



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**PETITION NO. 93 OF 2019**

**IN THE MATTER OF: ARTICLE 22(1) OF THE CONSTITUTION 2010**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 27(1) & (2), 28, 41(1) & (2) AND 48 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: SECTION 12 AND 41 OF THE EMPLOYMENT ACT, 2007**

**AND**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**BETWEEN**

**DAVID KARIUKI MUCHAI.....PETITIONER**

**VERSUS**

**CHRISTIAN CHURCH INTERNATIONAL**

**REGISTEREED TRUSTEES.....1<sup>st</sup> RESPONDENT**

**HENRY MULANDI.....2<sup>nd</sup> RESPONDENT**

**JOHN KAUTI MATIVO.....3<sup>rd</sup> RESPONDENT**

**RULING**

1. At all material times, David Kariuki Muchai (applicant) was serving as a Bishop, Diocese of Thika with the Christian Church International (1<sup>st</sup> Respondent).
2. On 7 September 2018, Bishop John Mativo (3<sup>rd</sup> Respondent) acting as Secretary General of the 1<sup>st</sup> Respondent wrote to the applicant to inform him that the National Administrative Council had decided that he be placed on *sabbatical leave* for 1 year. The reasons for and conditions of the leave were set out in the letter.
3. The applicant responded to the letter sending him on sabbatical leave on 21 September 2018 and indicated that because he had not requested for the leave, the action must have been informed by other considerations.
4. The applicant further decried in the response that he had not been afforded an opportunity to be heard before the decision to send him on *sabbatical leave* was taken.
5. It appears that the applicant did not abide with the conditions and terms of the *sabbatical leave* for on 21 February 2019, the 3<sup>rd</sup> Respondent issued to him a *show cause notice* calling upon him to explain why disciplinary action should not be taken against him allegedly for violating the terms of the sabbatical. The applicant was required to respond within 21 days.

6. The *show cause* reached the applicant after 21 days and in his response on 27 March 2019, he stated that he required the guidance of the Respondents considering the late receipt of the *show cause*. There was no response from the Respondents.

7. The applicant thereafter made a brief written response on 25 April 2019 in which he denied the accusations, and this was followed with a letter from the 3<sup>rd</sup> Respondent on 9 May 2019 informing him (applicant) that the National Executive Council had arrived at a decision to *excommunicate* him (applicant).

8. The *excommunication* prompted the applicant to file a Petition together with a motion under certificate of urgency on 3 June 2019 seeking orders

1. ...

2. **THAT** the Honourable Court be pleased to issue an order of injunction against the Respondents either by themselves, agents, employees and/or servants from implementing the impugned decision of sending the Petitioner on sabbatical and/or excommunicating and/or expelling the Petitioner from office/employment as the Bishop of Diocese of Thika and Christian Church International, Ndunyu Chege including but not limited to repossessing of the 1<sup>st</sup> Respondent's properties currently in the possession of the Petitioner/Applicant which includes the vehicle, minister's license, marriage certificate book, ordination certificate, minister's ID and any other property or document or preventing the Petitioner from accessing all the 1<sup>st</sup> Respondent's churches, offices and learning institutions pending the hearing and determination of this application.

3. **THAT** the Honourable Court be pleased to issue an order of injunction against the Respondents either by themselves, agents, employees and/or servants from implementing the impugned decision of sending the Petitioner on sabbatical leave and/or excommunicating and/or expelling the Petitioner from office/employment as the Bishop of Diocese of Thika and Christian Church International, Ndunyu Chege including but not limited to repossessing of the 1<sup>st</sup> Respondent's properties currently in the possession of the Petitioner/Applicant which includes the vehicle, ministers license, marriage certificate book, ordination certificate, ministers ID and any other property or document or preventing the Petitioner from accessing all the 1<sup>st</sup> Respondent's churches, offices and learning institutions pending the hearing and determination of this Petition.

4. **THAT** the Honourable Court be pleased to issue an order compelling the Respondents to reinstate the Petitioner's full salary and benefits with effect from May 2019 pending the hearing of this application.

5. **THAT** the Honourable Court be pleased to issue an order compelling the Respondents to reinstate the Petitioner's full salary and benefits with effect from May 2019 pending the hearing of this application.

6. **THAT** the costs of this application be provided for.

9. When the application was placed before the Court *ex-parte*, it declined to grant any substantive order and lieu thereof, it directed that the application be served for *inter-partes* hearing on 11 June 2019.

10. The Respondents filed grounds of opposition and replying affidavit on the morning of the hearing.

11. The Court heard oral submissions from the parties and has also considered the application and the responses thereto.

12. The sequence of events leading to the *excommunication* of the applicant are largely not in dispute.

13. It is also not in dispute that the applicant started his journey with the 1<sup>st</sup> Respondent through a letter of appointment (was not filed in Court) and was entitled to a salary and other benefits usually enjoyed in an ordinary employment relationship.

14. It is further not disputed that the 1<sup>st</sup> Respondent has a Constitution and By-Laws.

15. The question the Court needs to address in the circumstances is whether the facts as presented to the Court have met the legal threshold for grant of injunctive orders sought at an interlocutory stage. The principles applicable were set out long ago in the case of *Giella v Cassman Brown & Co. Ltd. (1973) EA 338*.

16. *Excommunication* has been defined in Black's Law Dictionary (10<sup>th</sup> edition)

as Expulsion from a church or religious society, esp, as a formal sentence of censure pronounced by a spiritual court for an offence falling under ecclesiastical cognizance....

17. Black's Online dictionary on its part defines *excommunication* as

A sentence of censure pronounced by one of the spiritual courts for offenses falling under ecclesiastical cognizance. It is described in the books as twofold: (1) The lesser excommunication, which is an ecclesiastical censure, excluding the party from the sacraments; (2) the greater, which excludes him from the company of all Christians. Formerly, too, an excommunicated man was under various civil disabilities. He could not serve upon juries, or be a witness in any court; neither could he bring an action to recover lands or money due to him. These penalties are abolished by St. 53 Geo. III. c. 127. 3 Steph. Comm. 721.

