



Muthungu v Registered Trustees of the Anglican Church of Kenya (Cause E090 of 2025) [2025] KEELRC 2832 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2832 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E090 OF 2025
S RADIDO, J
OCTOBER 23, 2025

BETWEEN

JAMES MUIGAI MUTHUNGU CLAIMANT

AND

THE REGISTERED TRUSTEES OF THE ANGLICAN CHURCH OF KENYA RESPONDENT

RULING

1. James Muigai Muthungu (the Claimant) sued the Registered Trustees of the Anglican Church of Kenya (the Respondent) on 12 February 2025, alleging violation of his Constitutional rights.
2. On 6 May 2025, the Respondent filed a Motion dated 2 May 2025, seeking orders:
 - i. The Suit is a non-starter, incompetent, null and void ab initio and should be struck out.
 - ii. In the alternative, this Honourable Court be pleased to strike out the Respondent from these proceedings and refer this matter for resolution before the Internal Dispute Resolution Mechanism as per Canon XVI of the Provincial Constitution of the Anglican Church of Kenya ("ACK"), and Canon XIV of *the Constitution* of the ACK Diocese of Mt. Kenya South.
 - iii. This Honourable Court be pleased to stay further proceedings in this suit pending the hearing and determination of the proceedings per prayer (2) above.
 - iv. Costs of the Suit and the Application herein be granted to the Applicant.
3. The grounds in support of the Motion were that the Respondent lacked the locus standi to be sued in its name and thus the Cause was incompetent and defective; the relationship between the parties was spiritual and ecclesiastical governed by the Provincial Constitution of the Anglican Church and *the Constitution* of the Diocese of Mt Kenya South; there was no employer – employee relationship between the parties; any presumed employment relationship could only be with the Diocese of Mt



- Kenya South which is registered under the *Societies Act; the Constitution* of the Diocese and applicable Canon law provided internal structures for resolution of disputes and the Claimant moved the Court before exhaustion of the procedures and that the real issue in dispute was not employment but spiritual.
4. The Claimant filed a replying affidavit in response to the Motion on 21 May 2025 attesting that the Respondent, a registered society, had the right to hold the monies and assets of the Anglican Church of Kenya and thus a proper party; the Court had previously held in *J.M.M..J.N.G & P.M.W v Registered Trustees of the Anglican Church* (2016) eKLR that the Respondent was a proper party in Causes such as the instant one; the Respondent had an obligation to ensure his rights were not violated; the Respondent had been unwilling to accord him due process; the Respondent had abused its internal processes; the continued pendency of the appeal was a further violation of his rights and his right to legitimate expectation had been breached.
 5. The Respondent filed its submissions on 22 July 2025.
 6. In the submissions, the Respondent urged that the Claimant had not demonstrated the existence of an employer–employee relationship as contemplated by section 12(1) of the *Employment and Labour Relations Court Act* and section 86 of the *Employment Act*.
 7. To buttress the submission, the Respondent submitted that the Claimant’s contract was with the Diocese of Mt Kenya South.
 8. Alternatively, the Respondent urged the Court to stay the proceedings if it found that there was an employer –employee relationship pending the exhaustion of the internal dispute resolution processes outlined in the Provincial and Diocesan Constitutions. The Respondent cited *Geoffrey Muthinja & Ar v Samuel Muguna Henry & 1756 Ors* (2015) KECA 304 (KLR).
 9. The Claimant filed his submissions on 17 September 2025 and submitted therein that the Respondent was a proper party to the proceedings in light of the holding in *J.M.M..J.N. G & P.M.W v Registered Trustees of the Anglican Church* (2016) eKLR.
 10. The Claimant also submitted that he was an employee of the Anglican Church of Kenya, and that he was bound by the provisions of the Respondent’s Regulations, Holy Orders, Oaths, declarations and Provincial Constitution.
 11. Further, the Claimant was of the view that the Respondent had dragged the internal dispute resolution mechanisms and disregarded his right to a fair hearing and that by virtue of section 9(4) of the *Fair Administrative Action Act*, the Court could intervene, considering exceptional circumstances.
 12. The Court has considered the Motion, affidavits and submissions and makes the following conclusions.
 13. First, the determination of an employment relationship requires the presentation of and interrogation of evidence. The evidence has yet to be presented and examined by the parties and the Court.
 14. Second, the Anglican Church has a Constitution that provides for dispute resolution. The Claimant was informed of certain allegations to confront and given the opportunity to respond and appear before the Diocesan Pastoral Care Committee, culminating in a notice dated 10 December 2024, on Intention to Withdraw Your License.
 15. Third, the Notice informed the Claimant of the right to appeal to the Archbishop within 1 month of the receipt of the Notice. Under the relevant provisions, the Archbishop was expected to appoint a Commission of Enquiry.



16. Fourth, the Claimant appealed on 9 January 2025 before moving the Court on 12 February 2025.
17. Fifth, the period between the Appeal and the institution of Court proceedings could not have allowed the Archbishop sufficient time to appoint the Commission, and it cannot be argued that there was a delay or inordinate delay.
18. Sixth, the Court cannot second-guess the outcome of the proceedings before the Commission.
19. Seventh, in effect, the Court concludes that the Claimant moved the Court in haste and before allowing the internal dispute resolution avenues to be concluded.
20. Eighth, the Claimant did not seek leave of the Court to institute proceedings before the finalisation of internal dispute resolution mechanisms, nor demonstrate the existence of exceptional circumstances to warrant the Court assuming jurisdiction.
21. The Court cannot foretell the form and nature of proceedings that may arise after the determination of the Claimant's appeal, and therefore, it would not serve the prudent use of judicial time to sustain the instant Cause.

Orders

22. In light of the conclusions above, the Court finds that the Claimant moved the Court prematurely and the Cause herein is struck out.
23. No order on costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 23RD DAY OF OCTOBER 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mugane Law LLP

For Respondent TripleOKLaw LLP, Advocates

Court Assistant Wangu

