



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 155 OF 2019

BETWEEN

REV. CHARLES AKULE CLAIMANT

VERSUS

PRESIDING BISHOP METHODIST

CHURCH IN KENYA1ST RESPONDENT

PROF. ZABLON NTHAMBURI,

BISHOP DR. LAWI MATHIU, MR. JOHNSON

MWONGERA NJUKI, MR, SHADRACK KIRURI

M'LAARIA, MRS. ELIZABETH KITZAO, MR. SAMUEL

NTOITI M'MBOROTHI, MR. SOLOMON MUKABA

MATIRI, REV. MICHEAL BENJAMIN SIMBA,

MR. LAWI MUCHAI, REV. KIPKEMOI KOSKEI,

REV. JOSHUA M'IKIAO.....TRUSTEES / RESPONDENTS

RULING

1. There are 2 Applications filed by respective Parties, due for ruling today.
2. The 1st is dated 13th April 2021, filed by the Claimant. He seeks leave to file an Amended Statement of Claim, Amended Witness Statement and Supplementary List of Documents. He prays that annexed Draft Amended Statement of Claim be deemed as duly filed and served.
3. The 2nd Application is filed by the Respondents. It seeks mandatory injunction to compel the Claimant to vacate the Kawangware Methodist Church Manse.
4. The Applications are supported and opposed through the Affidavits sworn by the respective Parties on record. It was agreed that both Applications be considered and determined simultaneously, on the strength of the Affidavits and Submissions on record. The dispute was last mentioned in Court on 8th February 2022, when Parties confirmed filing and exchange of their Submissions.
5. The Claimant relies on Rule 14[6] of the Employment and Labour Relations Court [Procedure] Rules, 2016 in seeking Amendment of the Statement Claim. He submits that the Respondents have not filed their Statement of Response close to 2 years after the Claim was filed. He explains that initially, he presented the Claim seeking to bar the Respondents from evicting him from Kawangware Methodist Church Manse.

There was disagreement on the posting of the Claimant. The Respondents then alleged to have defrocked the Claimant, which the Claimant holds, amounts to termination of employment. The Respondents later alleged to have retired the Claimant. The Claimant submits it is necessary to amend his Claim, to bring clarity to the issues in dispute.

6. On the Application by the Respondents, the Claimant submits that the Respondents have conceded they did not terminate his contract of employment. They have not retired the Claimant regularly. The Claimant was not listed as one of the Ministers due for retirement in 2020, in the Church's Annual Conference of 2019. He has not been issued with any letter of retirement. He is the current occupant of the Manse, and has been ministering at the Church. He has no problem leaving the Manse, once regularly retired. An order of mandatory injunction at interlocutory stage, issues only in special circumstances and clearest of cases.

7. The Respondents explain that the Claimant was notified in 2018, that he would be stationed at Kangeta Circuit in Nyambene Synod. He was to move from Kawangware. He declined to move to Nyambene. The Respondents' Ministerial Standing Committee recommended the Claimant's exclusion from ordained ministry, pending the decision of the Annual Conference.

8. The Claimant instead filed the current Claim. During the pendency of the Claim, the Respondents retired the Claimant, in accordance with the Church's Standing Orders, after he attained the age of 65 years. His service has not been extended, and retirement stands. The Respondents therefore submit that the Application to amend the Statement of Claim, amounts to an attempt by the Claimant, to breathe life into a Claim whose embers were extinguished by effluxion of service.

9. On their Application for eviction of the Claimant, the Respondents state that the Claimant was retired as of 1st January 2021. He was resident at Respondents' Kawangware Manse and received all dues appurtenant to his contract. His contract was not terminated and he was not denied residence at Kawangware. However, once retire, he is no longer entitled to residence and to remuneration. There is nothing left for the Court to determine. The Respondents pray that their Application is allowed.

The Court Finds: -

10. The substantive prayers in the Claim include declaratory orders that defrocking of the Claimant by the Respondents from the ordained ministry was unfair and irregular; that the decision to remove the Claimant from Kawangware residence was illegal; that the Respondents acted contrary to Sections 41, 44 and 45 of the Employment Act; permanent injunction restraining the Respondents from transferring the Claimant; an order quashing the decision to remove the Claimant from Kawangware residence; and compensation for unfair termination.

11. The Respondents allege that the Claimant was retired while this Claim is pending before the Court, and the prayers above have become moot. They cannot be revived through amendment, and there is no justification for the Claimant to continue residing at Respondent's Kawangware residence.

12. The Court is persuaded that the Claim before it, relates to termination of employment, whether the term used in terminating, is termination, defrocking or retirement. What the Claimant pleads is that he was, or has, not been treated fairly, and in accordance with the law, in terminating, defrocking or retiring him. He must not be denied the opportunity to show that unfair termination has occurred, and the Respondent must similarly have the opportunity to justify termination, by whatever name called, as required under Section 47[5] of the Employment Act, 2007.

13. The Claim is far from extinguished. At the heart of the dispute is unfair termination. Rule 14 [6] of the E&LRC [Procedure] Rules, 2016 allows Parties to amend their Pleadings, subject to grant of leave by the Court, where proceedings have closed. The Claimant states that the Respondents have not filed their Statement of Response. The Respondent shall have the opportunity to respond in their Statement of Response, to all the issues that are raised by the Claimant, in the Amended Statement of Claim.

14. Grant of mandatory injunction at an interlocutory stage, does not appear to the Court the prudent thing to do. The Respondents must substantively justify their decision against the Claimant. They must justify termination, defrocking and/ or retirement. This is not to be done through an interlocutory application. It follows that eviction the Claimant from the Kawangware residence, while the Claim is pending, is not the right thing to do. Parties must abide the outcome of the main dispute.

IT IS ORDERED: -

a. The Application dated 13th April 2021 filed by the Claimant is allowed.

b. The Respondents shall file and serve their Statement of Response, Documents and Witness Statements within 14 days of the delivery of this Ruling.

c. The Application by the Respondents dated 17th September 2021 is declined.

d. Parties shall endeavour to schedule the main Claim for hearing as soon as practicable.

e. Costs in the cause.

Dated, signed, and released to the Parties electronically, under the Ministry of Health and Judiciary Covid-19 Guidelines, at Chaka, this 28th day of April 2022

JAMES RIKA

JUDGE