

IN THE SUPREME COURT OF SOUTH AFRICA

CAPE OF GOOD HOPE PROVINCIAL DIVISION

CASE NUMBER: 10058/82

DATE: 20.11.1985.

In the matter between:

AHMADIYYA ANJUMAN-ISLAM LAHORE (SA) Plaintiffs

ISMAIL PECK

and  
THE MUSLIM JUDICIAL COUNCIL & OTHERS Defendants

WILLIAMSON J: Originally two plaintiffs sued in this action. They were, as first plaintiff the Ahmadiyya Anjuman-Islam Lahore (SA), a voluntary association of Muslims constituted in terms of a written constitution whose members are commonly known and referred to as Ahmadis and second plaintiff one Ismail Peck. Ismail Peck is a member of the first plaintiff association and sued in his individual capacity as well as in his capacity as a member of such association.

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The defendants are, firstly, the Muslim Judicial Council (Cape) described as a voluntary association of certain Sheiks, Immams and theologians; secondly, the trustees of a mosque situated at the corner of Long and Dorp Streets, Cape Town, to which I shall refer as the mosque and, thirdly, the trustees of the Malay portion of the Vygekraal Cemetery, Athlone, Cape.

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Briefly stated the plaintiffs' cause of action is that there are certain fundamental doctrines and principles upon which Islam is founded; that the plaintiffs accept these fundamental doctrines and principles and are Muslims; that all mosques are dedicated to Allah and every Muslim, irrespective of sect or movement, has the right of admittance to any mosque no matter where it is situated for the purpose of prayer and

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- (1) As against all three Defendants, Second Plaintiff is declared to be a Muslim and as such to be entitled to all such rights and privileges as pertain to Muslims.
- (2) As against First Defendant, First Defendant is interdicted from disseminating, publishing or otherwise propagating false, harmful, malicious and defamatory matter of and concerning members of the Ahmadīyya Anjuman Ashati *Iskhwat* Islam Lahore South Africa, including Second Plaintiff, to wit, that such members are non-Muslims, disbelievers, kafir, apostates, murtads, that they reject the finality (10 of the Prophethood of Muhammad, that they are non-believers and as such are to be denied admittance to mosques and to Muslim burial grounds, and that marriage with an Ahmadi is prohibited by Muslim law.
- (3) As against the Second Defendant, Second Plaintiff is declared to be entitled to admittance to the Malay mosque situate at the corner of Long and Dorp Streets, Cape Town, held under Deed of Transfer dated 11th February 1881, and to all rights and privileges therein pertaining to Muslims generally. (20
- (4) As against the Third Defendant, Second Plaintiff is declared to be entitled to the same rights of burial in the Malay portion of the Vygekraal Cemetery, held under Deed of Transfer No. 3, dated 18th December, 1908, as pertaining to all Muslims.
- (5) As against all three Defendants: Costs of suit on the attorney and client scale, which costs shall include
- (i) Costs of the hearing on 23rd February 1984,
  - (ii) the wasted trial costs occasioned by the postponement of the trial which was to have taken (30 place on 1st November, 1984,