Law, Religion and Leadership in Africa

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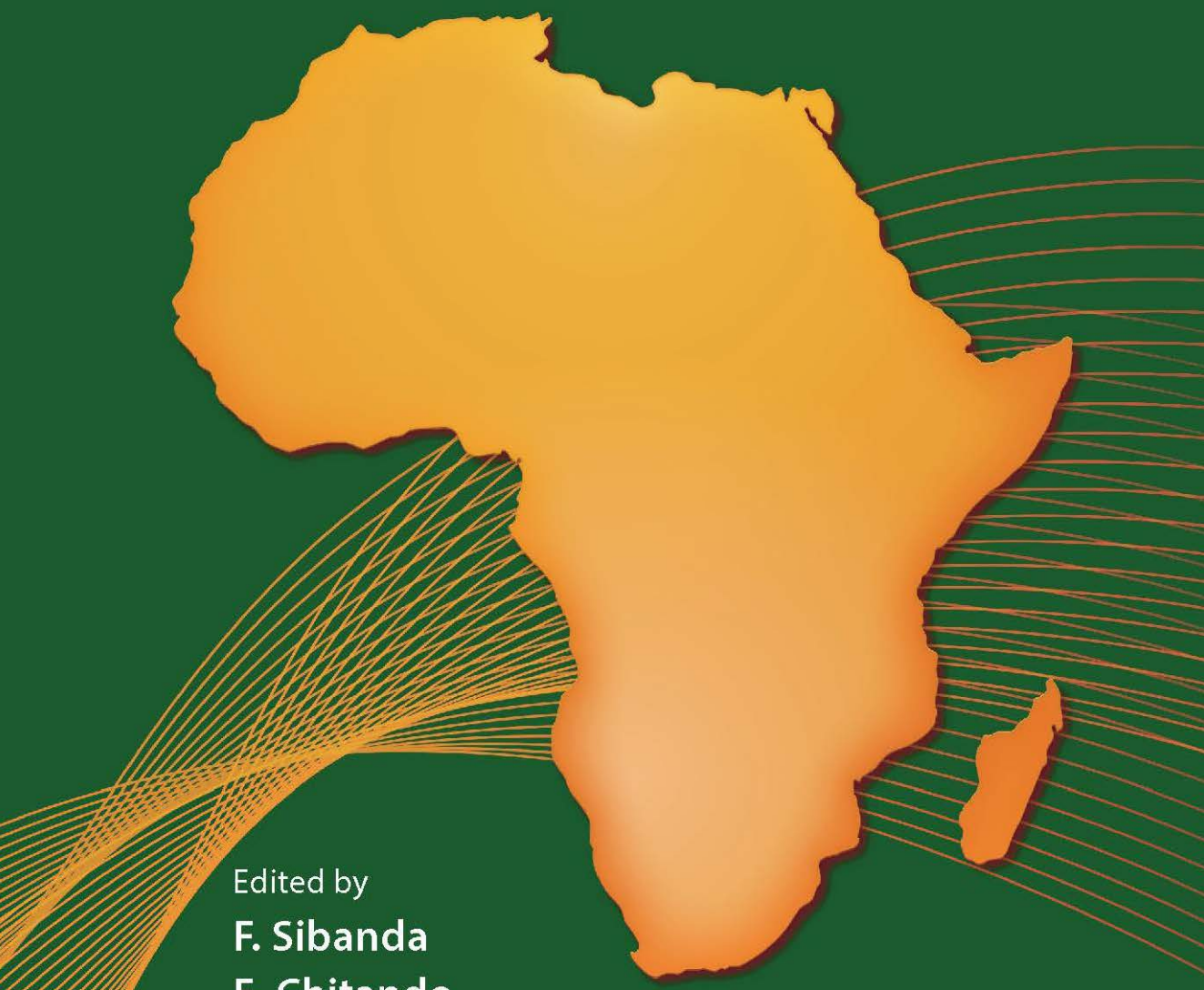

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# 7 When "pagan courts" decide Church leadership: The role of courts in resolving leadership succession disputes in Zimbabwe's churches

**Tarisai Mutangi**[1]

## INTRODUCTION

Zimbabwe is a dreamland for religious freedom. Believers are free to believe in anything, even if their deity is something they cannot even prove. The law protects belief as part of the exercise of the right to conscience and religion.[2] This is seen through the proliferation of churches across the country. Churches now occupy much of the office space which businesses formerly utilised, raising suspicion that the church has now become the new business. Much as religious freedom is almost unlimited, the law places limitations on the exercise of this right no more than is generally conceived as reasonable in a democratic society. The history of these limitations is planted in the historical incidents of abuse of followers in these churches, a scourge with which the country continues to grapple to this day.

Although there are several religious groupings, including African Traditional Religions (ATR), which can easily claim the status of default religion due their connection with local cultures, the population in Zimbabwe predominantly self-identifies as Christian. Such religious diversity would, in some places, lead to inter-religious conflicts with some group(s) seeking to forcibly impose their religion as the true and exclusive one. Yet such inter-religious conflicts are never confrontational, as is the case with other places on the continent. Rather, they are best described as "pulpit" conflicts where religious leaders seek to use doctrine to demonstrate that other religions are lost insofar as they are deemed to be pursuing the wrong doctrine. Religion has, however, ignited disputes that are many and varied in cause, profile and consequences in Zimbabwe. Labelled as a "double-edged sword", religion can "cause conflict or abate it".[3] Religion can be explored as a tool to prevent or resolve conflict, but it can also trigger some of the most devastating and divisive conflicts that leave communities reeling with polarisation and animosity.

It is believed that religious disputation and conflict, has played a substantial role in shaping the development of religious governance structure not only in

1 Head of Legal Postgraduate Department, Faculty of Law, University of Zimbabwe.

2 Constitution of Zimbabwe Amendment (No. 20) 2013, s 60, which basically mirrors provisions of various international human rights instruments providing for civil and political rights.

3 Johnston DM. 1996. "Religion and Conflict Resolution", *The Fletcher Forum of World Affairs* 20(1):53.



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Zimbabwe but across the globe. As scholar of religious education and missiology Gift Masengwe and Bekithemba Dube have observed, "Church conflicts emanate from varying backgrounds, worldviews, beliefs, and practices related to economic determinism. Church leaders change the 'rules of the game' to align and legitimise particular personalities on their access to, and control over, church resources. Constitutional conflicts, and the leadership transformation they bring, maybe a permanent feature in every church."[4] In Zimbabwe, the church is continually at the centre of national politics in the quest to finding a lasting solution to persistent political problems that have stalked the country for decades.[5] In some cases, churches, either individually or as a coalition, have confronted the state over certain laws and policies with the view to exercising a "godly" influence governance in times of crisis. However, these endeavours have elicited mixed results. Religion and state interactions have also resulted in the state intervening politically in cases where church disputes have degenerated into national chaos due to the public interest in those disputes.

The church is often a symbol of peace, fellowship, tolerance and communion among peoples who were once strangers but have been convened by a common interest to worship a deity together. Permanently engraved in the governance structure of churches from time immemorial is the concept of religious leadership where someone or a certain person is regarded as the "spiritual leader". Such status mainly emanates from them being the founder of that church; thus, they usually assume the title of "founder", "bishop", "apostle", "overseer" or a similar weighty title meant to imply that they command ultimate authority in the governance structure and spiritual trajectory of that particular church.[6]

The founder's credentials are often backed up by a mysterious account of how that leader was "called" to form and lead that particular church. It is more like Saint Paul's road to Damascus moment.[7] The founder claims to have heard and responded to the call of God. Invariably, the individualistic nature of the calling is a good breeding ground for the immortalisation of their leadership in that church and the basis upon which ultimate authority is acquired. Such is the governance structure of several "Christian" churches, living little room of accepting that death may terminate the founder's leadership. Without a clear succession plan, the surviving members are likely to fall into turmoil.

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4 Masengwe G and Dube B. 2023. "Patterning Constitutional Conflicts in the Church of Christ in Zimbabwe", *E-Journal of Religious and Theological Studie*s 9(6):207.

5 See generally Magezi C and Tagwirei K. 2022. "A critical assessment of Church and political engagement in Zimbabwe under the new dispensation", *Verbum et Eccles*ia a2527.

6 Nhumburudzi L AND Kurebwa J. 2018. "Leadership Succession in Zimbabwe's Pentecostal Churches: The Case of Zimbabwe Assemblies of God Africa (ZAOGA) and Apostolic Faith Mission in Zimbabwe (AFM)", *Global Journal of Human-Social Science: Arts & Humanities - Psychology* 18(1):45.

7 See Bible, Acts, ch 12.


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The focus of this chapter is to interrogate the intervention of the state in church succession disputes in Zimbabwe by providing a platform for the administration of justice before courts of law. The first part conceptualises church succession disputes in Zimbabwe exploring possible causes and profile of the disputes. The second part explores the Zimbabwean legal framework for church-related dispute settlement procedures. The third part uses examples of court judgments to further explore the nature of these disputes and how the courts resolved or could have resolved the issues. Finally, the paper considers inspiration from South Africa in proposing how best to deal with succession disputes in churches and how best to avoid and or manage them with the decency expected of believers.

## CONCEPTUALISING CHURCH SUCCESSION DISPUTES IN ZIMBABWE

Churches, supposedly role-model organisations for other sectors of society including politics, should be torchbearers when it comes to governance issues such as succession.[8] For purposes of this paper, the definition of the term "church" is borrowed from the court's decision in the case of *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese*, which defined a church as follows

> By definition, a church is a voluntary and unincorporated association of individuals united on the basis of an agreement to be bound in their relation to each other by certain religious tenets and principles of worship, government and discipline. The existence of a constitution is testimony to the fact that those who are members of the Church agree to be bound and guided in their behaviour as individuals or office-bearers on ecclesiastical matters by the provisions of the Constitution and the Canons made under its authority.[9]

However, as will be demonstrated in this paper, churches are often in courts of law, as are political parties conflicting over an election process or challenging the results thereof. Ironically, some churches resort to elections and election challenges to install a new leader in much the same way that public officials do.

Thus, church leadership succession disputes are those contestations that arise when believers are engaged in the process of determining who should succeed the leader of the church especially following the death or incapacitation of a current spiritual leader. As will more fully appear in this paper, each religious organisation is at liberty to determine its governance architecture and well placed to regulate this rather emotive, internal affair. The major consequence of such disputes, if not amicably resolved, is the split or schism of the church, further triggering other disputes, such as excommunications and squabbling over control of church property. Perhaps this can serve as a positive awakening "in the direction of

8 A court shared these sentiments in the case of *Tachiona v Bulawayo Seventh-day Adventist City Centre Church & Another* HH/167/17.

9 *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese* 2012 (2) ZLR 392 (S).



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positive change" as a result of the conflict, since "without conflict, we should have been stagnant.[10]

The proliferation of Pentecostal Christian churches in Zimbabwe has been particularly interesting to observe.[11] With no legal requirement to register with the government, churches are being formed daily. With the economic challenges in Zimbabwe affecting all sectors, there is now a hive of activity especially in the central business district of Harare, where churches have taken over most office complexes, malls, schools and other former places of entertainment. In order to compete with secular places of recreation, most modern churches have deployed musical bands that blurt songs of praise and worship with the objective of attracting passers-by.

One key aspect of this growth has been the personification of the leader, who is often the founder of the church. In all fairness, personification of leadership seems to be a national characteristic emanating from political organisations, which are often identified by their leaders and not their real corporate name or ideology. We may also add "privatisation of churches" to the concept of "leadership personification" in that the church leadership in these churches macro-manages all affairs of the church in their quest to remain perpetual leaders until death do them part with the church. The other aspect of personification is the establishment of churches by "prophets", be they deemed true or false. The "prophetic wave" has taken over the Pentecostal landscape where it appears the public is attracted more to the "gift" of prophecy than the explanation of true doctrine.

In other instances, churches have been made into family ventures or business entities in terms of both leadership and financial benefits, such that the "founding family owns the church, founder's close friends or relatives who are catapulted into the echelons of power by the church leader" and stand to have the final say in terms of the general administration (especially financial control) and ultimately, leadership succession.[12] Quite often the founder strategically allocates influential positions to family members as a governance mechanism to deal with the succession question when it arises. A founder who arrays their church in such a formation could be considered nobler than the one who simply leads without addressing the succession issue. This was the case in *Mugodhi Apostolic Faith Church v Washington Mugodhi*.[13]

The facts of the case were that the now late Tadewu Mugodhi who used to be the Bishop of the Mugodhi Apostolic Faith Church, was ill for over six months. At some

10 Harris P and Reilly B. 1998. "Democracy and Deep-Rooted Conflict: Options for Negotiators". (Stockholm) International Institute for Democracy and Electoral Assistance (IDEA), 32 (quoted in Masengwe, "Patterning Constitutional Conflicts in the Church of Christ in Zimbabwe", 211).

11 See Chitando E. 2014. "Multiplying in the Spirit: African Initiated Churches in Zimbabwe", in Gunda MR and Kugler J (eds) *Multiplying in the Spirit. African Initiated Churches in Zimbabwe*. Bamberg: University of Bamberg Press, 15-31.

12 Nhumburudzi & Kurebwa, "Leadership Succession in Zimbabwe's Pentecostal Churches".

13 *Mugodhi Apostolic Faith Church v Washington Mugodhi* HC 6126/20.


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point he called for a meeting with the board of ministers of the church, together with vice bishops and pastors, and made a pronouncement that his son Washington Mugodhi was now going to hold the office of vice bishop and subsequently succeed him as bishop upon his death. The pronouncement was contrary to the church constitution, which provided for a clear procedure for leadership succession. When the bishop died his son sought to implement the pronouncement and was met with a lawsuit by other leaders seeking to enforce the church constitution. In a subsequent lawsuit, the court overturned that decision by implementing the relevant provisions of the church constitution.[14]

Leading a church without addressing the succession question one way or the other triggers contestations due to the absence of any guidance when eventually dealing with the succession question. There have been several cases where the founder has left behind a will in which the succession issue is addressed. However, this approach triggers further challenges to an already compounded situation by adding another layer of complexity where a court may have to determine whether a church organisation could be bequeathed through a will, thus making it subject to a deceased leader's estate. In other words, this is a scenario where there are attempts to pass on church leadership through a will or testament.

## LEGAL FRAMEWORK FOR RESOLUTION OF RELIGIOUS DISPUTES

The legal framework pertaining to the formation and administration of churches is critical in this paper insofar as it sheds some light into the governance structure of these institutions. The complete legal code on the formation and administration of churches includes the Constitution of Zimbabwe in the first instance, along with subsidiary legislation implementing these constitutional principles. Section 60 of the Constitution of Zimbabwe provides for the right to conscience, which includes "freedom of thought, opinion, religion or belief" and "freedom to practise and propagate or give expression to such thought, opinion, religion or belief" in public or private alone or with others.[15]

Section 60(4) underscores the right to form or establish a church or religious organisation. It provides: *Any religious community may establish institutions where religious instruction may be given*, even if the institution receives a subsidy or other financial assistance from the State.[16] Although reference to a "religious community" establishing "institutions where religious instruction may be given" is usually interpreted to mean the establishment of religious educational institutions at all levels, which is common in the country, it arguably also includes people of religious conscious forming churches where congregations may gather to worship. There is

14 See *1. Chikwena and 3 v Mugodhi Apostolic Faith Church and 3 Others 2. Mugodhi Apostolic Faith Church and Another v Magoma and 35 Others 3. Mugodhi Apostolic Faith Church and Another v Mangoma and 35 Others* HH 340/24.

15 Constitution of Zimbabwe, s 60.

16 Constitution of Zimbabwe, s 60(4) (emphasis added).



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no better place faith-based institution in which to give a religious instruction than a church or congregation.

Now, there is no clear legal framework adopted to implement the right in Section 60(4) of the Constitution in relation to the formation and operationising a church organisation in the country. There is no legal requirement that churches should be registered, although church-owned educational or medical institutions are required by respective regulatory frameworks to register upon satisfying certain requirements for quality control and public protection reasons. One method of formation is for a church to be formed as a voluntary trust, a legal entity in which the founder often appoints himself or herself as the founding trustee and adds at least two more persons to assume the role of trustees, supposedly to provide policy guidance to the organisation and be the stewards of its assets.[17] In that set-up, the founder is often the chairperson of the governing body of trustees for the rest of his or her life. Often, the rest of the trustees would be close allies or family members so that the leader maintains a grip on the affairs of the church. In many circumstances, the trust document does not give details about the secession question, as functions are almost always concentrated in the leader, such as financial control.

A second method of church formation in Zimbabwe is that the church may be established as a legal entity through adopting a constitution that establishes internal structures and gives a general framework for how the affairs of that church will be managed. Once the founding members affix their signatures to the constitution, the organisation, called a *universitas*,[18] assumes legal recognition. Thus, a church registered as a trust or *universitas* becomes eligible to open bank accounts and own properties in its own name. We stress here that the identity documentation is not for purposes of expressing belief, as no formal registration is required. In comparison to a trust document, a constitution is often more elaborate on several issues that underpin the governance framework of an organisation. Among other things, a constitution addresses the governing structures that need to be established in that institution, including the name of the church, the appointment of chairperson of and the management committee, holding of regular or annual general meetings and the business to be dealt with thereat, keeping proper books of accounts, membership and its benefits and grounds for excommunication.

Finally, there are other churches that are neither registered as trusts or adopted any constitutive documents such as a constitution. Based on the premise that there is no obligation to register a church organisation with government for purposes of operating in the country, some modern Pentecostal churches simply gather and begin to operate under the leadership and guidance of the founder(s). All matters pertaining to the church, including structures (if any) and religious rites are determined by the founder as supposedly led by the deity. These are the

17 This is in terms of the Deeds Registries Office where all manner of trusts are formally registered for purposes of legal existence.

18 In Roman law, a society or corporation; the latter sense is where the word university is derived from.


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organisations where deceased leaders might attempt to address the succession question by way of a will. The courts of law are invited to make determinations on a number of issues, including whether the church and its property was part of the deceased's estate and, hence, subject to distribution in terms of the prevailing law on testamentary succession, that is, where one leaves a will.

The different ways through which churches come into legal existence illustrate the parameters within which courts have to creatively use the law in order to administer justice to the warring parties or members. As will more fully appear in the analysis below, courts rely on the constitutive instruments of an institution when determining disputes that have arisen in their affairs. Without such a document for guidance, courts of law are at pains in justifying their decisions. In most cases they end up applying what they call "neutral principles of law",[19] which include "objective, well established concepts of trust and property law".[20] These principles are derived from non-religious legal disciplines in the quest to develop a sophisticated body of law to deal with the proliferation of church disputes, including those related to leadership succession.

## COURTS' APPROACH TO RELIGIOUS DISPUTES

Zimbabwean courts continue to preside over diverse church disputes, not limited to leadership succession. Feuding church members have always put their trust in the courts of law to resolve these disputes, be they finances, schism or control over church property, especially in the wake of secessions.[21] One key question that arises is whether Christian doctrine allows believers to approach "pagan" courts when faced with conflict or to address certain grievances. One is reminded of Saint Paul's admonition in 1 Corinthians regarding dispute resolution between believers.[22] Part of it reads as follows:

1. Dare any of you, having a matter against another, go to law before the unjust, and not before the saints?
2. Do ye not know that the saints shall judge the world? and if the world shall be judged by you, are ye unworthy to judge the smallest matters?
3. Know ye not that we shall judge angels? how much more things that pertain to this life?
4. If then ye have judgments of things pertaining to this life, set them to judge who are least esteemed in the church.

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19 *Sibanda & 2 Ors v The Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) Inc* SC 272/15.

20 *Sibanda & 2 Ors v The Apostolic Faith Mission of Portland Oregon.*

21 A classic example of schism and conflict over control of church properties if the CPCA case above, where those members who resigned membership citing intense doctrinal differences went to court to retain control of properties acquired by the "mother church".

22 Bible, 1 Corinthians 6:1-8 (King James Version).



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5. I speak to your shame. Is it so, that there is not a wise man among you? no, not one that shall be able to judge between his brethren?
6. But brother goeth to law with brother, and that before the unbelievers.
7. Now therefore there is utterly a fault among you, because ye go to law one with another. Why do ye not rather take wrong? why do ye not rather suffer yourselves to be defrauded?
8. Nay, ye do wrong, and defraud, and that your brethren.

In one case, a court made verbatim reference to the first verse as quoted above.[23] The court was underscoring the difficulty that we seek to address in this paper, as to whether Saint Paul's admonition to Christians who approach secular courts could be tolerated in modern days. Justice Patel's view is that it should be so when it held as follows:

> While I cannot profess to be versed in doctrinal matters, I would venture to postulate that the biblical injunction against recourse to temporal as opposed to spiritual authority must be understood in its peculiar historical and political context. Moreover, notwithstanding the undeniable significance of Christian doctrine in the conduct and regulation of church affairs, *it cannot in our present time and circumstance be invoked in the realm of human affairs to preclude the administration and application of the general law through the secular courts.* This is so particularly where the issues that call for resolution, as in the present case, centre on proprietary interests and their assertion in the material world.[24]

Even though the focus of this chapter is not scrutiny of church doctrine around dispute resolution in general, it is fascinating that some of the conclusions that come at the end of this paper are founded on Saint Paul's admonition. More importantly, there is a public disapproval when believers take their feuds to the courts of law, because churches are expected to be role models in terms of decorum and handling sharp differences. Chaotic and sometimes violent approach to settlement of disputes is often associated with politics both at macro- and micro-levels. It should be a shameful thing that believers arraign each other before courts. Perhaps this is the "shame" to which St Paul referred, reminding the church that such was a shameful thing to do.

Litigation is one of the most discouraged forms of dispute resolution even within the secular world. At its peak, it destroys social connections and relationships, as parties are locked in a winner-takes-all contest. There is shame in losing a court case. Litigation causes deep-seated divisions, which are uncharacteristic of congregations of believers who are united by faith. Much as factionalism, secession or schism has always been part of the Christian journey of faith, it appears contrary to doctrine that believers be irreconcilably ripped apart by issues on which they should be

23 *Christian Faith Tabernacle v Sparrows Nest Ministries* HCH69/09.

24 *Christian Faith Tabernacle v Sparrows Nest Ministries* HCH69/09.


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able to lead by example and resolving same amicably.[25] By doing so, they offer themselves as role models of conflict resolution to the whole world, even on issues of intense disputation.

## JUDGES ARE NOT PREACHERS

For their part, courts in Zimbabwe have taken the judicial stance of steering away from interpreting ecclesiastical or doctrinal contestations and making pronouncements on the correctness of church canons. They have taken the commendable view that matters ecclesiastical or doctrinal are better left to men and women of the cloth and church members to interpret in their teachings or constitutive instruments of the church. As the Supreme Court of Zimbabwe held in a leading case on church disputes, the *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese* case, "The court does not discuss the truth or reasonableness of any of the doctrines of the religious group. It does not decide whether any of the doctrines are or are not based on a just interpretation of the language of the Holy Scriptures."[26] The court's observation appears to have been influenced by a long chain of cases from across the world, including the United States. For instance, in *Watson v Jones*, an American court held in a dispute over church property, "The Federal Courts are competent to enforce express terms contained in trust instruments governing the use of ownership of property. *However, courts may not resolve or inquire into matters of religious doctrine in order to determine entitlement to property*."[27] This principle applies to leadership succession-related disputes as well.

With more church disputes finding their way to the courthouse, the courts are getting more established in their approach to such matters. In the case of *Sibanda & 2 Others v the Apostolic Faith Mission of Portland Oregon (Southern African Headquarters) Inc*,[28] the court shared even more sentiments on the cautious approach to resolving religious disputes by considering matters of doctrine. The superior court pronounced with emphasis that "the ideal position is for voluntary associations [churches included] to discipline their own members" and that "it is for the church to dismiss the appellants and not for this court to do so in its stead".[29] This approach aligns itself with what Saint Paul seemed to recommend when he admonished believers for taking disputes to circular courts instead of resolving them between themselves. It is in fact dubbed by the courts as the "deference approach", as articulated in *Tachiona v Bulawayo Seventh-day Adventist City Centre Church & Another*, where the court maintained

25 Global Jurix. n.d. "Advantages of Alternative Dispute Resolution (ADR) over Litigation". Online at: https://www.globaljurix.com/blog/advantages-of-alternative-dispute-resolution-adr-over-litigation.php

26 *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese*, 411.

27 *Watson v. Jones*, 80 US (13 Wall) 679 (1871) (emphasis added).

28 *Sibanda & 2 Others v the Apostolic Faith Mission of Portland Oregon* (Southern African Headquarters) Inc [2018] ZWSC 49.

29 *Sibanda & 2 Ors v The Apostolic Faith Mission of Portland Oregon.*



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> *In our law, while the courts have generally adopted what has come to be known as the "deference approach" to church disputes which is to say that there is judicial recognition of the decisions of the church's highest hierarchical bodies on matters of discipline, faith or ecclesiastical rule, and in the absence of fraud, collusion or arbitrariness*, the decisions of the proper church tribunals upon matters purely ecclesiastical, are accepted in litigation before secular courts as conclusive because the parties made them so by consent, *there will always be judicial review of church decisions in situations where fraud, collusion or arbitrariness are alleged*.[30]

## LEGAL APPROACHES TO TO RESOLVING CHURCH DISPUTES

This paper has maintained that there is no law regulating churches in terms of formation and operation. Be that as it may, it is necessary to illuminate on the legal principles courts of law utilise in resolving disputes, having declined to refer to the Holy Scriptures in that regard. The question that has vexed our courts but the answer for which they have already partially found is: *What therefore is the law applicable when resolving church disputes in the courts of law?*

### *Neutral principles of law*

Although applied predominantly in disputes involving control over church property, we submit here that the same approach could be applied to church leadership succession disputes have been filed before courts. The approach is that these disputes "should be resolved on the basis of interpretation and application of the law of voluntary associations".[31] The law of voluntary associations is, in fact, the law that regulates entities established either as trusts or *universitas* as previously discussed in this paper.

The law applicable to voluntary associations in general represents what are deemed to be "neutral principles". As the name suggests, the applicable principles are neutral in that they were not made for a specific organisation such as a church. Rather, they are applicable to all organisations, which fall within the genus of "voluntary organisations", be they churches, social clubs, neighbourhood committee and so on. In a sense, they are a stroke for all folks who answer to the calling of voluntary work. The use of objective principles frees "civil courts completely from the entanglement of religious doctrine, policy and practice".[32]

However, making the application of the principles dependent on constitutive documents presupposes that every church has got a constitutive instrument, which

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30 *Tachiona v Bulawayo Seventh-day Adventist City Centre Church & Another*. HC 617 of 2017.

31 *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese* case, 411. See also *Independent African Church v Maheya* 1998 (1) ZLR 552 (H), 556. On general principles of voluntary organisations, see Bramford BR. 1982. *The Law of Partnerships and Voluntary Organisations in South Africa*. Third Edition. Cape Town: Juta.

32 *Jones v Woolf*, 443 US 595 (1979).


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is not the case in Zimbabwe. Some "independent" churches do not have such constitutive instruments.[33] This observation knocks open a new question as to how courts should deal with churches without constitutions. It may be the case that the courts have been dealing with incorporated churches, yet the reality on the ground is that the proliferation of churches has begotten churches without such documents.

Be that as it may, the survey of court decisions that supported this chapter revealed an inspiring trend whereby most churches seek to have governance structures as articulated in the church constitutions. The availability of such key instruments has assisted courts in resolving these disputes by placing reliance on the content of the church documents. It has enabled feuding members to accurately articulate the parameters of their disagreements and also provided the courts with the tool to measure compliance or otherwise with the agreed canonical rules.

This paper commends churches for taking this stance given the absence of a law requiring churches to form in a particular way. It is through foresight and good governance that they agree to rules that will bind them from the time of inception. The majority of disputes, if not based on purely ecclesiastical issues, then the basis is allegations of non-compliance with church constitution especially when electing a leader.

### *Fundamental church principles*

In the course of finding best approaches to dealing with church leadership succession disputes, the courts have devised what we have coined as the "fundamental principles" doctrine.[34] Essentially, the concept emanates from the realisation by courts that it is expedient to deal with church disputes using the core principles upon which that church organisation is founded. In that process, our courts deem themselves bound to consider and apply the terms and provisions of the constitutive instrument of the church concerned and other rules established under its authority.[35]

The justification is that such a document constitutes the most detailed memorandum of agreement between members of that church insofar as it provides for "faith, worship, government and discipline".[36] The courts have taken the view that churches tend to draft constitutional provisions is a way that aligns with their ecclesiastical persuasion, thus making such documents reliable when determined disputes. The consequence of this approach is that majorities cease to have relevance in determining disputes. In other words, the mere fact that the majority of the church membership is supporting a position that departs from the fundamental principles of that church will not sway the decision in their favour. The court looks

33 Per Judge Devitte coining a term for Zimbabwean Christian churches established without connection to those Christian churches formed before independent Zimbabwe.

34 *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese,* 411.

35 *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese*, 411.

36 *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese*, 412.



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at those few who still stand for these principles as the true membership of the church and therefore entitled to a favourable result in the contest, unless the constitution already provided for what should happen in such a scenario. This, euphemistically is referred to as "giving people what belongs to them and not what fits them".[37]

These principles should form the basis for the lawfulness or otherwise of decisions taken by leadership or membership that falls to determination in court. While this legal doctrine is intricately linked to the neutral principles rule, the latter are universal principles not necessarily found in the constitutive documents of an organisation.

### *The church deference principle*

Other cases seem to suggest further grounds for the general approach that courts should defer ecclesiastical matters to the church, sarcastically referring to themselves as "mere secular". This is what Justice Makarau meant when she held that:

> In my view, *this court is being called upon to determine on matters that are beyond it*. Matters ecclesiastical are best left to courts that are equipped to deal with matters of faith where evidence of the facts being alleged may not be necessary. *Circular* (sic) *courts* are trained to be and tend to be hardnosed and will call for evidence on all facts alleged, a feat that destroys most faith for faith is belief in things unseen and unheard.[38]

The point the court made here is that it may require evidence to be adduced in order to prove an ecclesiastical claim, thereby creating a colossal task for followers of that belief. In that case, the dispute was around the issue of whether or not the deceased leader had resurrected to lead his flock as he had claimed. One group believed that he was still to resurrect while the other one believed that he had already resurrected into one of the church members, who they were already following as the new leader.

Had the court attempted to resolve that issue, it would have required one group to show that the deceased leader was yet to resurrect and that such an act was physically possible. With similar difficulty, the other group would have to prove that the deceased leader had in fact reincarnated through that particular church member. Yet both groups are entitled under law to believe even in what they cannot prove. That is the full realisation of the right to religious freedom.

## CONCLUSION

This chapter set out to be a brief exposition of the role Zimbabwean courts have taken in resolving leadership succession disputes in Christian churches in Zimbabwe. Several of conclusions have been made. First, churches continue to

37 See also *Zambezi Conference of Seventh-day Adventists v General Conference of Seventh-day Adventists & Another* 2001 1) ZLR 160 (S).

38 *Mudzimuunoera Apostolic Church Board of Trustees v Mudzimuunoera Apostolic Church–Guruve Division and Another* HH (92/10).


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utilise courts of law as the appropriate forum for the resolution of all manner of disputes including those that are purely ecclesiastical. However, courts have taken the approach of deference to church authorities in those disputes. Nevertheless, courts seem to harbour the view that it is "un-Christian" for churches to bring disputes to secular courts, having witnessed first-hand the division and enmity which is a result of feuds extending over several years in some cases. Thus, courts discourage church members from adopting litigation as dispute resolution method.

Second, there is no law in Zimbabwe that requires churches to be registered for purposes of operating as such. The mere adoption of a church constitution by the founding membership is sufficient for that organisation to commence operating as a church, and the constitution gives them legal existence and competence to file and defend lawsuits and to acquire properties.

Third, whenever called upon to preside over disputes, including leadership disputes, courts will rely primarily on the constitutive documents of that church to identify the fundamental principles upon which the church is founded. Such principles and other provisions of these documents that speak to the process of choosing a leader will be applied to test compliance therewith. While courts cannot choose a leader for the church, they check whether church documents regulating the process were followed. If there is non-compliance, they can order a re-run of that process, for instance, an election to choose a leader.

Fourth, where the details of a dispute are not covered in the documents, the courts will apply the "neutral principles" rule, which entails resorting to legal principles generally applicable to voluntary organisations, which is the category to which churches belong. Such principles will substitute or compensate for the absence of a church constitution.

Fifth, it is now a customary approach for churches in Zimbabwe to adopt constitutions and other documents to regulate internal processes such as appointment to key positions in the church including church leadership. This has made it easier for Zimbabwean courts to resolve church disputes based on the contents of these key documents.

Finally, it would appear that while there are no formal coalitions for churches, it is necessary for one to be established where all church disputes should be mediated in the first instance by a "panel of church elders" composed of respected church leaders before taking the legal route. This approach would ensure that the church remains a role model in dispute resolution by allowing those of its own to hear and determine grievances. While this approach would appease Saint Paul, it can also serve as a case study even for secular political parties, endorsing pacific settlement of disputes as the Christian way to which all peaceful communities should subscribe.



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