



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO.E017 OF 2020**

***(Before D.K.N.Marete)***

**REV.RICHARD MAINA GITARI.....CLAIMANT**

**VERSUS**

**THE REGISTERED TRUSTEES**

**KENYA ASSEMBLIES OF GOD**

**(KAG GENERAL SUPERINTENDENT).....1<sup>ST</sup> RESPONDENT**

**PHILIP KITOTO.....2<sup>ND</sup> RESPONDENT**

**BISHOP BENSON IRUNGU.....3<sup>RD</sup> RESPONDENT**

**REV.PETER KAMETHU MWANGI.....4<sup>TH</sup> RESPONDENT**

**REV.WILLIAM WACHIRA WAMBU.....5<sup>TH</sup> RESPONDENT**

**REV.ISAAC MURIITHI GICHURE.....6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

This matter came to court vide a Statement of Claim dated 11th December, 2020. The issues in dispute are therein cited as;

- 1. Unlawful, wrongful and illegal termination and/or expulsion*
- 2. Payment of terminal benefits*
- 3. Claim for loss of income*
- 4. Damages for denial of a fair hearing*
- 5. Damages for denial of administrative process*
- 6. Damaged for harassment, intimidation and shame*
- 7. Damages and/or compensation for acquisition and development of an alternative place of worship*
- 8. Damages for loss of good health, hospitalization and mental torture.*

The Respondents in a Respondent's Statement of Response dated 15th April, 2020 deny the claim and pray that it be dismissed with costs.

That Claimant's case is that at all material times to this suit, he was a full time reverend of the Kenya Assemblies of God Church and was stationed at Kagio KAG Church.

The Claimant's further case is that he joined the Ministry of the KAG Church as a pastor in December, 1999 at Kimahuri KAG, Kyeni Area of Nyeri County. While in this service, the Claimant undertook a Diploma in Theology course and upon graduation was ordained and made a full minister in 2009. He was posted to Kagio in 2012 and served thereon until 23rd August, 2020.

The Claimants other case comes out as follows;

5. *On the 23/8/2020, at about 10:00am, the claimant was at the KAG Kagio Church, conducting the 2<sup>nd</sup> Service of the day, when he received information that the 3<sup>rd</sup> respondent, who was his Bishop, was outside the church compound.*

6. *The claimant left the service to go and receive the Bishop, whom he found in the company of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents. The Claimant found them in the company of two plain clothes police officers whom the claimant knew well as they were stationed at Kagio police station. They were also in the company of a re-knowned media personality who is a reporter for a popular local radio station, known as 'Johnson Muriithi wa Inooro' who the claimant also knew well.*

7. *The 3<sup>rd</sup> respondent rudely informed the claimant that he was under strict instructions from the 2<sup>nd</sup> respondent, the chief superintendent, to take over the church, from the claimant, and further, that the claimant was, with immediate effect, estopped from conducting any service at the said church, or any other KAG Church, for a period of Three (3) months.*

8. *The claimant asked for the written communication, or letter from the General superintendent, or the reason for the alleged suspension, but none was forthcoming.*

22. *The Claimant also avers that his termination and/or suspension was unlawful, wrongful and unprocedural because:-*

*i) He was not given any reasons for his termination, expulsion and/or suspension.*

*ii) He was not accorded any hearing as per the KAG's constitution.*

*iii) He was not given any chance to defend himself, thereby being deprived of his constitutional rights to a fair hearing.*

He cites his particulars of loss and damages as follows;

*1. Loss of his terminal benefits*

*2. Loss of income*

*3. Loss of good health*

*4. Loss of money that he has used to lease land, and to build a church*

He prays thus;

*a) Damages for an illegal, unlawful, wrong and unprocedural; termination- Kshs.50,000,000*

*b) Damages for loss of earning- Kshs.5,000,000*

*c) Damages for denial of his right to be heard- Kshs.1,000,000*

*d) Damages for harassment, intimidation and shameful termination; considering he had been a faithful to the respondent for a period of 21 years -Kshs.2,000,000*

*e) Payment of terminal benefits- Kshs.15,000,000*

*f) Damages for loss of good health and compensation for all hospital bills incurred- Kshs.5,000,000*

*g) Damages and compensation for acquiring a plot and putting up a church-Kshs.7,000,000*

*h) Costs of the suit.*

*i) Any other relief that this Honourable Court may deem fit to grant.*

The Respondent case is a denial of the Claim. This comes out as follows;

4. In further answer to the allegations under the heading “Basis of Claim”

- i) Save that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents were at the KAG Kagio church on 23<sup>rd</sup> August, 2020 the Respondents deny paragraphs 5,6,7,8,9,10,11,12 and 13 of the Basis of Claim.
- ii) The Respondents deny paragraph 14 and state that the handover of the keys and the office was done voluntarily by the Claimant and state that their presence at the church was due to occurrences that had occurred involving the Claimant.
- iii) If, which is denied, the Claimant leased a plot of land and built a church thereon the plot and the cost thereof was on his or on his congregations account and cost and the Respondents were and are not responsible therefore. In the premises the contents of paragraphs 16, 17 and 18 are denied.
- iv) In answer to paragraphs 18 and 19 and 21, if, which is denied, the Claimant has suffered any loss and damage, the Respondents are not responsible and/or liable therefor.
- v) In answer to paragraph 20 the Respondents state that indeed the Claimant was invited to a meeting where the circumstances of the matter would be ventilated but he refused, failed and/or neglected to attend the same and persisted in his refusal, failure and/or neglect.
- vi) In answer to paragraph 22, the Respondents state that the Claimant left of his own volition and refused, failed and/or neglected to avail himself at a meeting arranged by the Respondents. In the premises the Respondents deny that the Claimant’s constitutional rights were breached.
- vii) Save that the Claimant had been with the church for a period of 21 years, the Respondents deny the contents of paragraph 23 and put the Claimant to the strict proof thereof.
- viii) In answer to paragraphs 24, 25 and 26 of Basis for Claim, the Respondents state as follows;
- a) The Claimant was not dismissed by the Respondents.
- b) Payment of the tithe and other church payments are religious obligations observed by the church.
- c) The church that the Claimant alleges he built was his own choice and is not a KAG Church. In the premises the Respondents were and are not responsible therefor.
- ix) In answer to paragraph 28 of the Basis for Claim, which is denied, the Claimant was hospitalized, the Respondents deny that they were responsible and/or liable for the same and put the Claimant to strict proof thereof.
- x) In any event the Respondents state that the claims for leasing of land, building of a church and hospitalization are caught up by the principle of remoteness of damage and are an abuse of the process of court.

The matter came to court variously until 8th April, 2021 when the parties agreed on a determination by way of written submissions.

The issues for determination therefore are;

1. Whether there was a termination of the employment of the claimant by the respondent.
2. Whether the termination of the employment of the claimant by the respondent, if at all, was wrongful, unfair and unlawful.
3. Whether the claimant is entitled to the relief sought.
4. Who bears the costs of the claim?

The 1st issue of determination is whether there was a termination of the employment of the claimant by the respondent. The claimant in his written submission dated 11th May, 2021 submits a case of unlawful termination of employment. However, this is vehemently denied by the respondents in both their case and written submissions.

The claimant’s case is that he was an employee of the respondent for twenty-one (21) years but was elbowed out of employment in undue and unnecessary skirmishes at Kagio KAG Church, Kirinyaga County. He specifically cites Section 2 and 6 of the Respondent’s constitution which provides for support of ministers as follows;

“A minister shall be supported from the tithes of the assembly in which they serve”

“...every month, the pastor shall give a tithe of his church, plus a tithe of his own...”

It is his position and submission that for him to give a tithe of Kshs.4000.00, his salary was Kshs.40,000.00. He therefore submits unlawful

and unprocedural termination of employment leading to loss of earnings.

Other claims pleaded and submitted by the claimant is compensation for being forcefully sacked, falling sick and trying to salvage a bad situation by improvising a tent and thereon building a semi-permanent church for members of his congregation.

Further, he claims damages for loss of earnings, denial of a hearing, intimidation and shameful termination of employment. This is besides terminal benefits and damages for loss of good health, hospital bills and acquiring a plot.

The respondents deny employment of the claimant. It is their submissions that the claimant and other pastors in the church were subject to the policies of the church which decreed that they be supported by members of their local church with proceeds from tithes and offerings paid and made by the members. This is a sort of allowance, subject to availability. This is illustrated by Section 2 of the churches constitution as cited and relied on by the claimant.

The respondents further submit that the claimant has not in any event annexed or produced a contract of employment or any documents indicating receipt of salary from the 1st respondent. It is their case that the respondent was never in employment as is known in law therefore no termination of employment ever occurred.

Further, the respondents submit that the claimant quietly left the services of the 1st respondent for his other overtures, on his own volition and therefore a claim of termination or even being whisked out of his pastoral duties does not arise. He flatly refused and was not co-operative in pursuing an out of court settlement of the issues in dispute. A case of termination therefore does not arise.

I agree with the respondents case on two grounds. Firstly, the claimant has not in any way demonstrated a case of employment, let alone termination of employment. His is an eloquent and high sounding case of breach of contract and termination which is not demonstrated in evidence. His witness statement and those of his other witnesses do not in any way evidence his claim. This also goes for his list of documents in support thereof. I therefore find a case of no termination of employment and hold as such. And this answers the 1st issue for determination.

The 2nd issue for determination is whether the termination of the employment of the claimant by the respondent, if at all, was wrongful, unfair and unlawful. There was no termination of employment whatsoever. This court has no obligation delving into the legitimacy or otherwise in a case of no termination of employment.

The 3rd issue for determination is whether the claimant is entitled to the relief sought. He is not. Having lost on a case of unlawful termination of employment, he becomes disentitled to the relief sought.

I am therefore inclined to dismiss the claim with orders that each party bears the costs of the claim. And this meets all the issues for determination.

**DATED AND DELIVERED AT NYERI THIS 30TH DAY OF JUNE, 2021.**

D.K.Njagi Marete

JUDGE

Appearances

1. Ms.Wanjiru Rugaita instructed by Rugaita & Company Advocates for the Claimant.
2. Mr. Mungania instructed by J.K.Mungania & Company Advocates for the Respondents.