

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

2024/HP/1236

BETWEEN:

**STEVEN MWAFULILWA**  
**GEORGE CHULUMANDA**  
**STANFORD KAYAME**  
**FRIDAY NKOMA**

ePublic cF  
HIGH COURT  
PRINCIPAL  
14 SEP 2024  
RECIPT 3  
050067, LUSAKA

1<sup>ST</sup> PLAINTIFF  
2<sup>ND</sup> PLAINTIFF  
3<sup>TH</sup> PLAINTIFF  
4<sup>TH</sup> PLAINTIFF

AND

**REV. CHIPASHA MUSABA**  
(Sued in his capacity as the UCZ Synod General Secretary)  
**REV. FESTUS CHULU**  
(sued in his capacity as the Synod Bishop)  
**UNITED CHURCH OF ZAMBIA REGISTERED TRUSTEES**  
(Sued in their Capacity as custodians of the UCZ Constitution)

1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT  
3<sup>RD</sup> DEFENDANT

**Before!**

**The Hon. Mr. Justice C. Zulu**

For the Plaintiffs:

Mr. F. Lungu, of Messrs Frank Natasha Legal Practitioner and Mr. C. Liato of Messrs Andrew 86 Partners.

For the Defendant:

Ms. T. Bulaka 86 Mr. M. J. Kapila of Mesdames TMB Advocates.

## RULING

Cases referred to:

- Bernard Kutalika v Dainess Kalunga (SCZ Appeal No. 73 of 2013).***
- Turnkey Properties v Lusaka West Development and Others (1984) Z.R. 85 (S.C.).***
- Shell BP Zambia Ltd. v Conidaris & Others (1975) Z.R. 174.***

**4. *American Cyanamid Co. v Ethicon Ltd (1975) A.O 396.***

**5. *VDF Property Management Limited v Ronald Van Vlanderen (CAZ Appeal No. 190 / 2014).***

Legislation referred to:

**1. *The High Court Rules (HCR), Chapter 27 of the Laws of Zambia.***

## **1.0 INTRODUCTION**

1.1 This ruling concerns an application at the instance of the Plaintiffs dated Septembers 4, 2024. The Plaintiffs *inter alia* are challenging their 'expulsion' from the United Church of Zambia (UCZ). They allege that as *bona fide* members of the UCZ (third Defendant), they are entitled to an interlocutory injunction to stay or stop the forthcoming induction service of the first Defendant, Rev. Chipasha Musaba, scheduled to take place on September 15, 2024; to ordain him as the General Secretary of the UCZ.

1.2 The application was made pursuant to Order XXVII rule 4 of the ***High Court Rules (HCR), Chapter 27 of the Laws of Zambia.***

## **2.0 BACKGROUND**

2.1 It is *prima facie* decipherable from the documents filed into court that the UCZ held its 31st Synod Meeting from 27th June to 2<sup>nd</sup> July 2024. At the said Synod Meeting, the first Defendant, Rev. Musaba was elected as the General Secretary of the UCZ, and the second Defendant, Rev. Chulu was elected as the Synod Bishop. And by this application, it is apparent that

the Plaintiffs seek to stay the enforcement of Article 15(c) (i) of the UCZ Constitution, which provides:

2.1.1 ***The General Secretary shall take office and be formally inducted by the Synod Bishop within ninety (90) days after the elections.***

2.1 As previously stated, the induction of Rev. Musaba as the General Secretary of the UCZ is scheduled to take place on Sunday, September 15, 2024, under the auspice of the second Defendant, the Synod Bishop. Noticeably, the General Secretary is the Chief Executive Officer of the Synod.

2.2 The Plaintiffs allege that the nomination process and the electoral process leading to the election of Rev. Musaba as the General Secretary of the UCZ, including the election of Rev. Chulu, as the Synod Bishop was marred by illegalities and improprieties, contrary to the Constitution of the UCZ.

2.3 In the light of the foregoing, the Plaintiffs are reported to have been prompted to take out the present writ of summons and a statement dated September 4, 2024 seeking the following reliefs:

2.3.1(i) ***an order that the elections held between the 27th of June 2024 and 2<sup>nd</sup> July 2024 were illegal, improper and contrary to the provisions of the UCZ Constitution; and***

***(ii) an order that the Synod's decision to remove the Plaintiffs from the membership roll of the UCZ is illegal, ultra vires the UCZ Constitution and therefore void ab initio.***

2.4 The application for an injunction was strongly opposed by the Defendants.

### **3.0 AFFIDAVITS**

- 3.1 An affidavit in support of the application was deposed to by the first Plaintiff, Steven Mwafuililwa. He alleged that the Synod Nominations Committee at its meeting held on March 16, 2024, irregularly shortlisted candidates, including the first and second Defendants. That the nomination process was contrary to the Constitution of the UCZ. However, the specific provisions of the Constitution supposedly abrogated by the Defendants were not cited.
- 3.2 It was alleged that the Committee received eight nominations for the position of UCZ Synod Bishop and, two nominations for the position of General Secretary, but the Committee unilaterally and arbitrary altered the nominations submitted by various presbyteries.
- 3.3 That the appeal of Rev. Lungu as a candidate against the said nomination process was unsuccessful, and that the interested/conflicted parties, namely the first and second Defendants were part of the panel that determined the appeal from the Copperbelt Presbytery. He alleged that this influenced the decision of the Synod Council to dismiss the appeal.
- 3.3 It was also alleged that during the Synod election held on 27th June to 2<sup>nd</sup> July 2024, the Synod Council failed to appoint electoral officers as required by the Constitution. And that the list of delegates constituting the electoral college at the Synod Meeting was not verified before the elections.

3.4 The deponent further stated that he was excommunicated at some disciplinary meeting held on August 10, 2024 after writing a letter of protest to the Synod Bishop dated July 29, 2024 calling for nullification of the elections. He complained that in the aforesaid meeting, the first and second Defendants acted as judges in their own cause and were conflicted, given the allegations of misconduct he had previously raised against them.

3.5 According to him, if the induction was allowed to proceed, it would further entrench the effects of the illegitimate elections, and expose the Plaintiffs to suffer irreparable harm, because the leadership of the UCZ will be solidified based on the unlawful process.

3.6 An affidavit in opposition was deposed to by the second Defendant, Rev. Festus Chulu. I wish to pause here, and state that, the Plaintiffs' Counsel raised a preliminary objection, and sought to have the affidavit in opposition expunged from the record because paragraphs 7 and 8 were alleged to contain legal arguments.

3.7 In response, the Defendants' Counsel argued that reproduction of the UCZ Constitution in the said paragraphs was not synonymous with stating legal arguments.

3.8 Indeed, Order V rule 15 of the HCR, states that:

**3.8.1 *An affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion.***

- 3.9 I agree with the Defendants' Counsel that reproduction of the UCZ Constitution in the affidavit, which is material to the application does not in this particular case offend Order V rule 15 of the HCR.
- 3.10 The pith and substance of the deponent's opposition is that, he (Rev. Chulu) and Rev. Musaba were properly nominated and elected in accordance with Article 15B (2)(b) and Article 15B(1)(b) of the UCZ Constitution, Rules and Regulations.
- 3.11 He stated that it was within the vetting powers of the Nominations Committee to nominate candidates they deemed fit from a pool of candidates submitted by presbyteries. That Bishop Charles Lungu was not one of the nominees selected by the Nominations Committee for the position of Synod Bishop. And that in the case of Bishop Charles Zulu, after being nominated, he declined or withdrew his nomination. And that in the case of Dr L. Siame, he equally declined the nomination for the position of General Secretary.
- 3.12 He stated that a roll call of all delegates was conducted at the Synod Meeting by the Administrative Secretary and votes were duly and openly counted. He added that the Plaintiffs were not part of the delegates of the Synod Meeting, and do not participate in Synod meetings. He explained that the UCZ Constitution did not provide for qualified electoral officers to oversee the elections. He stated that the Synod was the body solely mandated to oversee the electoral process and elect the Synod Bishop and General Secretary.

3.13 In relation to the alleged appeal, he stated that the appeal was determined by the relevant appellate body in accordance with the Constitution, Rules and Regulations of the UCZ. And that the elections of the first and second Defendants could not be nullified merely on account of the voluntary decline of nomination by Bishop Charles Lungu, because he was not nominated as Bishop by the Nominations Committee, but was instead nominated for the position of General Secretary, of which he declined.

3.14 Finally, he lamented that the first Plaintiff, Steven Mwafuilwa had been perpetuating disharmony among congregants of the UCZ, by inciting them to rise against the Defendants. He stated that the first Plaintiff even created a group christened "UCZ Rescue Team" operating outside the structures of the UCZ, but bent on breeding hostility and confusion in the Church. He exhibited some *WhatsApp* texts allegedly authored by the first Plaintiff inciting others to rise against the first Defendant.

#### **4.0 THE PARTIES' RESPECTIVE ARGUMENTS**

4.1 The Plaintiffs' Counsel argued that the purpose of the injunction, if granted was meant to preserve the *status quo*, until the rights of the parties were determined. That if the induction was to proceed as scheduled, the Plaintiffs would suffer irreparable damage, given the gravity of the dispute at hand.

4.2 The Defendant's rejoined by arguing that the nomination and election of the first and second Defendants were properly done in accordance with the UCZ Constitution, Rules and

Regulations. It was noted that the status quo that should be preserved is that, the first and second Defendants were duly elected. And that the first and second Defendants have been performing their respective duties.

4.3 According to Counsel, the grant of an injunction will instead undermine the UCZ Constitution, and disrupt the functions of the UCZ, and cause confusion and disorder in the Church, and if not curtailed had the potential to escalate to a complete breakdown of church structures.

4.4 It was added that the Plaintiffs had not demonstrated what irreparable damage they would suffer, because in the first place they were not parties (candidates) to the disputed elections. That in fact, it was the Plaintiffs that were trying to mobilize UCZ members to destabilize the Church. It was observed that none of the members of Synod that participated in the electoral process are a party to the action herein.

## **5.0 DETERMINATION**

5.1 The Defendants' Counsel made reference to the case of **Bernard Kutalika v Dainess Kalunga**<sup>1</sup> in which the Supreme Court, advisedly guided as follows:

5.1.1A ***lower court hearing an injunction application should, as much as possible try not to delve into and predetermine the issues to be tried in the main cause. The court should confine itself to those issues necessary for the disposal of the application.***

5.2 Therefore, I tread carefully so as to avoid making premature or pre judgment pronouncements aptly reserved for determination



after full trial. Suffice to state that I have carefully considered the relevant facts and the arguments thereof.

5.3 In **Turnkey Properties v Lusaka West Development and Others**<sup>2</sup> the Supreme Court *inter alia* held:

5.3.1 ***In order to succeed, the appellants should have demonstrated that, not only was their right to the relief sought clear, but above all, that the injunction is necessary to protect them from irreparable injury.***

5.4 And as to the meaning of "irreparable damage" in **Shell BP Zambia Ltd. v Conidaris & Others**<sup>3</sup>, the phrase was defined to mean:

***5.4.1/njury which is substantial, and can never be adequately remedied, or atoned for by damages.***

5.5 The Plaintiff placed premium on the argument that, if the injunction was not granted, they would suffer irreparable injury, and that the lack of an injunction will fuel anarchy in the Church. However, the Plaintiffs have not demonstrated the basis for this serious allegation or, how wide spread the dissatisfaction is among the congregants of the UCZ, concerning the issues raised against the Defendants, in particular against the first and second Defendants. Likewise, I am unable to appreciably fathom the basis of the claim that if the injunction is not granted there will be a total break down of law and order in the Church.

5.6 The business of the court is to do justice, to preserve law and order. Therefore, it is ill-conceived to issue an injunction, only abetting or glorifying the perception of anarchy.

5.7 Furthermore, the object upon which an interim or interlocutory injunction is granted is *inter alia* to preserve the status quo. In the memorable case of **American Cyanamid Co. v Ethicon Ltd**<sup>4</sup> the Court held:

5.7.1 ***The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at trial; but the plaintiffs need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiffs undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the balance of convenience lies.***

5.8 Additionally, in the case of **VDF Property Management Limited v Ronald Van Vlanderens** the Supreme Court held that:

5.8.1 ***maintaining the status quo means maintaining the situation as it is now or as it was before a recent change.***

5.9 I agree with the Defendants' Counsel that, if the injunction is granted, it will inequitably alter the status quo, and possibly create more harm than good to the Church in general. Therefore, the balance of justice, famously known as the balance of convenience tilts in favour of the Defendants. But this does not take away the Court's duty to nullify the elections, if substantially proved wanting at the end of the trial. Therefore,

the argument that if the application is not granted, it will solidify the election of the first and second Defendants is unfounded. The decision as to who leads the Church while the matter is pending remains in hands of the third Defendant (the UCZ), as dictated by the status quo unless otherwise adjudged at the end of the trial.

## **6.0 CONCLUSION**

6.1 While I agree that the Plaintiffs as 'members' of the UCZ have *locus standi* or sufficient interest to judicially question acts or machinations of maladministration supposedly perpetuated by church leaders, I am, however, disinclined to allow this interim application. The justice of this case *inter alia* largely lies in its speedy disposal, so that the legal status of the immediate past Synod elective process is resolved and determined once and for all.

6.2 In the view of the foregoing, the application for an interlocutory injunction is dismissed.

6.3 I make no order as to costs.

6.4 Leave to appeal granted.

**DATED THE 14<sup>TH</sup> DAY OF SEPTEMBER 2024**

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**THE HON. MR. JUSTICE C. ZULU**