

THE APOSTOLIC FAITH MISSION OF  
PORTLAND OREGON  
(SOUTHERN AFRICAN HEADQUATERS)

versus

REV. RICHARD JOHN SIBANDA

and

JONAH MUNONDO

and

REV L.D MATEZA

and

JULIUS T MATOPE

HIGH COURT OF ZIMBABWE

DUBE J

HARARE, 9 March, 19 April 2015 and 20 May 2015

### **Opposed Application**

*T. Mpfu with N. Chamisa, for the applicant*

*T. Magwaliba with Mr Machaba, for the respondent*

DUBE J: The battle for the control of the Apostolic Faith Mission of Portland (Southern African Headquarters) Inc. rages on. The parties have for years been embroiled over control of the applicant. A grim schism has occurred in the church. With no resolution in sight, the dispute has spattered into the courts.

The brief background to this dispute goes thus. The Apostolic Faith Mission of Portland, Oregon a church corporation of the State of Oregon, USA, was established in 1906 and is headquartered in Portland, Oregon. It is headed by the Superintended General. This church organisation shall hereinafter be referred to as the Parent Church. Its main objective is to advance the word of God. In furtherance of this objective, the Apostolic Faith Mission of Portland, Oregon (Southern African Headquarters) Inc. was established in 1955. It appears that the Southern African Chapter Headquarters is located at the same premises as the church in Mpopoma, Bulawayo, and is run by the Overseer. It is a duly established Christian church organisation propounding the doctrine of Jesus Christ. Zimbabwe. Article 7 of its Constitution provides for its governance. The government of this religious organisation is vested in the Board of Directors chaired by a District Superintendent. He is chosen by the Headquarters in Portland, Oregon. He is otherwise known as the Overseer. It is common

cause that that the Southern African Chapter was at some stage led by the late Rev Freedom Sengwayo. The Board of Directors is nominated by the Southern Africa District Superintendent after consultation with and approval by the Superintendent General at International Headquarters in Oregon. The Parent Church has branches in several Southern African countries including Zimbabwe, South Africa, Botswana, Mozambique, Malawi, Namibia, Lesotho, Swaziland, Angola and Madagascar. The branches have their own constitutions designating them as branches of the Parent Church. These countries fall under the Southern African Chapter.

In this application, the applicant is the Apostolic Faith Mission of Portland Oregon; (Southern Africa) Inc. It will be interchangeably referred to as the applicant, Local Chapter, Southern African Chapter or Local Church. The first respondent is Reverend Richard John Sibanda. The Parent Church appointed him Overseer for the Southern African Chapter in June 1985. It appears that he is also the pastor of the local church in Bulawayo. The second to fourth respondents were joined to the application subsequent to the filing of this application. They are board members of the Southern African Chapter and members of the local church. The present dispute is centred on church administration, doctrine and practice. The dispute has its genesis in the existence of two choirs in the local church brought about by differences over whether the church choir should wear a uniform and dress in a particular manner. Members of the church wrote to the Parent Church over the issue. In an attempt to address the dispute, the Parent Church directed that the choirs be disbanded and be merged into one, in the spirit of unity. This directive did not find favour with the respondents. On 5 May 2004 the first respondent wrote to the main church over this resolution. The letter read in part as follows:

“During our recent board meeting with Bro Dwight Baltzell here in Zimbabwe, we warned him about the delicacy of the whole matter and the possible danger of enforcing change without harmonious and mutual agreement. He however, indicated that as soon as he got home, (USA) he would write us a letter which would be circulated to all branch churches, informing the choir members to do away with uniforms. If that ever happens, it would cause serious unrest in people’s minds and a possible split in the congregation. As the hour of rapture draws nearer and nearer, I do not wish to see the work undergoing another period of perilous confusion. It would rather be better for me to withdraw from the board and frown being overseer of the work in this part of the world. By the grace of God we feel very strongly that the best thing to do is to handle this highly sensitive issue with great care in order to avoid any further problems, confusion, possible splits and worst of all possible spiritual death among the brethren...”

In this letter, the first respondent expressed his intention to resign from the board and from being overseer if the dispute was not resolved to his liking. The first respondent did not implement the changes as directed. It was suggested that he retire from his position. When

Rev Baltzell visited with the intention of putting in place a retirement plan, members of the church were mobilised against him and the first respondent instituted legal action. On 25 May 2005, Darrel D Lee, the Superintendent General, dismissed the first respondent from the post of Southern African Overseer with effect from April 21, 2005. The reasons for this outcome were cited as disobedience, taking the leadership of the organisation to court contrary to biblical instructions and inciting violence at church meetings and services by the respondent. He was to remain an ordinary member of the church. He was ordered not to interfere with the conduct and management of all church affairs. He was also to vacate the church house he occupied and surrender the official church vehicles.

Following this development, the first respondent obtained provisional relief in terms of which he would remain overseer of the applicant under HH48\05. The provisional order was discharged on 12 October 2006. On 7 February 2008, the first respondent brought yet another application similar to the one discharged. He was granted an order in terms of which his removal from office was invalidated, unopposed. An application for rescission of the order brought by the applicant was refused. That decision was appealed against and the appeal lapsed and was deemed dismissed. The battle did not end here.

In November 2011 the head of the church visited the country and the respondent barred him from accessing the church branches and buildings and from conducting worship services. The matter spilled into the courts again with the parties agreeing to resolve their differences outside the court. In the same month the first respondent issued summons for eviction of pastors he did not agree with, from church premises. He appointed new pastors and replaced those pastors whom he perceived to be siding with the Parent Church. This development culminated in further tension in the church. On 25 January 2012, the first respondent was suspended from membership of the church by the Parent Church. The reason for this was that he had breached the canons of the church and violated spiritual doctrines by continuing to litigate against the faithful and that he had failed to submit to the authority of the church in breach of the church's Constitution. Further that his conduct had led to the creation of disharmony within the church and that he had appropriated the church's assets for his personal use. The other complaint was that he was effecting amendments to the Constitution without authority. The respondents' response was to cause their legal practitioners to write to Rev Darrel D. Lee, the Superintendent General of the Parent church based in America on 3 February 2012. The letter was written on behalf of the first respondent, the Board of Trustees, the applicant, Board of Directors, the church elders and church

members. Attached to the letter was a copy of amendments to the church Constitution. The letter written by legal practitioners for the respondents, Cheda and Partners, reads as follows,

“Dear Sir

RE APOSTOLIC FAITH MISSION OF PORTLAND OREGON UNITED STATES OF AMERICA VS REVEREND RICHARD SIBANDA AND APOSTOLIC FAITH MISSION OF PORTLAND OREGON (SOUTHERN AFRICAN HEADQUARTERS) AND THE BOARD OF TRUSTEES –CONSTITUTIONAL AMENDMENT

We refer to the above matter and advice as you may well know that we are lawyers for the Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) Inc. And the Board of Trustees of same and of course Reverend Sibanda the Overseer of the Southern Africa.;

1. The Southern African Headquarters is a legal person governed by its own constitution and we advise that the constitution was formed by the Board of Directors of Southern Africa duly convened and called for that purpose.
2. The same constitution is subject to amendment by the same Board of Directors duly convened for that particular purpose.
3. The historical relationship between Southern Africa and America was born out of historical issues of the refusal by the Colonial Government to accord indigenous people the right to preach the Gospel without external white missionaries. For the record, America and Southern Africa have a spiritual relationship; a look at the previous constitutions and your reference to the history of the church in Southern Africa will vindicate this position.
4. In our view, a look at the Amendments is not only reasonable but logical and was inevitable and on p8 are the proposed trustees chosen by the people of Southern Africa. The choice is yours, to either understand the amendments and try to build on a great relationship with Southern Africa under an affiliate status or choose to listen to people who appear to be feeding you with false information. For your information the whole Board of Directors and the Board of Elders and the Brothers and Sisters in the faith in the greater Southern Africa are prepared to proceed with the amendments of the constitution.
5. For the record, our clients collectively have decided that they will not accept the leadership from America. The Board of Directors, Elders and Church members have enough sense and intelligence to choose their own leadership. Finally the same God you serve is the same God they serve and He will give them guidance on succession issues.

May we have your response, if any within seven days?”

No response came to this letter. The letter reveals that it was written on the instructions of the first respondent, the newly formed Board of Trustees, Board of Directors, the applicant, elders and church members. The representation given is that it was the whole church that was steering the withdrawal or denunciation. The events that followed after the letter are as follows. The first respondent did not attend a disciplinary hearing to determine

charges laid against him set for 22 March 2012 resulting in his suspension from membership of the church being upheld. Rev Oniyas Z. Gumbo was appointed as Overseer in his stead. The first respondent maintains that he is still the Overseer of the applicant. The situation on the ground is that both Rev Gumbo and Sibanda claim to be Overseers of the applicant. On 22 March 2014 the respondents issued summons against Darrel Lee, the Superintendent General seeking to nullify the first respondent's suspension, nullification of Rev Gumbo's appointment and an order interdicting him from interference outside the applicant's Constitution with the operations of the applicant.

The respondents have not moved away from the applicant's church or formed a separate church. The first respondent claims to be still the Overseer when the Parent Church has appointed someone else in his place. There does not seem to be much of a relationship between the respondents and the Parent Church except for the litigation between the parties. The parties are engaged in fierce confrontation. The respondents have refused to submit to the authority of the Parent Church. A great schism has occurred.

In this application, the applicant seeks a declaration to the effect that the respondents are no longer members of the applicant and have lost rights to fellowship under the applicant or to make use of applicant's properties or amenities as well as its name. Secondly that the respondents should immediately stop and desist from making use of the applicant's name or any name which may be confused with the applicant's. Thirdly, that the respondents shall relinquish possession and use of the applicant's property.

The applicant maintains that the respondents have severed ties with the church by repudiating their positions in applicant and have seceded from the church. That the first respondent should not carryout ministerial work without valid credentials. The applicant contends that the letter of 3 February 2012 shows that the respondents will not accept leadership from America and that they will choose their own leadership. The applicant submitted that the applicant considers this as a denunciation of the authority of the Parent Church. That the respondents have severed ties with the applicant. The court was called upon to consider the effect of the declaration that the respondent no longer owes allegiance to the main church and whether the respondent has seceded from the church.

The respondents, apart from opposing the merits of this application, raised points *in limine* relating to the matter being *lis pendens* in Bulawayo, the existence of disputes of fact, the authority of Mr Gumbo to depose to the founding affidavit. These points were later abandoned after the parties agreed that the sole issue to be determined by the court was whether the respondents still have any relationship with the applicant. The parties agreed that

if it is found that there is no longer any relationship with the church, the respondents cannot make use of the applicant's assets and that's the end of the matter.

Adv. *Magwaliba* urged the court, in resolving this dispute, to have regard to the Constitution of the applicant church and the parties before it. He challenged the *locus standi* of the applicant to bring these proceedings. The respondent submitted as follows. The parties are the local AFM Church and the American or Parent church. The party before the court relying on the letter is the local church. The Parent Church is not before the court. That the party claiming that there was secession is not before the court but in proceedings pending in Bulawayo. The respondents submitted that there is recognition that the applicant is a *legal persona* which has never been part of the Parent Church except for affiliation. The application must fail because the Parent Church is not before the court and is not seeking any relief. That the party in respect of whom the alleged secession took place must be the party seeking relief. The respondents maintained that the applicant would have been able to take legal action for the relief sought if Rev Sibanda had parted ways with the local church. The respondents refute that they have seceded from the church and further that there is any letter relied on in terms of which the respondents seceded from the local church. The respondents also refute that para 5 of the letter in issue reflects that the respondents were not accepting leadership from America. They contend that the letter written by their legal practitioners is not a letter of resignation or secession but just a letter written by legal representatives of the local church. They contend further that it was a letter of protest in which they simply expressed an intention to resign. The respondents submitted that the first respondent has always conducted himself in accordance with the church Constitution. The respondents refute allegations that the first respondent amended the Constitution but contend that they sent a notice of the church Constitution amendment to the Parent Church as a mere proposal. The respondents maintained that the first respondent still continues to discharge his functions as an overseer in accordance with the church Constitution. The respondents maintain that they did not secede from the church and have not parted ways with the applicant.

The first issue raised relates to the *locus standi* of the applicant to bring this application. The applicant is prosecuting this application for and on its own behalf. The Parent Church is not part of these proceedings. The applicant claims that by denouncing the Parent Church, the respondents effectively denounced the applicant which is part and parcel of the Parent Church and hence it is entitled to bring these proceedings. Herbstein and Van Winsen in *The Practice of the High Courts of South Africa* 5<sup>th</sup> ed on p 186 says the following of *locus standi*:

“In some cases, it has been held that the applicant must have a direct and substantial interest in the relief claimed, other cases have explained that a ‘direct and substantial interest’ means a legal interest. Traditionally South African Courts adopted a restrictive attitude to this issue, requiring a person who approached the court for relief to have an interest in the sense of being personally adversely affected by the wrong alleged”.

*Locus standi* may be defined as a party’s ability to demonstrate to the court sufficient interest and connection to the action challenged or brought to support that party’s participation in the case. It is not in every case that an applicant whose *locus standi* has been challenged is required to prove a direct substantial interest in the matter. An applicant who proves that he or it stands to be adversely affected by the wrong alleged or complained against has *locus standi in judicio* with regards to that matter.

Article 1 of the Constitution of the applicant church states that the applicant “*shall be a branch of the Apostolic Faith Mission of Portland, Oregon USA, a worldwide organisation.*”

Article 5 of the same Constitution provides as follows:

“The doctrines and rules of the Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) Inc, shall be the same as the parent church in Portland, Oregon,...”.

The Constitution of the applicant reveals that the applicant is a branch of the Parent church and is affiliated to it. Being a branch of the Parent Church, it essentially is a part of it. It has the same doctrines and rules as the Parent Church. The applicant owes canonical obedience to the Parent Church. The local church is an integral part of the Parent Church. The applicant and the Parent church are part of a whole. Being a branch of the Parent Church, any denunciation of the Parent Church is necessarily a denunciation of the applicant church. An act of rebellion against the Parent Church is an act of rebellion against the its branch. Any person or splinter group which denounces a Parent Church with this sort of set up cannot remain a legitimate member of its church branch.

This dispute centres on the doctrines and rules of the Parent Church. The respondents are at loggerheads arising mainly from the existence of two choirs in the applicant, use of a uniform by the choir, the taking of legal disputes to court and litigating against faithful members of the church contrary to scripture and submission to the Parent Church. These are doctrinal disputes. The applicant’s argument is that if the respondents do not agree with the canons or doctrines of the Parent Church resulting in them instructing their legal practitioners to pen the letter in issue, they cannot continue to be members of and lead a branch or chapter of the Parent Church which follows the same doctrines they challenge or disagree with. Two people claim to be overseers of the applicant. There is need for clarity on this point. Members

of the applicant's congregation are bound to be adversely affected by this scenario. It is this court's considered view that the applicant is entitled to ask the court to decide the issue of secession of the respondents from the Parent Church as its determination will resolve the issue regarding the status of the respondents in both the applicant and the Parent Church. The applicant has a separate legal existence with capacity to sue and be sued. It can bring these proceedings. The applicant has a legal and substantial interest, though not direct in the matter. I am satisfied that the applicant is adversely affected by the wrong alleged. It is on this basis that the applicant is entitled to bring these proceedings.

As already found, the differences of the respondents with the Parent Church stem from doctrinal differences. The applicant maintains that the respondents have violated scriptural doctrine by litigating and for that matter in secular courts. I must observe that the applicant appears to have fallen foul of the same misdemeanour complained against it. It has also sought redress in the same 'secular courts'. Nonetheless, in *Corinthians 6: 1-9* the scripture says the following of church disputes:

"Dare any of you, having a matter against another, go to law before the unjust, not before the saints? Do ye not know that the saints shall judge the world? And if the world shall be judged by you, are ye unworthy to judge the smallest matters... Is it so that there is not a wise man among you? No, not one that shall be able to judge between his brethren. But brother goeth to law with brother and before the unbelievers. Now therefore there is utterly a fault among you, because ye go to law with another..."

It is this court's view that this court is at liberty to deal with church disputes for as long as its jurisdiction is not ousted. Other courts have given their views over the issue. In *Independent African Church v Maheya* 1998 (1) ZLR 552 (HC), Devittie J discusses the necessity for the development of separate church principles for the resolution of church feuds. He follows the approach adopted in settling disputes involving secession in the Presbyterian Church in America following the proliferation of independent churches after the American War of Independence in America. The judge once again, in *The Independent Church v Maheya* 2000 (1) ZLR 39 (HC), a case dealing with a claim for eviction of a spouse of a late Bishop of a church from church property once again asks whether there ought to be a separate *corpus* of principles to govern the resolution of church property disputes in Zimbabwe. He says that this arrangement would benefit the Zimbabwean Christian community. He discusses the *Watson v Jones* 80 US (13 Wall) 679 (1871), a case concerning a split into pro-slavery and anti-slavery factions in the Presbyterian Church of the United States. The facts of this case involve a minority group that claimed title to church property based on the fact that its views were more consistent with the teaching of the Presbyterian Church at the time of the Church's founding. The court in that case held that in adjudications of church property



disputes, the courts cannot rule on the truth or falsity of a religious teaching. The court in that case laid down the following principles:

- “(a) The Federal Courts are competent to enforce express terms contained in trust instruments governing the use of ownership of property. However, courts may not resolve or enquire into matters of religious doctrine in order to determine entitlement to property.
- (b) Where a dispute arises between factions of an independent congregation, ‘the right of such bodies to the use of the property must be determined by the ordinary principles which govern the association’. If the church had always governed itself by majority rule, for example, the majority faction would prevail.
- (c) Where the dispute is between a subordinate and superior bodies of a single hierarchical church organisation, and whenever the questions of discipline are of faith or ecclesiastical rule, custom or law which have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.”

Following on this case the judge finds that courts may not enquire into matters of religious doctrine. Devittie J in the *Maheya case* formulates the view that in resolving disputes involving churches, the law applicable thereto ought to be fashioned to meet the needs of Zimbabwean churches because religious associations have features which distinguish them from other associations. He calls for the need to articulate a separate body of church principles to govern church disputes for the peaceful resolution of these disputes. In *The Church of the Province of Central Africa Church*, MALABA JA seemed to be agreeing with the approach to be adopted towards doctrinal issues when he says the following:

“The court does not discuss the truth or reasonableness of any of the doctrines of the religious group. It does not decide whether any of the doctrines are or are not based on a just interpretation of the language of the Holy Scriptures. Whilst the court does not take notice of religious opinions with the view to deciding whether they are right or wrong, it might notice them as facts pointing to whether a person has withdrawn his or her membership from the church and should possess and control church property”.

I agree with these sentiments. What I view to be apposite is that when courts entertain church disputes they not go into the appropriateness or otherwise of the doctrines of the church. Identification of the doctrines will however help determine if the doctrines have been violated and further if a person or splinter group has withdrawn his or its membership from the church. Courts are encouraged to should shy away from interfering with church doctrines. It should not appear as if the courts are interfering with the independence of the church. A religiously neutral approach is called for.

The respondent has alleged that there are material disputes of fact that justify the calling of oral evidence. They allege that there is a dispute over who controls the majority

faction and that this dispute cannot be determined in the absence of evidence being led on that subject. They argue that the applicant should have come by way of action. The allegation of the existence of disputes of fact is a red herring. The applicant has simply alleged that the respondents resigned, seceded or withdrew from the Parent Church. Further, that there is a schism in the church and that the respondents have parted ways with the Parent Church. There is no issue regarding which the majority faction is. The applicant is simply saying they resigned and this assertion is based on a letter which is on record which the court must decode. This point fails.

I now turn to the merits of this application.

Prior to this letter, the relationship between the first respondent and the Parent Church had been acrimonious. The longstanding dispute started with the uniform saga. It was followed by first respondent's dismissal in 2005, the long feud involving litigation over the first respondent's dismissal as overseer and litigation against other pastors and leadership from America being denied access to church premises. The letter of 2<sup>nd</sup> February and further litigation indisputably heightened the schism already prevalent in the church.

Three words stand out as describing the respondents' conduct in applicant's case. They are that they 'Seceded', 'resigned' and caused a 'schism' in the church. The verb "secede" is borrowed from the Latin word "sece-dere" meaning an act of withdrawal. "Secede" is defined in *The Free Dictionary* asv "a formal withdrawal of membership, as from a political alliance, church, organisation, ect". *Thesaurus* defines it as follows, 'to withdraw, leave, resign, separate, retire, quit, pull-out, break with split from disaffiliate, apostatize'. The word 'secede' means the same as to withdraw or resign. A party is said to have seceded from a church or other organisation when it has severed ties, withdrawn, quit or resigned from it.

In *Bishop Jakazi and Anor v Anglican Church of the Province of Central Africa* SC 10/13 the court stated that resignation is a unilateral act which takes effect upon being communicated. See *Riva v NSSA 2002 (1) ZLR 412 (H)* at 414 A-B where the court said,

"It is common cause between parties that the giving of notice is a unilateral act; it requires no acceptance thereof or concurrence therein by the party receiving the notice, nor is such party entitled to refuse to accept such notice and to decline to act upon it. It seems to me to follow that notice once given is final and cannot be withdrawn except obviously with consent....."

See also *Muzengi v Standard Chartered Bank of Zimbabwe Ltd & Anor* 2002 (1) ZLR 334 (S)

The Supreme Court in *Church of the Province of Central Africa v Diocesan Trustees for the Diocese of Harare* SC 48/12 held that resignation is a question of fact and can be by

conduct. The court further held that where evidence shows that a person exercised his right to terminate the relationship with the church, the resignation takes effect immediately the conduct is committed and that acceptance of a resignation does not depend upon acceptance by the person to whom it is directed. The court also held that the taking of any action inconsistent with the creed of the church amounted to repudiation by the party so taking the action of their position in church. Further that a departure from the doctrinal basis upon which the church is founded amounts to repudiation.

Where a withdrawal is effected by means of a resignation, the resignation should be formal and ought to have been communicated. Once the resignation has been communicated it becomes binding on the giver unless it is withdrawn with the consent of the other party. There is no requirement that it be accepted or be responded to.

In the *Church of the Province of Central Africa case*, (*supra*), the court defined the word ‘schism’ and relied on the meaning in **The Concise Oxford Dictionary (1990)** which defines it as, ‘the separation of a church into two churches or the secession of a group owing to doctrinal, disciplinary differences’. The court in that case held that a person who has created a schism cannot be heard to say he has not withdrawn from the church.

Where a splinter group has risen in a church because of differences in doctrine resulting in a split, and one group wishes to break away from the Parent Church, that conduct amounts to a schism. A splinter group which denounces the doctrines of the church cannot insist that it has not withdrawn from it and still remains part of it.

The letter is written to the Parent Church. It includes the applicant as well as all church members as parties to the letter. The letter was written by the respondent’s legal practitioners, on clients’ instructions and on their behalf. The respondents have not denied giving those instructions to their legal practitioners. The respondents’ contention that it is their legal practitioners who wrote the letter and not the respondents themselves and hence it is not binding on them is preposterous. Who better than the respondent’s own legal practitioners to have communicated the resignation? It is their letter and the respondents own the contents therein. Where a legal practitioner tenders a resignation on behalf of his client and he communicates it, that resignation is binding on the client and becomes that of the client unless it has been shown that the legal practitioner acted without instructions. The resignation once made was communicated to the Parent Church. The respondents resigned unilaterally and the resignation took effect upon its communication and did not depend upon acceptance by the applicant or the Parent Church. The resignation took effect as soon as the letter was received by Darrel D. Lee. The letter constitutes a resignation letter and once that resignation

was communicated, the respondents ceased to be members of the Parent Church from that moment henceforth.

The contents of this letter amount to a resignation. The respondents denounce leadership from America. They state that they will not accept leadership from America and will choose their own leadership. God will give them guidance on succession issues. The letter evinces a clear and unambiguous intention to part with the Parent Church. The letter has the effect of denouncing and resigning from the Parent Church. The respondent's act of renunciation had the effect of cutting the umbilical cord with the applicant. The respondents made a conscious decision to sever ties with the Parent Church and effectively withdrew their membership of the applicant church. The act of denouncing leadership of the Parent Church or any affiliation with it amounts to repudiation by the respondents of their position in the church as a whole and that is inclusive of branches of the church. Once the respondents decided that they no longer subscribed to the church's authority, they severed ties with both the Parent Church and any other church or branch of it that observed and followed the same doctrines. The applicant is part of the world wide church. The respondents cannot claim to remain part of an organisation whose leadership they repudiated. By resigning from the church, the respondents stripped themselves of membership of the church.

The fact that the respondents have decided to part ways with the Parent Church is confirmed by their conduct. This position was well enunciated in *Sick and Funeral Society of St John's Sunday School v Golcar* (1973) 1 CH 51 @ 62 C-E where the court remarked as follows regarding resignation by conduct;

"It must be accepted that there can be resignation by conduct in addition to resignation by words."

I am not persuaded by the respondent's defence that the letter was merely a protest. The wording and tone of the letter as well as the conduct of the respondents shows that the respondents had made a decision to part ways with the Parent Church and were determined to do so. The conduct of the respondents in amending the Constitution amounts to an act of pure defiance and such conduct is supportive of the assertion that they resigned from the church. The respondents sought to change the Constitution without the authority and approval of the Parent Church. Article 5 of the Constitution of the church makes it clear that applicant shall not change any rule or doctrine without the recommendation or approval of the Parent Church. The respondents became an authority unto themselves. They did not care whether the Parent Church approved the changes to the Constitution or not. The respondents refute that they amended the Constitution, and argue instead that the amendments were merely proposals

of the amendments sought to be made. The letter gives the Parent Church a choice “to either understand the amendments or try to build on a great relationship with Southern Africa under an affiliate status’ or listen to false information. The respondents express a preparedness to proceed with the amendments of the Constitution. It does not appear as if the Parent Church had any discretion in the matter. The copy of the amended Constitution was for their information only. The amendments were not proposals because the respondents were going to proceed with the amendments anyway. It was either the Parent Church tried to understand the amendments and try to build on a great relationship with Southern Africa under an affiliate status or listen to false information. The attached board resolution shows that respondents sat and resolved to amend the Constitution immediately, failing which a formal court application would be made to effect the changes. They were seriously pursuing their withdrawal from the church. The respondents sought to change the Constitution of the church without approval of the Parent Church.

An analysis of the amendments shows that the respondents intended to sever ties with the Parent Church and had decided to break from the Parent Church and put in place their own systems. Some of the board members were not advised of the meeting which came up with the amendments.

The applicant is in terms of their Article 1, now affiliated to the Parent Church only and is no more a branch contrary to Article 1 of the Constitution of the applicant. The respondents seek through the amendments to make the first respondent the ultimate authority. The overseer is responsible for nominating the board of trustees, previously known as the board of directors. There is no provision for approval of the Parent Church .They chose a new set of trustees in terms of the amended Constitution to govern the applicant. In their letter of resignation, they already make the new Board Trustees being part of the letter of resignation. This shows that the amendments and changes were already effective and the respondents considered themselves as having parted ways with the applicant. The content of the amended Constitution confirms the respondent’s decision to sever ties with the Parent Church. This shows that the amendments were not proposals but had already actually been effected.

The respondents tried to wrestle control of the local church from the Parent Church through the constitutional amendments. The first respondent wanted to make himself the ultimate authority in Southern Africa. The first respondent led this revolt notwithstanding that he was on suspension from membership of the church. The first respondent was appointed into the position of overseer by the Parent Church. Once he repudiated the authority of the Parent Church, he repudiated his own position as overseer with the applicant. The

respondents resigned from the Parent Church, they cannot not remain part of a branch led and guided by the Parent Church, the applicant. By resigning from the Parent Church, the respondents in effect seceded and withdrew from the applicant as well. No relationship exists between the Parent Church applicant and the respondents.

The respondents severed ties with the Parent Church. Once the respondents resigned from the Parent Church, on the basis of differences in doctrines, they effectively resigned from the applicant church. The same doctrines applicable in the local church are the same as those of the Parent Church. It is not realistic that the respondents would secede from the Parent Church and remain in the local church and still remain under the control of the Parent Church. The departure from the doctrinal basis of the church amounts to repudiation. The respondents have caused such a schism to the extent that it is impossible to say that they remain part of the church.

The respondents no longer subscribe to the doctrines and canons of the Parent Church. They have no right to continue to use the applicant's name. The respondents conceded that should the court find that the respondents seceded from the church, they are not entitled to use and control of applicant's property. That concession was well made. The respondents undertook to cut ties with the church leadership and yet purport to be still part of the church leading the applicant, a branch of the parent church and controlling church assets and buildings. In *The Church of the Province of Central Africa @ p 35* the Supreme Court relied on the principle laid down in *Ethiopian Church Trustees v Sonjica* 1926 EDL 107 at pp 115-116 that after a withdrawal of membership from a church organisation, the property of the church must fall under the control and use of those who adhere to the fundamental principles of the church. The court held that a person, who leaves the church, leaves behind church property. The court remarked as follows;

“The property could not be applied to purposes which are alien to the purposes of the Trust and for the benefit of persons who have no title to call themselves members and office bearers of the church.”

*See also Chong v Lee* (1981) BCLR 13.

The court went on to remark at p 36 that:

“Related to this is the principle that a member of a voluntary association who leaves the organisation whilst others remain must leave the property with those who have not resigned membership. When one leaves a club one does not take its property with him or hermit has long been established as a statutory principle of law in this area of property ownership that when one or more people secede from an existing church, they have no right to claim church property even those who remain members of the congregation are in the minority.”

The court concluded that the property which was subject of the dispute belongs to the church and it has a right to vindication of the property against possessors who have no rights over it and that such persons had no right to continue possessing the congregation buildings when they had departed from the fundamental principles and standards on which the church is founded.

Any branch or chapter of the Apostolic Faith Mission of Oregon wherever found forms an integral part of the Church as a whole. Its property belongs to the denomination. Should any member resign or be deemed to have parted ways with the church, he ceases to be a member of the church as a whole .He leaves behind the property of the church. He cannot use the property unsanctioned by the church. Once the respondents severed ties with the Parent Church they ceased to have any right of access over the property. The respondents lost the right to use the applicant's name, possession and use of the church's property. The property remains for the loyal members of the church. The applicant is entitled to the order sought.

The application is allowed.

In the result is ordered as follows;

IT IS DECLARED THAT,

1. 1<sup>st</sup> 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are no longer members of Applicant and have lost all rights to fellowship under Applicant or make use of any of its properties or amenities as well as its name.
2. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents shall immediately stop and shall at all times desist from making use of Applicant's name or any such name which may reasonably be confused with Applicant's name and which may give the impression that they have any association with Applicant.
3. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents shall immediately relinquish possession and use of all of Applicant's properties both movable and immovable whether held by them directly or by those claiming the right of any use of occupation through them and which are set out in "3.1" below and shall concede such use and possession to Applicant.

**1. LAND AND BUILDINGS**

1. Bulawayo: church at Stand 61000, Size Road, and adjacent stands for youth and women, Western commonage No 6 Pelandaba;
2. Stan 36E, 37E, 38E, 39E, 40E, 54E, 55E Bekezela Street, Pelandaba;
3. House at No 16 Amatje Road, Four Winds, Bulawayo;
4. Greengables Farm, the remaining extent of subdivision B of Dunstaal, Khami;

5. Plot 11 and 12, Shamrock Road, Gweru;
6. Lower Gweru at Gwabada Farm and Ekukanyei Weaving Centre;
7. Kwekwe: Stand no 383 Mbizo Township Church and residence, Amaveni township church;
8. Kadoma: Stand no 4 Bwanali Street, Rimuka Township church and mission residence;
9. Chegutu: Stand 2134 Heroes Township Church and Mission residence at 550 Pfupajena Township;
10. Masvingo stand 14 Mucheke Township, Masvingo;
11. Mutare: Stand No 7 Machekaire Street, Dangamvura Township, Mutare;
12. Buhera Murambinda Township Church stand;
13. Nyanga: Church at Bonde Kraal;
14. Mount Selinda: Chako Township Church Stand;
15. Chinhoyi Stand 1159 Hunyani township Church and residence;
16. Mahororo Business Centre church stand Hurungwe;
17. Beitbridge Stand 2384 Dulibadzimu and residence at No 9;
18. Victoria Falls: stand 2647 Victoria Falls;
19. Kariba: stand 1727 Nyamhunga Township;
20. Chiredzi: 51 Makaza Triangle, No 6 Nzimbe Township Triangle;
21. Mwenezi: Sarahuru Township Church;
22. Mutoko: Mutoko Business Centre, Church stand;
23. Pilgrims' Progress restaurant Kadoma;
24. Pilgrims' Progress restaurant Gweru;
25. Bindura: 19/34 Musvosve Street stand at Chipadze Township and Trojan Mine;
26. All motor vehicle and church assets under their control;
27. Chipinda Church stand; and
28. Hwange: No 2 Glencoe Road, Railton, Hwange.

4. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are to bear the costs of this application.



*Muza and Nyapadi*, applicant's legal practitioners  
*Cheda & Partners*, respondent's legal practitioners