



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.10 OF 2014

(Formerly High Court Civil Case No.147 of 2009 at Embu)

PASTOR PAUL MUTHEE

MUNUHEPLAINTIFF

VERSUS

**THE EXECUTIVE SECRETARY, SEVENTH DAY ADVENTIST CHURCH C.K.C.....1ST
DEFENDANT**

**THE EXECUTIVE DIRECTOR, SEVENTH DAY ADVENTIST CHURCH C.K.C.....2ND
DEFENDANT**

**THE TREASURER, SEVENTH DAY ADVENTIST CHURCH C.K.C.....3RD
DEFENDANT**

**THE MINISTERIAL SECRETARY, SEVENTH DAY ADVENTIST CHURCH C.K.C.....4TH
DEFENDANT**

(Before Hon. Justice Byram Ongaya on Friday, 30th September, 2016)

JUDGMENT

The plaintiff filed the plaint on 11.09.2009 through A.P. Kariithi & Company Advocates. The plaintiff prayed for judgment against the defendants generally and severally for:

1. Unpaid local leave and leave allowance for the year 2008.
2. Pension Scheme Funds as per the staff entitlements.
3. General damages for wrongful termination of employment plus costs and interests and court rates
4. Any other relief.

The defendants filed the statement of defence on 19.11.2009 through Nyaberi & Company Advocates. The defendants' prayed that the plaintiff's suit be dismissed with costs. The defendants pleaded a preliminary objection that they were non-suited as they were not legal entities capable of being sued because as named, they were mere administrative titles within the Seventh Day Adventist Church.

The defendants filed an application dated 26.11.2010 stating that the defendants are merely offices in the

establishment of the Seventh Day Adventist Church (CKC) and the supporting affidavit of Jones Masimba filed together with the application on 26.11.2010 stated as much at paragraph 5. The record shows that that defendants' application which prayed for striking out of the plaint was subsequently dismissed for none attendance on 19.01.2010. The supporting affidavit and the defence remained on record.

The plaintiff gave evidence to support his case and the defendants did not call any witness. Final submissions were filed for the parties.

The **1st issue** for determination is whether the defendants have a valid preliminary objection as pleaded in their defence and as amplified in the supporting affidavit of Jones Masimba filed on 26.11.2010. The defendant's case is that the proper defendant is the Seventh Day Adventist Church (East Africa Limited) as per the certificate of incorporation filed in court. Thus the offices in the church as per named defendants are not suited and in any event holders of those offices act for the church so that the church would be vicariously liable for the actions of the officials. Thus, it was submitted that the named defendants being mere offices in the church are not persons and they are nonexistent persons and the suit must fail because the ensuing orders would not be enforceable. The claimant did not submit on that substantive and crucial issue raised for the defendants.

Section 260 of the Constitution of Kenya, 2010 defines "**person**" as including a company, association or other body of persons whether incorporated or unincorporated. The court holds that the offices named as defendants do not satisfy inclusion in the stated definition. Even if the Constitution was not in place and therefore not in operation on the date the suit was filed, the court finds that the Interpretation and General Provisions Act, Cap 2 defined "**person**" exactly as is defined in the Constitution. Paragraph 2 of the plaint stated that the defendants were being sued as representatives of the Central Kenya Conference, a managing body of the Seventh Day Adventist Church in Kenya. The court holds that entities which are not natural or artificial persons in law would not validly be sued by themselves or as representatives of others. The holders of the named offices were not specifically named or identified by their names. The court notes that despite full disclosure as per the said supporting affidavit of Jones Masimba filed on 26.11.2010, the plaintiff failed to take remedial measures such as seeking relevant amendment of the plaint. In view of the preliminary objection and the findings by the court, the plaintiff's suit will fail as there are no existing defendants as named. As the alleged defendants do not exist and in the submissions for the alleged defendant's there is no mention of costs, the prayer for costs is deemed abandoned as is not tenable in the circumstances of the case. Further the court considers that there would be no need to delve into the other issues for determination as were urged for the plaintiff.

In conclusion, the plaintiff's suit is hereby dismissed with no orders on costs.

Signed, dated and delivered in court at Nyeri this **Friday, 30th September, 2016.**

BYRAM ONGAYA

JUDGE