To be Argued by:
DONNA A. MILLING, ESQ.
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STATE OF NEW YORK

Court of Appeals

APL-2023-00119

IN THE MATTER OF
VICTOR O. IBHAWA,

Appellant,

vs.

NEW YORK STATE DIVISION OF HUMAN RIGHTS
AND DIOCESE OF BUFFALO,

Respondents.

Appellate Division Docket No. CA 22-00060
Erie County Index No. 806837/2021

REPLY BRIEF FOR APPELLANT VICTOR O. IBHAWA

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QUESTION PRESENTED

1. Is the First Amendment's ministerial exception a jurisdictional bar to NYSDHR's mandate to investigate discriminatory harassment and hostile work environment claims brought by a minister and did the Appellate Division err in holding that NYSDHR's determination of a lack of jurisdiction with respect to Appellant's hostile work environment claim was not arbitrary and capricious or affected by an error of law despite acknowledging that there is no controlling United States Supreme Court or New York precedent which holds that the ministerial exception applies to claims of a hostile work environment?

PRELIMINARY STATEMENT

Appellant, Victor O. Ibhawa appeals from a final order of the Appellate Division, Fourth Department entered on June 30, 2023. The Order reversed a judgment of Supreme Court, Erie County, which annulled the determination of New York State Division of Human Rights (hereinafter NYSDHR) to dismiss Appellant's hostile work environment claim against the Diocese of Buffalo (hereinafter Diocese) based on a lack of jurisdiction.

Appellant respectfully submits this Reply Brief in further support of his appeal and in response to the briefs filed by Respondents NYSDHR and the Diocese. [1]

For the following reasons, the Order of the Appellate Division, Fourth Department should be reversed and the matter remanded to NYSDHR for an investigation of Appellant's hostile work environment claim.

[1] **N.B.** Point One of Appellant's Reply Brief addresses the arguments in Points One and Two of Respondent NYSDHR's brief. Point Two of Appellant's Reply Brief addresses the arguments in Respondent Diocese's brief titled Argument.

POINT ONE

NO UNITED STATES SUPREME COURT DECISION BARRED NYSDHR FROM INVESTIGATING APPELLANT'S RACE DISCRIMINATION AND HOSTILE WORK ENVIRONMENT CLAIMS.

Respondent, NYSDHR, as it did in the Appellate Division, cites *Hosanna-Tabor Evangelical Lutheran Church and School v Equal Employment Opportunity Commission, et al.,* 565 U.S. 171 (2012) and *Our Lady of Guadalupe School v Morrissey-Berru,* 591 U.S. -, 140 S. Ct 249 (2020), for the proposition that the United States Supreme Court held that the ministerial exception barred them from considering Appellant's hostile work environment claims (NYSDHR Brief pp. 9-10). NYSDHR fails to point to any language in either decision to support its contention because no such determination was made in either case. Notably, on page 15 of its brief, NYSDHR concedes that "neither *Hosanna-Tabor* nor *Our Lady of Guadalupe* specifically addressed the issue of whether the ministerial exception bars hostile work environment claims". NYSDHR's concession is found in the *Hosanna-Tabor* court's statement that its ruling only applied the ministerial exception to bar claims of employment discrimination by a minister against a religious organization and that such exception constitutes an affirmative defense to an otherwise cognizable claim, not a jurisdictional

bar (*Hosanna-Tabor* at 195,n 4). "Today we hold only that the ministerial exception bars such a suit. We express no view on whether the exception bars other types of suits. There will be time enough to address the applicability of the exception to other types of suits" (*Id* at 26).

In *Our Lady of Guadalupe*, while finding that plaintiffs' employment discrimination claims (which dealt with the firing of employees) fell within the ministerial exception, the Court stated that it was "only deciding the case before it" (*Our Lady of Guadalupe* at 26).

In the face of this language from both United States Supreme Court decisions, NYSDHR argues that "*given the scope of activity*" that the United States Supreme Court held was constitutionally protected, it was "*reasonable"* for the agency to find that it could not address any of Appellant's claims, including those related to racial harassment (NYSDHR Brief pp. 15-16). NYSDHR has erroneously ascribed meaning to the United States Supreme Court's decisions which does not exist and which the Court specifically stated it would not address.

NYSDHR's reliance on cases from the Seventh and Tenth Circuit federal courts, in support of its claim that its decision to dismiss Appellant's claim based on a lack of jurisdiction was reasonable is similarly without merit (*See, Demkovich v St. Andrew the Apostle Parish, Calumet City and*

the Archdiocese of Chicago, 3 F.4th 968 [7th Cir. 2021]; *Skrzypczak v Roman Catholic Diocese of Tulsa,* 611 F.3d 1238 [10th Cir. 2010], *cert denied* 565 U.S. 1115[2012]). The *Demkovich* court found that the ministerial exception applied to Demkovich's minister on minister hostile work environment claims filed under Title VII of the 1964 Civil Rights Act and the Americans with Disabilities Act. While the *Skrzypczak* court held that the ministerial exception bars all hostile work environment claims, its decision pre-dated both *Hosanna- Tabor* and *Our Lady of Guadalupe.* Similarly, while these cases may have been instructive in NYSDHR's determination, they were not binding authority on a New York State agency or a New York State court.

New York federal District Court cases *Shukla v Sharma,* No. 07-CV-2972, 2009 WL 10690810 (E.D.N.Y. 2009) and *Brandenburg v Greek Orthodox Archdiocese of N. America,* No. 20-CV-3809(JMF), 2021 WL 2206486 (S.D.N.Y. June 1, 2021) both held that the ministerial exception may be applied to "any federal or state cause of action that would otherwise impinge on the Church's prerogative to choose its ministers". (*Shukla v Sharma* at 4-5). Shukla pre-dates the decisions by the United States Supreme Court in both *Hosanna-Tabor* and *Our Lady of Guadalupe*. Appellant's hostile work environment claims must be distinguished from Shukla's claim of a violation of New York State wage laws which was not brought pursuant

to the New York Human Rights Law. Shukla's main claims involved violations of federal law (FLSA § 29 USC §203) and TVPA § 18 USC §1589 et seq). His allegations of Defendants' violations of New York State law involved Defendants' failure to pay minimum wages and overtime- not a violation of the New York Human Rights Law.

Brandenburg, applied the ministerial exception to plaintiff's employment discrimination claims under federal law, but also to analogous claims under state law, including the New York State Human Rights Law (*Brandenburg* at 6). However, as NYSDHR acknowledges, the *Brandenburg* court after noting the division in the Seventh, Ninth and Tenth Circuits held that it did not have to take sides because the defendants did not move to dismiss the petitioner's hostile work environment claims based on the ministerial exception, thus forfeiting any argument that the exception applied to hostile work environment claims.

Additionally, the court noted that neither the Second Circuit nor the United States Supreme Court has decided whether the exception bars hostile work environment claims that do not involve challenges to tangible employment actions, and denied dismissal of the petitioner's New York State Human Rights Law claim under Executive Law § 296(11), on the ground that there was no allegation that the alleged harassment of the

petitioners was calculated to promote the religious principles of the Archdiocese, nor that there was a religious reason for the harassment (*Brandenburg* at 4).

NYSDHR's reliance on *O'Connor v Church of St. Ignatius Loyola,* 8 AD3d 125(1st Dept. 2004), *lv denied* 3 NY3d 610(2004), *cert denied* 544 U.S. 107(2005) and *Mills v Standing General Comm'n on Christian Unity,* 39 Misc.3d 296 (Sup. Ct NY County 2013), *aff'd* 117 AD3d 509(1st Dept. 2014) is misplaced. *O'Connor* fails to provide any rationale for its decision and was decided prior to *Hosanna-Tabor* and *Our Lady of Guadalupe.* In *O'Connor,* the First Department affirmed the lower court's granting of the Church's summary judgment motion, holding that employment discrimination claims filed by plaintiff ,a pastoral associate and chaplain whose primary function served the spiritual and pastoral mission of the church were barred by the ministerial exception (*O'Connor* at 125). The decision provides no facts or any insight into whether O'Connor's claims were filed under the New York Human Rights Law or alleged a hostile work environment.

In *Mills,* Petitioner Douglas Mills claimed he was wrongfully terminated as Associate General Secretary of Dialogue and Interfaith Relations and sought reinstatement or damages. Mills alleged that his

wrongful termination violated the Book of Discipline that provides that an Associate General Secretary will be elected every four years. In granting the defendant's summary judgment motion, the court found that Mills' interpretation of the Book of Discipline was incorrect and that the ministerial exception barred his wrongful termination claim because it involved "intra-church matters" and the church's decision to hire, fire or prescribe duties of its ministers is constitutionally protected" (*Mills* at 510).

Appellant has not disputed that he is an ordained Roman Catholic priest who served as a pastor for a religious institution. He acknowledges that religious organizations have constitutional protection in choosing whom they will employ (hire or fire) to work for them in a religious role without government interference. However, no statute, federal or state, or any United States Supreme Court or New York State case law cloaks a religious organization with immunity from racial and xenophobic discrimination in the workplace.

A. THE APPELLATE DIVISION ERRED IN HOLDING THAT NYSDHR'S DETERMINATION WAS NOT ARBITRARY AND CAPRICIOUS OR AFFECTED BY AN ERROR OF LAW.

While finding that "there is no controlling United States Supreme Court or New York precedent and the federal courts that have addressed the issue are divided", the appellate court concluded that NYSDHR's

determination with respect to Appellant's hostile work environment claim was not arbitrary and capricious or affected by an error of law (*In the Matter of Victor O. Ibhawa v New York State Division of Human Rights and Diocese of Buffalo,* 217 AD3d 1500[2023], *lv denied* 40 NY3d 1088[2024];R/A. 332; numbers in parentheses preceded by "R/A" refer to pages of the Record on Appeal). This determination coupled with NYSDHR's similar concession should permit this Court to conclude that NYSDHR's determination was unsupported by any New York State case law authority and was arbitrary and capricious or affected by an error of law. Absent any controlling New York or United States Supreme Court precedent to divest NYSDHR's jurisdiction, it was an error of law and arbitrary and capricious for NYSDHR to rely on non-controlling federal circuit cases for its dismissal determination.

It is the settled rule that "judicial review of an administrative determination is limited to the grounds invoked by the agency (*Matter of Scherbyn v Wayne-Finger Lakes Bd of Co-op Educ. Servs.,* 77 NY2d 753, 758[1991]). A reviewing court in dealing with a determination which an administrative agency alone is authorized to make, must judge the propriety of such action solely on the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the

administrative action by substituting what it considers to be a more adequate basis. While the court's review is deferential, it can interfere if there is no rational basis for the exercise of discretion or the action is without basis in reason.

9 N.Y.C.R.R. § 465.5(d)(1) permits the NYSDHR to dismiss a complaint for lack of jurisdiction or probable cause. The arbitrary and capricious test for agency action chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact (*Ahmed v City of New York,* 44 Misc.3d 228 [N.Y. Sup. Ct 2014], *aff'd as modified* 129 AD3d 435[1st Dept 2015]; *see also Beck-Nichols v Bianco,* 20 NY3d 540[2013]) In cases where NYSDHR issues an order prior to holding a hearing, dismissing a complaint for lack of jurisdiction, the standard of review is whether the determination was arbitrary or capricious (*see Scopelliti v Town of New Castle,* 210 AD2d 339[2nd Dept 1994],) or affected by an error of law (*see Baust v New York State Division of Human Rights,* 70 AD3d 1107, 1108[3rd Dept 2010], *lv denied* 5 NY3d 710; 24 Carmody-Wait 2d § 145.444). An error of law most often involves an allegation that the agency improperly interpreted or applied a statute or regulation (*see New York City Health and Hospitals Corp. v McBarnette,* 84 NY2d 205[1994]).

Determinations of the NYSDHR are accorded considerable deference in view of the important objectives of the Human Rights Law, the discretion vested in the Division to achieve those objectives and the special expertise in assessing discrimination claims. It is well-settled that neither the Appellate Division nor the Court of Appeals has the power to upset the determination of an administrative tribunal on a question of fact (Cohen and Karger, Powers of The New York Court of Appeals, § 108, p. 460; *In the Matter of Pell v Board of Education of union Free School District,* 34 NY2d 222[1974]). The approach is the same when the issue concerns the exercise of discretion by an administrative tribunal. The courts cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious (*see Matter of Colton v Berman,* 21 NY2d 322, 329 ; 8 Weinstein –Korn Miller, N.y. Civ. Prac., par. 7803.04 *et seq*). Arbitrary action is without sound basis in reason and is generally taken without regard to the facts. Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard. "Generally speaking, discretionary issues are not issues of law, but even in such cases it may be urged that the bounds of discretion were exceeded" (*In the Matter of Pell, supra*). The inquiry is always pertinent whether in any particular case, discretion was abused, just as inquiry is always pertinent

whether there is any evidence to sustain a finding of fact (Cohen and Karger, Powers of the New York Court of Appeals, § 159, p. 619).

NYSDHR's concession that neither *Hosanna* nor *Guadalupe* ruled that the ministerial exception bars hostile work environment claims renders its dismissal both arbitrary and capricious and an error of law. By dismissing on grounds of lack of jurisdiction, NYSDHR erroneously expanded the scope of the ministerial exception to include hostile work environment claims. Additionally, NYSDHR's further concession that there is no New York State case law which holds that the ministerial exception bars hostile work environment claims (NYSDHR Brief, p. 12) is additional evidence that their decision was not "reasonable" (NYSDHR Brief, p. 15). While NYSDHR has authority to dismiss claims based on a lack of jurisdiction, it may not do so absent controlling legal authority and in violation of its statutory mandate.

POINT TWO

A. THIS COURT HAS JURISDICTION TO ENTERTAIN THIS APPEAL PURSUANT TO CPLR 5601(b).

Respondent Diocese contends that this Court does not have jurisdiction to entertain this appeal pursuant to CPLR 5601(b), because it does not "directly involve" any constitutional issue (Diocese Brief p. 16).

Appellant acknowledges that despite the acceptance of this appeal under the review process described in Section 500.11 of the Rules of Practice of the New York State Court of Appeals, this Court may address any jurisdictional concerns at any time (*see,* Rules of Practice of the New York State Court of Appeals Section 500.10[a]).

As outlined in Appellant's Jurisdictional Statement (C-144-146; numbers in parentheses preceded by "C" refer to pages of Appellant's Compendium), all the requirements for taking an appeal have been met.

B. NYSDHR'S DISMISSAL OF APPELLANT'S HOSTILE WORK ENVIRONMENT CLAIMS WAS ARBITRARY AND CAPRICIOUS AND AN ERROR OF LAW.

Respondent Diocese contends that Appellant has applied the incorrect standard of review to the determination by NYSDHR. While conceding, as does Respondent NYSDHR, that there is no controlling authority in New York State or the United States Supreme Court, the Diocese argues that this lack of controlling authority on which NYSDHR relied "is not dispositive to this appeal" (Diocese Brief pp. 22-23). The Diocese also contends that because there was no controlling precedent upon which NYSDHR could rely, its determination was not affected by an error of law, nor was it arbitrary and capricious. They also state that NYSDHR was put in a "no win" position because any determination they made (investigate a hostile

work environment claim filed by a minister or dismiss it for a lack of jurisdiction), would have been unsupported by case law, and that NYSDHR cannot be penalized for making its decision based on the law in effect at the time (Diocese Brief p. 28). While not stated, the "law in effect at the time" (R-88-89) consisted of two United States Supreme Court cases which specifically stated that they did not address whether the ministerial exception bars hostile work environment claims (*see Hosanna-Tabor, supra; Our Lady of Guadalupe, supra)* and various federal circuit court cases, some of which held that the ministerial exception did not apply to hostile work environment claims while others did (see *Elvig v Calvin Presbyterian Church, supra; Skrzypczak v Roman Catholic Diocese of Tulsa, supra*, *Bollard v Ca Province of Soc of Jesus*, 196 F.3d 940 (9th Cir. 1999), *Demkovich v St. Andrew the Apostle Parish* No. 19-2142, ECF, No 85 (7th Cir 2020). Notably, NYSDHR chose not to rely on any of the decisions which held that the ministerial exception did not apply to hostile work environment claims.

Faced with no controlling legal precedent on which NYSDHR, a New York State agency could have relied, its position can be compared to a scenario where a court is faced with a case of first impression. When deciding a case of first impression, a court will look at sources like the

legislative history to determine what the legislature intended, what is fair and the law in other jurisdictions (*see generally, In the Matter of Joseph Makhani, v The Honorable Diane Kiesel,* 211 AD3d 132 [1st Dept 2022]). With no controlling New York State or United States Supreme Court precedent, NYSDHR should have looked to the New York State Human Rights Law (§§ 290[2], [3]; §293; 296[1][a],[h]); 296[11], and the October 2019 amendments in Executive Law § 300 urging liberal construction to maximize the law's remedial purposes and narrow construction of exemptions to and exemptions from the law in order maximize deterrence of discriminatory conduct. NYSDHR should also have looked at its brief filed at the Appellate Division in *Matter of Diocese of Rochester v New York State Division of Human Rights,* 305 AD2d 1000[4th Dept 2003] for further guidance. NYSDHR has attempted to distinguish *Matter of Diocese, supra*, from the instant case arguing that the petitioner in that case was a "lay minister" and not an ordained priest, and "there could have been issues of the religious status of the complainant therein, not present in this case" and that the case pre-dated *Hosanna-Tabor* and *Our Lady of Guadalupe,* (NYSDHR Brief p. 15).

While NYSDHR's assertion that the plaintiff was a lay minister and that the case pre-dated *Hosanna-Tabor* and *Our Lady of Guadalupe,* is

correct, their brief in *Matter of Diocese, supra*, acknowledged the exemption is not absolute and relied on this Court's decision in *Scheiber v St. John's University,* 84 NY2d 120,127 (1994). In *Scheiber,* this Court, in analyzing the exemption for religious institutions under Executive Law§ 296(11) cited to its 1991 decision in *In the Matter of Klein (Hartnett),* 78 NY2d 662, 667(1991). This Court wrote:

> "We are mandated to read the Human Rights Law in a manner that will accomplish its strong anti-discriminatory purpose. To that end, the Legislature repealed a blanket exemption for religious educational and charitable institutions, and those organizations are now prohibited from engaging in discrimination"

The exemption in Executive Law §296(11) does not license a religious employer to engage in wholesale discrimination. Rather, the exemption operates to exclude from the definition of "discrimination" exercise of a preference in hiring for persons of that same faith where the action is calculated by the institution to effectuate its religious mission. The exception for religious organizations does not remove race, sex or national origin as an impermissible basis of discrimination against employees of religious institutions. Nor does it single out ministerial employees for lesser protections than those enjoyed by other church employees (*see Bollard v Ca. Province of Soc of Jesus,* at 945).

A religious employer may not discriminate against an individual for reason having nothing to do with the free exercise of religion and then invoke the exemption as a shield against unlawful conduct (*Scheiber* at 126-127).

C. THE APPELLATE DIVISION ERRED IN FINDING THAT THE LOWER COURT APPLIED AN INCORRECT STANDARD OF REVIEW AND FAILED TO AFFORD DEFERENCE TO NYSDHR'S DETERMINATION.

Respondents Diocese and NYSDHR both contend that the Appellate Division properly held that the lower court applied an incorrect standard of review and failed to give the requisite deference to NYSDHR's determination. In the interest of brevity and to avoid repetition, Appellant has responded to this claim by NYSDHR in Point One, subheading A of Appellant's Reply Brief. Appellant sets forth the following argument as concerns the allegation that the lower court applied an incorrect standard of review.

In reviewing the dismissal of Appellant's complaint which contained claims that he was fired as a result of his claims of discrimination and that he was subject to racial discrimination and a hostile work environment, the lower court applied the correct standard of review. While dismissing

Appellant's claims "arising from, or relating to, tangible employment actions, such as hiring and firing and claims for which the Diocese offers religious reason" as barred by the ministerial exception, ("NYSDHR did not act in an arbitrary or capricious manner nor make an error of law in dismissing most of Petitioner's claims pursuant to the ministerial exception" R/A 10), the lower court held that the determination of lack of jurisdiction by NYSDHR "was affected by an error of law and the absence of controlling authority" from the United States Supreme Court, and New York state and federal courts (R/A 10-11). While Respondent Diocese concedes that there is an absence of controlling authority from both the United States Supreme Court and any New York court, they argue that an absence of controlling law did not amount to an error of law nor was NYSDHR's determination without a rational basis. Respondent Diocese asks this Court to find that despite the clear language of the lower court's decision, it applied the correct legal standard in dismissing Appellant's tangible employment related claim, but the wrong standard when addressing his hostile work environment claim.

D. THIS CASE IS NOT AN EMPLOYMENT DISPUTE

Respondent Diocese, contends that for the first time on this appeal, Appellant has "inexplicably" argued that his harassment claims does not arise from "any employment dispute" and characterizes this contention as

"non-sensical and otherwise a non-starter" (Diocese Brief p. 34). While Appellant acknowledges that his petition invoked Executive Law § 296(1)(a), (h), Appellant, as does case law, was attempting to distinguish his hostile work environment claim from claims relating to tangible employment actions such as hiring or firing which are barred under the ministerial exception.(*see e.g.*, *Hosanna-Tabor, supra; Brandenburg, supra*).

E. MATTER OF DIOCESE OF ROCHESTER V NEW YORK STATE DIVISION OF HUMAN RIGHTS AND NEW YORK EXECUTIVE LAW § 296 ARE NOT IN CONFLICT WITH HOSANNA-TABOR.

Respondent Diocese argues that Appellant's reliance on *Matter of Diocese of Rochester* and New York Executive Law§ 296(11) is "misplaced "in light of *Hosanna-Tabor* and its progeny. However, it is Respondent Diocese that places too much reliance on *Hosanna-Tabor* and its progeny. While having conceded that there is no United States Supreme Court precedent that has applied the ministerial exception to hostile work environment claims (Diocese Brief pp. 5, 23), Respondent Diocese claims that Appellant's argument is that the NYSDHR should have ignored "the constitutional limitations of the ministerial exception recognized by the United States Supreme Court" (Diocese Brief p. 36). It bears repeating that

while *Hosanna-Tabor* and *Our Lady of Guadalupe* held that the ministerial exception applied to employment discrimination suits, neither case addressed the applicability of the ministerial exception to hostile work environment claims.

Respondent Diocese also contends that Appellant in his argument to this Court ignored *Martin v SS Columba-Brigid Catholic Church*, No. 1:21-CV-491, 2022 WL 334832 (W.D.N.Y 2022) and *Brandenburg v Greek Orthodox Archdiocese of N. America,* 2021 WL 2206486 (S.D.N.Y. 2021). Appellant has addressed the applicability of *Brandenburg* to the instant case in Point One of his Reply Brief. In *Martin v SS Brigid-Columba* the district court determined that Linda Martin, a choir director, performed duties with a "significant religious dimension" and that the ministerial exception applied to any federal or state cause of action that would otherwise impinge on the Church's prerogative "to choose its ministers" (*Martin v SS Columba-Brigid, supra).* The *Martin* decision did not rule however on the applicability of the ministerial exception to a hostile work environment claim. Moreover, *Martin v SS Brigid-Columba* was decided after NYSDHR dismissed Appellant's complaint and Martin's race discrimination claims based on her retaliatory firing must be distinguished from Appellant's hostile work environment claims.

F. THE DECISION OF WHERE TO PURSUE A REMEDY IS NOT RELEVANT TO NYSDHR'S JURISDICTION. APPELLANT IS NOT MANDATED TO CHOOSE HIS REMEDY WITHIN THE CHURCH

Respondent Diocese contends that "if" what Appellant alleged in his complaint occurred, while abhorrent, Appellant must grieve this injustice within the Church and not the NYSDHR. New York State permits victims of employment discrimination several options, including filing a complaint with NYSDHR (https://ag.ny.gov/sites/default/files/publications/employment_discrimination_brochure.pdf). Appellant has chosen to grieve his hostile work environment claims in New York civil law and the NYSDHR.

Respondent Diocese has failed to acknowledge the numerous attempts by Appellant to have the Church address his allegations. (R 24-27, 50-53, 189). No investigation was conducted and Respondent Diocese did absolutely nothing to offer any assistance to Appellant when he reported the racial harassment and played an audiotape of the verbal assault containing the racial epithet to which he was subjected. Instead, the hierarchy with whom he met subjected him to xenophobic statements including that "In America, there are different ways of ministry", and conversations about foreign priests who urinated on lawns and did not know how to use a washing machine (R/A 23-27). It defies logic that Appellant would seek

redress within the Church, the institution that fired and defrocked him after he reported the allegations of workplace harassment contained in his complaint and refused to return to Nigeria.

The Church is free to manage internal Church governance issues under Canon Law, and to shape its own faith and mission through its appointments. It does not enjoy a general immunity from secular laws and is not permitted to discriminate against an individual for reasons having nothing to do with the free exercise of religion. The Church should not be permitted under New York State law to create a hostile work environment.

Racial and xenophobic harassment and discrimination in the workplace are separate and distinct from the mission of the Church and fall instead within the purview of the state to redress Appellant's harm through the application of its comprehensive anti-discrimination laws. New York Executive Law affords Appellant, and all New Yorkers, protection under the law and safeguards him from racial hostility in the workplace even though his employer is a religious organization. To conclude otherwise, would give the Church free reign to engage in racial abuse of its employees with impunity. Such result would be unconscionable and contrary to the mandate and spirit of the New York Human Rights Law.

CONCLUSION

For the foregoing reasons, the Appellate Division erred in reversing the Order of the lower court. It is respectfully requested that this Court reverse the Order of the Appellate Division, Fourth Department and the matter be remanded to NYSDHR for an investigation of Appellant's hostile work environment claims, and for such other relief as this Court deems just and proper.

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