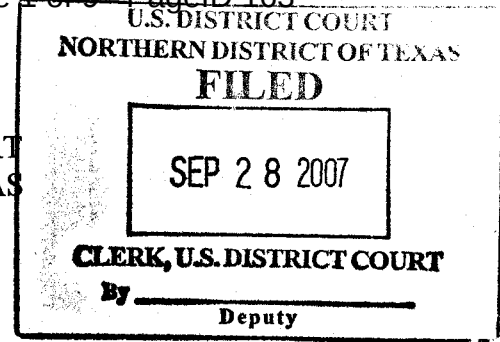


CT  
ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION



JOSE MERCED, PRESIDENT,  
TEMPLO YORUBA OMO  
ORISHA TEXAS INC.  
Plaintiff

§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 4-O6CV-891—A

V.

THE CITY OF EULESS  
Defendant

**AMENDED COMPLAINT**

**Jurisdiction**

1. This action is brought pursuant to 42 USC §1983, 42 USC §2000cc, and the First, Fifth and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§1331 and 1343(1), (2), (3), (4) and the aforementioned statutory and Constitutional provisions. Pendant claims arise under the *Texas Civil Practices and Remedies Code*, §110, also known as the Texas Religious Freedom Act.

**Parties**

2. Plaintiff Jose Merced is a citizen of the United States and a resident of the State of Texas. He is an ordained Oba in the Santeria religion and President, Templo Yoruba Omo Orisha Texas Inc. He resides in Tarrant County, Texas.

3. Defendant City of Euless is a municipal corporation of the State of Texas in Tarrant County.

**Cause of Action**

4. On or about May 4, 2006, at around 8:00 p.m., an officer of the Euless Police Department appeared at the home of Plaintiff Jose Merced and told him that the religious

ceremony scheduled for the following day should be called off until after Mr. Merced discussed it with city officials.

5. On June 21, 2006 Ventura Santana, a priest from Puerto Rico, met with Defendant's agent Kurt Kasson in the permit office in the City of Euless. Mr. Kasson referred Mr. Santana to Director of Planning and Development, Defendant's agent Mike Collins.

6. At all times relevant hereto and in all their actions described herein, the Defendant and its agents were acting under color of law and pursuant to their authority as police officers and city officials.

7. Mr. Collins told Mr. Santana that animal sacrifice by the Santeria congregation was illegal in Euless, that no permit would be issued, and that the religion could not conduct its ceremony in the City of Euless.

8. Blood sacrifice is essential for the practice of the Santeria religion, as explained in the *Affidavit of Jose Merced*, which is attached to this Complaint as Exhibit 1.

9. The prohibition by Mr. Collins effectively forbade Mr. Merced and his co-religionists to practice their religion on Mr. Merced's private real property.

10. The complete prohibition of blood sacrifice on private property, and therefore of the Santeria religion inside the City of Euless serves no legitimate governmental interest and violates the requirement of 42 USC §2000cc that

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

11. The absolute prohibition also violates the *Texas Freedom of Religion Act*, which provides,

Sec. 110.003. RELIGIOUS FREEDOM PROTECTED. (a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.

(b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that interest.

12. The Euless Police had visited the Plaintiff on two previous occasions in connection with planned religious ceremonies at the Plaintiff's home.

13. The Plaintiff does not seek to perform any act that might affect any legitimate governmental interest, such as concerns with hygiene, animal cruelty, noise, or nuisance.

14. The Plaintiff sought on or about May 4, 2006 as he seeks now only to perform the ceremony his religion requires in the privacy of his home by completely sanitary, and humane methods, away from the view and hearing of all who are not inside the building where the ceremony is performed.

15. Although the language of the statutes on which the Defendant relies in its prohibition of Plaintiff's religious rites is universal, the Defendant in fact applies the law selectively and discriminatorily against the Plaintiff. For example, the Euless City Code provides as follows:

Sec. 10-3. Slaughtering animals.

It shall be unlawful to slaughter or to maintain any property for the purpose of slaughtering any animal in the city.

(Code 1974, §3-10)

Cross references: Businesses, ch. 18; health and sanitation, ch. 42.

State law references: Authority to regulate, etc., V.T.C.A., Local Government Code §215.072; slaughterhouses, V.T.C.A., Health and Safety Code §§433.023, 438.061.

and

Sec. 10-65. Animal care.

If the following shall occur, the animal may be impounded and the owner shall be guilty of a violation of this chapter:

(4) \*\*\* It shall also be unlawful for a person to kill any animal, bird or fowl, except domesticated fowl considered as general table fare such as chicken or turkey, within the city.

16. Defendant acknowledges that "The Euless City Code prohibits the killing of any animal inside the City of Euless by any person other than a peace officer, health officer, or animal control officer, except domesticated fowl considered as general tablefare such as chicken or turkey."

17. Defendants admit, however, that although they will prosecute a homeowner who kills an animal for religious purposes, they make an exception when a homeowner kills an animal for reasons of esthetics, sanitation, or safety.

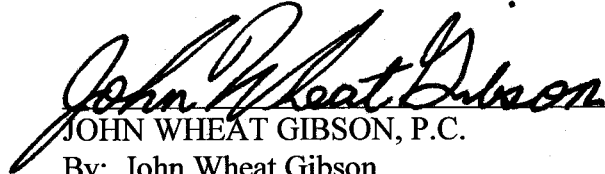
18. The Defendant denies to the Plaintiff the right to the free exercise of religion without unreasonable restraints, in violation of the First Amendment to the United States Constitution, and by its discriminatory application of the law denies the Plaintiff the equal protection required by the Constitution and statutes of the United States.

### **Remedy Sought**

19. The Plaintiff seeks a permanent injunction against the enforcement of any city ordinance against him personally or against his use of his land in the practice of his religion, for which there is not a compelling governmental interest and for which the enforcement is not the least restrictive means of achieving that compelling governmental interest.

WHEREFORE, Plaintiff prays the Court to issue a permanent injunction against interference with the free exercise of his religion. Plaintiff further prays for any additional relief to which he may show himself entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Wheat Gibson", is written over the printed name and firm name.

JOHN WHEAT GIBSON, P.C.

By: John Wheat Gibson

SBN: 07868500

701 Commerce, Suite 110

Dallas, TX 75202

(214) 748-6944, FAX: (214) 748-8693

ATTORNEY FOR PLAINTIFF

AFFIDAVIT OF JOSE MERCED

I am Jose Merced, older than 18 years and never convicted of a crime. I understand the obligation of an oath, and I swear that every word of the following declaration is the truth of my personal knowledge.

I reside at 203 Ironbridge Place, Euless, Texas 76040. I have been a priest (Oba Oriate) of the Santeria religion since 1979. I have a certificate from the National African Religion Congress. The Church and its members practice an ancient African religion variously known as Ayoba, Yoruba, Santeria, Regla de Ocha, or Lukumi. Yoruba originated at least five thousand years ago in the country of Nigeria. It arrived in the island of Cuba with slavery and came to the United States with refugees from the Cuban revolution.

"Santeria" and "Regla de Ocha" are Cuban names for the religion. There are an estimated one million adherents and ordained priest members in the United States. It is estimated that in Cuba Yoruba adherents comprise between 75 to 78 percent of the approximately 11.5 million population who are members of African based religions. Catholic statistics claim 40 percent of the total Santeria population is baptized, but many are nominal Catholics, and others have renounced Christianity completely and are members of Lukumi only.

On May 4, 2006 I and about 10 of our church members prepared for a religious ceremony the following day at my home. We had everything ready, and were sitting by the swimming pool drinking beer. The ceremony the next day would include animal sacrifice according to the requirements of our religion, but there was no ceremony on May 4. A little before 8 p.m. we received a visit from the Euless police and an animal control officer.

I told the officers that it was part of the Yoruba religion to sacrifice animals and then consume them. An officer told me that it was illegal to slaughter animals in the city and advised me to consult with city officials before conducting any sacrifice.

On June 21, 2006 Ventura Santana, a priest from Puerto Rico, who was in town for our ceremony, met with Mr. Kurt Kasson, C.B.O., Building Official and Mike Collins, Director of Planning and Development, in the permit office of the City of Euless. We asked for a permit to perform the ceremonies required by our religion. The official to whom we spoke called the Director of Planning and Development, Mr. Collins, who told Ventura that the city could not issue a permit and we could not conduct any animal sacrifice in Euless.

We do not want to break the law and yet we are entitled to practice our

religion. The prohibition on our practices by the city, as communicated to us by Mr. Collins, prevents us from practicing our religion.

People come from other states and from Puerto Rico to preside over our ceremonies. We usually have to bring in an Oba from outside of Texas. Only an Oba can conduct the ceremony to initiate new members.

Animal sacrifice is essential in our religion. We slaughter chickens and sometimes goats, by quick and humane methods, and we eat the meat. We do not keep animals on the premises in the city and we do not leave trash, offal, or other remains but dispose of them immediately. No flies, rodents, or other pests are attracted by the ceremony.

Santeria is an Afro-Caribbean religion that attaches extreme importance to tradition. Generation to generation, it is expected that the beliefs and practices of the religion are learned and passed on intact and unaltered. There is little or no room for experiment and change. This keeping of unaltered tradition is called "Regla" in Spanish. Within the context of the religion, "Regla" means an unalterable rule.

One of the "Reglas," one of the unalterable rules and intrinsic cornerstones of the practice of Santeria, is animal sacrifice. In order to understand the roots of sacrifice it is important to examine the meaning of the word. The origin of the term is found in three different languages. In Middle English the verb sacrifice means "to make sacred." It is derived from Old French, and ultimately from the Latin *sacrificium*: *sacer*, *sacred*; *sacred* + *facere*, *to make*.

Sacrifice is commonly known as the practice of offering food or the lives of animals to God or gods, as an act of propitiation or worship. The term is also used metaphorically to describe selfless good deeds for others. (Wikipedia On line Encyclopedia)

Throughout history, numerous religions, including Judaism and Islam, have made animal sacrifice central to the practice of their religion. The rationale and justification of sacrifice remains not only for religions that continue to practice rituals of sacrifice, but also for those religions that have animal sacrifice in their scriptures, traditions, or histories, even if sacrifice is no longer practiced.

In Santeria there are several reasons why animal sacrifice is central to the religion. Santeria shares similar beliefs in the need for animal sacrifice with the various reasons given for sacrifice in other religions. Animal sacrifice has always been completely essential to Santeria. If this practice is discontinued, then the religion ceases to exist.

Our religion teaches us that the Orishas, (mediating spiritual forces between

humans and God) which are the spiritual forces we propitiate, can only manifest themselves in the material world via the energy contained in blood. Tradition has it that blood contains Ashe, a spiritual energy that can be directed towards spiritual ends. Santeria scholar and priestess Maria Gonzales-Wippler states the matter:

*The blood itself represents the energy from which all things are created. To offer blood to the deity is to make him a gift of pure energy that he can use to create anew...the offering of blood is the most important and indispensable because the energy that is released is living energy, from which the spiritual world is both formed and nourished.* (Maria Gonzales-Wippler, The Santeria Experience: A Journey into the Miraculous, Llewellyn Publications, 1992, pages 306-307.)

The Orishas need sacrifice to sustain themselves and their power. Tradition teaches that if ebbó or blood sacrifice is not made, then the Orishas will withdraw from the world and will no longer communicate with Santeria's adherents. As the scholar Joseph M. Murphy stated,

*Like all living things they (the Orishas) must be constantly nourished...without human beings, there would be no Orisha. The Orisha need the sacrifice and praise of human beings in order to continue to be effective.* (Joseph M. Murphy, Santeria: African Spirits in America, Boston: Beacon Press, 1993, page 135).

Blood can only be offered to the Orisha by a consecrated and trained priest or priestess (Oba) in a sanctified act, by which the bloodletting opens a channel of energy and direct communication with the Orisha receiving the sacrifice. Sacrifice needs to be performed with precision for the animal must not be made to suffer; the carotid artery is to be severed by puncturing it with a 4-inch knife. The way in which the sacrifice is done impacts the results of the sacrifice. There are various events in our religion that necessitate animal sacrifice.

The Orisha needs to be fed or sustained when a new priest or priestess is initiated. In this instance, the new priest or priestess receives a consecrated shrine that is housed in special ceramic containers. Within this shrine the energies of the Orishas dwell. Here the sacrifice has a double purpose, to feed the Orisha of the godparent, who is consecrating the Iyawó (the new priest or priestess), and to consecrate the new shrine and its Orishas. Without this consecration and empowerment process the Orishas cannot embody themselves in the shrine. Without blood sacrifice, the energies of the Orishas do not become bonded to the shrine.

Without the Orishas there is no worship and no religion. There is therefore no substitute for the spiritual energy contained in blood. Without the sacrifice,



therefore, our ceremonies would become lifeless and without meaning. It is by means of blood that the Orisha is called from the spiritual realm and made to manifest upon the earth.

The Orisha manifests in the world through various means: by spiritual union with the body of the new priest (Iyawó) and also by physical embodiment in the sacred stones and shells that dwell in the shrine. These items will hold the essence of the Orisha for the rest of the lifetime of that new initiated priest.

Thus, without blood sacrifice, there could not be new initiates, nor the consecration of Otas (stones inhabited by the Orisha) and shells (mouth pieces of the Orisha). In the sacrifice during initiation, the bodies of the animals are carefully dressed and cooked and shared with the Orisha community who participated in the initiatory rituals.

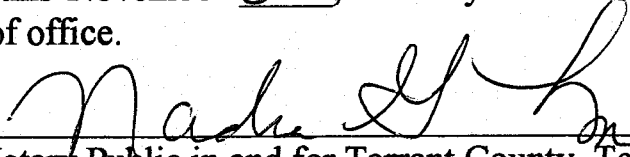
Sacrifice is also mandatory for the consecration of the sacred cowry shells, through which divinations are performed to determine the will of the Orishas. Without this consecration process the shells are lifeless and the Orishas will not "speak" through them. This sacred divination is a central practice of the religion, without which the religion collapses. Sacrifice also functions to appease the Orishas and to offer thanksgiving for prayers answered.

Animal sacrifices also function as healing rituals. The animal is used to gather the negative spiritual energies afflicting the person and that energy is lifted and released. In this case the Orisha acts as a mediating influence, extracting the negative spiritual energies and in return cleansing the person offering the sacrifice.

In summary, Santeria cannot continue to function, much less exist, without animal sacrifice. To deprive the Santeria community of the use of animal sacrifice, would be like depriving Catholics of the Eucharist. Without it, Catholicism would cease to exist. Likewise, without animal sacrifice as taught to us through tradition, Santeria as a set of beliefs and meaningful practices would cease to exist. Prohibition of animal sacrifice condemns our religion to extinction.

  
\_\_\_\_\_  
JOSE MERCED

Sworn to and signed before me this November 27<sup>th</sup>, 2006 by Jose Merced, to which witness my hand and seal of office.

  
\_\_\_\_\_  
Notary Public in and for Tarrant County, Texas

