

BETHLEHEM APOSTOLIC CHURCH
and
REPHIO CHIRUMBWA N.O.
versus
ZACHARIA CALEB GEMU

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE: 14, 15, 21, 22 & 23 March 2022, 17 February 2023, 20 November 2023 & 10
September 2024

Civil Trial –Church Leadership Dispute

Ms *AK Verenga*, for the plaintiff
Mr *N Mugiya*, for the defendant

MUSITHU J: The plaintiff (Rephio Chirumbwa) and the defendant are embroiled in a leadership dispute in an apostolic church known as Bethlehem Apostolic Faith Church (the Church). The trial of the matter commenced in March 2022. The matter suffered from setbacks, primarily, the unavailability of witnesses which derailed its progress and ultimately its conclusion. At the conclusion of the trial, the defendant made an application for absolution from the instance at the close of the plaintiff’s case. I dismissed the application for absolution from the instance in a judgment handed down under HH 267/23.

The court however upheld the defendant’s preliminary point that the church (being the first plaintiff in the matter) was not properly before the court. This was because no board resolution or some other form of authority was placed before the court authorising the second plaintiff herein to also institute proceedings on behalf of the church. Having upheld the preliminary point, the court struck out the church’s name from the face of the pleadings and excused it from taking further part in these proceedings. Any reference to the plaintiff herein therefore refers to the second plaintiff. The matter was set down for resumption of trial, but it got postponed on several occasions owing to the unavailability of some of the defendant’s witnesses.

Background to the plaintiff's claim

Most of the factual background is captured in the judgment in HH 267/23. I will therefore only capture what is relevant for purposes of this judgment. The plaintiffs approached the court seeking the following relief:

- a) An order declaring the 2nd plaintiff the duly elected and substantive Bishop.
- b) An order interdicting defendant or anyone acting through him or on his behalf from claiming to be Bishop of Plaintiff or member of Plaintiffs' General Board.
- c) An order interdicting Defendant or anyone acting through him or on his behalf from purporting to represent Plaintiff.

The background to the plaintiffs' claim

The leadership dispute between the parties has been raging on for some time. The parties have been in and out of court on numerous occasions. Regrettably, the question of the legitimate leadership of the church has remained elusive. On 17 October 2017, this court per TSANGA J granted an order by consent under HC 3350/17. In that matter, the church was the first plaintiff. The defendant herein was the second plaintiff in that matter. The first defendant was one Alfred Zamnkosini. The second plaintiff herein was the second defendant. The consent order reads as follows:

“IT IS ORDERED BY CONSENT THAT:

1. Parties be and are hereby ordered to return to the status quo as at the time that 1st defendant tendered his resignation letter on the 12th of June 2015.
2. The 2nd plaintiff who was the archdeacon at that time, be and is hereby ordered to return the position of archdeacon and act as the bishop of the church until 24 February 2018, when the plaintiff holds its annual general meeting in terms of the constitution.
3. Parties are hereby directed to appoint a bishop at the annual general meeting to be held on the 24th of February 2018, in terms of the 1st plaintiff's constitution.
4. Parties be and are hereby directed to worship together as they used to as at the 12th of June 2015, when 1st defendant resigned.
5. Each party shall bear its own costs.”

An Annual General Meeting (AGM) was convened on 24 February 2018 in compliance with the above order. The elections for the position of Bishop and members of the General Board were to be held on this day. The plaintiff herein claimed to have been elected as bishop by members of the church who were present and eligible to vote. The second plaintiff is alleged to have received 130 votes, while the defendant received none.

The defendant disputes the election of the plaintiff as the bishop of the church. He also disputes the election of Isaac Gaveta, David Njanji, Never Banda and Moses Sithole as members of the General Board. According to the plaintiff, the defendant's conduct has caused

unnecessary rift and conflict within the membership of the first plaintiff. He installed himself as the bishop of the church. He also set up his own General Board comprising of J Ncube, LS Kachere, W MAGIGA, J Shava, Tiba, M Msipa and P Matonga. The plaintiff further contend that the defendant's conduct violated Article ix Clause (b) of the first plaintiff's Constitution as it inculcates a culture of impunity and conflict.

The defendant was also accused of running parallel structures to those of the duly elected bishop of the first plaintiff and the General Board. Those parallel structures had interfered with the smooth running of the church by the plaintiff.

The defendant's plea

The defendant averred that he was the lawfully elected bishop of the church. The church could thus not sue its own bishop. He further averred that the issue was *res judicata* as this court determined that he was lawfully appointed in compliance with the order in HC 3350/17. The defendant also insisted that he won the elections as confirmed by minutes of the proceedings that were placed before this court. The second plaintiff allegedly created his own minutes that contradicted the legitimate minutes of the AGM.

Finally, the defendant averred that the plaintiffs had failed set out the basis for seeking a *declaratur*, as well as the cause of action to justify the relief that they were seeking. The proceedings were therefore an abuse of court process which needed to be dismissed with costs on the punitive scale.

The trial

The agreed trial issues were recorded following the pre-trial conference meeting held before CHAREWA J on 8 June 2021. They are captured as follows:

- Whether or not the second plaintiff is properly before the court.
- Whether or not the second plaintiff or the defendant was duly elected Bishop of the first plaintiff;
- The appropriate level of costs.

As already stated, the church as first plaintiff was struck off from the record following a preliminary raised by the defendant in the absolution judgment concerning the absence of the required authorisations to institute proceedings on its behalf. The issue of whether the second plaintiff (now the sole plaintiff), was properly before the court was also dealt with in the

absolution judgment. The remaining issues for determination are who between the plaintiff and the defendant was properly elected as bishop of the church. There is also the attendant issue of costs of suit, which must be disposed of.

The Plaintiffs' Case

The first witness was the plaintiff himself. He is one of the founding members of the church which was established on 14 March 1987. He claimed to be the bishop after being elected in terms of the church's constitution. The defendant became the acting bishop following his appointment to that position by Alfred Zamnkosini who had become incapacitated because of ill-health. That appointment was not done in terms of the church's constitution. After his appointment in June 2015, the defendant called for a meeting of the General Board members and their wives in December 2015. He told them he wanted to teach them how to do their work properly as they had been failing in that regard. He also castigated the former bishop for having failed to lead the church effectively.

According to the witness, the defendant's utterances and his somewhat abrasive approach led to disturbances in the church. The parties approached the Apostolic Christian Council of Zimbabwe (ACCZ) for mediation and counselling. The ACCZ advised that Zamnkosini ought to have been elevated to the position of Archbishop, with the defendant remaining the bishop of the church. The proposal was not implemented leading to further chaos with the dispute further spilling over into the Magistrates Court and the High Court. The parties have been in and out of court, with one of the latest court contests being the action that gave birth to the consent order granted by TSANGA J. The consent order directed that the defendant holds the acting position until 24 February 2018 when elections were to be held.

According to the witness a bishop was spiritually/prophetically appointed into office by the General Board and the general membership of the AGM. The bishop's tenure of office was only terminated either by death or resignation or by being voted out of office for one reason or another at an AGM following recommendations by the General Board. The witness further stated that the nomination of a member to stand as a candidate in the election of a bishop by the General Board had to be endorsed by the Board of Trustees.

The witness stated that the church reverted to the *status quo* following the order by TSANGA J. He was nominated by the General Board to be the candidate for the post of bishop at a meeting held on 20 October 2017. The General Board was the body responsible for the day

to day running of the church through Board meetings. At the time of his nomination, the General Board comprised of 9 members following the resignation of Zamnkosini. The minutes of the meeting of 20 October 2017 were only signed by five members of the Board out of the nine. The witness was also a member of the General Board. The witness stated that only five members signed those minutes because of misunderstandings and divisions within the church that arose after the defendant took away the church's Holy Ark. The other four members sided with the defendant and hence their abstention. In terms of the constitution, the quorum for the meeting was one more than half of the total number of members present. That meant that out of the nine General Board members available, if five attended then they would constitute a quorum.

Following his nomination to stand in the election for the position of bishop, the witness claimed that both factions invited their legal practitioners to be in attendance on the election day. The plaintiff's faction was represented by a Mr *Chigudu*, while the defendant's faction had a Mr *Muvhami*. The legal representatives were required for them help in interpreting the constitution and the consent order by TSANGA J. Proceedings started with a prayer from the General Secretary, one Ncube. The witness claimed that the General Secretary then hijacked the meeting and imposed himself as the chairperson of the day's proceedings. He invited the two legal practitioners to explain the implications of the consent order. The two legal practitioners consulted each other and agreed that Muvhami would address the meeting.

Muvhami advised the meeting to compile the names of the attendees from the church's districts to confirm those in attendance. He also explained the purport of the consent order as well as the election process. Thereafter he handed over to the General Secretary. As the voting was about to commence, the defendant invited the General Board members together with the legal practitioners for a chat outside the church. He pointed out that the witness could not participate in the election since his nomination had not been endorsed by the Board of Trustees. The plaintiff's legal practitioner requested the defendant to produce the paperwork confirming that his nomination had also been endorsed by the Board of Trustees. He had also not been endorsed. None of the candidates had therefore been endorsed by the Board of Trustees to participate in the election.

According to the witness, the legal practitioners agreed that since members of the Board of Trustees were all available, the two contestants could be endorsed. This was duly done and after their endorsement, they went back into church to vote. The General Secretary

requested the candidates and their spouses as well as their legal practitioners to go out of the building during the voting process.

While they were waiting outside, they heard a commotion from inside the church. The witness saw the defendant leaving the premises with his followers and their legal practitioner. The witness and his team and their legal representative remained behind. Their legal practitioner suggested that they go back into the church to establish the cause of the commotion. While inside they were informed of what transpired. The General Secretary had endorsed the defendant as the duly elected bishop since the plaintiff had been disqualified from participating in the election. After this announcement chaos erupted in the church, forcing some members of the defendant's faction to leave the church. The plaintiffs' legal practitioner advised them to proceed with the election in compliance with the court order and the church's constitution. The elections went ahead, and the second plaintiff was duly elected Bishop.

The plaintiff referred to minutes of the meeting which were tendered as exhibit 2 together with a list of the districts that had voted in the election. The documents confirmed that the second plaintiff had received 130 votes while the defendant received nil votes. The witness averred that he was therefore properly elected. He was a serving member of the General Board which nominated him to stand in the elections. His nomination was endorsed by the Board of Trustees. He was elected by the general membership at the church's AGM.

The witness further told the court that in terms of Article II (e) of the first plaintiff's constitution, any person could institute proceedings. He further stated that in the spoliation proceedings before MANZUNZU J, the defendant had lied that the witness and his faction had assaulted him and took away the church's keys from him. According to the witness that was false because since the election day, the defendant never set foot at the church again.

Under cross examination, the witness denied that a bishop had the authority to appoint another bishop even on recommendations of the General Board. The witness further averred that even though he did not challenge the appointment of the defendant as acting bishop by Zamnkosini, that did not make his appointment to that position constitutional.

The witness was asked to comment on a letter for his expulsion from the church by the defendant addressed to his former legal practitioners Zinyengere Rupapa, dated 25 October 2019¹. The witness confirmed receiving the letter but argued that he had challenged his

¹ Page 209 of the plaintiff's supplementary bundle of documents

dismissal. Although he admitted that there was no order of court setting aside his expulsion, he averred that he had also written a letter expelling the defendant from the church. He denied that by the time that he instituted the current proceedings he was no longer a member of the church by virtue of the said expulsion since he was the bishop of the church. The witness admitted that in terms of Article I (a), a Bishop had the power to expel any officer who violated the Constitution of the church. He still denied though that he was lawfully expelled from the church since the defendant was never elected as bishop.

Under cross examination, the witness admitted that he did not notify the defendant's faction of the meeting of 20 October 2017 where he was nominated by the General Board to stand in the elections for the position of Bishop. At the material time, the defendant was the Acting Bishop in terms of the consent order granted by TSANGA J. The witness defended his actions on the basis that because of the friction within the church, it was no longer possible to hold meetings together with the faction led by the defendant.

On the election day and going by the version of the minutes of the meeting produced in court as exhibit 2, the General Secretary declared the defendant the winner before the attendees had voted. He then walked out of the church together with the defendant's followers. The same minutes however state that following the departure of the General Secretary and the defendant together with their followers, the remaining attendees comprising of all the eight districts decided to proceed with the elections in terms of the constitution. The elections went on peacefully, and the witness was elected as bishop. According to the witness, following the departure of the General Secretary, the General Pastor, a Mr Banda presided over the elections.

In his re-examination, the witness stated that the name of the church in terms of the Constitution was Bethelhem Apostolic Church. The purported letter of his expulsion was on a letterhead of an entity called Bethlehem Apostolic Faith Church. The two entities were different. He could therefore not act on a letter from an organisation that he had no knowledge of. He was a member of '*Bethelhem Apostolic Church*' and not '*Bethlehem Apostolic Faith Church*'.

The evidence of John Muhomba

The next plaintiffs' witness was John Muhomba. He joined the church in 1994 and held the position of District Pastor. He corroborated the second plaintiff's evidence on how a bishop was elected in terms of the church's constitution. He narrated the events of the election

day as follows. They first sought police clearance to hold the election. Proceedings were set to commence at 10:00am and end at 4:00pm. Everyone present got into church at the time proceedings were set to commence. The defendant and the General Secretary were nowhere to be seen.

Around lunchtime it was suggested that elections must proceed even in their absence. Others were against the idea, and members of the Board of Trustees were requested to look for them. They found them at the defendant's home, and they came back together to the church premises. They got into church and started with an opening prayer. The General Secretary and the parties' respective legal practitioners took to the floor to speak. The legal representatives explained the implications of the consent order by TSANGA J and the process for the election of a Bishop in terms of the constitution. They further explained that their role was to assist the parties with the election process.

The next stage of the process was to determine those that were eligible to vote in the elections. This was done through a call register which identified all the districts. Thereafter, the General Secretary took the voters roll and handed it over to the defendant. He then requested the second plaintiff and the defendant as well as their respective spouses to go outside to allow the elections to commence. The General Secretary further announced that Zamnkosini was not in attendance to sign his papers as a contestant. Accordingly, the defendant stood unopposed in the election. This announcement came as a surprise to the attendees because it had not yet been agreed how elections would be conducted and who was going to be the presiding officer. During the commotion, the General Secretary walked out of the church with a few followers in the direction of the defendant's house. The people who remained behind asked themselves what had to be done in the circumstances.

The plaintiff's legal practitioner called for calm and explained to the people what the consent order demanded. He further explained that there was not much time left in compliance with the police clearance, for the holding of the meeting. He urged the meeting to proceed with the elections as directed by the court order. A chairperson was chosen to preside over the elections with the assistance of the Board of Trustees members. The elections went ahead, and the plaintiff was duly elected bishop. The witness averred that the plaintiff was properly elected by most of the eligible voters as required by the Constitution. All the structures that were required to partake in the election were present. The required quorum was also there.

The witness further stated that a bishop was recommended to the General Board for election by the Board of Trustees. The General Board could also appoint one of their members as bishop. Still a bishop could also be appointed by the Board of Prophets and Ministerial District members. The witness denied that a bishop could be appointed by another bishop. He also denied that the defendant was appointed by the General Board. The witness stated that the second plaintiff's elevation did not just involve the General Board members alone. It also involved district structures, board of prophets and the Board of Trustees.

The witness also corroborated the plaintiff's evidence that at the time he was recommended for election as bishop, the General Board had nine members. Five members of that board could therefore constitute a quorum.

Under cross examination, the witness was asked to comment on the accuracy of the minutes of the AGM of 24 February 2018 at which the plaintiff was allegedly elected bishop. The minutes stated that the meeting ended at 09:30hours, when according to the witness' version the elections only commenced after lunchtime. The witness stated that he was not aware how minutes were prepared but he stood by his version of events. The witness was also asked to comment on another set of minutes of the same meeting which were allegedly prepared by Banda. These stated that the meeting ended at 1200hours. His response was that there could have been an error on the noting of the exact time that the meeting started and ended. The witness also acknowledged that the two sets of minutes produced by the plaintiffs did not show that the legal practitioners were excused from the meeting.

The evidence of George Saizi

The plaintiffs' third witness was George Saizi. He held the position of Minister at the district level in the first plaintiff. He told the court that any member of the church could represent the church in terms of the constitution. He referred to Article 2(e) of the constitution. His evidence on the events of 24 February 2018 was not materially different from that of the first two witnesses. He confirmed that although the plaintiff and the defendant had been nominated by the General Board, they had not been endorsed by the Board of Trustees. That anomaly had to be regularised. The two contestants went out of the building with their respective members of the General Board who supported them to get the endorsement of the Board of Trustees.

Whilst the attendees waited for the regularisation of the anomaly, the General Secretary came back in the building and informed the meeting that after following due process, it was realised that the second plaintiff could not contest so the defendant was elected Bishop unopposed. That announcement led to a commotion in the church and at that point the General Secretary left the building with the defendant's supporters. The plaintiff's case was closed after the evidence of the three witnesses.

The Defendant's Case

The evidence of Zachariah Caleb Gemu

The witness' evidence was as follows. After the order of this court per TSANGA J of 17 October 2017, he became the archdeacon and the Acting Bishop of the church. He claimed to have been appointed the bishop of the church at the annual general meeting held on 24 February 2018. The process had started with the nomination and confirmation of candidates by the General Board on 20 October 2017. When the General Board set to conduct the nominations, the plaintiff proposed the candidature of Zamnkosini. That proposal was seconded by Gavheta and Njanji. The defendant was nominated by Mr Ncube, and that nomination was seconded by Kachere and Magiga.

The AGM was held at the church headquarters and started at 11:45am. The meeting agreed to appoint the General Secretary as the chairperson since he was going to be part of the contest. The chairperson welcomed the two legal practitioners Muvhami and Chigudu and asked them to explain why they were present and how the AGM was to unfold. The two practitioners explained the process and the import of the court order by TSANGA J. During the process, it emerged that for a member to be nominated for the position of bishop, they had to be a serving member of the General Board. Zamnkosini was disqualified because he was not a serving member of the General Board.

The other faction then decided to put forward another candidate who had not been nominated at the meeting of the General Board on 20 October 2017. It was at that stage that problems started to unfold. The chairperson disqualified both the new candidate and the old candidate. The General Secretary went into the church hall and announced that the defendant was uncontested and declared him the bishop of the church. The people gathered started making noise after that announcement and the General Secretary closed the AGM. The minutes of the meeting were prepared by Ncube.

After the meeting was concluded at around 3:45pm, the defendant and his entourage left the meeting because there was commotion in the church. The plaintiff and his own faction remained behind and held another AGM, which was wrong because the church could only conduct one AGM. If the plaintiff was not satisfied with the outcome of the AGM, then he ought to have approached this court which had directed the holding of that meeting. The plaintiff's faction proceeded to generate their own set of minutes of the meeting, which gave an incorrect account of events. The defendant denied that he and Ncube disappeared from the meeting with the voter registration papers.

The defendant denied that the plaintiff was constitutionally elected bishop of the church. The purported election of the plaintiff as bishop occurred when the AGM had already been closed. In so doing, the plaintiff and his group had effectively defected from the church and started their own church. The plaintiff had set up parallel structures which was contrary to the provisions of the constitution of the church. The defendant denied that he installed himself as the bishop of the church, insisting that the general secretary had announced the result.

Under cross examination, the defendant insisted that he won the election following the disqualification of those that wished to contest him. The plaintiff had not even submitted himself for nomination to the General Board following the meeting of 20 October 2017.

The evidence of Tafadzwa Muvhami

The witness attended the meeting on the instructions of the defendant, while the other legal practitioner Chigudu attended on the instructions of the plaintiff. The role of the two legal practitioners was to explain the meaning of the court order by TSANGA J, as well as the way the elections were to be conducted. As the senior between the two legal practitioners, he was given the platform to address the gathering. There were two camps at the meeting, the one represented by the plaintiff and the other represented by the defendant. As they awaited the commencement of the elections, the camp led by the plaintiff went outside the meeting for some time.

When they came back, they advised the meeting that their preferred candidate was no longer able to contest the elections. The plaintiff wanted to contest in the place of the candidate who was unable to contest. The plaintiff himself was unable to contest because he had not been nominated by the General Board. He was also disqualified because he was a polygamist. The two legal practitioners could not interfere as their role was limited to interpreting the constitution and the court order. The chairperson declared the defendant duly elected as the

bishop of the church. Most of the members present were from the defendant's camp. They started celebrating after the defendant was declared bishop.

According to the witness, the meeting started at 12:00pm and ended around 15:45 pm following the election of the defendant as bishop. The plaintiff was never elected bishop during the time that the witness was present. If at all he was elected, then that could have been done before the meeting started, or well after the witness had left the meeting.

The evidence of Jimmy Ncube

He was the General Secretary of the church and the chairperson in charge of process leading to the election of the bishop of the church. On the day of the election and at around 9:25am, he went to the church to check on the level of preparedness for the elections. The legal practitioners representing the parties arrived at the meeting a bit late. The meeting only started at 12:00pm, when it was supposed to start at 11:00am. When the meeting was about to commence, it was realised that there were preliminary issues that ought to be disposed of first in line with the constitution. The legal practitioners were requested to help clarify how the elections were to be conducted and who was eligible to attend the meeting as well as stand in the elections. Anyone from the position of evangelist and the General Board was eligible to attend. They removed those who were not eligible to attend the meeting. The legal practitioners were invited to help explain the order by TSANGA J and the constitution.

The meeting discovered that the plaintiff had not been properly nominated to stand in the elections as his candidature was not endorsed by the General Board. The late Zamnkosini and the defendant had their nomination to stand in the elections confirmed by the General Board at a meeting held on 20 October 2017. The candidacy of Zamnkosini was proposed by the plaintiff. Zamnkosini was however not eligible to stand in the elections of bishop because he had already retired. It was at that point that the plaintiff decided to stand. The defendant was then elected unopposed after the plaintiff was disqualified.

The witness declared the meeting closed at 15:35 hours. The police clearance required them to terminate the meeting before 16:00 hours. The witness swore that he had followed the provisions of the constitution in conducting the election. There were people that were disgruntled with the outcome of the election. The witness stated that no other meeting could have been held after he declared the meeting closed. Both the plaintiff and the defendant had signed the attendance register which accompanied the minutes of the meeting. That register

confirmed the correctness of the minutes. The witness dismissed the other set of minutes that were tendered by the plaintiff as doctored. He averred that there was no other AGM save for the one he organised and closed. The witness also told the court that from the time that the defendant was declared bishop of the church, the plaintiff had never attended church. The witness assumed that the plaintiff and his faction had formed their own church.

Under cross examination, the witness was asked why he disqualified the plaintiff from standing and not the Judicial Committee. His response was that the plaintiff failed to submit minutes of his nomination to stand in the elections of bishop. According to the witness, the defendant was nominated twice to the position of bishop. The first occasion was when he was nominated by Zamkosini to be acting bishop on 12 June 2015. This was the position he reverted to following the order by TSANGA J. The second occasion was when he was nominated by the General Board to stand in the elections for the position of bishop, during the meeting that was held on 20 October 2017.

Under cross examination, the witness was accused of being impartial because he is the one who had proposed the candidacy of the defendant during the nomination process. Thereafter he was involved in the election as the General Secretary and the chairperson. The witness averred that as a member of the General Board he was entitled to participate in the nomination process. According to the witness, on 24 February 2018, being election date, the parties present had verbally agreed that he be the chairperson of the meeting. The plaintiff and his legal practitioner did not raise any objection to him chairing the meeting. Following the plaintiff's failure to meet the requirements for election as bishop, the witness stated that the only course of action available was to declare the defendant as bishop since he was uncontested.

The plaintiff's closing submissions

The plaintiff averred that the defendant's election was unprocedural because the parties were still to agree on how the election was to be conducted. The decision of who was to be the presiding officer of the meeting was yet to be made. The defendant's last witness, Jimmy Ncube had imposed himself as the chairman and presiding officer of the meeting. The defendant and his faction had left the meeting after he was unprocedurally declared the winner of the election. The plaintiff claims that his legal practitioner advised his followers that the order by TSANGA J needed to be complied with and a proper election had to be conducted. They

convened their meeting and chose one Pastor Banda as the presiding officer. The election was conducted, and the plaintiff emerged the winner with 130 votes to the defendant's nil vote.

The plaintiff claims that he was properly elected to office for the following reasons. Firstly, he was a serving member of the general board; secondly, he was nominated by the General Board; thirdly he received an endorsement of his nomination by the Board of Trustees; and finally, because he was voted for by the general membership at the church's AGM. The plaintiff claimed to have been nominated to stand for election at a meeting held on 20 October 2017. He did not inform the defendant's faction of the meeting of 20 October 2017 because the two factions were at loggerheads, and it was not possible for them to hold meetings together.

The plaintiff also argued that his expulsion letter was issued by an entity known as Bethlehem Apostolic Faith Church and not the Bethlehem Apostolic Church that he was a member of. His purported expulsion was therefore a non-event as he could not have been expelled by a church that he did not belong to.

The plaintiff also claimed that his version of events was corroborated by his second witness John Muhombwa who confirmed that his election was supported by the General Board, the Board of Prophets, the Board of Trustees and district structures. The General Board had nine members when he was proposed for election as Bishop. Five members of that board constituted a quorum.

The plaintiff's last witness, George Saizi stated that while both the plaintiff and the defendant were nominated by the General Board, they had not been endorsed by the Board of Trustees. That irregularity needed to be regularised, and it was for that reason that the two contestants were requested to leave the building to get the required endorsement by the Board of Trustees.

The defendant's last witness, Ncube was dismissed as an unreliable witness who had just imposed himself as the presiding officer. He had failed to justify the purported election of the defendant as bishop and why the plaintiff was disqualified from standing. He also failed to explain his failure to sign the minutes of 24 February 2018, despite being the chairperson of that meeting.

The defendant's closing submissions

It was submitted that the plaintiff's failure to call as his witnesses, his legal practitioner who purportedly advised him to proceed with the election, and the secretary who allegedly

conducted the elections at its meeting was fatal. The plaintiff also failed to call the person who prepared the other version of the minutes of the meeting of the AGM.

The plaintiff also alleged that after the declaration of the defendant as the bishop of the church, Ncube and the other followers left with the voter's roll. It was therefore not clear where the plaintiff subsequently got the election material from, if it had been taken away.

The analysis

Following the striking off of the church as the first plaintiff in these proceedings, only one issue remained for determination. The issue is who between the plaintiff and the defendant was duly elected as bishop of the church.

The appointment of bishop of the church is provided for in Article V (a) of the church's constitution. That article provides that:

"The Bishop

To be prophetically elected or elected by members of the General Board, Board of Trustees and ministerial District Committee members. A candidate for Bishop should come from the serving member of the General Board."

The starting point in the process was the nomination of a candidate by the General Board. Once nominated, a candidate would still need to be further endorsed by the Board of Trustees and the ministerial district committee members. Both the plaintiff and defendant claim to have gone through this process. The plaintiff's witnesses claim that on the day of the election, it was discovered that both candidates had not been endorsed by the Board of Trustees, and the candidates were requested to leave the church building to regularise this omission.

Both plaintiff and the defendant claim to have been nominated to contest by the General Board. There are different versions of the minutes of 20 October 2017 when the nominations by the General Board are alleged to have taken place. There is the set of minutes which was tendered in as evidence by the defendant as exhibit D1². In attendance at that meeting were the defendant as the Archdeacon and Acting Bishop, the plaintiff as the overseer, J Ncube being the General Secretary, I Gavheta as the General Deacon, D Njanji as the Deputy General Deacon, L.S. Kachere being the General Treasurer, and W Magiga the elder in charge. At the meeting, the plaintiff proposed the candidature of Zamnkosini for election as bishop. Ncube proposed the defendant as the candidate of bishop. That meeting took place at 19:15 hours. The plaintiff did not dispute that he was present at this meeting.

² Page 99 of the of the main bundle of documents

The plaintiff produced his own set of minutes at which he claimed to have been nominated by the General Board³. The meeting was also held on 20 October 2017 at 13:00 hours. Present at that meeting were the plaintiff, General Deacon Gavheta, Vice General Deacon Njanji, General Pastor Banda and General Elder in Charge Sithole. It means that three members of the General Board from this meeting which took place earlier in the day, were also present during a similar meeting that took place in the evening of the same day.

In his evidence as well as his closing submissions, the plaintiff claimed that he did not inform the defendant's faction of the meeting of the same day that nominated him to stand as bishop, because the two factions were estranged making it impossible to hold meetings together⁴. I find this explanation fanciful and hard to believe. I say so for the following reasons. The purpose of seeking the nomination of the General Board was to enable one to stand in the election to the office of bishop.

The same people whom the plaintiff did not want to know of the earlier meeting were also going to participate in the election either as contestants or as voters. Further, if the earlier meeting took place, there was no need for the plaintiff to hide his ambition to contest in the elections by proposing the name of Zamnkosini. The mere fact that the two factions had some irreconcilable differences should not have stopped the plaintiff from making his intentions known. The elections were not a matter of hide and seek or an ambush. They had to be conducted in a transparent manner in terms of the constitution.

There is yet another set of minutes of a meeting that was held at the church headquarters on 24 February 2018, at 09:00 hours. This was the day of the AGM. The same General Board members who allegedly attended the plaintiff's nomination meeting on 20 October 2017, are the same people who attended that meeting. The agenda of the meeting was the appointment of the bishop candidate. The outcome of the meeting is recorded as follows:

“1. Appointment of the Bishop Candidate

The house unanimously chose Overseer R Chirumbwa to be their candidate of choice who will contest for the post of Bishop (Bethlehem Apostolic Church). The presiding chairperson, thanked the house for conducting the business of the day in a manner that showed maturity.”

According to the minutes, the meeting ended 0930hours. The issue that arises is at what point was the plaintiff nominated to stand as a candidate in the elections for the position

³ Page 68 of the plaintiff's supplementary bundle of documents

⁴ Paragraph 22 of the plaintiff's closing submissions

of bishop. Was it at the meeting of 20 October 2017, or at this meeting held on the eve of the election. No clarification was provided in the plaintiff's case or in the closing submissions. One is tempted to conclude that this latest meeting of 24 February 2018 was probably a reaction to the meeting that was held on 20 October 2017, which nominated the defendant as candidate.

There were some variations in the testimony from the plaintiff's witness's regarding the exact time when elections were held, who voted and the questions of quorum. There are different sets of minutes from the two factions, with different versions of the events of 24 February 2018. The minutes produced by the plaintiff's faction allege that the defendant was declared Bishop before the election had even started. The elections were then properly conducted after the defendant and his faction abandoned the meeting and left. The plaintiff was then duly elected bishop. The plaintiff's minutes are very brief, covering just half a page.

The minutes from the defendant's side portray a different picture altogether. They are detailed and explain the events of the day right up to the point both the plaintiff and Zamnkosini were disqualified from participating in the elections. What differentiates the parties' respective versions of events is the credibility of their witnesses and the evidentiary value of their testimony. The plaintiff appeared as the main witness in his case. The other two witnesses were John Muhomba and George Saizi. The plaintiff's two witnesses did not feature prominently in the events that led to the election of bishop. They were not amongst the people who nominated the plaintiff to contest in the elections. They were not involved in the taking of minutes of the election proceedings.

On the other hand, the defendant's witnesses, Ncube and Muvhami were actively involved in the events of the day of the election. Ncube was the general secretary who was given the mandate to supervise the elections. Ncube oversaw the election process and was also in charge of the minute taking. His role was not challenged even going by the version of the minutes of the meeting produced by the plaintiff. Muvhami appeared in his professional capacity to help clarify the order by TSANGA J, as well as to explain the election process. He appeared at the invitation of the defendant's faction.

The plaintiff's faction was represented by their legal practitioner Mr Chigudu. Mr Chigudu was not invited to testify as the plaintiff's witness. Mr Chigudu's testimony would have been valuable to explain what exactly transpired on the day of the election. As someone who was not intimately involved in the election, his evidence would have provided an independent assessment of the events of the day. The defendant's evidence was corroborated

by the two witnesses who explained in greater detail the reasons for the plaintiff's disqualification from contesting in the election, and how the election itself was conducted.

In the closing submissions, the plaintiff sought to discredit the testimony of Ncube on the basis that he was an interested party since he had proposed the nomination of the plaintiff to stand as a candidate in the election of bishop. He was also accused of having imposed himself as the chairperson of the meeting responsible for supervising the election. The plaintiff's own version of the minutes of the meeting of 24 February 2018, showed that the plaintiff never challenged Ncube's authority or capacity to supervise the elections.

The evidence of Muvhami was not challenged by the plaintiff in his closing submissions. Muvhami struck me as a credible witness, who despite being the defendant's witness, exhibited no signs of bias in favour of his client. His testimony on the events of the day, his involvement in the elections together with Chigudu who was representing the plaintiff, is highly credible. The evidence of the defendant's two witnesses helps to tilt the scales in favour of the defendant on a balance of probabilities. I find the evidence of the defendant and his witnesses more probable, believable and credible when compared to that of the plaintiff and his witnesses, in explaining the way the election was conducted leading to the declaration of the defendant as the bishop of the church.

The court is satisfied that the plaintiff had nominated Zamnkosini to stand as his faction's preferred candidate in the elections for the bishop of the church. Both the plaintiff and Zamnkosini were disqualified from taking part in the elections. Zamnkosini was disqualified because at the time of his nomination he had retired and was no longer a member of the General Board. The defendant was disqualified because he was a polygamist, and because he had not been nominated by the General Board. The plaintiff did not deny that he was a polygamist and that he had been partly disqualified because of that. It was at that point that the defendant was duly elected as bishop uncontested.

For the foregoing reasons, the court determines that there is no merit in the plaintiff's claim. The evidence before the court leaves the court in no doubt that following the disqualification of Zamnkosini and the plaintiff from standing in the elections of bishop, the defendant herein was elected as the bishop of the church uncontested. The plaintiff failed to prove his claim on a balance of probabilities, and it stands to be dismissed.

Costs follow the event. As the successful part, the defendant is entitled to an order of costs on the ordinary scale.

Resultantly, it is ordered as follows:

1. The plaintiff's claim is hereby dismissed.
2. The plaintiff shall bear the defendant's costs of suit.

Nyawo Ruzive Attorneys at Law, legal practitioners for the plaintiff
Mugiya & Muvhami Law Chambers, legal practitioners for the defendant