

and proper condition the said land after removal of the said buildings.

Order accordingly.

SAHID v. ALHARAZIM and OTHERS

COURT OF APPEAL (Sir Samuel Bankole Jones, P., Dove-Edwin and Marcus-Jones, JJ.A): February 13th, 1967
(Civil App. No. 22/66)

[1] **Employment—termination—summary determination—by employer—single instance of grave dereliction of duty may be ground:** Where by the terms of his employment an employee may be suspended or discharged from his employment for disregard of his duty, a single instance of grave dereliction of duty may be good ground for his dismissal without notice (page 46, lines 29-37; page 48, lines 16-21).

The respondents brought an action in the Supreme Court claiming declarations that the appellant had been lawfully discharged from the office of priest of a mosque and that he had ceased to be a priest of the mosque, and an injunction.

The parties were trustees of a mosque in Freetown and the appellant was the imam or senior priest of the mosque. Among the appellant's duties, he was to permit all Moslem worshippers to have full access to the mosque at all times for the purpose of performing their religious rites. By the trust deed under which the mosque was held, the trustees and the annual assembly of the mosque were empowered to investigate any charges preferred against a priest of the mosque deemed negligent of duty and, after notifying him of the charge and considering his defence, if any, to determine the charge and if necessary suspend or discharge him from his office.

One of the trustees told the appellant that the mosque was required for a funeral ceremony to be performed by another priest, the appellant's assistant. When the time for the ceremony came, the appellant and others prevented the use of the mosque; and in consequence, and to prevent a breach of the peace, the ceremony was held on private premises, to the humiliation of the deceased's family.

The trustee complained to the trustees that the appellant had caused the mosque to be closed and so prevented the ceremony from being held there. The complaint alleged that the appellant admitted responsibility for the closing of the mosque to prevent the other

priest from officiating. The trustees and the assembly sent the appellant a copy of the complaint. He was informed that it would be investigated at a meeting of the trustees and the assembly and was invited to be present, but he did not attend. The meeting investigated the complaint and decided to dismiss the appellant. This decision was communicated to him, and subsequently the respondents instituted the present proceedings and obtained judgment for the declarations and injunction sought. The proceedings in the lower court are reported in 1966(2) ALR Comm. 411; 1964-66 ALR S.L. 492.

The appellant appealed on the ground that the trial court had erred in holding that the complaint was a complaint that he had been negligent of duty, within the meaning of the trust deed, and thus a complaint which the trustees had power to investigate and adjudicate.

Johnson for the appellant;
E.L. Luke for the respondents.

MARCUS-JONES, J.A., delivering the judgment of the court:

The appellant and the respondents are trustees of the Jami-ul-Atig Mosque at Davis Street in Freetown, in the Western Area of Sierra Leone. In addition, the appellant was also a senior priest of the mosque. He was appointed acting priest on December 8th, 1953, and a priest on May 30th, 1964.

The history of the mosque could be traced to an indenture dated June 28th, 1876, in which William Cole of Walpole Street in Freetown released land at Davis Street, on which was a mosque known as the Jami-ul-Atig mosque, to Sumanu Newland and others therein named and their heirs and assigns upon certain trusts.

Sumanu Newland and others were named trustees in the said indenture, which I will call the trust deed, upon the following trusts, that is to say, that the said premises were to be used as a place of religious worship by the professors and adherents of the faith of the religious sect called Mohametans or Mohamedans. The trustees were also empowered to appoint a priest or priests to conduct and perform all usual acts and ordinances of religious worship therein, with a proviso that—

“if at any time or times any person or persons so appointed as priest or priests or acting in such capacity shall be deemed guilty of any immorality according to the doctrines of Mohamed, or negligent of duty, it shall be lawful for the said

trustees or trustee or any of the members of the annual assembly to be appointed as hereinafter mentioned to prefer a charge against such priest or priests and every such charge shall be investigated dealt with and decided upon by the said trustees or trustee together with the said annual assembly and the said trustees or trustee or the said annual assembly shall duly notify the said priest or priests of such charge and consider such defence as the said priest or priests may urge on his or their behalf and determine the said charge and if necessary may suspend or discharge the said priest or priests.”

By a letter dated April 24th, 1965, a complaint was made by one M. Y. Alghali, a duly appointed trustee of the mosque, to the effect that the appellant on April 22nd, 1965 caused the mosque to be closed and so prevented a funeral service from being performed on Alpha Abdur Rahim Cole, the deceased father-in-law of the complainant. It was alleged that not only was the mosque closed, but a crowd had collected which threatened to kill any one who attempted to open and enter the compound of the mosque and that consequently the funeral service was conducted in private premises, much to the annoyance, humiliation and dismay of the relations of the deceased.

This complaint was taken up by the trustees, and the appellant was invited to a meeting of the trustees on May 5th, 1965. The appellant, although served with notice of the meeting, ignored it and did not attend. A joint meeting of the trustees and the general assembly was convened for May 10th to hear the complaint preferred against him, to which he was invited. Again he did not attend. The trustees and the general assembly decided that a copy of the letter of complaint be sent to the appellant for his comments against the next joint meeting of the trustees and the general assembly, scheduled for May 15th, 1965. The appellant received notice of this meeting, together with the agenda, but he again failed to attend. On May 17th, 1965, the appellant was informed by letter that the trustees and the general assembly would investigate the complaint on May 22nd, 1965 at 5 p.m. at the Madrassa Sulaimania at Forster Street, Fourah Bay Road, and invited him to be present at the investigation. Again the appellant did not attend. The matter was investigated and a conclusion reached, dismissing the appellant from the office of priest of the mosque. This decision was communicated to him by letter dated May 25th, 1965, the dismissal taking effect forthwith.

On June 14th, 1965, the respondents took out a writ of summons against the appellant, claiming—

(a) a declaration that the appellant had ceased to be a priest of the Jami-ul-Atig Mosque situate at Davis Street, Freetown;

(b) a declaration that the appellant had been lawfully discharged from the office of priest of the above mosque; and

(c) an injunction restraining the appellant from acting in the capacity or performing the functions of a priest of the said mosque and from interfering with the performance of such functions by any other duly appointed priest.

This action came up for hearing before the Hon. Mr. Justice Cole, Ag. Chief Justice, and in an exhaustive and well-reasoned judgment he granted the declarations and injunction sought. It is against this judgment that the appellant has now appealed to this court, on the ground that—

“the learned trial judge wrongly concluded that the complaint that the appellant admitted responsibility for the closing of the entrance to the Jami-ul-Atig Mosque at Davis Street, Freetown, of which he was the senior priest, on Thursday, April 22nd, 1965, to prevent another priest from officiating at a funeral ceremony, was a complaint of ‘negligent of duty’ by the said appellant within the meaning and terms of the trust deed of the said Jami-ul-Atig mosque which the trustees thereof had power to investigate and adjudicate.”

From the evidence of the appellant in the court below, he received the summons to the meeting and he knew the charge that had been preferred against him. His reason for refusing to attend any of the meetings was because he said the worshippers had passed a vote of no-confidence in the trustees. As the appeal in this case is confined to the sole ground of whether the act of the appellant amounted to being “negligent of duty,” an offence created in the trust deed and for which a priest found guilty could be removed from office, the judgment will be confined to that aspect of the appeal only. “Negligent of duty” in this connection means nothing more than being “neglectful of duty”—that is, omitting to do what should be done, leaving undone what should be done; being remiss about one’s duty; showing disregard for one’s duty. Depending on the degree of neglect or disregard shown, a priest found guilty could either be suspended or discharged from his office of priesthood having regard to the gravity of the neglect.

What then was the conduct of the appellant which led to his

dismissal from office? The facts are contained in the evidence. In a nutshell it is this: The appellant was told by Mr. Alghali that the mosque was required for the funeral obsequies of the late Alpha Abdur Rahim Cole which were to be performed by Alhaji Abdul Khadri, one of the priests of the mosque. At the time appointed for the ceremony, the gate at the entrance of the mosque was closed, thus barring entry into the mosque. And what was more astonishing was the fact that the appellant at that time was in the mosque together with others. So alarming was the situation that the help of the police was sought and names were taken down, including that of the appellant. In order to prevent what would have resulted in a breach of the peace in the particular circumstances of the case, the funeral obsequies had to be performed in an adjacent compound.

Nothing emerged from the evidence of the case to show that the complainant did not belong to the sect for which the mosque was intended, and in fact he is a trustee of the said mosque; nor is there any evidence to show that he was not entitled to have the funeral obsequies performed there. All the evidence tended to show that he was entitled.

The appellant was the senior priest of the mosque and he had been informed that the funeral service would be conducted at the mosque on that date by his assistant priest. Was the appellant therefore under a duty to have made the mosque available to the complainant? If he was present at the mosque that day and behaved in the manner alleged, would that conduct amount to being "negligent of duty," or neglect of duty, as stipulated in the trust deed, an offence for which he could be tried, and if found guilty be suspended or removed from office, by the proper authority?

Counsel for the appellant argued strenuously about the ambiguity of the words "negligent of duty." We see no ambiguity in these words. They are plain and ordinary words denoting no more than a disregard of his duty. "Negligent" means "careless," "inattentive," "regardless," "inattentive to what ought to be done," "neglectful"; and "neglectful" means treating with neglect or slight, indicating indifference. And what is duty in the circumstances? That which is owing to anyone; an act that is due by moral or legal obligation; that which one ought or is bound to do.

The appellant was given every opportunity by the lawful body entitled to hear complaints against him and to inflict punishment. He was summoned before this body and he contemptuously dis-

regarded the summons to attend, on the plausible ground that there had been a vote of no-confidence against the trustees of whom he is one.

5 Looking at the conduct of the appellant, I have come to the conclusion that it was a grave dereliction of his duty, thus contravening the provisions of the trust deed, of which he was aware, and that it resulted in the humiliation of the family of the deceased, who, as Muslims and coming within the class provided for in the trust deed, were entitled to have the funeral rites—the last rites of
10 the deceased—conducted in that mosque.

The principles of natural justice were not violated by the trustees and the general assembly, and it seems to me that everything required to be done was done in order to give the appellant a just and fair hearing. He refused to be present and decided to
15 treat them with contumely.

I find no ambiguity in the charge “negligent of duty,” and it seems to me that so concerned was the donor that priests of the Jami-ul-Atig Mosque should conduct themselves with rectitude and strict devotion to duty, that the slightest act of dereliction would
20 render them liable to suspension and, in a more serious case, as this one seems to be, to discharge from office.

In the circumstances I find that the trustees and general assembly acted within the terms of the trust deed and that the conduct of the appellant amounted to neglect of duty, which was further
25 exacerbated by his wilful refusal to be present at the hearing and to offer any explanation in answer to the charge. I would therefore dismiss the appeal.

Appeal dismissed.

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