

CHRISTIAN FAITH TABERNACLE
versus
SPARROWS NEST MINISTRIES

HIGH COURT OF ZIMBABWE
PATEL J

Opposed Application

HARARE, 13 May and 7 July 2009

Mr. Kufaruwenga, for the plaintiff
Mr. Mkombo, for the defendant

PATEL J: Both parties in this matter are Christian church organisations with specific missionary objectives. Regrettably, as often happens in difficult times, their spiritual vision has been blurred by the material struggle for property. The specific object of their contestation in this case is Stand 7525, Mkoba, Gweru, which the defendant presently occupies and from which the plaintiff seeks the defendant's eviction.

At the trial of this matter, at the close of the plaintiff's case, the defendant sought absolution from the instance on the sole ground that the plaintiff lacked the requisite *locus standi* to sue in this matter. The defendant contends that the plaintiff has no valid constitution and is therefore not a common law *universitas*. Additionally, it is contended that even if a valid constitution does exist, it does not endow the plaintiff with legal capacity to sue in its own name.

The principal witness for the plaintiff, Zakeo Moyo, produced in evidence a document [Exhibit 1] which he stated was the amended constitution of the plaintiff. This document was purportedly signed by Apostle Peter Moyo, the deceased founder of the plaintiff's church. However, it is fairly clear from other documentary evidence before the Court as well as the testimony of the plaintiff's second witness, Tapiwa Mutonhodza, that the signature on the document is that of Zakeo Moyo and not of Peter Moyo. The former has obviously signed the document on behalf of his deceased brother.

In any event, at a later stage in the trial, Mutonhodza produced another document [Exhibit 10] which he testified was the original constitution of the plaintiff. Regrettably, this document is incomplete with a few pages missing *in fine*.

Having regard to all the relevant evidence, I am satisfied that Exhibit 10 is the original constitution of the plaintiff and that Exhibit 1 is the amended version thereof, albeit with a signature that clearly does not belong to the deceased Peter Moyo. The provisions contained in the two versions are virtually identical. In my view, both versions should be read together to ascertain the legal standing of the plaintiff and, in the event of any inconsistency, the original version should prevail.

Under the common law, the *locus standi* of a voluntary association derives from the provisions of its charter or constitution, either in express terms or by way of implication. For the power to sue to be implied, it must be incidental to the express powers as being absolutely requisite for the due carrying out of the express objects of the association. See *Bantu Callies Football Club v Mothlamme & Others* 1978 (4) SA 486 (T). The two principal characteristics of the capacity of a *universitas* to sue are perpetual succession, viz. continued existence or identity of the association despite changes in its membership, and the capacity to acquire rights and incur obligations independently of its members, in particular, the capacity to own property. See *Ward S 19 Council v Premier, Western Cape Province & Others* 1998 (3) SA 1056.

Turning to the constitution of the plaintiff, Articles I, V and VII, as read together, show that the membership of the plaintiff is open to all persons who meet the prescribed spiritual qualifications and that the composition of its executive body, the Board of Directors, is subject to change under specified circumstances. These elements clearly demonstrate the separate existence or identity of the plaintiff notwithstanding changes in its leadership or general membership.

The objects of the plaintiff are set out in Article II and include, *inter alia*, the erection and maintenance of immovable property and the collection of

funds, gifts and subscriptions, as well as the acquisition and disposal of real property and chattels. In this respect, Article V empowers the Board of Directors to manage and control investments and to build and repair property. In addition, Article II specifically enables the plaintiff to exercise all powers that are necessary or convenient to give effect to any of the purposes for which the church is organised.

One further aspect that calls for consideration is the argument put forward on behalf of the defendant relating to the essentially Christian character of the plaintiff. The argument is to the effect that it is not in the nature of Christian communities to approach secular courts for the resolution of their disputes. It derives from canonical scripture, in particular, the Bible in Romans 6:

“Dare any of you, having a matter against another, go to law before the unjust, and not before the saints? Do you not know that the saints shall judge the world?”

While I cannot profess to be versed in doctrinal matters, I would venture to postulate that the biblical injunction against recourse to temporal as opposed to spiritual authority must be understood in its peculiar historical and political context. Moreover, notwithstanding the undeniable significance of Christian doctrine in the conduct and regulation of church affairs, it cannot in our present time and circumstance be invoked in the realm of human affairs to preclude the administration and application of the general law through the secular courts. This is so particularly where the issues that call for resolution, as in the present case, centre on proprietary interests and their assertion in the material world.

Having regard to all of the foregoing, it seems clear that the plaintiff meets the requisite criteria for a duly constituted *universitas*, viz. a body endowed with perpetual succession and the capacity to acquire and own moveable and immovable property. It is also endowed with the capacity to do everything necessary to effectuate its objectives, including by implication the power to advance and protect its property rights. In this regard, the power to

sue must perforce be implied as being necessarily incidental to its express powers for the due carrying out of its express objects.

It follows that the plaintiff is an association properly vested with *locus standi in judicio*. The defendant's application for absolution from the instance therefore fails and must be dismissed. It is ordered that the matter proceed to the defendant's case.

Dzimba, Jaravaza & Associates, plaintiff's legal practitioners

Donsa-Nkomo & Mutangi Legal Practice, defendant's legal practitioners