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Schism : Nigerian Courts Contend with Scattering Clerics[1]

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Schism is the division of a group of religious body that was originally one into opposing sects. It does not arise by happenstance. Usually it commences with behind the scene suspicions, rumors, intrigues, disputations, mudslinging, me-ism and then degenerate into distrust, disunity and disharmony as well as dishonesty among clerics. The outcome is that religion that should be the epitome of truth, warmth, principled love, genuine brotherhood, peace, concord and all manner of vileness.

Many in Christendom who imagine that schism is an exclusive disease of Christian groups would be surprised to learn that Islamic groups do not always live up to the meaning of their religion, submission. The cases below show that Islamic groups have also been torn apart by sectarianism not a few of which are induced by rapacity and selfish materialism. This article examines how Nigerian courts determine whether schism has arisen in a religious group. However, it first discusses the common law and equitable principles that guide Nigerian courts in ascertaining who may keep an original group's properties upon schism.

Applicable Legal Principles

The immutable legal principles applicable to schism among religious bodies are set out in the century-old decision of the House of Lords in *Free Church of Scotland v Lord Overtoun.*[2] The facts of the case may be summarised as follows: Initially there was the Established Church of Scotland. At different times the United Presbyterian Church and the Free Church of Scotland seceded from the Established Church of Scotland. The Free Church seceded in 1843 and when it made appeals for funds members endowed it most bountifully. In 1900 the United Presbyterian Church and a majority of the Free Church decided to form the United Free Church and the property of the Free Church was conveyed to new trustees for the benefit of the United Free Church. The United Presbyterian Church did not share some of the doctrines of the Free Church, and so at the time of union it was agreed that individuals could hold differing opinions of matters of doctrine.[3] The appellants, a very small minority of Free Church, objected to the union, maintaining that the Free Church had no power to change its original doctrines; they also complained of a breach of trust inasmuch as the

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property of the Free Church was no longer being used for the benefit of the Church. In this action, the appellants sought a declaration that they, as representatives of the Free Church, were entitled to the property of the Church. The respondents contended that the Free Church had full power to change its doctrines so long as its identity was preserved.

By a majority of three to two the House of Lords held that the identity of a religious community consists in its doctrines, creeds, confessions, formularies, and tests. A religious group may retain power in its constitution or creed to alter or modify its tenets or principles, but the existence of such power must be proved. The respondents were unable to prove this. Consequently, they were held to be seceders. In this regard, it is not for a court of law to question the soundness or unsoundness of a particular doctrine so long as it is not contrary to public policy or illegal.[4] It however has authority to examine the tenet of the original group vis-à-vis what the so-called new tenets are in order to ascertain whether the issue is one of secession or mere disagreement on other matters. In this regard, the judgment of Lord Davey is seminal:

> I disclaim altogether any right in this or any other civil court of this realm to discuss the truth or reasonableness of any of the doctrines of this or any other religious association, or to say whether any of them are or are not based on a just interpretation of the language of Scripture, or whether the contradictions of antinomies between different statements of doctrine are or are not real or apparent only, or whether such contradictions do or do not proceed only from an imperfect and finite conception of a perfect and infinite Being, or any similar question. The more humble, but not useless, function of the civil court is to determine whether the trusts imposed upon property by the founders of the trust are being duly observed. I appreciate, and if I may properly say so, I sympathize with the effort made by men of great intelligence and sound learning to escape from the fetters forged by an earlier generation. But sitting on appeal from a court of law, I am not at liberty to take any such matter into consideration.[5]

With regard to the property of the Free Church it was held that funds contributed and set apart from one purpose must not be diverted to another and a different purpose. When there is a schism, the duty of the court is simply to ascertain what the original purpose for which the funds in dispute were collected; what the original trust is. The courts reason that it would be utterly irresponsible and presumptuous for the trustees for the time being – whether they be in the majority or not – to deviate from the original purpose and use even a minute part of the assets for a purpose other than the original. In the words of Lord Halsbury, LC, "no question of the majority of persons can affect the question, but the original purposes of the trust must be the guide;"[6] even where the adherents to the original purpose is less than one in a hundred, their position must prevail.[7] In what appears to be the oldest case on the point, *Craigdallie v Aikman*[8] Lord Eldon said:

> With respect to the doctrine of the English law on this subject, if property was given in trust for A B C & c, forming a congregation for religious worship; if the instrument provided for the case of a schism, then the Court would act upon it; but if there was no such provision in the instrument, and the congregation happened to divide.... the law of England would [not] execute the trust for a religious society, at the expense of a forfeiture of their property by the *cestui que trust,* for adhering to the opinions and principles in which the congregation had originally united.... The Court would enforce such a trust...for

> those who adhered to the original principles of the society [without] reference to the majority; [it is immaterial that] those [did not] change their opinions, instead of being a majority, did not form one in ten of those who had originally contributed. The adherents to the original opinions [should not be made to] forfeit their rights.

Expounding the same principle, Coker, JSC noted:

> In all cases of this type where it is claimed that property bestowed for use in connection with the activities of religious associations or bodies of persons bound together by common dogmas, tenets, faiths or other indications of mutual persuasions, it is no heresy for a court of law to examine and evaluate carefully such evidence as there may be for the purpose of ascertaining not only the subject-matter of the grant but also its destination as well as – what may be foremost in the mind of the donor – the purposes of the association.[9]

The substratum of the above principle is grounded in the law of trusts. Courts of equity frown upon a trustee who deviates from the express or implied intent of the settlor. No trustee has authority or power to alter a trust and substitute something quite outside the original purpose for which the trust was established. To do so would smack of irresponsibility which courts do not countenance.[10] It is of no moment that the trustee intends to benefit the majority of the persons interested in the property. In the words of Wilmer, LJ, "If money was advanced for an express purpose...the advanced person was under a duty to carry that purpose out, and he could not properly apply it to another."[11]

If the constitution of a religious group expressly provides that some members may separate and the property of the group shared accordingly, that would be a matter of contract and the court would have authority to act upon it.[12] The onus would be on the seceders to prove the existence of such a contract.

The trustees of the properties of the religious body may also choose to avert disputes, adverse publicity and long-drawn-out litigation that may put the body in bad light and bring it odium. In furtherance of this, they may compromise by sharing the assets of the religious body between the seceders and the original group. The courts imply such power in favour of trustees so long as it is exercised fairly, with no selfish inclinations and for the ultimate benefit of the trust.[13] Indeed, trustees confronted by a particular problem may surrender their discretion to the court and so be relieved both of the agony of decision and the responsibility for the result. Whenever a specific problem arises upon specific facts, the aid of the court may be sought under its inherent trust jurisdiction.[14] Since Nigerian courts are inclined to end the mudslinging that characterize most schisms,[15] it is believed that such a compromise would be upheld.

What Constitutes Schism – A Look at Nigerian Decisions

How have Nigerian courts fared in applying the foregoing principles? Where an action is brought by those who claim that they are entitled to the properties and assets of a religious group to the exclusion of other members, the onus naturally rests upon them to prove that there has been schism, that the defendants no longer share in the same tenets, doctrines and creeds as originally agreed upon by the founder(s) of the group.

One of the earliest reported cases on this is *Noibi v Ajose.*[16] In 1879 the Alqurani Islamic

sect acquired a mosque in Lagos. Some time later an eloquent preacher of the Ahmaddiya sect converted majority of the Alquranis to Ahmaddiya and the Alqurani mosque was renamed Ahmaddiya mosque; the funds of the two bodies were pooled and banked. A few Alquranis protested this union and when the preacher's influence waned, a large section of the Alquranis refused to continue joint worship with the Ahmaddiya. The Alquranis sought to recover the mosque and succeeded. Butler-Lloyd, Ag CJ concluded:

> There is no doubt that the Alquranis were the original *cestui que trust.* It is beyond dispute that they are still a numerous and important body in Lagos.... Even if the plaintiffs have in the past wavered in their allegiance to the particular sect it is abundantly clear that they do represent a body of Alquranis desirous of re-asserting their rights under the original trust, and....they are entitled to succeed. (at p. 148)

Igiehor v Oduntan[17] is another case where schism was proved. The Benin Division of The United Native African Church sought to secede. The plaintiffs and others who represented the Benin Division of the Church stopped attending services, refused to take holy communion and withheld their church dues. In this action, they sought a declaration that they were entitled to the properties and schools within the Benin Division of the Church. The action failed. Fatayi-Williams, JSC noted:

> So long as a remnant of the beneficiaries of the trust remain members of the Church, and there is abundant evidence that there are, it is they and not the plaintiffs who are entitled to the benefit of the trust.... By virtue of their position, those remaining beneficiaries have a proprietary interest in trust property which they can follow into any form into which it has been turned. The plaintiffs have ceased to be members of the Church before instituting this action and are total strangers to the trust.... As such, they have no *locus standi* in relation to the management of the trust property to which the schools which are the subject matter of this action were alleged to be a part. (at p.1045)

In *Eternal Sacred Order of the Cherubim and Seraphim v Adewunmi*[18] the defendants - seven prominent members of the Church - along with their followers, walked out on the *Baba Aladura* (the Leader). They subsequently disowned him, passing a vote of no confidence in him. The defendants had unsuccessfully sought to introduce a number of constitutional changes into the Church. The Leader had tried to get them to reason on issues but to no avail. The Leader dismissed them by virtue of the power the articles of the Church conferred on him. In this action, the plaintiffs sought a declaration that the defendants were no longer members of the Church and should vacate the churches or houses of prayer they occupied. The Supreme Court granted the claim and gave the defendants 30 days to vacate possession of the plaintiffs' churches and surrender all properties in their possession. In the words of Coker, Ag CJN,

> ... [The] defendants, having been dismissed from the organization, are not entitled to retain by themselves any of the properties of the organization and those of any church which claims to be a branch of it.... The responsibilities attaching to the high office of the *Baba Aladura* are enormous and their faithful and effectual exercise demands the co-operation, patience, loyalty and devotion of all members from the *Baba Aladura* to the lowest member. Disservice of an unproportioned magnitude has been done to this organization by constant rifts, fission, self-propagation and other ills which have been allowed to invade grounds where peace and concord should be reigning.[19]

In the above case, there were different factions of the Order of Cherubim and Seraphim answering the same name and in some cases adding the names of the locales where they operate to the corporate name. The Supreme Court held that where a break-away group assumes a name resembling that of the parent organization it constitutes an infringement of business name and the infringer is liable in damages and can be restrained by an injunction.[20]

The schism that led to the decision in *Adegbite v Lawal21* arose from high-handedness and mixing of politics with religion. The plaintiffs and defendants worshipped in amity in a mosque at Ijebu-Ode. Owing to political differences, the defendants ceased to attend the mosque, quite the Eid Praying Ground used for annual prayers, appointed a new Chief Imam and styled themselves 'Oyinbo Jamat.' Even after this secession, the defendants continued to interfere with the plaintiff's construction of a new mosque, instructing the builder to alter the plan of the mosque and carry out operations according to their own dictates. The plaintiffs were able to obtain an injunction to restrain the defendants and recovered damages for trespass to land. Discussing the issue of schism, Blackall, P observed:

> ....[T]he majority of mankind have the good sense not to mix up politics with religion. But cleavages on non-doctrinal grounds are not unknown, as witness that in the Catholic Church when there was a Pope at Rome and an anti-Pope at Avignon, each of whom fulminated against the other. An analogy might indeed be drawn between that dispute and the present, for the defendants admit that the Cheif Imam is the spiritual leader of the Muslim community of Ijebu Ode and yet they have set up a rival Chief Imam of their own..... Since the defendants are so imbued with party spirit that they cannot bring themselves to worship Allah under the same roof as their political opponents and have in fact seceded from the community or congregation of Jamat Musulumi they have in our view no right whatever to interfere with the building or management of the new... Central Mosque. (at p.400)

The next three cases show that a plaintiff who asserts that there has been a schism must prove that the schismatics have deviated from the doctrines of the religion as originally established.

In *Martins v Tinubu*[22] the plaintiffs sought a declaration that they were entitled to the unconditional possession, use and control of the properties of Ahmaddiya Movement-in-Islam (Nigeria Branch) to the exclusion of the defendants. The defendants had sought to introduce a different constitution to guide the Movement. On an examination of the new constitution, the court found that no change in matters of faith or doctrine was intended. Plaintiffs and defendants still professed the same faith, worshipped together at the same time and place under the same leadership. It therefore held that the principle in *Overtoun* did not apply; the plaintiffs' case was dismissed.

Similarly, in *Egubson v Ikechiuku*[23] the church at the centre of the storm was St. Joseph's Chosen Church of God. According to the Church's Immutable Rules and Conducts it is stated that 'the church had no hand' in any unlawful marriage by a member who took an additional wife. By this, members concluded that the church taught monogamy. In an extraordinary turn of events, the Founder, Leader and Sole Trustee of the Church, Apostle Joseph Ikechiuku took six additional wives while he was cut off in the Biafran enclave during the Nigerian Civil War, 1967-70.[24] When the matter became public knowledge at the

end of the war, some leading members of the church purportedly excommunicated him for flouting the creed of the Church. The Apostle tried without avail to convince his followers that during the War he received a revelation that urged him to take the additional wives.

The Supreme Court held that a careful reading of the creed showed that the Church did not consider polygamy a sin, just that the Church 'had no hand in it.' Put another way, any member who turned bigamous or polygamous did so at his risk. The creed regards polygamy as "unlawful marriage," not a sin. It is one thing to exhort members to be monogamous, it is another to forbid polygamy. The Supreme Court concluded that there was no schism, that Overtoun was not applicable.

Nor does a mere change in the name of a religious body effected by a majority of the members or in accord with its constitution a basis to order that a schism has occured. In *Shodeinde v The Registered Trustees of the Ahmaddiya Movement-in-Islam*[25] the Executive Committee of the Ahmaddiya Movement-in-Islam resolved to effect a change in the name of the Movement to Anwar-Ul-Islam Movement of Nigeria. Some members of the Ahmaddiya Movement-in-Islam dissented from this change of name and commenced proceedings in the High Court seeking a declaration that the change of name was null and void and not binding on the plaintiffs. The plaintiffs also sought control of all the assets and properties of Ahmaddiya Movement-in-Islam.

Ademola Johnson, J found that no schism took place, upheld the change of name, and held that the plaintiffs were dissidents.[26]

In *Adegboyega v Igbinosun*[27] the Benin branch of the Apostolic Church sought a declaration of title over two real properties within Benin City, claiming that the properties were granted to it by the King of Benin. The defendants were however able to prove that the Apostolic Church started as Faith Tabernacle and in 1931 changed its name to The Apostolic Church with branches across the country. The Benin branch was never an independent church. The Supreme Court adopted this testimony and held that unless there was a finding that the plaintiffs existed as a separate church at the time of the grant of the land, it was impossible to make a declaration in the plaintiff's favour.

The issue of schism did not arise in this case but it is doubtful if the courts would regard an unsuccessful assertion of independence from a parent body as schism. In line with the principle in *Overtoun* the doctrines, tenets and beliefs upon which the original group founded its association must be challenged. It may be that the association would have internal mechanism for disciplining such members, for instance, by suspension or excommunication. If this happens and the members meet the requirements for readmission, then no issue of schism would arise. If, on the other hand, the excommunicated members set up another religious association of their choice, then the principles enunciated above would apply: they are not entitled to any of the assets of the original body.

NOTES

1. *The Holy Bible* records Jesus' words that he who does not gather with him scatters: Matthew 12:30.
2. [1904] AC 515.

3. This state of affairs would create *"a mere incongruous heap of, as it were, grains of sand, thrown together without being united, each of these intellectual and isolated grains differing from every other,* and the whole forming a but nominally united while really unconnected mass; fraught with nothing but internal dissimilitude, and mutual and reciprocal contradiction and dissension.... This indeed I should hold to be... 'a Church without a religion.'" Per Smith, B in *Dill v Watson* (1836) 2 Jones Rep (Ir Ex) 48, 91 quoted in *Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 616.
4. "The courts are concerned with legal rights and will not inquire into questions of religious doctrine except so far as they bear on legal rights." Per Ademola, CJN in *Okuboyejo v Onasanya*, SC/458/1964 of April 22, 1966 referred to in *Siwoniku v Odufuwa* [1969] 1 All NLR 219-220.
5. *Free Church of Scotland v Lord Overtoun* [1904] AC 515, 644.
6. *Ibid.* at 617.
7. Remarkably, in *Abu v Ogli* [1995] 8 NWLR (Part 413) 353 the original members of the church under the name Steward Company Limited abandoned their place of worship for the seceders and took a new name all in a bid to avoid breach of the peace. Even so this did not abate the disputes between the two groups. See also Ejigbo v Oto [1985] HCNLR 883.
8. (1813) 1 Dow I, 16 quoted and followed by the majority in *Free Church of Scotland v Lord Overtoun* at 613-614.
9. *Adegboyega v Igbinosun* [1969] 1 ALL NLR 1, 12.
10. *Chapman v Chapman [1954] 2 WLR 723; Re Massingberd's Settlement* (1896) 60 LT 620, aff'd (1897) 63 LT 296, CA.
11. *In Re Pauling's Settlement Trusts [1964] 1 Ch. 303, 334-5.*
12. *Craigie v Marshall (1850) 12 D 523, 560, quoted with approval in Free Church of Scotland v Lord Overtoun [1904] AC 515, 614.*
13. *Chapman v Chapman* [1954] 2 WLR 723; Allen v Distillers Co. (Biochemicals) Ltd. [1974] B 384; Mason v Farbrother [1983] 2 All ER 1078; Martin, JE, Hanbury's Modern Equity, 13th ed., London, Stevens, 1996, p. 582; Marshall, O R, "Deviations from the Terms of a Trust," (1954) 17 Modern Law Review 420, 427-431.
14. Vajerm O V (1968) 84 *Law Quarterly Review 458.*
15. See the decisions of the Supreme Court in *Adegboyega v Igbinosun* [1969] 1 All NLR 1m 13-14 (re-trial refused as the Court believed that the suit must have agitated the worshippers); *Eternal Sacred Order of the Cherubim and Seraphim v Adewunmi* [1969] (2) ALR Comm 273, 289 (advisory board of the church urged to put its organisation on a proper footing); *Owodunni v Registered Trustees of Celestial Church of Christ* [2000] 10 NWLR (Part 675) 315 (rather than order a re-trial, the appeal was decided on the facts available, taking into account the fact that the church had been torn to shreds by a litigation that had lasted about a decade and half).
16. (1934) 2 WACA 135. There is the earlier unreported case of Tunolase v Davies, Suit No. 151 of December 15, 1930 decided by Webber, J which relates to a schism in the Eternal Sacred Order of the Cherubim and Seraphim Church shortly after it was incorporated. See Eternal Order of the Cherubim and Seraphim v Adewunmi [1969] (2) ALR Comm 273, 289.
17. [1962] ANLR 1040. *Indications are that tribal differences were responsible for the schims that* preceded this case.
18. [1969] (2) ALR Comm 273.
19. *Ibid.* at 292. This adjuration was ignored. Only five years later the clerics were in court again over leadership tussle: Eternal Sacred Order of Cherubim and Seraphim v Otubu [1985] HCNLR 943.
20. Supra note 18 at 288-289.
21. (1948) 12 WACA 398.
22. (1937) 13 NLR 124. *Other cases where schism rocked Islamic groups are Rafai v Igbirra Native Authority [1957] NNLR 178, Shitta v Ligali (1941) 16 NLR 23; Abubakri v Smith [1973] 6 SC 31 and Yusuf v Akindipe [2000] 5 SCNJ 128.* In Abubakri v Smith the plaintiffs were the Secretary and Treasurer of the Jamat-ul-Muslim of Lagos. Following dispute among the members, the defendants abrogated the constitution under which the plaintiffs were elected, made a new constitution, elected a new executive, detained the Jamat's properties and records and generally usurped the offices and functions of the executive under the original constitution. The plaintiffs' action failed on procedural ground. In the recent case of *Yusuf v Akindipe* the allegation was that members of the Ahmaddiya Movement-in-Islam broke into mosques in

the possession of a sect that called itself Followers of Ghullam Ahmed, Agege Mission. This happened on several occasions. On not a few occasions the defendants barricaded entrance to the mosques in dispute to bar the plaintiffs and their fellow worshippers from entry. The police was invited and it used tear gas and batons to disperse irate worshippers who were poised for violence.

23. [1977] ANLR 194.
24. Deep rooted cultural instinct, an avid desire for a male child together with uncontrolled concupiscence appear to be the prime reasons for the widespread practice of polygamy and conclubinage in Nigeria. According to Children and Women in Nigeria: A Situational Analysis, 1990, p.12 published by Federal Republic of Nigeria and UNICEF, 42.6 per cent of all married women in Nigeria are in polygamous union. Although a decade has passed since this study, there is no ground to suggest that the position would have changed considerably today.
25. [1980] ANLR 64, 81.
26. The *dissatisfied plaintiffs' appeal to the Supreme Court on procedural point failed.*
27. [1969] I All NLR 1. Similarly, in *Apostolic Church,* Ilesha v Attorney-General (Mid-West) [1972] 4 SC 150 an unregistered sect of a church sought to recover compensation for the compulsory acquisition of schools allegedly owned by it. The action was dismissed on the ground that the appellant, not being a juristic person, could not own property.