



Kirundu v Pentecostal Assemblies of God Kenya & another (Petition E008 of 2021) [2023] KEELRC 2457 (KLR) (5 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2457 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E008 OF 2021
MN NDUMA, J
OCTOBER 5, 2023**

BETWEEN

MOSES ORENDE KIRUNDU PETITIONER

AND

PENTECOSTAL ASSEMBLIES OF GOD KENYA 1ST RESPONDENT

ZAKARIA BUSOLO 2ND RESPONDENT

JUDGMENT

1. The petition dated 2nd January, 2021, filed by the petitioner, a founding Pastor of Rongai PAG Church seeks an order in the following terms:-
 - (a) That this Honourable Court be pleased to make a declaration that the actions of the 1st and 2nd Respondents of retiring the Plaintiff without due procedure are illegal and unconstitutional.
 - b. That this Honourable Court be pleased to issue a permanent injunction restraining the Respondents by themselves, their servants, agents, workmen or otherwise howsoever from interfering with the running of Ongata Rongai PAG Church.
 - c. That in the alternative, this Honourable Court be pleased to order the Respondents to pay exemplary damages for breach of legitimate expectation, damaged reputation and embarrassment and emotional distress and suffering.
 - d. That this Honourable Court be pleased to make a declaration that the Petitioner has made monetary contribution towards the 1st Respondent's institution and consequently order the Respondents to refund in full, the amount the petitioner has over the years invested into the 1st Respondent's institution.
 - e. That this Honourable Court be pleased to grant interest on prayer (d) above at Court rates.



- f. That this Honourable Court be pleased to grant costs of the petition to the petitioner.
2. The petition is premised on facts set out on the body of the petition; supporting affidavit and annexures thereto.

Facts

3. The facts may be summarized that the petitioner is a founding Pastor of Rongai PAG Church having established the church in the year 1999 using his own resources. That the petitioner has since its establishment served the church diligently until the 25th August, 2020 when the respondents retired him from Ministry effective 29th November, 2020. The petitioner says that the respondent retired him without due course or any lawful procedure.
4. The petitioner says that he has invested personal resources to the tune of Kshs. 4 million and he is therefore entitled to a proper and dignified send off in a manner befitting a servant of God and a diligent and hardworking employee of the 1st respondent.
5. That the retirement was sudden, abrupt and shocking and therefore, irregular and unjustified. That the respondent made a pre-determined decision to allocate the church to an undisclosed Pastor, a decision that is made in bad faith and hypocrisy.
6. Particulars of infringement of petitioner's constitutional rights are set out as follows:-
- (a) It failed to consider that the petitioner is an existing minister of the Church and that in the event he retires he is entitled to dignified send-off.
 - (b) Contrary to the Petitioner's legitimate Expectation, the 1st Respondent has unilaterally taken over the running of the Church a situation that has denied his source of livelihood.
 - (c) The 1st Respondent through its agents has now threatened the claimant with violent eviction contrary to law and:-
 - i. In breach of the Rules of Natural Justice.
 - ii. Contrary to the Legitimate expectation of the petitioner.
 - iii. Contrary to Law and Public Interest;
 - iv. Contrary to Government Policy of empowering its citizens/public and not leaving them in destitution.
7. The Petitioner summarises the petition by stating that he is a senior citizen who has worked for the Church for over 30 years and also has invested financially in building and renovating the said church hence the abrupt eviction is likely to occasion irreparable loss and damage to him.
8. The respondents filed a replying affidavit by Zakaria Busolo the overseer of Kibera District which covers among others Ongata Rongai PAG Church.
9. The deponent states that he is aware of the communication between PAG headquarters, himself and the petitioner regarding his retirement.
10. That on 11/7/2016, the petitioner was served with a letter headed "preparation for retirement."
11. The letter informed the petitioner that in accordance with PAG Kenya Bye - Laws No. 2.4, he had attained the retirement age. The copy of Bye-Laws No. 2.4 is attached. The PAG records show that the petitioner was born on 15/1/1951 and was due to retire on 31/12/2016.



12. That on 22/7/2020 the petitioner was served with another letter whose subject was appreciation. He was notified to prepare to hand over as he was past his retirement age. Letter is attached.
13. Further, the petitioner was served with a letter dated 25/8/2020 wherein the petitioner was informed that he was supposed to retire and leave employment of the 1st Respondent on 29/11/2020.
14. That the petitioner was at all material times aware that the retirement age of pastors of PAG was 65 years of age and Not service.
15. That on 8/8/2020, the petitioner attended a joint meeting at the District Committee and Rongai PAG in which his retirement was discussed among four pastors who were due for retirement.
16. That upon lengthy discussions, the Committee resolved to issue retirement notice to the petitioner. It was noted that he was to be accorded a dignified send off at the end of November, 2020.
17. That the petition has no merit and it be dismissed with costs.
18. The petitioner filed further affidavit deposed to on 19/4/2021 in which he denies having received the letter dated 11/7/2016 but only saw the same from his advocates. That Rev. Dr. Zedekia Oteri has denied having authored the said letter and so the same is a fabrication. The petitioner admits that he was born on 15/1/1951 but says he was not served with the letter notifying him of the expected retirement. That the purported retirement was only meant to silence the petitioner and/or get rid of him.
19. The petitioner admitted having attended the meeting alluded to by the respondents but states that the other pastors mentioned are still in active service and were not retired. The petitioner says that he has never been accorded dignified send off and the alleged send-off of November 2020 never took place. That the petitioner was forcefully removed from the ministry in an uncouth manner not befitting his stature.
20. That his family, relatives and friends have been banned and/or denied from attending the service at the Rongai PAG Church which brings to question the motive of the respondents in retiring him.
21. That the respondents have not denied that the petitioner used his own resources to build and develop Rongai PAG and so they cannot eject him from the said Church.
22. That the respondents have also not denied having forcefully ejected the petitioner from the church. That other pastors have continued to serve upon attaining 65 years of age.
23. That the petition has merit and it be granted as prayed.

Determination

24. The parties filed written submissions which the Court has carefully considered together with the depositions and documents filed by the parties. The issues for determination are:-
 - a. Whether the petitioner has established a case against the respondent regarding threat and or violation of his human rights set out in the Constitution of Kenya, 2010.
 - b. Whether the petitioner is entitled to the reliefs sought?



25. Article 22(1) stipulates:-

“Every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed; or is threatened.”

26. The petitioner has alleged in the petition dated 2nd January, 2021 that the respondents have unlawfully, unjustly and abruptly retired him from the ministry of PAG church where he served for over 30 years at Rongai Church.

27. The petitioner admits that he has attained the age of 65 years and does not deny that the policy of the church presented before Court provides for retirement of the PAG clergy upon attaining the age of 65 years. The petitioner faults the decision to retire him on the ground that having substantially, and materially contributed to the building and development of the Church, the respondents could not retire him without according him due compensation and dignity. That the purported retirement was abrupt and without notice and so a violation of his rights.

28. The Petitioner has not in the petition expressly stated any constitutional provision in the Bill of Rights that has been denied, violated and/or threatened by the respondent. Indeed, the entire petition does not refer to any provision in the Constitution of Kenya, 2010; any statutory law of Kenya or any statute of the Church.

29. The respondent has produced letter dated 11/7/2016 in which the respondents notified the petitioner that in accordance to the PAG Kenya By -Law No. 2.4, the petitioner was due to retire having attained 65 years. That records show that he was born in 1951, a fact which the petitioner has admitted.

30. In the said letter, the petitioner was to hand over by 31st December, 2016 and therefore had been given more than six (6) months' notice of retirement.

31. It is clear that the petitioner did not retire as was scheduled in that letter and so subsequent notices of retirement were duly issued to the petitioner culminating in the letter dated 25/8/2020 which gave the petitioner a retirement date of 29/11/2020. Again this letter had accorded the petitioner at least three (3) months' notice of retirement. The petitioner denied having received the letter dated 11/7/2016 but did not expressly deny having received the letter dated 25/8/2020.

32. Indeed, in the Notice of Motion application dated 13/1/2021, the petitioner attached the letter dated 25/8/2020 as evidence of abrupt, unjustified and arbitrary notice of retirement.

33. In terms of the decision in Anarita Karimi Njeru v Republic [1979] eKLR;

A petitioner must expressly in his petition disclose the rights and/or fundamental freedoms set out in the Constitution of Kenya, 2010, which have been threatened, denied and/or violated as the basis of the cause of action against the respondents.

34. In the present case, the petitioner did not make a single disclosure of a right and/or freedom set out in the Constitution of Kenya, 2010 which has been denied, violated and/or threatened by the respondent.

35. The petitioner has therefore not disclosed any cause of action against the respondents that justified him to bring this petition before this Court.



36. The Pentecostal Assemblies of God – Kenya Constitution (1998) which the petitioner relies upon provides at Article 22; Dispute Resolution thus:-

“No member, pastor, official of the church shall take any dispute involving a member, pastor, official, organ of the church to a Court of law or any tribunal without first exhausting the dispute resolution machinery provided herein after.”

37. The petitioner has not provided any evidence that he had utilized the internal machinery exhaustively to resolve his retirement dispute before approaching this Court for resolution.

38. As a matter of fact, the petitioner having surpassed the retirement age of 65 years mandated by the statute of the Church, cannot be heard to want to violate that mandate on the pretext that he had expended his personal finances on the establishment and development of the Church. That is what is expected of a worthy servant of God without expecting any reward for his generosity.

39. This petition is misconceived and an abuse of the process of this Court.

40. The matters of worship and access to the Church by the petitioner and his family are matters falling outside the jurisdiction of this Court as they are not employment and labour matters. If indeed the respondents have denied the petitioner and his family access to his chosen place of worship, that would be a great indictment on the Church itself. We say no more on that matter.

41. Accordingly, the petition lacks merit and is dismissed. Each of the parties to bear their own costs of this petition.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 5TH DAY OF OCTOBER, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Okullo for Petitioner

Mr. Oloo for Respondent

