

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 83 OF 2021**

**THE REGISTERED TRUSTEES OF MASJID ISTIQAMAH.....APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF BARAZA**

**KUU LA WAISILAM (BAKWATA).....1<sup>ST</sup> DEFENDANT**

**ADAM YUSUF MWINYIPINGU .....2<sup>ND</sup> DEFENDANT**

**RAJABU J. HAKIKA.....3<sup>RD</sup> DEFENDANT**

**RAMADHAN OMARI.....4<sup>TH</sup> DEFENDANT**

**HABIBU KIPAMBA.....5<sup>TH</sup> DEFENDANT**

**HASSAN SULEIMANI MATEGE.....6<sup>TH</sup> DEFENDANT**

**HASSAN KIPONDA.....7<sup>TH</sup> DEFENDANT**

**RULING**

*Date of last Order: 13/10/2022*

*Date of Ruling: 25/11/2022*

**E.E. KAKOLAKI, J.**

This ruling is in respect of the preliminary objection raised by defendants herein against the plaintiff's suit on the ground that, this Court has no jurisdiction to adjudicate the matter before it, hence the same should be dismissed with costs. The same is strenuously resisted by the plaintiff who

argues that it is misplaced as this Court is clothed with jurisdiction to entertain the suit. Both parties who appeared in Court represented when the matter was called for hearing, were heard viva voce as the plaintiff hired the services of Mr. Burhan Mussa, learned counsel while the defendants enjoyed the legal services of Ms. Salama S. Chambuso, learned advocate.

Briefly as gathered from the plaint, the plaintiff and 1<sup>st</sup> defendant are registered trustees and body corporate duly incorporated under the Trustees Incorporation Act, [Cap. 318 R.E 2002], while the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants are natural persons. The plaintiff which has been working with Baraza Kuu as the Supreme Religious with exclusion of the 1<sup>st</sup> defendant, is claiming against the defendants jointly and severally for declaration order that defendants are trespassers to Masjidul Istiqaamah Mzambarauni which is under the management of the plaintiff, declaration order that the defendants have no authority over the management of Masjidul Istiqaamah Mzambarauni, permanent injunction restraining the defendants and any other persons claiming under them from interfering the affairs and management of the said Masjidul Istiqaamah Mzambaauni, costs of the suit and any other reliefs as the Court may deem fit to grant. As alluded to above the plaintiff's claims were vehemently contested by the defendants when

filed their joint Written Statement of Defence, in which the Notice of Preliminary objection subject of this ruling was raised too.

Submitting in support of the sole point of preliminary objection Ms. Chambuso argued that, under article 19(2) of the Constitution of the United Republic of Tanzania, 1977 as amended (the URT constitution), this court lacks jurisdiction to entertain and determine this suit involving religious matters as it states clearly that the affairs and management of the religious bodies shall not be part of the activities of the state authority. In addition to that she argued, under article 2 and 98(1) and (2) of BAKWATA constitution any religious body under BAKWATA is prohibited to institute any religious civil disputes in the court of law as they have a forum to deal with them through their own Religious commission (Tume ya Dini). In view of the above submission Ms. Chambuso implored this Court to dismiss this suit for want of jurisdiction.

In response Mr. Mussa started with the issue of contravention of BAKWATA constitution submitting that, the same does not qualify to constitute a point of objection as the fact whether the plaintiff is a subject of BAKWATA or not calls for evidence as it has its own constitution hence a submission that BWAKWA is not supreme to the plaintiff as each both is registered and

regulated by its own constitution. As regard to violation article 19(1) of the URT Constitution, if this Court entertains the suit before it he countered the submission by the defendants are misplaced as what is being prohibited under the said article is for the state authorizes to run and manage religious affairs but not to regulate them such as ensure they are registration and conduct themselves in accordance with the law. To him, since the plaintiff is a registered body corporate under the Trustees Incorporation Act which powers to sue and be sued, then this suit is properly before the Court as it is none than this Court which is crown with powers to entertain it. He therefore urged the Court to overrule the objection with costs. In a short rejoinder Ms. Chambuso maintained her stance while adding that as per annexure P7 to the plaint BAKWATA is the mother of all Islamic religious institutions in Tanzania hence the plaintiff is affiliated to it and has to abide to its constitution. Otherwise she reiterated her submission in chief and the prayers thereto.

I had an ample time to peruse the pleadings, consider and accord both parties' fighting submission the weight it deserves. It is uncontroverted fact that both plaintiff and 1<sup>st</sup> defendant are registered trustees with their own constitution, hence body corporates with full powers to sue and be sued as

provided under section 8(1) of the Trustees Incorporation Act, [Cap. 318 R.E 2002]. The said section 8(1) of the Trustees Incorporation Act, reads:

*8(1) Upon the grant of certificate under subsection (1) of the section 5 the trustee or trustees shall become a body corporate by name in the certificate, and shall have:-*

*(a) Perpetual succession and a common seal;*

*(b) power to sue and be sued in such corporate name;*

What brings the parties into disagreement is the issue as to whether the Court is seized with jurisdiction to entertain their dispute, the issue which this Court is called to determine. To start with the first point as raised by the defendant that, it is Ms. Chambuso's contention that, this Court lacks jurisdiction to entertain this suit as to do so will be in violation of article 19(2) of the URT Constitution since state authorities are prohibited from running and managing religious affairs under that provision. Mr. Mussa finds the submission by Ms. Chambuso to be misplaced as to him the article does not prohibit state authority to regulate the conducts of religious bodies such as their registration and entertainment of their dispute like the one in the present matter as both plaintiff and 1<sup>st</sup> defendant are body corporate with the right to sue and be sued. For better understanding of that defendants'

contention I find it imperative to quote the said article. Article 19(2) of the URT constitution reads:

*(2) The profession of religion, worship and propagation of religious shall be free and a private affair of an individual; and the affairs and management of religious bodies shall not be part of the activities of the state authority.*

What is gleaned from plain interpretation of the above article is that, the same restricts affairs and management of religious bodies such as the plaintiff and 1<sup>st</sup> defendant to form part of the activities of the state authority. In other words it prohibits the state authorities from running and managing the affairs of religious bodies with a clear purpose of separating the religious bodies affairs and management from the state organs or authorities and not to regulate their conducts and resolve their dispute formerly filed in courts of law as per the constitutions guiding them as rightly put by Mr. Mussa whose submission I embrace. I so hold as under article 107A(1) of the URT constitution it is the judiciary which is mandated with the final dispensation justice to parties in dispute unless such dispute is restricted by law or their respective agreements or constitutions to be entertained by the Court. With that understanding I distance myself from Ms. Chambuso's contention that by entertaining this suit, the provisions of article 19(2) of the URT

constitution will be infringed by the Court as state authority. Hence this point lacks merit.

Next for determination is the second point as to whether articles 2 and 98(1) and (2) of the BAKWATA constitution restricts the plaintiff from preferring civil suit in the courts of law as the only forum for her is the Religious Commission (Tume ya Dini). The said provisions of articles 2 and 98(1) and (2) of BAKWATA constitution provides thus:

*2. Baraza Kuu la Waislam wa Tanzania (BAKWATA) litakuwa ndiyo chombo pekee cha kuongoza waislam na litakuwa na kauli ya mwisho kulinda, kutetea na kueneza Uislam na nadharia yake Nchini kwa mujibu wa Qura-aani na Sunna.*

*98.(1) Mamlaka ya kushtaki na kupeleka mbele ya Mahakama ya sheria kwa jina na kwa niaba ya Baraza Kuu la Waislam wa Tanzania (BAKWATA) amepewa Katibu au Mtu mwingine yeyote atakayeteuliwa kwa ajili hiyo na Katibu Mkuu, au na Halmashauri kuu ya Taifa.*

*(2) Mtu yeyote Tanzania hana ruhusa kumfungulia kesi ya namna yeyote Mufti wa Tanzania badala yake malalamiko yeyote yapelekwe kwenye Tume ya Dini.*

My reading and understanding of article 2 of BAKWATA constitution as cited above is that, BAKWATA is the sole organ for protection, prevention and promulgation of Islamic religion and its theories in the country in accordance

with the Holy Quran and Sunnah. As to article 98(1) of the constitution, the same confers the powers to sue for and on behalf of BAKWATA in the courts of law to the BAKWATA Secretary General or any other person duly authorised by him or by the National Executive Committee, while sub article (2) prohibits institution of any civil suit or claim in courts of law against Mufti by whoever is bound the said constitution, instead all claims or complaints against him be referred to the Religious Commission (Tume ya Dini).

With the above understanding, I am inclined to agree with Mr. Mussa hence embrace his submission in that, being body corporate with the right and powers to sue and be sue the plaintiff is not restricted to institute a civil suit against the 1<sup>st</sup> defendant who is also a body corporate independent from her. I so view as what the BAKWATA constitution restricts under article 98(2) is the institution of any civil suit in the courts of law against the mufti for any subject of BAKWATA as the proper forum for him/her is the Religious Commission (Tume ya Dini) but not the 1<sup>st</sup> defendant as body corporate. It is from that firm finding I hold the second point is also devoid of merit hence disregard it. In totality the issue as to whether this Court is seized with jurisdiction to entertain this suit is answered in affirmative.



All said and done, I find the preliminary point of objection raised by the defendants to be destitute of merit and proceed to overrule it with costs. I order that the suit should proceed to the next stage.

It is so ordered.

Dated at Dar es Salaam this 25<sup>th</sup> November, 2022.



E. E. KAKOLAKI

**JUDGE**

25/11/2022.

The ruling has been delivered at Dar es Salaam today 25<sup>th</sup> day of November, 2022 in the presence of Mr. Salama Chambuso, advocate for the plaintiff, Mr. Hassan Galiatano, advocate for the defendants and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

25/11/2022.

