



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 368 OF 2016**

*(Before Hon. Lady Justice Maureen Onyango)*

**REV. DANIEL MICHAEL JUMA.....CLAIMANT**

**VERSUS**

**THE ANGLICAN CHURCH OF KENYA,**

**ALL SAINTS CATHEDRAL DIOCESE.....RESPONDENT**

**RULING**

The application before this Court is a Notice of Motion filed by the Respondent on 19<sup>th</sup> April 2018 which seeks the following Orders:

1. That any further proceedings in the suit herein be stayed pending the hearing and determination of the intended appeal from the Ruling of this Court dated 5<sup>th</sup> February 2018.
2. That the costs of this application be provided for.

The application is supported by the Affidavit of Rev. Venerable Joyce Kariuki a priest with the Respondent and is premised on the following grounds:

1. This Court delivered the Ruling dated 5<sup>th</sup> February 2018 in this matter on 16<sup>th</sup> February 2018 whereby it found that the court had jurisdiction in the cause as presented by the Claimant.
2. The Court directed the parties to resolve the dispute amicably applying the Respondent's internal mechanisms within 30 days of the Ruling, failure to which the suit would be set down for trial on a priority basis.
3. The Respondent herein is aggrieved by the finding on jurisdiction and has given notice of its intention to appeal against the Ruling.
4. There is no contract of service between the Claimant and the Respondent and the priesthood is not a profession. Further, there was no employer-employee relationship between the Claimant and the Respondent that could confer jurisdiction on this Court.
5. The issue of this Court's jurisdiction to determine the claim is fundamental not only to the present dispute but to the Anglican Church as a whole and that the Claimant's remedy is to refer the dispute to arbitration as per the Anglican Church of Kenya's Provincial Constitution.

In her Supporting Affidavit Rev. Ven. Joyce Kariuki avers that the parties were directed to resolve the dispute amicably applying internal mechanisms within 30 days, that the Respondent wrote to the Claimant in its letter dated 16<sup>th</sup> November 2017 and 21<sup>st</sup> February 2018 but the Claimant by his letter dated 8<sup>th</sup> March 2018 declined to comply with the orders of the Court. She avers that Claimant shall not be prejudiced should the orders be granted as he still has the obligation to refer the dispute to arbitration as provided under the Anglican Church of Kenya's Provincial.

In response to the application, the Applicant filed both Grounds of Objection and a Replying Affidavit sworn by the Claimant on 17<sup>th</sup> May

2018. He avers that the matters raised in his Statement of Claim are not religious matters and that they are not matters of faith but are spiritual matters.

He avers that the Court made a preliminary finding that it is fully seized of the jurisdiction to hear and determine the matter thus the application is brought in bad faith. He avers that it is within the knowledge of Rev. Ven. Joyce Kariuki that the various meetings were held trying to resolve the matters and he participated fully in the internal mechanisms seeking to resolve the matter. He avers that is not true that he has declined to comply with the orders of this court to resolve the matters raised in the statement of claim

### **Respondent/Applicant's Submissions**

The Respondent submitted that it is in the interest of justice that the proceedings be stayed as the issue of this court's jurisdiction to determine the claim is fundamental not only to the present dispute but the Anglican Church as a whole. It argued that the provisions for stay of proceedings is granted to the Court under the provisions of Rule 17 (1) of the Employment and Labour Relations court Rules and that the principles for stay of proceedings were set out in the case of **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000** cited in the case of **Gichuhi Macharia & another v Kiai Mbaki & 2 others [2016] eKLR** where Ringera J (as he then was) held:

*“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice...the sole question is whether it is in the interest of justice to order for stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And, in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”*

It is submitted that it has an arguable appeal and it would be in the interest of justice to order stay of proceedings pending the hearing of the intended appeal. It averred that the relationship between the claimant and the Respondent is purely of a spiritual character and is inconsistent with spiritual obligations. It further argued that the issues upon which the suit is founded are not justiciable and this Court ought not exercise jurisdiction over the suit. It relied on the decision in **Hinga & Another v P.C.E.A thro' Rev Dr. Njoya and Another [1986] KLR 317** and **Davies v Presbyterian Church of Wales [1986] 1 WLR 323**.

The Respondent submitted that the issues raised by the Claimant are of a domestic nature that would be best dealt with by the Respondent through the Anglican Church's Constitution. It submitted that the Court in conferring jurisdiction on itself, is in effect depriving the Respondent and the Anglican worshippers their Constitutional right to worship under Article 32 of the Constitution.

It submitted that the Claimant will not suffer any prejudice as he is still entitled to refer the dispute in question to be addressed through the Respondent's well settled internal dispute resolution mechanism.

### **Claimant's Submissions**

The Claimant submitted that from evidence the claimant payments

were made to the Claimant arising from the relationship between the Claimant and the Respondent. He submitted that the Claimant's right to have the trial completed within a reasonable time ought not to be disturbed and that the stay of proceedings is a matter of judicial discretion which must be exercised in the interest of justice. He submitted that the exercise of that discretion is guided by defined principles which were expounded in **Daniel Walter Rasugu Nairobi HCCC No. 15 of 2006 and Global Tours & Travel Limited; Nairobi HC Winding Cause No. 43 of 2000**.

In conclusion it submitted that the health of the Claimant, the conduct of the parties and the fact that the matter is part-heard and the Claimant has closed its case, the application lacks merit.

### **Determination**

The main issue for determination is whether the Respondent/Applicant has met the threshold for the grant of an order of stay of proceedings pending the determination of this appeal. The Respondent submitted that this court has erred in finding that it has jurisdiction to determine the matter and it would be in the interest of justice that the proceedings are stayed to afford the Respondent a chance to have the issue determined on appeal.

In the case of **Kenya Power & Lighting Company Limited -V-**

**Esther Wanjiru Wokabi [2014] eKLR** the court held:

*“In answering this question, I wish to borrow from the wisdom of Ringera J (as he then was ) when he stated the following when confronted by a similar application in the case of **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000** ...To my mind, the courts discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles;*

- a) Whether the applicant has established that he/she has a prima facie arguable case.

b) Whether the application was filed expeditiously and

c) Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.”

The application herein was filed on 19<sup>th</sup> April 2018 which is 63 days after the delivery of ruling. On 17<sup>th</sup> August 2018, the Court did hear the Claimant’s case on priority basis due to the Claimant’s illness. In respect of the time taken to file the application the Court finds that despite the fact that the Claimant’s case was heard after the application was filed the Respondent did not expeditiously file the application until 63 days after the delivery of the ruling which was a long time in the circumstances of this case.

The Respondent averred that the Claimant would not be prejudiced should the order be granted. The Court is alive to the fact that the stay of proceedings would delay the expeditious disposal of this suit which was filed 3 years ago and further taking into account the Claimant’s illness. The Respondent has not demonstrated that it would suffer loss should the Court fail to grant the orders sought. It is not sufficient for the Respondent to state the Claimant shall have the opportunity to refer the dispute to the internal dispute resolution as the parties themselves failed to settle the matter. In **Timothy Manyara and 144 Others V Pyrethrum Board of Kenya [2006] eKLR** the Court held:

*“Having carefully considered the reasons advanced by the defendant in support of its application, and in light of the requirement of the provisions of Order XLI rule 4(2) of the Civil Procedure Rules that require a party seeking to have proceedings stayed must establish that it would suffer substantial loss if stay is not granted, I am of the opinion that the defendant has not made a case to be granted such orders. This court wonders what prejudice the defendant would suffer if the hearing of this case proceeds without a deposit of the sum sought by the defendant from the plaintiffs as security for costs is made. From the nature of the case filed by the plaintiffs, it would take a long time for the case to be heard and determined and if the defendant is diligent enough, his appeal would have been heard and determined by the Court of Appeal. In my considered view, the defendant would not suffer any substantial loss if this case is heard before the determination of the said appeal.”*

The respondent has not established substantial loss. It would still have an opportunity to file an appeal after the final determination of this case. On the other hand the claimant has expressed fears that due to his medical condition he may not be alive to prosecute his case should it be stayed.

I find that the balance of convenience tilts in favour of not staying the proceedings. After all the claimant has already testified and it would not take long to hear and determine the case so that if necessary, the applicant can file his appeal upon the determination of the entire suit.

For these reasons the application is declined and is accordingly dismissed with no orders for costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF JUNE 2019**

**MAUREEN ONYANGO**

**JUDGE**