

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(DAR ES S LAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM
CIVIL CASE NO. 215 OF 2018**

REGISTERED TRUSTEES OF MASJID UHUD..... PLAINTIFF

VERSUS

MBWANA UDAI SHAME.....1st DEFENDANT

RAMADHANI SAID MTUNDIA.....2nd DEFENDANT

BAKARI ISMAIL MBAWALA.....3rd DEFENDANT

NURDIN ALLY.....4th DEFENDANT

MWINYIJUMBE WAZIRI THABITI.....5TH DEFENDANT

TWALIBU SELEMANI MUSSA.....6TH DEFENDANT

Last order: 10/08/2022

Judgement date: 24/08/2022

JUDGEMENT

MANGO, J

The Plaintiff, Registered trustees of Masjid Uhud filed this suit against the Defendants namely Mbwana Udai Shame, Ramadhani Said Mtundia, Bakar Ismail Mbawala, Nurdin Ally, Mwinyijumbe Waziri Thabit and Twalibu Selemani Mussa seeking for the following reliefs;

1. Declaratory order that Defendants have no right of whatsoever to be trustees of masjid Uhud located at Magomeni area, Kiyungi street, Dar es Salaam
2. Perpetual injunction to restrain Defendant from taking part in the management of MASJID UHUD located at Magomeni area, Kiyungi street Dar es salaam.
3. Declaratory order that the Plaintiffs are lawful trustees of Masjid Uhud located at Magomeni area, Kiyungi street Dar es Salaam.
4. Perpetual injunction to restrain all Defendant from vying the post of trusteeship and Executive committee (Managerial) position to the Plaintiff.
5. Declaratory Order that, as per current constitution, or Masjid Uhud, Defendants have no qualifications to be elected trustees, Execution committee or any other managerial post thereof.
6. An Order of the Court to compel the 1st Defendant to return Certificate of Occupancy certificate of Title No 87645 issued on 21st day of May 2010 to the Registered Trustees of Masjid Uhud.
7. General damage, to be assessed by the court.
8. Costs of the suit
9. Any other order or relief the court may deem fit and just to grant.

The Plaintiffs claim that they were dully elected to the office by worshipers of Masjid Uhud via an election which was conducted on 13th August 2017. The Defendants challenged the legality of the election through which Plaintiffs were elected to office. They pegged their challenge on the unconstitutionality of the process through which the Plaintiff were elected.

During Final pre-trial settlement conference four issues were drawn for proper determination of the case. The issues are as follows:

- (1) Whether the members of Board of Trustees of Masjid Uhud were legally elected.
- (2) If the answer to issue No. 1 is in affirmative, whether it was proper for Defendants to interfere the Plaintiffs.
- (3) Whether Masjid Uhud is under supervision of Bakwata.
- (4) To what reliefs are parties entitled to

It is trite law that whoever allege must prove as per section 110 and 112 of the CPC. In the case at hand, the plaintiffs allege to be legally elected to serve their position in that regard they are bound to prove legality of the manner they were elected to be members of board of trustees of Masjid Uhud.

In proving their case the Plaintiff paraded three witnesses namely Shomary Madenge PW1, Juma Shabani, PW2 and Jaffar Abdallah Swalehe PW3, while in their defence the defendants had a single witness namely Mohamed Mwinjuma (DW1).

According to the testimonies of all witnesses it is not disputed that the Plaintiff were elected by the worshippers of Masjid Uhud via a General Meeting held on 13th August 2017. The only issue in this case is legality of their election procedure. The Defendants allege that the election was conducted contrary to the constitutional provisions. The Plaintiffs witnesses testified to the effect that the election was conducted in accordance to the registered constitution and agreement made of the worshipers. The constitution of Masjid Uhud which was tendered as Exhibit P3 provides for

the procedure of electing Board of Trustees under its article 5 of the registered. The article reads;

'The Trustees shall be elected by the Annual General meeting or extra – ordinary General meeting attended by Muslims of Magomeni Mapipa.'

According to this article, election of members of the board of trustees need to be done by Annual General meeting attended by Muslims of Magomeni Mapipa. The election through which the Plaintiffs were elected to office seems to be in compliance with the constitution as the meeting was attended by worshippers of Masjid Uhud who presumably are Muslims who live at Magomeni area.

However, the composition of the meeting contravenes the provision of article 12 of the registered constitution of Masjid Uhud. Article 12 of the constitution provides for the composition of the Annual General Meeting. The persons who should attend the meeting are:

- (i) The Board of Trustees
- (ii) Muslims who live at Magomeni Mapipa.
- (iii) The intend Muslims disnatories as observers.

The Annual General Meeting should be chaired by the chairman of the Board of Trustees.

The meeting through which the plaintiffs were elected to office was not chaired by the chairman of the Board of trustees as he is alleged to have been disqualified for his failure to attend three constitutional meetings. It was PW1's testimony that the election was supervised by the Supreme Council of Islamic Organisation of Tanzania. The registered constitution of Masjid Uhud does not vest any powers to the Supreme council nor does it

mention even its existence as far as Masjid Uhud operations are concerned. Since the registered constitution requires Annual General Meetings and Extra Ordinary meetings to be chaired by the Chairman of the Board of Trustees, a meeting chaired or supervised by the Supreme Counsel cannot be considered to be Annual General Meeting or Extra ordinary meeting under the provisions of the Registered Constitution of Masjid Uhud. Thus, the meeting through which the Plaintiffs were elected to office was not Annual General Meeting nor was it an extra ordinary meeting. Such findings establish that the election was conducted via a meeting which does not have powers to elect members of the board of trustees of Masjid Uhud.

Despite the constitutional requirements, it was alleged that the election was conducted in the manner agreed by the worshippers of Masjid Uhud. My thorough consideration of evidence tendered before the Court I have not seen any agreement of the association members stipulating for a new procedure of conducting general elections or electing members of the board of trustees. I hold so while aware that the supervision of election by Supreme Council and the manner the election was conducted seem to be part of the agreement between the two disputing groups of worshippers of the Masjid. The alleged agreement was tendered as evidence and it was admitted as Exhibit P 11. The contents of exhibit P11 do not suggests it to be an agreement of the worshipers of Masjid Uhud on how election should be conducted but a decision of the Supreme Council on the dispute that was referred to it by some worshippers of Masijid Uhud. The formation of election committee and the manner the election was conducted was actually the decision of the Supreme Council. Thus, the election was conducted as per

the decision of the General counsel dated 15th July 2017 after they have heard two disputing groups of the mosque worshippers.

It is my considered view that, the dictates of the General Council in its decision cannot be taken to be an agreement between the disputing sides. In absence of the agreement as to how the election need to be conducted, the election lacks legitimacy from the worshippers unless held in accordance with the registered constitution of the association.

I understand that at the time the election was conducted, the Masjid had no chairman of the registered trustee who could have chaired the general annual meeting as per dictates of article 12 of the registered constitution of Masjid Uhud. It is alleged that the powers of the board of registered trustees were revoked by the Imam, a prayer leader of the Mosque. My perusal of the constitution of the Registered trustees of Masjid Uhud, I could not find any article which empowers the Imam to revoke powers of the board of trustees. According to article 7 of Masjid Uhud's Registered Constitution, a membership of registered Trustees may cease if: he ceases to be a Muslim, goes against principles of Islam, he dies, resigns, becomes insane or incapacitated.

Unfortunately, cessation of the former members of the registered trustees was not raised as among issues to be determined in this suit. For that reason, there was no evidence that was tendered to establish correctness of the expulsion of the former members of the registered board of trustees of the Masjid. Moreover, even if they were disqualified, yet the Imam is not empowered by any of the provisions of the Registered constitution of the Masjid to dissolve the registered board of trustees. It

should be noted that, constitution of the registered trustee is a binding agreement on how the trust affairs should be managed. Thus technically, the board of trustees that existed before the disputed election was still in office. For those reasons, I find the election through which the Plaintiffs were elected to office to have been held contrary to the registered constitution of Masjid Uhud.

The law, section 17 of the Incorporation of trustees Act, sets a precondition that change of registered trustees should only be effected after the Registrar has been satisfied that the meeting through which the new trustees were elected was proper according to the constitution of the association and other governing laws. In such circumstances, the findings that the election through which the Plaintiffs were elected to the office was contrary to the Constitution of Masjid Uhud, disposes the first issue negatively and makes the second issue irrelevant.

The third issue should not detain much this court as the registered constitution of Masjid Uhud does not put the affairs of the Mosque under any supreme council of Islamic bodies. I understand that BAKWATA is the most known supreme institution for Islamic bodies in Tanzania but, this court cannot declare that the mosque is under BAKWATA because the constitution of Masjid Uhud does not expressly provide for such issue. It is up to the worshippers of the mosque to decide in their relevant meetings if they wish to be under the umbrella BAKWATA or Supreme Council of Islamic Associations.

The last issue, reliefs for the parties, this court do hereby dismiss this suit as the Plaintiffs have failed to prove legality of their election to the office.

Given the nature of the case and the need to maintain peace and harmony between the two groups of worshipper of the same mosque, I do not award costs.

Dated at Dar es salaam this 24th day of August 2022




Z. D. MANGO
JUDGE