

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM.**

**CIVIL APPEAL No. 135 OF 2017.**

*(Arising from the Judgment of Ilala district Court, Hon. F.E. Haule dated 03<sup>rd</sup> April, 2017)*

**MARCHADES KALEMELA AND 27 OTHERS.....APPELLANTS**

Versus

**NATIONAL EXECUTIVE COMMITTEE**

**OF THE SCOUT COUNCIL.....RESPONDENT**

**EXPARTE - JUDGMENT**

29.10.2019 - 13.2.2020

**J. A. DE'MELLO**

Before the **Ilala District Court**, the Appellants challenged the election of the Chief Commissioner of Scout Tanzania one **Abdulkarim Sha**. The suit was entirely dismissed by the Court hence the Appellants, which aggrieved them and are now before this Court for their first attempt on Appeal, with the following grounds;

- 1. That, the Trial Court Magistrate erred in law and, fact by holding that Article 12 of the Constitution of 1997 is for call of meeting only and not for voting.**

**2. That, the Trial Court erred in law and, fact by holding that, the voting of the Respondent was proper while the same contravene the Articles of constitution.**

**3. That, the Trial Court erred in law and, fact by not considering and giving weight the evidence given by the Appellant herein above.**

When this Appeal came for mention the Respondent absented himself without any reasons despite several notices for mention. Owing to this conduct, Counsel for Appellants prayed for the Court to enter Judgment in their favor. Written submissions was ordered in support of that prayer with a view of putting record right. Submitting on the first ground of Appeal, the Appellants reminds the Court of the paramountcy of the Constitution as the mother law to the rest of which no other law and or even by laws can override. Referring to Article **12.3 (a)** of the **Tanzania Scout Association Constitution of 1997** elaborates that; At any meeting every member who is physically present shall have one vote. For this alone, it was wrong for the Trial Magistrate to hold otherwise by stating that the meeting is for calling of members as opposed to voting. The provision is clear and certain that it is for meetings, voting and minutes recording, they believe. Reliance of the by law as opposed to Article 16 can not override the Constitution, they observe. Addressing the second ground, Appellants states that while voting is a process bestowed to all members of the Association physically present, the Trial Magistrate disregarded this fact by confirming it to be proper as it happened. That the post of Chief Commissioner is open to all members as no names were shared and submitted to the **Steering Committee** for

scrutiny and verification prior to tabling to National Executive Committee for Interview. Instead only one name of **Abdulkarim Sha** was sent, irrespective of the procedural flaws. On the last ground, it was improper and based on all the above, that the Trial Magistrate chose to disregard evidence adduced by the Appellants. Notwithstanding the Respondents appearance and presence from the **24<sup>th</sup> of August 2017, 14<sup>th</sup> of November 2017, 8<sup>th</sup> of March 2019, they absented themselves since 9<sup>th</sup> of May 2018, 5<sup>th</sup> of July 2018, 23<sup>rd</sup> of August 2018, 17<sup>th</sup> of September 2018, 4<sup>th</sup> October 2018, 9<sup>th</sup> of November, 2018, 18<sup>th</sup> February 2019, 18<sup>th</sup> April 2019, 4<sup>th</sup> June 2019 and 29<sup>th</sup> October 2019**, satisfied of their knowledge humbly granted the Appellants an Ex-parte hearing and by written submissions for an Ex-parte Judgment.

Having considered the one sided submissions by the Appellants, I am inclined to direct my mind to **Article 12** of the Tanzania Scout Association Constitution of 1997, with the Title reading "**CALLING MEETINGS, VOTING AND MINUTES**".

Article 12.3 (a) provides

**"At any meeting every member who is physically present shall have one vote."**

The word **member** has been interpreted to mean **any person who join the movement either as a participant of youth program or in a leadership capacity**. The entire **Article 12** stipulates guidelines on how to convene such meeting including; **Notice, Quorum, Voting and Keeping** of records of the meetings. **Article 12.3 (a)** provides as to who

is to vote in the election, the manner of voting and should not be taken specifically as instrument governing election of Chief Commissioner. The Constitution of Scout Association of Tanzania contains fundamental principles which governs its operation and the by- laws which establish specific rules by which the Association is to function. In this regard, nowhere under **Article 12 of Tanzania Scout Association of 1997** contains provision guiding **Election of Chief Commissioner** but rather puts Standards of Elections as, the by laws comes to rescue in smoothening the implementation of the Constitution. As for the second ground of Appeal challenging the manner and ways the name of **Abdulkarim Shah** was selected, submitted and processed to the post of Chief Scout Commissioner, records of the Trial Court and as per the testimony of **DW1** who identified as the Chairman of Executive Committee of Scout Tanzania, testified how all the mandatory procedures were met including that of issuing Notice not only to members but general public as a whole through advertisement. It highlighted qualifications which are not in the Constitution but in the by-laws, in which individuals applied and shortlisting revealed three names for interviewing. Those were **Abdulkarim Sha, Rashid Mchata and Fares Magesa**, all in line with. Basing on it by laws f 2000, Article 16 gives general provisions in which the by law complements the Constitution. Elections are governed by rules which are subject to change with circumstances and needs, making it easy to change by-laws governing elections than changing the Constitution. Records of the Trial Court further shows that notice were given to members via advertisement gazette, notice board and website, opposing the Appellants assertion that ~~it~~ was not. **Article 12.2 (b)**

provides; **“no meeting shall be invalidated for a reason of absence amongst the members thereof”**. What can be observed from the above Article of the Constitution is that, absence of some of the members of the meeting shall not invalidate the meeting. It is for the above reason I see no violation of the **Tanzania Scout Committee Constitution** and confirm the election was lawfully and properly conducted properly.

In respect of the third ground of appeal this Court has considered the submissions of the Appellant, records of the Trial Court, the circumstance surrounding this case. It is cardinal principle of evidence that a party who asserts the existence of fact has to prove. The Appellants have not exhibited this.

In the light of the above discussion, I find the Appeal to be devoid of merit. I accordingly dismiss it with costs.

  
**J. A. DE-MELLO**

**JUDGE**

**13/02/2020**