004 has been fully paid by the 3<sup>rd</sup> Respondent.

23. **Determination**

The parties filed submissions in support of their respective cases.

Upon considering all the circumstances of this case the Court finds as follows:-

This dispute emanates from an employer and employee relationship. The dispute was filed in the Chief Magistrate's Court at **Nairobi Milimani Commercial Courts Civil Case No. 6935 of 2004**.

The suit was heard and determined by Hon. Senior Resident Magistrate P. Wekesa. The Hon. Magistrate delivered a judgment in favour of the Applicant on 14<sup>th</sup> July, 2006.

24. The 3<sup>rd</sup> Respondent states that his office has honoured the judgment of the Court, which fact is partly admitted by the Applicant who states that the full decretal amount was not paid by the Respondents.

25. The Applicant did not file an appeal against the judgment of Hon. P. Wekesa. Instead the Applicant brought a Judicial Review Application at the High Court on 27<sup>th</sup> January, 2014 more than seven (7) years down the line.

26. A Judicial Review Application is not appropriate relief against a party aggrieved by a judgment of a court with competent jurisdiction. Even if this was appropriate, the application ought to have been brought within six (6) months from the date of the impugned decision. For these reasons, the application is bad in law and an abuse of the process of the court and the same is dismissed with costs.

27. For the avoidance of doubt, the Applicant having filed no appeal against the decision of Hon. P. Wekesa, the matter is res judicata and the issues raised cannot be visited afresh by another Court of competent jurisdiction.

**Dated and delivered at Nairobi this 5<sup>th</sup> day of December, 2014.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**