



Methodist Church in Kenya Trustees Registered & another v Maso (Cause E005 of 2023) [2025] KEELRC 1096 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1096 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
CAUSE E005 OF 2023**

**M MBARÚ, J
APRIL 3, 2025**

BETWEEN
METHODIST CHURCH IN KENYA TRUSTEES REGISTERED 1ST CLAIMANT
ISAYA DEYE 2ND CLAIMANT
AND
REBECCA GHAMAKALE MASO RESPONDENT

JUDGMENT

1. The orders sought by the claimant against the respondent are;
 - a. A permanent injunction be hereby issued against the respondent from referring/representing herself as the Circuit minister for the Methodist Church in Kenya Delta Circuit, Singwaya Synod.
 - b. A restraining order shall be hereby issued against the respondent from interfering in any way with the management and running of the church services for the Methodist Church in Kenya Delta Circuit.
 - c. A restraining order be issued against the respondent by herself, her servants, employee or any other person or party working at her behest from preventing the new Superintendent minister posted in the Delta Circuit from performing his/her duties including but not limited to denying him/her access into the ministers' office, withholding any material, office equipment, or any information within his knowledge necessary for the performing of his/her duties as the Circuit minister without undue difficulty or strain.
 - d. Costs of the suit and interests.
 - e. Any other or further reliefs that this court may deem fit and expedient to grant.



Claim

2. The 1st claimant is a registered corporate body of the Methodist Church in Kenya and the lawful custodian of the property and legal entity established in Kenya to carry out mission work in Kenya, Uganda, Tanzania, the DRC Congo and South Sudan. The 2nd claimant is the current Presiding Bishop, chief pastor, and principal executive officer of the Methodist Church in Kenya, upon election by the 58th Annual Assembly held between 19 and 22 July 2023.
3. The respondent is a female adult and a minister with the 1st respondent.
4. The 1st claimant must have the church order's stewardship, oversight, and care in accomplishing the mission. The claimants are responsible for *the Constitution* of the church. The Conference is the supreme authority for the claimants, and its mandate includes posting ministers of the Methodist Church in Kenya to various circuits and synods. There is a mandate to take disciplinary action against the ministers who fall short of the ministry's ethical conduct and the Church's Standing Orders.
5. The claim is that the respondent was served with a letter of transfer dated 1 August 2023 from the Delta Circuit to the new station, MCK Kangeta Circuit in Nyambene Synod, effective 15 August 2023, as the Circuit Minister. Upon receipt of the letter, the respondent failed to report to the new station and gave no reasons. Following this refusal, the Conference Standing Committee served the respondent with a letter dated 26 September 2023 inviting her to show cause within 14 days show cause why disciplinary action should not be taken against her. She did not respond.
6. Through a letter dated 26 September 2023, the claimants suspended the respondent from office for 21 days, awaiting disciplinary action under Church Standing Orders S.O. No.103 (2b).
7. The claim is that the respondent has been insubordinate to the Conference Standing Committee and the office of the Presiding Bishop. The respondent has disrupted the smooth flow of the functions of the Church in Delta Circuit and, by extension, Singwaya Synod, which the 2nd claimant complained of in a letter dated 11 October 2023 addressed to the Coast Regional Police commander.
8. The respondent has no authority to address any Methodist Church in Kenya Delta Circuit since she is no longer the Minister in the Circuit. Unless restrained by an order of the court, the respondent will continue to cause division within the Delta Circuit.
9. The claim is that the respondent has been unethical and has acted in misconduct. She failed to report to her new place of work, MCK Kangeta Circuit in Nyambene Synod, after being transferred from the Delta Circuit. Failed to reply to the invitation to show cause why disciplinary action should be taken, and disrupted the smooth flow of the church programme in the Delta Circuit. The conduct of church services by the respondent is illegal and misleading members by stating that she is the incumbent Circuit minister of the 1st claimant. This has denied the new minister access to the Minister's office, insubordination to the Presiding Bishop and the Conference of the Methodist church.
10. Despite being served with warning letters for her gross indiscipline, which includes refusing to hand over leadership of the Delta Circuit, refusing to vacate the office of the Minister, and interfering with the Delta Circuit church services, the respondent has remained insubordinate and is inciting members to use disparaging language in addressing the claimants. Unless the orders sought are issued, the claimants will suffer loss and damage in running the church's affairs.
11. In evidence, the claimants called Professor Zablon Nthamburi, a member and trustee of the Methodist Church in Kenya, who testified that the trustees are the registered custodians of the 1st claimant and the Conference is the supreme authority. During the 58th annual Conference held on 19 July and 22



July 2023, the 2nd claimant was elected as the Presiding Bishop. He took charge of the affairs of the 1st claimant, including the transfer and discipline of ministers.

12. Prof. Nthamburi testified that the respondent was served with a transfer notice from the Delta Circuit by the Conference, which required her to report to a new station, but she declined yet gave no reason. Due to the defiance, through a letter dated 26 September 2023, the claimants invited her to show cause why disciplinary action could not be taken, but she failed to reply. Due to gross insubordination, the respondent was suspended from duty but refused to vacate the Delta Circuit office, which interfered with the smooth flow of church operations. The new Minister posted to the station has been unable to take over leadership due to the respondent's actions. Unless the orders sought are issued, the operations of the claimants are stalled.
13. Prof. Nthamburi testified that the 1st claimant had employed ministers who are remunerated through a circular issued by the Conference to all the circuits, and each Circuit is allowed to apply it within the local needs. There is a letter of appointment indicating the duties of each Minister, and income is based on the tithe offered in each Circuit. The payment schedule is a guide for each station every year. The pay slip for the respondent is not filed, but every time there is a payment, the custodian at the Circuit records it.
14. The claimants also called Revered Dr. John Maloba, the Minister at Nairobi and immediate former Bishop of Nairobi. He testified that as the conference secretary, he is paid by the 1st claimant and has a letter of appointment. Ministers are stationed at different stations annually, and the income is based on offerings and tithes. The claimants have developed a payment schedule for each Circuit. All due statutory dues are remitted to the relevant bodies, including KRA, NSSF and NHIF.
15. Rev. Dr. Maloba testified that the respondent was transferred immediately from the Delta Circuit through a letter sent from the Conference through the stationing committee and her Bishop, but she declined the transfer. This has affected the Synod activities and the incoming Minister, who cannot take up complete duties due to disruptions caused by the respondent's refusal to take the transfer. Bishop Salat was appointed for the Singwaya Synod and, hence, was to deliver the letter of transfer to the respondent, which was done, but she declined to move or hand over the office. She was invited to show cause why disciplinary action should not be taken, but declined to respond, upon which she was suspended from duty.
16. The trustees and the Presiding Bishop have the authority to file suit for the 1st claimant.
17. The claimants also called Rev. Salati Mapembe Semi, a resident of Hola and a minister with the claimants. He testified that he served the respondent with the notice to show cause through the Tarsaa Church. As the Bishop-Elect for the Synod, he ensured the notice was served upon the respondent. Later, a suspension was issued, and he ensured it was served. The respondent has refused to honour these notices by taking up the transfer in disrespect to the 1st respondent, the Presiding Bishop. Her continued stay in the Delta Circuit has been disrupted, and orders should be issued to her to move to the new transfer station. Her presence has been negative and is affecting church operations.

Response

18. In response, the respondent denied the allegations made against her by the claimant. Her case is that the court has no jurisdiction to entertain the claim of church governance, which does not fall under the *Employment Act*. The respondent is not an employee of the 1st claimant, as alleged, and is not paid a wage. The claimants have no locus standi to sue the respondent.



19. The response is that the claimants' Constitution, standing orders and deeds of the church are inconsistent with *the Constitution* of Kenya and thus ultra vires.
20. The claimants have personal bias and a grudge against the respondent. This is demonstrated by their actions of punishing the respondent without giving her notice or an opportunity to be heard, creating hardship against the respondent for no reason, and appointing a replacement without notice to the members of the Circuit. The claim should be dismissed with costs.
21. The respondent testified that she is a minister of the 1st respondent stationed in Garsen and in charge of the Delta Circuit. She was ordained on 15 August 2021 at the Kaaga Synod and is married with a minor child. Her children attend Hola Primary School with her spouse, who works in Garsen. Transferring to Kangeta in Maua was made without giving her a hearing or consent. It was biased and arrived at without being granted the right to a hearing. This is contrary to the principles of natural justice. The alleged notice to show cause was not served, and there is no evidence to confirm receipt of the notices of transfer or any disciplinary matter.
22. The respondent testified that had the claimants served her with notice to transfer to a new station, she would have gladly moved as Minister. She was previously moved from Upper Tana Circuit to Delta Circuit, and the notice was passed through the Bishop. Rev. Salati was also issued a transfer notice in December 2022, and both were followed as directed. This was not the first transfer, and had the necessary notice been served, she would have told the claimants that she was expectant and later had a miscarriage, she had children in schools, and all these factors would have been considered before moving to a new circuit.
23. The respondent testified that she is not an employee of the first claimant, as alleged. She is paid a stipend, not a salary. The payments are not standard and depend on church collections, and there is no payment in some months.
24. The respondent testified that she receives WhatsApp messages through her phone number, 07089XXXX, but has internet challenges. On 24 August 2023, while using phone line 071790XXXX, the claimants sent no documents. On 20 August 2023, she was at the meeting in Singwaya Synod and not at a press conference. She was not invited to the Conference from 19 to 22 July 2024.
25. There was no pregnancy when she was required to report to the new station in August 2023. It was not her first transfer; before, she had been invited to the Conference and given a chance to state which Circuit she wanted to move to. The claimants have about 300 ministers and are asked where they would like to be stationed before a transfer. She was not given the Church Orders and has not read them. Upon being ordained, she took an oath to work anywhere, including Kangeta Circuit.
26. The respondent also called Thomas Mati Kisaba, a lay preacher in the Delta circuit, who testified that under the church constitution, a member or Minister of the church cannot be sued. All disputes in the church are solved according to the New Testament. The first claimant cannot sue the respondent; she is not an employee.
27. Kisaba testified that he consulted with the respondent and confirmed that she was not issued with a notice of transfer, show cause or any matter as alleged by the claimants. She was condemned unheard and the court has no jurisdiction over the matter.
28. At the close of the hearing, the parties agreed to file written submissions by 26 February 2025. Only the claimants complied.



Determination

29. The respondent has challenged the court's jurisdiction on the basis that there is no employment relationship between the parties to justify invoking the court's mandate. Further, the 1st claimant is wrongly enjoined in these proceedings. Save for these averments, the respondent has made no written submissions to elaborate on these jurisdictional questions.
30. The claimants submitted that the respondent was appointed a church minister under a written notice. The 1st claimant is a registered society under Section 10 of the Society Act, and such unincorporated bodies are not legal persons and hence cannot sue under their names but through the officials, as held in *Pentecostal Fellowship in Kenya v Kenya Commercial Bank HCCC No.4116 of 1992*. The 1st claimant is managed through its trustees, and the 2nd claimant, as the Presiding Bishop, is elected at the Annual Conference to head the 1st claimant's operations.
31. The respondent admitted that she was appointed a minister of the 1st claimant. She is paid a stipend based on a circular issued by the Conference, but it depends on circuit collections and donations. In her case, there are donations from France and tithes in the Delta circuit. She would receive a stipend from the steward and not pay for some months.
32. Section 2 of the *Employment Act* defines an employee as a person employed for wages or a salary, including an apprentice and an indentured learner. This definition is, therefore, not exhaustive. The cited relationships are encompassed under the stated relationship. The preamble of the Act gives the foundation of such relationships to incorporate employment and labour relations for connected purposes.
33. The employment relationships regulated under the *Employment Act*, as outlined under the Act and Section 12 of the Employment and *Labour Relations Act*, are not exhaustive. The Supreme Court of Kenya, in addressing similar submissions in the case of *Kenya Tea Growers Association & 2 others v The National Social Security Fund Board of Trustees & 13 others [2024] KESC 3 (KLR)* held that the employment relationships listed under Section 12(1)(a) to (g) are not exhaustive and that Parliament donated additional jurisdiction over disputes referred to the court connected to employment and involving labour relations. That;
- ... the preamble's expression 'connected purposes' should be construed to mean any dispute connected with employment and labour relations. As regards the list of scenarios enumerated in section 12(1) of the ELRC Act, the appellants assert that the expression 'including' means "includes but is not limited to" by the interpretation in article 259(4)(b) of *the Constitution*. ...
34. In this case, the respondent is appointed under a defined letter as a minister in the 1st respondent. The duties for such a position are elaborated, and control is under the church constitution and standing orders, including oversight, discipline and stipend payment. Paying statutory dues to KRA, NSSF, and NHIF is unique to an employment relationship. Even where the payment is called a stipend, the circular stating a minimum subject to enhancement by each Circuit speaks to an employment relationship and not a commercial enterprise.
35. The question before the court is the transfer of the respondent from the Delta Circuit in Singwaya Synod to the Kangeta Circuit. Ordinarily, transfers may occur in employment and labour relations. Even though there may be a transfer of services under commercial agreements, the relationships elaborated by both parties, including the suspension of the respondent upon not taking up the transfer, speak directly to an employment relationship and not any other.



36. The court is clothed with the requisite jurisdiction to address the claim herein.
37. At the core of the matter is the notice dated 1 August 2023 issued by the claimants to the respondent, transferring her from the Delta Circuit to the Kangeta Circuit effective from 15 August 2023. The respondent was categorical that she did not receive this notice on her phone or through a physical copy. She called Mr. Mati to testify that when he enquired, he learned that such notice had not been served. The respondent asserted that this would not be the first time she was on transfer. She was previously at Upper Tana Circuit, and before her transfer, she was consulted and agreed to move.
38. When asked whether she uses the phone numbers 07089XXXX and 071790XXXX, her case was in the affirmative, save for internet challenges, and sometimes her husband, who works in Garsen, would carry the phone and collect messages for her to read. Further, Rev. Salati's evidence that he ensured that the respondent was served with the subject letters was not challenged in any material way.
39. At the core of the respondent's contestations is that previously, all 300 ministers of the claimants were consulted before a transfer, and each could state their case and where they would like to work. Such a generous way of working must be very generous, where employees identify where they wish to be deployed.
40. However, the respondent attached the church constitution, which is well-assessed. The oath of office as a minister allows one to work anywhere as allocated by the Presiding Bishop, the position held by the second claimant.
41. Where the respondent may not have received the subject notice dated 1 August 2023, on 16 May 2024, the court addressed an application dated 19 October 2023 under which the respondent filed a Replying Affidavit and admitted that she was served with the letter of transfer but contested that such letter should have issued after the sitting of the Conference. In this case, the Conference was held on 27 August 2023, and her letter is dated 1 August 2023. She was expected to report to the new station within 14 days, but was expecting a child then. The order to report within 14 days failed to appreciate that she had school-going children, and the Bishop acted in a discriminatory manner due to her gender and health status.
42. Thus, the question of service admitted that the respondent could not turn around and contest such a fact. The question of consultation, her status, and her inability to take the transfer should not be juxtaposed with other matters.
43. Ordinarily, an employer has the prerogative to transfer its employees, officers and managers as held in *Gichuru v Package Insurance Brokers Ltd* [2021] KESC 12 (KLR) and *Mutegi v Chief Executive Officer, Kenya Development Leather Council & another* [2024] KEELRC 1447 (KLR). This is allowed to ensure the proper placement of each person within the structures for productivity. In *Anne Wairimu Kimani v Kenya Agricultural Livestock Research Organisation (KALRO)* [2017] KEELRC 470 (KLR), the court took into account the need for reorganization and the issuance of reasonable notice to the employee to allow for preparation and movement. In *Dorothy Ndungu versus Machakos University & others* [2016] eKLR, the medical status of the employee were considered, while in the case of *Severine Luyali v Ministry of Foreign Affairs & International Trade & 3 others* [2014] KEELRC 754 (KLR), the court considered the transfer of an employee working abroad and allowed a notice period of 3 months as sufficient for movement and taking up the transfer.
44. In this case, the respondent, being aware of the notice dated 1 August 2023, has not taken up the transfer, and there is no specific or noted communication to the claimants on her inability to transfer to the new station at Kangeta circuit. Since 1 August 2023, there has been no effort to take up the transfer.



- 45. Further, the respondent was issued with notice to show cause why disciplinary action should not be taken against her for gross misconduct. There is no demonstrated effort to respond. Following the suspension, the respondent has not made her response, statement or other matter to secure her appointment with the claimants.
- 46. The orders sought by the claimants through the application dated 19 October 2023 were addressed on 16 May 2024; to date, the respondent has not contested them.
- 47. Accordingly, the claim is hereby found with merit, and the following orders are hereby issued;
 - a. A permanent injunction is issued against the respondent from referring or representing herself as the Circuit Minister for the Methodist Church in Kenya Delta Circuit, Singwaya Synod.
 - b. A restraining order is issued against the respondent from interfering in any way with the management and running of the church services of the Methodist Church in Kenya, Delta Circuit.
 - c. A restraining order is issued against the respondent by herself, her servants, employees or any other person or party working at her behest from preventing the new Superintendent minister posted in the Delta Circuit from performance his duties including but not limited to denying him access into the ministers’ office, withholding any material, office equipment, or any information within his knowledge necessary for the performing of his duties as the Circuit Minister without undue difficulty or strain.
 - d. As Ministers serving under the 1st claimant, each party to bear its costs.

DELIVERED IN OPEN COURT AT MALINDI ON THIS 3RD DAY OF APRIL 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davis Wekesa

..... and

