

AmLP

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 122/2000

**BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
 THE HON. MR. JUSTICE BINGHAM, J.A.
 THE HON. MR. JUSTICE HARRISON, J.A.**

BETWEEN: PURCELL BROWN DEFENDANT/APPELLANT

**AND: CHURCH OF GOD &
 SAINTS OF CHRIST PLAINTIFF/RESPONDENT**

Bert Samuels for the appellant

Dr. Randolph Williams for the respondent

January 21, 23, 24, and May 28, 2002

DOWNER, JA.

Before Brown J. (ag.) the plaintiff/respondent (the "Church"), sought and obtained an interlocutory injunction which in substance deprived the defendant/appellant, Purcell Brown, of his bishopric and all the perquisites that went with that office. Additionally, it restrained the appellant from trespassing on the land vested in the respondent at 8 and 10 Lockett Avenue, or holding any meeting, or from removing property from the above address during the tenure of the injunction.

The issue of natural justice was of cardinal importance, so it was in the forefront of the appellant's arguments in the Court below and was the sole ground of appeal effectively argued on appeal. A curious feature of the

judgment in the court below was the absence of any analysis of this issue. This was a significant error in the learned judge's approach. He failed to consider the legal effect of the uncontested minutes of the Church which told in favour of the Bishop.

How was Purcell Brown deprived of his bishopric?

The core of Mr. Bert Samuels' submissions on behalf of the appellant was that the removal of Purcell Brown from his bishopric was invalid because the Church failed to adhere to the principles of natural justice. Specifically, the contention was that Brown was denied a fair hearing. This point goes to jurisdiction, and if it is successful then the order below must be set aside as null and void. The effect of this would be that the Bishop still retains his office and was wrongfully deprived of his perquisites. Article 3 section 3 of the Constitution of the Church addresses the emoluments of the Bishop. It reads:

" Sec. 3: Ministers who spend part of their time in the Work shall receive of the Tithes in proportion to the time they put in, and return to the General Fund all over their actual needs. Also the General Secretary in like manner, as well as the Bishops. The support of the Bishops shall be by tithing. All the tithes received into the Store House subject to their disposal. And it came to pass that they which had gathered much had nothing over, and they that had gathered little had no lack. By order of the Bishops the Presbytery Board will meet when necessary."
[Emphasis supplied]

The Bishop has the power to order a meeting of the Board when necessary and the implication is that he is a member and Chairman of that Board by virtue of his office. Be it noted that the amending clause of the

Constitution reads at page 16, "This Constitution can be amended when necessary by the authority of the Bishop and two thirds of the Board of Presbytery."

It should be emphasized that the appellant's contention is that the procedure resorted to, was unlawful. These proceedings are not concerned with the conduct of the Bishop. That is a matter for the appropriate tribunal set up by the Constitution of the Church.

The legal status of the Church is averred in the Statement of Claim as follows:

"1. The plaintiff is a body corporate incorporated by the Church of God and Saints of Christ Incorporation and Vesting Law (Act No. 8 of 1949) and is the registered proprietor of land at 8 and 10 Lockett Avenue, Kingston comprised in Certificate of Title registered at Volume 82 Folio 50 and Volume 1295 Folio 937 of the Register Book of Titles."

Section 4 of the Act is important. It reads:

"4- No deed or document purporting to be executed by the corporation shall be of any force or validity unless it be sealed with the Corporate Seal and signed by not less than three members of the corporation of whom the said Witlve Charles Hamilton, Evangelist at large during his lifetime or his successor for the time being in the Office of Evangelist at large of the West India Islands, Atlantic Ocean, Caribbean Sea, Central America, shall be one."

The evidence which demonstrates how the Bishop was defrocked and excommunicated is contained in the minutes of the Presbytery Board of the

Church, exhibited to the affidavit evidence of Raymond Munroe, the secretary. These minutes are dated October 2, 1997, October 1, 1998, and April 19, 2000.

The powers of the Presbytery Board are set out in section 1 of Article 2 of the Constitution and states:

"Sec. 1: The Board shall be called the Presbytery Board of the Church of God and Saints of Christ and it shall be the duty of the Board during the Assembly Meeting to recommend all Ministers that have been ordained since the last Assembly Meeting, and to adjust all errors, and to empower or discommunicate."

The composition of the Presbytery Board is stated in section 4 of Article

3. It reads:

"Sec. 4: There shall be a Presbytery consisting of Evangelists and ordained Elders and Deacons. The number shall be twelve, and their duty or work shall be to look after the General Business of the District Assembly. We further recommend that the Bishop shall preside over all meetings of the District Assembly, and in his absence the next to him and so on.

(Constitution calls for one Bishop in this District)"

It is to be recalled that section 3 (supra) by necessary implication makes the Bishop, Chairman of the Presbytery Board.

Since the Presbytery Board has certain duties during the Assembly Meeting, it is necessary to see how Article 1 section 1 defines the powers of the District Annual and General Assemblies. It reads thus:

"Sec. 1: The District Annual and General Assemblies shall be composed of Bishops, Elders, Evangelists, Ministers and deacons and all other members of the Church, who can furnish a Credential by Authority from the Church shall be entitled to a

seat in the Assembly and also the Daughters of Jerusalem shall be represented by their Sarahs and the Rachahs of each Tabernacle and the Sabbath Schools by their teachers and secretaries of the Tabernacle."

Then section 2 reads:

"Sec. 2: The Members when thus chosen, when convened, shall be known as the District Annual or General Assemblies of the Church of God and Saints of Christ. The Bishop or Bishops shall preside at this Assembly. The Bible is to be used to settle all questions. All differences to be settled by Matthew 5: 28 and Matthew 18:24. The Bishop and all other officers shall continue to hold their Office as long as they maintain sound doctrine, and keep the 10 Commandments, which will in no way permit them to fulfil the lust of the flesh. They must walk after the Spirit and not be as a Lord over God's heritage, or infringe on any of the Bible Rights of the Churches but shall merely be considered as lights of Advisory or Counsel, according to their position. All members of the Assembly must respect all Bible Truths."

It is clear that the Assembly which is a representative one, by virtue of the Constitution is the Parliament of the Church. There is a provision for minutes of Assembly thus:

"Sec. 7: The District Assembly shall endeavour to furnish a copy of the Minutes of all proceedings from every Assembly Meeting as soon as they are printed."

The primacy of the Bishop is recognized as he presides over the Assembly and the Presbytery Board. The Bishop and the Board also, have a crucial role in amending the Constitution. To reiterate, the amending clause at the end of the Constitution on page 16 reads:

"This Constitution can be amended when necessary by the authority of the Bishop and two-thirds majority of the Board of the Presbytery."

Since amendment is a legislative process any such proposed amendment must be subject to approval of the District Annual and General Assemblies because all the members of the Presbytery Board sit in the Assembly and are responsible to it. The amending clause as worded emphasizes the primacy of the Bishop both at the Board and in the Annual General Assembly.

To emphasise the legislative power and the status of the Bishop, section 5 of Article 1 reads:

"Sec. 5: Wherever a Tabernacle is organized anywhere in this District it shall be subject to whatsoever rules the District Annual or General Assemblies may adopt, or will adopt and the Pastor or Evangelist shall send a copy of the names of the members and officers to the District Secretary of the District, and the Secretary shall inform the Bishop or Bishops of the same."

The minutes of the Assembly recorded by the General Secretary will contain the rules enacted by the Assembly from time to time.

The Minutes of October 2, 1997

As to the above minutes of the Presbytery, Elder Telemaque raised the issue and it was recorded as follows in the minutes:

"ISSUES RAISED BY ELDER TELEMAQUE:

1. Bishop has preached Doctrine that our forefathers did not preach. In particular killing

of the lamb on the 14th of Abib to the evening of the 15th Abib, this is wrong.

2. Preaching the day begins at sunrise the next morning.
3. Ministers wanting an apology as to names they were called in the days of Unleavened Bread. Elder Telemaque moved that certain charges be brought against the Bishop, seconded by Elder M. Johnson. The Board decided unanimously to have the motion as far as the charges were concerned."

The minutes continued thus:

"Elder Telemaque then outlined the charges. Bishop Brown was then given the chance to speak in his defence to the charges.

Chairman of the Board then requested a motion to accept or reject what the Bishop put forward in his defence. The motion was moved by Evangelist George Whyte and seconded by Elder Wesley Grant. The vote was ten (10) rejected the arguments put forward in the Bishop's defence while Elder Clarence Bryant voted to accept the arguments of the Bishop. Deacon Radcliffe Mason abstained.

Elder Telemaque moved a motion requesting an apology from Bishop Brown for preaching Perverse Doctrine. This was seconded by Deacon Paul Hunnighan. The apology should be done in **writing** and **orally** to the church in general. The motion was carried with a vote of ten (10) for, one (1) abstention and one (1) against."

Failure (of the Bishop) to favourably respond to the above will result in the Bishop being silenced from his position until he complied; this should be done during the General Assembly which is convened in St. Mary on Ethanim (October) (2-5) 1997. The meeting of Ethanim three (3) was called off because the bishop said he was ill."

There are procedural points to note with respect to the minutes. It acknowledged that the primacy of the District and Annual General Assembly by stating that the apology should be in writing and orally before the church in general. The inference from the structure of the Constitution is that an action to discipline the Bishop although initiated by the Board must be affirmed by the District Annual and General Assemblies.

Be it noted that no notice in writing was sent to the Bishop indicating what charges were to be preferred against him. The General Secretary of the Presbytery did not see it as necessary to state the gist of the evidence in the minutes assuming that any evidence was adduced.

The requirement of a written notice of the charges was fundamental in this instance. The Bishop would have needed time to prepare his defence, he might have wished to call witnesses on his behalf and he might have sought assistance to present his case.

Dr. Randolph Williams, for the Church, submitted that the charges were so well known that no prior notice need be given to the Bishop. It is difficult to accept such a submission in the light of section 10 of Article 1, and the rule of common law on this issue. Section 10 reads:

"Sec. 10: There shall be no Officer removed from his or her station except a lawful reason be given, and the cause must be stated in writing. Any Tabernacle desiring to make a change in her pastor, must write to one of the Bishops."

This rule expressly states that a lawful reason must be given to remove any officer from his station and the necessary implication is that written reasons must also be given. Further, the cause i.e. the notice with charge must be stated in writing.

Another flaw in these proceedings was that the only evidence seems to have come from Elder Telemaque. He was prosecutor although there was not even a summary of his evidence, as well as he participated in voting for the punishment. This was unacceptable and Mr. Bert Samuels referred to the similar situation in **Owen Vhandel and the Board of Management Guys Hill High School** (unreported) S.C.C.A. 72/2000 delivered 7th June 2001 at page 23 which stated that this situation was impermissible at common law.

The punishment imposed, (being silenced from his position) is in the nature of conditional dismissal and even in the absence of section 10 (supra) the common law would have required a notice. Here is how Buckley L.J. stated the position at common law in **Stevenson v United Road Transport Union** [1977] 2 All ER 941 at 950. "In **Russell v. Duke of Norfolk and Others** [1949] 1 All ER 109 at 118 Tucker LJ said:

'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted one essential is that the person concerned should have a reasonable opportunity of presenting

his case. I think from first to last the plaintiff did have such an opportunity'."

It is instructive to examine section 9 of Article 1 at page 3 of the Constitution.

It reads:

"Sec. 9: No Minister shall be allowed to interfere with any Tabernacle but the one of which he is pastor. If he should interfere, the Bishop shall silence him for three months except an acknowledgement be made with the agreement not to be guilty of the act any more."

Although the power to silence is entrusted to the Bishop in this instance, it is not an unqualified power. "The common law" to adapt the words of an oft quoted statement "will supply the omission in the Constitution" and imply a right to a hearing being accorded to the Minister.

Then Buckley L.J. continued thus at page 951:

"As was pointed out in **Kanda v Government of Malaya** [1962] AC 322 at 337 if the right to be heard is to be a real right which is worth anything, it must carry with it a right for the party of whom complaint is made to know the case which is made against him (and see **Ridge v Baldwin** [1963] 2 All ER 66 at 102, [1964] AC 40 at 113, 114); and, since the purpose of that requirement is to enable that party to defend himself or answer the complaint, it must follow that the notice must be sufficient to enable him adequately to prepare his defence or answer. We agree with the judge in thinking that the plaintiff should have been supplied with a fair statement, by which we mean a sufficiently specific statement, of the charges which it was proposed to lay before the executive committee a reasonable time before the meeting of 9th July. This was not done. The plaintiff then asked, as he was entitled to do, for the charges to be formulated and for a sufficient adjournment to enable him to prepare his defence.

He was not allowed either. The learned judge found that the members of the executive committee assumed on 9th July that the plaintiff then knew with what he was charged, but this, although it may explain the denial of what the plaintiff was fairly entitled to, cannot excuse it. Consequently, in our judgment, the proceedings on 9th July did not conform to the requirements of natural justice and were defective."

The Minutes of October 1, 1998

These are the minutes of the next meeting relevant to this issue. It is pertinent to quote extensively from these Minutes. After the recitals stating who was present, the minutes continued:

"Bishop P.N. Brown "walked out" as he objected to sit with Elder Telemaque in the same meeting. Evangelist-At-Large Clarence Bryant also walked out but returned and sat in the meeting; Bishop Brown did not.

Evangelist Hall (Chairman of the Board) then informed the ministers that the meeting would be converted into a Board Meeting. This was unanimously accepted by the Ministers. Evangelist-At-Large Clarence Bryant subsequently walked out of the meeting a second time and did not return."

As in the initial meeting of the Board, there was no record that a notice was accorded to the appellant Brown. It must be recalled that the Bishop was an ex officio member of the Board and empowered by the Constitution to summon it when it was necessary. If there were charges, the ranking member, the Evangelist-At-Large or the next in line, would have been the officer responsible to summon the Board and in consultation with its members notify the Bishop of the charges which would be preferred against him. This

was essential for the initial Board meeting and was equally required for the second meeting. The next phase of the minutes is that it disclosed that Evangelist Hall assumed the role of Chairman, and Evangelist-At-Large Clarence Bryant walked out and did not return.

Here is how it was recorded by the Secretary in the minutes:

"Evangelist Everton Hall (Chairman)
 Evangelist George Whyte
 Elder Clifton Scott (substitute)
 Elder Zephaniah Johnson
 Elder Wesley Grant
 Elder Terrence Williams
 Elder William Telemaque
 Elder Raymond Munroe

DEACONS

Rohan Danville
 Paul Hunnighan
 Wesley Bloomfield
 Winston Drummonds

The Board considered the disrespectful behaviour of Bishop Brown to the Board among other things. Consequently, Elder William Telemaque moved a motion and seconded by Elder Wesley Grant that the Board apply the Clause of the Constitution.

Ratification of Constitution and Amendments Section 10 Page 9

'All ministers preaching perverse doctrine to the seven keys shall be silenced at once, and his credentials shall be disannulled, and if he is received again by repentance, he can only be a common member'."

There are three points to note in these minutes so far. Firstly, Bishop Brown departed from the meeting and did not return. He had not been

summoned to attend to answer charges nor did he know that allegations would be made against him. The Evangelist-At-Large, whose position is specifically recognized in section 4 of the statute incorporating the Church departed, returned and again departed without returning. These procedures were invalid as they were conducted in the absence of the appellant. The following passage from **Annamunthodo v. Oilfields Workers' Trade Union**[1961] 3 All E.R. 621 states the position in law with clarity. It reads at 625 where Lord Denning said:

"When the general council at the adjourned hearing desired to proceed under r. 11 (7), and found that he was not present, they ought to have adjourned the hearing once again so as to give him notice of the fresh charge; and they would have had to do it in writing under r. 32 (5). By failing to do so, they failed to observe the requirements of natural justice."

Therefore the following decision by the Presbytery Board was null and void:

"The decision of the Board was then circulated to the Jamaican Diocese, Evangelist-At-Large Brown (registered), the Chief Executive Officer Bishop R. Grant and Bishop Ntshangase."

The Minutes of 19 April 2000

On this occasion Bishop Brown was not present. Here is how the minutes stated the proceedings:

"Elder Wesley Grant requested of the Chair that he be allowed to move a motion, this was granted. Elder Grant said, "I beg to move a motion that the meeting be converted into a Board Meeting." Elder Terrence Williams seconded the motion and was carried by all.

The first matter to be discussed was the status of Evangelist-At-Large P.N. Brown. Elder Grant said, "Evangelist-At-Large Brown is still keeping the Passover in defiance of the Board's order. He has failed to attend the Passover despite being invited." The Elder said, "The defiance of the Evangelist-At-Large where the Board is concerned, he should be excommunicated from his office."

Then the minutes continued thus:

"The issue was discussed and a motion was moved by Elder Grant that Evangelist-At-Large Brown be excommunicated from his office. The reasons for his excommunication were outlined:-

1. Disrespectful conduct – refusing to follow the instructions of the Board.
2. Defiance of the Board's ruling.
3. Ordaining ministers without the authority to do so.
4. Failure to attend the 1999 and 2000 Passover Meetings and others when requested to do so.

The motion was seconded by Elder Clifton Scott. The Chair then put the motion to vote with nine (9) for his excommunication and three (3) abstentions."

What consequences flow from the void decision to deprive the Bishop of his office and excommunicating him?

Brown J. (Ag.) granted the following injunction:

- "1. The Defendant is restrained whether by himself, his servants, agents or otherwise howsoever from trespassing on the Plaintiff's land at 8 and 10 Lockett Avenue, Kingston by entering the said land, holding meetings on the said premises, erecting structures or barriers on the said premises and denying access to the ministers and agents of the Plaintiff until after the trial of this action, or until further ordered.

2. The Defendant is restrained whether by himself, his servants, agents or otherwise howsoever from removing documents, records, books of accounts, equipment, motor vehicle, religious utensils, furniture, the property of the Plaintiff from 8 and 10 Lockett Avenue, Kingston until after the trial of this action, or until further ordered.
3. And it is ordered that the Plaintiff through its Attorney-at-Law give the usual undertaking as to damages.
4. Leave to appeal granted to the Defendant."

The basis of the learned judge's decision to grant the injunctive relief is to be found in the following passage in his judgment:

"The affidavit evidence disclosed that the defendant has been a Bishop attached to the plaintiff. He was in charge of the Kingston Tabernacle situated at 8 Lockett Avenue.

He was removed from the office of Bishop and was subsequently excommunicated. He had refused to give up possession, of the Tabernacle and in defiance of the plaintiffs orders continued to carry out the functions as a minister at the said Tabernacle. He continued in possession and refused to permit the plaintiff's servants or agents access to the premises.

The defendant also admitted that he had commenced construction of a building on the plaintiff's land at 10 Lockett Avenue.

It was the defendant's case that he was duly appointed Bishop and his removal and subsequent excommunication was unconstitutional. He refused to accept any decision or order from the plaintiff. The defendant maintained that he had a right to remain in occupation and control of 8 and 10 Lockett Avenue and to continue his pastoral duties in the tabernacle."

The learned judge made no assessment of the Bishop's contention.

Instead he continued his reasons thus:

"It is trite law that the owner of property has a right to its enjoyment against all comers unless he is deprived of it by some lawful process.

Consequently where a person's proprietary rights are adversely affected he may obtain an injunctive relief."

Since it has been found that the decision of the Board to dismiss the Bishop was void then it is pertinent to examine the Bishop's rights in relation to 8-10 Lockett Avenue.

Here is how the Constitution recognizes the Bishop's powers in relation to the property of the Church in section 16:

"Sec. 16: No Minister or member of the Church of God and Saints of Christ shall be allowed to sell, lease or mortgage any land or property that belongs to the Church of God and Saints of Christ. Except the Bishop or Presbytery Board empowers them.

Sec. 17: No Minister or member shall be allowed to misrepresent any property that belongs to the Church of God and Saints of Christ, as being their own individual property. By so doing they deceive the public. But they shall make known that it is the property of the Church of God and Saints of Christ."

The Bishop as the highest Minister must take into account section 6:

"Sec. 6: Each Tabernacle shall have one Pastor and one Deacon, and the pastor shall appoint his own assistant. There shall be three Trustees to each tabernacle. Their duty shall be to look for a suitable place in which to hold meetings, and to see after the money and property in general. Count the money at

least every three months and let the balance appear on Record."

There are other deprivations which the injunction imposed. There was the matter of Tithes which are the revenue of the churches. Paragraph 2 of the injunction separates the Bishop from the revenue of the Church. Here are the provisions in the Constitution relating to Tithes:

"ARTICLE 2

Sec. 3: We also demand by the Word of God that every member of each Tabernacle, both great and small, to bring all the Tithes into the Store House; or "Will a man rob God" Malachai 3: 8-10."

Then the Article under the caption "Instructions to Ministers" Article 2, section 5 reads:

"Sec. 5: The Daughters of each tabernacle shall send the 10th of their treasure to the Headquarters: 8 Lockett Avenue, Kingston, J.A., W.I."

By wrongfully excommunicating the Bishop he was deprived of his emoluments. Here are the provisions for stipends under Article 3 section 2:

"Sec. 2: All Ministers must keep a daily record of all works done by them and the report delivered to the Secretaries of the Tabernacles over which they are overseers, and the same to be sent to the General Secretary of the Division in company with the Report of Tithes and Freewill Offerings of said tabernacles. All Ministers, whether pastors or traveling workers, who spend all of their time in the Gospel Work, shall receive of Tithes for their support and actual needs, and are to return to the General Fund all over their needs."

Then section 3 of the Article states:

"Sec. 3: Ministers who spend part of their time in the Work shall receive of the Tithes in proportion to the time they put in, and return to the General Fund all over their actual needs. Also the General Secretary in like manner, as well as the Bishops. The support of the Bishops shall be by tithing. All the tithes received into the Store House subject to their disposal. And it came to pass that they which had gathered much had nothing over, and they that had gathered little had no lack. By order of the Bishops the Presbytery Board will meet when necessary."

Again the Bishop was deprived of his powers to consider applications for aid which is provided for in section 6 of the Constitution at page 9 which reads:

"Sec. 6: All Communications for aid shall be sent to the Bishop in charge of the District."

No. 8 Lockett Avenue the head-quarters of the Church is specifically mentioned in the Constitution thus:

"Sec. 22: All Ministers and Members of the Church of God and Saints of Christ in this district 8 Lockett Ave., Kingston, Ja., W.I. or any land owned by the Church of God and Saints of Christ who build on the farm land owned by the Church of God and Saints of Christ must obey all the Commandments of God's laws and Statutes of the Church of God and Saints of Christ. The land belongs to the Church of God and Saints of Christ; and cannot be sold to any one individual or parties who build on the land and become tired of doing God's Commandments and living a righteous life, and want to sell the house which they have built on the land. They cannot sell to any outside party who does not belong to the Church of God and Saints of Christ. All indebtedness that they owe to the Church of God and Saints of Christ must be settled first and also to any of the Saints. The balance left can be sold only to the Church of God and Saints of Christ or any of the Saints who desire to buy it. This is done according to Daniel 2:44; Dan.7: 18; Ephesians 5:5."

Here is the averment in the Statement of Claim on 8 Lockett Avenue:

"5. The building on 8 Lockett Avenue was used as a tabernacle of the plaintiff. It is the largest tabernacle and was the main administrative office of the plaintiff, used exclusively for religious services, instruction and administrative work."

A section of the Constitution under the caption "Rules made by the Board of Presbytery" reads:

"Sec. 1: Half of all monies received on Holy Convocation Days from the Churches shall be sent to Bishop W.C. Hamilton, Head-quarters, 8 Lockett Avenue."

This is a further demonstration of the reach of the interlocutory injunction and how it hindered the Bishop in the performance of his duties to his congregation and diocese. Those foregoing substantial proprietary rights and privileges were dismissed by the learned judge below thus:

"It is also quite clear that both the defendant and the plaintiff cannot jointly occupy the premises. The former has no proprietary interest in the premises. It would therefore be wrong to exclude the plaintiff from the enjoyment of the property."

Why there was an error in the Court below

There is an intimate connection between the property of the Church and the Bishop who has rights over that property as ordained by its Constitution. The learned judge ignored those rights in his reasoning although they were pointed out during the written submissions of Margarett Macaulay and Aisha Mulendwe of Counsel. Here are the relevant paragraphs of those submissions

on the Constitution and natural justice. From the outset we asked Mr. Bert Samuels to confine his submissions to the jurisdictional points raised in the Court below:

"8. The Defendant's Affidavit makes it clear that the said Albert Hall and his supporters within the church were engaged in a coup d'etat and that they had no authority to remove him from office or to excommunicate him under their Constitution and I submit that under the said Constitution their acts are indeed null and void against the Defendant and I refer to and rely on Article 1 Section 2, 4th and 5th line, page 2; Article 2 Section 1, page 4; Article 2, Section 6, page 5; Article 2 Section 7, page 5, Article 3, Section 3 last sentence, page 8; Article 3 Section 4., page 8; Section 1 page 11-12, Section 5 and 7, page 12. See Constitution of the Church of God and saints of Christ."

Then the written submissions continued thus:

"15. I submit however that these purported Minutes support the Defendant's submission that the said actions were null and void being in breach of their Constitution and prove that they were also made in breach of the principles of natural justice. See **University of Ceylon v. Fernando** (1960) 1 All E.R. 631 at page 637C to 638E; and **Glynn v. Keele University & Anor.** (1971) 2 All E.R. 89 at page 89 held (1), page 94H to 96F."

The same learned ladies drafted the grounds of appeal. The relevant grounds did not display the clarity of the written submissions below but they did emphasise the unauthorized acts of the respondent which were contrary to its Constitution and the failure to adhere to the principles of natural justice ordained by the common law. The relevant grounds are 1, 2, and 4 and read as follows:

"1. The Learned Acting Judge erred in the exercise of his discretion when he granted the Interlocutory Injunction and thereby awarded the Plaintiff/Respondent the entire relief claimed in the Suit, consequently causing injustice to the Defendant/Appellant;

2. The Learned Acting Judge erred in his application of the test/principle in **Miller & Parkes vs Cruickshank** (1986) 23 JLR 154; 44 W.I.R. and the passages quoted therein having misdirected himself thereof; he misapplied the same and made erroneous conclusions.

....

4. The Learned Acting Judge erred by usurping the function of the Trial Judge in his inherent finding on untested material that the persons purporting to act for and on behalf of the Plaintiff/Respondent, were so authorized and entitled to so act, in fact, under its Constitution and in law."

The other error was in the learned judge's analysis of **American Cyanamid Co. v. Ethicon Ltd.** (1975) 1 All E.R. 504. Here is the analysis:

"In **American Cyanamid Co. v. Ethicon Ltd.** (1975) 1 All E.R. at page 510, Lord Diplock stated the principles the court must consider whether an interlocutory injunction should be granted.

The principles are as follows:

1. There must be a serious question to be tried
2. Whether the balance of convenience lies in favour of granting or refusing the interlocutory relief.
3. Whether the plaintiff would be adequately compensated by damages for loss sustained between the application and trial.

4. Whether the defendant would be adequately compensated under the plaintiff's undertaking if the plaintiff fails.
5. The preservation of the status quo."

But Lord Diplock did set out the limits of this case in his speech at page

406 [1975] A.C. 396 where he said:

"My Lords, when an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action."

Then His Lordship continues thus at page 407-408:

"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that "it aided the court in doing that which was its great object. viz. abstaining from expressing any opinion upon the merits of the case until the hearing": **Walker v. Duke of Buccleugh** (1865) 12 L.T. 628, 629. So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

The significant feature of the instant case is that the basis of determining that there was a failure to apply the rules of natural justice was derived from the unchallenged evidence in the minutes of the Board, and the true construction of the Constitution of the Church. There were no contested facts. Furthermore, the common law procedural rights enshrined in the principle of natural justice is certain and ought to have been grasped at the outset of these proceedings.

There are other limitations on the issue of interlocutory injunctive relief to be found in two cases which were mentioned in the judgment of the Court below. In **Miller and Another v Cruickshank** (1986) 44 WIR 318 Rowe P, said at page 322:

"Mr. Henriques submitted, quite rightly, that the court's discretion ought not to be exercised in that way, and he relied on the decision of the English Court of Appeal in **Cayne v Global Natural Resources plc** [1984] 1 All ER 225. The facts in that case are as complicated as those in this case are simple. Of those facts Eveleigh LJ said (at page 226): "The case is riddled with complexities of one kind or another" but over-simplified they relate to an application by minority shareholders to prevent directors of a company from issuing a large number of shares in the company prior to a general meeting as the minority shareholders apprehended that this was being done to maintain those directors in office. Sir Robert Megarry V-C held that there was no real prospect of the plaintiffs succeeding in their action for a permanent injunction and he declined to grant the injunction. In so doing, he did not even go on to consider the balance of convenience. Eveleigh LJ interpreted the opinion of Megarry V-C in these words (at page 232):

'The view that the Vice-Chancellor took on the facts was this. If an injunction was granted to the plaintiffs, that would be an end to the substance of the matter and the injunction would not in effect amount to a holding operation: it would be giving the plaintiffs all that they came to the court to seek, namely their injunction, and when the time came for trial there would be no point in a trial because the object of the plaintiffs would have been achieved seeing that the annual general meeting would have been held.'

Eveleigh LJ then added his own views: 'With that I agree'."

The principle applicable to the instant case is that on the face of the minutes, and the Constitution it was patent that the removal of the Bishop was invalid and that the plaintiff could never succeed at a trial. So the only option of the learned judge was to refuse the prayer for the interlocutory injunction.

As for **Miller v Cruickshank**, the principle to be elicited from that decision as applicable to the instant case is at page 323. Rowe P. quoted Kerr LJ thus:

"Kerr LJ was of a similar opinion. He said (at page 235):

'The practical realities in this regard are that, if the plaintiffs succeed in obtaining an injunction, they will never take this case to trial'."

The instant case is comparable since the Church would pursue the matter no further. There was a breach of natural justice and a failure to follow the mandates of the Constitution of the Church which rendered the proceedings null and void.

These are jurisdictional points which ought to be taken by the Court at any stage even if counsel fails to raise it. See the numerous cases on this issue cited in **Owen Vhandel v. The Board of Management Guys Hill High School** SCCA 72/2000 delivered June 7, 2001, pp 25-28. The most relevant are **Norwich Corporation v Norwich Electric, Tramways Ltd** [1960] 2 KB 119, **Westminster Bank Ltd. v Edwards** [1942] A.C. 529, **Chief Kwame Asante v Chief Kwame Tawla** 1949 Weekly Notes 40 at 41 and **Chief Kofi v. Barima Kwabena Selfah** [1958] 1 All ER 289 at 290; and **Patterson v. Solomon** [1960] 2 All ER 20, should be added to this list.

Two passages from the opinion of Viscount Simonds in **Patterson v. Solomon** ought to be cited. That at page 22 reads as follows:

"The details of the contract were then set out. It is not necessary to refer to them, for the merits of the case have not to be examined. In the courts of the Colony and before their Lordships, the issue has turned on questions of jurisdiction and procedure."

Then at page 24 the other relevant passage reads:

"At once, on the opening of the appeal, learned counsel for the respondent took the objection that no appeal lay to Her Majesty in Council from the decision of the Supreme Court of the Colony in a matter affecting membership of the Legislative Council and consequently affecting also membership of the Executive Council and the office of Minister. It was open to him to do so notwithstanding that special leave to appeal had been granted. This objection can conveniently be examined on the footing that the appellant's claim had been maintained in its entirety. On this footing, it appears to their Lordships that it must be sustained."

Conclusion

There can be no doubt that the removal of Bishop Brown from his Bishopric was invalid and the injunctive relief accorded to the Church as represented by the Presbytery Board was inappropriate. We are not concerned with the doctrinal disputes within the Church as that is a matter for the Church to be resolved by its own institutions. Those institutions must abide by the Constitution of the Church and the principles of natural justice. We do have the competence and jurisdiction to determine the status of Bishop Brown and his rights to the property of the Church. In so doing we determined the true construction of the Constitution of the Church as far as was necessary. The proper administration of the Church was a matter of some urgency and the Bishop was kept out of his office and his rights of entry at his tabernacle at Lockett Avenue for a considerable period, as a result of the interlocutory injunction. There was no "serious question to be tried" to justify the grant of the injunction, in the respondent's favour. We gave our decision at the conclusion of the hearing and allowed the appeal. These are our promised reasons.

BINGHAM, J.A.

I agree.

HARRISON, J.A.

I agree.