



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 620 OF 2012

EPHANUEL MUGAMBI MUCHIRI

CLAIMANT

V

REV. DAVID R. GATHANJU (MODERATOR OF GENERAL ASSEMBLY)

REV. GITONGA KABURU (SECRETARY GENERAL FRANCIS MATHEA (TREASURER)

SUED ON BEHALF OF THE PRESBYTERIAN CHURCH OF EAST AFRICA) RESPONDENTS

JUDGMENT

1. On 19 January 1997, Ephanuel Mugambi Muchiri (Claimant) was ordained as a Minister with the Presbyterian Church of East Africa. He was posted to Imenti Presbytery. In the course of ministry, the Claimant also served in Nyahururu, Ruaraka, Ngong Hills and Limuru parishes.
2. On or around 27 December 2009, the Presbytery Clerk, Limuru Presbytery wrote to the Claimant to inform him that it had been decided to depose him as a Minister of the Presbyterian Church of East Africa. The letter also instructed the Claimant to vacate the church manse and hand over.
3. On 11 February 2010, the Claimant wrote to the Secretary General of PCEA asking to be paid salary arrears. He wrote a reminder on 30 August 2011.
4. When no response was forthcoming, the Claimant's legal advisers wrote a formal demand followed by institution of the instant proceedings on 13 April 2012.
5. In the Memorandum of Claim, the Claimant cited Rev. David R. Gathanju (Moderator), Rev. Gitonga Kaburu (Secretary General) and Francis Mathea (Treasurer) in their capacities as officials of the Presbyterian Church of East Africa (the Respondents).
6. The Issue in dispute was stated as *non-payment of salary arrears, terminal benefits and unlawful dismissal*.
7. In its Response, the church contended that the Cause was incurably defective on the basis that the Respondents were not proper parties, denied owing the Claimant Kshs 902,870/- salary arrears or that the Claimant served in the Appointments Committee or that there was unlawful termination of employment.
8. The Cause was heard on 10 April 2018 and 11 April 2018 when the Claimant testified and closed his case, and on 25 June 2018 when the Respondents' witness testified.
9. The Claimant filed submissions on 24 July 2018 while the Respondent filed its submissions on 10 September 2018.
10. The Court has considered the pleadings, evidence and submissions.

Salary arrears

11. Although the Claimant pleaded at paragraph 3 of the Memorandum of Claim that he had an appointment letter, what was exhibited was not an appointment letter but letter postponing induction.
12. During testimony, the Claimant went into great detail in setting out the salaries he was earning at various periods and the amounts which were not paid.

13. The Claimant sought salary arrears of Kshs 1,516,638/- which he stated accrued from service at Ruaraka (March 2003 to September 2003), Ngong Hills (October 2003 to December 2004), Head Office (January 2005 to December 2005 and January 2008 to December 2008) and Limuru (April 2009 to December 2009).
14. The Respondent's witness admitted that the Claimant was entitled to a salary and that records were available but he did not produce any records in Court.
15. The Court is baffled that none of the parties saw the need to either seek the production of such records or file the copies they had.
16. In its submissions, the Respondent contended that some of the heads of claim for salary arrears were statute barred in terms of section 4 of the Limitation of Actions Act and section 90 of the Employment Act, 2007.
17. In terms of section 17 of the Employment Act, 2007, an employer is under an obligation to pay the entire wages when the same fall due. Failure to pay therefore would not only amount to breach of contract but of statute as well.
18. Such breach constitutes a cause of action distinct from unfair termination of employment but still subject to the limitation provision of section 90 of the Employment Act, 2007.
19. The instant proceedings were instituted on 12 April 2012.
20. The Claimant sought salary arrears up to June 2010 but admitted in testimony that he received the deposition letter on 12 January 2010.
21. In this respect therefore he can have no valid claim to salaries after 12 January 2010.
22. In terms of section 90 of the Employment Act, 2007, and considering that the Cause was instituted on 12 April 2012, the Court can only entertain claims for salary arrears running from to 12 April 2009 January 2010.
23. Using the figures in the Claimants exhibit 5, the total arrears is Kshs 273,534/- which is allowed.

Unfair termination of employment

24. The Respondents admitted in the Response that the Claimant was an *employee* within the definition of section 2 of the Employment Act, 2007. The protections in the Employment Act, 2007 were therefore available to him.
25. The Act contemplates notice of termination (section 35), a hearing before termination (section 41) and the employer proving that there were valid and fair reasons to terminate the employment.
26. The Respondents' witness admitted that the Claimant was not notified of the allegations against him and that the allegations could only be revealed during an appearance before the Presbytery Court during preliminary inquiries.
27. The witness also stated that two summons were sent to the Claimant to appear for preliminary inquiries but he did not explicitly reveal whether the summons set out the allegations the Claimant was expected to respond to.
28. On the question of how the summons were delivered, the witness stated that the summons were sent by registered post, but he did not produce evidence of such postage.
29. In the view of the Court and the Court so finds, the Claimant was entitled to be notified of the allegations and there being no evidence that he was notified and afforded an opportunity to make representations, the process undertaken by the Respondents did not meet the standard envisaged under the law.
30. Further, in terms of sections 43 and 45 of the Employment Act, 2007, the Respondents were expected to prove and prove as valid and fair the reasons for deposing the Claimant.
31. The reasons were not revealed, and the Court can only conclude that the defrocking of the Claimant was not for valid and fair reasons as the Respondent failed to discharge the burden expected.
32. It has disturbed the Court in no small measure that the parties did not consider it useful to file a copy of the Church *constitution or Practice and Procedure Manual* before commencing of hearing as this could have assisted in determining whether the dispute should have reached Court in the first instance.

Appropriate remedies

Compensation

33. The Claimant sought maximum compensation.
34. Compensation is a discretionary remedy.

35. In the view of the Court considering the nature of pastoral/ministerial work the Claimant was engaged in (for the glory of God and not man), this is not a suitable case to award compensation.

Pay in lieu of notice

36. The Claimant sought Kshs 47,147/- as pay in lieu of notice, but his testimony was that the salary before separation was Kshs 30,640/-. The Court will allow the amount as indicated during testimony.

Conclusion and Orders

37. The Court finds and holds that the Claimant is entitled to and is awarded

(a) Pay in lieu of notice Kshs 30,640/-

(b) Salary arrears Kshs 273,534/-

TOTAL **Kshs 304,174/-**

38. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 24th day of October 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Mogire instructed by Mogire & Co. Advocates

For Respondent Mr. Kamau instructed by Waruhiu K'Owade & Nganga Advocates

Court Assistant Lindsey