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SCHISM: NIGERIAN COURTS CONTEND WITH SCATTERING CLERICS

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"He who does not gather with me scatters."
Matthew ch 12 v.30 Revised Standard Version

Introductory

Schism is the division of a group of united body of religious devotees into opposing sects. Usually seeds of schism are sown by behind the scene suspicions, rumors, intrigues, disputations and mudslinging and gradually as these sprout they degenerate into distrust, disunity, disharmony and dishonesty among the laity. The outcome is that religion which should be the epitome of truth, warmth, principled love, genuine brotherhood, peace, concord and oneness of spirit turns out to be the centre of falsehood, profligacy, exploitation, conceit and all manner of vileness.

Many in Christendom who imagine that schism is exclusively a disease of Christian groups would be surprised to learn that Islamic groups do not always live up to the meaning of their religion, submission.[2][2] The cases below show that Islamic groups have also been torn apart by sectarianism not a few of which are induced by some of nature's virulent vices, greed, vulgar materialism and me-ism.

This article sets out to examine how Nigerian judges determine whether or not schism has arisen among members of a religious group. But it first discusses the common law and equitable principles that guide them in ascertaining who may keep a group's properties upon schism.

Applicable Legal Principles: The *Overtoun* Doctrine

The immutable legal principles applicable to schism among religious bodies are set out in the decision of the House of Lords in *Free Church of Scotland v Lord Overtoun.*[3][3] The facts of the case may be summarised as follows: Initially there was the Established Church of Scotland. At different times the United Presbytarian Church and the Free Church of Scotland seceded from the Established Church of Scotland. When the Free Church made appeals for funds members endowed it most bountifully. In 1900 the United Presbytarian Church and a majority of the members 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 Presbytarian Church did not share some of the doctrines of the Free Church, thus at the time of union it was agreed that individuals could hold different opinions on matters of doctrine.[4][4] The appellants, an insignificant minority of the Free Church, objected to the union, maintaining that the Free Church had no authority to change its original doctrines. As well, they complained of a breach of trust inasmuch as the property of the Free Church was no longer being used for the benefit of the Church. In this action, the appellants

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[2][2] *Christianity and Islam in their countless sects predominate in Nigeria.*

[3][3] *[1904] AC 515.*

[4][4] *This situation 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 Overtoun, supra note 2 at 616.*

sought a declaration that as representatives of the Free Church, they were entitled to the property of the Church. The respondents contended that the Free Church had full authority to change its doctrines so long as its identity was preserved.

By the narrowest of margins, a majority of three to two, the House of Lords held that the identity of a religious community consists in the identity of 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 whoever urges the existence of such power must prove it. The respondents were unable to prove this; consequently, they were considered 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.[5][5] It however has authority to examine the tenets 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 stands out:

> 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 or 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.[6][6]

With regard to the property of the Free Church it was held that funds contributed and set apart for one purpose must not be diverted to another and a different purpose. Where 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 or not they be in the majority – 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;"[7][7] even where adherents to the original purpose are less than one in a hundred, their position must prevail.[8][8] In what appears to be the oldest case on the point, Lord Eldon said[9][9]:

> 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

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[5][5] *"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, SC458/1964 of April 22, 1966 referred to in Siwoniku v Odufuwa [1969] 1 All NLR 219-220.*

[6][6] *Supra note 2 at p 644.*

[7][7] *Ibid at 617.*

[8][8] *Remarkably, in Abu v Ogli [1995] 8 NWLR (Part 413) 353 the original members of the Church under the name Steward Company Limited abandoned there place of worship for the seceders and took a new name all in a bid to avoid breach of the peace. Even so disputes continued between the two groups. See also Ejigbo v Oto [1985] HCNLR 883.*

[9][9] *Craigdalli v Aikman (1813) 1 Dow 1, 16 quoted and followed by the majority in Overtoun, supra note 2 at 613-614.*

> 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 execute the trust for a religious society, at the expense of a forfeiture of their property by the *cestuis 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 who [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 and espousing 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.[10][10]

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 the court will not countenance.[11][11] 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.[12][12]

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.[13][13] The onus would be on the seceders to prove the existence of such a contract.

The trustees of the religious body's properties 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 an authority in favour of trustees so long as it is exercised fairly, with no selfish inclinations and for the ultimate benefit of the trust.[14][14] 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

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[10][10] *Adegboyega v Igbinosun [1969] 1 All NLR 1, 12.*

[11][11] *Chapman v Chapman [1954] 2 WLR 723; Re Massingberd's Settlement (1896) 60 LT 620, aff'd (1890) 63 LT 296 (CA).*

[12][12] *In Re Pauling's Settlement Trusts [1964] 1 Ch 303, 334-335.*

[13][13] *Craigie v Marshall (1850) 12 D 523 at 560 quoted with approval in Overtoun, supra note 2 at 614.*

[14][14] *Chapman v Chapman, supra note 11; Allen v Distillers Co (Biochemicals) Ltd [1974] QB 384; Mason v Farbrother [1983] 2 All ER 1078; Martin, J E, 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 Rev 420, 427-431.*

jurisdiction.[15][15] Since Nigerian courts are inclined to end the mudslinging that characterize most schisms,[16][16] it is believed that such a compromise would be upheld.

Assets in the Hands of Third Parties

A schism may affect third parties who may hold the association's property. Banks quickly come to mind. The bank of an association which is beset by a schism may be unsure whose cheque they would have to honour. Bankers know too well that they cannot and should not be seen to take sides with a group against another.[17][17] Doing so would involve them in raising the defence of *jus tertii* (the right of a third party), something the law bars them from doing.[18][18] Lord Westbury illuminatingly states the law thus:

> The relation between banker and customer is somewhat peculiar, and it is most important that the rule which regulate it should be well known and carefully observed. A banker is bound to honour an order of his customer with respect to the money belonging to that customer which is in the hands of the banker; and it is impossible for the banker to set up a *jus tertii* against the order of the customer or to refuse to honour his draft, on any other ground than some sufficient one resulting from an act of the customer himself. Supposing, therefore, that the banker becomes incidentally aware that the customer, being in a fiduciary or a representative capacity, meditates a breach of trust, and draws a cheque for that purpose, the banker, not being interested in the transaction, has no right to inquire as between his customer and third persons. He would be setting up a supposed *jus tertii* as a reason why he should not perform his own distinct obligation to his customer.[19][19]

What this comes to is that the bank should continue to honour the cheques of the trustees who were authorised by the corporate body to operate the account until restrained by a court order.[20][20]

The bank was not so bold in *Solomon v Wema Bank Ltd.*[21][21] The plaintiffs and all the defendants, save the first defendant bank, were members of Zumuratul Hujaj, an Islamic religious organization incorporated under the name Registered Trustees of the Zumuratul Hujaj of Lagos State. When a rift arose among the members an inquiry was instituted which led to the expulsion of the president and the appointment of the plaintiffs as the organization's new officials. The organization opened an account with the first defendant and the organization authorised the plaintiffs to operate it. Some time later

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[15][15] *Baker, P V, (1968) 84 Law Quarterly Rev 458.*

[16][16] *See the decisions of the Supreme Court in Asani v Adeosun [1966] NMLR 268 (Ile Ife Moslem community was divided against itself and the Court intervened to save it); Adegboyega v Igbinosun, supra note 9 at 13-14 (re-trial refused as the Court believed that the worshippers must have been agitated by the suit); Eternal Sacred Order of the Cherubim & Seraphim v Adewunmi [1969] (2) ALR Comm 273, 289 (Court urged advisory board of the Church 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 Court decided the appeal 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).*

[17][17] *Ejikeme v Amaechi [1998] 3 NWLR (Part 542) 456, 466.*

[18][18] *Fulani v Bank of British West Africa Ltd (1953) 14 WACA 292; Ademiluyi v African Continental Bank Ltd [1964] NCLR 10; Ehiborroz Construction & General Enterprises Ltd v Int'l Bank of West Africa Ltd [1982] 1 Federation of NLR 73. The cases are collected in Chianu, E, Law of Banking: Texts, Cases, Comments, Benin City, Enslee, 1995, chapter 21.*

[19][19] *Gray v Johnston (1868) LR 3 HL 1.*

[20][20] *Calland v Lloyd (1840) 151 ER 307.*

[21][21] *[1973] 8 CCHCJ 99; also in Chianu, E, op cit, chapter 21.*

the plaintiffs drew a cheque on the account but the cheque was dishonoured and returned with the endorsement "orders not to pay." At a meeting of the organization it was resolved that the plaintiffs should take steps to withdraw all its funds from the bank. The plaintiffs' cheque was dishonoured, hence this action. The bank did not deny that the organization's funds were deposited with it; it was prepared to pay the funds to whoever the court adjudged to be entitled to them. Kazeem, J held that the bank had no justification for dishonouring the cheque when it was presented for payment.

Where a bank or any person in possession of an association's property is uncertain what to do, he should take out interpleader proceedings.[22][22] By this procedure, when a person is in possession of property in which he claims no interest, but to which two or more persons lay claim, and he, not knowing to whom he may safely give it up, is sued or expects to be sued by one or more, he can compel them to interplead; that is, to take proceedings between themselves to determine who is entitled to the property.

What Constitutes Schism: A Look at Nigerian Decisions

How have Nigerian courts fared in applying the foregoing principles? Where an action is brought by two who claim they are entitled to the properties and assets of a religious group to the exclusion of other members, the onus naturally falls 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 founders of the group.

One of the earliest reported cases on this is *Noibi v Ajose.*[23][23] In 1879 the Alqurani 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 *cestuis 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)

Ogiehor v Oduntan[24][24] 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

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[22][22] *Interpleader proceedings are provided for under Orders 28 and 45 of the Uniform Civil Procedure Rules, and Lagos High Court Civil Procedure Rules respectively.*

[23][23] *(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 shortly after it was incorporated. See Eternal Sacred Order of the Cherubim and Seraphim v Adewunmi, supra note 15.*

[24][24] *[1962] ANLR 1040.*

> plaintiffs who are entitled to the benefit of the trust…. By virtue of their position, those remaining beneficiaries have a proprietary interest in the 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 of 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 & Seraphim v Adewunmi*[25][25] the defendants – seven prominent members of the Church – along with their followers, walked out on the *Baba Aladura* (the Leader) and 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 under the powers conferred on him by the articles of the Church. 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 within which to vacate possession of the plaintiffs' churches and surrender all properties in their possession. In the words of Coker, Ag CJN,

> … [T]he 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.[26][26]

In the foregoing case, there were different factions of the Church answering the same Order of Cherubim and Seraphim and in some cases adding to the corporate name the names of the locales where they operate. The Supreme Court held that where a breakaway group assumes a name that resembles the parent organization's, it constitutes an infringement of business name and the infringer is liable in damages; they can also be restrained by an injunction.[27][27]

The schism that led to the decision in *Adegbite v Lawal*[28][28] arose from high-handedness and mixing of politics with religion. The plaintiffs and defendants worshipped in amity in a mosque at Ijebu-Ode. In course of time political differences crept into the group consequent upon which the defendants ceased to attend the mosque, quit the *Eid* Praying Ground used for annual prayers, appointed a different Chief Imam and styled themselves `*Oyinbo Jamat.'* Even after this secession, the defendants continued to interfere with the plaintiff's construction of a new Central 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 noted:

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[25][25] *Supra note 15.*
[26][26] *Ibid at 292. This adjuration fell on deaf ears. Only five years later the clerics were again in court over leadership tussle : Eternal Sacred Order of Cherubim & Seraphim v Otubu [1985] HCNLR 943.*
[27][27] *Supra note 15 at 288-289.*
[28][28] *(1948) 12 WACA 398.*

> … [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 Chief Iman 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 four 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*[29][29] the plaintiffs claimed 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, and both plaintiffs and defendants were professing the same faith, worshipping together at the same time and place under the same leadership. It therefore held that the principle in *Overtoun* did not apply and the plaintiffs' case was dismissed.

Similarly, in *Egubson v Ikechiuku*[30][30] the church at the center 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 has no hand" in any unlawful marriage by a member who took an additional wife.[31][31] 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. When the matter became public knowledge at the end of the war, some leading members of the church purportedly excommunicated him for flouting the Church's creed. The Apostle's determined effort to convince his followers that during the war he received a revelation that urged him to take the additional wives proved fruitless.

The Supreme Court held that a careful reading of the creed would show that the Church did not consider polygamy a sin, just that the Church "has no hand in it," that is, any member who turns polygamous does so at his own risk. With perspicacity, Udo Udoma, JSC observed that the creed used the phrase "unlawful marriage," and stated that there was a world of difference between what is unlawful and sin. It is one thing to

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[29][29] *(1937) 13 NLR 124. Other cases where schism hit Islamic groups include Abubakri v Smith [1973] ANLR 634 (action by General Secretary and Treasurer of Jamat-ul-Muslim of Lagos against the defendants claiming an order to restrain defendants from holding out themselves as officers of the group and an account of the group's monies in their possession; action failed as the plaintiffs had no locus standi); and Shitta v Ligali (1941) 16 NLR 23.*

[30][30] *[1977] ANLR 194.*

[31][31] *Deep rooted cultural beliefs, an avid desire to have a male child, together with uncontrolled concupiscence appear to be the chief reasons for the continued practice of polygamy and concubinage in Nigeria. According to a 1990 study, 42.6 per cent of all married women in Nigeria are in polygamous union: Federal Republic of Nigeria and UNICEF, Children and Women in Nigeria: A Situational Analysis, 1990, p 12.*

exhort members to be monogamous, it is another to forbid polygamy. The 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 regulations constitute a basis to order that a schism has occurred. In *Shodeinde v The Registered Trustees of the Ahmaddiya Movement-in-Islam*[32][32] 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 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 Ahmadiyya Movement-in-Islam. Ademola Johnson, J found that no schism took place, upheld the change of name, and declared the plaintiffs dissidents.[33][33]

In *Adegboyega v Igbinosun*[34][34] the Benin branch of The Apostolic Church sought a declaration of title to two real properties within Benin City, claiming that the Oba of Benin granted it the properties. 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 accepted this testimony and held that unless there was a finding that the plaintiffs existed as a separate church at the time of the grant, 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 reinstatement, 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.

This principle justifies the decision of the Court of Appeal in *Ajayi v Registered Trustees of Ona Iwa Mimo Cherubim & Seraphim Church.*[35][35] The appellant was a member of the respondent church. The church acquired a parcel of land at Jebba. The title documents were made out in the name of the appellant who was the church leader; the appellant's address on the title documents was the church premises. When dispute arose among the leaders, the appellant unilaterally decided to change the name of the church to New Ona Iwa Mimo Cherubim and Seraphim Church Onimajemu of Nigeria and Overseas, and sought to retain ownership of the church premises as the property of the new church. The respondent sought a declaration of title to the land, damages for trespass and perpetual injunction to restrain the appellant and his followers. All the claims were granted. In the course of his judgment, Ogebe JCA said:

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[32][32] *[1980] ANLR 64, 81.*

[33][33] *The dissatisfied plaintiffs' appeal to the Supreme Court on procedural points was unsuccessful.*

[34][34] *Supra note 15. Similarly, in Apostolic Church, Ilesha v Attorney-General (Mid West) [1972] 4 SC 150 an unregistered faction 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.*

[35][35] *[1998] 7 NWLR (Part 556) 156.*

> A church in its true definition is the body of Christ. One person cannot constitute the body of Christ; it connotes a congregation, an assembly of people. An individual cannot own a church. A church property must be the collective responsibility of all the members. The 1st appellant admitted … that he was a member of the 1st respondent church … and he was in a position to act on behalf of the church and carried out functions on its behalf.
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> … I am satisfied that there was enough evidence before the trial court that the ownership of the disputed property was not personal to the 1st appellant, that it was in fact the property of the church 1st respondent. He merely held the property in trust for 1st respondent. If the appellants were no longer in agreement with the constitution of the church, the only option for them was to move out of the church premises and establish their own elsewhere, rather than remain to disturb the peace of the existing church.[36][36]

In *Rufai v Igbirra Native Authority*[37][37] there was a dispute over the Imamship of Okene. There were two contestants – the appellant and one other person. The chief of Okene arbitrated the dispute and decided against the appellant. Dissatisfied, the appellant insisted on having his way. To avert a breach of the peace the Chief ensured that the police barricaded entry to the mosque the appellant intended to use. In this action he sought an injunction to restrain the police from interfering with his right to use the mosque. At the trial it was established that by Moslem law Friday worship (*Jama'a*) may only take place at a Central Mosque; that there may be more than one central mosque, but Friday prayers can only be said where there is a properly appointed Imam; and that the chief may forbid the use of a mosque for Friday prayers where that mosque has no properly appointed Imam. The plaintiff's action was dismissed as he was unable to prove that he had a right to use the mosque for Friday worship either under Islamic law or at common law.

Conclusion

The foregoing shows that Nigerian courts have ably applied the sound principles the House of Lords enunciated in *Free Church of Scotland v Overtoun*. The decisions show that Nigerian judges, without being irreligious, appreciate the importance of being dispassionate and neutral on doctrinal matters. At the same time, they ensure that those in whose hands the group's properties are entrusted do not vary the contracts entered into by parties as well as trusts created by donors. The principles of majority rule and democracy are of no moment in the matter.

The facts gleaned from the decisions show that among other things, leadership tussles, the folly of mixing politics with an emotive issue such as religion, absence of sincere spirituality, sectionalism, as well as doctrinal issues have been at the roots of clerics washing their soiled garbs and gowns in the spotlight of our courts and in public. As well, caught in the vortex of insatiable greed for power and giving free rein to the whiff of money, clerics are blinded to scriptural principles and this goads them to court. For instance, Anyaegbunam, CJ, on the facts before him, courageously styled a cleric litigant a confusionist whose only aim was to be in charge of subscriptions made by faithful and

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[36][36] *Ibid at 161. The penultimate sentence in the second paragraph of the above dictum accurately states the doctrine of resulting trust which was first espoused in Dyer v Dyer (1788) 30 ER 42. The trust of a legal estate results to the person who advances the purchase money. See also Akwei v Akwei (1943) 9 WACA 111; Coker v Coker [1964] LLR 188.*

[37][37] *[1957] NNLR 178.*

loyal adherents of the church.[38][38] More recently in *The Registered Trustees of Faith Tabernacle Congregation Church, Nigeria v Ikweghegh*[39][39] allegation of embezzlement of N1.5 million church funds pitched more than ten clerics against each other. Five years of internecine legal tussle did not bring harmony.

Evidently, Nigerian clerics are unable to settle interpersonal disputes – doctrinal as well as secular – in a spirit of give and take. This reflects a deep chasm between pretentious appearance of religiosity and actual spirituality. Unless these professed men of God from whom nobler standards are expected change their attitude, there is little basis for hope that conditions would improve. Assuredly, more schisms await Nigerian religious groups in the days ahead.

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[38][38] *Eternal Sacred Order of Cherubim & Seraphim v Otubu [1985] HCNLR 943, 963.*
[39][39] *[2000] 13 NWLR (Part 683) 1.*