



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MALINDI

CAUSE NO 7 OF 2017

REVEREND GEOFFREY DIDA.....CLAIMANT

VS

ACK DIOCESE OF MALINDI.....RESPONDENT

JUDGMENT

Introduction

1. Reverend Geoffrey Dida, the Claimant in this case, is an Anglican Priest currently serving in the Diocese of Mombasa. At the time the cause of action herein arose, he was serving in the Diocese of Malindi.
2. By his claim, which is contained in a Memorandum of Claim dated 17th April 2017 and filed in court on 20th April 2017, Rev. Dida seeks compensation for unfair termination of employment plus payment of terminal benefits.
3. The Respondent filed a Reply on 6th July 2017 to which the Claimant responded on 20th September 2017.
4. When the matter came up for hearing the Claimant testified on his own behalf and the Respondent called Reverend Moses Onyango. Both parties also filed written submissions.

The Claimant's Case

5. The Claimant states that he was first appointed in the service of the Anglican Church of Kenya in January 1990. He served in various capacities including Vicar in Charge, Area Dean, Director of Property Development and Education Secretary. He earned a monthly salary of Kshs. 38,232 exclusive of allowances paid at the discretion of the Respondent.
6. On 19th May 2016, the Claimant wrote to the Diocesan Bishop, Rt. Rev. Lawrence Dena requesting him to write a recommendation letter for him as he was contemplating relocating to his rural home in Marsabit. The Claimant avers that the canons of the Church allow a person to be released to another Diocese with concurrence of the receiving Diocese.
7. By letter dated 20th June 2016, from Bishop Dena to the Bishop of Marsabit Diocese, Rt. Rev. Qampicha Daniel Wario, the Claimant was released to Marsabit. Thereafter, the Respondent stopped the Claimant's salary and allowances effective August 2016. Prior to this, the Claimant had taken his leave for 2016 and when he resumed duty on 29th July 2016, the Respondent failed to allocate him duties on the ground that his services had been terminated.
8. The Claimant claims that the Respondent's action was unlawful and unfair. He therefore claims the following:
 - a) 1 month's salary in lieu of notice.....Kshs. 38,232
 - b) Unpaid annual leave for the year 2016.....38, 232
 - c) Sacco contributions from August 2015 to July 2016.....22,000
 - d) Spouse allowance from June 2015 to July 2016.....67,912

- e) Welfare contributions from March 2013 to July 2016.....10,400
- f) 12 months' salary for unfair termination.....458,784
- g) Certificate of service
- h) Costs plus interest

The Respondent's Case

9. In its Reply dated 30th June 2017 and filed in court on 6th July 2017, the Respondent admits having employed the Claimant as a Reverend at a monthly salary of Kshs. 27,960 inclusive of allowances. The Claimant was assigned several duties while in the Respondent's employment until 31st July 2016.

10. The Respondent avers that the Claimant, on his own volition wrote to Bishop Lawrence Dena requesting for a recommendation to be relocated to his rural home Diocese of Marsabit. Bishop Dena therefore wrote to the Bishop of Marsabit. The Claimant took the letter and went to Marsabit.

11. The Respondent was not aware that the Claimant had not been accepted in Marsabit Diocese. Having not returned to his work place, the Claimant was presumed to be in gainful employment in Marsabit Diocese. The Respondent later learnt that the Claimant had been employed by the Diocese of Mombasa from August 2016.

12. The Respondent denies terminating the Claimant's services. The Respondent further states that the Claimant took all his leave and denies owing him any terminal dues.

Findings and Determination

13. There are two (2) issues for determination in this case:

- a) Whether the Claimant has proved a case of unfair termination of employment;
- b) Whether the Claimant is entitled to the remedies sought.

The Termination

14. The Claimant's claim for unfair termination stems from a release letter dated 20th June 2016 written by the Bishop of Malindi to the Bishop of Marsabit as follows:

"Dear Brother Bishop,

RE: REV. GEOFFREY GUYO DIDA

Receive Christian greetings from the Diocese of Malindi.

The above mentioned person is a priest serving in this Diocese but hails from Marsabit. He has written a letter to us saying that he would like to relocate back to his home Diocese which is the Diocese of Marsabit.

We therefore write to release Rev. Geoffrey Guyo Dida from Malindi Diocese to Marsabit Diocese with effect from 1st August 2016. Rev. Dida joined the Diocese of Mombasa in September 2003 and served in different capacities: as Curate at Mombasa Memorial Cathedral, then Vicar in a couple of parishes, and finally as a Rural Dean. When the Diocese of Mombasa was divided in January 2015, to create the new Diocese of Malindi, Rev. Dida was posted to Malindi Diocesan office to serve as the Property Development Coordinator and Education Secretary with effect from 1st June 2015.

We recommend Rev. Geoffrey Guyo Dida to you without any reservations.

By copy of this letter, we inform Rev. Dida that you are hereby released from the Diocese of Malindi with effect from 1st August 2016.

Yours sincerely,

(Signed)

The Rt. Rev. Lawrence K. Dena

BISHOP OF ACK DIOCESE OF MALINDI"

15. This letter was preceded by the Claimant's own letter dated 19th May 2016 addressed to Bishop Dena stating *inter alia*:

“As I had shared with you on Tuesday 17th May, I and my family would wish to relocate back to our Home if I am accepted back to serve in my home Diocese of Marsabit. I have been away from home serving in Anglican Diocese of Mombasa and even now in Malindi since 2003 to date. Generally I have a working experience of 14 years in coastal Diocese. My aim of wanting to go home is to be closer to my home due to my age ground, families and relatives whom we parted ways (sic) many years ago.

Based on the above, kindly write for me a recommendation letter entitled “to whom it may concern” or as you may find fit based on the below listed years of my working experiences.....”

16. Section 45 of the Employment Act, 2007 cites the following as ingredients of unfair termination of employment:

- a) Failure to prove the reason for termination is valid;
- b) Failure to prove that the reason for termination is a fair reason related to the employee's conduct, capacity or compatibility or the employer's operational requirements;
- c) Failure to observe fair procedure in effecting the termination.

17. The question then is whether the circumstances surrounding the Claimant's exit from the Anglican Diocese of Malindi constitutes an unfair termination within the meaning of Section 45 of the Act. Upon reading the release letter dated 26th June 2016 together with the Claimant's prior request made on 19th May 2016, the Court formed the opinion that the parties in this case decided to activate a known and well established practice within the Anglican Church where a clergyman can move from one Diocese to another.

18. It would appear however, that the Claimant did not expect to be released from the Diocese of Malindi until he was accepted and absorbed in the Diocese of Marsabit. This was not a legitimate expectation. First, the Bishop of Malindi did what the Claimant asked him to do and that was to write a recommendation letter and second, the Bishop of Malindi had no control over the decision by the Bishop of Marsabit.

19. The Court therefore did not find any fault with the action taken by the Respondent nor did it find anything in the steps taken by the parties to suggest a case of unfair termination of employment. The Claimant's claim for unfair termination therefore fails and is dismissed. The same axe falls on the claim for one month's salary in lieu of notice.

20. Regarding the claim for leave pay for 2016, the Claimant admitted having proceeded on leave in the month of July 2016. The claim for leave pay is therefore without basis and is dismissed. The claims for Sacco contributions, spouse allowance and welfare contributions were not proved and are also dismissed.

21. Ultimately, the Claimant's entire claim fails and is dismissed.

22. In light of the relationship between the parties, I direct that they will bear their own costs.

DATED SIGNED AND DELIVERED AT MALINDI THIS 5TH DAY OF JUNE 2018

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JUDGE

Appearance:

Mr. Mathare for the Claimant

Miss Wambui for the Respondent