

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 202 OF 2017

DEACON JOSEPH MACHARIA.....CLAIMANT

VERSUS

BISHOP BENARD MUTHOGA.....1ST RESPONDENT

DAVID KARIUKI MURAGE (sued on his

own behalf and as the chairman, Gachatha

AIPCA Church Committee).....2ND RESPONDENT

JUDGMENT

1. The Claimant sued the Respondents for his alleged unlawful suspension from duty. In his claim, the Claimant averred that he was appointed by Reverend Bishop Stephen Njogu to serve as a Deacon in Churches within Tetu County, which assignment was to commence on 20th March 2017. He averred that he was posted as the Deacon at Gachatha AIPCA Church and that the 1st Respondent purported to suspend him from his employment which suspension was unlawful and of no effect as the 1st Respondent was not the appointing authority, had no powers to suspend him and that the suspension was contrary to the lawful authority of the Church. The Claimant averred that the purported suspension was against the constitution of the Church as he was denied the right of worship, the chance to discharge his lawful clerical duties which action is a recipe for breach of peace. The Claimant thus prays for judgment against the Respondents for a declaration that the 1st Respondent has no powers to suspend or terminate the Claimant's appointment and that the said suspension is of no effect as it is against the constitution of the Church, a declaration that the purported suspension is unlawful, null and void, costs and interests of the suit.

2. The Respondents filed a response to the claim and averred that the Claimant was only suspended pending investigations into his conduct as he was requested to appear before the Diocese Executive Committee which he never did. The Respondents averred that the Claimant was not the Deacon of Gachatha AIPCA and that he went to the said church with a group of goons and demanded to conduct the service but the 2nd Respondent, the Church committee and the members declined to have him conduct the service as he had already been suspended and he was in any case not the person to conduct the service on the said date. The Respondents averred that the Claimant was a troublesome Deacon, has various disciplinary issues and is always fighting with the other clergy and Bishops. The Respondents averred that the Claimant cannot be allowed to preach at Gachatha AIPCA as it will be a recipe for chaos and breach of peace of the Church. The Respondent contended that the Claimant sued wrong parties and that the matter is wrongly before this court as there are other dispute resolution mechanisms set out within the AIPCA constitution. The Respondents pray that the Claimant's claim be dismissed with costs.

3. The Claimant testified as did the witness for the Respondent Bishop Muthoga. The Claimant adopted his statement as his evidence in chief and testified that the 1st Respondent interfered with his work and yet was not the appointing authority. He stated that he works at Gachatha AIPCA and not Kiamathaga Parish in Mukaro diocese. He testified that he was loyal to the Church as per the constitution of the Church. He stated that the suspension was illegal since the 1st Respondent was not his employer.

4. The 1st Respondent testified and adopted his statement as evidence in chief and stated that the Claimant was sent from Mweiga to Kiamathaga but he absconded. He testified that Gachatha is part of the churches in his Diocese but he declined interfering with the Claimant's duties. He testified that Bishop Njogu issued the Claimant with a letter of appointment to Gachatha Church while he knew that Gachatha was not in his jurisdiction and is not part of Tetu. He stated that Njogu interfered with his work and caused chaos in his parish. He testified that the clash was caused by Njogu and the Claimant. He testified that the Claimant went to Gachatha to fight instead of going to Kiamathaga. That marked the end of oral testimony and parties were to file written submissions.

5. The Claimant submitted that the 1st Respondent acted *ultra vires* the constitution of the Church in purporting to suspend him. He relied in the case of **Shergill and others v Khaira and others [2014] UKSC 33** where it was held that "*the governing bodies of a religious voluntary association obtain their powers over its members by contract. They must act within their powers conferred by the associations' contractual constitution. If a governing body of a religious community were to act ultra vires... a member of the community could invoke the Jurisdiction of the courts...*" The Claimant submitted that his position is provided under Article VI(3) of the constitution of the Church and the procedure for disciplining a clergy is provided for under Article IV(C) of the constitution of the Church which provides that the immediate authority of Church should first investigate the truth of the matter and if the victim is found guilty, relevant authorities should be informed. The same provision calls for a decision by the Central Board in respect of such a disciplinary process "with a written approval signed by the Archbishop spiritual head of the church, National Chairman and secretary general." The Claimant submitted that the 1st Respondent admittedly originated his suspension under the 1st Respondent's his own hand and on his own assumed powers as evidenced by the letters of 20th March 2017, 21st March 2017 and 29th May 2019. The Claimant submitted that the 1st Respondent had no such powers under the above mentioned provisions hence his actions were *ultra vires*. The Claimant submitted that equally the 2nd Respondent as the official of the

subject local church acted in a similar way by purporting to effect the said decision. The Claimant submitted that therefore his claim should be allowed as prayed. The Respondent did not file submissions.

6. The Claimant was shown to have caused trouble at a parish and he was suspended from the deaconry position he held. This was basically the grouse he had with the Respondents who were Church officials. As he framed his dispute into one of ecclesiastical import, it clearly was not one for the court. In the Bible in the book of Romans Chapter 13:13 it says **Let us walk honestly, as in the day; not in rioting and drunkenness, not in chambering and wantonness, not in strife and envying.** Also in the book of Luke Chapter 6:29 the Bible says that **And unto him that smiteth thee on the one cheek offer also the other; and him that taketh away thy cloak forbid not to take thy coat also.** Christians and men of the cloth are required to be of a greater ideal. This dispute ought to have been resolved in the Church using the canons of the AICPA and in keeping with the faith that they all seem to profess. Being Christ-like is better than the striving for position displayed in this claim. Serving God is a calling and not a matter that should degenerate to the circus that the parties herein are involved in. I refer the dispute to the Church to resolve in terms of the Church constitution and the Bible. As held in the case of **Shergill and others v Khaira and others** (*supra*)

“In what circumstances, then, will the Courts entertain actions arising out of judgments of ecclesiastical bodies: Speaking generally, in either of two situations – (first) where the religious association through its agencies has acted clearly and demonstrably beyond its own constitution, and in a manner calculated to affect the civil rights and patrimonial interests of any of its members, and (secondly) where, although acting within its constitution, the procedure of its judicial or quasi-judicial tribunals has been marked by gross irregularity, such fundamental irregularity as would, in the case of an ordinary civil tribunal, be sufficient to vitiate the proceedings. But a mere irregularity in procedure is not enough. ... In short, the irregularity alleged must not be simply a point of form, or a departure from prescribed regulation, but must go to the honesty and integrity of the proceedings complained of.”

7. If a governing body of a religious community were to act *ultra vires* a member of the community could invoke the Jurisdiction of the courts. Note the key word in the decision is **could**. A mere irregularity in procedure is not enough. In short, the irregularity alleged must not be simply a point of form, or a departure from prescribed regulation, but must go to the honesty and integrity of the proceedings complained of. In service as a Deacon, the Claimant was not in an employee-employer relationship with the Respondents as they did not employ him to permit his suit before this specialized court. A civil court cannot determine religious issues and the ecclesiastical dispute is out of my province. In the final analysis the suit is dismissed with no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 17th day of December 2019

Nzioki wa Makau

JUDGE