

The court held that the risk of fire was better considered by the planning authority, which had granted the planning application. The ability to source indigenous thatch, its durability and/or obtaining insurance were matters for the petitioners to address. In respect of the remaining objection, namely that the use of thatch would have an adverse effect on the character of the churchyard and church, the court acknowledged it was an unusual choice in an urban setting. However, the building was a modest single-storey new building and physically detached from the church. The use of thatch would not have any deleterious effect on the church or churchyard. Therefore, the petition would be granted.

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Archbishop of Uganda v Joyce and Others

High Court of Uganda: Zeija J, 25 October 2023

HC-17-CV-CS-0034-2023

Episcopal appointment – reviewable by secular courts

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In April 2023, the House of Bishops of the Province of the Church of Uganda elected Canon Godfrey Kasana as Bishop of Luwero. Before his consecration could take place, however, a member of the church submitted a petition alleging that he was unsuitable for consecration on grounds of adultery – and in June the House of Bishops revoked his nomination. The respondents, in effect, sought judicial review of that decision, while the Archbishop argued that the claim was brought against the wrong party and was frivolous, vexatious and an abuse of process.

Principal Justice Zeija said that the general rule was that religious controversies were not the proper subject of civil court inquiry:

It is therefore taken as a constitutional gospel in all the Commonwealth jurisdictions, and also the United States, that courts have no business handling religious questions. In other words, courts should not resolve cases that turn on questions of religious doctrine and practice. This is popularly referred to as the 'religious question' doctrine ... [which] prohibits courts from addressing a wide set of claims even though dismissing such claims will leave plaintiffs without any forum that has the authority and ability to provide redress of serious cognizable harms.

He went on to note that the Constitution of Uganda provided for freedom ‘to subscribe to [a] certain faith and to unsubscribe’ and that ‘Once you subscribe to a certain faith, you must abide by its tenets’. The canons of the Church provided procedures for the appointment of bishops and for resolving disputes about their election – and ‘Courts cannot appoint a bishop for the Church’. Application dismissed; parties to bear their own costs ‘to promote reconciliation in the church’.

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Re St Paul, Caton-with-Littledale

Blackburn Consistory Court: Hodge Ch, 29 October 2023 [2023] ECC Bla 6 *Grave reservations – general principles*

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The petitioners, who were resident within the parish, applied for a faculty for the reservation of a grave plot. The incumbent did not consent to the petition; the policy of the PCC was not to support new applications for reservation as the churchyard would be full in less than ten years.

The court set out a series of propositions that could assist in determining such a petition. In respect of the PCC’s policy, the court noted that while such a policy could not be conclusive, and it could not remove the court’s over-arching discretion, where the PCC had adopted a policy that is considered, reasonable and fair, the court would only be justified in departing from that policy in exceptional circumstances. Anyone seeking a reservation in the face of such a policy would need to show that their case is markedly out of the ordinary.

Where the remaining burial space is limited, the court would take particular note of the fact that a reservation could prejudice the rights of those entitled to interment in the churchyard. In those circumstances, a faculty would not normally be granted, and the petitioner will have to demonstrate sufficient justification for the court to take the exceptional course of allowing a reservation in such circumstances. Even where such a justification is demonstrated, it would not, in the absence of exceptional circumstances, usually be right to extend the duration of the faculty beyond the period for which the churchyard is likely to have space for burials. Should such a faculty be granted for a limited duration, it would remain open to the petitioner to