

THE UNITED CHURCH OF CHRIST
versus
THE REVIVAL UNITED CHURCH OF CHRIST INTERNATIONAL

HIGH COURT OF ZIMBABWE
CHITAKUNYE & CHIRAWU-MUGOMBA JJ
HARARE, 24, 25, 26 and 31 January 2019

Civil Appeal

L Madhuku, for the appellant
P Siduli, for the respondent

CHIRAWU-MUGOMBA J: In recent times, the courts have been inundated with disputes involving churches or religious organizations. In *Christian Faith Tabernacle v Sparrows Nest Ministries*, HH-69-09, PATEL J (as he then was) poignantly observed as follows,

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.

The dispute in *casu* involves two 'factions' who were once part of the United Church of Christ (UCCZ). On the 19th of June 2017, the appellant (hereinafter UCC) noted an appeal against the judgement of the Magistrate Court sitting at Harare which was delivered on the 18th of May 2017. The court *a quo* dismissed an application for eviction that the appellant had sought against the respondent (hereinafter RUCCI). The grounds of appeal were framed as follows:

1. The learned magistrate in the court *a quo* grossly misdirected himself in finding that the appellant was not the same, 'United Church of Christ' that was the lessee in the lease agreement with the City of Harare in respect of Stand No. 535 Willowvale Township, Harare in that the finding was so outrageous in its defiance of logic or common sense that no reasonable magistrate could ever have reached that conclusion.
2. Alternatively, the learned magistrate in the court *a quo* erred in law in not finding that the appellant had established, on a balance of probabilities, that it was the lessee in respect of the lease agreement with the City of Harare regarding Stand No. 535, Willowvale Township, and Harare.

3. The court *a quo* erred in both fact and law in not finding that the appellant was the lawful lessee in respect of, and therefore with entitlement to evict the respondent from, Stand No. 535, Willowvale Township, Harare.

The appellant therefore sought the setting aside of the decision of the court *a quo*.

In *casu*, it is important to give a background of the dispute as amplified in the pleadings filed of record and the oral evidence led at trial. According to the witnesses for the appellant, UCC was formed in 2010 by a group of people who were once members of the United Church of Christ Zimbabwe (UCCZ). This was after disagreement on doctrinal issues such as the manner of praying or worship. Certain members were subsequently excommunicated from UCCZ. Not all the former members became part of UCC but there were various splinter groups. RUCCI came about from these various groups that would meet on Sundays and at annual general meetings. Initially, the groups that met used different names until they started to use the name RUCCI. This name was the one used for purposes of conducting activities such as the convening of the special Sunday. The individual churches did not become one under RUCCI but the latter was an umbrella body. There was no amalgamation of churches but simple affiliation. RUCCI came about when members noted that it was difficult to pick one name to use of those that came together after leaving UCCZ. There were a total of five groups that came together, the appellant being one of them. RUCCI was not involved in the day to day running of the activities of the five different groups and RUCCI also never adopted the properties of the other churches. In 2010, an application for the disputed stand was made to the City of Harare under the name UCC. When the application was made, there was no intention to change the name of UCC to any other name. RUCCI was not in existence at that time. The City of Harare and UCC subsequently entered into a lease agreement in respect of Stand No. 535 Willowvale, Harare (the stand) on the 28th of October 2013. The lease was signed after all the necessary steps such as advertising in the press for objections had been done.

The respondent attempted to change the name on the application for a stand from UCC to RUCCI by writing a letter to the City of Harare dated the 11th of March 2013 to effect the change. On account of that letter, UCC members believed that the respondent wanted to 'steal' the stand and they wrote a petition to the respondent indicating that they no longer wished to be associated with it. As at the date of summons, UCC and RUCCI were worshipping separately on the stand.

The evidence of the respondent was to the following effect: - regarding the separation, it was UCC that decided to leave RUCCI and therefore sought eviction of the respondent from the stand. The respondent is a Pentecostal denomination registered with the Evangelical Fellowship of Zimbabwe since 2013. The appellants' witnesses were members of RUCCI. The ex-communication of the members from UCCZ was in 2008 and thereafter they continued worshipping in their respective localities identifying themselves as UCC because they did not have any other name. In 2012, all the ex-communicated members agreed to form a new church called RUCCI, retaining the 'UCC' and adding the word 'Revival' to denote the new nature of worship and 'International' to denote the geographical spread. At the time of application for the stand, the 'Z' from UCCZ was dropped as it was inappropriate to use it. There was an agreement to use the name UCC for administrative purposes only in the application for the stand but the real intention was to have the name changed at a later stage. Members of RUCCI were the ones who were involved in applying for the stand from the City of Harare. The appellant therefore had no legal right to seek the eviction of the respondent. When the respondent attempted to have the name UCC that was on the application changed, the City of Harare advised RUCCI that the application process was at an advanced stage and if they wanted to use another name, the process had to be restarted. The main witness for the respondent conceded under cross examination that she only left UCCZ in 2012 and would not have personal knowledge about the activities of members ex-communicated before 2012.

It is crucial to note that the City of Harare did not give evidence in the matter. An application for joinder was filed on the 22nd of April 2016 seeking to join the City of Harare as the 2nd respondent and it was granted as appears on page 145 of the record. By not filing any pleadings or participating in the trial, it is presumed that the City of Harare as indicated by the witnesses chose to abide by the court's ruling.

From the evidence led and on a balance of probabilities, the picture that emerges is as follows:

- a. Certain members were ex-communicated from UCCZ in or around 2006.
- b. The ex-communicated members were scattered before they came together as different groups/congregations in Highfield.
- c. UCC was one of the groups/members who came together with a grouping of about four others.

- d. The different groupings/congregations decided to use the name RUCCI to deal with the issue relating to which name to use when they met at special meetings and annual meetings.
- e. The different groupings retained their individual identities.
- f. The application for the lease with the City of Harare was made in the name of UCC. Certain persons who are now members of RUCCI were involved in making the application. At that time, RUCCI did not exist.
- g. The appellant withdrew its 'affiliation' with the respondent in March 2014.
- h. At the time of issuance of summons, the appellant and the respondent were worshipping at the stand but at different times.

Turning to the first ground of appeal, after making a correct finding that the appellant was a common law *universitas* the learned Magistrate went on to hold that the appellant was not the same, 'United Church of Christ' that was the lessee in the lease agreement with the City of Harare in respect of Stand No. 535 Willowvale Township. In making this finding the learned Magistrate seemed to have relied on the fact that the name UCC was only adopted for purposes of applying for a stand. The Magistrate erred in ignoring the fact that the lease was in the name of UCC. In its plea, the respondent averred that the working name UCC was dropped on the 29th July 2012 when members unanimously agreed to adopt the name RUCCI. That averment confirms that UCC was in existence even before July 2012. There was no evidence led to show that UCC was disbanded and that a new entity RUCCI was formed. The evidence shows that the respondent established itself as a legal entity in 2013. The fact that the two entities were at the time of issuing summons worshipping separately confirms the fact that these were two distinct legal entities. The 'divorce' between the two entities occurred on the 30th of March 2014 when members of UCC Highfield church signed a petition stating that they were withdrawing their affiliation with the Bishops of RUCCI and that they were a standalone church as at the 30th of March 2014. This was followed by a letter dated the 3rd of April 2014 addressed to the RUCCI Bishop. The letter stated unequivocally that the Highfield Congregation was no longer interested in affiliating with the RUCCI church. The petition was enclosed as part of the letter. A letter dated the 24th of April 2014 was addressed to the RUCCI National Board through the Bishop. The letter is unsigned and it purported to confirm that RUCCI members were still worshipping at Highfield Assembly and it disputed the letter dated 3rd April 2014 as aforementioned. It is important to

note that in the 24th of April 2014 letter, the person who was supposed to have signed it called themselves RUCCI member. It also stated that “*We as Highfield RUCCI assembly*”. When one looks at the petition it clearly stated that “*We agree as Highfield Church- **United Church of Christ***”. (My emphasis). The unsigned letter of the 24th of April 2014 is therefore of no legal effect. What this state of affairs clearly points to is that there were two factions operating. The factionalism was further confirmed by a letter dated the 27th of June 2014 addressed by the RUCCI Bishop to the Board of Elders and Deacons of Highfield Assembly. The letter *inter alia* advised the Board of Elders to cease attending RUCCI church services or convene meetings at the RUCCI church stand. The claim that the property was a RUCCI stand was erroneous since the lease was in the name of UCC.

The learned Magistrate clearly erred by concluding that the appellant was an affiliate of the respondent in the sense that the former was subject to the control of the latter. Members of the respondent who participated in the application for the stand from City of Harare were mistaken in the belief that such participation gave them title. One of the recognised characteristics of a common law *universitas* is 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. The other recognised characteristic of a *universitas* is that it is distinct from its members who may come and go- see *La Lucia and ors v La Lucia Sands Shareblock Limited* , Case Number 19/2002 (High Court of South Africa- KwaZulu Natal division). The fact that certain persons who are now part of the respondent were instrumental in applying for the stand holds no water because at the time of application for the stand, they were not doing so as individuals but as members of an entity called UCC. The fact that they retained the original lease agreement does not give RUCCI any rights at all. The meeting of the 27th of September 2014 by the respondent at which it was resolved to seek a change of name on the lease did not alter the fact that the lease of the stand is in the name of UCC. The letter to the City of Harare by RUCCI ‘confirming’ that the application for a stand in Highfield was done by RUCCI is dated the 11th of March 2013. That letter actually confirms that the application was done by “UCC Church”. The lease agreement was signed on the 28th of October 2013. Between the 11th of March and the 28th of October 2013, there was nothing that prohibited the respondent from approaching the courts to seek an order confirming that although the applicant for the stand was UCC, the intended applicant was a yet to be formed entity, which had subsequently

been formed. It cannot be correct as stated in the 11th of March letter that the application was, “done by the RUCCI board”. As already stated, RUCCI was not yet in existence at the time the application for the stand was made. As already stated, the respondent claimed in its plea that the name RUCCI was adopted on the 12th of July 2012. This was after the application for the stand had already been made. There is no explanation as to why the respondent only wrote to the City of Harare in March 2013 to change the name on the application when the respondent was allegedly formed on the 29th of July 2012.

The evidence led shows that when RUCCI was formed, certain members chose to remain in UCC. In *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese*, 2012(2) ZLR 392(s) at 421, it was held that:-

Related to this is the principle that a member of a voluntary association who leaves the organization whilst others remain must leave the property with those who have not resigned membership. When one leaves a club one does not take its property with him or her. It has long been established as a salutary principle of law in this area of property ownership that when one or more people secede from an existing church, they have no right to claim property, even if those who remain members of the congregation are in the minority.

The issue is not a game of numbers. Even if the RUCCI could show that it had more members, sight should not be lost of the fact that the lease was in the name of UCC and as already indicated, there was no evidence that UCC was disbanded to form RUCCI. Put differently, there was no evidence that UCC became defunct. The receipts for payments to the City of Harare are in the name of the appellant further confirming the fact that the legal entity that is known at City of Harare is UCC and not RUCCI.

Having found that the UCC is the leaseholder, the next question is to decide whether or not it can evict the respondent. The appellant’s legal practitioner L *Madhuku* contended that a lessee in the same position as the appellant could sue successfully for eviction. On the other hand, the respondent’s legal practitioner P *Siduli* contended that the appellant merely has personal rights and cannot evict the respondent. In *Gwarada v Johnson and ors*, 2009(2) ZLR 159 with reference to decided cases, GOWORA J (as she then was) concluded that a lessee who has taken possession can sue a trespasser for ejection from a leased property – see *Jadwat & Moola v Seedat* 1956 (4) SA 273; *Nkadia v Mahlazi & Ors*, 1982(2) SA 441; *Steenkamp v Mienies & Ors* 1987(4) SA 186 and *Pedzisa v Chikonyora* 1992(2) ZLR 445(S). The evidence shows that the appellant was in occupation of the stand even before a formal lease had been signed. The fact that the respondent was also using the same premises for

worshipping does not give it any rights to the property. The appellant therefore has the requisite *locus standi* to seek the eviction of the respondent.

The appellant proved its case in the court *a quo* on a balance of probabilities.

Disposition

It is ordered that:-

1. The appeal be and is hereby allowed with costs.
2. The judgement in the court *a quo* is set aside and substituted with the following, “The plaintiff’s claim succeeds with costs. Defendant and those claiming occupation through it be and are hereby evicted from stand no. 535 Willowvale Township, Harare”.

CHITAKUNYE J: I agree

Lovemore Madhuku lawyers, appellant’s legal practitioners
M.T Chiwaridzo Attorneys-At-Law, respondent’s legal practitioners.