

ST ENGENAS ZIONIST CHRISTIAN CHURCH

versus

MAXWELL MAHWEHWE

RISIAS CHIKATO

MICHAEL CHIKATO

SOLOMON CHIKATO

ALLETAH CHIKATO

ST ENGENAS ZIONIST CHRISTIAN CHURCH HIGH SCHOOL (ZIVAVOSE HIGH SCHOOL)

MINISTER OF PRIMARY AND SECONDARY EDUCATION (HONOURABLE PAUL MAVHIMA) N.O.

HIGH COURT OF ZIMBABWE

WAMAMBO J

MASVINGO, 26 and 29 October 2020 and 12 February, 2021

Civil Trial

B. Maruva with him J. Zuze for the plaintiff

A. Majachana for the 1st, 3rd and 4th defendants

No appearance for the 2nd, 5th and 6th defendants

WAMAMBO J: This trial involves a dispute over who is the registered owner of 5th defendant school (sometimes simply referred to as the school). As crisply put in the issue referred

to trial the issue is “Whether or not plaintiff is the registered owner of the school being 5th defendant”.

On the plaintiff’s side is one Fana Phanel Chikato and Costa Chimuka whilst a number of witnesses testified on behalf of the defendant namely Modina Mawewe, 4th defendant, 3rd defendant and lastly Cornelius Mapuranga. 1st defendant Maxwell Mahwehwe withdrew from the matter, 2nd defendant Risias Chikato now becomes 1st defendant with the rest of the defendants following thereafter. For expediency and convenience I will comment on each witness testimony as I summarise it.

Fana Phanel Chikato’s evidence can be summarised as follows:

He is the Bishop of the St Engenas Zionist Christian Church. His father J.J.C. Mawewe before him was the Minister in Charge of the same church. His father died in 1986 after constructing 5th defendant school in 1982 with the assistance of congregants and his young brothers.

The church Constitution provides that the only person who could take over the reins had to be one of his father’s biological children. The witness’ brother Gabriel Chikato took over as the leader from the father and when he died the witness took over in 2013. When the 5th defendant school was built a resolution was made that the church be named St Engenas Zionist Christian Church. Problems arose with the management of the school. The leader of the church automatically becomes the one who runs the affairs of the 5th defendant school.

The witness produced a number of exhibits namely Exhibits 1, 2, 3, 4 and 5. When the witness spoke of the Constitution he was referring to a Constitution bearing a church date stamps of 10 March 2016 and 10 February 2016. There are two Constitutions with one that appears to be referred to during the course of the trial as the original Constitution. This Constitution is titled “Constitution of the St Engenas Zion Christian Church. Attached to this Constitution is a document which is in the following terms:-

“This Minister of Zimbabwe Mr J.C.C. Mawewe was baptised in 1927 on the 5th June and this church was founded in 1924 by the late Bishop Engenas Barnabas Lekganyane who died in 1948 having nominated his son Joseph Engenas Lekganyane to succeed him as Spiritual Leader and Bishop of the church.

This Zimbabwe Minister Mr J.C.C. Mawewe decided (sic) to build F.2. in Zimbabwe so he applied to the Government.

This Zimbabwe Minister, his full names are Joni Jakopo Chikato Mawewe, R.C. No. X 10338 was approved by Ndanga T.L.A. to build a Mission under Sadunhu Musuka of Chief Ndanga.

The Mission will be starting with Form One to Form Two.

The Bible School, is to be taught at that Mission and this Mission is for everybody.”

It is to be noted that on this document wherever Zimbabwe appears it is inserted in pen and substituted for Rhodesia. Except for the insertions of Zimbabwe in long hand the rest of the document is in typed form. The document bears no signature neither does it reflect who penned it. Of note is a date stamp inscribed “St Engenas Z.C.C. Minister J.J.C. Mawere” with a Ndanga, Masvingo address. The original Constitution reflects that the church was founded in 1924 by Bishop Lekganyane who was succeeded by Bishop Joseph Engenas Lekganyane in 1949. The other Constitution is the Zimbabwean version with the church now called St Engenas Christian Church (Z.C.C.) Zivavose.

In 1982 a resolution was made to name the church St. Engenas Zionist Christian Church. When plaintiff's turn came he was made the Bishop of the church by church members and family members, and worked well with family members.

Problems arose in the management of the school (5th defendant). Plaintiff testified that he was supposed to receive 10% levy from the school funds as the responsible authority.

It is common cause that the Zimbabwean version of the church Constitution emanates or borrows strongly from the church in South Africa. If one considers the original Constitution and the Zimbabwean version the two bear a strong resemblance in their preambles and historical background. Some of the clauses are similar. The original Constitution is however much longer with 60 clauses while the Zimbabwean version only has 28 clauses.

The 1st, 3rd, 4th and 5th defendants started blocking the school entrance and pupils could not access the school buildings. Although these defendants bear a different surnames from that of the witness they are his cousins and the surnames Chikato and Mawewe are used interchangeably amongst the feuding family members.

Even the witness' father J.C.C. Mawewe bore Chikato as one of his middle names.

There were disagreements over the running of the school which is owned by the church. In 2014 the witness' registered the Zimbabwean Church Constitution as referred to earlier. The church had been operating without being registered or having a Bishop's licence. The church was only registered in response to a Government requirement for the registration of churches.

In cross examination the witness was asked about the differences in the two Constitutions among others relating to the title of Bishop.

The other witness called for the plaintiff is Costa Chimuka an Executive Chairperson of plaintiff. According to him the disputes arose because the Chikato family members want to personalise the church property. He was quick to testify that he knows of no link between plaintiff and St Engenas Zion Christian Church of South Africa. He insisted that plaintiff was founded in Zimbabwe in 1972.

The defendants once locked the headmaster's office leading to a police report. A query was sent to the Ministry of Education to clarify who the owner of Zivavose School (5th defendant) is and the response was that it is plaintiff. He was clear that the defendant cannot belong to St Engenas Zion Christian Church of South Africa as it was built in Zimbabwe by Zimbabweans.

The witness appeared to be more forceful and adamant than the first witness that there was no connection between the South African Church and the Zimbabwean one.

This assertion however does not quite resonate with the fact that plaintiff's bundle of documents contains the South African version of the Constitution. Further the document attached to that Constitution is plaintiff's basis of proving that Fana Phaniel Chikato derived his Bishopship from a lineage dating back to his father. Like most witnesses he was rather self-serving and seemed not to budge from his original stance.

The defendants called Modina Mawewe, 4th defendant, 5th defendant and Cornelius Mazorodze Mapuranga. Modina Mawewe's evidence was to the following effect – The Ndanga Branch of the St Engenas Zion Christian Church was started by four men of the Chikato family namely Jacob Phillip, Togera and Runochinja. These four men went to South Africa and joined the Zion Church. Upon their return to Zimbabwe they continued practising the South African principles of the church. The four men built 5th defendant along with other believers. The building of the school started before 1980 during the liberation struggle but was only then built up to slab level. The witness a 95 year old woman testified that she could not remember when the school

opened. 5th defendant was built in the name of the church. She opined that the school belonged to the South African version of the church and that the church leader in South Africa allowed them to build the church. She testified that the South African leader would guide on issues of new leaders of the church. Her husband was a brother to the other four brothers who went to South Africa and returned to Zimbabwe after joining the church in South Africa. She was of the view that 5th defendant belongs to the South African church but is known as the Ndanga Branch. It is to be noted that J.J.C. Mawewe's name was only mentioned by her in cross examination. The role she ascribes to him is that he became leader of the church after being ordained by the four brothers referred to earlier. The witness testified that the moulding of bricks was done by the community. She testified that from 1972 the South African church leaders would visit Zimbabwe on a number of occasions and for a few years thereafter.

After J.J.C. Mawewe's death they did not visit the church to date. 1ST, 3RD and 4th defendants are the children of the four men who built the school. Her view was the 6th defendant belongs to the Chikato family as they constructed it. In response to a follow up question in re-examination she opined that the owner of the school is the church in South Africa.

The witness though of an advanced age gave her evidence without hesitation and appeared quite alert. She is not necessarily expected to understand the concept of ownership. Her testimony reflected that although the South African church leaders were involved by visiting the local church after J.J.C. Mawewe's death they never returned.

4th defendant testified as follows:-

She began her testimony by pronouncing that she is opposed to the allegation that 5th defendant belongs to plaintiff. She gave the history of the beginnings of the church in South Africa. She appeared knowledgeable about the early history of the South African church. The witness referred to some events which took place when she was very young. She testified that the plaintiff church's Bishop was never coronated. Her evidence though rich on the South African background and roots of the church did not assist much on the question to be decided that is who is the owner of the 5th defendant.

3rd defendant introduced himself as a Pastor of the St Engenas Church. He testified that he was born in the church and is Phillip's son. There was a dispute with Fana Phaniel Chikato who formed his own church in 2014. He and others remained worshipping at Ndanga branch up to date.

The building of 5th defendant was a result of the community moulding bricks and advise from Mr Mandava a Masvingo businessman. According to him, 5th defendant is owned by the Ndanga branch of the St Engenas Zion Christian Church. In cross examination when he was question as to the proof that St Engenas Zion Christian Church as opposed to plaintiff owned the 5th defendant he referred to the Constitution. He was unable to point out the particular clause in the Constitution as he said he was not learned.

The witness appeared to be the leader of the opposing branch to that headed by Fana Phaniel Chikato. He testified that he was ordained a Pastor by the branch members.

Cornelius Mazorodze Mapuranga the Zaka RDC Chairman and Councillor testified next. He was quite verbose and started off by referring to a “bokoshindi” among the parties over the school. The word generally refers to a dispute but of a rather violent type. He testified that in 1981 he was approached by the four brothers to assist by writing a letter seeking authority to construct a school. The school was built by the family. When he was approached by the brothers they had a South African Constitution and the leader was J.J.C. Mawewe. When asked who was the owner of the school his answer was that the one who courts the woman is the one who marries the woman not the mediator. As mentioned earlier the witness was quite verbose but was able at the end of the day mention who approached him for a recommendation for the building of the school, what Constitution they had and who assisted in the building of the school. At the end he could not point out who was the owner of 5th defendant.

I have gone into some detail on the testimonies of the witnesses, because of the nature of the dispute, a dispute involving the Church and a church owned school and members of the same family. Because of the above there was a lot of emotional involvement in the witnesses’ testimonies.

Apparently at the very root of the dispute is the administration of funds at the school. The family members are fighting over who administers the school, its funds and the various posts at the institution. Who owns the school becomes of paramount importance as the owner will be able to control, direct and administer the school.

That the plaintiff has its roots in South Africa cannot be doubted. The very Constitution of plaintiff in its preface celebrates this history by tracing the founding of the church in 1924 and tracing it to J.J.C. Mawewe clearly a towering figure in the history leading up to the plaintiff’s

establishment. Witnesses may have differed on whether it was J.J.C. Mawewe who went to South Africa alone and returned to form plaintiff or if it was the four brothers who went to South Africa and returned to form the church. It however becomes clear that J.J.C. Mawewe was the leader of the church when it was established in Zimbabwe.

The evidence of Fana Phaniel Chikato that there was a Constitution as far back as 1982 which he registered in 2014 because of Government calls for the registration of churches was feebly opposed. If J.J.C. Mawewe was the Chief Minister of the Zimbabwean established church and had a Constitution was drafted as far back as 1982 then there appears to be continuity in the leadership and principles of the church.

The South African Constitution of the St Engenas Zion Christian Church has a document attached to it establishing J.C.C. Mawewe's baptism and other credentials. The said document reflects that J.J.C. Mawewe is to build a school under Chief Ndanga. A reading of this document alongside the 2014 Church Constitution establishes that among the objectives of the church are to:

“2(c) to purchase, construct school (sic) hire or acquire by way of donation or otherwise moveable or property and equipment buildings suitable for religion, educational, social and other purposes whatsoever, and to sell, let mortgage, transfer, donate or otherwise dispose of moveable and immovable property.”

Though not so elegantly expressed the above objectives include the construction of a school.

The evidence reflects that the family members and other parties assisted in the establishment and construction of 5th defendant.

Defendants' witnesses were at pains to establish another branch of the church as opposed to plaintiff. There was no Constitution produced for this particular branch. 4th defendant even refers to himself as a Pastor of this particular church. As said earlier the South African connection of the St Engenas Zion Christian Church to the parties, excluding the 6th defendant is without doubt.

The establish ownership of the South African version of the church of the 6th defendant has not been proved. The St Engenas Zion Christian Church Constitution (elsewhere referred to as the South African or original church) makes no reference to Zimbabwe (or Rhodesia as it was then). Its headquarters are given as Zion City, Moria, Pietersburg. There is no clause in the said Constitution for an establishment of other congregations outside South Africa.

The evidence adduced reflects that at the most since the death of J.C.C. Mawewe there has not been any visits by the South African leadership of the church. 3rd defendant tried to insinuate that his branch also visits the South African church. If they do it however does not prove that they are the owners of the school. Nostalgic visits to shrines at St Moria can hardly qualify the South African version of the church as the owners of 5th defendant.

In support of the contention that plaintiff owns 5th defendant is the letter by the Ministry of Primary and Secondary Education dated 9 February 2018 and the ED 16 Form authored by the Secretary for Education and Culture date stamped 4 May 2016.

Following the words of Lord Denning in *Miller v Minister of Pensions* 1947 Z ALL ER 372 at 374 the standard of proof is as follows:-

“It must carry a reasonable degree of probability but not so high as required in criminal cases. If the evidence is such that the tribunal can say ‘we think it more probable than not, the burden is discharged, but if the probabilities are equal it is not.’”

In this matter for the reasons given above I am of the view that plaintiff’s evidence is such that it is more probable than not.

I find therefore that plaintiff deserves the relief he seeks.

I note however that disputes involving religious organisations should necessarily be minimised before our courts. In the *United Church of Christ v The Revival United Church of Christ International* HH 72-19 CHIRAWU-MUGOMBA J made the following remarks which are also relevant to the instant case:

“In recent times, the courts have been inundated with disputes involving churches or religious organisations. In Christian Faith Tabernacle v Sparrows West Ministries HH 69/09 PATEL J (as he then was) poignantly observed as follows:-

“Both parties in this matter are Christian Church Organisations with specific missionary objectives. Regrettably as often happens in different times, their spiritual vision has been blurred by the material struggle for property ”-----

Plaintiff seeks costs on an attorney and client scale. There was no sufficient motivation justifying such a course. In fact the plaintiffs did not effectively pursue the prayer.

To that end I find that costs on the ordinary scale fit the circumstances of this case.

To that end I make the following order –

1. The plaintiff is declared as the sole and only responsible authority to run and administer the affairs of the 5th defendant.
2. 1st to 5th defendants to pay plaintiff's costs on the ordinary scale.

Zuze Law Chambers, plaintiff's legal practitioners

Alex F & Associates, 1st, 3rd and 4th defendants' legal practitioners