

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**CIVIL SUIT NO. 305 OF 2020**

**REV. CHARLES OODE OKUNYA:.....PLAINTIFF**

**VERSUS**

**THE REGISTERED TRUSTEES OF THE CHURCH OF UGANDA:.....DEFENDANT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

**BACKGROUND**

On 19<sup>th</sup> November 2019, the Plaintiff was duly elected as the Bishop elect of Kumi Diocese after a thorough process of vetting and nomination. Subsequently, by letter dated 16<sup>th</sup> December 2019, the Archbishop of the Church of Uganda communicated to the Plaintiff that there were complaints raised against him and issues concerning his first relationship with the mother of his children a one Dinah for which the Plaintiff was to respond to in writing.

The said letter also informed the Plaintiff that his consecration and enthronement as the 2<sup>nd</sup> Bishop of Kumi Diocese scheduled for 29<sup>th</sup> December 2019 was postponed till further notice.

The Plaintiff made a response in regard to the allegations in writing to the Archbishop of the Defendant. The said lady in question Dinah Amongin and her father Mr. Onyait Stephen also wrote to the Archbishop in respect of the allegations against the Plaintiff.

The House of Bishops sitting at Boroboro appointed a select committee of three bishops to investigate the matter. That among the issues that came before the Select Committee was the issue of the Bishop Elect's age. The Select Committee picked up the issue of age upon which the plaintiff was allowed to explain the discrepancy in his age and especially the date of birth of 1975 or 1970.

The Select Committee made a report to the House of Bishops sitting at Mityana on the 01<sup>st</sup> day of February 2020. The House of Bishops accordingly proceeded to revoke the plaintiff's election on grounds that he falsified his age by way of statutory declaration and had not attained the age of 45 years by the time he was elected.

The defendant in their defence contended that the plaintiff's assertion that he was born on 23<sup>rd</sup> November 1970 is fraudulent given the over eight documents from different Government and Educational Institutions where the plaintiff passed where he personally submitted information that he was born 23<sup>rd</sup> November 1975. He fraudulently altered his year of birth to 1970 to meet the requirement for the office of the Bishop which at the time he had not attained.

The plaintiff in his plaint sought the following reliefs;

- (a) A declaration that the impugned decision of the House of Bishops revoking the election of the plaintiff as the 2<sup>nd</sup> Bishop of Kumi Diocese is illegal and unlawful.
- (b) A declaration that the impugned decision of the House of Bishops barring the plaintiff's name from ever coming up among any future candidates is illegal and unlawful.
- (c) A permanent injunction restraining the Defendant, its agents, servants and or employees from further conducting the search and subsequent appointment of another Bishop of Kumi Diocese until the determination of the suit.
- (d) An Order directing the defendant to consecrate and enthrone the plaintiff as the 2<sup>nd</sup> Bishop of Kumi Diocese.
- (e) General Damages.
- (f) Exemplary Damages.
- (g) Costs of the Suit.

The parties filed a joint scheduling memorandum where the following issues were agreed for court's determination;

**Issues**

- (i) *Whether the Plaintiff had attained the age of 45 as required by the Provincial Constitution and Canons by the time of his purported election by the House of Bishops;*
- (ii) *Whether the Defendant illegally and unlawfully revoked the election of the Plaintiff as second Bishop of Kumi Diocese;*
- (iii) *Whether the Defendant's decision in barring the Plaintiff's name from ever coming up among candidates for electoral office with the Defendant was lawful;*
- (iv) *Whether the Defendant plays any role in the election of \Bishops in the Church of Uganda;*
- (v) *Whether the Plaintiff is entitled to the reliefs claimed in the pleadings.*

The plaintiff was represented by *Mr. Ikilai Ben* and *Mr. Akena Alex Anthony* while the defendant was represented by *Mr. Tumusingize Barnabas* and *Mr Waniala Allan*.

The plaintiff lined up 5 witnesses while the defendant presented 2 witnesses who filed witness statement which were admitted as their examination in chief.

I have decided to redraft issue no. 4 so as to make it wide enough to capture the broad issue of; ***Whether the plaint discloses a cause of action against the defendant.*** It appears from the pleadings of the defendant that it disputed the claims against the defendant.

***Whether the plaint discloses a cause of action against the defendant.***

The defendant in paragraph 4(d), 25 and 27(d) of the defence contended that;

- ✓ *The defendant shall aver and contend that it does not enthrone or consecrate a Bishop in the Church of Uganda.*
- ✓ *The defendant plays no role in the appointment and election of Bishops.*
- ✓ *The defendant does not consecrate the Bishop and hence a Court cannot make an order capable of being enforced.*

### **Analysis**

As held in ***Auto Garage vs Motokov [1971] EA 514*** the three essential elements to support a cause of action are where the plaintiff enjoyed a right, that the right has been violated, and finally that the defendant is liable.

The main consideration in this matter is the appreciation of the nature of right the plaintiff enjoyed in this matter and whether such right is justiciable in the ordinary civil courts. The plaintiff is claiming a right to be consecrated as a Bishop of Kumi Diocese after the House of Bishop sat on 1<sup>st</sup> February 2020 and revoked the plaintiff's election as the 2<sup>nd</sup> Bishop of Kumi Diocese.

The nature of the plaintiff's case is a religious dispute and therefore religious issues arise out of this dispute since it involves the revocation of the plaintiff's election as a 2<sup>nd</sup> Bishop of Kumi Diocese. Generally, Religion is deemed by our culture to be a matter of persuasion. The law cannot compel a citizen's adherence to a religious belief, and must always protect the privilege of infidelity.

Countless are the times when courts have said that religious disputes are not within the jurisdiction of civil suits. This sweeping statement gets limited to read that a 'purely' ecclesiastical or doctrinal issue is outside the scope of civil jurisdiction, thereby enabling them to assume decision-making function over factions whose property squabbles are inextricably interwoven with doctrinal undertones. Or to put it the other way, a judge may say that religious disputes which involve property or civil dispute are within the scope of court.

In the case of ***United States v Ballard 322 U.S 78 (1944)*** the court noted that;

*"Judicial intervention into religious questions is similar to the doctrine of a political question, wherein, it can be understood that just like it is expected that political*

*branches are more opposite to decide the political question, religious bodies are suitable to decide questions about religion.”*

The court is basically ignorant of the historical beliefs and the reasoning behind it; hence they apply the judicial mind to check the veracity of faiths and beliefs because of which their interpretation is different from the beliefs of devotees. The court has to understand that they are ill-equipped to deal with religious beliefs and practices because of remoteness and lack of familiarity hence should only interfere when any practices seriously damage the constitutional fabric. This makes it the main reason for prohibiting courts from litigating religion because they lack the ability to address religious questions. There is ‘*limited jurisprudential competence*’ to decide such religious matters.

Therefore, courts generally have extracted the prohibition against litigating religion from the ‘*church autonomy doctrine*’ which requires judicial deference to religious institutions “*whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by.....church judicatories.*”

Justice Stephen Mubiru in ***Rev Father Cyril Adiga Nakari vs Right Reverend Ocan Odoki and Registered Trustees of Arua Diocese HCCS No. 002/2017*** High Court Arua had this to say on Church/religious disputes –

*“This is a suit in which deference to organs of governance with the religious community of the Church ought to be observed. This Court should use restraint and be slow to intervene in internal affairs of the Church whenever it is still possible for the Church to correct its errors within its own institutional means.”*

He went on further –

*“On the other hand, the determination of who is morally and religiously fit to conduct pastoral duties or who should be excluded for non-conformity within the dictates of the religion falls within the core of religious functions. Civil Courts will defer to a religious organisation good faith understanding of who qualifies as its Minister where resolution of the dispute cannot be made without extensive inquiry by the Civil Court into religious law and polity, the court will not intervene.*

*The mere adjudication of such questions would pose grave problems for religious autonomy. This kind of second guessing of ecclesiastical decisions would constitute a clear affront to rights of religious autonomy. The Church must be free to choose who will guide it on its way."*

Similarly, the other reason to prohibit courts from this decision making stems not from skepticism regarding judicial ability to resolve religious questions, but rather from concerns that judicial resolutions of such questions will be interpreted as an endorsement of one religious view over another or importing practices not conforming to spiritual and religious teachings.

The non-justiciability of some issues would mean that one cannot seek remedy elsewhere and thus leaving them without any options to vindicate their rights. The court in such circumstances should be open to address the issue before hand. However, where the religious institutions which have dispute resolution mechanism must be upheld. As a matter of constitutional law and sound policy, courts should wade in the waters of disputes turning on religious doctrine or practice so as to afford parties access to an adjudicative forum to provide redress for legal wrongs.

It bears emphasis, that whenever the questions of discipline, of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the courts must accept such decisions as final, and as binding on them, in their application to the case before them. This is premised on the view that courts lack capacity to litigate religion and it stems in large part from worry that religious claims lack objectivity and empirical bases. Thus, "In contrast to ordinary questions of fact, religious questions are understood to lie beyond judicial competence because they do not depend on the logic of law. Instead, religious questions may be answered on the basis of faith, mystical experiences, miracles, or other non-rational sources." In the case of ***Ballard v United States*** (*supra*) The Supreme Court noted;

*"Men may believe what they cannot prove-They may not be able to put the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond*

*the ken of mortals does not mean that they can be made suspect before the law....when triers of fact undertake that task, they enter a forbidden domain."*

The selection of a Bishop is a religious function in my view and the plaintiff's claims that are under adjudication would invite court to get involved in the resolution of religious question that involves the interpretation of the church constitution and the provincial canons that govern the appointment process. The United States Court of Appeals for the Third Circuit in the case of ***Petruska vs Gannon University*** noted:

*"The process of selecting a religious Minister is per se a religious exercise."*

**Article 4(2) of the Provincial Constitution** provides;

*No person shall be allowed to administer as Bishop, Priest or Deacon in the Church of Uganda unless he or she has been licensed by the Archbishop in the case of Bishops or Diocesan Bishop in other cases.*

The House of Bishops which is the highest organ responsible for selecting a Bishop has made a religious decision in their view that the plaintiff is not best suited to serve in that position as a leader of the Church in Kumi Diocese. The decision to certify the plaintiff or not is a religious one based on qualifications set out in the Provincial Constitution and Provincial Canons of Church of Uganda. This mandate as discussed earlier cannot be brought to question in courts of law and it must be respected for harmony in the Church management and administration. The intervention by courts would bring the Church and the State in direct conflict over the religious question contrary to doctrine of Ministerial Exception.

The doctrine of Ministerial exception is drawn from the USA where the First amendment guarantees freedom of religion and forbids Congress from enacting state religion. It is the equivalent of Articles 7 and 29(1) of the Ugandan Constitution. This doctrine has been applied in several American cases and which cases are of persuasive authority as they discuss constitutional provisions which are in pari-materia with those of the Ugandan Constitution.

In ***Petruska vs Gannon University*** the United States Court of Appeal for the Third circuit had this to say –

*“First, like an individual, a Church in its collective capacity must be free to express religious beliefs, profess matters of faith and communicate its religious message, unlike an individual who can speak on her own behalf. However, the Church as an institution must retain the collaray right to select its voice. A Minister is not merely an employee of the Church: she is the embodiment of its message. A Minister serves as the Church public representative, its ambassador, its voice to the faithful. Accordingly, the process of selecting a Minister is per se a religious exercise. The Minister is the chief instrument by which the Church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognised as of prime ecclesiastical concern. Consequently, any restriction on the Church’s right to choose who will carry its spiritual message necessarily infringes upon its full exercise to profess its beliefs.”*

In ***Hossana Tabor Evangelical Lutheran Church and School vs Equal Opportunities Commission***, the Supreme Court of the United States had this to say on the matter –

*“A religious organisation right to choose Ministers would be hollow, however if secular courts would second guess the organisations sincere determination that a given employee is a ‘Minister’ under the organisations theological tenets.”*

It went further to state –

*“When it comes to the expression and inculcation of religious doctrine there can be no doubt that the messenger matters. Religious teachings cover the gamut from moral conduct to metaphysical truth and both the content and credibility of a religious message depend vitally on the conduct and character of its teachers. A religion cannot depend on someone to be an effective advocate for its religious vision if that person’s conduct fails to live up to the religion percepts that he / she espouses. For this reason, a religious body’s right to self-governance must include the ability to select and to be selective about those who will serve as the very embodiment of its message and its voice to the faithful.”*



These cases though decided by the Supreme Court of the United States of America are relevant because they discuss constitutional provisions which are similar to these in the Ugandan Constitution. The First Amendment in the US Constitution provides that Congress shall make no law respecting an establishment of religion. This is at times referred to as the Establishment Clause. This is similar to Article 7 of the Uganda Constitution which states “Uganda shall not adopt a state religion.”

The Free Exercise clause in the American Constitution protects the right of citizens to freely exercise their religious rights and beliefs and is similar to **Article 29 (1) (c) of the Ugandan Constitution** which provides:

***“Every person shall have the right to freedom to practice any religion, and manifest such practice which shall include the right to belong to and participate in the practice of any religious body or organisation in a manner consistent with the Constitution.”***

**Justice Steven Mubiru in Rev. Fr. Cyril Adiga Nakari vs 1. Rt. Rev. Sabino Ocan Odoki and 2. The Registered Trustees of Arua Diocese – Civil Suit No. 0002 of 2017** (supra) made reference to the American case of ***Petruska vs Gannon University*** and went on to say:

*“That statement underscores the fact that a religious organization’s fate is inextricably bound up with those whom it entrust with the responsibilities of preaching its word and ministering to its adherents. These are difficulties in separating the message from the messenger. I am persuaded by the interpretation and application given to the First Amendment by the Courts in the United States to hold that Articles 7 and 29(1)(c) of the Constitution of the Republic of Uganda 1995 protect the roles of religious leadership worship ritual and expression.*

*The freedom of religious groups to engage in certain key religious activities (including the conducting of worship services and other religious ceremonies and rituals as well as the critical process of communicating the faith.*

**He went on further:**

*Religious autonomy means that religious authorities must be free to determine who qualifies to serve in positions of substantial religious importance. Accordingly, religious groups must be free to choose the personnel who are essential to the performance of these functions. If a Church believes that the ability of a priest to conduct worship services or important religious ceremonies or rituals, or to serve as a messenger or teacher of its faith or perform such other key functions has been compromised, then the constitutional guarantee of religious freedom protects the Church's right to remove the priest from his position. The Constitution creates a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs. "forcing a group to accept certain members may impair its ability to express those views, and only those views, that it intends to express" (**Boy Scouts of America v. Dale, 530 U. S. 640, 648 (2000)**). The Constitution leaves it to the collective conscience of each religious group to determine for itself who is qualified to serve as a teacher or messenger of its faith. In the result, all church offices ought to be filled by the exclusive decision of the church concerned. No state body (including the courts) is entitled to rule over the canonical aspects of church offices.*

The same position was adopted by the Supreme Court of the United States which held in the case of **Serbian Eastern Orthodox Diocese for The United States of America and Canada et al vs. Milivojevich** as follows:

***"whenever the questions of discipline or of faith or ecclesiastical rule custom or law have been decided by the highest of the Church adjudications to which the matter has been carried the legal tribunals must accept such decision as final and as binding".***

and went on further to say;

***"Religious freedoms encompass the power of religious bodies to decide for themselves free from State interference matters of Church Government as well as those of faith and doctrine".***

Therefore, the House of Bishops has made a decision that the Plaintiff is not the right messenger to disseminate its message and its beliefs given the Plaintiff's fraudulent engagement in changing his age and date of birth from 1975 to 1970.

The decision must stand and should not be interrogated by courts as discussed earlier since the court is not best suited to handle religious question disputes or it is an affront on the 'doctrine of ministerial Exception'.

The actions of the plaintiff involving change of date of birth is contrary to the Provincial Canons and the Constitution of Church of Uganda **Canon 3.9.1 ( Page 78 ) - A Bishop shall strive to be an example of righteous and Godly living ....."**

If the House of Bishops has determined that the Plaintiff does not meet such a standard, it would not be open to the Court to order the Archbishop to forcefully consecrate him. That would amount to forced inclusion and would run counter to the Ministerial exception doctrine which gives religious institutions residual power free from the Courts in determining who should be entrusted with the governance of its institutions.

The rights that the plaintiff enjoys are derived from the Provincial Constitution of the Church and the Provincial canons and the same must be ably enforced through the existing adjudication mechanisms instead of running to the civil court which is not very competent to resolve the same in ignorance of applicable regulations and guidelines as derived from the Canonical Scriptures of the Old and New Testament as being the ultimate standard of faith, given by inspiration of God.

Church of Uganda as a religious institution with a constitution and provincial canons maintains internal ecclesiastical bodies tasked with resolving religious disputes or litigation. Therefore, Church of Uganda has primary authority over such matters involving religious questions. **Article 16 of the Provincial Constitution** provides;

The Provincial Assembly shall by Canon provide

- a) That any Bishop, Clergy or Laity of the Church of Uganda shall not seek redress in any external adjudicatory body unless all the dispute resolution mechanisms provided under this Constitution and Provincial Canons have been fully exhausted.

**Article 17** provides that:

The Provincial Assembly shall provide by Canons for the following tribunals-

- a) Diocesan Tribunals;
- b) A Provincial Appeals Tribunal; and
- c) A Provincial Tribunal

The Plaintiff conceded in his examination-in-chief that as a Clergyman in the Church of Uganda, he is governed by the Provincial Constitution and Provincial Canons.

**Article 21 (4) of the Provincial Constitution** provides as follows –

*“Any person who is subject to this Constitution by virtue of being a member of the Church of Uganda shall not seek redress in any external adjudicatory body in connection with a matter that can be handled before he or she has exhausted all dispute resolution mechanism under this Constitution.”*

**Article 4(5) of the Provincial Constitution** provides as follows –

*“Any dispute regarding the formal qualification of any person to Minister as a Bishop, Priest or Deacon in the Church shall be decided by the House of Bishops.”*

The plaintiff failed to exhaust the available remedies with the church and this court would decline to handle the religious question which as discussed earlier is non-justiciable in this court. This matter stands dismissed on this ground.

### ***Wrong Party***

The plaintiff brought this suit against the defendant as “The Registered Trustees the Church of Uganda”.

The defence counsel submitted that this suit was instituted against the wrong party; - the Registered Trustees of the Church of Uganda, because the Registered Trustees of the Church of Uganda is not a body that plays any role in the election of Bishops in the Church of Uganda. The two bodies; The Registered Trustees and the House of Bishops are different and play different roles.

The plaintiff’s counsel submitted that According to **Article 18 (1) of the Church of Uganda provincial constitution 1972 as amended in 1994 and 2016** marked as

DEX 19 provides that there shall be a board of the registered trustees of the church of Uganda which shall be incorporated under the Trustees incorporation Act.

Under the same **Article 18(3) of the same constitution** provides for the composition of the registered trustees of the church of Uganda who shall consist of:

1. the Archbishop who shall be the chairman of the Board of Trustees.
2. dean of the province who shall be the vice chairman and
3. All other Diocesan Bishops of the church of Uganda who shall be members of the Board of trustees.

Under the **Church of Uganda provincial canons marked as DEX 18, Canon 3.6.1** on election and consecration of Bishops provides that in case of a vacancy for a bishop, the diocesan nomination committee shall on behalf of the Diocesan Synod forward two names to the Archbishop for consideration for appointment to the office of the Diocesan Bishop by the House of Bishops.

According to counsel in harmonization of the two provisions above, the Archbishop and the office of the Diocesan Bishop play a role in the election process and together are members of the Board that constitute the Registered Trustees of the Church of Uganda.

He prayed that this honorable court confirms and finds that the Archbishop and all other Diocesan Bishops are members of the Registered Trustees of the church of Uganda which is a legal person answerable to matters concerning and touching the pleadings before this Court.

### ***Analysis***

This court finds the submission of counsel for the plaintiff totally misleading and incomprehensible. The plaintiff as a member of the church is fully aware of the different organs of the church and the different roles they play in the Church administration and management. They are both established under different Articles under the Provincial Constitution as well as under the Provincial Canons.

The Provincial Constitution Article 18 provides for Registered Trustees of the Church of Uganda as follows;

- (1) There shall be a Board of the Registered Trustees of the Church of Uganda which shall be incorporated under the Trustees Incorporation Act.*
- (2) The Registered Trustees of the Church of Uganda shall have perpetual succession and shall sue and be sued in its corporate name.*
- (3)*
- (4)*
- (5) The functions of the Registered Trustees of the Church of Uganda shall be as follows:-*
  - (a) To hold all lands, property, funds and endowments of the Church of Uganda as may lawfully be entrusted to it for any specified purpose or for the general benefit of the Church of Uganda.*
  - (b) To give effect to this trust, attaching to any land, property or endowment being held pursuant to the provisions of this Article.*

In addition, Canon 1:6 of the Provincial Canons also provides for The Registered Trustees of Church of Uganda;

*1.6.3; All Church land and property shall be vested in the Board of Registered Trustees who shall be empower to hold them upon any trust which is approved and accepted by the Provincial Assembly.*

*1.6.4 All business of the Board of Registered Trustees of Church of Uganda shall be executed through the Directorate of Land Management at the Provincial Secretariat.*

It is clear from the above instruments that the Registered Trustees of Church of Uganda was established for a specific purpose and the capacity to sue or be sued is confined strictly to the functions for which it was created and established. There is nothing within their functions which provides for the election of Bishops

and the different roles cannot be swapped or interchangeable as the plaintiff's counsel would wish this court to believe.

The highest organ of the Church of Uganda is the Provincial Assembly which consists of three Houses namely that of the Bishops, that of the Clergy and that of the Laity (Article 5(6) of the Provincial Constitution)

The appointment of Bishops is provided for in Article 13 of the Provincial Constitution and Canon 3.7.5 which provides for forwarding names of candidates to the House of Bishops for consideration for appointment as a Bishop.

The plaintiff throughout his pleadings complains against the House of Bishops and the Registered Trustees of Church of Uganda are not mentioned anywhere as being responsible for any wrongdoing or being involved in the appointment and revocation of the plaintiff's appointment as the 2<sup>nd</sup> Bishop of Kumi.

It could be deduced from the Provincial Constitution that creation of the Registered Trustees of Church of Uganda as a body corporate was purposely done to hold their property and indeed they could hold the same in their names. The creation of the body corporate was not to allow them take over liability or responsibility of the entire Church of Uganda administration. It is indeed true that the areas like appointment of Bishops or Clergy or Laity were left out without '*corporate status of suing or being sued*' is not justiciable in courts and the existing system of dispute resolution under Article 17 of the Provincial Constitution is conclusive.

As a general rule, all appropriate parties should be involved in the proceedings so that a proper and complete determination of all issues and comprehensive adjudication of all affected interests. A suit against a wrong party is incompetent and cannot be sustained in any court of law. A cause of action can only be sustained against a proper party against whom court can give orders. A court cannot give any orders affecting a person who was not a party to the suit or who was not heard by court.

The plaintiff sought an order against the defendant and yet the defendant is not involved in the election of Bishops in Church of Uganda. ***"An Order directing the defendant to consecrate and enthrone the plaintiff as the 2<sup>nd</sup> Bishop of Kumi Diocese."***

The Bishop is consecrated and enthroned by the Archbishop; therefore any order made otherwise would be directed to a wrong party.

The plaintiff clearly sued a wrong party and this suit cannot be sustained against the Registered Trustees of Church of Uganda whose mandate and function under the Provincial Constitution as shown earlier is very different.

This suit would be dismissed on this ground alone. But for completeness the pertinent issue of age should be resolved.

***Whether the Plaintiff had attained the age of 45 as required by the Provincial Constitution and Canons by the time of his purported election by the House of Bishops;***

The plaintiff's counsel submitted that the plaintiff at the Second sitting of the Nominations Committee presented a Statutory Declaration with an attachment of Certificate of Birth No.23076 issued by Atatur Sub-county chief on the 18<sup>th</sup> March 1971 and a ministry of Health Young child clinic Immunization card No.8251. The documents presented in the statutory declaration throughout the entire proceedings of court have never been in contention and the same have been adopted in the plaintiff's witness statement.

The purpose of the plaintiff to swear a statutory declaration was to correct an error that was not of his own making the birth certificate and immunization card hadn't been in his custody and it would be improper for this honorable court to overlook this glaring evidence on the face or record.

The defendant's counsel submitted that the requirement for the office of Bishop for one to have attained the age of 45 is both a legal requirement under the Provincial Constitution and Provincial Canons. Article 13(6) of the Provincial Constitution and Canon 3.6.2 of the Provincial Canons. The Plaintiff himself agreed that as a priest in the Church of Uganda he is governed by both the Provincial Constitution and the Canons.

The Issue here is whether Rev. Charles Okunya (hereinafter the Plaintiff) was born on the 23<sup>rd</sup> of November 1970 or 23<sup>rd</sup> November 1975 and had attained the age of 45 on the 30<sup>th</sup> day of October 2019 on the date of nominations.



It is the contention of the Defence that he was born on the 23<sup>rd</sup> day of November 1975 and our reasons for the said submission are the following:

The following documents which the Plaintiff conceded were his own, some in his own writing indicate that he was born on 23<sup>rd</sup> November 1975.

These documents are:

1. Application form to Uganda Christian University; DEX 11
2. Admission Application to Uganda Christian University; DEX 11
3. Application to Uganda Management Institute; DEX 10
4. Curriculum Vitae presented to Bishop Illukor Girls' Secondary Schol, where the Plaintiff was a teacher; DEX 9
5. The Plaintiff's Passport; DEX 5
6. The Plaintiff's Electoral Commission Record. DEX 7
7. The Plaintiff's Diocesan Records to the Provincial Secretariat; DEX 8
8. The Plaintiff's Academic Transcript from Uganda Christian University; DEX 12
9. The Plaintiff's Driving Permit Spread from 2011 – 2019; DEX 14
10. The Plaintiff's application form for National Identity Card; DEX 15
11. The Plaintiff's National Identity Card. PE 11

These documents cover a period of 2003 – 2019 from the time he applied to go to Uganda Christian University to his last driving permit that was issued in 2019. That is a period of 16 years where the Plaintiff consistently indicated to various Organisations that he was born in 1975.

It should be noted that when he wanted to stand for election as a Bishop, only three (3) days before the election, he swore a statutory declaration to indicate that he made a mistake when he was registering for his National Identity Card. (Exhibit PE II)

It should however be noted that in paragraphs 21, 22, 23 of the Plaintiff's witness statement, the Plaintiff stated that the adoption of the year 1975 as his year of

birth was because he wanted to maintain consistency due to a mistake that had been made in 1991 when his uncle the late Apedel registered him in Senior Three.

### ***Analysis***

The main issue for consideration is whether the plaintiff was qualified to stand at the time he was nominated for election to the position of Bishop. The main criterion for nominating a person to the office of Diocesan Bishop is set out in the Provincial Constitution Article 13(6) and Provincial Canons 3.6.2.

***Article 13(6) and Provincial Canon 3.6.2*** provides:

*No person shall be elected to the office of Bishop unless he or she has attained the age of forty five (45) and is a holder of at least a Bachelor's degree in Theology, or a first degree in any other field with an additional Diploma in Theology from a Theological Institution recognized by the Church of Uganda, provided that a Bishop shall retire after serving for a period of fifteen (15) years or upon attaining the age of sixty five (65) years, whichever comes first.*

***Provincial Canon 3.7.23*** provides:

*The Diocesan Nominations Committee shall evaluate every candidate whose name is proposed for consideration for nomination on the basis of the following criteria-*

- a) Age;*
- b) Academic qualification;*
- c) Experience in pastoral ministry;*
- d) Spiritual life and personal testimony;*
- e) Family life;*
- f) Social standing;*
- g) Integrity; and*
- h) Experience in administration.*

It can be deduced from the above that the issue of age is so paramount and is the first major consideration for one to become a Bishop.

The plaintiff's life within the Church of Uganda as a clergy was premised on information he availed at the time joining and this was categorically reflected as 23<sup>rd</sup> November 1975. This fact is not in dispute but the plaintiff now wishes to alter his date of birth by claiming that the actual date of birth earlier indicated on all his personal documents was a mistake or an error.

The act of altering the date of birth three days to being nominated as a Bishop becomes very suspicious and it is not an innocent act by the plaintiff and I would agree with the defendant's counsel that it was indeed fraudulent. The plaintiff during cross examination confirmed that a Bishop should be a person of Integrity.

The Church was forced to carry out an investigation into the plaintiff's school background and it was established that he was consistently indicating the date of birth as 23<sup>rd</sup> November, 1975. It was also established that the plaintiff in some of the application forms to Uganda Christian University made some lies like denying having children and yet he had.

The official documents issued by the Government of Uganda like the Passport, National Identity Card, Voter's Card, Driving Permit and all academic testimonials clearly show that the plaintiff was born on 23<sup>rd</sup> November-1975. A statutory declaration could not suffice to make such a correction without changing the particulars in the National Data Base (National Register).

The plaintiff during cross examination stated that he wanted to maintain consistency in the date of birth well aware it was wrong. In the current legal regime under the Registration of Persons Act any person who wishes to change information must make an application to National Information Registration Authority. The information given in the National Register cannot be changed by statutory declaration but rather through a process set out under section 4 and such notification is in a particular form in Schedule 2.

***Section 4 provides;***

***(1) The notification of the Authority of a change in the information contained in the Register shall be made by the person to whom the information relates within ninety days from the time the change in the information occurs.***

***(8) Where a change of particulars includes a change in the name, date of birth, place of birth, sex, the notification shall include a request for a new national identification card or alien's identification card, and in such a case the person shall surrender the old card to the Authority.***

The plaintiff's date of birth could not change through statutory declaration as he claims to have done but rather through a process by process as set out in Section 4 and in particular on a form provided for under the Schedule. Otherwise, the National Register should not be changed at will without following the due process.

A party who has changed his particulars has a duty to notify the different institutions like former schools or Institutions of learning about the changes made to the particulars in order to avoid future issues about identity. Otherwise, any person who wishes to know about the plaintiff from his former schools or higher institutions may become confused with the change of the date of birth if such institution is not notified about such major changes to his identity. See ***Achola Catherine Osupelem v Electoral Commission Election Petition No. 02 of 2018***

The plaintiff according to the official documents issued from different government institutions like NIRA & EC his date of birth is still 23<sup>rd</sup> November 1975 and this date still binds him until it changed in accordance with the law. The plaintiff at the time of his nomination was not qualified to be elected a Bishop of Kumi since he had not yet made the mandatory age requirement of 45 years.

The House of Bishops was right and justified to revoke the election of Plaintiff as the second Bishop of Kumi Diocese.

For reasons stated herein this suit is dismissed with costs to the defendant.

I so order.

**SSEKAANA MUSA**

**JUDGE**

**30<sup>th</sup> June 2021**