

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY, TRUST AND PROBATE LIST**

**IN THE MATTER OF THE ETHIOPIAN ORTHODOX TEWAHEDO CHURCH ST  
MARY OF DEBRE TSION, LONDON**

**AND IN THE MATTER OF THE CHARITIES ACT 2011**

Rolls Building, New Fetter Lane  
London, EC4 1NL

Date: 10 June 2020

**Before :**

**Mark Cawson QC**  
**Sitting as a Deputy Judge of the High Court**

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**Between:**

- (1) REVEREND BERHANU BISLAT
- (2) DEACON DEREJE DEBELLA
- (3) DEACON MAHADER KASSA
- (4) DEACON ENGEDAWORK GEBREEGZIABER
- (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 BETHELEM 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 ASCHELEW KEBEDE
- (12) MS TIGIST TADESSE
- (13) MR TAYE HAILU ZELEKE
- (14) HER MAJESTY'S ATTORNEY GENERAL

**Defendants**

**-and-**

- (15) MR MAMO LEMA

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**Mr Franklin Evans** (instructed by **Wellers Law Group LLP**) for the **Claimants** and the  
**Interim Trustee Defendants**  
**Mr Matthew Smith** (instructed by **Stone King LLP**) for the **Second to Fourth Defendants**  
and the **Seventh to Eleventh Defendants**

Hearing date: 15 May 2020

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**Approved Judgment**

Covid-19 Protocol:

This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunal Judiciary website (press.enquiries@judiciary.uk). The date and time for hand-down is deemed to be 10.30am on Wednesday 10 June 2020.

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Mark Cawson QC

## MARK CAWSON QC

### Introduction

1. This judgment should be read together with my earlier judgments dated 26 June 2017 ([2017] EWHC 2123 (Ch)), 2 November 2017 and 30 April 2018 in this matter concerning the affairs of the Ethiopian Orthodox Tewahedo Church of St. Mary of Debre Tsion, London (“**the Church**”).
2. I am presently concerned with two applications:
  - a) The Claimants’ application dated 3 December 2019 seeking such further directions as the Court may consider necessary for the carrying into effect of the Order and Directions made on 30 April 2018, to include in particular orders requiring those Defendants serving as Interim Trustees:
    - i) to give notice convening a further General Assembly pursuant to paragraph 4(b) of the said Directions;
    - ii) to invite nominations for new trustees in accordance with clause 12.6 of the CIO Constitution which was settled by the Court and registered on 15 November 2018 (“**the CIO Constitution**”);
    - iii) to invite Clergy nominations from the Clergy Council under clause 12.6(c)(i) of the CIO Constitution for the election of no more than two members of the Clergy Council in accordance with clause 13.3(d)(i) of the CIO Constitution; and
    - iv) to fulfil all and any of those functions and duties set out in the said Directions which remain to be performed by them, including convening a further General Assembly, and those functions of the electoral committee set out in paragraph 4(c) of the said Directions to ensure that new trustees are elected in accordance with clauses 12.5 to 12.7 of the CIO Constitution.
  - b) The application of the 2<sup>nd</sup> to 4<sup>th</sup> and 7<sup>th</sup> to 11<sup>th</sup> Defendants dated 23 December 2019 whereby these Defendants seek orders to the following effect, namely:
    - i) to amend (by way of short scheme) the definition of “Clergy Council” in clause 29.4 of the CIO Constitution so that it is in accordance with past practice of the church, the Kale Awadi, and the common practice of the Ethiopian Orthodox Church worldwide;
    - ii) to give directions for the holding of fresh elections to the Clergy Council;

- iii) to declare that the words “Clergy Council” in clause 12.2(d)(i) of the CIO Constitution should be read as if they said “Clergy” or to amend the CIO Constitution to that effect by way of new scheme.
3. The applications were heard remotely by Skype for Business on 15 May 2020. Mr Franklin Evans appeared on behalf of the Claimants and Interim Trustee Defendants, and Mr Matthew Smith appeared on behalf of the 2<sup>nd</sup> to 4<sup>th</sup> and 7<sup>th</sup> to 11<sup>th</sup> Defendants. For convenience, I will refer to the parties represented by Mr Evans as “the Claimants” and the parties represented by Mr Smith as “the Defendants”. I am grateful to Mr Evans and Mr Smith for their helpful submissions.
4. The Claimants rely upon the witness statements of Alice Lithgow dated 10 December 2019 and Getachew Beshahwred (“**Mr Beshahwred**”) dated 5 May 2020. The Defendants rely upon the two witness statements of Rev Abate Gobena (“**Rev Gobena**”) dated 22 December 2019 and 12 May 2020.

### **Background**

5. The background to the dispute in this matter is set out in paragraphs 1 to 9 of my judgment dated 26 June 2017.
6. In short, the proceedings were commenced on 16 January 2015, at which time the Claimants claimed to have been excluded from the Church’s buildings. Interim relief was granted on 13 February 2015, and subsequently continued which allowed the Claimants access to the Church’s buildings. Thereafter, the Church’s buildings have been shared by the two rival groups comprising, broadly, the Claimant’s and the Defendants, and their respective supporters.
7. The matter came before me in June 2017 in order to determine a preliminary issue relating, essentially, to the proper construction of the Trust Deed dated 11 June 1992 that constituted the relevant charitable trusts concerning the Church and its buildings. The parties were agreed that this Trust Deed required to be read together with certain Bye-Laws introduced in 2006 (“the 2006 Bye-Laws”).
8. My Order dated 26 June 2017 contained a declaration in the following terms:

“On the footing that 1992 Trust Deed is effective to create a trust, and in the events that have occurred, the reference within the recital to the 1992 Trust Deed to “the Mother Church in Ethiopia which is operating under the spiritual jurisdiction of the Patriarch thereof” of which the Church was described as a branch, means The Ethiopian Tewahedo Orthodox Church Holy Synod operating in Addis Ababa under the spiritual jurisdiction of the Patriarch elected and recognised from time to time by that Holy Synod as Patriarch.”
9. By this stage, and the preliminary issue having been determined, the parties were agreed in principle that, subject to the approval of the Charity Commission, an administrative scheme should be brought forward making

provision for, or otherwise facilitating, the transfer of the assets of the charity to a new Charitable Incorporated Organisation (“CIO”) whose constitution was to be agreed between the parties, or in default of agreement, settled by the Court, and having the same or substantially the same charitable objects as prior thereto. The Order dated 26 June 2017 contained a recital to this effect, and the Order provided for an agreed mechanism for seeking agreement as to the terms of the CIO constitution, with provision being made for proceedings themselves to be adjourned to the first convenient date after 1 October 2017 when the position could be further considered by the Court.

10. It was in these circumstances that the matter came back before on 2 November 2017. By this stage the appropriate consent of the Charity Commission had been obtained, and the result of the parties’ efforts was the provision of two alternative forms of constitution for a CIO, comprising a first draft produced by the Defendants, to which the Claimants had then introduced amendments. As recorded in paragraphs 6 to 8 of my judgment dated 2 November 2017, what emerged from a consideration of these documents was disagreement on two broad matters, namely:
  - a) the extent to which on the one hand the constitution ought to reflect the fact that the Ethiopian Orthodox Tewahedo Church (“EOTC”) was a hierarchical church with a Patriarch, Archbishops and Bishops, with power rested with the hierarchy, and, on the other hand, the extent to which this particular Church ought to be treated as being congregation based with power resting in the congregation and congregation meetings;
  - b) the extent to which, and the way in which the Kale Awadi ought to be reflected in the terms of the constitution, given that the draft constitution provided by the Defendants referred to particular provisions of the third edition of the Kale Adawi as applying, rather than simply providing in general terms that the constitution should embrace the Kale Awadi as the 2006 Bye-Laws had done.
11. It was agreed between the parties that I should decide the issues that arose from these two broad questions by reference to a number of particular provisions of the proposed constitution without deciding all outstanding issues in respect thereof, but enough to assist the parties in, hopefully, agreeing the remaining provisions in the light of my findings.
12. In paragraph 26 of my judgment dated 7 November 2017, I identified that the case disclosed a tension. On the one hand, one had a trust established and funded essentially by the congregation back in 1992, but on the other hand, this was a Church established, on the basis of my finding on the preliminary issue, as a branch of the EOTC under the jurisdiction of the Holy Synod and the Patriarch in Ethiopia. My central conclusion, as set out in paragraph 28 of my judgment, was that the Claimants’ formulation of spiritual matters, as set out in the provisions of their draft, limiting spiritual matters essentially to administration of the sacraments, was too narrow an approach, but that the Defendants’ approach took too wide an approach to spiritual matters and sought to enable the Dioceses and other entities up the EOTC hierarchy to

intrude into and regulate property and other non-spiritual matters in what I considered to be an inappropriate way on the facts of this particular case, and in the light of the history of the Church.

13. My judgment dated 2 November 2017 then ruled on a number of provisions in the proposed constitution, including, most pertinently for present purposes, clause 12.9 dealing with the role and employment of the Priest in Charge, which I considered in paragraph 44 of my judgment. In paragraph 45 of my judgment I went on to say this:

“Unfortunately, the Defendants’ draft as presently drafted, whilst providing a definition of Clergy Council, makes no provision for how that Clergy Council is to be composed or authorised. In my judgment, so long as there is some provision within the Constitution that provides for the congregation effectively to be in a position to nominate the Clergy Council, then the provision proposed provides a fair system for identification and appointment of the Priest in Charge. Consequently, subject to this last point, I prefer the Defendants’ version of clause 12.9”.

14. My Order dated 2 November 2017 then provided for the Defendants to revise the draft CIO constitution prepared by them to give effect to my judgment and to address any other outstanding points, and to provide the same to the Claimants together with proposals as to the first trustees to be named in the constitution, draft directions to be given by the Court to those first trustees for the purpose of properly convening a general meeting at which new trustees could be elected, and a draft scheme by which the assets of the charity were to be transferred to the CIO. Provision was then made by my Order dated 2 November 2017 for a process by which the Claimants could indicate the provisions that they did not agree to, for Counsel to meet in order to seek to resolve any points in dispute, and in the event that agreement could not be reached on all points, for the matter to be referred back to me on paper in order to settle the terms of the CIO constitution, ideally without a further hearing.
15. Whilst this process did subsequently further narrow the issues between the parties, there did remain a significant number of issues between them as to the wording of the CIO constitution. Consequently, the matter was referred to me on paper in order to settle the terms of the CIO Constitution. This I duly did, by way of a revised version of the CIO Constitution then circulated to the parties. This exercise essentially involved me considering the Claimants’ objections to the latest draft produced by the Defendants and revising the CIO Constitution as I considered appropriate in the light thereof. The document that I produced contained annotated notes explaining my reasoning for departing from the Defendants’ draft when I did so, providing some further additional reasoning when I considered it appropriate to do so.
16. Thus, for example, in respect of the definition of “Clergy Council” in clause 29.3, my annotated note referred to paragraph 45 of my judgment dated 2 November 2017, and then added: “The Defendants’ version of clause 12.9 has, broadly speaking, been adopted above. In the circumstances, I consider that

the definition of “Clergy Council” ought to make some provision for the latter to be nominated by the congregation. I have therefore revised this definition in order to include such provision.”

17. The matter then came back before me on 30 April 2018 in order to resolve outstanding issues between the parties. There were a number of minor and typographical matters in respect of the CIO constitution that were dealt with by way of agreement during the course of submissions, thus enabling the terms of the CIO Constitution to be finalised for submission in due course to the Charity Commission for registration of the CIO.
18. This left a number of other issues that I needed to resolve in relation to the interim arrangements until the CIO constitution was properly in place, and in particular, until a parish administrative Council or “PAC” was appointed by the general membership as provided for by the terms of the CIO constitution. In paragraphs 6 to 10 of my judgment dated 30 April 2018, I identified and dealt with two particular issues as follows:
  - “6. Both submissions have identified one issue that has arisen from the wording of the CIO constitution as approved, and this issue follows from the fact that the PAC is required by clause 12.3(d) to include clergy - not more than two clergy - nominated by the clergy council pursuant to clause 12.6(c).
  7. However, clergy may only become members of the clergy council if they are registered with the PAC. On that basis, PAC members elected by the first general meeting would not be able to include, on the face of the documentation, clergy members as there is no clergy council to nominate them. Consequently, a solution is required in order to deal with this issue on an interim basis.
  8. A method that I have suggested, which has not been opposed with any vigour by any of the parties, is that the interim trustees, once appointed, should identify members of an interim clergy council. A general meeting would then be called by the interim trustees for the purposes of approving or otherwise the clergy council so nominated. Following that general meeting, and once a clergy council that is approved by the general meeting is in place, the process to elect the first PAC to be elected can then proceed. By that stage, because there is a clergy council in place, they can nominate two priests for the purposes of that election. The election would then take place to elect the first elected PAC.
  9. There is an issue between the parties as to the appropriate stage at which the priest-in-charge should be appointed. I consider that the appropriate time to appoint the priest-in-charge would be following that election of the first PAC to be elected because, at that point, there will be a PAC in place that ought to command the confidence of the membership.

10. As provided for by the constitution, the process of appointing the priest-in-charge would involve three priests being nominated by the clergy council and then an election taking place to elect the priest-in-charge subject to the various other provisions provided for in the constitution.”
19. The other outstanding issue that I dealt with was to resolve issues relating to the identity of the Interim Trustees of the CIO that was to be established. There was agreement between the parties as to the appointment of Rev Father Antonious T Shenouda (“**Rev Shenouda**”), Vicar General of the Diocese of London of the Coptic Orthodox Church as an independent Interim Trustee, and Chair of the Interim Trustees.
20. Having provided for the appointment of the Interim Trustees, the Order that I made on 30 April 2018 then, at paragraph 4 thereof, set out the machinery for taking matters further and provided for the following timetable:
  - a) Within 70 days of registration the CIO, the Interim Trustees were to:
    - i) determine a list of members of the charity as at 17 February 2013 and to admit to membership of the CIO such of those members of the charity as at 17 February 2013 as wished to become members of the CIO, and were eligible for membership under clause 10.1(b) of the CIO constitution;
    - ii) approve a provisional list of members of the Clergy Council as defined in the CIO constitution;
    - iii) convene a General Assembly in accordance with clause 11 of the CIO, at which the provisional list of members of the Clergy Council should be approved, amended or not approved by the Congregation (on which issue all admitted members of the CIO should be entitled to vote without regard to clause 10.1(b)(ii) of the CIO).
  - b) Immediately thereafter the Interim Trustees were to give notice convening a further General Assembly within the meaning of the CIO called in accordance with clause 11 thereof and to begin inviting nominations for new trustees in accordance with clause 12.6. The further General Assembly was to take place within 42 days of the General Assembly convened as referred to in paragraph 20(a)(iii) above. At the further General Assembly all admitted members of the CIO should be entitled to vote without regard to clause 10(b)(ii) of the CIO constitution.
  - c) The Interim Trustees were to fulfil the functions of the electoral committee for the purposes of the election of new trustees to take place at the General Assembly directed as referred to in paragraph 20(b) above and to ensure that new trustees were elected in accordance with clause 12.5 to 12.7 of the CIO constitution.

21. The CIO was duly registered on 15 November 2018 with Charity Number 1180723.
22. There have been a number of delays, and extension of time granted for compliance by the Interim Trustees with the Order dated 30 April 2018. The current position is as follows:
  - a) The Interim Trustees were eventually able to agree produce and agree a list of members of the CIO.
  - b) The Interim Trustees were also eventually able to agree a provisional list of 29 members of the Clergy Council, despite a number of disagreements between the parties in this regard. As part of this process, the Interim Chair requested a letter with a list of clergy acceptable to the Holy Synod as required by clause 29.3 of the CIO constitution. This resulted in the EOTC's Foreign Relations Department producing a letter dated 17 January 2019 setting out the names of 24 priests and deacons. However, the letter noted that, as at the date of that letter, a list of clergy from the Claimants had not been received, and stated that a further letter would be provided as and when it was received. In the event, the Claimants never provided such a list. A further point with regard to this process concerns the first named Claimant, Rev Bisrat. It was initially agreed that he should be on the provisional list of the Clergy Council. However, he has been suspended from an entitlement to officiate by the EOTC, and although it had been hoped by the Claimants that this suspension would be lifted, by letter dated 9 February 2019, the EOTC confirmed that he would remain suspended for a further year. This resulted in a decision by the Interim Trustees to reverse their decision to include him as a member of the interim Clergy Council. The attitude of the EOTC towards Rev Bisrat, is, it is fair to say, a cause of some grievance on the part of the Claimants, valid or otherwise.
  - c) A General Assembly was convened for 14 July 2019 when a list of the 29 priests and deacons on the provisional list of the Clergy Council was put to the congregation to vote upon for the membership of the Clergy Council. Although the Defendants were not entirely happy with the voting procedure adopted, the voting procedure that was adopted was as agreed by the Interim Trustees under the chairmanship of Rev Shanouda, and essentially provided for the congregation to vote yes or no to each of the named clergy set out on a ballot paper, with the relevant priest or deacon requiring 50% of the vote in order to be elected to the Clergy Council. In the event, some 450 members of the CIO voted. Only 10 of the candidates received over 50% of the vote. Of the 19 candidates who were not elected, all of them featured on the list of those priests and deacons who were confirmed as acceptable to the Holy Synod in the EOTC's letter dated 17 January 2019, which such list and was derived from a list produced by the Defendants. Of those who were not elected, there was generally a fairly consistent figure of between approximately 270 and 280 members voting against

them. Having said that, there was generally a fairly consistent figure voting against those who were, in fact, elected.

23. Prior to the vote at the General Assembly on 14 July 2019, Mr Beshahwred, who has, as I have said, made a witness statement on the Claimants' behalf for the purposes of the present hearing and who was officiating at the General Assembly, informed the membership that: "The Clergy Council is actually going to be responsible for the nomination of candidates for trustees and it is also going to be responsible for the nomination of candidates for a Priest in Charge or Administrator of actually the Church. That is actually its main duty."
24. Of the 10 candidates elected to the Clergy Council, eight have indicated that they are prepared to serve thereon, but it is said by the Defendants that two have not as a result of concerns in respect of the result of the election. Of the other eight, it is said by the Defendants that they are all deacons, rather than priests, who would not be eligible for election as Priest in Charge. However, the Claimants maintain that one of the eight, Rev Dereje Debella, is, in fact, a priest. I note that on ballot form and the list of successful candidates, Rev Dereje Debella is described as a priest rather than a deacon.

#### **The issues raised by the present applications**

25. The Defendants were naturally disappointed to be outvoted in the way that they were at the General Assembly on 14 July 2019, resulting in their favoured candidates for election to the Clergy Council not being elected. It is said on their behalf that they were prepared to live with the result until they were informed that the Claimants' position was that so far as the Clergy Council's role in nominating Clergy candidates for election to the PAC was concerned, the Clergy Council was limited to nominating members of the Clergy Council itself, rather than including amongst those that they were entitled to nominate, "Clergy", as defined by the CIO constitution, who were not members of the "Clergy Council".
26. However, given the approach taken by the Claimants to the question as to who the Clergy Council are entitled to nominate for membership of the PAC, the Defendants have decided to take a number of further objections in respect of the course that events have taken, as reflected in their application dated 23 December 2019. In short, it is their position that:
  - a) Clause 12.3(d)(i) of the CIO, should, as a matter of construction, be read as if it referred to "Clergy" rather than "Clergy Council", such that those that the Clergy Council can nominate for election to the PAC are not limited to their own members, but extend to all Clergy, alternatively that the CIO constitution to be amended by way of a short scheme to so provide;
  - b) Clause 29.4 of the CIO constitution should be amended by way of short scheme so that the definition of "Clergy Council" therein is in accordance with what is said to be the best practice of the Church, the Kale Awadi, and the common practice of the EOTC worldwide where

all clergy associated with the Church would ordinarily be members of the Church Council.

- c) The vote for the Clergy Council on 19 July 2019 should be declared invalid and ineffective because:
  - i) It was conducted on a false premise, the membership's understanding being that those elected to the Church Council would be entitled to nominate for membership of the PAC not only their own membership, but other Clergy; and
  - ii) Those voting against the Clergy who were not elected to the Clergy Council did so in consequence of a campaign led by the supporters of the Claimants to vote against them, such that votes were cast without the relevant members exercising their own independent judgment, and for reasons that cannot be supported as being in the best interests of the CIO. As to this, it is said that the members in question, in voting the way they did, acted in breach of their fiduciary duties arising under clause 10.3 of the CIO constitution referred to below and s. 220 of the Charities Act which provides that: "Each member of the CIO must exercise the powers that the member has in that capacity in the way that the member decides, in good faith, would be most likely to further the purposes of the CIO."

- 27. The position of the Claimants is that there is no merit in any of these three issues raised by the Defendants, and that I ought to proceed to give further directions along the lines set out in their application dated 3 December 2019 in order that my Order dated 30 April 2018 can be carried into further effect.
- 28. I propose therefore to consider in turn the various issues raised by the Defendants given that the latter are liable to impact upon the directions that I would otherwise have given to give further effect to my Order dated 30 April 2018.
- 29. However, before doing so, it appropriate, at this stage, to say a little more about the underlying differences between the Claimants and the Defendants. The issue at the heart of the preliminary issue determined in June 2017 was as to whether the Church owed its spiritual allegiance to the Patriarch and Holy Synod in Addis Ababa, or to the Patriarch and Holy Synod in exile in Seattle, USA, with the Defendants supporting the former position, and the Claimants supporting the latter position. The Patriarch in exile was in exile as a result of political differences that had caused him to leave Ethiopia in disputed and controversial circumstances following a change of government in Ethiopia, and those political differences, rather than any doctrinal issues, were behind the Claimants' support for the latter. However, since I determined the preliminary issue in June 2017, there has been a reconciliation between the Patriarch in Ethiopia and the Patriarch in exile, so as to bring an end to the schism between them. As a result, the Patriarch in exile and the Archbishops under his jurisdiction have returned to Ethiopia, and the Holy Synod has been reunited. One might have hoped that this would have helped bring an end to

the differences between the Claimants and the Defendants so far as the affairs of the Church are concerned. Sadly this does not appear to be the case, and a factor that has engendered a degree of antipathy between the Claimants and the authorities of the EOTC in Addis Ababa has been the treatment by the latter of Rev Bisrat. Further, it is apparent from the respective positions taken by the Claimants and the Defendants in respect of the present applications that the Defendants generally favour closer ties with the authorities of the EOTC in Addis Ababa, and closer direction of the affairs of the Church by the latter, whereas the Claimants favour a more congregationalist approach, with more control being in the hands of the congregation, i.e. much the same tension with regard to the governance of the Church that I identified in my judgment dated 2 November 2017.

### **Terms of the CIO Constitution**

30. Before resolving the issues to be determined on the present applications, it is necessary to set out the key provisions of the CIO constitution relevant for the purposes thereof, namely parts of clauses 10, 12, 25 and 29 thereof:

#### **“10.3 Duty of members**

It is the duty of each Congregational Member to:

- (a) exercise his or her powers as a Congregational Member in the way he or she decides in good faith would be most likely to further the purposes of the Church; and
- (b) to attend worship, participate in the activities of the Church and to act in accordance with his or her rights and obligations.”

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#### **12.3 Number of PAC Members**

- (a) The Parish Administrative Council shall comprise the following:
  - (i) not less than 5 nor more than 7 PAC Members elected in accordance with clause 12.5;
  - (ii) Subject to Clause 12.9(h) below, 1 PAC Member being the person appointed pursuant to clause 12.9 to hold the office of the Priest-in-Charge; and
  - (iii) 1 PAC Member being the person appointed pursuant to clause 12.10 to hold the office of Parish Secretary.
- (b) There must be at least 7 PAC Members. If the number falls below this minimum, the remaining PAC Member of PAC Members may act only to call a meeting of the Parish Administrative Council to seek nominations for additional

PAC Members and to convene a meeting of the Congregation where elections can be made.

- (c) The maximum number of PAC Members that can be appointed is as provided in clause 12.3(a). No PAC Member appointment may be made in excess of these provisions.
- (d) The members of the Parish Administrative Council to be elected in accordance with clause 12.5 (and to whom reference is made at clause 12.3(a)(i) above) shall be elected in accordance with arrangements by the PAC so that the PAC shall include:
  - (i) no more than two members of the Clergy Council nominated in accordance with clause 12.6(c); and
  - (ii) no more than one member of the Sunday School nominated in accordance with clause 12.6(c);

provided that nothing in this sub-clause shall prevent any member of the Clergy Council or the Sunday School from being nominated to the PAC in accordance with clause 12.6(b).”

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**“12.5 Election of PAC Members**

- (a) Apart from the first PAC Members and those PAC Members referred to in Clauses 12.3(a)(ii) and (iii) above, every elected PAC Member must be appointed by a resolution of the Congregation at a General Assembly in accordance with the procedure set out in clauses 12.6 and 12.7 of this Constitution and they shall, subject to clause 15, be appointed for term that lasts until the conclusion of the third AGM after the AGM at which they are appointed.
- (b) The Congregation or the Parish Administrative Council may at any time decide to appoint a new PAC Member, whether in place of a PAC Member who has retired or been removed in accordance with clause 14, or as an additional PAC Member, provided that the limit specified in clause 12.3 on the number of PAC Members would not as a result be exceeded. A person so appointed by the Congregation shall retire in accordance with the provisions of clause 12.5(a). A person so appointed by the Parish Administrative Council rather than the Congregation shall retire at the conclusion of the AGM next following the date of his appointment.

**12.6 Nominations**

- (a) Nominations for the role of PAC Member, other than the Priest in Charge and the Parish Secretary, shall be made to the electoral

committee elected and appointed, from time to time, by the Congregation, not later than three Sundays before the meeting of the Congregation at which the election is to be held.

- (b) Nominations must be submitted in writing with the signatures of at least two Congregational Members and the consent of the candidate. No Congregational Member may nominate more candidates than there are places vacant.
- (c) Nominations for the PAC Members that are to come from the Clergy and Sunday School as set out in clause 12.3(d) shall be nominated as follows:
  - (i) Clergy: shall be nominated by the members of the Clergy Council; and
  - (ii) Sunday School: shall be nominated by the members of the Sunday School.

The process for deciding who shall be nominated by the Clergy and Sunday School members in accordance with clause 12.6(c) shall be determined by the Parish Administrative Council.

- (d) Requests for nominations shall be made at all services on the three Sundays (or at other regular weekly meetings when the Church gathers together) immediately before that Sunday when nominations cease.
- (d) The electoral committee shall:
  - (i) confirm that each individual nominated for election meets the eligibility criteria set out in clause 12.2 of this Constitution; and
  - (ii) seek confirmation from the Clergy Council and the Parish Administrative Council that any Clergy nominated for election are eligible;
  - (iii) Seek confirmation from the Sunday School and the Parish Administrative Council that any Sunday School member nominated for election are eligible;

following which they shall confirm to the Congregation the names of those nominated for election not later than two Sundays before the meeting of the Congregation at which the election is to be held.”

.....

**“25. Status of Constitution and Rules**

- (a) This Constitution is intended in all respects to be applied and given effect to in a manner consistent with and so as to encompass the

general precepts of the Fetha Nägäst and the Kale Awadi provided that if there is any inconsistency between any of the provisions of this Constitution and the provisions of the Fetha Nägäst and/or Kale-Awadi, the provisions of this Constitution shall prevail.

- (b) The Parish Administrative Council may from time to time make such reasonable and proper rules or bye-laws and/or prepare a church handbook as they may deem necessary or expedient for the proper conduct and management of the Church provided that such rules, bye-laws and/or church handbook are not inconsistent with any provision of this Constitution and provided also that before any such rules, bye-laws and/or church handbook take effect they shall first be:
  - (i) sent to the Diocese or the Patriarchate Head Office for review and guidance (but not prior approval); and
  - (ii) approved by the Congregation at a General Assembly held pursuant to Clause 11 above.
- (c) Copies of any such rules or bylaws or church handbook currently in force must be made available to a congregational Member on request.”

.....

## **“29 Interpretation**

.....

**29.3** “Clergy” means an individual member of the clergy of the Ethiopian Orthodox Church who has been validly ordained as a Priest and/or Deacons by an Archbishop and/or Bishop; whose ordination is recognised by the Holy Synod; and satisfies the eligibility criteria required to be a Congregational Member as set out at clause 10.1(b) of this Constitution. For the avoidance of doubt, members of the Clergy must be members of the Congregation..

**29.4** “Clergy Council ” means the Priest in Charge and those Priests and Deacons whose membership of the Clergy Council has been approved by a resolution passed by the Congregation at a General Assembly held pursuant to Clause 11 above. However no such priest or deacon shall be eligible for membership of the Clergy Council unless he, in a paid or voluntary basis, is actively serving in the Church, is registered in the register of clergy, approved, maintained and regulated by the Parish Administrative Council and is aged 18 years old and above. Subject as aforesaid, the Clergy Council is accountable to the Parish Administrative Council.”

### **Clause 12.3(d)(i) – Are nominations to the PAC by the Clergy Council limited to members of the Clergy Council**

31. As I have said, since the General Assembly on 14 July 2019, the Claimants have maintained that the nominations that the Clergy Council is entitled to make for election to the PAC pursuant to clause 12.6(c) of the CIO are to be limited to members of the Clergy Council itself, and that is not open to the Clergy Council to nominate Clergy who are not members of the Clergy Council.
32. Mr Evans argument on behalf of the Claimant's is that this is the plain and clear effect and meaning of clause 12.3(d)(i) of the CIO Constitution in saying that the PAC to be elected in accordance with clause 12.5 should be elected in accordance with arrangements by the PAC so that the PAC shall include: "(i) no more than two members of the Clergy Council nominated in accordance with clause 12.6(c)." He says that as this is expressed in such unambiguous terms, the Court should not go behind the clear meaning of these words, and that no case is made out for amending this provision by way of a scheme.
33. This issue raises a question as to the true construction of the CIO Constitution as ultimately settled by the Court. To this extent the Court is, perhaps, more concerned with the correct approach to construing a court order than a contract or, say, articles of association of a company. In *Secretary of State v Field* [2014] 1 WLR 3396 at [28] Edward Murray, sitting as a Deputy High Court Judge, said this:

“ The interpretation of a court order cannot be entirely assimilated to the exercise of interpreting a contract nor can it be entirely assimilated to the exercise of interpreting a statute. In all three cases, however, the common starting point is the natural and ordinary meaning of the words used in light of the syntax, context and background in which those words were used. What additional principles and factors come into play as part of the court's exercise of interpretation will depend on the nature of the writing to be interpreted (contract, court order or statute) and, of course, will be highly dependent on the facts of the specific case.”
34. Clause 12.3(d)(i) is, of course, one of a number of provisions within clause 12 concerned with machinery for the nomination for election, and the election of members of the PAC, and has therefore to be construed in this context. Notwithstanding Mr Evans straightforward submissions based upon the wording of clause 12.3(d)(i) considered on its own, I am satisfied that the provisions of the CIO constitution considered as a whole, as a matter of true construction thereof, provide for the Clergy Council to nominate for membership of the PAC pursuant to clause 12.6(c)(i) not only members of the Clergy Council, but anybody falling within the definition of “Clergy” in clause 12.3 of the CIO Constitution.
35. I reach this conclusion for the following reasons:
  - a) Clause 12.3(d)(i) retains the wording of the Defendants' draft sent to me as part of the process of my settling the terms of the CIO Constitution. As then drafted, the definition of “Clergy Council” in clause 29.4 was not limited to those Clergy who were approved by the

congregation as provided for by the revisions that I made to clause 29.4 in settling the final form of the CIO Constitution as referred to above. Thus it effectively extended to all Clergy, and the distinction between “Clergy” and “Clergy Council” was not as ultimately provided for with a much clearer distinction between the two.

- b) I consider that clause 12.6(c) should be taken to be the primary or governing provision providing for the nomination by the Clergy Council of Clergy to the PAC, with clause 12.3(d)(i) being concerned more with limiting the maximum number for appointment, rather than who, exactly, could be nominated. Although clause 12.6(c) does refer back to clause 12.3(d), the operative clause 12.6(c)(i) refers to “Clergy” nominated by members of the “Clergy Council”, drawing a clear distinction between the two.
  - c) The wording at the end of clause 12.6(c) refers to the process for deciding “who shall be nominated by the Clergy”, but nobody suggests that the Clergy as a whole should be responsible for the nominating the Clergy candidates, and this wording might thus be regarded as showing a degree of inconsistency in this provision, equivalent to that in clause 12.3(d)(i) between the use of “Clergy” and “Clergy Council”.
  - d) It was common ground between the parties that the effect of clause 12.9 of the CIO constitution is that although the Priest in Charge would be an ex officio member of the Clergy Council, it was not a requirement that the three individuals to be nominated by the Clergy Council to be voted on by the General Assembly pursuant to clause 12.9(d) should necessarily come from the Clergy Council as distinct from the Clergy as a whole. It would be odd, in my view, if nominations for the PAC had to be from the Clergy Council, whereas nominations for the Priest in Charge did not.
  - e) The CIO constitution is required, by clause 25(a), to be applied and given effect to in all respects so as to encompass the precepts of the Fetha Nägäst and the Kale Awadi, subject to the CIO constitution prevailing in the event of inconsistency. The Kale Awadi would, ordinarily, treat the Clergy as more or less synonymous with the Clergy Council, and so a provision providing for the nomination of any Clergy, rather than simply a member of the Clergy Council to the PAC would, in my view, be more compatible with the Kale Awadi.
36. Taking all these factors into account, I consider that the relevant provisions of the CIO constitution fall to be construed such that it is open to the Clergy Council to nominate, the purposes of clause 12.6(c) of the CIO constitution, any “Clergy”, and not only those Clergy who are members of the Clergy Council, notwithstanding the wording of clause 12.3(d)(i).

#### **Clause 29.4 of the CIO Constitution**

37. As I have explained, the definition of “Clergy Council” in clause 29.4 of the CIO Constitution was settled by me on the basis of the draft provided by the

Defendants as commented on by the Claimants, and so as to give effect to the determination in paragraph 45 of my judgment dated 2 November 2017 that there should be some provision within the CIO constitution that provided for the congregation to be in a position to nominate the Clergy Council for the reasons therein set out. Further, the requirement for the congregation to have a say in the appointment of the Clergy Council was reflected in paragraph 4(a)(iii) of my Order dated 30 April 2018 providing for the provisional list of members of the Clergy Council to be “approved, amended or not approved by the Congregation”. There has been no appeal from my Order dated 2 November 2017, or from my Order is made on 30 April 2018 giving directions to the Interim Trustees and in relation to the Scheme.

38. The Defendants now argue that I should direct that clause 29.4 be amended by way of a short scheme “so that it is in accordance with past practice of the Church, the Kale Awadi, and the common practice of the EOTC worldwide.” Paragraph 41 of Mr Smith’s Skeleton Argument sets out the definition of “Clergy Council” in the CIO constitution of another EOTC church that essentially provides for all Clergy actively serving in the church to be members of the Clergy Council. I am invited to direct by way of scheme that such a provision be introduced in place of the existing clause 29.4.
39. It is argued on behalf of the Defendants that experience shows that the present wording is unsatisfactory in that, for example, it does not make clear how or how often a General Assembly is expected to pass resolutions about the composition of the Clergy Council after the first PAC is elected. It is submitted that once the first PAC is elected by the congregation, the PAC’s supervision of the composition of the Clergy Council should be sufficient to guard against any of the perceived threats of undue interference from above of the kind behind the decision reflected in paragraph 45 of my judgment dated 2 November 2017. It is also said that this will avoid the difficulty of knowing how (single vote on entire Clergy Council; individual by individual vote requiring 50% for each candidate) and how often (annually; before each election; on each new admission or expulsion) the Clergy Council is meant to be approved by the congregation under the existing clause 29.4.
40. I appreciate that the more general practice of EOTC churches might differ from clause 29.4 of the CIO Constitution. However, the CIO constitution was settled by reference to the particular history and circumstances of the present case, and in particular the historic involvement of the congregation in the establishing and governance of the Church. I have identified above the tension between the Claimants and the Defendants that required to be taken into account in order to arrive at the present CIO Constitution, which seeks to strike something of a balance between the respective positions of the parties. In my judgment it would not be appropriate at this stage to upset that balance by effectively reversing the decision that I took in settling the terms of clause 29.4 of the CIO constitution in the terms that I did. Further, I am not satisfied that the CIO constitution sufficiently clearly provides for the required degree of supervision of the composition of the Clergy Council by the PAC to obviate the need for the additional wording that I provided for in clause 29.4.

41. Subject to the question as to whether the vote on 14 July 2019 stands, and as to whether there is therefore a need for a fresh election in place thereof, the next step in accordance with paragraph 4 of my Order dated 30 April 2018 would be for the Interim Trustees to convene a further General Assembly and invite nominations for new trustees in accordance with clause 12.6, in order that the PAC can be elected. Clause 25(b) of the CIO Constitution provides for the PAC to make rules or bye-laws and/or prepare a church handbook. It would be open to the PAC to make appropriate bye-laws or rules to cater for the various issues concerning how a priest's or deacon's membership of the Clergy Council might be approved by resolution passed by the Congregation at a General Assembly as provided for by clause 29.4.
42. Consistent with the wording and intend of clause 29.4, I would expect any such bye-laws or rules to provide for votes for individual candidates, requiring 50% for each candidate, and for regular elections, e.g. at each annual general meeting. It would, as I see it, be up to the PAC to decide whether, for example, to provide for appointments to the Clergy Council for a fixed period of say three years, perhaps with one third retiring (subject to re-election) each year, or simply to provide for those in whose favour a resolution was passed remaining as members of the Clergy Council until such time as a resolution was passed to remove them. I propose to provide in my Order that there be permission to apply for the Court to make a scheme to regulate these matters in the event that the PAC fails to introduce satisfactory bye-laws or rules in respect of these matters, within a period of 12 months.
43. In short therefore, I do not consider it appropriate to make a scheme of the kind proposed by the Defendants, but I will give permission to apply in the terms set out in the previous paragraph.

#### **Challenge to the election of members of the Clergy Council at the General Assembly on 14 July 2019**

44. In view of my finding that nominations from the Clergy Council for the purposes of clause 12.6(c) of the CIO constitution are not limited to members of the Clergy Council but can extend to all clergy, the question of the vote having been conducted on a false premise does not arise.
45. However, this does still leave the argument that the vote is open to challenge because the relevant members voting against those candidates who were not elected did so acting in breach of their duties owed to the CIO.
46. S. 220 of the Charities Act 2011 provides as follows:

“Each member of a CIO must exercise the powers that the member has in that capacity in a way that the member decides, in good faith, would be most likely to further the purposes of the CIO”.
47. As set out above, there is a corresponding duty in clause 10.3 of the CIO constitution, albeit referring to the purposes of “the Church.”

48. In *Children’s Investment Foundation Fund (UK) v Attorney General* [2019] Ch 139, the Court of Appeal held that members of a charitable company owed a duty corresponding to that specifically imposed on members of CIOs by s. 220 of the Charities Act 2011. The judgment of the Court went on to say at [48]:
- “In other words, the member must exercise the powers that he has in that capacity in the way that *he* decides, in good faith, would be most likely to further the purposes of [the charitable company]. It should be stressed that this duty is subjective: in other words, that what matters is the member’s state of mind (compare e.g *Regentcrest Plc v Cohen* [2001] 2 BCLC 80, para 120, dealing with company directors)”.
49. The argument advanced on behalf of the Defendants is that, as a result of a voting campaign, the Claimants’ supporters voted en bloc against those who were not elected, all of whom were on the Defendants’ list of Clergy whose eligibility had been confirmed in the letter from EOTC’s Foreign Relations Department dated 17 January 2019. Mr Smith submitted that there was no rational reason for voting against each such candidate. He says that no explanation has been provided for voting against these candidates, and so the inference must be that the relevant members can have had no properly justifiable reason for voting in the way they did, and/or that they did not exercise an independent judgment in exercising their vote. On this basis, it is submitted that the vote ought to be set aside, and fresh elections ordered.
50. I am not persuaded that there is sufficient evidence to support the conclusion that the relevant members did act in breach of their duties as members under clause 10.3 of the CIO constitution, s. 2 of the Charities Act 2011, or otherwise.
51. The reality is that there are two groups within the Church holding deeply held views centred around the issues referred to in paragraph 10 above, and the tension identified in paragraph 12 above. Each side is seeking to test the CIO constitution by their respective approaches to it, as reflected not least in the issues that I have already decided, with the Claimants’ contention that Clergy Council nominees to the PAC are limited to members of the Clergy Council, and the Defendants’ contention that I should restrict the power of the congregation to decide upon the composition of the Clergy Council by amending clause 29.4 of the CIO constitution.
52. Whilst I have been able to deal with these particular issues on their merits in the way that I have, it is not, as I see it, possible for the Court to say that either side, and the supporters thereof, do not in good faith *subjectively* believe that the views that they hold on the relevant issues are the views most likely to further the purpose of the CIO/Church.
53. I have no reason to doubt that the respective views of the Claimants (and their supporters) on the one hand, and the Defendants (and their supporters) on the other hand, do not genuinely represent their honestly held belief that the purposes of the CIO/Church would be better served if their own position in respect of the issues such as those identified in paragraph 10 above, and those

that I have had to decide in respect of the present applications, were to prevail. In that case, given that the CIO constitution as approved by the Court does provide for elected positions, including in relation to the composition of the Clergy Council, it is in my judgment difficult properly say that any member has acted in breach of clause 10.3 of the CIO constitution or s.220 of the Charities Act 2011 simply because they chose to back a candidate in an election that supported their position, and chose not to back a candidate who did not, or who supported the alternative point of view. It is, of course, possible that some members voted out of blind obedience to one side or another without any independent consideration of the underlying issues, but there is, in my judgment, no sufficient evidence that they did.

54. Looking at the votes cast on 14 July 2019, the impression one gets is that, with some exceptions, there was a solid block for each of the two sides voting for and against the respective candidates. All those on the list verified by EOTC were from the Defendant's list, and so the evidence suggests that this was not simply a question of rejecting those candidates because they were verified by the EOTC, but rather because they came from the Defendant's list, and therefore that they were more likely to support the position that those voting against them did not consider best furthered the purposes of the CIO/Church.
55. Further, it is perhaps not without significance that on 19 June 2019 and in anticipation of the meeting to elect the Clergy Council, Mr Beshahwred said, this:

“The thing that will be carried out during this meeting is the election of serving clergies. It is a day where you will be choosing clergies to give service. Out of the list you will be given, it could be all of them, it could be some of them, and out of them it is a day you choose the clergy to serve. Without thinking of this side or that side, those you think will serve the church... Because clergy means a service giver (those who serve), should not be one that will cause us disagreement again, should not be one that will take us back to our old place... One that can unify us, those who can bring about our unity, those who follow God's laws, these are the clergies we must choose. Therefore, attend this meeting and through the authority granted to you by the courts, you will choose these clergies to serve. We'd like to stress that you do not miss this meeting.”
56. This does, in my view, certainly indicate that the congregation were correctly directed to apply their own minds to who they ought appropriately to vote for, albeit that the respective sides may have exercised their votes in a fairly uniform way.
57. In the circumstances, I do not consider that it would be appropriate for the Court to intervene to declare that the vote that took place on 14 July 2019 is invalid.
58. Of course, once the PAC is elected, the congregation ought to have its say, on a regular basis, as the composition of the Clergy Council as discussed above, and so the effect of the vote on 14 July 2019 is limited by the ability of the congregation, in due course, to review the composition of the Clergy Council.

59. When any future elections do take place, it would do no harm for the Chair of the relevant meeting to remind members that, in voting in respect of the composition of the Clergy Council, they do owe a duty to the CIO/Church to exercise an independent judgment, and to vote in the way that they, in good faith, consider the interests of the CIO/Church would be best furthered.

### **Claimants' Application**

60. Given the decisions that I have reached in respect of the various matters raised by the Defendants' application, and subject thereto, I consider it appropriate to give further directions with regard to the carrying into effect of the Order and Directions made on 30 April 2018, including directing the Interim Trustees to take the steps referred to in the Claimant's application as set out in paragraph 2 above.
61. Of course, in relation to the direction regarding inviting clergy nominations from the Clergy Council under clause 12.6(c) of the CIO Constitution, this would be for the election of no more than two members of the Clergy, not limited to members of the Clergy Council.
62. I also propose to provide for 14 days, rather than the period of seven days, for the taking of the steps referred to in the Claimants' application.
63. I would hope that an Order can be agreed as to the precise form of the appropriate directions.

### **Clause 26 of the CIO constitution**

64. Clause 26 of the CIO constitution provides, in the case of disputes such as those raised by the present applications, for the parties to try and resolve the matter by agreement, and if the dispute cannot be resolved by agreement, to try in good faith to settle the dispute by using the internal church structures of the EOTC in the first instance, and if this is not possible, by means of ADR, such as mediation, before resorting to litigation.
65. The Defendants maintained, although not with great vigour, that I should not proceed to hear the present applications, but should stay the matter pending the taking up of an offer of conciliation by the EOTC in the form of an offer to send a number of delegates from Addis Ababa in order to try to resolve the matter. Unfortunately, the ability to send this delegation from Addis Ababa in the immediate future is now prevented by the present Covid-19 crisis.
66. In the circumstances, and given the delays that have occurred in getting on with electing a PAC and putting the CIO constitution into effect, I considered it appropriate to press on and deal with the applications. However, in the case of any future applications to the Court, the Court is likely to expect the parties to have sought to exhaust the dispute resolution machinery contained within clause 26 of the CIO constitution before entertaining the same, or to be able to satisfactorily explain why they have not done that.

