IN THE KIRIBATI COURT OF APPEAL] **CIVIL JURISDICTION]** **HELD AT BETIO]** **REPUBLIC OF KIRIBATI]**		**Civil Appeal No. 5 of 2017**

BETWEEN	**MOTITI KOAE & BWAAMA MIKAERE ON BEHALF OF THEMSELVES AND ALL OTHERS AS AFFECTED MEMBERS OF THE KIRIBATI UNITING CHURCH**	**APPELLANTS**
AND	**ARITI TIIRA, MAREWEIA RITETI ET AL AS TRUSTEES FOR THE KIRIBATI UNITING CHURCH FOR AND ON BEHALF OF THE GENERAL ASSEMBLY**	**RESPONDENTS**

Before: Blanchard JA
Handley JA
Hansen JA

Counsel: *Elsie Karakaua* for appellants
Batitea Tekanito for respondents

Date of Hearing: 12 August 2017
Date of Judgment: 16 August 2017

JUDGMENT OF THE COURT

Introduction

[1] The appellants are seeking the determination of certain questions and a declaration that a change of name of the Kiribati Protestant Church to the new name of Kiribati Uniting Church by decision of the General Assembly of the Church in September 2016 was not done in accordance with the constitution of the Church and that the former name must be reinstated.

[2] The Chief Justice dismissed the appellants' application and from that decision they appeal. The appellants are members of the church and the respondents are trustees for the church and represent the General Assembly.

The High Court Judgment

[3] The Chief Justice recorded that in August 2014 the General Assembly met in Arorae. On its agenda was a motion to change the name of the church. That motion was discussed and eventually passed on 28 August 2014. The matter was however raised again at another meeting of the Assembly at Antebuka, the headquarters of the church, in September 2016 when "the church finally approved the change of name of the Church from KPC to KUC with a vote of 76 in favour of change and 23 against". On 29 September 2016 the new name was registered with the Ministry of Internal Affairs.

[4] The Chief Justice identified three main issues:

(a) Justiciability – whether the decision to change the name was capable of being challenged in a court proceeding

(b) Locus standi – whether the appellants had legal standing to bring a challenge

(c) The relevant constitution – whether the case fell to be determined under the 2006 constitution of the church or under a 2014 constitution which was said to have superceded it.

[5] The argument for the appellants, as it is in this Court, was that the way in which the change of name occurred was contrary to clause 96 of the 2006 constitution:

"96. The Amendment Procedure

(1) Any amendment intended to be made to the constitution, must be received together with its explanatory note by the General Secretary, six months prior to the sitting day of the General Assembly.

.....

(3) The General Secretary, upon receipt of those amendments, must circulate in writing notices of the same to the members of the General Assembly, three months prior to the sitting day of the General Assembly.

(4) ***Amendments shall be raised to the General Assembly which are done in compliance to subsection (1) and (2) prior to this sub-section and it shall be discussed thereat and if the General Assembly agreed as stated in section 95 to approve that those amendments shall be accepted accordingly, they shall become part of the constitution and shall come into effect from that date the amendment is approved".***

[6] In particular, it was objected that the requisite notices had not been given to the members and the time periods had not been observed.

[7] The respondents said, however, that the constitution had been revised in September 2014 to permit "late motions" for changes to the constitution to be discussed and passed if the General Assembly approved that course. An additional subclause had been added to clause 96 (new clause 90 in the 2014 constitution):

"90(4) Proposed amendments that are received late can be raised if the General Assembly agrees. They will be raised in the manner prescribed in (3) above, and if passed will take immediate effect like all other amendments but they shall be confirmed at the next General Assembly".

The respondents said the change of name had been raised with the agreement of the Assembly and passed in 2014. It had been confirmed by the Assembly in September 2016.

[8] The Chief Justice reviewed the affidavit evidence before the Court. He accepted the respondents' argument. He concluded that the motion tabled, discussed and accepted at the 2014 Assembly had been "properly and validly done". Following that Assembly, the constitution had been revised and updated and the 2014 constitution had incorporated the amended clause now numbered 90. The change of name became effective after formal adoption of the new name at the 2016 Assembly, by which time the 2014 constitution was already in place and applicable.

[9] The Chief Justice then turned to the question of whether the Court in fact had jurisdiction in the matter. He referred to the view which has been traditionally taken, that the courts are reluctant to intervene when purely spiritual or religious issues are at stake, noting, however, that they have been prepared to intervene when civil, economic or proprietary rights are alleged to have been infringed. The Chief Justice referred to a number of authorities including *Shergill v Khaira* [2014] UKSC 33; [2014] 3 All ER 243, observing that in that case the Supreme Court of the United Kingdom had made "a slight departure" by holding that the constitution of a voluntary association, such as an unincorporated religious community, is a civil contract. But, the Chief Justice said, that case was not applicable to the circumstances of Kiribati. The traditional position taken by the courts in the various jurisdictions, especially

those within the region, was still applicable and should be followed. He referred to the decision of the Supreme Court of Samoa in *Rupena v Senara* [2016] WSSC 140 (Sapolu CJ).

[10] The appellants had nevertheless sought to invoke the jurisdiction of the Court relying on clause 3(5) of the constitution of the Church and Order 58 r.1 of the High Court (Civil Procedure) Rules. Clause 3(5) said:

> **"(5) All disputes or dissatisfactions which are directly related with the Constitution can be brought to the Court, but they shall all be raised and dealt with according to the procedure stated in Chapter 14".**

[11] The respondents argued that clause 3(5) gave the courts only a limited role. The machinery for resolving disputes was provided for in clause 88 in Chapter 14 which relevantly provides:

> **"88. PROCEDURE FOR COMPLAINTS**
>
> **Complaints relating to the actions or decisions of the Protestant Church, from its member(s) or its employees, or any of its institutions/bodies, shall be allowed to be brought to the Court, but shall be brought in the following procedure set out below:**
>
> **(1) Complaints from member(s) of the Protestant Church shall be brought in this manner:**
>
> **(a) to the *Kabowi n Ekaretia* of the village from which the complaint arises from, but if the matter is not resolved therefrom,**
>
> **(b) to the *Kabowi n Abamakoro* of the island district from which the complaint arises from, but if the matter is not resolved therefrom,**
>
> **(c) to the *Minita n Tararua* who is responsible in overseeing the island district from which the complaint arises from, but if the matter is not resolved therefrom,**

(d) **to the *Aia Kabowi Taan Onimaki*, but if the matter is not resolved therefrom,**

(e) **to the *Kauntira (Council)*, but if the matter is not resolved therefrom,**

(f) **to the General Assembly.**

.....

[There followed complaints procedures for employees and institutions/bodies of the church].

[12] The Chief Justice said that in each of the three categories of complaints the "final arbiter" was the Assembly. Chapter 14 made "no mention that the civil court is part of that dispute resolution process". Disputes arising within the church or between the church and its members or between organisations/bodies and the church were matters for the church authorities to resolve. They were not matters for the civil courts to determine:

"72. **Thus the positions demonstrated by the case authorities can be put as: First, the civil courts are not to intervene in doctrinal or religious disputes. They are best left to the Church's governing authorities. Secondly, Courts may intervene where civil, economic or proprietary rights are in dispute. Thirdly, the Civil Courts are, to refrain from intervening even in property disputes, where the church's hierarchical structure provides for the machinery to decide on such disputes".**

[13] In the present case Chapter 14 provided for the procedure and the final arbiter was the Assembly. The Chief Justice continued:

"73. ..... **The General Assembly had considered the question of the amendment to the provisions of Clause 96 of the 2006 Constitution in Abaiang in 2012 and in Arorae in 2014. The Assembly decided to**

approve the amendment of Clause 96 of 2006 in Arorae. Consequent upon the passage of that amendment, the Assembly considered and accepted the motion on short notice to change the name of the Church from KPC to KUC. The Assembly finally and formally approved the change of the Church from KPC to KUC in its meeting in September 2016 at its Headquarters, in South Tarawa. The procedure followed was that mandated by the Church's Constitution".

[14] The Chief Justice accepted the respondents' submission that resort could be made to the courts only in matters that could not be resolved under the church's dispute resolution procedure. There was no exception for disputes related to the constitution.

[15] The Chief Justice also considered Order 58 r.1:

> ***"O.58 r.1 Any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested".***

He held that unique features of the constitution meant that it could not be said to be a "written instrument" within the rule. It was not a book of law, it had been enacted with little or no consultation with members and was more of a "tool and guide". He relied also on evidence that there had been a "general consensus" of the members of the Assembly as well as the administration of the church that the constitution did not bind the Assembly and that the courts could only be involved if the private right of the members were infringed or if personal injury or damage was involved.

[16] The Chief Justice therefore came to this conclusion:

"84. The unique features of the Church's Constitution, although it is a written document, cannot be regarded as a written instrument conferring legal or equitable rights or liability upon those who are governed by the Church's Constitution. There is no enforceable legal or equitable rights flowing from the alleged breaching of the provisions of the Church's Constitution.

85. In fact, the Constitution has all the features of a set of rules in a voluntary organization, as religious organisations are. Any dispute arising out of the rules is best resolved by a decision of the majority of the congregation, where no structure exists to resolve such dispute, or by the hierarchical procedure where such process exists, as in the present case. The Courts take a *'hands-off'* approach in such a case consistent with the common law approach of non-intervention in the affairs of a voluntary unincorporated religious institution".

[17] There was therefore no need for the Chief Justice to determine the issue of the legal standing of the appellants to bring the proceeding.

[18] The Chief Justice also made it clear that he had not been asked to decide whether it was right or wrong to change the church's name, nor was it proper that the Court should decide on such a question which was very much a doctrinal one. The Court's finding was merely that the General Assembly had properly followed the proper procedure to change the church's name.

[19] The Chief Justice answered the questions for determination as follows:

1. **In considering an amendment of the constitution or any provisions therein, is it clause 53(1)(o)* or clause 96 that should be followed?**
   Answer: The question cannot be sensibly answered. Any amendment to

the church's constitution must now follow clause 90 of the present constitution.

* Note: We have not been able to determine what this refers to as there is no such clause in the constitution and no further reference has been made to it.

2. **In changing the name of the church have the correct provisions of the church's constitution been followed by the Assembly in its meeting of some time in August 2014 and throughout?** Answer: The General Assembly had properly followed clause 96 of the 2006 constitution as amended when it considered and approved the motion to change the name of the church in August 2014. When the General Assembly confirmed the change of name in September 2016, it did so pursuant to clause 90 of the 2014 constitution.

3. **If the correct provisions have not been followed, is the current name, Kiribati Uniting Church, constitutional?** Answer: It is for the General Assembly to decide on the constitutionality of the change of name from Kiribati Protestant Church to Kiribati Uniting Church and not for this Court. All that this Court can say is that the General Assembly followed the procedure required of it to effect the change.

Submissions

[20] We received very full and helpful submissions from both parties. The essential points made by Ms Karakaua, for the appellants, were that the so-called 2014 constitution, and particularly the amended version of clause 96 therein, had never been passed by the General Assembly, let alone in a manner compliant with the 2006 constitution; that the 2006 constitution was enforceable in the courts at the behest of a member or members of the church; that the appellants had done their best to resolve their dispute within the

church under the Chapter 14 procedures before going to the High Court; and that any change of name required a constitutional amendment which had not occurred because of non-compliance with the constitution either at the 2014 or the 2016 Assemblies.

[21] For the respondents, Ms Tekanito resisted each of these arguments. She relied upon the affidavit evidence of the lawyer for the church in which he explained why the procedures adopted to change the constitution and the name of the church were valid. She submitted that the constitution had never been intended by the church to be legally enforceable, and certainly not by members whose property or personal rights had been unaffected by an amendment. Even if the constitution were enforceable in some instances, the courts should not intervene when any irregularity related to something which the majority had the right to do. There was no abuse of power and no minority rights were affected.

Justiciability - the authorities

[22] The Samoan Supreme Court decision in *Reupena v Senara*, on which the Chief Justice placed some reliance, was very recently reversed by the Samoan Court of Appeal: *Reupena v Senara* [2017] WSCA 1. The facts of that case differed considerably from those of the present case but the account given in it of the relevant authorities assist us on the issue of justiciability.

[23] The Court of Appeal considered that in *Shergill v Khaira*, the Supreme Court of the United Kingdom had appropriately developed the common law relating to religious bodies as it had been explained in Australasia in *Mabon v Conference of the Methodist Church of New Zealand* [1998] 3 NZLR 513 (CA) and *Ermogenous v Greek Orthodox and Community of South Australia Inc* [2002] HCA 8; (2002) 209 CLR 95 (HCA). In *Mabon* the New Zealand Court of Appeal said that members of unincorporated associations ordinarily entered

into a mutual or consensual compact. In cases where property or civil rights were involved the compact would in a functional sense be enforced but courts would be reluctant to determine what were at heart ecclesiastical disputes where matters of faith or doctrine were at issue. The employment claim in that case failed because the laws and regulations of the church provided that a minister was not an employee. In *Ermogenous*, another monetary claim, the High Court of Australia accepted that it was possible that the relationship between a minister and the body or group that sought or received the ministry would be governed by contract.

[24] In *Shergill* the Supreme Court was concerned with the terms of a trust under which temples were held for a Sikh sect. The religious body was unincorporated but it had a constitution. The Court said:

> "[46] **The law treats unincorporated religious communities as voluntary associations. It views the constitution of a voluntary religious association as a civil contract as it does the contract of association of a secular body: the contract by which members agree to be bound on joining an association sets out the rights and duties of both the members and its governing organs. The courts will not adjudicate on the decisions of an association's governing bodies unless there is a question of infringement of a civil right or interest. An obvious example of such a civil interest is the loss of remunerated office. But disputes about the doctrine or liturgy are non-justiciable if they do not as a consequence engage civil rights or interests or reviewable questions of public law.**
>
> [47] **The governing bodies of a religious voluntary association obtain their powers over its members by contract. They must act within the powers conferred by the association's contractual constitution".**

[25] The Supreme Court quoted with approval a passage from the decision of Lord Justice-Clerk Aitchison in *McDonald v Burns* 1940 SC 326 at 383-384 which is pertinent in the present case:

> **"In what circumstances, then, will the Courts entertain actions arising out of judgments of ecclesiastical bodies: Speaking generally, in either of two situations – (first) where the religious association through its agencies has acted clearly and demonstrably beyond its own constitution, and in a manner calculated to affect the civil rights and patrimonial interests of any of its members, and (secondly) where, although acting within its constitution, the procedure of its judicial or quasi-judicial tribunals has been marked by gross irregularity, such fundamental irregularity as would, in the case of any ordinary civil tribunal, be sufficient to vitiate the proceedings. But a mere irregularity in procedure is not enough. ... In short, the irregularity alleged must not be simply a point of form, or a departure from prescribed regulation, but must go to the honesty and integrity of the proceedings complained of".**

[26] In *Reupena v Senara* the Samoan Court of Appeal was of the view that the constitution of the Congregational Christian Church of Samoa, an unincorporated body, was a civil contract which set out the rights and duties of members and the governing organs of the church, including its General Assembly, although the constitution could also exclude rights and duties, as had happened in *Mabon*. The Court considered that the general common law principles which it distilled from the authorities to which it referred applied in Samoa and involved no burdensome constraint:

> **".... In choosing to adopt a constitution it has chosen to apply to its members, office-holders and organs the rules and regulations found**

therein. They are sufficiently particularised to have binding force"…..

[27] The dispute before it between an elder and the church was found to be justiciable.

Justiciability - this case

[28] We will proceed on the basis that the constitution is, at least in part, enforceable in the courts within the limits described in the case-law to which we have referred above. There is a contrary argument, put by Ms Tekanito, that clause 3 of the 2006 constitution makes it only a supreme guideline in the observance of which the General Assembly is the final arbiter. But against this, clause 3 also seems to allow disputes to be brought to Court after the disputants have first tried to resolve matters under the internal Chapter 14 procedures.

[29] We do not find it necessary to resolve this difficult question, which is fortunate because during the hearing we were presented with competing translations of the crucial parts of clause 3 (subclauses (1) and (2)). We cannot possibly determine important linguistic differences in the absence of independent expert evidence from a qualified translator.

[30] Assuming, then, that an aggrieved member of the church is able under Order 58 r.1 of the High Court (Civil Procedure) Rules and the constitution of the church to take the matter to the High Court, and is able to establish that the constitution is wholly or in part a civil contract – matters we do not determine – that hypothetical member would find that the Court would not be prepared to adjudicate upon that matter unless it could be demonstrated that the member's civil rights or interests had been affected or that there had been, in substance rather than in form, a gross irregularity – one that goes, as the

Scottish Court said in *McDonald v Burns*, to the honesty and integrity of the proceedings. Technical objections by themselves will not cause the Court to intervene in the affairs of a voluntary religious association.

[31] The general spirit in which the Court should approach a dispute within such an association is encapsulated in the following remarks of Mellish LJ in a case involving a company, *MacDougall v Gardiner* (1875) 1 Ch D 13 at 25-6:

"In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, there can be no use in having a litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes.

.....

"Of course if the majority are abusing their powers, and are depriving the minority of their rights that is an entirely different thing, and there the minority are entitled to come before this Court to maintain their rights; but if what is complained of is simply that something which the majority are entitled to do has been done or undone irregularly, then I think it is quite right that nobody should have a right to set that aside, or to institute a suit in Chancery about it, except the company itself".

[32] With that in mind we will examine whether what occurred in this case involved an intrusion on the rights of the appellants which can fairly be described as a gross irregularity which affects the honesty and integrity of the name change. We are of course concerned only with the process adopted. The Court will certainly not enter upon the merits of the old or new name. We are also assuming that the appellants can really be said to have rights in respect

of the name (though they are certainly not rights of property as was submitted for the appellants).

The constitutional amendments

[33] The name of the church is set out in a constitutional provision: clause 4. Therefore an amendment of the constitution was required to change the name. The focus of the case has therefore correctly been on clause 96 which became clause 90 in the 2014 constitution. Clause 90, if validly adopted, contained a sub-clause that enabled the Assembly to dispense with the requirements for six months' notice to the General Secretary and three months' notice from the General Secretary to the members of the Assembly prior to the sitting day (i.e. the first day of the relevant meeting of the Assembly). It is only the General Assembly that can approve constitutional amendments so that they become part of the constitution: clause 96(3).

[34] The first question, therefore, is whether clause 90 was validly approved by the Assembly. The affidavit of Mr Kaongotao, the lawyer for the church, set out what had occurred in order to create the 2014 constitution. As he conceded, the General Assembly had for practical reasons made a number of amendments without strictly following the prescribed procedures. To remedy this situation the General Assembly in 2012 had approved the lawyer's proposal "to allow late motions for changes to the constitution to be discussed and passed if the General Assembly approved their admission". He explained why this was desirable:

> **"The General Assembly was of the view that the 6-months period by which proposed amendments were to be received by the General Secretary and the three months' period by which amendments should be received by members of the General Assembly, was impractical and should be changed. The fact that the General Assembly is held**

once in two years and that important and urgent amendments would have to wait for that long period of time if they do not meet the required notice persuaded the General Assembly to approve my proposed amendments. My proposed amendment gives the General Assembly the power to allow late amendments to the Constitution to be considered, and if passed by the General Assembly, would come into effect immediately but they would have to be confirmed at the next General Assembly".

[35] What was passed by the Assembly and described as its decision, did not, however, go that far. The minutes of the 2014 meeting said only this:

"The Lawyer raised a motion at that time in regards to late amendments, they should be discussed in this meeting and to be passed in the next meeting of the GA".

[36] Therefore when Mr Kaongotao drew up a document called the 2014 Constitution he should not have included the amendment which became part of clause 90. This was more than a mere irregularity. Indeed it is arguable that none of the changes the lawyer purported to make to the wording of the 2006 constitution have ever been validly made as amendments to the constitution. Certainly the Assembly appears never to have been asked to formally adopt the 2014 constitution.

The name change

[37] Accordingly, the amendment to the name of the church has to be considered against the unamended clause 96, and it is clear that the procedures set out in that clause have never been strictly followed in relation to the name change either in 2014 or in 2016.

[38] What occurred was as follows. Without prior notice a motion for the change of name was put forward for the first time and discussed at the 2014 Assembly. According to the evidence of Mr Kaongotao, unchallenged on this point, more than the 2/3rds majority of members present (as required by clause 95) voted in favour of the motion. But there is no evidence that the motion was framed as, or appreciated by the members as being, a constitutional amendment. In any event, the lack of the relevant notices or any procedure that in substance if not form gave equivalent notification when a matter of this importance was being raised for the first time, casts considerable doubt on the validity of what was done in 2014.

[39] Nevertheless what occurred at the 2014 Assembly clearly gave a forewarning of two years that the name change would be placed before the 2016 Assembly because in 2014 there was an expressed intention to have the change confirmed in 2016. All the members of the Assembly must have been well aware of that. Indeed the church officers somewhat "jumped the gun" by beginning to use the new name in the intervening period.

[40] At the 2016 Assembly the proposed name change was again raised without formal notices complying with the terms of clause 96. It is clear, however, from the minutes of the meeting, that members would have understood that the Assembly was being asked to amend the constitution. The minority opposed to the name change actually complained that the constitution was not being followed. So when, at the end of an extensive debate, a motion to "revert" to the old name was defeated and the new name was confirmed, there can be no doubt that the members understood that a constitutional change of name had been decided upon. The requisite 2/3rds majority again voted for the new name by 76 to 23 with 8 abstentions.

Non-compliance with Clause 96

[41] But, again assuming justiciability, did non-compliance with clause 96 vitiate the decision of the 2016 Assembly? That raises the question of whether what was done was sufficient to comply in substance if not in form with the requirements of the clause.

[42] There are two important considerations. The first has been mentioned, namely that the members must have been well aware for two years that it was intended to "confirm" the name change, at the 2016 Assembly, even though the intended confirmation process was a reference to clause 90(4) of the invalid 2014 constitution.

[43] The second is that, as discussion with counsel during oral argument revealed, the unamended clause 96 is in practical terms unworkable. Compliance with it is difficult, if not actually impossible in some instances. It requires that the General Secretary give three months' notice, and not one day less, to all members of the Assembly of proposed constitutional amendments prior to the meeting. But how does the Secretary know who the members of the forthcoming General Assembly will be? The membership of the Assembly is prescribed by clause 19(1):

"19(1) Membership of the Assembly shall be comprised of the following:

(a) Representatives from islands as stipulated in Schedule 1.
(b) Members of the Council.
(c) Principals from schools of the Protestant Church.
(d) RAK Coordinator or substitute.
(e) YCL Coordinator or substitute.
(f) Representatives of Christian Churches and other organizations in Kiribati and abroad whom the Protestant Church has invited".

[44] There is little in the constitution to govern how and when the representatives from islands are to be selected. Under clause 64 an Island Church Council does not have to have any particular number of councillors nor is anything said about how or when they are appointed. Under Schedule 1 there are fixed numbers of representatives depending upon quota and per capita but each Island Council Church is given the right to decide upon how to select representatives (i.e. membership of the Assembly), subject only to one being a pastor etc., one being female and one being a YCL (with a deacon filling the extra quota when an island has more than three representatives).

[45] It may fairly be said that the General Secretary will know who were representatives at the previous Assembly but how does the Secretary know about replacements for those whose terms have expired and what is to happen if changes occur within the three months before an Assembly? The same applies in the case of school principals. There no doubt are practical methods of gaining this information but the potential for notices to be given to the wrong person and not received by the right person or at all is considerable. All it needs is what Mellish LJ called "one cantankerous member, or one member who loves litigation" (p. 25) for a procedural quagmire to be exploited to thwart proposed constitutional changes.

[46] We consequently consider that it can never have been intended by the framers of clause 96 that strict compliance is required before an amendment to the constitution can be validly passed. In this case, as we have said, the members in 2014 would have known that the name would be the subject of a constitutional amendment in 2016 and, given the (premature) use by the church of its new name in the intervening period, newly appointed representatives would surely have been informed of that intention in time to give the matter proper consideration before the 2016 Assembly. Any aggrieved person had ample time to campaign against the adoption of the new

name, as in fact the appellants and their supporters actually did. The issue was then fully debated at the Assembly before the vote. And the 2/3rds majority was substantially exceeded.

Locus Standi

[47] Like the Chief Justice, it has not been necessary for us to consider whether the appellants had the necessary locus standi to bring their case but we incline to the view that as members of the church they were, other things being equal, entitled to do so.

Result

[48] We have decided that the Chief Justice came to the correct conclusion in refusing to make the declaration sought by the appellants, although we disagree with the answer he gave to Questions 1 and 2. He erred in considering that there had been a valid amendment to clause 96 and that there was an effective name change in 2014. That did not occur until 2016. As to Question 3, we would substitute this answer: Assuming the issue was justiciable, the procedure adopted to change the name of the church in 2016 was sufficient to achieve that purpose. The appeal is otherwise dismissed.

[49] We make the following orders:

1. The answers to the Questions are set aside.

2. In lieu thereof Question 3 is answered as follows. Assuming the issue was justiciable, the procedure adopted to change the name of the church in 2016 was sufficient to achieve that purpose.

3. The appeal is otherwise dismissed.

4. The respondents are entitled to costs and disbursements in this Court. If the parties cannot agree they are to be fixed by the Registrar.

Blanchard JA

Handley JA

Hansen JA