

CHARLES MASUNUNGURE
versus
HENRY MUZHARI
and
THE FAMILY COVENANT CHURCH GOVERNING COUNCIL
and
PAUL BAYETHE DAMASANE
and
COSTAH GOMBA
and
GODFREY MBAIWA
and
DANIEL CHIKWAYA
and
NICHOLAS MOYO

HGH COURT OF ZIMBABWE
MUZOFA J
HARARE, 14 October & 16 December 2021

Civil Trial

G Chihuta with *C Chichetu*, for the plaintiff
V Vengai, for the defendants

MUZOFJA J: The applicant, first, third, fourth, fifth, sixth and seventh defendants are members of the second defendant, a church. They formed the second defendant after they left the Family of God Church. The second defendant is governed by a constitution. In terms of its constitution, the first defendant is an overseer for life in the second defendant. He is at the helm of the church.

In 2019 at an Easter Conference of the church, held in Gweru, the first defendant launched the Henry Muzhari Ministries (HMM). This was the onset of trouble in the church. There was a general perception that the first defendant had formed another church. According to the applicant, some members simply left the church, the applicant made a conscious decision not to leave the church, as he said he was part of the founding members. I believe he took it upon himself to hold the first defendant accountable for his conduct. The plaintiff issued summons seeking declaratory relief that the first defendant seceded from the second defendant

and was no longer its overseer and that the resolutions made by the first or second defendants after 21 April 2019 are illegal and of no consequence. In the alternative, the plaintiff seeks an order to compel the second to seventh defendants to conduct disciplinary proceedings against the first defendant for his errant conduct. He also seeks specific relief on the composition of the disciplinary committee.

The defendants denied all the allegations levelled against them. More specifically that HMM is not a church neither is it a parallel ministry in the second defendant. It is the first defendant's platform to teach and mentor other people in his personal capacity outside the second defendant.

Despite the relief sought, the parties referred only two issues for trial as follows,

1. Whether the first defendant has seceded from the Family Covenant Church.
2. Whether the resolutions and decision of the defendants in connection with Family Covenant Church after 21 April 2019 are null and void.

The plaintiff's case

The plaintiff was the only witness in his case. His evidence was as follows. He is a former provincial overseer in the second defendant for the Northern Region. He resigned on 19 August 2019. He is now a senior pastor at the Bindura Assembly. The second defendant officially opened in 2016 after the applicant and the first defendant spearheaded a breakaway from the Family of God Church led by Andrew Wutaunashe.

The second defendant is governed by a constitution. In terms of the constitution every member is enjoined to comply with fundamental principles as outlined. The first defendant has specifically reneged on clause 9.4 of the constitution that disqualifies him from being the head of the church. In April 2019 the first respondent launched the HMM. It is a parallel ministry unrelated to the church. It duplicates the work of the church. It has separate account numbers but it uses church resources to conduct its activities. It initially recruited members from the church. Its programmes include evangelism; teaching and members pay tithes directly to the first defendant. HMM has literally fractured the second defendant. Four overseers have left the second defendant and parallel structures have formed in Bindura and Marondera. The first respondent has formed a new church within an existing church. His conduct manifests a secession.

Further to that, the first defendant has committed numerous infractions that disqualify him from leading the second defendant. More specifically in that he has called congregants to deliver tithes to him personally, as a result the Bulawayo Central assembly under his

stewardship no longer remits its 10% contribution to the national account. He has failed to constitute the National Council of the church, he has ordained numerous overseers, appointed and removed church leaders without following the constitution.

The plaintiff also said he tried to use the internal remedies to resolve the issues to no avail. At the end of the plaintiff's evidence in chief, it was indicated that the plaintiff no longer pursued the second issue referred to trial. Under cross examination, the plaintiff stuck to his evidence that HMM was a church. He however conceded that the constitution does not provide for the GC to approve the inception of any ministry.

The defendants' case

The first, third and sixth defendants gave evidence in support of the defendants' case. The third and sixth defendants' evidence was as follows. They are members of the GC .When HMM was launched the first defendant did not consult the GC neither was there approval from the GC. They perceived HMM as the first respondent's platform to serve the Lord as he felt led. It does not use the second defendant's resources. The first defendant in particular said the church is limited in scope and geographical coverage, it also has limited resources. There was need to evangelize, in areas where the church did not have presence. He is an author and is usually invited to preach at different platforms. He therefore needed a vehicle through which he can do all those things without involving the church. HMM is not a church. It does not have members but supporters, it does not have structures and it is not contrary to the second defendant's constitution. Supporters do not meet regularly, and no church services are conducted.

Analysis of the evidence

The plaintiff explained the issues as he perceived them. He struck the court as a reliable witness in relation to the factual background of the case. His evidence on the formation of HMM was materially corroborated by the third and sixth defendants. The relevant evidence on the issue for determination is that the first defendant did not consult neither did he obtain the approval from the GC to launch HMM. HMM is the first defendant's personal platform to do as he pleases. The plaintiff conceded under cross examination that there was no obligation on the first defendant to place the issue on the formation of HMM before the GC.

Although the defendants denied that HMM used the second defendant's resources there are pointers to confirm the plaintiff's version. What is evident is that there is an intricate entanglement between the second defendant and HMM. It is difficult to completely throw away the plaintiff's assertion. I say this because, it was not disputed that the launch of HMM was

done during a church conference. The second defendant was used as a launching pad and the first defendant obviously benefits from the second defendant's goodwill.

The first defendant was an unreliable witness. He literally contradicted himself on the formation of HMM and its activities. Under cross examination the first defendant said he consulted the GC and HMM was approved. At one point he indicated that HMM is a ministry that complements the second defendant. In another breath he said it's his personal ministry for use when invited in his personal capacity. It has nothing to do with the second defendant. He was not candid with the court as to what exactly is HMM. In my view, the defendants did not tell the court everything related to HMM activities. I shall revert to the issue later in the judgment.

The law

The only issue for determination is whether the first defendant's conduct amounts to a secession. Secession is a term that has exercised the courts' mind in various cases and the definition of the term is now settled. Both parties referred to the relevant case law on this aspect. In *The Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) v Rev Sibanda & Ors* HH 463/15 the court had this to say,

'The verb 'secede' is borrowed from the Latin word 'sece-dere' meaning an act of withdrawal. Secede is defined in the Free Dictionary as a 'formal withdrawal of membership, from a political alliance, church, organization etc.... A party is said to have seceded from a church or other organization when it has severed ties, withdrawn, quit or resigned from it'

The act of withdrawal is a matter of evidence. It may be by way of resignation as in the case of *Jakazi & Anor v Anglican Church of the Province of Central Africa* SC 10/13. It may be by way of formation of another church and formal withdrawal. See *Province of Central Africa v The Diocesan Trustees for the Diocese of Harare* SC 48/12 where the court found that, upon the appellant and other trustees constituting their new church in January 2008 they had seceded from the original church. In that case the court defined a church as a

'...voluntary and unincorporated association of individuals united on the basis of an agreement to be bound in their relation to each other by certain religious tenets and principles of worship, government and discipline ... it is the words and actions of the individuals as members and office bearers that indicate whether there is conformity with the articles of faith'

A material deviation from the fundamental principles on which the church is founded is evidence of a secession. Such deviance may be by conduct or words.

A church is generally defined from the biblical perspective as an organisation. What constitutes a church can assist in determining whether an organisation is a church. Some of the attributes of a church are that it has a definite doctrinal standard, meets for public spiritual

worship, united in prayer, has office bearers, regulates church decorum and has different activities to reach out to the public¹. It maybe that all the listed elements may not be in a church organisation but what cuts across is that there must be a doctrine of faith that members coalesce around.

Application of the law to the facts

There is no doubt that the first defendant founded HMM. The determinant issue is what is this organisation? Is it a church within a church? Does the organisation deviate from the second defendant's fundamental doctrine and purpose? I do not think so for the following reasons.

The paper trail on the launch of HMM gives some insight on what HMM is. The concept document on page 84 is clear. It is inscribed,

‘HENRY MUZHARI MINISTRY PARTNERS
A SUPPORT MINISTRY OF THE FAMILY COVENANT CHURCH.’

In one of the documents at page 77 the first defendant set out what he termed the journey. It started with a Ministry launch in 2016. The Ministry that was launched was the second defendant. The following steps in the growth of the said ministry is set out as establishment in 2016 ,consolidation in 2017 and 2018 then from 2019 it was advancement. Despite this professed association with the second defendant on paper, HMM was never formally accepted as a ministry in the second defendant. The court is alive to the fact that the members of the GC dissociated themselves with HMM but what is evident from the documentary evidence is that they associated with it in their personal capacity and allowed the second defendant's resources to be used in the furtherance of HMM's objectives.

The Newsletter authored by the first defendant also offers some insight as to what is HMM. In Chimanimani it partnered with another organisation to preach the word of God. One wonders why the HMM instead of the second defendant where the first defendant is the general overseer for life. In the UK the first defendant said one overseer Magara led the work. Magara was indeed part of the second defendant. It was not disputed that he has left the second defendant on account of the formation of HMM. I quote verbatim what the first defendant had to say about the work in the United Kingdom, he said;

‘The meetings held there were designed to envision and enable the leaders to run with the work of the Ministry’

¹Henry Thiessen , Lectures in Systematic Theology ,1981

The Ministry referred to is the HMM. If indeed HMM compliments the second defendant, why would the leaders in the United Kingdom rally with HMM work instead of the second defendant's mission? It would seem the first defendant was now prioritising HMM work ahead of the second defendant.

In Botswana various activities were conducted. It was reported;

'For three weeks prior to the conference we organized and held very successful crusades and outreaches with our evangelists in the following areas...'

There was no evidence that these evangelists were specifically HMM evangelists. As already indicated in the United Kingdom the human resources were drawn from the second defendant. It is most likely that the evangelists were drawn from the second defendant. A church was planted in Tonota, Botswana by HMM. There was no evidence on the affiliation of the church. It was not suggested that it was affiliated to HMM. It may be accepted that the church is under the second defendant.

Finally in his concluding remarks in the Newsletter the first defendant wrote,

"We would like to appreciate every one of our partners who has stood with the work of God and Ministry in its fledging days, as we advance relentlessly the message of the Kingdom. From our inception in April 2019 at the Easter Conference we have sought to fulfil the call of God for our ministry, to touch people with the saving knowledge of Jesus Christ and to equip the Saints of God for the work of the Ministry."

Simply put, the concluding remarks speak out on the HMM purpose. This is exactly the purpose and the four pillars of the second defendant as set out in ss 5 and 6 of its constitution. Its purpose is to advance the gospel of Jesus Christ and values associated with it using biblical means. Its four pillars are evangelism, discipleship, building a habitation for God and preaching and teaching the full counsel of God as revealed in the Scriptures. There is no deviation from the second defendant's purpose.

Members were to deposit their contributions in to the second defendant's international account.

The documentary evidence is supported by the evidence of the third and sixth defendants. Their evidence was that HMM was not approved by the GC. The second defendant's constitution does not set out how a ministry maybe formed. There is no provision that such an issue must be placed and approved by the GC. The plaintiff made a concession on that aspect. Nothing turns on the non-approval. HMM was launched and it has conducted its activities within the second defendant and some of the second defendant's members were actively involved as evangelists. The second defendant's resources were used in the furtherance of HMM's activities. This gives credence to the plaintiff's evidence. By conduct the members

of the GC accepted HMM as a ministry. From the foregoing it is apparent that HMM does not have regular meetings but targeted evangelist crusades.

This is a sad tale of poor governance, abuse of power and the need to self-glorify that has fractured the second defendant. I say this because the first defendant in his own words named HMM after himself for posterity as evidence of his work. I totally agree with the third defendant's observation that this is bad governance at its highest level. It was disingenuous for the first defendant to name this organisation after him. His conduct could be viewed as an act to hype oneself at the expense of the real work that he professed to be called for. The first defendant took advantage of his position as an overseer for life in the second defendant. He created HMM an organisation not accountable to the GC. Its activities are similar to the second defendant's ministries like the Timothy ministry. Despite these observations, HMM does not satisfy the recognised tenets of a church. I comment in passing though that two scenarios may arise as a result of HMM's existence within the second defendant: Firstly, it will remain a problem child and a stumbling block to some of its members. Secondly it may be a steppingstone for the first defendant's way out of the second defendant

The first defendant argued that it would be unreasonable to secede from a church where he is an overseer for life. I do not understand that submission to mean he is beyond removal. I may say in passing that in terms of s17 (3) as read with s31 of the second defendant's constitution he may be susceptible to removal. The court does not have to exercise its mind further on the issue since it is not for determination.

It is unnecessary to make a determination on the first defendant's noncompliance with the constitution, the issues become irrelevant in view of the abandonment of the second issue.

Disposition

HMM does not have a doctrine of faith, its members / supporters do not meet regularly and its purpose for existence does not deviate from the second defendant's purpose. It is an organisation, but not a church *in strictu*. The first defendant did not form a church within a church. There was no secession but a high level of poor governance and abuse of power.

Generally, costs follow the cause and they are entirely in the court's discretion. In this case the first defendant is the author of the chaos in the second defendant. This is a proper case for the court to show its displeasure by awarding costs against the first defendant despite the fact that the claim has been unsuccessful.

In the result, the following order is made:

The plaintiff's claim is dismissed.

First defendant to bear the plaintiff's cost.

Gumbo and Associates Legal Practitioners, plaintiff's legal practitioners
Warara and Associates, defendant's legal practitioners