



IN THE COURT OF APPEAL FOR EAST AFRICA

AT MOMBASA

(Coram: Wambuzi P, Law V-P & Mustafa JA)

CIVIL APPEAL NO 61 OF 1975

LALJI MEGHJI PATEL..... APPELLANT

VERSUS

KARSAN PREMJI..... RESPONDENT

JUDGMENT

Law V-P delivered the following Judgment. The appellant represents a Nairobi temple, which follows the religious principles of the Shree Swaminarayan sect, and is under the Seat of Nar Narayan Dev at Bhuj Ahmedabad in India.

The respondent represents a Mombasa temple, which is also pledged to follow the Swaminarayan religion, under the guidance of the Nar Narayan Dev at Bhuj Ahmedabad. These two temples are separate and distinct legal entities registered under the Societies Act, but have similar constitutions, extending reciprocal membership to each other.

There is another Swaminarayan temple in Nairobi, which I shall call the Temple Road Temple, which the appellant does not recognise as it purports to adhere to both the Nar Narayan Dev Seat at Bhuj and the Seat of Lakshum Naran Dev must adhere to one or the other seat, but not to both. The Mombasa temple, however, does recognise the Temple Road Temple and has established religious and social connections with it. In this they have incurred the disapproval and displeasure of the appellant's temple in Nairobi. The appellant accordingly sued the respondent claiming declarations that the Mombasa temple should not recognise the Temple Road temple or admit to membership members of that temple, and asking for the issue of an injunction prohibiting the respondent from inviting members of the Temple Road temple to participate in the temple's religious and social functions. After a protracted hearing Sheridan J dismissed the appellant's suit on two main grounds: Firstly, that the dispute had been disposed of under an arbitration; and secondly, that the suit was misconceived, which I take to mean either that the appellant had no cause of action, or that the Court would not, in the exercise of its discretion, grant the reliefs sought. I do not find it necessary to deal with the grounds of appeal directed against the arbitration award, as I am fully in agreement with the judge that the appellant's suit was misconceived. I am fortified in this by reference to section 78 of the Constitution of Kenya, which guarantees freedom of conscience. Every individual is entitled to follow such religion, and to manifest and propagate that religion in worship, teaching, practice and observance, as his conscience dictates. The Courts in Kenya will not interfere in matters of religion and conscience, provided of course that no breach of the laws of Kenya is involved. The Courts will not interfere with matters of dogma or ritual and other internal matters within the competence of a church or religious establishment. If the members of the Mombasa temple wish to

recognise one or other or both the Nairobi temples, that is entirely a matter of individual choice and conscience for the members of the Mombasa temple, and the Constitution guarantees their freedom of conscience in this respect.

Mr Bhandari for the appellant has sought to found a cause of action on the argument that the members of the appellant's temple, in their capacity of reciprocal members, have some proprietary and contractual rights as members of the Mombasa temple. Even if this were so, and it seems doubtful to me, it is clear that the Mombasa temple has not done anything to deprive the members of the appellant's temple of their reciprocal membership, so that the proprietary rights of the members of the appellant's temple, if any exist, have not been affected by anything done by the members of the Mombasa temple.

Even if the trial judge had jurisdiction to make the declarations sought, to enforce any contractual rights which the members of the appellant's temple might enjoy under the constitution of the Mombasa temple, he would clearly have refused to exercise his discretion to do so for the reason given by him: that the dispute was primarily one for resolution by the spiritual head of the seat in Bhuj and not a proper subject for litigation in the ordinary Courts of Kenya. That would have been, in my view, a proper and judicial exercise of discretion.

On any view of this matter, I agree that the appellant's suit was misconceived, for the reasons I have attempted to set out, and that he has no cause of action in respect of the remedies he seeks, or, if he had such a cause of action, the judge correctly exercised his discretion in refusing to grant the declarations sought. In my view, this appeal fails and should be dismissed, with costs. I would not interfere with the order for costs made in the High Court.

Mustafa JA. I agree with the judgment delivered by Law V-P. I wish only to add this. The appellant temple is a separate and distinct legal entity from the Mombasa temple, as both are registered societies with their own constitutions, even if the constitutions are practically identical. They are under different management bodies, each management body being responsible for the running of its own temple. I do not think that the appellant temple can possibly have any right to tell the Mombasa temple how to run its affairs or conduct its business. Mr Bhandari has submitted that since all the members of the two temples are of the same sect in the same faith, they are or can become members of each other's temples. The reciprocity of membership, however, does not confer on the Nairobi temple any right to interfere in the way the Mombasa temple runs its affairs. It would perhaps be different if the members of the Mombasa temple had asked for the help of the Court to interfere with the management body of the Mombasa temple because the management had breached some fundamental provision of its constitution. The appellant temple, merely because its members have reciprocal rights of membership with the Mombasa temple, cannot have that right. It seems to me that the appellant temple is trying to compel the Temple Road Temple, with which it is in deep disagreement over some doctrinal matters, to alter its constitution to follow only one Gadi, through exerting pressure on the Mombasa temple. I concur in the order proposed by Law V-P.

Wambuzi P. I agree with the judgment delivered by law V-P and I associate myself with the remarks made by Mustafa JA. Accordingly, there shall be orders in the terms proposed by law V-P.

Appeal dismissed.

Dated at Mombasa this 11th Day of May 1976.

S.W.W. WAMBUZI

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PRESIDENT

E.J.E.LAW

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VICE - PRESIDENT

A.MUSTAFA

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JUDGE OF APPEAL