

APOSTOLIC EJUWELL JEKENISHENI CHURCH
versus
THE INTERNATIONAL APOSTOLIC EJUWELL JEKENISHENI CHURCH
and
BISHOP SHATIRWA MAFUKIDZE
and
BAYISO CHAKANYUKA
and
MUNETSI NGWENYA
and
ANDREW MASHAMAIRE
and
CHIEF ZIMUNYA
and
MUTARE RURAL DISTRICT COUNCIL

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 6 and 14 February 2020

Civil Trial

C Ndlovu, for the Plaintiff
T Zisengwe, for the 1st-5th Defendant
No appearance for the 6th Defendant
No appearance for the 7th Defendant

MUZENDA J: On 22 May 2019, the plaintiff issued Summons against the seven (7) defendants claiming the following:

- (a) that the plaintiff be declared the legitimate legal and *bona fide* holder of a lease of a piece of land measuring seventeen (17) hectares at Garai Village, Mabiya, Chief Zimunya under Mutare Rural District Council;
 - (b) that plaintiff and its members regard and hold the said land as its sacred religious shrine;
 - (c) that 1st defendant and its members have no right or claim to the Mabiya Shrine;
 - (d) that the 2nd- 5th defendants pay the costs of this action.
- On 4 June 2019, 1st-5th defendants filed their appearance to defend the matter.

BACKGROUND

In the plaintiff's declaration, plaintiff is an Apostolic Ejuwell Jekenisheni Church, a religious and Christian Church. 1st defendant is The International Apostolic Ejuwell Jekenisheni Church, plaintiff describes 1st defendant as an off-shoot of the plaintiff. 2nd to 5th defendants are the church leaders of 1st defendant. 6th and 7th defendants were cited in their

official capacities. Sometime in 2013 Bishop Elijah Dzingai Nyikambaranda formed 1st defendant constituted by 2nd-5th defendants as its co-leaders. 1st-5th defendants registered its own constitution and from the date of 1st defendant's formation in 2013, plaintiff and 1st defendant existed as two distinct entities.

Plaintiff contends that it holds a lease with 6th defendant for a 17 hectare piece of land situated in the communal area of Chief Zimunya under Village Garai where Mabiya is situated. Plaintiff regards that place as its shrine and sacred for its religious ceremonies since 1985. After the formation of 1st defendant, 2nd-5th defendant and 1st defendant congregation incidentally also regards the same 17 hectare shrine as sacred and clash with the congregants of plaintiff during festivities. Parties ended up in court, involved the police and had had clashes pertaining to the use of the shrine.

The 1st-5th defendants filed their plea and in addition filed a counter claim. In their plea the 1st-5th defendants deny that 1st defendant is an off-shoot of plaintiff to 1st-5th defendants, it is plaintiff who is a renegade and 1st defendant is the mother church. To 1st defendant, it's the plaintiff who broke away from 1st defendant in 2018. 1st-5th defendants deny that Bishop Elijah D. Nyikambaranda did not form 1st defendant as a break-away church but that the original church only changed its name and constitution to add the word "*International*." Otherwise 1st defendant retained the same membership of the original church, as such 1st defendant is the appropriate lessee of the 17 hectares piece of land at Garai Village which is its shrine.

The plaintiff should be the organisational church body which must be barred from interfering of the shrine, not 1st defendant. The 1st defendant adds in its pleadings that it is the one which had been paying lease rentals to the 6th defendant. 1st defendant admits that parties have been both to this court as well as to the Magistrate's Court relating to the dispute over the use of the shrine during the church's festivities. 1st defendant also concedes that there have been wrangles and hostility amongst members of plaintiff and 1st defendant. It prays for a declaratory order identical to the relief being sought by the plaintiff, and that 1st defendant be declared the appropriate user of the sacred place at Garai Village.

On 7 November 2019, the minutes of the joint pre-trial conference identified two issues for trial:

- (i) between plaintiff and 1st defendant, which one is the main church or the splinter group?
- (ii) between plaintiff and 1st defendant, which one is the holder of rights of Mabiya Shrine.

These two issues constitute issues for trial and for this court to decide.

PLAINTIFF'S CASE

Plaintiff opened its case by calling Mr Gwinyai Gabriel Banganwa of House No. 983 Chikanganwa, Mutare. He was born in plaintiff church. Plaintiff and 1st defendant's congregants used to belong to one religious organisation called Jekenisheni Church stretching from 1932 until 2013 when High Priest Zabron Chitakatira had died. According to the church's norm, after the death of a leader, they have to have time to search for a new leader of the church. The witness used to be a Secretary for Mutare Centre. After the death of a leader members have to have a mourning period of a year before they choose a new leader. According to Mr Banganwa's evidence, in 2013 one Dzingai Elijah Tom Nyikambaranda returned from Botswana where he had been staying since 1957 and upon his return he went to the church and announced his intention to transform plaintiff church. His return and ordination as an Arch-bishop resulted in a dispute, dividing the congregants into two warring factions. In 2015 in July during a passover Nyikambaranda was ordained by ACCZ from Harare and in terms of the 1st defendant's constitutional provisions he was ordained as the leader of 1st defendant with a position of an Arch-bishop.

After ordination of Arch-bishop Nyikambaranda, part of the congregants refused to recognise him as a leader allegedly because of the Arch-bishop's autocratic leadership. The group approached Chief Zimunya, 7th defendant, and lodged a complaint. The faction had previously consulted the local traditional leadership but could not get assistance. The witness stated that contrary to the plaintiff's constitution, the post of Arch-bishop was new to them, the regalia had been altered, the insignia/badge given to Arch-bishop was alien to plaintiff and the very process of having ACCZ coming to ordain a church leader was foreign to plaintiff. Plaintiff's name came into being in 2009 when a new constitution was introduced and the church abandoned Jekenisheni Church name. He disagreed that plaintiff church consented to the new name by 1st defendant's title. As a result of the formation of 1st defendant some of the leadership crossed the bridge and joined 1st defendant where they were given leadership posts.

Plaintiff, according to the witness is the legitimate beneficiary of Mabiya Shrine. According to legend, High Priest Luke Mutendamambo the founder was led by the Holy Spirit to this hill in Garai Village under Chief Zimunya and was shown in a vision that the place was holy, even members of the other church denominations acknowledge the sanctity of the place. This is the place which had triggered the dispute as to who should use it during

Passover annually held in July. They have to go and worship until Jesus comes as the witness said in court. The shrine is compared to Jerusalem in Israel and the members of the church believe that they get their salvation and healing at Mabiya Shrine. Without Mabiya Shrine one cannot state that he is a member of Jekenisheni Church. The witness appeared in court to be well indoctrinated and added that even the teachings of the church centralises Mabiya Shrine.

Mabiya Centre was previously leased to Jekenisheni Church measuring 4000m². The place was identified after the church leaders had visited the village head, headman and chief. Later the church was given a lease agreement by the local authority now called Mutare Rural District Council. Given the growth of the church, the area was extended to cover an expanse of 17 hectares. The witness produced receipts in court which are marked exh 3. The lease agreement as well as the plaintiff's constitution were produced as exh 2 and 1 respectively. The witness denied the contention by the 1st defendant that plaintiff is the one which broke away from the 1st defendant.

During cross examination by Mr *Zisengwe*, for the 1st defendant, Mr Banganwa admitted that in 2015 members belonging to plaintiff and 1st defendant were present when Arch-bishop Nyikambaranda was ordained, however the factional group did not recognise him as a leader to them, he was an ordinary person, to them their leader was Phillip Chagonona. He was also asked as to how leaders were chosen and he indicated that upon the death of a leader, his deputy succeeds. He repeated that when Nyikambaranda was ordained, he was the leader of 1st defendant and as far as the witness is concerned, plaintiff and 1st defendant are two distinct church entities, he also added that that was the reason 1st defendant was holding service at a different centre when Arch-bishop Nyikambaranda summoned the leadership of plaintiff who were assembled at Mabiya Shrine to go and explain to the Arch-bishop the meaning of the two gatherings.

The 2nd witness called by plaintiff was Chief Zimunya, (Kibben Bvirindi). He is a member of Seventh Day Adventist Church, he knows both plaintiff and 1st defendant. He also knows the sacrilege of Mabiya Shrine and that plaintiff worships there. The chief allocated Mabiya place to Jekenisheni as a worship centre. When the dispute between plaintiff and 1st defendant erupted, he was accompanied by police and local legislator to go there and ordered that none of the two should use the shrine until the dispute between them had been resolved. He later on summoned Arch-bishop Nyikambaranda to his court and instructed the church leader to resolve the impasse. Arch-bishop Nyikambaranda later on reported back to chief his

unwillingness to change his council, he bade farewell to the chief and indicated to the witness that he was going to establish his own centres at Chaseyama in Chakohwa in Chipinge District, one in Mutasa and the other one in Masvingo. When the Arch-bishop died he opted to be interred at Mutasa Centre.

He also told the court that when the founder of Jekenisheni Church died his sons formed their own churches whilst originating from Mabiya Shrine. They left the shrine and established themselves in Chipinge, the other son went as far as Mozambique and established his centre in Manica province. The chief added that plaintiff and 1st defendant operate in his jurisdiction and his desire is to see peace between them if 1st defendant wishes. Its leaders are free to approach the chief and be allocated a place for worship. According to him, plaintiff is the legitimate user of the shrine, to him 1st defendant must relinquish Mabiya and find a different centre as in 2019 they held their Passover at Chaseyama.

Under cross-examination by defendant's counsel, the chief told the court that the reason he summoned Arch-bishop Nyikambaranda to his court was that the Arch-bishop was the one who had caused the violence at Mabiya Centre. Arch-bishop Nyikambaranda to the witness was the leader of 1st defendant and not leader of plaintiff.

Plaintiff then called Peter Sigauke as its witness. He resides at 3318 Domboramwari Epworth, Harare, he is now on pension. He is aged 66 years and was born in Jekenisheni Church. He was present when the plaintiff and 1st defendant separated. He was the one who spearheaded the separation and was the chairman of the splinter group. He participated in the organisation and registration of 1st defendant with the ACCZ and arranged for the drafting of 1st defendant's constitution in consultation with the ACCZ. After registration of 1st defendant Arch-bishop Nyikambaranda was ordained in 2015 as the leader of 1st defendant. He later on decided to leave 1st defendant because 1st defendant's principles had drastically deviated from those of the founding father and he went back to his roots at plaintiff.

All the three witnesses for the plaintiff impressed the court as credible witnesses who gave their evidence very well, more particularly the chief. Before he gave evidence the court was advised by both counsel to take note that the chief had been seen talking to some people belonging to plaintiff church but no details of the discussion was revealed. The court noted the observation but looking at the nature of his evidence, the court detects no bias or otherwise on the part of the chief. I will treat his evidence as untainted and basically administrative in a way. He knows the original church and the leaders who approached him

for a place to worship (by this the court infers to his predecessors) and when he became chief it was plaintiff who was worshipping at the Mabiya Shrine.

The defence opened its case by calling Bishop Shatirwa Mafukidze aged 82 years. He succeeded Arch-bishop Nyikambaranda after the latter's death. According to him the plaintiff and 1st defendant parted when Arch-bishop Nyikambaranda called for a meeting and plaintiff's group did not attend 1st defendant also worships at Mabiya Shrine on 17 July of each year. He told the court that there are however other centres belonging to 1st defendant. The witness alluded to the lease agreement produced by plaintiff as 1st defendant's as well. Although Arch-bishop Nyikambaranda was ordained the church remained united.

During cross-examination by Mr *Ndlovu* for the plaintiff, the witness clarified that these people who did not heed the call by Arch-bishop Nyikambaranda did not congregate with him. He admitted that 1st defendant has its own constitution, an Arch-bishop, a badge and could have its leader ordained by people outside the church. He refused to leave Mabiya Shrine.

The defendants then called Munetsi Ngwenya as its witness. In 1932 the Holy Spirit visited both Luke Mutendamambo and John Marange instructing them to form an apostolic church. According to the witness the dispute between plaintiff and 1st defendant commenced in 2018 on 2 March. Arch-bishop Nyikambaranda called for a convention at Chinenga but members of plaintiff rebuffed the meeting. The leader of the church sent four people to go and find out why the members had absconded. The four emissaries found plaintiff's members assembled at Mabiya holding their own convention. The witness told the court that Nyikambaranda was nominated leader among the four apostles chosen by the Holy Spirit long back in 1951 and was destined to succeed Zabron Chitakatira also blessed Nyikambaranda when the former was ill so after the death of Zabron it was logical that Nyikambaranda had to take over.

The witness stated further that 1st defendant's shrine is Mabiya. From 1970 the original church was Jekenisheni up to 2006. Mr Mutanga was the leader, he also reiterated that the lease agreement produced by the plaintiff is the lease given to the church by Mutare Rural District Council. To the witness there is no distinction between plaintiff and 1st defendant. The reason the name of the church was changed was to protect it from being claimed by the sons of the founding father. All the people agreed to the choice of Nyikambaranda as the new leader and all agreed to change the constitution and adopt the

word “*International*” to be suffixed to the existing name of the church. He pointed out that the people who broke away belong to the plaintiff.

During cross examination he denied participating in the registration and formation of 1st defendant contrary to what is indicated in 1st defendant’s summary of evidence. To him the plaintiff is still the same as in 1st defendant formation but had gone through transformation. He also blamed the chief as causing problems between plaintiff and 1st defendant.

The 1st defendant then called Andrew Mashamaire. He resides at 2020, Phase 12 Eastview, Harare. According to him the dispute between plaintiff and 1st defendant started when Arch-bishop and his council was summoned by the chief. To the witness there is no distinction between plaintiff and 1st defendant to talk about, they are one no matter what names are being used. Arch-bishop Nyikambaranda succeeded Zabron Chitakatira according to the church’s succession policy. The suffix “*International*” or prefix to 1st defendant was proposed by ACCZ to distinguish 1st defendant from previously registered churches with the name “*Jekenisheni*” he added. However besides the addition of “*International*” nothing changed, 1st defendant is the same as plaintiff. According to this witness the plaintiff is the breakaway church. 1st defendant is still paying rentals to the local authority and uses Mabiya Shrine as its centre, he concluded.

The defence witnesses relied much on the history of the church and deliberately avoided the issues in dispute as spelt out in the joint pre-trial conference minute. Maybe that was due to the questions led by their legal practitioners when they were leading their evidence. However the witnesses were evasive and argumentative when they were giving evidence, they avoided critical evidence, more particularly the effect of registration of 1st defendant relating to its identity *vis-à-vis* plaintiff. Whether by registering a new name and creating a new constitution they were still within the old traditional norm maintained previously by the leadership of plaintiff and its predecessors? The witnesses for 1st defendant chose to underscore those nagging questions and pretended as if the introduction of 1st defendant was a non-event.

APOSTOLIC EUJWELL JEKENISHENI CHURCH’S CONSTITUTION

Plaintiff’s Constitution provides that the church’s headquarters shall be at Mabiya in Zimunya Communal Lands in Mutare District and the headquarters is called “*The Regiment.*” Clause 6 of the constitution spells out the five (5) major gatherings per year and prominent among those days is 17 July, the Anniversary and Holy Communion Celebration day, after

that day the Passover is then spread to different centres and to those centres outside Zimbabwe. Clause 7 of the constitution is also important to mention dealing with the holding of an Annual Conference, this is where an Annual General Meeting for all members of the church shall be held to review the operations and laws of the church, amend and recommend any changes to the constitution.

The leader of the church is called church leader, below him is his deputy followed by the Twelve Disciples, below them are Priests and Levities, the least on the hierarchy is the General Membership. Clause 12 (b) of the constitution provides that the church leadership goes by order of hierarchy and seniority as approved by the Holy Spirit.

INTERNATIONAL APOSTOLIC EJUWELL JEKENISHENI CHURCH'S
CONSTITUTION

Clause 1 of the 1st defendant's constitution defines the name of the church, it has its Headquarters at Mabiya as well. The aims and objectives, provisions relating to Membership, creed, funds and succession are similar word by word to plaintiff's clauses. However 1st defendant's constitution introduces new clauses in clause 13 "*Roles of women*", clause 14 "*Roles of the Youth*", clause 15 "*Marriage*" clauses 16 and 17 on "*Expansion and Growth*" and on "*Amendments*" briefly spell out the factors for growth and that the constitution is open to amendments.

It is important to note that 1st defendant's constitution in clauses 13-15 creates totally new provisions as compared to the plaintiff's constitution. The clause dealing with church leadership hierarchy is not included at all. The following issues are common cause to this matter:

1. Plaintiff and 1st defendant have different constitutions and the earlier formed church is the plaintiff formed in 1932 and the 1st defendant whose constitution was introduced in 2013.
2. Currently the two; plaintiff and 1st defendant have distinct leadership, plaintiff is led by Bishop Chagonona and 1st defendant is led by Bishop Mafukidze.
3. The dispute started in 2013 when Tom Dzingai Elijah Nyikambaranda returned from Botswana after the death of Bishop Zabron Chitakatira.
4. Both church entities regard Mabiya as their shrine and refer to it in their constitutions as the headquarters of the church.

5. Both parties have irreconcilable differences relating to the way the church must be managed.
6. The lease agreement relating to Mabiya Shrine registered with the Mutare Rural District Council was initially applied for and registered in the predecessor of plaintiff, Jekenisheni Church up to now the registered name had not yet changed.
7. The receipts produced by the 1st defendant for payment of lease rentals to the local authority relates to year 2018 only.

There are two issues outlined by the parties for this court to decide:

- (a) between plaintiff and 1st defendant which is the splinter group from the main church.
- (b) who between plaintiff and 1st defendant is the legitimate holder or rights and custodian of Mabiya Shrine?

BETWEEN PLAINTIFF AND 1ST DEFENDANT WHICH IS THE SPLINTER GROUP FROM THE MAIN CHURCH?

Jekenisheni Church was formed long back in 1932 by Luke Pferredzai Mutendamambo and using that name the leadership approached traditional leaders as well as the local authority to secure a lease for Mabiya Shrine. The lease, exh 1 is still in the name of Jekenisheni, that aspect is uncontroverted. In 2009 the name of Jekenisheni was introduced is not disputed by the 1st defendant. In 2013 the 1st defendant was introduced born out of the constitution whose provisions have already been alluded to hereinabove. However of great importance to this matter 1st defendant brought in a new design to the uniform as compared to the one worn by congregants of the plaintiff church there was now a new title to the leader of the church by the name of Arch-bishop, he now wore an emblem or badge and as already highlighted in the constitution of 1st defendant there were clauses addressing women, youth and marriages, these aspects were totally alien to the plaintiff.

To quote the evidence of defendant's witnesses, Archbishop Nyikambaranda had come to transform the original church, so he was a transformational leader. Unfortunately there is no evidence led by 1st defendant to the effect plaintiff's constitution was repealed and replaced by 1st defendant, plaintiff still uses that constitution as its supreme law. There is no evidence led by 1st defendant in form of recorded minutes recorded during an Annual Meeting where the plaintiff's constitution was amended or repealed. There is virtually no connection between plaintiff's constitution *vis-à-vis* 1st defendant's.

In the matter of *Province of Central Africa vs The Diocesan Trustees of the Diocese of Harare*¹. His Lordship MALABA DCJ (as he then was) defined the word “CHURCH,”

“By a definition a church is a voluntary and unincorporated association of individuals united on the basis of an agreement to be bound in their relationship to each other by certain religious tenets and principles of worship government and discipline. The existence of a constitution is a testimony to the fact that those who are members of the church agree to be bound and guided in their behaviour as individuals or office bearers on ecclesiastical matters by the provisions of the constitution made under its authority. It is the words and actions of the individual as members and office bearers that indicate whether there is conformity with the articles of faith.” (My own emphasis).

Earlier on, on p.17 of the cyclostyled judgment, the then Learned Deputy Chief Justice stated that:

“The belief of a Christian Church must be founded in general upon Holy scriptures. What differentiates one church from another is the accepted and crystallised definition of what they hold those scriptures to contain-in other words their creed- If an association of Christians adopt one creed as the basis of their association no one can cut and carve it without altering the foundation upon which that body has been associated.”²

On the same page of the same judgment, His Lordship added:

“Great light is in fact thrown on what are the essential doctrines of a church by reference to the declarations made by those who founded it as to what their view was fundamental.”

The plaintiff took over from Jekenisheni Church founded by Luke Mutendamambo and virtually maintained the founded values through and through up to this date. Nothing materially changed except leadership of the church, when such a leader dies. The introductions of the constitution in 2009 was done by consent, that is why there was never a dispute in the plaintiff church. Indeed in 2013 Arch-Bishop Nyikambaranda introduced a new constitution which clearly defined the realm and spectrum of its congregants. As already mentioned above, 1st defendant’s constitution borrowed some clauses from plaintiff’s and 1st defendant went on to add some new clauses relating to youth, women and marriages. It is not in dispute that 1st defendant has its own constitution distinct from plaintiff.

In the *Province of Central Africa v The Diocesan Trustees for the Diocese of Harare supra*³ it was held that:

“A person who is responsible for the creation of a schism cannot be heard to say he or she has not withdrawn membership from the former church.”

I am convinced on a balance of probabilities that the conduct of the 1st defendant, the badge, the constitution it introduced as well as the new title, for its leader pointed to one

¹ SC 48/2

² See *Free Church of England v Lord Overtoun* [1904] AC 515 at 577

³ On page 37

conclusion, Arch-bishop Nyikambaranda, formed a breakaway church which he named International Apostolic Ejuwel Jekenisheni Church, distinct from the mother church, which is the plaintiff. The new constitution constitutes an agreement between its members that the faith by which all those people who choose to take up membership of the church and the standards in accordance with which they undertake to act as revealed to them by the church leaders. Plaintiff is the root, 1st defendant is an off-shoot, albeit with the church doctrine well founded upon that of the plaintiff. 1st defendant's Arch-bishop Nyikambaranda seceded from plaintiff, consecrated and enthroned by ACCZ as Archbishop of 1st defendant. I cannot accept the 1st defendant's argument that plaintiff and 1st defendant are one nor can it be said that there are factions in the church, the truth proved before me is that 1st defendant was formed as a new church by Arch-bishop Nyikambaranda and enjoys total autonomy from the plaintiff.

WHO BETWEEN PLAINTIFF AND 1ST DEFENDANT IS THE LEGITIMATE HOLDER OF RIGHTS AND CUSTODIAN OF MABIYA SHRINE

Having ruled that the 1st defendant seceded from plaintiff, this second issue smoothly, flows from the above. Plaintiff contended in its summons that when its congregants meet annually at Mabiya Shrine 1st defendants congregants also converge at the shrine and conduct their church business simultaneously with the functions of the plaintiff church. Obviously the use of the shrine by the parties at the same time had created friction and turmoil which ended in legal battles in the courts. It is true that the doctrine of the two churches is identical but the leadership is totally polarised. What is clear on paper and from evidence adduced in court by both parties is that both claim a right to be at the shrine and 1st defendant demands that plaintiff should come on its knees to beg to rejoin the 1st defendant. On the other hand the plaintiff submitted that since the 1st defendant broke away from the plaintiff, 1st defendant has no right to continue using Mabiya's Shrine.

Both parties produced receipts which were proof of payments for the lease. One of 1st defendant's receipts shows that the receipt was paid and receipted in a third party's name. 1st defendant stated that the one who paid that receipt was the payer using ecocash. However the 1st defendant did not produce receipts for 2019 and it explained that this was due to the wrangles which were going on between plaintiff and 1st defendant. Plaintiff produced 2019 receipts. The receipts produced by the parties do not help either side, in 2018 1st defendant could have paid the rentals for its leader claimed autonomy over the church. What is not clear from the evidence is, whether plaintiff also paid rentals during the same period of 2018.

However even if the 1st defendant paid the rentals, they did not change the name of lessee on the Rural District Council's papers, the name Jekenisheni still remains on the lease document. I have since ruled that it is the first defendant and its leadership which broke away from the mother church, the plaintiff. In the matter of *Province of Central Africa* case supra⁴ the Supreme Court concluded that:

"Those, however, who, as members of the congregation of the former Hervomde Church of Rustenburg, however small their number might be, have not joined the union still remain the Hervomde congregation of Rustenburg and are as such entitled to all the property and things belonging to or standing registered in the name of Hervomde Church of the Congregation of Rustenburg."

In *Zambezi Conference of Seventh Day Adventists v General Conference of Seventh Day Adventists and Another*⁵ MCNALLY JA held⁶

"These individual members who seceded from the church, even if they be a majority of the member of a particular congregation, have seceded as individuals. They cannot have a claim to property of the Seventh Day Adventist. They have formed a *universitas*, a new association of individuals. They cannot have a claim to property of the Seventh Day Adventist. It may be that, as individuals they subscribed towards the funds of the church but they did so as members. Having now founded a new *universitas* they cannot in law claim ownership of church property."

Chief Zimunya unconditionally stated in his testimony that plaintiff is the rightful church to use the Mabiya Shrine, the 1st defendant is at liberty to approach the traditional leadership and be allocated a place for its prayers and annual functions. 1st defendant is a new *universitas* and it is independent from plaintiff, it follows that there is no legal basis why the 1st defendant should go and interfere with plaintiff at Mabiya Shrine. Sons of the founder of Jekenisheni, fully conscious of the sanctity of Mabiya Shrine, broke away from Jekenisheni Church and formed their own *universitas* and established at other centres. 1st defendant ought to follow suit of such a noble move and leave the mother church with its own centre. The plaintiff has managed to prove its case on a balance of probabilities and it ought to succeed.

THE PRAYER

The court asked Mr C Ndlovu for the plaintiff to look at paragraph (b) of its prayer which reads:

"That the plaintiff and its members regard and hold the said land as its sacred religious shrine."

⁴ At p.37

⁵ 2001 (1) ZLR 160

⁶ At p. 162 D-F

Plaintiff's central reason for bringing the action to court was because of Mabiya Shrine which it regards as sacred and it is seeking a relief that the court should bar 1st defendant from interfering with its prayer sessions there. Why would a court declare a place sacred, in my view that is beyond this court's power? Only members of the plaintiff know which place is sacred or not in accordance with that church's own religious beliefs. Mr *Ndlovu* conceded and prayed that paragraph (b) of the relief be expunged from the prayer. It is a proper concession.

Accordingly the following order is granted:

1. The plaintiff is the legitimate, legal and *bona fide* holder of a lease of a piece of land measuring seventeen (17) hectares at Garai Village, Mabiya, Chief Zimunya under Mutare Rural District Council.
2. That 1st defendant and its members have no right or claim to the Mabiya Shrine.
3. That defendants jointly and severally pay the costs of this action.

Gonese & Ndlovu, plaintiff's legal practitioners
Muchineripi & Associates, defendant's legal practitioners

