

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 90 OF 2023

**MOHAMED ISLAM - NAHDI.....1ST APPLICANT
SALMAN SALEH AL-JABRY.....2ND APPLICANT
SALIM SALEH ALJABRY3RD APPLICANT
AHMED SHARIFF ALAWY.....4TH APPLICANT
AHMED ABDALLAH SAGGAF.....5TH APPLICANT**

VERSUS

THE REGISTERED TRUSTEES OF AL-JUMAA

**ARAB MOSQUE.1ST RESPONDENT
ADMINISTRATOR GENERAL.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT
ABDULAZIZ HASSAN.....4TH RESPONDENT
FAUZ ABOOD.....5TH RESPONDENT
ADIL DHIYEBI.....6TH RESPONDENT
ABDALLAH MUNIF.....7TH RESPONDENT**

RULING

4th April & 16th June 2023

MKWIZU, J.

The applicants are moving this Court under sections 2(1),2(2) and (2(3) of the Judicature and Application of Laws Act, (Cap 358 RE 2019), Order XXXVII (2) (1), and section 95 of the Civil Procedure Code (R.E 2019), for a Mareva injunction restraining the 1st, 4th, 5th, 6th and 7th Respondents from conducting General Meeting and Election at a date

unknown to the Applicant's pending the expiry of ninety days' notice issued to the 2nd and 3rd respondents and upon the disposal of an intended suit. The application is supported by a joint affidavit of the applicants. The respondents are opposing the application and they have filed a counter affidavit to that effect.

The application was ordered to be disposed of by written submissions. The Applicants are enjoying the services of Mr. Mashaka Ngole Advocate; the 1st, 4th, 5th, 6th, and 7th respondents are represented by Mr. Kasimu Nyangarika advocate, and Edwin Joshua the learned State Attorney was in court on behalf of the 2nd and 3rd respondents.

It is worth noting here that the 2nd, 3rd, 6th, and 7th respondents did not file a counter affidavit suggesting that they are not opposing the application. The counter affidavit in opposition to the application was filed by the 1st, 4th, and 5th respondents. And is only the counsel for the applicants and 1st, 4th, 5th, and 7th respondents who filed their written submissions as per the order of the court. The State Attorney did not bother to comply with the court order hence this expert ruling against the 2nd, 3rd, and 6th respondents.

The applicant's counsel began his written submissions by adopting the joint affidavit in support of the application stating in addition that the applicants are the members of the 1st respondent Organizations in which the 4th to 7th respondents are the Trustees elected in the year 2001. That despite the expiry of their tenure, the 4th to 7th respondents are continuing to manage the affairs of the 1st respondent entity without a legal mandate and have failed to conduct general meetings and elections as per the

constitution of the organization for the whole period they are in office. Dissatisfied by that situation, the applicants petitioned the 1st respondent for a general meeting of the organization move that was ignored by the 4th to 7th respondents. Instead, surreptitiously, the 4th to 7th respondents-initiated procedures for conducting a general meeting and election, by issuing forms for membership application, secretly and selectively to only favored members to avoid some of the existing members including the applicants, and admitting only fresh applicants.

The situation was intervened by the 2nd respondent by directing both sides to convene a joint committee to oversee the preparation and conduct of the general meeting and election, the directives which were ignored by the 4th to 7th respondents. He contended that the applicants are aggrieved and are intending to file a suit to protect their rights as members and ensure the proper and lawful management of the affairs of the 1st respondent. To execute their intention, they have issued a 90 days notice to the 2nd respondent, a public official, the Attorney General, and the Solicitor General under section 6(1) (2) and (3) of the Government Proceedings Act, Cap 5 RE 2019. In the circumstances, the applicant's counsel said, there is a real danger that substantial injury can be caused if the respondents are not restrained by the court order.

Relying on the decision of **Leonilah Kishebuka V Dustun Novat Kutaguruka and 2 others**, Land Application No 70 of 2022(H/C unreported) **The trustees of the Anglican Church Diocese of Western Tanganyika V Bulimanyi Village Council and 2 others**, Miscellaneous Civil Application No 01 of 2022, the applicants counsel said, the applicants have established a prima facie case raising triable issues as

to whether the applicants are lawful members of the 1st respondent, whether they have rights to participate in the 1st respondent's general meetings and election; whether there is an attempt by the 4th to 7th respondent to exclude the Applicants from participating in the general meetings and election and whether the 2nd respondent was right in condoning the 4th to 7th respondent's plan which was contrary to its directives given through annexure LK-5 to the affidavit.

Speaking of the irreparable injury, the applicant's counsel said, it is established that there is an imminent danger if the 4th to 7th respondents will be allowed to carry on with their illegal plan aimed at denying the applicant the right to participate in both general meetings and elections.

Regarding the balance of inconvenience, he said, the 4th to 7th respondents will be less inconvenienced by the delayed general meeting and election than the applicants. His contention on this point was that the respondent's general meeting has been delayed for 21 years and the election for 16 years, that they just work up after the applicant's challenge and therefore they cannot pretend today to take the matter urgently. He lastly urged the court to grant the application with costs.

On the other hand, Mr. Nyangarika for the 1, 4th, 5th, 6th, and 7th respondents opted to first adopt the counter affidavit filed in court with an additional explanation in opposition to the application that, (i) The application is not tenable in law for failure to meet the test set by the case laws(ii)The application is time-barred. He on this said, the time between 15th and 16th March 2022 when the 2nd respondent gave his directives to 9th March when this application was filed is more than 10 months

rendering the intended suit time-barred;(iii)this application was filed after the striking out of a similar application by Nkwabi J for failure by the applicant to comply with the provisions of section (6) (1) of the Government Proceedings Act; (iv)The 2nd respondent is a government Agency and the 3rd respondent is the Attorney General who is not covered by the orders grantable under Order XXXVII Rule 2 (1) of the CPC. He said, though the 2nd and 3rd respondents are not specifically mentioned in the prayers made, the obvious is, the interim order intends to prohibit the implementation of the 2nd respondent's directives.

He was of the view that the cited cases by the applicant's counsel are distinguishable and therefore not applicable in the circumstances of this application because a Mareva injunction order cannot be granted where the chances of filing a case at the end of the day are almost impossible. And that there are no reasons given as to why the applicants did not issue the 90 days statutory notice before filing their earlier struck-out applications. He on this relied on the decision of **Ryan Investment Limited and Naothor V The United States of America** (1970) EA 675; **Gulam Abbas V Ebrahiimji and Others** (1971) EA 22 and **Adoma v Mutekanga** (1970) EA 429.

The respondent counsel went on to challenge the locus of the applicants stating that, unlike the respondents, the applicants have failed to display their membership cards in the application and therefore it is not known whether they are members of the Registered trustees or not for them to stand and challenge the legality of its operations. He again on this point cited the case of **Lujuna Shubi Ballonzi, Senior V Registered trustees of Chama cha Mapinduzi** (1996) TLR 203.

The respondent's counsel went further to explain that the applicants have failed to establish a prima facie case, irreparable injuries. He contended that it is the respondents who are likely to suffer irreparable loss if the application is granted. He prayed for the dismissal of the application with costs.

I have enthusiastically considered the application. As stated, applicants are seeking for Mareva injunction restraining the respondents from conducting a general meeting and election pending the expiry of the 90-day statutory notice issued to the 2nd and 3rd respondents and hearing and final determination of the intended suit by the applicants. This order is simply a temporary command granted to safeguard the applicant's apparent legal claims by freezing the respondents from taking certain actions pending the institution of the suit which would finally determine their rights. So, it is generally issued where there is no pending matter before the court.

So, the question to be considered is whether the application is meritorious or not. There are several issues questioning the competence of the application before this court raised by the respondent's counsel in his written submissions. It should be noted here that all these issues are a repetition of the earlier raised preliminary objections resolved through this court's ruling dated 4/4/2023. I will for that reason not discuss them in this ruling.

The applicant's request in this application is two fold. One is a restraining order pending the expiration of the 90-day statutory notice, and the second is a restraining order pending a hearing and final determination of

the intended suit. The second prayer is unworthy at this point. As stated above, the Mareva injunction is a transient order issued where there is no pending matter before the court. See **Allan Charles Kiwia v Ubungo Municipal counsel and Another**, Misc. civil Application No 116 of 2022 and **Daudi Mkwya Mwita v Butiama Municipal Council & AG**, Misc. Land Application No 69 of 2020, (All unreported). In the latter case, this court said.

"First, a Mareva injunction cannot be applied or be granted pending a suit. It is an application pending obtaining a legal standing to institute a suit. A Mareva injunction may be applied where an applicant cannot institute a lawsuit because of an existing legal impediment for instance where the law requires that statutory notice be issued before a potential plaintiff can institute a suit." (bold is mine)

Dismissing the application, Galeba J (as he then was) observed:

"Although Mr. Mligo said that this application is for mareva injunction, there was no indication that the injunction is being sought pending the expiry of a statutory notice; in fact according to the chamber summons, the prayer if granted would be pending determination of 'the main suit' which suit is nonexistent and unknown to both parties. So the prayer quoted above if granted, would be pending nothing tangible or ascertainable. This court cannot grant an order pending anything on record. That is the first reason why not only this application should fail at this

preliminary stage, but also it is the same reason it must fail even if it was to be substantively heard.” (Emphasis added)

Likewise, what is on the records so far is an expression of the applicant’s intentions to file a suit against the respondents. It is not certain if they will still execute their intention or not. I think, to grant a restraint order pending an application/ a suit which is not on the records would be to work on the odds. The second part of the applicant’s prayers is therefore refused.

I have no doubt that the first prayer by the applicant is grantable by this court. It is well covered by section 2(2) of the Judicature and Application of Laws Act as interpreted above. The obvious fact, however, is, the 90 days’ notice in respect of this application was issued by the applicants to the 2nd and 3rd respondents on 22/2/2023 expiring on 20/5/2023 meaning that to date, the said statutory 90 days’ notice has no life, expired in almost 26 days ago meaning that the prayer by the applicant is no more on demand.

What then would be the fate of this prayer? Faced with a similar position, this court in **Bagamoyo Abattaor and Meat processing company limited v. Athumani Omari Said And others**, Misc. Civil Application No 729 of 2022 (H/C Unreported) held:

“... once a Mareva application is overtaken by the event, then the Court’s power to determine such kind of application ceases.”

I am persuaded by the above decision. Though aware that the applicants are not at fault for this delay, this court finds no reason to grant the prayer which is by now overtaken by even for doing so would be to grant

something not in need. The only remedy available is to strike out the application. Since the time ran out while the matter was still in court, I make no order as to costs.

Dated at Dar es Salaam this **16th June** 2023.



A handwritten signature in brown ink, appearing to read "E.Y. Mkwizu", written over a horizontal line.

E.Y. Mkwizu

Judge

6/6/2023