

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

Box 193

www.ahmadiyya.org

CASE NO.: 10058/82

In the matter between :

THE AHMADIYYA ANJUMAN ISHAATI-ISLAM  
LAHORE (SA)  
ISMAIL PECK

1ST PLAINTIFF  
2ND PLAINTIFF

and

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

1ST DEFENDANT  
2ND DEFENDANT  
3RD DEFENDANT

=====

NOTICE IN TERMS OF RULE 36(9)(b)

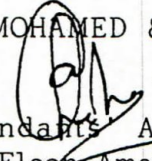
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PLEASE TAKE NOTICE in terms of Rule 36(9)(b) that the witnesses whose names and qualifications are set out in Annexure "A" hereto will give evidence at the trial of the above matter and that the summary of the evidence to be given by each of these witnesses is set out in Annexure "B" hereto.

BE PLEASED TO TAKE FURTHER NOTICE that the witnesses whose names and qualifications are set out in Annexure "C" hereto will give evidence at the trial of the above matter and that the summary of the evidence to be given by each of these witnesses is set out in Annexure "D" hereto.

DATED AT ATHLONE THIS 1ST DAY OF OCTOBER 1984.

H. MOHAMED & ASSOCIATES

per:   
Defendants' Attorneys  
1st Floor Amelia House  
21 Belgravia Road  
ATHLONE  
(AAC/RJ/02595)

To: The Registrar  
Supreme Court  
CAPE TOWN

And to: M.R. Khan &  
Associates  
Plaintiffs' Attorneys  
1st Floor A K Building  
Klipfontein Road  
RYLANDS  
(M R Khan)

care of:  
Buirski Herbstein & Ipp  
40 Queen Victoria Street  
CAPE TOWN

care of:

M.S. Frank & Frank  
3rd Floor Dumbarton House  
1 Church Street  
CAPE TOWN

RECEIVED COPY  
DATE: 17-10-84  
TIME: 3.05  
M. S. FRANK & FRANK  
PER: *N. Jeyl*

ANNEXURE "A"

EXPERT WITNESSES:

1. MOULANA MUHAMMAD ZAFAR AHMED ANSARI

Qualifications:

'A' graduate M.A. LL.B

Former member of the National Assembly of Pakistan

Founder member of the Constitutional Council of the Muslim World League

Assistant Secretary General of the All India Muslim League

Member and Secretary of the Board of Talimaat-i-Islamia which was the Board to advise the Constituent Assembly of Pakistan on Islamic Laws

Member of the Council of Islamic Ideology under the Constituent which is a Body established under the Constitution of Pakistan

Chairman of the Constitution Commission appointed by the President of Pakistan to advise the President on the future constitutional development of Pakistan

Author of several publications on Islamic questions including the following:

- (i) Some constitutional problems of Pakistan published in 1950;
- (ii) Report of the Constitution Commission published in October 1983;
- (iii) Education in the Muslim World.

2. MR. JUSTICE (RETIRED) MOHAMMAD ABZAL CHEEMA

Qualifications:

M.A., LL.B

Ex-member of the Punjab Legislative Assembly 1951/1956

Member of the National Assembly of Pakistan 1962/1965

Former senior deputy speaker of the National Assembly of Pakistan 1962/1965

Former acting speaker of the National Assembly  
1962/1965

Acting President of the Islamic Republic of Pakistan  
(May 1963)

Judge of the West Pakistan and Lahore High Courts  
appointed for the first time on the 18th April 1965

Federal Law Secretary of the Government of Pakistan  
appointed on the 14th May 1973

Elevated as a Judge of the Supreme Court of Pakistan  
October 1974

Appointed in September 1977 as the first full-time  
Chairman of the Council of Islamic Ideology - a

Constitutional Body created in respect of Islamisation  
of Laws in Pakistan

Current member of the<sup>“</sup> Constitution Commission  
appointed by the President of Pakistan

Currently Secretary General of the Asian Branch  
of the Muslim World League

The author of numerous judgments reported in the  
Federal Laws of Pakistan pertaining to Muslim  
Personal Law, Constitutional Law and other matters  
related to Islamic jurisprudence

Commentator and expert on the Qadiani and Ahmedi  
movements.

3. MOULANA JUSTICE MUHAMMAD TAQI USMANI

Qualifications:

M.A., LL.B

Graduate of Islamic Sciences - Darul Uloom, Karachi

Vice-Rector of Darul Uloom, Karachi

Member of the Council of Islamic Ideology 1977/1980

Member of the Constitution Commission established  
by the President of Pakistan

Former Judge of the Federal Shariat Court

Presently Judge of the Supreme Court of Pakistan  
(Shariat Bench)

Author of numerous books in Urdu and Arabic on  
Islamic subjects

Co-author and contributor of "Quadianism on Trial"

Commentator and scholar on the Quadiani and Ahmedi  
Movements

Editor of Al Balaagh

4. PROFESSOR KHURSHID AHMAD

Qualifications:

M.A., LL.B

Master's Degrees in the Disciplines of Political  
Sciences, Economics and Islamic Studies

Former Minister of Planning and Statistics in the  
Federal Cabinet of Pakistan

Former Deputy Chairman of the Planning Commission  
of Pakistan

Former Director-General and present Chairman of  
the Islamic Foundation, Leicester, United Kingdom

Former Secretary General, Islamic Research Academy,  
Karachi

Chairman of the Institution of Policy Studies,  
Islamabad, Pakistan

Prolific writer and author/editor of over 50 books  
including commentaries of the Quadiani and Ahmedi  
Movements

5. DR. SAYED RIAZUL HASAN GILANI

Qualifications:

M.A., LL.B., Ph.D

Senior Lecturer higher Islamic Law, University Law  
College, Punjab University

Senior adviser High Court and Supreme Court of Pakistan

Standing Counsel of the Government of Pakistan in the Federal Shariat Court and in the Shariat Appeal Bench of the Supreme Court

Author of numerous publications on Islamic jurisprudence, Islamic philosophy and related Islamic questions including:

- (i) "The Reconstruction of Legal Thought in Islam"
- (ii) "Two-nation theory (in Urdu)"
- (iii) The concept of contempt of Court in Islamic Law

6. PROFESSOR MEHMOOD AHMAD GHAZI

Qualifications:

M.A. Graduate - Darul Uloom, Rawalpindi, Pakistan

Associate professor Islamic Research Institute, Islamabad, Pakistan

Visiting professor Institute of Shariat Law and the Institute of Training in Shariat and the legal profession - Islamic University, Islamabad

Editor of the Arabic journal Al-dirasat-al-Islamica

Editor of the Urdu journal Fikr-o-Nazr

Juris consultant of the Federal Shariat Court

Associate member of the Constitution Commission appointed by the President of Pakistan

Author of various works on Islamic Law, physiology and history including:

- (i) Adab-al-qazi (procedural Law)
- (ii) In English: "Hijra", physiology and message for the modern man
- (iii) In Arabic: Talks about Hinduism
- (iv) In English: Quadianism is a threat to the integrity of the Muslim Umma

Commentator and expert on Ahmadi and Quadiani movements.

7. PROFESSOR HABIBUL HAQ NADVI

1. Professor of and Head of the Department of Arabic, Urdu and Persian at the University of Durban-Westville since 1976. ::
2. Alim and graduate in Islamic Studies at the Darul Uloom Nadwat al-Ulama at Lucknow in India.
3. Honours and master' degree in both Arabic and English at the Patna and the Sind Universities in India and Pakistan respectively.
4. M.A. and Ph.D. at Harvard University, Massachusetts, United States of America.
5. Held teaching appointments at the Sind, Karachi at Harvard University.
6. Studied Islamic Law under Professor J. Anderson at Harvard University.
7. Founder/Editor and contributor to various research journals.
8. Author of a number of books, the latest of which is "Dynamics of Islam".

ANNEXURE "B"

Summary of the expert opinion to be given by each of the witnesses whose names and qualifications are set out in Annexure "A".

The aforementioned witnesses will give evidence to be supported by references to scriptural, academic and other authority as well as from experience with regard to the relevant issues before the Court in these proceedings. This evidence is summarised as follows:

1. The witnesses will concede that the five principles referred to in the Plaintiffs' Particulars of Claim in Paragraph 7 are indeed fundamental doctrines and principles of Islam.
2. They will state however that the acceptance of these five principles alone and no more is not sufficient to constitute a Muslim. More particularly, they will say that in their expert opinion based on a reading of the Quran and other relevant sources of Islamic Law a person cannot be accepted as a Muslim unless he also accepts the holy Prophet Muhammad as the last and final Prophet.
3. These witnesses will further say that belief in the finality of the prophethood of the Holy Prophet Muhammad is a central article of faith crucial



for a believing Muslim and not a mere matter of detail.

4. Each of these witnesses will further say that members of the Plaintiff, the Ahmadiyya Anjuman Ishaati-Islam Lahore (SA), also known as Lahorees in Pakistan and defined in the present case as "Ahmedis", together with other followers of the late MIRZA GHULAM AHMED sometimes known as Qadianis fail to accept certain fundamental principles and beliefs which are essential for a Muslim. Included among the beliefs which they do not accept are the following:

(a) the finality of the prophethood of the Holy Prophet Muhammad in that they accept as a leader and reformer and in no way repudiate the teachings of MIRZA GHULAM AHMED whose claims to prophethood and as a recipient of revelations from Allah are inconsistent with any unqualified belief in the finality of the prophethood of the Holy Prophet Muhammad.

(b) The apostasy of MIRZA GHULAM AHMED.

(b) Immaculate conception and the virgin birth of Jesus Christ referred to in the Quran as the Prophet Essa; and

(d) Jihad or religious war against unbelievers in Islam.

5. In support of this opinion these witnesses will testify as follows :

(a) (i) The writings, utterances and the claims made by MIRZA GHULAM AHMED and unrepudiated by and adhered to by his followers which claims and utterances are quite inconsistent with unqualified acceptance of the proposition that the Holy Prophet Muhammad is the last and final Prophet.

(ii) The attitude adopted by MIRZA GHULAM AHMED and his followers towards other Muslims who did and do not accept the claims of MIRZA GHULAM AHMED is such that the followers of MIRZA GHULAM AHMED constitute for themselves a separate and distinct religion, divorced from the accepted and basic traditions of Islam and manifested by numerous prohibitions which MIRZA GHULAM AHMED enjoined against marriages with Muslims who did not accept the claims of MIRZA GHULAM

AHMED and against prayers performed behind Imams who did not accept such claims.

- (b) The proposition that MIRZA GHULAM AHMED was an apostate is a logical and inevitable consequence of claims made by him which are in the opinion of these witnesses quite inconsistent with the finality of the prophethood of the Holy Prophet Muhammad and the clear contents and directions of the Holy Quran and the traditions and utterances of the Holy Prophet Muhammad during his lifetime.
- (c) These experts will further say that the writings and utterances of MIRZA GHULAM AHMED during his lifetime and the utterances of his followers and admirers since his death clearly involve at worst repudiation and at best scepticism to whether Jesus Christ was of virgin birth. Such repudiation and scepticism is confirmed by the attitude adopted by the Plaintiffs in this case to the effect that belief in the virgin birth of Jesus Christ or Essa is not essential for a Muslim. The witnesses will say that such a proposition is plainly untenable in Islam and necessarily involves either repudiation or scepticism of an essential part of the Holy Quran in which the virgin birth

of Jesus Christ is clearly stated without qualification. The witnesses will further say that no place exists in the science of Islamic jurisprudence or Quranic interpretation which allows any Muslim to accept one part of the Quran and repudiate or be sceptical of another.

(d) On the question of Jihad or religious war against unbelievers in Islam, these witnesses will further say that the acceptance of Jihad is an essential part of the faith of a Muslim that Jihad in appropriate circumstances includes the use of force and that in the writings and utterances of MIRZA GHULAM AHMED it is clear that MIRZA GHULAM AHMED regarded Jihad in this form as being obsolete and of no further application in Islam. The said witnesses will say that there is no justification whatever in Islamic Law and theology for this view and that its adoption is not permissible to a believing Muslim on the basis of scriptural authority.

6. The witnesses will further say that notwithstanding differences in emphasis and occasional differences in terminology, the dogmatic and theoretical position adopted by both the Lahorees (defined in this case as Ahmadis) and the Qadianis is not different in

principle. Both these offshoots of the movements founded by MIRZA GHULAM AHMED involve the acceptance of a claim which is inconsistent for the finality of the prophethood of the Holy Prophet Muhammad or support of a person who makes such a claim. The witnesses will state that whatever the concepts of "Fanafirrasul" or "wahi-e-wilawat" might mean in a spiritual or philosophical sense, the actual claims made by MIRZA GHULAM AHMED were clearly claims to prophethood which are inconsistent with the acceptance of the Holy Prophet Muhammad as the last and final prophet. These claims further involve the proposition that there could be revelations from Allah after the death of the Holy Prophet Muhammad. Such a possibility is completely excluded by the holy scriptures. The witnesses will deny that the reference to the word "ittiba" in the Holy Quran relied on by the Plaintiffs is helpful in any way to the case sought to be advanced by MIRZA GHULAM AHMED or his followers on his behalf.

7. The witnesses will further say that from the writings and utterances of MIRZA GHULAM AHMED accepted and followed by his followers there appear unacceptable and offensive attitudes to Jesus Christ. The witnesses will say that an analysis of these writings of MIRZA GHULAM AHMED and the utterances made by him shows clearly an attempt by him to

liken himself to an authentic and reverted Prophet in a manner wholly unacceptable to a believing Muslim and in a manner wholly unjustified by the Quran, the Hadith or by any other relevant source of Islamic Law and dogma.

8. Apart from these matters each of the said witnesses will give evidence as to the right and power of trustees and administrators of mosques and Muslim cemeteries to regulate the attendance of persons at these places, to maintain proper discipline and to exercise a discretion on bona fide grounds as to when one or a group of persons can be excluded from these places where such person or persons cause deep offences to the majority of the congregants and impedes and interferes with proper prayer, concentration, spiritual fellowship and serenity. The witnesses will further refer to the writings and utterances of MIRZA GHULAM AHMED and his followers to the effect that even in their own judgment they regard it as offensive to have any inter-marriage or communal prayers with members of the Muslim faith who do not accept the claims of MIRZA GHULAM AHMED made in his writings and utterances.

9. The said witnesses will further state that the question as to whether a particular body of persons can be considered to be Muslims is basically a

theological question which involves a determination of doctrinal and religious matters. These religious and doctrinal disputes are not proper for determination by a secular Court inter alia because in some respects they are inherently unsuitable for factual determination (for example whether Jesus Christ was of virgin birth), because in such disputes not only the interpretation of writings in languages which are foreign to South African Courts but interpretations resting on religious and cultural values and mystical and allegorical allusions which require special training, experience and exposure to interpret and to understand. They will accordingly contend that for these reasons a secular Court should not attempt in these circumstances to resolve questions of a doctrinal and religious nature such as those ventilated by the pleadings in this case.

In support of this view these experts will say that there are indeed Bodies of Islamic Learning and authority such as those set out in Paragraph 11(d) of the Defendants' Consolidated Plea and others who are qualified to make such a judgment, who have in fact made such judgments all over the world in such matters. The authority and guidance of these Bodies is accepted by Muslims in both those countries with Islamic Governments and those countries with non-Islamic Governments with either minority or majority Muslim populations.

10. In this regard these witnesses will concede that from time to time there have emerged in the history of Islam various divisions between Muslims arising from differences in emphasis on matters pertaining to rituals and related matters and arising from differences in the political history and philosophy of Islam. The witnesses will concede that the differences between Shiah Muslims and Sunni Muslims is an example of this division. They will contend however that none of these divisions either historic or contemporary involve any dispute concerning any fundamental article of faith such as those set out in the five principles relied upon by Plaintiffs and the four additional principles relied upon by the Defendants. They will say however that the dispute between the followers of MIRZA GHULAM AHMED on the one hand and the rest of the Body of Islamic opinion on the other hand, does involve a dispute concerning a fundamental article of faith related to the finality of the prophethood of the Holy Prophet Muhammad. Accordingly they will contend that whilst there are differences between Shiahs and Sunnis originating principally in questions relating to the successorship to the Khilafat both Sunnis and Shias are at one in repudiating the claims of MIRZA GHULAM AHMED as being heretical. They will further contend that the views of the institutions and seats of learning referred to in Paragraph 11(d) as well as other institutions in this respect as accepted



by Sunnis as well as Shias as well as other groups of organised Muslims. For this view they will rely inter alia on the unanimous view of both Shias and Sunnis that the followers of MIRZA GHULAM AHMED should be excluded from the Holy Land and the cities of Mecca and Medina.

11. In addition to the foregoing evidence, and in order to lay the basis for the views expressed by them and the legitimacy of those contentions in terms of Islamic theology, the witnesses will also give general evidence on the juridical status of the Quran in Islamic Law, this authenticity in the form in which it is now available, the proper canons of interpretation to be followed in the appreciation of the meaning of the Holy Quran, the status of Hadith in Islamic Law, the principles to be applied in ascertaining the reliability of an alleged Hadith, the approach in considering apparently conflicting expressions of the Hadith, the competence, status and qualifications of persons who interpret and give expressions to Ijma and the role of different schools of legal thought in Islam.
12. The witnesses will further deal with some aspects of the life of MIRZA GHULAM AHMED to show his unsuitability for the role of a prophet or spiritual leader and to illustrate some of the crudeness and

vulgarity of his expressions which it will be contended are inconsistent with the character of a person claiming to have the qualities of a prophet or spiritual leader. Some assessment will also be made of the cultural and political milieu in which he operated to explain the background and motivation of some of his utterances.

13. In expressing these opinions and making these analyses each of the witnesses will have regard to various academic works which they are in a position to assess and interpret, various scriptural authority, various writings from MIRZA GHULAM AHMED and his followers from different groups and the attitudes and the stance adopted by the followers of MIRZA GHULAM AHMED on numerous occasions in matters which the witnesses will say are crucial to the faith of believing Muslims.
14. All the witnesses will say that they concede that both in Islamic countries and elsewhere the followers of MIRZA GHULAM AHMED have a perfect right to propagate the teachings of MIRZA GHULAM AHMED and to attempt to persuade others to do so. They will say however that this is simply the right of any group of persons who wish to propagate a new or a different religion. They will dispute that the followers of MIRZA GHULAM AHMED are entitled

in terms of Islamic Law and theology to propagate his views as Muslim or to pretend that they are Muslims.