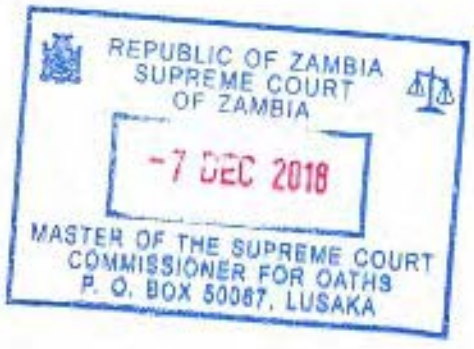
IN THE SUPREME COURT OF ZAMBIA **Appeal No. 63/2016**
HOLDEN AT NDOLA **SCZ/8/020/2016**

(Civil Jurisdiction)



BETWEEN:

PAUL KADOCHI	**1ST APPELLANT**
BENSON MANJIMELA	**2ND APPELLANT**
CHARLES KADOCHI	**3RD APPELLANT**
GEOFFREY MUBUYA	**4TH APPELLANT**
SIMEON MWAMBA MAVUYA	**5TH APPELLANT**

AND

CHRISTIAN COMMUNITY CHURCH TRUSTEES **RESPONDENT**

Coram: **Wood, Malila and Mutuna, JJS**
on 4th December, 2018 and 7th December, 2018

For the Appellants: Mr. K. Bota, Messrs William Nyirenda & Co.

For the Respondent: Mr. P. Katupisha, Messrs Milner & Paul Legal Practitioners

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JUDGMENT

Malila, JS, delivered the Judgment of the Court.

Cases referred to:

1. *Attorney-General v. Marcus Achiume (1983) ZR 1.*
2. *Examination Council of Zambia v. Reliance Technology Limited, SCZ Judgment No. 46 of 2011.*
3. *Wilson Masauso Zulu v. Avondale Housing Project (1982) ZR 172.*
4. *Nkhata and Others v. Attorney-General (1960) ZR 124.*

Legislation referred to:

1. *Societies Act, chapter 119 of the laws of Zambia.*
2. *Land (Perpetual Succession Act, chapter 288 of the laws of Zambia.*
3. *The Constitution of Zambia Act No. 2 of 2016, chapter 1 of the laws of Zambia.*

Amending a constitution of an entity – any entity - be it a country, a political party, a club or a church, can be potentially divisive to its members and may carry with it the risk of fracturing what are otherwise cordial relationships.

The dispute in the present appeal arose from an amendment of a church constitution undertaken by the leadership of the respondent Christian Community Church. Part of the brethren were unenthused with the process leading to, as well as the substance of those amendments. The amended constitution was submitted to the Registrar of Societies.

The background facts are plain. The respondent was a religious organization founded as a church and registered as such under the provisions of the Societies Act, chapter 119 of the laws of Zambia. It was issued with a Certificate of Registration in 1971 under the hand of the Registrar of Societies. It had a

constitution which created various organs and defined power relations. On diverse occasions over the years, that constitution was amended. The last amendment before the one subject of this dispute was in 1997.

The respondent was also subsequently incorporated under the Land (Perpetual Succession) Act, chapter 288 of the laws of Zambia, and was issued with a Certificate of Incorporation under the hand of the Minister of Lands.

The drama animating the present appeal started to unfold after the respondent's leadership body, the Apostolic Council, convened a meeting in December, 2012 at which it was resolved to amend the respondent's constitution. The amended constitution was dubbed the 2013 Constitution. The appellants, who are members and Elders in the respondent church were, as intimated already, unhappy with the amendments and thus constituted themselves into a pressure group of sorts that refused to recognize the amendments. They regarded these amendments as irregular and unconstitutional. They thus actively agitated for a return to the status *quo ante*.

Their case was that the Apostolic Council was not provided for in the constitution of the church and could, therefore, not lawfully amend the constitution. According to the appellants, the body that was properly mandated to amend the constitution was the Translocal Council of Elders (TCE) which was made up of representatives of Elders from autonomous local churches.

They viewed the Apostolic Council as a mere congregation of individuals who purported to act on behalf of the respondent. They, to this end, made numerous representations to the Registrar of Societies, urging the latter not to recognize the amendments to the church constitution.

The Registrar of Societies, for his part, implored the parties to resolve the differences between them amicably and in accordance with their church's constitution. By the guidance of the Registrar of Societies, the 1997 Constitution as it stood before the purported amendment was to hold until the parties resolved their disputes. According to the appellants, the respondent declined to take this advice and went ahead to expel them on the basis of the contested amended Constitution of 2013.

The Apostolic Council did not take kindly to what it regarded as the baseless machinations of the appellants. Determined to maintain discipline in the church, the Apostolic Council did, sometime in February, 2013, hold an extraordinary meeting where it resolved to charge the appellants for gross indiscipline and subsequently suspended them pending further disciplinary action, directing that they exculpate themselves in the meantime. Unsurprisingly, the appellants did not exonerate themselves, prompting the Apostolic Council to expel them from the church.

Undeterred by these developments, the appellants continued to exert their views over the affairs of the church, purporting in some instances to assume leadership.

Being an illegitimate body in the view of the appellants, the Apostolic Council, could not take any disciplinary action against them which was the preserve of the Elders and the respective local churches. Meanwhile, the appellants also decided to expel the Apostolic Council members.

Without the authority of the Apostolic Council, the appellants issued notices for the International General Meeting which was held on the 6th and 7th July, 2013, at Kimiteto Teen Mission at Solwezi. The respondent church viewed this as the clearest sign yet of a rebellion on the part of the appellants and determined to do everything in its power to contain the situation.

As the impasse continued to hold, the options available to the parties were diminishing. The respondent church then initiated legal proceedings in the lower court against the appellants, seeking the endorsement of the High Court, through a declaration, that the appellants were lawfully expelled from the church. It also sought an injunction against them to prevent them from interfering in the operations of the church. The respondent furthermore prayed for a declaration that the International General Meeting held on the 6th and 7th July, 2013 was illegal and, therefore, that all the actions taken at the said meeting were a nullity. Additionally the respondent sought damages and costs.

The respondent maintained that the TCE had unanimously been renamed Apostolic Council in 2011 at a meeting held at

Sachibondu in Mwinilunga District, and that the Apostolic Church is the legitimate body to make amendments to the constitution of the church. The respondent's position was that the TCE comprised councilors and other decision makers whose decisions are implemented by a committee. The amendments to the constitution went through the lawful processes and were duly lodged with and accepted by the office of the Registrar of Societies. In the respondent's estimation, the disciplinary action taken against the appellants for forming their own secretariat and bringing the name of the church into disrepute, was lawfully done.

In their response, the appellants denied being lawfully divested of their membership in the church. They relied on the facts as we have already narrated them earlier in this judgment. They put up a counter claim in which they sought a series of declaratory orders as well as an injunction restraining the respondent from interfering in their exercise of the rights as members of the church.

After hearing the parties witnesses and considering the documents filed, the High Court was of the view that the

overarching issue was whether the 1997 Constitution was validly amended. The court found that for the church's constitution to be validly amended, two-thirds of the TCE should have agreed on the amendments.

Based on the oral and documentary evidence she had received, the judge found that the number of local churches was 500 made up of 400 branches in Zambia, 65 in Angola and 35 in the Democratic Republic of Congo (DRC). She further found that the 1997 Constitution provided in Article A(5) that the TCE should be chosen from district churches. Article Q(4) states that amendments require two-thirds of the TCE membership, representing registered local churches, while Article F(4) states that the TCE members should be chosen by their churches. She concluded that the members of the TCE thus come from district churches and not from the local churches as contended by the appellants. She further found that the TCE Meeting held in September, 2000 and attended by 30 members resolved to rename the TCE as the National Council.

The learned trial judge also accepted, as factually established, the respondent's narration that another meeting of

the TCE held in December 2004 dissolved the TCE and replaced it with a 15 member Apostolic Team led by a Mr. Chilapu as Overseer. The Apostolic Council met in April, 2011 and was attended by 67 people. It decided the composition of 27 leaders with 22 of them representing the 22 districts which included Angola and DRC. The meeting of the Apostolic Council held in December 2012 approved the amended Constitution of 2013, which amendment is the subject of the present dispute. That meeting was attended by 23 members of the Apostolic Council and 25 other members of the church, bringing the total to 48.

Her conclusion was that prior to 1997 the TCE comprised 41 members and this was reduced to 27 in 2011. The TEC was renamed an Apostolic Team and later the Apostolic Council but that these changes had not been reflected in the respondent's constitution until 2013. She further found that the Apostolic Council was the legitimate body to amend the constitution after its change of name from TCE.

By the judge's arithmetic, two-thirds of the members of the TCE under the 1997 Constitution was approximately 31 while two-thirds of 27 members after April 2011 was approximately 18.

Her conclusion was that the passing of the amended Constitution by 48 members exceeded the threshold of two-thirds which was 31 members. The Constitution was thus validly amended and properly lodged with the Registrar of Societies.

On the issue whether the appellants were validly expelled, the learned judge, after examining and provisions of Article O clauses 1 to 8 of the 1997 Constitution and Article 16 of the 2013 constitution, held that the procedure for expelling members was not followed in respect of the appellants and therefore that their expulsion was irregular. The disciplinary provisions in the two constitutions, i.e. the 2007 and 2013 Constitutions are similar and require that the disciplining of Elders and members of the Apostolic Council of elders is to be carried out by fellow Elders or Apostolic Council members in conjunction with the district leadership or Elders of the churches in which they serve. The appellants' expulsion letters did not show that the Elders or Apostolic Council leaders consulted the district leadership or elders of the local churches where the appellants belonged.

In regard to the claim by the respondent that an injunction be issued against the appellants, stopping them from performing

or acting as Church Elders or representatives of the church and from interneddling in the affairs of the church, the learned judge did not make any decision but urged the parties, as believers to reconcile, based on Biblical principles and heal the wounds that had been occasioned. She suggested the use of a neutral party in the reconciliation process.

As to whether the International General Meeting of 6th to 7th July, 2013 was illegal and all decisions made thereat a nullity, the learned judge found that the meeting was not sanctioned by any provisions of the constitution and was accordingly illegal and decisions made thereat were a nullity.

The learned judge also declined to give the appellants damages for inconvenience, stating that the respondent contributed as much to the malaise.

Turning to the appellants' counter claim, the learned judge declined to grant the declaration that the amendment of the constitution was null and void. She reiterated her earlier finding that the amendments were duly effected. She allowed the prayer

for a declaration that the appellants were irregulary dismissed from the church.

Unhappy with the judgment of the court, the appellants have now appealed to this court and fronted two grounds of appeal as follows:

> ***GROUND ONE***
>
> *The court below erred in fact and in law to have held that the subject Constitution was validly amended and lodges with the Registrar of Societies. This holding was against the weight of the evidence on record and against the express provisions of the Constitution purported to be amended wherein the composition of the Translocal Council of Elders is 'Elders representing Local Churches' as opposed to Districts as held.*
>
> ***GROUND TWO***
>
> *The court below erred in fact and in law to have held that the International General Meeting held by the Defendants on 5th, 6th and 7th July, 2013 and decisions passed thereat are a nullity and illegally done, which was against the entitlements of the appellants under the law and the constitution of their right and freedom to associate among their respective local churches.*

Heads of argument were filed in support of the respective parties' positions by their learned Advocates. Mr. Bota appeared for the appellant while Mr. Katupisha appeared for the respondent.

We allowed Mr. Bota's application to amend his heads of argument by mentioning not only Article 20 of the Republican Constitution chapter 1 of the laws of Zambia but to include article 21 a well.

Counsel for the appellants stressed in their heads of argument, a rather obvious point at the outset. This was that the appellants had not appealed against the declaration by the lower court that their expulsion was against the provisions of the constitution of the respondent church and thus null and void. This, of course, should be the position granted that the learned judge held that the expulsion of the appellants was irregularly done, meaning that they remained members of the church.

The first ground of appeal was purely interpretational in substance. It centered around the composition of the body which was mandated to amend the respondent church's constitution, that is to say, the TCE and other participants. While the appellants contended that the required quorum of two-thirds of the TCE was premised on representation from the registered local churches, the respondent's interpretation on the other hand was that it was the districts which counted. The lower court judge

held that the members of the TCE were to come from district churches and not local churches.

The contention by the learned counsel for the appellants was that the lower court had rightly directed its mind as regards the composition of the TCE; that the court correctly cited Article F of the constitution but fell into error by holding that the said article has to be read in light of Article A clause 5(a) and (b). In so doing, the lower court subordinated a clear provision in the constitution relating to amendment of the constitution to a provision which was unrelated to amending the constitution. In this sense, the court misdirected itself.

Mr. Bota quoted Articles A(5) and Q(4) of the 1997 Constitution which had been referred to by the trial judge in her judgment. The two sections read as follows:

> *"5(a) The general administration of churches shall be done by the Translocal Council of Elders (TCE), according to Eph. 4:11."*
>
> *"4(q) In the event of amendments, additions, deletions or corrections being required, the approval of two-thirds (2/3) of the recognized Translocal Council of Elders representing registered local churches within the Christian Community Church, shall be required."*

The learned counsel submitted that for purposes of amending the constitution the quorum for the TCE is based on representation of local churches and not districts. Counsel also quoted article Q of the Constitution and submitted that, that provision, which relates specifically to amending the constitution, equally refers to a quorum of the TCE representing local churches rather than districts. He furthermore referred us to the evidence of witnesses in the record of appeal and ended with the submission that in Article 5(a), which relates to the general administration of churches and not the amendment of the constitution, there is reference to the TCE being chosen from district churches. Other than this, the preponderant reference to TCE representation is to local churches. We were urged to uphold ground one.

As regards ground two of the appeal, it was contended that the holding of the lower court in respect of the International General Meeting held by the appellants on the 5th, 6th and 7th of July 2013 contravened the rights of the appellants under the law and the respondent's constitution.

Counsel submitted that the appellants had always had the liberty to associate in conference as they did. In doing so, they exercised their guaranteed right to association and assembly under Article 20(1) and 21 of the Constitution of Zambia. He quoted article 20 of the Constitution before submitting that by congregating as they did, the appellants were exercising their constitutional rights and thus did nothing illegal.

In orally augmenting ground two of the appeal, Mr. Bota was at pains to press the point that the conduct of the appellants, which the respondent found offensive, was in fact within the broader Republican Constitution-sanctioned freedoms of association and assembly under Articles 20 and 21 as well as within the rights conferred on the appellants as members of the respondent church to cooperate and to congregate in conference as they did in July 2013. There was, according to counsel, nothing untoward or unbecoming for the appellants to have called for a meeting with other brethren. He specifically called our attention to Article 4 of the constitution of the respondent. It was wrong therefore, according to Mr. Bota, for the lower court to have found illegality in the convening and

holding of the meeting in July 2013 – particularly in view of the constitution freedoms available to the appellants under the Bill of Rights.

We asked Mr. Bota whether indeed by voluntarily assuming membership of the respondent church, the appellants had not in fact undertaken to subscribe to the rules of the church which defined how the freedoms of assembly and association were to be undertaken if they related to church matters. Mr. Bota was unrelenting in alleging a violation of the appellant's constitutional rights. When referred to the claim as originally framed in the High Court, Mr. Bota, however, conceded that issues to do with the Bill of Rights were not raised in that court nor was the correct procedure for seeking redress for violations of provisions of the Bill of Rights employed.

Counsel nonetheless urged us to uphold ground two of the appeal as well.

In reacting to these submissions counsel for the respondent vehemently opposed the appeal, submitting that the appellants appear to have somewhat lost track of the historical changes

made to the respondent organisation to which the first appellant was in fact a party. Counsel was here referring to the events leading to the change of name of the TCE and its composition as were recounted by the lower court in its judgment. The substance of that narration has been captured earlier on in this judgment.

As regards the change of name from TCE to Apostolic Council it was submitted that the first and fourth appellants were in attendance in the meetings that took the decision and the first appellant Elder was redesignated as an Apostle – a title he happily assumed and uses.

The respondent dispelled the notion held by the appellants that the TCE's composition is based on churches and not districts. This, according to counsel, is a misunderstanding of the wording of the constitution. According to the respondent, all churches are found in districts in which the church is situated and hence the provision of Article 5(a) that the general administration of churches shall be done by the TCE chosen from district churches. The learned counsel submitted that the Elders from the registered local churches in respective districts

form the TCE. These Elders from various district churches came together to form a Council of Elders which was later renamed District Apostles. The District Apostles made up the Apostolic Council which succeeded the TCE.

Mr. Katupisha contended that the lower court judge gave a correct narration of the sequence of events leading to the amendment of the constitution. That narration by the court represents her findings of fact. He submitted that what the appellant is seeking to do under this ground of appeal is effectively to reverse the lower court's findings of fact contrary to the established general rule that an appellate court will not lightly interfere with such findings except in very limited circumstances. The cases of *Attorney-General v. Marcus Achiume*[1], *Examinations Council of Zambia v. Reliance Technology Limited*[2], *Wilson Masauso Zulu v. Avondale Housing Project*[3] and *Nkhata and Others v. Attorney-General*[4] were all cited to buttress that submission.

We were urged to dismiss ground one of the appeal.

Turning to ground two of the appeal, Mr. Katupisha argued that the International General Meeting of 5th to 7th July 2013 and the decisions passed at that meeting were properly treated as a

nullity as they were illegal. In supporting the holding of the lower court three reasons were given by the learned counsel for the respondent. First, that the meeting in question was held against the advice of the Registrar of Societies who had specifically advised that the parties were to meet in the presence of representatives from the Registrar of Societies. Second, that the respondent had obtained an *ex-parte* order of injunction on 3rd July 2013 restraining the appellants from holding the said meeting pending the *inter-partes* hearing on 21st July 2013.

Notwithstanding due service of the said injunction on the appellants by the Officer-in-Charge of Police at Solwezi, the appellants blatantly ignored the order.

Third, Charles Kadochi, the third appellant, who purported to convene the meeting, had no authority to do so since at that time a functional Secretariat of the church with leaders mandated to call such meetings, was in existence.

Counsel stressed the point that although the respondent's constitution did entitle the appellants to associate with other church members, the specific meeting was intended to be for the

two factions of the church membership in the presence of representatives from the Registrar of Societies.

The learned counsel for the respondent ended by submitting that the contention that Article 20(1) of the Zambian Constitution guaranteed the appellants the freedom of association and assembly, was misplaced as the Zambian Constitution did not sanction anarchy. We were urged to dismiss ground two of the appeal as well.

We have carefully considered the arguments of the parties in this matter. The contestation is on fairly narrow points, namely, first whether the constitution of the respondent church was amended by a properly constituted body. Second, and equally significant, whether the appellants had a viable claim to calling and holding the International General Meeting of the 5th to the 7th July, 2013. If not, what the efficacy of the proceedings and resolutions of that meeting are.

We have stated already that the issue here is interpretational in substance. The constitutional provision that

calls for interpretation is an Article headed "AMENDMENTS TO THE CONSTITUTION." It reads as follows:

> *"1. This constitution was written by the recognized translocal leadership of the committed societies known as the CHRISTIAN COMMUNITY CHURCH (CCC).*
>
> *2. It shall be reviewed by them periodically to determine if amendments, additions, deletions or corrections are needed.*
>
> *3. No amendments, additions, deletions or corrections can be made to the constitution without the knowledge of the quorum of the Translocal Council of Elders (TCE).*
>
> *4. In the event of amendments, additions, deletions or corrections being required, the approval of two-thirds (2/3) of the recognized Translocal Council of Elders representing registered local churches within the CHRISTIAN COMMUNITY CHURCH shall be required.*
>
> *5. This constitution was written primarily to meet the requirements of the Societies Act CAP 105 of 1974 and to offer general rules for the societies registered with the CHRISTIAN COMMUNITY CHURCH. It points to the Word of God, which must remain the final and binding authority."*

In our understanding of this provision, there is no doubt whatsoever that any amendment of the constitution, by paragraph 4, requires the approval of two-thirds (2/3) of the recognized Translocal Council of Elders representing registered

local churches. The use of the term "recognized Translocal Council of Elders" carries the connotation that there could be unrecognized Translocal Council of Elders. This however was not raised by either party as an issue.

In the Introductory part of the constitution under Article A5(a) the general administration of churches is done through the TCE Elders (TCE) chosen from district churches.

A further provision dealing with the TCE and other leaders, is Article F relating to Administration. Paragraph 4 states that these leaders shall be chosen as the need arises by their churches, to co-ordinate, administer and represent the churches they serve.

With the argument by the appellant that the TCE which is empowered to amend the constitution is one representing local churches within the respondent church, the question we pose is whether there are various kinds of TCE members appointed differently. While the appellant maintains that the appointment of the TCE members to amend the constitution should be drawn from local churches, the respondent argues that there is only one

TCE, which in addition to being mandated to amend the constitution, is also entrusted with administrative duties under Article A 5(a).

We have already referred to Article F(4) which states that TCE and others shall be chosen as the need arises by their churches, to coordinate, administer and represent the churches they serve, through leaders who chose them.

We are inclined to accept as correct, the interpretation placed on the interface between local churches and district churches – meaning that the members of the TCE chosen by local churches also represent districts since churches are to be found in districts. In the absence of clear provision in the constitution of the respondent suggesting that there are different categories of TCE members with different modes of appointment, our view is that this interpretation is the only plausible one in these circumstances.

Consequently, we hold that the provision of the constitution requiring the approval of two-thirds (2/3) of TCE refers to members appointed or chosen in accordance with clause F(4) of

the constitution by local churches but who equally represent district churches. We accordingly hold that ground one of the appeal is without merit and we dismiss it accordingly.

As regards ground two of the appeal, it is abundantly clear to us that the team of the appellants and their followers side stepped the provisions of the respondent's constitution either because they misunderstood those provisions, or they deliberately embarked on a course designed to promote their own individual leadership interests. By ignoring the existing leadership and convening a meeting using powers they did not constitutionally possess, they were well on the course to spelling anarchy in the respondent church.

Although the argument advanced by the appellant alleging violation of the appellant's constitutional rights under the Bill of Rights have been rendered moot by Mr. Bota's own concession that they were not part of the case as pleaded in the lower court, we are inclined to comment upon the same if only to dispel a common myth. Once persons accept to be members of a club or an association with a constitution stating how things should be done, they have in essence agreed to circumscribe their rights

under the Bill of Rights to the extent that their unrestricted exercise of their constitutional rights would run contra with their obligations as members.

The meetings convened and held by the appellants and others in July 2013 were consequently unconstitutional; unconstitutional in the limited sense of contravening the respondents constitution. The outcomes of such a meeting can only equally be unconstitutional. We thus agree with the respondent that the meeting and its outcomes have no legal validity.

Ground two of the appeal must fail also. The result is that this appeal fails and is dismissed with costs.

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A. M. WOOD
SUPREME COURT JUDGE

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M. MALILA
SUPREME COURT JUDGE

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N. K. MUTUNA
SUPREME COURT JUDGE