



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**  
**CAUSE NO. 32 OF 2013**  
**(Formerly Nairobi Cause No. 2237 of 2012)**

**ANTONY MURITU NJOROGE.....CLAIMANT**

**-VERSUS-**

**COMMISSIONER OF POLICE .....1<sup>ST</sup> RESPONDENT**

**PERMANENT SECRETARY FOR**

**MINISTRY OF INTERNAL SECURITY.....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 26<sup>th</sup> July, 2013)**

**JUDGMENT**

The claimant **Antony Muritu Njoro** filed the memorandum of claim on 06.11.2012 through Ikua, Mwangi & Company Advocates. The claimant prayed for judgment against the respondents for:

- a. **A declaration that the claimant's dismissal from work was unlawful.**
- b. **An order the claimant is reinstated to work forthwith.**
- c. **Payment of the claimant's salary and all other accruing benefits from the date of dismissal to the date of reinstatement.**
- d. **Costs and interest of the suit.**

The respondents' response to memorandum of claim was filed through the 3<sup>rd</sup> respondent, the Honourable Attorney General, on 03.01.2013 by the learned Litigation Counsel, Nanjala C.W. The respondents prayed that the court finds that the claimant's dismissal was lawful and to dismiss the suit with costs.

The case was heard on 13.06.2013 when the claimant gave evidence to support. For the respondents' learned Senior Litigation Counsel Mr. E.N. Njuguna opted to rely on the pleadings and the documents

filed for the claimant and did not call any witness.

The claimant was appointed to the National Police Service on 30.08.1997 as a police constable. At the time of dismissal, he was deployed at the office of the Provincial Police Officer, Rift valley at Nakuru town. He was engaged to use the police motorbike on 19.11.2010 to perform official assignments involving travelling to Nairobi and back to Nakuru.

Upon arrival in Nakuru, he decided to use the motorbike by riding to a place near the Nakuru police lines with a view of repairing his shoes. While at that place, he testified that he received information from his informant that the informant had cited a lorry ferrying bhang, a proscribed intoxicating drug, at Ndarugu Area within Nakuru Municipality. The testimony was that the informant did not provide the complete details of the registration number of the lorry and the claimant proceeded to the road in the stated area. He engaged by stopping every lorry to see if the drivers tallied his informant's description.

In that process, a Toyota Van moved by, stopped and some men inside the van called the claimant to go to them. He complied and the men, according to the testimony, alleged that they had captured the claimant on their mobile phones' cameras taking bribes from the motorists he had been stopping. The claimant testified that the three men directed him to follow them to the police station. At a distance of 400 meters or there about, the three men diverted into a feeder road and called the claimant along. The claimant was riding on the police motor bike behind the van.

They called the claimant to the van and the claimant complied with the order to get into the van. They ordered the claimant to surrender all the money he had collected from the motorists and after denying that he had such money, he gave them only Kshs.200/= which he testified was his money and that in fact, he had more than Kshs.1,500/= and which he did not surrender. As he produced the money from his pockets, one of the men recorded him using his phone's camera. After handing in the Kshs.200/=, he was asked to leave the van. He demanded to be given his money back but he was not given at all. He went with the three men to the Nakuru Police Base instead of the Nakuru Central Police Station where the claimant was deployed in the Provincial Police Officer's Office.

The orderly room proceedings were convened at 7.00 pm the same date, 19.10.2010. The charges were read to the claimant and he pleaded not guilty. The presiding officer declared that the men had left and the hearing was rescheduled for 26.11.2010. The claimant was not asked if he needed any assistance. Prior to the hearing, the claimant testified that he asked for the witness statements but these were not provided as the presiding officer ruled that he would record the evidence as the hearing progressed.

The orderly room proceedings are attached on the memorandum of claim. The claimant was charged with the offence of being guilty of an act to the prejudice of good order and discipline contrary to regulation 3(41) of the police regulations. He entered a plea of not guilty. The hearing was on 26.11.2010.

The court has perused the record of the orderly room proceedings. The witnesses from the Kenya Anti-corruption Commission who said they saw the claimant taking bribes from the motorists on the material day testified and they were cross-examined by the claimant. They informed the orderly room proceedings that the claimant had admitted receiving only Kshs.200/= in bribes and a further Kshs.1,000/= in his pockets was his private money. There is no doubt that the claimant and his activities were recorded by the Kenya Anti-corruption Commission officers and the video clip was played at the police station and P.W4 C.I Solomon Wamae who viewed the video clip testified before the presiding officer that the clip did not specifically show the claimant taking money from the motorists but it showed him stopping the lorries and releasing them. PW4 also informed the court that he had not assigned the claimant traffic duties at the place where the Kenya Anti-corruption Commission's officers had found him. In view of the evidence, the presiding officer found:

- a. The claimant never shared the alleged informer's communication with other officers or, report the same to his officer in charge.
- b. The claimant alleged he was taking the police motorcycle for repairs yet he had not reported any defects.

- c. The claimant was heard admitting that he had collected only Kshs.200/= in bribe.
- d. In conclusion, the proceedings established that at the material time the claimant was doing things contrary to the police code of regulations and was therefore guilty as charged. The presiding officer found the offence serious and beyond his powers to impose a punishment and he forwarded the same to higher authority.

The claimant was subsequently dismissed with effect from 8.12.2010 as per the letter of the same date attached on the claimant's memorandum of claim. The claimant appealed against the dismissal by the letter dated 28.12.2010 but the appeal had not been determined and the claimant moved the court as there was no other path for justice.

The court has considered the pleadings, the documents, the evidence and the submissions on record and makes the following findings on the matters in issue:

1. The first issue for determination is whether the reason for termination was genuine and valid. The reasons leading to termination include taking bribes from motorists, using the motorcycle without authority and failing to inform the in-charge or any other officer about the informer's communication to the claimant. For the first reason, the court finds that the respondents failed to demonstrate that the claimant took bribes from motorists. It was important that the Kenya Anti-corruption Commission officers corroborate their evidence by providing evidence of the motorist who had been required to give the bribe. Undoubtedly, they took the video clip for that purpose but P.W4 who watched it said it did not show the claimant taking bribes. The presiding officer found that the claimant was heard saying that he had only taken Kshs.200/= in bribe but the basis of that finding was not P.W4's evidence as per the record of the orderly room proceedings and the court finds the finding was ungrounded. The claimant did not establish that he had authority to use the motor bike and he did not give any reason for not informing other officers about his mission to apprehend the alleged criminals. That conduct was obviously suspicious but in the opinion of the court, it did not justify the ultimate employer's punishment of dismissal. Accordingly, the court finds that the dismissal was not proportionate to the established misconduct especially taking into account the otherwise clean record of service set out in the dismissal letter.
2. The next issue is whether due process of justice was followed in this case. The court finds that the presiding officer failed to inquire whether the claimant needed the assistance of another police officer as provided for in rule 16(x) of the Force standing order and as submitted for the claimant. As for the language used, the record shows that the proceedings were in English and the claimant has not alleged and identified the language that he may not have understood and was used at the hearing. The court finds that the claimant understood the language of the proceedings. The dismissal letter advised the claimant that he had a right to appeal and the court finds that the claimant's submission that such right was not communicated is unfounded. The claims that the orderly room proceedings were by a wrong department was unfounded because the claimant did not establish any legal basis that the proceedings had to be conducted by his superiors at the point of his deployment. In any event, the claimant did not produce any deployment letter to confirm his point of deployment. In the opinion of the court, it was sufficient that the presiding officer was the competent and neutral person to preside at the proceedings. The court finds that the procedural defects as identified impaired the orderly room proceedings and were prejudicial to the claimant's case.
3. The final issue is whether the claimant is entitled to the remedies as prayed for. The court has found that the dismissal was excessive in view of the claimant's clean record of service and the established misconducts. In the circumstances, the court finds that the claimant should be re-engaged into the police service with imposition of a severe reprimand under a bond to observe and not to breach any Kenya Police Service Regulations for 12 months. The court also finds that in the circumstances of this case, the parties shall bear own costs of the case.

In conclusion, judgment is entered for the parties for orders:

- a. The claimant is re-engaged into the National Police Service with effect from 1.08.2013 at the prevailing terms of service for Police Constables employed on 30.8.1997.
- b. The period between the dates of dismissal 8.12.2010 and the re-engagement 1.08.2013 shall be treated as a long disciplinary leave without pay so that the claimant shall not suffer any break in his service.
- c. The Inspector-General of the National Police Service shall impose against the claimant a severe reprimand under a bond to observe and not to breach any National Police Service Regulations for 12 months with effect from 1.08.2013.
- d. The claimant shall report to the Inspector-General of the National Police Service on 1.08.2013 for appropriate deployment and action in view of this order.
- e. Parties to bear own costs of the suit.

**Signed, dated and delivered in court at Nakuru this Friday, 26<sup>th</sup> July, 2013.**

**BYRAM ONGAYA**

**JUDGE**