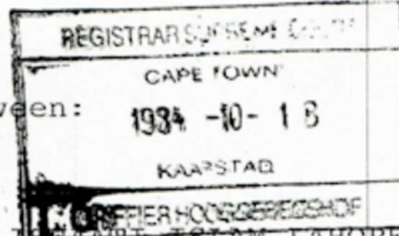


IN THE SUPREME COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO. 10058/82



In the matter between:

1984-10-16

KAAPSTAD

AHMADIYYA ANJUMAN ISHAAT-I-ISLAM LAHORE
(SOUTH AFRICA)

First Plaintiff

ISMAIL PECK

Second Plaintiff

and

THE MUSLIM JUDICIAL COUNCIL (CAPE)

First Defendant

THE MUSLIM TRUSTEES MOSLEM SECT. (AGHANAF)

Second Defendant

THE TRUSTEES FOR THE TIME BEING OF THE
MALAY PORTION VYGEKRAAL CEMETERY BOARD

Third Defendant

NOTICE IN TERMS OF RULE 36(9)

TAKE NOTICE that at the hearing of this matter Plaintiffs will call as an expert witness HAFIZ SHER MUHAMMAD;

Maulana Hafiz Sher Muhammad studied Islamic theology for ten years at Madrassa Gousia in Khusab, Pakistan, and Madrassa Qamria, Ichra, Lahore, Pakistan. He joined the Ahmadiyya Anjuman Ishaat-I-Islam (Lahore) in 1939 and attended the missionary class organised by the movement.

For ten/...

For ten years he worked with Maulana Muhammad Ali, the founder of Ahmadiyya Anjuman Ishaat-I-Islam, Lahore, who was a companion and disciple of Mirza Ghulam Ahmad of Qadian.

Maulana Hafiz Sher Muhammad has made a close study of the Quran (which he knows by heart), as well as the Hadith and the other sources of Islamic Law. He has also studied all the published writings of Mirza Ghulam Ahmad. He has written several books and pamphlets on Islam and on the Ahmadiyya movement, as well as numerous articles.

By reason of his education, studies and experience, he will express the following opinions in his evidence.

1. In order to become a Muslim, a person must bear witness that there is no god but Allah and that Muhammad is his prophet, and must call himself a Muslim.

This is the teaching of Holy Prophet Muhammad according to the Hadith: in his time, everyone who became a Muslim embraced Islam exactly in this manner. This is also accepted by all Muslim scholars of repute, e.g., Maulana Syed Abul-Aala-Maududi, a famous Sunni scholar, who was the head of Jamaat-i-Islami.

2. The profession, "I bear witness that there is no God but Allah and I bear witness that Muhammad is the Messenger of Allah", is known as the Kalimah Shahadat.
3. There are many sayings (ahadith) of the Holy Prophet strongly condemning the person who calls a Muslim a Kafir. For instance, "Whoever calls a believer a Kafir, he is like his murderer" (Tirmizi).
4. A person who adheres to the five pillars of Islam ((1) bearing witness that there is no God but Allah and that Muhammad is the Messenger of Allah. (2) the keeping up of prayer; (3) the payment of Zakat; (4) fasting in the month of Ramadaan; and (5) the pilgrimage to Mecca) is a Muslim.
5. It is essential for a true Muslim to believe in the finality of Prophethood of Holy Prophet Muhammad, just as it is essential for a Muslim to accept all the points of the Quran. However, as long as a person adheres to the Kalima Shahadat, he cannot be expelled from Islam, no matter how misguided he may be. The same applies to jihad.

Belief in the Virgin Birth and Immaculate Conception of Jesus Christ, belief in Jihad with the sword or religious war against unbelievers in Islam, and belief in apostasy on the part of Mirza Ghulam Ahmad are not essential for a person to be a Muslim.


6. The belief that the Prophet Muhammad is the last of all the prophets of Allah is in accordance with the belief and teachings of Mirza Ghulam Ahmad.

7. Mirza Ghulam Ahmad did not claim to be a prophet in the specialised sense that that word bears in the Quran and the Shari'ah.

He claimed to be a reformer (Mujaddid) and Muhaddath (a non-prophet who has been spoken to by God). He used the words nabi and rasul of himself but in the figurative, not real, sense, and the literal, not the specialised technical sense of the Quran and Shari'ah. The word rasul is used in a literal sense in the Quran, as well as in a specialised, technical sense.

There is ample precedent for the use of the words nabi and rasul for non-prophets in classical Islamic literature, which is acceptable by Sunni Muslims. Examples are Shah Wali-Ullah, the famous 18th century Indian Muslim reformer, Shah Ismael Shaheed, the early 19th century Indian Muslim leader, Mujaddid Alif Sani, a renowned Indian Muslim reformer of the 16th and 17th centuries, Baba Farid Shakar Ganj, a 13th century Sufi saint, Jalal-ud-Din Rumi, a renowned 13th century Sufi poet, the Maulana Sanaa-Ullah Panipat, a Muslim theologian who lived in British India, and Khwaja Habib-Ullah 'Attar, a famous Sufi saint from Kashmir.

Examples/...



Examples of this usage can also be found in the writings of modern Muslim scholars, such as Maulana Mufti Kifayatullah, Allama Khalid Mahmud, Maulana Sajjad Ahmad, Maulvi Muhammad Tahir Faruqi, Maulana Ashraf Ali Thanvi, Maulana Abdur-Rashid, Maulana Mufti Muhammad Shafi Deobandi and Maulana Muhammad Haneef Nadavi.

On numerous occasions in his writings, Mirza Ghulam Ahmad made it clear that he did not claim to be a prophet (nabi or rasul) in the specialised sense in which those expressions are used in the Shari'ah. The use by him of these expressions in relation to himself is not forbidden by or inconsistent with the Shari'ah.

8. Mirza Ghulam Ahmad's claim to be a Messiah in the likeness of Jesus was made in a figurative sense: he claimed messianic qualities as a spiritual leader. He did not claim to be Jesus or to be like Jesus in the sense of a prophet of Allah. His claim to be a Messiah in the likeness of Jesus, i.e., to have messianic qualities as a spiritual leader, is not contrary to or inconsistent with the Shari'ah. Such claims have been made in the past by renowned spiritual leaders in Islam, e.g., Abu Yazid Bustami, Hazrat Shams Tabriz, Khwaja Mu'in-ud-Din Chisti, Shah Nujaz Ahmad of Delhi.

9. Mirza Ghulam Ahmad claimed saintly revelation (wahy wilayah) from Allah, and always refuted allegations that he claimed prophetic revelations (wahy nubuwwah): the claim made by him is not contrary to or inconsistent with the Shari'ah.
10. Mirza Ghulam Ahmad was not an apostate.
11. Acceptance of Mirza Ghulam Ahmad as a leader and a reformer and the non-repudiation of his teachings do not breach the finality of the prophethood of the Prophet Muhammad.
12. Ahmadis of the Lahore section accept the finality of the prophethood of the Prophet Muhammad.
13. Ahmadis of the Lahore section do accept Jihad as laid down in the Quran and the Hadith. The true meaning of Jihad is a striving to achieve nearness to Allah and to bring about a spiritual reformation through the teachings of the Quran to protect Islam and to serve humanity (either by word of mouth, or pen, wealth or other peaceful means). There is Jihad of another type involving the use of force: this is also part of the teachings of the Quran and Holy Prophet Muhammad and was not denied by Mirza Ghulam Ahmad. A Jihad of this type is forbidden unless certain conditions precedent exist, namely an attack on Muslims with arms to destroy Islam.

14. It is not true to say that the followers of Mirza Ghulam Ahmad are not recognised as Muslims by the International Muslim Community. There are countries in which Ahmadis are persecuted by certain Sunni Muslims, generally on political grounds. In Pakistan, after court decisions had been given that the Ahmadis are Muslims, the Legislative Assembly in 1974, on political grounds, decreed that they were not. There are numerous Islamic countries where Ahmadis are not regarded as non-Muslims.

15. It is not correct that the followers of Mirza Ghulam Ahmad have been found to be non-Muslim apostates by recognised Muslim authorities throughout the world. Certain ulemas from certain institutions have called the Ahmadis apostates in various parts of the world, but ulemas from the same institutions in the past have stated that the Ahmadis are Muslims.

16. It is not correct that First Defendant and the international bodies listed in paragraph 11(d) of Defendants' Plea are empowered to rule that persons calling themselves Muslims are not Muslims, or that their decisions are authoritative and binding on all Muslims in the areas in which they operate. It is not possible to derive such a power from the accepted sources of Islamic law read as a composite whole.

17. A fatwa is an opinion given by an expert on a religious topic. It is not binding and is given for advisory purposes only. Only the Quran and the Sunna are binding. History shows that so-called "informed sources" in the Islamic world give fatwas which a few years later are rejected as contrary to the teachings of Islam and fatwas are then given directly opposed to earlier ones.

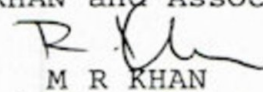
The authority and status of Ijma (the informed consensus of the Muslim world on doctrinal issues) is controversial. Many authorities do not regard it as binding.

In support of some of the opinions which he will express in his evidence, the witness will refer to the reasons and authority set out in a book written by him in Urdu, entitled "True Facts about the Ahmadiyya Movement", a copy of which is annexed hereto.

DATED at CAPE TOWN this 18th day of OCTOBER 1984.

M R KHAN and Associates

per:


M R KHAN
Defendants' Attorneys
AK Building
Klipfontein Road
Rylands Estate

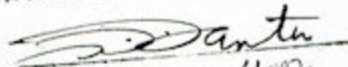
or care of:

M S FRANK & FRANK
Grand Parade Centre
Adderley Street
Cape Town

RECEIVED COPY HEREOF
SUIRSKI HERBSTEIN & IPP

PER

DATE


18.10.84 11:00am

TO/..A

TO: The Registrar
SUPREME COURT
CAPE TOWN

AND TO: MESSRS HOOSAIN MOHAMED
Plaintiffs' Attorneys
1st Floor, Amelia House
21 Belgravia Road
Athlone
(Ref: AAC/RF/02595)

care of

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