

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA
ON WEDNESDAY 25TH DAY OF SEPTEMBER, 2019
BEFORE HIS LORDSHIP: HON. JUSTICE V.V.M. VENDA
SUIT NO: FCT/HC/CV/1366/2017

BETWEEN:

MR. SUNDAY NIMZINGAPPLICANT

AND

- | | | |
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| <p>1. REGISTERED TRUSTEES OF CHURCH
OF CHRIST IN NIGERIA</p> <p>2. REV. SULEIMAN ALI</p> <p>3. REV. SOLOMON BUNMI</p> | } | <p>..... RESPONDENTS</p> |
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JUDGMENT

The Plaintiff in this suit has approached this court in suit No. CV/1366/2017 seeking the following reliefs from the Court.

(a) A Declaration that the suspension of the Applicant by the Respondents is unlawful, illegal, null and void and constitutes a gross violation of the Applicant's Fundamental Rights to fair hearing as enshrined in the 1999 constitution of the Federal Republic of Nigeria as amended.

(b) A Declaration that the continued suspension of the Applicant by the Respondents without disclosure of any

- offence known to law is illegal, unlawful and a violation of the Fundamental Rights of the Applicant to dignity of human person as guaranteed by section 34 (1) (a) of the constitution of the Federal Republic of Nigeria 1999 as amended.*
- (c) An Order setting aside the unlawful and illegal suspension of the Applicant by the Respondents.*
- (d) An Order directing the Respondents to tender an unreserved and profound apology to the Applicant for the unlawful suspension and breach of Applicant's right to fair hearing.*
- (e) An Order directing the Respondents jointly and severally to pay the sum of N500, 000.00 only as compensation for the unlawful and unconstitutional suspension of the Applicant by the Respondents since 2012.*
- (f) And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.*

In support of the application is a 25 paragraph affidavit deposed to by Applicant himself. He deposed that 1st Respondent is an incorporated body registered under part "C" of the companies and Allied Matters Act, Cap C 20 LFN, 2004. That 2nd Respondent is a clergy in the employment of 1st Respondent assembly of COCIN Church for about two years before he was subsequently transferred to Bokkos in Plateau State, while 3rd Respondent is also a clergy in

the Employment of 1st Respondent and was in charge of the Kuje local assembly of COCIN Church from 2010-2012.

Sometimes in 2012, Applicant wrote a letter of complaint to the executive church counsel on issues bordering on the N4.4. million naira meant for acquisition of land for the Kuje local Assembly of COCIN Church being a contributor of the said sum. He attached a copy of the letter marked exhibit "A". That instead of using the said sum for the acquisition of the land for the church building, the fund disappeared in questionably circumstances under the custody of the 3rd Respondent who was in charge of the Kuje local Assembly of the COCIN church as at the time the contribution was made. That the 3rd Respondent neither consulted nor co-opted knowledgeable persons in the handling of the entire transaction but instead shrouded same in secrecy, culminating in financial loss to the church.

Aggrieved by the poor handling of the entire transaction, he severally enquired for further clarification on the issue during the administration of 3rd Respondent and also the time when 2nd Respondent took over the administration. Rather than given the clarification as requested, he was invited by the 2nd Respondent alongside the Church Board of Elders to a meeting, where he was asked to stop enquiring about the matter and let go of the whole transaction.

According to the Applicant, he however, persisted and was rudely excused from the meeting and subsequently suspended without being afforded the opportunity to be heard, of which no letter conveying the purported suspension was handed over to him despite his persistent demands.

That this suspension violates the extant provisions of the relevant articles of COCIN Church's constitution and or bye-laws in that, it does not fall among the stated offences warranting suspension. He attached the said COCIN Constitution and bye-laws and marked same as exhibit "B".

It is Applicant's further testimony that the suspension has subjected him to psychological and mental agony, as it has lowered his hard earned reputation among members of the church and his colleagues. That the arbitrary and high-handed suspension which was masterminded by Rev. Suleiman Ali has further exposed him and his family members to contempt, odium and ridicule.

Furthermore, notwithstanding the shameful and unfortunate manner the 3rd Respondent handled the 4.4 million Naira land acquisition church fund, the 3rd Respondent has neither been reprimanded nor invited to clear himself in the entire transaction, and that till date, there is no positive explanation regarding the where about of the said funds or the status of the land in question.

Further aggrieved by the unjust and unfair suspension, he instructed his solicitors M.A. Ebute & Co to write a letter of demand for reversal of the suspension dated 13th June, 2016 attached and marked exhibit "C".

That till date, the 1st and 2nd Respondents have failed, neglected or refused to heed the letter of demand, and that unless by an Order of this Honourable Court, the 1st and 2nd Respondents will not lift the suspension. It is in the interest of justice to grant this application, as the Respondents will not be prejudiced.

The applicant also filed a written address dated the 3rd day of April, 2017. He formulated a sole issue for determination thus:

Whether the Applicant is entitled to the reliefs sought.

Arguing the sole issue, counsel for the Applicant submitted that the Respondents infringed on the fundamental human rights of the Applicant. As a result, Applicant has suffered grave injury and psychological trauma which entitles him to remedy by way of compensation.

He argued that once an applicant shows that there is an infringement of the principle of Natural Justice against him, he needs show nothing more. The finding that there is infringement of the principle is sufficient to grant him a remedy. He urged the court to hold that the suspension of the Applicant without been accorded fair

hearing which is a fundamental human right as guaranteed by the constitution has occasioned psychological injuries to the Applicant.

He cited section 36(1) of the constitution of the federal Republic of Nigeria 1999 (as amended) and the relevant article of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act, Cap 10, Laws of the Federation of Nigeria, 2004.

He also cited the case of **UMAR VS. ONWUDINE (2002) 10 NWLR (PT 774) PAGE 129 @ 152** and the case of **ONYEKWULUJE VS. BENUE STATE GOVERN. (2005) 8 NWLR (PT 928 614-642 PARAGRAPHS E-G.**

Counsel argued further that the breach of the substantive provisions of the constitution as in the instant case by the Respondents when they suspended the Applicant without affording him the opportunity to be heard rendered the purported suspension a nullity. On this he cited section 36 (6) of the Constitution of the Federal Republic of Nigeria and case of **NWANKWO VS. YARDUA (2010) 12 NWLR (PT 1209) PG 518 @ 540.**

He finally urged the court to grant the application on the strength of the submissions and authorities cited.

The Respondents neither filed a counter affidavit to oppose the application nor appeared in court to defend the application

The sole issue for determination in this suit is whether the Applicant is entitled to the reliefs sought.

Having listened to the Applicant, it is clear that the grievance of the applicant is simply put that he, being under the employment of the Defendants, was wrongfully suspended without been fairly heard. The Applicant is an employee with the 1st Respondent church. A contract of employment is one considered strictly from its terms, and just like other contracts, it is usually in writing, though it could be verbal.

Every contract of employment contains the terms and conditions that will regulate the employment or the relationship such as terms on termination, notices, wages, benefits are usually contained in the expressed contract of service.

See **ONYEUKWU VS. FIRST BANK OF NIGERIA PLC (2015) LPELR-24672 (CA)**. See also **LONGE VS. FBN PLC (2010) 6 NWLR (PT 1189) 1 SC**.

In every contract of employment, just like in every relationship, each party has rights and obligations.

The law is settled that there are now roughly three categories of contract of employment:

- 1. Those regarded as purely master and servant.*

2. *Those where a servant is said to hold an office at the pleasure of the employer; and*
3. *Those where the employment is regulated or governed by statute, often referred to as having statutory flavor.*

See **CENTRAL BANK OF NIGERIA and ANOR VS. MRS. AGENS M. IGWILLO (2009)14 NWLR (PT 1054) 393**. See also **OLANIYAN VS. UNIVERSITY OF LAGOS (1985) 2 NWLR (PT 9) 599**.

For a court to adequately take a decision on a matter, all facts must be before the court. The court in the instant case is left to presume the type of contract of employment the claimant in this case went into.

The letter of employment spells out all the rights of the employee and his obligation to the office into which he is employed. This is to prevent any form of falling short, on either side.

In the instant case the claimant has not attached his letter of employment for me to know what kind of contract he and the Defendant entered into and for which the defendant must be held liable if so found.

This is necessary because the rules governing the relationship between the employee and his employer in the different categories of contract are not the same. For instance it was held in the case of

ANAJA VS. UNITED BANK FOR AFRICA PLC (2010) LPELR-3769

(CA) thus:

*The relationship between an employer and his employee, is generally to be found in the service agreement or letter of employment. See **INTERNATIONAL DRILLING CO. NIG (LTD) VS. AJIJOLA (1976) 1 ALL NLR 117 @ 130.***

In this same Anaja case, (supra) the court holding on whether a master can terminate the contract of the servant anytime, the court held:

The law regarding the relationship between master and servant is settled. The master has full powers to terminate the employment of his servant at anytime, for any reason or indeed for no reason at all.

Provided that the termination of such an employment, should follow the procedure spelt out in the contract of service otherwise the master will be liable in damages for breach of the contractual agreement.

See **CBN VS. BASSEY AMIKE (SUPRA) AND RIDGE VS. BALDWIN (1964) AC 40. IN OLAREWAYU VS. AFRIBANK (SUPRA) @ 502, KATSINA ALU JSC** (as he then was) held:

“In this class of cases (Master and Servant) an officer’s appointment can lawfully be termite without first telling

him what is alleged against him and hearing his defence or explanations.

Similarly an Officer in this class can lawfully be dismissed without observing the principles of natural justice”.

Having settled thus, I must say that it is very important and Germaine to the determination of this case for the terms of employment to be availed the court. In the absence of the terms of employment I cannot justly see whether or not the Defendants in this case did what they were or were not supposed to do.

The Applicant has however annexed as exhibit “B” to this suit, the Bye-laws of Church of Christ in Nations which I have painstakingly looked through to see where I may salvage this situation.

I note in section 30 of the Bye laws titled: Steps for resolving Disputes. For a clearer understanding and ease of reference, I hereby reproduce the section:

- (1) Any staff or member of the Church who has a grievance against the church shall follow the biblical steps reconciliation of grievances laid down in Mathew 18:1-18.*
- (2) Any member of the church who has a dispute against another member of the church shall follow the biblical*

- steps for reconciliation of grievances laid down in Mathew 18:15-18.*
- (3) The church shall persuade its staff and members to exhaust relevant alternative dispute resolution methods.*
 - (4) In the case of dispute between a staff and the church, if a member of staff is not satisfied with the reconciliation step taken between him and the church and chooses to go to court then he shall first resign his appointment with the church, vacate church accommodation and duly handover to the appropriate officer before instituting court action.*
 - (5) Where there is any dispute between a section of the church with some person(s) over church property and it is not resolved by them the matter shall be referred to the Board of Trustees.*
 - (6) Where the Board of Trustees is unable to settle such dispute it shall refer the matter to the General Church council.*
 - (7) The General Church Council may take a decision which may include delegating the Board of Trustees and the General Secretary to handle the matter on its behalf which may include taking any of the following measures:*
 - a. Taking appropriate steps to take possession of the property of the church.*

- b. Taking over and recovering any monies at hand or in Bank Accounts; and*
- c. Taking any other steps they may deem fit.*

The provision of the bible referred to in the said Bye-laws which an aggrieved party must follow states in the said Mathew 18:15-18 thus:

- 15. Moreover, if thy brother shall trespass against thee, go and tell him his fault between thee and him alone: if he shall hear thee thou hast gained thy brother.*
- 16. But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established.*
- 17. And if he shall neglect to hear them tell it into the church: but if he neglect to hear the church, let him be unto thee as an heathen man and a publican.*
- 18. Verily I say unto you, whatever ye shall bind on earth shall be bound in heaven, and what so ever ye shall loose on earth shall be loosed in heaven.*

The Applicant has not stated in his evidence that when he observed an abnormality about the N4.4million, he first discussed the matter with the officer concerned but was dissatisfied with his explanation before writing to the Executive Church Council.

Moreover, in the above quoted provisions of the bible which form the Bye-Laws relied upon by the Applicant, it is expected of the Applicant to go with another brother to confront the suspected culprit of the N4.4million saga before reporting the matter to the Church. If the church's action or inaction, or where the said suspected offender refused to own up and give piece a chance the Applicant was to see him as an heathen man.

But where the applicant intends not to go this way but go into litigation, he is bound to go to arbitration first, the provision for which is found in section 31 of the Bye-laws. It states:

- 1. Whenever the church has a dispute with anyone that is likely to result in litigation, the matter shall be referred to Arbitration.*
- 2. The Church and the other party can engage the service of one Arbitrator; alternatively, each party can engage an Arbitrator and the two Arbitrator shall agree on the Arbitrator who shall preside at the arbitrator proceedings.*

He is also expected to resign his appointment and vacate the ministry quarters.

Applicant also states in paragraph 12 of his affidavit in support of this application that during a meeting which he was also in attendance he was asked to let go the matter and when he refused to

let go, he was excused from the meeting and subsequently suspended.

In my opinion, this is the stage when the Applicant ought to have proceeded to Arbitration and not to approach the court first.

I find that the Applicant has failed to follow the procedure provided for, by the Bye-laws of the organization he worked for.

And in this case he neither exhibited his letter of employment nor sufficient evidence of suspension. There is nothing for the court to work with. The letter of report to the Regional Church Council annexed as exhibit 'A' and the Bye-laws of the church annexed as exhibit "B", though good materials are grossly insufficient to proof this case.

In the circumstance this case is hereby none suited.

Signed
Hon. Judge
25/9/2019

PARTIES:

- 1. MR. SUNDAY NIMZING - APPLICANT**
- 2. REGISTERED TRUSTEES OF CHURCH OF CHRIST IN NIGERIA AND 2ORS - RESPONDENT**

APPEARANCE:

- 1. U.B. EYO FOR THE APPLICANT**
- 2. NO APPEARANCE FOR THE RESPONDENT**

STATUTES

- 1. SEC. 34(1) (A) 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)**
- 2. SEC. 36 (1) 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)**

DECIDED CASES

- 1. UMAR VS. ONWUDINE (2002) 10 NWLR (PT 774) PAGE 129 @ 152.**
- 2. ONYEKWULUJE VS. BENUE STATE GOVERNMENT (2005) 8 NWLR (PT 928) 614-642 PARAGRAPH E-G.**
- 3. NWANKWO VS. YARADUA (2010) 12 NWLR (PT 1209) PAGE 518 @ 540.**
- 4. ONYEUKWU VS. FIRST BANK OF NIGERIA PLC (2015) LPELR-24672 (CA).**
- 5. LONGE VS. FBN PLC (2010) 6 NWLR (PT 1189) 1 SC.**
- 6. CENTRAL BANK OF NIGERIA ANOR VS. MRS. AGENS M. IGWILLO (2009) 14 NWLR (PT 1054) 393.**
- 7. OLANIYAN VS. UNIVERSITY OF LAGOS (1985) 2 NWLR (PT 9) 599.**
- 8. ANAJA VS. UNITED BANK FOR AFRICA PLC (2010) LPELR 3769 (CA).**
- 9. INTERNATIONAL DRILLING CO. NIG (LTD) VS. AJIJOLA (1976) 1 ALL NLR 117@ 130.**
- 10. RIDGE VS. BALDWIN (1964) AC 40.**
- 11. CBN VS. BASSEY AMIKE.**
- 12. OLAREWAYU VS. AFRIBANK.**