

HH 91-03  
HC 9990/2000

BETENINGO CHIVESE  
versus  
MAI MEGI MATANHIRE

HIGH COURT OF ZIMBABWE  
SMITH J,  
HARARE, 13, 14, 15, 16, 17, 20, 21, 23, 24, 27, 28, 29, 30, 31 January,  
31 March, 2, 3, 4, 8, 9 April and 11 June, 2003

*Mr E Matinenga* for plaintiff  
*Mr J Samkange* defendant

SMITH J: The Gospel of God Church International (hereinafter referred to as "the Church") was founded by Baba Johane (hereinafter referred to as "the Founder") who died at Ndola in Zambia on 13 September 1973. He was buried at Gandanzara, near Rusape. After his death the Church was divided into various factions quarrelling over its leadership. The dispute resulted in a number of applications to the Court which were referred to trial. The issue was whether the leader of the Church was Mai Megi Matanhire, the defendant (hereinafter referred to as "Mai Megi") or Rozi Ngosi, both of whom were surviving spouses of the Founder. The parties to that action agreed that the Court's finding on that issue would be binding on each of them personally, as well as upon the Church in Zimbabwe, and that they would observe it not only in Zimbabwe but throughout the world. The trial started on 5 April, 1978 and came to an end on 10 August 1979, after 36 days in court.

PITTMAN J, after analysing the evidence that had been led, found that the leader of the Church was Mai Megi and not Rozi Ngosi - G.S-144-79. Thereafter a constitution was drawn up and adopted for the Church.

On 25 April 2001 an urgent application was filed in the name of the Church, citing Mai Megi as respondent. The applicant sought an order declaring as follows -

- (a) Mai Megi is no longer President of the Church or a member of the  
Church Council;
- (b) all persons purporting to act on behalf of, or on the instructions of, Mai

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Megi in connection with the affairs of the Church and in regard to the control and management of the Headquarters of the Church at Gandanzara are interdicted from doing so;

- (c) the control and management of the affairs of the Church are vested in the Church Council, the members of which include the applicant (hereinafter referred to as "Chivese") and 25 others;
- (d) the powers of the President of the Church be vested in the Deputy President, Sister Eni Manyati, as President;
- (e) the Zimbabwe Republic Police recognises the above-mentioned Church Council as the controlling body of the Headquarters of the Church at Gandanzara;
- (f) the purported amendment of the constitution of the Church (hereinafter referred to as "the Constitution") which was filed in the Deeds Registry on 7 February, 1992 be declared null and void and of no effect.

Mai Megi opposed the application. Understandably, the material disputes of fact between the parties could not be resolved on the papers and the matter was referred to trial. As I mentioned earlier, the application was brought in the name of the Church. Before the trial commenced Mr *Samkang* submitted that the Church was not properly cited as the Plaintiff. The deponent to the founding affidavit is Chivese and he must institute the action in his personal capacity. There is nothing on the papers to show that he has been duly and properly authorised to institute the action on behalf of, and in the name of, the Church.

Mr *Matinenge* argued that the action is properly brought in the name of the Church. Mai Megi was not being expelled from the Church. The Church was merely seeking a declaration that she was no longer President thereof. It was acting in terms of Article V, para (d)(vii) of the Constitution.

I ruled that Chivese had not produced any proof that the Church Council had authorised him to institute this action in the name of the Church. Therefore, he could only proceed with the action if he was prepared to do so in his personal capacity. He wanted to proceed and accordingly, he is the plaintiff. Article V of the Constitution

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deals with the governing body of the Church, which is the Church Council.

Paragraph (c) thereof provides that the Council shall have all such powers as are necessary for the proper management and running of the Church and para (d) confers certain special powers on the Council. The power conferred by sub-para (vii) thereof is to defend, in the name and on behalf of the Church, any legal proceedings in any matters connected with the administration of the Church. There is no mention of any special power to institute any legal proceedings in the name of the Church.

The Constitution is not happily worded. It definitely was not drafted by anyone with legal training and drafting experience. Many of the provisions do not hang together and some provisions are not consistent with others. That means that it is not very easy to ascertain with certainty the intention of the framers of the Constitution. I will set out those provisions of the Constitution which are relevant to the settlement of the dispute between Chivese and Mai Megi. Of course the dispute runs deeper than merely the two parties. Members of the Church have backed one or other of the two, and so there is a split in the Church. It is for the Court to decide whether or not Mai Megi is still the President and whether or not Chivese and the others named in the application are still members of the Council.

Article I of the Constitution contains a number of definitions. It defines the term "President" as meaning the leader of the Church for life. Article II provides in para (b) that the seat of the Church and its Headquarters shall be at Gandazara where the Founder is buried and the Headquarters shall also be in Harare. Article IV deals with membership of the Church and para (c) provides for the circumstances in which a member may be expelled from the Church and the procedure which must be followed. Article V provides that the affairs of the Church shall be governed and managed by the Council, which is an elected body, with the President being the head thereof. The Council shall consist of 36 elected and appointed members comprising the President, the Secretary, the Treasurer, the Assistant Treasurer, Priests and evangelists. Article VI provides for the office-bearers. In terms of para (a) the office-bearers are the President, the Deputy President, the Secretary, the Secretary-General, the Treasurer, the Assistant Treasurer and members elected by the Church. Paragraph (b) provides that all office-bearers shall be elected at a Conference and shall hold office for a period of two years until their successors are elected at the next appropriate conference. In terms of paras (c) and (d), if the office of the President becomes vacant the Deputy President shall automatically succeed to the office of the President but all other vacancies are to be filled by appointees of the Council.

Article VII deals with meetings and finance. Council meetings are referred to as Synods. The Council must have Synod annually at a venue authorised by the Deputy President, after consultation with the President. They must give at least 14 days notice of the meeting and advise where and when it will be held. The President is chairman of all meetings but, if she is not present, then the Deputy President presides. The Secretary is required to take minutes of all Synod meetings and the minutes must be confirmed by the Deputy President. In terms of para (c) the Conference consists

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of all members of the Church. The Conference must meet at least 3 times a year at a place and time to be specified by the Secretary. The President is the Chairman of all Conferences but, if she is not present, the Deputy President is the chairman. Office-bearers are elected at the Conference. The Council is required to elect at its first meeting, a Finance Committee consisting of 10 members. The Finance Committee is required to produce a final report twice annually to the Synod (even though the Council is only required to have a Synod once annually).

Article IX provides for the resignation of officer-bearers and the termination of their office. In terms of para (b), the office of an office-bearer shall automatically be terminated upon failure to attend three consecutive meetings without reasonable grounds for such absence being given to, and accepted by, the Council. Article V provides that the Constitution may be amended at Conference by a two-thirds majority of the people present and voting and such amendment shall subsequently be approved by Council.

Chivese was the first witness. He testified as follows. He is the Secretary-General. He joined the Church in 1932 when he was 10 years old. He was installed as a preacher in 1952. At that time the Church did not have a constitution. The members followed the rules set by the Founder. Before his death the Founder appointed a body or council of 7 members to govern the affairs of the Church in Zimbabwe, whilst he was spreading the gospel in other countries. Because the Church had bought a motor vehicle known as a jeep to convey the 7 members of the council around the country, the council became known as the Jeep. On the death of a member of Jeep a successor was elected by the remaining members to fill the vacancy. Kupara had been Secretary-General for about 10 years. After his death in 1989 he, Chivese, was appointed Secretary-General at a meeting at the Church premises at 140 St Patrick's Road in Hatfield. That was where the monthly meetings of the Council and the annual Conferences were held. The Council had tried to convene the Conference at Gandanzara in 1999, 2000 and 2001 but they were not successful because of the disturbances caused by the supporters of Mai Megi. Mai Megi had gone to live in Botswana in 1984 and had stayed there until 2000. She had never presided over a Conference at the Headquarters in Hatfield or over a Synod at Gandanzara. It was essential that the Synod was held at Gandanzara because it must be held at the "grave of the Founder, which is regarded by the Church as a holy place". The Founder had told his followers that they should annually, on the anniversary of his death, visit the place where he was to be buried in remembrance of him. It was very important that the followers gathered at the shrine every year. There would be prayers and then the evangelists would teach the people the rules that must be observed. They would be taught about the Founder and his teachings. The annual visit would start on 23 September and close on 4 October, because the Founder had been born on 1 October. He and some other members of the Council had gone to Botswana to speak to Mai Megi and to ask her to come to meetings of the Council in order to try to solve the problems. They had gone to Botswana three times to try to persuade Mai Megi but she would not come to Zimbabwe. She would not give any reason.

In terms of the Constitution, the seat of the Church is at Gandanzara and the Headquarters are in Hatfield. It is not possible to have meetings anywhere other than those two places. The Council members wanted Mai Megi to attend their meetings. The first time they went to see her was when she was at Gaberones. The second and third times she was at Shashi. Mai Megi had been living outside Zimbabwe for 5 years before their first visit to see her in Botswana. She never attended a Conference

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or Synod and neither did she appoint a representative to attend on her behalf. In terms of para (b)(ii) of Article IX of the Constitution, the office of an office-bearer would terminate if he or she failed to attend 3 consecutive meetings. Mai Megi had not attended any meeting for more than 5 years. She had not been excused from attending any meeting and she had not been given an indulgence to hold a meeting at any other venue.

The Conference had not met at any time to amend the Constitution. In terms of Article X of the Constitution, only the Conference can amend the Constitution. He first became aware of the alleged amendment to the Constitution in 1999. They had gone to the Rusape Police Station to tell the police that there were visitors from other countries and asked them to be hospitable towards the visitors. That is when the police told them that they had received a letter from Mai Megi saying that the Council had no authority to represent the Church. The names of the people mentioned in the draft order as being members of the Council had been members of the Council in 1999. They had not met to approve any amendment to the Constitution.

During his lifetime the Founder had told them that they were to build a temple at his grave site and a place for the sisters who would look after the temple to live in. He wanted a big building so that members of the Church could come and visit his grave once a year. He also said that they must build a house for the Jeep members and a big homestead and school for the children. A durawall must be built around the complex. The wall had been built, as well as a temporary home for the sisters. It was intended to build a bigger house to accommodate 150 sisters. Money was collected for the purpose by the Finance Committee. The Finance Committee had two bank accounts : one for the building project and the other for the general upkeep of the sisters and the various missionary duties connected with the spreading of the word of God. A South African contractor, Bert van den Heever, had been contracted to build the shrine at Gadanzara. He had been selected by Mai Megi. The Council told van den Heever that before he could start work he had to show that he was authorized by the Government to do the building and that the plans had been approved by the appropriate authorities. In addition, the area where the buildings were to be erected had to be surveyed. When the Council heard that some payments had been made to van den Heever, it sent 6 or 7 members to South Africa to find out from him whether its requirements had been met. He said that he had sent the plans to Mutare. The delegation returned to Zimbabwe. After going to Mutare and Rusape they eventually were given a copy of the plans but the plans had not been approved by the Rusape Town Council. They obtained an order from the Rusape magistrates court interdicting van den Heever from carrying on with the building work. Despite the court order, van den Heever continued with the building. They were told that Mai Megi had authorised him to do so. Mai Megi had not consulted the Council in that matter.

Chivese said that there had been a fight amongst members of the Church at Rusape. Some of the members were taken to court in Rusape over allegations of assault. There had been about 150 sisters at the shrine. About 75 were members of his faction who lived in Hatfield. There were other sisters in Nairobi. He produced lists of names of sisters whom he alleged belonged to his faction and a list of those whom he alleged belonged to Mai Megi's faction. It was the duty of the sisters, evangelists and prophets to sing and pray for the world so as to bring peace to the whole world. They had been tasked by the Founder to visit another 7 countries, and so far they had visited only 3. It was a very big task and if they failed, there would

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be no blessings from God. The sisters were complaining about the division in the Church, saying that it prevented them from carrying out God's work. The congregations were also worried about the division. The Register of Members showed that there was a total of 33473 members in 6 countries. It was the duty of the Council to bring unity to the Church so that the congregations can pray for the blessings propounded by the Founder. All the members who supported the Council abide by the Constitution. By letter dated 23 August 1999, Mai Megi invited each Council member to appear before a disciplinary committee in Botswana on 17 September 1999. They did not attend because she did not have the power to convene such a meeting without the authority of the Council. Later Mai Megi purported to suspend the Council members. However, that suspension was improper. 27 members of the Council signed a resolution declaring the suspension to be of no force and effect.

Subsequently, on 17 May, 2000 he had signed a letter in which the Council invited Mai Megi to attend a disciplinary hearing. There were 8 charges against her, being : from 1994 she had failed to attend meetings for 7 years; she had entered into a \$14 million contract for the construction of the buildings at the shrine without Council approval; in 1999 she had unlawfully changed the funds collection venue from Hatfield to Gandanzara; she had not accounted to the Council for monies collected at Gandanzara; she had unlawfully authorised Bert van den Heever to withdraw money from the Church bank account without Council approval; she had unlawfully sought to convene disciplinary hearings against Council members and to expel them; she had secretly and unlawfully sought to amend the Constitution; she had acted in a manner divisive to Church members and in a manner which brings the Church into disrepute. Mai Megi did not attend the hearing.

Mai Megi returned to Zimbabwe in 2001. A Synod meeting was convened at Gandanzara but it was not successful. Mai Megi had caused the police to set up a roadblock and only those members who had a letter from her were allowed to pass and visit the shrine. Members of the Council faction had to sleep outside. Mai Megi saw them when she was on her way to the shrine and sent the police to chase them away. A Synod had been held at Gandanzara in 2000, after the Council members had been suspended. Members of the two factions had prayed separately. Members of the Council faction had not been able to visit the shrine.

The Council wrote to Mai Megi, inviting her to a meeting at Hatfield to discuss the various issues. She said that she would not talk to people who had been suspended. In 1999, after the Council members had been given their letters of suspension, they and their followers had not been able to pray peacefully at Gandanzara. Whilst they were at the shrine Amos Kabisi had obtained a peace order which ordered that they be evicted from the shrine. Most of the Council members appeared on the list of those to be evicted. The Council decided to relieve Mai Megi of her position as President because she was not abiding by the Constitution. She was found guilty of all the 8 charges levelled against her. The Council was acting in terms of the Constitution. Sister Eni Manyati, the Deputy President, assumed the office of President. Mai Megi was not suspended or expelled from the Church.

Chivese was subjected to a very lengthy and rigorous cross-examination, in the course of which he made the following responses. He became acting Secretary-General on 30 April 1999 and was elected Secretary-General by the Council on 30 December 1999. He had become a Council member in 1984. The resolution of the Council on 30 April 1999 (Exhibit 8) had been signed by him, in his capacity as Secretary-

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General. He had made a mistake when he said he had become Acting Secretary-General on 30 April. He had been appointed Acting Secretary-General in 1998 when Kupara was ill. When a Council member died the Council would appoint someone to fill the vacancy. According to the Constitution, elections for Council members should be held every two years but that was not happening. An election was held soon after the Constitution was adopted but he could not remember any subsequent election. All those who were Council members in 1999 had been elected before 1997. He had been on the Council for 9 years and had never been re-elected. Once a member was elected to the Council he remained a member until he died. There were some office-bearers who were not members of Council. Eni Manyati was a member of Council and was also Vice-President. The President was supposed to attend Council meetings because she was the chairperson. All office-bearers, other than the President, must be re-elected every 2 years. After the Constitution was adopted all the Council members were elected at the Conference. Their election was not confirmed at the Synod. After the initial election, whenever a member died the Council would appoint someone to fill the vacancy. The Council resolutions (Exhibits 5 & 9) were signed by him, purportedly as Acting Secretary-General but that was a mistake because he was Secretary-General at the time.

The amendment to the Constitution filed at the Deeds Registry on 7 February 1992 was null and void because it had not been approved by the Council. The first time he had known that there was any amendment to the Constitution was when it was shown to him by the police at Rusape in 1999. He and some other Council members had gone to Botswana to see Mai Megi. The first visit was to Gaberones. Although he was cited as the plaintiff, he was not bringing this action in his personal capacity. He is representing the Council. It was the Council that had instructed him.

In re-examination Chivese said that there were 7 members of the Jeep. They and the 29 elected members constituted the Council. The Jeep is the Supreme Council which rules the Church. The Founder had said that Mai Megi is the overall leader of all the sisters. In disciplinary matters the Jeep is superior to the President. It is an accepted convention in the Church that the Jeep is supreme.

The next witness was Shadreck Magudu who testified as follows. He has been a member of the Church since his birth in 1946. The original members of the Jeep were appointed by the Founder. They were to lead the Church. They were responsible for the administration of the Church and had authority over all the sisters. Mai Megi is the head sister. If she is unable to settle any issue concerning any of the sisters she must refer it to the Jeep. She has no authority to discipline any member of the Jeep, but the Jeep has authority to discipline her. Of the 36 Council members, the 7 Jeep members were appointed by the Founder and the other 29 are elected. The Jeep selects those who are to be elected, then it calls a meeting of Church members and they elect the person selected. That is the manner in which he was elected to the Council in 1997. He is a pastor and he was elected to be responsible for external affairs of the Church. The Council has many responsibilities. The Jeep was not satisfied with the arrangements Mai Megi made for the construction of the buildings at Gandanzara. They wanted to see the contract signed with van den Heever and the certified plan and to ascertain the cost. They also wanted to know if he had a work permit. They invited van den Heever to come to Harare to sign the contract, but he said he did not recognise the Council, only the council in South Africa, when in fact there was no other council in South Africa. There was no electoral process outside Zimbabwe. Mai Megi had appointed a committee to oversee the construction of the

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buildings at Gandanzara but she had no authority to do so. Only the Council or the Jeep had that authority.

Collections for the construction of the buildings were being taken at Gandanzara when they should be taken at Hatfield. That is why these proceedings were instituted. Disciplinary powers were vested in the Jeep. Mai Megi had no authority to suspend any member. A Synod was held every year at a venue authorized by the Deputy President. They were always held at Gandanzara because the Founder had so decreed. Synods were never held in Botswana. Conferences were held 3 times a year at a place specified by the Secretary. Those he attended had been at Hatfield, because the Jeep had so resolved. They were never held in Botswana. Mai Megi had been outside the country from 1994 to 2001 and, during that period, had never attended a Conference or Synod. Before the death of Kupara the Council had resolved that she must be seen and so invited her to come to Zimbabwe. He was part of the delegation that went to Botswana to invite her to come back. He had attended the Conference at Gandanzara in 1999 but it was not successful because the Mai Megi faction had obtained a peace order against the Jeep members and some of the other members of the Council. There had been another Conference at Gandanzara in 2000. The two factions had kept apart and had prayed separately. Mai Megi's faction no longer took instructions from the Jeep. In 2001 there was a Conference at Gandanzara. The police put up a road block and only allowed those with a card from Mai Megi to pass.

Kupara had been Secretary-General. He died in April 1999 and Chivese took over. Chivese had been acting Secretary-General from December 1998 because Kupara was ill. He had been appointed by the Deputy President. The elders of the Council and other members were present when he was appointed. At Council meetings all the proceedings were conducted in Shona. The resolutions were also framed in Shona. After each meeting the Secretary would get the resolutions translated into English and then the English version would be read out at the next meeting. Minutes of meetings were kept.

Magudu was also subjected to a lengthy and rigorous examination, in the course of which he made the following responses. The Jeep had been in existence since 1966. The original members had been appointed by the Founder. If any member died, a replacement should be appointed by the elders, i.e. the Jeep. The Jeep had overall authority over all congregations, even those in other countries. It was accepted by all members of the Church and its authority was not challenged. At the time of the dispute between Mai Megi and Rozi Ngosi, the Jeep had supported Mai Megi and its members had testified on her behalf. The Jeep had passed a resolution that Mai Megi should be asked to return to Zimbabwe, but he did not know where the records of the Jeep minutes and resolutions were. Although the Jeep was not mentioned in the Constitution, it had been appointed before the Constitution was adopted. The tradition had been established by the Founder and they carried it on. It was the custom that anyone appointed to the Jeep remained a member for life, whereas the other 29 members of Council were re-elected every two years. Even if that was not part of the Constitution, it was a custom that was followed. Mai Megi had caused a division in the Church. The troubles started in 1996 when she refused to come back to Zimbabwe. The problems began over the construction of the buildings at Gandanzara. The Church elders in Botswana were pressing for the construction of the buildings to start, whilst the Jeep wanted to wait. The records of the proceedings of the Jeep and the Council, including their resolutions, were in the custody of the



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Secretary who has since died. He did not know where the records were. The next witness was Eni Manyati, the Vice-President, who testified as follows. She had been a member of the Church for as long as she could remember. She was one of the wives of the Founder, but was junior to Mai Megi. The women who gathered around the Founder are now called sisters. Many sisters used to stay at the shrine at Gandanzara but, because they were assaulted there, they have moved and now stay at Hatfield. There are about 150 at Hatfield. There are a number of sisters who stay with Mai Megi in Botswana and about 15 live at Gandanzara. There are also sisters in Kenya. Mai Megi was appointed leader of the sisters. She was told to look after them and lead them on their missionary journeys. The Jeep is responsible for the social well-being of the sisters. The Council is made up of two bodies. There is the Jeep, which is the Supreme Council. Then there is the other group of members who make up the Council. The Jeep, which the Founder established, still exists. If a sister commits an offence she and the President, Mai Megi, preside over the case. If the sister refuses to be disciplined by them, then the matter goes to the Jeep. Mai Megi was absent from Zimbabwe for 7 years. She had to chair the annual meetings at Gandanzara because Mai Megi did not attend. She went to Botswana three times to ask Mai Megi to come back. Mai Megi said she would but then did not come back. On one of her visits she found a lot of people at Mai Megi's house. However that did not constitute a Conference or Synod, because they could only be held in Zimbabwe. Mai Megi had purported to suspend her and then to expel her from the position of Deputy President but she had no authority to do that.

In the course of a lengthy cross-examination Eni Manyati gave the following responses. The Founder had spent more time out of Zimbabwe than in the country. He had tasked Mai Megi to go to Kenya and to stay there. Mai Megi had instructed that she and the other sisters living at Gandanzara should be evicted. She was now the President because Mai Megi had abdicated. When Mai Megi returned she could resume her position as President.

The last witness called by Chivese was Febi Chisiba who testified as follows. She had joined the Church in 1936. She had been with the Founder in Port Elizabeth, South Africa, and had moved with him to Lusaka. She is one of the sisters and is staying at Hatfield, but is normally resident in Kenya. She has come to Zimbabwe for this case. All the sisters are looked after by the Jeep. It has authority over all the congregations and all the sisters. Mai Megi is the head sister and has authority over the sisters but not over the Church. If a sister does something wrong and needs disciplining, Mai Megi and her inner council would take the necessary measures, but if the sister concerned disagreed with what was done, the matter would be taken to the Jeep. The Jeep had been appointed by the Founder. The Council is in fact the Jeep. The President cannot expel members from the Church, only the Jeep has the power to do that. She had visited the shrine at Gandanzara in 1999 with Eni Manyati and had been chased away when some of the sisters were assaulted. In 2000 she had also gone to Gandanzara with members of the Jeep and their supporters. They had not been allowed to go to the shrine at the top of the mountain to pray. Once again they had been assaulted by supporters of Mai Megi. The police had been called in.

In cross-examination Chiseba gave the following responses. The Jeep was the Supreme

Council because the Founder had said that it would be in charge after his departure, just as Jesus had left Peter and the other disciples in charge after his crucifixion. She and other sisters had approached

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Eni Manyati to express their concerns over the fact that Mai Megi would not return to Zimbabwe and had instructed that they be assaulted and chased away from Gandanzara. People had been sent to Botswana on a number of occasions to invite Mai Megi to return to Zimbabwe. She had eventually been suspended in terms of the Constitution because she had lived outside Zimbabwe for 7 years.

At the close of the plaintiff's case Mr *Samkange* applied for absolution from the instance. In view of the importance of the issues involved and the necessity to try to settle the dispute between the two factions into which the Church had been split. I considered that it was desirable to listen to both sides and to make a final determination. I accordingly dismissed the application.

Mai Megi testified as follows. She is the President of the Church. She was appointed by the Founder. She had been one of his wives. At the time of his death she was the senior wife. Rozi Ngosi had challenged the position and PITTMAN J

had declared her to be the leader of the Church. She had led the Church since the Founder died and she had drawn up the Constitution. The Constitution provides that she is President and Leader of the Church for life. There is no provision therein for her removal from office. She moved to Botswana because of her illness. She is still not well. She had been unable to attend meetings in Zimbabwe because she had been bed-ridden. She had convened meetings in Botswana which Church elders had attended. She had not denied Chivese and his followers access to the shrine at Gandanzara. It was the Church that had prohibited him because of his activities in trying to get her removed from office so that he would take over the leadership of the Church. Because of the reports she had received about the activities of Chivese and his supporters, she had written the letter dated 23 August 1999 to them, notifying them of a disciplinary hearing to be held against them in relation to allegations that they had conducted themselves in a manner considered injurious to the interests and character of the Church and the objects for which it was established. The letter advised them of the specific allegations against them and that

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there would be a hearing on 17 September. Chivese and his followers failed to attend the hearing and so, after confirming the allegations against them, she suspended them from membership of the Church. The suspension, in effect, expelled them from the Church and they are no longer members thereof.

She said that she was the one who had sourced the property in Hatfield for the Church. Chivese and his supporters were occupying the property and she wanted it back, together with all the records and other contents. The property did not belong to Chivese. There is also a house in Mutare which belongs to the Church. Chivese and his followers must also vacate that property. They were free to establish their own church but they should not use the name "Gospel of God Church International" or use the property of the Church. She had not instigated or authorised the assaults that had occurred at Gandanzara. The dispute between the parties arose out of the construction of the shrine and other buildings at Gandanzara. Chivese and his supporters did not want the shrine to be built and they held the funds that were to be used. The contractor, Bert van den Heever, had stopped work on the buildings because he was not being paid. Since she took control of the project, the work had resumed.

Mai Megi was subjected to a rigorous cross-examination in the course of which she made the following responses. She had first associated with the Founder in 1943. She believes that God spoke through him. What he said must be accepted and cannot be changed. Anyone who tries to change his teachings is removed from the Church. Various families had released their daughters into his care. They formed the sisterhood he established to spread the gospel. All the sisters were under her authority, because she is the Head Sister. It was the duty of the male members of the Church to work for the sisters and ensure that they were well cared for and fed. As Head Sister, she was the one who sent people to visit various congregations and to report back. During his lifetime the Founder established congregations in many countries, including South Africa, Zimbabwe, Zambia, Kenya, Malawi and Mozambique. The Founder had appointed someone to be in charge of each congregation. He had appointed some members, known as the Jeep council, to represent him and to control the Church but they were all now deceased. The Jeep had consisted of 7 members, appointed by him, and was set up to oversee the operations of the Church. When any member of the Jeep died someone was appointed to replace him. Until the death of Kupara in 1999, she was kept informed of what the Jeep was doing, but after his death no-one reported to her. The Constitution reflects the wishes of the Founder. The Council had to carry out its duties under her direction, as she had the duty to administer the Church. She had not expelled Eni Manyati from the Church; Eni had expelled herself by forming her own church with Chivese. She had written the letter dated 30 April 2001 addressed to Eni Manyati in which she had said that the Supreme Council of Sisters had voted that there should be two Vice-Presidents, instead of one, and that it had also decided to relieve Enni Manyati of her duties with effect from 1 May. It was felt that one person could not look after all the sisters in the absence of the President.

The last witness was Zebron Nengomashe who testified as follows. He has been a member of the Church for 64 years, as his parents were members when he was

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born. He had gone to Port Elizabeth with his parents in 1954, when he was 6 years old. The Founder had lived together with them until 1959, when he returned to Zimbabwe. His family had returned to this country in 1962. In 1968 he was appointed a preacher. After the Founder's death he was buried at Gandanzara and the first meeting was held there in 1974. The next meeting was held there in 1975. Mai Megi had returned from Kenya and it was disclosed that the Founder had appointed her to be the one in charge of the Church. Her appointment was accepted by all present. It was also resolved that the Church should be registered. The Constitution was then drawn up. There had been a dispute concerning the leadership of the Church, the two contenders being Rozi Ngosi and Mai Megi. The two factions took the matter to court and it was agreed that the losing side would join the winning side. PITTMAN J had declared that Mai Megi was the leader of the Church. He had been a member of the Rozi Ngosi faction, but joined Mai Megi after the court ruling, as had been agreed. He had later been appointed as a member of the Council.

Mai Megi had fallen ill in 1994 and had decided to go to Botswana to recuperate. In 1995 he had visited her and found that she was so ill that he thought she was going to die. After the ruling by PITTMAN J the Constitution had been drawn up. It had been accepted by members at a meeting on 25 June 1976. Council meetings had been held in Botswana and there had been Conferences convened there in 1995, 1997 and 1998. It was at the Conference in 1998 that the amendment to the Constitution had been adopted. That amendment accepted Mai Megi as the official leader of the Church and provided for the appointment and functions of a Supreme Council of Sisters. It was realised that the Constitution did not provide for a council of sisters. That was anomalous because there had been no council closer to the Founder than the council of sisters and it was felt that that should be the Supreme Council. Chivese had rebelled and would not accept the amendment. He wanted to usurp the powers of Mai Megi. The Founder had appointed 7 members to constitute a governing body, which became known as the Jeep. It was part of one of the two councils of elders that he appointed. One of the councils consisted entirely of members from Zimbabwe and the other consisted of members from all countries. At the time of the death of the Founder only 3 of the members he had appointed to the Jeep were still alive. At present, under the Constitution there is a Council consisting of 36 members. It has no powers. It merely reports to Mai Megi.

He said that one of the aims of the Church was to build a shrine where the body of the Founder was laid to rest and a big house for the sisters. In having the buildings erected at Gandanzara, Mai Megi was merely fulfilling the wishes of the Founder. She was not usurping the powers of any body. Money used to be collected at Hatfield but there was no rule to that effect. The contractor, Bert van den Heever,

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had started construction at Gandanzara on 1997 or 1998 and, by 1999, had finished the blasting work and the sewage system. Chivese and some Council members wanted to stop the building operations because they had not seen or approved the plans for the building. They appointed a legal practitioner to assist and instituted proceedings in the Rusape magistrate's court for an interdict to stop van den Heever from continuing with the construction of the buildings at Gandanzara. The action was brought in the name of the Church. The founding affidavit was deposed to by one, James Chirai Mpofo, who was a pastor in the Church and claimed to be Secretary for Foreign Affairs. The provincial magistrate was satisfied that there was a split in the Church and that Mpofo belonged to the faction which opposed Mai Megi. He found that Mpofo had no authority to represent the Church. Accordingly he dismissed the application and ordered that Mpofo, not the Church, pay the costs.

Nengomashi said that in 1999 he was elected as Deputy Secretary. He is now Secretary-General, having been elected thereto in 2001 after the previous incumbent died. Chivese and his faction were controlling several properties belonging to the Church, being the buildings at 140 St. Patrick's Road, Hatfield, a plot in Fern Valley, Mutare, a house in Entumbane, Bulawayo, and two plots in Nairobi, Kenya, together with the records and other items therein, including some vehicles and bank accounts. They should be returned to Mai Megi.

In cross-examination Nengomashi said that the amendment to the Constitution had been properly adopted by members at a meeting of the Church and had been signed by Mai Megi in 1991.

In his judgment PITTMAN J made some general observations which were applicable to nearly all the witnesses that appeared before him. He said that most were uneducated and virtually illiterate. They were pressed to answer inherently difficult questions, containing abstract expressions, which would have confused even sophisticated persons. They were asked to discuss events, many of which had occurred several years ago, and of which it was inherently unlikely that they had genuinely retained any detailed recollection. Similar observations apply in relation to the witnesses who appeared before me. They were asked questions about the Constitution and about Council meetings, Synods and Conferences and officer-bearers and who were the members of the Jeep or of Council at different times. They were also asked about resolutions that had been passed and who had proposed them. It was clear from their answers that none of the witnesses had a working knowledge of the provisions of the Constitution and the respective powers and responsibilities of the President and of the Council. PITTMAN J also pointed out that the trial before him was attended every day by an audience of between 100 and 150 members, who

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patiently listened to each witness with intense interest. He said that many of the witnesses were very conscious of the attention being paid to them, and could not resist the temptation to behave more theatrically than they might otherwise have. In the trial before me there were between 300 and 400 members of the Church present in court each day. They listened quietly and with great interest to what each witness was saying. Each witness must have been very conscious of the audience and would have felt constrained to play to the gallery, giving answers which would be acceptable to, and appreciated by, members of the faction to which he or she belonged.

As mentioned earlier, this action was initiated in the name of the Church. Because it started as a court application, a founding affidavit was filed. The deponent was Chivese, in his capacity as Secretary-General of the Council. He claimed that he was authorised, by resolution of the Council, to act on behalf of the Church. No such resolution was filed with the application, nor was one produced by Chivese when he gave evidence, despite being pressed by Mr *Samkangeto* produce the resolution and he agreeing that one would be produced. Because of the failure on the part of Chivese to file the necessary resolution prior to the commencement of the trial, I upheld the submissions by Mr *Samkangeth* that Chivese had no *locus standi* to represent the Church and, accordingly, Mr *Matinenga* applied for Chivese to be substituted as plaintiff. Mr *Samkangeth* then submitted that Chivese had no *locus standi* to institute these proceedings even in his own name. In *Mtshali v Mtambo & Anor* 1962(3) SA 469 (G) the court was dealing with a case where a member of a church, on discovering that the respondents had called an annual conference of the church, which they had no authority to do, applied, *inter alia*, for an order declaring that the holding of the meeting was unlawful. The issue of the *locus standi* of the applicant was raised. DE VOS HUGO J considered that the decision in the case of *Louvis & Ors v Oiconomos & Ors* 1917 TPD 465, answered the argument that the applicant had no *locus standi*. At p 474-475 he set out the facts in that case which were that a sharp division had arisen in the church between the priest and some followers on one hand and a committee formed for the purpose of looking after the temporal affairs of the church on the other hand. Matters had come to a head when the committee closed the doors of the church. The priest and some of the members obtained an interdict against the committee. The matter went on appeal and the point was taken that all the members of the church should have been before the court. The learned judge said -

"Dealing with this point DE VILLIERS, JP, said at p 474:

"To my mind this argument is based on the fallacy that here there is a proceeding in contract and not in tort. But the complaint here is not breach of contract. The rights which the applicants claim were not granted to them by the other side under a contract. What they complain of is a wrong, a delict which has been committed by the

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members of the committee. Each individual member of the community, therefore, who complains of the delict is entitled to proceed against those persons who are directly responsible for the delict'.

WESSELS, J, stated his view of the matter on pp. 475-6 in the following terms:

'That committee had no right whatever to turn anyone out of the Church who came to worship there, and had no right to turn the priest out. Therefore if they shut the doors of the Church they were wronging the individuals and they were wronging the priest. They are committing a tort against these persons and the applicants have a right to invoke the aid of the Court to open the doors of the Church, to allow the priest to officiate and to allow them to participate in the worship.

That is, to my mind, the simple legal position of affairs here'.

The Court thereupon proceeded to hold that what the members of the Committee did was not *intra vires* their powers and dismissed the appeal. In *de Waal and Others v van der Horst and Others*, 1918 TPD 277 at p 284, it was also held that a member of a church had *locus standi* to sue, and in *van Rensburg and Others v Afrikaanse Taal- en Kultuurvereniging*, (SAS & H), 1941 CPD 179 at p 184, it was held that a member of an association also has *locus standi in judicio* to protect his rights."

In my opinion Chivese has the necessary *locus standi* to institute these proceedings. He has been a member of the Church for many years. Mai Megi has purported to suspend him and to evict him from the Church. He is entitled to come to Court to protect his interests.

The sharp division in the Church has arisen because of the divergence of views between Mai Megi, as President, and Chivese, as Secretary-General of the Council, together with other members of the Council with regard to the buildings that were to be erected at Gandanzara, where the body of the Founder has been buried. That site is held sacred by members of the Church, it is part of their faith that they must go to the shrine every year on the anniversary of the death of the Founder in order to pray. Mai Megi and her followers considered that Chivese and his colleagues were collecting donations at Hatfield for the construction of the buildings but not using the money for that purpose. Accordingly she instructed that monies for the shrine were to be collected at Gandanzara, and subsequently she appointed Bert van den Heever, a South African contractor, to go ahead with the construction of the buildings. Chivese and his colleagues tried to stop the construction, by way of

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proceedings in the Rusape Magistrates Court, but without success. When Chivese and his followers went to Gandanzara to pray at the shrine, the followers of Mai Megi tried to stop them. That resulted in some fighting and the police were called in. Mai Megi then instituted disciplinary proceedings in Botswana. Chivese and other members of the Council refused to attend the proceedings and were then suspended and evicted from the Church. In order to protect their position, Chivese and some other Council members then summoned Mai Megi to appear before the Council in this country to answer charges levelled against her. She too refused to attend and was then suspended and removed from the position of President. The Deputy President, Eni Manyati, was appointed President.

Chivese is seeking an order declaring that Mai Megi is no longer President and that Eni Manyati holds that office; that members of Mai Megi's faction should relinquish control of the buildings and shrine at Gandanzara; that control and management of the Church's affairs vests in the Council, whose members include the persons specified in the draft order filed; that the Zimbabwe Republic Police recognises the Council as the controlling body at Gandanzara that the purported amendment to the Constitution is null and void. In order to determine the issues it is necessary to analyse the Constitution. That is not an easy task since the Constitution and the purported amendment are both very poorly drafted. However an attempt must be made. As DE VILLIERS JP said in *Kahnv Louw N.O. & Anor* 1951 (2) SA 194 (C) at 211-212-

"The Constitution of a voluntary organisation is the charter of the organisation, expressing and regulating the rights and obligations of each member thereof. In relation to that organisation, to the constitution of which he has subscribed, he is no longer a free and unfettered individual : he is a member bound by his agreement, and to that extent has surrendered his private individuality. Were it not so, the constitution would not be worth the paper it was written on; and the proceedings and activities of the organisation would be attended by embarrassment and chaos."

In **Bamford's** The Law of Partnership and Voluntary Association in South Africa 3 ed at p 133 the learned author states that the constitution of a voluntary association will normally be construed benevolently. However, a power may not be exercised, for example by a committee, which has not



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expressly or impliedly been granted by the constitution.

The main issue in this dispute is whether or not the Council has the authority to remove Mai Megi from the office of President. In Article I of the Constitution the term President is defined as meaning the leader of the Church for life. That seems to be a clear, simple and unequivocal statement. Article VI (a) specifies that the office-bearers of the Church shall consist of the President, the Deputy President and other holders of office. Clearly, therefore, the President is an office-bearer, which is what one would expect. Paragraph (b) provides that all office-bearers shall be elected at a Conference and shall hold office for a period of two years. However, none of the witnesses considered that this provision applied to Mai Megi. She has been President since the judgment of PITTMAN J was handed down in 1979 and there has never been any suggestion that she should be re-elected at two-year intervals. Article IX (b) provides that the office of an office-bearer shall automatically be terminated upon failure to attend 3 consecutive meetings without reasonable grounds for such absence. That was one of the grounds on which the Council purported to remove Mai Megi from office.

As I have pointed out, the Constitution provides that the President is an office-bearer. However, it is stated unequivocally that the President is the leader of the Church for life. It appears to me that that is one of the basic tenets of the Constitution. Obviously that is why no-one has complained that she was not re-elected at 2-year intervals. Even the Council has not attempted to hold that she ceased to be President 2 years after she assumed office because she was not re-elected at the next appropriate Conference. If the provision concerning the 2-year term of office is deemed not to be applicable to the President, then it seems to me that Article IX (b) dealing with termination of office likewise does not apply. It is significant, to

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my mind, that paras (a)(ii) and (c)(iii) of Article VII provide that the President shall be chairman of all meetings and Conferences but, if she is not present, the Deputy President shall be chairman. Such a provision is inconsistent with the requirement that an office-bearer loses his or her office if he or she fails to attend 3 consecutive meetings without reasonable grounds.

If the holder of the office of President cannot be removed from office because of failure to attend 3 consecutive meetings, it follows that the Council may not remove the holder of such office on the grounds specified in sub-para (iii) of para (b). That sub-paragraph provides that an office-bearer may be removed from office if he or she has been guilty of conduct calculated to bring the Church, its interests and purposes into disrepute or if there has been gross impropriety in the conduct of the duties of the member "which impropriety would include but not be limited to misappropriation of the Church's assets or conduct and interests of the Church". (It is difficult to understand why the words "conduct and interests of the Church" were inserted. They are meaningless in the context). The allegations levelled against Mai Megi, other than failure to attend meetings, were - entering into the contract to construct the buildings at Gandanzara without Council approval; unlawfully changing the venue for the collection of funds; not accounting for monies collected after the change of venue; unlawfully authorizing Bert van den Heever to withdraw funds from the Church's bank account; unlawfully convening disciplinary hearings and expelling or suspending members; secretly and unlawfully seeking to amend the Constitution; acting in a manner divisive to Church members and in a manner which brings the Church into disrepute. The sub-paragraph provides that the finding that the member concerned has been guilty of conduct calculated to bring the Church into disrepute or of gross impropriety must be made by a simple majority of the Council present at a duly convened meeting.

In support of his contention that Mai Megi had been removed from office, Chivese produced three documents purporting to be resolutions of the Council. The first (exhibit 5) purports to be a resolution resolved at a Conference held at Hatfield on 12 December 1999. It states that Mai Megi has spent 5 years out of the country and would not return, even though she was called 6 times. Accordingly it was resolved to suspend her until she returns to Zimbabwe. Chivese says that the resolution was signed by himself and 20 other members of the Council. The second (exhibit 6) purports to be a Council resolution. It is not dated. It notes that Mai Megi had, for the past 7 years, failed to attend meetings of the Council without reasonable cause; without the approval of the Council entered into a multi-million dollar contract on behalf of the Church; unlawfully changed the venue for the collection of funds; unlawfully authorised third parties to withdraw money from the Church account; not accounted to the third parties to withdraw money from the Church account; not accounted

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to the Council for monies collected at Gandanzara or withdrawn from the account; unlawfully sought to convene disciplinary hearings; proposed to amend the Constitution without complying with the provisions of the Constitution. The Council therefore resolved that Mai Megi be relieved of her office as President. There are 23 signatures at the bottom of the form. Chivese said that he was one of the signatories and the others were Council members. The third (exhibit 7) purports to be the minutes of a meeting held at the Church's headquarters at 140 St Patrick's Road, Hatfield, on 9 June, 2002. It lists the names of 26 members as being present, Chivese being one of them. It stated that the Council found her guilty of all 8 offences she was charged with and therefore unanimously agreed that she had been relieved of the leadership of the Church with effect from that date. One of the offences was that Mai Megi had not come to the meeting on 9 June 2000. The offences of which she was found guilty were similar to, but not the same as, those with which she was charged. For instance she was charged with entering in a \$14 million dollar contract for the construction of a building but she was found guilty of building a house valued at \$140 000.

There is no evidence, either on the documents or from any witness, that the first two resolutions were passed by a simple majority of the Council members present. There is no explanation why the Council felt it necessary to pass two separate resolutions relieving Mai Megi of her office as President. There is no evidence that when the Council, at its meeting on 9 June, 2000, found Mai Megi guilty of the offences specified it considered that the offences constituted either conduct calculated to bring the Church into disrepute or a gross impropriety in the conduct of her duties. It was necessary for the Council to make such a finding before it could terminate her office in terms of Article IX (b)(iii) of the Constitution.

For the reasons set out above, I am of the view that the Council had no authority or power under the Constitution to remove Mai Megi from office. Even if it did have such authority, the power to do so was not exercised properly. It is clear that Mai Megi was appointed as President and leader of the Church because she was the senior surviving spouse of the Founder. She was chosen because of her relationship to the Founder. The Constitution that was subsequently adopted specifically provided that the President would be the Leader of the Church for life. From the evidence given before the Court it is clear that the followers of the Founder exalted and revered him. They believed that he was a prophet sent by God to Zimbabwe, that God spoke through him and that whatever he said must be respected and obeyed without change. For instance, because he had appointed the Jeep to run the affairs of the Church, they believed that the Jeep retained that authority forever and a day, notwithstanding that it is not even mentioned in the Constitution.

Since I have found that the purported removal from office of Mai Megi was unconstitutional, it follows that she is still President. Consequently, I cannot order that the members who are acting on her behalf and on her instructions at Gandanzara are interdicted from continuing to do so. It also follows that I cannot order that Eni

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Manyati is now the President.

As mentioned earlier, Chivese is seeking an order that the control and management of the affairs of the Church are vested in the Council whose members include himself, Eni Manyati and 24 others. Although Chivese mentioned some of them as being members of Council, no evidence was led in relation to each particular person to show that he was elected to Council and, more importantly, when he was elected. The date of election is, to my mind, of importance. Chivese testified that he was elected as Secretary-General in 1999 and had been an elected member of Council before that date. He also testified that after his election to such posts he was never re-elected. Article VI (a) of the Constitution provides that the office-bearers of the Church shall consist of the President, the Deputy President, the Secretary, the Secretary-General, the Treasurer, the Assistant Treasurer and members elected by the Church. It seems to me that the reference to members elected by the Church must be a reference to members of Council. Therefore they are office-bearers. There are no offices mentioned in the Constitution to which members are elected by the Church, as opposed to the Council. Paragraph (b) provides that all office-bearers shall be elected at a Conference and shall hold office for a period of 2 years until their successors are elected at the next appropriate Conference. That means that Chivese is no longer Secretary-General because his term of office expired 2 years after his election to that post. Likewise, Eni Manyati is no longer Deputy President because her term of office expired 2 years after her election to that post. As regards the other persons whose names are mentioned in the draft order attached to the papers, there is no evidence as to when each was elected as a member of Council, assuming that they had been so elected, and therefore it is not possible to say that their terms of office had not expired. Moreover, the papers which initiated this action were filed on 14 September 2000. Accordingly, even if all the persons mentioned were office-bearers at that date, they would not be office-bearers now unless they were re-elected in the interim. There is no evidence to that effect.

For the reasons set out above, I cannot issue an order declaring the persons concerned to be members of the Council.

Throughout the trial reference was constantly made to the Jeep and its 7 members. That body is not mentioned in the Constitution. However, it would appear that it still runs the Church. In the document referred to earlier (Exhibit 5) recording the first resolution of the Council on 12 December 1991 that Mai Megi was suspended until she returned to Harare, it is stated -

"At the meeting the council re-affirmed that within the Supreme Council of thirty six members are the 7 member council called Jeep that is the Supreme Court was especially appointed by the founder of the church, Baba Johane in 1996 and was conferred with the authority to judge in all matters to everyone who is a member of the church including the sisters. Sister Megi Matanhire being a sister herself has no authority to act as a judge.

The suspension of a member wherein the suspension of a member is needed a column of 12 Supreme Council Members who include the 7 members of the Supreme Court have the power to suspend any member of the church, all sisters included." (*sic*)

Although the last paragraph is not grammatically correct, the import is clear. The 7 members of Jeep have paramount authority. Then, in a letter dated 2 January 2000 addressed to Mai Megi (Exhibit 9), it was said that the letter she had written in which

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she claimed that she had expelled Chivese and the entire Jeep from the Church had been read to the leadership and members of the Harare Congregation. The letter continued -

"Now we the Harare Congregation Leadership and all members of the congregation do not consent to the expulsion of the seven member council of Jeep. Nobody in the Church has the authority to expel the council of Jeep, since it was specifically appointed by the founder of the church Baba Johane. All the legislative authority and judiciary management of the congregation and the 'Ark of Sister' was vested in the council of Jeep, nationally and Internationally.

There were 450 members who gathered at the church. We therefore consider their expulsion null and void". (sic)

The letter was signed by J Mpfu who described himself as Secretary for Foreign Affairs.

These letters support the testimony of the various witnesses that it is in fact the Jeep which runs the affairs of the Church. The Founder appointed the initial 7 members of Jeep. After his death, whenever a vacancy occurred amongst the 7 members, the remaining 6 would appoint someone to fill the vacancy. Once appointed, it seems that the person remained a member for life. None of the present members were appointed by the Founder. These are the ones who complain that Mai Megi has breached the provisions of the Constitution by her failure to come to Zimbabwe for 7 or 8 years in order to preside over a Synod or Conference. Yet they continue to act as the Supreme Council even though the Jeep is not mentioned in the Constitution and therefore has no authority or power to manage the affairs of the Church.

Since I cannot issue an order declaring that the persons specified are members of the Council, I cannot issue an order directing the Zimbabwe Republic Police to recognize the Council so is constituted as being the controlling body of the Church headquarters at Gandanzara.

The last thing sought by Chivese is a declaration that the purported amendment to the Constitution filed at the Deeds Registry on 7 February 1992 be declared null and void. Chivese testified that there had been no Conference held in Zimbabwe which had approved any amendment to the Constitution. A copy of the amendment, signed by Mai Megi was filed by Chivese with his founding affidavit. There is no indication as to who made the amendment. It is merely stated that the document "is unanimously agreed upon", without saying who agreed that. The document is signed by Mai Megi. The name of Eni Manyati, described as "Deputy Head Sister", appears near the bottom of the page but her signature does not. The amendment declares that Mai Megi is the official leader of the Church and then sets up a supreme council of sisters under her. It also provides that "there should be a supreme court council of the sisters under her"; "the supreme consent of sisters and the rest of the sisters shall be known as the general council"; "all matters within the church affairs, shall be finalised by the successor who shall be appointed under the supreme council of sisters in any given matters of the church" (sic); "the elders shall be under the council of sisters such as the Pastors, the Evangelist and the Prophet and shall be the lower council"; "all financial matters shall be guided by the president and her council of sisters"; "the banking and distribution of moneys or kind, except ordered by the sisters to the elders"; "all matters of the welfare shall distributed under the instruction of the president and the

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sisters council." It is impossible to make sense of the amendments. It is not clear what the composition is of the supreme court council, the general council and the lower council, neither are the functions of any of those councils set out. It is not stated that the new councils replaced the Council established before the amendment was approved. The Constitution provides that the Council must have a Synod once annually and must appoint a Finance Committee. Which of the new councils established by the amendment will be required to carry out those functions? Which of the new councils will elect office-bearers?

In her evidence-in-chief Mai Megi did not mention the amendment to the Constitution. However, in cross-examination she was questioned about the amendment that was filed (hereinafter referred to as "Annexure E") and an amendment similarly worded which was purportedly signed by the S. Katsanyira as Secretary (hereinafter referred to as "Exhibit 11"). Below the signature of the Secretary there is a note -

"N.B. The president, the chairman and the secretary shall be responsible with the matters of church properties. No other unauthorised person shall sign property documents on behalf of the Church".

Annexure E was recorded with the Registrar of Deeds on 7 February 1992 and Exhibit 11 was filed with other papers in August 2002. It was put to Mai Megi that the amendments had been made at different times and that there were two separate amendments, she agreed. She must have made a mistake. The two versions do have some slight differences but the similarities are such they must both refer to one amendment. No two people or groups of people, acting separately and years apart from each other, could have produced such nonsensical amendments, with both having the same grammatical mistakes and *non sequiturs*. After some hesitation she said she remembered when the amendment had been made. It had been approved at a Conference in Gandanzara. She could not say why Annexure E, which had a space for Eni Manyati to sign, had not been signed by her. Katsanzira had been elected as Secretary in 1999 at a Conference in Botswana so Exhibit 11 must have been signed after his election.

Article X of the Constitution provides that the Constitution may be amended at a Conference by a two-thirds majority of the people present and voting and such amendment shall subsequently be approved by Council. In both Annexure E and Exhibit 11 it is stated that "this document is unanimously agreed upon". Clearly then it was passed by more than a two-thirds majority. There is no indication that it was

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passed at a Conference. Had the amendment been passed in 1999 or later, I would have been satisfied that it could not possibly have been approved by the Council because of the split between the President and the Jeep. If, however, it was passed in 1992 or earlier, then it is possible that the Council would have approved it because at that stage relations between the President and the Jeep were not hostile. As Annexure E was recorded at the Deeds Registry on 7 February 1992, it must have been passed before that date. Therefore, although the amendment is not very comprehensible, I am unable to say that it is null and void. It will undoubtedly give rise to many problems if it is to be implemented but I cannot declare that it shall have no effect whatsoever.

On the evidence before me I am unable to grant Chivese the order he is seeking. As there is no counter-claim filed by Mai Megi, I am unable to order Chivese and the members of his faction to restore to the President and officials of the Church possession of 11 St Patrick's Road, Hatfield and the contents thereof of and of the other properties belonging to the Church. I have found that Mai Megi is still the President and the Leader of the Church. I sincerely hope that Chivese and his faction will respect the authority of Mai Megi and return to the fold. It appears that after the judgment of PITTMAN J unity was restored to the Church. May this judgement have the same effect.

The application by Chivese is dismissed.

It is ordered that Chivese pay the costs of the respondent.

*Chivanga & Partners*, legal practitioners for applicant  
*Byron Venturas & Partners*, legal practitioners for respondent