

BISHOP ELSON MADODA JAKAZI  
and  
BOARD OF TRUSTEES, ANGLICAN DIOCESE OF  
THE PROVINCE OF CENTRAL AFRICA  
versus  
THE ANGLICAN CHURCH OF THE PROVINCE OF CENTRAL AFRICA.  
and  
REVERENT JOSEPH CHIPUNDLA  
and  
Rt. REVERENT RALPH PETER HATENDI

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE, 25 November 2009 and 19 May 2010

*R Moyo*, for the applicants  
*G Chikumbirike*, for the respondents

### **Urgent Chamber Application**

BHUNU J: The applicant in his founding affidavit states that he is a dully consecrated and enthroned Bishop currently heading the Anglican Diocese of Manicaland.

The second applicant is the Anglican Board of Trustees for the Diocese of Manicaland whereas the first respondent is the Church of the Province of Central Africa.

On 23 September 2007 the Rt. Reverent Elson Jakazi addressed a letter to the Archbishop of the Church of the Province of Central Africa and the Bishop of Upper Shire notifying them of its withdrawal from the church of the Province of Central Africa.

The withdrawal was prompted by disagreements on issues of homosexuality.  
The letter reads:

“Your Grace,

RE: NOTIFICATION OF WITHDRAWAL OF THE ANGLICAN DIOCESE OF  
MANICALAND FROM THE CHURCH OF THE PROVINCE OF CENTRAL  
AFRICA

The above subject refers.

To put to rest speculation from your office, the church of the Province of Central Africa and the rest of the Anglican community, this letter comes to you as confirmation that the Anglican Diocese of Manicaland has withdrawn from the church of the Province of Central Africa with effect from 21 September 2007.

The resolution by the Diocesan committee which is attached and my submission to the Provincial Synod when I moved a motion on the need for the dissolution of the Province also attached and the minutes of the standing committee is a statement of emphasis on this matter by the standing committee

This your Grace is the kind of seriousness that we take this matter.

Yours faithfully

Signed

The Rt. Revt. Elton Jakazi.

cc All Bishops of the Church of Central Africa the Bishops of the Church of The Province of Central Africa”

The Bishops of the Province of Central Africa responded by issuing a statement rejecting the withdrawal of the Diocese of Manicaland but accepted the withdrawal of the first applicant as an individual. The statement reads in part:

“BISHOPS OF THE PROVINCE OF CENTRAL AFRICA STATEMENT ON THE DIOCESE OF MANICALAND ISSUE.

We the undersigned Bishops of The church of the Province of Central Africa At the extraordinary Episcopal Synod held on 24 December 2007 at the Lusaka Hotel Zambia, state that we were consulted by the dean of The Province of Central Africa the Rt. Rev. Chama in connection with the contents of the letter of 23 September 2007. Addressed to the Archbishop of the Church of The Province of Central Africa. (CPOA) concerning the withdrawal by Bishop Jakazi of the Diocese of Manicaland from the CPOA.

We unanimously concur that:

1. The fundamental declarations, articles of the constitution, canons and laws of the CPOA do not permit the unilateral withdrawal of a Diocese from the Province even if as alleged by Bishop Jakazi but challenged by many, the Diocesan standing committee of the Diocese unanimously expresses a desire no longer to be associated with the province.
2. Bishop Jakazi was *inter alia* expressing his personal attitude and intention to sever all ties with the Province and was himself withdrawing from the Province.
3. In the circumstances we accept his personal resignation and withdrawal from the body of the CPOA”. (my emphasis).

The applicant in a letter written by his Diocesan Registrar dated 31 October and subsequently followed up by his own letter attempted to recant and retract his withdrawal from The Central Province of The Church of Central Africa.

The retraction met with outright rejection. On 20 December 2007 Bishop Albert Chama advised him of the same in the following terms:

“We write to advise you that following the letter of 31 October 2007 written on your instructions by the Diocesan Registrar of Manicaland, Mr. Peter Makombe retracting your withdrawal from the Church of The Province of Central Africa as per your letter of 23 September 2007, addressed to the former Archbishop of Central Africa Dr. Bernard Amos Malango and copied to all bishops of the Province, The extraordinary Episcopal Synod held at the hotel on 20 December 2007 considered your letter of retraction and decided to uphold the earlier decision taken and communicated to you that you are no longer a Bishop of the Church of the Province of Central Africa,

Consequently we as dean of the Province of Central Africa immediately appoint a Vicar General for the Diocese of Manicaland pending the election of the next Bishop.”

The first respondent followed up by appointing the second and third respondents in terms of the above letter.

Aggrieved by the first respondent’s refusal to reinstate him and the appointment of the second and third respondents, the applicants launched this urgent chamber application seeking a declarator setting aside the appointments on the basis of unlawfulness. It also seeks to have the first applicant declared the reigning Bishop for the Diocese of Manicaland until such time his appeal has been determined in terms of the first respondent’s constitution and canons. It is an established rule that resignation is a unilateral voluntary act which takes effect as soon as the resignation has been communicated to the correct person or authority. In the case of *Mazengi v Standard Chartered Bank & Anor* (2) ZLR 137 this court held that a letter of resignation constitutes a final act of termination by an employee.

What this means is that once the first applicant’s resignation letter was received by the Archbishop of the Central African Province of Central Africa the first applicant automatically ceased to be an employee or member of that church organization without any further formalities.

Having ceased to be an employee or member of the church organization he automatically stripped himself of any rights and privileges arising from the contract of employment, membership or his status as Bishop of that church organization. The first

applicant was not dismissed. His was a voluntary act to resign from that church organization. That being the case, he can hardly be heard to complain or cry foul. Any appeal or review which he may launch means that he is appealing or seeking a review of his own conduct. This is wholly untenable and illogical such that it must be incompetent at law.

The applicant having voluntarily divested himself of all rights and privileges accruing to a member, employee or Bishop of the Anglican Church Province of Central Africa he has no residual rights to meddle in the affairs of that organization by barring the appointment of replacement staff.

For that reason the application cannot succeed. It is accordingly ordered that the application be and is hereby dismissed with costs.

*Chikumbirike & Associates*, applicants' legal practitioners  
*Gill Godlonton & Gerrans*, respondents' legal practitioners