



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1299 OF 2018

PATRICIA NDUNGE MUTINDA.....CLAIMANT

VERSUS

ALL SOULS CATHEDRAL, DIOCESE OF MACHAKOS....1st RESPONDENT

CHURCH COMMISSIONERS OF KENYA.....2nd RESPONDENT

RULING

1. In an Amended Statement of Claim filed in Court on 3 September 2018, the Claimant included the Church Commissioners of Kenya as the 2nd Respondent.
2. In introducing the 2nd Respondent, the Claimant pleaded
 - 2A. The 2nd Respondent is the Registered Trustee of the Anglican Church of Kenya duly appoint (sic) to hold all the Church's funds and properties of the Anglican Church in trust, with capacity to sue or to be sued.
3. Upon service, the 2nd Respondent filed a motion dated 17 September 2018 seeking orders
 1. The Claimant's Amended Statement of Claim filed in Court on 3rd September 2018 be struck out and as a result the Claimant's suit as against the 2nd Respondent/Applicant be dismissed with costs to the 2nd Respondent.
 2. In the alternative the 2nd Respondent/Applicant's name be struck out from the suit, and the suit against it be dismissed.
 3. The costs of this suit be provided for.
4. The grounds upon which the application were anchored were that there was no employment/contractual relationship between the Claimant and the 2nd Respondent, and thus there was no nexus between the parties.
5. It was urged that the Claimant had not disclosed any reasonable cause of action against the 2nd Respondent.
6. The Claimant filed a replying affidavit in opposition to the application and also cited the case of *J M M, J N G & P M W v Registered Trustees of the Anglican Church of Kenya* (2016) eKLR.
7. The Court has considered all the material placed before.
8. In paragraph 3 of its Statement of Response, the 2nd Respondent admitted the description outlined by the Claimant and set out in paragraph 2 herein above, except that it denied being the Registered Trustee of the Anglican Church of Kenya.
9. In the view of the Court, the admission by the 2nd Respondent that it holds all church funds and properties satisfies the test in section 2 of the Employment Act, 2007 of who qualifies as an *employer*.
10. The 2nd Respondent, at least on the papers as of now may be required to satisfy any decree which may be granted in favour of the Claimant were she to succeed.

11. The 2nd Respondent is a necessary and appropriate party to these proceedings.

12. In the circumstances, the Court finds no merit in the motion dated 17 September 2018 and orders that it be dismissed with costs to the Claimant.

Delivered, dated and signed in Nairobi on this 13th day of December 2018.

Radido Stephen

Judge

Appearances

For Claimant S.K. Muendo & Co. Advocates

For 1st Respondent Weda & Co. advocates

For 2nd Respondent Tripleoklaw LLP, Advocates

Court Assistant Lindsey