to be allowed their costs, but their lordships do not think that the circumstances of the case justify a departure from the general rule, and there will therefore be no order as to costs.

Appeal allowed.

N'DANEMA *v.* RENNER and FIVE OTHERS

WEST AFRICAN COURT OF APPEAL (Coussey, P., Bourke, C.J. (Sierra Leone) and Korsah, C.J. (G.C.)): May 29th, 1956
(W.A.C.A. Civil App. No. 31/55)

[1] **Administrative Law—tribunals—procedure—no interference by court until all other rights of appeal exhausted:** A person ordained as a minister of a particular church is bound by the constitution of that church, including any provisions therein which relate to disciplinary tribunals; and therefore where such a minister is dismissed by the governing body of the church acting in a quasi-judicial capacity, the courts will not intervene on the ground that the proceedings have not been fairly and properly conducted until all rights of appeal to tribunals properly constituted for the purpose have been exhausted (page 435, line 40—page 436, line 22).

[2] **Ecclesiastical Law—ministers—dismissal—no interference by court until all other rights of appeal exhausted:** See [1] above.

[3] **Jurisprudence—justice—rules of natural justice—quasi-judicial bodies—no interference by court until all other rights of appeal exhausted:** See [1] above.

The appellant brought an action against the respondents in the Supreme Court for a declaration that his suspension by the respondents was irregular and unconstitutional, or in the alternative that it was *ultra vires.*

The appellant was an ordained minister of the Evangelical United Brethren Church of Sierra Leone. Under the constitution of the church, accepted by the appellant at the time of his ordination, all matters of discipline were to be heard by a judicial committee and then reviewed by another body. The constitution also provided for appeals to be heard by an appellate tribunal. The appellant was suspended by the respondents, sitting as the judicial committee, for immoral conduct, and his suspension was ratified by the review body which revoked his licence. The appellant alleged several irregularities in the procedures of the two tribunals, and instituted

the present proceedings in the Supreme Court instead of pursuing the rights of appeal provided in the constitution of the church. The respondents entered a preliminary objection as to the validity of the proceedings, and the Supreme Court, after hearing both parties but without admitting evidence of the alleged irregularities, struck out the action.

On appeal, the appellant contended that (a) the trial judge erred in dismissing the action without taking evidence to determine the alleged irregularities; and (b) the trial judge erred in dismissing the action on the ground that an appeal under the constitution of the church should have been taken before an action was brought in the civil courts.

Cases referred to:

(1) *Amoa* v. *Wesleyan Methodist Missionary Socy.* (1929), D.Ct. '29–31 7.

(2) *Dean* v. *Bennett* (1870), 6 Ch. App. 489; 24 L.T. 169.

(3) *Long* v. *Bishop of Cape Town* (1863), 1 Moo. P.C.C.N.S. 411; 15 E.R. 756.

Beoku-Betts for the appellant;
Zizer for the respondents.

BOURKE, C.J. (Sierra Leone):

The appellant, who was an ordained elder or minister of the Evangelical United Brethren Church of Sierra Leone, issued a writ in the Supreme Court against the six respondents in their personal capacities claiming a declaration that—(a) the decision of the judicial committee of the Sierra Leone Evangelical United Brethren Church relating to the conduct of the plaintiff was irregular and unconstitutional; and (b) in the alternative, the decision was *ultra vires*. No point was taken either here or below that the respondents were not sued as the judicial committee whose decision is impugned, but by para. 2 of the statement of claim it is alleged that the respondents were members of the said judicial committee.

It is not in dispute that the appellant had accepted and was bound by the provisions governing the constitution of the Church as contained in the Discipline of 1951. Under para. 498 of this Discipline the appellant was tried by the judicial committee of the Annual Conference on a charge of immoral conduct and the accusation was found to be sustained. In accordance with the provisions of para. 499 of the Discipline the appellant was thereupon suspended

until the next session of the Annual Conference when the committee on conference relations reviewed the case. About January 1953, the proceedings of the trial committee were ratified with the result that the appellant's licence was revoked by the Annual Conference (see the Discipline, para. 484). The appellant, if he was dissatisfied, was thereupon entitled to pursue an appeal to the Court of Appeals by virtue of paras. 489 and 499 of the Discipline, by giving written notice to the secretary of the Annual Conference pronouncing the final judicial decision within 30 days after the adjournment thereof. It may be noted that a further appeal lies to the General Conference when objections are taken on the ground that the proceedings were irregular in the application of law and the said objections are entered before the decision of the court is pronounced (para. 489). The appellant did not avail himself of the right of appeal to the Court of Appeals but, after the lapse of a considerable period, that is, on November 25th, 1954, he instituted the proceedings in the Supreme Court out of which the present appeal arises. The decision attacked and from which relief was sought in those proceedings is not that of the reviewing committee on conference relations or that of the Annual Conference but, in terms, that of the judicial committee or "trial committee" which made its findings in December 1952. That being so, I find it difficult to understand the relevance of the objection set out in para. 3 hereunder to the constitution of the reviewing committee on conference relations.

The irregularities complained of by the appellant in his statement of claim were as follows:

"1. The notice for the trial of the plaintiff by the defendants was less than 30 days, contrary to the E.U.B. Discipline, 1951.
2. The accuser, Mr. T. Byrne, was not a member of the Church, contrary to the E.U.B. discipline.
3. The defendants tried the plaintiff and some of them also sat as members of the reviewing committee."

There is no allegation of anything amounting to a denial of natural justice or failure to proceed in a manner consonant with the elementary principles of justice. There is no averment that the appellant at any stage raised an objection on the ground of irregularity before the judicial committee or the reviewing committee or the Annual Conference. It is alleged by the defence that no such objection was raised.

Having regard to the course of the trial before the lower court, it is not necessary to refer to the allegations of fact contained in the

pleading in defence. By para. 8 thereof, notice was given that the defendants would contend that the action was misconceived. At the hearing argument proceeded on the preliminary objection being taken that the appellant's remedy lay in appeal to the appellate tribunals as provided under the Discipline, and that it was not open to him in all the circumstances at that stage to seek declaratory relief in the civil courts. The learned judge accepted this submission, and in a considered judgment came to the conclusion that the action could not be maintained and it was accordingly dismissed. In arriving at its decision the court below relied upon the principles laid down in *Long* v. *Bishop of Cape Town* (3) (1 Moo. P.C.C.N.S. at 461–462; 15 E.R. at 774).

The grounds of appeal filed in this court are:

"2. (a) That the learned trial judge was wrong in dismissing the plaintiff's case without taking evidence to determine the irregularities complained of by the plaintiff.

(b) That the learned trial judge was wrong in dismissing the plaintiff's case on the ground that the plaintiff should have appealed to the Court of Appeals of the Evangelical United Brethren Church instead of taking a civil action against the members of the judicial committee of the E.U.B. Church."

I cannot see that, for the purpose of determining the preliminary objection taken as to the validity of the proceedings, there was any necessity to hear evidence "to determine the irregularities complained of by the plaintiff." According to the record no application was made to lead any evidence at this preliminary stage and no suggestion has been made that there was any such application. Argument was offered by counsel for each side on the question as to whether the action could be maintained, and there is reason to think that for the purposes of such argument and decision the contents of the statement of claim were not accepted as they stood. It is evident to my mind that the learned judge regarded the irregularities complained of as eminently suitable for submission on appeal to the ecclesiastical appellate tribunals constituted under the rules of discipline governing the members of this religious body and which the appellant had admittedly accepted and recognised as binding upon him as a Minister of the Church. In the circumstances he declined to assume jurisdiction and, with respect, I think he was right. It is true that the courts will intervene where proceedings of this kind have not been fairly and properly conducted (see *Dean*

v. *Bennett* (2) and *Amoa* v. *Wesleyan Methodist Missionary Socy.* (1)); but here there was the clear right of appeal to a tribunal constituted for that purpose and the appellant did not choose to resort to the exercise of that right. I agree with the words of the learned judge in the following passage taken from the judgment:

"The plaintiff, as an ordained Elder of the Church, as I have said, is bound by implication by the constitution of the Church. He must follow the directions in the Discipline in judicial matters. If he is dissatisfied with the decision of the judicial committee which was confirmed by his Annual Conference, his next step, according to the Discipline, is to take the matter to the Court of Appeals, and if he is still dissatisfied he may take it further to the General Conference. From the pleadings, the plaintiff did not take the matter beyond the Annual Conference, which adopted and acted on the decision of the judicial committee as ratified by the reviewing committee. He must explore all these avenues, for he has contracted to observe them and be bound by them. If having gone through all, he still feels that the judicial bodies created by the Discipline have acted without authority or illegally, he can then proceed to the civil courts to protect his rights. But he must first have exhausted the remedies provided by the Discipline."

I would dismiss the appeal with costs.

COUSSEY, P. and KORSAH, C.J. (Gold Coast) concurred.

Appeal dismissed