



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER E175 OF 2021**

**BETWEEN**

- 1. DR. MARGARET MIGIRO**
- 2. MBAABU BARINE**
- 3. JANE CLARE MUTHONI WANYEKI**
- 4. MASELA ACHIEMG BARAZA**
- 5. ANNE NYAMBURA OCHANDA**
- 6. CHRISTINE WANJA**
- 7. NEHEMIAH MISATI BUNDI**
- 8. IRENE BETTY SUNGU**
- 9. MARGARET MUSUME**
- 10. ALFRED MUTWIRI NJERU**
- 11. CHRISTINE MAKENA GITARI**
- 12. ELENA WANJA**
- 13. LEAH WANGECI GACHOKA**
- 14. BEVERLY NASAMBU KICHANA**
- 15. ANNE NJERI MUREITHI**
- 16. COLLINS SIMIYU MUTEKA.....CLAIMANTS**

**VERSUS**

- 1. THE REGISTERED TRUSTEES OF THE NATIONAL COUNCIL OF CHURCHES OF KENYA**
- 2. JUMUIA HOSPITALS LIMITED.....RESPONDENTS**

**RULING**

1. In its Application dated 30<sup>th</sup> August 2021, the 1<sup>st</sup> Respondent prays the Court to strike out the Claim against the 1<sup>st</sup> Respondent.

2. The 1<sup>st</sup> Respondent states it has never been an Employer to the Claimants; it is a distinct legal entity from the 2<sup>nd</sup> Respondent; employment contracts were executed between the Claimants and the 2<sup>nd</sup> Respondent; the doctrine of privity of contract does not allow for joinder of the 1<sup>st</sup> Respondent; and the Claim against the 1<sup>st</sup> Respondent is in abuse of the process of the Court.

3. The Application is founded on the Affidavit of 1<sup>st</sup> Respondent's General Secretary, Rev. Canon Chris Kinyanjui Kamau.

4. It is opposed through a Replying Affidavit sworn by the 5<sup>th</sup> Claimant, Anne Nyambura Ochanda on 30<sup>th</sup> September 2021.

5. Ochanda explains that the 1<sup>st</sup> Respondent was a major decision-maker on recruitment, placement, transfer, remuneration, and disciplining of the Claimants. The 1<sup>st</sup> Respondent issued job application forms to the Claimants. Employees filled the forms and handed them in to the 1<sup>st</sup> Respondent. Employment letters issued on 1<sup>st</sup> Respondent's letterhead. Certificates of Service were issued and signed by 1<sup>st</sup> Respondent's Human Resource Manager. Probation contracts were signed by 1<sup>st</sup> Respondent's General- Secretary. Termination letters were signed by Rev. Canon Chris Kinyanjui Kamau. Lastly, Rev. Canon. Chris Kinyanjui Kamau wrote the Claimants upon termination, thanking them for their service to the 1<sup>st</sup> Respondent.

6. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions. These were confirmed to have been filed and served.

**The Court Finds:** -

7. There is overwhelming evidence contained in the Replying Affidavit of the 5<sup>th</sup> Claimant, to show that the 1<sup>st</sup> Respondent employed the Claimants.

8. It is difficult to see in what way, the 1<sup>st</sup> Respondent does not fit the description of the term 'Employer,' contained in Section 2 of the Employment Act, as expounded in ***Rosephine Mumbi Munyoki & 4 others v. Blue Edge Hotels Limited [Managing Soni Hotels & Apartments] & Another [2016] e-KLR.***

9. The material on record indicates the Respondents, were Co-Employers. There is no reason to justify striking out of the Claim against the 1<sup>st</sup> Respondent. If by any chance the 1<sup>st</sup> Respondent has additional evidence to show it was not an Employer to the Claimants, such evidence can be adduced at the trial. There is however no reason at all, to warrant discharge of the 1<sup>st</sup> Respondent from the proceedings. Parties should endeavour to have the Claim heard in full, instead of making unnecessary and time-consuming Applications.

IT IS ORDERED: -

***a. The Application by the 1<sup>st</sup> Respondent, dated 30<sup>th</sup> August 2021 is declined.***

***b. Costs to the Claimants.***

**Dated, signed and released to the Parties at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 8<sup>th</sup> day of February 2022.**

**James Rika**

**Judge**