

**REPORTABLE** (37)

(1) **RICHARD JOHN SIBANDA** (2) **JONAH MUDONDO** (3) **L. D. MATEZA**

v

**THE APOSTOLIC FAITH MISSION OF PORTLAND OREGON  
(SOUTHERN AFRICAN HEADQUARTERS) INC.**

**SUPREME COURT OF ZIMBABWE  
BEFORE: GOWORA JA, HLATSHWAYO JA & UCHENA AJA  
HARARE, 20 NOVEMBER, 2015 & JULY 27, 2018**

*F. Girach*, for the appellants

*T. Mpofu* with *N. Chamisa*, for the respondent

**HLATSHWAYO JA:** This is an appeal against the whole judgment of the High Court of Zimbabwe dated 20 May 2015.

The order sought to be impugned reads as follows:

“IT IS DECLARED THAT,

1. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent are no longer members of Applicant and have lost all rights to fellowship under applicant or to make use of any of its properties or amenities as well as its name.
2. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondent shall immediately stop and shall at all times desist from making use of applicant’s name or any such name which may reasonably be confused with applicant’s name and which may give the impression that they have any association with applicant.
3. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents shall immediately relinquish possession and use of all of applicant’s properties both movable and immovable whether held by them directly or by those claiming the right of any use of occupation through them and which are set out in paragraph “3.1” below and shall concede such use and possession to applicant.
  1. **LAND AND BUILDINGS**
    1. Bulawayo: church at Stand 61000, Size Road, and adjacent stands for youth and women, Western Commonage No 6 Pelandaba;
    2. Stand 36E, 37E, 38E,39E,40E, 54E, 55E Bekezela Street, Pelandaba;
    3. House at No 16 Amantje Road, Four Winds, Bulawayo;
    4. Greengables Farm, the remaining extent of subdivision B of Dunstaal, Khami;
    5. Plot 11 and 12, Shamrock Road, Gweru;
    6. Lower Gweru at Gwabada Farm and Ekukhanyeni Weaving Centre;

7. Kwekwe: Stand no 383 Mbizo Township Church and residence, Amaveni township church;
  8. Kadoma: Stand no 4 Bwanali Street, Rimuka Township church and mission residence;
  9. Chegutu: Stand 2134 Heroes Township Church and Mission residence at 550 Pfupajena Township;
  10. Masvingo stand 14 Mucheke Township, Masvingo;
  11. Mutare: Stand No 7 Machekaire Street, Dangamvura Township, Mutare;
  12. Buhera Murambinda Township Church stand;
  13. Nyanga: Church at Bonde Kraal;
  14. Mount Selinda: Chako Township Church Stand;
  15. Chinhoyi Stand 1159 Hunyani township Church and residence
  16. Mahororo Business Centre Church Hurungwe;
  17. Beitbridge Stand 2384 Dulibadzimu and residence at No 9;
  18. Victoria Falls: Stand 2647 Victoria Falls;
  19. Kariba: stand 1727 Nyamhunga Township;
  20. Chiredzi: 51 Makaza Triangle, No 6 Nzimbe Township Trangle;
  21. Mwenezi: Sarahuru Township Church;
  22. Mutoko: Mutoko Business Centre, Church Stand;
  23. Pilgrims' Progress restaurant Kadoma;
  24. Pilgrims' Progress restaurant Gweru;
  25. Bindura: 19/34 Musvosve Street Stand at Chipadze Township and Trojan Mine;
  26. All motor vehicles and church assets under their control;
  27. Chipinda Church Stand; and
  28. Hwange: No 2 Glencoe Road, Railton, Hwange.
4. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are to bear the costs of this application.

The background to this matter is clearly set out in the judgment of the court *a quo* and may be summarized as follows:

The Apostolic Faith Mission of Portland, Oregon, is a church corporation of the State of Oregon, USA, which church was established in 1906 with its headquarters in Portland, Oregon, and is hereinafter referred to as the “mother or parent church”. It is headed by a Superintendent General. One of the mother/parent church’s premier goals is to disseminate biblical truth and evangelise the world. In advancing this goal, the Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) was established in 1955 (hereinafter referred

to as the “local church”). The Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) is the respondent *in casu*.

The mother church has other branches in a plethora of Southern Africa countries, *inter alia*, South Africa, Malawi and Angola. The local church is governed by a Constitution like any of the other branches of the mother church in Southern Africa. The first constitution of the respondent was promulgated in 1968 and then amended in 1985 and 1996. In terms of Article 1 of the respondent’s amended constitution, the respondent was established as a branch of the mother/parent church. The appellants sought to further amend the constitution in 2012 which purported amendment, however, was not endorsed by the mother church.

The first appellant was appointed Overseer of the respondent in 1985. It was during the stewardship of the first appellant that an issue arose concerning the existence of two choirs in the respondent’s church. The pith of the dispute related to whether there was need for the choir to wear a uniform and dress in a particular manner. The mother church was informed of the dispute and it directed that both choirs be disbanded. The first appellant did not act in accordance with this direction from the mother church. Rather, the first appellant wrote to the mother church indicating that he would consider withdrawing from the Board and from being an overseer if the issue of uniforms was not dealt with to his satisfaction.

The director responsible for Africa, one Reverend Baltzell, visited the respondent with the intention of retiring the first appellant and appointing a replacement. Alive to this fact, the first appellant instituted legal action. Subsequently, Darrel D. Lee, the Superintendent General, wrote to the first appellant communicating his removal from the position of Southern

Africa Overseer with effect from 21 April, 2005, leaving him as an ordinary member of the church.

Aggrieved by his removal, the first appellant instituted legal action which saw him obtaining a provisional order in terms of which he would remain overseer of the respondent. This provisional order was, however, subsequently discharged. The first appellant appealed against this judgment. The appeal, however, lapsed and was deemed dismissed. On 7 February 2008, following an application made by the first appellant, the respondent's removal was invalidated, unopposed, under case HC/1170/05 and the subsequent application for rescission was dismissed.

The application *a quo* was however not premised on the previous removal of the first appellant. The material events that led to the appealed judgment are set out hereunder, as outlined *a quo*:

“In November 2011 the head of the parent church visited the country and the (first appellant) barred him from accessing the church branches and buildings for conducting services. This matter spilled into the courts again with the parties subsequently agreeing to resolve their differences outside the court. In the same month, the first (appellant) issued summons for the eviction of pastors he did not agree with, from church premises. He appointed new pastors and replaced those he perceived to be siding with the parent church. This development culminated in further tensions in the church. On 25 January 2012, the first (appellant) was suspended from membership of the church by the parent church. The reason for this was that he had breached the canons of the church and violated spiritual doctrines by continuing to litigate against the faithful and that he had failed to submit to the authority of the church in breach of the church's constitution. Further, that his conduct had led to the creation of disharmony within the church and that he had appropriated the church's assets to his own use. The other complaint was that he was effecting amendments to the constitution without authority”.

The letter of 25 January 2012 suspended the first appellant “immediately from all activities associated with the church” and stated further that “during the suspension and pending the finalization of investigations and any subsequent disciplinary hearing that might

be conducted against you, you shall not set your feet (*sic*) at any of the church's premises. You shall also not conduct any church service. You shall also be expected not to interfere with church members wherever located in Southern Africa ..." Against these charges, the first appellant instructed his legal practitioners to write to the head of the parent church. The contents of this letter dated 3 February 2012 read as follows:

"Dear Sir

RE APOSTOLIC FAITH MISSION OF PORTLAND AND OREGON UNITED STATES OF AMERICA VS REVEREND RICHARD SIBANDA AND APOSTOLIC FAITH MISSION OF PORTLAND OREGON (SOUTHERN AFRICAN HEADQUARTERS) AND THE BOARD OF TRUSTEES – CONSTITUTIONAL AMENDMENT

We refer to the above matter and advise as you may well know that we are lawyers for the Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) Inc. And the Board of Trustees of same and of course Reverend Sibanda the Overseer of the Southern African Headquarters.;

1. The Southern African Headquarters is a legal person governed by its own constitution and we advise that the constitution was formed by the Board of Directors of Southern Africa duly convened and called for that purpose.
2. The same constitution is subject to amendment by the same Board of Directors duly convened for that particular purpose.
3. The historical relationship between Southern Africa and America was born out of historical issues of the refusal by the Colonial Government to accord indigenous people the right to preach the Gospel without external white missionaries. For the record, America and Southern Africa have a spiritual relationship; a look at the previous constitutions and your reference to the history of the church in Southern Africa will vindicate this position.
4. In our view, a look at the Amendments is not only reasonable but logical and was inevitable and on p8 are the proposed trustees chosen by the people of Southern Africa. The choice is yours, to either understand the amendments and try to build on a great relationship with Southern Africa under an affiliate status or choose to listen to people who appear to be feeding you with false information. For your information the whole Board of Directors and the Board of Elders and the Brothers and Sisters in the faith in the greater Southern Africa are prepared to proceed with the amendments of the constitution.
5. For the record, our clients collectively have decided that they will not accept the leadership from America. The Board of Directors, Elders and Church members have enough sense and intelligence to choose their own leadership. Finally the same God you serve is the same God they serve and He will give them guidance on succession issues.

May we have your response, if any, within seven days?"

The episodes that followed after this letter are that the first appellant was called to a disciplinary hearing to respond to the charges preferred against him. The charges were, *inter alia*, that the first appellant had violated Articles VI and VII of the Respondent's Constitution by deliberately refusing to submit to the authority of the parent/mother church and that the first appellant had violated the Constitution as read with doctrinal rules of the Apostolic Faith Church of Portland, Oregon (Southern Africa Headquarters) in that in or around December 2011, first appellant had elected to settle his personal disputes with church brethren in the High Court of Zimbabwe rather than as dictated by the Bible.

The first appellant did not attend the disciplinary hearing to determine charges laid against him set for 22 March 2012. The hearing nevertheless went ahead and it was resolved that the first appellant's suspension be "confirmed". Rev Onias Z. Gumbo was then appointed as Overseer in the place of the first appellant. Undeterred by the suspension, the first appellant maintains that he is still the Overseer of the respondent. On 22 March 2014 the appellants issued summons against the superintendent of the parent church challenging the first appellant's suspension and seeking nullification of Reverend Gumbo's appointment and an order interdicting him from interfering with the church operations. The parent church counterclaimed seeking a declaration of the lawfulness of the suspension and the interdiction of the appellants from acting as overseer and board of directors of the local church. This action does not seem to have been pursued to finality, for reasons that are not clear from the record. Instead, the respondent filed an application for a declaratory order in the court *a quo* essentially seeking the same relief as in the counterclaim. The terms of the order prayed for, which order was granted by the court *a quo*, have already been quoted above.

Aggrieved by that order, the appellants noted this appeal on the following grounds of appeal:

- “1. The High Court erred in finding that the respondent, being a *universitas* with power to sue and be sued in its own name, could not secede from the Apostolic Faith Mission of Portland Oregon.
2. The High Court further erred in finding that the respondent had an interest in suing its overseer and its board of trustees, the Appellants, when the letter of the 3<sup>rd</sup> of February 2012 was written on behalf of the respondent, its leadership and its members.
3. The High Court further misdirected itself in finding that the letter of the 3<sup>rd</sup> of February 2012 amounted to a resignation by the (appellants) from the (respondent) or a denunciation of the doctrine of the church.
4. The High Court misdirected itself in finding that the (appellants) had shown conduct as to amount to sensation (*sic*) (secession?) when there was no evidence to that effect.
5. The High Court misdirected itself in finding as it did that the (appellants) had adopted a new constitution for the applicant when in fact they had not proceeded with the proposed amendments.
6. The High Court further erred in failing to find that the (respondent) church, through the overseer, the 1<sup>st</sup> (appellant), had the authority to appoint its own leadership, that is the board of trustees and therefore the communication that the applicant’s leadership would be appointed locally could not amount to denunciation of the American church.”

At the hearing of this matter additional grounds of appeal were moved and granted through an amendment as follows:

7. The learned judge in the court *a quo* erred in not finding that the respondent did not have the requisite capacity to bring the action in this matter and/or that it required the support of the church in Oregon, USA.
8. The learned judge in the court *a quo* erred in not finding that the application was, in any event, fatally defective as the deponent to the founding papers was barred from representing respondent.
9. The learned judge of the court *a quo* erred in finding that the first appellant ceased to be District Superintendent and ought to have found therefore that the application was a nullity.

The appellants then prayed for the setting aside of the judgment of the High Court and its substitution with an order dismissing the declaratory application with costs.

The laxity and inattentiveness in drafting the notice of appeal by the appellants' counsel has necessitated the insertion in brackets of the proper parties before this Court. The appellants in their grounds of appeal cite the parties as if they are still before the High Court. The appeal should relate to "Appellants" and "Respondent" and not "Applicant" and "Respondents." This lack of attentiveness by legal practitioners is the kind of carelessness that should never manifest at this level of litigation.

This Court therefore is seized with an appeal seeking to overturn a declaratory order granted *a quo*. From a close reading of the grounds of appeal, two questions call for determination and these are:

1. Whether the respondent had the requisite *locus standi* to sue?
2. Whether the appellants had ceased to be members of the respondent?

The just mentioned questions shall be dealt with hereunder.

*Whether the respondent had the requisite locus standi to sue?*

The appellants contend that the respondent did not have the requisite *locus standi* to bring the application before the court *a quo*. The appellants point to Article VII of the respondent's Constitution as the basis of the argument against respondent's *locus standi* in the court *a quo*. Article VII of the respondent's Constitution reads as follows:

"The Government of the religious organisation shall be vested in the Board of Directors consisting of not less than three (3) or more than seven (7) members..."

The appellants' interpretation of Article VII of the respondent's constitution is that it is only the Board of Directors that has *locus standi* to institute legal proceedings. The appellants further note that there is no provision in the respondent's constitution that gives the local chapter/local church any direct right to institute legal proceedings. To buttress this argument, the appellants take the point that the degree of control exercised by the mother church over the local church shows that the proper applicant in the court *a quo* ought to have been the parent church.

It is common cause that the respondent is an organisation clothed with legal personality. As a legal *persona*, the respondent has rights, duties and capacities independent of its own members. The respondent therefore has a right to sue and be sued in its own name. This right however cannot be exercised in instances where the respondent has no substantial interest in the matter. In other words, the respondent as a legal person need to have *locus standi* in order to be afforded audience in a court of law. It is trite that *locus standi* is the capacity of a party to bring a matter before a court of law. The law is clear on the point that to establish *locus standi*, a party must show a direct and substantial interest in the matter. See *United Watch & Diamond Company (Pty) Ltd & Ors v Disa Hotels Ltd & Anor* 1972 (4) SA 409 (c) at 415 A-C and *Matambanadzo v Goven* SC 23-04.

*In casu*, it is common cause that the respondent is a branch of the parent church. However, the respondent is endowed with powers to sue and be sued in its own name. It is further common cause that the respondent is under the leadership appointed by the parent church. The constitution of the respondent is approved by the mother church. The first appellant has been in control of the respondent's assets on the basis of being an overseer appointed by

the mother church. The main allegation *a quo* was that the appellants were no longer members of the respondent and hence should cease to control the assets of the respondent.

The respondent as a branch of the mother church had an unfettered direct interest in the matter in that the first appellant purported to act on the respondent's behalf when he was on suspension. The first appellant had been divested of the power to act on behalf of the respondent. It is common cause that the first appellant was on suspension when he caused the letter of 3 February 2012 to be drafted. He purported to communicate to the mother church an incorrect position that the respondent was also the author of the letter in question. The respondent who had not authored the letter in question surely has a direct interest in a matter where its previous leader purports to act on its behalf without its authority. Therefore, the respondent's *locus standi* in the court *a quo* cannot be gainsaid.

In too many church or voluntary association-related disputes, the parties attempt to abuse the issue of *locus standi* in order to outwit each other and avoid the merits of the matter being adjudicated upon or even to completely frustrate any legal resolution of the matter. It is high time that the court, as it has done *in casu*, takes a robust approach and leans in favour of finding that *locus standi* exists and proceeds to judicially determine the issues. A party who is suspended from an organisation must in the first place legally confront such suspension instead of resorting to the devious ruse of challenging the *locus standi* of such organisation or any person appointed in their stead, in order to escape judicial scrutiny of their conduct.

*Whether the appellants had ceased to be members of the respondent?*

The appellants contend that the letter of 3 February 2012 written by their legal practitioners to the mother church did not communicate their resignation from the mother

church. Against this contention is a specific finding made by the court *a quo* that the first appellant had resigned from the respondent's church. The contents of the letter have been quoted above.

It must be noted that the letter was written on 3 February 2012, days after the suspension of the first appellant from the respondent's church. The first appellant had been suspended from the respondent's church on 25 January 2012. The terms of the suspension were *inter alia* that the first appellant was suspended immediately from all activities associated with the respondent church. It therefore follows that any activity that the first appellant purportedly did on behalf of the church after his suspension was null and void. As long as the suspension was still in force, any purported act by the first appellant on behalf of the respondent was of no effect.

The letter in question was written by the law firm, Cheda and Partners, on the instructions of the first appellant who had been suspended from the respondent church. The author of the letter at law is undoubtedly the first appellant. It is worth observing that the legal practitioners who wrote the letter in question state that they are lawyers for the respondent, the first appellant and the Board of Trustees of the respondent. In this letter, the first appellant sought to act on behalf of the respondent as noted from the cited parties. The contents of the letter therefore *prima facie* reflects that the first appellant was representing the respondent. This could not be possible as the first appellant had been suspended by the respondent.

Be that as it may, the pertinent question that this Court is seized with is whether the letter communicates a resignation by the appellants from the respondent's church. In the event that this Court is to find that it communicates a resignation, does it then follow that the

appellants are no longer members of the respondent despite the absence of dismissal of the appellants by the respondent.

It is also worth noting the letter in question contains very strong doctrinal issues. Is it a form of schism, a declaration of independence from the parent church? In the case of *Independent African Church v Maheya* 1998(1) ZLR 552(H), DEVITTIE J reflects on the historical schisms generated by the passion of church conflicts, thus:

Even at birth, the Christian Church experienced a great schism...It came about when a convert of the early church, Paul, adapted Christianity to meet the needs of all mankind and freed it from the local and national parameters...

Another schism which took place in early times was the Reformation. The growth of national consciousness in medieval times in part motivated the great conflict the Catholic Church and Protestantism. The spirit of nationalism could not accommodate the claims of the papacy, a non-national authority, to moral dictatorship. This schism has raged for centuries and continues to this day...

In like vein, the spirit of freedom radiated by the advent of democratic government in Zimbabwe in 1980 precipitated a rapid growth of independent churches in Zimbabwe. I use the word "independent" to denote churches with no association or affiliation to the established churches."p.553

However, before the ink was dry on the above judgment, the schism had spread to local branches of established churches and the relationship between the parent churches and their local branches is currently undergoing serious strains as the present case clearly demonstrates. The relationship between the metropole-based parent churches and their peripheral local branches that was forged under brutal colonial conquest and tenuously survived the bitter struggles of independence must now respond to the democratic dispensation demands and not wish away the tensions as mere ruses of charlatans and greedy leaders of the poor peripheral congregations.

But how are the church property disputes to be resolved. The *Maheya* case provides some useful indications. Quoting several USA Supreme court cases, the learned judge

in that case teases out a number of useful principles. From the case of *Watson v Jones* 80 US (13 Wall) 679 (1871), the following principles emerge:

“The Federal Courts are competent to enforce express terms contained in trust instruments governing the use of ownership of property. *However, courts may not resolve or inquire into matters of religious doctrine in order to determine entitlement to property.*” (emphasis added)

In the case of *Presbyterian Church in the United States v Mary Elizabeth Hulle Memorial Presbyterian Church* 393 US 440 (1969), the Supreme Court held:

“...there are *neutral principles of law*, developed for use in all property disputes, which can be applied without ‘establishing’ churches to which property is awarded. But First Amendment values are plainly jeopardised when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.” (emphasis added)

In *Jones v Woolf* 443 US 595 (1979), the “neutral principles” approach was supported by the Supreme Court, thus:

“This method relies exclusively on objective, well established concepts of trust and property law and formulae familiar to lawyers and judges. It thereby promises to free civil courts completely from the entanglement of religious doctrine, policy and practice.”

Thus, the principles developed in the USA for resolution of church property disputes which may be applied with much benefit in our jurisdiction may be summarized as follows:

1. Civil Courts will enforce express terms governing the use and ownership of property contained in church documents, such as constitutions, trust instruments, canons, etc.
2. Civil Courts may not resolve or inquire into matters of religious doctrine in order to determine entitlement to property.

3. Civil Courts may apply *neutral principles of law*, which are objective, well established concepts of trust and property law and formulae familiar to lawyers and judges and avoid entanglement in religious doctrinal issues, policy and practice whether pertaining to the ritual of liturgy of worship or the tenets of faith.

Applying the above principles to the facts of this matter:

- a) In resolving church property disputes, it is improper to get entangled in the doctrinal issues as the court *a quo*, in my view, unfortunately did. The question of choir uniforms and how they are to be worn, whether the appellants exhibited behaviour amounting to schism or denounced the founding principles of respondent or their propensity to seek legal redress in disputes with congregants contrary to Biblical teachings are all doctrinal issues that cannot be the bases of resolving the property dispute. The exceptional circumstances in the case of *Church of the Province of Central Africa Ltd & Anor v Diocesan Trustees for the Diocese of Harare* SC 48/12 (hereinafter the “CPCA case”) are distinguishable from the current one. In the *CPCA* case, *supra*, people who had been members of the board of trustees for the church but *withdrew their membership from the church and formed a new church organization* were held to have resigned from their offices thereby losing the right to control the original church’s property such as buildings, houses, schools, motor vehicles and funds in banks. In this regard, MALABA JA (as he then was) had this to say in the *CPCA* case:

“The court does not discuss the truth or reasonableness of any of the doctrines of the religious group. It does not decide whether any of the doctrines are or are not based on a just interpretation of the language of the Holy Scriptures. While the court does not take notice of religious opinions with a view to deciding whether they are right or wrong, it might notice them as facts pointing to whether a person has withdrawn his or her membership from the church and should possess and control church property.”

- b) This Court accepts as a correct statement of law made in *Independent African Church v Maheya* 1998(1) ZLR 552(H) at p 556E and relied upon in the *CPCA* case *supra* that disputes over ownership or possession and control of church property should be resolved, in the first instance, on the basis of the interpretation and application of the

law of voluntary associations. Therefore, the constitution of a voluntary association and rules governing it can be relied upon in solving property disputes. This is in line with the first principle noted above that civil courts will enforce express terms governing the use and ownership of property contained in church documents, such as constitutions, trust instruments, canons, etc.

- c) Finally, the court may have resort to *neutral principles of law*, which are objective, well established concepts of trust and property law. In the present case, the question to answer is whether the first appellant, having been suspended from the respondent, and while that suspension subsists, can retain control of the property and assets of respondent? This issue can be resolved without the court entangling itself in doctrinal issues of whether questioning the relationship between the parent and local churches, the way the 1<sup>st</sup> appellant did, amounts to secession or schism or at what stage suggesting constitutional arrangements becomes rebellion against fundamental tenets of the faith and ceases to be a normal, albeit vigorous, democratic discourse? When can a church member be held to have so denounced the fundamental principles that lie at the heart of a church that he or she divests himself or herself from being a member of the respective church and becomes disentitled from access to its properties? The best answer is that it is a matter of opinion, a matter of degree and an issue of doctrinal intricacies that courts are ordinarily unfamiliar with. It was, therefore, a misdirection for the court below to base its decision on these doctrinal imponderables.

In *Jakazi & Anor v Anglican Church of the Province of Central Africa* SC 10/13, this Court dealt with the issue of resignation as an objective fact. In communicating resignation, a party gives notice. The giving of notice is a unilateral act which needs no acceptance. Whether

or not a party resigned is a question of fact. The sentiments of this court in the *CPCA* case are instructive with regard to resignation of church members:

“Where the evidence shows that the individual exercised his/her right to terminate the relationship with the Church the resignation takes effect immediately the conduct is committed. This is so unless there is a special provision by virtue of which it takes effect upon acceptance by the person who is given the right to receive written notice and decide whether to accept the resignation or not. The law is clear. Whether it is under article 4 or 13 resignation is a unilateral act. Its validity does not depend upon acceptance by the person to whom it is directed. Acceptance determines when the resignation takes effect. In the final analysis it is for the court and not the individual concerned to decide whether his conduct amounts to resignation or not.”

It must be emphasized that the ideal position is for voluntary associations to discipline their own members, either by dismissing or suspending them in terms of their set procedures. In this case, the respondent conducted a disciplinary hearing against the first appellant for charges preferred against him. The disciplinary hearing proceeded in the absence of the first appellant despite his being properly served. At this disciplinary hearing, the decision to suspend the first appellant was “confirmed”. What is baffling in this case is that the respondent or the mother church, despite having powers to dismiss the appellants, resolved to simply “confirm” or uphold the suspension of the first appellant. A declaration that the appellants are no longer members of the respondent was only sought in the court *a quo*. Now, if the church itself, seized with the alleged doctrinal infractions of the first appellant at a disciplinary hearing, opts not to dismiss the appellant but rather to merely uphold the suspension, on what basis would a civil court of law, unschooled in the intricacies of doctrinal niceties, be expected to pronounce the first appellant no longer fit to maintain membership of the church?

It is for the church to dismiss the appellants and not for this court to do so in its stead. The respondent is enjoined to take steps to terminate its relationship with a member who

denounces its authority, and the civil court will give due deference to that decision in the absence of arbitrariness, bias or unreasonableness. What was placed before the court was in fact a process upholding the first appellant's suspension. Nothing shows that appellants were dismissed and therefore ceased to be members of the respondent. Suspension cannot by any stretch of imagination be a method of terminating a relationship between parties. The first appellant therefore remains suspended and not dismissed from the respondent.

There is no record of the second, third and fourth appellants being charged with any misconduct let alone being suspended or dismissed from the respondent's church. There is therefore no basis in my view to declare that the second, third and fourth appellants ceased to be members of the respondent. The court *a quo* erred in doing so.

All in all, therefore, there is sufficient ground to allow the appeal, with each party bearing its own costs. That part of the order of the court *a quo* declaring the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> appellants as having ceased to be members of the respondent is not supportable, has to be set aside and replaced with an order declaring the 1<sup>st</sup> appellant and all those claiming through him to be barred from controlling or accessing respondent's properties or amenities on account of 1<sup>st</sup> appellant's extant suspension. All specific references to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> appellants in the order of the court *a quo* are also improper and have to be removed. Given this partial success by the appellants, it is proper that each party shall bear its own costs.

Accordingly, it is hereby ordered that:

1. The appeal is allowed with each party bearing its own costs.
2. The judgment of the High Court in case No. HC 1451/13 be and is hereby set aside and substituted as follows:-

“IT IS DECLARED, WITH EACH PARTY BEARING ITS OWN COSTS, THAT:

- a) The 1<sup>st</sup> respondent having been suspended on 25 January 2012 by the parent church, and while that suspension remains extant, has no right to personally, or by anyone claiming through him, make use of any of the applicant’s properties or amenities as well as its name.
- b) The 1<sup>st</sup> respondent, or anyone claiming through him, shall immediately stop and shall at all times desist from making use of applicant’s name or any such name which may reasonably be confused with applicant’s name and which may give the impression that they have any continuing association with applicant.
- c) The 1<sup>st</sup> respondent, or anyone claiming through him, shall immediately relinquish possession and use of all of applicant’s properties both movable and immovable whether held by them directly or by those claiming the right of use or occupation through them which are set out in ‘c1’ below and shall concede such use and possession to the applicant.

1. LAND AND BUILDINGS

- i) Bulawayo: church at Stand 61000, Size Road, and adjacent stands for youth and women, Western Commonage No 6 Pelandaba;
- ii) Stand 36E, 37E, 38E,39E,40E, 54E, 55E Bekezela Street, Pelandaba;
- iii) House at No 16 Amantje Road, Four Winds, Bulawayo;
- iv) Greengables Farm, the remaining extent of subdivision B of Dunstaal, Khami;
- v) Plot 11 and 12, Shamrock Road, Gweru;
- vi) Lower Gweru at Gwabada Farm and Ekukhanyeni Weaving Centre;
- vii) Kwekwe: Stand no 383 Mbizo Township Church and residence, Amaveni Township church;
- viii) Kadoma: Stand no 4 Bwanali Street, Rimuka Township church and mission residence;
- ix) Chegutu: Stand 2134 Heroes Township Church and Mission residence at 550 Pfupajena Township;
- x) Masvingo stand 14 Mucheke Township, Masvingo;
- xi) Mutare: Stand No 7 Machekaire Street, Dangamvura Township, Mutare;
- xii) Buhera Murambinda Township Church stand;
- xiii) Nyanga: Church at Bonde Kraal;
- xiv) Mount Selinda: Chako Township Church Stand;
- xv) Chinhoyi Stand 1159 Hunyani township Church and residence
- xvi) Mahororo Business centre church Hurungwe;
- xvii) Beitbridge Stand 2384 Dulibadzimu and residence at No 9;
- xviii) Victoria Falls: Stand 2647 Victoria Falls;
- xix) Kariba: stand 1727 Nyamhunga Township;
- xx) Chiredzi:51 Makaza Triangle, No 6 Nzimbe Township Trangle;
- xxi) Mwenezi: Sarahuru Township Church;
- xxii) Mutoko: Mutoko Business Centre, Church Stand;
- xxiii) Pilgrims’ Progress restaurant Kadoma;
- xxiv) Pilgrims’ Progress restaurant Gweru;
- xxv) Bindura: 19/34 Musvosve Street Stand at Chipadze Township and Trojan Mine;
- xxvi) All motor vehicles and church assets under their control;
- xxvii) Chipinda Church Stand, and
- xxviii) Hwange: No 2 Glencoe Road, Railton, Hwange.

**GOWORA JA:** I agree

**UCHENA JA:** I agree

*Majoko & Majoko c/o G. N. Mlotshwa & Co, appellants' legal practitioners*  
*Dube-Banda Nzarayapenga & Partners, respondent's legal practitioners*