IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: LUBUVA, J.A., MUNUO, J.A. And KAJI, J.A.)

CIVIL APPEAL NO. 33 OF 2004

BETWEEN

SHEIKH AHMED SAIDI ..... APPELLANT

AND

THE REGISTERED TRUSTEES
OF MANYEMA MASJID ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dodoma)

(Kileo, J.)

dated the 30th day of August, 2000
in
Civil Appeal No. 29 of 1999

JUDGMENT OF THE COURT

LUBUVA, J.A.

This is an appeal from the decision of the High Court (Kileo, J.) in (DC) Civil Appeal No. 29 of 1999. The matter originated from the District Court of Dodoma where the respondents, the Registered Trustees of Manyema Masjid had filed a suit against the appellant, Sheikh Ahmed Said. The trial District Court dismissed the suit. Dissatisfied, the respondents successfully appealed to the High Court. The appellant has now come on appeal to this Court.

The background of the matter is straightforward, it may be stated briefly as follows: From the documents laid before the court at the trial, it is not disputed that since, 1996, the appellant has been employed as an Imam at the Manyema Masjid. He has since been conducting prayers and other religious sermons at the Masjid for which it appears he was remunerated from money realised by way of collections "Sadak" from the worshipers, the details of which are, we think not necessary for the determination of the appeal.

It is also common ground that the respondents, the Registered Trustees of Manyema Masjid, were registered and incorporated on 6.2.1998. It is also apparent that prior to the incorporation of the respondents on 6.2.1998, there was a Committee, known as "Kamati ya Ujenzi" which was responsible for the construction of Manyema Masjid and other related activities.

From Exh. P.7 and Exh. P.8, it is also apparent that the appellant's conduct in discharging his functions as Imam of Manyema Masjid, was found to be unsatisfactory by the Committee. Consequently, by letter of 24.11.1999, the appellant was warned by

the Secretary of the Committee. Furthermore, the minutes of the meeting of the Committee Members on 9.12.1997 also indicate grave concern shown on the appellant's conduct in managing the affairs of the Masjid.

It is also to be observed that the members of the Committee, that is Kamati ya Ujenzi, namely, Omari Selemani, Hassani Mlonja, Haruna Taratibu, Abdalla Yusufu, Abdalla Mkamba and Khatibu Kakungu, were, except for one or two, the Registered Trustees of Manyema Masjid which, as stated earlier, was incorporated on 6.2.1998. Article 7(a) of the Constitution of Manyema Masjid provides for the responsibilies of the Trustees. It is clearly stated under paragraph (a) of Article 7 that the Trustees shall, collectively or individually, be responsible for planning and coordinating the daily activities of the Masjid. It would appear that as the conduct of the appellant regarding the management of the Masjid had not, in the view of the Committee changed, by letter of 10.12.1997, signed by Hassan L. Mlonja, the secretary of the Committee, the appellant was suspended from his function as Imam and any other functions connected with the construction work at Manyema Masjid. On

3.7.1998 by letter of same date (Exh. P.10) the appellant was called upon by the Secretary of the Registered Trustees of Manyema Masjid, to show cause why disciplinary measures should not be taken against him on account of his unsatisfactory conduct as Imam of the Masjid. Following this, the appellant's service as Imam was terminated on 13.7.1998 (Exh. P.10-13).

The termination of service of the appellant is the centre of contention in this case. When served with the letter of termination and payment of terminal benefits, the appellant defiantly declined. He challenged that the respondents had no power to terminate his service as Imam of the Masjid because the incident leading to the termination took place before the Registered Trustees of Manyema Masjid, the respondents, were incorporated on 2.6.1998. At the trial the suit instituted by the respondents was decided infavour of the appellant. The Trial District Magistrate dismissed the suit holding that the respondents had no power to terminate the appellant as Imam of Manyema Masjid for acts committed before the date of incorporation.

The respondents were dissatisfied with the decision of the District Court. They appealed to the High Court where the appeal was allowed. The learned judge was of the view that the Registered Trustees had the power to terminate the service of the appellant as Imam because the Trustees were carrying on with the activities which had been started by the "Kamati ya Ujenzi" Committee pertaining to the Masjid.

Undaunted, the appellant has preferred this appeal. He was represented by Mr. Mpoki, learned counsel. The thrust of his argument before us was more or less a repeat of what he had submitted in the courts below. He firmly urged that s the respondents were incorporated on 6.2.1998, they had no power to take disciplinary measures against the appellant for actions which took place in 1997. He said there was no evidence to show that the Trustees had taken over from the "Kamati ya Ujenzi" In his view, the Trustees were a creation of the constitution (Exh. P.3) which does not provide for the taking over of activities of the Committee by the Trustees.

Mr. Mpoki, also criticised the learned judge for holding that it was erroneous on the part of the trial magistrate in failing to make a specific finding on issue two as framed. The learned advocate further submitted that as issues one and two had to be taken together, it was unnecessary for the trial magistrate to make a specific finding on issue two.

Responding to these submissions, Mr. Nyabiri, learned counsel for the respondents, submitted that the decision of the High Court was correct in law, it cannot be faulted. First, he said the constitution of Manyema Masjid as incorporated, provides that the Trustees were responsible for coordinating the daily activities of the Manyema Masjid. So, he further stated, as the appellant had been carrying on the activities for the same Masjid since 1996, the appellant was carrying on the same activities for the same Masjid under the Trustees after the incorporation. Second, that from the evidence on record, the appellant accepts in clear terms that he was appointed as Imam by the respondents who had raised his salary from 15,000/- to 30,000/- a month. For these reasons, Mr. Nyabiri urged that the respondents as correctly held by the learned judge

had power to terminate the service of the appellant as Imam of Manyema Masjid.

With regard to the failure by the trial magistrate to make a specific finding on issue two, Mr. Nyabiri, submitted that the learned judge correctly stated the position of the law. It is common knowledge that it is a rule of procedure that specific finding has to be made in respect of each issue raised, he emphasized.

As already indicated, the issue is whether the respondents had power to terminate the service of the appellant as Imam of Manyema Masjid. In resolving this issue the following factors among others, have to be taken into account. First, that the Manyema Masjid has been in existence for years before the incorporation of the Trustees on 6.2.1998. Second, the objective of the Masjid was the same prior and after the incorporation. Third, prior to the incorporation, the daily activities and allied activities of the Masjid was supervised by a Committee known as "Kamati ya Ujenzi". Fourth, the same activities and objectives of the Masjid were still carried on after the incorporation on 6.2.1998.

Against this background, it cannot be gainsaid that the appellant who had started working at the Masjid as Imam prior to 6.2.1998, continued serving at the Masjid as Imam for the same purpose and objective. With the incorporation of the Masjid, the Trustees, the respondents, carried on the activities for the Masjid which were started prior to the incorporation on 6.2.1998. With respect, we are in agreement with Mr. Nyabiri, learned counsel in his submission that the learned judge cannot be faulted in her finding when she stated:

> "Having been incorporated, I think it was their responsibility to see to the proper management of the Masjid, and seeing to proper management of the Masjid would involve taking care of unfinished business if, any ..... I think in my considered opinion that it is not proper to say that the trustees could not fire the Imam for something done while they were not lawfully constituted."

In our view, it would be ridiculous and absurd if, as urged by M. Mpoki, the respondents, the Registered Trustees, whose objective was to manage the Masjid were held to have no power to discipline the appellant on the ground raised. In that situation, who else, in the absence of the previous Committee, would deal with the appellant, who was being paid by the Trustees. Furthermore, according to the evidence on record, the appellant, as pointed out by Mr. Nyabiri, does not dispute that he was answerable to the Trustees who had even raised his salary from 15,000/- to 30,000/- a month. The appellant cannot accept and enjoy the benefits awarded by the Trustees by way of salary and other terms while at the same time he does not recognise the Trustees' authority to take disciplinary measures against him.

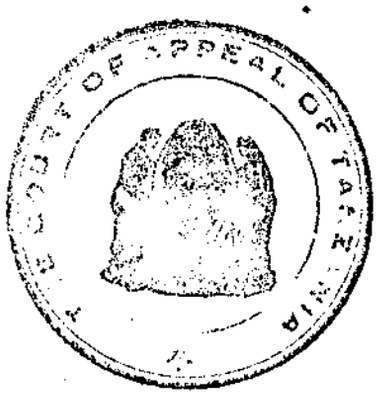
Furthermore, it is to be observed that what was in issue before the court was whether the Trustees had the power to terminate the appellant's service as Imam on 13.7.1998. The issue was not whether what the appellant did in 1997 was properly founded to warrant the disciplinary measure taken by the Trustees resulting in

the termination. At this juncture, it should also be noted that the termination was a follow up action after the appellant had previously been suspended by the committee on 10.12.1997, and on 3.7.1998 was called upon to show cause why disciplinary measures should not be taken against him. He did not respond. In the circumstances, we are of the settled view that the learned judge was correct in the decision that the Registered trustees of Manyema Masjid had the power to effect the termination of the appellant's service as Imam.

With regard to Mr. Mpoki's complaint that it was erroneous for the learned judge to hold that the trial magistrate erred in not making a specific finding on issue two, we need not be delayed in this point. It is an elementary principle of pleading that each issue framed should be definitely resolved one way or the other. This aspect was touched on by the Court in **James B. Kumonywa v Mara Cooperative Union (1984) Ltd** and **The Attorney General**, Civil Appeal No. 22 of 1995 (unreported). The fact that the two issues covered the same aspect, does not, with respect, detract from the legal requirement under the rules of procedure. The learned judge, was therefore correct in her observation on this point.

All in all therefore, we find no merit in this appeal. It is accordingly, dismissed with costs.

DATED at DODOMA this 3rd day of May, 2004.



D.Z. LUBUVA
JUSTICE OF APPEAL

E.N. MUNUO
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S.M. RUMANYIKA)
DEPUTY REGISTRAR