



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 446 OF 2014

BETWEEN

REV. PETER MATANO MUNENE.....CLAIMANT

VERSUS

1. BISHOP ZACHARIA KAHUTHU

2. REV. LUKE MWOLOLO

3. REV. CATHERINE NGINA MUSAU

4. LYDIA MAINA.....RESPONDENTS

RULING

1. The Court has been asked to give a ruling, on an application filed by the Respondents dated 25th January 2021. The orders sought are that: decree herein, and taxation orders made on 30th April 2020 are stayed; ruling of the Taxing Master of 18th December 2020 is set aside; and the Bill of Costs dated 6th August 2020 is taxed afresh.

2. The history leading to taxation of Bills of Costs for and against the Parties on opposite sides, is a little muddled.

3. The initial Claim was against the 4 Respondents sued in their capacities as Trustees of Kenya Evangelical Lutheran Church.

4. The Respondents entered appearance and filed their Statement of Response through M.M. Kimuli & Company Advocates.

5. They subsequently filed an application dated 30th October 2017, asking the Court to dismiss the Claim, as the Trustees of the Kenya Evangelical Lutheran Church are duly registered body corporate under the Trustees [Perpetual Succession] Act, and ought therefore ought to have been sued in their corporate name.

6. This prompted the Claimant to file an application dated 6th November 2017, seeking amendment of the Claim, striking out the names of the Respondent, and introducing the Kenya Evangelical Church as the sole Respondent

7. It is not clear from the record when the 2 applications were heard and orders made, but on 3rd July 2018, the matter was mentioned before Hon. Judge Wasilwa, when the Counsel for the Respondent Mr. Kimuli, told the Court that he was facing certain challenges in the matter. He told the Court that he filed an application for dismissal of the Claim on account of misjoinder. Before his application could be heard, the Claimant applied for leave to amend. He states that leave was granted, and the 4 Respondents discharged from the proceedings, with a new Respondent introduced to the proceedings.

8. He told the Court: -

§ I have no instructions and ask the Court to allow me out of the suit.

§ The new Parties should be served.

§ I also ask to be given costs of my Claim.

9. The Court ordered, in exact words, that: -

§ The Counsel for the 4 Respondents expunged M.M. Kimuli & Co Advocates are allowed to get out of the Claim with costs to the Respondents.

§ Claimant to serve the new Respondent, Kenya Evangelical Lutheran Church directly.

10. These orders were made on a mention. M.M. Kimuli was, in the understanding of this Court, granted leave to cease acting. It is not clear from the orders above what costs to the Respondents were granted, as what was before the Court, was a mention, in which previous Respondent's Counsel, apparently asked for leave to cease acting. It is also not clear what costs of the Claim M.M. Kimuli asked for, as he was not a Claimant, neither was he acting for the Claimant.

11. The Court has not been able to see the actual ruling and orders, made by the Court allowing the Application for amendment, and dismissing the Claim against the initial 4 Respondents, with costs to the 4 Respondents.

12. The new Respondent appointed M.M. Kimuli to act for it, through a Notice of Appointment of Advocates, dated 31st August 2018.

13. A Statement of Response and Counterclaim was filed by the new Respondent on 31st August 2018. The Claim was subsequently heard and the Claimant awarded Kshs. 456,252, costs and interest, in a Judgment dated 13th January 2020.

14. The Claimant filed his Bill of Costs which was taxed at Kshs. 159,515, in a ruling of the Taxing Master, dated 30th April 2020.

15. The initial 4 Respondents moved to file their own Bill of Costs dated 6th August 2020 after the Claimant had taxed his Bill. Their Bill was based on the orders of the Court made 3rd July 2018, which they state, dismissed the Claim against them. Their Bill was drawn at Kshs. 1,703,001, and was taxed at 157,860 on 18th December 2020.

16. The 4 Respondents were dissatisfied with the taxation ruling as was the Claimant. The 4 Respondents filed reference under Rule 11 [1] and [2] of the Advocates [Remuneration] Order, 2009, while the Claimant, in a letter dated 11th January 2020, sought reasons for the ruling from the Taxing Master, to facilitate his own reference.

17. The 4 Respondents argued their reference in the absence of the Claimant, on 12th March 2021, and ruling was reserved for 24th June 2021. They argue among other things that they should have had instructions fees granted individually, rather than to them as a unit of 4 Respondents.

18. The Court has encountered difficulty in preparing the proposed ruling. The undersigned Judge was not involved with the Trial. Typed proceedings are not in the file. The handwritten transcripts, and orders made, are not clear as would enable the Court to make an informed ruling. The Claimant was absent when the 4 Respondents made their submissions on their reference. It has become necessary therefore for the Court to revert the reference to the Parties, for clarification of the following issues: -

- a. Whether M.M. Kimuli, having been discharged from the proceedings on 3rd July 2018, was properly on record on taxation of the 4 Respondents' Bill of Costs.
- b. What costs of the Claim, M.M. Kimuli sought from the Court on 3rd July 2018.
- c. What costs were granted.
- d. Whether, and when, the applications by the respective original Parties, for amendment and dismissal of the Claim, were heard.
- e. Availability of the rulings and orders arising from the 2 applications.
- f. Whether reference filed on 5th February 2021, relating to the Bill taxed on 18th December 2020, was filed within time.

19. It is necessary also that proceedings are typed, and placed on the record before the full Ruling is made.

IT IS ORDERED: -

- a. Ruling on reference filed by the initial 4 Respondents, on 5th February 2021, scheduled for 24th June 2021 is deferred.**
- b. The 4 Respondents shall file and serve supplementary submissions within 14 days of this ruling, clarifying the 6 issues raised by the Court at paragraph 18 above.**
- c. The Claimant shall file his submissions within 14 days of service.**
- d. Proceedings shall be typed and placed on record.**

e. Parties shall move the Court for a new ruling date, after they have complied with the orders made herein.

Dated, signed and released to the Parties electronically at Mombasa, under Ministry of Health and Judiciary Covid-19 Guidelines, this 24th day of June 2021.

James Rika

Judge