

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2005 HCV 00486

|         |                                       |                           |
|---------|---------------------------------------|---------------------------|
| BETWEEN | CHURCH OF GOD AND SAINTS<br>OF CHRIST | 1 <sup>ST</sup> CLAIMANT  |
| A N D   | PURCELL BROWN                         | 2 <sup>ND</sup> CLAIMANT  |
| A N D   | ZEPHANIA JOHNSON                      | 1 <sup>ST</sup> DEFENDANT |
| A N D   | TERRENCE WILLIAMS                     | 2 <sup>ND</sup> DEFENDANT |

**Appearances**

Bert Samuels for the Claimants

Dr. Randolph Williams for the Defendants.

**Heard: June 21, & October 25, 2006**

**Williams, J**

The drafters of the constitution for the Church of God and Saints of Christ recognized that there must be disputes within the church and provided for them to be resolved by reference to the Bible. They may never have imagined that in the space of a few years the Church would have had to go to Court not once but twice to resolve internal strife.

**Background**

The first claimant is a body corporate incorporated in Jamaica under the Saints of Christ (Incorporating and Vesting) Act. The second claimant is a Bishop of the Church

which has its headquarters at 8 Lockett Avenue, Kingston 4 in the parish of Saint Andrew. He, Brown, says he was duly appointed Bishop on the 17<sup>th</sup> of April, 1993.

The first defendant, joined the church in 1944. A tabernacle of the church was established in Saint Mary and the first defendant joined it he says in 1949.

He was appointed pastor of the tabernacle in 1994 – Purcell Brown said he was head of the church at the time and it was he who appointed Johnson as pastor.

Both Johnson and Brown derive their income from the tithes and offerings of the congregation.

The second defendant says he has been a member of the church for twenty-two (22) years. He was appointed pastor of the tabernacle in Colgate, Saint Ann but when membership dwindled and they were left without a meeting place he joined Tabernacle 6 in Saint Mary. He assisted the first defendant in ministering in that tabernacle.

In February 2001 a letter was sent to Johnson giving him notice that he had been excommunicated with immediate effect. This was followed by another advising him of his removal as pastor of the tabernacle.

Johnson did not give up his pastorship and continued to minister to his congregation.

In June 2002 Terrence Bloomfield was appointed pastor of the Tabernacle. It is claimed that he attended the Tabernacle but was prevented from assuming his duly appointed position.

The claimants have now brought this matter seeking the following:

1. A declaration that Terrence Bloomfield has been duly appointed pastor of Tabernacle No. 6 in the parish of Saint Mary by the second claimant in

accordance with Article 2 Section 7 of the Constitution of the Church of God and Saints of Christ.

2. An injunction to restrain the defendants, their servants and or agents from interfering or in any way preventing Terrence Bloomfield from exercising his right to hold meetings and to function as the duly appointed and sole pastor of Tabernacle No. 6 in the parish of Saint Mary.

### **The Claimant's Case**

Mr. Samuels on behalf of the claimants insisted that the claimant had done all that needed to be done in keeping with the constitution of the church to remove Mr. Johnson as pastor and to appoint Mr. Bloomfield in his stead.

Interestingly in 1997 efforts had been made by the Church to have Brown removed as Bishop. The Court of Appeal in Purcell Brown v. Church of God and Saints of Christ SCCA 122/2000 delivered 28.5.02 had ruled that an injunction granted in the lower court which had "in substance deprived the defendant/appellant Purcell Brown of his bishopric and all the prerequisites that went with his office" was inappropriate. The removal of Bishop Brown from his bishopric was invalid.

The decision is relied on by Brown in asserting his being still the Bishop with power to appoint Bloomfield as Pastor since Johnson had been excommunicated.

This excommunication he claim was in keeping with Section 10 of the constitution.

"There shall be no officer removed from his or her station except a lawful reason be given and the cause must be stated in writing....."

The letter sent to Johnson dated Sabat 28, 2000 is the writing being pointed out which provided the cause outlining the lawful reason.

The copy exhibited is not totally clear but it appears the reasons given were:-

1. to do with the laws precepts and doctrines of the church
2. Johnson subsequent disassociating himself from the church
3. Further grounds being – insurrection deception and treachery.

There is no challenge mounted to the affidavit of Joan Vassell on behalf of the church. She was a secretary of Tabernacle No. 6 from 1978 to 1999 and a secretary to the Church from 1995 to 1999. She stated that Johnson had disassociated himself from the church. He failed to attend Passover, refused to submit quarterly reports and tithes and failed to communicate with headquarters as required under the Constitution. She left tabernacle No. 6 along with twenty-six (26) members.

Thus, having had the grounds for removing Johnson and having so notified him in accordance with the Constitution, the claimants' argument is that it is now within the right of Brown to appoint Terrence Bloomfield as Pastor.

Article 2 Section 7 of the constitution provides inter alia

“The Bishop shall have power to appoint evangelists and members to their respective tabernacle.”

Mr. Samuels went on to further submit that Johnson failed to acknowledge the Bishop as head of the church and as such seemingly would not wish to defend themselves or answer any complaints against this Bishop whose authority they do not recognize.

### **The Defendants Case**

Mr. Johnson in his affidavit states that Purcell Brown is not head of the church and is not authorized to represent the Church in matters pertaining to the acquisition or possession of land and buildings belonging to the Church. He maintains his purported excommunication is contrary to the constitution and fairness. Further any purported appointment is also not in keeping with the constitution. He insists he is the pastor and therefore not a trespasser.

The second defendant denies interfering with tabernacle No. 6 or agitating members of the congregation. He agrees that he assists Pastor Johnson in ministering to that tabernacle. Both defendants point to a petition from the members in their support.

Dr. Williams asserted that Brown had no jurisdiction to act as he did as the disciplinary powers of the Church are set out in the constitution. He referred to Article 1 Section 2.

“All differences to be settled by Matthew 5.28 and Matthew 18.24 .....”

Further, he argued, the procedure applied by the claimant in this matter violates principles of natural justice and the constitution of the church.

He too referred to Article 1 Section 10 [supra] and submitted the defendants should have been told more precisely what the offences were and given a hearing .

Dr. Williams submitted further that the Court in deciding the matter will have to interpret the words of the constitution of the church but is not limited to those words. He submitted that the Court will apply common law to fill in gaps in the constitution

where necessary to achieve justice; in particular the court must apply principles of natural justice. Disciplinary process he concluded must be fair and unbiased.

In applying this argument to the facts Dr. Williams asserted that Mr. Johnson not having been notified of the excommunication proceedings before hand or given an opportunity to defend himself at the proceedings rendered them null and void.

He pointed out that the letter advising Johnson of his removal was signed by the same person to be appointed in his stead i.e. Terrence Bloomfield. This he submitted is another breach of the rules of natural justice as Bloomfield having an interest in the matter would be acting as judge in his own cause.

Another matter Dr. Williams highlighted that even the Bishop could be regarded as having an interest in the proceedings which would lead to perceptions of bias. As Bishop, Brown was paid from tithes and Johnson was withholding those collected at Tabernacle 6.

In any event, Dr. Williams maintained that the powers of the Bishop to discipline is limited by the constitution and his words cannot be final – there should be a right to appeal.

### **The Issues**

The matter to be determined is whether Johnson was properly removed from the position as pastor, thus leaving a vacancy requiring the appointment of Terrence Bloomfield to fill.

Bloomfield can only be declared duly appointed if there was a position for him to be appointed to.

The defendants can only be restrained from interfering with Bloomfield if he is indeed the duly appointed pastor.

**Applying the law to the fact**

The issue to be determined must be resolved by first revisiting the relevant principles of natural justice.

It is well established that Courts and any tribunals with the trappings, procedures and functions similar to those of the courts must observe rules of natural justice.

English law recognizes the two most important ones as being:-

1. nemo iudex in causa sua-
2. audi alteram partem

As regards the second rule, there is an implied duty for its observation dependent on the nature of the complainant's interest and upon the severity of sanctions that can be imposed.

Natural justice requires that persons liable to be affected by decisions or proceedings be given adequate notice of those proceedings and an opportunity to be heard. Further it is required that the tribunal be disinterested and impartial.

The Courts have constantly upheld a strict adherence to the principles of natural justice and have indicated where necessary the common law will supply any omission.

Tucker L.J. in *Russell v Duke of Norfolk and others* 1949 1All ER 109 at 118 said:

“The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth. Accordingly

I do not derive much assistance from the definitions of natural justice which have been from time to time used but whatever standard is adopted one essential is that the person concerned should have a reasonable opportunity of presenting his case.”

It is significant to note that in the case mentioned above which was brought to oust the Bishop, that our Court of Appeal re-affirmed the necessity for administrative actions to adhere to the requirement of natural justice.

Mr. Justice Downer, J.A. in his conclusion started:

“We are not concerned with the doctrinal disputes within the Church as that is a matter for the church to be resolved by its own institutions. Those institutions must abide by the constitution of the church and the principles of natural justice.”

#### **Application of the law to the facts**

The defendants are not disputing the fact that they have disassociated themselves and the members of Tabernacle No. 6 from the Head Church. They are not disputing the fact that they have failed to send in their tithes and submit regular reports as required by their constitution. One may well ask whether they are still recognizing the constitution, however, so long as they continue to be members of the Church of God and Saints of Christ they are bound by its constitution.

The expressed assertion that Purcell Brown is not the head of the church is grounds for questioning whether the defendants will recognize anything done under his authority. Once again the basic consideration is that as long as they remain members they must do so. Having successfully challenged the efforts to remove him as Bishop in the courts, Mr. Purcell Brown retained his office and had been wrongly deprived of his perquisites.



As Bishop, the Churches constitution provides that he shall preside at the District annual or General assemblies of the church. He and other officers shall continue to hold the office as long as they maintain sound doctrine and keep ten (10) commandments.....- as set out in Article 1 Section 2.

It is useful to try and discern what the constitution has to say about the appointment and removal of ministers.

Article 2 Section 2 states-

“The Board shall be called the Presbytery Board of the Church of God and Saints of Christ and it shall be the duty of the Board during the assembly meeting to recommend all Ministers that have been ordained since the last assembly, and to adjust all errors, and to empower or discommunicate.”

At Section 6 – it states-

“We further recommend that the Bishop of Bishops have in the absence of the Assembly, power to ordain Elders or dismiss any that preach not the Doctrine of Christ Jesus our Lord.”

Finally at Section 7 – it states inter alia-

“The Bishops have power to appoint evangelists and send Ministers to their respective Tabernacles.”

So as Bishop, Mr. Brown had the power to act without the Board in the dismissal of any that preaches not the doctrine.

From the evidence presented to the Court there is nothing to suggest whether the Board or the assembly had in fact met to discuss the matter of Minister Johnson.

The letters sent to him are by way of finality to any differences with him – he was excommunicated and removed as pastor.

The claimants asserted that the letters provide the notice required by the constitution. They did indeed set out in general terms the offences and grounds for his excommunication. There was nothing specific as to when the acts were committed and what exactly he did that amounted to them being so described as insurrection deception or treachery.

The constitution goes on to out in various sections what is required of Ministers, Pastors and Elders of the church. As to the sanctions for failure to comply with any of the Church principles mention is made of silencing, example where ministers are found speaking against one another, where members rise up against other pastor in charge of Tabernacle on Sabbath of any other time. -

See Ratification of Constitution and Amendments Section 3 and Section 8. It is significant to note that in relation to the first offence a minister so silenced can ask for pardon and has the option to appeal to the advisory Board.

At Section 10 of the said section all ministers preaching perverse doctrine to the seven keys are to be silenced at once and his credentials disannulled and if received again by repentance, he can only be a common member.

At section 11 – it is stated-

“All Elders of the Church of God and Saints of Christ that has a membership and fails to send in a report to the assembly of the work he or she has done shall be cut off. They should be warned before action take against them”.

The constitution also provides for punishment for elders found living together not lawfully married and for members marrying outside of the Church.

A careful reading of the constitution fails to reveal what exactly is to be considered insurrection, deception or treachery. Further there is no indication that the punishment of excommunication is required in those instances.

The letters sent to Mr. Johnson in particular the one indicating he had been excommunicated does indeed seem to comply with the spirit of Article 1 Section 10 of the constitution. However that section does not have regard for the principles of natural justice. The defendant Johnson was in effect summarily dismissed from his livelihood without a hearing. The same letter advising him of the charges advised him of his sentence – that can hardly be regarded as fair.

Mr. Johnson has clearly demonstrated he has no respect for Brown as Bishop and has disregarded certain provisions of the constitution. It is ironic that it is to that constitution they have looked for protection. It is that constitution in conjunction with the principles of natural justice which must be applied.

If Johnson had been given an opportunity to defend himself and chosen not to be heard that would have been another matter. As it stands despite his apparent disregard even for the Courts as seen in his attitude towards the Bishop after the Court of Appeal decision, the same principle that guided that decision must guide this – to Mr. Johnson's benefit.

The proper procedure must be followed giving due regard to the principles of natural justice. Johnson having not been validly removed remains the pastor and the appointment of Bloomfield is of no effect.

Having determined this issue there is no need to address other issues.

In the circumstances the declaration and injunction sought by the claimants cannot be granted. The fixed date claim form is dismissed.

There will be no order as to cost.