

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**(CORAM: NDIKA, J.A., FIKIRINI, J.A., And KIHWELO, J.A.)**

**CIVIL APPEAL NO. 2 OF 2020**

**THE REGISTERED TRUSTEES OF  
ISLAMIC PROPAGATION CENTRE (IPC) ..... APPELLANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF  
THAAQIB ISLAMIC CENTRE (TIC) ..... RESPONDENT  
(Appeal from the Judgment and Decree of the High Court of Tanzania  
at Mwanza)  
(Bukuku, J.)**

**dated the 28<sup>th</sup> day of August, 2018**

**in**

**Land Case No. 23 of 2015**

**.....**

**JUDGMENT OF THE COURT**

13<sup>th</sup> & 27<sup>th</sup> July, 2021

**NDIKA, J.A.:**

The protagonists in this dispute are two incorporated religious trusts. While the appellant, the Registered Trustees of Islamic Propagation Centre (henceforth "IPC"), is headquartered in Dar es Salaam, the respondent, the Registered Trustees of Thaaqib Islamic Centre (henceforth "TIC"), is based in Mwanza.

In the High Court of Tanzania at Mwanza, TIC sued IPC for ownership and possession of three plots of land, namely, one, Plot No. 502, Block 'A', Nyasaka, Mwanza City comprised in the Certificate of

Title No. 29139 (henceforth "Nyasaka Plot"); two, Plot No. 569, Block 'LL', Kiloleli, Mwanza City comprised in the Certificate of Title No. 29177 (henceforth "Kiloleli Plot"); and Farm No. 1, Block 'LL', Kiloleli, Mwanza City comprising in the Certificate of Title No. 4256 (henceforth "Kiloleli Farm"). While on the Nyasaka Plot stood Nyasaka Islamic Secondary School, the Kiloleli Plot was developed into Thaaqib Islamic Primary School. The Kiloleli Farm was undeveloped in 2015 when the suit was instituted.

The essence of TIC's suit as pleaded in the plaint is that before the year 2000, a number of Muslims associated in an unregistered outfit known as "*Darasa Duara*" under the auspices of Thaaqib Islamic Centre resolved to establish and operate educational institutions in Mwanza. Towards their common goal, the *Darasa Duara* members initially established Koranic schools and later in October 1999 acquired a piece of land in Nyasaka area in Mwanza on which to establish a secondary school. Since Thaaqib Islamic Centre was at the time unincorporated association and that it could not legally own property, its functionaries engaged IPC who then agreed not only that the land intended to be acquired be registered in its name but also to run the proposed school as one of its schools across the country. Eventually,

the said land (the Nyasaka Plot) as well as the two other pieces of land were acquired and registered in the name of IPC in 2009 and 2010 on behalf of Thaaqib Islamic Centre.

It is averred that these properties were acquired and developed out of funds mobilized by Thaaqib Islamic Centre, mostly from its members. Initially, IPC ran the schools smoothly by incorporating some officials from Thaaqib Islamic Centre but later the relationship between it and Thaaqib Islamic Centre became sour. On 19<sup>th</sup> December, 2014, TIC was incorporated as a trust as per the certificate of incorporation number 5043. At that point, it appears, TIC demanded to take over the management and administration of the schools as it claimed being the owner of the three properties. IPC rebuffed the demand. Accordingly, TIC sought judgment and decree with costs as follows:

1. That IPC be ordered to cease managing the schools owned by TIC namely Nyasaka Islamic Secondary School and Thaaqib Islamic Primary School and hand them over to TIC.
2. That IPC be ordered to transfer the titles to the three properties at Nyasaka and Kiloleli, Mwanza City.

In its written statement of defence, IPC sturdily denied the claim. It averred that it was the lawful owner of the schools as well as the properties on which the schools were built and that TIC, not being the registered owner of the properties, had no *locus standi* to maintain the claim. IPC also denied having been engaged at any point by TIC to supervise and manage the schools. Most importantly, IPC asserted in Paragraph 9 of its defence that it acquired the properties in dispute:

***“by the consent of the Moslem community who participated in the efforts of establishing schools as stated in paragraphs 5 and 7 above and as regards the Plaintiff [TIC], it was non-existent by then and does not in any case represent or replace the Muslim community in Mwanza who are still committed and continue to work under the umbrella of the Defendant [IPC].”*** [Emphasis added]

It was further averred that TIC was non-existent at the material time and that it was incorporated on 27<sup>th</sup> April, 2014 (sic) to represent a minority of the Muslim community of Mwanza. And that TIC had not been sanctioned to take over the schools from IPC. On that basis, IPC prayed that the suit be dismissed with costs.

In its reply to the defence, TIC maintained that the properties in dispute were registered in IPC's name as a result of an arrangement aimed at securing the registration of the schools as its members at the time had not been incorporated. It was also asserted that IPC acknowledged that fact in its Twenty-Five Years Report published in 2010. It was denied that the Thaaqib Muslim community in Mwanza was a minority.

At the commencement of the trial, three issues were framed for trial and determination by the court, namely:

- 1. Who as between TIC and IPC is the lawful owner of the disputed properties.*
- 2. Whether the performance of Nyasaka Islamic Secondary School and Thaaqib Islamic Primary School has deteriorated under the management of IPC.*
- 3. To what reliefs are the parties entitled.*

In proving its claim, TIC called seven witnesses and tendered seventeen documentary exhibits (Exhibits P.1 to P.17). On the adversary side, four witnesses were produced along with five pieces of documentary evidence (Exhibits D.1 to D.5).

In her judgment, the learned trial Judge held, on the first issue, that TIC was the lawful owner of the disputed properties. For clarity, we extract at length the relevant part of the judgment, shown at page 643 of the record of appeal, thus:

*"The issue now is who is the rightful owner of the above disputed properties? I am mindful of the fact that the Plaintiff [TIC] was by then, not legally registered at the time the properties were acquired. Much as the Plaintiff as an institution did not exist at the time the properties were acquired, yet I hold that the Plaintiff is the rightful owner of the disputed properties. There is sufficient evidence from both the Plaintiff and the Defendant [IPC] to that effect, as herein demonstrated. As admitted by the Defendant himself, that all the disputed properties originated from Thaaqib Islamic Centre. **It is also not in dispute that members of Thaaqib Islamic Centre are the ones who initiated and developed the process of bringing the disputed properties into existence.** Now, the same centre, that is 'Thaaqib Islamic Centre' has been registered. **As already intimated herein, out of trust and confidentiality, the Plaintiff***

***trusted the Defendant. Here there was an obligation annexed to the ownership of the properties for the benefit of the Plaintiff. This trust was a form of contract between the parties distinctly enforced in equity.***”[Emphasis added]

The learned trial Judge went further, at the same page, that:

*“All in all, I hold that the agreement between the parties herein was based on religious good faith, which is absolutely a matter of faith of individuals and communities. **What matters is the intention of the parties which has to be inferred from the circumstances in which they related.** In here, an arrangement binding in law had been intended on both sides. Both parties have acted upon an understanding agreed and treated it as binding, they are both bound by it.”*[Emphasis added]

The learned trial Judge also took into account that it was PW4 Hamisi Benny Kaliyomba, a member of Thaaqib Islamic Centre having possession of the certificates of title over the disputed properties, who tendered the certificates at the trial and that IPC did not claim at any point that the certificates were in wrong hands. According to her, this

evidence proved as a fact what was said by PW4 that it was agreed with IPC that Thaaqib Islamic Centre would keep the original certificates since they were owners of the properties in dispute.

As regards the second issue, the learned trial Judge answered it in the negative as she found unproven that the academic performance at the school had deteriorated under IPC's management and administration. In the premises, judgment and decree was entered with costs as prayed for by TIC. Accordingly, IPC was ordered to transfer the titles to the disputed properties to the TIC and that it should yield up management of Nyasaka Islamic Secondary School and Thaaqib Islamic Primary School to TIC.

The present appeal was initially predicated on four grounds of appeal but in the course of its written submissions, IPC abandoned the last two grounds and canvassed the first and second grounds only.

These are as follows:

- 1. That the learned trial Judge erred in law in holding that the disputed landed properties are the lawful properties of the respondent while the same were acquired and registered in the name of the appellant before the respondent came into being.*



*2. That the learned trial Judge erred in law in applying the principles of equity and trust in deciding the matter before her while whatever was done by the respondent was done as members of the appellant.*

At the hearing, Mr. Deya Paul Outa, learned counsel, teamed up with Messrs. Mussa Kiobya and Othman Kalulu, learned advocates, to prosecute the appeal for IPC. Mr. Twaha Taslima, learned counsel, stood for TIC.

In highlighting the written submissions lodged in support of the appeal, Mr. Outa began by faulting the learned trial Judge for finding that IPC and TIC had an oral agreement over the acquisition and development of the properties in dispute. Referring to section 10 of the Law of Contract Act, Cap. 345 R.E. 2002, he submitted that TIC could not have entered into any kind of contract with IPC over the disputed properties because the said properties were acquired before TIC came into being. He said that it was in the evidence that TIC became incorporated on 19<sup>th</sup> December, 2014 as per its certificate of incorporation (Exhibit P.11) and that the properties in dispute were acquired and registered in IPC's name as follows: first, the Nyasaka Plot was registered on 3<sup>rd</sup> June, 2010 vide the Certificate of Title No. 29139;

secondly, the Kiloleli Plot was registered vide the Certificate of Title No. 29177 on 12<sup>th</sup> July, 2010; and finally the Kiloleli Farm had the Certificate of Title No. 4256 issued on 2<sup>nd</sup> February, 2009.

Mr. Outa then referred to the testimony of PW1 Mussa Omary, shown at page 127 of the record of appeal. According to PW1, Thaaqib Islamic Centre had about 200 unregistered members who then appointed two members (PW4 Hamisi Benny Kaliyomba and Ilunga Hassan Kapungu) to travel to Dar es Salaam to liaise with IPC leadership and obtain consent for their grouping's properties to be acquired and registered in the name of IPC. Based on this evidence, Mr. Outa argued that if at all there was any agreement over the proposed acquisition of the properties involving IPC, then the other parties would have been the said Hamisi Benny Kaliyomba (PW4) and Ilunga Hassan Kapungu and that TIC could not be the other party. He was emphatic that it was the said two persons only who could have sued IPC, but not TIC. He added that even if the said two persons had been parties to this matter, they were incompetent to enter into an agreement on behalf of other members in the absence of a written document giving them powers to do so.

Coming to the second ground of appeal, Mr. Outa contended, based on the testimonies of DW1 Omar Juma Msangi, DW3 Hassan Hussein and DW4 Haruna Omari Cheyo, that Muslims based in Mwanza contributed to the acquisition of the disputed properties as individuals as opposed to being members of any independent group. On that basis, he submitted that the learned trial Judge's finding that Thaaqib Islamic Centre initiated and mobilized the acquisition and development of the properties in dispute was against the weight of evidence. It was his further contention that the disputed properties could not be legally deemed to have been held in trust in equity. Referring to section 33 (1) of the Land Registration Act, Cap. 334 R.E. 2002 (now R.E. 2019), the learned counsel argued that IPC held the properties free from any encumbrance and that equity had no application in the matter because fraud was neither pleaded nor proven in the matter. Accordingly, he prayed that the appeal be allowed and that the judgment and decree of the High Court be reversed.

Replying, Mr. Taslima revisited the evidence on record, submitting that the case was an illustration of an extraordinary verbal contractual arrangement by which IPC was entrusted with the disputed properties to supervise and manage them for the benefit of the *Darasa Duara*

members under the auspices of Thaaqib Islamic Centre. He underlined that the properties were acquired and developed upon funds mobilized by the *Darasa Duara* members under the Executive Committee of Thaaqib Islamic Centre.

Specifically addressing the first ground of appeal, it was Mr. Taslima's essential submission that the fact that IPC's name features in the certificates of title as the owner does not mean that it was truly the rightful owner of the properties. Referring to the minutes of the Executive Committee of Thaaqib Islamic Centre conducted in 1999 and 2000 (Exhibits P.1 and P.2 respectively) as well as the testimony of PW2 Ghalib Msasa, Mr. Taslima argued that it was firmly established that the disputed properties were acquired by the *Darasa Duara* members under the Executive Committee of Thaaqib Islamic Centre. That PW3 Khalfan Almas Mushumba tendered in evidence solicitation forms and cards (Exhibit P.5) used for various fund raisers conducted by Thaaqib Islamic Centre. That IPC was requested and agreed to have the properties registered in its name but that the original certificates were retained by Thaaqib Islamic Centre's officials. That IPC's witnesses, notably its General Secretary and Administrative Officer (DW1 Omar Juma Msangi), indicated that they do not have any

evidence to prove that IPC paid for the acquisition and development of the disputed properties. The learned counsel added that IPC acknowledged in its Twenty-Five Years Report published in 2010 (Exhibit P.7) that the disputed properties were acquired and developed by the *Darasa Duara* members under Thaaqib Islamic Centre.

Mr. Taslima went on to refer to the principle of corporate personality based on section 15 (1) of the Companies Act, Cap. 212 R.E. 2002 as well as two cases he cited. He thus contended that although TIC became incorporated on 19<sup>th</sup> December, 2014, its members owned the properties prior to its incorporation. He urged us to ensure what he called the legal façade of incorporation does not deprive the members behind TIC the fruits of their efforts.

On the second ground, Mr. Taslima countered that there is no evidence that members of *Darasa Duara* acted and contributed towards the acquisition and development of the properties in dispute as members of IPC. Again, referring to the testimonies of the plaintiff's witnesses as well as the minutes (Exhibits P.1 and P.2), he argued that it was sufficiently established that IPC was not the true or beneficial owner of the schools and the properties but that it was only enlisted to

supervise and manage the schools. Its name was used to register the properties in trust for the beneficial owners who at the time were, as an association, unregistered. Accordingly, the learned counsel implored us to dismiss the appeal with costs.

In a brief rejoinder, Mr. Outa argued that the contention that IPC was only used as an umbrella for acquisition and development of the disputed properties was flawed. He maintained that IPC was the rightful owner by virtue of its registration as the occupier of the properties. It was irrelevant, he added, that the original certificates were in possession of persons who happened to be TIC's members. Mr. Outa rounded off his rejoinder, contending that the alleged oral agreement was a myth; it was unproven mainly because the parties thereto remained unknown.

We have reviewed the record of appeal in the light of the contending submissions of the learned counsel for the parties. The main sticking question for our determination based on the two grounds of appeal as canvassed by the learned counsel is whether TIC was rightly held to be the owner of the disputed properties which were registered in IPC's name before TIC came into existence.

In determining the above question as the first appellate court, we are enjoined by rule 36 (1) (a) of the Tanzania Court of Appeal Rules, 2009 to re-appraise the evidence and draw our own inferences of fact. We are cognizant of the settled jurisprudence that when the credibility of a witness is a primary consideration, the findings of the trial court, its evaluation of the witness testimonies and its assessment of the probative value thereof, as well as its conclusions premised on such findings, must be accorded respect if not conclusive effect. For the trial court having had the unique opportunity to observe the demeanor of the witnesses, it was best placed to determine whether they were telling the truth.

In dealing with the question at hand, we deem it necessary to start with the manner in which the properties in dispute were acquired and developed. It is TIC's case, based upon the minutes of the Executive Committee of Thaaqib Islamic Centre conducted in 1999 and 2000 (Exhibits P.1 and P.2 respectively) as well as the testimony of PW2, PW3 and PW4, that the disputed properties were acquired by the *Darasa Duara* members under the Executive Committee of Thaaqib Islamic Centre. PW4 tendered the original certificates of title,

suggesting that IPC was not the true owner of the properties but just a caretaker, so to speak.

Although IPC's witnesses, notably DW3 Hassan Hussein and DW4 Haruna Omari Cheyo, asserted that the disputed properties were acquired and developed by IPC through its own activities vide its Mwanza-based branch, we reject this claim for several reasons. First, as rightly found by the learned trial Judge, we think that TIC's evidence on this aspect was clear, consistent and coherent. Conversely, IPC's evidence on this question is clearly contradictory. To be sure, DW3 and DW4's evidence on how the properties were acquired materially contradicted DW2 Mohamed Masoud Mtore's account. At pages 179 to 180 of the record of appeal, DW2 is depicted to have averred that IPC made monetary contributions towards the development of the properties but said nothing as to how the acquisition of the properties was funded. As rightly observed by the learned trial Judge, IPC was clearly portrayed as a mere contributor as opposed to being the brains behind the acquisition and development of the properties.

Secondly, the evidence unveiled by IPC's witnesses that the disputed properties were acquired and developed by IPC through its



own activities vide its Mwanza-based branch is clearly at war with the pleading in paragraph 9 of the defence by which it is averred that IPC acquired the properties in dispute "*by the consent of the Moslem community who participated in the efforts of establishing schools.*" IPC did not lead any evidence to establish this pleaded fact. How the alleged "consent" was given and who gave it were issues left unattended. Instead, IPC led evidence frantically seeking to show that the disputed properties were a direct outcome of its own activities. At this point, we are constrained to recall the time-honoured principle of law that parties are bound by their own pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored – see **James Funke Ngwagilo v. Attorney General** [2004] TLR 161. See also **Lawrence Surumbu Tara v. The Hon. Attorney General and 2 Others**, Civil Appeal No. 56 of 2012; and **Charles Richard Kombe t/a Building v. Evarani Mtungi and 3 Others**, Civil Appeal No. 38 of 2012 (both unreported).

So as to accentuate the above point, we would like to refer, with approval, to a passage in an article by Sir Jack I.H. Jacob bearing the

title, *"The Present Importance of Pleadings,"* first published in **Current Legal Problems** (1960) at page 174 thus:

*"As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings .... **For the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made.** Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation."* [Emphasis added]

Thirdly, we find, as did the learned trial Judge, that IPC's acknowledgement in its Twenty-Five Years Report published in 2010 (Exhibit P.7) that the disputed properties were acquired and developed by the *Darasa Duara* members under Thaaqib Islamic Centre was no doubt the most compelling piece of evidence against IPC's case. Like the learned trial Judge, we wish to extract the relevant parts of the report in Swahili at length, starting with a passage at page 109:

*"Mwanzoni mwa mwaka 1996 Kituo cha Thaqib baada ya kujiimarisha na kuimarisha Darasa Duara lililokuwa likifanyika humo, kilichukuwa nafasi ya mihadhara .... Matunda ya Darasa Duara na Mihadhara ile ilikuwa ni kupatikana Waislamu wanaharakati walio tayari kutoa mali zao na nafsi zao kwa ajili ya kusimamisha uislamu katika jamii. **Wanaharakati hawa ndio walioanzisha na wanaoendeieza ujenzi wa Nyasaka Islamic Secondary School na Thaqib Shule ya Msingi ya Kiislamu kwa njia ya matamasha ya ujenzi na mlchango ya fedha ya kila mwezi na kila panapotokea mahitaji.**" [Emphasis added]*

We have supplied emphasis to the text above to stress IPC's acknowledgement that the properties in dispute were acquired and developed into schools by members of *Darasa Duara* under Thaaqib Islamic Centre. Crucially, the above excerpt (or even the rest of the book) says nothing if IPC had any decisive role in the acquisition and development of the schools as its property. Be that as it may, the report goes further, at pages 120 – 121, to confirm, yet again, that the brains behind the establishment of Thaaqib Islamic Primary School were Thaaqib Islamic Centre:

***"Madrasa na shule ya awali ya Thaqib inamilikiwa na kuendeshwa na wana Darasa Duara wa Kituo cha Thaqib .... Baada ya shule ya awali ya Thaqib kuboreshwa wadau wake waliona sio jambo la busara kuwaachia wahitimu kujunga na darasa la kwanza katika shule za serikali .... Hii ikawa ndiyo chimbuko la fikra ya kuwa na shule ya Msingi ya Kiislamu na kuifanya Kamati ya Thaqib ianze na harakati za kutafuta uwanja wa kujenga shule hiyo.***

*Kamati ya Thaqib ilipata msukumo zaidi ya kuanzisha shule ya msingi ya Kiislamu mwaka*

*2005 .... Kutokana na msukumo huo Kamati ya Thaqib iliamua kuanzisha shule ya msingi ya kiislamu mwaka 2006 ...."* [Emphasis added]

At this point, we are constrained to find it preponderant that the properties in dispute were predominantly acquired and developed into schools by members of *Darasa Duara* under Thaaqib Islamic Centre.

The next issue concerns the status of ownership of the properties in dispute. For a start, it is common ground that the properties in dispute were acquired and registered in IPC's name in 2009 and 2010. At that time, Thaaqib Islamic Centre was an unincorporated association and that TIC was incorporated subsequently on 19<sup>th</sup> December, 2014. On that basis, we would agree with Mr. Outa that TIC could not have owned the properties prior to its incorporation. But, this is not the only fact to be considered in this matter.

It is in the evidence that members of *Darasa Duara*, who acquired and developed the disputed properties, acted and associated under the umbrella Thaaqib Islamic Centre. As an outfit, Thaaqib Islamic Centre was an unincorporated association of persons whose relationship might or might not have been governed by a written contract or constitution. As such, it was a non-entity in the eyes of the law at the time the

properties were acquired and developed. In the premises, it neither had capacity to own property nor did it have the capacity to enter into contracts. It could not sue nor could it be sued.

It would be pertinent to refer to the Scottish Law Reform Commission's Report on Unincorporated Associations of November 2009 (Scot Law Com No. 217). The Commission noted that Scottish law of incorporated associations rested on common law as at the time it had not been developed significantly by statute. In paragraph 1.4 of the report, the Commission observed that unincorporated associations:

***"... have no capacity to enter into contracts. Contractual responsibilities must be undertaken by individual office-bearers or, possibly individual association members.***

*They cannot be held liable for wrongful acts committed by their representatives while acting on behalf of the association ....*

*A member cannot sue for damages for injury sustained as a consequence of a wrongful act committed by an office-bearer or fellow member while acting on behalf of the association ....*

*They cannot own property. Title must instead be taken in the name of **individual members or office-bearers as trustees, necessitating further transfers when such members or office-bearers die or cease to participate in the association's activities.***" [Emphasis added]

We have no doubt that the above position mirrors the position in our country. So far as it relates to the instant case, the contractual responsibilities relating to an unincorporated association can be undertaken by individual office-bearers or, possibly individual association members, as it lacks capacity of its own to enter into contracts. As regards property ownership, title to property must instead be taken in the name of individual members or office-bearers or even a third party as trustees. At any rate, in the absence of agreement to the contrary the assets of an unincorporated association belong to the members jointly as the association lacks its own corporate personality separate from its members.

A Canadian case of **Tillsonburg Scout Association v. Scouts Canada**, 2020 ONSC 747, decided by Ontario Superior Court, appears to be a case in point. In that case, Tillsonburg Scout Association (TSA),

an unincorporated association, disagreed with Scouts Canada as to who was the true or beneficial owner of a boy scout camp operated for many years by TSA but the title thereto was registered in the name of a corporation affiliated with Scouts Canada. TSA admitted that as an unincorporated association it could not be a beneficiary of a trust. Nonetheless, it claimed to be the settlor or trustmaker of the original trust and that it had subsequently incorporated a successor entity, TSA Inc., which it contended could now take the title. The court rejected that argument because TSA, as an unincorporated association, lacked capacity to be the settlor of the original trust nor could it be the beneficiary of a continuing trust.

The **Tillsonburg Scout Association** case (*supra*) is distinguishable from the present case because the court did not consider the prospect, in the alternative, that Scouts Canada was the trustee of the property for individual members of TSA. In the instant case, it is in the evidence that members of *Darasa Duara*, acting under the umbrella of Thaaqib Islamic Centre as an unincorporated association, acquired and developed the properties in dispute for the common goal of establishing Islamic schools. As per the minutes of its two meetings (Exhibits P.1 and P.2), the Executive Committee of



Thaaqib Islamic Centre resolved that the land sought to be acquired and developed be registered in IPC's name as Thaaqib Islamic Centre was yet to be incorporated at the material time. It is in the evidence, believed by the learned trial Judge, that two officials of Thaaqib Islamic Centre, namely, Hamisi Benny Kaliyomba (PW4) and Ilunga Hassan Kapungu, engaged IPC's officials at Dar es Salaam and secured a verbal arrangement that the properties in dispute would be registered in IPC's name as TIC was yet to be incorporated. The fact that certificates of title over the disputed properties were retained by officials of Thaaqib Islamic Centre and that they were tendered in evidence by PW4 lends credence to the claim that IPC was not intended to be the true or beneficial owner of the said properties except that it was an ordinary trustee thereof for the members of Thaaqib Islamic Centre. It must follow, therefore, that the true and beneficial owner of the properties remained the members of Thaaqib Islamic Centre, who, then, intended that TIC, as the successor entity to Thaaqib Islamic Centre, would take over the title to the disputed properties.

Mr. Outa valiantly argued that there was no proof of an oral agreement making IPC a trustee over the disputed properties. He wondered if Thaaqib Islamic Centre was a non-entity at the material

time, then who were the parties to the agreement. Thaaqib Islamic Centre was clearly a non-entity then but, we think, it was sufficiently established that it acted through its officials, namely, Hamisi Benny Kaliyomba (PW4) and Ilunga Hassan Kapungu, who travelled to Dar es Salaam and entered into a verbal agreement with IPC. The properties were so registered in IPC's name as agreed. However, in our considered view, the said agreement did not make IPC the true or beneficial owner of the properties, but a mere trustee. We think that it is necessary that we give effect to the wish by *Darasa Duara* members under Thaaqib Islamic Centre as expressed by their officials, notably PW4, that IPC only served as a trustee of the properties in dispute. That is why Thaaqib Islamic Centre's officials retained the original certificates of title. It is inferable from this fact that the titles to the properties were to be transferred from IPC upon their association's incorporation.

Based on the foregoing discussion, we find both grounds of appeal unmerited. We dismiss them both.

In the final analysis, we dismiss the appeal with costs.

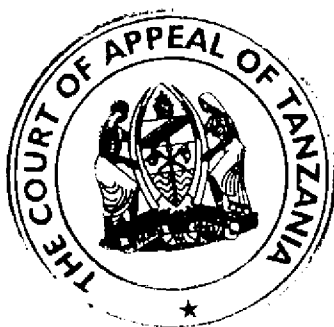
**DATED at DAR ES SALAAM** this 22<sup>nd</sup> day of July, 2021.

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

P. S. FIKIRINI  
**JUSTICE OF APPEAL**

P. F. KIHWELO  
**JUSTICE OF APPEAL**

The Judgment delivered this 27<sup>th</sup> day of July, 2021 in the presence of Mr. Musa Kiobya and Mr. Othman Kalulu, present in person and Mr. Deya Paul Outa, linked to the Court by video facility from Mwanza High Court, all learned counsels for the appellant. Mr. Twaha Issa Taslima, present in person and Mr. Emmanuel Michael John linked to the Court by video facility from Mwanza High Court, both learned counsels who appeared for the respondent is hereby certified as a true copy of the original.



A handwritten signature in black ink, appearing to read "S. J. Kainda".

S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**