



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CASE NO. 140 OF 2018

MERRY MUKIRIA.....CLAIMANT

VERSUS

METHODIST CHURCH IN KENYA

TRUSTEES REGISTERED.....1ST RESPONDENT

KAAGA SYNOD BISHOP

METHODIST CHURCH OF KENYA.....2ND RESPONDENT

JUDGMENT

1. The Claimant was an evangelist under the Kaaga Synod from October 2016 till 22nd November 2017 when she was dismissed. She earned Kshs. 19,000/- a month. The reason for termination was pregnancy before wedding against moral standards of the church. She averred that the dismissal was unlawful. She averred that the conduct of the Respondent in terminating her services amounted to discrimination on the basis of pregnancy and gender and as such she sought compensation. She prayed for general damages for discrimination on the basis of pregnancy and gender, compensation for unfair termination Kshs. 228,000/-, unpaid house allowance @Kshs. 2,850/- for 15 months, one month's salary in lieu of notice and 3 months of unpaid maternity leave, 21 days unpaid annual leave, unpaid salary for November and unremitted NSSF dues for 15 months. She also sought the costs of the suit and interest.

2. The Respondent did not enter appearance nor file defence despite service. The claim proceeded as an undefended cause. The Claimant testified on 26th September 2018 and stated that she was an evangelist serving two churches being Nyeri Methodist and Suguoi-Ngobit Church. She stated that on 22nd November 2017, a Sunday, she received a letter of termination stating the reason for dismissal as a having a child before 9 months after marriage. She was not called for a hearing before dismissal and she testified that having a child out of wedlock is not an offence. She referred to the standing orders of the church at page 162 and stated that counseling was recommended and normal maternity leave given. She worked until 21st October and on 22nd she went to hospital when she was in labour. She sought maternity leave but received the dismissal instead. She reported the matter to the Ministry of Labour and despite the letter from the Ministry and a demand letter from her lawyer there was no payment forthcoming. She testified that her NSSF contributions were not up to date and she did not receive maternity dues. She stated that the Respondent rented a house for her and she did not receive pay in October. She thus sought to recover for the discrimination meted on her due to her gender and for having a child. She testified that the Respondents had spoilt her name and she claimed damages. She did not wish to file written submissions and instead was willing to abide a determination on the matter relying on the material before the court.

3. The Claimant's dismissal was for the reason contained in the letter of termination. It is imperative to have the precise wording of the letter for it tenor and effect. It was as follows:-

8th Nov. 2017

To

Evangelist Merry Mukiria

REF: TERMINATION OF DUTIES

As per the above subject, your duties and payment has been terminated starting 1st November 2017 due to failure of moral standards

as a Church Evangelist. As noted, you did your church wedding on May 27th 2017 and you gave birth in the month of October 2017. That is five months instead of the expected nine months.

After investigations, it was noted that the baby had gone the full cycle of nine months, showing that you involved yourself in sex before marriage, far much before your wedding, thus compromising the moral standards of the church which you are supposed to uphold and lead as an example to those who you were preaching to as an evangelist.

After consultation with the relevant committee, it was decided that your duties and payment be terminated as from 1st Nov. 2017 to maintain the moral standards of the church.

Yours

(signed)

Rev. Wislon Njagi

Sup. Minister

For Synod Bishop

CC:

1. Synod Bishop

2. Nyeri MCK Executive

3. Circuit steward

4. Synod Account

4. The dismissal precipitated the present suit. The Claimant does not deny engaging in premarital sex and does not deny the fact of her pregnancy and the birth of her first born child in October 2017. She takes issue with the dismissal which is in her words is contrary to the Standing Orders and Agenda (Revised Edition) 2015. She cited paragraph 7 at page 162 which is headed **Pregnancy Cases of Single Female Employees**. She did not point out any reference to a situation where a married female employee is accused of what she faced. Be that as it may, the Claimant stated that the provision gave leeway for a different manner of handling the issue. The section provided as follows:-

7. Pregnancy Cases of Single Female Employees

Pregnancy of single female staff members should itself not involve dismissal. Normal maternity leave should be granted, and Christian Pastoral Counseling offered to both parties involved by the head of Institution is situated. However, in order to assist the said female employee, there must be total honesty and disclosure of the matters at hand.

The Claimant was from the reading of the foregoing on similar footing somewhat because the pregnancy occurred when she was a single employee of the Respondent. The letter of dismissal confirms that the Claimant was not married at the time of the conception. The dismissal was harsh in the circumstances. She was not given the pastoral counseling and her maternity leave was not granted. She was not afforded the safeguard that the canons of the church made available for those who may slip and fall like she did. As the Claimant was housed, the non-payment of house allowance was not erroneous since under Section 31 of the Employment Act the employer may provide housing or in the alternative pay house allowance. She did not prove that the NSSF dues were unpaid as a nil return statement does not appear blank like hers does. In the case before me, there was no indication that maternity leave had been given. She would therefore be entitled to claim the days due. In the final analysis, the Claimant is therefore entitled to the following reliefs:-

- a. One month's salary in lieu of notice Kshs. 19,000/-;
- b. 3 months of unpaid maternity leave Kshs. 57,000/-;
- c. 21 days unpaid annual leave Kshs. 19,000/-;
- d. Unpaid salary for 8 days in November Kshs. 5,066.70
- e. Compensation for 6 months for the unfair termination Kshs. 114,000/-;
- f. Interest on the sums in a), b), c), d), and e) above at court rates from date of judgment till payment in full;
- g. Costs of the suit; and

h. Certificate of service

It is so ordered.

Dated and delivered at Nyeri this 9th day of October 2018

Nzioki wa Makau

JUDGE