

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

CASE NO. 10058/82

In the matter between:

THE AHMADIYYA ANJUMAN ISHAATI-ISLAM
LAHORE (SA

1st Plaintiff

ISMAIL PECK

2nd Plaintiff

and

MUSLIM JUDICIAL COUNCIL (CAPE)

1st Defendant

TRUSTEES MOSLEM SECT (AGHANAF)

2nd Defendant

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

3rd Defendant

DEFENDANTS' NOTICE IN TERMS OF RULE OF COURT 33(4)

TAKE NOTICE that in terms of the above Rule application will be made on behalf of Defendants at the hearing of this action on 1ST NOVEMBER 1984 for the following questions to be determined in limine and separately from the merits of this action, and for all proceedings in the action to be stayed until the said questions have been disposed of.

1. Whether Second Plaintiff is entitled to approach the Court

to /

to enforce his alleged right to attend the said mosque either by reason of alleged rights conferred upon Muslims by the conditions contained in Annexure "A" to the Deed of Transfer No. 258 (Annexure "C" to the Particulars of Claim), referred to in Paragraph 12 thereof, or by reason of the alleged right set out in Paragraph 9 of the Particulars of Claim. Defendants rely on the second exception (excluding sub-paragraph "6") set out in their Notice of Exception dated 20th December 1983 for their contention that the allegations in Paragraph 9 of the Particulars of Claim do not support a valid cause of action.

2. Whether Second Plaintiff is entitled to approach the Court to enforce alleged rights of members of First Plaintiff to have their dead buried in the Malay Portion of Vygekraal cemetery held under Deed of Grant No. 3 dated 18th December 1908 (Annexure "D" to the Particulars of Claim) and/or whether the express conditions of the said Deed of Grant referred to in Paragraph 13 of the Particulars of Claim confer any rights upon the said members and/or whether Second Plaintiff is entitled to enforce these alleged rights by legal action. Defendants contend that the allegations in Paragraph 13 read with further particulars thereto do not:

- (a) establish any or sufficient grounds constituting any right or rights on the part of members of First Plaintiff, including the Second Plaintiff to be buried in the Malay section of the said cemetery; or

(b) /

- (b) establish any right or rights on the part of such a person to enforce such alleged rights;
- (c) establish any grounds upon which such a person is entitled to relief against the Defendants;
- (d) establish that such a person would be excluded from the Vygekraal cemetery as a whole.

Furthermore, the action is impermissible in that it is brought on behalf of others and not on behalf of Second Plaintiff.

3. Whether Second Plaintiff has a valid cause of action based on alleged defamation in as much as Defendants contend that Paragraph 11 of the Particulars of Claim read with prayer 2 thereof insofar as these are intended to constitute a separate cause of action do not establish the Second Plaintiff was personally defamed nor do they establish sufficient grounds for interdicting any such apprehended defamation. Defendants rely on the fourth exception set out in their Notice of Exception dated 20th December 1983 in their contention that Paragraph 11 of the Particulars of Claim read with prayer 2 thereof do not support a valid cause of action.
4. Whether or not the Court should decline to hear the merits of dispute as to whether Ahmedis are Muslims or not because of the contentions of the Defendants in Paragraph 11 of the Plea.
5. Whether or not the Court should decline to hear the merits as to whether Ahmedis are Muslims or not because of the

contentions /

contentions raised in Paragraph 11 bis of the Plea.

TAKE NOTICE FURTHER that Defendants will apply at the hearing of this application that the costs of this application be reserved for decision at the hearing of the questions set out above.

DATED AT ATHLONE ON THIS THE 29th DAY OF OCTOBER 1984.

HOOSAIN MOHAMED & ASSOCIATES

Per:

Defendants' Attorneys
1st Floor, Amelia House
21 Belgravia Road
ATHLONE

(AAC/RJ/02595)

Or c/o:

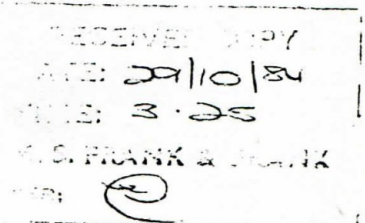
To: THE REGISTRAR
Supreme Court
CAPE TOWN

BUIRSKI HERBSTEIN & IPP
Huguenot Chambers
40 Queen Victoria Street
CAPE TOWN

And To: M R KHAN & ASSOCIATES
Plaintiffs' Attorneys
First Floor
A K Building
Klipfontein Road
RYLANDS

(MRK/jfc)

Or c/o: M S FRANK & FRANK
Dumbarton House
Church Street
CAPE TOWN



In the matter between :

THE AHMADIYYA ANJUMAN ISHAATI-ISLAM
LAHORE (SA)

1ST PLAINTIFF

ISMAIL PECK

2ND PLAINTIFF

and

MUSLIM JUDICIAL COUNCIL (CAPE)

1ST DEFENDANT

TRUSTEES MOSLEM SECT (AGHANAF)

2ND DEFENDANT

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

3RD DEFENDANT

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A F F I D A V I T

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I, the undersigned, AHMED AYOUB CHOCHAN, do hereby
make oath and state :


1. I am an Attorney of the above Honourable Court,
practising as such in the employ of H. Mohamed
& Associates of First Floor, Amelia House, 21
Belgravia Road, Athlone, Cape, Defendants'
attorneys of record herein.
2. I am in charge of the preparation of Defendants'
case and the facts hereinafter stated are within
my personal knowledge.
3. I respectfully submit that it will be convenient
and sensible for the Court to determine the legal
questions set out in the accompanying Notice of
Motion prior to embarking on the merits of the
above matter.

4. (a) The merits for the most part consist of contentious doctrinal issues which are likely to occupy the time of the Court for many weeks (if not months). Plaintiff has given notice of his intention to call no less than four experts from all over the world and Defendants have given similar notice to call fifteen experts.
- (b) Their experts include academic professors from abroad, Judges of the Supreme Court, linguists in Arabic, Urdu and Persian and theological leaders.
- (c) The Discovery Affidavits disclose that a vast quantity of literature of religious and academic nature will be relied upon by the parties.
- (d) Evidence from their experts in their circumstances will involve:
- (i) an examination of the writings of Mirza Ghulam Ahmed and his supporters in foreign languages;

- (ii) an examination of the allegorical mystical meanings of many of their passages;
- (iii) an analysis of the accuracy of any English paragraphs thereof;
- (iv) a study of the Quran and other scriptural authority pertaining to Islamic law and dogma;
- (v) an examination of the historical and socio-political background prevailing at any given time when certain writings were made in order to understand their meaning, motivation and significance;
- (vi) an analysis of various judgments of Supreme Courts in various parts of the world including a judgment of some 220 foolscap pages handed down by the full bench of the Federal Shariat Court of Pakistan during 1984 in Petition 17/1/1984 and Petition 2/L of 1984 which were both heard on the same day.

5. In the circumstances, I respectfully submit that the merits would involve enormously protracted, complex and costly litigation which will be avoided if a decision on the issues set out in the Notice of Motion is made in favour of the contention of the Defendants.

6. I further submit that it is in every way suitable that this great expenditure of time and money should be avoided if possible and it is therefore in the interests of justice that this application should be granted.


.....

I certify that the abovementioned signature is the true signature of AHMED AYOOB CHOCHAN and that he acknowledged to me that he knows and understands the contents of the foregoing Affidavit, which Affidavit was signed and attested to at the undermentioned address on this the _____ day of October 1984 in accordance with the provisos of Regulation R1258, dated 21.07.1972 as amended by Regulation No. 1648 dated 19.08.1977.

signed by Abraham Morris Korber
COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

RECEIVED COPY
DATE: 29/10/84
TIME: 3.25
M. S. FRANK & FRANK
PER: 