REPORTABLE (45)

(1) MUGODHI APOSTOLIC FAITH CHURCH (2) WASHINGTON MUGODHI
v
RANGANAI CHIKWENA AND 40 OTHERS

SUPREME COURT OF ZIMBABWE
GWAUNZA DCJ, MAKONI JA & MWAYERA JA
HARARE: 14 NOVEMBER 2024

M. Ndlovu, for the appellants

F. Chinwawadzimba with *L. Charagwa,* for the respondents

MWAYERA JA:

1. This is an appeal against the whole judgment of the High Court ("the court *a quo*") which was handed down on 14 August 2024, in which it held that the fifth and sixth respondents were the substantive Bishop and vice bishop respectively, of Mugodhi Apostolic Faith Church ("the church"). The court *a quo* in its judgment further interdicted the second appellant from holding himself out as the bishop of the church.

2. On 14 November 2024 after hearing submissions from counsel, the following order was issued by this Court-:

   "The appeal be and is hereby dismissed with costs."

   It was indicated that full reasons for the judgment would follow in due course. These are now proffered hereunder.

3. The first appellant is a church operating as a universitas. The second appellant is a pastor of the church and son of the late Bishop Tawedu Mugodhi. The respondents are members of the church with some of them being pastors, reverends and the fifth and sixth respondents being the senior vice bishop and vice bishop respectively. The first appellant and the respondents hold two mutually destructive versions on how the church leadership is regulated.

FACTUAL BACKGROUND

4. At the onset it is important to set out the full facts of this case in order to get a clear understanding of how the events unfolded. The dispute between the parties emanated from a church leadership wrangle. The leadership crisis arose from two polarized positions with one faction holding the view that the leadership succession of the church was outlined in the church constitution. The other faction subscribed to the view that the church had no constitution. The leadership crisis then spilled to the secular courts.

5. The church was foundend in 1932. It was then known as the Apostolic Faith Mission ("AFM") led by Paul Kruger. Elijah Mugodhi, and other leaders such as Chikore and Chakuvinga joined the church the year it was formed. In 1945, Elijah Mugodhi had become an evangelist in the AFM and was supposed to be ordained as a reverend in 1947. However, this did not happen as he took a second wife when the church constitution prohibited polygamy. (Underlining my emphasis)

6. The polygamy saga took center stage and the leaders were divided on the need to adhere to the church doctrine. This prompted Elijah Mugodhi and other leaders who did not see anything wrong with polygamy to break away in 1949. They then started a new church and as the most senior evangelist, Elijah Mugodhi was appointed the Bishop of the new

church which was christened Mugodhi after one of its founding members. The leaders then agreed to come up with a constitution for the church since they but for the polygamy, were still following the AFM way of worshipping. The church operated as a universitas as governed by a constitution. The appointment to leadership positions was done according to seniority in terms of the church's constitution.

7. The succession history of the church can be summarized as follows:

   The founding Bishop of the church Mugodhi, died in 1971 and his Vice Bishop Lameck Chakuvinga then took over the leadership as Bishop according to seniority, until his death in 1981. He was succeeded by Bishop Chikwena who died in 1991 and was succeeded by Bishop Mutandiro Mubvuwiwa. He in turn was succeeded by Bishop Tawedu Mugodhi, who led the church until his demise in 2019.

8. During his reign Bishop Tawedu Mugodhi, like his predecessors, had two vice Bishops namely Aaron Munodawafa (the fifth respondent) and Tonnie Sigauke (the sixth respondent). The leaders were, in terms of the constitution appointed on seniority basis. In 2019, Bishop Tawedu Mugodhi was diagnosed with a terminal illness. On 10 August 2019 he called for a meeting of the Board of Ministers, vice Bishops and Pastors. At the meeting, he announced that the second appellant, his son, Washington Mugodhi was appointed the senior Vice Bishop of the church.

9. This caused dissonance in the church with some leaders alleging that such pronouncement and appointment was contrary to the church`s constitution in that the second appellant, who then held the position of a pastor, was not eligible to be appointed senior vice bishop ahead of his seniors. Further, that his appointment was contrary to the church`s constitution. That pronouncement and appointment of the second appellant led to a split within the church and marked the genesis of the current court wrangles.

10. The second appellant's appointment triggered an urgent chamber application in the High Court ("the court *a quo*") under HC6734/19, in which the first appellant ("the church") sought to interdict the late Tawedu Mugodhi, the second appellant and two other family members from interfering with church operations. The provisional order which was granted was set aside by this Court under case SC 508/19 on the basis that the court *a quo* had made findings based on minutes that were in vernacular, without translation thereby contravening the High Court Act [*Chapter 7:06*].

11. Following the death of Bishop Tawedu Mugodhi, the National General Conference, held on 2 February 2020 resolved that in light of the demise of the bishop, the office of the bishop became vacant. In terms of the church's constitution, a bishop was only appointed from the senior of the two vice bishops serving in that capacity. The fifth respondent, (Aaron Munodawafa) who was the senior vice bishop, was appointed substantive Bishop of the church, and the sixth respondent, (Tonie Sigauke) was elevated to the position of senior vice bishop. This meant that the office of the new second vice bishop was vacant. Vice bishops were picked from the Board of Ministers. This meant that the most senior member of the Board of Ministers was supposed to be elevated to the position of the second vice bishop. Simon Madziva happened to be the most senior minister to occupy the position of second vice bishop. He however chose to align himself with the second appellant's leadership and thus the next most senior member Phillip Musuva was appointed as the second vice bishop.

PROCEEDING IN THE COURT *AQUO*

12. The appointment of the second appellant as vice bishop by his late father, Tawedu Mugodhi, ahead of senior vice bishops prompted church members to commence various

motion proceedings before the court *a quo.* There was an application for a *declaratur*, instituted by the first respondent in HC 905/22. It was contended that the second appellant appointed himself as Bishop of the church at his father`s (the late bishop's) memorial service when he was not even a member of the church's board of ministers at the time of appointment nor, the most senior member of the church leaders. The applicants sought nullification of the appointment of the second appellant as a bishop and instead that a *declaratur* be issued to the effect that the fifth respondent was the substantive Bishop of the church *per* the constitution.

13. The second appellant also filed an application under case number HC 5594/21 in which he sought to interdict the respondents and all those members who did not support his ascendance to the office of Bishop of the church, from accessing and entering the church's shrine.

14. Again, related to the same application in HC 905/22 the second appellant sought an interdict on an urgent basis, barring the respondents from convening, attending and entering the church's National Shrine at Chitope, Hwedza.

15. All the applications before the High Court were consolidated and the disputes were referred for trial on the following issues:

1. Whether or not there exists a written constitution for Mugodhi Apostolic Faith Church.

2 (a) Whether or not the first plaintiff had an appointed vice Bishop prior to August 2012.
(b) Whether or not the appointment of Washington Mugodhi as vice bishop of the Mugodhi Apostolic Faith Church is null and void.

3. Whether or not Aaron Munodawafa is the Bishop of the first plaintiff.

4. Whether or not the first to thirty sixth defendants and their agents or followers should be interdicted from using, accessing and entering into any shrine, premises or property of the first plaintiff.

16. During the trial, after consolidation of the cases the court *a quo* identified the sole issue which was dispositive of all the disputes. The issue that fell for resolution related to whether or not there was a written constitution for the first appellant, the church. Several witnesses testified in support of the respondents. Davison Mangoma testified as the Chairperson of the constitutional committee of the church. He recounted how the church was formed and that it had a constitution. He stated that even after the fall out on polygamy the leaders agreed to draft a constitution since the Mugodhi church adopted the way of worship of AFM. According to the witness's evidence the constitution was signed by Bishop Tawedu Mugodhi in 2013, after the constitutional committee was consulted to redraft the 1952 constitution. This was occasioned by the need to amend the constitution and have it on a Letter Head for banking purposes. Furthermore, the constitution was used to purchase immovable property for the church. He maintained that any new appointment to the leadership position was based on the constitution and was not hereditary. He was firm that the church was not guided by cannon laws as clearly, since its formation in 1952 the church had a constitution. The same constitution was simply endorsed with words "amendment" and had a cover page with signatures to suit the church's current needs. The witness's evidence, on the existence of a constitution and leadership succession of Bishops was corroborated by Nigo Mike Mukhali (the tenth respondent). All the other witnesses confirmed that the church had a constitution.

17. The second appellant on the other hand, contended that the church had no constitution and that the sitting bishop was free to select his preferred successor. He argued that his father the late bishop appointed him following the church's unwritten cannons.

FINDING OF THE COURT *AQUO*

18. The court *a quo* held that the church was governed by a constitution, it having adopted the first constitution in 1952. The constitution was admitted in evidence before the court *a quo*. It further made a finding that in 2012 the church constituted a constitutional committee whose mandate was to drive amendments of the 1952 constitution and this yielded a final product in 2021. The court *a quo* was fortified in this finding by the fact that the late Bishop Tawedu Mugodhi, in a meeting of 10 August 2019, acknowledged the existence of the constitution in his opening remarks. The court *a quo* further made reference to s 4 of the constitution which provides for the appointment of a senior vice bishop to the office of a substantive Bishop when such office fell vacant by reason of death or resignation. The court *a quo* thus held that the former Bishops of the church were former vice bishops who only ascended to the position of Bishop by having been the most senior vice bishop of the church per the church constitution.

19. It dismissed the second appellant's argument that the appointment of the bishop was based on unwritten church cannons and that it was hereditary, more so in view of the fact that Chakuvinga, Chikwena and Mubvuniwa who had no family ties with the Mugodhi family, were Bishops of the church in succession. Resultantly, the court *a quo* declared that in terms of the church constitution, the fifth and sixth respondents were the substantive bishop and senior vice bishop of the church, respectively. It further held that the second appellant`s appointment was *ultra vires* the church constitution and thus null and void. Further that the second appellant had no *locus standi* to institute proceedings

on behalf of the church. It held that the appointment of the fifth respondent as substantive Bishop of the church at the National General Conference held on 2 February 2020, in terms of s 4 (a) of the church's constitution was valid.

20. Having found that the church had a constitution the court *a quo* gave an order in favor of the respondents. Aggrieved by the judgement of the court *a quo*, the second appellant noted the present appeal on the following grounds.

GROUNDS OF APPEAL

"1. The court *a quo* erred and grossly so in making a finding that the first appellant has a valid written constitution contrary to clear and unchallenged evidence that the same was clearly not in existence.

2. The court *a quo* further erred in making a finding that the produced constitution belonged to the first appellant when the document itself is said to be an amendment and in the absence of the prior constitution which was requested by the appellants and the same spoke to the futuristic events from the date the constitution is said to have been made a clear sign of chicanery. (sic)

3. The court *a quo* erred at law in granting the application for a declaratory order when there were inherent and clear inconsistencies in the evidence of the witnesses who testified before it.

4. By making a finding that Aaron Munodawafa (5th) respondent is the substantive bishop, the court *a quo* grossly erred at law as the said person never placed any pleading before it, never came to court and was said to be senile. Put otherwise the court *a quo* could not grant a declaratory order in favor of an individual who never even accepted to be the Bishop of the church.

5. The court *a quo* grossly erred at law in finding that there was a written constitution for the first appellant in the absence of any supporting documents which was accepted by all the witnesses who testified.
6. The court *a quo* grossly erred and misdirected itself at law in dismissing the submission that Bishops in the 1st appellant where appointed through cannons and traditions when no single witness was able to provide resolutions, letters of appointment in accordance with the constitution for those said bishops.
7. The court *a quo* further erred at law in finding that there was a written constitution were in fact all witnesses accepted that at the meeting to adopt the constitution, there was no register for attendances and no records of how votes were cast and counted to meet the 90% threshold going by the provisions of the same disputed constitution.
8. The court *a quo* erred at law in granting the minutes of the first appellant dated August 2019 which minutes clearly shows that the church did not have any written constitution.
9. Having accepted that there were imperfections in coming up with the alleged written constitution, the court *a quo* erred at law and grossly so as it ought to have dismissed the application for a declaration that basis adore. (sic)
10. The court *a quo* further erred at law in striking off the roll two applications for interdicts when the same were properly before it and ought to have been determined on the merits per the strict demands of law.
11. The court *a quo* erred in not granting interdicts that were sought in HC 5594/21 and HC 901/22 in the face of an extant order of the High Court in HC 2164/20 a fact which was accepted by the witnesses themselves.

12. The court *a quo* further erred in granting the claim for *declaratur* without the evidence which was presented through evidence of the first and the second appellant having been put in issue through cross-examination of the witnesses.

13. The court *a quo* erred at law and grossly so in relying on evidence of a mentally disturbed witness [MUSUVA] who had not even filed a summary of evidence as requested by the rules. (sic)

14. Finally, the court *a quo* erred and grossly so in refusing to accept that the respondents who were present at the Budiriro meeting of 10 August 2019 had seceded from the church and formed their own soon after they continued with the meeting after it was closed by the later Bishop Tawedu Mugodhi. (sic)

15 The court *a quo* erred and misdirected itself in finding that the evidence of the respondents was not challenged when in fact and at law the same was through cross examination considered together with the affidavit which were already before the Court." (sic)

21. The appellant sought the following relief before this Court.

1. That the instant appeal is allowed with costs.

2. The judgment of the court *a quo* in respect of HC 905/22 is set aside and in its place and stead be substituted with the following:

"The application be and is hereby dismissed with costs."

3. The judgment of the court *a quo* in respect of HC 5504/22 is set aside and in its place and stead be substituted with the following:

"1. The respondents their agents, followers and anyone associated with them be and are hereby interdicted and barred from using accessing and entering into any structure, premises, or property of the first applicant.

2. The respondents and their agents, followers or anyone associated with them be and are hereby interdicted and barred from interfering in any manner whatsoever with the worship, meetings, programs and church

services of any congregation or gatherings of members of the first applicant.

3. Any respondent opposing this application be and is hereby ordered to pay costs of suit on a high scale." (sic)

4. That the judgment of the court *a quo* in respect of HC 901/22 is set aside and in its place and stead be substituted with the following:

"The application for interdict be and is hereby granted with costs. All the respondents are hereby interdicted or barred from interfering with the activities of the applicants and assessing designing its properties of disrupting any gatherings. (sic)

SUBMISSIONS BEFORE THIS COURT

22. At the hearing Mr *Ndlovu*, counsel for the appellants, submitted that he was abiding by papers filed of record. He abandoned all the preliminary issues which had been raised in the appellant's heads of argument. He narrowed his submissions to the sole issue of whether or not the first appellant had a constitution. He contended that the first appellant did not have a constitution since the first constitution of 1952 was a fraud since part of its content related to events that happened in 1971. He further submitted that the 2012 amendment could not have amended the 1952 constitution since the latter was a nullity. Further, he submitted that the court *a quo* erred by finding that the first appellant had a constitution. He also argued that the court *a quo* erred by relying on two sets of minutes when it was apparent the version of minutes dated 10 August 2019 was the only clear version.

23. *Per contra*, Ms *Chinwawadzimba,* counsel for the respondent, submitted that there was clear and sufficient evidence to prove that the church, that is the first appellant, had a written constitution. She averred that Bishop Tawedu Mugodhi confirmed the existence of the constitution, even in the proceedings before the court *a quo* in HC 6734/19. Both sets of the church minutes referred to by the appellants *a quo* acknowledged the existence

of a constitution. She submitted that when the constitution was adduced in evidence in the court *a quo* the issue of fraud which the appellants sought to raise for the first time on appeal did not arise. Counsel submitted that the appointment to the position of Bishop was not hereditary but done in terms of the constitution with the systematic sequence of the most senior vice bishop taking over whenever the vacancy arose.

ISSUE FOR DETERMINATION

24. The sole issue that presents itself for determination is whether or not the church has a constitution. Once this issue is resolved, all other ancillary issues will fall into place.

ANALYSIS

25. It is worth mentioning that although the second appellant insisted that the church had no constitution, he did not adduce evidence to refute the evidence of existence of a constitution as outlined by the respondents in the court *a quo*. He chose not to lead evidence as he opened and closed his case. A reading of the minutes of the church meeting held at the Budiriro church site, chaired by the late Bishop Tawedu Mugodhi on 10 August 2019, is pertinent. Such minutes were compiled by Forbes Mutsikiri (the secretary general of the church) and were authenticated by the late Bishop Tewedu Mugodhi. The minutes show that the church has a written constitution governing the appointment of Bishops. It is apparent from the minutes that the late Bishop Tadewu Mugodhi tasked some members with coming up with the constitution and he thanked the "constitutional committee" that played a crucial role which "empowered him in choosing the successor as enshrined in the constitution."

26. An excerpt of the minutes confirms the church had a constitution in place.

> "The meeting was for the top twelve and Pastors as they represent various areas in their spheres of jurisdiction and some members of Harare who were not Pastors were allowed by the chairman in the meeting as he wanted to present them to the Pastors for the mammoth task of coming up with the constitution for Mugodhi Apostolic Faith Church. In his opening remarks, the chairman emphasized and thanked the team that played a crucial role which empowered the Bishop in choosing the successor as enshrined in the church constitution, which put the clause as the main agenda of the meeting …
>
> Bishop called acting secretary General Mr Mutsukiri who started reading telling people that "I Tawedu Mugodhi will be succeeded according to what is in the Church Constitution" (Underlining for emphasis)

27. The above excerpt of minutes shows that the late Bishop appreciated and acknowledged that the church had a constitution and was governed by the same. Further, the late bishop, a deponent to the opposing affidavit signed and dated 18 August 2019 in case HC 6734/19, acknowledged that the church had a constitution. This can easily be gleaned from the averments that he made as follows:

> "The board of Ministries comprise of twelve people in terms of the church constitution …. The second vice bishop's office has been vacant. I had not appointed anyone as can be seen from the deponent's shenanigans to be purportedly appointed by his clique of conspirators in their palace coup. I appointed the second respondent exercising my powers in terms of the constitution." (sic) (Underlining my emphasis)

28. Worth noting is the fact that the second appellant was the second respondent in the application. He, in those proceedings, acknowledged the existence of a constitution when he chose to associate fully with the averments of his father, the late Tawedu Mugodhi. On the basis of that acknowledgment of the existence of a church constitution, the second appellant cannot now turn around and say the church has no constitution and is governed by tradition. The second appellant cannot be allowed to rely on the constitution as and when it is favourable to him and when it is not in his favour make a complete turn around and claim that the church has no constitution. His contrary

assertion constitutes a classic case of approbating and reprobating, which is impermissible in our law, see *Hlatswayo* v *Mare and Des* 1912 AD 242 at 259.

29. It is worth mentioning that the court *a quo* took into consideration the oral evidence from the several witnesses who confirmed the existence of a church constitution which affirmed the appointment of Bishops on the basis of seniority. The second appellant did not take issue with this evidence *a quo*. He also did not impugn the evidence of one Musuva whom he now alleges, for the first time on appeal, was mentally challenged. He failed to rebut the cogent evidence that the church has a written constitution. It was evident that Musuva played a crucial role as the secretary of the Board of Ministries and that his assertions that the whole chaos and saga was affecting him mentally should not be taken literally and out of context. In any event the second appellant only made allegations that Musuva is mentally challenged but no expert evidence to that effect was adduced. It is an accepted principle of law that he who alleges must prove the allegations. See *Bere* v *Judicial Service Commission & Ors* SC 1/22 at p 20.

In any event Musuva's evidence was corroborated by all the other respondents and the minutes confirmed by the late Bishop Tawedu Mugodhi pointing out that the church has a constitution.

30. The second appellant bore the onus to establish that there is no written constitution for the church. This Court's remarks in *Chiangwa & Ors* v *Apostolic Faith Mission in Zimbabwe & Ors* SC 67/21 are apposite where at p 4, KUDYA AJA (as he then was) stated the following:

> "This contention, which relates to the fourth ground of appeal, seeks to place the onus of placing the amendments on the respondents. In so doing, the appellant overlooked the trite principle of our law that he who alleges must prove. This point was emphatically restated by this Court in *Zimbabwe United Passenger Company Limited* v *Packhorse Services (Pvt) Ltd* SC 13/17 at 12 as follows:

> 'The cardinal rule on onus is that a person who claims something from another in a Court of law has to satisfy the court that he is entitled to it. See *Pillay* v *Krisha* 1946 AD 946 at 952 – 953. It also settled that he who alleges must prove. See *MB Investments (Pvt) Ltd* v *Oliver & Partners*, 1974 (3) SA 269 (RA)". See also *Goliath* v *Member of the Executive Council for the Eastern Cape* [2014] ZASCA 182 at p 8.'"

31. *In casu* the second appellant did not even adduce evidence from a single witness to rebut the evidence adduced by the respondents nor attach expert evidence to the effect that Musuva was mentally challenged and therefore not a competent witness. Further, the second appellant did not attach any evidence to prove that there were traditions or cannons governing the appointment of bishops in the church. Resultantly, after the court *a quo* considered the totality of evidence placed before it, it found that the assertion by the respondents that there was a written constitution was more probable. This was more so upon considering that the bishops who took over in succession, after the founding Mugodhi bishop passed on were not of the Mugodhi clan but were appointed based on seniority.

32. The issue pertaining to the 1952 constitution being a nullity was raised for the first time on appeal. The issue was not placed before the court *a quo*, hence the court *a quo* could not have determined the validity or otherwise of an issue not placed before it. The principle that a court cannot be faulted for not determining an issue not placed before it was clearly spelt out in the case of *Easy Credit (Pvt) Ltd & Ors* v *Infrastructure Development Bank of Zimbabwe* SC 85/21 at pp 7 – 8 wherein it was stated:

> "The importance of properly setting out one's case in pleadings was highlighted in the case of Medlog Zimbabwe v Cost Benefit Holding SC 24/18 where GARWE JA (as he then was) stated as follows at p 10 – 12 of the cyclostyled judgment:
>
> > 'In general, the purpose is to clarify the issues between the parties that require determination by a court at law. Various decisions of the courts in this country and elsewhere have stressed this important principle. In *Jowell* v *Bramwell-Jones* 1998 (1) SA 836 at 898 the court cited with

approval the following remarks by the authors Jacob and Goldein in their text Pleadings; Principles and Practice at p 8 – 9:

> 'As the parties are adversaries, it is left to each of them to formulate his case in his own way, subject to the basic rules of pleadings ……..For **the sake of certainty and finality, each party is bound by his own pleading and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as much bound by pleadings of the parties as they are themselves**. It is not part of the duty or function of the Court to enter upon any enquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. **Indeed, the court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties …….the court does not provide its own terms of reference or conduct its own inquiry into the merits of the case but accepts and acts upon the terms of reference which the parties have chosen and specified in their pleadings. In the adversary system litigation, therefore, it is the parties themselves who set the agenda of the trial by their pleadings and neither party can complain if the agenda is strictly adhered to**.'
>
> The position is therefore settled that pleadings serve the important purpose of clarifying or isolating the triable issues that separate the two contesting litigants. It is on those issues that a defendant prepares for the trial and that a court is called upon to make a determination. Therefore, a party who pays little regard to its pleadings and may find "itself in the difficult position of not being able to prove its pleadings may well find itself in the difficult position of not being able to prove its stated cause of action against an opponent.' (Emphasis added).

Applying the above to the circumstances of this case I find that the court *a quo* cannot be faulted for not determining issues that had not been properly pleaded and argued before it. It should be noted that the mere raising of an issue does not mean that a Court should deal with it. It has to be raised in accordance with the procedures prescribed by the law. This did not happen *in casu*, nor did the appellant bring the issues up before this Court, as new points being raised on appeal.'""

33. The same reasoning is applicable with equal force in the present case. The issue that the 1952 constitution was fraudulently obtained and was as such a nullity, was not placed before the court *a quo*. It cannot be sustained before this Court. The evidence adduced *a*

quo clearly shows that the church has a constitution which was amended in the year 2012. Its existence was further confirmed and buttressed by the Bishop Tawedu Mugodhi's say so when he purported to appoint his son the second appellant as a senior vice bishop in terms of the constitution, albeit contrary to the constitution as his son was evidently not the senior vice bishop at the relevant time .The assertion by the second appellant that his appointment was in terms of tradition and cannons of the church cannot be sustained given the conspicuous existence of a written constitution regulating the church affairs in particular succession to the office of bishop and vice bishops.

34. Having made a finding that the church has a written constitution, it is important to turn to the ancillary issue of who the substantive Bishop of the church is. The succession to leadership of the church is governed by the constitution in particular section 4 of the constitution of the church which provides as follows under the heading "THE TWO VICE BISHOPS."

> "The vice Bishops shall; among spiritual duties;-
> (a) …..
> (b) …..
> (c) When the Bishop is away or is unable to perform the functions of his position assume and perform these functions; in an acting capacity and
> (d) Be appointed and installed Bishop of the MAFC by the General Church Conference where the position of Bishop becomes vacant by reason of his death or resignation in accordance with church regulations."

35. The constitution states that only a vice bishop can act as a bishop when the substantive bishop is away. Paragraph 4 (d) further provides that when a bishop dies or resigns, the office of bishop becomes vacant. The only person who can qualify to be appointed as substantive Bishop is the senior vice bishop. At the time that the late bishop passed away, Munodawafa and Sigauke were the two vice bishops with Munodawafa being the most senior. On that basis and in terms of the church constitution, Munodawafa and not the second appellant Washington Mugodhi was the rightful substantive bishop. Accordingly

in terms of the constitution, the court *a quo* cannot be faulted for declaring as it did, that Munodawafa the fifth respondent, was the rightful and substantive Bishop while concomitantly declaring the appointment of the second appellant a nullity.

DISPOSITION

36. Given the fact that the church has a constitution and that the fifth respondent had already been constitutionally appointed as the substantive Bishop at the National General Conference held on 2 February 2020 in compliance with s 4 of the Constitution, the court *a quo's* findings are unassailable. The second appellant's appointment based on inheritance has no basis on which to stand on. It is, as found by the court *a quo* null and void. The court *a quo* made factual findings of the existence of a constitution based on credible evidence on record. This Court cannot therefore, interfere with the factual findings of the lower court in the absence of a gross misdirection It is with the above considerations that this Court held that the appeal has no merit and issued the order quoted above.

GWAUNZA DCJ : I agree

MAKONI JA : I agree

Mutamangira & Associates, appellants' legal practitioners

Muvingi & Mugadza, respondents' legal practitioners