IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA, A.D. 2005

CORAM - F.M. LARTEY, J.S.C. [PRESIDING]
ASARE KORANG, JA
TWENEBOA-KODUA, JA

H1/179/2004
22ND APRIL, 2005

ASSEMBLIES OF GOD CHURCH, GH. [PER THE EXECUTIVE PRESBYTERY] HEADQUARTERS BUILDING, H/NO. C. 500/J ACCRA … **PLAINTIFF/RESPONDENT**

VRS.

1. REV. RANSFORD OBENG
2. JOSEPH OPOKU
3. C.K. ACOLATSE
4. P.K. OWUSU
5. C.O. KPODO … **DEFENDANTS/APPELLANTS**

J U D G M E N T

TWENEBOA-KODUA, JA - This is an appeal from the judgment of the High Court, Kumasi. In the judgment delivered on 11 December 2001, the plaintiff (ASSEMBLIES OF GOD CHURCH, GHANA) who is the respondent on appeal was adjudged to recover against the defendants, as appellants herein, as follows:

"1. A declaration that by seceding from the Assemblies of God Church, Ghana, the defendants have ceased to be members of the Church.

2. A declaration that the Calvary Charismatic Centre a Local Assembly of the plaintiff's church i.e., the church building or

auditorium and the office block acquired before 16 November 1992 are held in trust for Assemblies of God, Ghana.

3. A declaration that movable and immovable properties of C.C.C. which were acquired before 16 November 1992 are properties of the plaintiff church.
4. Recovery of possession in respect of all the said properties.
5. The property No. 12 was acquired by the Calvary Chapel Ministry and jointly developed by C.C.M. and C.C.C.
6. It is ordered that the parties go into accounts in respect of all incomes, harvest proceeds, tithes, offerings……if any was outstanding before and up till 16 November 1992.
7. Further to that, the parties should settle their respective contribution and entitlement to the property on Plot No. 12 which they jointly developed.
8. The properties itemized in Exhibits 28 and 29 are owned by and declared in favour of the 1st defendant. The defendants are restrained from entering upon, dealing with or in any way interfering with the plaintiff's Local church know (sic) as Calvary Charismatic Centre building, offices, or any other property of the church in terms of the preceding orders. In respect hereof, their agents, workmen, servants etc. are equally restrained. The order of injunction is to take effect after the accounts have been gone into. In any case since the C.C.C. is a going concern, the injunction order will begin to take effect after three months from today or after settlement of accounts, whichever is later."

Dissatisfied with the judgment foregoing, the appellants launched their appeal on one ground, namely, "that the judgment is against the weight of evidence." They however gave notice that they would return in due course with additional grounds. The additional grounds they filed are as follows:

"(a) The trial judge erred when he held that the decision by the C.C.C. to secede from the Assemblies of God Church amounted to

a division within C.C.C. for which reason certain properties held by C.C.C. legally remained for the General Council of the Assemblies of God Church.

(b) The trial judge erred in law when he held that by seceding from the Assemblies of God Church there was a division within the C.C.C. for which reason certain properties held by the C.C.C. remained for the General Council of the Assemblies of God Church.

(c) The trial judge erred when he held that by virtue of the Constitutions and Bye-Laws of the Assemblies of God Church, (all tendered in evidence) properties acquired by the C.C.C. before 16 November 1992 belonged to the Assemblies of God Church and that the defendants are restrained from entering upon, dealing with or interfering with the C.C.C.

(d) The trial judge erred in law when he failed to determine the legal effect of the various statutes under which the Assemblies of God Church was registered in relation to the Respondent's capacity to commence the action now on appeal before this Honourable Court."

The respondents duly gave a notice of their intention to contend that the decision of the High Court, Kumasi be varied and they set out the grounds on which they intended to rely in a notice.

First the variation of the judgment sought is as follows:

(1) A declaration or holding that Plot No. 12 Atimpongya, Kumasi and the building thereon as belonging to the plaintiff church and that defendants hold the same in trust for the Assemblies of God, Church.

(2) A declaration for recovery of possession of Plot No. 12 Atimpongya, Kumasi, and the building thereon in favour of the plaintiff (ie. the respondent Assemblies of God Church, Ghana) as against the defendants (ie. the appellants).

(3) An order to compel the 1st defendant (ie. the 1st appellant) to

surrender his credentials to the respondent.

(4) An order of perpetual injunction to compel the appellants, their agents, workmen, servants, relatives, supporters and assigns from entering upon, dealing with or in any way interfering with Plot No. 12, Atimpongya, Kumasi.

(5) A declaration for recovery of possession of the properties mentioned in Exhibit 29.

(6) An order granting leave to the respondent to amend the endorsement of the Writ of Summons as prayed for in the plaintiff's (the respondent's) motion for leave to amend the same filed on 16/7/2001.

(7) An order granting (the) respondent all the reliefs claimed by the respondent and as sought to be amended by the said motion of of 16/7/2001.

Now the grounds on which the respondent Church sought to vary the aforesaid judgment:

"(a) The learned trial judge was wrong in holding that the respondent did not adduce any evidence on the acquisition of Plot No. 12,

(b) The learned trial judge erred in holding that Plot No. 12 Atimpongya was acquired by C.C.M.

(c) The learned trial judge was wrong in holding that Plot No. 12 Atimpongya was jointly developed by both C.C.C. and C.C.M.

(d) The learned trial judge erred in holding that the properties mentioned in Exhibit 29 were loaned to C.C.C. and therefore they rightly and legally belonged to the 1st appellant as the one who loaned them to C.C.C. and he should therefore have them.

(c) The learned trial judge was wrong in refusing to grant leave to amend the endorsement of the Writ of summons filed on 16/7/2001."

The facts at the background of the case are brief and hardly complicated. The appellants were local members of the Assemblies of God Church, Ghana shortly before the action herein commenced. The 1st appellant, in particular, was an accredited pastor of

the Church. He received training in the Southern Ghana Bible Institute of the Assemblies of God Church at Saltpond between 1977 and 1979. When he passed out of the Institute, the 1st appellant was given appointment as "Associate Pastor" at the Central Assemblies of God Church, Kumasi, a local branch of the Assemblies of God Church, Ghana. He worked under the Senior Pastor of the local church ie. the Central (also called Lighthouse) Assemblies of God Church in Kumasi.

The 1st appellant was soon given the assignment involving the supervision of the University of Science and Technology branch of the Assemblies of God Students Union (AGSU) later called Assemblies of God Campus Ministry.

The Associate Pastor was on the payroll of the Central Assemblies of God Church, Kumasi. He soon came up with the idea of establishing an English-speaking Assemblies of God Church and he received the support of the Central Assemblies of God Church Kumasi. His effort culminated in the development of the Assemblies of God Campus Ministry into the Calvary Charismatic Church (the C.C.C.) on Easter Sunday 1985.

As he travailed to build the C.C.C., the 1st appellant significantly remained on the payroll of the Central Assemblies of God Church Kumasi and was housed in the parsonage of that local church.

It is beyond dispute the C.C.C. emerged and continued as part of the Assemblies of God Church, Ghana from 1985 until it attained an "affiliate" or "Set in Order" status. In other words, the C.C.C. had attained maturity and had become a "full member church" of the Assemblies of God Church, Ghana.

Undoubtedly the C.C.C. had been erected in conformity with all the relevant provisions of the Constitutions and Bye-Laws of the Assemblies of God church (Exhibits C,C1 and C2)

By a letter dated 16 November 1992, the appellants, then constituting the Church Board of the C.C.C., communicated to the Executive Presbytery of Assemblies of God, that the C.C.C. had "ceased affiliation" with the Assemblies of God Church. (Exhibit BB).

Some efforts were made to resolve the differences between in parties but they yielded no fruit: the appellants described their "stance as non-negotiable" and were therefore unyielding.

The die for de-affiliation was really cast on or from 19 November 1992. The respondent Assemblies of God Church called on the de-affiliating or seceding branch to divest itself of all the properties – movable and immovable – acquired prior to 19 November 1992: they were to surrender them to the parent Church.

In the written submission filed on behalf of the appellants, Counsel expounded some aspects of the law and in the bright light of his exposition, Counsel strenuously vindicated the appellants' case. The tone for argument in the appeal was thus set.

The appellants rejected the claim for the properties and the respondent immediately resorted to the action in the Court below.

Counsel for the respondent criticised the approach of his counterpart. He submitted that "the written submission of the appellants' case is characterized by unfortunate twisting of facts, arguing in circles and misconceived averments which tend to blur an otherwise simple matter." Counsel for the respondent did not however spare himself the agony of similarly arguing in circles in response and further blurring the otherwise simple matter.

The trial judge foresaw and avoided the pitfall described above. He simply addressed the issues raised for determination against the backdrop of the evidence and more particularly the Constitutions of the Assemblies of God Church and drew his conclusions. The approach commends itself to me.

Counsel for appellants found it convenient and reasonable to address the additional grounds first and that, in his view, would facilitate the resolution of the initial principal ground, namely, "that the judgment is against the weight of evidence."

The first of the additional grounds addressed in the written submission reads:

> "The trial judge erred in law when he held that the decision by the C.C.C. to secede from the Assemblies of God Church amounted to a division within the C.C.C. for which reason certain properties held by the C.C.C. legally 'remained' for the General Council of the Assemblies of God Church."

Counsel for the appellants started off by emphasizing that the C.C.C's decision to secede from the Assemblies of God Church triggered off the suit now on appeal herein.

Counsel took the view that it was a cessation of affiliation with the Assemblies of God (AG) Church and not a division that inspired the Court action.

Counsel found it contradictory for the judge in the Court below to conclude in one breath that the secession was the cause of the action and in another that the division was the cause.

Indeed the judgment illustrated the division in the C.C.C. by citing the five witnesses who testified in court for the respondent A.G. Church and who had previously belonged to and worshipped at the C.C.C. as having, among other unidentified former members, stoutly opposed the secession .The judgment was categorical that that crop of former members of the C.C.C. had ceased to return to worship at the C.C.C.; they rather did so in other local A.G. Churches.

Counsel for the appellant put the cessation of affiliation by the C.C.C. down to certain policies of the Assemblies of God Church Ghana, contained in the Pastoral Letters (Exhibits 10 and 11) sent to the C.C.C. These policies imposed prohibitions and restrictions on the C.C.C. local church; they included a prescription of what "dresses" the women members should consider appropriate to use, what materials as learning aids could be used in Church activities and which Church workers of other denominations should be allowed or not to officiate in the local Churches.

Counsel for the appellants did not see any merit in the conclusion that the C.C.C's decision to secede from the A.G. Church amounted to a division within the C.C.C. To Counsel, the conclusion was drawn in error. The decision to cease affiliation with A.G. Ghana by the local church was initiated by the Board of Directors of the C.C.C. and allegedly approved by the congregation. So there could not have been any division.

The foregoing proposition is false. As demonstrated, all five witnesses called by the respondent church disagreed with the secession, opposed it and deserted camp. Nothing demonstrates a division in camp better.

In a broader perspective, the de-affiliation of the C.C.C. from A.G. church simply termed secession was no less a division of the local church from the parent church. In the Church history of the late medieval and early modern times, secession was called schism.

In the definition of the term, the lexicographers make division a strong element of that experience. For example, Ernest Baker's CASSEL'S NEW ENGLISH

DICTIONARY [1946] explains "schism" as: "a split or division in the community; division in a church, especially secession of a part or separation into two churches, the sin of causing such division." The new Penguin English Dictionary (First published in 2000) offers a definition as follows:

> "Schism: (1) the separation of a group into opposing factions, especially because of a different ideologies (2) the formal division of a church or religious body, either into two entities or with one faction ceasing to exist, usually caused by ideological or doctrinal differences."

Clearly in schism or secession the division element is strong.

By the constitution and Bye-Laws of the Assemblies of God, Ghana (Exhibit C in the Record of Appeal at page 729), a provision has been made for membership of the wider church. Article IV Section 1(d) accords each Assembly (local church) membership. Such a church will have been set-in-order and is entitled to one voting delegate in their meetings.

It is not an abuse of language where such an affiliate or set-in-order church secedes to say there is a division in the entire Church. The trial judge was therefore perfectly right in holding that the secession amounted to a division in the Assemblies of God Church. The phenomenon was manifest in both the local C.C.C. and the A.G. Ghana.

The issue of the consequential loss of church properties by the C.C.C. to the parent Church could come in handy in the examination of the next additional ground, namely, "the trial judge erred in law when he held that by seceding from the A.G. Church, there was a division within the C.C.C. for which reason certain properties acquired by C.C.C. remained for the General Council of the A.G. Church."

The appellants' counsel has put down the error of the judge to the manner in which he construed the Constitutions and Bye-Laws of the church. He pointed out in the written submission that no provision was made in those documents (Exhibits C, C^1, C^2) for secession or the cessation of affiliation and the judge had himself underscored that point.

Relying on his contention that secession could not be equated with division within the membership of the C.C.C., a contention already discredited above, Counsel submitted that the trial judge should have ended up there. To the Learned Counsel when the judge

proceeded to construe secession to mean a division in the C.C.C., the trial judge assumed the function of rewriting the Constitutions and Bye-Laws of the Church without authority. Counsel relied on the authority of **ALLAN SUGAR (PRODUCTS) LTD. V. GHANA EXPORT CO. LTD.** (1982-83) 2 GLR 992 C.A. for his opinion .

In that case this Court said:

> "It is no function of the Court to rewrite an agreement for the parties by inserting terms that would have been beneficial but were overlooked."

It is submitted with respect that the authority cited offers the appellants no help or comfort for the trial judge did not insert a new provision or "term." He did construe a provision as demonstrated herein above: the secession had occasioned a division.

It was also submitted that granted that a division had occurred in the church the Constitution and Bye-Laws of the Local Churches (Exhibit C^2) had provided a specific procedure for addressing such an issue. No advantage was taken of the specific and special procedure prescribed.

The attractive submission foregoing courts a simple response. The group of 5, (the appellants herein) had declared their "stance non-negotiable": they were uncompromising too. The specific procedure was simply unavailing in the circumstance.

As suggested by Counsel for the appellants, the appellants could not be restrained from parting company, for that was their Constitutional right within the focus of the "general fundamental freedoms" of the 1992 Constitution. It is provided, inter alia, as follows in Article 21.

> "21. (1) All persons shall have the right to –
>
> (b) freedom of thought, conscience and belief, which shall include academic freedom.
>
> (c) freedom to practise any religion and to manifest such practice."

So the appellants and other like-minded members of the C.C.C. did withdraw or secede on 19 November 1992 in the unimpeded exercise of their guaranteed freedom of religion and the open practice thereof.

On the evidence, the division in both the C.C.C. and the Church at large was real and trial judge cannot be faulted for his holding so.

The expropriation of the C.C.C's properties and the basis for it were prominently recurring in all the first three additional grounds. It is considered appropriate and tidy to address that basis of the expropriation while dealing with the third additional ground.

The ground is, once again, as follows:

> "3. The trial judge erred when he held that by virtue of the Constitutions and Bye-Laws of the Assemblies of God Church, (all tendered in evidence) properties acquired by the C.C.C. before 16 November 1992 belonged to the Assemblies of God Church and that Defendants (ie. the appellants) are restrained from entering upon, dealing with or interfering with C.C.C."

Counsel for the appellants discussed the various organs of the church such as the Executive Presbytery and the Board of Trustees of the A.G. Church, Ghana and the respective function particularly in terms of property holding. He descended on the rights of the C.C.C. and the A.G. Church with respect to acquired property. He conceded that the trial judge referred to the appropriate provisions of the various Constitutions and Bye-Laws of the Assemblies of God Church for purposes of determining the question as to the ownership of property between the C.C.C. and the A.G. Church.

Counsel however disagreed with the conclusion reached by the learned judge that the constitutional provisions made the properties, acquired by the local churches of A.G. Church, the properties of the parent A.G. Church. As usual, he sought to exclude the C.C.C. from the crop of local churches of Assemblies of God.

Counsel underlined the independent existence of the C.C.C. from its inception in 1985 until it matured into an "affiliate" or a "set-in-order" church in 1990. The affiliation was brief and had ended by 19 November 1992 when the appellants declared the C.C.C. to have ceased the affiliation with the A.G. Church (See Exhibit BB at page 967 of the Record of Appeal).

Counsel examined the trust relationship provided by the Constitutions of the Church between the local churches and the A.G. Church, Ghana with regard to properties in the

church. He discredited the trust for failing to meet the law of creation and declared the relationship void.

Counsel came to grips with the question at stake, namely, what happened to the C.C.C. properties on the cessation of its affiliation or on secession.

Counsel cited Article XV Section 4 of the Constitution and Bye-Laws Local Churches of the A.G. Ghana as relevant with regard to such properties. It is therein provided:

> "Section 4. In case of division within the membership, all Church property shall remain for the General Council of the Assemblies of God, Ghana."

Learned Counsel relapsed into their non-negotiable stance, returned to their arguments and rekindled the issues or matters already dealt with. He contended that there was no division in the C.C.C. to warrant the application and enforcement of Section 4 of Art XV of the relevant Constitution of the local Churches; that trust relationship in the Constitutions and Bye-Laws of the Church did not exist because either it had not been created by law in the case of a Board of Trustees envisaged or the General Council of the A.G., Ghana neatly proposed in Article XV(4) of Exhibit C^2 not been incorporated. It was also added that the C.C.C. had been independent from birth and had not been a local Church or a part of the A.G. Church of Ghana.

Counsel took the view that Art. XV(4) of Exhibit 2 was inapplicable, void and of no effect whatsoever and so were any provisions having regard to the C.C.C. properties.

Against the background of arguments foregoing the appellants have impugned the holding by the Court below that the properties acquired by the C.C.C. prior to 16 November 1992 belonged to the Assemblies of God Church and the appellants were accordingly restrained from interfering with the C.C.C. in the light of the Constitutions and Bye-Laws of the A.G. Church (Exhibits C, C^1 and C^2 tendered in evidence).

This Court has already accepted on evidence on the record that there had occurred a clear division in the C.C.C. and that the appellants had also created a division in the A.G. Church, Ghana by their open secession and defiance.

The Court below found and rightly so that the C.C.C. had no independent existence: it was part of the A.G. Church, Ghana; the evidence on record is overwhelming that the

C.C.C. operated under the name of the A.G. Church and used the materials of the A.G. Church, the logo thereof etc.

It is a fact that the trust relationship in terms of the Board of Trustees proposed in the main Constitution and Bye-Laws of the A.G, Ghana (Exhibit C) never materialized. As well the provision of a trust around the General Council of Assemblies of God, Ghana for "All church property" (Section 4 of Article XV of the Constitution and Bye-Laws – Local Churches of the A.G., Ghana) was not made to work: it was not backed by law or the General Council was not incorporated.

But that apparently was not the end of the matter. On 25 May 1990 the "Assemblies of God, Ghana" was registered under Religious Bodies (Registration)Law, 1989 (PNDCL 221). Two very relevant sections of the Law are quoted here. They are Sections 3 and 7(3).

Section 3 provides:-

> "Every religious body in Ghana shall be registered under this Law, and no religious body in existence in Ghana shall after three months from the commencement of this Law operate as such a body unless it is registered under this Law."

Section 7 (3) also provides:

> "All assets and properties of a registered religious body shall vest in the Trustees or its governing body who shall hold the same in trust for and on behalf of the members."

The C.C.C. was part of the A.G. Church, Ghana. What property or properties the C.C.C. had or held was or were already vested in the A.G. Church's governing body by virtue of the foregoing statutory provision. The appellants and the C.C.C. members seceding with them have left the A.G. Church and they must by law leave or are so bound to leave any property or properties vested in the Church.

The trial judge therefore hardly erred in holding as he did. The appeal on that ground is accordingly dismissed.

The final additional ground of appeal was formulated as follows:

> "The trial judge erred in law when he failed to determine the legal effect of various statutes under which the Assemblies of God Church

was registered in relation to (the) respondent's capacity to commence the action now on appeal before this Honourable Court."

Counsel for the appellants intimated to the court that the Church had been registered under two statutes, namely, the Trustees Incorporation Act, 1962 (Act 106) on 4 November 1966 and the Religious Bodies (Registration) Law, 1989, (PNDCL 221) on 25 May 1990.

By Act 106, the trustees of the religious body registered under the statute were vested with the power to sue and be sued in the corporate name of the said trustees. (See Section 4 of Act 106). But Section 9 (2) of PNDCL 221 on the other hand vested the power of a registered religious body to sue and be sued in the corporate name of the body.

Incidentally as counsel rightly pointed out, the combined effect of Sections 3 and 21 of PNDCL 221 repealed Act 106. He also intimated that as of 2 February 1993 when the action now on appeal was commenced, the Assemblies of God Church incorporated on 25 May 1990 had the necessary capacity to sue and did not need another to do so for it.

Counsel submitted that when the A.G. Church purported to sue per the Executive Presbytery, a body not recognized by law, the capacity to take the action was seriously flawed, with consequences: Counsel suggested that the action should not have been entertained. It was submitted with vigour that the respondent should have been "non-suited."

When counsel for the appellants had the opportunity to take another bite at the cherry, he submitted that the respondent had made some effort to amend the capacity of the respondent by authorities at that stage. The legal effect would be to subvert the statute providing for the capacity of the respondent to commence legal proceedings. Counsel entertained no doubt in his mind that to allow the amendment sought would give a different dimension to the action.

Counsel took the view that the approach would have a retrospective effect and would purport to cure the capacity in which the action was commenced, as if the Executive Presbytery properly commenced this action. Counsel found the procedure reprehensible. Relying on the principle settled in MACFOY V. UNITED AFRICA COMPANY LTD. (1961) 3 All E.R. 1169 P.C, Counsel submitted that the procedure

would amount to putting something on nothing. The effect would be that the action should be deemed to have been properly commenced right from the outset, when in fact and in law it was not.

Counsel for the respondent on his part submitted that even if an action was brought in the wrong name where "a legal person" was disclosed, the court would substitute and /or amend to bring in the right person, in order to avoid multiplicity of suits. Counsel cited authorities in support. Among the cases was the Interim Executive Council vrs. Interim Executive Committee of the Apostolic Divine Church of Ghana (1984-86) GLR 29. In that case the Court of Appeal did hold that the respondents had no capacity to issue the writ in the name of the Interim Executive Committee because the Interim Executive Committee was not a legal entity and it could not sue or be sued in the church's name. The court was, however, prepared to amend the writ to disclose the identity of the Executive Committee since the said Executive Committee was a body created by the Church itself. The Court did state that the Committee was, for that reason, "a persona." To the Court therefore the misdecription was a mere misnomer, readily curable "by the court granting an amendment to enable the merits of the action to be determined, once it had been determined that the committee existed."

The second of the cases cited by Counsel for the respondent was Ghana Ports and Harbours Authority v. Issoufou [1991] 1 GLR 500 C.A. and affirmed in [1993-94 1G.L.R. 24 by the Supreme Court. In the Court of Appeal it was significantly held at page 511 of the indicated report as follows:

> "There is no doubt that in certain circumstances the capacity of a party could be amended even on appeal."

This was a case in which the plaintiff sued in the business name of a firm. The court so amended the capacity in order to ensure that all issues in controversy were determined, and to do substantial justice. In the Supreme Court it was held as in the head notes in the first holding as follows:

> "…..the courts had a duty to ensure that justice was done in cases before them and should not let the duty be circumvented by mere technicalities. Since the power to make amendments to the capacities of a party rested in the inherent jurisdiction of the courts, the courts

could, when the issue was raised either in the trial court any time after judgment was delivered or in the Appellate Court on the application of a party to the suit, orally or otherwise, grant such amendments as were necessary to meet the justice of the case."

The two cases foregoing offer ample guide as to what to do in the circumstances of the case in hand. But the Supreme Court's holding above is particularly instructive. This court cannot fail to amend the title of the suit herein by deleting the phrase "per the Executive Presbytery" in order to leave the Assemblies of God Church, Ghana, already endowed with capacity by reason of due incorporation, as the suing party in the case. That will surely enhance the judgment of the court below and "meet the justice of the case."

Accordingly the title of the suit is hereby amended, as suggested or indicated supra, making the A.G. Church, Ghana the substantive plaintiff (now on appeal). The 4th and final additional ground is therefore rendered inconsequential. It is accordingly struck out.

This brings the court to the ground mounted as the main ground of appeal, to wit, "The judgment is against the weight of evidence." The judgment is the sum total of building blocks of evidence. The evidence was wide-ranging. It covered the run-up to the secession from the church, the consequent division in the C.C.C. and in the A.G. Church, the expropriation of properties found of and in the C.C.C. etc. The judgment was in tune with the weight of evidence on record: it was not against the weight of evidence led. It is simply idle for anyone to draw that conclusion. The ground is similarly struck out for want of merit.

The respondent exercised the procedure for seeking the variation of decision in the judgment on appeal (Rule 15 of the Court of Appeal Rules, 1997 C.I. 19). The seven-paragraph variation has been set out above. As well the grounds for the variation have been mounted hereinabove.

The first of the grounds is that "the learned trial judge was wrong in holding that the respondent did not adduce any evidence on the acquisition of Plot No. 12 Atimpongya." Counsel for the respondent said that the judge went back on his word impliedly admitting that some evidence was offered by the respondent on the acquisition of the said plot. He had made the admission when he said DW2 had sworn that the development of aforesaid

plot was done by the C.C.C. and the Calvary Charismatic Ministry (CCM) jointly. Counsel found it corroborative of their evidence.

Counsel submitted that the Plot No. 12 was acquired in 1992 on the oath of PW1 and after a fundraising, the C.C.C. raised about ¢8,000,000.00 that was used to develop the Plot in question.

The 1st appellant did swear that the plot had been purchased in 1990 and before secession. So that it was palpably false that it was purchased in 1992 as the trial judge concluded.That the Plot No. 12 building was called C.C.C. Building Complex was a manifestation of the Church's ownership. It had reached lintel level by 1992. The evidence of that was captured by the 1993 Calendar which had a picture of the ongoing works on the Centre building, Sepe Buokrom.

It is significant, Counsel states, that it had been built by the C.C.C. and differences of level of the edifice did not detract from the fact that it was work undertaken by the C.C.C. Counsel sought to stress that the appellants were not entitled thereto because of their secession from the church.

The 1st appellant under cross-examination admitted the contribution and donation by members at the C.C.C. before 1993. Such contribution in a special box went to build the church. So in the view of the respondent's counsel, the building at Plot No. 12 was constructed from the Church's contribution and must go to the Church (ie. the parent).

To this and all other grounds, Counsel for the appellants did not address his argument direct. He spoke on general principles on procedural defences. He adverted his mind to Representative Proceedings and said in all the proceedings the appellants were being treated as though they represented the C.C.C. According to Counsel the appellants were sued in their individual capacities yet the reliefs sought were calculated to be enforced against the C.C.C.save one, namely the surrender of credentials being pressed against the 1st appellant.

Counsel for the respondent did argue the second ground raised for the variation of the judgment from the Court below. The ground: The learned trial judge erred in holding that Plot 12 Atimpongya was acquired by C.C.M . Counsel argued among other things that it was palpably false that the C.C.M. bought the land at Atimpongya. He gave the short history that the purchase of the parcel of land was made in 1990 (see page 556

of the Record of Appeal) but the C.C.M. came into existence by registration on 13 November 1992. So that by the time of secession, the C.C.M. had made no contribution whatsoever towards to the acquisition and development of Plot No. 12 Atimpongya (See the Certificate of Registration annexed to Exhibit TT at pages 922-924 of the Record of Appeal). The C.C.M. had no legal capacity then to acquire immovable property.

In the state of non-existence, the C.C.M. could not have collaborated to develop the Plot No. 12, Atimpongya with the C.C.C. then existing as part of the Assemblies of God Church, a legal entity and to create joint ownership rights as envisaged on ground 3, namely, "The learned trial judge was wrong in holding that Plot No. 12 Atimpongya was jointly developed by [the] C.C.C. and [the] C.C.M."

The ground No. 4 reads: "The learned trial judge erred in holding that the properties mentioned in Exhibit 29 were loaned to [the] C.C.C. and therefore they rightly and legally belonged to the 1st appellant, as the one who loaned them to [the] C.C.C. and he should therefore have them."

Exhibit 29, a list of chattels said to have been loaned to the C.C.C. is beset with many problems in terms of its genuineness with regard to the message it seeks to convey or the evidence it proffers. It bears no date on its face and it was not deemed necessary or expedient to bring the signatories to testify to prove its message.

It is engulfed by a web of doubt and worse of all the claimant of the chattels has shown not a single receipt to authenticate his ownership of any single item.

Set against the state of the claim of ownership is corroborated evidence of title to those chattels.

In the result, all the four grounds fore-going have found favour, in my view, and are accordingly sustained, the relevant variation shall soon be made or ordered.

The 5th and final ground for the variation was formulated as follows:

> "The learned trial judge was wrong in refusing to grant leave to amend the endorsement of the writ of summons filed on 16/11/2001."

Counsel for the respondent has argued that the amendment sought and refused was meant to facilitate the execution or enforcement of the judgment in the future. The trial

Judge refused because he found no difference between the original relief (3) and the new relief (3). According to Counsel, the trial judge misapprehended the amendment proposed: he reiterated that it was meant to ease the execution of the judgment hence it was necessary to be specific as to the properties.

Counsel came to expound the law governing amendment and cited, inter alia, the case of **ACOLATSE V. AHIABLEAME** [1962] 2 GLR 34 S.C. wherein the S.C. held: "An amendment can be made by court propio motu." Further, by rule 31 of C.I. 19:

> "The Court may -
>
> (a) make any order necessary for determining the real question in controversy
>
> (b) amend any defect or error in the record of appeal."

Counsel for the respondent sought to re-inforce the position of the respondent by invoking rule 30 of C.I. 19. The rule provides:

> "30 No interlocutory judgment or order from which there has been no appeal shall operate so as to bar or prejudice the court from giving a decision upon the appeal as may seem just."

In the result of the submission foregoing Counsel for the respondent found ample justification for urging the Court to grant the application for amendment refused in the court below.

The appellants' counsel reacted to the argument foregoing. According to Counsel, the decision in the interlocutory application in the court below sought to be varied (in the present appeal) was not part of the decision appealed against. The former decision in the interlocutory action was subject to appeal under Section 11(1) of the Courts Act, 1993 (Act 459) and such appeal should have been brought under rule 9 (1)(a) of C.I. 19 within 21 days.

Counsel further submitted that the Order for leave to amend was one usually granted at the discretion of the trial judge and the Court of Appeal would not intervene to question the exercise of the discretion unless the Honourable Court was satisfied that in the exercise of that discretion the court applied a wrong principle or it could be said the trial court reached a conclusion that would work injustice to the respondent and other parties. (See **YEBOAH V. BOFOUR [1971] 2 GLR 199 C.A.**) Relying on the case of

ROBERTSON V. REINDORF [1971] 1 GLR 289 (Headnote 4) Counsel pointed out that the court had power to allow amendment of pleading even in cases on appeal but such power would not be exercised where it was likely that by granting the application, the issues between the parties might not be settled but fresh issues might be raised and the respondents' cause of action might change making it different from that which was in the court below.

With greatest respect, it is submitted that the immediately foregoing suggestion is merely speculative. In many places the proposed amendment was designed to furnish details of the relief or reliefs initially sought.

I feel satisfied that the amendment sought was deserving and that this court has power to grant it. The 5th and final ground for purposes of the variation of the judgment of the court below is accordingly sustained.

In the result of the entire review foregoing, the appeal is dismissed and the judgment of the court below is affirmed with express variation as follows:

"1. A declaration that by seceding from Assemblies of God Church, Ghana, the defendants (ie. the appellants) have ceased to be members of the church.

2. A declaration that Calvary Charismatic Centre, a Local Assembly of the Plaintiff church ie. the church building or auditorium and the office block acquired before 16 November 1992 are held in trust for Assemblies of God, Ghana.

3. (a) A declaration that the movable and immovable properties of the Calvary Charismatic Centre are the properties of the plaintiff (respondent) Church, the Assemblies of God, Ghana.

(b) A declaration that Plot No. 7, Atimpongya, Kumasi and the auditorium and offices thereon are the properties of the plaintiff church, the Assemblies of God, Ghana.

(c) A declaration that Plot No. 12, Atimpongya, Kumasi, and the building thereon are the properties of the plaintiff (respondent) church, the Assemblies of God, Ghana.

(d) A declaration that Neoplan buses marked and numbered

AS 346 C and As 3407 C and Toyota Hiace Bus with Registration mark and number ARC 2984 C are the properties of the plaintiff (respondent) Church.

(e) A declaration that the pews, chairs, deep freezer, fridge, Office equipment, electric typewriter, electricity generator, a set of musical instruments, public address system, the "Melodies of Praise" – Assemblies of God, Ghana hymn books, and all properties of and used by the Calvary Charismatic Centre, Assemblies of God, are the properties of the Assemblies of God, Ghana.

4. Recovery of possession of all these properties and the properties referred to in the Writ of summons in the possession of the defendants (appellants herein), their agents, workmen, servants, supporters and assigns.
5. A declaration that property, No. 12 (ie. Plot No. 12) was acquired and developed by the Calvary Charismatic Centre (C.C.C.) of Assemblies of God, Ghana.
6. An order directed at the parties to go into accounts in respect of all incomes, harvest proceeds, tithes offerings…….if any was outstanding before and up till 16 November 1992.
7. An order declaring ownership of all the items contained in Exhibits 28 and 29 in the favour of the Assemblies of God Church, Ghana. The defendants (appellants) are, by order, restrained from dealing with or in any way interfering with the local church of the plaintiff (respondent) Assemblies of God church, Ghana, which local church is known as " the Calvary Charismatic Centre building, offices or any other property of the church" in terms of the preceding orders. In respect hereof, their agents, workmen, servants etc. are equally restrained. The order of injunction shall come into force or effect after the settlement of accounts ordered or after a period

of 3 months from this day, whichever is later.

Costs.

K. TWENEBOA-KODUA
JUSTICE OF APPEAL

I agree.

F.M. LARTEY
JUSTICE OF THE SUPREME COURT

ASARE KORANG, JA - The plaintiffs/respondents (to be called hereafter as the Respondents or respondent church) sued the Defendant/Appellants (hereafter referred to as the appellants) for the following reliefs:-

"1. A declaration that by seceding from the Assemblies of God, Ghana the defendants have ceased to be members of the church.
2. A declaration that the Calvary Charismatic Centre, a local Assembly of the plaintiff's church, that is the church building or Auditorium and the office block are part of the plaintiff's church or same belongs to the plaintiffs' church and same are held by the plaintiffs in trust for the Assemblies of God Church Ghana.
3. A declaration that movable and immovable properties of the said Calvary Charismatic Centre are properties of the plaintiffs church, Assemblies of God, Ghana.
4. Recovery of possessing of all properties of the church in possession of the defendants.
5. Recovery of possession of all properties in possession of the defendants.

6. Order pf Accounts in respect of all incomes, harvest proceeds, Tithes, Offerings and all incomes of the church.
7. Order compelling the 1st defendant to surrender his credentials to the Plaintiffs after ceasing to be an accredited Pastor of the plaintiffs church.
8. Perpetual Injunction restraining the defendants, their agents, workmen, Servants, relatives, supporters and assigns from entering upon, dealing with Or in any way interfering with the plaintiffs local church known as Calvary Church building, offices or any other property of the church."

The facts as presented in this case are as follows:

In a letter dated the 16th day of November 1992, written by the Board of the Calvary Charismatic Centre (hereinafter described as the C.C.C.), the respondents were informed that the C.C.C. had decided to end their "affiliation with the Assemblies of God denomination with effect from 19th November 1992."

The 1st appellant is a pastor of the C.C.C. who together with the 2nd, 3rd, 4th and 5th Appellants constitute the Board of the C.C.C.

The 1st appellant was trained as a pastor of the Southern Ghana Assemblies of God Institute at Saltpond in the Central Region from 1977 to 1979. After completing his pastoral education, the 1st appellant worked as an Associate pastor in the Central Assemblies of God Church, Kumasi also called the Lighthouse Assemblies of God Church until 1985 when he resigned to start the C.C.C. The 1st appellant's resignation was based on his vision to found a church capable of responding to the spiritual needs of the increasing number of English speaking intellectual and professional groups in the Kumasi metropolis.

The respondents stressed the fact that the 1st appellant resigned from Central Assemblies of God Church, Kumasi and not from the Assemblies of God Church itself as it was necessary for him to resign from the local church in order not to duplicate his membership in two local churches.

1st appellant named his new English speaking church the Calvary Charismatic Church (C.C.C.). The initial base of the C.C.C. was the Assemblies of God Campus Ministry (A.G.C.M.).

The C.C.C. functioned, the respondents alleges, as a local Assemblies of God Church from April 1985 until it matured into a Set-In-Order or affiliate status.

As stated earlier, on 16th November 1992, the appellants who constituted the church Board of the C.C.C. wrote to the Executive Presbytery of the respondent church, informing them that the C.C.C. had ceased affiliation with the respondent church. The sole reason the appellants gave for the cessation of affiliation was that the Holy Spirit had led them to do so.

The respondents contend that the letter of cessation of affiliation was never written with the knowledge or approval of the congregation of the C.C.C.

On receipt of the letter, the National Executive Presbytery of the Assemblies of God, Ghana (the respondents herein), implored and advised the appellants to reconsider and rescind their decision but the appellants consistently resisted all overtures and insisted that their stance was non-negotiable.

The General Superintendent of the respondent church is said to have asked the appellants to surrender the properties of the church and leave the premises of the church but the appellants refused to comply claiming they were entitled to secede and keep the properties at the same time.

It was the cessation of affiliation or the relationship between the C.C.C. and the Assemblies of God Church, Ghana, coupled with the refusal of the appellants to vacate the church properties and hand over these properties to the respondents that precipitated this suit.

After the hearing, judgment was entered in favour of the Respondents for all their reliefs except the relief as to Plot No. 12, Atimpongya and the building thereon which the court decided were jointly owned with the Calvary Chapel Ministries.

Against the judgment, the appellant's appealed alleging the following grounds:-

"That the judgment is against the weight of evidence.

The appellants later filed Additional grounds of appeal and they read:

(1) That the trial judge erred when he held that the decision by the C.C.C. to secede from the Assemblies of God Church amounted to a division within the C.C.C. for which reason certain properties held by the C.C.C. legally 'remained' For the General Council of the Assemblies of god Church.

(2) The trial judge erred in law when he held that by seceding from the Assemblies of God Church, there was a division within the C.C.C. for which reason certain properties acquired by the C.C.C. 'remained' for the General Council of the Assemblies of God Church.

(3) The trial judge erred when he held that by virtue of the Constitutions and By-Laws of the Assemblies of God Church (all tendered in evidence) properties acquired by the C.C.C., before 16/11/92 belonged to the Assemblies of God Church and that defendants are restrained from entering upon, dealing with or interfering with the C.C.C.

(4) The trial judge erred in law when he failed to determine the legal effect of the various statutes under which the Assemblies of God Church was registered in relations to respondent's capacity to commence the action now on appeal before this Honourable Court."

The Respondents also filed Notice of their intention to contend that the judgment of the trial court be varied in respect of reliefs not granted them in the following terms:

(1) By declaring or holding Plot No. 12 Atimpongya, Kumasi and the Building thereon as belonging to the Plaintiffs Church and that the Plaintiffs hold the same in trust for the Assemblies of god Church, Ghana.

(2) By declaring recovery of possession of Plot No. 12, Atimpongya, Kumasi and the building thereon in favour of the Plaintiffs as against the Defendants.

(3) By granting an order compelling the 1st defendant to surrender his credentials to the plaintiffs.

(4) By granting perpetual injunction to restrain the defendants, their agents, workmen, servants, relatives supporters and assigns from entering upon, dealing with or in any way interfering with Plot No. 12, Atimpongya, Kumasi.

(5) By declaring recovery of possession of the properties mentioned in Exhibit 29.

(6) By granting leave to amend the endorsement of the writ of summons as prayed for in the Plaintiffs motion for leave to amend the same filed on 16/7/2001 and refused by the Trial court on 232/7/2001.

(7) By granting all the reliefs claimed by the plaintiff and as sought to be amended by the said motion of 16/7/2001.

The grounds upon which the Respondent sought a variation of the judgment of the trial court were that:

(i) The learned trial judge was wrong in holding that the plaintiffs did not adduce any evidence on the acquisition of Plot No. 12, Atimpongya, Kumasi.

(ii) The learned trial judge erred in holding that Plot No. 12, Atimpongya Kumasi, was acquired by C.C.M.

(iii) The learned trial judge was wrong in holding that Plot No. 12, Atimpongya was jointly developed by C.C.C. and C.C.M., and therefore created joint ownership rights in both C.C.C. and C.C.M.

(iv) The learned trial judge erred in holding that the properties mentioned in Exhibit 29 were loaned to C.C.C. and therefore they rightly and legally belonged to the 1st defendant as the one who loaned them to C.C.C., and he should therefore, have them.

(v) The learned trial judge was wrong in refusing to grant leave to amend the endorsement on the writ of summons filed on 16/7/2001."

Having set down at length the reliefs sought by the parties in this appeal I intend in this opinion to confine myself to the narrow compass of the legal capacity of the Executive Presbytery of the Assemblies of God Church whether by itself or for and on behalf of the Assemblies of God Church to commence this action against the appellant and then to proceed from there to consider whether the respondent had taken advantage of provisions in the Constitutions to exhaust the internal remedies available under those Constitutions before suing the appellants.

In his judgment commencing from pages 701 to 712 of the record of proceedings, the learned trial judge cited and considered what he thought were relevant provisions of the various Constitutions of the respondent church. These were Exhibit C described as the present Constitution and intituled the Constitution and Bye-Laws of the Assemblies of God and Exhibit C2, the Constitution and Bye-Laws of the Local Churches of the Assemblies of God.

Part 2 of Article IX, Section 2 of Exhibit C dealing with Bye-Laws provides:

"The Executive General Presbytery shall consist of the General

Superintendent, the Assistant General Superintendent, the General Secretary, the General Treasurer and all the General Presbyteries. They shall serve the Assemblies of God, Ghana as Trustees to act for and on behalf of the body they shall represent and take decisions on behalf of the General Council of the Assemblies of God, Ghana when it is not in session and shall serve as the Credential Committee."

In Exhibit C, Part One which relates to the Constitution of the respondent church, it is stated in Article VIII on Trustees, Section I:

> "There shall be a Board of Trustees in whom shall be vested title to the freehold and leasehold property of the Assemblies of God, Ghana."

Section 2 of the Constitution is on the composition of the Board of Trustees and it is to be observed that it is the same officers of the respondents named as members of the Executive Presbytery who constitute the Board of Trustees.

In his submissions, counsel for the appellants noted that in terms of composition, the membership of the Board of Trustees and the Executive Presbytery were separate and distinct, each performing different and unrelated functions under one and the same Constitution. In the Board of Trustees is vested all the freehold and leasehold titles to the property of the respondent church whilst the Executive Presbytery's powers are restricted to representing the General Council of the respondent church and taking decisions on behalf of the General Council when it is not in session and acting as the Credentials Committee.

What impelled counsel for the appellants to state the difference between Board of Trustees and the Executive Presbytery of the respondent church, it appears, was the fact that the church, Assemblies of God, Ghana was first registered under the Trustees Incorporation Act, 1962 (Act 106) and under and by virtue of that statute, the legal capacity of the respondent church to acquire, hold and alienate properly and to sue and be sued was exercisable only by registered Board of Trustees of the church.

Presently, however, the legal capacity of religious bodies to operate is governed by the Religious Bodies (Registration) Law, 1989 (PNDCL 221) under which legal personality is conferred not on a Board of Trustees but the registered name of the religious body itself.

Counsel for the appellant referred to Article XV Section 4 of Exhibit C2 which reads:

> "In case of a division within the membership, all church property shall remain for the General Council of the Assemblies of God, Ghana."

Counsel then argued that by statute, it is the church itself, Assemblies of God, Ghana, which has legal capacity to hold property and the provision that in case of division property is vested in the General Council is void and of no effect as the General Council has no legal personality of its own.

Proceeding from this argument and relying on Section 9(2) of PNDCL 221, counsel for the appellants questioned the legal capacity of the respondent church or to be precise its Executive Presbytery to sue.

Section 9(2) of PNDCL 221 reads:

> "Upon the grant of an approval and the registration of the body, the religious body shall become a body corporate by the name described in the approval and shall have perpetual succession and an official seal, acquire, hold and assign property and may sue and be sued in its corporate name."

Counsel for the appellants submitted that since under PNDCL 221, the capacity to sue and be sued is vested in the church itself as a registered body, the Executive Presbytery had no legal capacity to institute action against the appellants for and on behalf of the Assemblies of God Church, Ghana.

To these submissions counsel for the respondent answered as follows:-

(1) Since by Section 27 of the Interpretation Act, C.A. 4, the word "may" is permissive, the phrase "may sue and be sued in its corporate name" in Section 9(2) of PNDCL 221 makes it possible for the right to sue to be exercised on behalf of the corporate body. And as in Exhibit C, the Executive Presbytery and the Board of Trustees are a body of known persons, their composition being the same nothing prevented them from instituting an action for and on behalf of the respondent church.

(2) In law, it is only when the action is not brought by or against a known legal person that the same is a nullity and where the action is brought in the wrong name, the court would amend to bring in the right name or substitute the right name in order to avoid a multiplicity of suits.
For this proposition, counsel for the respondents cited these cases: GIHOC V. VINVENTA PUBLICATIONS (1971) 2 GLR 24, C.A. OHENE VRS. PRINCIPAL SECRETARY, MINISTRY OF FINANCE (1971) GLR 107; MANAGING DIRECTOR, GHANA FOOD DISTRIBUTION CORPORATION VRS. TORTO (1992) Part 2 GBR 762, C.A., INTERIM EXECUTIVE COUNCIL VRS. I INTERIM EXECUTIVE COMMITTEE OF THE APOSTTOLIC DIVISION CHURCH OF GHANA (1984986) GLR; GHANA PORTS AND HARBOURS AUTHORITY VRS. ISSOUFOU (1991) 1 GLR 500, C.A., affirmed by the Supreme Court in (1993-94) 1 GLR 24; GBOGBOLULU VRS. HODO (1947) 7 W.A.C.A 164 at p165 and DOVE VRS. WUTA OFEI (1966) GLR 299 at p. 317 S.C.

(3) The issue of the capacity of the plaintiff was not raised in the pleadings or the evidence and as in SARKODIE VRS. BOATENG (1982-83) 1 GLR 715 AMISSAH-ABAIDOO VRS. AABAIDOO (1974) 1 GLR 110, it was only where capacity is put in issue that it must be proved.
Therefore capacity cannot be raised when it is not put in issue.

In answer to these submissions by counsel for the respondents, the appellants contend that if the capacity of the respondent is amended at this stage, its legal effect would be to subvert the statute which provided for the capacity of the respondent, that is the Assemblies of God Church, Ghana by and for itself to commence legal proceedings. The subversion, the appellants explain, lies in the reason that the amendment of the capacity would have retrospective effect and purport to cure the capacity in which this action was commenced as if the Executive Presbytery right from the inception of the action, properly commenced this action.

For my part, I do not consider retrospectivity to be a bane to the amendment of the capacity with which the respondent church could sue because in all the cases cited by respondents counsel, the capacities varied or amended were retrospective in effect to preserve proceedings already taken or recorded and to avoid a multiplicity of suits as it is in the interest of the administration of justice and democratic principles that there must be an end to litigation.

I do not also think that it is only when capacity is raised in pleadings or evidence that it is put in issue. I am of the view that the issue of capacity is a legal one and as the Supreme Court held in the case of KWAME VRS. SERWAAH & OTHERS (1993-94) 1 GLR 429 at pp. 438-439 relying on KWANTRENG VRS. AMASSAH (1962) 1 GLR 241 at 250 S.C.

> "The law was that a point of law arising on the record could be canvassed in an appellate court even though it had not been raised in the court below if it involved a substantial point of law, substantive or procedural and would not require the adduction of further evidence."

That was a case where the doctrine of laches and acquiescence was neither pleaded nor set down as an issue in the Summons of Directions. The doctrine was raised on appeal in the Court of Appeal and the Court of Appeal inferentially rejected it. On a further appeal being taken to the Supreme Court, it was held that the matter was properly before the court for consideration.

Even though the point of law raised in that case was the doctrine of laches and acquiescence, I am of the view that the principle therein stated applies in the circumstances of the instant case.

While I agree that on the authorities, the capacity of the Respondents may be amended in this case, I think I would allow the appeal for a different consideration which relates to a matter of law.

It was contended that the suit on appeal before this court resulted from the decision of the C.C.C. to cease affiliation with the Assemblies of God Church, Ghana.

The learned trial judge found that the appellants seceded from the parent church and there was a division within the appellants church, the C.C.C. and the division and

secession were one and the same thing for which reason certain properties acquired by the C.C.C. "remained" for the General Council.

The learned trial judge made this clear in his judgment when he declared at page 722 of the record:

> "The provision relating to a division in the church is suggestive of secession. The ingredients that result in division are the very ones that exist in a secession."

Assuming there was a division amounting to a secession or there was a secession resulting in a division – whatever the situation may have been – it does not appear to me that the local remedies rule was strictly and sufficiently applied in resolving the differences of the membership of the C.C.C. if there was a division and between the appellants and the respondents for the learned trial judge himself recognised in his judgment that:

> "Where a society or association is ruled by laws, then it is to those laws that one has to turn to better appreciate their rights and obligations which they have set for their own governance."

It is provided in Article XVI of the "Constitution and By-Laws-Local Churches of the Assemblies of God, Ghana" as follows:

> "All disputes within the church which cannot be settled amicably by the local Board shall be settled by the sectional committee. If the section is unable to settle it peacefully, it shall be referred by the section to the District Committee."

It does not appear to me that the steps clearly set out in this constitutional provision were strictly followed. The respondents say there were attempts made to settle but in what manner were these attempts made and where was the concrete evidence of these?

The evidence in this case also showed that the appellants and their church, C.C.C., were subject to the Constitution and Bye-Laws of the Ghana District Council Assemblies of God, Ghana, tendered as Exhibit C1 Article XVI of which deals with DISCIPLINE. For a Minister of the Church, the Areas of Discipline includes a Refusal to Abide by the Constitution and regulations.

The provision for a Local Church (such as the C.C.C.) reads:

"B. LOCAL CHURCH

1. If any Church fails to abide by the Council's Constitution and Regulations the District Superintendent together with the Presbyter shall meet with the Church Board or Committee to discuss the area of failure and appropriate measures taken.
2. The District Superintendent shall then report his findings and recommendations to the Executive Committee of the District Council. The Executive Committee shall be empowered to proceed with the necessary action or discipline If they feel advisable."

It may be contended that the decision of the appellants to secede was tantamount to a refusal by the appellants to abide by the Constitution and regulations of the Assemblies of God Church, Ghana. It that is so, then Article XVI (B) of Exhibit C1 mandatarily enjoined the General Superintendent and Presbyter to meet with the Church Board (in the case of C.C.C., the appellants herein) to discuss the matter. The District Superintendent was then to take appropriate measures and submit a report of his findings to the Executive Committee which was to take necessary disciplinary measures as they considered fit to take.

Were these steps taken and where is the evidence that they were? Perhaps one of these measures would require the 1st appellant to surrender his credentials to the Credentials Committee which was one of the reliefs sought in the court below.

But as an initial remedy open to the respondents, did they resort to it before coming to court? It the respondents did where is the report of the findings of the District Superintendent on the issue?

It was argued by counsel for the respondents that since the decision that brought about the dispute was taken by the local board of the C.C.C. (that is, appellants) it would be absurd to invoke the Constitutions to make the local board on arbiter in its own case as the dispute envisaged buy the constitutional provisions was not the type in which the local board itself was involved.

The observation has been made in this case that the Constitutions of the respondent church contained no provisions on secession but in the settlement of disputes, the Constitutions do not make the local boards final arbiters. There is a hierarchy consisting

of sectional committees, District Committees and Executive Committees in place or that ought to be in place to handle matters in difference within the church.

There is no evidence that these various organs established under the constitutions of the Church have been made use of.

I have already referred to the observation made by the learned trial judge that in an association or society ruled by laws, one has to have recourse to those laws to determine and appreciate the rights and duties of its members. It is an observation I entirely agree with. But then the respondents have argued in their submissions that in its case, the appellants did not plead the fact that disputes within a local Assemblies of God Church ought to be settled by a specific procedure and not by recourse to a court action and same was not even in evidence.

On this issue I would have to reply again on the case cited by me earlier on – KWAMEV. SERWAAH (supra) to the effect that a point of law arising on the record could be argued in an appellate court even though it had not been raised in the court below if it involved a substantial point of law. And I hold the issue about the internal remedies for resolving disputes set down in the Constitutions of the Assemblies of God Church, Ghana deals with substantial points of law that have been properly brought up in this appeal.

As Acquah, J.S.C. held (now Acquah, C.J.), held of Section 12(1) of PNDCL 152 in respect of institutional mechanisms established to settle disputes internally in BOYEFIO V. NTHC PROPERTIES LTD. (1996-97) S.C. GLR S531 at p. 546 S.C.

> "Section 12(1) of the law is in consonance with the modern practice of setting up an internal tribunal in an institution to have a first bite at disputes arising within that institution before recourse is made to the courts if the matter does not end at the internal tribunal. Where a person ignores the internal tribunal and comes to the courts in respect of any such internal dispute, the courts would invariably order him to go back to the internal tribunal, if that person has no substantial reason for side stepping the internal tribunal. For the law is clear that where an enactment has prescribed a special procedure by which something is to be done, it is that procedure alone that is to be followed:

TULARLEY V. ABAIDOO (1962) 1 GLR 411, S.C."

I have seen no substantial reason in this case why the respondents chose to ignore or depart from the internal processes and committees obviously with adjudicating powers under the various Constitutions of the Assemblies of God Church, Ghana, and rushed to court to sue the appellants. The Constitutions of the Assemblies of God Church, Ghana, I note, provided an adequate safety valve for dealing with the schism, if any, that arose within the C.C.C. and between the appellants and the respondent church and I say so notwithstanding the claim alleged to have been made by the appellants that their decision to secede from, or cease affiliation with the respondent church was non-negotiable.

I have proceeded in this opinion on the basis that the C.C.C. and the appellants were an integral part of the Assemblies of God Christian family, the C.C.C. being an affiliate church of the respondent church and I choose to discountenance as unconvincing the volumes of ink spilt to deny that the C.C.C. was not a local church of the respondent church and the 1st appellant not a pastor of the respondent church

I am of the view that the respondent church ought to have respected the local remedies rule which required that disputes be first settled by the local board failing which reference of such dispute would be made to the sectional committee and finally to the District Committee.

It is, to me, necessary that the internal mechanisms and procedures for settling disputes be resorted to particularly in light of the variation orders now sought by the respondent church on appeal in respect of properties not granted them and orders not made in their favour by the learned trial judge.

It is not a sufficient answer to the submission that the local remedies rule was not applied in this case that an invitation was addressed to the 1st appellant to meet the Executive Committee "to resolve any matter that has led to his shocking decision" as stated by counsel for respondents in his written submissions at page 44.

Indeed it is admitted by counsel for the respondents that the Church Board of the C.C.C. (the appellants herein) did meet the District Executive Officers in order for the appellants to clarify the vision received by the appellants to cease affiliating with the respondent church.

It is noteworthy that the appellants willingly met the District Executive Officers. But under the Constitutions of the church was the District Executive the body of first instance to take the initiative in the resolution of disputes? And was the District Executive's function only confined to seeking clarification when a dispute arises" The answer is No.

In the circumstances, I would allow the appeal and hold that having regard to the fact that the local remedies rule was not invoked and applied by the respondent church the action mounted by them in the court below was incompetent.

A. ASARE KORANG
JUSTICE OF APPEAL