

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON FRIDAY 23RD OCTOBER, 2015
BEFORE THE HONOURABLE JUSTICE A.O. FAJI
JUDGE

SUIT NO: FHC/IL/CS/6/2007

BETWEEN:

1. PROF. M.O. OYAWOYE
2. ALHAJI WAHAB AKEWUSOLA
3. BARRISTER BABATUNDE FATAI LAWAL
4. ALH. AKEWUSOLA NASIRU
5. ALH. SEFIU ADEGBOYEGA OLADIPO
6. DR. KAMALDEEN AL-MUBARAK ALI
7. PRINCE ABDULGANIYY OLUKITIBI OYAWOYE
8. REGISTERED TRUSTEES OF OFFA GRAN
MOSQUE & ISLAMIC CENTRE.

PLAINTIFFS

AND

1. ALHAJI HAMZAT OLAOTI IJAIYA
2. ALHAJI RASAQ OYEWU
3. ALHAJI BISIRIYU OMOABASI
4. ALHAJI S.A. OYELEKE

DEFENDANTS

JUDGMENT

The Writ of Summons was filed on 16th March 2007.
By the further amended statement of claim filed on 23rd
May 2014, the Plaintiffs claim:

1. A declaration that by virtue of the provisions of the constitution of Offa Grand Mosque and the certificate of registration of the Corporate Affairs commission dated 9th March, 2012 the Plaintiffs are the registered Trustees of Offa Grand Mosque and Islamic centre.
2. A declaration that the Plaintiffs as the Registered Trustees of the Offa Grand Mosque and Islamic Centre are the only competent person acting as a body to set up a management Committee for the said Offa Grand Mosque and Islamic centre to the exclusion of any other persons, especially the Defendants.
3. A declaration that under the provision of the constitution of Offa Grand Mosque and Islamic centre and the Law, the 1st Defendant has no constitutional power whatsoever to dissolve the management committee of Offa Grand Mosque and Islamic centre put in place by the Registered Trustees

and any purposed dissolution of the committee is null and void.

4. A declaration that there is only one legally known and centrally controlled Mosque which is known as Offa Grand Mosque and Islamic Centre in Offa.
5. An order of perpetual injunction restraining the Defendants, either by themselves, their agents, servants, privies or whosoever may be claiming through or under them from parading themselves as members of the management committee of Offa Grand Mosque or any other Mosque or Islamic centre forming part of the Offa Grand Mosque.
6. An order of perpetual injunction restraining the Defendants either by themselves or whosoever may be claiming through or under them from disturbing the Plaintiffs or persons or authorities acting for or through them from carrying out their responsibility concerning the discharge of their function as

contained in the constitution of the Mosque and under the law.

7. An order of this Honourable Court Compelling the 1st – 7th Defendants to render account in respect of all incomes collected by them in the name of Offa Grand Mosque since the time of their purported appointment in 2002 on thereabout by the 1st Defendant.
8. An order for payment by the Defendants to the treasurer of Offa Grand Mosque of any sum found due from the Defendants upon taking such accounts.
9. An order of perpetual injunction to restrain the Defendants, their servants, agents or privies and supporters from running a parallel management committee of whatever name called on Offa Grand Mosque management Committee of which the 1st Plaintiff is chairman.
10. Any further reliefs to which the Plaintiffs may be found entitled.

The operational statement of defence is the further amended statement of Defence filed 10th June, 2014.

The Defendants' Contention is that:

1. There is only one Offa Central Mosque in Offa.
2. The Offa Central Mosque was built and owned by the entire Offa Community.
3. That the Olofa is the custodian of the Offa central Mosque and the head of the Muslim Community in Offa.
4. That the Olofa appoints the management committee to run the Mosque.
5. That the Offa Central Mosque has never been registered as an incorporated trustees as to be placed under the control of the Plaintiffs.
6. That there was never a time Offa community changed the name of Offa Central Mosque to Offa Grand Mosque and Islamic Centre.

7. That the Offa Central Mosque has been in existence for over 50 years long before the alleged existence of the Plaintiffs.

There is some contention about the processes filed sequel to the statement of defence. Defendants objected to the consequential amended replies to the statement of defence filed after the Amended Statement of Claim of 4th July 2007 and that same be struck out for being based on an incompetent process which was not signed by a competent person.

Plaintiffs' reaction is that the further consequential amended replies filed on 14th November 2013 and 20th June 2014 were signed by a competent person to wit: I.O. ATOFARATI Esq. whose name and signature appear on both processes.

On the face of the two written addresses it is not clear whether the process being objected to is the Reply to Statement of Defence filed on 4th July 2007 or the consequential amendments thereto. Furthermore, the

details of the incompetence were not stated. It was in oral address on 25th June 2015 that Defendants' Counsel made it clear that the reference was to the reply of 4th July, 2007. Even then, the nature of the incompetence or the incompetence of the person who signed was not specified. The Court is not to make a case for a party. Not having specified what is wrong about the Reply to Statement of Defence filed on 4th July, 2007 therefore, the objection is without merit, vague and unsustainable. In any event that incompetence to my mind ought to have been raised at the point the consequential replies of 14th November 2013 and 20th June 2014 were filed. Not having been so raised, I think it is too late in the day to raise it at this point. The objection is therefore hereby overruled.

In the course of hearing, Defendants' Counsel indicated his objection to admissibility of exhibits H and I and raised same in his written address on the grounds that:

- They were not pleaded or frontloaded

- They are not relevant and thus not admissible

Exhibit I was also not tendered through its maker and has no connection with DW 2. Plaintiff's response is that exhibit I is part of the Court's record having been filed in this case. The Court can look at it in deciding the case one way or the other even if not tendered or admitted. Tendering it was for ease of reference.

Plaintiff's did not respond to the objection to exhibit H. The objection is thus conceded and consequently upheld. Exhibit H is accordingly hereby expunged from the Courts' records. As for Exhibit I, even if the Court is to look at a document in its record for purposes of deciding a case one way or the other, that document must pass the test of admissibility which is relevancy. It is not every document on record that can be useful in all aspects of a case. It may be that the Court cannot close its eyes to documents in its file but it can only rely on those documents if they are relevant to the issue at hand. That has not been shown by Plaintiffs' Counsel as regards

Exhibit I which is also hereby expunged from the Court's records.

The exhibits before the Court are therefore **Exhibits A-C** tendered by PW1, and **D-G** tendered by PW2. PW1 was subpoenaed to tender documents. DW2 was subpoenaed to testify.

Trial commenced on 26th November 2013 and closed on 11th March 2015.

PW1 was Aminu Ibrahim, a member of staff of Corporate Affairs Commission who was subpoenaed to tender a document pursuant to **Exhibit A** – a subpoena duces tecum issued on 30th April 2013.

PW2 was the 1st Plaintiff – Professor M.O. Oyawoye. PW2 adopted his witness statements on oath of 25th June 2009 and 14th November 2013. PW2 was cross-examined by Defendants' Counsel. Plaintiffs closed their case.

DW1 was Alhaji Bisiriyu Omo-Abasi who adopted two statements on oath made on 1st December 2011 and

10th June 2014 respectively. DW1 was cross-examined by Plaintiffs' Counsel.

DW2 was subpoenaed. He is Hon. Justice Banji Orilonise – a Retired Judge of the High Court of Kwara State. DW2 adopted his written statement on oath made on 18th February 2015. DW2 was cross-examined by Plaintiffs' Counsel and the Defence case was closed.

Written addresses were adopted in open Court on 25th June 2015.

Defendants' position is that they are members of Offa Central Mosque Management Committee and that the Mosque is neither under any Registered Trustees nor under the control of the Plaintiffs. The Plaintiffs do not deny that the Offa Central Mosque has been maintained by the Community since it came into existence in 1948 and has been rebuilt several times through the efforts of the Community. Counsel relied on **Exhibit D.** There is agreement that the Central Mosque was in existence before Plaintiffs as Incorporated Trustees. Plaintiffs

should thus show that the Community transferred the Mosque to them. The Plaintiffs are to show how the Community authorized them to incorporate the Trustees in accordance with Section 590 of the Companies and Allied Matters Act. Exhibit A does not therefore automatically entitle the persons listed therein to register themselves as Incorporated Trustees as they must have been authorized at a meeting in compliance with Section 591 of Companies and Allied Matters Act. The Certificate is thus only prima facie evidence of these facts.

The evidence is that the Offa Central Mosque owned by the entire Community was not given to the Plaintiffs and they were not authorized to incorporate it. It is for Plaintiff to show such authority. PW2 admitted that the Offa Central Mosque predates the Trustees as far back as 1948 but did not show how Plaintiffs acquired control of the Mosque except by mere incorporation as Trustees. Issues having been joined as to the incorporation of Offa

Grand Mosque and Islamic Centre it is for Plaintiffs to lead evidence and in the absence of such evidence the issue must be resolved against Plaintiffs. The Plaintiff not having been authorized to incorporate the Mosque, such incorporation is null and void and vests no power or control of Management of Offa Central Mosque or Grand Mosque on the Plaintiffs.

The Plaintiffs have also not proved a legitimate interest and authority to demand for an account. Defendants have shown that the Mosque does not belong to the Plaintiffs but to the Offa Muslim Community who appointed Defendants into the Management Committee of the Offa Central Mosque through the head of the Community which has been the customary owner of and in possession of the Mosque for over 50 years. Counsel relied on ADEAGBO ODE-&-YESUFU OMOTOSHO & ORS-V-THE REGISTERED TRUSTEES OF THE DIOCESE OF IBADAN (1966) ALL NLR 285 @ 290.

The Plaintiffs have not shown that the Defendants are

either their agents or Trustees in a fiduciary position. The Plaintiffs do not even qualify as principals in relation to the Mosque. Since Plaintiffs have not shown a legitimate interest they cannot hold Defendants as being in a fiduciary relationship. The Defendants are not shown to be trespassers because they were put in charge of the Management of the Mosque by the customary owners of the Mosque – the Community. Unless Plaintiffs can show a better title that they are authorized by the Community, the claim for accounts must also fail.

Counsel urged the Court to dismiss Plaintiffs' claims.

It is Plaintiffs' position that 8th Plaintiff was incorporated on 8th September 2003. The Plaintiffs are its current Trustees. Counsel relied on witness testimonies and **Exhibits B,C and H** which show that the body, Offa Grand Mosque was so incorporated and registered. The Defendant who had been removed as a Trustee constituted themselves into a management committee and

were soliciting for and collecting funds for the Mosque, in contravention of its constitution – Exhibit B.

The Defendant's position is that the Offa Grand Mosque (8th Plaintiff) is different from Offa Central Mosque which the Defendants are managing. Exhibit D-F however describe Offa central Mosque as Offa Grand Mosque. It is agreed that Offa Central Mosque is in several phases and that exhibits D and E are programmes for commission of these phases. Offa Central Mosque was also described and indeed called Offa Grand Mosque during the opening and commissioning of the two phases of the Mosque. Counsel thus submitted that Offa Central Mosque and Offa Grand Mosque are one and the same.

DW2 also admitted that he did not have full knowledge of the facts of the case.

Exhibit G does not also show any distinction between Offa Central and Offa Grand Mosque because:

- It was written by 1st Defendant a pioneer trustee who took active part in the incorporation of the Grand Mosque.
- The heading of exhibit G shows it has to do with objection to 4 new trustees for the Grand Mosque and not as regards its incorporation.
- The distinction in paragraph 2 of exhibit G does not avail much since the document itself would not have been written if there was a difference between the Central and the Grand Mosque.
- The Defendants can not take benefit of the distinction since parties have behaved in a manner indicating that the central and grand mosque are one and the same.

Dw2 also testified that one of the proposals for settlement was that the trustees either be:

- (a) De-registered or (b) Re-constituted to include other persons.

Having been duly registered, the 8th Plaintiff has vested in it the powers and legal rights which can be exercised through its Trustees pursuant to section 596 of CAMA and must be governed according to its constitution which binds all members since it is a mandatory requirement for registration.

The Defendants appointed themselves as management committee without being so appointed by the Trustees, at the behest of 1st Defendant. The failure of Defendants to tender the documents pleaded in paragraph 7 of the amended statement of Defence imposes the presumption of withholding evidence pursuant to **Section 167 (d) of the Evidence Act**. The Defendants had no right to appoint themselves as management committee. That power belongs to Plaintiffs vide clause 9.4 of **Exhibit B**. The Defendants' committee is thus illegal and fraudulent.

Counsel urged the Court to grants reliefs 1-3.

By clause 9.4 of **Exhibit B**, it is the Trustees that can dissolve the management committee appointed by them. Offa Central Mosque being same as Offa Grand Mosque and the Grand Mosque having been registered, the legally known body is Offa Grand Mosque and Islamic Centre. Counsel therefore urged the Court to grant reliefs 4,-6 and 9.

Since Defendants have been soliciting for funds in 8th Plaintiffs' name they are legally bound to render an account. Counsel therefore urged the Court to grant reliefs 7 and 8.

On Defendants' arguments, Counsel submitted that Plaintiffs are not contending that they own the Mosque but that the Mosque having been registered the control and affairs of the Mosque vest in Plaintiffs' hands. **Exhibit D** also shows that the Central and Grand Mosques are one and the same.

That the Mosque pre-existed the Plaintiffs and they were not authorised to incorporate it shows that the Offa

Grand Mosque is one and the same as the Offa Central Mosque. The registration of the Mosque is also not in issue in this case. Section 590 CAMA was therefore cited out of context. The Defendants do not also have a Counter-Claim.

As regards reference to Section 591 CAMA to the extent that it provides that a certificate of incorporation is prime facie evidence of fulfillment of requirements for registration fortifies Plaintiffs' case. It is for Defendants to say there was no authority to incorporate the Mosque. That cannot be done in the absence of a Counter-Claim. 1st Defendant having been involved in the registration cannot also at this stage make that contention.

On the contention that having been appointed by the community, Defendants cannot render account to Plaintiff, Counsel submitted that by virtue of exhibit C, Plaintiffs are the Trustees with custody of the funds of the Mosque.

The Court was urged to decide this religious matter without passion but in accordance with justice and the law. Counsel relied on: SHODEINDE -V- REGISTERED TRUSTEES OF AHMADIYYA MOVEMENT – IN – ISLAM (1980) ALL NLR 64 AT 323.

Those were the submissions of Counsel.

I have already, in the course of this Judgment, disposed of the objections raised by the defendants. Material to the determination of the issues raised in this case are exhibits B-G.

Central to this case is relief 4 which seeks:

A declaration that there is only one legally known and centrally controlled Mosque which is known as Offa Grand Mosque and Islamic Centre in Offa.

PW2 in his testimony stated that Exhibit E was aborted because the clerics were of the view that it could attract ‘unclean funds’ to wit: Funds not suitable for

Islamic purposes as in building of a holy place such as a Mosque. Exhibits D and F were tendered by PW2. He can therefore not resile from them. From them one gathers that from 1900 Islam spread into Offa and its surroundings with some rapidity. Present day Offa has a population that is over 85% Muslims. Various families regarded as the pillars of Islam in Offa were enumerated. The existing Mosque was built in 1948. The Olofa of Offa that is His Royal Highness Alhaji Mustapha Olawore Olanipekun Ariwajoye II gave Islam a major boost in Offa and its environs. By 1985, the existing Mosque was inadequate and there was need to build a Grand Mosque for Jumat prayers. The various architectural components of the new Mosque are stated at page 7 of Exhibit D. As at the date of exhibit D – Friday 5th February, 1993-there was a Board of Trustees made up of children of those who took the initiative in building the old Mosque. Page 23 of Exhibit D shows how the old Mosque was to be

architecturally preserved and made the centre-piece of the new Mosque. Its unique architecture (of the old Mosque) was to be preserved and its main dome was to be located between the two domes and four minarets of the South and North wing extensions.

The Grand Mosque was incorporated on 8th September 2005 and Plaintiff PW2 and 2 others (1st Defendant inclusive) were its Registered Trustees until a special resolution was passed making Plaintiffs the Registered Trustees (to the exclusion of the Defendants).

The name of the old Mosque can be gleaned from paragraphs 10-12 of the witness statement of PW2 of 25th June 2009. The Grand Mosque was to be inclusive of the Central Mosque. The name of the old Mosque is therefore from PW2's testimony, Offa Central Mosque.

However in his further statement of 14/11/13, PW2 now stated that the Grand Mosque was incorporated on 28th January 1999 with the involvement of 1st Defendant. The Further Amended Statement of Claim however states

that the Registered Trustees were incorporated vide a certificate of incorporation dated 8th September 2005. Though front loaded, that certificate was not tendered by PW2 probably because after filing this action additional Trustees were appointed hence the certificate of 9th March 2012 – Exhibit C – which is the current certificate. Exhibit C however recited an earlier certificate of 28th January 1999. It therefore seems to me that the trustees of the Grand Mosque were incorporated on 28/1/99. I am also of the view that Exhibit G was in reaction to an objection to additional Trustees subsequent to the certificate of 28/1/99. Exhibit G is dated 2/6/2005. Even though an objection to additional trustees, I think Exhibit G is clear on certain issues as regards whether or not the Central and the Grand Mosque are one and the same at least as far as the Corporate Affairs Commission (CAC) is concerned.

Paragraphs 2 and 3 are clear and to the effect that to the CAC the Central Mosque is different from the Grand

Mosque and there is no nexus between the two. That being so, the objectors had shown no interest that will be affected by the appointment of additional trustees for the Grand Mosque.

It has been contended that in a way 1st Defendant was involved in the incorporation of the Registered Trustees of the Grand Mosque and that he in fact chose the person who carried out the corporation. That with respect is a faulty premise. The case of the Defendants has always been that the Central Mosque is owned by the community. I do not therefore see how the conduct of one person could negative the interest of an entire community.

PW2 did not also seriously or in any manner debunk the contention that the 1948 Mosque was built by the community with the then Olofa championing the propagation of Islam in the area as shown in Exhibit D.

Even though Exhibit F was 'aborted', PW2 did not deny that it was made. Exhibit F at page 1 refers to the old Mosque. At page 2 it refers to the first Central

(Jumat) Mosque. It was therefore decided to build a new Mosque but to preserve the old Mosque. Page 3 refers to 2 new wings on both sides of the old Mosque. This tallies with **Exhibit D**. At page 4, Exhibit F states that the invitation to donate was from the Offa Muslim community. This shows that as stated by Dw2 Mosques are built by communities except for those built by groups like NASFAT and ANSAR UD DEEN.

Indeed **Exhibit B** in its preamble shows that there was at all material times, a pre-existing Mosque known as Offa Central Mosque. In clause 2.1, it states that the Offa Central Mosque together with associated Islamic Cultural centre and the praying ground shall be known as Offa Grand Mosque.

I therefore find that at all material times there was a central Mosque owned by the Offa Muslim community.

By paragraph 2 of the Further Amended Statement of Claim, Plaintiffs aver that on 28/1/99 1st Defendant, 1st Plaintiff (PW2) and late Alhaji Sanni Aba Balogun were

the registered trustees of the Grand Mosque. How they were appointed and in respect of which physical building is not stated. Indeed the resolution for the reconstitution of the Registered Trustees though pleaded was not tendered. I hold that the presumption in Section 167 (d of the Evidence Act) applies and that the document, if produced will be against Plaintiffs' position.

Paragraph 12 of PW2's statement of 25/6/2009 refers to the fund raising for the Offa Central Mosque. Exhibits D-F therefore even though they are captioned in relation to the Grand Mosque were for the purpose of raising funds for the Central Mosque. Even though it was then described as the Grand Mosque. How the change of name was affected was not stated and by who it was so known is not specified.

I also find the answers of PW2 under cross-examination a bit evasive. When asked if exhibit D at page 5-7 did not mean a representation that the central

Mosque belongs to the Offa Muslim community, PW2 said a Mosque belongs to Allah.

I think that it is a notorious fact that Allah (or God) is not a physical human being and can only own things ascribed to him by people. I think PW2's answer is a tacit admission that the central Mosque built by the Offa Community in 1948 is owned by Offa Muslim Community.

I am also satisfied that what was being renovated and improved upon vide Exhibits D-F was the Central Mosque built in 1948. Indeed, the aim of the architectural design was to preserve the unique and beautiful architecture of the Central Mosque. Exhibits D-F was for the improvement of the Central Mosque and they are all clear on this. They are all Plaintiffs' documents and Plaintiffs must sink or swim with them.

I think that the reference to 'Grand Mosque' in relief 4 is fictional- a legal fiction. What Plaintiffs registered was a fictional legal entity called the Offa Grand Mosque

and not the physical structure known as the Offa Central Mosque.

Indeed, PW2 admitted under cross-examination that the Mosque was built by people who are committed to Allah. He could not however state frontally how authority was passed unto him or the registered trustees by the group of people who built the old Offa Central Mosque. He could not even mention one name out of the said people.

I therefore agree with the Defendants' position that even though Plaintiffs registered the Grand Mosque, that Mosque is not the same as the Central Mosque but a legal fiction having no nexus with the Central Mosque.

Plaintiffs have contended that Defendants cannot affect the registration of the Grand Mosque without a counter – claim. My understanding of the Defendants' case is that even though Plaintiffs may have registered a 'Grand Mosque' that Mosque is not the same as the 'Central Mosque'. The registration thus has nothing to do

with the Central Mosque. The physical building is the Central Mosque. How the Plaintiffs changed its name to Grand Mosque has not been shown. I do not also think that registration 'simpliciter' is what is in issue. I think what is in issue is the physical entity that was registered. The Plaintiffs did not register any physical entity and even if they did, it is not the physical entity called the 'Central Mosque'. I think Plaintiffs are being too legalistic in their approach with the aim of pulling wool over every one's eyes by resorting to legal fiction.

I will therefore and hereby hold that the only legally known and centrally controlled mosque in Offa is the Offa Central Mosque.

The other reliefs as it were, cascade. Reliefs 1-3 which are declaratory in nature refer to a legal fiction known as the Grand Mosque. They have nothing to do with the Central Mosque. Defendants have consistently maintained that they have nothing to do with the Grand Mosque. They are lawfully in control of the Central

Mosque and Plaintiffs' reliefs have nothing to do with the Central Mosque. To my mind, it will be futile to grant the reliefs claimed as they have no utility value. Reliefs 1-3 which are declaratory in nature are therefore hereby dismissed.

Reliefs 5-9 are parasitic on reliefs 1-4 and must be and are hereby dismissed.

I hereby reiterate my finding that the only legally known and centrally controlled Mosque in Offa is the Offa Central Mosque.

The Plaintiffs' claims fail in toto and are hereby accordingly dismissed.


A.O. Faji
Judge
23/10/2015

Counsel:

**I.O. Atofarati Esq. with
N.N. Adegboye Esq. and A.A. Ahmed Esq.,
for the Plaintiffs.**

**Dr. K.I. Adam with Mrs. Iwalola Bello and I
Daibu Esq. for the Defendants.**