

RELIGION IN CONTEMPORARY LEGAL SYSTEMS

- AN OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK FOR THE PRACTICE OF RELIGION AND FAITH IN GHANA

The exercise and practice of faith and worship in the pursuit of one's religion was known to the people of Ghana even before the arrival of the European colonialist in the 14th and 15th centuries. Like most parts of the world, religion in Ghana has become a necessary condition of human and communal existence, and the freedom of religion, faith, worship and conscience a constitutionally- inalienable human right. The general view is that in Ghana, as in most parts of the world, religion and the practice of faith is a critical factor of the social structure and indeed the cord that holds society together.

Geographically, Ghana is located, approximately, at the intersection of the Equator and the intersection of the Greenwich, hence the expression, "Ghana sits at the centre of the world!" Stretching from the Atlantic sea in West Africa, and covering an approximate area of 238,500 square kilometers, Ghana has an estimated population of 22 million people drawn from more than 100 ethnic groups each with its own unique language. English is, however, the official language.

From the latest census figures (2000), about 69% of the people in Ghana are Christians, 16% are Muslims and the remaining 15% of its population is made up of people who cling to indigenous traditional religious forms of worship, and those who claim no affiliation with any religion. It can hardly be disputed that Christianity is the dominant religion practiced in Ghana today. Among this group is the notable growth of Charismatic and Pentecostal churches.

It is also a fact that the essence of government in Ghana is to provide the legal and regulatory framework within which all persons can pursue their legitimate endeavours, earn a living and interact harmoniously with each other for the common good of all. This paper seeks to examine the legal and regulatory frame work governing religious practices in Ghana and the socio-traditional practices that impinge on religious freedom in this West African country.

The paper focuses on the constitutional, statutory and other rules and regulations that affect religion, the practice of religious faith and belief and various significant interventions that affect the relations between the state and religious bodies and groups, and the interaction of various groups in exercise of their right and freedom to worship. Each of these significant areas is discussed below.

THE CONSTITUTION

The supreme law of the Republic of Ghana is its 1992 Constitution which came into effect on 7th January 1993. The Constitution as the supreme law of the land contains explicit and comprehensive provisions on fundamental human rights and freedoms. More importantly to our discussion, the Constitution guarantees to all persons in Ghana, the fundamental human right of freedom of religion and its practice. Indeed, Article 21 provides that:

"All persons shall have the right to

- (a) Freedom of speech and expression, which shall include freedom of the press and other media;*
- (b) Freedom of thought, conscience and belief, which shall include academic freedom;*
- (c) Freedom to practice any religion and to manifest such practice;*
- (d) Freedom of assembly including freedom to take part in processions and demonstrations;*
- (e) Freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest;*
- (f) Freedom of Information, subject to such qualifications and laws as are necessary in a democratic society;*
- (g) Freedom of movement which means the right to move freely in Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana."*

In line with these constitutional provisions, the State of Ghana does not, generally speaking, inhibit or otherwise prevent anybody from exercising or practicing any religion or faith. Citizens are free to hold any belief and practice any religion and openly manifest such religious belief without fear of intimidation or reprisal from any circle. It must be remarked however that whereas the right to believe is uninhibited, the Constitution makes the practice of one's religious belief subject to such controls as are reasonably necessary in a democratic state for the protection and in the interest of public health, morals etc.

Again, the Constitution's Directive Principles of State Policy enjoin the State to endeavour to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability. The State is also enjoined to make laws that ensure the enjoyment of rights of effective participation in the development process including rights of the citizens to form their own associations free from State interference.

TAXATION

In line with its policy of promoting and encouraging freedom of religion, the State does not impose tax on church donations or church "collections" (as it's locally referred to). Consequently, Section 10(1) (d) of the Internal Revenue Act of 2000, (Act 592) exempt from the payment of tax all "*...Income accruing to or derived by an exempt organization other than (its) income from a business*" The Act defines an "exempt organization" as including a person "who or that is and functions as a religious, charitable or educational institution of a public character."

The position in Ghana therefore is that so long as a religious organization is engaged in an ecclesiastical, charitable and/or educational activity, the State exempts it from the payment of taxes. However, and to the extent that any religious organization engages in a commercial income-generating venture or business, it will be obliged to pay taxes on those activities in accordance with the tax laws of the country. These provisions have not deterred the various religious groups from vigorously operating real estate companies (that actively buy and sell landed properties to its members and to the general public), public transportation, promoting

financial services and insurance companies in addition to their primary goals of winning more souls to God. Finally, the tax laws of Ghana require all paid staff of religious groups whether they are styled as Pastors, Bishops, Priests and Reverend Ministers etc. to pay taxes on their monthly or yearly incomes/earnings.

ENVIRONMENTAL PROTECTION LAWS ON NOISE-MAKING & NUISANCE

The proliferation of Pentecostal and Charismatic churches has led to increasing complaints in respect of the intolerable noise made by those churches during their worship and prayer meetings. There have been occasional complaints also against some Muslim sects on the level of noise made by them.

The siting of churches and mosques at residential areas has also contributed to aggravate this problem.

The Environmental Protection Agency was established under the Environmental Protection Agency Act, 1994, Act 490 and empowered under Section 2(g) (j) and (m) to undertake the following functions among its mandate, namely to:

- (g) Issue notice in the form of directives, procedures or warnings to any other person or body for the purpose of controlling the volume, intensity and quality of noise in the environment;*
- (j) Act in liaison and co-operation with government agencies, District Assemblies and any other bodies and institutions to control pollution and generally protect the environment;*
- (m) Initiate and pursue formal and non-formal education programmes for the creation of public awareness of the environment and its importance to the economic and social life of the country;*

Most of these churches and mosques, in fact, use Public Address Systems during worship and prayer meetings and the noise emanating from some of these PA Systems sometimes makes hearing in residential neighborhoods virtually impossible. Some of these churches do not discriminate between day-time worship

or activities and night-time prayer meetings. Others do not care whether they are operating from residential areas or not. They operate under the mistaken belief that their act of worshipping God entitles them to disturb other people even outside the confines of their places of worship.

Ghanaian courts generally seem to think otherwise. For example, in the case of the **Republic vs. The Pastor in Charge, Power Miracle Chapel International**, (Unreported) District Court case No. B12/23/08 La. Accra, the Court had the occasion to enforce a recommendation by the Environmental Protection Agency that the respondent church, led by the accused Pastor, abate its noise by the installation of noise proof materials in their building within 14 months failure of which the Accra Metropolitan Assembly was authorized to close down the church.

It is important for religious practitioners to note that the right to the practice of one's religion / faith is not a license to trample upon the rights of other citizens.

POLITICAL PARTIES AND RELIGION

Members of religious organizations are free to join political parties and other associations of their choice as long as they remain citizens of Ghana and are of the required voting age that is, 18 years of age. Article 55(4) of the Constitution however provides that *"Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions"*. Thus, political parties cannot be formed on religious lines.

Article 56 of the Constitution reinforces this point by providing that:

Parliament shall have no power to enact a law to establish or authorise the establishment of a body or movement with the right or power to impose on the people of Ghana a common programme or a set of objectives of a religious or political nature.

Thus, the right to join a political party is an individual right and for that reason a religious organization has no power to compel its members to join any particular political party. This is in conformity with Article 55(16) of the Constitution of Ghana which states that *"A member of an organisation or interest group shall not be*

required to join a particular political party by virtue of his membership of the organisation or group”.

RELIGIOUS SYMBOLS

The Republic of Ghana does not encourage or discourage the use of religious symbols in any form. In practice however, where one is required to submit a photograph for an official purpose, as for example to obtain a Ghanaian passport, a photograph which hides the facial impression and identity of the applicant, in my view, will not be acceptable to the authorities and the applicant cannot be excused on the basis that his religious belief does not permit him to reveal or show his face completely.

RADIO STATIONS

The laws of the Republic of Ghana do not permit the establishment of Radio Stations for the sole purpose of propagating any particular religion or faith.

MARRIAGES

The laws of the Republic of Ghana recognize basically, three forms of marriages. These are marriages celebrated in accordance with the customary law and practices of the various tribes and ethnic groups which are registrable under the Customary Marriage and Divorce (Registration) Law 1985, PNDC Law 112. The second type of marriage recognized under Ghanaian law, are marriages under the Marriage Ordinance CAP 127 otherwise known as Christian Marriage. The third is marriage under the Marriage of Mohammedans Ordinance CAP 129. All these marriages are rites celebrated in accordance with religious norms. They are all recognized by the laws of the land and have, as a result, legal effect in respect of their validity and relationship to succession rights of spouses and the children of such marriages.

PUBLIC HOLIDAYS

As a way of expanding the parameters of freedom of religion, the Republic of Ghana recognizes Christian and Muslim festivities alike. Consequently, 25th December

which is celebrated world wide as Christmas day by Christians and the Easter festivities in each year are recognized by the State which has set aside those days as holidays for the whole nation. Equally, the Muslim festivities of Eid al fitr (Ramadan) and Eid al Adha (Hajj) have been set aside by the state to be observed as holidays. These are contained in the **Public Holidays Act 2001 Act 601**.

Unfortunately, no day is set aside as a public holiday for Traditional Religious Practitioners. This may, perhaps, be due to the fact that Traditional Religious Practitioners, unlike their Christian or Muslim counterparts, do not have a common day or days which they together and as a unit celebrate as their festive days. The state does not discriminate against any religious organization. Indeed, this is clearly exhibited during State functions where prayers are offered by Christians, Muslims and Traditional Religious practitioners alike without any discrimination of any sort.

EMPLOYMENT AND RELIGION

The laws of Ghana protect religious liberty and employment. The law prohibits discrimination against employees and would-be employees on grounds of their religious beliefs. In furtherance of this the Labour Act of 2003, Act 651 provides at section 14(e) that:

An employer shall not in respect of any person seeking employment, or of persons already in his employment

(e) discriminate against the person on grounds of gender, race, colour, ethnic origin, religion, creed, social or economic status, disability or politics.

Again section 63(1) (2) (d) also states that:

(1) The employment of a worker shall not be unfairly terminated by the worker's employer.

(2) A worker's employment is terminated unfairly if the only reason for the termination is;

(d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;

An employer who violates the above provisions may be ordered to re-instate the affected employee or pay adequate compensation to him.

RELIGIOUS AUTONOMY

Every religious organization in Ghana is autonomous and the State does not directly or indirectly participate or otherwise determine the governance of any religious grouping. However, in cases of dispute, members of religious organizations, voluntarily, submit to the jurisdiction of the courts, which determines and resolves the dispute in accordance with the general laws of the land. An example is the case of the **Trustees of the Saviour Church of Ghana vs. Essien (1984-86) 1 GLR 265** where the applicants, members of the Board of Trustees of the Saviour's Church of Ghana, claimed that since the death of the founder, the defendants had broken away from the church and ceased to be members of the church. They also alleged that the defendants forcibly took over the church and were desecrating it and had also threatened members with violence should they attempt to enter the church. In dismissing an ex parte application for an order of perpetual injunction to restrain the defendants from, inter alia, entering the church and operating the bank accounts of the church the Court held that the applicants could not seek an order of perpetual injunction by an application ex parte and that the defendants ought to have been notified.

The Court also held that since there was no evidence that the mode of worship was injurious to the reputation of the church or that they had used the church headquarters, assets and other properties for purposes other than the administration of the affairs of the church or worship it would be unjust to impose a restraint on them by an interim injunction without hearing their side of the matter. In any event, an injunction would not be granted to stop a going business concern or religious worship.

Another interesting case on this point is **Osam-Pinanko vs. Lartey & Another (1967) GLR 380** in which the parties were all members of the A.M.E. Zion Church. The applicant was dismissed from his church office by the respondents. In a motion the applicant prayed for an injunction to restrain the first respondent from performing his duties as Bishop of the A.M.E. Zion Church because he was, inter alia, guilty of heresy. The applicant also sought to restrain the respondents from interfering with the applicant's duties, rights, etc. as a member and elder of the church. In dismissing the application the Court held that the motion was manifestly vexatious and frivolous.

Heresy, according to the Court, was defined as a belief contrary to the authorised teaching of one's natural religious community. There was no established religion recognised as the religion of the State. The courts in Ghana applied only the laws of the country and not what the Christian Bible taught. If a bishop committed heresy by preaching contrary to the precepts of Christ or by propounding religious dogmas opposed to the accepted and established canons of the church, there was nothing that a temporal court could do about it. Only the church authorities could deal with the particular bishop. Therefore whether the first defendant had committed heresy or not the court had no jurisdiction in the matter.

Similarly, in the case of **Chief Tsokosi and others vs. Alhaji Abbas and others (1972) 1 GLR 257**, the plaintiffs asked for a declaration that the election and installation of the 1st defendant on 4 June 1971 as Chief Imam of Greater Accra was invalid. They also asked for an order of perpetual injunction to restrain the 1st defendant from performing the functions of Chief Imam of Greater Accra. In an application the plaintiffs prayed for an interim injunction to restrain the first defendant from performing the functions and enjoying the privileges of the office of Chief Imam of Greater Accra. The basis of the application was (i) the likelihood of the breach of the peace and (ii) the desire to keep the unity and integrity of the Muslim Church. The defendants resisted the application on the ground that the plaintiffs had no right to decide who should be chosen as the Chief Imam for the Central Mosque.

The court held that the purpose of an interim injunction is to preserve the status quo ante. That the 1st defendant had been acting as the Chief Imam since 1965. If the

plaintiffs' application was granted the status quo would not be preserved because the 1st defendant would be prevented from acting as Chief Imam. Further, although the plaintiffs were aware of the 3rd defendant's preparations to install the 1st defendant as Chief Imam, they did not act timeously through the court for a proper and effective protection of their rights.

Again, in the case of **Prophetess Thane II vs. Prophet George (1977) 1 GLR 467**, the Respondent sued the Appellant at the High Court and sought to restrain the Appellant from using the words "**Twelve Apostles**" as part of the name of his church the "Twelve Apostles Church of Ghana". The Respondent also sought to recover from the Appellant, certain articles given to the Appellant as the insignia of his office during his ordination.

The Court of Appeal held that the Appellant was pursuing his lawful spiritual rights and could not be lawfully restrained from the use of the name "Twelve Apostles" Church under either Act 85, Act 179, or Act 270 because (a) the Copyright Act, 1961 (Act 85, s. 1 (1) listed works eligible for copyright as (i) literary works, (ii) musical works, (iii) artistic works, (iv) cinematograph films, (v) gramophone records and (vi) broadcasts. It did not include a mere name and therefore no copyright vested in the Respondent by the mere use of the name "Twelve Apostles" and (b) the Respondent's church was not a company within the meaning of the Companies Code, 1963, because the church was not engaged in business with a view to profit and (c) as the Respondent had not and did not register any trade mark in that name, the Trade Marks Act, 1965 (Act 270), was also inapplicable.

The Court held further that notwithstanding the Respondent's failure to restrain the appellant's use of the name "Twelve Apostles", she was entitled to recover those sacred articles from the appellant in a detinue action. But since there was no certainty as to the availability of those articles delivered to him nearly half a century ago to be recovered *in specie*, an order for specific return of them might be impossible of performance. The ends of justice would therefore be met if the appellant was ordered to pay the cost of the articles to the respondent.

RELIGIOUS BELIEFS, CHILDREN & MEDICATION

As already pointed out, the Constitution of the Republic of Ghana, guarantees freedom of religion to all persons. However, Articles 28(4) (5) and 30 of the Constitution 1992 provides that:

28(4) No child shall be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.

(5) For the purposes of this article, "child" means a person below the age of eighteen years.

30. A person who by reason of sickness or any other cause is unable to give his consent shall not be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.

What these Articles of the Constitution implies, when read together with Article 21(c) is that as far as an adult of full capacity is concerned, one may use his religious belief as a ground or reason to refuse medication to himself. However, as regards children and other persons incapable of giving or withholding their consent, nobody has the right to use his religious belief as a ground to refuse medication or medical treatment to a child or to any such person who is incapable of giving or withholding consent.

The activities of some churches, in this respect, have brought them in grand collision with the State when, in pursuit of their religious beliefs and practices, some of the members of those churches attempted to prevent their children from receiving medication. A case in point is members of the Christ Apostolic Faith Church in some communities at Ho, in the Volta Region of Ghana, when in the year 2000, members of the church locked up their children to prevent them from being immunized by health workers in a nation wide immunization exercise against poliomyelitis for the reason that it was against their religious beliefs. Members of the Jehovah Witnesses sect are also known to refuse blood transfusion.

Continuous education is recommended. Nevertheless, by the laws of Ghana, as long as a person remains a child or suffers from incapacity, that person cannot be denied medical treatment of any sort by another solely on the ground of the religious belief of that other person.

RELIGION AND EDUCATION

The laws of the Republic of Ghana permit Religious Organizations to establish educational Institutions in accordance with the requirements of the laws of the land. Indeed, most of the leading educational institutions were established by Religious Organizations and are open to members of the public. Presently, the government funds most of these mission schools which are run as public institutions.

At the primary or basic level, most of the mission schools are managed by qualified members of the various missions. By law, the curricula of the mission schools must conform to the standards set by the Ghana Education Service at both the basic or primary and secondary (i.e. High School) levels. At the tertiary level, the curricula are generally developed by the University or the Tertiary Institution concern. However, there is a National Tertiary Education Board that supervises all Tertiary Institutions.

From time to time, conflict arises between some of the students who do not belong to particular religious organizations but who attend schools established by such religious movements on one hand and the management of such schools on the other.

Such conflicts arise when the management of those faith-based schools requires the *"non believing students"* to observe some doctrinal beliefs of those religious organizations.

One school of thought has argued that faith based educational institutions have their own standards fashioned in accordance with their religious beliefs and that, once a student has applied for enrolment in that school the student has agreed and offered to adhere to those principles or standards and can therefore not complain after he or

she has been offered admission. Another school of thought is however of the opinion that no one should be compelled to practice a belief he does not share.

A case in point is a suit brought by a group of Seventh - day Adventist Students against the University of Ghana in 2005 in which the students prayed for an injunction to restrain the University from organizing examinations on Saturday which is their Sabbath and a holy day. In dismissing the application the Court held, among others, that a grant of the application will cause more hardship on the University since it had already committed resources into setting the dates for the examinations and that the application was not timeously brought.

It is unfortunate that the Court did not consider the fact that the applicants were seeking to enforce their fundamental human right to freedom of religion guaranteed under the Constitution 1992 and particularly so when the said right has not been determined to be obnoxious or against good conscience.

Another source of Inter- religious conflict crops up when members of one religious organization tries to compel compliance with their beliefs by other members of a different religious grouping. A case in point is the banning of drumming in particular and noise making in general as part of rituals leading to the observance and celebration of the Homowo festival by the good people of Accra. Most charismatic churches which use drums in worship see the ban as a coercion to observe religious beliefs which they do not share. This requirement has often led to seizure of drums and other instruments from some of the charismatic churches with its attendant breaches of the peace and sometimes causation of bodily harm to other persons.

THE “TOKOSI SYSTEM” AND RELIGIOUS LIBERTY

Trokosi is a traditional religious practice by which young female virgins are sent to fetish shrines in certain parts of Ghana in bondage to serve at the shrines or sometimes to be married to the fetish priest, all in an attempt to pacify the gods for various acts of transgressions or violations committed by certain relatives in their families.

It is believed that failure to send a virgin girl to go and serve at the shrine in pacification for the sins of a relative may lead to massive deaths of family members. These virgin girls are mostly held in slavery or servitude for years. Clearly, this customary religious practice is against good conscience. Although Article 26(1) of the Constitution provides that *"Every person is entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution,"* the same Constitution also provides in Article 26(2) that *"All customary practices which dehumanise or are injurious to the physical and mental wellbeing of a person are prohibited"*.

Again, it is provided in Article 16(1) (2) that no person shall be held in slavery or servitude and furthermore, no person shall be required to perform forced labour.

Equally important is the fact that the religious practice of Trokosi as a traditional and cultural observance certainly runs counter to provisions contained in the International Covenant on Civil and Political Rights to which Ghana is a signatory.

To curb the evil effect of the traditional religious practice of Trokosi, the Ghana Parliament passed the Criminal Code (Amendment) Act 1998, Act 554 which provides that:

A person who:

- (a) sends to, or receives at a place, any other person, or*
- (b) participates in or is concerned in a ritual or customary activity in respect of any other person, with the purpose of subjecting the other person to a form of ritual or customary servitude, or a form of forced labour related to a customary ritual, commits a criminal offence and is liable to a term of imprisonment not less than three years.*

Thus, the Act prohibits the traditional religious practice of Trokosi by criminalizing it henceforth. As expected, traditional religious practitioners were not pleased with the law and voiced out their condemnation thereof in the strongest terms with some members describing the law as an attempt to demonize traditional religious belief and practice; and as discriminatory in the process.

It must be stated that a sustained education and monitoring is necessary in order to make the observance of the law effective. For, as stated in the Ghanaian Constitution, a human being cannot be held in slavery and servitude in the name of religious belief and practice of whatever form.

Additional protection of the rights of children can be found in Article 28(2) and (3) of the Constitution provides that:

28 (2) Every child has the right to be protected from engaging in work that constitutes a threat to his health, education or development.

(3) A child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

It is part of the duty of the State to protect its citizens from dehumanizing treatment and all forms of cruelty as provided in Article 39(1) and (2) that:

39. (1) Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

(2) The State shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and, in particular, that traditional practices which are injurious to the health and wellbeing of the person are abolished.

REGISTRATION AND RELIGIOUS ORGANIZATIONS

Before the coming into force of the Constitution of the Republic of Ghana, the then Government, the Provisional National Defence Council, passed a law, the Religious Bodies (Registration) Law of 1989 (PNDCL 221) which was seen by many as a direct infringement on their right to freedom to hold any religious belief and to practice and manifest same.

The law mandated two bodies to oversee the registration of religious bodies. These are the Religious Affairs Committee and the National Commission for Culture. Persons desiring to found or establish any religious body were obliged to apply to the committee for a provisional approval which shall be in effect for only 3 months. The failure to obtain a provisional license before the establishment of a religious body may result in a confiscation of the assets of the religious body in addition to criminal prosecution of the founder.

Section 3 of the said Law provided that:

“Every religious body in Ghana shall be registered under this Law and no religious body in existence in Ghana shall after three months from the commencement of this Law operate as such a body unless it is registered under this Law.

To qualify for registration, a religious body needs to obtain a certificate of approval issued by the commission upon the recommendation of the committee. To qualify for the grant of a certificate of approval Section 6(1) (2) provided that “Any person who seeks approval for the registration of a religious body shall apply in writing to the Committee on a form prescribed by the Commission”.

It stipulated further that the following shall be furnished with the application:

- (a) A copy of the constitution of the religious body which shall specify its objects, rules and regulations;
- (b) The names, occupation and addresses of the trustees of the religious body;
- (c) The emoluments or other benefits of the principal officers of the body;
- (d) The location and the address of the headquarters of the body;

- (e) Evidence of the numerical strength of its male and female membership and the spread of the membership in the country;
- (f) Particulars indicating that the places of worship or activity are suitable for the purpose;
- (g) A declaration that the places and mode of worship do not constitute a health or environmental hazard to the members of the body or to the public in general;
- (h) The social and community work programme other than evangelistic or religious programme, if any, of the body; and
- (i) The financial statement and intended source of funds of the body.

The Law provided further that the place of worship of a religious body may be inspected by the Committee before and after the grant of a certificate of recommendation. It is after the receipt of a certificate of approval that an application can be made to the Registrar General for the registration of a religious body.

Section 13 of the law empowered the commission to cancel any registration and prohibit a religious body from operating or worshipping as the case may, upon being satisfied of the presence of certain conditions as for example that "acceptable standards of decency are not observed at the meeting of the body" etc. By section 14, where a religious body has been prohibited under the said Law and its registration cancelled, the Chairman of the Commission may make such orders as appears to him just and equitable for the dissolution and disposal of the properties, assets, rights and liabilities of such a body. The law finally makes provision for penalties and other criminal sanctions for disobedience and infractions by religious bodies and persons connected thereto.

The law, as it stood, was seen by the older Christian churches which were established by missionaries as a complete infringement on their fundamental human rights to freedom of religion. Indeed the Christian Council of Ghana and the Catholic

Bishop Conference openly stood against and opposed the law with all vehemence. In a letter written by the Christian Council of Ghana and the Catholic Bishop Conference to the government, the two bodies observed that the law was “*a direct contravention of the freedom of religion enshrined in the United Nations Charter on Human Rights to which Ghana subscribes*”.

Before the passage of PNDC Law 221, the Trustees of religious bodies registered under the Trustees (Incorporation) Act 1962, Act 106 which vested them with the power to hold immovable properties in trust for their religious organizations and constituted them into corporate bodies with the power to sue and be sued. The Religious Bodies (Registration) Law 1989, PNDCL 221 made the Trustees (Incorporation) Act of 1962 inapplicable to religious bodies.

Indeed in the case of **Quayson vs. The Church of Christ (1997 – 1998) 2 GLR 671**, the plaintiff church which was founded in 1956 was registered under Act 106. Upon the coming into force of PNDCL 221, the church applied for registration under the law and was given notification to operate pending registration.

Upon a leadership struggle, the defendant and certain members seceded and formed a rival church called Church of Christ (Pentecostal) and attempted to register same under the law.

The plaintiff, therefore, brought an action at the High Court for a declaration that having seceded; the defendants were no longer members of the plaintiff church and were therefore not entitled to hold onto and in their custody any property belonging to the plaintiff. The defendants contended that the plaintiff church had not been registered and so lacked the capacity to sue and that the plaintiff church does not have a certificate of approval as required under PNDCL 221. In the meantime, the defendant withdrew their letter of secession from the National Commission for Culture. The High Court ruled in favour of the plaintiffs and on appeal by the defendants, the Court of Appeal held that:

- (a) The Religious Bodies Registration Law, 1989 (PNDCL 221) introduced new procedural rules for registration of religious bodies, and to give legal recognition and status to such registered bodies; it did not take away any

rights that accrued under any previous legislation, especially before the committee set up under the law to register such religious bodies had processed and granted approval to any application for registration by existing religious bodies. It could simply not have been the legislative intendment to outlaw existing religious bodies whose applications for registration under the law could not be approved by the committee as quickly as possible within the three months allowed by them to register.

- (b) Hence, where such an existing religious body filed its application within time but could not get the approval on time, it would not be illegal for it to function when its application was still pending, for its only responsibility under the law was to apply for registration, and the duty to register it rested with the committee. And for that reason, where the committee was still considering an application and had granted an interim approval, such approval would operate to give the applicant the right to operate in every way as a church. In the circumstances the 'notification to operate' albeit interim, was sufficient to clothe the plaintiff with the requisite legal personality or the capacity to sue and be sued.

Every person had a right to protect his own property and that would include a right of action in court in respect thereof. Thus, where a person had a right, legal or equitable, to a certain property, it implied a right to sue in defence of such property. Hence whether an existing religious body was registered under PNDCL 221 or not, it was entitled to sue to protect its property; and no person had a right to take its property from it by praying in aid the fact that the particular religious body was not registered under PNDCL 221. The right acquired by the plaintiff church under Act 106 to own property could not and was not taken away by PNDCL 221.

- (c) Consequently, the defendant could not hold on to the plaintiff's property simply because the plaintiff was not registered under the law. Such property of an unregistered religious body could, by section 3 (5) of PNDCL 221, be confiscated only by the State and nobody else. The court would therefore be promoting lawlessness in the society if it endorsed the action of a third party

who took the property of another on the ground that that other person had failed to comply with the existing law and so lacked capacity to sue; and in a situation where the trustees themselves are seeking to take over the church property and are thus acting against the church, the elders of the church and, failing them, the ordinary members could sue in the name of the church to recover its property. In consequence, whether registered or not, the plaintiff had the capacity to sue; and at the very least the title of the suit could be amended to show that the action was instituted by the trustees of the plaintiff church.

It must be placed on record that the Religious Bodies (Registration) Law 1989, PNDCL 221 died a natural death upon the coming into force of the Constitution 1992 on the 7th January 1993 since its provisions were grossly against the constitutional provisions which guaranteed freedom of religion as earlier mentioned and also in view of the provision in Article 1(2) that any "law found to be inconsistent with any provision of the Constitution shall be, to the extent of the inconsistency, void."

CONCLUSION

In conclusion one can do no better than to repeat the words of Rev. Professor K.A. Dickson, a Professor Emeritus and former President of the All African Conference of Churches that *"... generally speaking, freedom of religion is a reality in Ghana, as it is elsewhere in Africa, and that this has led to unprecedented growth; attempts to restrict the church's freedom have usually been resisted"*.

Indeed, the 1992 Constitution of Ghana guarantees to all persons "the freedom to practice any religion and to manifest such practice". I must remark that there is no freedom any where in the world which is absolute. Every guaranteed freedom must be exercised within the permissible boundaries of the law in view of the need to ensure that the rights of others are not unduly infringed as a result of the practice or enjoyment of one's freedom.

The only threat to the exercise of religious freedom in Ghana today is not the State but individual intolerance and the lack of respect for the rights of others.

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GHANA.