



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**CAUSE NUMBER 1210 OF 2015**

**BETWEEN**

**THE REV. JOHN KENNEDY KINYUA.....CLAIMANT**

**VERSUS**

**1. THE REV. JOEL WAWERU MWANGI**

**[BISHOP OF NAIROBI DIOCESE]**

**2. THE ANGLICAN CHURCH OF KENYA**

**[DIOCESE OF NAIROBI].....RESPONDENT**

*Rika J*

*Court Assistant: Emmanuel Kiprono*

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*P.K. Mbabu & Company Advocates for the Claimant*

*Kibatia & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed an Amended Statement of Claim, on 23<sup>rd</sup> October 2019.
2. He states, he was ordained as a Deacon of the 2<sup>nd</sup> Respondent on 24<sup>th</sup> July 1994. He was appointed a Priest through a letter dated 11<sup>th</sup> October 2005.
3. He worked as Vicar until 16<sup>th</sup> November 2010, when the 1<sup>st</sup> Respondent unfairly demoted him to the position of Curate. He accepted the lower position and continued to serve effective 1<sup>st</sup> December 2010.
4. The 1<sup>st</sup> Respondent failed to pay the Claimant allowances as per service manual and increase his salary in June 2011, after he attained a Master's Degree in Theology.
5. He states, between December 2010 and September 2012, he was denied responsibility allowance, house allowance, and provident fund, amounting to Kshs. 534,463.
6. He claims that his salary was underpaid for the period between January 2009 and June 2012, in the amount of Kshs. 692,960. His gross monthly salary, at the time of termination, should have been Kshs. 198,831.

7. He received a letter on 19<sup>th</sup> September 2012, from the 1<sup>st</sup> Respondent, revoking his appointment. There was no notice, no warning or hearing. The allegations made in the letter were not true. He was embarrassed in the eyes of the Christians to whom he ministered. He was not subjected to any disciplinary hearing, contrary to the Constitution of the 2<sup>nd</sup> Respondent.

8. He did not act contrary to the terms and conditions of his service in his engagement with Carlile College. He had informed his boss the Vicar of the approach by the College to teach during his free time. He intended to discuss the offer with the 1<sup>st</sup> Respondent. He assured the 1<sup>st</sup> Respondent he would not take up the offer without the 1<sup>st</sup> Respondent's permission. When the 1<sup>st</sup> Respondent received a copy of the Claimant's letter of appointment, he terminated the Claimant's contract.

9. The 1<sup>st</sup> Respondent circulated a notice on 2<sup>nd</sup> August 2018 to all, which was read at the Claimant's St. Peters Church at Kahawa Sukari, to the effect that the Claimant had taken up appointment with Carlile College. The Claimant was present and was embarrassed.

10. He prays for Judgment against the Respondents for: -

a. Declaration that revocation of appointment and termination by the 1<sup>st</sup> Respondent is illegal irregular, and un-procedural.

b. Setting aside or revocation of appointment, unconditional reinstatement, payment of salary, allowances and other benefits from 19<sup>th</sup> September 2012 until date of reinstatement and written retraction of the letter dated 2<sup>nd</sup> August 2018.

Alternatively,

c. A month's salary in lieu on notice at Kshs. 198,831.

d. Annual Leave pay for 2012 at Kshs. 198,831.

e. Colar Kshs. 1000.

f. Clergy training 2012 at Kshs. 100,000.

g. 12 months' salary in damages for un-procedural and unlawful termination at Kshs. 2,385, 972.

h. Service pay for 18 years.

i. Underpayments at Kshs. 692,960.

j. Unpaid allowances at Kshs. 543,463.

11. The Respondents filed their Statement of Response on 17<sup>th</sup> August 2015. They agree that the Claimant was employed by the 2<sup>nd</sup> Respondent as Curate and Vicar. It is agreed that the Respondents revoked the Claimant's appointment on the ground that he took up employment with Carlile College Centre. He accepted appointment by signing the letter on 10<sup>th</sup> July 2012, without the authority of the Respondents. The Bishop had the authority to dismiss the Claimant summarily, if the Claimant fundamentally breached his obligations arising under Articles 1 and 2 of his contract. The Claimant did this, by accepting employment of another Employer. The Respondents state that termination was fair and lawful, and pray for dismissal of the Claim with costs.

12. The Claimant gave evidence and closed his case on 26<sup>th</sup> November 2019. The 1<sup>st</sup> Respondent gave evidence on 26<sup>th</sup> February 2020. The Respondents informed the Court that they had dispensed with the calling of an intended 2<sup>nd</sup> Witness on 23<sup>rd</sup> September 2021. The hearing was marked as concluded on 23<sup>rd</sup> September 2021. The matter was last mentioned on 27<sup>th</sup> October 2021, when Parties confirmed their compliance on filing of Closing Submissions.

13. The Claimant restated details of his appointment as Curate and Vicar, as well as the circumstances leading to termination of his contract, in his evidence. He appealed against the decision to revoke his appointment. He spoke to the top echelons of the Church including Chancellor Muturi Kigano, and the Archbishop Most Rev. Wabukhala. Nothing worked, compelling him to present the Claim in Court.

14. Dismissal was on the ground that the Claimant took up employment with Carlile College. The College is an ACK Institution. The Principal called the Claimant and other colleagues for a 2-day seminar. The Claimant was authorised to attend the seminar by his Supervisor, the Vicar. The Principal said he was recruiting the clergy to start Diploma Programmes in the respective parishes. Appointment letters issued. There was no acceptance clause for the clergy to sign.

15. The Claimant sought an appointment with the 1<sup>st</sup> Respondent before accepting appointment. He saw the 1<sup>st</sup> Respondent who advised that he had not seen the Principal's letter yet.

16. On 10<sup>th</sup> July 2012 the Claimant met the Principal. The Principal advised the Claimant to sign the letter, so that it could be forwarded to the 1<sup>st</sup> Respondent. The Claimant obliged, signing the letter on 10<sup>th</sup> July 2012.

17. On 19<sup>th</sup> September 2012, the 1<sup>st</sup> Respondent's Secretary called the Claimant. He was asked to pick his letter from the 1<sup>st</sup> Respondent's

office. He went there and received the letter revoking his appointment, dated 19<sup>th</sup> September 2012. There was no hearing.

18. Cross-examined, the Claimant accepted that he took oath of canonical obedience from the outset. The oath binds all Priests to obey the Bishop's instructions that are lawful and honest. The Claimant was bound by the constitution of the Church.

19. The Claimant was at some point demoted from Vicar to Curate. He was not happy with the demotion. His letter of appointment did not allow the Claimant to engage in any other duty, except as assigned by the Vicar.

20. The letter of revocation referred to Claimant's appointment by Carlile College. He could not take up the appointment, without the Vicar's permission. He explained his position at pages 72 and 73 of his documents.

21. The Claimant signed the letter of appointment on 10<sup>th</sup> July 2012. He did not write back to say he could not take up appointment without the Bishop's authority. The Claimant tried to reach the Bishop. The Bishop, 1<sup>st</sup> Respondent herein, was looking for an opportunity to sack the Claimant. The relationship between the 2 was good, but the Claimant felt the Bishop was looking for an opportunity to sack him, and the opportunity came with Carlile College.

22. Redirected, the Claimant told the Court that his salary was reviewed over time. He did not have a problem with the 1<sup>st</sup> Respondent. The Vicar never complained about Claimant's service. The Bishop had raised concerns, which were addressed.

23. The 1<sup>st</sup> Respondent told the Court he is the Bishop overseeing the Diocese of Nairobi. He was familiar with the Claimant and the facts in this dispute.

24. The Claimant's service was terminated. He took up an appointment with Carlile College. The College is not part of Nairobi Diocese. It is run by a Board of Directors. He signed letter of appointment on 10<sup>th</sup> July 2012, to offer part-time tutorials, contrary to canonical oath of obedience and appointment letter. The canonical oath of obedience is crucial. Priests are called, interviewed, trained and ordained. They swear to obey the Bishop and Canon of the Church.

25. Prior to taking up the part-time job, the Claimant did not seek the 1<sup>st</sup> Respondent's authorization. When he received the Claimant's letter of appointment, it was administrative, not about discipline of morality. The 1<sup>st</sup> Respondent consulted the Diocesan Chancellor, Mr. Kibara. The Chancellor advised that the Claimant's appointment is revoked. This is what the 1<sup>st</sup> Respondent did. The College was ACK, but not part of the Diocese. No authority had issued.

26. In August 2012, the Claimant had visited the Bishop, the 1<sup>st</sup> Respondent herein. He asked the 1<sup>st</sup> Respondent if he had received a copy of the Claimant's letter of appointment by Carlile College. The 1<sup>st</sup> Respondent advised he had not. Later, the letter was received by the 1<sup>st</sup> Respondent, signed, showing that the Claimant had accepted appointment.

27. Quoting Matthew 6:24, the 1<sup>st</sup> Respondent told the Court that no one can serve 2 masters at the same time. The Diocesan Chancellor advised revocation of appointment. A disciplinary committee was not required since the Claimant was moving on, and had moved on. The 1<sup>st</sup> Respondent had no reason not to let the Claimant move on.

28. The 1<sup>st</sup> Respondent did not terminate his ordination. He only revoked his working in the Nairobi Diocese. His ordination is still in place.

29. It was not possible to have the Claimant reinstated. He had divorced his wife. He called the 1<sup>st</sup> Respondent a terrorist. The Bishop would have difficulty working with the Claimant. He would have to reapply and interviewed by a Panel. The 1<sup>st</sup> Respondent did not have the sole mandate of reinstatement. The Claimant's record shows ups and downs. The relationship between the Claimant and the Church was not cordial. There were issues on ministerial conduct. Retired Bishop Njoka raised issues. The 1<sup>st</sup> Respondent told the Court he did not have any grudge against the Claimant. In September 2012, he availed a Master's Degree Certificate to the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent could not act on it because the Claimant had already moved on, on new appointment.

30. Cross-examined, the 1<sup>st</sup> Respondent told the Court, he did not terminate the Claimant's contract; he revoked it after the Claimant took employment with Carlile College. The 1<sup>st</sup> Respondent heard the Claimant on the subject, on dates he could not recall. Prior to appointment, the Claimant had told the 1<sup>st</sup> Respondent about the proposed appointment. Prior to revocation of appointment, the 1<sup>st</sup> Respondent did not give the Claimant a hearing. The Claimant had already taken up appointment. The 1<sup>st</sup> Respondent consulted the Diocesan Chancellor. The advisory issued by the Chancellor is not exhibited in Court.

31. The Constitution and the terms of service, do not provide for revocation of appointment for disciplinary matters. The Claimant was appointed in 2005 by Archdiocese of Nairobi. There were transfers thereafter. Revocation letter referred to 'we' as the decision-makers. The Bishop was corporate, not individual. He consulted Diocesan Chancellor. There was no hearing prior to revocation. The power to revoke was inherent in the Bishop. The 1<sup>st</sup> Respondent spoke to the Vicar, Claimant's Supervisor, who advised he was not aware of the appointment. The Claimant was not tried by any Court, acknowledged by the Synod.

32. His letter of appointment is dated 26<sup>th</sup> June 2012. It was signed by the Claimant on 10<sup>th</sup> July 2012. It was received by the 1<sup>st</sup> Respondent on 13<sup>th</sup> September 2012. The Vicar did not report the Claimant to have been absent at the parish, between June and September 2012.

33. The College was an Institution of ACK. Appointment was as a part-time Tutor. Priests had time-off on Mondays. The 1<sup>st</sup> Respondent had

power to revoke appointment, but not to reinstate him.

34. The 1<sup>st</sup> Respondent conceded he wrote a letter dated 2<sup>nd</sup> August 2018 addressed to all congregations, indicating that the Claimant had taken up a new appointment. The letter was done in 2018, while the Claim was filed in 2015. Prior to writing and circulation of the letter, the 1<sup>st</sup> Respondent did not give the Claimant a hearing, and prepare him for the circulation. The purpose was to inform congregations that the Claimant was no longer clergy in the Diocese. He was paid his contractual salary and benefits. He did not complain to the 1<sup>st</sup> Respondent about non/underpayment.

35. Redirected, the Bishop told the Court page C20, transfer letter, allowed the Bishop to revoke appointment. Power to revoke and appoint is vested in the Bishop. Authority is from heaven and inherent in the Bishop. The Claimant wrote saying he was apologetic. He knew it was necessary to obtain the permission of the 1<sup>st</sup> Respondent, before taking up the appointment with Carlile College. The 1<sup>st</sup> Respondent did not cancel the Claimant's licence as a Priest. He revoked appointment as conveyed in the letter C20.

36. The issues are whether the Claimant's employment contract was terminated or appointment revoked by the 1<sup>st</sup> Respondent; whether termination or revocation of appointment, was carried out fairly, based on valid reason; and whether the Claimant is entitled to the remedies pleaded.

**The Court Finds: -**

**Procedure and justification**

37. It is unfortunate that even after the Parties indicated to the Court that they were negotiating settlement within their Church structures, the Parties were not able to settle the matter conclusively out of Court.

38. Secular Courts must be left to deal with secular disputes, while disputes involving religious institutions must be resolved within the grievance and dispute settlement organs, available in the institutional governance structures, by application of religious /canon law. It is important to pay obeisance to ecclesiastical authority in Churches, acknowledging that secular laws and institutions, are not suited to deal with disputes involving the brethren.

39. Article XXV1 of the 2<sup>nd</sup> Respondent's Constitution states that discipline in the Church, rests on the consent of its members and has nothing to do with the coercive jurisdiction of an earthly Court. However, the Article observes that Christians, like all others are subject to the law of the land in which they live and may claim neither exemption nor privilege, in relation to the law of the land.

40. The Parties have failed to resolve the dispute within their field of calling and the Court must therefore intervene, applying the law of the land, and impose a solution.

41. The history of the Claimant's employment is not disputed. He was ordained as a Deacon way back on 24<sup>th</sup> July 1994. He made his way up to the position of Vicar, before reverting to the position of Curate. He lastly worked at St. Peters Church in Kahawa Sukari, until his appointment was revoked by the 1<sup>st</sup> Respondent on 19<sup>th</sup> September 2012.

42. In terms of the Employment Act, revocation of appointment simply means termination of that appointment. It may mean something else within canonical law, but the Court is concerned with the law of the land, not canonical law.

43. The 1<sup>st</sup> Respondent terminated the Claimant's appointment as Curate, through the letter dated 19<sup>th</sup> September 2012.

44. In doing so, the 1<sup>st</sup> Respondent invoked his corporate powers under Article 6 of the letter of appointment. He informed the Claimant that the Claimant had breached Article 1 and 2 of his letter of appointment by taking employment with Carlile College, without the authority of the Bishop.

45. There was no hearing before termination. The 1<sup>st</sup> Respondent alleged that there was no need for hearing, because the Claimant had taken up another job and the 1<sup>st</sup> Respondent had no reason to prevent the Claimant from moving on.

46. With tremendous respect to the Bishop, he and his unspecified colleagues who made the decision to terminate Claimants' appointment, were required to hear the Claimant before termination, in accordance with Section 41 and 45 of the Employment Act.

47. The reason given for the decision, that the Claimant had taken up employment with Carlile College, needed to be validated. It was disputed, and the Claimant needed to be given an opportunity, to explain himself on the Carlile College appointment. It was not just a matter of the Bishop reading the letter of appointment, and concluding that the Claimant had foregone his appointment as Curate, left employment after years of ministering, and gone to teach at Carlile College. The 1<sup>st</sup> Respondent needed to show valid reason or reasons, for his decision to terminate the Claimant's long church service.

48. It was irrational of the Bishop. Why? The nature of the teaching the Claimant was being invited to engage in, was part-time. It was within the ACK ecclesiastical reach.

49. The record indicates the offer from Carlile College was not a secretive side-hustle, a moonlighting activity, involving the Claimant alone.

50. There was an Archdeaconry Clergy Meeting held at St. Hellen's Church on 10<sup>th</sup> August 2021. It included St. Peter's Chairman Ven. Fredrick Kibaki. It was observed under Min 5/08/Arch/ 2012-AOB, that Carlile College had organized Diploma in Theology and Civil Responsibility through Parishes.

51. It was a corporate venture, involving an ACK College, aimed at benefiting the Church through learning for Diploma in Theology and Civil Responsibility.

52. The Claimant informed the 1<sup>st</sup> Respondent about the Diploma proposal right from the beginning. Instead of the 1<sup>st</sup> Respondent cautioning the Claimant against applying to teach part-time, if there was something objectionable in teaching, he told the Claimant he had not seen the letter of appointment. The Claimant also told the 1<sup>st</sup> Respondent he would not teach, until he obtained permission from the 1<sup>st</sup> Respondent. The course was due to start in September 2012. The Claimant offered not to teach until the College itself, had sought the permission of the 1<sup>st</sup> Respondent. Did the Claimant therefore engage in work which was not assigned by his Vicar, contrary to the terms of his appointment? There was no work carried out by the Claimant for Carlile College.

53. It would have been very easy for the 1<sup>st</sup> Respondent to decline to sanction the teaching proposal from the College, notwithstanding that the College was an ACK Institution, and what it was offering was in line with the work of the Church, and known in the wider church community. The Claimant subjected himself completely to the authority of the 1<sup>st</sup> Respondent, and only signed accepting appointment upon the insistence of the College's Principal. If the 1<sup>st</sup> Respondent registered his disapproval on receiving a copy of the letter of appointment, would it not have been possible for the College to revoke the letter of appointment? Instead, the 1<sup>st</sup> Respondent assumed, quite irrationally, that the Claimant had terminated his long-running service as a Church Minister with the 2<sup>nd</sup> Respondent, and gone into teaching.

54. Teaching itself was not full-time. Priests were free on Mondays. The Vicar at Kahawa Sukari was aware of the Diploma Course, and the offers made to the Claimant and others to facilitate this work of God. Why would the 1<sup>st</sup> Respondent take the drastic action against the Claimant, even when the Claimant offered evidence that he had not started teaching and would not teach, until the Bishop gave his blessings? Could not the Bishop take up the issue with the Vicar at Kahawa Sukari, the College and the Claimant himself, have the teaching proposal reversed altogether, instead of adopting such a drastic measure as termination?

55. The 1<sup>st</sup> Respondent was plainly wrong, in taking the decision he took against the Claimant, which he says, was based on his mandate of heaven.

56. Article V1 of the 2<sup>nd</sup> Respondent's Constitution on the role of the Bishop does not in the view of the Court, seem to have guided the treatment of the Claimant by the 1<sup>st</sup> Respondent. The article requires that the Bishop shall be a loving friend, father and brother to all clergy under his jurisdiction, sharing their burden and guiding them with wise counsel. He is the Chief Minister of discipline in his Diocese, providing proceedings as may be required under the Canon of disciplinary proceedings. He is expected to be diligent in seeking the restoration of those who have offended.

57. The Article requires the Bishop to remember that exercise of authority and power may lead all too easily to arrogance, and he must be watchful at all times over his ways, knowing that he is the servant of servants of God, and that he can carry out his duty only in so far as he follows the example of Christ, who made himself the servant of those whom he had come to redeem.

58. And why would the 1<sup>st</sup> Respondent, but for malice, issue circular to the congregation at Kahawa Sukari Church, in 2018, 6 years after he terminated the Claimant's contract, and while proceedings were in Court, informing the Church that the Claimant was no longer their Curate? Had the Claimant defied the letter of termination and presented himself for service at Kahawa Sukari, 6 years after termination?

59. Termination was unfair, not based on fair procedure, or substantive reason.

### **Remedies.**

60. Ordinarily the Claimant would be entitled to reinstatement as there does not seem to have been rational ground for termination of his service.

61. Section 12 of the E&LC Act however limits the remedy of reinstatement to 3 years from the date of termination. Termination took place over 9 years ago. The order of reinstatement is similarly neither practicable nor reasonable, after such a long time away from the pulpit for the Claimant. It is also likely that the Bishop would not facilitate his work. As demonstrated in his circular of 2018, the Bishop appears to harbour a deep-seated loathing for the Claimant. It is not likely that the Claimant peacefully discharges his ministerial calling upon reinstatement, under such a Bishop.

62. The initial Claim was that the Claimant earned a monthly salary of Kshs. 54,030. Existing pay slips match this initial Claim. The Claimant then came up with amendments, pushing forward the case for a salary of Kshs. 198,831 monthly, upon which the prayer for compensation is based.

63. He did not explain in fine detail in his evidence, why the Court should endorse this new salary. He did not complain about underpayments while he ministered all those years. He has not shown that he was underpaid salary and allowance. He did not show any clause in his contract, or policy in the Church, which entitled him to service pay.

64. The 1<sup>st</sup> Respondent told the Court that clergy authorized to go for further studies, were entitled to a training allowance of Kshs. 100,000. The Claimant obtained a Master's Degree in Theology and the Court does not see any reason why, he should not have this allowance.

65. Colar at Kshs. 1000? There is no evidence on this.

66. He worked from 1994 to 2012 – a period of 18 years. As observed above, he would have been entitled to reinstatement had there been no time-bar on the remedy, under the law. His record was clean. There were complaints which had been raised about his ministerial conduct, such as not sleeping in the same house with his Wife, and reference to Worshippers as, ‘hypocrites.’ These complaints were addressed and were not pursued by the Church. The Claimant expected to go on serving as a Minister. **He is allowed compensation based on a monthly salary of Kshs. 54,030, equivalent of 12 months’ salary at Kshs. 648,360.**

67. **He is granted a month’s salary in lieu of notice at Kshs. 54,030.**

68. **He is allowed the prayer for clergy training allowance at Kshs. 100,000.**

69. **The prayer for annual leave for the year 2012 is allowed on pro-rata basis [9 months] at Kshs. 40,522.**

70. **Costs to the Claimant.**

71. **Interest allowed at court rates, from the date of Judgment, till payment is made in full.**

**IN SUM, IT IS ORDERED: -**

**a. Termination was unfair.**

**b. The Respondents shall pay to the Claimant: equivalent of 12 months’ salary in compensation for unfair termination at Kshs. 648,360; notice at Kshs. 54,030; clergy training allowance at Kshs. 100,000; and annual leave at Kshs. 40,522- total Kshs. 842,912.**

**c. Costs to the Claimant.**

**d. Interest granted at court rates, from the date of Judgment, till payment is made in full.**

**DATED, SIGNED AND RELEASED TO THE PARTIES AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 17<sup>TH</sup> DAY OF FEBRUARY 2022.**

**James Rika**

**Judge**