

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 757 OF 2003

TENAW ESTEZIAW & 24 OTHERS PLAINTIFFS

VERSUS

ABA HABTEYESU KEGESSE & 6 OTHERS DEFENDANTS

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT:

The twenty five Plaintiffs and the seven Defendants are all Ethiopian Orthodox believers resident in Uganda. They congregate under the Ethiopian Orthodox Tewahindo Kampala Mekane-Selam Medhanealem Church. Some rather deep differences rocked the congregation which had achieved a semblance of a formal religious communion with property including a place of worship. The dispute arose due to differences as to who and how to govern the church. So on 19/10/2003 an electoral upheaval left the old executive in the cold as it were, as a new crowd swept into office and became the new leaders in the church. It is this election and from its conduct and outcome that has given rise to this suit. As it is now, the term of office of this disputed executive, is also run out. It is the contention of the Plaintiffs that the disputed elections were rigged as non members of the Church were allowed to flood the electorate and swallow the registered members in the voting process. Further that the newly

elected officials usurped office. At the trial the Plaintiffs side called three witnesses while two testified for the defence side. Four issues were framed for the trial namely:-

1. Whether the defendants were validly elected to the Executive Committee of the Church.
2. Whether the approval of the archbishop (of the elections) was a mistake.
3. Whether the Plaintiffs are entitled to the remedies sought if any.
4. Quantum of general damages if any.

The Plaintiff presented 6 exhibits while the defendant exhibited 7 documents in all. Some of the documents were written in the native Amharic but were translated into English. Four facts were agreed on as follows:-

1. All the 25 Plaintiffs and the 7 defendants are members of the Church.
2. The meeting (of 19th October 2003) was legally convened by a Notice of 5/10/2003.
3. The plaintiffs and all the defendants duly attended the meeting on 19/10/2003.
4. The attendance register annexed to the plaint is admitted.

From the above and the evidence on the record at least 67 and at most 118 persons attended the meeting. It is argued that about 26 or so of these were non-members. According to Tenaw Esteziaw (PW1) the Church had by the time of its formation acquired Land comprised in Plot 443 Block 249 situate at Bunga in Kampala. He told court of the newly adopted constitution for the Church (Exhibit P.1) This constitution laid out the membership criteria for the Church. He however conceded that while originally there were few church goers the number increased as more Ethiopians joined. For this reason he maintained a register. He then described the events of the 19/10/2005 thus:-

“I was in the Church where the General Assembly was called. I reached at 7.45 a.m before the mass prayer was held. When I entered there were few as usual. Not even 20 people. We sat inside the church and held service. The time for the meeting was 10.30 a.m. We ended service at around 11.00a.m. pushing the meeting further. As I came out I saw a lot of people. Many were strangers others were people who never used to attend while a few are those who could come once in a year. At the time there were about 60 members. But I saw some 90 people or so. This was unusual.”

The complainant was clearly surprised at the influx on a day that was not the popular Easter Epiphany. He went on:-

“We entered the hall beside the church in the same compound. All strange faces non members and members alike took seats...”

He went on to describe the electoral process which saw all and sundry that attended participating. A complaint was raised regarding non-members but this was not approved. He and others objected to the violation of the constitution by allowing non-members to participate. The witness also doubted the number of voters as he suggested some wrote their names twice. He told court that one Muslim also registered using Christian names. At the end the elections of the Committee and Board went ahead and was concluded. The defendants were among those elected into office. He lamented

“The defendants are now in the church leadership. I want court to do justice and restore the constitution for order, law and doctrine. The election should be declared null and void as it was unconstitutional. A new election be ordered...”

In his further evidence the complainant (PW1) denied blocking the process of registration of new arrivals into the country as church members. He however conceded that a transition was ushered in whereby a new constitution was written and in the process the term of office of the old executive had been extended.

Mr. Agedow Manaye (PW2) told court that the issue that the assembly of 19th October 2003 dealt with first was whether the new constitution has been registered. By then the chairman had ruled that there was no issue of quorum which was determined visually according to the witness. He described the electoral process as orderly and attendance was put at 118. He explained how a difference arose with one group wishing to stick to the

new constitution while others waited voting to proceed on the basis of physical presence. In the process some people moved out while others sat and abstained.

The next witness was Agumasie Taye PW3. He told court that although at one stage the election meeting went out control the electoral process was eventually concluded. He also told court that out of disagreements he had resigned his position as electoral committee member.

For the defence Col. (retired) Dejene Bikila DW3 told court that he attempted to mediate in the church dispute and a tripartite agreement was signed. That after some time a new constitution was put in place after reviewing the old one. He explained that during the review process the issue of membership got shelved. To him the elections progressed under the constitution and the (interim) mediation tripartite agreements. He then told the court that article 6(1) and 29 of the constitution declares that all church matters (disputes) should be resolved by the Archbishop. He suggested that by bringing this suit the plaintiffs were in breach of the constitution.

Mr. Sagaye Meshasha DW2 explained to court the genesis of the new constitution. He also explained the elections subject of this dispute and how it was conducted. He stated:-

“From July 2002 we held 9 assemblies. Membership was not an issue. We were trying to correct very serious weaknesses in the old constitution and its flawed implementation. As the president in two

assemblies, the question of membership did not arise. The membership would be tackled after transition.”

He did concede however that the issue of membership was raised at the election but was over looked.

From the evidence it is clear that the growing Ethiopian Orthodox Community in Uganda meant that the church they formed would become the focus of religious and social attention. Some economic and political perspectives also crept into the church as discerned from the evidence. This is despite the understanding that service in the church leadership was voluntary. This meant that as numbers grew there could develop disagreements and each of the protagonists would employ exclusion of some or inclusion of all as a strategy to edge out or overwhelm the other. In this jostling process a new constitutional order preceded by an interim extended executive was ushered in place. While it came into place its implementation particularly on the issue of membership which necessitated some sacrifice (subscriptions, attendance etc) became unclear. On the crucial date however Exhibit D.3 a report of the electoral committee shows that past membership was shelved and instead the popular view of potential or actual participatory membership was adopted. From the evidence members did attend the assembly that elected the new executive. It is evident that about 30% of the people who participated were probably not on the register maintained by the old executive. However the members who attended did elect the new executive. It is therefore the finding of this court that in spite of a popular turn out of more than the old membership the elections of 19th October 2003 were a valid exercise of the religious

mandate of the Ethiopian Orthodox Church in Uganda. The requirement of payment of dues and identity cards at the time when the new constitution had only come into being was popularly postponed as the old executive may not have leveled the ground and prepared the growing church faithful to fully participate as members in the transition period. I have therefore concluded that the defendants were validly elected as members of the executive committee of the church on 19/10/2003 and have duly served their term of office lawfully. Having said this and thus answered the first issue in the affirmative it is not necessary to go on and determine the other issues as they flow from the determination of that first issue. In any case the doubted approval by the archbishop was an approval given that the archbishop is mandated as the final arbiter of church matters. His fallibility or otherwise would thus be a matter that is unnecessary for this court to go into given his ultimate temporal power over the church as stipulated in the constitution of the church itself.

In the result, while dismissing the plaintiffs' action I would issue the following declarations and orders namely that

- (1) The Plaintiffs' suit against the defendants is dismissed forthwith.
- (2) A declaration is issued that the defendants were validly elected to the Executive Committee W.E.F 19/10/2003.
- (3) It is ordered that the defendants prepare within the next 10 days a list or register of all the members of the church

including the Plaintiffs and as provided for in the constitution. This list will be displayed in the church and circulated to all concerned and will be tabled at the next general assembly of the church and a copy duly signed by all members and verified by the signature of the current executive committee will be filed with the registrar within 21 days thereafter.

- (4) A General Assembly for the purpose of fresh elections will then be convened and held within 30 days from the date of filing of the register of members with the registrar of this court.

- (5) The results from the elections will then be filed with this court within seven days thereafter.

- (6) Each party to bear his own costs.

R.O. Okumu Wengi

JUDGE

4/10/2005