



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO 1974 OF 2016

REV. FR. EMMANUEL AMOLO OWUOR.....CLAIMANT

VERSUS

ST. MATTHIAS MULUMBA MAJOR SEMINARY1ST RESPONDENT

SEMINARY EPISCOPAL COMMISSION.....2ND RESPONDENT

FR. DOUGLAS MWIJA.....3RD RESPONDENT

JUDGMENT

Introduction

1. Rev. Fr. Emmanuel Amolo Owuor, the Claimant in this case, is a Catholic Priest in the Archdiocese of Kisumu. He brought this claim pursuant to his engagement as a Lecturer, at St. Matthias Mulumba Major Seminary, Tindinyo, the 1st Respondent herein.
2. The claim is contained in a Memorandum of Claim dated 24th June 2016 and filed in court on 26th September 2016. The Respondents filed a Reply on 18th April 2018.
3. At the trial, the Claimant testified on his own behalf but the Respondent did not call any witness. Both parties filed written submissions.

The Claimant's Case

4. The Claimant states that he was employed as a Lecturer at St. Matthias Mulumba Major Seminary and that he was supposed to be paid a monthly salary of Kshs. 100,000. He claims to have served in that capacity until 2015, when the Respondents terminated his services, without notice.
5. The Claimant lays a claim for unlawful and unfair termination of employment and adds that he was not issued with a termination letter and was not paid his final dues.
6. The Claimant alleges that in the year 2016, his name was dropped from all lessons and engagement lists, with the Respondents appointing another staff member to take over from him.
7. The Claimant avers that he wrote to the Respondent asking for a proper termination letter, giving reasons for the termination. He also asked for his dues plus a certificate of service.
8. The Claimant now seeks the following remedies:
 - a. General damages for infringement of his fundamental rights;
 - b. Unpaid arrears amounting to Kshs. 6,000,000;
 - c. Refund of money spent in supplies for the Seminary being Kshs. 81,224;
 - d. Cost of internet for 6 years being Kshs. 144,000;

e. Certificate of Service;

f. Costs plus interest.

The Respondents' Case

9. In their Reply dated 13th April 2018 and filed in court on 18th April 2018, the Respondents deny the Claimant's claim and state that there was no dismissal or termination as envisaged under the Employment Act.

10. The Respondents point out that the Claimant is a Priest falling under Canon Laws governing the Catholic Church. They state that the Claimant was only released from seminary duties and add that he remained qualified for other church duties, including preaching and conducting Mass.

11. The Respondents deny that the Claimant was entitled to a monthly salary of Kshs. 100,000 and state that he was not paid a salary but received a monthly allowance of Kshs. 10,000 for lecturing duties. The allowance was later increased to Kshs. 15,000. In addition, the Claimant received other allowances for conducting Gregorian Masses and was housed by the Church.

12. Regarding the circumstances surrounding the Claimant's exit from the Seminary, the Respondents state that the Claimant had failed to perform his duties in addition to committing acts of insubordination and talking ill of his colleagues at the work place. According to the Respondents, this rendered it impossible for the Claimant to continue teaching at the Seminary.

Determination

13. The first issue for determination in this case is whether there was an employment relationship between the Claimant and the Respondents.

14. Section 2 of the Employment Act defines an employee as:

“a person employed for wages or a salary and includes an apprentice and indentured learner.”

15. The Claimant's appointment as a Lecturer at St. Matthias Senior Seminary was formalised by letter dated 30th July 2009 stating as follows:

“Dear Rev. Dr. Emmanuel Amollo

RE: APPOINTMENT TO BE LECTURER AT ST. MATTHIAS-SEMINARY.

TINDINYO

Cordial greetings from the Archbishop's Office!

In response to KEC's request for a Priest Theologian and following my communication with you some time ago, I wish to confirm that I have appointed you to go and teach theology at **ST. MATTHIAS MULUMBA SEMINARY, TINDINYO** with effect from **1ST AUGUST 2009**. The Bishop in charge of the Seminaries has assured me that the Rector of Tindinyo Seminary will assign you the intended subjects to be taught.

CONGRATULATIONS again for having obtained a **DOCTORATE** in **THEOLOGY** and I am confident that you will inspire all the Seminarians by your zealous teaching.

Yours sincerely

(signed)

Most Rev Zacchaeus Okoth

ARCHBISHOP OF KISUMU”

16. From this letter, it is evident that the Claimant's appointment as a Lecturer at St. Matthias Senior Seminary was dependent upon his being a Priest Theologian. There is also evidence that the Claimant was paid an allowance and not a salary. Further, even as he taught at the Seminary, the Claimant continued conducting Masses and drawing the applicable allowances.

17. In the persuasive decision in *Universal Church of the Kingdom of God v Myeni, Mxolisi Justice & 2 others (ZALAC/2015/31)* the Labour Appeal Court of South Africa held that a Pastor earning a stipend allowance, could not claim an employment relationship with the Church. The South African Court went further to hold that an employment relationship must be evidenced by either an implied or express contract of employment.

18. In the present case, the Claimant was released by his Archbishop to teach at the Seminary. This meant that he continued being a Priest in the Archdiocese of Kisumu. The teaching appointment did not therefore create an employment relationship between the Claimant and the Seminary.

19. In the result, the Claimant's entire claim, which he based on his view that he was an employee of St. Matthias Mulumba Senior Seminary collapses and is dismissed.

20. Each party will bear their own costs.

21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2022

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JUDGE

Appearance:

Mr. Oloo for the Claimant

Mr. Wekesa for the Respondent