

IN THE HIGH COURT OF TANZANIA

AT MBEYA

(DC) CIVIL APPEAL NO. 28 OF 1999

(FROM DISTRICT COURT OF MBEYA, ORIGINAL

CIVIL CASE NO. 15 OF 1998

BEFORE: S.V.G. KARUA - S.R.M.)

THE CHAIRMAN - PENTECOSTAL  
CHURCH OF MBEYA ..... APPELLANT

VERSUS

1. GABRIEL BISANGWA	} ... RESPONDENTS
2. AIBROS JOHN	
3. MICHAEL JACKSON	
4. MRS. YUSUFU NYAMKUSWA	
ISAKWISA MWASILE	
ON BEHALF OF THE	
COMMITTEE MEMBERS	

JUDGEMENT

MWIPOPO, J.

This is an appeal by the Chairman of Pentecostal Church of Mbeya the appellant represented by the learned Mr. Mwakolo (Adv.) against purportedly five respondents named: 1. Gabriel Bisangwa, 2. Aibros John, 3. Michael Jackson, 4. Mrs. Yusufu Nyamkuswa and 5. Isakwisa Mwasile supposed to act on behalf of the Committee Members who are represented by the learned Mr. Naali (Adv.).

The memorandum of Appeal has wrongly included the original 3rd plaintiff Michael Jackson, the 4th plaintiff Mrs. Yusufu Nyamkuswa and the 5th plaintiff Isakwisa Mwasile whereas the trial court presided over by the learned Mr. Karua (S.R.M.) already dismissed their claims in this case against the appellant from which decision they <sup>have</sup> not appealed so far. So, this appeal then, is only against the 1st Respondent Gabriel Bisangwa and Aibros John as the second Respondent only. The rest of the names in the Memo of Appeal are thereby struck off this court's <sup>file and</sup>

register and off the written memorandum of appeal.

The trial court held that the issues framed at the start of the trial would not be resolved and made the basis of the analysis of the judgement. The reason given by the trial court for not including himself in determining the issues framed was that he was following the precedent of the case of Rev. Canon Onesmo Kashishi Vs. <sup>1</sup>Rev. John Changae: 2. Archi-Bishop of the Anglican Church in Tanzania Civil Case No. 34 of 1994 Mwanza High Court Registry (unreported) quoted in the speech of <sup>His Lordship the</sup> Chief Justice of Tanzania Francis L. Nyalali titled:-

"Hotuba ya Jaji Mkuu Francis L. Nyalali kuhusu Utatuzi wa Migogoro ya kidini Mahakamani Iliyotolewa Mbele ya Mkutano Mkuu wa Kikristo Tanzania Dodoma 9 Juni, 1999"

which speech the learned Mr. Karua (S.R.M.) quoted in full in his judgement.

The first two grounds of this appeal specifically deal with the desistance of the trial court to determine the case on the basis of the framed issues and the full citation of the Hon. Chief Justice's speech abovementioned in these words: I quote from the Memorandum of Appeal:-

- "1. That the trial court erred both in law and fact when it used the speech of His Lordship Chief Justice Nyalali as an authority to decide the suit against the defendant.
2. That the judgement of the trial court is bad in law for it has been decided out of the issues framed."

The trial court's framed issues were as follows:-

I quote them in full:-

- "1. Whether the plaintiffs are members of the Pentecostal Church of Mbeya and members of the Executive Committee.
2. Whether Reverent Jackson Mwalyego was sacked by the executive committee.
3. Whether the reinstatement of the Rev. Jackson Mwalyego was lawful.
4. Whether the constitution annexed is the constitution of the church.
5. Whether the plaintiffs were defamed and suffered damages.
6. What reliefs are the parties entitled to, if any."

Out of these 6 issues framed by the trial court the first four issues deal specifically with the religious sect of Pentecostal Church in its executive membership, powers of the executive committee in sacking their pastor Rev. Mwalyego, his reinstatement by the church chairman Rev. Nelson Shango and the proper constitution of the church. These are specific matters relating the activities and management of the religious organisation termed Mbeya Pentecostal Church.

Lordship the  
The speech of His <sup>an</sup> Lordship the Chief Justice quoted above dealt in detail exactly with the problems involving activities and management of religious organs being brought into courts for adjudication with a cited court case as <sup>an</sup> example - with its holding thereof. The cited case in His <sup>an</sup> Lordship the Chief Justice's speech was of this Court, yet to be reported, which is binding upon the trial court of Mbeya District Court/R.M.'s Court.

As such, in disposing off the first written ground of this memo of appeal I hold that the learned Mr. Karua (S.R.M.) was quite justified to quote, about two months later on 3/8/1999, the entire speech of His Lordship the Chief Justice delivered to the Meeting of the Christian Council of Tanzania at Dodoma on 9/6/1999.

In disposing off the 2nd ground of appeal I hold that the 4 above quoted framed issues No. 1 - 4 in this case at the trial court's level were similar issues as those drawn in the Mwanza High Court decision of Rev. Canon Onesmo Kashishi Vs. The Archbishop of the Anglican Church in Tanzania and Rev. John Changae as both cases are dealing with the activities of church and its management of religious and administrative affairs which should best be left to be run by the religious agencies themselves. For ease of reference the issues framed in the Mwanza cited High Court Case inter alia were:-

- "(a) A declaration that the election of the 2nd Defendant to the office of Bishop of the Diocese of Victoria Nyanza is null and void.
- (b) A declaration that the second Defendant, by his conduct, has disqualified himself from holding the office of Bishop of the Diocese of Victoria Nyanza or any other diocese in the Anglican Church.
- (c) An order compelling the 1st Defendant to use His constitutional powers and demand the resignation of the 2nd defendant as Bishop Victoria Nyanza..."

These issues when compared with those framed in this case look similar in essence and semblance.

The other two remainder framed issues in this case at the trial court which read as follows:-

"5. Whether the plaintiff's were defamed and have suffered damages.

6. What reliefs are the parties entitled to, if any"

are not religiously oriented issues, as they are based on tortious liability <sup>and</sup> / defamation. The 5th issue was properly filed before the trial court and it could only be handled by a court of law(not otherwise within the walls of the church)unless they would settle it out of court on their own free agreement. However, in this particular appeal the person to complain should have been the respondents whose claim for damages for being defamed had been dismissed by the trial court. The appellant cannot appeal on behalf of the respondents in this regard.

The third and last ground of appeal raised by the Chairman of the Pentecostal Church of Mbeya in the memorandum of appeal is that to quote it exactly as it is:-

"3. That the trial Magistrate totally misdirected himself when he directed the appellant to abide with the verdict of UMPT to which the Pentecostal Church-Mbeya is not a member and is not listed in the constitution."

This point was hotly contested by both sides through their advocates. With the terminated proceedings of the case having been done by the District Court the trial magistrate feared to leave a vacuum that would prolong the conflict which appeared to be potentially violent as indicated by these comments in the last para of the judgement of the trial court in these words:-

"However, the current conflict has potent threat to public tranquillity to which I am so concerned about. Happily enough, as an organ to which the church accepted by both parties, the UMPT resolved the dispute in favour of the plaintiff, in the course of these proceedings, after the court referred the dispute to it. The question here is whether the decision of UMPT could stand or pass the test of fairness and is endowed with sound judgement. I think, it does, because it tends to give many a reparation and spiritual restoration. I think, it could be proper, at this juncture, and I stand to be corrected, if its verdict which is incorporated in these proceedings, is backed by this court and ordained by the force of the law. The parties are accordingly directed to abide by the verdict of the UMPT. The UMPT itself shall see to it that its orders and directions are obeyed, and elections, if necessary, are conducted according to the constitution of the church. The police are, accordingly directed to assist UMPT, in carrying out its directions. It is so ordered and directed."

From the record of the trial court there are letters from both sides and from UMPT Mbeya Zone showing that during  
midway / the trial in the lower court both sides agreed to try to reconcile their differences outside the court and an order was made to that effect on 3/12/98 in these words:-

"As the parties are waiting to resolve the matter by reconciliation, and as they are obliged to submit themselves to the auspices of their National Organization, the UMPT Mbeya Zone, and as the UMPT, wishes to attempt to resolve the conflict by reconciliation, I accordingly yield to the parties wishes, and accordingly forward the parties to the patronage of Rev. Amos Makoye and their National Organization Mbeya Zone.

"The defendant, however, is directed to call a special session of the Church Executive Committee with dispatch and I and perhaps, all of us, shall oblige if this matter is finalized before Christmas.

On the circumstances I accordingly adjourn this case sine die, pending reconciliation. It is so ordered and directed."

After many meetings were done and many letters were cross written between the three parties i.e. the adversary parties and UMPT Mbeya Zone the UMPT Mbeya Zone reached a reconciliation resolution as follows, as contained in the letter with ref. UMPT/KNSK/12 of 18/3/1999:-

"Itakumbukwa kwamba shauri Na. 15/1998 ambalo lilitolewa mahakamani tarehe 3/12/1998 na kupewa uongozi wa Kanda (UMPT) na ya kwamba katika barua hiyo iliagizwa mgogoro uwe umemalizika kabla ya Krismasi 1998.

Baada ya hatua mbalimbali zilizochukuliwa kwa kufanya vikao mbalimbali vya usuluhishi, uchambuzi ulifanywa na uongozi wa Kanda (UMPT) katika kumaliza mgogoro huo.

Kwa upande wetu Kanda (UMPT) imefikia uamuzi ufuatao, kwamba ifikapo tarehe 28/3/1999 muwe mmerudi Kanisani bila masharti."

The quoted Swahili version above means that the reconciliation by UMPT could not be done by Christmas as directed by the court. Nevertheless, after many meetings etc. the Zonal UMPT had reached a resolution that by 28/3/1999 all the plaintiffs (Church members of about 40 in number) should return back to their church without any conditions.

This reconciliatory resolution was the best ever

that could be accomplished by <sup>any</sup> ~~any~~ neutral reconciliation in this face of the earth. In Shakespeare's terms the Gods too must have stood up and admired this resolution. Why? From the background of this dispute this short but brave reconciliatory resolution meant that the status quo of all the parties in the dispute should return <sup>to the norm which existed</sup> before the dispute arose, that is the Pentecostal Church of Mbeya would remain intact in physical <sup>and spiritual</sup> ~~form~~ <sup>pastorated and</sup> i.e. ~~the church~~ <sup>church</sup> premises etc. as well as in personnel, administration and congregation. All the 40 or so members of the church would have returned to their normal worshipping practices under the leadership of Rev. Shango as Chairman and Rev. Mwalyego as Secretary. All the past would have been buried aside as if nothing had happened between them. What better repentance and reconciliation before Man and God could be found than this? None, in my secular and judicial view. The loggerheads and actual disputes between them which would have been buried once and for all and blessed most likely with a common forgiveness prayer and celebrations of their church solidarity are the following:-

The initial allegation that Rev. Mwalyego had not or had dealt with a request for a loan of 30,000/= by one Yusto which loan was meant to have come from Rev. Lackson Mwanjali would have been buried and forgiven.

The action of the congregation and Executive Committee of the church to suspend Rev. Mwalyego which was done with the full participation and signature of the Chairman Rev. Nelson Shango would have been buried and forgiven.



The hypocritical action of Rev. Nelson Shango of thereafter, all alone, reinstating Rev. Jackson Mwalyego back into church leadership behind <sup>the</sup> back and joint undertaking of the Executive Committee and Congregation would have been buried and forgiven.

The action of both Rev. Shango - as Chairman and Rev. Mwalyego of ex-communicating all the 40 or so congregation from the church would have been buried and forgiven.

The expulsion of Rev. Shango by UMPT - Headquarters from being the Chairman of Mbeya Pentecostal Church would have been buried and forgiven.

The case would have been terminated from the courts and peace and tranquillity would have flowed back to the church and all its flock and pastors alike as before.

This reconciliatory resolution was accepted by the respondents but unaccepted by the appellant. In between, the trial court endorsed the reconciliation resolution and ordered it to be executed by the <sup>police</sup>. The appellant and his secretary Rev. Mwalyego were evicted from the church premises by the police by orders of the lower court. The appellant ran to this court for intervention. I ordered a temporary suspension of the eviction pending the hearing of <sup>this</sup> appeal and this is the judgement which will determine the fate of the suspended eviction.

I already indicated in my previous ruling of 19/10/99 that in this same appeal I would not deliberate on the preliminary points raised until I do so in this judgement in these words:-

"Lest we start dragging our feet, hands and brains into the very matters which will crop

up in the arguments of the appeal itself, I reserve my determination and reasons of these preliminary points which will be given in the main judgement of the appeal itself. So, for the time being we can proceed with the hearing of the main appeal."

This judgement covers the points touched upon <sup>by</sup> both sides on the preliminary points raised and argued previously.

The questions of the third point of the memo of appeal and the preliminary points raised covering the status of the Pentecostal Church of Mbeya in the UMPT and the legality of the UMPT dismissing the appellant from being the Chairman of the Pentecostal Church of Mbeya and the position of the constitutions of the Pentecostal Church of Mbeya and the UMPT and whether the Pentecostal Church of Mbeya is under UMPT or not are matters which this court is not going to deliberate upon <sup>them</sup> <sup>by doing so</sup> <sup>the court</sup> in this appeal because <sup>I</sup> will be indulging <sup>L</sup> into the activities and management of the religious organs in a suit not properly filed in this court for that purpose. This court can still deal with religious organs on matters falling within the prerogative orders of this court or on matters filed relating the infringement of the constitution of the country or legality of the laws of the country dealing with religious affairs etc. The United <sup>of Tanzania</sup> Republic/Constitution clearly provides in article 19 (2) as follows:-

"(2) Bila kuathiri Sheria zinazohusika na Jamhuri ya Muungano, kazi ya kutangaza dini, kufanya ibada na kueneza dini itakuwa ni huru na jambo la hiari ya mtu binafsi, na

shughuli na uendeshaaji wa jumua za dini zitakuwa  
nje ya shughuli za Mamlaka ya Nchi."

The underlining is mine to stress the express constitutional proscription that the activities (shughuli) and management (uendeshaaji) of religious organs shall be outside the activities of the sovereign powers of the state. Under Article 4 of the constitution the Judiciary is one of the three pillars of the Sovereign organs of the State the other two being the Executive and the Parliament. So, Article 19 (2) of the Constitution excludes the Judiciary as well as the Executive and the Parliament from meddling and running the day to day affairs of the religious organs. All the grounds of issue being raised in this appeal as well as the preliminary points raised and argued are in touch with the activities of the leaders and members of the Church of Pentecostal Mbeya into which this court can't deep its pen and hands at this stage in the way this suit was filed in court.

On the other hand, the 3rd ground of appeal touch on the reconciliation overtures ordered by the court as a result of a consent agreement reached by the adversary parties in court. Both parties were agreed that they should reconcile their differences before a specific neutral umpire the UMPT Mbeya Zone and an order of the trial court to that effect was made and acted upon by all the three parties the appellant, the respondent and the umpire UMPT Mbeya. After the umpire made his reconciliation resolution and tranquility to the parties for them to implement it for the peace / the church, which in my view was the best / ever reachable solution as explained above, - one party decided to disagree with annuities it thereby reaching to the past / and old reclamations that existed prior to the dispute being solved by reconciliation.

The quoted order of the court for the UMPT umpired resolution to be followed and implemented by force of the court and police is not an interference into religious affairs. It was an implementation of a resolution settled out of court and recorded into the court by consent of both parties. The illegality<sup>passing</sup> of the court in the resolution stems from the fair agreement by consent of both parties who were represented by advocates to call UMPT Mbeya Zone as the reconciliator of the parties. Both parties are bound to follow their own stances to have their dispute reconciled by UMPT Mbeya Zone. This is not dependent in the legality of the UMPT constitution over the Mbeya Pentecostal Church or membership of Mbeya Pentecostal Church into the UMPT etc. This is binding resolution on both parties as a result of their<sup>judicial</sup> consent agreement to have UMPT Mbeya Zone reconcile them which job was commendably done.

Therefore, this appeal is dismissed with costs. The status quo returns to the one ordered by the trial court that is the Chairman of Pentecostal Church of Mbeya who is the appellant on this case who is namely one Rev. Nelson Shango and his secretary Rev. Jackson Mwalyego are to be evicted from the church premises of the Pentecostal Church of Mbeya and to which church the rest of the congregation of 40 members or so shall return and continue with their religious activities under the supervision of UMPT Mbeya Zone until new church leaders are found. It should be made clear that the same Rev. Nelson Shango and Rev. Jackson Mwalyego should be free to contest for leadership into the church at Mbeya when that stage has been reached.


So as to give another <sup>chance</sup> ~~for~~ reconciliation to be attempted while the status quo directed above subsists I allow the following steps to be taken:

1. Since the respondents were willing to implement the reconciliatory resolution of the UMPT Mbeya Zone as explained above they are found by their agreement to implement that resolution. Since the appellant and his secretary Rev. Jackson Mwalyego were the ones not ready to implement the resolution of UMPT Mbeya they are now free and allowed to agree with it and implement it. If so, they shall indicate so to the trial court and the trial court shall order the resolution to be implemented the effects of which I have explained in detail above and I am <sup>shakespears</sup> sure ~~I~~ God's will stand up to see it and be pleased with its bravery and soundness in solving this problem.
2. To give a second chance of reconciliation at a higher level than the UMPT Mbeya Zone the appellant and Rev. Jackson Mwalyego <sup>if they want,</sup> are, ~~I~~ hereby allowed to go back to the District Court and ask for another attempt at reconciliations to be made at a higher level than before. If they do so the District Court shall convene all the two parties as well as the UMPT Mbeya Zone and direct that UMPT at National level and the

Headquarters shall deal with the reconciliation in the following manner:-  
3 of its office bearers as assigned by UMPT National level shall deal with the reconciliation together with 3 members appointed by the appellant and Rev. Jackson Mwalyego and another 3 members appointed by the respondent. The Nine members of the Reconciliation Team shall be <sup>chaired</sup> ~~by~~ by the Chairman from the UMPT among the three members of the team and a secretary <sup>shall again come</sup> ~~from the~~ same three members of UMPT National level in the team. The Mbeya Zone UMPT will not be allowed <sup>to</sup> ~~to~~ participate in the UMPT National Team. Both parties the appellant, Rev. Mwalyego and the respondents in this appeal court shall be allowed to be heard. The decision of the 9 mens Team <sup>shall</sup> ~~shall~~ be <sup>or:</sup> ~~or:~~ decided on simple majority vote and <sup>the same</sup> ~~the same~~ decision shall be filed by the reconciliation team in the trial court for execution.

Probably, these steps explained above will solve the crisis of this problem <sup>by</sup> ~~by~~ reconciliation outside the court but as executed by the court due to the binding

agreement at the trial stage that there should be a reconciliation between them.



E. L. K. MWIPOPO

JUDGE

29/11/1999

29/11/99

Coram: Hon. E.L.K. Mwipopo, J.

For Appellant: Mr. Mwakolo, Adv. - Absent

Rev. Nelson Shango - Present in person

For Respondents: Mr. Naali, Advocate - Absent

1st Resp. Gabriel Bisngwa - present in person

2nd Resp. Aibros John - Absent

3rd Resp. Michael Jackson - present in person

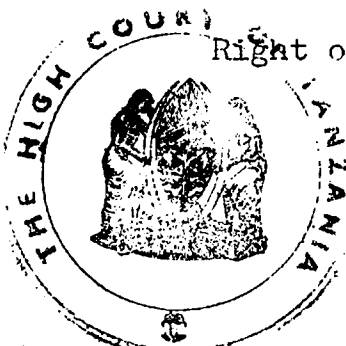
4th Resp. Mrs. Yusufu Nyamkuswa - Absent

5th Resp. Isakwisa Mwasile - present in person

Rev. Jackson Mwalyego - present in person

Both Advocates are absent.

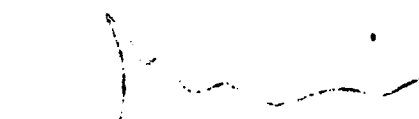
COURT: Judgement delivered in the presence of both sides and in the absence of both advocates. Also in the presence of Rev. Jackson Mwalyego. Right of Appeal is explained.



AT MBEYA

29TH NOVEMBER, 1999

ELKM/JJM



E. L. K. MWIPOPO

JUDGE