

IN THE HIGH COURT OF LESOTHO

In the Matter of :

AFRICAN METHODIST EPISCOPAL
CHURCH Plaintiff

and

LAWRENCE MATIME 1st Defendant
S.R. JAAS 2nd Defendant
NTOBAKI RAPOKISA 3rd Defendant
THE BOARD OF GOVERNORS OF
SERUTLE SECONDARY SCHOOL 4th Defendant

J J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 23rd day of January, 1989.

Plaintiff herein has filed with the Registrar of the High Court summons commencing an action in which she claims, against the defendants an order framed in the following terms :

- " (a) Directing defendants to return the buildings and site of the Serutle Secondary School to Plaintiff.
- (b) Directing defendants to hand over the Serutle Secondary School to Plaintiff.
- (c) Restraining the defendants from running Serutle Secondary School.
- (d) Directing defendants to pay costs of suit."

2/ In her /....

In her declaration to the summons Plaintiff alleges, inter alia, that she is a universitas personarum and authorised by the Ministry of Education to run schools in the country. She is the rightful owner of Serutle Secondary School which has been duly registered as her school by the Ministry of Education under the official Number 25 1001. However, in February, 1982 the 1st defendant, who is the Headmaster of Serutle Secondary school, assisted by the 2nd defendant, seized control of the school and turned it into a community school. Since 1985 the defendants have been unlawfully running Serutle secondary school in terms of a document purporting to be a constitution for the school. Despite demands defendants refuse/neglect to return the school to Plaintiff. Wherefor Plaintiff prays for an order as aforementioned.

1st, 2nd and 4th defendants have filed notice of intention to defend this action. The 3rd defendant has, however, not intimated his intention to defend the action. It may be assumed, therefore, that he is prepared to abide by whatever decision this court will arrive at.

In their plea, the 1st, 2nd and 4th defendants contend that ever since its inception Serutle secondary school has always been a community and not a church school. They deny, therefore, Plaintiff's allegation that she is the lawful owner thereof.

3/ In an attempt ...

In an attempt to curtail the duration of the trial the parties have filed minutes of a pre-trial conference (dated 10th February, 1988) setting out the points of agreement and disagreement. In terms of paragraph 3 of the minutes of pre-trial conference, it is agreed that for the decision in this matter the court has to determine only two issues viz. (a) whether the Serutle secondary school is an African Methodist Church school or a Community school (b) whether the site of the Serutle Secondary school and the buildings thereon belong to African Methodist Church School or Community School.

In my view the real decisive point in this case is (a) above i.e. is Serutle secondary school the plaintiff church's school or a community school. The contention of the plaintiff church is that the school belongs to her whilst the defendants claim it to be a community school.

In support of her contention, the plaintiff church called P.W.2, Rev. Daniel Rafube, who told the court that he was the secretary of the conference of the plaintiff church and had signed the resolution authorising the institution of the proceedings against the defendants.

The evidence of P.W.3, Leonard Gqoli, was that, at all material time, Plaintiff church owned a school commonly known as Serutle primary school situated in the area of Serutle in the district of Buthe-Buthe.

He (P.W.3) was the principal of the school in 1978, when some of his pupils who had passed the Std 7 examination in the third class grade were unable to obtain admission in any of the secondary schools in the country and were, therefore, stranded for schooling. He brought the problem to the attention of the Serutle primary school manager, one Rev. Vaas, who together with his school committee, decided to open a secondary school for the stranded pupils.

On 19th January, 1979, Rev. Vaas who has since passed away, and the Serutle primary school committee of which the Reverend and P.W.3 were the chairman and the secretary, respectively, held a meeting with the parents of the stranded pupils. The parents were prepared to pay M50 per child per annum towards the funding of the proposed secondary school at Serutle.

On the authorisation of the late Rev. Vaas, the manager, the committee of Serutle primary school used its existing funds to purchase the necessary equipment for the secondary school which was to be known as "Serutle Secondary School". Again, on the authority of Rev. Vaas, P.W.3 recruited 1st defendant to teach a Form A Class for the stranded pupils from Serutle primary school together with pupils, from other primary schools, who were equally stranded for schooling.

5 / When, at the

When, at the beginning of February, 1979 Serutle secondary school commenced its work, there were no sufficient class rooms at Serutle primary school and the Std 1 pupils were being accommodated at a nearby building belonging to the Apostolic church. In order to make available class room facilities for the new Serutle secondary school, P.W.3 had to move the Std 1 class out of that building which was, admittedly, used as a class room by the first Form A students of Serutle secondary school.

When it started operating in February, 1979, Serutle secondary school did so without the approval of the Ministry of Education and it was being managed by the late Rev. Vaas, of the Plaintiff church, through his Serutle primary school committee. However, at the beginning of June, 1979 the Ministry of Education was approached with an application for its formal registration as a secondary school. Rev. Vaas was subsequently invited to appear before the District Advisory Committee on Education meeting which was held on 8th June, 1979. He together with four (4) other people amongst whom was P.W. 3 himself did attend the meeting at which a recommendation was passed for the Serutle secondary school to be formally registered.

1st defendant testified on oath and gave a slightly different version as to how Serutle secondary school was founded. According to him, prior to February 1979 he had a discussion with a certain Mr. Khasane. As a

6 / result

result of that discussion he attended a meeting at Serutle village. At that meeting a decision was taken by the community to open Serutle secondary school with effect from 2nd February, 1979. He was appointed the headmaster of that school by the steering committee consisting of Motebang Mhaseane (Chairman), Pule Pule (Treasurer) P.W.3 (Secretary) Manamolela Senatle (Member) and Joseph Ndlapo (member). He contended that Serutle secondary school was founded as a community school and denied, therefore, the evidence for the Plaintiff church that it was founded as a church school:

It is, however, significant to note that, apart from P.W.3, none of the members of the so-called steering committee were called as witnesses to support the 1st defendant in his story that the decision to open Serutle Secondary school was taken by the community at a meeting held at Serutle village where he was appointed the headmaster of the school. There was, therefore, only the word of the 1st defendant against that of P.W.3 as to how it was decided to open the school.

However, as has been stated earlier, P.W.3 told the court that after the school had been opened and was operating without the approval of the Ministry of Education, the Ministry was approached with a request to have it formally registered. Consequently Rev. Vaas was, by invitation, called upon to attend a meeting of the District Advisory Committee on Education. He, together with four (4) other people, including P.W.3 himself,

7/ attended the

attended the meeting of which a cyclostiled copy of the minutes was handed in as exhibit "B".

It will be observed that according to exhibit "B", which is an official document emanating from the office of the District Advisory Committee on Education Rev. Vaas, P.W.3 and the other three (3) people who accompanied them were all representatives of the plaintiff church and not the community. Indeed, according to paragraph M7 at page 2 of exhibit "B", a recommendation was passed for the approval of Serutle Secondary School belonging to Serutle Parish of the plaintiff church.

In my view,, if it were true, as the defendants wants this court to believe, that at its inception Serutle Secondary School was a community and not the plaintiff church school the representatives of the community and not the plaintiff church would have been invited to attend the meeting of the District Advisory Committee on Education. Furthermore, a recommendation would have been made for the approval of the school as a community school and not a school belonging to the Serutle Parish of the plaintiff church.

For his contention that Serutle Secondary School is a community school 1st defendant has also relied on exhibit "D", a draft constitution for the school. It is not really disputed that 1st defendant himself drafted this document which is full of erasures.

B/ According

According to him, 1st defendant made the erasures on the authority of the community at its meeting held on 11th August, 1979 when the draft constitution was discussed and adopted. It is, however, significant to note that both P.W.3 and D.W.4, Agnes Liutlulleng, two of the people who are supposed to have adopted the draft constitution by attaching their signatures thereto know nothing about the erasures the effect of which is to substitute the community or Board of Governors for the plaintiff church as the proprietor of the Serutle Secondary School.

There is not the slightest doubt, in my view, that when it was adopted on 11th August, 1979 exhibit "D" showed the Plaintiff church and not the community as the owner of Serutle Secondary School. It was only after 2nd October, 1981 that 1st defendant surreptitiously made the erasures and substituted the Plaintiff church by the community or Board of Governors. I am fortified in this view by the fact that on the day in question, 2nd October, 1981, 1st Defendant himself addressed exhibit "H" to Rev. Vaas as the manager of Serutle Secondary School and clearly pointed out that the school belonged to the plaintiff church. Thus for example, paragraph 1 of exhibit "H" reads, in part:

"1. Section 7(1) Education Order No.32 of 1971 lays down imperatively that the appointment of a Board of Governors shall be executed by the proprietor, in the case of this school the A.M.E. Church."

One other point on which 1st defendant relied for the allegation that Serutle Secondary School belonged to the community and not the plaintiff church is that exhibit "E", official notification for the school to operate, was on 5th August, 1982 addressed to him as Headmaster of the school and not to the plaintiff church or a representative thereof, by the ministry of Education.

It is to be observed, however, that according to exhibit "E" itself, the official number under which the school is registered with the Ministry of Education is admittedly 25 1001. Charles Moeketai Bohloko testified as P.W.1 in this trial and told the court that he was the Chief Education officer in the Ministry of Education. He assured the court that according to the records under his control in the Ministry, Serutle Secondary School had, since 26th January, 1982, been officially approved and authorised to operate as a school belonging to the Plaintiff church and not the community. Its serial number was 25 1001 which referred only to schools belonging to the plaintiff church and certainly not the community.

By and large, I am satisfied that, on a balance of probabilities, there is ample evidence indicating that Serutle Secondary School is a school belonging to the plaintiff church and not the community. It is perhaps worth mentioning that the rest of the evidence refers to the fact that the site on which Serutle Secondary School is currently operating is lawfully allocated

10/ to the school

allocated to the school and the buildings thereon are likewise the property of the school. Having decided that the school belongs to the Plaintiff church I consider it unnecessary to go over such evidence. Suffice it to say if the school belongs to the Plaintiff church it stands to reason that the site and the building thereon belong to the school of the Plaintiff church and not the community.

In the circumstances, I have no alternative but to come to the conclusion that Plaintiff's claim ought to succeed and it is accordingly ordered.


B.K. MOLEAI

JUDGE

23rd January, 1989.

For Applicant : Mr. Maqutu
For Respondent : Dr. Tsotsi.