

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2014/HP/0897

BETWEEN:

THREE ANGELS MESSAGE

AND

THE REGISTRAR OF COMPANIES



APPLICANT

RESPONDENT

**BEFORE the Honorable Mr. Justice I. C. T. Chali in Open Court, on
the 16th day of December, 2014**

For the Applicant: Mr. B. Mosha, Messrs. Ferd Jere & Company

For the Respondent: Ms. N. Mupunda – Muma, Legal Officer

J U D G M E N T

Legislation referred to:

1. *Constitution of Zambia Act, Chapter 1 of the Laws of Zambia.*
2. *Companies Act, Chapter 388 of the Laws of Zambia.*
3. *Companies (Amendment) Act, No. 24 of 2011 of the Laws of Zambia.*
4. *Trade Marks Act, Chapter 401 of the Laws of Zambia.*
5. *Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia.*

On 16th March 2010 the Applicant was incorporated as a Company limited by guarantee pursuant to the provisions of the Companies Act, Chapter 388 of the Laws of Zambia. However, on 27th May 2014 the Registrar of Companies wrote to the Applicant directing it to change its name. The letter ready in part as follows:

“Concerns have been expressed regarding the use of the words “Seventh Day Adventist” by yourselves in light of the Seven Day Adventist Church. It is our considered view that your name and that of the aforesaid Seventh Day Adventist Church are confusingly similar and thus likely to confuse the public.

In the circumstances, in accordance with Section 41 of the Companies Act as read with Section 5 of the Companies (Amendment) Act, No. 24 of 2011, we direct that you drop the term “Seventh Day Adventist” from your company name within fifty (50) days of this letter. Kindly note that we may replace the company name with its registration number as its new name and issue a replacement certificate in that regard, should you fail to comply with the directive.

In view of the foregoing, you are advised to propose a different name of your choice for our consideration.....”

On 11th June 2014 the Applicant filed into Court an originating notice of motion to challenge the said decision of the Registrar on the following grounds:

1. That the Registrar misdirected himself in his finding that the Applicant’s name is confusingly similar to the existing name of Seventh Day Adventist Church notwithstanding that it has a unique and peculiar distinguishing description that sets it apart from the already existing name;

2. That the Registrar misdirected himself by failing to appreciate that the words "Seventh Day Adventist" are a generic description for the followers of certain Biblical doctrinal values that cannot be peculiar to only one single group that has exclusive use of the words;
3. That the Registrar was biased and discriminatory in his decision by singling out the Applicant for the use of the words "Seventh Day Adventist" in its name when he has in fact registered and maintains on the Register of Companies numerous corporate entities with the exact same words in their names; and
4. That the Registrar misdirected himself in law and fact by compelling the Applicant to change its name without regard to the fact that it has been in existence for 4 years and has registered trade marks around the same name and has built up goodwill and confidence.

The Applicant therefore prayed that the Court finds the Registrar's decision to be unlawful.

The application was supported by an affidavit sworn by Mr. Joseph Change, the Applicant's regional leader, in which he deposed to the facts giving rise to the appeal against the Registrar's decision. He deposed, among other things, that the Registrar's decision came without warning and without giving the Applicant an opportunity to be heard or to make representation. He said the term Seventh Day Adventist is a Biblical

term which appears 51 times in the Bible and it is thus gravely erroneous to effectively ascribe its exclusive use to one organization only. The term, he said, is associated with believers who are waiting for the second coming of Christ. He deposed that the Registrar's decision is based on misplaced considerations and has been heavily influenced by the Seventh Day Adventist Church with whom the Applicant has had many differences over the years.

He said that there are many other organizations in existence that are using the phrase Seventh Day Adventist in their names which are still maintained on the Register of Companies including the Restoration Free Seventh Day Adventist Ministry, Seventh Day Gospel and Seventh Day Baptist. He deposed that it had taken the Registrar quite some time before he could register the Applicant because of the existence of a lot of faith based organizations registered with the Registrar that have the words Seventh Day Adventist in their names. The Applicant stated that there is no confusion whatsoever that has been or that may be caused by the Applicant's use of those words as the words are a generic description of those believers that share certain doctrinal values and are distinguished from one another by other words such as "Baptist", "Gospel", "Restoration Free", and, in the case of the Applicant, by the words "Three Angels Message". Mr. Change also deposed that since its incorporation, the Applicant has registered certain trademarks in its own name, as evidenced by certain certificates issued by the Registrar.

Lastly, he also stated that since its registration in 2010 the Applicant has enjoyed the use of its name without any inhibition and its members who worship at the Ministry are fully aware of its distinction from the Seventh Day Adventist Church.

Two affidavits were filed in opposition to the Applicant's appeal, one by Mr. Christopher Mapani, Assistant Registrar of Companies, and the second by Mr. Emmanuel Mwale, President of East Zambia Field of the Seventh Adventist Association Registered Trustees as well as trustee of the SDAART. Starting with the latter affidavit of Mr. Mwale, he deposed that before 26th October 2006, the Applicant's first directors were members of some Seventh Day Adventist Congregations in East Zambia Field of the Seventh Day Adventist Association Registered Trustees. However, on 26th October 2006 the congregations to which those members belonged were disbanded or expelled from the sisterhood of Seventh Day Adventist congregations at a duly convened session held at Mwami Mission Station, Chipata. The dissolved congregations accordingly ceased to be members of the General Conference of the Seventh Day Adventists worldwide. Further, nine of those directors of the Applicant ceased to be members of the East Zambia Field when they failed to secure their membership within three months as required by the Church manual. They also ceased to be members of the worldwide General Conference of the Seventh Day Adventists. A few of those members contested the dissolution of their congregations and their expulsions in case No. 2007/HP/0413.

I must, however, hasten to state here that case No. 2007/HP/0413 did not touch upon the issues I am now concerned with in this case.

After the said case, members of the Applicant attempted to register the dissolved congregations with the Registrar of Societies, but, when that failed, they ended up registering themselves with the Respondent.

Mr. Mwale further deposed that the name "Seventh Day Adventist" is a trademark of the General Conference of the Seventh-Day Adventists and is reserved for the exclusive use of itself, its institutions, and its affiliates. He produced a copy of an excerpt from the Working Policy 2008-2009 of the Church to support that claim. I shall return to that part of the Working Policy later in this judgment.

According to Mr. Mwale, the Applicant's first directors did not obtain authorization to use his Church's trade mark, hence on 1st April 2010 his Church wrote to the Registrar of Societies, the Minister of Home Affairs, and the Respondent herein basically contending that the use by the Applicant of the words "Seventh Day Adventist" in its name was a breach of his Church's protected copyright and would confuse unsuspecting members of his Church. The Church accordingly requested the authorities to intervene in the matter.

Mr. Mapani was the author of the letter to the Applicant dated 17th May 2013 the subject of the Applicant's grievance. He deposed in his affidavit that he wrote the letter based on the legal mandate to determine the

suitability of the name of an entity registered or proposed to be registered with PACRA. He said that the letter followed concerns raised by the Seventh Day Adventist Church to the effect that the Applicant's name is confusingly similar to the name of the Church. It was then found prudent to exercise the statutory powers vested in the Registrar. Similar concerns had also been raised by the Provincial Administration in Eastern Province through the Deputy Permanent Secretary's letter dated 10th April 2014 to the Respondent. Mr. Mapani stated that notwithstanding the fact that there are other organizations also registered with the Respondent which bear the words "Seventh Day Adventist", none of those organizations have been alleged to be confused with the Seventh Day Adventist Church. Therefore, he said, the directive was issued to the Applicant to replace its name based on the existing name's potential to cause confusion in the minds of members of the public. He denied that he acted in bad faith or that the decision was subjective.

At the hearing of this matter, I received oral submissions from Counsel for the parties, which I have considered and taken into account in arriving at my decision

The first issue I would like to determine is the claim by the Seventh Day Adventist Church to copyright or trade mark in the words "Seventh Day Adventist", "Adventist" and "SDA" or their equivalents in other languages.

The Church's Working Policy 2008-2009, an excerpt of which was exhibited to Mr. Mwale's affidavit, provides in part as follows:

“BA 40 50 Trademark Protection Procedures – It is the responsibility of every organizational entity, at all levels of the Seventh-day Adventist Church, to protect the names Seventh-day Adventist, Adventist, and SDA (or their equivalents in other languages)”

Apart from laying claim to copyright and trademark to the said words, Mr. Mwale did not produce any evidence to show that the said words are legally reserved for his Church to the exclusion of other organizations worldwide. Neither did Mr. Mapani in aid of the claim of the Church.

Under Section 2(1) of the Trade Marks Act, Chapter 401 of the Laws of Zambia, a “trade mark” is defined as:

“..... A mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person.....”

And the word “mark” is said to include

“ a device, brand, heading, label, ticket, name, signature, work, letter, numeral or any combination thereof.”

The law under the Trade Marks Act makes provision for, *inter alia*, the registration of trademarks and for their protection. And a register of such trademarks is kept for the purposes of identifying proprietary interests therein.

Under Section 7 of that Act, the law also provides:

“7. No person shall be entitled to institute any proceedings to prevent or to recover damages for the infringement of an unregistered trade mark, but nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.”

Therefore, without the registration of the words “Seventh-Day Adventist” and “Adventist”, and the letters “SDA”, the Church cannot claim to be entitled to the exclusive use of the same as its “trade mark”. Therefore, the Church’s Working Policy on its own does not assist the Church in its quest for protection. The claim ought to be backed by the law, which I find not to be the case here. In fact, paragraph BA 40 25 of the working Policy excerpt produced by Mr. Mwale appears to impose a duty on the Church’s organizational entities to register the said words as trade marks. That paragraph reads:

“BA 40 25 Unauthorized use: It shall be the responsibility of the divisions to monitor and review any unauthorized use of the trademarks registered in the name of the General

Conference Corporation. In the event that a registered trade mark or name is being used without authority, the division shall initiate the Trademark Protection Procedures outlined in BA 40 50 in order to protect the proprietary interests of the Church as well as its good name. (Underlining supplied for emphasis).

Therefore, I find the claim by the Church based on trademark to be without foundation.

As for the claim to "copyright" in the said words and initials, our law provides for protection of original literary, musical and artistic works, computer programmes, audiovisual works, sound recordings, broadcasts and cable programmes, and rights in performances as defined under the applicable laws. And in Zambia no copy right or right in the nature of a copyright may subsist otherwise than by virtue of the Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia. Like trade marks and patents, copyright gives rights against imitation or piracy of an original and creative maker's works in the subject matter concerned. Such works are generally called intellectual property and the corresponding rights over them as intellectual property rights. Again such works can only be protected for the maker by securing them through registration.

As to the categories of works in which copyright subsists, Section 8 of the Copyright and Performance Rights Act provides as follows:

“8(1) The products of creativity in which copyright may subsist under this Act are the following categories of works:

- (a) Original –**
 - (i) Literary works;**
 - (ii) Musical works;**
 - (iii) Artistic works; or**
 - (iv) Computer programs;**
- (b) compilations;**
- (c) audiovisual works;**
- (d) sound recordings;**
- (e) broadcasts;**
- (f) cable programs**
- (g) typographical arrangements of published editions of literary works.”**

Again there was no evidence that the Church has any Copyright under any law in force in Zambia in the words and initials claimed. Those words and letters cannot be reserved for the Church's exclusive use on that account either. The mere fact that the SDA Church is regarded by many people as essentially being synonymous with the practice of Seventh-Day Adventism does not mean that it necessarily possesses proprietary rights in the designation "Seventh-Day Adventist."

The next question to consider is whether indeed the Applicant's name is so similar to that of the SDA Church as to be capable of causing confusion in the minds of the public. I, first, have to consider the Registrar's powers, if any, where such a situation is alleged to exist.

Section 41 of the Companies Act, Chapter 388 as amended by Section 5 of the Companies (Amendment) Act No. 24 of 2011 of the Laws of Zambia provides as follows:

“41 (1) The Registrar may refuse to register a proposed name of a company where it appears to the Registrar that-

(a) the name, if registered, is likely to cause confusion with a well known name or the name of an existing company;

(b) the registration is sought to prevent another person who is legitimately entitled to use the name from using the name, or

(c) the registration of the name is otherwise undesirable or not in the public interest;

and the Registrar may direct the company to change its name in accordance with this Division.

- (2) The Registrar shall, where the Registrar refuses to register a proposed name of a company, notify the applicant of the reasons for the refusal within seven days of the decision.**

In my opinion, Section 41 of the Act, as amended, only confers on the Registrar power to refuse to register a proposed name on the grounds listed under paragraphs (a), (b) and (c) of subsection (1), and not to direct a change of an already registered name. The key phrases in that Section include “proposed name”, “if registered”, “is likely to cause”, and “the registration is sought”.

Before the amendment, Section 41 (1) provided thus:

“if, in the opinion of the Registrar, the name of a company is likely to cause confusion with the name of another company or is otherwise undesirable, the Registrar may direct that the company shall change its name in accordance with this Division.”

It is clear to me that under the repealed law the Registrar had power to direct a change of name of an already registered entity on the grounds stated thereunder.

There is therefore an apparent lacuna in the present law if one were to only look at Subsection (1).

I therefore have to look to the intention of the legislature to see if it is curable within itself. For that purpose I visited the repealed law to see what would follow after the Registrar directed a registered company to change its name. This was captured under Subsections (2) and (3) of Section 41 and read:

“(2) if the company does not change its name within fifty days, or such longer period as the Registrar may allow in writing, after receiving a direction under Subsection (1), the Registrar shall register the designating number of the company, together with the word “Limited” or “PLC” if required by Section thirty-seven, as the name of the company, and shall issue a new certificate of incorporation for the company, worded to meet the circumstances of the case.

(3) A change of name under Subsection (2) shall not affect any rights or obligations of the company nor render defective any legal proceedings that could have been continued or commenced against it in its former name, and any such legal proceedings may be continued or commenced against it by its new name.”

I find similar provisions under the new law in Subsections (3) and (4). So that when read as a whole, the powers of the Registrar survived the repeal and substitution of Subsection (1). My opinion on the survival of those powers is reinforced by the new Subsection (5) which reads:

“41 (5) Where the Registrar directs a company to change its name, compensation shall not be payable in respect of the name ordered to be changed.”

This Subsection in my view contemplates an already registered company.

Having thus confirmed the Registrar's powers, I now must consider whether those powers were properly exercised in the instant case. The ground upon which the Applicant was directed to change its name is that the Applicant's name and that of the SDA Church “are confusingly similar and thus likely to confuse the public.” This can best be fitted under Section 41 (1) (a) i.e. that it is “likely to cause confusion with a well known name.”

The words common in the name of the Applicant and the other entity is “Seventh Day Adventist.” In the case of the Applicant, those words are preceded by the words “Three Angels Message” and end with the word “Ministry.” In the case of the other organization sought to be protected by the Registrar, those are the key or opening words in its name and end with the word “Church.”

Looked at objectively, the two organizations cannot reasonably be said to be so similar as to be likely to cause confusion in the minds of the public. And by “public”, I mean right-thinking or reasonable people. This is so because I think the test ought to be an objective one. I do not think any true and reasonable member of the SDA Church would be unwittingly duped into going for the Applicant.

As for the words themselves, the word “advent” as a noun is defined in the Concise Oxford English Dictionary, 11th Edition, Revised as “the arrival of a notable person or thing.” In Christian theology, it is said to be the coming or second coming of Christ. The word has its origins from the Latin “adventus” meaning “arrival”, from “advenire” from ad “to” and venire “come”. And an “Adventist” is defined as a member of a Christian sect emphasizing belief in the imminent second coming of Christ. And the dictionary further defines a Seventh-Day Adventist as a member of a strict Protestant Sect which preaches the imminent return of Christ to Earth and observe Saturday as the Sabath. As for “Sabath” it is defined as a day of religious observance and abstinence from work, kept by Jews, for instance, from Friday evening to Saturday evening. And “Adventism” is the derivative name given to a core of beliefs, most significantly, a belief in the nearness of the Second coming of Christ.

The question then is : should anyone else be barred from professing or calling themselves as Seventh-Day Adventists apart from members of the SDA Church?

I think that people belonging to the Applicant are equally entitled to be called Seventh Day Adventists if their faith accords with the doctrinal teachings of adventism.

Article 19 (1) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia guarantees protection of freedom of conscience in the following terms.

19 (1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.”

Clearly, in my opinion, members of the Applicant are entitled to call themselves as Adventists of the Seventh-day variety. The words Seventh-Day Adventist cannot be reserved exclusively for members of the SDA Church. To do so would be an infringement of other persons' constitutionally protected right. Using the descriptive name of the religion to identify oneself is part of the right to freedom of conscience. A direction not to use the words SDA would deprive the Applicant's members to correctly and fully express their faith and belief. To reserve the words SDA for the exclusive use of the SDA Church would expose other persons to possible criminal prosecution which would amount to religious persecution.

It is indisputable from the affidavit evidence that the Applicant is a splinter organization from the SDA Church. This is religious history repeating itself. Throughout history, on account of doctrinal differences within a particular religious organization, splinter organizations have

sprang up and have continued to do so ad infinitum. That is to be expected even more where there is freedom of conscience. The trend cannot be stopped on account only of the reasons given by the SDA Church through the Respondent.

There was also evidence that there are other faith-based organizations registered that have the words "Seventh-Day Adventist" in their names. It is discriminatory, therefore, to single out the Applicant for change of name. I agree with the Applicant's contention that the Respondent appears to have been heavily influenced by the biases of the SDA Church against the Applicant.

In the circumstances, I find that the Respondent's decision to invoke Section 41(1) of the Act and to direct the Applicant to change its name was wrong in law. I accordingly reverse his decision and restore the Applicant's full names to the Register.

In the circumstances of this case I find it appropriate to order and do order that each party shall bear its own costs of the action.

Leave to appeal is granted.

Delivered in Open Court, at Lusaka, the 16th day of December, 2014.


I. C. T. Chali
JUDGE