

**RE: REGISTERED TRUSTEES FOR CHURCHES OF CHRIST IN NIGERIA  
– LEGAL ADVICE**

*By Jobalo Oshikanlu*

I am currently a member of the Church of Christ at Iju, in the Ifako-Ijaye Local Government Area of Lagos State.<sup>1</sup>

Issues arising from relationship with the governmental or regulatory authorities, particularly the Corporate Affairs Commission (“CAC”), bordering on the incorporation (registration) status of Churches of Christ in Nigeria, have continued to undergo debate among brethren, and quite unfortunately so. Various legal and doctrinal positions continue to be taken. Some of the brethren in whose presence I expressed shock, in 2003, at the obvious falsity of the LEGAL principles upon which some of the positions taken are based, requested me, at the time, to provide a written legal advice, in order to enable brethren read and understand the correct legal position, and be guided thereby.

I therefore render this advice, as a Christian as well as a lawyer, with the aim of assisting Christians in Nigeria in taking decisions, on these issues, that do not violate the will of God as expressed in the New Testament, as well as to help them arrive at results that will be most advantageous to them, given that the circumstances of each local church would often differ.

Some of the legal positions I have heard put forward are as follows:

1. Registration of a church is a compulsory requirement of law and it is illegal to not register;
2. A church that is not registered cannot own property (i.e. land);
3. The advantages of registration are too manifold to be disregarded;
4. If the “Church of Christ” fails to register in Nigeria, or if the subsisting registration is allowed to be struck off, other religious bodies will register the name for themselves and thereby acquire a right to prevent members of the Church of Christ from using the name in Nigeria; and
5. Individual local churches cannot afford the high costs and implications of incorporation.

In addressing the above-listed issues, I intend to present Nigerian law, as it stands today, in the most straight-to-the-point manner and to avoid, as much as possible, presenting a complex legal treatise that some may find difficult to use.

1. **“Registration of a church is a compulsory requirement of law and it is illegal to not register”**

This is NOT TRUE. To clarify this, suffice it to refer to Section 590 of the relevant law, the Companies and Allied Matters Act, CAP. C20, LFN, 2004 (“CAMA”):

*“Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or ... body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they **may**, if so authorized by the community, body or association, apply to the Commission in the manner hereafter provided for registration under this Act, as a corporate body.”* [Italics and emboldening mine]

The legal and plain interpretation of the above-quoted section of the law is that quest for registration by any group of persons (whether religious, social or otherwise) should only arise where the group has appointed one or more among themselves whom they desire to be their trustees<sup>2</sup> and only where the group has authorized that the registration of those Trustees be procured. The use of the word “may” also means, legally and in ordinary language, that it is permissive rather than compulsory i.e. it is a matter of choice<sup>3</sup>.

It is well understood in legal circles and by the Corporate Affairs Commission (“CAC”) that registration of clubs, religious associations and other non-profit-making (i.e. charitable) organizations is not mandatory under the law. Please be well informed that any claim that such registration is a compulsory requirement is a product of ignorance of the law.

## 2. **“A church that is not registered cannot own property (i.e. land)”**

This also is NOT TRUE. A church, and indeed any other association, that is not registered can acquire legal title to any property through any of its members<sup>4</sup>. Under the law of trusts, such a member or members is/are deemed to hold such property in trust for all the members. Section 596(2) of CAMA witnesses this principle by providing (with regard to an association having registered trustees) that –

“The certificate of incorporation shall vest, in the body corporate, all property and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.”

For our purposes, it only remains to add that a trust may, in law, be “express” or “implied”. I have indeed advised some congregations to acquire their lands in the names of 2 or 3 trusted members. An agreement could then be drawn up between those 2 or 3 members and the rest of the members of the congregation. The agreement will show the capacity in which they hold title to the property i.e. that such title is merely entrusted to them. That would be an “express trust”. Where the understanding is not clearly encapsulated in an agreement as described, it would be an “implied trust” which is nevertheless valid at law. In any event, please note that it is a pre-requisite for registration, that the organization already owns land, before applying to be registered.

3. **“The advantages of registration are too manifold to be disregarded”**

There are indeed certain advantages, which border on convenience. However, *there are also disadvantages which should not be disregarded*. The advantages are recorded in Section 596(1) of CAMA and are: *perpetual succession, power to sue in its name and power to own property in its name*. The disadvantages, however, are potentially unquantifiable. The only one of them recorded in Section 596 is capacity to *be sued*.<sup>5</sup>

Contrary to what I have heard from some brethren, qualification to get “expatriate quota” for *missionaries* should not be regarded as an advantage. Expatriate quota does not give the expatriate a right to remain in Nigeria indefinitely. He will still be here only temporarily. I am not sure I know what “missionary” means, but if that means an “evangelist”, then a visiting evangelist might just as well come into Nigeria on a visiting visa. He does not require an expatriate quota, as he could make do with a suitably-worded letter of invitation from a local church or from individual Christians, which he will tender at the Nigerian mission abroad, in order to be issued a visiting visa. Furthermore, it is important to point out that there are increasing pressures and policy against expatriate quota in the country. The trend is to limit their grant to situations where immigration authorities are convinced that the intending expatriates have expertise that is not available in Nigeria. It is now becoming almost impossible for churches to procure such quotas.

Another disadvantage of registration is the enormous powers to be granted to the trustees and the capacity for abuse of such powers (whether or not they actually abuse it today) and the compelling potentials for apostasy<sup>6</sup>. Yet a further disadvantage is that a registered church, like other registered associations, must file returns at the CAC every year, in line with Section 607 of CAMA, and will therefore incur annual expenses for that purpose, in addition to the official fees for filing each return. There is effort and paperwork involved in filing returns which, in addition, will likely require engaging the services of a legal practitioner each time. **In deciding whether or not to incorporate, an association of people must therefore reckon, not only the advantages, but also the disadvantages, immediate and ongoing financial costs, as well as the inherent dangers.**

4. **“If the church fails to register or the subsisting registration is struck off, other religious bodies will register the name and acquire a right to prevent members of the Church of Christ from using the name”**

Indeed it is legally possible for other religious bodies to register for themselves the name “Church of Christ”, if unregistered or de-registered, but they would not thereby have acquired for themselves a right to restrain other people, who have been previously identified by that name for a considerable period, from continuing to bear the name. They would only acquire the right to prevent those other people from registering the name and to prevent entirely new groups of people from using the name.<sup>7</sup> In fact, they will have acquired no legal right to prevent subsequent registration of the name (e.g. by a local church) by the introduction of additional qualifying words, as for example, the registration of “Church of Christ, Yaba” or at least “Yaba Church of Christ”, which are

words introducing the element of geography and imply that there should be no conflict with names not bearing the additional word.

The implication of the above is that a local church can undertake its own registration without running into conflict with any other church.

The right of a charitable institution to continue to bear an unregistered name that it has always borne, notwithstanding its conflict with the name of a newly registered body, is a species of the law of passing off, and derives from common law, and in fact extends to the power to actually prevent the new body from registering the name at all, or from operating under such name, if the new body has already registered it.<sup>8</sup>

**No one, under current Nigerian law, can legally prevent members of the Church of Christ, registered or unregistered, from using that name, and my advice is that we are merely distracting ourselves from God's work by inventing difficulties for ourselves where there are none!**

5. **"Individual local churches cannot afford the high costs and implications of incorporation"**

Neither I, nor anyone, except each local church itself, can decide whether it can afford, or has need for, registration. To assist each local church in deciding, the following are the requirements for incorporation<sup>9</sup>:

- i) Official registration fee in bank draft (note that these fees have continued to undergo upward review from time to time);
- ii) Availability check and reservation of Name (form, etc.);
- iii) Public notices in 3 national newspapers one of which must circulate in the area of the location of the organization;
- iv) Completed application forms, with the proposed common seal impressed;
- v) Two printed copies of the organization's constitution signed by the Chairman and Secretary with the common seal impressed;
- vi) Extracts of the minutes of the meeting at which the trustees were elected (it must be by election) showing present and absent members and the voting pattern<sup>10</sup>;
- vii) Extracts of the minutes of the meeting where it was adopted as rule that the income of the organization will never be shared to members and that if the organization is dissolved, the outstanding moneys shall be donated to another similar organization;
- viii) Two passport photos of each trustee;
- ix) Formal letter applying for registration, forwarding all the above items;
- x) The organization must have its own landed property;
- xi) Other expenses (to include lawyer's or agent's fees).

The process takes anything between 3 months to one year.

My conclusion is that each local church should be left to decide, for itself, whether it has need of, or funds for, registration.

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<sup>1</sup> This legal advice was first compiled in 2003. I was, at the time, a member of the church at Onilekere, Cement b/stop, Lagos. Brother Gbenga Fabunmi recently contacted me in July 2009, asking for its re-publication in the current issue of *The Beatitudes*; I have therefore updated the paper as far as possible.

<sup>2</sup> The elders of a local church are therefore *trustees* in this sense.

<sup>3</sup> Note that the right to freely associate is guaranteed by the supreme law of Nigeria (i.e. the Constitution of the Federal Republic of Nigeria, 1999) and that such right cannot be taken away by any statute, except where the association wishes to do business for the purpose of making profit or is formed as a secret society or to carry on criminal activities.

<sup>4</sup> It is in the same sense that churches often open bank accounts or own lands in the joint names of some of the members. Legally speaking, such members are “trustees” for such limited purposes.

<sup>5</sup> The implication is that it becomes easy to take court action against a registered church, since it will be very easy to procure the Defendant’s name. For an unregistered church, in view of the legal difficulties to suing “persons unknown”, an intending litigant would have to find out the names of prominent members to put forward as the Defendants and, even then, he must first file an application to court for permission to sue the named persons as representing all persons unnamed.

<sup>6</sup> This is especially so where such powers are given to persons other than elders in respect of their own local church.

<sup>7</sup> This writer actually believes that registration of “Church of Christ” is inherently challengeable on a number of legal grounds, including on the ground that this name ought to be treated as an unregistrable generic name. The point, however, falls outside the compass of this write-up.

<sup>8</sup> For authorities, see *British Legion vs British Legion Club* (1931) 48 RPC 555; *Dr Barnardo’s Homes vs Benardo* (1949) 66 RPC 103; *Clerk & Lindsell on Torts*, 16<sup>th</sup> Ed., p. 1644, *Gower’s Principles of Modern Company Law*, 4<sup>th</sup> Ed., p.304, *Palmer’s Company Law*, 2002 Ed., Vol.1, p.2097.

<sup>9</sup> At every point when registration is desired, it would be necessary to check/inquire on the current scale of fees and costs, since they change from time to time.

<sup>10</sup> Note that Section 591(5) of CAMA makes it a criminal offence, punishable by imprisonment for 1 year or payment of fine, for anyone to give false information so as to procure registration under the Act.