



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**

**CAUSE NUMBER MISC 64 OF 2016**

**JOHNSON LISAMULA MURILA.....CLAIMANT**

**VERSUS**

**PRESBYTERIAN CHURCH HOSPITAL.....1<sup>ST</sup> RESPONDENT**

**REGISTERED TRUSTEES OF THE PRESBYTERIAN**

**CHURCH OF EAST AFRICA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant/claimant moved the court through Notice of Motion dated 19<sup>th</sup> May, 2016 seeking transfer to this court of case number 7973 of 2010 filed at the Chief Magistrate's Court. I allowed the application as prayed on 26<sup>th</sup> May 2016. The respondent now seeks a review of that order.
2. According to the respondent, the defendant named in the suit sought to be transferred was initially PCEA Kikuyu Hospital. The plaint was subsequently amended and PCEA Kikuyu Hospital deleted from this suit and a new defendant, namely Presbyterian Church of East Africa brought in its place.
3. An application was subsequently brought by the new defendant and the suit in the lower court struck out by a ruling delivered on 2<sup>nd</sup> March, 2012. The lower court however in the same ruling gave the plaintiff leave to enjoin the PCEA Church Hospital as a defendant. According to the respondent, no such joinder has to date been done.
4. The counsel for the respondent contended that once the suit in the lower court had been struck out, there was no suit left to which the PCEA Church Hospital could be enjoined. The order for joinder by the lower court was therefore a nullity. The defendant preferred an appeal against the order for joinder and the appeal is still pending as HCC Appeal No 165 of 2012.
5. According to counsel for the respondent, once the claimant's suit had been struck out by the lower court, the only remedy left for the claimant was to file a fresh suit or file an appeal. Counsel for the claimant on the other hand contended that the respondent did not highlight any valid ground to warrant a review of the order made on 26<sup>th</sup> May, 2016.
6. According to counsel, the courts discretion to review is limited to the grounds provided under rule 32(1). The claimant further argued that an application for review should be accompanied by a memorandum supporting the application which was not the case here.

7. According to counsel, the reasons raised by the respondent could not be regarded as error on the face of the record as it was not a self evident error that required correction. Counsel further submitted that the Honourable Magistrate did not strike out the entire suit. The court ruled that the suit had been struck out against the PCEA Church and granted the applicant leave to join the correct parties.

8. Counsel further submitted that the respondents have at all times denied the claimant justice by issuing him with contract and paper work which stated that his employer as various entities. It was only when the claimant sought justice that the entities he sues state they have no legal capacity.

9. As correctly pointed out by both the respondent and claimant the lower court did not fully strike out the claimant's suit. What the court did was to strike out a party which the court felt was wrongly enjoined in the proceedings. Under Order 8(3) (4) of the Civil Procedure Rules, an amendment to correct the name of a party can be allowed even if the effect would be to substitute a new party.

10. This was the intention of the learned Magistrate when she struck out the wrong defendant from the suit but permitted the claimant to join the correct party. The court would be unjust to turn a blind eye to the close nexus between the PCEA Church and the PCEA Hospital. The confusion on the part of the claimant as to who is the correct party to sue can be understood in this context.

11. Concerning the order made on 26<sup>th</sup> May, 2016 this court as per the constitution has exclusive jurisdiction over employment and labour relations matters. The Chief Magistrate's court does not have jurisdiction to hear matters preserved to the jurisdiction of this court.

12. The court therefore does not see any error it made in allowing the application to transfer the suit in the lower court to this court. The court will therefore decline the orders sought in the review application.

13. In order to enable speedy resolution of this matter the court will reiterate its order made on 26<sup>th</sup> May, 2016 transferring CMCC No 7973 of 2010 to this court. The court further directs that High Court Civil Appeal No. 165 of 2012 filed by the respondent be transferred to this court as the proper court with jurisdiction to dispose of the same.

14. The parties shall have the liberty to decide whether to pursue the appeal to conclusion before setting CMCC No 7973 of 2010 (now transferred to this court) for hearing and disposal.

15. It is so ordered.

Dated at Nairobi this 22<sup>nd</sup> day of September, 2017

**ABUODHA J. N.**

**JUDGE**

Delivered this 22<sup>nd</sup> day of September, 2017

**NDERI NDUMA**

**JUDGE**

In the presence of:

.....for Claimant

.....for Respondent