

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

**MISC. CIVIL CAUSE NO. 32 OF 2019**

**THE REGISTERED TRUSTEES OF  
THE JUMA MOSQUE, MWANZA.....1<sup>st</sup> APPLICANT**

**OMARY MBALAMWEZI.....2<sup>nd</sup> APPLICANT**

**VERSUS**

**ADMINISTROR GENERAL.....1<sup>st</sup> RESPONDENT**

**THE REGISTERED TRUSTEES OF  
BARAZA KUU LA WAISLAMU TANZANIA  
(BAKWATA).....2<sup>nd</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>rd</sup> RESPONDENT**

**AL HAJ MARUZUKU MAGONGO.....4<sup>th</sup> RESPONDENT**

**SHEIKH HAMZA MANSOUR.....5<sup>th</sup> RESPONDENT**

**ABDULHAKIM ABEID.....6<sup>th</sup> RESPONDENT**

**ABDALLAH S. BAJBER.....7<sup>th</sup> RESPONDENT**

**RULING**

*07/02/2019 -03/03/2020*

**Masoud, J.**

The applicants herein applied for orders of certiorari, and prohibition under among other things section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, cap. 310 R.E 2002. The order of certiorari was sought in order to quash the decisions of the first respondent (Administrator General) contained in a letter Ref. No.

ADG/TI/244/Vol.2/19 dated 23/08/2019; a letter Ref. No. ADG/TI/244 Vol. II/25 dated 23/09/2019 and a letter Ref. ADG/TI/244/Vol. II/24 dated 31/08/2019. And the order of prohibition was sought in order to restrain the first and second respondents from interfering with the affairs of the first applicant relating to its management.

The letters containing the challenged decisions were annexed to the first applicant's affidavit deponed by one, Abdallah Amin Abdallah, and the second applicant's affidavit deponed by one, Omary Mbalamwezi, which along with the joint statement of facts signed by the said Abdallah Amin Abdallah, supported the present application for the above mentioned prerogative orders.

The said Abdallah Amin Abdallah deponed the affidavit as a member and trustee of the first respondent. He also signed the statement of facts as a member, trustee and secretary of the first applicant. As to the said Omary Mbalamwezi, he deponed the affidavit as a member and trustee of the first applicant. The chamber summons indicated that the application was supported inter alia by affidavit of the said Abdallah Amin Abdallah, a member, trustee and the secretary of the first applicant as reflected in the Statement and not the affidavit verifying the facts.

While this matter was still pending in this court, the 4<sup>th</sup> -7<sup>th</sup> respondents who claimed to be amongst the trustees of the first applicant and therefore interested in this matter were joined as such pursuant to an order of this court dated 30/12/2019. The said order followed the order of this court as per Hon. Maige J. in Misc. Civil Application No. 57 of 2019 of this court which allowed the application to join the said respondents in this application for the prerogative orders sought by the applicants.

The proceedings were accordingly amended to reflect the 4<sup>th</sup> -7<sup>th</sup> respondents; regard being had to the urgency of the matter. The matter was opposed by all respondents who filed their respective counter affidavits and statements in reply vehemently opposing the granting of the prerogative orders sought by the applicants. There were also preliminary points of objection by the 4<sup>th</sup> -7<sup>th</sup> respondents against the application. The same were to the effect that the application is overtaken by events and in the alternative, the applicants have no locus standi.

The matter was heard on both the preliminary objections and on the merit of the application on 07/02/2020. The understanding was that the court would determine the application on merit only if the preliminary objections would not dispose of the matter.

Parties were all duly represented by learned counsel. The applicants were represented by Mr Juma Nassoro, Mr Daimu Halfani, and Ms Loveness Denis, all learned Advocates; the first and third respondents were represented by Ms Narindwa Sekimanga, Mr Cosmas Mutabazi, and Mr Rashid Mohamed, all learned State Attorneys, the second respondent was represented by Mr Rashid Kiliza, learned Advocate, and the 4<sup>th</sup> – 5<sup>th</sup> respondents were represented by Mr Willbard Kilenzi, learned Advocate.

The learned counsel representing all the parties in this matter made extensive oral submissions in respect of the preliminary objections in so far as it was relevant to them and the merit of the application. As the submissions are all on the record, I think I need not to reproduce them save where it is necessary to do so in dealing with relevant issues at stake. I nevertheless commend all learned counsel for their sound arguments and authorities they referred me to.

The submissions of all counsel, in their totality, raised the following issues. One, whether the application has been overtaken by events; second, whether the applicants had authority to institute and pursue the present proceedings; and third, whether the applicants have made out a case for this court to grant the prerogative orders sought. The first and the second

issues in my considered views have also a bearing on the preliminary point(s) of objection raised to the effect that the matter before the court has been overtaken by events and in the alternative the applicants have no locus standi on the matter.

Having considered the rival submissions on the preliminary objections, I was of a considered view that the two objections raised in the alternative do not qualify as pure point of law to be entertained and determined as preliminary issues. This was also the view taken by the learned counsel for the applicants to convince the court to overrule the objections.

Without labouring much on the above stance, it was no wonder that the learned counsel for the 5<sup>th</sup> -7<sup>th</sup> respondents who raised the points of objection had in the course of his submissions resorting to matters of evidence such as, factual developments that had since taken place and records showing that there was no factual basis for the applicants to prosecute the matter against the respondents. As indicated above, I overruled the objections as they were in my view not pure points of law which could be properly dealt with and determined as preliminary points.

At the centre of this matter, it is the complaint of the first applicant against the respondents and in particular the decisions allegedly made by the first respondent amounting to interfering with the management of the affairs of the first applicant. In this context, the principal allegations in this application were that the impugned decisions specified in the chamber summons were ultra vires of the first respondent's statutory power and were made without affording the first applicant an opportunity to be heard.

The backdrop of the impugned decisions specified in the chamber summons was mainly the investigation which was conducted by a committee appointed by the first respondent on the affairs relating to management of the first applicant. The report of such investigation was allegedly neither given to the first applicant nor discussed with the first applicant.

It is alleged that consequent to the complained investigation, the first respondent made the impugned decisions against the first applicant. The decisions saw the first respondent unlawfully seizing the affairs, investments and operations of banks' accounts of the first applicant and appointing the second respondent as her agent.

Before making any further progress, it is crucial to point out that the first respondent is a board of registered trustees. It is thus a body corporate incorporated under the Trustees' Incorporation Act, cap. 358 R.E 2002 as amended. The record brought to my attention indicates that the first applicant was incorporated way back in 20/11/1957 although it has in the recent years been in a turmoil of series of endless internal conflicts. As a body corporate, the first applicant is capable of suing and being sued in its corporate name (i.e The Registered Trustees of Juma Mosque) pursuant to the provision of section 8 of the said Trustees' Incorporation Act (supra).

It is evident on the record that the parties are not in dispute at all that the first applicant is a body corporate and must only sue and be sued in its corporate name. It is in this regard that the issue of authorization for the institution of this matter and for the said Abdallah Amin Abdallah to sign relevant documents for this matter comes into play. It is more so because the issue is intrinsic in the 1<sup>st</sup> and 4<sup>th</sup> -5<sup>th</sup> respondents' counter affidavits in relation to which the applicants were given opportunity to reply.

The claim in the affidavit of the said Abdallah Amin Abdallah which was made in support of the application was that the said Abdallah Amin

Abdallah was authorized to sign documents in relation to this matter. A board resolution of the first applicant was shown in the affidavit to fortify the averment on the authorization. The Board resolution was allegedly made in a meeting of the first applicant held on 26/09/2019. The meeting was allegedly attended by (i) Idriss Abdallah, (ii) Ibrahim Hussein; (iii) Khalid Abdallah; (iv) Sheraly Hussein Sheraly; (v) Abdallah Amin Abdallah; and (vi) Omary S. Mbalamwezi.

The allegation of the existence of the authority for institution of this matter and having the said Abdallah Amin Abdallah sign the relevant documents is disputed by the respondents as pointed out above. The thrust of the dispute was that the meeting of the first applicant purporting to authorize the institution of the present application, was not made by the trustees of the first applicant, was forged and it was not signed by the trustees of the first applicant.

Among other documents, the court was shown by the 4<sup>th</sup>-7<sup>th</sup> respondents a letter from the first respondent Ref. No. ADG/TI/244/VoL.II/29 of 01/11/2019 which named the following as the authorized trustees of the first respondent; (i) Abdallah Amin Abdallah, (ii) Omary S. Mbalamwezi, (iii) Hamza Mansour, (iv) Abdillah Saleh, (v) Khalid Abdallah, (vi) Maruzuku



Magongo, and (vii) Abdulhakim Abeid. Similar position is seemingly reflected in a letter Ref. ADG/TI/244/90 of 14/03/2018 whose list of authorized trustees listed Bihonga Amiri Bihonga and Miraj Bwana in addition to the above named authorized trustees. The latter as was the former part of the 4<sup>th</sup> -7<sup>th</sup> respondents' counter affidavit.

The above letters are in my view central to the issue about the recognized trustees of the first applicant. However, neither of the above mentioned letters nor their contents were specifically disputed by the applicants in their reply to counter affidavit of the 4<sup>th</sup> -7<sup>th</sup> respondent. There is at best a general assertion that those who signed the resolution were indeed the trustees of the first applicant. The averment by the first respondent that there were trustees who were not involved in the alleged meeting of 26/09/2019 was similarly not countered by the applicants.

The exception was with regard to the changes of the trustees which were allegedly effected by the first applicant. One of the category of such changes concerned Maruzuki Magongo (the fourth respondent), whose membership as a trustee ceased on 10/03/2018 when he was removed and replaced by Ibrahim Hussein Sherally. And the second category of such changes were in relation to appointment of Idriss Abdallah in place

of Mashaka Magongo; and Sherally Hussein Sherally in the place of Bihoga A. Bihoga. Although the said changes were seemingly effected between 2017 and 2019 as per the documents in support of the application shown to the court, they were evidently not authorized by the first respondent.

The letter Ref. ADG/TI/244/90 of 14/03/2018 referred to herein above made references to an earlier letter Ref. ADG/TI/244/77 of 28/12/2017 issued to the first applicant by the first respondent. It is not on the record that the contents of the said letters had once been challenged by the first applicant. The letters are evidently significant as to why the changes of trustees alleged by the applicants were not authorised by the first respondent. The letters related to persistent conflicts amongst the trustees of the first applicant, and a directive as to changes required to be taken by the first applicant before any changes of the existing trustees could be effected and authorised. The relevant part of the letter Ref. ADG/TI/244/90 of 14/03/2018 insisted as follow and I quote:

*3...Ofisi inawajulisha kuwa haijatengua maelekezo ya barua husika kilichofanyika ni kuongeza muda ili kukamilisha mambo muhimu ikiwemo tarifa ya ukaguzi wa hesabu ya msikiti wenu.*

*4. Kutokana na mgogoro uliopo.....Ofisi haitapitisha mabadiliko yeyote ya wadhamini katika kipindi hiki.*

*5. Wadhamini wanaotambuliwa na Ofisi kwa sasa ni hawa wafuatao:*

*i. ABDALLAH AMIN ABDALLAH*

- ii. BIHONGA AMRI BIHONGA
- iii. OMARY MBALAMWEZI
- iv. HAMZA MANSOUR
- v. ABDILLAH SALEH
- vi. KHALID ABDILLAH
- vii. MIRAJ BWANA
- viii. MARUZIKU MBWANA
- ix. ABDULKARIM ABEID

**NB** Mabadiliko ya wadhamini (Fomu TI4) na marejesho ya wadhamini (Fomu TI5) ya mwaka 2017 mliyowasilisha Ofisini hayajapitishwa kwa sababu ya mgogoro uliyopo kati yenu,

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.....

*Tafadhali fahamishwa hivyo.*

*Gilbert P. Bubeiwa*

*Kny MMSIMAMIZI MKUU WA WADHAMINI*

I compared the names of the trustees mentioned in the said letters with the names appearing in the alleged board resolution of the first applicant. In so doing, I was curious to see if there is anything on the record which on the balance of probabilities show that there was not a valid board resolution of the first applicant authorizing the institution of the present application by the said Abdallah Amin Abdallah. I was in particular mindful of the letters Ref. ADG/TI/244/77 of 28/12/2017 and Ref. ADG/TI/244/90 of 14/03/2018 which restricted changes of the trustees until the existing conflicts were resolved which letters were not challenged by the applicants.

My comparison of the letters and the board resolution revealed the following. On one hand, I noted that there were in the board resolution three names of individuals who do not appear in the uncontested letters containing a list of recognized trustees referred in the 4<sup>th</sup> -7<sup>th</sup> respondents' counter affidavit. The three names of such individuals were, Idriss Abdallah, Ibrahim Hussein, and Sherally Hussein Sherally).

Whilst there was in relation to the above observations explanations from the applicants as to the changes of the trustees of the first applicant which brought these individuals in place, there was as earlier shown no authorization from the first respondent confirming such changes and such individuals as the trustees of the first applicant replacing members whose membership for one reason or the other ended.

On the other hand, there were only Omary S. Mbalamwezi, Abdallah Amin Abdallah, and Khalid Abdallah in the board resolution who also appear in the uncontested letters listing the recognised trustees of the first applicant. The other trustees appearing in the above mentioned letters inclusive of the 4<sup>th</sup> -5<sup>th</sup> respondents were not amongst those who attended the alleged meeting and passed the disputed resolution. It is, in my finding, therefore, an established fact that there were trustees of the first

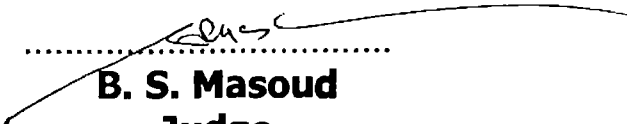
applicant who were not involved in the passing of the alleged resolution. Neither was it shown that they were notified but chose not to attend the meeting.

To make it worse, there were individuals who were not in the list of recognized trustees if one goes by the uncontested letters from the first respondent's office. It is therefore fair to hold that the purported board resolution was passed in the purported meeting of the first applicant which was only attended by three trustees recognized by the first respondent and three other individuals who are not recognized trustees of the first applicant. The validity of the resolution of the meeting held on 26/09/2019 on the basis of which this matter was instituted is in the circumstances wanting as it is a result of an improperly constituted meeting of the trustees of the first respondent.

With the above findings, I am afraid I cannot hold that there was an authority from the first respondent to have this matter instituted and the said Abdallah Amin Abdallah to sign the relevant documents for this matter. The matter is for that reason incompetent before the court. It is an academic exercise to labour on the other issues as this finding alone disposes of the application.

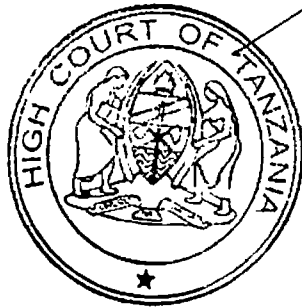
In the end, I would, as I hereby do so, strike out the application as a whole with costs. I order accordingly.

Dated at Dar es Salaam this 03<sup>th</sup> day of March 2020.

  
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**B. S. Masoud**  
**Judge**  
03/03/2020

**Court**

Ruling is hereby delivered in the presence of Mr Daimu Halfani, Advocate assisted by Ms Loveness Denis, Advocate for the applicants and accompanied by the second applicant; Ms N. Sekimanga, SA assisted by Mr C. Mutabazi, State Attorney for the first and third respondents, Ms Salima Mussa, Advocate for the 4<sup>th</sup> – 7<sup>th</sup> respondents and accompanied by the 4<sup>th</sup> -5<sup>th</sup> respondents and in the absence of the second respondent this 03/03/2020.



*B. S. Masoud*  
.....  
**B. S. Masoud**  
**Judge**

03/03/2020

