



ambuka v Registered Trustees of the Pentecostal Evangelistic Fellowship of Africa (PEFA) & 3 others (Petition E197 of 2024) [2025] KEELRC 1571 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1571 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E197 OF 2024**

B ONGAYA, J

MAY 29, 2025

JUDGMENT

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLE 27(4), 32(1),
33(1), 48 AND 50(1) OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

DR PETER NJOROGE AMBUKA PETITIONER

AND

**THE REGISTERED TRUSTEES OF THE PENTECOSTAL EVANGELISTIC
FELLOWSHIP OF AFRICA (PEFA) 1ST RESPONDENT**

**DR THOMAS TEMBO CHIPA (SUED AS THE SECRETARY GENERAL OF
PEFA) 2ND RESPONDENT**

**DR JOHN OKINDA (SUED AS THE PRESIDING BISHOP OF
PEFA) 3RD RESPONDENT**

**PAUL MUNYIRI (SUED AS THE DEPUTY PRESIDING BISHOP OF
PEFA) 4TH RESPONDENT**

JUDGMENT

1. The petitioner filed the Amended Petition dated 09.11.2023 and through S.B.Otieno & Company Advocates. The petitioner prayed for:
 - a. A declaration by the Honourable Court that the suspension and institution of disciplinary proceedings against the petitioner for inter alia filed and maintaining in court Milimani MCCC E1282 of 2024 PETER NJOROGE AMBUKA vs THE BOARD OF TRUSTEES PEFA & 3 other and HCCA E782/2024 and for the alleged matters set out in the letter dated



22.11.2024 is an infringement and affront to the Constitution of Kenya and an infringement of the petitioner's rights under Articles 27(4), 32(1), 33(1) and 48(1) of the constitution of Kenya.

- b. An order of status quo ante reversing the petitioner's suspension from holding the office of Deputy Regional Bishop and acting Nairobi Regional Bishop issued by the 2nd respondent on 22.11.2024 and the intended disciplinary hearing.
 - c. An order of prohibition to prohibit the respondents and prevent them from suspending the petitioner from holding the office of Deputy Regional Bishop and acting Nairobi Regional Bishop and or from instituting disciplinary proceedings against the petitioner on the grounds set out in the letter dated 22.11.2024.
 - d. An award of damages.
 - e. Costs and interest.
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition and his Further Affidavit sworn on 09.04.2025. The petitioner's case is as follows:
- a. The petitioner is a long-term credentialed member of the Pentecostal Evangelistic Fellowship of Africa P.E.F.A and a minister of the gospel pastoring PEFA Cathedral of Grace in Kahawa West.
 - b. It is the petitioner's case that as a pastor in PEFA he is an employee of the respondent. That at article 8 sub article 11 of the PEFA constitution, there is established the district council whose functions are inter alia to, "on behalf of the church recruit, employ, post, transfer and pay the salaries of the pastors, evangelists and missionaries"
 - c. Vide a letter dated 22.11.2024 the 2nd respondent acting on behalf of the respondents suspended the petitioner from holding the office of Deputy Regional Bishop and acting Nairobi Regional Bishop with immediate effect on grounds that the petitioner had filed and was maintaining a case in court challenging the nomination of the 4th respondent as a candidate for Deputy Presiding Bishop in the concluded PEFA national elections.
 - d. The petitioner filed the case challenging the nomination of the 4th respondent as a candidate for Deputy Presiding Bishop in the then pending PEFA national elections on grounds that the 4th respondent did not meet the minimum requirements set by article V sub article 2(d) of the PEFA elections rules, procedures, leadership and governance guidelines 2023 for candidates for the position of Deputy Presiding Bishop.
 - e. Article V, sub article 2(d) of the PEFA elections rules, procedures leadership and governance guidelines 2023 provides that for a candidate to validly be nominated to vie for the position of Deputy Presiding Bishop of PEFA, they must have served as a PEFA bishop either at the region or cathedral level for at least five years. The petitioner's contention in the case was that the 4th respondent was at the time of his nomination a district overseer and had never served as a PEFA bishop either at the region or cathedral level for over 5 years and was thus not eligible to be nominated to vie for the position of deputy presiding bishop under the PEFA constitution.
 - f. The petitioner believes that the respondents suspended him from holding the office of deputy regional bishop and acting Nairobi regional bishop because he filed a case in court.
 - g. The petitioner believes that by suspending him and instituting disciplinary proceedings against him, the respondents are discriminating against him.



- h. The petitioner contends that by suspending him for following the circular dated 19.07.2024 issued to him by his immediate superior, the Nairobi Region Bishop, directing churches in Nairobi Region to bank their allocation of 12%(7% to the region and 5% to the national) in the Nairobi region main account and by failing to also suspend and discipline the said Nairobi regional bishop, the then Nairobi regional secretary and all other bishops in Nairobi region who have been following the circular, the respondents were discriminating against the petitioner.
3. The 2nd respondent filed his replying affidavit sworn on 17.03.2025 and drawn by Akhaabi & Co Advocates. It was urged and stated thus :
- a. That being a credentialed member of the 1st respondent church, the relationship between the petitioner and the respondents is governed by the PEFA constitution and by-laws.
- b. That the petitioner is not an employee of the 1st respondent and no employment contract or employment relationship exists between the petitioner and the respondents.
- c. That the Honourable Court lacks jurisdiction to entertain these proceedings, because it is not a dispute by or against a person contemplated under section 12(1) and (2) of the *Employment and Labour Relations Court Act*.
- d. The grievances raised in the petition against the church's letter dated 22.11.2024 are grievances which can properly be raised and addressed within the structures and mechanisms provided under the PEFA constitution and Bylaws, which are yet to be exhausted by the parties.
- e. The 2nd respondent believes that courts will not intervene in internal disciplinary proceedings until they have run their course.
- f. That the employer has the prerogative to deal with discipline of its employee(s) by application of the internal mechanism, disciplinary measures or human resource management policies.
- g. That the Petitioner challenges the said suspension letter on the basis that he was suspended for maintaining cases in Court being, Milimani MCCC No.1282 of 2024 Peter Njoroge Ambuka & the Board of Trustees of PEFA Church & Others and Milimani HCCA No. E782 of 2024 Peter Njoroge Ambuka & the Board of Trustees of PEFA Church & Others, challenging the nomination of the 4th Respondent as a candidate for Deputy Presiding Bishop in the concluded PEFA National Elections,
- h. The 2nd respondent states that from the suspension letter exhibited as "PNA-2" of the Petitioner's Supporting Affidavit, was issued for other violations of the PEFA constitution and bylaws, and actions which constituted gross misconduct on the petitioner's part which lay and demonstrate a legal basis for issuance of the Suspension Letter to the Petitioner.
- i. That the said suspension letter was issued to the Petitioner on the basis that he had on various dates, intentionally misused his office by publicly inciting members of the Nairobi Regional Council to rebel against lawfully elected leaders. That the said actions by the Petitioner were in total disregard of the PEFA membership covenant and amounted to gross misconduct as provided under Article II sub-article 3(b) and Article 5 sub-article 2.1, 2.2, 2.3 and 2.4 of the PEFA constitution and bylaws.
- j. That Article II sub-article 3(b) of the PEFA constitution and bylaws provide for matters that may give rise to disciplinary proceedings in the Church and include; holding to and/or promulgating doctrines contrary to the fundamental tenets of the Christian faith as



stated in the PEFA Church Statement of Faith, defiance or failure to submit to constituted authority, dishonesty, fraud, perjury, and other misrepresentations, spreading false rumours about another and causing dissension or division within the Church.

- k. That the suspension letter was further issued on the basis that the petitioner violated PEFA financial policy by deliberately refusing to remit and bank five percent of the total tithes and offerings collected from Kahawa west cathedral into the annual general assembly designated bank accounts and misused his position as the deputy regional bishop and acting regional bishop by instructing and inciting Nairobi region district overseers, PEFA members and subordinate governing bodies not to attend general meetings of the church pursuant to the provisions of Article 9 of the PEFA constitution and by-laws.
 - l. That courts of law should be very slow to interfere in the internal disciplinary process at work place unless it is manifestly clear that the action by the employer derogates materially from the internal disciplinary process and law.
4. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows:
- a. To answer the 1st issue, the Court returns that the parties are invariably in a contract of employment. The manifestation of the employment relationship is that the petitioner has in fact been subjected to disciplinary process by way of the impugned show-cause letter and suspension letter. As urged and pleaded for the petitioner, article 8 sub-article 11 of the PEFA constitution establishes the District Council whose functions include to, on behalf of the church, recruit, employ, post, transfer and pay the salaries of pastors, evangelists and missionaries. As submitted, the article makes it elaborate that pastors are employees of the church. Sub-article 11.4.15 states that the Council shall consider and make decisions on requests and recommendations on the employment and staff needs of the District and Local Churches in the District. Sub-article 11.4.18 states that the exercises the power to discipline all credential ministers and staff under their jurisdiction. The PEFA constitution then provides for District Council, Regional Council and National Executive Council with delineated human resource powers and functions for designated employees and ministers of the gospel employed in that regard. In acknowledging the employment relationship, the respondent has at paragraphs 4 and 5 of the submissions stated that the disciplinary process as initiated were within the respondents' prerogative as an employer. The preliminary objection in that respect will fail.
 - b. The respondent has urged that the petition is premature because the petitioner has failed to exhaust the internal disciplinary procedure and process. It is submitted that the petitioner rushed to file the petition without exhausting elaborate internal dispute procedure in the PEFA constitution and bylaws. The petitioner was suspended pending investigations. Under sub-article 14.2 it is provided that disciplinary matters for ranks such as the one held by the petitioner shall initially be submitted to the Sub-committee of the National Executive Council (which must be chaired by the Presiding Bishop) and thereafter the National Executive Council shall make appropriate decision.
 - c. The Court has considered the suspension letter. It does not mention that the suspension is in view of the previous suits that the petitioner had filed. It is that the suspension letter sets out clear particulars of allegations and it was imposed pending the conclusion of the disciplinary process as will be referred to the National Executive Council. Accordingly, the Court finds that the petitioner was filed without care to exhaust the internal church procedures. The



Court considers that even if the church doctrines discouraged institution of civil suits, the suspension letter did not expressly invoke the pending suits. It appears to the Court that in the circumstances, the petitioner, who did not attack the church doctrines in that respect, cannot bypass the church internal procedures. The petition will fail upon that account and that the petitioner has failed to pass the test to justify the intervention of the Court. Further, the Court returns that a violation of constitutional provisions has not been established as was alleged for the petitioner.

- d. While making the finding the Court finds that the petitioner has failed to satisfy the conditions or tests set in the principles that would justify the Court's interference with an employer's prerogative to undertake human resource functions thus, in *Geoffrey Mworira –Versus- Water Resource Management Authority & 2 Others* [2015] eKLR thus, "The principles are clear. The court will very sparingly interfere in the employer's entitlement to perform any of the human resource functions such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy, or any other human resource function. To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of *the Constitution* or legislation; or in breach of the agreement between the parties; or in a manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer's internal process."
5. The Court has considered that parties are in continuing employment and work place relationship and the petition will be dismissed with no costs.
6. In conclusion the petition is hereby dismissed with no costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025

BYRAM ONGAYA

PRINCIPAL JUDGE

