



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1122 OF 2017

DIOCESE COMMITTEE OF AFRICAN INDEPENDENT PENTECOSTAL

CHURCH OF AFRICA, GATUNDU SOUTH.....1ST PETITIONER

PRIEST COUNCIL.....2ND PETITIONER

BISHOP GEOFFREY NJOMO MUITA.....3RD PETITIONER

VERSUS

JOSEPH KIMANI.....RESPONDENT

Mr. Ojienda for respondent/objector

Mr. Njuguna for petitioners

RULING

1. The respondent has taken a preliminary objection to this suit that the court does not have jurisdiction to hear and determine the case since it is not an employment related matter.

2. The objection is elaborated in the written submissions by the respondent to the effect that the suit discloses no employment dispute as defined under section 12 of the Employment and Labour Relations Court Act, 34 B, 2014.

3. Section 12 (1) reason as follows;

The court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including –

- a. Disputes relating to or arising out of employment between an employer and an employee;*
- b. Disputes between an employer and a trade union;*
- c. Disputes between an employer's organization and a trade union's organization.*

- d. Disputes between trade unions;
- e. Disputes between employer organisations;
- f. Disputes between an employer's organization and a trade union;
- g. Disputes between a trade union and a member thereof;
- h. Disputes between an employer's organization or a federation and a member thereof;
- i. Disputes concerning the registration and election of trade union officials; and
- j. Disputes relating to the registration and enforcement of collective agreements.

4. Section 12 (2) further spells out the kind and / nature of matters to be lodged with the court as follows;

An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer's organization, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.

5. The petitioners in *Casu* are the Leadership Committee, the Priest Council and the Bishop of the African Independent Pentecostal Church of Africa, Gatundu South Diocese, against the respondent, a suspended Arch Deacon of the church.

6. The dispute is that, the petitioner by a letter dated 20th March 2017, suspended the respondent Joseph Kimani Ngugi from acting in his capacity as clergy of AIPCA, Gutundu South Diocese. The letter was written and signed by the 3rd petitioner, Bishop Geoffrey Njomo Muita, in his capacity as the overseer of the respondent and the chairman of the priest Council with the consent, blessings and authority of the 1st and 2nd petitioners.

7. The letter was issued in terms of the mandate bestowed in Chapter VI of the AIPCA's constitution.

8. The suspension letter invited the respondent to attend a hearing to address the reasons for the suspension and exercise his right to be heard. The respondent has ignored the suspension and continued to discharge his duties of bishop unhindered hence the suit.

9. The respondent/objector filed written submissions on 24th July 2017.

10. The petitioners/respondents were on 26th July 2017, the return date given seven (7) days to file written submissions which submissions have not been received to date.

Decision

11. In ELRC Cause No. 445 of 2017 this court has previously dealt with disputes between the leadership of the church.

12. From the facts averred in the petition itself, it is apparent that the respondent in his capacity as clergy of AIPCA Gatundu South Diocese has a mandate given to him by the church to serve the church in this diocese. The respondent continues to discharge the mandate given to him by the church, notwithstanding the suspension, and is accused of insubordination.

13. These facts as pleaded, disclose an employee, employer relationship between the petitioners and the respondent which has gone sour.

14. Following the decision of the court in ELRC Cause No. 445 of 2017 and in the case of **Ndichu Nick**

Githinji Vs. Clerk Kiambu County Assembly and another which decision was cited with approval in the **Court of Appeal at Kisumu, County Assembly of Kisumu and 82 others –vs- Kisumu County Assembly service board and 6 others, Civic Appeal No. 17 and 18 of 2015 (consolidated) (2015) eKLR** (per Maraga, Musinga and Murgor JJA and by Sitati J. in **Peter Kingoima vs. County Assembly of Nyamira**, “*employer/ employee relationship exists when there is a ‘contract of service’ as defined by Section 2 of the Employment Act, 2007. We concur with the learned Judge that the law is not concerned with the manner of engagement or assumption of the position of employee. What is important is the existence of a contract of service “whether oral or in writing and whether expressed or implied to employ or to serve as an employee for a period of time for wages or a salary.”*”

15. There is no doubt, that the respondent herein has a contract of service with petitioners. If there was none, there would be no dispute regarding the manner the respondent is presently discharging his service. We have no doubt that the respondent is paid a wage or salary for this service regularly.

16. The dispute itself demonstrates that the petitioners purport to have authority and control over the respondent which is alleged to have been violated.

17. Accordingly, the preliminary objection is dismissed for lack of merit. The petition to take its normal course.

Dated, signed and delivered at Nairobi this 15th day of September 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE