



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 491 of 2009

**REV PROFESSOR ZABLON JOHN NTHAMBURIPLAINTIFF
VERSUS**

REV. DR. S K M'IMPWI1st DEFENDANT
REV. ISAYA DEYE SAMSON.....2nd DEFENDANT
MR. GITONGA MURIUKI.....3RD DEFENDANT
REV. DR. JESSE KAMAU.....4TH DEFENDANT
MR. TITUS KIREA IBUI.....5TH DEFENDANT
DR. MRS. GLADYS MWITI.....6TH DEFENDANT
MRS. HELLEN MUNG'ATHIA.....7TH DEFENDANT
DR. SHEILA RYANGA.....8TH DEFENDANT
DR. RICHARD BAGINE KIOME.....9TH DEFENDANT
MR. REUBEN MARAMBII.....10TH DEFENDANT

RULING

The plaintiff filed an Originating Summons dated 16th September, 2009 under the provisions of several Laws and Rules, namely, Universities Act (Cap 210 B), Universities (establishment of Universities) (standardization, accreditation and supervision) Rules 1989, (Legal Notice No. 56 of 1989 under the aforesaid Act, Charter for Kenya Methodist University (Legal Notice No. 130 of 2006) also under the said Act, Trustees (perpetual succession) Act (Cap 164), Registration of Documents' Act (Cap 285), Sec. 3A of the Civil Procedure Act and order 36 Rule 5 and Order 39 Rules 2, 3, & 7 of the Civil Procedure Rules. The Reference was also made to the Trust Deed for Establishment of the Kenya Methodist University and certificate of incorporation of the Kenya Methodist University Board Registered Trustees.

The Originating Summons has 10 defendants and it has raised many questions for determination set forth on the face of the Originating Summons and seeks the prayers for several declarations. The Originating summons is supported by the supporting affidavit sworn on 16th September, 2009 by the plaintiff, Prof. Zablon Nthamburi.

Along with the Originating Summons, the plaintiff has filed a Chamber Summons under order 39 of Civil Procedure Rules seeking interim orders namely:

2. *THAT pending the hearing of this application inter-parties the Defendants are restrained jointly and severally from convening as a Board of Trustees of the Kenya Methodist University of Friday, 18th September, 2009 at 2.00 pm at the Methodist Ministries Centre in Nairobi or at any other place to conduct the business of the Kenya Methodist University Board Registered Trustees or any other business concerning or connected with the Kenya Methodist University.*
3. *THAT upon hearing the parties inter-parties and pending the hearing and determination of the Plaintiff's suit an order of injunction is (sic) issued to restrain the Defendants jointly and severally from attending the meeting convened by the 1st Defendant under a notice dated*

8th September 2009 calling for a meeting of the Kenya Methodist University Board of Trustees whether such meeting be held on Friday, 18th September 2009 at 2.00 pm at the Methodist Ministries Centre or on any other date or time or place to conduct the business of the Kenya Methodist University Board Registered Trustees or any other business concerning or connected with the Kenya Methodist University.

The application is supported on the ground set forth on the face thereof and on the supporting affidavit sworn on 16th September, 2009.

The plaintiff thereafter under directions of the court and on his own motion filed further affidavits as follows:

- (1) *Further supporting affidavit sworn by Mr. S. M. Mwenesi (the Advocate for the Plaintiff) on 17th September, 2009.*
- (2) *Further supporting affidavit to the Originating Summons sworn by the aforesaid Advocate on 17th September, 2009.*
- (3) *Further supporting affidavit sworn by the Plaintiff on 24th September, 2009.*
- (4) *Further supporting affidavit sworn by the plaintiff (with leave of the court) on 14th November, 2009.*
- (5) *Further supporting affidavit sworn by the plaintiff on 30th November, 2009 (pursuant to the leave of the court of 16th November 2009).*
- (6) *Supplementary further affidavit sworn by the plaintiff on 17th December, 2009 (after the scope of order of leave to file further affidavit made on 16th November, 2009 was explained).*

The Respondents filed the following affidavits:-

- (1) *Replying affidavit sworn by the 1st Defendant (with authority of 2nd to 10th Defendants) on 17th September, 2009.*
- (2) *Affidavit sworn by G. K. Kuria (the Respondent's counsel) on 28th September, 2009.*
- (3) *Affidavit of 1st Defendant sworn on 29th September, 2009.*
- (4) *Further affidavit sworn by the 1st Defendant on 5th November, 2009.*
- (5) *Further affidavit sworn by the 1st Defendant on 16th November, 2009.*

The Respondents also filed Notice of Preliminary Objections dated 25th September, 2009.

These are the pleadings before the court in the present suit. The counsel also filed written submissions at various points and thus the Originating Summons has turned out to be a very voluminous record. Because of filing of Notice of Preliminary Objections mentioned hereinbefore, the hearing commenced with hearing of submissions thereon.

The submissions made on the Preliminary Objection was by consent placed in abeyance till the issue of interpretation of the terms of Trust Deed for establishment of Kenya Methodist University dated 11th April, 1991 was heard as a primary issue on priority so that the question as to who is the sponsor referred in the Trust Deed in question, could be determined.

I shall thus start to determine the said issue of interpretation as a primary one.

It is not in dispute that since 1989, the plaintiff has been associated with the Kenya Methodist University when it was proposed to be established.

While submitting on the said question, both parties made submissions on broader issues than the one agreed upon and details of various documents produced were relied upon. In respect of the decision of the annual conference whereby the plaintiff was removed and hence challenged, serious submissions were made. These submissions were made at the hearing of the application seeking interim reliefs. Pursuant to this scenario, the court on 23rd October, 2009 permitted either party to file further affidavits to show the

documents and background as to appointment of the Plaintiff as a trustee of Kenya Methodist University which is the basis for filing the Originating Summons. The same were filed and further submissions were made.

The above is the background of pleadings and submissions proffered before the court.

Submissions:

Mr. Mwenesi, the learned counsel for the plaintiff, submitted that this Originating Summons is competent and properly filed under Order 36 Rule 5 of the Civil Procedure Rules.

The said sub-rule stipulates:-

“5. Any person claiming to be interested under a deed, will or other written instrument may apply in Chambers by Originating Summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the person interested.”

He contended that the plaintiff seeks the interpretation of the Trust Deed and the declarations of his rights as a Trustee appointed under the trust Deed in question.

Commenting on provisions of Trustees (perpetual Succession) Act (Cap 164), (hereinafter referred to as ‘Trustees Act’), he simply stated that the said Act came into force on 31st May, 1923, while the Civil Procedure Act came into force on 31st January, 1924, and the latter Act being the later Act of Parliament in time, the same should be followed. Yet I note that the principles of interpretation that the specific provision overrides the general has not been considered. However, he conceded that there are several provisions of law allowing the filing of the process by petition like Matrimonial Causes Act (Cap 152), National Assembly and Presidential Elections Act (Cap 7) and the Constitution.

The court herein, shall not dwell presently with the issue of competence of filing the Originating Summons under Order 36 Rule 5 of the Civil Procedure Rules instead of by way of filing the petition under Sec. 14 of the Trustees Act, as it was further agreed that the court shall determine the issue of the interpretation of Trust Deed dated 11th April, 1991 in view of the rival contentions on the removal of the Plaintiff as a trustee from Kenya Methodist University Board of Trustees.

The defendants moreover contend that they are the ones entitled to serve as the Board of trustees within the meaning of Charter of the Kenya Methodist University and discharge the functions set out in article 12 of the charter.

With the aforesaid consent order, I do tend to agree the scope of the Originating Summons as a petition or suit so that the issue of interpretation can be determined by considering all relevant provisions of laws and documents.

Both counsel has submitted with approval the following passage (1460) from Halsbury’s Laws of England, 4th Edition, Vol. 12 – relating to construction of deeds, namely:-

“The intention must be gathered from the written instrument read in the light of such extrinsic evidence as is admissible for the purpose of construction. The function of the court is to ascertain what parties meant by the words which they have used to declare the meaning of what is written in the instrument not of what was intended to have been written, to give effect to the intention as expressed, the expressed intention being for the purpose of interpretation equivalent to the intention. Various implications and presumptions will also be made where it is necessary or settled by law or usage.”

I may also quote the following abstract from paragraph 1459 of the Halsbury:-

“The object of all interpretation of a written instrument is to discover the real intention of the author, the written declaration of whose mind it is always considered to be. Consequently, the construction must be as near to minds and apparent intention of the parties as is possible and as the law will permit.”

The Deed to be interpreted as per principles of law enunciated herein above as well as per the general

principles of interpretation, is the Trust Deed dated 11th April, 1991 (Annexure 'ZJN-4' of supporting affidavit – pages 29 – 39)

The same was drawn by M/s Oraro & Rachier Advocates and executed between the Methodist Church in Kenya Trustees Registered, a body corporate under the Trustee Act (referred to as 'the Sponsor') and 10 individuals named therein (including the plaintiff) referred to as "the Trustees".

The preamble of the said Deed states, and I quote:

"Whereas the sponsor is established for religious educational and charitable purpose and is desirous of providing for the establishment of a Methodist University in Meru District of the Republic of Kenya to be known as The Kenya Methodist University (hereinafter called "The University") and with that object has appointed the trustees and placed at their use the properties specified in the schedule hereto and trustees have consented to act as trustees of this deed."

The Deed also provided that the Trustees shall collectively be known as The Kenya Methodist University Board of Trustees.

Mr. Mwenesi relied upon clause 6, 7 and 8 of the Trust Deed which stipulates:-

"6. There shall be a Chairman of the Board of Trustees who shall be appointed by the conference of the Methodist Church of Kenya.

7. The Trustee may elect a Vice-Chairman for their meetings and determine the period for which he is to hold office.

8. The Conference of the Methodist Church in Kenya shall appoint a member thereof with executive power as a full member of the Board of Trustees and such appointee shall, subject to these presents, be removeable by the conference.

The above clauses are relied upon to show that the conference of the Methodist Church in Kenya can only appoint the Chairman of Board of Trustees and a member with executive power as a full member of the Board of Trustees.

The powers to construct and manage the university are vested in the Trustees. (clause 10 to 16). Lastly, clauses 19 and 21 of the Trust Deed are relied upon. They stipulate:-

"19. The power of appointing a new trustee or new trustees of this deed shall be vested in the sponsor and any trustee as aforesaid may be appointed by resolution of a meeting of the sponsor and whenever a trustee is so appointed a memorandum of his appointment shall be prepared and signed by the person presiding at such meeting and attested by two other persons present thereat.

21. The office of a member of the Board of Trustees shall become vacant –

(a) if, not being an ex-officio member, he resigns his office by writing under his hand addressed to the Chairman of the Board giving two months' notice of his intention so to do;

(b) if, the Board of Trustees is satisfied that the member is, by reason of physical or mental infirmity, unable to exercise the functions of his office.

(c) upon his death.

Clause 2 of the Trust Deed stipulates:-

"Subject to the stipulation made in clause 21, a member of Board of Trustees shall hold his post for five years and is eligible for re-appointment."

As regards the provisions of clause 19 of the Trust Deed, it was urged that there was no vacancy as provided in clause 18 in the membership of Trustees and clause 19 specified the power of appointment by

the sponsor and not the conference, as is the case in the present case.

The court was urged to note that the Trust Deed of 1991 was intended to establish a University and thus the deed ought to have conformed to *'The Universities (establishment of Universities) (Standardization, Accreditation and Supervision) Rules 1989* which was being promulgated earlier in time to the execution of the Trust Deed. It is also to be noted that the *Universities Act (Cap 210B)* under which the aforesaid Rules are legislated came into effect on 18th August, 1985, prior to the said Trust Deed.

Part III of the aforesaid Rules makes provisions for establishment of New Universities. He further contended that Rule 64 of the Rules, provides that any person intending to establish the University shall be or is a sponsor of a University or a corporate body having one of its objects, the provisions of university education, is eligible to apply for authority to establish a university.

With the above provisions it was stressed that a 'sponsor' has to be a 'person' either natural or corporate. Mr. Mwenesi referred to the Charter for Kenya Methodist University and contended that the Board of Trustees prepared the same, as per clause 13 of the Trust Deed.

I have perused the said Charter (pages 99 to 129 supporting affidavit) and do note that the said Charter has been given by the President Mwai Kibaki on 28th June 2006 and also signed by the then Minister of Education Hon. Noah Wekesa.

The first clause of the preamble of the Charter states:-

"Whereas the Methodist Church in Kenya, the sponsor of Kenya Methodist University situated in the Republic of Kenya, wishes to establish an institution in the name of Kenya Methodist University." Emphasis mine.

I further note that Clause 29 of the Charter provides that the provisions of Charter shall be valid and effectual in law according to its true intent and meaning and shall be construed, subject to the provisions of the Act (which is the Universities Act (Cap 210B)), in the best interest of the University and promotion of its objectives.

The Charter also provides for establishment of Council and Senate to govern the affairs of the University (Clauses 13 and 14 thereof).

Coming back to submissions by Mr. Mwenesi, he emphasized that the University 'Council' was established by Board of Trustees which is defined in the Charter, to wit:-

"'Board of Trustees' means the Kenya Methodist University Board established under the Deed registered on 11th April 1991"

The Trust Deed stipulates that the trustees shall be collectively known as the Kenya Methodist University Board of Trustees.

That would mean that the Board of Trustees referred to in Trust Deed and Charter are the same.

He emphasized that the sponsor which is a body corporate as shown in Trust Deed has not met or made any report and has not invoked to take action as per clause 19 of the Trust Deed.

I may pause here and refer to the documents produced by the plaintiff which is the report of 44th Special Senate held at the Main Campus in Meru at 2.00 pm on 19th August, 2009 (Annexure ZJN 11). It mentions Methodist Church in Kenya as sponsor and development of soured relation between

University (through the chancellor) and the said sponsor was noted therein.

It gave recommendation to the council as mentioned on page 170 of the Supporting affidavit and other meeting of council addressing several issues affecting the University and relevant correspondence. (Pages 174 to 182).

Mr. Mwenesi also relied on letter dated 19th June, 2009 to the Vice-Chancellor of the University from Commission for Higher Education. The letter, amongst other issues, raised the concerns relating to election of unauthorized offices and structure, establishment of unapproved centres, launching of unapproved programmes etc and gave six months to prepare its own report (page 183 – 184 of the Supporting affidavit). A letter dated 18th September, 2009 addressed to the 1st defendant by the Secretary, Commission for High Education was also relied upon (Ann ZJN 18). I do note however that the said letter is written after the Originating Summons was filed and the source thereof or circumstances under which it was addressed are not divulged. I further note that the said letter is not copied to the plaintiff although he has produced it!!!

Mr. Mwenesi also stressed that none of the reports placed before the court has concluded or recommended the reconstruction and/or dissolution of trustees and that the conference took extraneous matters into consideration in arriving at its resolution and thus it is improper and against principles of justice and fairness.

The letter of 4th September, 2009 removing the plaintiff as a trustee, it was contended, is thus ultra vires and that the court cannot go beyond the Trust Deed, the Charter and the laws applicable.

At this juncture I do observe that the said letter is addressed to the plaintiff and signed by the 1st defendant as the Chairman of Board of Trustees Kenya Methodist University. It mentions further that *“the sponsor has taken appropriate action as specified in Charter and the Trust Deed and appointed a Team of New Trustees.”*

Dr. Kuria, the learned counsel for the Respondents supported the contents of the said letter by specifying the reasons of replacement of some trustees. He stressed that from the documents produced before the court, it comes out clear that The Methodist Church of Kenya’s corporate name is Methodist Church in Kenya Trustees Registered.

The plaintiff was removed from the University because his actions were against the provisions of the Universities Act and the University risked facing sanction from the Commission for Higher Education as a result of his action. The Report of the Commission is specified hereinbefore. Further reasons for such removal are specified at pages 129 – 132 of the Replying affidavit sworn by the 1st defendant.

In further supporting the action, it was urged that the decision in question was an unanimous one and Resolution 7/09 of the 44th session of Annual conference of the Methodist Church in Kenya (sponsor) on KEMU, clearly states inter alia that as per clause 2 of the Trust Deed and in response to the report of the Commission of Higher Education dated 17th June, 2009 and 19th June, 2009 and in order to strengthen the Board to execute its mandate, the 44th Annual Conference of The Methodist Church in Kenya invoked clause 19 of the Trust Deed and appointed ten members of Board of Trustees.

It was conceded that the plaintiff was one of the trustees appointed on 15th April, 1991 when the Trust Deed establishing the Kenya Methodist University was executed and he was also the Deputy Vice Chancellor of the University as well as a member of its council and senate. The members of the council are appointed by the Board of Trustees who exercise the executive power of the University. The learned counsel used analogy of cabinet and Parliamentary system of governance, for governance of the affairs of the University.

It is also common ground that the trustees under the Trust Deed then applied for certificate of incorporation as a Corporate Body under the name of ‘Kenya Methodist University – Board of Registered

Trustees” under Trustees Act and was issued the certificate on 5th August, 1992. The plaintiff was shown therein as one of the Trustees who were appointed by Methodist Church in Kenya Trustees Registered.

The certificate also mentions that the appointment of every new trustee was to be certified to the Minister in question.

Attention of the court was drawn to Sec. 6 of the Trustees Act (Cap 164) which stipulates that the vacancies in the number of trustees shall from time to time be filled in as required by the Constitution of the Trust concerned or by any condition or directions inserted by the Minister in the certificate, and to the fact that the Minister has not specified any condition and thus it is contended that the vacancy can be filled in as per the Constitution of the Trust – which is the Trust Deed of 11th April 1991, and it also does not spell out the procedure of removal or appointment of Trustees.

In the circumstances, it was stressed that the original certificate of incorporation issued to the Methodist Church Missions Kenya Trustees Registered on 1st July, 1930 and Constitution of the Methodist Church in Kenya, should be looked at or relied upon while interpreting the Trust Deed.

The said certificate of Methodist Church in Kenya Trustees Registered (Ann – SKI 2 to the Replying affidavit of the 1st Defendant) specifies the procedure of the appointment of new trustees and substitution thereof by stipulating:-

“In the event of necessity arising for the appointment of a new trustee or new trustees in addition to the said trustees or in substitution of all or any of the trustees now appointed or any subsequent trustees, such appointment shall be made at the Annual Conference of the United Methodist Church as evidenced by a resolution of the said conference authenticated by the signature of the President for the time being. Every change of trustees shall be certified to me in writing for endorsement on the back of this certificate.”

The name of the Registered entity in the said document was changed to read Methodist Church in Kenya by direction of Minister of Land and Settlement on 20th September, 1967 (page 13 of the replying affidavit of the 1st defendant).

The replying affidavit also incorporates Standing Orders of the Methodist Church in Kenya (pages 20 to 128 of the replying affidavits).
Sec. 2 of the Trustees Act (Cap 164) stipulates:-

“In this Act, unless the context otherwise requires constitution means the rules, regulations, terms and documents relating to the object of the trust and regulating the affairs thereof and appointment of trustees and other officers thereof.”

Relying on the said provisions, it is urged that all these documents should be taken into consideration while interpreting the Trust Deed of 1991. Special attention was drawn to Standing Order No. 2 (page 22 of the Replying Affidavit) which states:-

“The governing body of the Methodist Church in Kenya is the conference constituted and meeting as provided for in these orders. The conference is the final authority within the Methodist Church for interpretation of the doctrinal standards of the church”

The 1st defendant also stressed that as per statute IV of the Charter, he has power as a Chancellor of the university to determine the cause of action to take on any recommendation that may be made following an inspection and inquiry or a visitation amongst other powers.

It is then contended that in the annual meeting of the Methodist Church in Kenya, known as the Conference held between 10th and 16th August, 2009, the reports of Commission for Higher Education was discussed and it was resolved to replace most of the members of the Board of Trustees and as per the said resolution the Plaintiff, Prof Mutuma Mugambi and other trustees were replaced. The resolution

arrived at was by the members of the Conference as per the Standing Order of the Church. It was submitted that this action is synonymous with the act of removal of a director of a corporate body at the annual general meeting of shareholders. It was stressed that the Trustees are in place of directors of a corporate body and Board of Trustees is similar to Board of Directors.

The Trust Deed, it is submitted be read together with all the documents produced and the relevant Acts namely Trustees Act (Cap 164) and the Universities Act (Cap 210 B).

In respect of clause 19 of Trust Deed, it was submitted that the power to appoint includes power to replace.

The following passages from Halsbury's Laws of England (3rd Edition) vol. 13 at page 32 – 33 were relied upon. The passages are in respect of *Endowments and Property of a religious body*:-

“49. Endowments. So far as the endowments of religious bodies are concerned, in the absence of any special provisions affecting a particular church, the courts will administer the ordinary law relating to charitable trusts, but will, in construing the deeds of trust relating to property owned for the benefit of a church, look at them as part and parcel of the whole machinery by which the particular church is kept together and carried on.

50. Tenure of property. Any religious body recognized by the law is protected in the enjoyment of its endowments, and it is the duty of a court of justice to give intent of the founder of any charity for the benefit of such body, so far as can be done without infringing any known rule of law. Where the instrument of foundation of the charity uses phraseology which leaves that intent in doubt, extrinsic evidence is admissible to prove the existence of a religious body by whom that phraseology is used, the manner in which it is used, and the fact that the founder is or was member of the body. Statutory provisions has been made to facilitate such proof and facilities that have also been provided (a) for conveying or assuring property acquired by, or by trustees in connection with any congregation or society or body of persons (e) associated for religious purposes, so that the conveyance or assurance may vest the estate not only in the parties named therein as trustees, but also in their successors in office for the time being (f). Trustees holding a leasehold interest in premises held upon trust to be used for the purposes of place of worship may acquire the freehold (g).”

It further was emphasized that while removing a trustee *actual misconduct need not be shown.*

Halsbury's Modern Equity (15th Edition) – pages 503 to 504 was relied upon, namely;

“...the court has inherent jurisdiction in actions for the administration of trusts to remove a trustee compulsorily;...

Actual misconduct on the part of a trustee need not be shown, but the court must be satisfied that his continuance in office would be prejudicial to the due performance of the trust and so to the interest of the beneficiaries. The court has a clear ground for removal in cases where a trustee is ignoring one of his duties.”

Clause 19 of the Deed gives power to the sponsor to appoint new trustees and thus the Sponsor by implication is granted power to remove the existing trustees. I do note that in any event, the first certificate of incorporation (certificate of 1930) has given that power explicitly. However, following passage from the case of *Campling Bros & Vandreal Brother & Another vs. United Air Services* 19 EACA, 155 at 158 was relied upon:

“The first thing is to see what the parties have expressed in the contract and then an implied term is not to be added because the court thinks it would have been reasonable to have inserted in the contract. A term can only be implied if it is necessary in the business sense to give efficacy to the contract, that is, if it is such a term that can confidently be said that if at the time the contract was being negotiated someone had to say to the parties, what will

happen in such a case?. They would have both replied, “of course so and so will happen; we did not trouble to say that; it is too clear”. Unless the court comes to some such conclusion as that, it ought not to imply a term which the parties themselves have not expressed”.

To sum it was submitted that the appointment of new trustees and removal of some existing ones was made by the Methodist Church in Kenya whose corporate name is Methodist of Church in Kenya Trustees Registered, and who is a Sponsor of Kenya Methodist Church for promoting the interest of the Methodist Church in Kenya and as per the object and purpose shown in Trust Deed of 11th November, 1991.

It is lastly contended that the rights and obligations of the trustees have to be viewed against the nature of the office of the trustee and it is trite that a trustees in general stands to gain nothing from his work. As per the Trust Deed, the trustees agreed to serve out of feeling of religious duty and as per clause 23 he is not expected to receive any monetary gain for services to be rendered.

It is thus further contended that the Plaintiff herein cannot get redress by equitable remedies by way of injunction or specific performance for his removal as a trustee which was under a deed comparable to a contract of service. The cases of *Eric V. J. Makokha & 4 Others vs. Lawrence Sagini & Others*, Court of Appeal Civil Application No. 920/1994 and *Omondi vs. KCB Ltd* HCCC No. 3520 of 2003 were cited in support of this submission

Conclusion:

Apart from what I have observed hereinbefore, let me put on record that I have considered all the affidavits and submissions placed before the court.

The issue before the court boils down to the question whether the 44th conference of the Church had authority to remove the plaintiff along with other trustees from the Board of Trustees of the Methodist Church in Kenya Trustees Registered and secondly who is the sponsor as per the Trust Deed dated 11th April, 1991.

From the Trust Deed, the corporate body called Methodist church in Kenya Trustees Registered is a sponsor of the Kenya Methodist University. Clause 2 of the Trust Deed gives five years term to the Trustees so appointed. As per the record, the plaintiff was reappointed in 2007 and removed on August 2009 by resolution of 44th Annual meeting of conference of the Methodist Church in Kenya. As indicated hereinbefore the said church is described as the Sponsor in the minutes of the aforesaid meeting as well as other documents. It is also the contention of the Respondents that the Church's corporate name is Methodist Church in Kenya Trustees Registered and all the corporate, executive and religious activities thereof are run by Methodist Church in Kenya.

The said contention supported by the documents referred to hereinbefore and produced by the Respondents has not been controverted by the Plaintiff, and thus prima facie it is shown that the sponsor is the Methodist Church in Kenya with corporate name of Methodist Church in Kenya Trustees Registered.

Both parties rely on the clause No. 19. The plaintiff submits that there was no meeting or a resolution of the corporate body and the Respondents state that annual meeting of the conference is such meeting.

The first certificate of incorporation of 1930 provided for the procedure of appointment and substitution but the Trust Deed in question is silent on the said procedure, though clause 19 gives the sponsor power to appoint trustees and moreover, states that such appointment be made by resolution of a meeting of the sponsor.

Can this power to appoint debar the sponsor from removing a trustee? In my considered view, taking that view as principle of construction shall be against all norms of justice and practical administration of

affairs of a trust. I may also note here the trite principle of interpretation namely, who has a right of hire, shall have a right of fire.

I do tend to agree that construing clauses 2, 19 & 21 of the Trust Deed as contended by the Plaintiff creates an unimaginable situation, where a sponsor shall be held helpless to remove a trustee who could be acting against the welfare, goals and objects of the Sponsor. I shall not be persuaded to accept an interpretation which could create such situation.

I shall also accept that the Trust Deed cannot be interpreted, under the specific circumstances of this case, without the aid of other documents so as to impute the intention of the Sponsor and also trustees as regards management of the Trust at the time of executing the Trust Deed.

I have also observed that prima facie the Church is shown to be a Sponsor in the documents pertaining to the University and as per the first Certificate of Incorporation and also the Standing Orders (Standing Order 2), the conference has powers to appoint and by implication to substitute the trustees. Thus the resolution of removal of the plaintiff as a trustee made in 44th Annual Meeting of Conference was under the powers of the sponsor as prescribed by Constitution of the Church. I have noted the meaning of Constitution as per law, hereinbefore.

Whether the resolution or whether the decision of removal of the plaintiff as a trustee was justified is the issue which has to be determined at the trial of the cause. The other issues raised may be also heard and determined at that trial.

In view of aforesaid finding, and in absence of the plaintiff satisfying the Court that he has satisfied the principles held in Geila's case (*Geila vs. Cassman Brown (1973) EA 388*), I dismiss the Chamber Summons of 6th September, 2009 with costs.

Orders accordingly.

Dated, Signed and delivered at Nairobi this 15th day of February, 2010.

K. H. RAWAL
JUDGE
15.02.2010