

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE UYOO JUDICIAL DIVISION
HOLDEN AT UYO

ON TUESDAY THE 5TH DAY OF MAY 2015
BEFORE THE HONOURABLE JUDGE I. L. OJUKWU

BETWEEN

SUIT NO: FHC/UY/CS/MSC/24/10

- 1. BISHOP PETER JUMBO UDOKANG
- 2. ELDER SAMUEL MKPONG
- 3. ELDER MIKE NTUK
- 4. ELDER BASSEY AKPAUTIN
- 5. ELDER MAURICE ESSIEN

(Suing for themselves and as representing aggrieved members of Mount Zion Lighthouse Full Gospel Church Inc. No. 16 Eka Street, Uyo)

Plaintiffs

AND

- 1. BISHOP N.D. AYAKNDUE
- 2. BISHOP J.B. UBONG
- 3. THE REGISTERED TRUSTEES OF MOUNT ZION LIGHTHOUSE FULL GOSPEL CHURCH INC.

Defendants/Applicants

1st, 2nd, 3rd and 5th Plaintiffs present.

Defendants are absent.

P. O. Arikpo for the Defendants/Applicants.

Godwin Ikpe for the Respondents.

RULING

This is a Ruling on a motion on notice brought pursuant to Order 35, Rule 1(2) (b) and Rule 2(1) of the Federal High Court (Civil Procedure) Rules, 2009, praying this Honourable court for the following;

- 1. An Order committing the 1st Plaintiff/Contemnor to prison for having disobeyed the judgment/Order of this court made on 3rd December, 2010 per His Lordship, E.S. Chukwu in Suit No.

FHC/UY/CS/24/2010, resolving the issues in that suit in favour of the Defendants/Applicants and dismissing the Plaintiffs' claims in their entirety with a cost of Thirty thousand Naira (N30, 000.00), which judgment/ Order was affirmed by the Court of Appeal in Appeal No. CA/C/29/12 per C. C. Nweze, JCA in his lead judgment delivered on Thursday, the 5th day of December, 2013 on the grounds shown in the schedule hereto.

2. The omnibus ground.

The ground of this application was that the Plaintiff/Contemnor has consistently paraded himself as the Diocesan Superintendent of Mount Zion Lighthouse Full Gospel Church Inc., Uyo Diocese, No. 16, Eka Street, Uyo and carrying out all the duties and exercising all the powers of that office despite his suspension from that office by the 1st Defendant/ Applicant, which this Honourable court confirmed and further affirmed by the Court of Appeal.

And that 1st Plaintiff/Contemnor is undermining the integrity and authority of this Honourable court.

In their 12 paragraph affidavit in support, deposed to by one Bishop Nyong Davies Ayakndue, the 1st Defendant, who described himself as the Trustee of the Church, it was averred that the 1st Plaintiff was suspended and subsequently dismissed for parading himself as the Diocesan Superintendent and acting in that capacity due to gross insubordination. The 1st Plaintiff and other Plaintiffs initiated a proceeding in court to challenge his dismissal but lost in the suit they initiated. They proceeded on Appeal and again lost on appeal. Despite the dismissal of the 1st Plaintiff's action and the two judgments in favour of the Defendants/Applicants in this motion, the 1st Plaintiff continued to parade himself as the Diocesan Superintendent of the Church and threatened that the corpse of the

1stDefendant/Applicant will be carried out of Uyo should he venture to worship in the church Headquarters.

Consequent upon the above, he instructed the Registrar of this court to issue the processes in view of the contempt evident in the actions of the 1stPlaintiff. Exhibits of his status as trustee and judgments were attached.

In the written address of learned counsel P.O. Arikpo, it was submitted that the issue that calls for determination is whether it will not be proper to make an order committing the 1stRespondent to prison on the face of the 1stRespondent's continuous refusal to obey the order of this court made on the 3rd day of December 2010.

It was submitted that a court of law has the duty to protect its own judgment from being ridiculed or disparaged; he urged the court to resist any attempt made by the 1stRespondent to disparage its decision. He placed reliance on the case of **OKEYA V SANTILI** (1991) 7 NWLR (PT 206) 337.

Learned counsel posited that having exhibited the formal order of this court, which was served on the Respondent, they have complied with the condition precedent to this application. He relied on **OGAJI & ORS V DIGBANI & ANOR** (2010) 10 NWLR (PT 1202) 289,294 and urged the court to grant this application for the committal of the 1stPlaintiff/Respondent.

In their 11 paragraph affidavit in opposition deposed to by 1st Plaintiff/Respondent, he averred that he is an ordained Bishop and an elected Trustee of the church, that the 1st and 2nd Defendants/Applicants cannot function in isolation to take a decision as a Body of Trustee of Mount Zion Lighthouse Full Gospel Church.

He averred that a vote of no confidence was passed against the 1st Defendant on 21/2/2010 by the Elders Council and he was removed as the President of the church by the Court of Appeal on 29/3/2010. He stated that they filed an appeal against the dismissal of their suit in Appeal No. CA/C/29/2012. While their appeal was pending, the 1st and 2nd Defendants being aware that no enforceable order was made in the judgment of this court filed another suit FHC/UY/CS/88/2011 which was struck out by E.S. Chukwu J on the 14/11/2012.

He averred that the 1st Defendant is no longer the president in view of the Court of Appeal decision in suit No. CA/C/29/2012, delivered on 5/12/2013, declaring one Bishop Paul Akpan Augustine as president though he 1st Defendant/Applicant still parading himself as one. Moreover, they have filed a Notice of Appeal against the decision of the Court of Appeal in the said judgment of 5/12/2013, and also an Injunction pending Appeal in Appeal No. CA/C/36M/2014. These processes were attached as Exhibits A, B and C. He denied the alleged threat to life.

In their written argument by Counsel Godwin Ikpe, it was submitted that the issue that calls for determination is whether there was any enforceable order made against the 1st Respondent in Suit. No. FHC/UY/CS/24/2010 which the Respondent has disobeyed, more so when the matter is on appeal to the Supreme Court and an injunction pending appeal is before the court of Appeal, Calabar in respect of the said judgment.

He submitted that when there is no positive or mandatory order in the judgment of a court, there is no order to disobey or enforce. He cited the authority of **AWONJI V REGISTERED TRUSTEES (2000) 79 LRCN 1796, 1799** and submitted that 1st Respondent has not

disobeyed any order of court. He again posited that the suit in FHC/UY/CS/24/2010 has not been concluded in view of the Notice of Appeal filed to contest that decision. He submitted that an appeal is said to be entered when the Notice of Appeal has been filed in the Registry of the lower court as in this case.

He called in aid the case of **OSHO V A.G. EKITI STATE** (2001) 46 WRN 22,23 and contended that once an injunction pending appeal is filed, it suspends temporarily the legal rights of a successful litigant until the appeal is determined. He reminded the court that the Defendant/Applicant has not denied the Notice of Appeal and Injunction before the court of Appeal. Counsel urged the court to dismiss this application with substantial cost.

In a further affidavit filed by the Defendants/Applicants, 1st Defendant denied the existence of any vote of no confidence against him and noted that he was not served with the Notice of Appeal, more so, when a notice of appeal cannot transmute into a valid appeal. He reiterated his earlier averments and maintained that 1st Plaintiff is still holding unto the property of the Church at No. 16 Eka Street, Uyo which 1st Applicant let to him when he was a member of the Church and its Diocesan Superintendent.

From the above state of facts as presented by both parties, there was an order of this court Coram E.S. Chukwu which was endorsed at the back of Form 48 (Notice of Consequence of Disobedience of Judgment/Order of Court). The said Order read as follows;

1. That the Defendants action is within the scope and contemplation of their Constitution
2. That in the circumstance the issue is resolved in favour of the Defendants.
3. That the Plaintiffs claims are hereby dismissed in its entirety.

4. That the costs follow events, the Plaintiffs are to bear the costs of this action assessed at Thirty thousand naira. (N30,000:00) only.

None of the parties made available to this court the full judgment of E.S. ChukwuJ and it is not in this court's file. But I am permitted to look at part of the process of the Defendant/Applicant where the prayers sought in the Writ of Summons in suit no. FHC/UY/CS/24/10 were endorsed. The Plaintiffs in that suit who are the present Respondents sought a declaration that the 1st Plaintiff is the Diocesan Superintendent of Mount Zion Lighthouse Full Gospel Church Inc., Uyo Diocese, No. 16 Eka Street, Uyo and entitled to carry out all the powers of the office.

A declaration that the 2nd to 5th Plaintiffs are Elders of the Church.

A declaration the purported suspension letter of the 1st Plaintiff is null and void and of no effect and an injunction restraining the Defendants from interfering with the administration of the affairs of the church by the Plaintiffs.

I am not aware of any counter claim by the Defendant/Applicant which was resolved in their favour. In that vein therefore, let me restrict my decision to the afore stated order of court as endorsed on Form 48, which was allegedly disobeyed.

Let me again rely on the schedule of grounds for this application; it is noted that the complaint of the Defendants/Applicants is that the 1st Plaintiff has consistently paraded himself as the Diocesan Superintendent of the Church and carrying out all the duties of the office despite his suspension by the 1st Defendant. This action was brought by the 1st and 2nd Defendants on behalf of the Registered Trustees of Mount Zion Lighthouse Full Gospel Church Inc. It is on

record vide Exhibit A attached by the 1stPlaintiff that one Bishop Paul A. Augustine is the current President/Registered Trustee of this Church by virtue of a court of Appeal Judgment in suit No. CA/C/29/2012 though not exhibited. From Exhibit A, the said Paul A. Augustine appears to be the one running the affairs and administration of the entire Church, even at local levels and not the 1st Respondent in this application.

In any case, I have not been presented with any evidence that the 1stPlaintiff/Respondent is still running the affairs of the Church or an order of the court mandating him to vacate the premises at No. 16 Eka Street, Uyo. The order of court endorsed in Form 48 does not make specific pronouncement on the position of the 1stRespondent apart from dismissing their action.

Since a committal proceedings bothers on deprivation of liberty of a person, the procedure therefore must be applied strictly and any departure from this strict application vitiates the proceedings. Similarly, contempt of court being a deliberate disobedience of a court order, it involves a guilty mind and being also quasi-criminal, the standard of proof is the standard required in a criminal matter, which is proof beyond reasonable doubt. See **EZEJI V IKE** (1997) 2 NWLR (PT 486) 206.

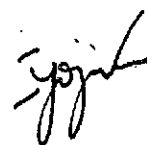
Though a court is honour bound to protect its orders and integrity but the exercise of its power of committal must conform with rules and procedure. In the instant case again, the 1stRespondent's averred that he has filed a Notice of Appeal against the said judgment of the Court of Appeal and Exhibited the Notice of Appeal. But contrary to the position of the 1stPlaintiff/Respondent, the correct position of the law is that a mere filing of Notice of Appeal without more cannot transmute into entering an appeal or a pending

appeal. An appeal is entered when the court below transmits the record of appeal to the appellate court and the appellate court, indeed receives the records of appeal and assigns a suit number. See **OGUNREMI V DADA** (1962) 2SCNLR 417 and **EZEOKAFOR V EZEILO** (1999) 9 NWLR (PT 619) 513,517.

Be that as it may, though there is no evidence that the appeal has been entered at the Supreme Court, there is evidence that there is a motion for injunction pending appeal, filed 31/1/2014, this was not debunked by the Defendants/Applicants. That motion has not been determined by the court of appeal. It will be too presumptuous of this court to commit the 1st Plaintiff/Respondent to prison for failing to obey the order of this court, as captured above, in the light of the particulars of the said order, -especially when his motion at the court of appeal has not been determined and he has not exhausted the remedies open to him in contesting the said judgment.

The parties are already before the Court of Appeal and should await its decision. Meanwhile the motion to commit the 1st Plaintiff to prison is dismissed.

Parties to bear their own costs



Ijeoma L. Ojukwu
Judge
5th May, 2015