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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE CLAIM No. 40 OF 2015

ARISING FROM HCT-CS-297/2008

1. ● REV. PATRICK KIGOZI :::::::::::::::::::::::::::::: CLAIMANT

VERSUS

1. THE REGISTERED TRUSTEES OF

THE CHURCH OF UGANDA

2. REV. EPHRAIM MUSIIME

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3. RT. REV. DR. ZAC NIRINGIYE :::::::::::::::::::::::::::::: RESPONDENTS

● BEFORE:

THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

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1. MR. EBYAU FIDEL

2. MS. HARRIET MUGAMBWA NGANZI

3. MR. FX MUBUKE

AWARD

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25 **BACKGROUND**

The Claimants claim against the Respondent is for recovery of salary and allowance for the period he was employed by the 1st respondent. According to him, he was employed as a cleric/priest in the church of Uganda since 1975 and served in various capacities. He contends that during the time of his employment, the respondents
30 failed, neglected to effect payment in regard to his salaries and allowances as prescribed under the terms of Kampala Diocesan council resolutions of 1975, dully submitted and approved by the commission on canon law and the doctrine of finance of the church of Uganda, Rwanda and Bogga zaire provincial Assembly 1976.

He initially claimed for the recovery of monies owing in salary and allowances for
35 the period he was employed by the 1st Respondent from 1975 to date, a sum of UGX 1,319,462,210 but later reduced the claim to UGX 65,168,760 being salary arrears for the period of 01/01/1999 to 01/01/2018 out of which he deducted a sum of UGX 15,024,680 leaving a balance of UGX 50,144,080.

The Respondent on the other hand contends that at all times, the Claimant was paid
40 all his emoluments from the respective parishes where he was posted to serve, although it does not have a central and uniform salary structure for priests and staff. According to the 1st Respondent the Claimant started receiving his stipend from the Diocesan headquarters when he was posted at the Diocesan secretariat and upon his retirement, the 1st Respondent started paying him pension. However, he did not
45 pick his pension until this case was filed in this court. The 1st Respondent contends that the Claimant relied on forged letters from the provincial secretary's office

which have no connection whatsoever with determination of emoluments of a serving clergy in each diocese, therefore he is not entitled to any of the claims in his memorandum of claim.

50 **ISSUES**

1. Whether the 1st Respondent owes the Claimant the sums claimed?
2. Whether the Claimant is entitled to continuous payment of pension in the sums of UGX 240,000 per month?
3. Whether the Claimant is entitled to the prayers in the claim?

REPRESENTATIONS

Ms. Jackline Natukunda of M/s Magna Advocates represented the Claimant, and the Respondent was represented by Ms. Deborah Brenda of Agaba Muhairwe & Co. Advocates.

60 **EVIDENCE**

The Claimant adduced his own evidence and stated as follows:

He started working in the church in 1974 under Kampala diocese. According to him, initially the diocese had no money but he was deployed at St. Luke's Ntinda, where he was paid Ugx.100,000/- per month for 6 years. But he later worked without pay, for a period of 20 years, although this was on the understanding that he would demand for it later. It was also his testimony that some little money was paid to him, although it was not done on a regular basis and the amounts paid to him varied. It was further his testimony that he was entitled to payment of Ugx. 670,000/- per month from 1974 when he was appointed, until his retirement.

70 Therefore, for the period 01/01/1999 to 01/01/2015, he expected to receive Ugx.50,144,080/- at a rate of Ugx.670,000/- but he received between Ugx. 80,000/- and Ugx. 90,000/-. He also testified that he was supposed to receive Ugx. 670,000/- per month from 2006. However, this was never paid in full, because he was only paid Ugx. 561,350/=. He admitted the contents of a letter from Rev. Ephraim
75 Musiime dated 1/06/2006, at page 15 of his trial bundle, in which he was notified that, with effect from 1/06/2006, he would receive his salary from the diocese office and at the time he was at Wandegeya where he served until 2010. It was also his evidence that he retired from the church in 2010. However, he only started receiving his pension 2 years later. He also stated that, between January 2008 and May 2010,
80 he received Ugx.561,350/- and the same was paid per month from July 2006 to 2010. When asked to point out the months he was not paid any salary, he stated that he received half salary, leaving Ugx. 50,000,000/- outstanding. He also stated that, although he had an account in Barclays Bank, his salary was paid by vouchers.

The Respondent testified through 5 witnesses RW₁, John Awudi, RW₂, Bishop Magezi
85 Amos, RW₃, Reverend Canon Job Mbukure, RW₄, Merabu Elizabeth Gamuwa and Natukunda, Branch Manager Absa Bank Kampala Road..

RW₁, John Awudi, testified that at the time he was the field coordinator at the Respondent, he had the privilege to know the employment contracts and terms of the priests in the church. Although he did not attach any evidence to prove it, it was
90 his testimony that priests at the Respondent were paid a stipend. He also did not attach any evidence to show how much the Claimant was paid as salary/stipend in all the positions he held between 2003 and 2015. He however admitted that as diocesan secretary he was aware that, there was a salary structure, but it was not

uniform, and even though he oversaw their payments, he did not know what all the
95 priests were paid, including the Claimant.

RW2, Bishop Magezi Amos testified online, via zoom, that, when a person is
ordained as a priest he or she is not given a contract of employment but a letter of
order which posts him or her to the place of work. He further stated that the
province is governed by a Constitution, Canons and Policies which are kept in the
100 office of Human Resources and the Provincial Secretary. He denied ever writing the
letters which the Claimant claimed he wrote regarding his payment and stated that
they were a forgery.

RW3 Reverend Mbukure testified that, he was priested in 1975 earning about 1000
shillings per month. He could not remember how much the Claimant was paid or
105 what his terms and conditions of service were. He also said that, the Respondent
did not have a uniform salary structure for clergy, but priests earned a stipend,
although some of the priests had contracts depending on the synods of the diocese
and each diocese had its own terms and conditions of service. According to him,
some determined how much of the stipend was to be paid by the diocese and what
110 was to be paid by the parish, but payment of salaries was handled by parishes. He
denied knowledge of the Kampala resolutions of 1975, regarding salaries. When
court sought to know how the priests of the diocese were paid, he stated that part
of the salary was paid by the diocese and the other part was paid by the parish in
equal parts. Therefore, the priest received one part from the Diocese and the other
115 from the parish but there was no specific salary stipulated by the dioceses of
Kampala. What each Parish paid varied.

RW4 Merabu Elizabeth Gamuwa testified that, she was the 1st Respondent's Assistant Treasurer, and she was appointed on 1/06/2006. It was her testimony that, the church did not have a uniform salary structure because priests are paid a stipend which is determined by the Councils of the various parishes and payment from the diocese was based on quarterly collections brought into the diocese by the parishes and it was based on the Parishes financial standing. It was also her testimony that she knew the Claimant and he was called to serve at the diocese in June 2006, and his salary from then was paid by the Diocese of Kampala. Instead, he sued the church for retiring him early, but this notwithstanding he continued to receive his salary until his retirement in 2010. According to her, the Parishes are semi-autonomous in the management of their operations therefore the Secretariat did not have much power over them.

RW5 Francis Kabanda, branch Manager Absa Bank Limited, rendered his testimony regarding the Claimant's Account Number 0341296420 and the 1st Respondent's Account Number : 0391111099. During examination in chief, he testified that, the transactions relating to payment of the Claimant indicated the date, amount and narration about the payment and he cited dates between August 2008 and October 2008 as examples. By the time of his testimony the Claimant's bank statement was not on record. Counsel was given time to produce it.

SUBMISSIONS

Issue 1; whether the 1st Respondent owes the sums claimed?

Counsel restated the facts of the case and submitted that although the Claimant initially claimed Ugx.1,319,462,210/-, it was reduced to Ugx.50,144,080/-. He contested the Respondent's memorandum in reply on grounds that it generally

denied the Claimant's claims and without any specific defence. He contended that in civil disputes, the burden of proof lies with the claimant to prove his or her case on a balance of probabilities and the other party can only be called upon to dispute or rebut what was alleged. He relied on **Takiya Kashwahiri vs Kajungu Dennis** 145 **CACA No. 85 of 2011**, to support this legal proposition. He contended that, the Respondent departed from their memorandum in response comprised under 6 paragraphs in which they denied the claim without any specific denials or averments, and they never amended their memorandum of response. He further contended that, the evidence led through 5 witnesses and the evidence led did not stem from memorandum of reply because their witness statements introduced new 150 and departed from their pleadings. He argued that Order 6 rule 7 of the Civil procedure rules prohibits departure from pleadings by parties. Therefore parties are bound by their pleadings which have the potential of forming the record and courts are bound by what the parties have stated in their pleadings as to the facts 155 relied on by them. He relied on **Jani Properties Ltd vs Dar es salaam City Council [1966] EA 81** and **Struggle Ltd vs pan African Insurance Co. Ltd (1990) ALR46-67** both cited with approval in **Paoneto Semalulu vs Nakitto Eva Kasule HCCA No. 04 of 2008** and settled by the Supreme Court in **Luyimbazi Sulaima vs Stanbic Bank (U) Limited SCCA No. 02/2019**. He insisted that the Respondents did not 160 plead any specific defence's apart from stating that the Claimant's averments were denied, yet the law mandates the defendant to specifically plead a defence to each of the allegations in the plaint/claim with particulars thereof, whether in the main or in the alternative, and that's the import of Order 8 rule 3 read together with Order 6 rule 1 of the CPR. The response must conform to the form prescribed under order

165 8 of the CPR and as stated in **Vambeco Enterprises Limited Vs Attorney General**
HCMA No 0265 of 2014.

1. **Whether the first Respondent owes the Claimant the sums claimed?**

It was submitted for the Claimant that, his employment to the 1st respondent was not in dispute as evidenced in PE-1 and PE-2.

170 Counsel for the Claimant reiterated that the Respondent's testimonies and contentions are a departure from the original pleadings by the Respondent that, they never made any specific denials in their memorandum of claim, and they did not specifically traverse all the claims.

According to Counsel the Respondent owed the Claimant arrears for the period
175 1st/01/1999 to 31st/12/2000 for 24 months, where he was supposed to be paid Ugx. 373,840/- per month but was paid Ugx. 32,4000/- per month instead amounting to a total of Ugx. 775,200/- for 24 months as opposed to Ugx.8,972,960/- Which was not contested by the Respondent and for the period 01/01/2001 to 30th/06/2006, for 65 months, the Claimant's salary was supposed to be Ugx. 467,300/- per month,
180 however, he received only Ugx.63,772/- per month giving a total of Ugx.4,415,180 as opposed to Ugx.26, 229,320/=. However, the period 01/001/2008 to 31/05/2010 for 28 months was not contested. He cited PE3 and PE4 which were letters purportedly written by the provincial secretary indicating that the Claimant's salary was Ugx.675,000/- and although the Respondent alleged that, the letters were forged,
185 the Respondent did not produce any evidence inform of a laboratory statement through a handwriting expert to prove that the letters were forged by the Claimant and there was no evidence to prove that a criminal police file relating to the forgeries was opened. He relied on ,**Post Bank(U) vs. Wandera Masudi Civil Appeal No.**

154 of 2012. He further contended that, none of the computations above were
190 disputed by the Respondents and none of the Respondents witnesses adduced any
evidence to support their testimonies. According to him, none of them knew how
much the Claimant earned and none of them was privy to his terms and conditions
of service. He concluded that, given that the Claimant discovered that his salary
ought to have been Ugx.675,000/- pursuant to the letters clarifying his salary, he was
195 entitled to an award of top up.

The Respondents in their reply submitted that, according to Section 101(1) of the
Evidence Act, the burden of proof lies on the Claimant to prove his case on the
balance of probabilities. Counsel also submitted that the Claimant did not adduce
any evidence to back the claims in the memorandum of claim, and in his attempt
200 to get evidence he submitted forgeries which were not sufficient to shift the burden
of proof to the Respondents. He further contended that, the Claimant's reliance on
Order 6 rule 7 of the Civil Procedure Rules is misconceived and only intended to
mislead Court that new grounds or facts not contained in the pleadings were raised
by the Respondent whereas not. He cited the definition of an employee under
205 section 2 of the Employment Act and admitted that the Claimant was employed by
the Respondent from 1975 to 2010 when he retired from the service of church. He
argued that the Claimant having retired, in May 2010, he was not entitled to receive
a salary beyond that period. He cited Section 41(1) of the Employment Act which
entitles an employee to payment of wages and canons 3.23.1, 3.23.2, 3.23.3, 3.23.4 and
210 3.23.5 of the provincial Canons which provide for fact that there is no uniform salary
for priests and that priests only receive a monthly stipend from the parishes where
they are posted. It was also his submission that, this was affirmed by the witness

statements of Rev. Canon John Awodi, Canon Job Mbukure and Mrs Merabu Gamuwa.

215 According to Counsel it was the evidence of Bishop Amos Magezi that he did not author PE₃ and PE₄ which he purportedly authored when he was Provincial secretary of the church, because the duties of the provincial secretary of the church as he outlined in his testimony, did not permit him to deal with the parishes or individual priests. He further refuted the authenticity of the letters marked D 47
220 on the RTB because he reported a case of forgery to police regarding the difference in the signatures and the fact that the signatures were not his. He relied on **Premier Commodities (U) Limited vs Kiir for Services & Construction Company Limited & 3 others HCCS No.0126 of 2019**, “... for the legal proposition that Court may find itself in position to determine that the contested signatures were forged if
225 the purported genuine signatures and the purported signatures are obviously different.” He insisted that, Court should be able to distinguish the impugned signatures and the difference in the church of Uganda letter heads and it should pronounce itself on the forgeries.

He contested the submission by counsel for the Claimant that, the claimant’s salary
230 for the period 01/01/1999 to 31/12/2000 was Ugx.373,840, instead of Ugx.32,400/- and Ugx.467,300/- instead of Ugx.63,772 he claims he received because he testified during cross examination that his salary was Ugx.675,000/-,he refuted the claimant’s claims as stated under paragraphs 6 (i) (ii), 6.4, 6.414 and 6.15 and the assertion that the Claimant started earning Ugx.675,000/- in 1975 yet he testified that the letter
235 marked D23 on the RTB indicated he was to receive Ugx.561,000/- from July 2006. In any case evidence was led to show that the Claimant only received this payment

from 2008 to 2010 when he retired and in **Buyonjo Charles vs Rakai District Administration LDC No. 232 of 2016**, this court stated that the an employee could only claim arrears where they had proved that they were engaged for a service by the employer which service was done but the employer failed to pay the agreed salary. Therefore, court should find that the claimant was paid the stipend he was entitled to.

Decision of Court

Before we proceed to resolve this issue , it is important that we resolve the contention by Counsel for the claimant that the Respondent in adducing evidence departed from its pleadings.

The Supreme Court in **Interfreight Forwarders (u) Ltd vs East African Development Bank , SCCA no. 33 of 1992**, held that: *"...The system of pleading is necessary in litigating. It operates to define and deliver clarity and precision of the real matters in controversy between the parties upon which they can prepare and present their perspective cases upon which court will be called to adjudicate between them . it thus serves the double purpose of informing each party what the case of the opposite party is, and which will govern the interlocutory proceedings before the trial and what the court will have to determine at the trial. ... Thus, issues are framed on the case of the parties so disclosed in the pleadings and evidence is directed at the trial to the proof of the case so set and covered by the issues framed therein. A party is expected and bound to prove the case as alleged by him and as covered in the issues framed . He will not be allowed to succeed on a case not set up by him and not be allowed at the trial to change his case or set up a case not set up by him and be not allowed at*

260 *the trial to change his case or set up a case inconsistent with what was alleged in his pleadings except by the way of amendment of the pleadings.”*

Therefore, pleadings should disclose clearly and precisely the real issue in controversy between the parties, as opposed to a recitation of the evidence, which each party intends to adduce at the trial and parties are bound by what they say in their pleadings. The Court is also bound by what the parties have stated in their pleadings as to the facts stated therein. They are intended to give the opposite party fair and proper notice of the case he or she will meet to enable him or her prepare his or her own case for trial. (Also see, **Bitarabeho Christine vs Edward Kakonge** CACA No. 4 of 1999 HCB, **Palmer vs Guadagni**[1906]2 CH 494).

270 Order 6 rule 1 and rule 7 and 8 provide that:

“(1) Every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defense , as the case may be..

(2) The pleadings shall, when necessary, be divided into paragraphs , numbered consecutively: and the dates, sums and numbers shall be expressed in figures....

275 *(7) No pleading shall, not being a petition, application , except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading.*

...

280 *(8) It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defence by*

way of counter claim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages.

285 Order 8 on the other hand provided for the requirement to give notice of admission of a case.

Rule 5 of The Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012, provides as follows:

290 (1) *The Registrar shall within seven days after registering a reference, give notice to the parties that a dispute has been referred to the court and require each party to file a memorandum and in the case of the claimant the memorandum shall be filed within seven days after receipt of the notice.*

(2) *The memorandum referred to in subrule 1 shall set out the case of the claimant, the nature and particulars of each item of the claim involved in the dispute and the claimant shall serve the memorandum on the respondent.*

295 (3)...

(4) *The respondent shall, within seven days after receipt of the memorandum, file a reply as he or she may wish to give to the items of the claim raised in the claimant's memorandum and shall serve the memorandum on the claimant.*

...”

300 The Claimant under paragraph 3 of his memorandum of claim, claimed for the recovery of money owing in salary and allowances for the period he was employed by the respondent from the year 1975 to the date the claim was filed in this court. i.e 21/11/2016, for inconvenience caused to him and for costs of the claim. He set out the particulars under paragraph 4 of claim and stated the sums of Ugx.1,319,462,210/-
305 for unpaid salaries and allowance claimed under paragraph 7,

In reply the Respondent admitted the claim about the Claimant's employment by the Respondent and generally denied his claims for unpaid salaries and allowances for which they would put him to strict proof. This notwithstanding, no objection as to the competency of the reply was raised by Counsel before the commencement of the trial. Instead, both parties framed the issues for resolution in a Joint Scheduling Memorandum(JSM) signed by Counsel for both parties, and filed in court on 8/06/20122, as follows:

1. Whether the 1st Respondent owes the Claimant the sums claimed?
2. Whether the Claimant is entitled to continuous payment of pension in the sums of UGX 240,000 per month?
3. Whether the Claimant is entitled to the prayers in the claim?

Although the initial claim was Ugx.1,319,462,210/- both parties availed themselves to resolve the matter out of court and partially settled by reducing it to Ugx.50,144,080/- for the period 1999 to the date of filing the case in the Industrial Court. The issues for resolution were maintained as framed under the JSM and the sums claimed stood at Ugx.50,144,080/-. The matter was set down for hearing, both parties adduced their evidence, thereafter court issued the parties with schedules to file their respective submissions and the date for the delivery of the award was also pronounced. It is therefore unacceptable for Counsel at this late hour after both parties have adduced their respective evidence, at submissions stage, to raise objections regarding the competence of the Respondent's memorandum in reply. Such an objection ought to have been raised early before the commencement of the case and so much time was given to the parties to schedule and consider a settlement out of court, but the Claimant did not raise any objection then. To condone such an objection at this stage in our considered view would not only

further delay the disposal of this matter but it would also amount to condoning abuse of court process. In the circumstances we find no merit in the objection and in the interest of the justice of this case we shall proceed to resolve the issues as framed and maintained by both parties under the Joint scheduling memorandum, and on the outstanding claim following the partial settlement, standing at Ugx. 50,144,080/- for the period 1999-2016.

Resolution of issues:

1. Whether the 1st Respondent owes the Claimant the sums claimed?

The Employment Act provides that a “*contract of service means any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship*” It is a good Labour practice to have a written contract of service because the absence of a written contract makes it difficult to ascertain the nature and terms and conditions of a person’s Employment. Section 58 of the Employment Act, enjoins an employer to prepare a written contract which sets out the terms and conditions of service, including but not limited to the description of the employment, commencement date, form and duration of contract, place and hours of work, remuneration, and details of any other benefits and how it is to be paid, terms of termination, terms of collective bargaining (if applicable), among many others. Section 41 of the Employment Act entitles an employee to payment of wages for work done as agreed under a contract of employment. Therefore, the an employee claiming employment rights such as claim for unpaid wages /salary, must prove that an employment relationship exists in the first place. Even in circumstances where there is no documentary evidence of the existence of an employment

355 relationship, the employee still has the onus to prove his or her claim viva voce by
evidence. In the Canadian Case of **Wells vs New found land** [1999]3 S.C.R 199,
Court held that "...while the terms and conditions of the contract may be dictated, in
whole or in part, by statute, the employment relationship remains a contract in
360 substance and the general law of contract will apply unless superseded by explicit
terms in statute or agreement. The terms of such contract are to be found in the
written and verbal manifestations of the agreement, applicable statutes and
regulations..."

After carefully analysing the evidence adduced by both parties in the instant case,
we found several correspondences regarding the Claimant's employment on both
365 parties' trial bundles. They particularly related to his being "ordered" and posted
to various parishes and sub parishes as a Priest/Cleric. Given these correspondences,
we found that his engagement/employment as a Priest/Cleric with the 1st
Respondent was not in dispute. What was in dispute as we understood it, is
|whether the 1st Respondent owed the Claimant salary arrears amounting to
370 Ugx.50,144,080/- for the period 1999 until he filed this claim in this court?

It was the Claimant's testimony that, he was supposed to receive a monthly salary
of Ugx.670,000/- from the province from 1974 when he was first employed. However,
he did not adduce any appointment letter to prove that he was entitled to payment
of this amount as salary. Save for the letters at page 15 and 16 of his trial bundles,
375 which notified him about receiving salary from the diocese with effect from
1/07/2006 and actual notification about the payment of Ugx.561,350/- for the month
of July 2006, there was nothing to show how the salaries of Ugx.373,800/- for 1999-
2001 and Ugx. 467,300 for 01/01/2001 -30/06/2006 under the table Marked PE 8 on

his witness statement, were computed nor was there any evidence of the payments
380 he claimed he received. Whereas he testified that he was paid by vouchers, he only
filed an undated Salary payment Voucher No. 984 at page 19 of his trial bundle, for
salary for the month of July/August 2001 amounting to Ugx.127,500/- from Kampala
Diocese (Wandegeya Parish) and salary payment voucher No.3785 for the month
of October 2006, amounting to Ugx. 561,381, from Kampala Diocese (Church of
385 Uganda). The Voucher from Wandegeya Parish confirmed that before 2006, the
Claimant received his payment from the parishes where he was posted and the
amounts varied. We were fortified by RW₂ Rev. Mbukure's testimony when he said
that, there had never been a uniform salary structure for the Clergy, and payment
of salary was done by the parishes under which a clergy served. He also said that,
390 there was no specific salary designated by the diocese of Kampala. This was
confirmed by RW₃ when he also testified that there was no uniform salary structure
because the priests were and are still paid a monthly stipend by the parishes where
they serve.

We had no reason not to believe that it was the Parishes which determined what
395 to pay the Claimant, given the Voucher issued by Wandegeya Parish. This is because
nothing in the voucher made reference to any contribution from the Diocese. The
Claimant also testified that *"...the salary was got from the diocese all of us from the
parish because we had a quarter system ... we were paid little we were not paid regular
amounts .. I would receive Ugx. 80,000 or 90,000/-... I was never paid in full.."*

400 We had an opportunity to scrutinize the correspondences relating the Claimant's
employment and particularly to his posting to various parishes, at pages 9 to 14 of
the Respondent's Trial Bundle (RTB), and established that save for the

correspondences indicating the various parishes to which the Claimant was posted, nothing was stated about his remuneration. We also scrutinized PE-4, and PE5
405 which are letters purportedly written by a one Rev. Canon Amos Magezi, (now Bishop) who was the Provincial secretary in 2016, regarding his entitlement to salary of Ugx. 670,000/= and found as follows:

PE4 reads as follows:

Rev. Patirck Kigozi

410 *P.o.Box 5433*

Kampala, Uganda

Dear sir:

Re: CLARIFICATION ON YOUR SALARY AND OTHER ALLOWANCES

Reference is made to your afore mentioned matter.

415 *This is correspondence is priest, the clarify and confirm that since your employment of 5 priest, the following amounts of money were payable to your both in salary and allowances.*

420 *From 1974 to retirement your salary stood at 675,000/- (six Hundred seventy thousand shillings) without housing allowance, water, electricity and transport.*

The above amounts were or are due to your monthly and derived from the terms of Kampala diocesan Council resolutions of 1975 and duly submitted to or approved by the commission of the canon law. Doctrine and Finance of the church of Uganda, Rwanda and Boga Zaire Provincial Assembly 1976...

We hope that this is helpful and let us know if you have further questions.

In Christ

....

Rev. Can. Amos Magezi

PROVINCIAL SECRETARY"

430 The letter at page 18 is dated February 2016, and it was addressed to the Chief Magistrate Nabweru Chief Magistrates Court on the other hand reads as follows:

February 12, 2016

Your Worship,

The Chief Magistrates,

435 *Nabweru Chief Magistrates Court*

Your Worship,

RE: REV PATIRC KIGOZI

This is reference to the above person.

440 *He is currently entitled to Uganda shs. 675,000/- per month as per the terms of Kamapala Diocesan Council resolution of 1975 and duly submitted to/and approved by the Commission on Canon Law, Doctrine and Finance of the church of Uganda, Rwanda and Boga Zire Provincial Assembly, 1076.*

All assistance extended to him will be highly appreciated.

In Christ,

PROVINCIAL ASSEMBLY

...

The 2 letters were written in 2016, 6 years after the Claimant retired and ceased to earn a salary or allowances. We found it peculiar that the correspondences were responding to purported queries about his salary and allowances and yet the letters to which they were responding were not furnished to the court to enable us determine the context in which the clarifications were being sought in 2016. In any case the Claimant testified that he filed a case about nonpayment of his dues and according to PE-7, the suit was cited as **Nabweru Chief Magistrate's Court Civil Suit No. 297 of 2008, Rev. Patrick Kigozi vs the Registered Trustees of the Church of Uganda, Rev. Ephraim Musiime and Rt. Rev. Dr. Zac Niringiye**, which means it was filed in the Magistrates court as far back as 2008. He also testified that Rev. Ephraim Tumusiime withdrew from the case and thereafter it did not proceed. He testified that; *"...That case we were in court but Ephraim Tumusiime withdrew from the case and it stopped there..."* It was therefore peculiar that the matter having not proceeded in 2008, the Chief Magistrate sought clarification on it 6 years after the Claimant retired, moreover when he had ceased to earn any salary. In addition, both letters referred to Council resolutions of 1975 as the basis for the computation of his pay purported to be Ugx.675,000/- per month, but the resolutions were not placed on the record for our scrutiny. The Claimant further testified that, this salary applied to him from the time of his employment in 1974, yet the resolutions were purportedly approved and issued in 1975. Most importantly, whereas the letters stated that the Claimant was entitled to Ugx. 675,000/ per

month, it was his testimony that he was entitled to Ugx. 670.000/- and the table in
470 which he computed his arrears reckoned different salaries for different periods as
follows; Ugx373,840- per month for the period 1999 to 2000 and Ugx.467,300 for
the period 2001 to 2006. Evidence was also led to indicate that with effect from July
2006 until his retirement on 30/05/2010, the Claimant received his salary from
Kampala Diocese (Church of Uganda) and he was receiving Ugx.561,350/- per
475 month and this was not denied by the Claimant.

It is abundantly clear from the above, that the Respondent did not have a uniform
structure of paying remuneration to its priests/clergy rendering the authenticity of
the 2 letters PE₃ and PE₄ (supra) questionable.

We reiterate that, apart from the uncontroverted correspondences regarding the
480 Claimant's deployment to various Parishes at pages 9-14 of the RTB, already
discussed above, the Claimant did not adduce any other evidence of any contract
of employment or any appointment letter or Council resolutions of 1975(supra)
which purportedly provided a pay structure for Clergy, or explicitly stated the salary
or remuneration to be paid to him in particular, from the commencement of his
485 employment in 1974 until 2006 when he was placed directly under Kampala Diocese
at a salary of Ugx.561.350/- per month effective 1/07/2006. In the absence of such
documentary evidence and given the glaring contradictions, in the evidence he
adduced, the 2 letters are not sufficient to prove that he was entitled to payment of
Ugx. 675,000/- per month from 1974 when he commenced employment and
490 particularly from 1999 to 2016, which he claims he partially received, thus reducing
his claim for salary arrears to Ugx. 50,144,350/-.

We also do not believe that he was entitled to payment of Ugx. 675,000/ per month from 1974 and the period 1999 to 2016, as alleged, in the absence of any contract or letter of appointment or the Council resolutions that explicitly stated so. In any case he retired from the service of the church in 2010 and commenced to receive his pension, of Ugx. 240,000/- per month albeit 2 years later. This issue therefore resolved in the negative.

2. Whether the Claimant is entitled to continuous payment of Pension in the sums of UGX 240,000 per month?

It was not in dispute that as a clergy/Priest the Claimant was entitled to payment of monthly pension of Ugx.240,000/- when he retired, until death. We established that he retired from the service of the Church on 30/05/2010. It is also not in dispute that the Respondent paid him a sum of Ugx. 8,640,000/- for the period 1/06/2010 to 30/06/2010, albeit 2 years after he retired.

According to the Respondent he was entitled to payment of pension until, death. In the circumstances the 1st Respondent is ordered to continue paying the Claimant his monthly pension of Ugx.240,000/- per month up to the time of his death. The 1st Respondent having not denied that the Claimant was entitled to payment of his pension and given that the Court is not privy to its inflows it would be superfluous for the Court to order for a standing Order to be issued for the payment of Pension. We believe that, any irregularity in payment can be a remedied by execution proceedings.

3. Whether the Claimant is entitled to the prayers in the claim?

a) Salary Arrears

515 It was submitted for the Claimant that he was entitled to salary arrears from 01/01/1999 to 30/05/2008 UGX 38,012,030 and top up from the periods of 01/01/1999 to 31/05/2010 of UGX 30,876.630. We have already established that the Claimant failed to prove the basis of these claims , therefore there was no basis to award them. They are therefore, denied.

520 **b) Pension**

The 1st Respondent is ordered to continue paying the Claimant his pension of Ugx. 240,000/- per month up to the time of his death. It is however, not necessary to order for a standing order to issue for this purpose.

c) General Damages

525 It is trite law that General Damages are intended to bring an aggrieved party to as near as possible in monetary terms to a position as he or she was in before the injury occasioned to him or her by the respondent occurred. (see **British Transport Commission vs Gourley[1956]AC 155**. General Damages are therefore compensatory in nature. The Claimant having failed to prove his claim for salary
530 arrears, we found no basis to award him General Damages claimed in the sum of Ugx. 30,000,000. In the circumstances this claim fails.

Costs

It is the position of this court that even if costs follow the cause, in employment matters where the parties are not an equal footing, the employer being the holder
535 of capital and the employee the subordinate and who lost his or her source of income through termination, costs would be awarded as an exception. We are of the considered opinion that this case does not warrant an award of costs. Therefore, no order as to costs is made.

Delivered and signed by:

540 LINDA LILLIAN TUMUSIIME MUGISHA

AG. HEAD JUDGE

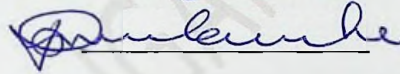
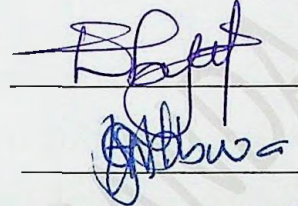
PANELISTS

1. MR. EBYAU FIDEL

2. MS. HARRIET MUGAMBWA NGANZI

545 3. MR. FX MUBUKE

DATE: 25/03/2024



INDUSTRIAL COURT OF UGANDA