



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. E017 OF 2021

IN THE MATTER OF

ARTICLES 3(1), 22, 23, 27(1), 41, 50, 159 AND 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF

ALLEGED VIOLATIONS AND/OR THREATENED VIOLATION OF FUNDAMENTAL

RIGHTS AND FREEDOMS OF INDIVIDUALS AS ENSHRINED UNDER

ARTICLES 27, 28, 41, 47 AND 50 OF THE CONSTITUTION

AND

IN THE MATTER OF

THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND

FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF

SECTIONS 5, 9, 10, 17, 18, 20, 35, 37, 41, 43, 44, 45 AND 49 OF

THE EMPLOYMENT ACT, 2007

BETWEEN

PASTOR KENNETH OKECH MAENA.....PETITIONER

v

SEVENTH-DAY ADVENTIST CHURCH E.A. LTD.....1st RESPONDENT

KENYA LAKE CONFERENCE2nd RESPONDENT

WEST KENYA UNION CONFERENCE.....3rd RESPONDENT

RULING

1. This is one of the ever-increasing number of disputes where *lord spirituals* are bringing court proceedings before the *lord temporals*.
2. Some of the facts presented appear smack out of an adult's only X-rated movie (nude and sexually explicit photos).

3. Pastor Kenneth Okech Maena (the Petitioner) was at all material times serving as a District Pastor, Oyugis Milimani parish of the Seventh Day Adventist Church.
4. The Petitioner was also serving as the Union President.
5. On 19th December 2017, the Petitioner sought leave of absence, and the Secretary of the West Kenya Union Conference (the Union Conference) notified the Petitioner of the approval through a letter dated 25th January 2018. The approval was subject to conditions.
6. The Petitioner concluded the leave of absence and, on 13th January 2020, applied for deployment.
7. On 6th March 2020, the Union Conference notified the President of the Kenya Lake Conference (the Lake Conference) that it had received the Petitioner's request for deployment, but because it had received allegations of sexual harassment against him during the leave of absence, the Lake Conference should inquire into the allegations.
8. The Lake Conference deployed the Petitioner to Milimani Oyugis effective 17th March 2020.
9. The Lake Conference deliberated on the allegations against the Petitioner, and on 11th June 2020, it resolved to suspend him pending inquiries and investigations. The Petitioner was informed of the suspension through a letter dated 12th June 2020.
10. On 20th July 2020, the Lake Conference invited the Petitioner to appear before its Executive Committee to listen to the report from the inquiry and also make representations.
11. The Inquiry Commission presented its report dated 17th July 2020 to the Lake Conference on 2nd August 2020.
12. The Commission found that the sexual allegations had not been proved, and the Lake Conference voted that the Petitioner be reinstated as a District Pastor.
13. However, there were allegations that the Inquiry report had been doctored, and the Union Conference established another Commission which presented another report dated 15th October 2020.
14. The new Commission found that the initial report had not been doctored.
15. As a result, the Union Conference invited the Petitioner to appear on 8th November 2020 for a review of his case.
16. The Union Conference met on 16th December 2020 and resolved to withdraw the Petitioner's ministerial license.
17. The Petitioner was aggrieved, and he moved the Court on 10th March 2021, alleging infringement of his rights and seeking the following remedies:
 - (1) A declaration that the 3rd Respondent is in breach of the Commission of Inquiry findings and recommendations made on 17th July 2020 and the same to be upheld by this Honourable Court.
 - (2) A declaration that the resolutions purportedly passed on 16th December 2020 concerning the recommendations by the 3rd Respondent to the 2nd Respondent are null and void as it exposes the Petitioner to double jeopardy and has no basis and is biased, based on no report and illegal.
 - (3) A declaration that the Petitioner was rightful and procedurally reinstate (sic) to work after investigations by the appointed commissioners and the same be maintained and validated by this Honourable Court.
 - (4) The costs of the Petition.
18. Filed with the Petition was a Motion under a certificate of urgency.
19. The Court directed the Petitioner to effect service of the Motion and Petition upon the Respondents.
20. When served, the Respondents filed a replying affidavit and at the same time raised a Notice of Preliminary Objection contending that:
 - (1) The Seventh Day Adventist Church/Organisation (under which the Respondents herein exist) has clear and established structures, running up to the General Conference in sessions, articulating the rights of appeal and or review. Consequently, the instant Petition is premature and violates the doctrine of exhaustion.
 - (2) On the other hand, the subject of the Petition and consequential proceedings have been mounted in the absence of a precipitate decision and thus violates the doctrine of ripeness.
 - (3) In any event, the impugned decision upon which the subject proceedings are premised and/or otherwise grounded was/is an administrative decision which is subject to the provisions of section 9(2) of the Fair Administrative Actions Act, 2015.

(4) Besides, the subject Petition was filed and/or commenced on the basis of existing suit and/or proceedings, namely Kisumu CMCC E & L R Cause No. E44 of 2020. Consequently, the subject Petition is barred and/or prohibited by the doctrine of sub-judice. In the premises, the Petition offends the provisions of section 6 of the Civil Procedure Rules, chapter 21, Laws of Kenya.

(5) Be that as it may, the instant Petition does not meet and/or satisfy the constitutional threshold provided for and/or otherwise enumerated in the locus classicus decision in the case of *Anarita Karimi Njeru v Republic* (1979) eKLR. Consequently, the entire Petition does not disclose and/or capture any reasonable cause of action.

(6) In the premises, the Petition herein and the Notice of Motion application are legally untenable.

(7) Notwithstanding the foregoing, the instant Petition amounts to and/or constitutes an abuse of the due process of Court.

(8) Besides, the Petitioner is non-suited.

21. When the Petition came up for directions on 15th June 2021, the Court directed the parties to file and exchange submissions on the Preliminary Objection.

22. The Respondents filed their submissions on 4th June 2021, while the Petitioner's submissions were not on record by the agreed timeline of 23rd July 2021.

23. The Court has considered the record, the Preliminary Objection and the submissions.

Sub judice

24. The Petitioner herein sued the Respondents before the Magistrates Court in Kisumu ELRC Suit No. E044 of 2020, *Pastor Kenneth Okech Maena v Seventh Day Adventist Church EA Union Ltd & Ors*, on 21st December 2020.

22. The subject of the dispute was in the main similar to what the Court has outlined above, and the remedies sought before the Magistrates Court were:

(1) A declaration that the 3rd Respondent is in breach of the Commission of Inquiry findings and recommendations made on 17th July 2020 and the same to be upheld by this Honourable Court.

(2) A declaration that the resolutions purportedly passed on 16th December 2020 concerning the recommendations by the 3rd Respondent to the 2nd Respondent as null and void as it exposes the Petitioner to double jeopardy and has no basis and is biased, based on no report and illegal.

(3) A declaration that the Petitioner was rightful and procedurally reinstate (sic) to work after investigations by the appointed commissioners and the same be maintained and validated by this Honourable Court.

(4) The costs of the Petition.

25. The remedies are the exact same remedies sought before this Court. The facts upon which the action were anchored are also the same.

26. The Respondents raised a Preliminary Objection in near similar terms before the Magistrates Court, and the Magistrates Court delivered a Ruling on 24th March 2021, declining jurisdiction on pecuniary grounds.

27. The instant Petition was filed on 10th March 2021 before the aforesaid Ruling by the Magistrates Court.

28. The Petitioner did not disclose in the body of the Petition or in the affidavit in support of the Petition that he had mounted similar proceedings before the Magistrates Court, or that such proceedings were pending.

29. In the view of the Court, the Petition herein was not only caught up by the doctrine of *sub-judice*, but it was also an abuse of the court process for material non-disclosure.

Exhaustion of alternative dispute resolution

30. The Respondents produced an extract of its constitution in Court. The Constitution has created structures and an Organisational hierarchy.

31. Under the structure and hierarchy, the General Conference Session and the General Conference Executive Committee between Sessions is the highest ecclesiastical authority.

32. The Constitution further provides that when disputes are not resolved at lower levels, they should be appealed to the next higher Organisation until the highest authority.

33. The decision to remove the Petitioner from pastoral or ministerial duties was an ecclesiastical function.

34. The Petitioner did not demonstrate that he had exhausted the laid down appellate avenues within the church before invoking the jurisdiction of the Court (see *Speaker of National Assembly v Njenga Karume (2008) 1KLR 425*).

35. The Court would therefore decline jurisdiction, and the Petition is dismissed with costs to the Respondents.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF DECEMBER 2021.

RADIDO STEPHEN,

MCIARB JUDGE

Appearances

For Petitioner Mauwa & Co. Advocates

For Respondents Oguttu Mboya, Ochwal & Partners Advocates

Court Assistant Chrispo Aura