

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

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CASE NO.: 10058/82

In the matter between:

AHMADIYYA ANJUMAN ISHAATI-ISLAM LAHORE (SA)
ISMAIL PECK

FIRST PLAINTIFF
SECOND PLAINTIFF

and

THE MUSLIM JUDICIAL COUNCIL (CAPE)
THE TRUSTEES MOSLEM SECT (AGHANAF)
THE TRUSTEES FOR THE TIME BEING OF THE
MALAY PORTION VYGEKRAAL CEMETERY BOARD

FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT

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NOTICE OF AMENDMENT TO PLEA

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1. TAKE NOTICE that the Defendants intend to amend Defendants' Plea (as amended) by the insertion therein of the following SPECIAL PLEA immediately after the existing Plea to be numbered Paragraph 11 to the Plea, and to read as follows:

"11(a) The prayers claimed in Paragraphs 1, 2, 3 and 4 of the prayer to the Particulars of Plaintiff's Claim involve a decision as to whether Ahmadis are Muslims;

(b) The decision of that issue involves a determination of the doctrinal and religious questions and/or disputes set out in

(i) Paragraph 8 of the Particulars of Plaintiff's Claim

(ii) Paragraph 5 of the Plea and in the Further Particulars thereto.

(c) These religious and doctrinal issues and disputes are purely ecclesiastical in nature, and it is not appropriate for a secular Court to attempt to resolve these questions.

2./.....

- (d) Furthermore these religious and doctrinal issues and disputes have been determined in favour of the contentions of the Defendants by the First Defendant and by the International Bodies of Islamic ecclesiastical opinion to which First Defendant is affiliated namely the following:
- (i) Darul Uloom of Deoband, India;
 - (ii) Darul Ifta in Riyad;
 - (iii) Al Azhar in Egypt; and
 - (iv) Jamiatul-Uloom in Karachi, Pakistan.
- (e) First Defendant and the said International Bodies referred to are empowered to make decisions of an Islamic ecclesiastical nature, and it is part of their normal functions to make such decisions which are authoritative and binding as far as the Muslim world is concerned in the areas in respect to which they carry on their ecclesiastical judicial functions.
- (f) First Defendant and the said Bodies are fully conversant with the doctrinal and religious questions referred to. They are peculiarly and particularly qualified to adjudicate upon such questions and to decide them.
- (g) In the premises this Honourable Court cannot alternatively should not attempt to resolve or adjudicate upon the said doctrinal and religious issues and/or should accept and apply the decisions of First Defendant and the said ecclesiastical Bodies on the said doctrinal and religious issues.

(h) Accordingly the Plaintiffs must fail in seeking the relief sought which can only be granted in the event of the aforesaid religious and doctrinal issues being decided in favour of Plaintiffs.

(i) Accordingly the Defendants plead that this Special Plea should be heard and determined separately before the other Pleas are considered in that the effect of doing so will be to curtail very substantially the proceedings before the above Honourable Court and to make it unnecessary for the Court to hear the protracted evidence of religious experts from all over the world who would be required to testify with regard to the intrinsic merits of the religious and doctrinal issues referred to above.

2. TAKE NOTICE FURTHER that Defendants intend to amend their Plea by the addition of the following additional Paragraph to be numbered 12 to be placed immediately after the Special Plea set out in Paragraph 1 hereof:

"12. The citation of Third Defendants as being the Trustees of the Malay Portion of the Vygekraal Cemetery, Athlone read together with Paragraph 13 of the Particulars of Plaintiffs' Claim is bad in that the Deed of Grant being Annexure "D" to the Particulars of Plaintiffs' Claim does not envisage and there in fact never has been constituted, Trustees of the Malay Portion of the said cemetery separately from the Trustees for the management or the said cemetery as a whole.

WHEREFORE Defendants pray for an Order dismissing Prayer 2 of the Prayers, alternatively relief and costs.

4./.....

3. UNLESS objection in writing is made within fourteen(14) days to the proposed amendments the Defendants will amend their Plea accordingly.

DATED AT ATHLONE THIS 20TH DAY OF DECEMBER 1983.

HOOSAIN MOHAMED

per: *H*

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To: The Registrar
Supreme Court
CAPE TOWN

care of:

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