IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: ATUGUBA, JSC (PRESIDING)
ADINYIRA (MRS), JSC
GBADEGBE, JSC
BENIN, JSC
AKAMBA, JSC

CIVIL APPEAL
NO. J4/31/2012

11TH NOVEMBER,2015

MUSAMA DISCO CHRISTO CHURCH - - PLAINTIFFS
PER: 1. REV. JERESIM OFFA JEHU-APPIAH, /RESPONDENTS
2. REV. JAMES KINAKOSA ADDAE /RESPONDENTS
SUBSTITUED BY:
1. REV. JIMATONA EMMANUEL KOBINA MENSAH
2. REV. JOHN KODAKEEN KWAWO BAGYINA
MOZANO NEAR GOMOA ESHIEM

VRS

PROPHET MIRITAIAH JONA JEHU-APPIAH - - - DEFENDANT
MOZANO NEAR GOMOA ESHIEM /APPELLANT
/APPELLANT

JUDGMENT

ATUGUBA, J.S.C:

FACTS:

The Defendant/Appellant/Appellant (hereinafter called the 'defendant') is the leader (Akaboha) and the head of the Plaintiff/Respondent/Respondent (hereinafter called the 'plaintiff-Church). In 2002, Bold and Beautiful (a periodical) published an article alleging that the defendant had drugged and raped a JSS girl. Scandalized by this, the executive council of the plaintiff church met and urged the defendant to institute a libel action against the publishers of the periodical. The defendant however only pleaded that the plaintiff church should rather 'appeal' to the publishers to stop further similar publications. The executive council then set an investigative committee to delve into the allegation. The investigative committee found that the defendant had indeed committed the act he had been accused of and had also committed other sexual misconduct contrary to the Church's constitution and Bible. The defendant's reaction was that he was reserving his comment but would undertake a 21-day fast with prayers for the forgiveness of sins and would compensate his sex victims. He was suspended and later the plaintiff church's I'Odomey conference (the general annual assembly of the plaintiff church which according to the constitution of the church is the governing body of the Church), reached a consensus to remove him from office. Whilst trying to formulate its consensus, some family members of the defendant invaded and disrupted the conference. The defendant was later formally removed but some of his family members challenged the said removal claiming that the Akaboha or head holds the office for life and cannot be removed.

Trial Court

The plaintiff church brought an action against the defendant in the High Court claiming the following:

a. A declaration that the defendant, Prophet Miritaiah Jonah Jehu-Appiah, the Akaboha III or Leader and General Head Prophet of the Musama Disco Christo Church, based at Mozano, Gomoa Eshiem, has been lawfully and permanently removed from the post or office of Akaboha or Leader and General Head Prophet of the said Church as from Friday 14 February 2003.
b. A consequential declaration that the defendant has been *ipso facto* removed or deposed from all ancillary post or offices, religious or secular, affiliated to or associated with the said Church.
c. A further consequential order upon the Defendant forthwith to vacate and quit his present official accommodation at Mozano, near Gomoa Eshiem, along with his wife, children and other licencees of his, and to deliver or hand over the said accommodation, the keys and all the official contents thereof to the Church Father the Rev. Jeresim Offa Jehu-Appiah upon trust for the plaintiff.
d. Such further or other relief as in the circumstances may be just or proper including, in particular, a perpetual injunction restraining the defendant, whether by himself, his servant, agents, privies whomsoever or otherwise howsoever, from holding out the defendant in any manner whatsoever as the Akaboha or Leader and General Head Prophet or as any kind of office holder whatsoever of the Musama Disco Christo Church.

Judgment of the High Court

The High court gave judgement in favour of the plaintiff church. On the question of capacity, the trial judge held that even though the defendant, through his

counsel, had told the court that he had abandoned his challenge to the people who had initiated the action on behalf of the plaintiff church, only to subsequently raise the same, it was still important to determine the issue as capacity goes to the root of a matter and could be raised at any time. The court held that aside the consideration of the unfairness for the defendant to raise his abandoned challenge to capacity, all the registered trustees of the church were deceased and the name of the first representative of the plaintiff church in the action was part of the new list of trustees and therefore he could bring its action.

On the second issue, the court held that, from the evidence, it was clear that the girls did not fabricate the stories against the defendant. He therefore found that the defendant was guilty of the conduct he had been accused of. On the quest ion of whether the defendant could lawfully be removed or not, the judge found that from section XXIV of the Constitution of the plaintiff church (tendered in evidence as Exhibit 1), it is provided that members are forbidden to do certain acts which include immorality. The constitution of the plaintiff church also provided that any member found to have violated any of the rules shall be liable to suspension or expulsion from membership according to the nature of the offence. Appendix B (found at page 47) of Exhibit 1 provides that officers shall hold office for life from the date of appointment at the I'Odormey but may be changed at the discretion of the Executive Council or at their request. From this, it is clear that Exhibit 1 made provisions for the removal of the General Officers who hold office for life (which would include even the Akaboha). The trial judge therefore denied the defendant his counterclaim.

Court of Appeal

Dissatisfied with this judgment, the defendant appealed to the Court of Appeal. The Court of Appeal upheld the decision of the High Court on all the issues. On

the issue of capacity, the Court of Appeal held that, a proper person to bring any action must be 'a person aggrieved.' He is not anybody who is remotely connected with the subject matter of the dispute, not a mere busy-body. The court takes a broader view of *locus standi*. The plaintiff has to show that he may share that interest with a thousand others. The representatives of the plaintiff church in the action, as members, trustees and members of the Executive Council of the plaintiff church have sufficient interest in the matter to clothe them with the capacity to bring the action against the defendant.

On the second issue, the court held that, exhibit 1 clearly provides that a member can be removed or suspended for certain reasons which include immorality. Also, it provides that the General Officers of the plaintiff church which include the Akaboha, treasurer, general secretary and financial secretary shall hold office for life from the date of appointment at the I'Odormey Conference but may be changed at the discretion of the Executive Council or at their request. This shows that the defendant even as the head of the Church may be removed from his post at the discretion of the Executive Council even though he holds the office for life.

At the Court of Appeal, the defendant claimed that he was not given a fair hearing when the investigative committee which was set up by the church to investigate the allegations against him failed to give him an opportunity to confront or cross-examine the alleged victims when their statements were being taken. However, evidence was given to prove that the investigating committee's work was met with 'spiritual defence' by the defendant when he told them it was a spiritual attack and reserved his comments for prayers before any comment. In effect, the defendant refused to co-operate with the committee when the committee met him. He therefore created the situation of not meeting the victims.

After careful examination of the record, the Court of Appeal held that it was satisfied that the findings of the trial Court were clearly supported by the evidence of the record with no serious blunder on the part of the trial judge.

Appeal to the Supreme Court

Again dissatisfied with the decision of the Court of Appeal, the defendant appealed to the Supreme Court on the following grounds:

1. That the judgment is against the weight of evidence.
2. That the Court of Appeal erred by delivering a lopsided judgment in favour of the plaintiff church without considering the defence put up by the defendant.
3. That the Court of Appeal erred by ignoring the evidential rules relating to admission of fact when it turned a blind eye to the import of the evidence of DW 1-Nana Koomson.
4. That the Court of Appeal erred by adjudging that the plaintiff had capacity to institute the action against the defendant.
5. That the Court of Appeal erred by misinterpreting the relevant provisions of the Companies Act (Act 179) 1963 in favour of the plaintiff.
6. That the Court of Appeal erred by adjudging that the plaintiff complied with the rules of natural justice.
7. That the Court of Appeal erred when it confirmed the decision of the trial court that the defendant in his capacity as the Akaboha of the plaintiff church can be removed from office.
8. That the Court of Appeal erred when it ignored the fact that the plaintiff failed to comply with the institutional mechanisms established to settle disputes internally as per the Church’s constitution.

DECISION

GROUND 1

1. That the judgment is against the weight of the evidence.

   The defendant claims that the judgment is against the weight of the evidence. Also, he claims that the trial judge relied on uncorroborated evidence. The decision of the plaintiff church to de-stool the defendant was mainly based on the allegations of sexual misconduct on his part. He was alleged to have raped or defiled certain female members of the church which he denied. He claimed however that, the evidence of the plaintiff's witnesses was not corroborated. The general rule is that, multiplicity of witnesses alone does not prove a case, and evidence of a single witness, if credible and reliable is sufficient proof of any matter in issue. This was also stated in the case of *Adom v Ntow* (1992-1993) 4GBR 1603 C.A and *Kru v Saoud Bros* (1975) 1 GLR 46. Consequently ground 1 of the appeal fails.

GROUND 2

2. That the Court of Appeal erred by delivering a lopsided judgment in favour of the plaintiff church without considering the defence put up by the defendant.

   Evidence given at the trial showed that the defendant did not give any concrete defence to the allegation. He was also given a chance to defend himself when he was called by the investigative committee. The defendant gave a spiritual defence when he told them it was a spiritual attack and reserved his comments for prayers before any comments. This defence cannot be accepted. Ground 2 also fails.

GROUND 3

3. That the Court of Appeal erred by ignoring the evidential rules relating to admission of fact when it turned a blind eye to the import of the evidence of DW 1-Nana Koomson.

   It is settled law that where the trial Judge has made findings of facts and there is evidence in support of those findings, the appellate Court will not interfere with them. The Appellate court is not to set aside the findings of a trial court unless there is clear evidence of some blunder or error which results in miscarriage of justice. From the trial, DW 1 claimed that the representatives of the plaintiff paid the females who gave evidence against the defendant to give false information about the defendant because they wanted to remove him from office. But counsel for the plaintiff church, during cross examination was able to establish that DW 1 was not a truthful witness, he had also performed certain immoral acts and had received help from the defendant. Thus, his evidence could not be accepted. Ground 3 also fails.

GROUNDS 4 AND 5

4. That the Court of Appeal erred by adjudging that the plaintiff had capacity to institute the action against the defendant.
5. That the Court of Appeal erred by misinterpreting the relevant provisions of the Companies Act (Act 179) 1963 in favour of the plaintiff.

The issue of capacity is very important and can be raised at any stage of the trial and even after judgment. This position of the law has been endorsed by the court in several cases including the celebrated case of *Tuffour v Attorney-General* (1980) 637 C.A (sitting as the S. C). The representatives who brought the action were

members of the church and held important positions in the church. The principle of corporate personality is fundamental but not absolute. This was stated by Adade JSC in *Agyekum v Asakum Engineering* (1989-90) GLR 650 at 673-674 very copiously as follows:

> "When courts talk of the separate personality of a company distinct from the shareholders and directors, relying, particularly on Salomon v Salomon & Co Ltd (1897) AC 22, PC attention is hardly called to the fact that several exceptions have been created by the courts, wherein the veil is lifted, ie 'the law disregards the corporate entity and pays regard instead to the economic realities behind the legal façade.': See Gower, Modern Company Law (3rd edition) (1969) at page 189. The learned author says at p216 that the law will crake open the corporate shell 'if corporate personality is being blatantly used as a cloak for fraud or improper conduct'.
>
> In this appeal, given the charges and counter-charges, of improper conduct on the part of the directors, I wonder whether any court of justice should maintain the cloak, especially where, as in this case, the veil is not for the protection of members of the company against third parties, but in respect of the interests of the members and director of the company per se. in such a case it will be unjust to allow one party (to plagiarise a phrase by Russel J) to hold the mask of corporate entity 'before his face in an attempt to avoid recognition by the eye of equity; (see Jones v Lipman [1962] WLR 832 at 836.) There is no doubt that looking at the record, the real plaintiffs are the other directors and shareholders led by G. K. Asafu-Adjaye. These are the persons referred to by the defendant as the company's alter ego. There is evidence that the company has ceased to operate since October 2, 1984; it therefore exists only in name. relations among the directors and shareholders

have strained to such a limit that the parties can no longer come together to do business. They have pulled apart, breaking up into two groups; one group with the defendant, has formed Ladco Ltd; the other group, with G. K. Asafu-Adjaje, has formed Asakum Plant Hire Ltd. Each group is keeping for its use the plaintiff-company's property (particularly plant and machinery) which it had in its possession at the commencement of the diaspora. There are allegations that some of the directors have misappropriated funds of the company to put up private houses; that another has diverted cement and so on. These are mere allegations, and naturally have been denied. The defendant is described in the statement of claim as 'a civil engineer, a shareholder and general manager' of the company. The defendant himself says he is a director-general manager, and owns a third of the shares of the company. And according to the plaintiff's counsel, the defendant is sued as a director. Notwithstanding these statements by and on behalf of the plaintiffs, counsel is able to assert in the letter of March 21, 1986 that the defendant:

> 'was never allotted any shares, and he never paid for any, so that strictly speaking, he has no shares to be bought in the proposed buying-out process; certainly none to be valued.'

This no doubt explains the plaintiff's attitude to the orders for the accounts which they themselves agreed to before Ampiah J (as he then was). In an application for a stay of execution, the Court of Appeal, Amua-Sekyi JA (as he then was) felt, without expressing an opinion on the matter, that:

> The fact that the company have refused to permit the valuation [of the company's asset] to be made may at the hearing of the appeal be held to disentitle them to relief, and the learned judge [Lutterodt J] be held to have erred in entertaining the application for judgment'.

With these sentiments, I am in complete agreement. *It would seem that someone is trying to cheat, and the court should not encourage cheating. Someone is trying to use the myth of the separate personality of a company to get into his hands and under his control all the assets of the company to the detriment of the defendant who too is a shareholder, director and general manager."* Corporate personality therefore cannot be allowed to be used by the respondent as a cloak for perversion of the church.

GROUND 6

6. That the Court of Appeal erred by adjudging that the plaintiff complied with

   the rules of natural justice.

   From the unchallenged evidence at the trial, it was clear that some elders of the plaintiff church (unbelieving that he was innocent) asked the defendant to institute a libel action against the publishers of the article. He, knowing that the article was true, pleaded that the plaintiff church should rather 'appeal' to the editor to stop further publications. The investigative committee set up to delve into the matter, after hearing several witnesses invited the defendant, confronted him with the evidence, and asked him for his reaction to the evidence. The defendant's reaction to the said evidence was that he was reserving his comments but would rather immediately undertake a 21-day fast with prayers for the forgiveness of his sins and would also compensate his said sex victims. This clearly showed that the *audi alteram partem* rule of natural justice was adhered to. He was given several opportunities to be heard and to tell his side of the story, all of which he failed to take advantage of. Indeed, the defendant, due to his posture before the investigative committee,

created the situation of not meeting the victims by not cooperating with the investigative committee.

GROUND 7

7. That the Court of Appeal erred when it confirmed the decision of the trial court that the defendant in his capacity as the Akaboha of the plaintiff church can be removed from office.

Even if it be contended that the provision relating to the Akaboha position is specific and therefore cannot be affected by *generalia* he is still not absolutely immune from expulsion.

There were the days when the rules of interpretation of statutes quarrelled virtually uncontrollably *inter se,* but today, one of them, which has been and still is dynamic and composite, has prevailed over the others although it is now better known as the purposive rule of interpretation. Thus in *Grey v Pearson* (1897) HL 61 at 106 it is stated as follows*:*

> *"In construing wills and indeed statutes, and all written instruments the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency, with the rest of the instrument, in which case the grammatical and ordinary sense of the word may be modified so as to avoid the absurdity and inconsistence, but no further.'(e.s)*

The literalism of the provision in exhibit 1 relied on by the appellant for his shield of irremovability cannot help him. That provision is S,IV(3) of the church's constitution. It is as follows: "The Akaboha is *the Life Chairman* of the I'Odomey Conference and the Executive Board". I will say *mutatis mutandis* as did Roxburgh

J in *In re Ullswater, Decd. Barclays Bank Ld. v Lowther and Another* (1952) 1Ch. 105 at 109 "*I think that is the literal construction of these words, but it would be a ludicrous result and one which I am sure no court has ever contemplated. The truth of the matter is that, though these operations are stated in chronological sequence, the words are not to be regarded as a mandatory direction to the trustees to adhere to the strict chronological sequence."(e.s)*

A legal instrument, including a statute, has its letter as well as its spirit or core value and as was said by Knight Bruce L.J in *Key v Key* (1853) 4 De G.M. & G. 73. at 84 "*In common with all men, I must acknowledge that there are many cases upon the construction of documents in which the spirit is strong enough to overcome the letter; cases in which it is impossible for a reasonable being, upon a careful perusal of an instrument, not to be satisfied from its contents that a literal, a strict, or an ordinary interpretation given to particular passages, would disappoint and defeat the intention with which the instrument, read as a whole, persuades and convinces him that it was framed. A man so convinced is authorized and bound to construe the writing accordingly."(e.s)* See also *Brown v Attorney General* (Audit Service Case) (2010) SCGLR 183.

Section IV(1) of the said constitution provides as follows: "*In order to fulfil her mission of Evangelisation* and to *maintain her good name and discipline*, the church has a form of government and executive officials" (e.s)

> It is therefore quite clear from Exhibit 1 that the plaintiff church was established to advance, *inter alia*, sanctity and therefore it would defeat that object and spirit to construe it literally to mean that the Akaboha can hold his office for life even if he is morally decadent. His tenure of office for life does not stand alone in the air but is meant to give him the peace of mind for the effective attainment of the objectives of the church.

Accordingly, upon the true and purposive interpretaion of Exhibit 1, the Akaboha could only hold office for life *quamdiu se bene gesserit secundum leges Dei Omnipotenti*.

GROUND 8

8. That the Court of Appeal erred when it ignored the fact that the plaintiff failed to comply with institutional mechanisms established to settle disputes internally as per the church's constitution.

Evidence given at the trial showed that, the plaintiff church complied with the constitutional provision that matters must first be directed to the various arbitral bodies mentioned in the Constitution. One of the arbitral bodies was the Executive Committee to look into the allegation made against the defendant; the victims of the defendant's act were first invited to appear before the investigative committee. Having taken evidence but unfortunately, he refused to cooperate with the internal mechanisms to set in place by the constitution. The committee then made its recommendation for the removal of the defendant to the Executive Council. As to the jurisdiction of the investigative committee in this matter I do not think that it undertook to investigate charges against the appellant that are *strictissimi criminis*.

For all the forgoing reasons, we dismiss the appeal.

(SGD) **W. A. ATUGUBA**

JUSTICE OF THE SUPREME COURT

CONCURRING OPINION

BENIN, JSC:-

I am in agreement that the appeal be dismissed for the reasons espoused in the lead judgment just delivered by my able brother Atuguba, JSC. I only want to address the issue of capacity and what counsel for the appellant termed the constitutionality of the action which he has argued at length, both in terms of law and fact. I would not want to re-state the law on this question of capacity for the principle is very well grounded in our law that where a party's capacity to mount an action is challenged he cannot succeed on merits without first satisfying the court that he is clothed with the requisite capacity to bring the action.

What are the facts upon which the plaintiff's capacity has been challenged in this action? It was undisputed that the plaintiff church was registered with the office of the Registrar-General as a body corporate somewhere in 1959. The membership of its board of directors and board of trustees, inter alia, was filed with that office. The defendant contended, among other things, that the two persons who brought the action in the name of the Church were not part of the board of trustees or board of directors. And it was also argued that they were not even authorized by the appropriate bodies to bring this action. Hence grounds iv and v of the grounds of appeal were raised and argued together. For a perfect understanding of the submissions, these two grounds will be re-stated here. They are:

iv. That the appellate court erred by adjudging that the plaintiff had capacity to institute the action against the defendant.

v. That the appellate court erred by misinterpreting the relevant provisions of the Companies Code, 1963 (Act 179) in favour of the plaintiff.

Counsel discussed this question of capacity under three heads, namely: "(i) Mandate from the Company Church; (ii) Power of Attorney and (iii) Resolutions"

Two relevant and material documents were tendered into evidence by the defendant namely, exhibit 1 which is the Constitution of the Church which also incorporates the 1959 registration documents from the Registrar-General's office; and exhibit 5 which is an extract from the records at the office of the Registrar-General affecting the plaintiff church which discloses the names of members of the board of directors and the board of trustees. Counsel said none of the two persons who are in court as representatives of the plaintiff church has been listed as a member of the board of directors or trustees hence they have no capacity to bring this action.

It seems the defendant in a desperate attempt to salvage his battered image and position is prepared to rely on anything, however untenable it may appear to be.

Exhibits 1 and 5 both list Prophet M. M. Jehu-Appiah as the leader of the Church. It is a known fact the said Prophet M. M. Jehu-Appiah died in or about the year 1972 and the defendant herein succeeded him. Is the defendant then saying that since his name does not appear on the records of the Registrar-General as borne out by exhibits 1 and 5 he (the defendant) has never been the Akaboha? The reality of the situation is that since the filing of the particulars of the church with the Registrar-General's office in 1959, they have undergone a lot of changes which are not reflected in these exhibits. So it was prudent for Counsel for the appellant to have pointed out these changes which could be found on the record; rather he chose to point out those which he believed were in favour of his client. That was quite unprofessional and dangerous. It is dangerous in the sense that if the court is to go by counsel's line of reasoning the only logical conclusion would be that since the defendant was unknown in the records of the Registrar-General, then he has never been Akaboha. That would be absurd, to say the least. That is why counsel should have been very candid with the court and to tell us the true state of affairs in the church as it existed at the date of the commencement of these proceedings.

The true state of affairs in regard to the membership of the board of trustees and elders of the church is reflected in exhibit B, copy of the church's leadership filed on 8th April 1991 with the Registrar of religious bodies as required by section 3 of the Religious Bodies (Registration) Law 1989, (PNDCL 221), since repealed. This is found at pages 268-270 of the record. The receipt bears the name of Prophet Miritaiah Jona Jehu-Appiah, defendant herein. In the said notification in exhibit B the defendant submitted the names of seven persons as members of the board of trustees including the name of Rev. Jeresim Offa Jehu-Appiah one of the two representatives of the plaintiff herein. Besides, exhibit B contains the names of the five principal officers of the church including the defendant herein. Indeed the membership of these two important bodies is entirely different from those in exhibits 1 and 5. Exhibit B being later in time and done at a time the defendant had assumed the reins of office as Akaboha it supersedes that in exhibits 1 and 5 which have names of deceased persons. Exhibit B is the deed of the defendant and he is thus bound by it; estoppel by deed and conduct will operate against him. Sections 25(1) and 26 of the Evidence Decree, 1975 (NRCD 323) are both applicable; they provide thus:

25(1) Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the instrument, or their successors in interest.

26. Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or

his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest.

The first representative as a trustee is clothed with the power to represent the church. And so too is the second representative who is a church religious minister and leader. In this particular case the defendant as Akaboha is automatic head of the l'Odomey Conference, the highest decision making body in the Church, was not expected to call a meeting to discuss his removal from office. Indeed it would be unreasonable to even guess that the defendant would call for such a meeting, it was thus open to any member of the executive council or board of trustees to bring an action to protect the image of the church, so long as the these bodies do not oppose the move. As a matter of fact the defendant had by his own conduct and utterances given an indication he would not take any step to protect the church's image. He had refused to cause even a rejoinder to be published to retract the scandalous story. In these circumstances how would you expect the members of the church to wait until a formal authorization has been given by the l'Odomey Conference which the defendant chairs.

Be that as it may Rev. Bagyina pw6 who spoke for the church said the action was authorized by both the executive council and the board of trustees. Having regard to the general conduct and actions of the hierarchy of the church in seeking to protect or salvage the image of the church since the newspaper story broke out, it was reasonable for the court to accept and rely on the evidence of pw6. His testimony under cross-examination was consistent with the mood at the time which was to remove the defendant from office. Moreover the absence of a formal resolution should not detract from the evidence of pw6 especially as the members of those two bodies namely the executive council and board of trustees have not objected to the institution of this action.

In the light of the foregoing it is clear that all the arguments founded on provisions of the Companies Code, 1963 (Act 179) do not fly as the records at the Registrar-General's office were outdated and clearly unreliable.

The next line of argument was that the plaintiff did not give a power of attorney to pw6 to testify for the plaintiff. Counsel's position was that "*it is trite learning that in a situation where a party cannot act his authority to do so is given to another person to do so through a Power of Attorney……..This is what the plaintiff should have done in this case but this elementary duty was ignored and it is fatal to the case of the plaintiff."* Counsel went on to itemize the reasons why the lack of a power of attorney was fatal to the plaintiff's case. These are:

1. *"That pw6 is deemed to have given evidence in the case without any authority and his evidence is therefore of no consequence in the case.*

2. *The conduct of the plaintiff in permitting pw6 to testify on its behalf is wrong in law and as such it is caught by the principle of 'Delegatus non potest delegare'……..…..This case is therefore to be treated as if the plaintiff had not given evidence at all. One therefore wonders why the trial court gave judgment in favour of the plaintiff on the basis of the unauthorized evidence of pw6. It is therefore submitted that the evidence of pw6 should be ignored at this appellate level and treated as if he did not give evidence at all. Without the evidence of the plaintiff on record, then it stands to reason that the plaintiff has no case against the defendant".*

I have been at pains to understand the basis for this submission unless we decide to ignore the law on evidence. I thought that the law has always been that any competent person with knowledge of the subject-matter could give evidence for a party. And if it is the party himself who has tasked a knowledgeable person to testify for and on his behalf, nobody else has the right to challenge that. In other words I have always thought that the party to a case has full liberty to decide who should talk for him. If counsel's argument is accepted then even if the trustees of the church were not privy to the events that culminated in this action they could not ask any person with knowledge of the events to testify for them unless they have given him a power of attorney. Where in the rules or laws on evidence do we justify this preposterous argument? All the decided cases have made it clear that a party need not testify by himself, see these cases: **In Re Ashalley Botwe Lands; Adjetey Agbosu and Others v. Kotey and Others (2003-2004) SCGLR 420** at page 448, per Wood, JSC (as she then was) and **William Ashitey Armah v. Hydrafoam Estates (Gh.) Ltd, Civil Appeal J4/33/2013 dated 28 May 2013, unreported.** And where the person giving evidence has been called by a party in the case to talk for and on his behalf he does not require a power of attorney. Representing a party, qua party per se, should be distinguished from testifying for a party as a competent witness for and on behalf of a party or in the stead of a party. In the former situation a power of attorney will be required to enable the holder of the power to conduct the case as an attorney; in the latter situation a power of attorney is not required for the representation ends with his testimony to the court. In this case Rev. Bagyina said he was the spokesperson for the plaintiff and he testified not as a party but as plaintiff witness number six. He did not require a power of attorney to do that.

Thirdly Counsel spoke about lack of resolutions to authorize the issuance of the writ. Counsel's position, briefly stated, was that as a registered company, the plaintiff church was obliged to act by resolution of the appropriate body/bodies to authorize the plaintiff to mount this action. But none of the three resolutions that

were put in evidence did authorize the institution of this action according to counsel. All these resolutions were passed on 24th January 2003 and they came from the Elders Council and Apakanhenfo, the Finusifim band and Mozano Oman respectively. It is not in dispute that all these groups were important component parts of the Church. It is now clear that the membership of the various constituent bodies filed with the office of the Registrar-General was not a true reflection of the current state of affairs. Thus the views of these constituent bodies and others which the entire membership of the Church had duly acknowledged could not be wished away. These bodies had taken the position that the leadership of the defendant was no longer tenable. Whichever way that decision was carried out should not detract from its intended effect and purpose notwithstanding that they did not strictly conform to the requirements of a resolution as understood by lawyers. Their intent was to denounce the repugnant and shameful acts committed by the defendant against the Church and to get him removed from office. The failure to call or head same as a resolution was of no moment, it achieved the same purpose and object. We as lawyers should not make mockery of those not endowed in the use of legal terminology; such technicalities belittle the intelligence of non-lawyers and do no justice to the parties. As a court it is our duty to appreciate and understand what purpose the writer of a document sought to attain and to give effect to it, the language used should not be a bar to justice. These decisions of these important constituents in the church no doubt must have emboldened the plaintiff to take this action since the defendant had refused to clear his name and for that matter that of the church. The decision to take the action, looking at the constitution of the church could only be reached if the constituent bodies took a stand against the defendant who as the leader of the church, is also a prophet and traditional ruler of the town of Mozano. In this scenario what appeared to be a vote of no confidence by the head chiefs, the religious groups and the Oman representing the people was surely the most potent signal that an action could be taken by the church. Thus when pw6 said the executive council and board of trustees authorized the action he was speaking the truth, the lack of resolutions to that effect notwithstanding.

It is important to recall the resolution by the Elders Council and Apakanhenfo dated 24th January 2003. It was addressed to the Chairman of the Interim Oversight Administrative Committee, which was then running the affairs of the Church. It reads in relevant part thus: "…….we were briefed on recent developments concerning the Akaboha III……..and hereby resolve that in view of the damaging things done by the Akaboha III, where he has not been able to redeem himself of, we cannot serve him again as the Akaboha of the church" This was attested by principal kingmakers, namely the Twafohene, Adontenhene, Benkumhene, Nyimfahene, Sanaahene, Obaatan, Kyidomhene and Guantoahene. Other members of this body who also attested to the resolution were the acting

Chairman of the Council of Elders as well as eight district heads from various parts of the country. In a situation like this any member of the Board of Trustees or the Interim executive body that was in place could take an action to redeem the image of the church by seeking to enforce the decisions taken by the various bodies in the church to remove the defendant. As earlier pointed out it would be absurd to expect the defendant to convene a meeting of the l'Odomey Conference to recommend the institution of an action against himself.

Unconstitutionality of the suit. This is the subject of ground viii which I thought borders on capacity as well. The appellant's contention couched in several words in the statement of case as well as the reply to the respondent's statement of case was that the plaintiff did not exhaust the internal mechanism provided under the church's constitution before instituting this action. For that reason he submitted the action was unconstitutional, which I understood to mean premature and should be dismissed on that account. I do not think we need to spill much ink on this point which as I said was addressed at length. Section XIV of the constitution makes resort to arbitration a precondition before resort to the law court in matters involving members of the church. That arbitration clause does not apply here because the present action does not involve opposing members of the church; it is an action by the church itself against a member for which no provision is made in the constitution for arbitration. Secondly, the church cannot be treated as a member for it is not, having regard to the definition of member of the church in section X of the constitution. Finally the jurisdiction of the arbitration panel was ousted by the general law of the land in the sense that the issues involved were criminal offences of rape and defilement which only the State, represented by the Attorney-General and the courts of the land, could deal with. These criminal offences could not be the subject of private arbitration. Indeed subsection 5 of section XIV of the church's constitution, exhibit 1 makes it clear that the arbitrators are to decline jurisdiction "when it is found to be more serious and above the church's jurisdiction'' There is no doubt such serious criminal offences as rape and defilement are above their jurisdiction. Arbitration in the circumstances of this case was a non-starter. These arguments are thus roundly rejected. The action was thus properly brought by persons with the right capacity to act on behalf of the church.

(SGD) **A. A. BENIN**

JUSTICE OF THE SUPREME COURT

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JUSTICE OF THE SUPREME COURT

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