

IN THE SUPREME COURT OF WESTERN SAMOAHELD AT APIA

BETWEEN: LEAULA TAVITA AMOSA of
Ululoloa and Afega, School
Teacher:

PLAINTIFF

A N D: THE BOARD OF TRUSTEES OF THE
CONGREGATIONAL CHRISTIAN CHURCH
IN SAMOA (INC), a duly incor-
porated Charitable Trust
pursuant to the Charitable
Trusts Act 1965 sued for and
on behalf of the Education
Committee of the Congregational
Christian Church in Samoa:

FIRST DEFENDANT

A N D: AFA A. LEULUAI previously of
Leauvaa but present whereabouts
unknown:

SECOND DEFENDANT

COUNSEL: Mr R.S. Toailoa for Plaintiff
Mr L.S. Kamu for First and Second Defendants

DATES OF HEARING: 17, 18, 20, 24 August 1993

DATE OF JUDGMENT: 3 February 1994

JUDGMENT OF SAPOLU, CJ

This is an action by the plaintiff claiming damages against the first and second defendants for wrongful dismissal and defamation. In the course of the hearing the action against the second defendant was discontinued. So the Court is not required to make a decision on that action. That leaves only the action against the first defendant.

Initially, the first defendant was cited in the statement of claim as the education committee of the Congregational Christian Church in Samoa. For convenience the Congregational Christian Church in Samoa is hereinafter referred to as "the Church". In the amended statement of claim subsequently filed by the plaintiff, the first defendant is changed to the board of trustees of the Church incorporated pursuant to the Charitable Trusts Act 1965 and sued on behalf of the education committee of the Church. In effect then, the plaintiff's action is directed at the board of trustees of the Church as first defendant. In the statement of defence and subsequent amended statement of defence filed by the first defendant, it is denied that the education committee of the Church has locus standi before this Court. At the hearing, part of the evidence for the first defendant referred to the question of whether the board of trustees of the Church is the proper defendant in these proceedings.

After due consideration, I think that before the Court makes a decision on the merits of this case, it must first decide on the question whether the board of trustees of the Church is the proper defendant in these proceedings. If the Court finds that the board of trustees is the proper defendant to be sued in this case, then it will be necessary to proceed to a consideration of the merits of the case. But if the Court does not so find, then it will not be necessary to proceed further to a consideration of the merits of the case.

Evidence was adduced on behalf of the first defendant through the senior inspector of the incorporated societies section of the Justice Department that the board of trustees of the Church was incorporated under the Charitable Trusts Act 1965 on 12 July 1968. Evidence was also adduced for the first defendant by the deputy chairman of the Church that the board of trustees of the Court is in fact the "Komiti o Fanua ma Fale ma isi Mea Totino" of the Church as shown in the constitution of the Church approved by its general assembly in May 1990. Literally translated into English, the "Komiti o Fanua ma Fale ma isi Mea Totino" means the committee on lands and housing and other properties. However it

appears from the constitution of the Church that that committee is described in English as the board of trustees.

The constitution of the Church also shows that the "Komiti o Feau Eseeese" and the "Komiti o Aoga" which is the education committee, are two of the principal committees of the general assembly of the Church and they are separate committees. The board of trustees is shown as a sub-committee of the "Komiti o Feau Eseeese" and it does not come under or above the education committee. The evidence by the deputy chairman of the Church also states that the education committee is directly responsible to the general assembly of the Church. From a perusal of the constitution, I accept that is so. That is clear from at least pages 3 and 20 of the constitution. Page 3 of the constitution sets out an outline of the structure of the Church and the "Komiti o Feau Eseeese" and the education committee are shown as separate committees directly related to the general assembly. The board of trustees or the "Komiti o Fanua ma Fale ma isi Mea Totino" comes under the "Komiti o Feau Eseeese". Page 20 of the constitution then again sets out the principal committees of the general assembly which include the "Komiti o Feau Eseeese" and the education committee and makes provision for sub-committees of the principal committees. It is also provide in page 20 of the constitution that a sub-committee reports to its principal committee. That being so, the board of trustees being a sub-committee of the "Komiti o Feau Eseeese" as shown in pages 26 and 27 of the constitution reports to the "Komiti o Feau Eseeese" which is its principal committee and not to the education committee.

The evidence that was adduced at the hearing also shows that it is the education committee and not the board of trustees that employed the plaintiff as the principal of Leulumoega Fou College and later on requested his resignation from that position. The documentary evidence also shows that the administrative and employment authority for staff members in Church schools is the education committee and not the board of trustees. There is also no suggestion from the evidence that the education committee when it employed the plaintiff was acting

on behalf of the board of trustees so that it may arguably be said that the board of trustees is to be vicariously liable for the actions of the education committee. It also appears from page 27 of the constitution that the responsibility for the execution of documents relating to the transfer and sale or purchase of properties approved by the Church is vested in the board of trustees. There is no expressed responsibility given to the board of trustees under the constitution for education-related matters.

Turning now to the provisions of the Charitable Trusts Act 1965 under which the board of trustees is incorporated, I find no provision in that Act to support an argument that the board of trustees may be sued on behalf of the education committee for the actions alleged by the plaintiff. I have considered section 20 of the Act which relates to the form of contracts which may be made on behalf of the board of trustees and I am of the view that the contract of employment of a principal of a Church school is not a contract which may be made on behalf of the board of trustees in this case. In any event the contract of employment in this case was not entered into by the education committee on behalf of the board of trustees. I also find nothing else from the incorporation of the board of trustees or any powers that the board of trustees may have under the Charitable Trusts Act or the constitution of the Church to lead me to the conclusion that the board of trustees may be sued in this case on behalf of the education committee.

For those reasons, the Court has reached the conclusion that the board of trustees is the wrong defendant in these proceedings. The present action is therefore not maintainable in law against the first defendant as cited and is accordingly dismissed on the ground that the first defendant is the wrong defendant. In these circumstances, it will not be necessary to make a decision on the merits of the claim or other defences raised.

Costs are awarded to the first defendant which I fix at \$350. As the second defendant seeks no costs, no order for costs is made for the second defendant.

T F M Goffin
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CHIEF JUSTICE