

THE ACTS OF THE RESURRECTION
APOSTOLIC FAITH IN ZIMBAWE
and
THE TRUSTEES FOR THE TIME BEING FOR THE
RESURRECTION OF APOSTOLIC FAITH CHURCH TRUST
versus
KIREBA MUPARAGANDA

HIGH COURT OF ZIMBABWE
NDLOVU J
HARARE, 4,5 & 27 July 2022

CIVIL TRIAL

C.T Tinarwo, for the plaintiffs
A. Borerwe, for the defendant

NDLOVU J The Plaintiffs issued summons on 18 May 2020 against the Defendant seeking an order:

- 1) Declaring that the Defendant is no longer the Archbishop of the first Plaintiff.
- 2) For the eviction of the Defendant and all those claiming occupation through him from The Acts of the Resurrection of Apostolic Faith in Zimbabwe (Kumuka Kweva Apostora Church), Shinje Business Centre, Guruve.
- 3) Interdicting the Defendant from using the Archbishop's Regalia, the church vessels and utensils used for Passover (Holy Communion) and taking with him church assets and property such as chairs, roofing iron and asbestos sheets, water tanks, water pumps, goats, chickens and pigeons.
- 4) Barring the Defendant, his family, relatives and associates from using the church name, the uniform of the Women's Wing (Ruwadzano) and church structures and premises anywhere within or outside Zimbabwe, first Plaintiff is operating when they decide to form their own congregation.
- 5) Costs of suit on a legal practitioner and client scale.

BACKGROUND

The first Plaintiff is a Church and the second Plaintiff is a Trust birthed by the formation of the first Plaintiff. The defendant is the founding Archbishop of the first Plaintiff since first Plaintiff's formation in 1996.

In or about January 2020, some members of the Plaintiffs and in particular a group known as the General Body of Elders charged the Defendant with some acts of misconduct. That group then constituted itself as a Disciplinary Committee and tried the matter in the absence of the Defendant and found him guilty of a litany of acts of misconduct and dismissed him from the position of Archbishop of the first Plaintiff and thereby reducing him to an ordinary member of the church. The Defendant who had earlier on ignored the invitation to attend the disciplinary hearing needless to say, ignored the decision to dismiss him from the position of Archbishop of the first Plaintiff. It is on those basis that the Plaintiffs approached this court for the orders I have referred to hereabove. It is critical to note that most of the facts are common cause.

PLAINTIFFS' CASE

The Plaintiffs prosecuted their case through the medium of two witnesses, the first to testify was Mr Shadreck Mapira who is a member of the General Body of Elders as well as Vice Bishop of the first Plaintiff. Mr Mapira's evidence on the critical aspects of this matters is that:-

The Defendant's acts of misconduct prompted the witness and other church leaders who are in the General Body of Elders to call him for a disciplinary hearing and on the 3 occasions they did, the Defendant did not turn up, leading to a disciplinary hearing which he chaired in the Defendant's absence on 25 March 2020. Defendant was found guilty and relieved of his position of Archbishop as a result. 8 out of 12 members of the General Body of Elders sat as the Disciplinary Committee. According to Mr Mapira this decision was communicated to the Defendant and he ignored it as well, prompting the Plaintiffs to approach this court as they did in this case.

While in his evidence in chief, he saw nothing amiss with the General Body of Elders sitting as a Disciplinary Committee he however admitted or conceded under cross examination that there should have been a Disciplinary Committee that gets directions from the General Body of Elders. That a "Judge" was in existence at the time and that the Church judge has the constitutional power to hear and try anyone without fear or favour in the church. The judge was unwell and they wanted to resolve the matter quickly. Mr Mapira told the court that the

quorum of the General Body of Elders is $\frac{3}{4}$ of its membership of 12 although he could not point out this in the constitution. It was his belief that they acted constitutionally. In fact he was adamant on this point. He told the court that the church building belongs to the church through the Trust.

Mike Mutonhodza Mupfurutsa also testified for the Plaintiffs. He is a founder member of the first Plaintiff and a trustee of the second Plaintiff, as well as a secretary of the General Body of Elders. Like Mr Mapira he alluded to the fact that the Defendant committed what as a church they considered acts of misconduct attracting censure. This led to the Plaintiffs to suspend the Defendant from being the Archbishop. The Defendant ignored the suspension. The Plaintiffs continued to invite the Defendant in writing to come and defend himself but the invites were ignored leading to a disciplinary hearing being conducted in the Defendant's absence. He told the court that the General Body of Elders sat as a Disciplinary Committee and that the Church judge was part of the committee and that $\frac{3}{4}$ of the General Body of Elders constitutes a quorum.

This witness was of the firm view that these court proceedings are not the proper forum for the Defendant to raise the issue or argument of the General Body of Elders possibly having acted *ultra vires* the church's constitution in acting as it did against him. According to the witness, the Defendant should have raised that objection at the Disciplinary Hearing that he chose to ignore to attend. In any case, so the witness contended, the Defendant has not challenged the Disciplinary Committee's decision given way back in 2020 and as far as the Plaintiffs are concerned, the Disciplinary Committee's decision is extant, binding and constitutionally arrived at. Under cross examination, Mr Mupfurutsa conceded that the Church judge was available and was entitled to try all cases including those involving the Archbishop and that 8 members who sat as a Disciplinary Committee in the Defendant's case did not constitute a quorum.

DEFENDANT'S CASE

The Defendant testified in his defence. He is a centenarian having been born in 1921. His clarity of mind, presence of mind and comprehension of questions and issues defy his age. He never went to school. He is the Archbishop of the first Plaintiff since 1996. First Plaintiff has a constitution. He is a member of the General Body of Elders which is made up of 12 people. He is aware of the Disciplinary Hearing invite and sitting which he did not attend because the venue was not the Church. He was hearing of his being dethroned for the first time

in court. The Church has a judge reposed with the power to try all matters within the church including matter involving him as an Archbishop and his matter ought to have been referred to the Church's judge.

He does not want to vacate the position of Archbishop under these circumstances but would not refuse to, if everything relating to his removal is done properly. All the property movable and immovable in issue belongs to the church. The Defendant considers the General Body of Elders members opposed to him as being rebels and no longer members of the church as they are no longer congregating at the church or worshipping with other church members. In so doing, those members have voluntarily left the church. As far as he is concerned, knows and understands, the General Body of Elders is not a Disciplinary Committee and cannot purport to constitute itself as one. Their purported ousting of him by them is therefore a nullity as they lacked legal power to remove him from the office. He therefore regards himself the legitimate and incumbent Archbishop of the first Plaintiff.

JOKONIA CHIRAVA

He is a Treasurer in the first Plaintiff and a member of the General Body of Elders of the same. He is one of the founding members of the first Plaintiff. He is unable to read but is aware of the first Plaintiff's Constitution and that there is a Church judge empowered to preside over all disputes in the church. He was unable though to clearly outline the role of the General Body of Elders except that it makes binding decisions agreed upon by the majority of its members. The General Body of Elders has no power to preside over disputes and neither do they have power to remove the Archbishop. Being the complainant, the General Body of Elders could not preside over its own matter. He does not know where those who are against the Defendant are congregating for the past 3 years. He told the court that the Defendant is occupying first Plaintiff's property.

ARGUMENTS

The resolution of this matter lies in the interpretation of the first Plaintiff's constitution and the resultant determination of whether or not those who took the decision to charge, try and dethrone the Defendant acted legally in doing so in terms of that Constitution. In so doing, one needs to look at the duties of the General Body of Elders as provided for in the constitution. I must hasten and agree with counsel for the Defendant when he says in his closing submissions.

“19. It is also worthy noting that one might argue that The Constitution seems to have been badly crafted such that it is open to wide interpretation as it is ambiguous.”

Article (2) (b) of the Constitution provides as one of the duties of the General Body of Elders, as follows:

“(b) To work on the questions from the vestry since the Committee deals with all grievances from all areas because it has the power to impose disciplinary action on the offenders.”

Article 2(d) on the other hand reads as follows:

“(d) To give directives of how the disciplinary committee should work with vestry.”

The article 5(i) reads as follows:

“(i) JUDGES

These shall hear all cases in church and shall pass judgment without being biased, but considerate to both sides.....”

The Plaintiffs have argued that they relied on Article 2(b) to do what they did in this matter. The Plaintiffs argue and say that the Constitution empowers the General Body of Elders to sit as a disciplinary committee and conduct a disciplinary hearing as Article 2 (b) empowers the General Body of Elders to impose disciplinary action on the offenders as it is the highest decision-making body in the church. Considering the Constitution holistically and the evidence at trial, the Plaintiffs argue that the General Body of Elders has the capacity to carry out a disciplinary action against the Defendant and pass a decision and in any event the Church judge was part of the Disciplinary Committee.

The Defendant on the other hand has argued that Articles 2(b) and 2(d) of the Constitution should not be read in isolation. It is the Defendant’s argument that a contextual reading of the Constitution indicates that the General Body of Elders has the power to impose disciplinary proceedings and that power does not extend to it sitting as a Disciplinary Committee. There should be according to the Constitution a Disciplinary Committee as a separate entity from the General Body of Elders.

ANALYSIS

Mr Mupfurutsa said it all before the court albeit arguably not realising the full import of his answer, in relation to Article 2(b). He told the court that, there are instances of ill discipline or grievances in the branches of the church which the local leadership of the church would be unable to thoroughly deal with at that level. Those cases are then referred to the

General Body of Elders for attention and resolution. When that happens the General Body of Elders then sits as a Disciplinary Committee.

In my view what the Elders do with the referral is what is wrong if reliance is had to the Constitution. In my interpretation, what Mr Mupfurutsa explained is what Article 2(b) talks to in that:

The parishioners would have a disciplinary issue at their local branch that turns out to be beyond their local capacity. They will then refer that matter to the General Body of Elders, the reason for so doing, being that the General Body of Elders deals with grievances and also solves problems from all areas of Zimbabwe where “the work of God is going on because if not supervised everything will be a flop¹.” This referral and receipt of questions and grievances is informed by the power of the General Body of Elders to impose disciplinary action on the offenders.

Imposing disciplinary action simply means to put in place disciplinary processes. That is the plain meaning of Article 2(b) and no more.

In imposing disciplinary action on an offender the General Body of Elders will give directives on how the Disciplinary Committee should work with the matter. Article 2(d) .

It is common cause that no-where in the Constitution is there a provision that the General Body of Elders can convert itself into a Disciplinary Committee. All there is is an Article dedicated to the Disciplinary Committee. Clearly the General Body of Elders cannot give directives to itself. Giving Article 2(b) the interpretation the Plaintiffs are giving it flies against common sense and the purview of natural justice on the facts of this case in that, the General Body of Elders would have been the Complainant, Police, Prosecutor and Judge in their own case as rightly observed by Jokonia Chiriva. That is against natural justice. Badly crafted as the Constitution might arguably be, this could not have been the intention of its drafters. The resultant absurdity cannot be acceptable in a democratic society. The presence of the Church judge” in the committee, who did not even chair the proceedings, cannot have sanitised the purported disciplinary hearing.

The Plaintiffs through Mr Mupfurutsa and their closing submissions stated that because the Defendant did not challenge the process before the outcome and the outcome after it was announced up to now, he therefore is “barred” from questioning the powers of the General Body of Elders at this stage/ hearing. My understanding of that submission is that the Plaintiffs

¹ Article 2 of the Constitution.

are equating their decision to an order of court or labour hearing or decision of a recognised tribunal. If my understanding is correct, then they are wrong in taking that position. A litigant in Defendant's position is at large as to when to challenge an *ultra-vires* a domestic Constitution process and/or decision.

DISPOSITION

For the above reasons, I find that the General Body of Elders do not have the power to sit as a Disciplinary Committee and relieve the Archbishop of his position. Their conduct was nullity and I order as follows:

IT IS HEREBY ORDERED THAT:

1. The action matter by the Plaintiffs against the Defendant be and is hereby dismissed with costs.

Zimudzi and Associates, plaintiffs' legal practitioners.
Ngwerume Attorneys at Law, defendant's legal practitioners