



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 156 OF 1988

BETWEEN:

J.W.C. M'BAMA -----PLAINTIFF

- and -

THE REGISTERED TRUSTEES OF THE ..... DEFENDANT  
AFRICAN INTERNATIONAL CHURCH

CORAM:

BANDA, J.

Chirwa of Counsel for the Plaintiff

Msiska of Counsel for the Defendant

Nyirenda, Court Interpreter

Gausi (Mrs), Court Reporter

J U D G M E N T

This is an action in which the plaintiff is claiming to recover possession of a church building situated at Sanjiro in Chirumba area of Karonga District or a sum of K6,000 being the alleged sum spent by the plaintiff in the construction of the said church building. The plaintiff further claims damages for loss of use and occupation until possession is delivered up.

It is alleged that by permission and licence of the plaintiff which was given orally in or about 1981 the defendants and the members of the African International Church used and occupied the premises of the plaintiff consisting of a yard and a church building situated at Sanjiro. It is further alleged that it was an implied term of the said licence that the defendants would surrender the use and occupation of the said yard and church building if the plaintiff who was at the material time a member of the African International Church, ceased to be such a member. The plaintiff became a member of the African Church some time in 1984. The plaintiff also alleges that by reason of the foregoing matters the said licence was duly determined at the time the plaintiff ceased to be a member of the African International Church. The plaintiff further contends that the defendants have wrongfully failed to deliver the said premises to him and that they are still wrongfully in possession.

The defendants deny that the church at Sanjiro belongs to the plaintiff and have contended that the said church has always



been the property of the defendants and that the plaintiff has no legitimate claim to it. It is not disputed that from about 1976 the plaintiff was a member of the African International Church and that in 1984 he ceased to be a member.

The plaintiff's evidence is that he decided to build a church in which he and his family would pray; that he used his own money in building the church; that he employed labourers who made and burnt bricks and that he paid them. It is his evidence that the money he used in building the church came from his own shop which is at Uliwa Trading Centre. He stated that he spent K1400 on making burnt bricks. He contended that the African International Church did not contribute a single penny towards the cost of constructing the church building. He stated that he used bricks, planks, cement, nails and other building materials in constructing the church. He roofed it with ironsheets which he bought from Messrs Chipiku Stores and from Messrs H.H. Wholesalers. The plaintiff produced cheques and invoices to support his contention that he used his money in paying for the materials which were used in building the church.

Exhibits 1 to 6 are paid up cheques. Exhibits 1,2,3,4 are payable to Messrs Chipiku Stores in various amounts ranging between K200 and K500. The total amounts on these four cheques is K1286.02. Exhibits 5 and 6 are cheques payable to Messrs H.H. Wholesalers. The total amount on the invoice from H.H. Wholesalers is K1471.00. Exhibits 8 and 9 are cash sale invoices made out to the plaintiff by Import & Export Co. of Malawi (Chipiku Stores). It should be noted that all the cheques exhibited in this case do not have any supporting invoices or cash sale. The two cheques, exhibits 5 and 6 do not apparently relate to the H.H. Wholesalers invoice which is Exhibit 7 as the amount on the invoice is K1471 whereas the total amount on the two cheques to H.H. Wholesalers only come to K800. Similarly the invoices from Chipiku Stores which are Exhibit 8 and 9 have no connection to the 4 cheques made out to Chipiku Stores. It is therefore difficult to discover what materials were purchased on the cheques exhibited in this court. It is also interesting to note that Exhibits 8 and 9 have alterations and it would appear the alterations were not clever ones. On Exhibit 8, for example, it is clear that the number of iron sheets measuring 8ft each were 9 and if the two figures are multiplied by each other the answer is 72. This should have been the figure which should have been shown on the column for quantity but the figure which appears on quantity is 172. Similarly the total value is also changed. The unit price is shown as 84t. If 84t is multiplied by 72 the total should come to K60.48 and yet as a result of the alterations the total amount shown is K144.48. That amount does not agree with the number of sheets which appeared to have been bought on that invoice. Similarly, on exhibit 9 the alterations again were not clever ones. It is shown that the number of sheets bought were 2 measuring 7ft each. Now the total should have been 14ft and at unit price of 69t the total sum should have been K9.66. But as a result of the changes to the quantities instead of 14ft that is now shown as 114ft, and the total cost



comes to K78.66. However the original sub-total of K9.66 was not changed and it is still showing. No evidence was of course led to explain the alterations and contradictions which are apparent on the face of these two invoices. The onus was on the plaintiff to explain these alterations and contradictions. It should be noted that none of the alterations were signed for. The defendants stated that the plaintiff, because of his business experience, had been appointed Treasurer of the Church Building Project and that the money which was subscribed by members of the Church was given to the plaintiff as Treasurer. It was the evidence of the defendants that the money which was used in the construction of the Church at Sanjiro came from the contributions and subscriptions which were made by members of the church and that the bricks were made on voluntary basis by members of the Church.

Both Counsel have agreed that the one major issue in this case revolves around the issue of who built the church at Sanjiro and for whom was it intended. Mr. Chirwa for the plaintiff submitted that the issue is whose property was it and that in resolving that issue it is important to determine whose money was used in building the church. Mr. Chirwa has contended that if the court finds that the church was built with the plaintiff's money then the church is the property of the plaintiff. Mr. Chirwa has urged the court to weigh the stories of the plaintiff and that of the defendants and to assess which story has more truth than the other. He submitted that it is incumbent on the party making an allegation to prove it and that since both plaintiff and the defendants have made allegations as to ownership of the church it is incumbent on either party to prove their respective allegations.

Mr. Chirwa contended that there is no evidence adduced by the defendants to show the basis of their claim that the plaintiff built the church as a gift for them and that there is no pleading to that effect. Mr. Chirwa submitted that the plaintiff has tried to show to the court that he built this particular church with his own money and that the evidence is clear and that it shows that all materials for the church were purchased or acquired by the plaintiff. He contended that the evidence showed that the builders and the carpenters and others involved in the construction of the church were paid by the plaintiff.

Mr. Msiska has contended that there is no evidence that the materials purchased by the plaintiff were for Sanjiro Church. Indeed on the evidence before me the only exhibit which would tend to show that some materials were bought for Sanjiro Church are Exhibits 8 and 9 and as I have already stated earlier in this judgment those two invoices have alterations on them and the arithmetic does not agree with the amount of sheets allegedly bought on them. As I have already said Exhibit 8 shows that the quantity of sheets are 9 measuring 8ft each and the unit price is 84t per foot and the correct price for 9 iron sheets would have been K60.48. Similarly Exhibit 9 for the quantity of sheets



bought measuring 7ft each would have been K9.66. It was Mr. Msiska's submission that the exhibits before the court which have been produced by the plaintiff have no evidential value to support the plaintiff's claim.

Suppose the plaintiff's contention is true that he decided to build a church at Sanjiro, and that he was doing so for the congregation of African International Church. Would the church building cease to belong to the African International Church on the cession of the plaintiff's membership of the church?

The plaintiff's pleadings allege that there was a permission and licence given orally in 1981 that the defendants should use the church at Sanjiro. No evidence was given to that effect during the trial.

I have carefully reviewed the evidence given during the trial and I have carefully considered the issues raised in this case. The onus is on the plaintiff to discharge and to substantiate his allegations on a balance of probabilities. The evidence which has been produced to support the plaintiff's contention that he used his own money in buying materials for the church building has not, in my judgment, been substantiated. All the six cheques that have been produced in support of that contention do not show that these cheques were used in purchasing materials for the church at Sanjiro. There are no supporting invoices or cash sales to show what was bought on each respective cheque. Indeed, there has been some suggestion and this suggestion has not been disputed, that the plaintiff was, at the same time as the church building was being constructed, engaged in building his own house on which he used burnt bricks, cement and iron sheets. It is also interesting to note that there is some contradictions in the plaintiff's own evidence when the church started and when it finished. At one stage he stated that the church building was started in 1971 and that it was finished in 1978 and then at another occasion during his evidence he stated that the church building was completed in 1981. It is interesting to see, therefore, that if the church building was completed in 1978, three of the cheques are dated between 28th September, 1979, and 24th October, 1979. If the church building was completed in 1978 these three cheques could not have been used in purchasing materials for it.

I am satisfied that the cheques on their own do not, in my judgment, prove that they were used to purchase materials to be used for the construction of the church building. No weight can be attached to the two invoices exhibits 7 and 8 on which there are very clear alterations which have not been explained and have not been signed for. I am satisfied, having looked at all the totality of the evidence in this case and considering the issues raised that the church building at Sanjiro belongs to the African International Church and does not belong to any individual member. In my judgment, even if it is accepted that the plaintiff used his own money in building the church it does not stop belonging to the African International Church, after the cession of the plaintiff's membership of the church. I find it

difficult to accept the plaintiff's contention that he set out to build a church for himself and his family. The evidence was that originally the African International Church was sited at one place and that when it was discovered that a new road would pass through the site, a new site was sought from Village Headman Khuruwa Harawa and a new church building was built on the new place. I am satisfied therefore that the plaintiff has failed to substantiate his claim that the church building at Sanjiro is his own property and I would dismiss his claim with costs.

PRONOUNCED in open Court this 23rd day of October, 1991, at Blantyre.

A handwritten signature in blue ink, appearing to read 'R. A. Banda', is written over a faint, circular official stamp.

R. A. Banda  
JUDGE