IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA

CORAM: DR. DATE-BAH, JSC (PRESIDING)
ADINYIRA (MRS), JSC
OWUSU (MS), JSC
DOTSE, JSC
ANIN YEBOAH, JSC

CIVIL APPEAL
NO. J4/7/2009
3RD FEBRUARY, 2010

ASSEMBLIES OF GOD CHURCH, GHANA HEAD QUARTERS BUILDING H/NO. C500/J AVENOR, ACCRA ... PLAINTIFFS/RESPONDENTS/ RESPONDENTS

- VRS -

1. REV. RANSFORD OBENG
2. JOSEPH OPOKU
3. C. K. ACOLATSE
4. R. K. OWUSU
5. C. O. KPODO

... DEFENDANTS/APPELLANTS/ APPELLANTS

J U D G M E N T

DOTSE, JSC:

The fact, that, this case, concerning a reputable House of God and others also reputed to be very outstanding and charismatic men of God has come to the litigation altar of the civil Courts and made to travel all the way from the High Court, through the Court of Appeal, to this Court is indeed a sad reflection on Christendom.

In this respect therefore, we would want to reflect on the following two quotations as we journey through this exercise to resolve the final victor in the sight of men.

1. ***Mathew 16, 24 -25***
   "Then Jesus said to his disciples, if anyone desires to come after me, let him deny himself and take up his cross, and follow me, for whoever

desires to save his life will lose it, but whoever loses his life for my sake will find it"

2. *"Let each one remember that he will make progress in all spiritual things only in so far* ***as he rids himself of self love, self-will and self interest****.*
   St. Ignatius Loyola

BRIEF FACTS OF THE CASE

The facts of this case admit of no controversy whatsoever. The genesis of this case is a letter written by the defendants/appellants/appellants, hereinafter referred to simply as the Defendants on the 16 day of November, 1992, in their capacity as the Board of the Calvary Charismatic Centre, (hereafter referred to as C.C.C.) and addressed to the plaintiffs/respondents/respondents hereinafter referred to as the plaintiffs, wherein the plaintiffs were informed that the defendants had decided to cease affiliation with the Assemblies of God denomination, i.e. the plaintiffs church with effect from 19th November, 1992.

In view of the profound effect which this letter generated and also its effect on the totality of the entire suit, we deem it fit and proper to reproduce it in extenso.

It must be noted that this letter was tendered in evidence by the plaintiffs as exhibit BB and is produced on page 967 of volume one of the record of appeal (ROA).It provides as follows:-

> "Calvary Charismatic Centre
> The Executive Presbytery
> Assemblies of God Church
> P. O. Box 7644
> Accra-North
>
> Dear Partners of the Inheritance
>
> It is with great joy and expectation that we announce to you the tremendous things that the Lord is doing in our midst here in Calvary Charismatic Centre. It has not been rosy, but the good Lord has granted us the strength and wisdom to go through the many phases of ministry that we have already gone through."Precept upon precept, line upon line,

here a little, there a little we are surging on in the pursuit of the vision that God has given as a local Church.

We are happy to announce to you our entry into a new phase of Ministry that demands emphasis on the five-fold gift of Ministry, as well as enriching the body of Christ with all the experience that he has given us by His Spirit. In this phase of Ministry, the Holy Spirit is leading us in the direction of freely sharing with the Body of Christ all that he has freely given us, spiritually, materially and socially.

As you may infer from the nature of the call, we have realized the need to stay neutral from all denomination affiliations if we are to obey and pursue the will of the Holy Spirit in an impartial and faithful ministration to His body.

We therefore announce to you the cessation of our affiliation with the Assemblies of God denomination with effect from 19th November, 1992.

As we have already mentioned we are called into ministry unto the whole body of Christ of which the Assemblies of God Church is a member. This means that we should freely and wholeheartedly render our services to the Assemblies of God Church as a member of the body of Christ and as much as we are led by the Holy Sprit to.

We thank the Lord for all that he has taught us while we remained part of the denomination, and we are more grateful to him for the greater things he has in store for us as we faithfully obey his call and remain non-denominational.

May the Lord continue to bless us all, as we obey His voice and allow ourselves to be used by His spirit in building His body.

Yours in His Service

Rev. Ransford Obeng
Joseph Opoku
C.K. Acolatse
R. K.Owusu and
C.O.Kpodo

CC: The District Superintendent
Mid-Ghana

Kumasi"

The above letter led to a series of attempts by the plaintiffs to play it soft with the Defendants' but when the latter signified their non-negotiable doctrine about the cessation of affiliation, the plaintiffs on the 2nd of February, 1993 issued a writ of summons against all the above signatories in the High Court, Kumasi claiming the following reliefs.

1. "A declaration that by seceding from the Assemblies of God, Ghana, the defendants have ceased to be members of the Church.

2. A declaration that the Calvary Charismatic Centre, a local Assembly of the plaintiff's church i.e. the Church building or Auditorium and the office block are part of the plaintiff's Church or same belongs to the plaintiffs' Church and same are held by the plaintiff's in trust for the Assemblies of God Church, Ghana.

3. A declaration that movable and immovable properties of the said Calvary Charismatic Centre are properties of the plaintiffs Church, Assemblies of God, Ghana.

4. Recovery of possession of all properties of the Church in possession of the Defendants.

5. Order for accounts in respect of all properties of the Church in possession of the defendants.

6. Order compelling the 1st defendant to surrender his credentials to the plaintiffs after ceasing to be an accredited Pastor of the plaintiff's church.

7. Perpetual injunction restraining the defendants, their agents, workmen, servants, relatives, supporters and assigns from entering upon, dealing with or in any way interfering with the plaintiffs local church known as Calvary Charismatic Centre Church building, offices or any other property of the Church"

In support of the above reliefs the plaintiffs averred that the 1st defendant for example, was until the letter of 19th November 1992, referred to supra, plaintiffs

local Pastor in charge of the Calvary Charismatic Centre Assembly of God Church, Kumasi whilst the other defendants were Deacons and members of the said church all in Kumasi.

In further support of their claims, the plaintiff's averred that the Calvary Charismatic Centre, being a local church of the Assemblies of God, Ghana is governed by three constitutions of the church, namely:

1. The Constitution and bye laws of the Assemblies of God, Ghana, - Exhibit C, see pages 729 – 785 of record of appeal, Volume I.

2. The Constitution and bye laws of the Assemblies of God, Ghana, Mid-Ghana District, Exhibit C1 reference pages 786-804 volume I of the record of appeal.

3. The Constitution and bye laws of the local Churches of the Assemblies of God and Exhibit C2, reference pages 805 – 833 of volume I of record of appeal.

It is important to note that these three constitutions had been tendered in this case as exhibits C, C1, and C2.

It is important to note that the following facts are not in dispute:

1. The plaintiff church is a National Church having branches throughout Ghana and has for purposes of administrative convenience been divided into three major Districts, namely

    a. The Coastal Ghana District
    b. The Mid-Ghana District and
    c. The Northern Ghana District

    The Kumasi local churches come under the mid-Ghana District, including the Plaintiffs' church as well as the Calvary Charismatic Centre Assemblies of God, local Church.

2. The 1st defendant was trained as a Pastor at the Southern Ghana Assemblies of God Bible Institute at Saltpond from 1977-1979.

3. After the successful completion of the Pastoral course, the 1st defendant was appointed an Associate Pastor of the Central Assembly of God Church, a.k.a Light House Assemblies of God, a local Church of the Assemblies of God, Ghana in Kumasi.

4. In April, 1985 the 1st defendant resigned as Associate Pastor of the Light House Assembly of God in order to plant the Calvary Charismatic Centre. Whilst the plaintiff's contend that this local Church, the Calvary Charismatic Centre was an Assemblies of God Church, the defendants state otherwise. Since this is a key issue in the determination of the instant appeal, I will only state the undisputed facts as above.

5. The Calvary Charismatic Centre was established basically as English-speaking Church, to serve the needs of the non-Akan speaking members of the church in Kumasi.

6. The 1st defendant served as the District Treasurer for the mid-Ghana District Council of the Assemblies of God, Ghana, between 1988 – 1990. This period is significant because it is the period in which the 1st defendant was the Pastor of the Calvary Charismatic Centre.

7. From 1990 to November 1992 when he ceased affiliation with the Assemblies of God, Ghana, the 1st defendant was the National Youth Co-ordinator of the Assemblies of God, Ghana.

8. The initial core membership base for the Calvary Charismatic Centre was the campus Ministry of the plaintiff's Church at the KNUST, Kumasi.

9. The Calvary Charismatic Centre has been a fully "set in order" church of the plaintiffs' Church.

10. The local Bank accounts of the Calvary Charismatic Centre were opened with the Plaintiff's Constitution as supporting documents.

11. The Calvary Charismatic Centre throughout its existence as a local church of the plaintiff paid its local subscriptions as a local church of

Assemblies of God in the form of tithes and other fees as regulated by the Constitutions.

12. The 1st defendant and his wife also regularly paid their tithes as members of the Assemblies of God.

DISPUTED FACTS

It is disputed:

1. That the Calvary Charismatic Centre was started by the 1st Defendant as a new Church after his resignation from the Light House Assemblies of God in 1985, and that he ran the said church from 1985 -1990 when the Calvary Charismatic Centre was affiliated to the plaintiffs church.

2. That the decision of the CCC to cease affiliation with the Assemblies of God was taken by the Church Board of the Calvary Charismatic Centre pursuant to Article XII of the Constitution and Bye Laws of the local Assemblies of God, **Exhibit C 1.**

3. That the properties of the Calvary Charismatic Centre belong to the plaintiffs' by virtue of Article IV section I of the Local Churches Constitution which states as follows:

"All property of the Church is held in trust by the legally incorporated organization known as the ASSEMBLIES OF GOD, GHANA, no real property of the church shall be sold, leased, mortgaged or otherwise alienated without the action of the executives of the Assemblies of God, Ghana General Council".

DECISION OF THE HIGH COURT AND COURT OF APPEAL

After a trial which spanned 1993 to December, 2001, the High Court, Kumasi presided over by Quaye J as he then was on the 11th day of December, 2001 delivered judgment in favour of the Plaintiff and concluded the case as follows:-

"The evidence clearly shows that there is a division in the CCC. The witnesses who testified for the plaintiff church, apart from the plaintiff's representative, previously belonged to and worshipped at CCC. The said witnesses together with some other former members of that local church, opposed the secession. Some of them now worship at Sisanso and other Assemblies of God, Local Churches. I find no difference between issues 3, 4 and 6. The finding on them is the same. The cessation of affiliation per se is not provided for under any of the Constitutions of the Assemblies of God. The provision relating to a division in the Church is suggestive of secession. The ingredients that result in division are the very ones that exist in a secession. The two terms may interchange. In simple terms, "division" as used in the constitution visualizes a situation where some members are leaving the church or opting out of the Assemblies of God, while other members of the same local church would not like to join the other group. In this case of secession, the five defendants announced the breaking away of the CCC from the Assemblies of God. <u>The issue then is whether those breaking away should keep the properties of the Church, as they held during the affiliation with the plaintiff church.</u> <u>I believe that a person who has a right and exercises it to affiliate, can in the exercise of the same right decide to secede or terminate the affiliation more especially where there is no provision in any of the laws regulating their relationship forbidding same or making it unlawful.</u> The last issue has already been answered in issues 3, 4 and 6. The properties acquired and held by CCC before 16th November, 1992 should legally go to the plaintiff church.

Plot No. 12, Atimpongya, was acquired by CCM. Evidence however, shows that the CCC and CCM jointly invested in its development. That property standing on plot No. 12 Atimpongya creates joint ownership rights in both CCC and CCM."

Whist the defendants felt aggrieved by the said decision and therefore appealed against it the plaintiffs even though accepted the decision, but like OLIVER TWIST, asked for more reliefs, by way of variation of the judgment pursuant to rule 15 of Court of Appeal Rules, 1997 C. I. 19.

COURT OF APPEAL

On the 22nd day of April, 2005, the Court of Appeal by a majority decision-Coram Lartey JSC, as he then was, presiding and Twenboa-Kodua JA, with Asare-Korang dissenting, held per the majority as follows:

> "In the result of the entire review foregoing, the appeal is dismissed and the judgment of the Court below is affirmed with express variation as follows:
>
> 1. A declaration that by seceding from Assemblies of God Church, Ghana, the defendants (i.e. the appellants) have ceased to be members of the Church.
>
> 2. A declaration that Calvary Charismatic Centre, a local Assembly of the plaintiff Church, i.e. the church building or auditorium and the office block acquired before 16th November 1992 are held in trust for Assemblies of God, Ghana.
>
> 3. a. A declaration that the movable and immovable properties of the Calvary Charismatic Centre are the properties of the plaintiff (respondent) church, the Assemblies of God, Ghana.
>
> b. A declaration that plot No. 7, Atimpongya, Kumasi and the auditorium and offices thereon are the properties of the plaintiff church, the Assemblies of God, Ghana.
>
> c. A declaration that Plot No. 12, Atimpongya, Kumasi and the building thereon are the properties of the plaintiff (respondent) Church, the Assemblies of God"
>
> d. There was also a declaration in favour of the plaintiff church in respect of Neoplan Buses, items of furniture and office equipment, musical instruments etc. The Court also granted recovery of possession in respect of all the properties mentioned in the writ of summons.
>
> The Court of Appeal also decided that property No. 12 was acquired and developed by the Calvary Charismatic Centre of the Assemblies of God, Ghana. The Court further directed the parties to go into accounts

in respect of all incomes, harvest proceeds, tithes offering if any was outstanding before and until 16th November 1992.

The Court of Appeal finally declared as follows:

8. "An order declaring ownership of all the items contained in Exhibits 28 and 29 in favour of the Assemblies of God church, Ghana. The defendants (appellants) are by order restrained from dealing with or in any way interfering with the local church of the plaintiff (respondent) Assemblies of God Church, Ghana which local church is known as "the Calvary Charismatic Centre building, offices or any other property of the church" in terms of the preceding orders. In respect hereof, their agents, workmen, servants etc are equally restrained. The order of injunction shall come into force or effect after the settlement of accounts ordered or after a period of three (3) months from this day, whichever is later."

GROUNDS OF APPEAL

In this Court, the grounds of appeal are:-

1. The judgment is against the weight of evidence on record.

2. That the Court of appeal erred in law when it amended the capacity in which the respondent brought the action.

3. Further grounds of appeal will be filed upon receipt of the record of proceedings.

Since no additional grounds have been filed, it is to be taken that the above constitute the only grounds of appeal.

APPEAL TO THE SUPREME COURT

We have perused the erudite submissions contained in the respective statements of case of the parties. Even though we admire the industry learned Counsel for the parties put into the case we think there has been an over elaboration on their part. In our estimation and assessment this has led to the introduction of an excessive amount of extraneous matters into their submissions coupled with repetitions.

Our assessment of the situation is that Counsel have put too much of their own self into the case. It is a good thing for Counsel to conduct cases with passion. But since too much of everything is bad i.e. too much salt which has been added to the soup has made it salty and therefore not appetising. We will henceforth urge all learned Counsel involved in preparation of statement of case for their clients especially at the Supreme Court level to be mindful of the following:

1. Consider in proper context the grounds of appeal in relation to the facts of the case and the law applicable. Serious efforts must be made to ensure that Counsel does not deviate from the grounds of appeal and embark upon an excursion into uncharted territories which sometimes can lead one into a minefield.

2. Avoid abusive and insulting language not suitable for use in a Court of law such as this Supreme Court. It is to be noted that learned Counsel can still make their points and arguments very strongly without the use of language that is sometimes associated with persons in some other vocations. Not so however in a Court of law.

3. Finally arguments contained in a statement of case must be made relevant to specific grounds or grounds of appeal. In such a case, the argument must relate to specific portions of the record of appeal and where applicable relevant and appropriate legal authorities must be cited in support. This point is supported by Rule 15 (6) of the Supreme Court Rules 1996, C. I. 16 which states as follows:-

"The statement of case of each party to the appeal

a. Shall set out the full case and arguments to be advanced by the party including all relevant authorities and references to the decided cases and the statute law upon which the party intends to rely"

The situation when Counsel decided to go on and on without end in pursuit of undoing the other in terms of the size of the submissions will be frowned upon by this Court.

ISSUES FOR DETERMINATION

The following issues are to our mind the issues that are germane to the resolution of the grounds of appeal that have been argued by learned Counsel in this appeal.

i. Was the Calvary Charismatic centre a local church of the Assemblies of God, Ghana upon its establishment in 1985 or became an affiliate only in 1990 when it acquired the "set in order" status?

ii. Whether the decision of the Board of the Calvary Charismatic Centre to cease affiliation with the Assemblies of God church in November 1992 amounted to a division or secession from the Assemblies of God?

iii. Whether the plaintiffs lack capacity to have instituted the suit against defendants. Put in other words, was the amendment of the capacity of the plaintiffs by the Court of Appeal proper?

ISSUE ONE

In order to resolve issue one as has been formulated above, a close look will be taken at the following exhibits in order to assess their full effect and impact.

1. **Exhibit D** - This is the invitation letter that was sent out when the Calvary Charismatic Centre was established in 1985. Boldly printed in front of this exhibit on page 835 of volume 1 is the logo of the **Assemblies of God, with the caption**

   "Come to Kumasi's newest and most exciting church – Calvary Charismatic Centre"

There is therefore an indication that the Calvary Charismatic Centre was established really as a local branch of the Assemblies of God.

2. **Exhibit M** - This is the first anniversary brochure of the Calvary Charismatic Centre on pages 879 – 894 of volume 1. On the front page of this exhibit, is the **Assemblies of God Church logo** and imprint written on it, with **CHARISMATIC NEWS** boldly written on the first page.

On the 2nd page, which is at page 890 of volume I of the record of appeal appears the following statement which we think speaks volumes.

"The CHARISMATIC NEWS is published by the Calvary Charismatic Centre, Assemblies of God Church, Kumasi."

On the 3rd page of this exhibit, which is at page 881 of the record of appeal is a very beautiful picture of the 1st defendant and his lovely wife.

The 1st defendant gave a report of the activities of the Calvary Charismatic Centre, and in it, he admitted the immense contribution and critical role played by the Assemblies of God Union of the KNUST Kumasi.

From all indications, it does appear to us that the Calvary Charismatic Centre was established from the eggs laid by Assemblies of God, nurtured and hatched by Assemblies of God and are being snatched away, by the defendants.

3. **Exhibit N** - This is the fifth anniversary brochure of the Calvary Charismatic Centre which appears on pages 895-908 of the record of appeal, Volume I. This 5th anniversary brochure, just like the first anniversary one had the logo of the **Assemblies of God** on the first page of the brochure ref. page 895 of Volume I of record of appeal. The title of the brochure is Charismatic Chronicle.

4. EXHIBITS H, H1, J, K, K1 AND L

Exhibit H is a Baptismal Certificate issued and signed by the 1st defendant to a member of the Calvary Charismatic Centre Assemblies of God in the person of Theresa Tsakle, dated 1st August, 1990. Boldly written in front of this exhibit are the words

"Assemblies of God Baptismal Certificate"

Exhibit H1 on page 874 of the record of appeal also gives the same indication.

"Assemblies of God Baptismal Certificate" dated 10th day of August, 1985 and was similarly signed by the 1st Defendant, in favour of Clemence Osei Sampah.

Exhibit J, is an infant Dedication Certificate issued to one Akua Asieduwa Appiagyei on page 875. Exhibits K and K1 are tithe packets of some members of the Calvary Charismatic Centre, Nii Ayi Aryeetey and K. Amponsah-Efah who testified as PW1, reference pages 876 and 877. Exhibit L on the other hand is the membership card for adults within Assemblies of God, Ghana church.

What has to be noted clearly is that in our parts of the world, the core functions of Christian churches is the following:

i. To baptize their members.

ii. Payment of tithe by the members in those churches where payment of tithe is a requirement

iii. Evidence of membership of the church,

iv. Officiating at marriages

v. Burying the dead etc.

We have noted that, in the performance of baptism by immersion, dedication of infants, payment of tithes and membership cards, the Calvary Charismatic Centre used the Assemblies of God printed forms, cards and or logo in the performance of those critical core functions.

What this means is that, right from its inception in 1985, the Calvary Charismatic Centre was a local church of the Assemblies of God and represented to the outside world and to the generality of its members that it was an Assemblies of God church.

5. It is also on record that the 1st defendant after he resigned from the Lighthouse Assemblies of God Church to establish the Calvary Charismatic Centre held two positions within the Assemblies of God, Church, Ghana. These were

a. District Treasurer, 1988 - 1990
b. National Youth Co-ordinator of Assemblies of God Church when he seceded from the Assemblies of God.

It is even on record that the 1st defendant contested for and lost the superintendent position of the mid-Ghana section of the Assemblies of God Church in 1992, having contested that position with other ordained Ministers of the Assemblies of God Church in January 1992 ref. page 335 volume 1, lines 19-25

6. It is also on record that the 1st defendant admitted during cross-examination that he did not resign from the Assemblies of God when he resigned from the Light House Assemblies of God Church.

On page 515 volume 1 of the record of appeal, from lines 24 to 35 and pages 516, of the same volume line 1 -9, one gets a full picture of the exact position as to whether or not the 1st defendant, whom we regard and consider as the moving spirit and brain behind the defendants action never really resigned from the Assemblies of God Church. This is what is captured in the record of appeal.

"Q: You resigned from Light house but not from Assemblies of God

A: I resigned from the Lighthouse Assemblies of God Church because they had employed me.

Q: You did not resign from the Assemblies of God organisation

A: I was holding credentials of the Assemblies of God organisation

Q: So you did not resign from the Assemblies of God organisation

A: **I did not resign from the Assemblies of God organisation**

Q: At the time that you were Associate Pastor of Lighthouse, you were given oversight of the Assemblies of God Campus Ministry.

A: I was the one that initiated the Assemblies of God Campus Ministry, Kwame Nkrumah University of Science and Technology, Kumasi

Q: And the full name was Assemblies of God Campus Ministry.

A: Yes"

All these go to establish the fact that at all times material to this action, the 1st defendant remained an ordained Minister of the Assemblies of God Church. It follows therefore that, it was in that capacity that he was pastoring the Calvary Charismatic Centre Assemblies of God Church.

The extracts from the record of appeal just referred to also show that the initial base and membership of the Calvary Charismatic Centre was the Campus Ministry of the Assemblies of God which the 1st defendant in his position initiated as an ordained Minister of the Assemblies of God Church.

Indeed the 1st defendant confirmed during his cross-examination that he was until 1992 renewing his ordination certificate as a Minister of religion within the Assemblies of God. *Reference pages 508, 508B and 511 and 513 all of volume 1 of the record of appeal.*

PAYMENT OF TITHES AND OTHER FEES BY CALVARY CHARISMATIC CENTRE TO ASSEMBLIES OF GOD CHURCH

There is also evidence that the Calvary Charismatic Centre paid its local subscriptions as a local Church of Assemblies of God in the form of 20% of its tithes and other fees as regulated by the Constitutions of the plaintiffs' eg. Exhibits C, C1 and C2. These clearly establish that the Calvary Charismatic Centre was never an independent Church, but a local church of the Assemblies of God Church from its inception until the cessation in November, 1992.

On page 692, of volume 1 of the record of appeal, the learned trial Judge explained in detail what a set in order status of the Assemblies of God Church entailed. After analysing same in detail, the learned trial Judge concluded thus:-

> *"The obligations upon the local churches of the Assemblies of God Church included payment by each of the said local churches of twenty per centum of all monthly tithes and twenty per centum of annual harvests and donations to the headquarters of the Assemblies of God Church through the respective District Councils".*

It is note worthy also that, by provisions of the Mid-Ghana constitution exhibit C 1, a local church can be disciplined by the District. It is therefore not correct that the Calvary Charismatic Centre was an independent local church.

Having adverted our minds to all the exhibits referred to supra in which the logo and name of the plaintiffs church, (Assemblies of God) had been manifestly used

by the defendants coupled with the express acts of conduct and or omission of the defendants, we think it is correct to conclude on the basis of the provisions of *Section 26 of the Evidence Act 1975 NRCD 323* that the defendants are estopped from denying that the CCC was not an Assemblies of God Church. *Section 26* of the *Evidence Act, 1975, NRCD 323* provides thus:-

> ***"Except as otherwise provided by law. Including the rule of equity, when a party has by his own statement, act or omission intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest"***

Thus, by reference again to exhibits H, H1, J, K, K1 and L together with exhibits M & N which are the copies of the 1st and 5th anniversary brochure's of the Calvary Charismatic Centre, it is clear that the defendants, especially the 1st held themselves out as officers and agents of the plaintiff's and they must be considered as such.

In such a situation, all the properties acquired by the Calvary Charismatic Centre during the period 1985-1992 when the defendants purportedly seceded from the plaintiff's church all belong to their mother church, the Assemblies of God when they decided on their own volition to cease affiliation or seceded from it.

The decision of the Court therefore is that the Calvary Charismatic Centre was a local church of the Assemblies of God Church upon its establishment in 1985 and became an affiliate when it acquired the "set in order" status.

2. WHETHER THE DECISION OF THE CALVARY CHARISMATIC CENTRE TO CEASE AFFILIATION WITH ASSEMBLIES OF GOD CHURCH AMOUNTED TO A DIVISION OR SECESSION

It is a fact that there is no provision in any of the three Constitutions of the plaintiffs which makes provision for secession. The closest provision in the local

church's Constitution, exhibit C2 article XV section 4 deals with division and is stated as follows:

> ***"In the case of division within the membership all church property shall remain for the General Council Assemblies of God."***

In order to determine exactly what happened to the Calvary Charismatic Centre in or about 16th November, 1992, the conditions prevailing in the church prior to the writing of exhibit BB by which the Calvary Charismatic Centre ceased all affiliation with the Assemblies of God Church has to be considered in detail.

From the contents of the exhibit BB, it is clear that the decision to cease affiliation was not taken because of doctrinal differences. Stated briefly, the cessation of affiliation was predicated upon by a desire to expand the ministry and in essence be non-denominational.

There is no evidence of the total membership of the Calvary Charismatic Centre at that material time having held a meeting to consider the issue of ceasing affiliation and whether the request to cease affiliation was democratically decided by affording the members the right to decide the issue to enable those who were opposed to do so.

Our own in depth analysis and study of all the evidence on record coupled with the exhibits and the judgments of the trial and the appellate Courts, is that, what happened in the Calvary Charismatic Centre was that, the Defendants used their position in the Calvary Charismatic Centre CCC at the material time, hijacked the Calvary Charismatic Centre, declared their cessation agenda in order to satisfy their own spiritual and material advantages.

From the scenario that had been given in the record of appeal, it is clear that, division and cessation can be used interchangeably since they meant one and the same thing.

So far as we are concerned, the findings of the learned trial Judge on this issue and concurred in by the Court of appeal are sound both on the facts and the law and we find no reason to disturb them.

As a matter of fact, we hasten to add that, a party against whom two concurring findings of fact have been made by first, the trial Court, and an appellate Court, must be slow to bring appeal to a second appellate Court such as this Supreme Court.

In such an instance, there must be really cogent, strong legal grounds of appeal that must be filed and argued to convince the second appellate Court to reverse the findings of fact. If however as in the instant case, the only serious ground of appeal urged and argued is the omnibus ground of

"Judgment being against the weight of evidence"

then it means the odds are stacked against the appellant. Under these circumstances the second appellate Court must be very slow in interfering with the findings of fact made by the trial Court and concurred in by the appellate Court unless strong grounds exist for departing from those findings. See cases of

a. Achoro vrs Akanfela [1996-97] SCGLR 209, HOLDING 2

b. Thomas vrs Thomas [1947] AER 582

c. Clarke vrs Edinburgh Tramways and District Tramways Co.1919 S.C.H.L. 35, 56 SC. LR. 86L

d. Powell vrs Streatham Manor Home [1935] A.C. 243 at 250

e. Akuffo-Addo vrs Cathline [1992] 1 GLR 377 per Osei-Hwere

The position can thus be stated that where findings of fact made by the trial Court and concurred in by the first appellate Court, the second appellate Court must be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence on record which are manifestly clear that the findings of the trial Court and the first appellate Court are perverse.

It is only in such cases that the findings of fact can be altered thereby disregarding the advantages enjoyed by the trial Court in assessing the credibility and demeanour of witnesses.

In the instant appeal, we find no such compelling reason to disturb the findings of fact so ably formed by the trial Court and concurred in by the Appeal Court.

On the whole, we endorse the finding that what happened in the CCC was a division and that in the context of this case cessation and division mean the same thing.

3. THIS THEN BRINGS US TO THE RESOLUTION OF THE LAST ISSUE IN THIS APPEAL

This is the issue of **CAPACITY** and whether it was proper for the Court of Appeal to have amended the capacity of the plaintiff's in order to clothe them with capacity to maintain the action.

We find as a fact that, the plaintiffs commenced this action as follows:-

> ASSEMBLIES OF GOD, CHURCH, GHANA PER THE EXECUTIVE PRESBYTERY, HEADQUARTERS BUILDING H/NO C. 500/J AVENOR, ACCRA

We also find that this title is not different from the address that the defendants used in their letter exhibit BB to the plaintiffs. This meant that, the defendants themselves were dealing with an Executive Presbytery of the Assemblies of God Church, Ghana.

However, as was rightly stated by the Court of Appeal, reference page 206 of volume 2 of the record of appeal, at the material time, the relevant law under which religious organizations such as the plaintiff's could be registered was the Religious Bodies (Registration Law 1989 PNDC L 221).

The Court of Appeal referred to Sections 3 and 7 (3) of PNDC L 221 which provides as follows:-

> ***Section (3)*** *" Every religious body in Ghana shall be registered under this law, and no religious body in existence in Ghana shall after three months from the commencement of this law operate as such a body unless it is registered under this law.*
>
> ***Section 7 (3)*** *"All assets and properties of a registered religious body shall vest in the Trustees or its governing body who shall hold the same in trust for and on behalf of the members"*

Before PNDCL 221 was enacted, there was in existence the Trustees Incorporation Act, 1972 Act 106. It does appear from the records that the plaintiff church registered first it Trustees under Act 106 on 4th November, 1966 and under PNDC L 221 on 25th May, 1990.

By virtue of section 4 of Act 106, it was the Trustees of the religious body registered under the statute that were vested with power to sue and be sued in the corporate name of the said trustees. However, Section 9 (2) of PNDC L 221

vested the power of registration of a religious body to sue and be sued in the corporate name of the body.

By ordinary rules of interpretation the combined effect of Sections 3 and 21 of PNDC L 221 is that they repealed the relevant provisions of Act 106 on registration.

In this Court, we take the view that since the Courts exist to do substantial justice, it will be manifestly unjust to non-suit the plaintiffs because they added "Executive Presbytery" to their names on the writ of summons. Courts must strive to prevent and avoid ambush litigation, by resorting and looking more at the substance than at the form.

On the facts once the plaintiff church had been registered as a corporate entity under the Religious Bodies (Registration) Law 1989 PNDC L 221, the plaintiffs cannot be denied the capacity which they already have.

We agree that there are plethora of legal authorities to support an amendment of a capacity of a party on appeal in order to do substantial justice in the case. See cases like:

i. Ghana Ports and Harbours Authority vrs Issoufou [1993-94] 1 GLR 24 S.C

Where the Supreme Court held that:-

> *"…the Court had a duty to ensure that justice was done in cases before them and should not let the duty be circumvented by mere technicalities. Since the power to make amendments to the capacities of a party rested in the inherent jurisdiction of the Courts, the Courts could, when the issue was raised either in the trial Court anytime after judgment was delivered or in the appellate Court on the application of a party to the suit, orally or otherwise, grant such amendments as were necessary to meet the justice of the case".*

In the circumstances of this case, we are of the considered opinion that the Court of Appeal was right in amending the capacity of the plaintiff's in order to do substantial justice, avoid mere and fanciful technicalities and bring out the real issues in controversy for resolution. The amendment by the Court of Appeal

of the capacity of the plaintiffs was in order, and that ground of appeal is equally dismissed.

ii. ***Hanna Assi (No.2) vrs GIHOC Refrigeration and Household Products Ltd (No.2) [2007-2008] SCGLR*** where it was held as per Prof. Ocran JSC on page 34 as follows:

> *"The majority in the ordinary panel had assigned a sacrosanct quality to pleadings that cannot be justified either in procedural law or in policy terms. As recently as 28 February 2007, in the counterpart application to this review application – the earlier one brought by the respondent in suit No CM J7/1/2007, namely,* ***Gihoc Refrigeration & Household Product Ltd. (No 1) v Hanna Assi (No 1) [2007-2008] SCGLR 1*** *– this same review panel decided (per Atuguba JSC) that pleadings, as initially filed in a case, could not be said to be watertight throughout the proceedings so as to render impossible any additions or amendments through evidence adduced in Court or the agreement of the parties to consider other issues.* ***Moreover, since an appeal was in the nature of a re-hearing, a party, and indeed, the court itself, could throw in a fresh issue or fresh matter of evidence for consideration. As long as there is the opportunity for full argumentation by the parties, the potential natural justice problem of surprise did not arise.***

There is therefore ample legal support for the amendment of the capacity of the Plaintiffs. That ground of appeal is also dismissed.

VARIATION OF JUDGMENT BY COURT OF APPEAL

We have already stated that the decision to vary the judgment upon an application is one that is covered under rule 15 of the Court of Appeal Rules, 1997 C.1.19.

Besides, we also take cognisance of an equitable maxim which states that:

"He who comes to equity must come with clean hands"

However, the circumstances under which the 1st defendants purported to change the registration documents in respect of plot No 12, Atimpongya upon which the building known as Calvary Charismatic Centre building complex has been sited

from Calvary Charismatic Centre into Calvary Charismatic Ministry which was not in existence at the time the land was purchased in 1990 smacks of fraud. The attempt by the 1st defendant to change the purchase date from 1990, when there was no division, to 1992 smells of fraud. In view of the above it will be manifestly unjust to allow the defendants to enrich themselves by their own fraud.

Besides, under Section 7 (3) of PNDC L 221 the operating law at the time, all assets and properties of a registered religious body shall vest in the Trustee or its governing body who shall hold the same in trust for and on behalf of the members."

Apart from the above law, the church's own constitution which we have referred to supra states that, in case of division within the membership of the church, all church property shall remain for the General Council of the Assemblies of God, Ghana.

It is in view of the above reasons that we endorse the variation of the judgment as was ordered to be effected by the Court of Appeal.

This way, there will be finality of judgment and of all issues in controversy will be seen to have been dealt with.

CONCLUSION

In the premises the appeal filed herein against the majority judgment of the Court of Appeal dated 22nd April, 2005 is accordingly dismissed.

Instead the judgment of the trial High Court dated 11th December, 2001 as was varied per the majority judgment of the Court of Appeal per Lartey JSC presiding and Tweneboa Kodua JA dated 22nd April 2005 is upheld in its entirety. The appeal fails and is accordingly dismissed

J.V.M. DOTSE
JUSTICE OF THE SUPREME COURT

DR. S.K DATE-BAH
JUSTICE OF THE SUPREME COURT

S.O.A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

R. C. OWUSU (MS)
JUSTICE OF THE SUPREME COURT

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