

HIGH COURT. 1960. 8, 22, August; 19, September. MARSACK C.J.

Injunction - use of building for religious services - rights of parties thereto - rights of a dismissed pastor continuing performing services.

Before a writ of injunction will issue to restrain a defendant and his followers from using a building for religious services, it must be proved by the plaintiff applying for such a writ that it has exclusive right to the use and occupation of the building.

An injunction restraining a person from holding himself out as an authorised pastor will issue, where such a person has already been dismissed from his post.

APPLICATION for an injunction restraining defendant from continuing to conduct religious services in building allegedly owned by plaintiff.

Metcalf, for plaintiff.
Phillips, for defendant.

Cur. adv. vult.

MARSACK C.J.: This is an application for an injunction restraining the defendant Vaeau from continuing to conduct services in the building claimed to be owned by the Methodist Church at Faleasi'u. The application is opposed on the ground that the plaintiff has no right, title or interest in the church building; and that the defendant is conducting services at the express instance and request of the Methodist congregation of Faleasi'u who are the real owners of the church building.

Before the Court is in a position to decide whether or not an injunction lies it is necessary first to examine the evidence applicable to two main points:

- (a) The history of the church building and the rights of the contending parties over that building;
- (b) The status of Vaeau within the Methodist Church and the right of the ruling body of the Methodist Mission in Western Samoa to subject the defendant to its discipline.

I find that at the time when the erection of a Methodist Church, and pastor's house, in Faleasi'u was first contemplated, the Methodist congregation was united and all those who were then members of it contributed materially in money and in work to the building of the church. It is, I think, clear that the project was largely inspired by the Methodist pastor (Leoleo) at that time, by name Tevita. I accept the evidence of Apulu Tautai that the members of the Methodist congregation at that time who contributed in the greatest measure to the erection of the church and pastor's house were Apulu Vevesi, Sauvao Lemoa, Apulu Tasi, Apulu Iolama, Lautasi Suafo'a, Sauvao Tupuola, Mana'o Misitea, Mose. The successors of most of the persons named support the defendant. Although I find that these were the persons who contributed most materially to the erection of the church and pastor's house, yet I have no doubt that the whole of the Methodist congregation over the period involved in the building operations made contributions of some sort, in varying amounts. Construction work started in 1927 and went on at intervals until 1938 when the church was finally dedicated. The total cost somewhat exceeded £4,000 and the whole of this was found by the Methodist congregation of Faleasi'u. No contribution was made by Mission headquarters, or by any other institution connected with the Methodist Mission in Western Samoa.

In 1955 or 1956 substantial renovations to the church building were effected. These involved the expenditure of an amount somewhat in excess

of £500. Once again the money was subscribed by the Methodist congregation, which was still united, and no contribution was made by the headquarters of the Mission.

In 1960 a petition by Sauvao Fausia, the holder of the pule of the land upon which the church and the pastor's house were erected, was heard before the Land and Titles Court. On the 12th April 1960 a decision was given by that Court confirming the pule of Sauvao, and ordering that possession of the land concerned be given up to him with the exception of the land occupied by the church building. Sauvao stated that he did not wish to disturb the use of the church building by the Methodist congregation for religious purposes. As far as the pastor's fale was concerned this was, in accordance with the judgment of the Land and Titles Court, dismantled and removed before the commencement of the present proceedings. That Court expressly refrained from deciding as to what persons constituted the Methodist congregation entitled to make use of the church for religious services.

No steps were at any time taken to vest the church buildings, or the land upon which they are situate, in the Methodist Mission of western Samoa, or in the Methodist Mission Overseas Trust Association which is a company, incorporated in New South Wales, formed for the purpose of acquiring the legal ownership of lands and buildings the property of the Mission. It is perfectly clear from the judgment of the Land and Titles Court that the land upon which the church is built is Samoan customary land and is under the pule of the title Sauvao. The building itself is affixed to the soil and would, in accordance with the law of real property obtaining both in Great Britain and in New Zealand, be subject to the same proprietary rights as the land itself. In Samoa, however, the principle quid solo plantum est solo cedit does not invariably apply to lands held in accordance with Samoan customs; and that same custom will at times permit a person who has erected a building on another's land to retain the ownership of that building notwithstanding that it is affixed to the soil. The determination of such ownership is a matter for the interpretation of Samoan custom applying to the particular case.

By reason of the decision of the Land and Titles Court the right to occupy the church building is given to the Methodist Church congregation of Faleasi'u for the purpose of holding religious services. That Court has full and exclusive jurisdiction to deal with all disputes between Samoans affecting Samoan customary lands, but has no jurisdiction, and did not assume jurisdiction, to decide the question as to which body of persons was entitled to use the church building for religious purposes. Before proceeding to a consideration of that matter it is necessary to find the facts regarding the present split of the original Methodist congregation into two parts.

Defendant Vaeau was first appointed as Leoleo, which is one grade of Methodist pastor who is not an ordained Minister, to the village of Faleasi'u by resolution of the Methodist synod held at Faleula in November 1957. He was then over 80 years of age. He entered into occupation of the pastor's house built on the land of Sauvao and remained in occupation until the house was dismantled some time after the judgment of the Land and Titles Court in April 1960. Since the date of his appointment until the present time he has continued to conduct religious services in the church building concerned in these present proceedings.

At the Methodist synod held at Salelologa the following year, October-November 1958, Vaeau's name was entered on the Station Sheet followed by the word "malolo", indicating that he was retired. Vaeau was given no previous advice that there was a possibility of this action being taken. The Secretary of the synod, Tupu, said that the reason for his retirement was old age and indifferent health. His old age, according to Tupu's evidence, seemed to be the more serious factor. He was informed verbally of the decision after it had been made, but was not called upon to appear before the synod and was not told beforehand of any objections

made to his continuing in office.

It is perhaps significant that Vaeau, in common with other Methodist village pastors, received no salary or other emoluments from the headquarters of the Mission. He and his family were housed, fed, clothed and provided with money entirely by the Methodist congregation within the village. Head office of the Mission played no part whatever in furnishing the village pastor with a living.

Some time after the Methodist congregation heard of the decision of the synod they held a meeting and decided to send a deputation to the headquarters of the Mission asking that the services of Vaeau as Methodist pastor at Faleasi'u be retained. No dissentient voices were raised at this meeting, and the deputation was thus authorised to speak on behalf of the whole Methodist congregation. Some of the matais now supporting the plaintiff were members of this deputation, and one of them, Mailo Toloa, actually made the main speech. The evidence as to what took place when the deputation met the Reverend Allardice and Tupu at Faleula is very conflicting. On the whole I am inclined to accept that given by Apulu Tautai to the effect that Reverend Allardice said that the request of the deputation would receive consideration. I do not accept the evidence of Tupu, who was a somewhat confused and unsatisfactory witness, that the deputation returned again next day and were told that they would have to accept the decision of the synod. Up to this stage I am satisfied that the Methodist congregation as a whole supported Vaeau and were anxious that he should remain as their pastor in Faleasi'u.

Some time after the deputation returned Vaeau received a letter from the Methodist Mission headquarters to the effect that a truck would be sent to pick up and remove his belongings from the house he occupied as Leoleo. On receipt of this letter Vaeau went to Faleula and saw Mr Allardice who told him that his appointment to Faleasi'u was terminated. Vaeau stated that he would obey the instructions of the Mission, if the Methodist congregation agreed that he should go. The congregation - which was not then split into two factions - informed Vaeau that they wished him to stay on as their pastor. Vaeau then continued to occupy the house and to conduct services in the church.

At the synod held in August 1959 a resolution was passed that Vaeau be struck off the roll of pastors. It is rather extraordinary that no official notification was sent to Vaeau to the effect that he was no longer a pastor of the Methodist Church. The same synod appointed one Salele to be the new pastor. Salele arrived in the village of Faleasi'u, but did not call on Vaeau and did not approach him with regard to the use either of the pastor's house or of the church building. By this time a section of the Methodist congregation had decided no longer to support Vaeau but to attend services held in the house of Mailo Senituli who also has provided him with living quarters. From that time onward the original Methodist congregation of Faleasi'u is divided into two distinct sections, who throughout the proceedings were referred to as the followers of Vaeau and the followers of Salele. Nominal rolls of the two sections were produced to the Court by each side, and despite a few minor objections the roll produced by one side was not challenged by the other. On the roll put forward by the plaintiff there are 182 names, including small children. On the roll put forward by the defendant there are 277 names. I find that the Methodist congregation at Faleasi'u is now split into two well defined sections with approximately 40% supporting the plaintiff and 60% supporting the defendant.

In the course of his evidence Vaeau stated that the services he is still conducting in the church building are Methodist Church services held in accordance with the rites of the Methodist Church. He also stated in evidence that upon his appointment as a Methodist Leoleo he agreed to learn and obey the general laws of the Church and its by-laws. It is not contested that the yearly synod has power to make appointments to particular villages or that the general administration of the Mission in Western Samoa

is in the hands of the synod and Methodist headquarters in Faleula.

I know of nothing in the law which prohibits any person from holding religious services at any place in this country. If any assembly or congregation of people desires to hold a religious service and appoints one of their number to conduct it there is nothing to prevent his doing so. As Vaeau is no longer an authorised pastor of the Methodist Mission he is in that respect no longer subject to the discipline of the Mission. The congregation itself, or in any event what may be referred to as the dissident section of that congregation, is not subject to instructions from Mission headquarters as to when and how they may hold religious services. As I see it therefore there is no reason why Vaeau should not continue to carry out the wishes of the dissident section of the Methodist congregation at Faleasi'u with reference to their religious observances.

In doing so, however, he would not be entitled to hold himself out as being a Methodist pastor, or to give public notice that the services he holds are services held under the auspices of the Methodist Mission. He has been dismissed from his post as Methodist pastor and he is therefore no longer entitled to speak for the official Methodist Mission.

The most important question to be determined is that concerning the right of user of the church building for the purpose of holding religious services. I find as a fact that the whole cost of the erection of the church between 1926 and 1938, and of the repairs carried out in 1955 or 1956, was borne by the adherents to the Methodist Mission in Faleasi'u. No legal right, title, or interest in the building or in the land upon which it is erected was sought for or obtained by the Methodist Mission or the Methodist Trust Association. The evidence was singularly silent as to the precise details of the dedication ceremony in 1938. From what I have been able to gather from the evidence this dedication was purely a ceremony in accordance with the rites of the Methodist Church, consecrating the building as a church in which religious services in accordance with the principles of Christianity could properly be held. There is nothing in the evidence to justify the inference that by the consecration ceremony the pule was vested in the headquarters of the Mission to have thereafter the exclusive right to say how, when and by whom religious services should be conducted in the church building.

There remains for determination the difficult question as to what body of persons, if any, has the exclusive right to use the church building for religious purposes. The decision of the Land and Titles Court of the 12th April 1960 authoritatively determines the pule of the land upon which the church building is situate but does not determine the ownership of the building itself. It is clear that the erection of the church was a joint effort by a number of people of the village of Faleasi'u who at that time were adherents to the Methodist Mission of Western Samoa. I have no doubt that what was in contemplation was that these adherents would always remain ~~united~~ in the matter of their religious observances, and that the church building would be used substantially by the same persons and their families jointly in the future. There is no evidence that at any time the body of persons who built the church conceded to the headquarters of the Methodist Mission at Faleula, or to the synod, the right of exclusive control over the church building. I can find nothing in the evidence, nor do I think I can draw the inference, that there was an agreement express or implied that only those members of the congregation who continued to support the decisions of Methodist Mission headquarters would be entitled to the exclusive use of the church building. In my view, before the plaintiff can succeed in an application for an injunction restraining the defendant and his followers from using the building for church services the onus is on the plaintiff to prove that the official Methodist congregation has an exclusive right to the use of the building. The evidence falls short of establishing any such exclusive right.

The claim for an injunction restraining the defendant from carrying on services in the church building must accordingly fail. At the same time

I am of opinion that plaintiff is entitled to an injunction restraining Vaeau from holding himself out as a Methodist pastor, and from asserting that religious services held by him in the building are held under the auspices of the Methodist Mission in Western Samoa. If the plaintiff desires the issue of such a writ of injunction a draft should be submitted to the Court, and if necessary I will hear counsel as to the form of the injunction.

It should be made clear that this judgment is not a finding that the members of the original Methodist congregation now supporting the plaintiff have no rights with regard to the use of the church building. The refusal of the injunction sought by plaintiff is based on my finding that the evidence does not establish the exclusive right of the plaintiff to the use and occupation of the church building. It may well be that both sections of the original Methodist congregation at Faleasi'u have some rights of user; and in that event the rights of both sides could be recognised and protected by an amicable arrangement between the two sides for sharing the use of the building, some days being allotted to the section supporting the plaintiffs and some days to the section supporting the defendant. That, however, is a matter for the parties themselves and not for the Court to determine in these proceedings.

As each party has to some extent been successful there will be no order as to costs.