

## TOWARDS GIVING JURISTIC PERSONALITY TO CHURCHES UNDER COMMON LAW IN NIGERIA

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### **Abstract**

*This article explores the juristic personality of churches under common law as applicable in Nigeria. Generally, the popular assumptions by which churches seek juristic personality or enjoy its benefits are through incorporation as a company limited by guarantee or registering trustees under the Companies and Allied Matters Act 1990 (CAMA). Consequently, the courts have denied some churches the benefits of being juristic persons where the churches are unable to prove their juristic status in terms of CAMA. This article argues that besides the provisions of CAMA, churches can acquire juristic personality through other means, including under common law applicable in Nigeria without the need to register under CAMA. However, it seems most lawyers representing churches, the courts, jurists and academics alike are ignorant of this position. Consequently, this article seeks to create awareness and shine a light on the juristic personality of churches under the common law. The article evaluates historical records, statutes, extant literature to trace the juristic personality of*

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*churches to common law* and argues that the same is enforceable in Nigeria.

## Introduction

The issue of the legal status of churches as it relates to their juristic personality came up again in *Dairo v Registered Trustees of Diocese of Lagos*.<sup>1</sup> In the case, the Anglican Diocese of Lagos instituted a suit on a simple claim of trespass to land and an injunction. After 33 years of the legal battle, the Supreme Court dismissed the suit on the ground that the church could not prove its capacity to sue without evidence of incorporation of its trustees under the provisions of the Companies and Allied Matters Act (CAMA).<sup>2</sup> This court's decision has implication for the capacity of the church to sue to protect its proprietary interest without the evidence of the incorporation of trustees under CAMA. The courts have upheld similar position in several other cases.<sup>3</sup> These judicial decisions raise some pertinent questions, such as how does a church acquire the status of a juristic person? Does a church in Nigeria need incorporation as a company or register trustees under the provisions of CAMA before it can acquire a juristic personality and the capacity to sue? Answers to these questions are what this article focuses.

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<sup>1</sup> (2017) LPELR- 42573 (SC).

<sup>2</sup> Companies and Allied Matters Act 1 of 1990, Cap C20 LFN 2004 is the legal framework under which companies and civil society organisations are registered and regulated in Nigeria.

<sup>3</sup> See further *The Registered Trustees of the Church of the Lord (Aladura) v Jacob Sheriff* (2000)15 NWLR (Pt. 689) 165; *Incorporated Trustees of Holy Apostles Church Ayetoro and Seven others v Incorporated Trustees of Oneness Faith of Christ Ministry, Ayetoro and 8 others* (2016) LPELR-41368(CA) 1; *Registered Trustees of the Apostolic Church v Attorney-General, Mid- Western States* (1972) 4 SC 133.

The widely held approaches by which Nigerian churches seek to acquire juristic personality or enjoy its benefits is to either seek incorporation as a company limited by guarantee or register trustees under CAMA. Thus, the courts have denied several churches, such as the Anglican Church as in *Dairo* the benefits of being juristic persons where the churches could not prove their juristic status in either of the two options under CAMA. However, the challenge is that some churches may choose not to take any of these two options provided in CAMA because, as will be discussed shortly, some provisions of CAMA on the juristic personality of churches have the potential of limiting a church's right to religious autonomy and self-governance. The consequence of this limitation is that such churches cannot enjoy the benefits of juristic personality. This article, however, contends that besides the provisions of CAMA, churches can acquire juristic personality under common law applicable in Nigeria and need no registration under CAMA. However, the lawyers that represent churches in courts, jurists and academics alike seem to be unaware of this position of the law. This article, by drawing insight from other legal systems, seeks to create the awareness and throw light on the juristic personality of churches under common law and argues that the same is obtainable in Nigeria.

To achieve its aim, this article is structured as follows. The next section conceptualises the keywords used and briefly gives the implications and benefits of attaining a juristic personality. This is followed by the examination of how churches can acquire juristic personality in Nigeria. Thereafter the article evaluates the limitations of the provisions of CAMA on churches' juristic personality, and then justify how the common law position is

applicable in Nigeria. The last section summarises the findings of the article and draws the conclusion.

### **Conceptualisation of Terms**

It is necessary to conceptualise the words “church”, “legal status” and “juristic person” from the outset. The word “church” lacks a precise definition. However, in *Segun Ajayi v The Registered Trustees of Ona Iwa Mimo Cherubim and Seraphim Church*,<sup>4</sup> the court describes a church in the following words: “A church in its true definition is the body of Christ. One person cannot constitute the body of Christ; it connotes a congregation, an assembly of people. An individual cannot own a church.” This definition describes a church from two perspectives. First, it depicts a church as an organism, that is, a body of Christ—the universal church.<sup>5</sup> Secondly, it sees a church as a local congregation or religious community of a particular sect of a Christian denomination. This paper is concerned with the second usage of the word. In this context, therefore, a church refers to a Christian congregation or religious community whose primary purpose is to conduct worship and proclaim the gospel of Jesus Christ, such as the Anglican Communion, the Redeemed Church of God, the Baptist Church, and so forth.

The phrase “legal status” means the position held by a person with regard to law or a set of rights, obligations, powers or restrictions that a person or thing has which are encompassed in or declared by

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<sup>4</sup> (1998) 7 NWLR (Pt. 556) 156.

<sup>5</sup> See also CP Van Reken, ‘The Church’s Role in Social Justice’ [1999] 34 *Calvin Theological Journal* 198.

law.<sup>6</sup> The meaning of the word “person” as used in this definition is wider than the everyday usage because the law sees a “person” as someone or something that is capable of having legal rights and duties. As Boberg puts it, “a person may be defined as a being, entity or association capable of having legal rights and duties.”<sup>7</sup> According to these definitions, “persons” include both “natural persons” (human beings) and “artificial persons” (i.e. juristic persons).<sup>8</sup>

According to Heaton, a juristic person has a specific technical meaning in law. It denotes a specific kind of legal subjects, that is, an entity apart from a human being or natural person, to which the law grants legal personality, such as a company, university or the state.<sup>9</sup> Van Heerden *et al* explain further that these entities or associations of persons, which, having fulfilled certain requirements, are allowed by law to have rights and duties apart from the individuals who compose them or direct their affairs.<sup>10</sup> These juristic persons are also called “corporations” or “corporate entities”.<sup>11</sup>

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<sup>6</sup> See generally BA Garner, (ed), *Black's Law Dictionary* (7th edn St. Paul 1999) 1419; *Oloba v Akereja* (1998) 3 NWLR (Pt. 84) 508, 524.

<sup>7</sup> B Van Heerden, A Cockrell and R Keightley, *Boberg's Persons and the Family* (Juta 1999) 6; HR Hahlo and E Kahn, *The South African Legal System and its Background* (Juta, 1973) 103.

<sup>8</sup> A Barrat, *Law of Persons and the Family* (Pearson, 2017) 7; *Black's Law Dictionary* 1028; See also *Assigned Est Albertyn v Marine Hotel (Pty) Ltd* 1934 CPD 399; s 18 of the *Nigerian Interpretation Act 1 of 1964*.

<sup>9</sup> J Heaton, *The South African Law of Persons* (LexisNexis, 2012) 2; WJ Hosten, AB Edwards, F Bosman and J Church, *Introduction to South African Law and Legal Theory* (2nd edn Butterworths 1988) 553-554.

<sup>10</sup> Van Heerden, Cockrell and Keightley *Boberg's Persons and the Family* 5.

<sup>11</sup> Hosten *et al* *Introduction to South African Law and Legal Theory* 5; BA Garner *A Dictionary of Modern Legal Usage* (Oxford University Press 1987) 156; HC Black (ed) *Black's Law Dictionary* (5th edn St Paul, West Publishing 1979)308.

### **Benefits of Being a Corporation or Juristic Person**

A church can seek to become a corporation. Being a corporation or acquiring a juristic personality under the law has some important implications for a church. First, it implies the church has the legal capacity as a natural person, possessing rights and obligations. It also possesses a personality that is distinct from its constituting members. Accordingly, the church has the capacity to enter into legal transactions and it can sue and be sued in its corporate name. Ordinarily, without being a juristic person, a church would not be able to sue and be sued in its name. In addition, its members would be personally responsible for the acts of other members of the church. Hammar,<sup>12</sup> an American church law scholar, illustrates this point as follows:

It meant, for example, that a church association could not sue its members. Thus, if a church member's negligence caused fire damage to a church, neither the church nor the church's insurance company, as a subrogee of the insured church, could sue the members. It also meant that a church association could not be sued by its members...Finally, since an association could not sue or be sued, it generally was held an association's members were personally responsible for the acts of other members or agents of the association committed in the course of the association's business.

Thus, the members of a church that has acquired a juristic personality are shielded from personal liability for the debts and misconduct of other members or agents of the church. To this end,

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<sup>12</sup> RR Hammar *Pastor, Church and Law* (Gospel Publishing House, 1983)128.

Hammar strongly recommends incorporation as a means of protecting church members from personal liability for the actions of other members or of the church as a whole.<sup>13</sup> A juristic person further has the power to acquire, own, transfer or dispose of any property or interest in its name. It possesses perpetual succession, which means a member may drop out of its membership without any legal consequences for the legal status of the church. In fact, the death of one or all the members cannot deny the church of its corporate existence and capacity to sue.<sup>14</sup>

It suffices to note further that the right to legal personality is an essential component of the right to freedom of religion and emphasises the rights of self-governance and self-regulation of churches and religious organisations.<sup>15</sup> This view was highlighted by the European Court of Human Rights in the case of *The Metropolitan Church of Bessarabia and others v Moldova*.<sup>16</sup> According to Moldovan law, only recognised religious denominations are afforded legal personality. According to the court:

[...] not being recognised, the applicant Church cannot operate. In particular, its priests may not conduct divine service, its members may not meet to practice their religion and, not having legal personality, it is not entitled to judicial protection of its assets. The court therefore considers that the

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<sup>13</sup> *Ibid* 128.

<sup>14</sup> *Onuekwusi v The Registered Trustees of the Christ Methodist Zion Church* (2011) All FWLR (Pt. 573) 1.

<sup>15</sup> The right to freedom of religion is provided in section 38 of the constitution of Nigeria, 1999 (as amended).

<sup>16</sup> *Metropolitan Church of Bessarabia and others v Moldova* 45701/99 [2001] ECHR 860 (13 December 2001).

government's refusal to recognise the applicant Church [...] constituted interference with the right of the applicant Church and the other applicants to freedom of religion, as guaranteed by Article 9§1 of the Convention.

### **Legal Status of Churches in Nigeria**

Churches in Nigeria can acquire the status of a legal person or corporation through the following approaches. Firstly, a church can become a juristic person through a statutory creation. Secondly, through registration as a company limited by guarantee. Thirdly, a church may register trustees under the provisions of Part C of the CAMA.<sup>17</sup> However, this article argues that, strictly speaking, registering trustees under CAMA does not confer juristic personality on a church. This article further canvases for the popularity of a fourth approach, which is the acquisition of juristic personality in terms of common law. These various approaches are discussed below.

#### ***Statutory Creation***

A church can acquire a juristic personality where a statute specifically confers the status on it. In the history of Nigeria, only the St Saviour Church, Lagos, was established as a corporation by a statute. This was by virtue of the Colonial Church Council (Incorporation) Ordinance.<sup>18</sup> This church became St Saviour's Church in terms of the St Saviour Church Council (Incorporation) Act of 1958 and St Saviour Church Council Act 1960. In Ekwo's opinion, the essential intention of these statutes was to establish a

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<sup>17</sup> Companies and Allied Matters Act No 1 of 1990 (CAMA).

<sup>18</sup> Ordinance 2 of 1923.

church by charter in the fashion of the Church of England.<sup>19</sup> In 1991, the status of St Saviour's Church was modified when it was denominationalised as a parish of the Anglican Church in the Diocese of Lagos in terms of the St Saviour's Church (Miscellaneous) Act, 1991.<sup>20</sup> Thus, section 1(1) and (2) and of this 1991 Act provide:

- (i) As from the commencement of this Act, the church situated in Lagos and known as St Saviour's Church, Tafewa Balewa Square, (hereinafter in this Act referred to as 'the Church') shall be a parish church within the Lagos Diocesan Synod of the Anglican Communion of Nigeria.
- (ii) The Church shall be administered in accordance with the Constitution of the Diocesan Synod of Lagos.

### ***Incorporation as Companies Limited by Guarantee***

A church can also acquire the status of a juristic person if it is incorporated as a company limited by guarantee in terms of section 26 of CAMA. Section 26 (1) of CAMA provides that:

A company may be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to

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<sup>19</sup> Inyang E Ekwo *Incorporated Trustees: Law and Practice in Nigeria*(LexisNexis 2007)14.

<sup>20</sup> Act 26 of 1991. Immediately after the enactment of the 1991 Act, the Anglican Diocese of Lagos changed the name of the church from St. Saviour's Church to Our Saviour's Church. See the official website of the Anglican Diocese of Lagos < <http://www.osc-tbs.org/about-us/>> accessed 5 March 2018.

be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted under the law.

The inclusion of religion as one of the objects of the entities that may register in terms of the above provision qualifies a church to register as one. However, a church registers in terms of this provision as a company limited by guarantee. A company limited by guarantee is not incorporated to carry on a business for making profits for distribution to members.<sup>21</sup>

Every provision in the memorandum or articles or in any resolution of the company limited by guarantee that purports to give any person a right to participate in the divisible profits of the company or purporting to divide the company's undertaking into shares or interests is void.<sup>22</sup> Where a company limited by guarantee carries on business for distributing profits, all its officers and members who are cognisant of the fact will be jointly and severally liable for the payment and discharge of all the debts and liabilities that the company incurred in carrying on such business. Furthermore, the company and every such officer and member are liable to a fine.<sup>23</sup> If upon the winding up of a company limited by guarantee, there remains after the discharge of all its debts and liabilities, any property of the company, the same is not distributed among the members. Rather, it is transferred to some other companies limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or

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<sup>21</sup> CAMA, s 26(4).

<sup>22</sup> CAMA, s 26(2) and (3).

<sup>23</sup> CAMA, s 26(6).

charity as determined by the members prior to the dissolution of the company.<sup>24</sup>

However, it seems that most churches do not opt for registration as a company limited by guarantee to acquire legal personality.<sup>25</sup> Some reasons for this may include first, the cumbersome responsibilities that a church would have to follow if it is registered as a company to acquire legal personality.<sup>26</sup> For instance, in terms of CAMA, all companies must appoint independent auditors and convene an annual general meeting at which various matters, including the presentation of the audited financial statements, are attended to.<sup>27</sup> Secondly, registering as a company may also give wide powers to the regulatory body to be involved and interfered in the affairs of the church in the facade of statutory oversight,

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<sup>24</sup> CAMA, s 26(10).

<sup>25</sup> A Ukah, 'Obeying Caesar to Obey God: The Dilemmas of Registration of Religious Organizations in Nigeria' in P Coertzen, MC Green and L Hansen (eds), *Law and Religion in Africa: The Quest for the Common Good in Pluralistic Societies* (2015 African Sun Media 2015) 321; However, the Eternal Order of Cherubim and Seraphim Church is an example of a church that was originally registered as a company in 1930 under the Nigerian Companies Act of 1922 before the church became polarised due to disputes. See *Eternal Sacred Order of Cherubim and Seraphim v Adewunmi* (1969) 2 ALR 273, 282.

<sup>26</sup> For instance, in terms of section 26(6) of CAMA, a church must seek the consent of the Attorney-General of the Federation before it can be registered as a company limited by guarantee.

<sup>27</sup> See generally, Parts VIII and XI of CAMA on "Meetings and proceedings of companies" and "Financial statements and audit" respectively. Furthermore, provisions such as section 26(9) of CAMA might also not make churches to wish to incorporate as companies limited by guarantee. This provision states: "If, in breach of subsection (6) of this section, the total liability of the members of any company limited by guarantee shall at any time be less than N10, 000, every director and member of the company who is cognizant of the breach shall be liable to a fine of N50 for every day during which the default continues." See further, Akintunde Emiola *Corporation Law* (Emiola Publishers 2005) 103.

thereby eroding the right to religious autonomy of the church. Thirdly, the uniqueness of the polity of some church denominations may conflict with the company management requirements in the statute, such as the churches practicing Congregationalism. On to this position, MacFarlane and Fisher observe:

In the light of the principles [company management principles], churches organised especially in congregational lines (as opposed to Episcopalian governing methods) need to evaluate whether the company limited by guarantee is really a suitable legal structure to embody their church. The divergence between management and membership dictated by the corporation law is most unsuitable for churches with no formal leadership structure such as the Brethren.<sup>28</sup>

### ***Incorporated Trustees***

A church can enjoy to some extent,<sup>29</sup> the benefits of a corporation if it registers trustees under Part C of CAMA.<sup>30</sup> Section 590 of CAMA lists associations or entities bound together by custom, religion, nationality, social development, culture, sporting or charitable purpose and permits them to appoint one or more

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<sup>28</sup> P MacFarlane and S Peter, *Churches, Clergy and the Law*(Federation Press 1996) 38.

<sup>29</sup> As would be discussed shortly, CAMA does not give full legal personality to a church that register trustees.

<sup>30</sup> Part C of CAMA is a section of the legislation that evolved from the extraction and modification of the Land (Perpetual Succession) Act 1958. This 1958 Act was first promulgated on 21 August 1924 as an Ordinance of the colonialist government. It was then designated as the Land (Perpetual Succession) Ordinance 32 of 1924.

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trustees<sup>31</sup> to apply to the Corporate Affairs Commission (CAC)<sup>32</sup>  
for registration as “the incorporated trustees” of the association or  
entity. Section 590(1) of CAMA provides:

Where one or more trustees are appointed by any  
community of persons bound together by custom,  
*religion*,<sup>33</sup> kinship or nationality or by any body or  
association of persons established for any  
*religious*,<sup>34</sup> educational, literary, scientific, social,  
development, cultural, sporting or charitable  
purpose, he or they may, if so authorized by the  
community, body or association (in this Act referred  
to as “the association”) apply to the Commission in  
the manner hereafter provided for registration under  
this Act as a corporate body.

Section 596(1) and (2) of CAMA stipulate the effects of  
registration of trustees as follows:

1. From the date of registration, the trustee or  
trustees shall become a body corporate by the  
name described in the certificate, and shall have  
perpetual succession and a common seal, and  
power to sue and be sued in its corporate name as  
such trustee or trustees and subject to section 602

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<sup>31</sup> Section 592 of CAMA also provides for those that are not qualified for  
appointment as a trustee. They include an infant, a person of unsound mind  
having been so found by a law court, and an undischarged bankrupt or person  
convicted of an offence involving fraud or dishonesty within five years of his  
proposed appointment.

<sup>32</sup> Corporate Affairs Commission (CAC) is the government agency established  
in terms of section 1 of CAMA to register and perform oversight over  
companies and civil society organisations that register under CAMA.

<sup>33</sup> Emphasis added.

<sup>34</sup> Emphasis added.

- of this Part of this Act to hold and acquire, and transfer, assign or otherwise dispose of any property, or interests therein belonging to, or held for the benefit of such an association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.
2. The certificate of incorporation shall vest in the body corporate all property and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.

Given the position made earlier that most churches do not register as a company limited by guarantee, registering trustees thus seems to be the commonest approach through which most churches seek legal personality.<sup>35</sup> However, the provisions of CAMA regarding incorporated trustees have some important implications for the legal status of churches and other religious organisations, particularly as it relates to their right to self-regulation and self-governance. First, there is the popular assumption by some scholars,<sup>36</sup> judges,<sup>37</sup> and even legal practitioners<sup>38</sup> that by

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<sup>35</sup> See also, A. Emiola *Corporation Law* 100; E. Ihome "Country Report for Nigeria: NGO Laws and Regulations (2001) *The International Center for Not-for Profit Law (ICNL)* 1 <<http://www.usig.org/countryinfo/laws/Nigeria/International%20Reporter%20-%20NIGE> RIA.df> accessed 5 June 2018.

<sup>36</sup> See, for instance, Ekwo, *Incorporated Trustees: Law and Practice in Nigeria* 15; MN Umenweke, 'Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria' [2011] 2 *Nnamdi Azikiwe*

registering trustees in terms of CAMA, the association itself acquires a corporate personality. By this assumption, the trustees and the association (in this context, a church) are taken as the same being.<sup>39</sup> This assumption is faulty; it is not the true position of the law. The fact is that unlike a company limited by guarantee that becomes a corporation upon incorporation, a church that registers trustees does not. An association or a church that was not a full corporation before its incorporated trustees were registered remains an unincorporated body. The law confers the status of a juristic person only on the incorporated trustees. The provision of section 590(1) is clear on this. It states that “From the date of registration, the trustee or trustees shall become a body corporate....”<sup>40</sup> The implication of this is that a church that registers trustees is still limited in its legal capacity; it cannot exercise the functions of a corporation by itself. The incorporated trustees act on the church’s

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*University Journal of International Law and Jurisprudence* 15, 19; MK Adebayo, BM Abubakar and Z Gimba, ‘An Examination of the Laws on Tax Reliefs and Exemption in Nigeria: The Status of Non-Governmental Organizations’ [2011] 17(5) *Journal of Business and Management* 4, 5.

<sup>37</sup> See, for instance, *Nkume v Registered Trustees of the Diocese of Aba* (1998) 10 NWLR (Pt. 570) 514 at 522; *The Registered Trustees of Igbo Community, Oyo State v Akabueze* (Unreported, Suit No. OY1/568/96).

<sup>38</sup> See G Henshaw, ‘Tax and Ecclesiastical Bodies in Nigeria’ [2015] 1(3) *The Barcode* <<http://barcode.stillwaterslaw.com/1.1/2015/12/21/tax-and-ecclesiastical-bodies-in-nigeria/>> accessed 2 March 2018.

<sup>39</sup> For instance, the Supreme Court in *Onuekwusi v The Registered Trustees of the Christ Methodist Zion Church* (2011) All FWLR (Pt. 573) 1, per Muhammad, JSC referred to the Christ Methodist Zion Church and its incorporated trustees as one and the same entity; See also, *Omomobi v Adeoye* (Unreported, Suit No. FCT/ABJ/CS/1111/07).

<sup>40</sup> See CAMA, s 596(1) and (2); Thus, the judgment of the Supreme Court in *Onuekwusi v The Registered Trustees of the Christ Methodist Zion Church* that referred to Christ Methodist Zion Church and its incorporated trustees as the same is, therefore, wrong.

behalf and are responsible in their personal capacities for the liabilities of the church.<sup>41</sup>

Second, section 601 of CAMA provides that where a church that registers trustees appoints a governing body, the trustee(s) must be included and get involved in the administration and management of the church. Section 608 also empowers the CAC to dissolve the trustees that a church registers.<sup>42</sup> These provisions imply that churches would have to adhere to the statutory stipulations to acquire and maintain their legal personality irrespective of whether these statutory provisions reflect their theological standpoints, particularly as it relates to administration and governance. Furthermore, section 606 provides that the CAC is to keep all documents of the church delivered to it at incorporation, and the CAC can permit any member of the public to inspect the documents. Meanwhile, legal scholars like Doe have argued that being forced to reveal information about one's religion is an invasion of freedom of religion.<sup>43</sup> Ukah also expresses his worries with these statutory influences on Nigerian churches when he queries:

The paradox is that even when religious authority is believed to come from a metaphysical source, it relies on secular sources as the Corporate Affairs Commission (CAC) in Nigeria to grant it a legal backing or powers. The CAC operating under

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<sup>41</sup> See CAMA, ss 602, 503 and 605.

<sup>42</sup> A Ukah "Obeying Caesar to Obey God: The Dilemmas of Registration of Religious Organisations in Nigeria" 325-326; Enyinna Nwauche, 'Law, Religion and Human Rights in Nigeria' [2008] 8 *African Human Rights Law Journal* 568 at 582.

<sup>43</sup> Norman Doe, *Law and Religion in Europe* (Oxford University Press, 2011) 49.

CAMA has legal powers to incorporate, *regulate, oversee*,<sup>44</sup> and even liquidate religious organizations. How does a secular agency liquidate a religious association whose authority is usually embedded in a supernatural realm? The sovereignty or religion and the incorporation of religious organizations in Nigeria create legal and religious dilemmas.<sup>45</sup>

In the same vein, Ekwo contends that CAMA is a secular law and the CAC a secular agency, their operations are secular, not ecclesiastical. He argues:

A point must be made that the CAMA is a legislation principally focused on the regulation and supervision of the formation, incorporation, registration, management and winding up of companies and business names. Any other additions thereto are considered as ‘allied matters.’ It is secular law. This law also creates another secular body known as the Corporate Affairs Commission, charged with the operation of the Act. It is between these two that the church is registered, administered and regulated.<sup>46</sup>

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<sup>44</sup> Emphasis added.

<sup>45</sup> Ukah “Obeying Caesar to Obey God: The Dilemmas of Registration of Religious Organisations in Nigeria” 311.

<sup>46</sup> Ekwo *Incorporated Trustees Law and Practice in Nigeria* 19-20. Ekwo further observes that “The provisions of Part C are not very detailed and this has made its implementation somewhat difficult ... the courts have employed some principles of company law in dealing with matters under incorporated trustees”.

In light of the above, it is not impossible that some churches may have sacrificed their theological standpoints in an attempt to follow the dictates of the statute. Arguably, the above implications may also constitute good theological justifications for some churches not to register trustees in terms of CAMA. However, the challenge is that such churches are susceptible to the risk of being denied the benefits of juristic personality. Remarkably, the courts have on certain occasions denied churches the benefits of juristic personality where a church could not prove its juristic personality under CAMA. In fact, it seems many of the Nigerian courts now wrongly assume that CAMA obligates all churches in Nigeria to register in terms of CAMA to acquire legal personality.<sup>47</sup> The assertion of Ibiyeye JCA in *The Registered Trustees of the Church of the Lord (Aladura) v Sheriff*<sup>48</sup> on this point is apt. He said: “There is no gainsaying the fact that *the primary purports* of the provisions of the 1990 Act [CAMA] are the need for registration of a religious body among other designated bodies by the Corporate Affairs Commission.”<sup>49</sup> A similar position was held in *Fawehinmi v Nigerian Bar Association (No 2)*<sup>50</sup> where Karibi-Whyte JSC, citing the case of *Registered Trustees of Apostolic Church v The Attorney General of Mid-Western State*,<sup>51</sup> stated:

The well settled judicial view in this country appears to me consistent in holding that an

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<sup>47</sup> However, according to the United Nations Rapporteur, Bielefeldt, regulation should not be made compulsory if a religious community is to enjoy fully its right to religious freedom. See, H Bielefeldt, ‘Human Rights Council, Report of the Special Rapporteur on Freedom of Religion or Belief’ A/HRC/28/66/Add.1.

<sup>48</sup> (2000)15 NWLR (Pt. 689) 165.

<sup>49</sup> Emphasis added.

<sup>50</sup> (1989) 2 NWLR (Pt 105) 558.

<sup>51</sup> (1972) 4 SC 133.

association of persons [church] without incorporation cannot be regarded as a legal person for the purpose of actions in court.<sup>52</sup>

The significance of registration of church trustees commonly comes to the fore where a party in a lawsuit challenges the competence of a church to sue or where the church is not able to tender the certificate of registration of its incorporated trustees.<sup>53</sup> For instance, in the recent case of *Dairo v The Registered Trustees of the Anglican Diocese of Lagos (Dairo)*,<sup>54</sup> the Lagos Anglican Diocese as the plaintiff instituted a civil suit against the defendants at the High Court of Lagos State with the name “Registered Trustees of the Anglican Diocese of Lagos.” The action was a simple claim for damages for trespass and injunction against the defendants. However, the suit had not gone to trial before the defendants raised a preliminary objection to challenge the competence of the plaintiffs to institute the suit. The defendants demanded that the church presents its certificate of registration of its trustees, but the church was unable to do so. In fact, Chief Benjamin Ajayi, one of the purported trustees of the church who testified as the plaintiffs’ witness said at his cross-examination, “I have not seen the certificate of the Registered Trustees of the Anglican Diocese. The Registered Trustees of the Anglican Diocese have not been registered.”<sup>55</sup> The Supreme Court held that since the plaintiffs failed to produce their certificate of registration,

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<sup>52</sup> *Fawehinmi v Nigerian Bar Association (No 2)* 632.

<sup>53</sup> *Registered Trustees of Apostolic Church v The Attorney General of Mid-Western State* 133; *Dairo v The Registered Trustees of the Anglican Diocese of Lagos* (2017) LPELR 42573 (SC) 1.

<sup>54</sup> (2017) LPELR 42573 (SC) 1.

<sup>55</sup> *Dairo v The Registered Trustees of the Anglican Diocese of Lagos* 5D-F; *Omomobi v Adeoye* (Unreported, Suit No. FCT/ABJ/CS/1111/070).

they could not prove their capacity to sue. The court accordingly struck out the case.

From the above discussion, it is established that whether or not a church registers trustees in terms of CAMA may have implications for the legal status of the church. It may, however, be argued that the approach that would best serve and protect the religious identity and freedom of churches is to claim juristic personality under common law. Perhaps the relevant question to ask is whether churches in Nigeria can acquire juristic personality in term of common law without registering under CAMA? Put differently, do the provisions of Part C of CAMA de-recognize churches as corporations under common law? The next section explores the answer to the questions.

### **Juristic Personality of Churches at Common Law in Nigeria**

As indicated in the last section, most judgments and rulings of the courts regarding juristic personality of churches suggest that the Nigerian courts favour registration of trustees in terms of CAMA as a means of acquiring or enjoying the benefits of a corporation. It can, however, be argued that churches in Nigeria can acquire juristic personality under common law without the need to register under any statute. However, it appears the courts and most lawyers are unaware of this common law position in Nigeria. This may be because the judiciary has not been opportune to make a specific declaration to answer the question of whether a church is a corporation under common law enforceable in Nigeria. It seems almost certain that no lawyer has canvassed or tested this principle in any case, particularly in cases where churches' competence to sue has been challenged. Most literature on the field also appears

not to pinpoint common law as a source of a juristic personality of churches.

Notwithstanding the above, the argument remains that churches are a corporation under common law applicable in Nigeria. Emiola is also of this opinion. He argues that churches, particularly those that can trace their source through to apostolic succession<sup>56</sup> are a corporation under common law. Whilst using the status of the Anglican Church and other mainline churches as examples, Emiola posits:

The Anglican Communion in Nigeria, as well as the Protestant denominations — Methodist, Baptist, Lutheran, and Presbyterian — are offshoots of their mother Churches in Europe and America. Some of them emerged as corporations, not by charter or statute, but by apostolic succession which entitled them to be recognized as ecclesiastical corporations with the same power, authority, and status descending from the earliest Churches ... it is submitted that the Church can sue or be sued either by its spiritual leaders or as a corporation on its own ... It is, however, submitted that without the two forms of statutory instrument, the Church of Nigeria [Anglican Church] can trace its corporate status,

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<sup>56</sup> *Random House Webster's College Dictionary* (Random House Reference 2001) 60 states: "Apostolic succession is the unbroken line of succession beginning with the apostles and perpetuated through bishops, considered essential for orders and sacraments to be valid in the Roman Catholic, Anglican, and Eastern Orthodox Churches." Today, apostolic succession is effected by the selection and induction of priests as bishops into Christ's apostleship through prayers and casting of lots (Holy Bible, Acts 1: 24, 26). By that process, Mathias became the first apostle by succession, replacing Judas Iscariot (Holy Bible, Acts 1: 25).

like every orthodox early Church, to the historical recognition of the ancient ecclesiastical corporations of which it is one by succession.<sup>57</sup>

Emiola's argument is premised on the ground that the common law corporation existed long before the Crown and the state begins to grant legal personalities. According to him, the legal personalities of the state, the Crown, the stool, and ecclesiastical corporations, were recognised at common law, having grown out of custom long before the idea of the grant came up and the Crown began to confer corporation status by charter, or the parliament by statute.<sup>58</sup> This argument is in keeping with the perspective that Justice Fitz Gibbon's understands a church as a "*quasi*-corporation in the English case of *MacLaughlin v Campbell*.<sup>59</sup> A *quasi*-corporation is an entity not specifically created by law as a corporate body, but because of the duties it performs or the functions it carries out *over a period of time*<sup>60</sup> is allowed in law to be regarded as a juristic person. The Black's Law Dictionary defines a *quasi*-corporation as

A term applied to those bodies, or municipal societies, which though not vested with the general powers of corporations, are yet recognised, by statutes or

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<sup>57</sup> Emiola *Corporation Law supra* 95, 97.

<sup>58</sup> *Ibid* 7; See also, MP Van Huffel, 'Control, Secede, Vested Rights and Ecclesiastical Property' [2011] 37(2) *Studia Historiae Ecclesiasticae* 173, 175-176. Van Huffel accounted as follows: "The common law had only one category under which such tenure could be classed, namely, that of the juristic person. Only one sort of juristic person was recognised, the corporation (*corpus, collegium*), as the concept of an institution or charitable foundation (later known in common law as *pia opera or universitas bonorum*) capable of holding property...."

<sup>59</sup> *MacLaughlin v Campbell* (1906) 11r R 877.

<sup>60</sup> Emphasis added. This emphasis shows the need for the consideration of time in the determination of whether an entity can assume the status of a *quasi*-corporation.

*immemorial usage*, as persons, or aggregate corporations, with precise duties, which may be enforced, and privileges, which may be maintained, by suits at law.<sup>61</sup>

In the same vein, IHEME's opinion that some old and established churches in Nigeria are not mere non-profit organisations and need no registration under any statute to be a corporation is germane. IHEME contends:

It may be argued, in strict jurisprudential terms, that some of the bigger, older and well-established Christian religious organisations, such as the Catholic and Anglican Churches ought not to be described as NGOs because they are managed and their property held in the name of an office (i.e. bishop) by individuals which have perpetual succession...a concept we have inherited as part of the common law.<sup>62</sup>

IHEME's claim is supported by the obiter of OPUTA JSC in *Thomas v Olufosoye*<sup>63</sup> that "[The] Church of Nigeria [Anglican Communion] ought to be a legal person with perpetual succession." This argument can be taken further by evaluating the preamble to the Land (Perpetual Succession) Ordinance of 1924,<sup>64</sup> amended in 1958.<sup>65</sup> This is now modified as Part C of CAMA<sup>66</sup> under which

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<sup>61</sup> *Black's Law Dictionary* 309. Emphasis added.

<sup>62</sup> IHEME "Country Report for Nigeria: NGO Laws and Regulations" 1. (1986) LPELR-3237 (SC) 1, 35-36.

<sup>63</sup> Ordinance 32 of 1924.

<sup>64</sup> Land (Perpetual Succession) Act of 1958.

<sup>65</sup> See *Akindipe v Commissioner of Police, Lagos State* (2000) 2 SCNQR 895, 905, where the Supreme Court of Nigeria held that: "It is true that the Land (Perpetual Succession) Act has been repealed by the Companies and Allied Matters Act, 1990. Its provisions were substantially re-enacted in Part C of

most churches now register their trustees. This preamble provides that the primary purpose of the legislation was to make it possible for associations and entities that are not juristic persons to be able to have perpetual succession and to hold land.<sup>67</sup> Ekwo echoes this point that “the power to own land was the only characteristic that availed incorporation under the Land (Perpetual Succession) Act.”<sup>68</sup> Of course, churches have always had perpetual succession and held lands before the time of the enactment of these laws.<sup>69</sup> It is also a known fact that the Catholic Church, Anglican Church, Methodists and Baptist Churches and some other churches acquired lands as gifts by kings or bought from landowning families.<sup>70</sup> These were valid transfers under customary law and titles in perpetuity were vested in the churches under customary law. That

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the Companies and Allied Matters Act, 1990”; See also, *Registered Trustees of Isowulu Youths Association and Social Club v Gbughemobi* (1995) FHCLR 301.

<sup>67</sup> In *The Registered Trustees of the Planned Parenthood Federation of Nigeria v Shogbola* (2004) 11 NWLR (Pt. 883) 1, 19, the court further held: “The incorporation of an association of persons or body as the 1<sup>st</sup> appellant under the Land (Perpetual Succession) Act by vesting all lands or interests therein held by the association or body in trust for the association or trustees in section 2(3) is only to facilitate the acquisition and transfer of land on behalf of the association and it does not vest on the trustees any greater power that they might have had without it.” Emphasis added; similarly, in *Egubson v Ikechiuku* (1977) LPELR-1050 (SC) 1, 15, Udo Udoma JSC said: “Incorporation of Trustee or Trustees under the Land (Perpetual Succession) Act is not a case of incorporation generally, but incorporation for a specific purpose. The certificate of incorporation has the effect of vesting in the body so incorporated all land or any interest therein of whatever nature or tenure belonging to or held by any person or persons in trust for such community, body or association of persons.” Emphasis added.

<sup>68</sup> Ekwo *Incorporated Trustees: Law and Practice in Nigeria* 12. Emphasis added.

<sup>69</sup> *Ibid.* Ekwo asserts: “The church as a body predates Nigeria as a sovereign state. Its establishment in this country owes much to the effective activities of the European missionaries from the fifteen century.”

<sup>70</sup> *Iseru v Catholic Bishop, Warri Diocese* (1997) 3 NWLR (Pt 495) 517.

was over seventy years before Nigeria came into existence in 1914. This means churches had title to the land and had been in possession since 1842 when Christianity came into Nigeria and 1924 when the Land (Perpetual Succession) Ordinance came into effect.

Furthermore, it must be understood that long-possession is also a mode of proving title to land in Nigeria. The questions that may be asked include, in what capacity did the churches acquire and hold properties before the Land Perpetual Ordinance and CAMA? Have the churches been divested the titles to their estates under these statutes? It is submitted that the churches acquired and held the estates in their capacity as corporations under common law. The statutes never divested the churches of their estates. Consequently, if the church had been recognised as a corporation under the law before Nigeria was born in 1914, it cannot now turn round to de-recognise them. In law, such must be expressly stated without ambiguity. Curiously enough, the concept of legal personality began with the church. In the history of the world, this is accepted. Nothing in the provisions of the Land Perpetual Ordinance or CAMA that expressly or tacitly suggests that the statutes intend to remove the legal status of an entity that had already acquired juristic personality. What could, in fact, be inferred from section 590(1) of CAMA is that registration of trustees under CAMA is optional — it is to allow those organisations that have not attained juristic personality to do so. Regarding this point, Ukah, whilst responding to the assertion made by Van der Vyver,<sup>71</sup> says:

The operative word in the provision [i.e. section 590 of CAMA] is the modal verb “may”, which only indicates

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<sup>71</sup> JD Van der Vyver and MC Green, ‘Law, Religion and Human Rights in Africa: Introduction’ [2008] 8(2) *African Human Right Law Journal* 346.

a possibility rather than a requirement. It is in this sense that the statement that 'In Nigeria, registration [of churches] is required by the Companies and Allied Matters Act' needs qualification.<sup>72</sup>

Additionally, there is no provision in the Land Perpetual Ordinance or CAMA that may be pointed to as directing, instructing or mandating entities that have exercised juristic personality prior the coming into effect of the statutes, such as acquiring property in their corporate names to divest such interests to the trustees that are now being registered under the statutes. The absence of such a provision can only be taken as an acknowledgement that some categories of entities to which Part C of CAMA relates, have already acquired juristic personality. It is submitted that recognising the juristic status of churches under common law is not inconsistent with the provision of CAMA, and for all intents and purposes, CAMA does not have any provision intending to abrogate this.

Furthermore, the Nigerian courts have recognised corporations at common law as part of the Nigeria jurisprudence.<sup>73</sup> The West African Court of Appeal in *Quaram v Yanka*<sup>74</sup> confirmed this by acknowledging a traditional or religious stool as a corporation sole which never dies and that whilst the occupants of a stool come and go, the stool remains forever. In the same vein, Adaramola posits: "It has been said, certain idols, shrines, trees, rocks, and rivers are

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<sup>72</sup> Ukah "Obeying Caesar to Obey God: The Dilemmas of Registration of Religious Organisations in Nigeria" 318; see also, *Johnson v Omotayo Banjo* (1973) NNLR 187.

<sup>73</sup> *Olaniyan v University of Lagos* (1985) 2 NWLR (Pt 9) 599, 623.

<sup>74</sup> (1936) 2 WACA 80.

not considered merely sacred, but also as possessing legal personality under customary law.”<sup>75</sup> And all that is needed to be proved in terms of the customary law is the faithful recognise that the customary stool or a shrine forms part and parcel of the cultural practices and that it is binding on them.

Given the above, it is argued that if social and traditional religious institutions, such as stools, idols, and shrines are recognised as corporations, then it is paradoxical not to recognise churches or other old and world religious institutions like church, Islam as religious corporations except they register trustees with the CAC.<sup>76</sup> It may be argued that since the Nigerian courts have accepted the existence of common law corporations in Nigeria,<sup>77</sup> then institutions such as churches should be recognised as a religious corporation or *quasi*-corporation. It is submitted that once a church meets the criteria of being a *quasi*-corporation — that is, identity, perpetual succession, acceptance by particular people as part of their national custom, then there is nothing sinister in recognising their corporate status.<sup>78</sup> In this instance, the church has been

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<sup>75</sup> F Adaramola *Basic Jurisprudence* (University of Illinois Printing Services 1992) 139; See also, *Emiola Corporation Law* 16. Emiola asserts: “Ancient monarchies and religious institutions emerged by custom and grew through the customary process of selection before they became *recognized* as personified beings.”

<sup>76</sup> It can be argued further that recognising the legal personality of traditional religious organisations with statutory registration without according the same recognition to other religions practised in Nigeria amounts to an unequal treatment, which detracts from the spirit of sections 10 and 38 of the Constitution of the Federal Republic of Nigeria 1999 that guarantee equality of all religions.

<sup>77</sup> See, *Oputa JSC in Olaniyan v University of Lagos* (1985) 2 NWLR (Pt 9) 599, 623.

<sup>78</sup> This is also similar to Hart’s notion that the basic source of legal authority is the overarching “rule of recognition”. To him, a law is simply law because it has been made under the rule of recognition. See HLA Hart, *The Concept of*

identified as the primary institution through which the Christian communities express their identity. Furthermore, its history dates back to about two millennia even before the existence of Nigeria as a sovereign state. This is evidence of long usage and recognition by the society and it also satisfies the condition of perpetual succession. It is then absurd to think that it is the statute that was made about two decades ago that will now give a church a perpetual succession that it has always had. Finally, the members accept the religion as the expression of their belief and a mode of uniting them to God with a fundamental belief in future rewards and punishments.<sup>79</sup>

From the foregoing, it is submitted that churches, particularly the old mainline churches that seek registration of their trustees under the statute do not need such registration to function as a corporation or enjoy its benefits. However, in spite of the above position supporting the recognition of the legal personality of churches under common law, it is surprising that many churches still struggle to register under CAMA. Thus, the question arises, why did the churches and lawyers representing them fail to canvass their legal status under common law in cases, such as the Anglican Church in *Dairo*, or the Apostolic Church in *Registered Trustees of the Apostolic Church v Attorney-General, Mid- Western States*. One possible explanation for this is the lack of adequate knowledge of church law among lawyers and jurists and non-availability of

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*Law* (2<sup>nd</sup> edn Oxford University Press 1984) 107; See also, R Sandberg, 'Towards a Jurisprudence of Christian Law' in Norman Doe, (ed) *Christianity and Natural Law: An Introduction* (Cambridge University Press 2017) 223.

<sup>79</sup> See *Nikulnikoff v Archbishop of Russian Greek Orthodox Catholic Church*, 142 Misc. 894 (N.Y. Misc. 1932) 255.

literature in the field. Ekwo, a theologian and a judge on the Federal High Court in Nigeria, observes this point as follows:

There is perhaps nothing in Nigerian law more intriguing than the fact that notwithstanding the great age of the established church in Nigeria, this area of the law pertaining to the government of the church is as yet relatively underdeveloped, and there are many issues that are recondite. This is reflected in the dearth of historically established legal literature and reference material available, in inverse proportion to the number of living legal practitioners....<sup>80</sup>

In view of the above, it is submitted that it is time for lawyers representing churches in Nigeria to begin to canvass and pay attention to the legal status of churches under common law.

### **Conclusion**

This article explores the approaches through which churches acquire the status of juristic persons. It demonstrates that there are three popular approaches through which churches acquire this. It noted that, strictly speaking, churches and other trustees do not become corporations by registering trustees. Furthermore, registering trustee has implication for the governance and autonomy of church. Accordingly, the article advocates for the popularity of the recognition of religious corporation under the common law. For instance, South Africa, which also practices constitutional democracy like Nigeria, has recognised the juristic personality of churches and other religious organisations under common

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<sup>80</sup> Ekwo *Incorporated Trustees: Law and Practice in Nigeria* 12-13; Doe *Christian Law* 9.

law.<sup>81</sup> Although the historical sources of the Nigerian and South African legal systems are different. Whilst the Nigeria source is majorly the English common law, the South Africa is both the English common law and Roman-Dutch law. Notwithstanding this difference, there is nothing sinister if the Nigerian courts also pronounce and affirm the juristic personality of churches and other religious organization without the burden of having to register under the statute. This will not only promote religious freedom of religious organisations, but will also be in tandem with the global legal trends. In the same vein, churches are now recognised as capable of having the standing to sue at the European Commission of Human Rights in terms of the European Convention on Human Rights and Fundamental Freedoms of 1950 without any evidence of prior registration.<sup>82</sup> Thus, in *X and the Church of Scientology v Sweden*,<sup>83</sup> the European Human Right Commission reversed its earlier decisions<sup>84</sup> in *Church of X v United Kingdom*<sup>84</sup> and *Karnell and Hardt v Sweden*<sup>85</sup> that a church does not have a locus of

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<sup>81</sup> See generally, *Ex Parte Johannesburg Congregation of the Apostolic Church* 1968 (3) SA 377 (W); “Distinguishing between an Unincorporated Association and a “Universitas” <<https://www.vdma.co.za/distinguishing-unincorporated-association-universitas/>> accessed 22 June 2018; *Jamile v African Congregational Church* 1971 (3) SA 836 (D); *Twelve Apostles Church in Christ v Twelve Apostles Church in Christ* [2010] ZAKZPHC 5 para 7.

<sup>82</sup> See also, the decision of the United States’ court in *Murphy v Taylor* 289 So. 2d 584, 586 (Ala. 1974), where it was held: “A church or religious society may for all the purposes for which it was organized independently of any incorporation of the body ... and, it is a matter of common knowledge that many do exist and are never incorporated. For the promotion of religion and charity, they may sub-serve all the purposes of their organization, and, generally.”

<sup>83</sup> App. 7805/77, 16 ECHR 68.

<sup>84</sup> App. No. 3798/68, 13 Y.B. ECHR 306 (1968).

<sup>85</sup> No. 4733/71, 14 Y. B. ECHR 676 (1971).

instituting an action in its name before the Commission. The Commission held thus:

The commission is now of the opinion that the ... distinction between the church and its members under Article 9 (1) is essentially artificial. When a church body lodges an application under the Convention, it does so in reality, on behalf of its members. It should therefore be accepted that a church body is capable of possessing and exercising this right contained in Art. 9 (1) in its own capacity as representative of its members.<sup>86</sup>

This above argument is in keeping with the perspective that Van Reken understands the church to mean an agent that can do things and can say things because it has its voice. The church as an institution has its own purposes and plans, its structure and officers and its own mission. It has its proper sphere. In many ways, it parallels other institutions like governments or schools.<sup>87</sup>

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<sup>86</sup> *X and the Church of Scientology v Sweden* 70;

<sup>87</sup> CP Van Reken "The Church's Role in Social Justice" (1999) 34 *Calvin Theological Journal* 198.