



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 368 OF 2016

(Before Hon. Justice Mathews N. Nduma)

REV. DANIEL MICHAEL JUMA.....CLAIMANT

VERSUS

THE ANGLICAN CHURCH OF KENYA

ALL SAINTS CATHEDRAL DIOCESE.....RESPONDENT

RULING

1. The Respondent has moved the court by an amended notice of motion filed on 28th June, 2016, that the suit be struck out on the ground that it raises no justiciable issues.
2. The Respondent argues that there is no employment relationship between the Claimant priest and the ACK, Church, the Respondent.
3. That Priesthood is not a profession but a calling.
4. That a priest once ordained is licensed to officiate as a priest of the Anglican Church of Kenya.
5. That the Claimant relinquished and or abandoned his personal duties.
6. The court has no jurisdiction to determine the suit therefore.
7. The Respondent relies on the decision of **Aluoch J** in **Hinga & Another v PCEA thro' Rev. Dr. Njoya & Another** in which the judge held –

“I find that the PCEA church constitution having invested such wide and extensive powers on the church as to the manner of dealing with complaints such as the ones before my court today, it is the provisions of that constitution which should have been invoked and utilized fully because the issues before court, I find are not justiciable in law but fall under provisions set out in the church constitution. A court of law such as mine should therefore be slow in interfering with church matters, unless of course the Rules of Natural Justice were being violated.”

8. In Mombasa, **E & LRC No.95 of 2016, Wilson Shisia Nyangweso v Church of God in East Africa (K) Rika J.** held –

“The court is of the view that complaints such as those brought before the court by the Claimant

pastor, are intended to be taken through the internal grievance handling and arbitration process. It is not correct that the internal process should have been initiated by the church. It is the claimant who has complaints about his treatment by the church, necessitating his filing of the claim in court. His complaints as contained in this claim should properly have been taken through the procedure under Article 14 of the Constitution of the church.”

9. The High Court of Kenya at Nairobi Civil Case No.383 of 2013 **William Charles Fryda v Lance P Nadeau and Maryknoll Fathers and Brothers Society**, struck out the suit by the Plaintiff with costs stating –

“Clearly, the Claim by the Plaintiff is not justiciable. A member of the Public who voluntarily joins and/or subscribes to a society is bound by its rules and regulations. The court will only come in to exercise its jurisdiction if such a society oversteps its mandate under those rules which such a member has subscribed to. That has not been shown in this case.”

10. In the present case, claimant is an ordained pastor within the limits of the Anglican church of Kenya Diocese of All Saints Cathedral with effect from 2nd November, 2004.

11. The Claimant committed himself to canonical obedience to the Bishop of all Saints Cathedral Diocese and his successors, in all things lawful and honest.

12. The Claimant consented to be bound by the constitution laws and Regulations of the Diocese of All Saints Cathedral and further undertook to submit to any sentence which may at any time be passed upon him after due examination by any court acknowledged by the said synod for the trial of the clergyman, saving all rights of appeal allowed by the said synod.

13. The statement of claim filed by the claimant does not disclose any attempt by the Claimant to have the employment dispute between him and the church resolved within the constitutional frame work of the church to which he has willfully submitted to.

14. It is the court’s considered view, that whereas the statement of claim discloses serious triable issues arising from a relationship of service between the parties, the court is slow to dwelve into the matter before the matter is ventilated upon by the church.

15. For the avoidance of doubt, this court has jurisdiction on the alleged violation of the contract of employment, arbitrary reduction of salary and subjection to unfair labour practices alleged in the memorandum of claim.

16. However, the court has decided to give the parties a chance in deference to the church, and that holy calling to priest hood to resolve the dispute amicably applying internal mechanisms within thirty (30) days of this ruling, failing which the suit be set down for trial on a priority basis before the court at Nairobi.

Dated and Signed in Kisumu this 5th day of February, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 16th day of February, 2018

Maureen Onyango

Judge

Appearances

Mr. Gachuli for Respondent/Applicant

M/s. Aneka for Claimant/Respondent

Anne Njung'e – Court Clerk