

NICHOLAS MARK MA'ARAMO
(General Secretary of the Church of Melanesia
suing on behalf of the Church of Melanesia)

-v-

RAYMOND AUMAE

High Court of Solomon Islands
(Muria, CJ.)

Civil case No. 186 of 1995
Hearing: 27 July 1995
Judgment: 9 August 1995

A. Radlcyffe for the plaintiff
F. Waleilia for the defendant

MURIA CJ: The plaintiff is the General Secretary to the Church of Melanesia and as such he is the chief administrative officer of the Church. In that capacity, he also serves as the Secretary to the Council of Bishops and other major bodies in the Church.

No point has been taken by Counsel for the defendant with regard to the standing of the General Secretary to bring this matter on behalf of the Church of Melanesia. As such I shall not deal with the point as an issue, save to express my reservation on the General Secretary's standing to have the action commenced in his name as acting on behalf of the Church of Melanesia. The requirement of Order 58 rules 1 and 2 is that the person bringing the action must have a personal interest or legal or equitable right in the matter. I am not certain as to what personal interest or legal or equitable right does the General Secretary has in commencing these proceedings under his name and acting for the Church. The point, as I have said, had not been argued and as such no ruling has been given on the point.

I turn to the issue now presented to the Court by the plaintiff. The action is brought by an originating summons for declaration in the following term:

"That Raymond Aumae has lawfully resigned from his position as Bishop of Malaita effective from the 31st July 1995 and his resignation has been accepted in accordance with the Canons of the Church of Melanesia."

The defendant does not accept the position as put by the plaintiff and contends that his resignation has not been effective as it was not done in accordance with the rules of the Church. As such, argues the defendant, he is still a Bishop of the Diocese of Malaita.

In order to properly consider the issues raised, it is necessary that I should briefly outline the position of the parties in this case. The defendant is a Bishop for the Malaita Diocese of the Church

of Melanesia. Following some allegations of mismanagement of the trust accounts of the Diocese, an audit of the said accounts had been carried out.

The auditors' reports were very critical of the way the trust accounts for the Malaita Diocese were managed.

As a result of the auditors' investigation, allegations had been levelled at the defendant questioning his suitability as a Bishop of the Malaita Diocese. These allegations were on matters relating to the trust accounts and they were contained in a letter which was later found to be written by Father Ngalihesi. That letter was copied to the Archbishop of the Church of Melanesia.

The defendant was in Honiara on or about 7 April 1995 on official business when the Archbishop called him and discussed with him about the allegations and told him about the advice he (Archbishop) received from the Vice Chancellor on the matter. In addition, the Archbishop advised the defendant that he had received a letter petitioning for the removal of the defendant as Bishop of Malaita Diocese.

On 27 April 1995 the Archbishop wrote a letter to the defendant who received the letter on the same day, advising the defendant to decide whether he should resign or face the Provincial Church Court. That letter is important for the purpose of these proceedings and as such I shall set it out in full.

Dear Bishop Raymond,

I do not mean to influence you as to which decision you should make - to resign or to face the Provincial Church Court - but I would like to have your decision today, or tomorrow at the latest.

You will understand that whichever decision you make, it will be necessary for the Council of Bishops to take action - i.e. to decide on dates for the convening of the Provincial Church Court, or for agreeing with you upon the date on which your resignation will become effective and the convening of the Diocesan Electoral Board, etc.

In making this request for your prompt decision, I do not believe that I am placing any undue pressure on you as you have been aware of the need to make this decision since our discussions soon after my return from the Primates' Meeting nearly a month ago.

For your information, I attach a copy of a fax message received from the Vice Chancellor this morning.

Please be assured of my constant prayers for you, your wife and family - and your diocese - as you consider these things.

Yours sincerely in Christ,

Archbishop"

The Council of Bishops had been advised accordingly in the afternoon. The defendant then advised the Council of Bishops that he would resign but that he would do so after he returned to Malaita. He did return to Malaita that same day and after consulting with his wife, the defendant decided to resign and faxed his letter of resignation in the evening of the same day (27/4/95). I set out the defendant's letter hereunder:

"The Most Rev. Ellison Pogo

Dear Archbishop,

Please refer our conversation this afternoon regarding my resignation.

My wife and I have finally agreed that I resign from the position of the Diocesan Bishop of Malaita as from 31st July 1995. I will however vacate the Auki bishop's house on 30th June and July as our 1995 leave entitlement. However please consider the following points:-

- 1. Could I be able to have a job straight after my resignation. I have an outstanding loan with ANZ Bank at \$500.00 monthly instalment. I still have upto 1½ years to repay.*
- 2. Would it possible to replace Fr. Sam Sahu or The Dean of the Cathedral at the end of this year?*
- 3. I am only entitled for the Bishop superannuation fund when I am a diocesan bishop. Could I have my share now after I resigned while my normal retirement will continue when you give me another job.*

Please my brother bishop help me with my family needs as I still have 3 in school. I have not done anything wrong, its only my secretary that spoils me.

I pray that God will continue to guide you all in the Church of God and above all I love you all and the Church of God.

Yours sincerely brother in Christ

Raymond"

The Council of Bishops met to consider the defendant's letter of resignation and on 28 April 1995 a reply from the Council of Bishops was sent to the defendant accepting his resignation which was to take effect on 31 July 1995. I also set out hereunder the letter of acceptance:

"Dear Bishop Raymond,

The Council of Bishops has received your letter of resignation effective from 31/7/95 and has consented to your retirement. I shall therefore be announcing your resignation to the Church and shall, according to the provisions of Title C Canon 1 Paragraph B, make provision for the well-being of the Diocese as from 30 June, 1995, which is the date on which I understand you will be leaving Auki.

If you are prepared to amend your letter of resignation to take effect from 31 May, 1995, the Church would be willing to pay your Bishop's stipend up until 31 July, in one lump sum on 31 May, and allow you to remain in the Bishop's house until the end of June. If you wish to make that amendment to your letter of resignation, please advise me in writing immediately.

As discussed, the Council of Bishops will indemnify you by deed in respect of any claims arising from the misuse of trust funds provided you sign both the deed of indemnity and the undertaking. The signature of these two documents is important in your own interest of course, otherwise despite your resignation you could remain open to action in the High Court for breach of trust as a trustee.

I hope it is clear to you that the deed of indemnity is for your own benefit and the undertaking is for the Church's benefit so that it can be sure of your co-operation if it is decided to sue Reuben Moli

Yours sincerely,

Archbishop"

Then came the defendant's reply dated 1 May 1995 to the Archbishop's letter of the 28 April 1995. The defendant's reply is contained in a two and half page letter and I do not think it is necessary to set it out in full. I shall set out the first paragraph of that letter which I think is relevant for our present purpose. It reads:

To: Archbishop

From: Bishop Raymond Aumae

Subject: Resignation

I received your letter of 28th April with surprise - VERY CONTRADICTION! The whole issue is confusing. Two different points of views, I proposed one thing you proposed another. Last Thursday you gave me the freedom to decide for myself, but now you think you could decide for me. What an

unfair decision. I do not accept the whole content of your letter and as such I shall now reverse my decision to resign and I shall continue to stand as the Diocesan Bishop of the Diocese of Malaita and I am still even this minute. I shall remain until justice is given to the Church in Malaita and I am prepared to face church court. It may sound very bad as it will be the first time in History. But I want to set history whether I die or live, whether I lost or win but I want to fight to the end for the sake of the Church of God. Let it be clear in your mind that I have today revoke that decision given in my letter of 27th April as null and void. It is my decision and I have the right to keep it in place or revoke it no one can tell me what to do.

.....
"

It is the consequence of that decision by the defendant to revoke his resignation that leads to these proceedings. The plaintiff says that the defendant had effectively resigned as Bishop of Malaita Diocese and that the defendant's revocation of his resignation was ineffective and of no force. The issue before the Court therefore is whether the defendant's resignation which had been accepted by the Council of Bishops was effective and could not be unilaterally withdrawn by the defendant.

On behalf of the plaintiff Mr. Radclyffe had submitted that the defendant's resignation had been done in accordance with established Canons of the Church, in particular Title C Canon 1B and having been consented to by the Council of Bishops, it could not be withdrawn unilaterally. Counsel submitted that as from 31 July 1995, the defendant ceased to hold the office of Bishop of Malaita Diocese.

Mr. Radclyffe relied on a number of authorities to support his contention. I shall refer very briefly to some of those authorities cited by Counsel.

In *Birrell -v- Australian National Airlines Commission* [1984]5 FCR, 447 the Court held that the giving of notice of termination of contract is a right that can be exercised unilaterally but having given such notice it can only be withdrawn with consent of both parties. That case also cited a number of earlier cases such as *Emery -v- Commonwealth of Australia* [1963]5 FLR 209; *Riordan -v- War Office* [1959]1 WLR 1046; *Decro-Wall International SA -v- Practitioners in Marketing Ltd* [1971] 1WLR 361; *Harris and Russell Ltd -v- Slingsby* [1973] 3 ALLER 31 and *NZ Labourers etc IUOW -v- Hodder & Tolley Ltd* [1989] 1NZILR 430 . These cases clearly support the proposition that a notice of termination of a contract of employment once given cannot be unilaterally withdrawn. However these cases must be looked at as applying more appropriately to cases where there are contracts of employment the provisions of which governed the relationship between the employer and employee Nevertheless the principles found in those cases do provide some assistance to resolving the issues before the Court in the present proceedings.

In *Glossop -v- Glossop* [1907] 2 Ch. 370, a managing director wrote to the company resigning from his office of managing director. However before the directors met, he wrote again to the company withdrawing his resignation. The board later met and resolved that the managing director had, by his resignation, vacated his office and that he could not withdraw his resignation without the consent of the company. Reliance in that case was based on the provisions of the Articles 84 and 85 of the company's Articles of Association which provided that the office of the managing director shall be vacated upon, among other things, resignation and shall take effect upon passing a resolution to that effect by the board.

The case of *Finch -v- Oake* [1896] 1 Ch 409 concerns a member of a voluntary Association resigning from being a member of the Association. The court held that he was entitled to resign from being a member of the Association without the need for any consent of the other members and upon receipt of the resignation letter, he ceased to be a member of the Association anymore.

In *The Queen -v- The Mayor and Town Council of Wigan* (1885) 14 QBD 908, one Mr. Ackerly, a Councillor, sent his formal resignation to the town clerk in accordance with section 36 of the Municipal Corporation Act 1882. The council met and decided not to accept the resignation. The court held that under section 36 the resignation was complete when Mr. Ackerly delivered his letter of resignation to the town clerk and thereupon must "declare the office to be vacant". Then we come to the case of *Reichel -v- Bishop of Oxford* (1887) 35 Ch D 48 which Counsel for the plaintiff in the present case firmly relied on. That case concerns a vicar of a parish who had been accused of immorality. Following that, the Bishop wrote to the Vicar on 8 May 1886 telling him that he (Bishop) expected him to resign. The vicar later wrote to the Bishop on 28 May 1886 tendering his resignation. A formal deed of resignation was then sent on 31 May 1886 to the Vicar who executed it before two witnesses on 2 June 1886. The formal acceptance by the Bishop of the vicar's resignation was to take effect on 1 October 1886, although the Bishop had signed the memorandum of acceptance in or about 26 July 1886. But before 26 July 1886, the vicar executed on 10 June 1886 a document withdrawing his resignation on the ground that his resignation had been done under undue pressure from the Bishop and as such it was not done voluntarily.

Two questions arose for the Court's consideration in that case. These are: Was there an effective resignation by the plaintiff? Was there an effective revocation or withdrawal of the resignation by the plaintiff? As to the first question, the court found that the resignation was effective and on the second question the court held that although the acceptance was to be formalised on 1 October 1886, the Bishop had already approved the resignation and as such the plaintiff had no power to withdraw his resignation. The Court stated that the postponement of its operation until 1st October was an act of extreme kindness on the part of the Bishop.

I feel the case of *Reichel -v- Bishop of Oxford* presents some similarities to the case now before this court. In the present case complaints had been made against the defendant over the management of his Diocesan trust accounts. Subsequently a petition for his removal sent to the

Archbishop of the Church of Melanesia, signed by six communicant members of the Diocese. No doubt the petitioners had in mind the provisions of Title C, Canon 2 (The Disciplining of Bishop) in particular, sections A & B which provide as follows:

"A. When a Bishop or Archbishop has done any of the following he will be disciplined by the Council of Bishops:-

- 1. Taught wrong teachings against the Foundations of Faith as contained in Article 1 of the Constitution;*
- 2. Been guilty of a criminal offence;*
- 3. Been guilty of immorality;*
- 4. Been guilty of dishonest dealings with Church funds;*
- 5. Been guilty of neglect of duty;*
- 6. Been guilty of drunkenness.*

The Council of Bishops will discuss the case in private with the Bishop concerned and will decide what discipline should be done by the offending Bishop.

B. If a Bishop who is alleged to have committed any of the offences in section A is charged in writing to the Archbishop by six communicant members of his Diocese or of the Diocese in which the offence is alleged to have taken place, the matter will be brought to the Provincial Court as outlined in Title C Canon 3 B 2 for judgment and, if necessary, sentence, and if the Archbishop is to be charged, the charge shall be delivered to the Senior Bishop."

Those provisions clearly could have been invoked by the Council of Bishops upon receipt of the allegations, against the defendant. It was certainly contemplated in the letter of 27 April 1994 from the Archbishop to the defendant. That, however, was not done and the only reason for not opting for the process specified in section B, as far as I can see from the affidavit evidence before this Court, is because the defendant had tendered his resignation on 27 April 1995 and accepted by the Council of Bishops on the 28 April 1995.

The defendant, however, three days later wrote to the Archbishop on 1 May 1995 revoking his resignation and maintained that he was still the Bishop of Malaita Diocese. In his letter of revocation the defendant contended that the decision to resign was his and as such he could maintain it or revoke it. At the risk of repetition I reiterate what he said in his letter:

"Let it be clear in your mind that I have today revoke that decision given in my letter of 27th April as null and void. It is my decision and I have the right to keep it in place or revoke it, no one can tell me what to do"

The Archbishop in his letter of 3 May 1995 to the defendant maintained that the procedure under the Church rules had been followed and that the defendant's resignation was effective as from 31 July 1995.

Mr. Waleilia of Counsel for the defendant argued that the question to be decided here is not whether the defendant can withdraw his resignation unilaterally but rather the question which should be decided is whether the defendant had been lawfully terminated as Bishop of the Malaita Diocese. Put another way, counsel for the defendant is urging this court to decide whether the defendant still remains a Bishop of the Malaita Diocese or not. The answers to those questions in my opinion do not lie in the general law but rather in the ecclesiastical law which is administered by ecclesiastical courts. It is this body of law that governs the rules and practices of the churches, members of the churches, spiritual persons and ecclesiastical officers, divine services, benefices and the property of the churches (see *Halsbury's Laws of England*, 3rd ed. Vol. 13 para. 1, p.7).

The Church of Melanesia, although separated from the Church of the Province of New Zealand in 1973, to be the Church of the Province of Melanesia, is still part of the Anglican Communion. The laws and practices of the Church as found in the Constitution and the Manual of the Church of Melanesia are similar to those in other Anglican Communion in the world, with modifications, of course, to suit the local circumstances.

When one, then, turns to the Constitution and the Canons of the Church, one is bound to see provisions laid down by those laws of the Church for the appointment and disciplining of its spiritual leaders. Those laws are enforced by the Church Courts - the Provincial Courts and Diocese Courts. See *Article 18 of the Constitution* which clearly gives the Church Courts power in this respect. Article 18 provides that:

"Article 18. Church Courts

A. The Provincial Synod shall make provision for Church Courts to be set up in each Diocese to hear and decide all cases concerning the following matters:-

1. Church laws and discipline;
2. the way in which the Diocese is organised and administered;
3. the teaching, life and worship of the Church

B. It shall also provide for appeals from these Diocesan Courts to a Provincial Court which shall be set up by Provincial Synod. The decision of the Provincial Court shall be final".

Title C Canon 3 then goes on to make provisions for the establishment of the Church Courts. I have already referred to Title C Canon 2 which provides for the disciplining of Bishops.

When one considers these provisions of the laws of the Church of Melanesia, it must be plainly obvious that the power to decide whether or not a Bishop is still a Bishop of a particular diocese does not lie in this Court. I would venture to say that it lies with the Church Courts. It is only where the Church Courts have exceeded their jurisdiction will this Court intervene: see *R -v- Chancellor of St. Edmundsbury and Ipswich Diocese, Ex parte White* [1948] 1 KB 195; [1947] 2 All ER 170.

Thus the question posed by Defence Counsel does not arise in this case. Perhaps, as I have said earlier in this judgement, that had the process laid down in section B of Title C Canon 2 been invoked, then there may be opportunity for this Court to dwell into questions such as that raised by Counsel for the defendant. But as I have already pointed out the course taken by the defendant in resigning prevented section B of Title C Canon 2 from applying.

Thus I return to the questions as those asked by Cotton LJ in *Reichel -v- Bishop of Oxford* case: Was the resignation effective and was the resignation effectively revoked? The answer to the first question is easy enough to ascertain from the evidence. The answer to the second question may not be as easy to see.

The evidence contained in the defendant's affidavit shows that prior to the 27 April 1995 he did have some discussions with the Archbishop about various allegations made against him. This was round about the 7th April. Again on 26th April the Archbishop advised the defendant about the allegations contained in a petition signed by six clergymen from the Malaita Diocese.

Then, as we have already seen, on 27 April 1995 the Archbishop wrote to the defendant requesting him to decide whether to resign or face the Provincial Church Court. That letter also confirmed what the defendant has stated in his affidavit that some discussions had occurred between the defendant and the Archbishop earlier on in the month.

After returning to Auki, the defendant discussed the question of resignation with his wife and subsequently wrote the letter of resignation also dated 27 April 1995. I have already set out that letter. In his letter, there is a reference to his conversation earlier in the afternoon with the Archbishop regarding his resignation. The defendant then went on to say that his wife and him had "finally agreed" that he should resign from the position of Diocesan Bishop of Malaita with effect from 31 July 1995.

It is also worth noting that in his letter of resignation, the defendant had requested the Archbishop to consider various matters such as giving him a job after resignation, since he still has financial obligations with the bank; replacing Fr. Sam Sahu or the Dean of the Cathedral at the end of the year; and requesting his share of the Bishop's Superannuation Fund after he resigned. He also pleaded with the Archbishop to help him with his family needs and also that the Archbishop

should know that it was his Diocesan Secretary who caused problems for him. Finally he concluded with a prayerful line and expressing his love to all and the Church of God.

Having read that letter it must surely be crystal clear that the defendant had agreed to resign and did resign under his hand on 27 April 1995. I do not think it can ever be regarded as a "pretended resignation" as that argued by the vicar in *Reichel -v- Bishop of Oxford* case.

To further confirm that the defendant had indeed decided to resign, one need only to look at the defendant's own letter of 1 May 1995 in which he reiterated that the decision to resign was in his own words "*my decision and I have the right to keep it in place or revoke it...*" That is indeed a clear admission that the decision to resign was his, made after being requested to choose whether to resign or face the Church Courts.

It is contended by Counsel for the defendant that the provisions of Title C Canon 1B did not apply here. I cannot accept that. The first paragraph of section B provides for the optional retirement by Bishop at the age of 55 and the compulsory retirement at the age of 60. The second paragraph provides for the procedure for retiring or resigning from the office of Diocesan Bishop in circumstances not covered by the first paragraph of section B. The resignation of the defendant in this case in my judgement comes within the second paragraph of section B.

On the evidence before the Court, it is abundantly clear that the defendant had, by his own act, made an effectual resignation from his office as Bishop of Malaita Diocese.

I turn to the next question as to whether the resignation was effectually revoked by the defendant. The letter in which the defendant purported to revoke his resignation, as we have already seen, is that of 1 May 1995 which was written three days after the Council of Bishops had already consented to his resignation and in that sense had accepted the resignation.

On this aspect of the matter, Counsel for the defendant argued that the resignation was made under undue influence and as such the defendant was entitled to rescind it. I have searched for evidence of undue influence in this case and I have been unable to find any. In fact the evidence as disclosed in the defendant's own affidavit points to the contrary, in particular, his letters of 27 April 1995 and 1 May 1995. Those letters contain the defendant's own words which run counter to any suggestion of undue influence being exerted upon him.

As I have already said earlier, there is evidence from the defendant's affidavit that he had been aware of adverse reports and complaints about him well before the 27 April 1995. The evidence contained in Bishop Lazarus Sone Munamua's affidavit supports that view. Bishop Lazarus deposed that there had been extensive correspondence and discussions with the defendant about the complaints raised against him for a period of some months and that these lead

up to the defendant's resignation and the Council of Bishops accepting that resignation. Then finally came the petition against the defendant.

In those circumstances it was not unexpected that the alternatives between which the defendant had to choose were, resignation by his own act or face the Church Courts. He deliberately, after full consideration, elected to resign rather than face proceedings before the Provincial Court. The alternatives were clearly given to him in the Archbishop's letter of 27 April 1995.

The Archbishop, and Council of Bishops for that matter, might well feel that in view of all the adverse complaints against the defendant, it would be proper for him to step down from his position. But that could hardly be evidence of undue influence or pressure upon the defendant.

On the evidence I find that there had been no undue influence or pressure on the defendant in this case, much less as could render his resignation void as to entitle him to rescind it.

Can the defendant still withdraw his resignation unilaterally on the basis as he said that he could "keep it in place or revoke it." It had not been argued by Mr. Waleilia that the defendant could retract his resignation before acceptance by the Council of Bishops. The reason of course must be that the resignation had already been accepted before its purported withdrawal.

There is no doubt that for a resignation to be effectual, it has to be assented to or approved. In this case, for the defendant's resignation to be effective, it had to be consented to by the Council of Bishops and until that was done the resignation was ineffective. Cotton LJ put it this way in *Reichel -v- Bishop of Oxford* at page 77:

"... there is pœnitentia up to a certain point, but when 'facta et probata resignatio' there is no place for pœnitentia."

I desire to add one more authority to the ones that I have already cited in this judgement on this point, and this is the American case of *Ryan -v- Murphy* (1908) 97 Pac R 391, at 393 where the Supreme court of Nevada stated as follows:

"By the great weight of authority, however, a prospective resignation may be withdrawn before the time prescribed for it to take effect. In a number of cases, however, where the common law rule is held to prevail, the right to withdraw after there has been an acceptance of the resignation has been denied. At common law the resignation of a public officer was not complete, so far as the public is concerned, until it was duly accepted by the proper authorities."

Thus in this case up to the time the defendant signed his letter of resignation there was still room for revocation, but as soon as the assent or approval had been given by the Council of Bishop the

resignation was complete and there was no power to recall his resignation. The authorities cited in this judgement support this conclusion.

I reiterate what I have earlier stated in this judgement. The question that has been posed for this Court to decide on is limited to the issue which is, having resigned from his position as the Bishop of Malaita Diocese, was it competent for him to unilaterally revoke that resignation? The question whether or not the defendant is still a Bishop is not for this Court to decide on. That is a matter for the Church authorities to decide.

I also bear heavily in mind the many arguments made on behalf of the defendant regarding his desire to have the various allegations brought against him to be dealt with by the Church Courts. Unfortunately in my view, the course of resigning he had taken and accepted by the Council of Bishops no longer allows his desire to go before the Church Courts to be followed.

Returning to the declaration sought in the Originating Summons in the present proceedings and having anxiously considered all that have been put before the court I make the declaration that:

The defendant Bishop Raymond Aumae has lawfully resigned from his position as Bishop of Malaita Diocese and that his resignation having been accepted by the Council of Bishops in accordance with the Canons of the Church of the Province of Melanesia cannot be unilaterally withdrawn by the defendant.

(Sir John Muria)
CHIEF JUSTICE