Case No: HC/2015/000150

Neutral Citation Number: [2015] EWHC 840 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Friday, 13 February 2015

BEFORE:

HIS HONOUR JUDGE PURLE QC

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BETWEEN:

(1) REVEREND BERHANU BISRAT
(2) DEACON DEREJE DEBELLA
(3) DEACON MAHADER KASSA
(4) DEACON ENGEDAWORK GEBREEZIABER
(5) GENERAL HAILU BERWAK MIRGA
(6) MRS AREGASH GEBRE KIDAN
(7) MR GIRMA HAILE-MARIAM
(8) MR SHUMET MENGISTIE
(9) MR MEKU GETACHEW

Claimants

- and -

(1) ARCHIMANDRITE ABA GIRMA KEBEDE
(2) REVEREND ABATE GOBENA
(3) MRS BETHLEHEM TADESSE
(4) REVEREND DAWIT ABEBE WORKU
(5) MR ABENER AMENSHOWA
(6) MR DAWIT HABTEMARIAM
(7) MR NIGUSSIE ASRESS
(8) ARCHDEACON DAWIT WOLDETSADIK
(9) MR FASIEL BEKLE
(10) MR HENOK GEBREMICHAEL
(11) MR. ASHELEW KEBEDE
(12) MS TIGIST TADESSE
(13) MR TAYE HAILU ZELEKE
(14) HER MAJESTY'S ATTORNEY GENERAL
AND PERSONS UNKNOWN

Defendants

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MR FRANKLIN EVANS (instructed by **Wellers Law Group**) appeared on behalf of the Claimants

MR Z SIMRET appeared pro bono on behalf of the above-named Defendants (except Defendants 5, 6, 12, 13, 14 and "Persons Unknown") some of whom also addressed the Court in person

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Judgment

HIS HONOUR JUDGE PURLE:

1. This case concerns the Ethiopian Orthodox Tewahedo Church of St. Mary Debre Tsion, which is an unincorporated association and a registered charity; I shall call it the charity. It holds property in Battersea in Queenstown Road, where the activities of the church are carried out from. There is a trust deed establishing the charity which is dated 11 June 1992, though the present premises in Battersea were only acquired as late as 2011 following several years of successful fund raising.

2. There is an issue as to who are the persons entitled to control the trust. The trust deed lays down detailed provisions which have been amended (at least purportedly) in 2006 and (the claimants would say) subsequently, but there has never been, as far as the present evidence goes, full compliance with the requirements of the trust deed either in its original or in its amended form. There should, for example, have been a general council from which trustees should have been taken but that has never been brought into effect. Moreover, whilst there appears to have been a degree of acquiescence over the years in relation to the constitution of the governing body, there has been no such acquiescence in recent times since around 2012.

3. In 2007 there was an appointment of trustees, as required by the governing documents of the charity, which was apparently for three years, and which appears, by general consent, to have been extended for a further two years, there being no further extension beyond that date. Thus, it is said on the one side that the appointment (if effective) lapsed and, on the other side, that nothing having replaced them, the appointments continued.

4. The defendants, apart from the fourteenth defendant, which is Her Majesty's Attorney General, and the fifth, sixth, twelfth and thirteenth defendants, who have expressed their entire neutrality, claim to be the existing trustees, as required by the governing documents of the charity: that is to say the first four defendants and defendants seven to eleven inclusive. They claim to be the present governing body. The first defendant is also carrying out the functions of administrator which is the person in day-to-day control of the charity. Throughout this judgment, the expression "the trustees" is used to denote those entitled or claiming to be entitled to control the affairs of the Charity under the Trust Deed and amendments. There may be different from the individuals registered as legal owners at the Land Registry, who do not claim in that capacity to be entitled to control under the charity's governing documents.

5. There is an unfortunate division amongst those who have worshipped and wish to continue to worship at the church operated by this charity. The Ethiopian Orthodox Church is one of the oldest churches, of great distinction and establishment. There have, however, over recent decades been political eruptions within Ethiopia which have impacted upon the Ethiopian community in this country. Many Ethiopians are inimitable towards (and in some cases refugees from) the existing regime in Ethiopia, which is predominantly under the control of the Tigrean People's Liberation Front ("TPLF" for short).

6. In around 2012 a Tigrean patriarch (Abune Mathias) was appointed in Addis Ababa where the mother church is located (subject to one point to which I shall come) who has in turn appointed a Tigrean Archbishop (Abune Enthos) to the North Western European diocese and who therefore is relevant to the operation of the charity's church in Battersea because it is said to be part of that diocese. The one point to which what I have just said is subject is this: At the time of the adoption of the trust deed in June 1992 it is said by the claimants that the true patriarch was Patriarch Abune Merkorios, who is still alive but who, in circumstances which I do not need to explain and indeed could not if I did need to explain, left Ethiopia. A rival synod to the synod of the mother church in Ethiopia has been set up in Seattle in the USA. The claimants are loyal to the Seattle synod; the defendants are said to be loyal to the mother church in Addis Ababa and thus to Patriarch Abune Mathias and Abune Enthos (the North Western European Archbishop). Unfortunately, both Patriarch Abune Mathias and Abune Enhtos are perceived by a number of those loyal to the Seattle synod and Patriarch to be allies of the TPLF regime to which those supporting the Seattle synod are opposed. That has resulted (and there may be other reasons) in the relationships between the two groups of church celebrants breaking down. In fact, until around 2012, the two groups lived and worshipped together in apparent harmony, but that is sadly no longer the case and there have been meetings and church services which have been disturbed by dissent and disagreements. The result is that a number of people (including the claimants and those who may loosely be described as their followers) feel unable to worship at a service which is conducted by those who are loyal to Patriarch Abune Mathias and Abune Enthos and worship, it is said, at the church premises, but outside. This is a matter which is less than satisfactory to them because they are deprived (they say) of access to the Holy Tabot, which is a representation of the Ark of the Covenant, is consecrated within the church premises and is very important for the purpose of celebrating the sacraments and for various other purposes connected with the Ethiopian Orthodox faith.

7. A Part 8 claim form has been issued with the permission of the Charity Commission (because the proceedings plainly embrace charity proceedings within the meaning of the Charities Act 2011) which seeks to resolve a number of issues. I am not going to read them all out, but it is evident that a number of solutions may be determined by the court. The first issue which needs to be decided is whether there is a valid trust at all or whether the trust fails for uncertainty. What then also needs to be decided through a series of considerations of subsequent amendments and various appointments and purported appointments of the governing bodies is whether there are any validly appointed (for want of a better word) trustees, meaning those who control the affairs of the charity, or whether, as appears to be one real possibility, there have been no valid appointments either at all or at least since the expiry of what appeared to be the consensual appointments of 2007, as extended. There have been purported appointments in 2013 on what may loosely be called the claimants' side, but the validity of the convening of the meeting or meetings to give effect to that (and a preceding alteration to the byelaws) is challenged, as is the conduct of the meeting or meetings. There have, in addition, been what is described in the defendant's evidence as the co- opting of additional trustees on the defendants' side earlier last year, or maybe in 2013, so that the present controlling body of trustees (for want of a better word) are the nine individuals that I mentioned earlier; namely, the individually-named defendants other than defendants five, six, twelve and thirteen.

8. I say straight away that as defendants five, six, twelve and thirteen made a clear declaration of neutrality it seems to me that they need, at least at this stage and for the foreseeable future, take no further part in these proceedings. That also was the position of the claimants once they had heard and seen what these defendants had to say. Accordingly, it seems to me that the proceedings against those individuals must be stayed, so that they do not feel the need to take any further part in the future in these proceedings, though they will, as with anyone else, be free, if they wish, to attend any part of the proceedings that they wish to attend, assuming that a court is available which is large enough to accommodate everyone, as members of the public. They will not however be required to spend money on legal costs, or be at risk of being liable for anyone else's costs hereafter. I say nothing about the costs to date because I would need to hear arguments on that, but I would be astonished if I am asked, as against those defendants, for any costs order whatever the outcome because they have, as I have said, adopted a position of entire neutrality.

9. There have been issues raised on the defendants' side as to the adequacy of the service of the proceedings against a number of the defendants. It appears, however, from the statements of service that I have seen, that the service was sufficient under the rules and that, in any event, people have received the core documents through that service, though not necessarily the paginated bundle that was before the court. Additional documents that have been produced during the hearing have been produced to and seen by Mr Simret (to whom I shall now come).

10. Mr Simret is a legally qualified individual who has offered his services pro bono to the defendants and has assisted them and, if I may say so, the court in the presentation of their case. There were the four defendants, as I say, who expressed neutrality, and they were not technically represented in any way by Mr Simret. Naturally enough, what the claimants' counsel did when providing documents arising during the course of the hearing was, as he explained to me, to disclose them to Mr Simret and not distribute them around individual defendants. It seems to me that where defendants choose, as the relevant nine defendants did, apart from Mr Bekle (who has not been present), to have their say through a sympathetic individual with legal qualifications they must expect any distribution of documents to be through that individual. I also heard from individual defendants, most significantly from the Reverends Gobena and Worku, who spoke eloquently and moderately for their own cause and that of the defendants siding with them. I did not hear at length from other defendants and the first defendant (the administrator) Archimandride Aba Girma Kebede was content with what others had said. This led (surprisingly) to some criticism from Mr Evans for the claimants. It is a criticism which I do not accept. It seems to me that Archimandride Aba Girma Kebede was entitled and well advised, in fact, to maintain his silence given that there were others who were able to get across his point of view.

11. The hearing before me has not been a trial. I shall come back to what it has been. It has been an interlocutory hearing and there must be a limit to what can be said and by whom. Whilst I anticipated that there might be some objection from the claimants' side on the grounds that I had been over-indulgent towards the defendants, the complaint was that, contrariwise, I should be critical, which I am not, of the first defendant for not having spoken directly to me at all.

12. I move on from that point. The issues before me do not arise directly out of any of the issues which are set out in the CPR Part 8 claim form. The CPR Part 8 claim form is or reads more like a conventional construction summons seeking to find out the legal effect of the trust deed and other documents, such as purported amendments, in the events which have happened. That is a conventional form which is more often than not appropriate. The facts are not seriously in dispute. Despite the large number of allegations and counter allegations which have been ventilated in outline before me, the essential facts do not appear to be very much in dispute. However, there certainly is some dispute as to what may have been agreed and by whom at particular times and as to who or who may not have been obstructive from time to time.

13. What has been agreed from time to time may be highly relevant to questions of acquiescence. It is commonplace that in unincorporated bodies such as this charity, the rule book (by which I mean, in this case, the trust deed and byelaws, if valid) is not always adhered to strictly and many charities, if one stops at any given moment in time and looks backwards over the previous 10 years, would break down completely if strict adherence to the rule book was required. If one finds, as one often does, a charity where people have lived in harmony knowing and accepting departures from the strict constitutional position, the court will readily infer acquiescence and the adoption of an alternative method of proceeding which binds all interested parties. Hence, it may well be (and I am deciding nothing at this stage) that the events down to 2012 or thereabouts, when there was relative harmony amongst the ranks of the contributors to this charity, will be covered by considerations of acquiescence. Things have been very different since 2012 because there appears to have been limited or no acquiescence in the operation of the constitution, which may well, as I have said earlier, result in the conclusion that the 2007 trustees' period of office has expired and no one has taken their place. That is not the only possible conclusion: they may be found to remain in place for one reason or another or new trustees may be found to have been appointed in their place. I am ruling nothing out: this may be a case where there are no trustees, or it may be a case where there are trustees.

14. As things stand, no one knows what the legal position is and I am not in a position to determine it today, and indeed am not asked to do so, save in one sense: the defendants have asked me, through Mr Simret, to strike out the claim on the grounds that it is bound to fail. However, that is not primarily (though this becomes part of it) upon the ground that the defendants are bound to establish that the current body of trustees, as alleged by them, is the true body. The defendants' objection is based primarily upon the ground that the claimants do not have a sufficient interest to pursue these proceedings, and that the pursuit of the present interlocutory proceedings is not covered by the consent of the Charity Commission. The latter point does not go to the strike out point, but it does go to whether or not it is appropriate to grant interlocutory relief. However, the first point as to whether or not the claimants are interested at all does go to the strike out point and goes also to the heart of whether or not I should grant interlocutory relief because, if Mr Simret is correct, then the claimants are officious interveners at whose suit the court should not act.

15. There is no doubt that any interested party may, with the consent of the Charity Commission, bring proceedings. The Charity Commission has given its consent. That, however, does not prevent the defendants from taking the point before me that the claimants do not have a sufficient interest. The claimants' interest is that they are

apparently objects of the charity who have worshipped collectively at the church, wherever it has been from time to time, over many years, having contributed to the acquisition of the Queenstown Road church, and having actively participated in the life of the church over many years. They are also (or claim to be) registered members.

16. There is no definition of interested person in the Charities Act 2011 or elsewhere. There is a series of authorities going back to the like provisions under section 28 of the Charities Act 1960. In Haslemere Estates v Baker [1982] 1 WLR ER 1109, a decision of Sir Robert Megarry, Vice-Chancellor, this was said at page 1122:

> "Now I do not aspire to define the meaning of the phrase 'any person interested in the charity' in this context. That I shall leave for others; I am merely concerned to find a safe resting place for my decision in this case. In my judgment, the phrase in its context does not bear the wide meaning for which counsel and junior counsel for the plaintiffs contend. Many a person may be interested in the property of a charity without, for this purpose, being interested in the charity. I do not think that to contract with the trustees of a charity turns the contractor into a 'person interested in the charity', even if the contract relates to land or other property of the charity. I do not think that the phrase includes every tenant of charity land, or those who have easements or profits or mortgages or restrictive covenants over charity land, or those who contract or repair or decorate charity houses, or those who agree to buy goods from the charity or sell goods to the charity. An interest which is adverse to the charity is one thing, an interest in the charity is another. Those who have some good reason for seeking to enforce the trusts of a charity or secure its due administration may readily be accepted as having an interest in the charity, whereas those who merely have some claim adverse to the charity, and seek to improve their position at the expense of the charity will not. The phrase, I think, is contemplating those who are on the charity side of the fence, as it were, however much they may disagree with what is being done or not being done by or on behalf of the charity. The phrase does not refer to those who are on the other side of the fence, even if they are in some way affected by the internal affairs of the charity."

17. It may be relevant in this connection just to refer to the essential parts of the trust deed of 11 June 1992. That recites that the Congregation of the Church (described as "a branch of the Mother Church in Ethiopia which is operating under the spiritual jurisdiction of the Patriarch thereof"), having been founded by a resolution of an Assembly held in a church in Bayswater on 10th November 2001, is desirous of forming a charitable trust. The objects in clause 2 are said to be: "To propagate the Gospel of Christ by advancing the Ethiopian Orthodox Faith and in particular the Charitable Work of the Ethiopian Orthodox Church, St. Mary of Debra (sic) Tsion, particularly in London and the Home Counties."

18. In clause 11 there is the prospective provision for dissolution, which the claimants say may come into play in this case, as follows:

> "On the winding up of the Trust herein contained the Trustees shall distribute all assets of the Trust to such other Charitable Trusts or Trusts which shall be for the benefit of the Ethiopian Orthodox Church either in the United Kingdom or anywhere else in the world such distribution to be effected by the Trustees in their sole, absolute and unfettered discretion."

19. All the claimants are members of the Ethiopian Orthodox Church and are therefore interested, in a general sense, as adherents to that faith. In addition, however, they have been registered members of this church and regular worshippers and contributors, and (in the case of the first claimant) a priest, until recently (purportedly) dismissed by those of the defendants currently in control of the charity.

20. It seems to me that the claimants cannot be equated with an outsider who has some claim adverse to the charity, but are on the charity side of the fence and, therefore, interested for the purpose of bringing charity proceedings. In Bradshaw v University College of Wales Aberystwyth & Another [1989] 1 WLR 190, Hoffman J (as he then was) had to consider whether the personal representatives of a deceased settlor who had transferred farmland on charitable trusts to the defendant college were interested persons for the purpose of bringing charity proceedings. He held that they were not. The basis of the decision was that a person who could not in any circumstances be a beneficiary of the charity or take any interest under the trusts applicable to the property of the charity could not be a 'person interested in the charity'. Since neither the executors nor the estate of the settlor could in any sense be regarded as beneficiaries under any of the charitable purposes of the trusts, it followed that the executors had no more interest in the charity than any other member of the public.

21. That is relied upon by both sides; by Mr Simret because he says these people are not beneficiaries, they are merely people who may enter into contractual relationships with the charity by paying their subscriptions (which incidentally they have not done over recent times though the claimants say that is because the charity's bank account has been frozen). They are not, he says, person who can be regarded, in any sense, as beneficiaries.

22. I think one has to be careful of the use of the word "beneficiary" in this context. A charitable trust, as such, does not have beneficiaries in the same sense as beneficiaries under a private trust. No individual has any proprietary interest in the charity's assets and funds as such, but a person may become a beneficiary in a loose sense as an object of the charitable trust. The advancing of the Ethiopian Orthodox faith would, in one sense, embrace all those of that faith. That would not, I think, be sufficient to make all members of the Ethiopian Orthodox Church, anywhere in the world, who are very considerable in number, persons interested in this charity, but I do think that regular worshippers, who have contributed as such to the acquisition of the assets of the charity, as well as worshipping at the church in its various forms over many years, are undoubtedly interested persons for this purpose. Hoffman J, in considering who is an

interested person noted that no definition has been attempted in any previous case. He then set out the passage from the Vice-Chancellor's judgment that I have referred to and decided (for reasons which seem tolerably obvious) that the executors could not regard themselves on the charity side of the fence simply on the grounds that the deceased settlor would have wished to see the trusts of the charity enforced. Even if the deceased had been a person interested on those grounds, that was not an interest which could have been transmitted to the executors. As Hoffman J put it, executors succeed to the property of the deceased not to the deceased's spirit and disembodied wishes. That case, therefore, is of no help to the defendants in this case.

23. I was also referred to Rosenzweig v NMC Recordings Ltd by Mr Simret; a decision of Norris J [2013] EWHC 3792 (Ch). In that case, a musician claimed to be an interested party in bringing proceedings against a charity which had as its objects the recording and promotion of otherwise unrecorded contemporary music. NMC Recordings Ltd was the name of the defendant, which originally stood for "New Music Cassettes", although no longer so. At paragraph 24 reference was made to Bradshaw. Norris J noted that the executors in that case could not be regarded as beneficiaries under any of the charitable purposes, nor was there any possibility of the trust property reverting to the settlor's estate. They, therefore, had no more interest in the charity than any other member of the public. I have already said that that is not the position of these claimants, who have been regular worshippers at the church premises and contributors to the charity.

24. Reference was also made to Re Hampton Fuel Allotment Charity [1989] Ch. 484, the relevant part of which was alluded to by Norris J where he set out the following passage from the judgment of Nicholls LJ at page 493C:

> "We accept that there may be cases where an actual or potential beneficiary under a nationwide charity will qualify as a person interested in that charity. But we do not accept that an actual or potential beneficiary would always qualify. It must depend on all the circumstances."

25. I repeat again the caution that must be exercised when considering the concept of a beneficiary in the charity context. However, it is apparent from that quotation that the reasoning in that case (which concerned a local authority) has nothing to do with the present case because we are not here concerned with a charity which, as presently constituted and run, is being run as a *nationwide* charity, though obviously, on dissolution, as clause 11 demonstrates, the assets could be applied towards the purposes of the Ethiopian Orthodox Church here or abroad. What this case is concerned with is a church in Battersea of which the claimants are already, and have been for many years, members and part of the congregation (using that in a non-technical sense) and contributors.

26. What was also noted in the Hampton Fuel Allotment case was, as it was put at page 493H-494A: "…the person needs to have some good reason for bringing the matter before the court;" and, later on, at 494E-F: "…to qualify as a plaintiff in his own right a person generally needs to have an interest materially greater than or different from that possessed by ordinary members of the public…" In my judgment, it is self-evidently

the case that these claimants, given their longstanding connection to this charity and the nature of that connection, have an interest which is far greater than ordinary members of the public, and have because of that connection a good reason for bringing these proceedings. I accordingly reject the submission that the claimants have no locus standi to bring these proceedings. In my judgment, they may.

27. Does it follow from this that they are entitled to bring the interlocutory application which, as I have said, does not directly reflect any relief sought in the claim form? Mr Simret pointed out that the permission of the Charity Commission, which is embodied in an order, merely gives permission to bring the proceedings as set out in the claim form, paragraph by paragraph. Therefore, he says, as these interlocutory proceedings seek relief which is nowhere mentioned in the claim form, they are not within the scope of the permission and are therefore unauthorised and cannot be entertained by the court.

28. It is necessary to explain what the interlocutory application before me is. The claimants, between now and trial, wish the court to regulate the use to which the charity premises may be put so as to enable those who are, to put it broadly, the adherents of the Seattle synod of the church, to have full use of the church premises on specified occasions, and those who are the adherents to the Addis Ababa synod to have use at other times, so as to celebrate under their respective chosen priests. As I have said, one of the claimants is a priest who was formerly paid by the charity but who has (purportedly) been dismissed by those now in control of the charity.

29. None of that is relief sought in the claim form and immediately gives rise to what is apparently a hostile claim, which is not what Part 8 proceedings are usually about. Nonetheless, as is pointed out by Mr Evans, once proceedings are afoot then section 37 of the Senior Courts Act 1991 applies and that allows the court, in any case, to make an interim injunction (not just a final one), even if a final injunction is not sought, to regulate matters until the case can be decided, in any case where it is just and convenient to do so. In my judgment, that is a complete answer to this objection, subject to one point. I say it is a complete answer because what the Charity Commission has done is give its consent to these proceedings. Once proceedings are on foot then interlocutory applications can, and will normally have to be, made during the course of those proceedings. There may, for example, be applications for disclosure, for the making of witness statements and other directions calculated to bring the matter to trial. It is not necessary to get the permission of the Charity Commission for each stage of the proceedings, or for applications properly made within the purview of the current proceedings. Unless I reach the view that this interlocutory application is not properly made at all within the purview of the current proceedings, then it seems to me that the existing consent, as this is only an interlocutory application, extends to the interlocutory application as made.

30. In my judgment, the present application is a perfectly proper interlocutory application to have made within the purview of the present proceedings. Reduced to its bare essentials, Mr Evans' case for the claimants is this: We do not know who the current trustees are; there may be no current trustees at all, but equity never allows a trust to fail for want of a trustee. The court may, at the end of the day, have to dissolve the present trust, or administer the trust. Administration of the trust is recognised by Sir Robert Megarry, the Vice-Chancellor, in the Haslemere Estates case (to which I have

referred) as a proper remedy to seek. That can be sought on an interim basis and is sought now. The claimants wish the court to give directions and orders to regulate how the trust property is to be used until the case is tried. To my mind, that is proper relief for the claimants to seek on an interlocutory basis. Although there is no claim for final relief to like effect, it may well be that once the court has determined what the answers to the questions raised in the Part 8 claim are, the court may, of necessity, have to give directions for the future administration of the charity, whether that be dissolution, the imposition of a scheme by the Charity Commission or the court, or some other directions. Accordingly, there is nothing in this objection by Mr Simret. The claimants are entitled to bring the claim they have brought and to seek the interim relief that they seek. Whether they should be granted interim relief is another matter.

31. The way in which the relief that is sought is framed is to divide the future into two periods. The first period, which is why it is necessary to decide this case today, relates to the period over lent of this year. Lent in the Ethiopian Orthodox Church calendar begins on 16 February this year and so relief is sought in relation to the "permitted hours" which are said to be 5.00 am until midnight on certain dates. Essentially, what is sought is:

> "An injunction restraining the defendants by themselves or their servants or agents, [and that includes, as defined, their followers] from entering upon the church premises … or from attending, attempting to attend or in any way disrupting or interfering with any services of religious worship to be conducted by or on behalf of the claimants."

I will not read through the rest of that paragraph. So, the essential mechanics of the order, as originally sought, was an injunction telling the defendants to keep out of the church premises while the claimants were allowed to celebrate within the church according to their own rites. That was mirrored by undertakings offered by the claimants themselves to keep out on days when the defendants would be allowed to conduct their own services. Essentially, down until Easter Day, which in the Ethiopian Orthodox Church calendar is Sunday 12 April 2015, the claimants were to have exclusive use of the church on alternative Sundays and Saturdays from the 22 February onwards. There are then ancillary provisions to make all of that workable, including provisions for access to keys and to the Holy Tabot, which everyone is agreed is very important.

32. What is then sought is an order that the claimants and defendants are to agree arrangements after Lent, failing which the matter is to come back to court. Essentially, therefore, I am concerned firstly with the period down to Easter. I have no doubt that I am entitled to make an order of the kind sought. As I have said earlier, the court will not decline to act for want of a trustee and it is impossible, on the present state of the evidence, to decide who is properly appointed. I can see difficulties in the way of the claimants in relation to their appointments, which they may nevertheless be able to overcome. I can see difficulties too in the defendants' contention that the 2007 appointments have in some way continued down to the present day, carrying with them a right of co-option which appears to be contrary to the trust deed. The defendants take the point that there is nothing in the rules to say that there "must" be a further election.

They rely on the fact that only the word "shall" is used. That is not a distinction which I find easy to adopt, but all that is for another day. The court simply does not know who is entitled to control this charity.

33. One of the matters ventilated with the Charity Commission by the claimants when applying for the consent they obtained was that an application for interim relief might be necessary. I did say earlier that the consent they obtained was sufficient to permit this application, subject to one point. That reservation related to whether the Charity Commission should have been informed as to the claimants' intention to make an interlocutory application of the kind now under consideration. I would have been troubled by this point, not as limiting the power of the claimants to bring these interlocutory proceedings, but on the question of whether the court should, as a matter of discretion, respond favourably to the interlocutory application had the Charity Commission been kept in the dark about the intention to apply for interlocutory relief. However, the Charity Commission was not kept in the dark. On the contrary, it was told, when consent was sought, that an application for interlocutory relief would have to be made. My concerns on that score, therefore, have been satisfied. One possibility indicated to the Charity Commission was that an application might be made for the appointment of a receiver. I am bound to say that had such an application been made this seems to me to be a paradigm example of a case where the court would have found it very difficult to refuse the appointment of a receiver. Where the management of an organisation is in doubt, the court often has little alternative but to put it under the control of an independent third party. The drawback is that such a course often comes with considerable expense. Neither side wishes to deplete the funds of the charity in this regard, but a receiver would necessarily look to the charity property for the payment of his proper fees and remuneration. I therefore readily understand why the claimants have not applied for the appointment of a receiver, who would then be left to decide the matters that I am now being asked to rule upon. The fact that there would have been, at least for the court, that easy way out is no reason for the court not intervening now. It seems to me that where the right to manage this charity is in doubt, the court should intervene and give directions for the administration of the trust property until the issues are finally resolved at the hearing of the Part 8 claim.

34. I should mention that Mr Simret said that there is no doubt in this case as to who is entitled to control the charity. He says the trust deed (as one can see from looking at it) clearly looks to the Mother Church in Addis Ababa, and was executed at a time of some turmoil in Addis Ababa. The trust deed clearly, according to Mr Simret, declares its allegiance to the Addis Ababa branch of the church, despite the turmoil. Against that it is said that the deed was executed pursuant to a resolution passed some months earlier when the turmoil was less.

35. It is correct that the trust deed refers to the Mother Church in Ethiopia and also to the spiritual jurisdiction of "the Patriarch". The relevant Patriarch at that time had been Patriarch Abuna Merkorios. He may well have been (purportedly) removed by the time the trust deed was executed, but it was open to anyone, as has subsequently proved to be the case, to contend that he remains the Patriarch, to the exclusion of all others, and is entitled to act as spiritual head of the church, wherever he may be from time to time in the world. That argument, and the failure of the two factions to resolve it, is the reason for the current longstanding schism within the church. I cannot resolve that. All I can say is that I do not think it is possible, merely from looking at the June

1992 trust deed, to reach a conclusion as to the impact of events which had not, at that stage, fully unfolded and which appear to have pre-dated the actual establishment of another synod in Seattle, or at least may have done. Moreover, I do not consider that clause 11 takes the matter any further. That requires the trustees on dissolution to distribute the trust property for the benefit of the Ethiopian Orthodox Church, not necessarily in the United Kingdom, so it could well be in Addis Ababa, or it could be for the benefit of the church in Seattle, or indeed anywhere else in the world. The clause does not tell me who is entitled to control the charity now, or who the trustees who have that power on dissolution are.

36. There are faint indications in the 2006 by-law amendment (to which I have referred) of continued allegiance to the Addis Ababa synod. Reference is made in the definition in Article 2(1) to the "Holy Synod" as "the highest body of the Ethiopian Orthodox Tewahedo Church which presides in Addis Ababa", and there is another reference to the Holy Synod in Article 2(2). However, these definitions are of no significance throughout the rest of the document. There is, moreover, a question mark over the validity of the adoption of that by-law and as to the extent to which it was ever followed in full. Accordingly, I do not think I can regard that as in any way indicative of what the result of this case will be.

37. It is said by Mr Simret that the current governing body are not dissipating the trust property. That is not alleged against them. It is said that the claimants will suffer no prejudice by waiting for the conclusion of legal proceedings. He bolsters that by reference to the minimal level of standing that they have. I have already said that, in my judgment, they have sufficient standing, and that is enough. As they have sufficient standing they are entitled, on the face of it, to ask the court to administer the trusts of the charity in the short term so as to allow all those who have celebrated at the church in the past to do so in the future. That is all I am being asked to do and it seems to me to be, in essence, a reasonable request, though it goes against the grain, I am bound to say, to be asked to exclude anyone from the church. However, Mr Evans, in response to a point that I raised with Mr Simret when hearing an address from him, indicated that an alternative suggestion which I ventilated in argument would be acceptable to his clients.

38. It seems to me that as a judge exercising charity jurisdiction, I am entitled to administer the trusts of the charity, and, in doing so, to give directions that bind everyone who might be concerned with the affairs of the charity and, in particular, to give directions which those presently in de facto control of its affairs are to comply with. It seems to me that what the court ought to do is to direct the defendants, other than the four defendants, against whom I said proceedings should be stayed (and other, of course, than the Attorney General) and all other persons claiming any right to control the affairs of the charity, to permit the claimants to conduct services with a priest or priests to be chosen by the claimants (including the first claimant, if so chosen) on the specified days and to have access to the church during the permitted hours (as defined). I heard from both sides that the spiritual celebrations at this church are such that services begin at 5.00 o'clock in the morning and last for many hours. That will mean, and the order should make this clear (I am not drafting) that on those days those will be the only services to be held at the church. I shall equally direct that on the remaining days, the defendants are to be permitted to conduct services which the claimants and all other persons claiming a right to conduct the affairs of the church will permit with a

priest or priests of their choice, again to the exclusion of any of the claimants' services on those days. That will mean that both sides will have the right to conduct services in the church on different days. If there are those who wish to attend services conducted by priests which they have not chosen, they may do so. The church is the house of God, as I was reminded repeatedly, and no one will be barred.

39. The order should provide that no person shall in any way disrupt or interfere with any services of religious worship to be conducted by or on behalf of the claimants or the defendants. Provision will have to be made for keys to be provided to the claimants. The mechanism should be for keys to be provided to the claimants' solicitors, to be held to the order of the court, and they will be at liberty to make such practical arrangements as are appropriate for parting with those keys to enable the claimants to conduct services, so long as the keys are returned to the claimants' solicitors as soon as practicable thereafter. No copies of keys should be taken except as permitted by the claimants' solicitors and they are to retain and hold to the order of the court all such keys until further order. They will, of course, having made at least one copy of the keys then return them, even before the trial, to the defendants.

40. I approve of an order granting access to the Tabot along the lines set forward in the draft order. That is to say each side will provide the other with full and uninterrupted access to the church premises for the use of all ancillary utilities and services and the claimants will be permitted, on the days when their services take place, full and interrupted access to the Holy Tabot, but that will not be exclusive (as currently drafted) because these services will not be exclusive to the claimants. I will ask, after I have completed the delivery of this judgment, Mr Simret and any defendants who wish to participate in the process (though I hope it will be left mainly to Mr Simret, as the lawyer) to try and agree a form of order and if it cannot be agreed I am here all afternoon and will adjudicate upon any dispute later.

41. These suggested directions, at the moment, are a mixture of both directions and suggestions. I will hear further argument on the detail, if necessary, but I am giving, at the moment, my ruling as to what I think the directions should comprise. The order should be framed in such a way that if anyone stands in the way of any of those services taking place in an orderly way they will be at risk of being in contempt of court. The order, being an order of the court, will prevent anyone from disrupting services and should be reinforced by a notice at the church to that effect.

42. It is said on Mr Simret's side that no prejudice would be suffered by the claimants if they were denied all relief at this stage, but that great prejudice would be suffered by the church (under the control of the Defendants) by not being allowed to use the trust property in accordance with the Trust Deed. However, I am not preventing anyone from attending the church. I accept that there will be people on both sides who will not wish to attend the other persons' services (that is their choice) but those who do wish to attend must be allowed to do so and if there is any disruption from anyone the consequences could be very serious and result in applications for committal for contempt of court, or for the seizure of assets or for fines. I do not encourage anyone to adopt that approach and I hope it will not be necessary, but the order will be enforced if necessary. I do not accept that the claimants will suffer no prejudice. Anyone who is denied access to the church that they are used to attending has a legitimate complaint.

43. It can fairly be said that the claimants are not being denied access to the church premises as such. That has been the defendants' position before me, despite the fact that at least one of the claimants was in March 2013 formally barred from attending, but no one is, I am told, barred from attending now. However, the reality is that in the absence of the removed Mr Bisrat, who has incidentally also been defrocked by Abune Enthos, the current North Western European Archbishop, it is readily understandable that the claimants, or some of them, along with many of their followers, do not wish to attend and instead are holding services outside the church in a way which even some of the defendants find embarrassing because this public display of division does not speak well of the church to the world at large. I have heard earnest declarations from both Reverend Gobena and Reverend Worku to the effect that their church is open to everyone, including the claimants, and it now appears that the ban of March 2013, though referred to in the trustees' statement before me signed by Reverend Worku, is no longer in force. I am pleased to record that that is the case.

44. That, therefore, is the order that I propose to make which is the order, in my judgment, that will cause the least prejudice either way. I do not say that there is no prejudice because those who feel that they do not wish to attend the others' services may have to attend other churches and vice versa, or may have again to congregate outside. I hope that that will not be the case with the provision of alternate Saturdays and Sundays. I shall also make an order (in broadly the terms sought) requiring consultation and agreement by the date in March suggested, failing which the matter will have to be relisted. Enquiries should be made to ascertain my availability because I will, so far as practicable, retain this case. In addition, I would wish to have, in due course, discussions concerning directions for trial. I am available in London for two weeks from May 11 and for 12 days starting October the 1st, though I am not likely to be sitting on the morning of October the 1st because I shall be elsewhere: at church.

45. I mention one other matter. Mr Simret also objected to relief being granted on the grounds that the claimants did not come to the court with clean hands. That was said to derive from the failure of Rev Bisrat or anyone else to disclose his dismissal from employment as a priest by those currently in control. It is correct that this fact was not disclosed. However, in my judgment that does not come anywhere near to establishing unclean hands. The point is of no great relevance to anything I have to decide on this application or to anything that will be decided at the ultimate hearing of the Part 8 claim. Moreover, the application before me is made on notice, and has been fully argued and debated on both sides. I am satisfied that proper notice has been given (despite complaints of inadequate notice from the defendants). The standards of disclosure which might be appropriate to a without notice application therefore have no bearing on the present application.

LATER:

46. I am going to refuse permission to appeal. I do so because I am not persuaded that I applied the wrong legal tests, both as regards the principal issue of the claimants' position as interested persons, and in weighing the alternatives in considering the balance of convenience. I acknowledge that the solution which appealed to me did not do complete justice to either side, but it was one which did the least injustice to both. That is a point of view which is not shared by the defendants, but it is a view which is

open to me on the evidence and, if the defendants wish to have permission to appeal, they will have to apply to the Court of Appeal for such permission.

47. An additional point was taken, or it may be that it was the same point correcting what was said to be a misunderstanding on my part; it was said that the unclean hands of the claimants was to have brought proceedings without having paid their subscriptions. In fact, even on the assumption that they have inexcusably failed to do so, they have not ceased to be persons interested.

48. As far as I can tell from the documents I have seen (they are very voluminous and I have not been taken to every part, though I have looked at a number of them myself) those who wish to vote may find themselves unable to do so whilst their subscriptions are in arrears. They have not however lost the opportunity to bring their subscriptions up-to-date. In any event, I do not see that as a clean hands point. It might go to locus standi and it is a point which I had in mind when considering locus standi. I noted that the ability of the claimants to pay their subscriptions was affected by what appeared to be the freezing of the bank account. This is disputed on the defendants' side though I am told on the claimants' side that standing orders and direct debits were returned unpaid.

49. The defendants also claim to be the victims of an injustice, by which they mean they disapprove thoroughly of my decision and also say that for me to make the proposed order would put the church in breach of canonical law because an un-ordained priest (the first claimant) having been defrocked could not validly conduct a service of the Ethiopian Orthodox Church. That may well be so, in their eyes, but the position may be different in the eyes of what may loosely be called the Seattle followers because the person defrocking him, on their approach, did not have authority to act.

50. I cannot say who is right. The defendants say that what I should have done is simply open the doors; they have never excluded anyone. As I observed in my judgment, the joint statement of the trustees made by Reverend Worku still referred to the individuals barred in the March 2013 letters as: "Individuals whom trustees have legitimately suspended their church membership on justifiable grounds." Mr Simret acknowledged to me that that was a reference to the same individuals referred to in the March letter. It seems to me, therefore, that until these proceedings were brought that is how they were regarded, as people who had been legitimately suspended and still were; note the use of the word "have" in a witness statement made as recently as 9 February. That position was not adhered to during the hearing. I am delighted to say that the defendants acknowledged that the church was open to all and said that what I should have done was simply ensure that the church remained open to all. That was described in previous argument by Mr Evans as facile. I think that is putting it too high, but the fact is that, as things stand, the present state of the schism within the church means that those who lived and worshipped harmoniously alongside each other for so many years are now unable to celebrate with the others however much they may previously have been willing to do so. I sincerely hope that that changes, but I must realistically recognise things as they are and not how they would be in an ideal world, and have considered it appropriate (for the reasons I have given) in the short term, to give directions having the effect of allowing all the members of the church to share its facilities, including those whose subscriptions may, at the moment, be in arrears. Accordingly, permission to appeal is refused.

51. It was also said that I misconstrued clause 11 of the trust deed, but I do not consider that I did and that there is any realistic prospect of Mr Simret or anyone else for the defendants persuading the Court of Appeal otherwise.