

DISTRIBUTABLE: (15)

**CHURCH OF GOD OF PROPHECY (INTERNATIONAL)
V**

**1. CHURCH OF GOD PROPHECY 2. ABIGAIL MAPINGURE
(NEE NYAMHUKA) 3. DAVID MTISI 4. PIO CHIDYAMAKUNI
5. KENNEDY CHINYOWA 6. NAISON SHARA 7. MOSES
MUDAYA 8. GODFREY MATANGI 9. JOSHUA NYAMHUKA**

**SUPREME COURT OF ZIMBABWE
BHUNU JA, MATHONSI JA & CHITAKUNYE JA
HARARE, 20 JULY 2021**

S Mushonga, for the appellant
R G Zhuwarara, for the first to eighth respondents

Judgment No. SC 16/22
Civil Appeal No. SC. 600/19

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BHUNU JA: This is an appeal against the whole judgment of the High Court (the court *a quo*) sitting at Harare which dismissed the appellant's application for joinder as the fourteenth defendant on 16 January 2020 under case number HC 3499/14 (the main case). At the close of submissions by counsel we dismissed the appeal with costs and indicated that our reasons for judgment would be delivered in due course. I now proffer the reasons for the court order delivered on 20 July 2021.

BRIEF SUMMARY OF THE CASE

1. The substantive dispute between the parties in the main case before the court *a quo* has to do with succession and ownership of church property between the local church

based here in Zimbabwe and a sister church based in the United States of America. That is to say the first respondent and the appellant respectively.

2. It is common cause that sometime in 1976 the late Bishop Kenneth Nyamhuka founded and incorporated the first respondent (the church) as a *universitas* with its own Constitution. The affairs of the church are regulated by the 1979 Constitution filed of record.
3. As fate would have it, Bishop Nyamhuka fell ill and succumbed to death on 4 April 2014. Following his death a dispute arose relating to positions of leadership, possession and ownership of church property amongst the local leadership of the church cited in the main case.
4. The appellant sought to intervene and be joined to the main case on the basis that the Church is an affiliate of the appellant church which is the mother body based in America. In its founding affidavit it claimed that it is responsible for the appointment of the church's leadership and financial support. For that reason it claimed the right to appoint the church's leaders and to ownership of the disputed property. On that score it claimed that it had a direct and substantial interest to wade into the succession battles among the local membership of the church.
5. The appellant's assertions to the effect that it is the mother body of the church responsible for the succession process and ownership of the church's property was strenuously disputed by the respondents. They maintained that the church is independent of the appellant save that they share the same Christian doctrine. To that

extent they asserted that the church has the right to appoint its own leadership and has sole ownership of all its property.

THE LAW

The law on joinder of parties to judicial proceedings was eloquently articulated by MAKARAU J (as she then was) in *Burdock Investments (Private) Limited v Time Bank Limited & Ors*¹ where the learned judge had occasion to remark that:

“Before a party may be joined or may be allowed to intervene in proceedings before the court, he or she must establish a direct and substantial interest in the subject matter of the judgment. The interest must be such that the judgment cannot be carried into effect without adversely affecting the legal position of the party mis-joined and in circumstances where the defence of *res judicata* will not be raised against that party in future proceedings to protect that interest.”

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THE ISSUE FOR DETERMINATION

6. The crisp issue for determination in this appeal is whether or not the appellant discharged the *onus* of proving that it has a direct and substantial interest in the subject matter for determination in the main matter.

APPLYING THE LAW TO THE FACTS

7. The respondents produced cogent empirical documentary evidence in the form of annexures C1 and C2. The evidence shows that the appellant has affiliates in 40 African countries under the administration of its General Presbyter Masilela but Zimbabwe is not one of them.

¹ 2003 (2) ZLR 437 at p 442

8. The learned judge *a quo*'s summation which discredits appellant's claim cannot be faulted. It completely discredits the appellants' claim that the church is its affiliate. The learned Judge's sentiments at p 7 of his cyclostyled judgment bear repetition where he says:

“The Applicant (appellant) offered no explanation for the absence of Zimbabwe from the list of African countries which are, as it were, affiliated to the applicant. Counsel for it stammered at the question which related to Zimbabwe's absence from the list of countries which fall under its administration. He eventually honed (*sic*) (owned) up and stated that he did not know why Zimbabwe was not one of the countries which fall under the applicant's administration in Africa.”

9. The learned judge *a quo* found that the appellant lay dormant without asserting its purported rights for 5 years from May 2014 to June 2019. It only belatedly filed its claim for joinder in aid of the ninth respondent after he filed his plea. The ninth respondent Joshua Nyamhuka is the late bishop Kennedy Nyamhuka's son who was the appellant's acquaintance.

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DISPOSAL

10. A perusal of the parties' respective pre-trial conference memoranda shows that this is a succession battle being fought amongst the local membership of the church. The appellant is a total stranger with no real and substantial interest in the dispute among Zimbabweans. It has merely sought to dishonestly intervene in the main case to prop up its acquaintance's son.
11. It is surprising that counsel for the appellant had the temerity to approach this Court on appeal in the face of such credible damning evidence against his client. Such “Dutch”

courage can only amount to an abuse of court process.

12. Counsel for the appellant has now asked for the reasons for judgment to pave way for him to approach the Constitutional Court.
13. It is for the foregoing reasons that we dismissed the appeal with costs.

MATHONSI JA:

I agree

CHITAKUYE JA:

I Agree

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Mushonga Mutsvairo and Associates, the appellant's legal practitioners.
Danziger & Partners, the 1st to 8th respondents' legal practitioner.