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Legal Alert: Key Decision on Scope of Courts' Intervention in Disputes of a Religious Nature.

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Religious disputes—that are purely ecclesiastical or doctrinal such as the appointment of ministers—are not within the jurisdiction of civil courts. However, an exception may be made where the dispute is either civil or involves property.

Doctrines of 'church autonomy' and 'ministerial exception' affirmed in Uganda: *Rev. Charles Oode Okunya v The Registered Trustees of the Church of Uganda*, HCCS No. 305/2020

Brief facts

The Plaintiff brought an ordinary suit seeking declarations that the decisions of the House of Bishops revoking his election as the 2nd Bishop of Kumi Diocese and barring his name from ever coming up among any future candidates are illegal and unlawful. Further, he sought a permanent injunction to restrain the Defendant its agents, servants and or employees from further conducting the search and subsequent appointment of another Bishop of Kumi Diocese until determination of the suit; an order directing the Defendant to consecrate and enthrone him as the 2nd Bishop of Kumi Diocese; general and exemplary damages; and costs of the suit.

In response, the Defendant contended the revocation of the Plaintiff's appointment resulted from his own fraudulent representations as to his age that were intended to qualify him for election to the House of Bishops. The issue that the High Court (Civil Division) focused on was whether the plaint disclosed a cause of action against the Defendant.

This Alert considers the ruling of the court in its examination of the jurisdiction of courts *vis-à-vis* religious autonomy and **Articles 7 and 29(1)(c)** of the Constitution of Uganda 1995, which *forbid enacting a state religion* and *provide for freedom of religious practice* respectively.

Ruling of the High Court.

The High Court rendered the ruling on June 30, 2021 and, in dismissing the suit, the learned judge, Ssekaana, J. held thus:

- (a) The selection of a Bishop is a religious function. Therefore, the plaintiff's case invites court to get involved in the resolution of a religious dispute.
- (b) The law cannot compel a citizen's adherence to a religious belief, and must always protect the privilege of infidelity.
- (c) Religious disputes are not within the jurisdiction of civil suits, in accordance with the church autonomy doctrine.
- (d) Exceptions to the church autonomy doctrine may be made for religious disputes which involve property or civil disputes.
- (e) Whenever the questions of discipline, of faith, or ecclesiastical rule, custom, or law have been decided by the highest of church judicatories to which the matter has been carried, the courts must accept such decisions as final, and as binding on them.

- (f) The court cannot order the Archbishop to forcefully consecrate the Plaintiff in accordance with the doctrine of ministerial exception.
- (g) The rights that the plaintiff enjoys that are derived from the Provincial Constitution of the Church and the Provincial Canons must be enforced through the existing adjudication mechanisms therein, and not through civil courts.
- (h) The Defendant whose mandate under the Provincial Canons is limited to the Church's assets was the wrong party to the suit.

Reflections on the High Court's ruling and decisions from other jurisdictions.

The High Court based its ruling on the twin doctrines of '**church autonomy**' and '**ministerial exception**'.

Firstly, the court held that church autonomy doctrine requires judicial deference to religious institutions whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by church judicatories. The position on religious issues taken by the highest body of the church is to be preferred over the opinion of a civil court. The rationale for this doctrine is:

- (i) courts are ill-equipped to deal with religious beliefs and practices because of remoteness and lack of familiarity; and
- (ii) judicial resolutions of religious questions will be interpreted as an endorsement of one religious view over another or importing practices not conforming to spiritual and religious teachings.

More importantly, given that the courts are the judicial arm of the government, their decisions may be viewed as an imposition of a preferred religious practice, contrary to article 7 of the Constitution of Uganda 1995 which stipulates that "*Uganda shall not adopt a State religion*".

Article 7 of the Constitution of Uganda is similar in spirit to the First Amendment of the Constitution of the United States of America. In *United States v Ballard*, 322 US 78 (1944), the Supreme Court held that the First Amendment does not select anyone group or anyone type of religion for preferred treatment. The facts of that case were that the followers of Guy Ballard were charged with mail fraud for fraudulently seeking and collecting donations from their believers in exchange for healing. One of the elements of the alleged offence was knowing intent to defraud. The court stated that the truthfulness or falsity of religious views cannot be subjected to trial by a jury regardless of how incredible or preposterous they may seem to most people.

Ssekaana J. referred to the US Supreme Court decision and stated that, in contrast to ordinary questions of fact, religious questions are understood to lie beyond judicial competence because they do not depend on the logic of law. Instead, religious questions may be answered on the basis of faith, mystical experiences, miracles, or other non-rational sources. Therefore, the protection of the right to freedom of conscience and belief necessitates the exclusion of certain religious questions from the domain of civil courts.

Secondly, in furtherance of that protection, the learned Judge held the doctrine of 'ministerial exception' gives religious institutions residual power free from the courts in determining who should be entrusted with the governance of the institutions. Ssekaana J. referred to the decision of the US Court of Appeals for the Third Circuit in *Petruska v Gannon University*, 462 F.3d 294 (3d Cir. 2006), in which Lynette Petruska's claim of employment discrimination against Gannon University had been dismissed by the District Court for lack of jurisdiction. On appeal, the Court of Appeal held that the doctrine of ministerial exception applies to any claim, the resolution of which would limit a religious institution's rights to choose who will perform particular spiritual functions.

The rationale for the 'ministerial exception' doctrine is that a minister of a church embodies the religious message of that church. Therefore, any restriction on the church's right to choose who will carry its spiritual message necessarily infringes upon its full exercise of the right to profess its beliefs.

The ‘ministerial exception’ was applied in *Rev. Fr. Cyril Adiga Nakabi v Rt. Rev. Sabino Ocan Odoki & Another*, HCCS No 2/2017 [2018] UGHCCD 4, where Mubiru, J. referred to *Petruska case* and held that civil courts will defer to a religious organization’s good faith understanding of who qualifies as its minister.

In its recent decisions, the US Supreme Court has emphasized the purpose of the ministerial exception doctrine as being to ensure the authority to select and control who will minister to the faithful is a matter strictly ecclesiastical. In *Hosanna-Tabor Evangelical Lutheran Church and School v Equal Employment Opportunity Commission*, 565 US 171 (2012) and, recently, *Our Lady of Guadalupe School v Morrissey-Berru*, 591 US __ (2020), the top US court has also clarified who qualifies as a minister within the meaning of the ministerial exception and noted that a person serving an important religious function, even if not holding the title or training of a religious leader, satisfied the ministerial exception. Undoubtedly, in the matter before the High Court, the Plaintiff was a minister since he had been appointed to the position of the 2nd Bishop of Kumi Diocese, an appointment that was subsequently revoked.

It is on the basis of these two doctrines that the High Court upheld the decision of the House of Bishops to revoke the Plaintiff’s appointment as the 2nd Bishop of Kumi Diocese and bar his name from ever coming up among any future candidates.

As a civil court, the court could not delve into the religious practices of the Church of Uganda and direct the House of Bishops to appoint the Plaintiff as a bishop without bringing the State and religion into direct conflict.

Be that as it may, civil courts will intervene in disputes that are of a civil nature or relate to property rights. For instance, in *Petruska case*, court was open to investigating the allegations of fraudulent misrepresentation and breach of contract, having noted that such questions did not limit the respondent’s rights. Notably, in *Pentecostal Assemblies of God Lira Limited v Pentecostal Assemblies of God Limited & Another*, HCCS No 97/2015 [2019] UGHCCD 217, Ssekaana, J. heard and determined a civil dispute between two churches that raised questions touching on intellectual and real property rights.

Therefore, a party is at liberty to litigate disputes that are seemingly religious, as long as they articulate a civil dispute or property rights infringement. Even then, civil courts may only determine the issue of property, and not the underlying religious doctrine pertaining to church property—this is the principle in decisions of the US Supreme Court in *Presbyterian Church v Hull Church*, 393 US 440 (1969) and *Serbian Eastern Orthodox Diocese v Milivojevich*, 426 US 696 (1976).

Conclusion.

The ruling of the High Court emphasised religious autonomy as constitutionally enshrined in articles 7 and 29(1)(c) of the Constitution of Uganda 1995. It has underscored the vitality of maintaining a clear distinction between matters that would necessitate court’s examination of the propriety of a religious belief or practice, and those that require the adjudication of civil or property rights. In the former, jurisdiction is left to the highest organs of the religious sect, while in the latter, recourse may be had to civil courts.



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