

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB REGISTRY

AT MBEYA

LAND APPEAL NO. 48 OF 2023

(Originating from Application No. 10 of 2020 of the District Land and Housing

Tribunal for Kyela)

- 1. ELIA MWAMAFUPA**
- 2. GADSON MWAKIFUMBWA**
- 3. TREZIA SEBA**
- 4. ASUBISYE LUVANDA**
- 5. DAUDI MWAMBALASWA**
- 6. UDITH GASTON**
- 7. ATUGANILE MWAIJALA**
- 8. HEZROM MWANDALIMA**
- 9. BRUNO GEORGE**
- 10. TABIA KAFUJE**
- 11. TASLIMU MWAKALAGILA**
- 12. DYUKE MWAITENDA**

.....**APPELLANTS**

VERSUS

**THE REGISTERED BOARD OF TRUSTEES OF
BAPTIST CHURCH OF TANZANIA.....RESPONDENT**

JUDGMENT

Date of hearing: 21/2/2024

Date of judgment: 28/3/2024

NONGWA, J.

The respondent, the Registered Board of Trustees of Baptist Church of Tanzania, before the District Land and Housing Tribunal for Mbeya in

Application No. 10 2020, successfully sued the appellants for trespass over the land measuring 216.9 acres located at katela village Makwale ward within Kyela District in Mbeya region (the suit land).

The factual allegations constituting the claim briefly stated, are as follows, the respondent is a religious institution duly incorporated under the laws of Tanzania. In that capacity, it owns and runs Knap Orphanage Centre, Uhai dispensary, cocoa and banana plantation allocated at the suit land. It was alleged that the appellants have unlawfully trespassed and are interfering with the respondent's operation to the extent of disrupting and frustrating health and orphanage service. Thus prayed for the following reliefs; **one**, that the disputed land belongs to the applicant; **two**, declaration that the crops and structures in the disputed land belongs to the applicant; **three**, Perpetual injunction against the respondent jointly and severally from interfering for whatever reason with the applicant land and landed properties situated therein; **four**, the account of all proceeding(sic) of money received from cocoa harvest from the applicant farm by the respondent; **five**, general damage; **six**, costs of the suit; and **seven**, any other reliefs the tribunal deemed fit to grant.

The appellants refuted the claim, in their joint written statement of defence they alleged that the suit land was allocated to them on behalf of other followers by the local leader Mafumu in which they erected building

for Baptist Church, dispensary and orphanage centre. They further asserted that it was the respondent who was interfering the appellants and other followers in the suit land. To that end, they prayed application to be dismissed.

At full hearing, the tribunal was satisfied that the respondent had proved the claim and she was declared the lawful owner of the suit land and the appellants as trespassers. The appellants are aggrieved with the whole judgment and have filed memorandum of appeal which consist of seven grounds.

1. That, the District Land and Housing Tribunal Chairman for Kyela erred in law and entertained the Application case which was initiated and signed by a person who is not a Board member, and there is no Certificate of Board Resolution from The Registered Board of Trustees Baptist Church of Tanzania to filed the case hence has no locus stand.
2. That, the District Land and Housing Tribunal Chairman for Kyela erred in law and failed to address his mind that there is no cause of action against the Appellants who are wrongly sued as they were acting under the instructions of The Registered Board of Trustees Baptist Convention of Tanzania, who are founders of the suit land as pleaded, and who were not joined as necessary party.
3. That, the District Land and Housing Tribunal Chairman Misdirected himself by stating in his judgement that the Appellants neglected to call The Registered Board of Trustees Baptist Convention of Tanzania while the same Tribunal refused Application by the Board

in Miscellaneous Land Application No. 4 of 2022 to be joined as Respondents jointly with the Appellants.

4. That, the District Land and Housing Tribunal Chairman for Kyela erred in law and fact for declaring the Respondents as lawful owner of the suit land on unreliable evidence, and no Title deed was produced in the trial, while the Appellants have undoubtedly established that through The Registered Board of Trustees Baptist Convention of Tanzania acquired the suit land in 1962, and the Respondent who parted from the Convention is now trying to pull away and grab the assets by initiating these proceedings.
5. That, the District Land and Housing Tribunal for Kyela in contravention of the Rules, without any justification refused documentary exhibits aimed to be tendered by Appellants during the trial, tending to prove existence of The Registered Board of Trustees Baptist Convention of Tanzania and its legitimacy over the suit land, instead relied on the evidence of PW.1 Israel Mwakibinga who is Member of Trustees No. 5 for the Convention in favour of the Appellants.
6. That, the District Land and Housing Tribunal Chairman for Kyela, examined the evidence adduced bialys in favor of the Respondent, because the Appellants evidence given by DW.1 -DW.8 is only mentioned at page 5 of the judgement, but is nowhere discussed or consider by the Chairman, and the contents of their vital evidence has not been disclosed, hence reached to unfair decision.
7. That, the District Land and Housing Tribunal Chairman for Kyela imported extensors matters not coved by evidence by stating that the dispute arose in 2020 while in fact there are series of Applications filed by the Respondent way back in 2018, and grossly

in pages 7 to 14 of his judgment is covered by his own personal feelings not covered in evidence.

When the appeal was called on for hearing Mr. Partience Maumba and Kelvin Kuboja Gamba, both learned counsels appeared representing the appellants and respondent respectively. Parties prayed and was granted to argue the appeal by way of written submission, the scheduling order was fully complied.

Mr. Maumba argued grounds of appeal in seriatim, on ground one he submitted that Issa Mwasinyanga had no authority to sign the pleading as he did not disclose under which capacity he was signing and there was no resolution authorising him to do so. It was also argued that there was no board resolution authorising the respondent to institute the suit and therefore had no *locus stand* to sue. The case of **Investment House Ltd vs Web Technologies (T) Ltd & 2 others**, Commercial Case No. 97 of 2015 was cited.

On ground two, it was submitted that the appellants were wrongly sued without joining Baptist Convention of Tanzania under which they were acting and that no one among the appellants claims ownership of the dispute land. Mr. Maumba argued that appellants are not trespasser rather legal investors of the Baptist Convention of Tanzania which owner all the infrastructures in the disputed land.

Arguing ground three, it was stated that the tribunal wrong declined to join Baptist Convention of Tanzania in Misc. Land Application No. 4 of 2022 and chose to continue with the appellants who had no *locus standi* over the suit land.

In respect of ground four, it was submitted that the tribunal wrongly decided in favour of the respondent who did not produce any title deed as compared to appellants who proved that the Registered Board of Trustee Baptist Convention of Tanzania acquired the suit land in 1960's. Mr. Maumba submitted that the appellants are invitees of the Baptist Convention of Tanzania. Counsel added that there was a religion conflict which arose when the respondent splinted from Baptist Convention of Tanzania and removed all followers who were against the changes. That the respondent changed the name from the Baptist Convention of Tanzania to Baptist Church of Tanzania has issued the conflict all over the country. He cited the case of **Reg. Trustees of the Kanisa la Wabaptist Tanzania vs Nicholas Luselele Nzela & 7 Others**, Civil Case No. 13 of 2020) [2023] TZHC 18108 (12 May 2023) to support he point.

Further submission on ground four was that the respondent had failed to establish boundaries, how he acquired and from whom, that

coupled with non-production of certificate of title has the effect of making the claim unproven.

Ground six and seven were argued conjointly, it was submitted that the chairman did not discuss evidence of the appellants which was composed of thirteen witnesses instead dwelled in the respondent's evidence only. That nothing was said about quality of the appellants' evidence which denoted bias on part of the chairman. Counsel stated that the chairman was bias as against the appellants and extraneous matter was imported in the judgment specifically on evidence of Issa Mwasinyanga by adding statement that the dispute arose in 2020 and those found at page 9 paragraph 2 of the judgment.

Responding on the issue of signing pleadings, Mr. Gamba stated that the suit was filed by Registered Board of Trustee of Baptist Church of Tanzania and the application was signed by Issa Mwasinyanga who disclosed his capacity as required by the law. He added that the issue was never raised in the tribunal and per the case of **Kennedy Makuza vs Monalia Microfinance Ltd**, PC. Civil Appeal No. 1 of 2021 cannot be raised on appeal.

On the requirement of board resolution, it was argued that there is no law which requires a board resolution to be passed to authorise a

person to sign pleading and institute the case. The case of **Investment House Ltd**(supra) was distinguished.

Replying to ground two and three, Mr. Maumba stated that it was not true that the appellants were suing under Baptist Convention of Tanzania and they failed to produce even a single document to substantiate. It was contended that the appellants pleaded that they owned the land individually. The attention of the court was drawn to the case of **Yara Tanzania Limited vs Ikuwo General Enterprises Limited**, Civil Appeal No. 309 of 2019 in which it was held that parties are bound by their own pleadings.

Extending submission on that aspect, it was submitted that the Baptist Convention of Tanzania to which the appellants admit to be the invitee is the one who has been changed to Baptist Church of Tanzania the lawful and legal owner of the suit land.

On the complaint that the tribunal refused to join Baptist Convention of Tanzania, it was submitted that the tribunal was satisfied that the said Baptist Convention of Tanzania was the same which was being dissolved and changed to the current Baptist Church of Tanzania.

On whether the respondent had proved the claim in fourth ground, Mr. Gamba submitted that respondent's evidence in record was strong

compared to that of the appellants, on balance of probability the case was proved. To cement the argument the case of **Sudi Kasapa vs Paulo Futakamba**, Land Appeal No. of 2019 HCT was cited. He added that the respondent proved their title by producing exhibit P2 a letter of transfer of property from Baptist Mission of Tanzania to Baptist Church of Tanzania and a copy of title from the responsible ministry of land.

On suing while not issued with certificate of registration, Mr. Gamba replied that respondent was in operation when instituting the application and the change was in accordance with the law, the case of **Kanisa la Wabaptist Tanzania** (supra) was distinguished in that the former concerned illegal use of name while the latter is dispute over the land.

On whether the boundaries were established by the respondent, counsel for the respondent submitted that it was sufficiently proved through evidence of PW1 and PW2.

On the complaint that the appellants' evidence was not considered and the chairman was biased in ground six and seven, it was Mr. Gamba's reply that only 4 appellants testified while the other adopted evidence of their fellow witnesses. He added that no extraneous matter was introduced by the chairman but evaluated and analysed evidence of both parties which was in record.

During rejoin, Mr. Maumba stated that despite Issa Simwanyanga being a director of Uhai Dispensary, there was no proof that he was among the directors of the respondent as the same was not substantiated by introduction letter and board resolution. He added that locus of the said Issa Simwanyanga was not a new issue as it was raised in the tribunal.

In ground two and 3 three, it was submitted that the Baptist Convention of Tanzania is the one who filed application to be joined but it was refused. It was also submitted that the respondent filed the suit while was not registered.

Having considered the record of appeal and rival argument for and against the appeal, a will dispose it in the manner counsel for the parties submitted.

Starting with the first complaint which is two folds, one that there was no board resolution authorising the institution of the suit and two, that the application was signed by unauthorised person. To begin with the first limb the appellant submitted that there was no board resolution of the church or meeting minutes mandating the suit to be filed, the respondent submitted to the contrary.

Through the pleadings it is clear that the suit was instituted in the name of Registered Trustees of the Baptist Church of Tanzania. In terms

of sectionn 8(1) of the Incorporation of Trustees Act, Cap 337 as amended from time to time, once a trustee is registered it becomes body corporate. That section provides: -

'Upon the grant of a certificate under subsection (1) of section 5 the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have: -

(a) Perpetual succession and a common seal;

(b) Power to sue and be sued in such corporate name;

(c) Subject to the conditions and directions contained in the said certificate to hold and acquire, and, by instrument under such common seal, to transfer, convey, assign and demise, any land or any interest therein in such and the like manner, and subject to the like restrictions and provisions, as such trustee or trustees might, without such incorporation, hold or acquire, transfer, convey therein, assign or demise any land or any interest.'

The law above is unambiguous and in its plain meaning does not require a registered trustee of a body corporate to have a resolution to institute the suit, board resolution is limited to cases involving disputes within the body corporate and not against the outsiders. In **Simba Papers Converters Limited vs Packaging & Stationery Manufacturers Limited & Another**, Civil Appeal Case No. 280 of 2017 [2023] TZCA 17273 (23 May 2023) the court stated

'.... In any other case we will be hesitant to extend the rule any further mindful of the legal position relating to the power of the company to be sued in its own name.'

Although the above principle was pronounced in relation to power of the company, the same applies squarely to any corporate body which is duly registered and issued with certificate of registration or incorporation, the registered trustee inclusive. This is more strengthened by the wording of section 8(1) of the Incorporation Act which provides that upon registration of trustee it becomes a body corporate by the name described in the certificate with power to sue and be sued in such corporate name. Moreover, the dispute in this case is not within the registered trustees but with the outsider making sanction of trustees unnecessary.

As to the second limb that the application was signed by an authorised person, it was submitted without citing any law or authority that the Issa Mwasinyanga who signed the application did not disclose under which capacity he was signing, Mr. Gamba had contrary view, he submitted that it is plain in the application that capacity under which the said Issa Mwasinyanga is disclosed.

I have perused the application which was filed in the tribunal and agree with Mr. Gamba that Issa Mwasinyanga who signed the application disclosed to be the principal officer of the applicant/respondent. In terms

of Order XXVIII rule 1 of the Civil Procedure Code [Cap 33 R: E 2019] in case of suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. See **Bansons Enterprises Limited vs Mire Artan**, Civil Appeal No. 26 of 2020 [2023] TZCA 90 (9 March 2023; TANZLII).

It is noteworthy that the Land Disputes Courts (The District Land and Housing Tribunal) Regulations G.N. No. 174 of 2003 "Regulation" does not prescribe who can sign pleading, however, Regulation 3 (1) of the regulation governs the procedure of instituting a application before the tribunal. It provides

*'Any proceedings before the tribunal shall commence by an application filed by an applicant or **his representative** upon payment of appropriate fees prescribed in the First Schedule to these Regulations.'*

The word "representative" had been defined by the Regulations to mean an advocate, or any relative or any member of the household or authorised officer of a body corporate. It follows from the above provision of the law that a person who has power and authority to initiate proceedings before the tribunal is either an applicant himself or his relative or any member of his household, or an advocate or authorised officer of

a body corporate and it is the same person who has power to sign the application. Considering that the application is in the name of the Registered Trustee of Baptist Church of Tanzania, I take it as cognizance that Issa Mwasinyanga was authorised officer to sign the application and there is no evidence which was adduced to prove the contrary. There was no evidence that Issa Mwasinyanga was not among the trustees of the respondent who could file the application and sign the application in the name of the Registered of Trustee Baptist Church of Tanzania. Therefore, the first ground fails.

In the conjointly ground two and three, submission of the counsel had two limbs, one, that the appellants were the invitee and acting under instruction of Baptist convention of Tanzania and two that Baptist Convention of Tanzania was not joined as a necessary party. In the first limb it was argued that the appellants pleaded and testified that they were not owner of the suit land. In reply it was stated that the same was not pleaded let alone not proved by any scintilla of evidence.

After going through the written Statement of defence filed by the appellants, I agree with Mr. Gamba that the issue of appellants acting under instruction or being the invitee of the Baptist Convention of Tanzania was not pleaded. What is discerned in joint Written Statement of Defence is that the suit land was their property following allocation by

Mafumu. The fact that appellants testified that they did not own the suit land contradicts with their Written Statement of Defence in which they claimed to be the owner. To appreciate, relevant part of the Written Statement of Defence is reproduced;

3. *That, the Respondents Vehemently deny the contents of paragraph 6(c) to the effect that, the Applicant has no right or powers over the said properties situated in Katela village in Makwale Ward.*
4. *That, the contents of paragraph 6(d) is denied. **The Respondents state further that, the disputed land was allocated to the Respondents on behalf of followers, by local leaders known as MAFUMU** a couple of years ago, as a farm and to erect buildings for the Baptist church, dispensary and orphanage centre. The same were specifically acquired by them for their benefit and sue without interference from outside the village, and the Applicant shall be put to strict proof.*
5. *That, the contents of paragraph 6(e),vehemently denied, to the effect that, it is the Applicant who has been threatening to chase the Respondents employee and workers at tire dispensary, **the Respondent state further that, it is the Applicant who is maliciously interfering with the Respondents together with their followers who are beneficiaries in their landed properties by filing fictitious application against them,** and the Application is now harvesting cocoa and cutting trees therein under the umbrella of temporary injunction order fraudulently obtained to the detriment of the Respondents while the order prohibits all the parties from doing any activity therein. Applicant shall be put to strict proof.*

6. *That, the Respondents end up by stating further that, at no time the Respondents or their followers have neither threatens to chase away any employees, nor, frustrating health services provided at the Dispensary and Orphanage centre **in the suit land because all these properties belong to the Respondents.** This is a frivolous and vexation application which intends at nothing but abuse of process as the Applicant intends to sell part of the Land as they did to UHAI META MBEYA*

The bolded phrases above tells that the appellants claimed ownership over the suit land for themselves and for unknown followers and no more. They did not plead the suit land to belong to Baptist convention of Tanzania as they testified during hearing, which was contrary to basic tenets of pleadings. See **Hamis Sultan Mwinyigoha vs Zainabu Sultan Mwinyigoha**, Civil Appeal No. 447 of 2020 [2024] TZCA 150 (29 February 2024; TANZLII). Based on the claim in the application and defence as per reproduced paragraphs, the respondent had cause of action against the appellants it is why they were able to file defence and claim ownership over the suit land. Even if I assume that they were invitee as claimed, which invariably is admission of being in the suit land, then suit for trespass was rightly instituted against them.

On the second limb, it was submitted that the tribunal refused to grant application to join Baptist Convention of Tanzania as necessary party. I have scrutinised the records of the tribunal and failed to locate

Misc. Land Application No. 4 of 2022 which from reply submission of Mr. Gamba the same was filed by the appellants. This appeal also does not indicate to originate from Misc. Land Application No. 4 of 2022 for record of it to have formed record of this appeal. Even if that was the case though not, that application could not stand the law because the appellants being parties' to the case were incompetent to file application to join another interested party. The complaint could be more suitable by the said Baptist Convention of Tanzania which according to the appellants invited them in the suit land.

From the above discussion, the issue of appellants acting under or being invitee of the Baptist convention of Tanzania was not pleaded, their evidence that the land belonged to Baptist convention of Tanzania was against the trite law that parties are bound by their own pleading and cannot be allowed to depart from it without due amendment. Similarly, the court is also bound by the party's pleadings. Therefore, the issue having not being surfaced in the appellants pleadings their evidence that the suit belonged to Baptist Convention of Tanzania and not them, was rightly considered and ignored by the chairman. Furthermore, this appeal does not originate from Misc. Land Application No. 4 of 2022, the complaint that Baptist Convention of Tanzania was refused to be joined cannot stand as geared from the Mr. Gamba reply submission that the

application was filed by the appellants. An application to join interested party to a suit cannot be made by a person who is already party to the case but must be made by a person who claim to have interest in the suit and has not been joined. In this case application to join interested person was supposed to be filed by Baptist Convention of Tanzania and not the appellants who were already party to the suit. With these findings grounds two and three collapse.

Adverting to ground four that that the tribunal erred in deciding in favour of the respondent without proof. Mr. Maumba submitted that the appellants were the followers of Baptist Church Makwale which was established in 1960s. He added that in 2020 when the application was filed in the tribunal the respondent was not registered. In reply Mr. Gamba stated that the respondent's evidence was heavier than that of the appellants and on balance of probability the case was proved. On whether the respondent was registered when filing suit, it was submitted that exhibit P2 proved how the name changed from Baptist Convention of Tanzania to Baptist Church of Tanzania.

After going through the records and argument advanced in this appeal, it is agreed by parties that Baptist Convention of Tanzania changed to Baptist Church of Tanzania as evidence by exhibit P2. What is seen as a twist of fate is that the appellants were not comfortable with the change

of name which triggered into the present suit and other suits which were filed in courts, to wit **Reg. Trustees of the Kanisa la Wabaptist Tanzania** (supra) cited also by the appellants.

Another thing which was not disputed is that the suit land was owned by the Baptist Convention of Tanzania under the registered Trustees. This was the theme of the appellants' evidence during trial.

With the above, it becomes incumbent that proof of ownership of the suit land becomes not an issue at all and I agree with the chairman and submission of the respondent's counsel that ownership was proved by the respondent as per exhibit P2. The appellant having admitted that the suit land belonged to the Baptist Convention of Tanzania and not them and there being evidence of change of name from Baptist Convention of Tanzania to Baptist Church of Tanzania as per exhibit P1, appellant cannot be heard to complain that the respondent did not prove her case. First there is admission from their evidence that the suit land belongs to Baptist Convention of Tanzania which has now changed to Baptist Church of Tanzania. Also, the appellant cannot purport to act for the dissolved institution which its existence is no long there. Likewise, the argument regarding boundaries becomes redundant for it has already been established by the appellants themselves that the suit land did not belong to them. This was the defence evidence of DW1, DW2, DW3 and DW4

evidence of which was adopted by other appellants who testified in the tribunal.

Another argument which was raised in ground four was that at the time of filing the application in the tribunal the respondent was not registered. In reply it was submitted that the respondent was operative.

In resolving this complaint, it is undisputed truth that the current Baptist Convention of Tanzania changed its name to Baptist Church of Tanzania. The change is explained in exhibit P1 which was admitted without objection from the appellant. To be noted is that exhibit P1 was issued under the Societies Act and its rule.

Now, in this appeal Mr. Maumba submitted that change of name of the respondent was affected on 4.2.2021 while the suit filed in 2020. In reply it was argued that the respondent was operative all the time with certificate from the registrar of societies.

In my view, argument of both counsels is premised in misconception of the law. The respondent is not registered under the societies Act rather the Trustees Act, thus reliance on exhibit P1 was erroneously. It follows that there is no complaint that the respondent is not registered under the Trustees Act. Counsels in this appeal failed to distinguish the religion institution, which according to their argument is the Baptist Church of

Tanzania as referred by the respondent or Baptist Convention of Tanzania as regarded by the appellants. Trustee is established to hold property for and on behalf of be it religious, educational, literary, scientific, social or charitable institution. Section 3 of the Trustees Act provides;

3(1) A trustee or trustees appointed by a body or association of persons bound together by custom, religion, kinship or nationality, or established for any religious, educational, literary, scientific, social or charitable purpose, and any person or persons holding any property on trust for any religious, educational, literary, scientific, social or charitable purpose, may apply to the Administrator-General for incorporation as a body corporate.

(2) Every such application shall be in writing signed by the person or persons making the application, and shall contain such particulars as may be prescribed and shall have annexed thereto copies, verified in the prescribed manner, of the constitution and rules of the body or association, if any, and of any trust instrument or declaration of trust defining the trusts on which such property is so held.

(3) The Administrator-General may require such declaration upon oath or otherwise or other evidence in verification of the statements and particulars in the application, and such other particulars, information or evidence as he may think necessary or proper.

From the above, it is clear that the religious institution as the case here is different from the registered trustees and is established under different laws. The argument of Mr. Maumba is premised under the Societies Act and its rules on change of name which under rule 7 provides;

'(1) No registered society shall, without the prior permission in writing of the Registrar—

*(a) **change—***

*(i) **its name; or***

(ii) any provision of its constitution or any of its rules;
or

(iii) any of its objects; or

(b) become a branch of or affiliated to or connected with any organisation or group of a political nature established outside Tanzania.'

Regarding change of name of the registered trustee, section 6(3) of the Trustees Incorporation Act provides;

'6(3) A body corporate created under this Act may, with the prior approval in writing of the Administrator-General, change its name, and shall, within one month of so doing, notify the change to the Administrator-General in the prescribed manner.'

The above law permits body corporate under the trustees Act to change its name, in changing the name the body is permitted to seek approval of the administrator general or not as opposed to procedure on change of name obtained in the Societies Rule in which approve of the registrar must first be sought before change of name. This is so, because the word used is "may" according to section 53(1) of the Interpretation of Laws Act [cap 1 R: E 2019], the word is permissive This section reads;

'53(1) Where in a written law the word "may" is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not, at discretion.'

While under rule 7 of the societies Rules the word used is "shall" and in terms of section 53(2) of the Interpretation of Laws Act here in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

The only condition imposed by section 6(3) of the Trustees Act applicable to the respondent in this case is that upon the change of name, the changes must be communicated to the administrator general within one month and the notification must be in the prescribed manner. It follows therefore that religious institution as the case here is different from the registered trustees and are established under different laws. Similarly, procedure for change of name of registered trustee as the case here, it is

not mandatory to seek approval of the administrator-general before changes are affected, the administrator- general need only to be notified of such changes. In this appeal there is no material showing that the respondent is not registered as required by the law or that change of its name did not comply with the law. The complaint is therefore rejected and ground four is dismissed.

Ground 5 was not submitted for by the appellants and therefore deemed abandoned. However, looking at the said ground, that, the District Land and Housing Tribunal for Kyela in contravention of the Rules, without any justification refused documentary exhibits aimed to be tendered by Appellants during the trial, tending to prove existence of The Registered Board of Trustees Baptist Convention of Tanzania and its legitimacy over the suit land, instead relied on the evidence of PW.1 Israel Mwakibinga who is Member of Trustees for the Convention in favour of the Appellants. I have gone through the records of the tribunal nowhere showing that the alleged exhibit was tendered and rejected thus making this ground also unmerited.

Ground 6 and 7 were argued together, the main complain in that the chairman was biased because despite the vast evidence they adduced from thirteen witness, nothing was said as to its quality. Further that the chairman imported extraneous matter as to when the conflict arose. In

response it was stated that only 4 witnesses gave evidence while others just adopted evidence of other witnesses. He added that there was no bias on party on the chairman, the decision was based on evaluation of evidence of both sides.

I have gone through evidence of both sides and read the judgment of the tribunal. Starting with the argument that the chairman was bias against the appellants' evidence, **one**, I agree with the respondent's counsel that only four appellants gave substantive evidence, that is Elias Joshua Mwamfupa (DW1), Godson Shabani Mwakasuka (DW2), Bruno George (DW3) and Diuke William Mwaitenda (DW4). Other appellants, 8th appellant (DW5), 5th appellant (DW6), 6th appellant (DW7), 4th appellant (DW8), 10th appellant (DW9), and 7th appellant (DW10), 3rd and 11th appellants did not testify. In addition to their testimony the appellants called Kezie Mwangala (DW11) and Timon Mwalukwa (DW12) and Fred Nkoloma (DW13) in support. **Two**, what was common in defence evidence was that the suit land belonged to Baptist church, none on the appellant claimed to be his personal property.

The tribunal on its judgment noted that the appellants evidence on who was the owner of the suit land varied with their pleadings, that evidence of the respondent was substantiated with documentary evidence as opposed to the appellants who gave bare assertion, that the

respondent has been in occupation for long time without complaint from the appellant. After going through the judgment, I find that the appellants evidence was fully considered, making their complaint unmerited.

On importing extraneous matter, I have not seen anywhere the chairman held that the dispute arose in 2020. The year 2020 was referred when the chairman was summarising evidence of PW1 and PW2 and therefore did not form part of the decision of the tribunal. In total ground six and seven collapse for being without merits.

I wish to end by expressing my earnest hope that the living faith the parties profess to have, will enable them to forget and forgive, embrace one another again, and take up from where they parted ways, and then seek to improve things from within. See **Registered Trustees of Tanzania Assemblies of God vs William Lusito and Emmanuel Lazaro** [1990] TLR 26.

Flowing from the deliberation of the grounds of appeal above, it follows that the appeal is devoid of merits and is hereby dismissed with costs.



A handwritten signature in blue ink, appearing to read "V.M. Nongwa", is written over a horizontal line.

V.M. NONGWA
JUDGE
28/3/2024

DATED and DELIVERED at MBEYA this 28th day of March, 2024 in presence of Mr. Pacience Maumba Advocate for the appellants, 9th and 12th appellants, Mr. Kelvin Kuboja and Ms. Carolyne Luhungu, Advocates for the Respondent and Mr. Issa Mwasinyanga Principal officer of Respondent.



A handwritten signature in blue ink, appearing to read "V.M. Nongwa", is written over the printed name.

V.M. NONGWA
JUDGE