

Case 1

HC 905/22

RANGANAI CHIKWENA
and
LAMECK CHAKUVINGA
And
FUNNY CHADYA
and
PHINIAS JAJA
versus
MUGODHI APOSTOLIC FAITH CHURCH
and
AARON MUNODAWAFA
and
TONNIE SIGAUKE
and
WASHINGTON MUGODHI

Case 2

HC 5594/21

MUGODHI APOSTOLIC FAITH CHURCH
and
WASHINGTON MUGODHI
versus
DAVISON MAGOMA
and
TEDIUS MUNYANYI
and
NGOBSON BANDIRAI
and
NIGO MIKE MUKARATI
and
CEPHAS CHATORA
and
PRINCE MACHIRIDZA
and
RUZAI GWAVAVA
and
MANFRED MADAKA
and
TALENT MAPWEZA

and
TOBIAS MARWA
and
CHARLES MASANGO
and
GEORGE MANGWIRO
and
OBERT TAKABVIRA
and
HAMAYANGU NGANGA
and
MATAMBUDZIKO CHIYAMBIWA
and
MIRIRO BARE
and
THERESA NHAITAI
and
TAONESA TAKABVIRWA
and
CAINOS DANDANYIKA
and
WEDZERAI MAGEJO
and
MANASSA SENGWE
and
PHILIP MUSUVA
and
MUDIWA SAVIOUS MUTSARO
and
HOSIA SHAMBAMUTO
and
WEBSTER NYEKETE
and
SHUPIKAI MATAMBO
and
BRIGHTON MAHWITE
and
SAMUEL MAZURU

and
JACOB MACHIKANDA
and
GIVEMORE DZIMBANHETE
and
RUNGANO FAMBISAI
and
TAWANDA MUPAMHANGA
and
PETER KWATYA
and
ERIA PARIMWA
and
ERUWATI NYANDORO
and
TONNY SIGAUKE

Case 3

HC 901/22

MUGODHI APOSTOLIC FAITH CHURCH
and
WASHINGTON MUGODHI N.O.
versus
DAVISON MANGOMA
and
TEDIUS MUNYANYI
and
NGOBSON BANDIRAI
and
NIGO MIKE MUKARATI
and
CEPHAS CHATORA
and
PRINCE MACHIRIDZA
and
RUZAI GWAVAVA

and
MANFRED MADAKA
and
TALENT MAPWEZA
and
TOBIAS MARWA
and
CHARLES MASANGO
and
GEORGE MANGWIRO
and
OBERT TAKABVIRA
and
HAMAYANGU NGANGA
and
MATAMBUDZIKO CHIYAMBIWA
and
MIRIRO BARE
and
THERESA NHAITAI
and
TAONESA TAKABVIRWA
and
CAINOS DANDANYIKA
and
WEDZERAI MAGEJO
and
MANASSA SENGWE
and
PHILIP MUSUVA
and
MUDIWA SAVIOUS MUTSARO
and
HOSIA SHAMBAMUTO
and
WEBSTER NYEKETE
and
SHUPIKAI MATAMBO

and
BRIGHTON MAHWITE
and
SAMUEL MAZURU
and
JACOB MACHIKANDA
and
GIVEMORE DZIMBANHETE
and
RUNGANO FAMBISAI
and
TAWANDA MUPAMHANGA
and
PETER KWATYA
and
ERIA PARIMWA
and
ERUWATI NYANDORO
and
TONNY SIGAUKE

HIGH COURT OF ZIMBABWE
MUSITHU J

HARARE, 27, 28, 29, 30 March 2023 & 15, 16 May 2023 & 14 August 2024

Opposed Applications - Dismissal of application for want of prosecution

Adv F Chinwadzimba with her *N M Phiri*, for the plaintiffs in Case 1 and for the defendants in Case 2 and 3

Adv M Ndlovu, for the plaintiffs in Case 2 and 3 and for the defendants in Case 1

MUSITHU J: This composite judgment deals with three matters that commenced as motion proceedings but were consolidated and referred to trial at the Pre-Trial Conference stage because there were material disputes of fact that were unresolvable on the papers. For convenience

I have labelled the respective cases as Case 1, Case 2 and Case 3. The central issue that cuts across the three cases is whether there exists a written constitution for the Mugodhi Apostolic Faith Church (the church), which is the first respondent in Case 1 and the first applicant in Case 2 and Case 3. That issue became central after it caused a leadership crisis in the church. A resolution of that issue will ultimately resolve the question concerning the legitimate leadership of the church. Case 1 was an application for a *declaratur*. The applicants therein were seeking the following relief:

“IT BE AND IS DECLARED THAT:

- a) The 2nd Respondent is the Substantive Bishop of the 1st Respondent in terms of its constitution.
- b) The 3rd Respondent is the Vice Bishop of the 1st Respondent in terms of its Constitution.
- c) The 4th Respondent’s appointment as Vice Bishop of the 1st Respondent, being ultra vires the 1st Respondent’s Constitution is null and void.

CONSEQUENTLY, IT IS HEREBY ORDERED THAT:

- d) The 4th Respondent is interdicted from holding himself as Bishop of the 1st Respondent.
- e) All appointments and or reassignments and actions of the 4th in his purported capacity as Bishop of the 1st Respondent are unconstitutional and therefore null and void.
- f) The 4th Respondent shall pay costs of suit on a legal practitioner and client scale.”

Case 2 was an application for an interdict by the church and Washington Mugodhi, who were the first and second applicants respectively. Davison Mangoma and 35 others as cited in the papers were the respondents. The relief sought was captured in the draft order as follows:

“IT IS HEREBY ORDERED THAT:

1. The Respondents, their agents, followers or anyone associated with them be and are hereby interdicted and barred from using, accessing and entering into any shrine, premise or property of the 1st Applicant.
2. The Respondents, their agents, followers or anyone associated with them be and are hereby barred and interdicted from interfering in any manner whatsoever with the worship, meetings, programmes and church services of any congregation or gatherings of members of the 1st Applicant.
3. Any respondents opposing this Application be and are hereby ordered to pay costs of suit on a higher scale.”

Case 3 was an urgent chamber application for an interdict. The parties were the same as they appear in Case 2. The interim relief sought was that pending the determination of HC 5594/21 (Case 2), the respondents and anyone associated with them be barred from convening, attending, intruding or entering the applicants’ premises at their National Shrine at Chitope, Hwedza. The final order sought was that the respondents be barred from conducting themselves in the manner

stated in the interim relief sought. Costs were also sought on the legal practitioner and client scale against any party that opposed the application.

All the above matters were opposed.

Events leading to the referral of the matters to trial

The three applications were initially consolidated and placed before MHURI J to be argued as one. At the hearing, submissions were made regarding the existence of material disputes of fact which afflicted all the three matters. The parties were agreed that the matter to be heard first was HC 905/22 (Case 1), as the resolution of the issue arising therein would in turn resolve the issues arising for determination in HC 5594/21 (Case 2) and HC 901/22 (Case 3). The critical issue that permeated across all the cases was whether the church had a constitution or not. The applicants in Case 1 argued that the church had a written constitution that had been breached by the respondents. The respondents on the other hand argued that the said constitution availed by the applicants was a fraudulent document which had just been smuggled in for purposes of these proceedings.

The court agreed with the respondents' submission that the question about whether the church had a constitution could not be resolved on the papers. The court, per MHURI J made the following order in judgment HH 551/22:

“It is therefore ordered that the matter be referred to trial for evidence to be led from the committee members on the Constitution referred to for the court to determine whether the Church has a written Constitution and for the person who prepared the minutes of 10 August 2019 to testify on the minutes. The papers filed of record stand as the pleadings.”

The parties were not directed to file further pleadings. The matter was placed before CHINAMORA J for a pre-trial conference, and the parties agreed on the following pre-trial conference issues:

1. Whether or not there exists a written constitution for Mugodhi Apostolic Faith Church.
- 2(a) Whether or not the 1st plaintiff had an appointed Vice-Bishop prior to August 2012.
- 2(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.

The parties also agreed that the onus was on the defendants on issues 1, 2(a), 2(b) and 3. The onus was on the plaintiffs on the fourth issue.

The Case Management Meeting

When the parties appeared before me for the commencement of the trial, confusion arose regarding the proper identification of the parties and the attribution of onus, following the conversion of the matters into trial proceedings. It appears the matters had been treated as one matter, yet some of the applicants in Case 1 were not necessarily the respondents in Case 2 and Case 3. Similarly, some of the respondents in Case 1 were not part of the applicants in Case 2 and Case 3.

I invited the parties for a case management meeting where it was agreed that Case 1 would be heard first because a resolution of the issues arising from that matter was dispositive of the issues arising in the other two matters. Further, for convenience and to avoid further confusion in the identification of the parties, it was also resolved that the applicants in Case 1 be referred to as the plaintiffs and the respondents be referred to as the defendants. The same approach would also be followed in Case 2 and Case 3. The applicants in the two cases would be referred to as the plaintiffs and the respondents as the defendants.

Background to Case 1 HC 905/22

The founding affidavit was deposed to by the first plaintiff, Ranganai Chikwena, the son to the late Bishop Davison Chikwena. The late Bishop Chikwena was the senior Vice Bishop during the reign of the late Bishop Lameck Chakuvinga. The late Chikwena took over as Bishop of the church in 1981 in terms of the Church's constitution and according to seniority, following the death of the late Bishop Chakuvinga. The deponent became a member of the church in 1988 and fellowshipped at the church's Kuwadzana branch.

The church operated as a universitas governed by a constitution. Appointment to leadership positions was done according to seniority in terms of the church's constitution. He narrated the succession history of the church as follows. The founding Bishop of the church was Elija Mugodhi who died in 1971. His vice Bishop then, Lameck Chakuvinga took over the leadership according to seniority until his death in 1981. The late Bishop Chakuvinga was

succeeded by Bishop Chikwena. After his death in 1991, Bishop Chikwena was succeeded by Bishop Mutandiro Mubvuwiwa, who in turn passed on the mantle to Bishop Tadewu Mugodhi, who led the church until his death in 2019.

During his reign, Bishop Tadewu Mugodhi had two Vice Bishops, Aaron Munodawafa cited as the second defendant and Tonnie Sigauke, cited as the third defendant herein. Both were appointed in terms of the church's constitution. Before his death, Bishop Tadewu Mugodhi was diagnosed of a terminal illness, and he called for a meeting of the Board of Ministers, Vice Bishops and pastors on 10 August 2019. At the meeting, he announced that the fourth defendant had been appointed as senior Vice Bishop of the church. From that date, there was discord in the church, with part of the leadership alleging that the pronouncement was contrary to the provisions of the church's constitution in that the fourth defendant, who held the position of Pastor was not eligible to be appointed senior Vice Bishop in terms of the church's constitution.

The appointment of the fourth defendant as Vice Bishop triggered an urgent chamber application under HC 6734/19, in which the church as the applicant, sought to interdict the late Tadewu Mugodhi, the fourth defendant, and two other family members from interfering with the operations of the church. The provisional order granted by this court was appealed to the Supreme Court under SC 508/19. On 16 October 2020, the Supreme Court allowed the appeal on the basis that the lower court had made findings based on minutes that were in vernacular, without a translation. The proceedings were found to be in contravention of s 49 of the High Court Act [*Chapter 7:06*].

The present application was premised on the ground that the fourth defendant was appointed Vice Bishop in violation of the church's constitution. Following the death of Bishop Tadewu Mugodhi, on 2 February 2020, and at the National General Conference, it was resolved that in light of the demise of the bishop, the office of Bishop had become 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 second defendant, who was the senior Vice Bishop was appointed the substantive Bishop of the church and the third defendant was elevated to the position of senior Vice Bishop. That meant that the office of the second Vice Bishops became vacant following the elevation of one of the Vice Bishops to the position of Bishop. Vice Bishops were picked from the

Board of Ministers. That meant that Simon Madziva, the most senior member of the Board of Ministers, was supposed to be elevated to the position second Vice Bishop, but he chose to align himself with the fourth defendant's leadership. Philip Musuva, who was the most senior member of the second defendant's leadership was then appointed as Vice Bishop.

On the other hand, the fourth defendant with the support of his followers appointed himself as the Bishop of the church at the late Bishop's memorial service held in February 2020. He continued to hold himself as the bishop of the church. The fourth defendant was not even a member of the Church's Board of Ministers at the time of his appointment, and neither was he the most senior member in the church. He was just a junior pastor in the church and therefore it was not possible for him to be elevated to the position of Vice Bishop in the church. The church's leadership was not hereditary but was governed by the constitution. It was for that reason that even the founding Bishop, Elijah Mugodhi had not appointed any of his sons to succeed him. The late Tadewu Mugodhi, being a son of the founding bishop, had to wait for his turn to be appointed bishop based on seniority.

The fourth defendant's conduct had resulted in two factions within the church, one led by Aaron Munodawafa and the other by the fourth defendant. The fourth defendant had also gone ahead and changed locks at the national shrine in Hwedza, Chitope, thus denying the plaintiffs access to the place of worship.

The second to fourth plaintiff's deposed to supporting affidavits in which they associated themselves with the deposition by the first plaintiff.

Oral evidence in support of the plaintiffs' claims

Davison Mangoma

Davison Mangoma was the first plaintiffs' witness. He held the position of reverend or pastor, having joined the church in 1986. He was also the Chairperson for Greater Harare Province. He also served as the Chairperson of the Constitutional Committee. His evidence was as follows. The church was formed in 1932. Then it was known as the Apostolic Faith Mission Church (AFM) led by Paul Kruger. Elijah Mugodhi and other leaders such as Matigi Chikore, Chakuvinga and others joined the AFM in 1932. In 1945, Elija Mugodhi who was now an

Evangelist in the AFM, married a second wife after his first wife turned blind. The church constitution did not permit polygamy at that stage. Mugodhi was supposed to be ordained as reverend in 1947, but this did not happen after he took on a second wife.

The leadership of AFM tried to resolve the polygamy issue by insisting that the church doctrine be adhered to, but Mugodhi and other leaders who supported polygamy within the church refused to abandon their polygamous marriages. In 1949, Mugodhi and the other leaders broke away and started their own church which had no name by then. As the most senior evangelist, Elijah Mugodhi was appointed the first Bishop of the new church. It was at that point that the new church was christened Mugodhi, after the name of one of its founders. The church held its first quarter meeting at Chitongo village in Wedza. The following year the church held a ten-day gathering in Dorowa, along Save. The leaders agreed to come up with a constitution for the church, since they were still following the AFM way of worshipping.

The witness told the court that the church had its own constitution which was signed by Bishop Tadewu Mugodhi in 2012. According to the witness, in May 2012, Bishop Tadewu Mugodhi and the Board of Ministers constituted a constitutional committee made up of the witness, Tadius Munyanyi, Bandirayi, Joram Madziwa and Mike Mukarati to redraft the 1952 constitution. This was because the existing constitution had no letterhead and was not signed. Bishop Tadewu Mugodhi was the custodian of the church documents, and he was the one who handed over the draft constitution to the members of the constitutional committee, while accompanied by the Secretary General a Mr Chitongo. The witness was chosen to be the chairperson of the constitutional committee. His duties included leading the committee and chairing meetings until the process was completed.

When the committee finished the assignment, it handed over to the bishop for proof reading, the draft constitution and the 1952 constitution. The bishop came back to them after two months on 1 August 2012, accompanied by Chitongo. The bishop gave the committee the go ahead to print the final copies of the constitution as he was happy with the final draft. The printing of the copies was done on the same day. On 19 August 2012, the bishop, Chitongo and a younger brother to Chitongo travelled to Harare and the witness accompanied them to their legal practitioners' offices so that they could sign the constitution before their legal practitioner. The Bishop and the

Secretary General signed the constitution in the presence of their legal practitioners on 19 August 2012. The other members of the committee signed the constitution the following day on 20 August 2012. The witness, Tadius Munyanyi and Jorum Madziwa also went and signed the constitution and paid a fee of US\$300 to the legal practitioners for purposes of having the constitution notarized.

Meanwhile the church's ten-day annual gathering had had started on 20 August 2022. The witness collected the constitution from the legal practitioners on 22 August 2022 and took it to the church headquarters at Chitope, Wedza and surrendered it to the Bishop. In the afternoon of 29 August 2012, Bishop Tadewu Mugodhi addressed the gathering with the constitution in hand. He informed the congregants that the church now had a constitution which had been prepared by the constitutional committee that the church had commissioned for that purpose. The witness stated that one of the main reasons for coming up with a written constitution was that the church was facing challenges in opening bank accounts and acquiring church land as it was a requirement that any application for that purpose be accompanied by a constitution.

According to the witness, the only difference between the 1952 constitution and the 2012 constitution was that the latest constitution was inscribed with the words 'amendment' and had a cover page with signatures. The Bishop gave the witness a copy of the new constitution which the church used to open bank accounts in Chinhoyi and Harare. These bank accounts were opened in 2015. Interim bank statements from ZB Bank Limited and the checklist with the requirements for account opening were also tendered as exhibits.

The church also used the same constitution to apply for church stands in Harare. A copy of the 2012 constitution was tendered in evidence as exhibit 1. The witness explained the different dates that appeared on the cover page of the constitution as follows. The year 1932 referred to the year the founding leadership of the church joined the AFM of Paul Kruger. The date 1 August 2012 was the date the constitutional committee printed the final constitution. The date 25 May 2018 on the church stamp was the date the constitution may have been stamped in the Church. It was not of much significance. As regards the dates on the signature page, these were different because the Bishop and the Secretary General signed the document on 19 August 2012, while the rest of the committee members signed on 20 August 2021 when they became available.

The draft copy of the 1952 amended constitution of the church was also tendered as exhibit 2 by consent. This is the draft copy that the witness claimed was handed over to the constitutional committee to redraft and culminated in the 2012 constitution. The witness stated that the document was carved as the “*1952 Amended Constitution of the Mugodhi Apostolic Faith Church*” because when the leaders started the church they were coming from the AFM. This 1952 constitution is what was drafted at Dorowa, Save in 1952, and was largely based on the AFM constitution.

The witness also outlined the leadership of the church from 1949, when Bishop Elijah Mugodhi assumed the leadership of the church until his death in 1971. The vice bishops were Kunonga from Wedza and Chakuvunga from Dorowa. Before Elijah Mugodhi died, Kunonga defected back to AFM, leaving Chakuvunga as the first vice bishop. After Elijah Mugodhi’s death, Chakuvunga as the most senior vice Bishop was confirmed as Bishop from 1971 to 1981. Chakuvunga died in 1981 and was replaced by Bishop Davison Chikwena who led the church from 1981 to 1991 when he died. Bishop Chikwena was succeeded by Bishop Mubvuwiwa took over from 1991 to 2000. In 2000, Bishop Mubvuwiwa defected and joined another church called Sungano Revapostori. His vice then called Muringani also defected.

Tadewu Mugodhi then took over the reigns as Bishop in 2002 until his death in October 2019. Tadewu Mugodhi’s vice Bishops were Mupimbira from Buhera and Munodawafa. Following the death of Mupimbira, Munodawafa took over as the first vice Bishop. Mututsa took over Munodawafa’s position as the second vice Bishop. Mututsa also died and was replaced by Sigauke as the second vice Bishop. The church leadership was therefore made up of Tadewu Mugodhi as Bishop, followed by Munodawafa as the first vice Bishop and Sigauke as the second vice Bishop. These were selected from the Board of Ministers in terms of section 4(e) of the constitution. The witness also explained that in terms of the constitution, when a sitting Bishop died or became incapacitated, the first vice Bishop took over the leadership of the church in an acting capacity until the meeting of the General Church Conference which would install as the substantive Bishop. Before the coming into force of the 2012 constitution, the appointment of bishops was based on the 1952 constitution.

When the position of first vice Bishop became vacant, the second vice Bishop became the first Bishop. The most senior person in the board of ministers was then elevated to the position of

second vice Bishop. The Bishop did not play any role in the appointment of the vice Bishop. The constitution provided the procedure for the appointment of vice Bishop.

The witness explained the appointment of Washington Mugodhi as follows. The late Bishop Tadewu Mugodhi called for a meeting of the church leadership on 10 August 2019. The witness was also present as the chairperson of the constitutional committee, and as well as being the chairperson of the Greater Harare Province which was hosting the meeting. The Bishop arrived around 10:00am and the meeting started with a prayer. After the prayer the Bishop stood up and thanked the church for helping with his treatment and medical bills when he was hospitalized. He also thanked the committee that helped him prepare the church's constitution which he had signed.

Following those announcements, the Bishop invited to the front, the acting secretary general Forbes Mutsvikiri who was acting following the death of Chitongo. He also invited his five sons to line up according to their ages. The Bishop asked the secretary general to read out the paper that he had handed over to him. Mutsvikiri read as follows: *"I am reading from section 16 of the amended constitution I Tadewu Mugodhi I am taking my son Washington Mugodhi to be the first vice bishop followed by Munodawafa. I am doing this in accordance with the Constitution."* When Mutsvikiri finished reading, there was an uproar in the church with people questioning the section of the constitution in terms of which the decision had been made. The Bishop walked out of the meeting with his sons and his vice Bishop, Sigauke.

The vice Bishop later came back into the church where the church leadership had remained seated. He was asked to explain what the Bishop had done and answered that he had come to close the meeting. The leadership invited the members of the constitutional committee to explain the clauses that the Bishop had cited in announcing the decision to elevate the fourth defendant to the position of Vice Bishop, and it was noted that there was no such clause in the constitution. The people present concluded that the Bishop had violated the constitution by appointing his son as vice Bishop because he was not even in the board of ministers or the board of elders. He was merely a pastor who had been appointed to that position in 2012. No past Bishop had ever appointed a successor in their lifetime. Three leaders of the church, second vice Bishop Sigauke, Elder Madaka and Reverend Mangwende were requested to approach the Bishop and inform him

that had violated the constitution. If he remained defiant, then the leadership was to seek the intervention of a third party to help resolve the dispute.

The witness also told the court that Bishop Mugodhi was the custodian of the constitution having signed it himself. He further averred that even when the parties came to court under HC 6734/19, the Bishop Tadewu Mugodhi filed opposing papers in which he acknowledged the existence of the constitution. In the minutes of the meeting held on 10 August 2019, which were prepared by Mutsvikiri and were signed by the Bishop, the Bishop thanked the constitutional committee for the job it had done in drafting the church constitution. At the commencement of the meeting on 10 August 2019, the Bishop had asked the secretary general to quote section 16 of the constitution meaning that he was aware of the existence of the constitution. The witness also denied that the meeting of 10 August 2019 ended when the bishop Tadewu Mugodhi left, insisting that the meeting proceeded when Vice Bishop Sigauke rejoined the meeting. As the vice Bishop, Sigauke was also the vice chairperson of the meeting.

According to the witness, two sets of minutes were prepared after the meeting of 10 August 2019. One set was prepared by Mutsvikiri as secretary general and the other by vice secretary for Harare Province, Jonathan Machinga. It was the practice at such meetings that two secretaries preparing minutes that would later be compared and consolidated. The witness also made reference to the minutes of the General Conference held on 2 February 2020 at which vice Bishop Munodawafa was confirmed as the Bishop of the church, following the death of Bishop Tadewu Mugodhi. The witness denied that the church was guided by cannon laws, which had allegedly been invoked to elevate Washington Mugodhi to the position of vice Bishop. He insisted that appointment to leadership positions was based on the constitution.

The witness disputed Washington Mugodhi's *locus standi* to seek an interdict against him and 35 other members of the church arguing that he was not the Bishop of the church. He averred that Washington Mugodhi had no authority to represent the church in any proceedings since he had not been appointed as Bishop in terms of the constitution of the church. The witness also denied that he had been involved in any violence or interfered with the proper running of the church. The witness further denied having been expelled from the church by the Washington Mugodhi led leadership, insisting that Mugodhi was not the legitimate leader of the church. It was

only the board of ministers that had the right to dismiss a person from the church as the highest decision-making body.

Under cross examination, the witness did not deny that section 20 of the 1952 amended constitution required that any constitutional amendments or alterations of the constitution shall be made at an Annual General Meeting (AGM) called for that purpose. Further, such amendment required the approval of two thirds or 90% of the church members at the General Conference convened for that purpose. The witness however insisted that an AGM was held in February 2012 for purposes of facilitating the amendment of the constitution. He did not have the register of the attendees and neither did he know the number of people that attended the AGM.

The witness also admitted under cross examination that he had no records, minutes or resolutions that made reference to the 1952 constitution or the appointment of previous bishops because such records were kept by the Bishop.

The witness insisted that even though vice Bishop Munodawafa was old and of ill-health, he remained the legitimate successor to the late Tadewu Mugodhi in line with the church's constitution. The fact that Munodawafa was frail and incapacitated did not disqualify him from assuming the leadership of the church.

As regards the interdict sought against him as the defendant in Case 2 and Case 3, the witness insisted that he had done nothing wrong to warrant the order being made against him. The witness was asked to comment on the spoliation order granted against him and others under HC 2164/20 in which they were restrained from conducting themselves unlawfully against the church at Tagarira Village at Murambinda. His response was that the matter was filed as an urgent chamber application during the lockdown period of the Covid 19 era. The applicants' counsel in the matter had refused to have the matter postponed to allow them to attend the hearing. He did not appeal against the order because their own legal practitioner advised that they needed to have the leadership dispute resolved first.

The evidence of Mike Nigo Munyati

The plaintiffs' second witness was Mike Nigo Munyati. He was born in the church but became a full member on being baptized in 1984. He held the position of Reverend/Pastor in the

church from 1995 when he was ordained to that position. He was currently the senior pastor for the Harare South branch of the church comprising of six assemblies. He was also a member of the constitutional committee. He corroborated the first witness' testimony on the church leadership and the succession of Bishops from the time the church was formed to the time that Bishop Tadewu Mugodhi became Bishop. He was aware that the church was governed by the 1952 constitution after its breakaway from the AFM.

The old constitution had no logo or signatures which presented challenges when the church wanted to open bank accounts or acquire church land. During the first week of February 2012, at the annual synod meeting, it was resolved that the constitution be amended so that it satisfied the standards requirements for opening bank accounts and acquiring council land. He and the other constitutional committee members were chosen by the bishop and the board of minsters to drive the constitution redrafting process. His evidence on the amendment process, the signing of the constitution, its presentation to the people, and the alleged discrepancies in the dates on the constitution, was similar to that of the first witness.

The witness dismissed the defendants' assertions that the church had no constitution as false. He alluded to two events where the late Bishop Tadewu Mugodhi and Washington Mugodhi acknowledged the existence of the constitution. During the meeting of 10 August 2019, the late Bishop Tadewu Mugodhi declared that his was elevating Washington Mugodhi to the position of vice Bishop in terms of the constitution. In their opposing affidavits to earlier litigation between the feuding parties, the late Bishop Mugodhi and the fourth defendant insisted that the decisions made by the late Bishop were valid because they were made in terms of the constitution.

The witness narrated the events that transpired at the meeting of 10 August 2019. His version is similar to that of the first witness right up to the point where the late Bishop Tadewu Mugodhi walked out of the church after pronouncing the fourth defendant as the first vice Bishop deputized by Aaron Munodawafa. It is therefore not necessary to repeat the same evidence herein. As the Bishop walked out of the church in the ensuing commotion, the witness claims that he heard him say "*lets meet at Wedza*".

According to the witness, after the departure of the late Bishop from the meeting, it was resolved to send a delegation of senior leaders to ask the bishop to reconsider his decision since he

had violated the constitution. The same meeting also resolved that the Mutsvikiri be removed from his position as Secretary General of the church because he had read falsehoods.

Concerning the claim for an interdict against him and the other defendants in Case 2 and Case 3, the witness chose to abide by his averments that he made in his opposing affidavits to the applications.¹

Under cross examination, the witness averred that there were no material changes made to the 1952 constitution that they had been tasked to amend. He further averred that all the important documents pertaining to their appointment to steer the process, and the people who attended the AGM to approve the constitution were under the custody of the late bishop Tadewu Mugodhi.

The evidence of Tadius Munyanyi

The third witness was Tadius Munyanyi. He was born and raised in the church. He was baptized in 1976 when he was 12 years old. The witness was also a member of the constitutional committee, who also signed the document on 20 August 2012 at the offices of the church's legal practitioners. He held the position of reverend after he was ordained in 1996. His evidence on the formation of the church, the leadership and the of succession of Bishops and vice Bishops was on all fours with that of the first two witnesses. The witness was also one of the defendants against whom an interdict was being sought in HC 5594/21. He chose to abide by his deposition in opposition to that application.²

The evidence of Ranganai Chikwena

The fourth witness was Ranganai Chikwena. He is the first plaintiff in Case 1 and deposed to the founding affidavit. He chose to abide by the deposition made under oath and his evidence is summarized above. No further evidence was led from this witness by the plaintiffs' counsel.

¹ The averments were made in the opposing affidavit on p 466-468 of the record.

² His opposing affidavit is on pages 459-461 in the main record.

The evidence of Phillip Mhike Musuva

The fifth witness claimed to have become a member of the church from 1949. His version on the formation of the church, its founding leadership and issues of succession and the application of the constitution to the appointment of Bishops corroborated that of the witnesses who testified before him. He also claimed to be a younger to the founding Bishop Elijah Mugodhi.

According to the witness, when the late Tadewu Mugodhi arrived at the meeting on 10 August 2019, he asked for him. The witness went to the late Bishop's car and the late Bishop started talking about his illness. Sitting in the car with the Bishop was elder Mazulu. According to the witness, the late Bishop told him of his decision to leave the church in his family's hands. He disagreed with the late Bishop and openly told him that his decision was going to destroy the late Bishop Elijah Mugodhi's good work. He claimed to have been seriously disturbed by the Late Tadewu Mugodhi's decision to surrender the church to his family.

First and Second Defendants' Case in Case 1

The opposing affidavit was deposed to by Washington Mugodhi in his capacity as fourth defendant and as the substantive Bishop of the first defendant. His opposing affidavit raised the following preliminary points. The first was that the applicants lacked *locus standi* to institute the current proceedings. The plaintiffs had not attached any evidence to confirm their membership in the first defendant. The deponent denied that the plaintiffs were members of the church, and therefore were not interested parties to the suit. The second preliminary point was concerned with the existence of material disputes of fact in connection with the disputed constitution of the church. That objection has been overtaken by events, it being the reason why the matter was referred to trial.

Concerning the merits, the deponent denied that the second and third defendants were the substantive Bishop and Vice Bishop of the church. The second defendant was said to be a senile old man who was bedridden and unaware that his name was being abused by the plaintiffs. At the time of his death, Bishop Tadewu Mugodhi is alleged to have denied appointing the third defendant as vice-Bishop. The fourth defendant claimed that he was duly appointed substantive Bishop of the church in accordance with the canons of the church. He denied that the church ever had a

written constitution. He also denied that his father the late Tadewu Mugodhi was appointed on the basis of seniority. The deponent averred that the late Bishop was appointed by virtue of being the then serving Bishop's choice, as there were more candidates that were more senior than him at the time. These included Rukuni Makwasha and a Mr Mubvuwiwa. The first plaintiff's father is alleged to have been chosen by Chakuinga, because he was loyal to the founding Bishop and was only to serve in a caretaker role till Tadewu Mugodhi became of age to assume the leadership of the church.

The deponent averred that the choice of a successor to a serving Bishop was the exclusive prerogative of the sitting Bishop. It was in that same capacity that the late Tadewu Mugodhi made a pronouncement that owing to a vacancy that existed in the office of first Vice Bishop, the fourth defendant who was a pastor was eligible for appointment to that office. The late Tadewu Mugodhi is alleged to have further pronounced, during a meeting held on 10 August 2019, that owing to his ill-health, and in accordance with the canons of the church, the deponent was being appointed the acting Bishop of the church. The late Bishop is also alleged to have indicated that there was still the outstanding task of coming up with a constitution of the church. The deponent further alleged that a splinter group led by Davison Mangoma convened their own meeting and formed their own breakaway group.

The decision to defy the decision made by the late Bishop Tadewu Mugodhi was deemed a rebellion against the authority of the late Bishop and a non-acceptance to continue under his leadership. The group is alleged to have appointed the third defendant as their own Bishop. The deponent further averred that the conduct of the splinter group constituted schism which resulted in them creating their own leadership and church. For that reason, the group could not seek to enforce rights in a church they revolted against.

Cases 2: HC 5594/21

As already highlighted under the background above, Case 2 was an application for an interdict by the church and Washington Mugodhi, who were the first and second plaintiffs respectively. Davison Mangoma and 35 others as cited in the papers were the defendants. What triggered the application for an interdict were the chaos and mayhem allegedly unleashed by the

36 defendants who were aggrieved by the elevation of the second plaintiff to the position of substantive bishop of the church. The second plaintiff claimed that his elevation was done in terms of the church's canons and had been endorsed by several judgments of this court.

The defendants are alleged to have rebelled against the church leadership after they remained behind and convened their own meeting following the termination of the meeting called by the late Bishop Tadewu Mugodhi on 10 August 2019. They openly defied the decisions that the late Bishop had made which included the elevation of the second plaintiff to the position of the first vice Bishop of the church. The defendants were subsequently charged with misconduct and expelled from the church on 5 December 2020. The defendants did not challenge their expulsions from the church.

The main opposing affidavit was deposed to by the first defendant, Davison Mangoma. The other 35 defendants filed opposing affidavits in which they essentially associated themselves with the deposition made by the first defendant in his opposing affidavit. The first defendant's affidavit raised as a preliminary point the absence of *locus standi* on the part of the second plaintiff. They claimed that the second plaintiff's ascendancy to the position of Bishop was null and void as it was not in accordance with the constitution of the church. As regards the merits, the defendants denied all the allegations that were made against them. The question of the applicant's *locus standi* is tied to the issue of whether the church has a written constitution. This is the very issue that prompted the referral of the matter to trial.

Case 3: HC 901/22

This was an urgent chamber application filed by the plaintiffs to arrest the disturbances that were occurring allegedly at the instigation of the 36 defendants. The interdict was sought to preserve the *status quo* pending the determination of Case 2. The application was opposed by the 36 defendants with the first defendant deposing to the main opposing affidavit. The other 35 defendants also filed opposing affidavits in which they essentially associated themselves with the averments made in Davison Mangoma's opposing affidavit. The first defendant's opposing affidavit raised as a preliminary point, the absence of *locus standi* on the part of the second plaintiff because he was not constitutionally appointed as the Bishop of the church. It was also averred that

the issue of the church's leadership was now the subject of a separate pending matter under HC 905/22.

The other preliminary point was that the matter was not urgent because the application was essentially like the one filed under HC 5594/21. The last preliminary point was that there was no cause of action, with the defendants averring that their expulsion from the church was a nullity because the second plaintiff had no authority to exercise such powers to expel members from the church. The merits of the application were contested as well primarily for the same reason that all decisions taken by the second plaintiff were null and void for want of authority.

Submissions and the analysis of the three Cases

At the conclusion of the plaintiffs' case, the defendants through their legal practitioner chose to open and close their case without leading any evidence from their witnesses. The parties' counsels agreed to file their closing submissions on or before 26 May 2023. The closing submissions were also going to touch on the issues that arise for determination in the three cases. The plaintiffs in Case 1, who are the defendants in Case 2 and Case 3 filed their closing submissions on the agreed date. Their submissions therefore apply to the claim in Case 1 and their defence in Case 2 and Case 3. At the time of preparing this judgment, no closing submissions had been filed on behalf of the defendants in Case 1 and the plaintiffs in Case 2 and Case 3. This judgment has therefore been prepared without the benefit of the defendants' closing submissions in Case 1 and the plaintiffs' closing submissions in Case 2 and Case 3.

Whether there exists a written constitution for the church

The first issue for determination is whether there is a written constitution for the church. As already highlighted, this issue looms large in all the three cases. A determination of the issue will have a ripple effect on the remaining issues for determination in all the three cases.

It was submitted for the plaintiffs in Case 1 and the defendants in Case 2 and Case 3 that the church was a voluntary association of a religious character governed by a constitution. The provisions of that constitution had to be adhered to. It was further submitted that the evidence of the first witness, which was corroborated by the other witnesses demonstrated that since its

inception, the church was guided by principles and values of the AFM church as enshrined in the AFM constitution. The church adopted its first constitution in 1952 as confirmed by the document that was submitted into evidence as the amended 1952 constitution. In 2012, the church constituted a constitutional committee whose mandate was to drive the amendment of the 1952 constitution, and the final product was the August 2012 constitution. The late Bishop Tadewu Mugodhi acknowledged the existence of a written constitution in previous court proceedings under HC 6734/19. Further, at the meeting of 10 August 2019, the late Bishop Tadewu Mugodhi also acknowledged the existence of the constitution in his opening remarks.

The defendants in Case 1, who also happen to be the plaintiffs in Cases 2 and Case 3, may have taken an irresponsible risk in choosing to open and close their cases without leading evidence as well as filing closing submissions. This is because the oral testimony submitted on behalf of the plaintiffs, which happens to cut across the three cases was uncontested. It is trite that what is not denied is taken to be admitted.³

The witness' testimony points to a well-structured and coordinated framework for the appointment of the church leadership in the church. At least five bishops had been at the helm of the church before the controversial elevation of the fourth defendant firstly to the position of the first senior vice Bishop and latter to the position of Bishop following the demise of Bishop Tadewu Mugodhi who happened to be the fourth defendant's father. The five Bishops Elijah Mugodhi, Chakuvinga, Chikwena, Mubvuwiwa and Tadewu Mugodhi. No controversy surrounded their elevation to the position of Bishop. From the witness' evidence, it is clear that apart from Elijah Mugodhi who was the founder of the church, the rest of the Bishops were former vice Bishops who only ascended to the position of Bishop by having been the most senior vice Bishops of the church.

The evidence before the court also shows that even the late Tadewu Mugodhi only became Bishop when it was his turn by virtue of him being the most senior vice Bishop at the time the position became vacant. It did not matter that the late Tadewu Mugodhi was the son of the founding

³ *Trustees for the Time Being of Cornerstone Trust & 2 Ors v NMB Bank Ltd* SC 97/21 at p 7; See also *Nhidza v Unifreight Ltd* SC-27-99; and *Minister of Lands and Agriculture v Commercial Farmers Union* SC-111-2001 at 60.

Bishop of the church. I find the fourth defendant's argument that his appointment was based on some unwritten church canons, or that it was hereditary highly unfathomable and unbelievable. No explanation was given as to why Chakuvinga, Chikwena and Mubvuwiwa, in respect of whom no family ties with the Mugodhi Family were ever alleged, ended up being Bishops of the church if it was not because of their seniority in the church. Section 4 of the constitution of the Church 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 those 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."

The plaintiffs' evidence on record that the five Bishops referred to above were elevated in terms of the above provision of the constitution was not refuted in the absence of any oral evidence in rebuttal of the plaintiffs' testimony. Of course, there is a related issue of whether this constitution was the constitution of the church. In his opposing affidavit in Case 1, the fourth defendant dismissed the 2012 constitution as a fraud. In his founding affidavits in Case 2 and Case 3, the fourth defendant averred that the church never had a written constitution. The credibility of his averments must be tested against the late Tadewu Mugodhi's own conduct in relation to the same issue of the constitution. This is because it is the late Tadewu Mugodhi who appointed the fourth defendant first as senior vice Bishop, before he was elevated to the position of substantive Bishop following the death of Tadewu Mugodhi.

In his opposing affidavit that he deposed to on 18 August 2019, in HC 6734/19, the late Bishop Tadewu Mugodhi made the following pertinent averments:

"5.2The meeting of the 10th August 2019 is clearly being abused and cannot be a causa. The deponent is seeking to divest into himself powers, which in terms of the constitution he seeks to rely on, he does not have.....In terms of the constitution, I appoint a deputy bishop and no one else can abrogate such powers."⁴ (Underlining for emphasis).

⁴ See page 56 of the defendants' bundle of documents

Further down in the same affidavit, more specifically in para 7.1, the late Bishop Tadewu Mugodhi also made the following remarks:

“7.1In any event, the constitution does not provide for the appointment of a deputy bishop in the manner alleged....” (Underlining for emphasis)

In paragraphs 10 and 11 of the opposing affidavit in the same matter, the late Bishop went on to make the following remarks:

- “10.The board of Ministers comprise twelve people in terms of the church constitution. I have not appointed anyone to be in the board of ministers...
11.The Applicant was not founded in terms of the Constitution. The Applicant was found in 1947 and the alleged constitution only executed in 2012. The governing law are the canon laws. I was not appointed in terms of the constitution attached as I was appointed in 2002, ten years before the document was consummated.” (Underlining for emphasis).

These sentiments were expressed in the aftermath of the meeting of 10 August 2019, which gave birth to the serious disturbances that rocked the church after the elevation of the fourth defendant to the position of first vice Bishop. The reference to the constitution in the cited paragraphs, when the events of 10 August 2019 were still fresh in the mind of the deponent could not have been a coincidence. The references confirms that he was aware of the significance of the constitution. The late Bishop was aware of the nature of the accusations that were being made against him, and these were all grounded on the alleged violations of the constitution.

In HC 6734/19, the applicant was the church represented by vice Bishop Tonnie Sigauke. The relief sought therein was an interim interdict prohibiting the late Tadewu Mugodhi from carrying on his functions as the bishop of the church as his was now incapacitated by a terminal illness. The respondents were the late Bishop Tadewu Mugodhi and three of his sons. The fourth defendant herein was the second respondent in that matter. As the second respondent in that matter, the fourth defendant deposed to his own opposing affidavit in which he fully associated himself with the averments made by the late Bishop Tadewu Mugodhi. By fully associating himself with those averments, the fourth defendant is deemed to have been aware that there was a church constitution in existence as confirmed in the late Bishop Tadewu Mugodhi’s own deposition.

In their closing submissions, the plaintiffs also accused the defendants of being duplicitous. This was because in HC 6734/19, both the late Tadewu Mugodhi and the fourth defendant herein

accepted under oath, the existence of the constitution as highlighted in the extracts above. In his opposing affidavit to the application under HC 905/22, the fourth defendant herein said the following in paragraph 10:

“The validity of the Constitution attached the 1st Respondent is vehemently denied. The 1st Respondent has never had a constitution, neither has it ever accepted or ratified Annexure “A”. This document is denied in its entirety and the Respondents put the Applicants to the strictest proof thereof to prove that same is the constitution of the 1st Respondent.”

The annexure A referred to is the August 2012 constitution that the plaintiffs alluded to as the one that was drafted by the constitutional committee and launched by the late Bishop Tadewu Mugodhi at the 10 day annual gathering of the church at Chitope on 29 August 2012. That evidence was not refuted by the defendants.

The events that occurred at the meeting of 10 August 2019 are instructive. There are two versions of the minutes of that meeting that were tendered as exhibits in court. According to the plaintiffs’ witnesses, one version of the minutes was prepared by Mutsvikiri in his capacity as the secretary general. The other version was prepared by the vice secretary for Harare Province, Jonathan Machinga. The plaintiffs’ first witness told the court that it was the practice to have two minute takers at any meeting. The minutes would then be consolidated by the minute takers after confirming their authenticity. In his cross examination of the plaintiffs’ witnesses, counsel for the defendants sought to discredit the minutes prepared by the Machinga on the basis that only the secretary general of the church had the mandate to prepare minutes. It was also averred that the set of minutes by Machinga was not signed and neither did it bear the church stamp.

There are not material variations in the two sets of minutes. They only differ on events that occurred after Bishop Tadewu Mugodhi left the meeting. Both sets of minutes however refer to the constitution of the church, an item which cannot be overlooked as it confirms that the issue of the constitution arose at the meeting. The minutes by Mutsvikiri, which the defendants claim to be the official version of the minutes make the following references to the constitution of the church:

“The meeting was for the top twelve and Pastors as they represent various areas in their spheres of jurisdiction. 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 critical role, Revrend Mangoma, Munyuki, Bandirai and Madziva which empowered the Bishop in choosing the successor as enshrined in the church Constitution which part of that clause was the main Agenda of the meeting.....He saw it

prudent after the four mentioned church Revrends wrote a constitution, that the Chairman saw it fit to officially appoint his son Washington Mugodhi as the Vice Bishop who will understudy him so that he will take over upon his demise....”⁵

The chairperson of the meeting was the late Bishop Tadewu Mugodhi. In the maligned minutes prepared by Machinga, the late Bishop Tadewu Mugodhi is alleged to have thanked members of the constitutional committee for their sterling work in coming up with the constitution. The late Bishop is also alleged to have appointed the fourth defendant as vice Bishop in terms of the constitution of the church. The minutes of the meeting of 10 August 2019, undoubtedly confirm that the church leadership endorsed the existence of the constitution.

The defendants cannot be allowed to prevaricate by taking two positions that are inconsistent.⁶ They cannot approbate and reprobate over such a monumental matter that is at the heart of the disturbances that rocked the church.

In his cross examination of the plaintiffs’ witnesses, counsel for the defendants also sought to discredit both the 1952 and 2012 constitutions for various reasons. There was the form, and the font used in the 1952 constitution which according to counsel showed that it was a manufactured document. The provisions of the constitution pertaining to the procedure for amending the constitution were allegedly not followed. There were several dates on the August 2012 constitution which cast some doubt on its authenticity. In my view, the alleged imperfections that afflict the two constitutions or the constitutional process leading to the drafting or amendment of the August 2012 constitution are irrelevant to the resolution of the issues before the court.

The issue before the court is simply whether there exists a written constitution of the Church. Going by the evidence that has been placed before the court, and the conduct of the late Bishop Tadewu Mugodhi, as confirmed by events that occurred at the meetings at which the constitution was discussed, this court is satisfied that the church indeed had a written constitution. This court was not required to interrogate the validity of that constitution. The court was only required to determine whether a written constitution existed. Questions concerning the failure to comply with the provisions of the 1952 constitution concerning the convening of the meetings for

⁵ See the minutes on pages 44-48

⁶ See *ZIMRA v Stanbic Bank Zimbabwe Limited* SC 13/19

purposes of passing resolutions authorizing the amendments of that constitution, the approvals of the amendments and the conflicting dates on the August 2012 constitution do not arise at all at this stage. If the defendants were so minded, they ought to have sought a *declaratur* or made a counterclaim of their own attacking the validity of the August 2012 constitution based on the alleged violations of the procedures leading to the drafting of that constitution. The validity of that constitution is clearly a matter for another day.

Whether or not the church had an appointed Vice-Bishop prior to August 2019 and whether the appointment of Washington Mugodhi as Vice Bishop of the Mugodhi Apostolic Faith Church is null and void.

The finding that the church indeed had a written constitution resolves a lot of questions. The discordance in the church all emanated from the constitutionality of the decisions that were made by the late Bishop Tadewu Mugodhi. The finding that there exists a written constitution for the church resolves the illusion that Mugodhi Apostolic Faith Church was a family church and that decisions concerning the appointment of Bishops and other leaders of the church was done in terms of some uncodified church canons. The church had as its foundation, a constitutional framework that its members collectively agreed to submit themselves to. It follows that all the matters concerning the affairs of the church that includes the manner in which the church membership must conduct itself, the various tiers of leadership right up to the position of Bishop and the ascendancy to leadership positions among other things were to be regulated by the constitution.⁷

The evidence by the plaintiffs' witnesses shows that office bearers at all levels of authority assumed leadership positions on the basis of seniority. I have already related to the flawless and seamless manner in which all the Bishops right up to the late Tadewu Mugodhi were appointed and steered the church until they were succeeded by the next most senior vice Bishop. The succession system was so well organized and transparent from the time of the formation of the church by the late Elijah Mugodhi right up to the events of 10 August 2019, when the late Tadewu Mugodhi sought to circumvent the constitution and the orderly manner in which Bishops and vice

⁷ See in this regard *The Church of the Province of Central Africa v Diocesan Trustees for the Diocese of Harare* SC 48/12

Bishops were elevated in the church. The plaintiffs' last witness, Phillip Musuva had been in the church from its inception. He told the court that he was a brother to the late founder of the church Elijah Mugodhi. His testimony was that he was invited for a discussion of the succession issue by the late Tadewu Mugodhi a few minutes before the meeting of 10 August 2019. He warned the late bishop about the dangers of leaving the church in the hands of his family, thus departing from the values that bound the church together from its inception. Musuva's evidence was not challenged.

The witness' testimony shows that when Tadewu Mugodhi became bishop in 2002 until his death in October 2019, there were two vice Bishops. These were Mupimbira from Buhera and Munodawafa. When Mupimbira passed on, Munodawafa took over as the first vice Bishop, and Mututsa took over Munodawafa's position as the second vice Bishop. Mututsa also died and was replaced by Sigauke as the second vice Bishop. At the time of the meeting of 10 August 2019, the church leadership was therefore made up of Tadewu Mugodhi as Bishop, followed by Munodawafa as the first vice Bishop and Sigauke as the second vice Bishop. The vice Bishops had ascended to their positions by virtue of being the most senior members in the Board of Ministers in terms of section 4(e) of the constitution.

The fourth defendant was not a member of the Board of Ministers. The evidence of the plaintiffs' witnesses, which was not challenged, shows that the fourth defendant was a mere pastor or reverend, whose rank was some four tiers from the rank of vice Bishop. In between were the boards of deacons, elders and the twelve ministers. In terms of the church hierarchy therefore as set out in section 3 of the church's constitution, the fourth defendant could not ascend to the rank of vice Bishop, before he became a member of the boards of deacons, elders and the twelve ministers. All the people occupants of those boards were more senior than him.

The fourth defendant claimed to have been elevated to the rank of vice Bishop in accordance with the canon laws of the church. Because the defendants chose to open and close their case without leading any evidence, these church canons were neither placed before the court nor explained. No evidence was placed on record to confirm their existence and how appointments under those canons were made. In any case, and as already demonstrated, the fourth defendant's claim that he was appointed in terms of the church's canons is at variance with the position that

the same he took in his deposition in HC 6734/19. It is also at variance with the late Tadewu Mugodhi's position at the 10 August 2019 meeting where he told the gathering that he was appointing Washington Mugodhi to the position of vice Bishop in terms of the church's constitution. This apparent conflict in the defendants' version of events was not explained since they chose not to lead evidence from witnesses.

For the foregoing reasons, the court determines that the church had its full complement of vice Bishops as of 10 August 2019 in accordance with its constitution. There was no vacancy in the office of vice Bishops. The appointment of the fourth defendant to the position of vice Bishop was irregular as it was unconstitutional. Not only did he not qualify for the appointment, there was also no vacancy in the rank of office Bishops. Even assuming that a vacancy existed, it could only be filled by the most senior member in the board of ministers.

Whether Aaron Munodawafa is the Bishop of the Church

It is common cause that at the time the meeting of 10 August 2019 was held, Aaron Munodawafa was the most senior vice Bishop. He is said to have become old and frail and therefore incapacitated to hold office in the capacity of Bishop or vice Bishop. It was also averred under cross examination that Munodawafa had not filed any papers even when he was cited in the proceedings under Case 1. Counsel for the plaintiffs' submitted that Munodawafa had been cited as an interested party in the proceedings. Following the death of Bishop Mugodhi on 14 October 2019, Munodawafa was the first senior vice Bishop who was earmarked to take over the reigns of Bishop in terms of the church's constitution. His participation in the proceedings was therefore essential.

The court agrees with the submission by the plaintiffs' counsel that Munodawafa's state of health did not disqualify him from ascending to the position of Bishop in terms of the church's constitution.

The record shows that on 2 February 2020, a National General Conference/SNOD Conference was held at the church's national headquarters at Chitope in Wedza. The meeting was chaired by the second vice Bishop, Sigauke. The minutes of the meeting were tendered as an

exhibit by consent.⁸ Some of the agenda items for the meeting were: the notification on the passing away of Bishop Tadewu Mugodhi; confirmation of a substantive Bishop; confirmation of the first and second vice Bishops; and the elevation of elders to the board of ministers. The meeting was attended by members of the board of ministers, board of elders, deacons, reverends, evangelists, preachers and parish secretaries. The membership present unanimously agreed that the next in line to assume the position of Bishop was the first vice Bishop Aaron Munodawafa. In line with the constitution of the church, Aaron Munodawafa became the sixth substantive Bishop of the church.

Further, in terms of the constitution and by virtue of seniority, the second vice Bishop Tonnie Sigauke was elevated to the position of the first vice Bishop. The most senior minister from the board of ministers, Phillip Mutusva, was elevated to the position of the second vice Bishop. The same meeting noted that the new Bishop Aaron Munodawafa was now incapacitated as he was 105 years old and unable to walk. The general conference unanimously agreed to confirm the first vice Bishop, Tonnie Sigauke as the Acting Bishop of the church. This evidence was not challenged, and the appointments were done by virtue of seniority in line with the church's constitution. Resultantly, the court determines that Aaron Munodawafa was constitutionally appointed as the Bishop of the church.

Whether the applications for an interdict in Case 2 and Case 3 should succeed

In their submissions, the defendants in Case 2 and Case 3 submitted that the plaintiffs failed to establish a clear right and all the requirements for the granting of an interdict. The requirements of an interdict were set out in the celebrated case of *Setlogelo v Setlogelo*⁹ as follows: a clear right; a well-grounded apprehension of irreparable harm if the relief is not granted; that the balance of convenience favours the granting of the relief; and that there is no other satisfactory remedy.

In their submissions, the defendants contend that the failure by the plaintiffs to establish a clear right meant that remaining requirements of an interdict would fall away because they could not exist in the absence of a clear right. A party cannot suffer irreparable harm, and neither can it allege the absence of an alternative remedy in the absence of a clear right. It was further submitted

⁸ Exhibit number 7 on page 51 of the plaintiffs' bundle of documents

⁹ 1914 AD 221 at 227

that going by the plaintiffs' case as pleaded in the application for an interdict, and in opposition to the claim in Case 1, the church did not have a constitution. That averment effectively meant that the church did not exist, as it had no standing at law. The second plaintiff could not therefore claim to be the Bishop of a non-existent entity.

I am persuaded by the defendants' submission in both Case 2 and Case 3 that the plaintiffs failed to establish a clear right. Earlier in the judgment, I remarked that the finding on whether the church had a written constitution would effectively dispose of Case 2 and Case 3. In their opposing affidavits in the two cases, the defendants challenged the second plaintiffs' capacity and authority to institute proceedings on his own behalf and on behalf of the first plaintiff on the basis that his appointment as Bishop was null and void since he was unconstitutionally appointed. In both matters, the second plaintiff instituted proceedings in his capacity as Bishop of the first plaintiff, the church. The court has already determined that the second plaintiff's purported appointment as the vice Bishop of the church on 10 August 2019 was irregular and consequently null and void as it was done in breach of the church's constitution. His ascendancy to the position of Bishop following the demise of Tadewu Mugodhi was similarly irregular and consequently null and void as it was also done in breach of the church's constitution.

In Case 2, the second plaintiff's founding affidavit was deposed to on 15 October 2021. In Case 3, the founding affidavit was deposed to on 11 February 2022. At that point, the church already had a substantive Bishop in the form of Aaron Munodawafa who was constitutionally appointed at the National General Conference held on 2 February 2020, in terms of section 4 (d) of the church's constitution. That meeting resolved that since Aaron Munodawafa was incapacitated by ill health and old age, Tonnie Sigauke be appointed the Acting Bishop of the church. That procedure is provided for in terms of section 4(c) of the church's constitution.

It follows that the second plaintiff was never the legitimate of the church in view of the constitutional violations that surrounded his purported ascendancy to the position of vice Bishop and later the purported substantive Bishop of the church. Further, in light of that finding that his appointment as vice Bishop and subsequently as Bishop of the church was null and void, the second plaintiff could not assert to have a clear right in the affairs of the church to institute proceedings for an interdict in his own name and on behalf of the church as the second plaintiff.

He could not claim to have any right to speak on behalf of the church as its Bishop when he never was.

For the foregoing reasons, the court determines that the plaintiffs in Case 2 and Case 3 are not properly before the court.

Costs of suit

The court was urged to grant the relief sought in Case 1 with an order of costs on the punitive scale of legal practitioner and client. The court was also urged to dismiss the claims for an interdict in Case 2 and Case 3 with costs on the punitive scale. No further submissions were made to justify the order of costs on the punitive scale sought on behalf of the successful parties. The parties have been in and out of court on diverse occasions. The dispute concerning the legitimate leadership of the church remained unresolved in all those legal skirmishes. The matters as consolidated therefore raised an important legal question that the parties had long evaded during their lengthy legal voyage. An order of costs on the punitive scale is therefore unjustified.

DISPOSITION

Resultantly it is ordered that:

In respect of Case 1:

IT BE AND IS DECLARED THAT:

1. The second defendant is the substantive Bishop of the first defendant in terms of its constitution.
2. The third defendant is the Vice Bishop of the first defendant in terms of its constitution.
3. The fourth defendant's appointment as Vice Bishop of the first defendant, being *ultra vires*, the first defendant's constitution is null and void.

CONSEQUENTLY, IT IS HEREBY ORDERED THAT:

4. The fourth defendant is interdicted from holding himself as Bishop of the first defendant.
5. All appointments and or reassignments and actions of the fourth defendant in his purported capacity as Bishop of the first defendant are unconstitutional and therefore null and void.
6. The fourth defendant shall bear the plaintiffs costs of suit.

In respect of Case 2:

1. The first and second plaintiffs claim for an interdict be and is hereby struck off the roll.
2. The second plaintiff shall bear the defendants' costs of suit.

In respect of Case 3:

1. The first and second plaintiffs claim for an interdict be and is hereby struck off the roll.
2. The second plaintiff shall bear the defendants' costs of suit.

Mvingi & Mugadza, legal practitioners for the plaintiffs in Case 1 and for the defendants in Case 2 and Case 3

Mutamangira & Associates, legal practitioner for the plaintiffs in Case 2 and Case 3 and for the defendants in Case 1