



**Ngunjiri v Full Gospel Churches of Kenya & another (Cause 1 of 2019)
[2023] KEELRC 3215 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3215 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1 OF 2019
B ONGAYA, J
DECEMBER 7, 2023**

BETWEEN

JOSEPH MWANGI NGUNJIRI CLAIMANT

AND

FULL GOSPEL CHURCHES OF KENYA 1ST RESPONDENT

BISHOP ISAAC KARIUKI 2ND RESPONDENT

JUDGMENT

1. The claimant filed the amended statement of claim on 22.06.2023 through MAK & Partners Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the claimant's compulsory leave was unlawful, wrongful and the amounts to constructive dismissal of the claimant's services.
 - b. The 1st and 2nd respondent be and are hereby ordered and directed to pay the claimant reputational damages suffered of Kshs 16,800,000.00.
 - c. The 1st and 2nd respondent be and is hereby ordered and directed to pay the claimant full salary together with interest thereon at court rates from 28.12.2018 until payment in full.
 - d. The 1st respondents be and are hereby ordered and directed to pay the claimants the senior pastors retirement package as per the church constitution Kshs 1,000,000
 - e. The 1st respondents be and are hereby ordered and directed to pay the claimant all his gratitude contribution of Kshs 6,000 per month contributed since year 2015 to date.
 - f. The respondents be and are hereby ordered and directed to pay the claimant the bereavement benefit packages to the tune of Kshs 260,000/= which was to be released to the claimant upon the death of his daughter.



- g. The respondents to issue the claimant with a certificate of service.
 - h. The respondents be and are hereby ordered and directed to pay the claimant costs of this suit together with interest thereon at court rates from the date of filing of suit until payment in full.
 - i. The respondents be and are hereby ordered and directed to pay the claimant costs of this suit together with interest thereon at court rates from the date of filing of suit until payment in full.
 - j. A declaration that the compulsory leave to the claimant is unlawful and against the rules of natural justice and contrary to the provisions of the constitution and employment act.
 - k. Mandatory order against the 1st and 2nd respondents to stay the compulsory leave notice dated 13.12.2018.
 - l. An order that the 1st respondent pay the claimant the cumulative salary from December 2018 together with accrued interest thereon until end of the period of contract.
 - m. Any other relief the Honourable Court deem fit to grant in accordance to equity and principles of natural justice.
 - n. Costs of the claim to be provided for.
2. The 1st and 2nd respondent filed their amended statement of response dated 01.08.2023 through Kosgei Muriuki & Koome Advocates. The respondent prayed that the suit be dismissed with costs, additionally the respondents prayed for the following prayers under the counter-claim:
 - a. Refund of the money collected but not remitted to the church district office by the claimant for the year 2017-2018 amounting to Kshs 460,000/=.
 - b. Return of all church documents and records taken away by the claimant.
 - c. Costs of the suit.
 - d. Any other relief that is just and expedient in the circumstances.
 3. The claimant's case was that he was an employee of the 1st respondent serving as a pastor at Dandora Local Church employed pursuant to a contract of employment dated 10.09.1998.
 4. He served the 1st respondent as pastor since the year 1975 when he was ordained as a full pastor. In 2018 he was suspended from service, at the time he held the position of senior pastor.
 5. By a letter dated 13.12.2018 the respondents directed the claimant to proceed on unpaid compulsory leave with immediate effect.
 6. The claimant states that as at the date of the compulsory leave, he was earning a salary of Kshs 70,000 per month.
 7. On 04.12.2018 the 2nd respondent summoned that claimant to a meeting to discuss his compulsory leave, the meeting was held at Buruburu church, a branch of the 1st respondent. In attendance was the 2nd respondent and some members of the Dandora Church, Regional Overseer Nairobi Region and all senior pastors of the 1st respondent within the Nairobi central district.
 8. The claimant was denied audience during the said meeting and was asked to leave the meeting and that the decision of their findings would be communicated to him.



9. The outcome of the meeting and the decision of the respondents concerning the claimant's compulsory leave was never communicated to him.
10. The claimant contends that the unpaid compulsory leave which is still in force, is wrongful and unlawful and it was a dismissal in the disguise of a suspension thus amounting to constructive termination.
11. The claimant states that he was a permanent employee and anticipated to work until past his retirement age (70 years). At the time of the compulsory leave he was sixty-four years old and had intended to work past his retirement age since his nature of work did not really have a retirement age per se, and he could have worked for another 20 years past his retirement age.
12. The claimant states that he had a healthy working relationship with the respondents as he diligently executed his duties and responsibilities at work and had worked for the respondents for more than eleven years without any warning letter or any complaint regarding his work performance.
13. The claimant was a member of the 1st respondent's retirement scheme where he contributed monthly towards the scheme and he seeks his savings from the scheme.
14. That he was a member of the bereavement scheme with the 1st respondent where he contributed towards the same and was entitled to a bereavement benefit to the tune of Kshs,260,000/- if he lost a close relative. That during his suspension, he lost his daughter and as a result of said loss he was entitled to a bereavement benefit package of Kshs 260,000/- which amount he was never granted.
15. The claimant states that he has suffered irreparable reputation damage occasioned by the actions of the 1st and 2nd respondents and he can no longer serve in the gospel ministry because his name and career has been tainted in society.
16. On the part of the respondents, it is stated that the 2nd respondent while serving as the District Overseer for Nairobi Region, around 12.05.2017 he received a letter dated 11.06.2017 from the elders of Dandora Church regarding the conduct of the claimant.
17. Upon receipt of the complaint letter the 2nd respondent states he called the claimant to his office and brought the issue to his attention and gave him a copy of the letter and asked him to resolve the issues raised and restore proper order in the church. To which the claimant promised to act on the issues raised.
18. Subsequently, the 2nd respondent received reports that issues at the claimant's church were getting out of hand and as such he convened a meeting of the District Executive Committee on 03.12.2018 when the claimant was given a chance to explain himself before the committee.
19. The claimant was requested to call his elders and pastors under him to attend a further meeting with the committee on the next day, 04.12.2018, during which meeting the claimant left midway when it was the turn of the elders to be heard.
20. On 13.12.2018 the elders made a decision to dismiss the pastor in exercise of their mandate. The 2nd respondent states that he received the letter and at the same time sent the claimant on compulsory leave to pave way for proper investigations and to avert further crises at the church considering there had developed an acrimonious relationship between the claimant and the members of the church.
21. The 2nd respondent stated that ordinarily upon receipt of a dismissal letter he is required to confirm and endorse it, but he instead decided to give the claimant a further chance to make amends, that would bring restoration to the church.



22. That he appointed a caretaker committee to take over the affairs of the church for the intervening period in the interest of bridging the gap and giving direction to the members who were concerned about the stability of the church. The taskforce was also to undertake fact finding and report back on the status of the church within six months from December 2018 to march 2019.
23. The caretaker committee run the administration of the church and was able to unravel several things that were not done right as per the church procedures, and the committee reduced their findings into a comprehensive report.
24. Based on the hearing done involving the claimant and the elders, the taskforce arrived at a preliminary conclusion showing that the violations done by the claimant were cognizable and that the claimant needed to show cause.
25. On 18.03.2019 the 2nd respondent issued the claimant with a notice to show cause why should not face appropriate disciplinary action.
26. The respondents maintain that the claimant filed this suit with the sole aim of embarrassing the church despite the constitution of the church discouraging court cases involving the church. The respondent states that it attempted to resolve the dispute by way of arbitration, however, the same aborted with the claimant disowning the process.
27. The respondents have since discovered that the claimant was planning to exit the church to form his own church ministry where he is currently the bishop. That this fact alone suffices to have him dismissed from being a pastor, having proceeded to form another church.
28. The claimant was never given a transfer letter from Kikuyu where he ought to have been serving, and he has not disclosed the circumstances under which he moved to Dandora. Previously, he had moved from the Eldoret church before joining the Kikuyu church and had been transferred from Kitale under unclear circumstances. He is known to be a trouble maker and it is why he has always left the churches where he has gone.
29. The claimant was serving as the senior pastor in charge of a local church assembly which consisted of two branches under him. As a senior pastor, the claimant was supposed to pay salaries of the pastors under him, all out of the collections of the church assembly. However, he did not pay other pastors their dues.
30. The taskforce reported that the claimant had misappropriated church funds and was not faithful and accountable to the church. The church was in arrears as a result and the same is captured in the report.
31. The respondent contends that the church is governed by its constitution and internal procedures which ought to be given a chance without perpetual litigation over a matter that has since been resolved internally.
32. The claimant has never made a point to request for his pension. Additionally, the pension scheme records do not reflect the contributions of the claimant as claimed.
33. The churches constitution provides that the retirement age for pastors is the age of 65 years.
34. The respondent maintains that the claim has no basis since the claimant was never subjected to any form of unfairness. He was rightfully dismissed and went through the internal procedures of the church, where a decision of a church appointed arbitrator was rendered as per the church constitution and the claimant refused to abide by it, despite having been heard.



35. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
36. To answer the 1st issue for determination there is no dispute that the claimant was employed by the respondents. The respondents have confirmed in their submissions that at the material time the claimant was the Senior Pastor of a Local Church Assembly known as Dandora falling under the Nairobi Central District whose head, known as Overseer, was Bishop Isaac Kariuki, the 2nd respondent. The 2nd respondent was the claimant's supervisor.
37. It is clarified for the respondents that several Districts constitute Regions headed by Regional Overseers and Regional Overseers constitute decision makers at the church national level composed of the National Executive Council (NEC) headed by the General Overseer.
38. The 2nd issue is whether the respondents terminated the claimant's employment as the Senior Pastor for Dandora Church. The evidence was that the claimant had differences with the church elders at the Dandora Church culminating into the meeting of 03.12.2018 where the claimant gave his account. The church elders' concerns were about alleged failure of the claimant to account for church resources and specifically the money contributed by the congregants. A further meeting was held on 04.12.2018 at which the elders gave their account. A turn then came for the claimant and the church elders to have a joint meeting about the issues. The 2nd respondent testified that he initially held the separate meetings with the claimant then the elders to better understand the dispute prior to the joint meeting. But the claimant walked away on the joined meeting. The Court finds that there is no reason to doubt the 2nd respondent's testimony that the claimant walked away thereby frustrating the 2nd respondent's effort to get to the root of the dispute. Thereafter the church disputes persisted and there were violent scenes involving police. The 2nd respondent appointed a care taker committee. In the meantime, the elders had on their own and separately issued the letter of 13.12.2018 dismissing the claimant. The elders had hired the claimant. The letter of 13.12.2018 by the elders was issued at the time the 2nd respondent had issued the letter of compulsory leave also dated 13.12.2018. The claimant then filed the suit on 28.12.2019. The Court finds that the claimant was not dismissed at all as at the time he filed the instant case.
39. To answer the 2nd issue, it appears to the Court that the claimant's compulsory leave was not unfounded because the evidence by the claimant and all other witnesses was that the Dandora church had become chaotic and the leave was a valid intervention to restore calm. The evidence show that the claimant had walked away from the 2nd respondent's interventions in the preliminary objections and in any event, the church elders had taken steps to dismiss him. The compulsory leave then had no effect to the extend that the elders had anyway dismissed or expelled the claimant. The evidence was that the claimant had indeed failed to account for the congregants' contributions and appeared to run the church with unilateral decisions. The Court finds he invited the predicament to himself and the claim that the compulsory leave was unfair or unlawful is found unjustified.
40. To answer the 3rd issue the claimant has not established defamation or injury to the reputation against the respondents. It is that the claimant had a difference with the church elders in Dandora Church that became chaotic. In all those chaotic transactions which invariably had an adverse consequence to the church and the claimant, the respondents have not been shown to have had a hand in it. The claimant has failed to show the defamatory material that the respondents published and that the claimant suffered reputational injury.
41. Except for the certificate of service, the Court finds that the claimant has failed to establish any of the remedies as prayed for. Any dispute about pension benefits would fall for determination per section 46



of the *Retirement Benefits Act*. In consideration of all circumstances, each party to bear own costs of the suit. The Court returns that the claimant has failed to show the contractual and statutory basis of the other reliefs prayed for. While making that finding, the reliefs as introduced in the amended statement of claim also appear to have been time barred under section 90 of the *Employment Act* because as at the time of their introduction by amendment, the three years of limitation had already lapsed from the date of the cause of action.

In conclusion the suit is determined with orders:

- a. The declaration the respondents to deliver a certificate of service per section 51 of the *Employment Act*, 2007.
- b. Each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

