



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

APPEAL NO. E044 OF 2025

ATHANASIOS AMADIVA OMARE.....**1ST**

APPELLANT

NICANOR COSMAS BIDALI SHILESI.....**2ND**

APPELLANT

JOHANNES MUTSOTSO ASONGA.....**3RD**

APPELLANT

VALENTINE CHERUTO LIMO.....**4TH**

APPELLANT

VERSUS

MOST REVEREND MARCOS THEODOSIS

GEORGIOS..**RESPONDENT**

(Being an appeal from the judgment and decree of Hon. K. Cheruiyot (SPM) in Kisumu CMEALRC No. 117 of 2020 delivered on 24th June 2025)

JUDGMENT

1. The Appellant lodged this appeal against the Judgment of Hon. K. Cheruiyot (Mr.) SRM delivered on 24th June 2025 in ***Kisumu CMELRC No. 117 of 2020, Athanasios Amadiva Omare & 3 others v Most Reverend Marcos Theodosios Georgios***. The Memorandum of Appeal dated 18th July 2025 set out the following grounds:

- a. THAT the Trial Magistrate erred in law and fact by finding that there were no contracts of employment presented by the Appellants.
- b. THAT the Trial Magistrate erred in law and fact by finding that they had not established an employer-employee relationship with the Respondent.
- c. THAT the Trial Magistrate erred in law and fact by finding that the relationship was religious and not an employment relationship.
- d. THAT the Trial Magistrate erred in law and fact by finding that the Appellants were not terminated in the presence of evidence to the contrary.
- e. THAT the Trial Magistrate erred in finding that the letters provided were ordainments letters whereas

there were appointment letters for other services duly signed by both the employer and the employee.

f. THAT the Trial Magistrate erred in finding that all Respondents were priests notwithstanding the Respondent's admission that the 4th Appellant, was a secretary.

g. THAT the Trial Magistrate erred in law and fact by failing to consider and analyze whether the termination was unlawful and unfair.

2. On the basis of the foregoing, the Appellants sought orders allowing the appeal with costs, setting aside the judgment of the Trial Court, and allowing the suit before the subordinate court with costs.

3. The appeal was disposed by way of written submissions.

Appellants' Submissions

4. The Appellants identified three issues for determination, namely:

- a. Whether an employer–employee relationship existed between the parties;
 - b. Whether their employment was unfairly terminated;
 - c. Whether the reliefs sought were merited.
5. On the existence of an employment relationship, the Appellants submitted that the Trial Court’s finding that they were priests rather than employees was against the weight of the evidence on record. They drew the Court’s attention to several documents, including the 1st Appellant’s appointment letter as Executive Administrative Secretary dated 19th December 2015 at pages 23-25 of the record of appeal; the 3rd Appellant’s appointment letter as translation officer found at pages 33-35 of the record of appeal; proof of salary payment at pages 29, 38-40, 41-44 and page 54 of the record of appeal; proof of salary cuts at page 55 of the record of appeal and suspension letters at pages 60, 64, 71 and 72 of the record of appeal.
6. Relying on the case of **Short v Henderson Ltd (1946) 62 TLR**, the Appellants asserted that the essential elements of a contract of service were satisfied, namely the Respondent’s

power of selection, payment of remuneration, control over the manner of work, and the right to suspend or dismiss. They further pointed to the Respondent's testimony in cross-examination admitting that he suspended the Appellants for alleged misappropriation of funds, as well as paragraph 7 of his witness statement in which he directed the 4th Appellant to work from home during the Covid-19 period, as further proof of control consistent with an employment relationship.

7. The Appellants submitted that, even assuming they were priests, the degree of control exercised by the Respondent created an employer-employee relationship and did not exempt the Respondent from compliance with fair termination procedures. They placed reliance on the case of **JMM, JNG & PMW v Registered Trustees of the Anglican Church of Kenya [2016] eKLR**, which held:

"In particular, the court finds that the Claimants were employees within the meaning of the Employment Act, 2007 because each was paid a salary on monthly basis and was bound by the provision of the Respondents regulation, holy orders, oaths taken, declarations subscribed to and the churches diocesan and provision

Constitution. The court particularly finds that by the license to officiate, the bishop [particulars withheld] in exercise of the legitimate authority conferred upon under the statutes of the church appointed each of the Claimants to the respective position in the church and displayed them accordingly under his hand and authority as duly conferred,”

8. With respect to termination, the Appellants submitted that the alleged termination failed both the substantive and procedural fairness tests. They contended that no reasons were given and that no disciplinary hearing was conducted, noting that allegations of misappropriation of funds were first raised in the Respondent’s witness statement. They urged the Court to be guided by **Kenfreight (EA) Ltd v Benson K. Nguti [2016] eKLR** on the employer’s obligation to prove compliance with fair procedure. On remedies, the Appellants submitted that having established unfair termination, they were entitled to compensation equivalent to twelve months’ salary. Regarding withheld salaries, they contended that the Respondent’s failure to produce

employment records entitled them to the sums claimed. They relied on section 112 of the Evidence Act and **Yaa v SGA Security Solutions Limited (Employment and Labour Relations Appeal E002 of 2022) [2022] KEELRC 1553 (KLR)**. On costs they urged the court to award them costs of the lower court. In conclusion, the Appellants invited the Court to allow the appeal, mindful of its duty as a first appellate court as articulated in **Selle & another v Motor Boat Company Limited [1968] EA 123**.

Respondent's Submissions

9. In response, the Respondent submitted that the Appellants' engagement was purely ecclesiastical and spiritual in nature and not contractual. He asserted that the Appellants resisted accountability over alleged misappropriation of funds and subsequently defected to the Russian Orthodox Church, and that the Trial Court therefore correctly found that no employment relationship existed. The Respondent identified the issues for determination as:

- i. Whether the Appellants proved the existence of an employment relationship with the Respondent or the Orthodox Diocese of Kisumu and Western Kenya.
 - ii. Whether the trial court erred in holding that the Appellants failed to prove unfair termination.
 - iii. Whether he could be held liable for acts or omissions preceding his assumption of office in 2020.
 - iv. Whether the appeal is merited.
10. On the existence of an employment relationship, the Respondent submitted that the Appellants failed to discharge their burden of proof under section 107 of the Evidence Act. He relied on **Everett Aviation Ltd v Kenya Revenue Authority [2013] eKLR** for the proposition that an employment relationship must be established by evidence and not inference. He maintained that no contracts, payslips, or proof of statutory deductions were produced. The Respondent further argued that the Appellants served under canon law rather than under contracts of employment. He relied on **Bishop Joseph Kimani & another v Pastor Samuel Gichuki [2022] eKLR**, which held that religious ministers are not employees merely by receiving stipends or

honoraria. Additional reliance was placed on **PCEA Church v Rev. John Mbugua [2019] eKLR**, which underscored that ordination into ministry constituted spiritual service not contractual relationship under the Employment Act. He also pointed to the Appellants' admissions in cross-examination that ordination conferred spiritual service, that they were appointed to serve the church rather than hired as employees, that stipends were not wages, and that he was not the bishop at the time of the alleged engagements in 2015.

11. On termination, the Respondent submitted that no termination letters were produced and that termination must be proved by evidence of a communicated decision, as held in **Kenya Airways Ltd v Aviation & Allied Workers Union [2014] eKLR**. He submitted that the Appellants voluntarily defected to another church, which amounted to abandonment of duty rather than termination, relying on **Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza [2015] eKLR**. With respect to liability for acts or omissions predating his tenure, the Respondent submitted that he

assumed office as Bishop in 2020, whereas the Appellants' alleged engagements occurred in 2015. He asserted that in the absence of proof of continuity he could not be held liable for events preceding his assumption of office. He relied on the case of **Ongwen v Attorney General [2021] eKLR**.

12. The Respondent also submitted that he was improperly sued in his personal capacity, contending that the Appellants admitted they were engaged by the Orthodox Diocese, which is a legal entity capable of being sued. He relied on **Samuel Ndung'u v Board of Trustees, ACK Diocese of Mt Kenya [2019] eKLR**, which held that religious administrators are not personally liable for ecclesiastical administrative decisions. On the merits of the appeal, the Respondent maintained that it was unmerited and amounted to a misuse of the labour jurisdiction. He relied on **AIC Kijabe Mission Hospital v Rev. Karanja [2020] eKLR** for the proposition that courts should not interfere with ecclesiastical matters disguised as employment disputes. In conclusion, the Respondent urged the Court to dismiss the appeal and uphold the judgment of the trial court with costs.

Disposition

13. The appeal is to be viewed in the prism of the case of **Selle & another v Motor Boat Company Limited [1968] EA 123**. Being the first appellate Court, I must evaluate the evidence and reach my own conclusions always bearing in mind I neither saw nor heard the witnesses and give due allowance for that.
14. The Appellants assert they were employees of the Respondent. That is the position that they have maintained both before the Learned Magistrate and this Court. Having regard to the evidence adduced before the Learned Magistrate, and which evidence is before me, I am inclined to agree with the Learned Magistrate that there was no employee-employer relationship with the Respondent. The Respondent who is a Bishop assumed the office of Bishop in 2020. The Appellants assert they were employed by the Respondent in 2015. That is a factual impossibility as there is no way the Respondent could have employed the Appellants prior to 2020. By not pleading against the actual employer, the Appellants shut the door on any relief this Court or any

other Court could give. They ought to have sued the Church they assert they worked for rather than the Bishop who took over in 2020. Plainly put, they sued the wrong party and as a result did not establish employment by the Respondent. The foregoing is proof that this Appeal is completely devoid of any merit and is accordingly only fit for dismissal. Appeal dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Kisumu this 29th day of January

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**