

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 245 OF 2023**

**THE REGISTERED BOARD OF TRUSTEES OF
NIANJEMA TRUST FUND APPLICANT
VERSUS
CHARLES SLOAN JR..... RESPONDENT**

RULING

13th July & 4th August 2023

MKWIZU, J

This is an application for a declaration order *that "the prior Meetings and Resolutions submitted to RITA"* are null and void. The application is supported by three affidavits by Dr Frank Manase, Mr. Gideon Kiyenze, and Daniel M. Msaky the principal officers of the applicant.

The application has been vigorously opposed by the respondent through a counter affidavit sworn by Charles W. Sloan Jr on 13th July 2023 accompanied by a notice of preliminary objection containing three points drafted thus:

- 1. That the applicant is an artificial person, the application ought to have been instituted with a Board of Trustees resolution annexed hereto; therefore, the absence of a Board of Trustees resolution renders this application incompetent and thus should be struck out with costs.*

- 2. That the application is incurably defective and bad in law on the basis that being an application made under the civil procedure code, cap 33 RE 2019, it was mandatorily supposed to be preceded by a plaint.*
- 3. That the application is incurably defective and bad in law since the court has no jurisdiction to grant the sought orders.*

The preliminary objection was heard on 17th July 2023 in the presence of Ms. Prisca Mtanga advocate for the applicant and Mr. Alex Mgongolwa assisted by Rujaina Mohamed advocate for the respondent.

Submitting on the first preliminary objection, Mr. Mgongolwa Advocate said, the applicant being an Artificial person ought to come to court with a Board Resolution of the Board of Trustees. He argued that the three affidavits supporting the application have not annexed any resolution of the board of Trustees stipulating the mandate that the artificial person by the name of Nia Njema Trust Fund has authorized this artificial person to proceed with the suing / filing this application. Explaining the legal position set in **Simba Paper Converters Limited V Packaging and Stationery Manufacturers Limited and Another**, Civil Appeal No. 280 of 2017 (Unreported) page 20, Mr Mgongolwa said, for any legal person to approach the doors of the court it must be mandated by the respective legal body in the organization. While acknowledging that the cited case was in respect of a Commercial Company, Mr Mgongolwa said, the principle enunciated in that decision is of universal application that applies to the Trust and NGOs because just like the company and NGOs they are in the eyes of the law artificial bodies with the mandate of authorization.

He contended that the legal personality in a Trust lies with the Board of Trustees, just like in a local Company where the legal personality lies with the Board of Directors of the Company and therefore like in a commercial company, here the Board of Trustees ought to have authorized the Trust to proceed before the court of law. He insisted that the purpose of that principle is to create harmony in the body that is an artificial person by doing away with any individual who is a member of that artificial person going to court unauthorized.

He said the applicant is an NGO whose legal personality is gained under section 18 (2) of the NGO's Act and that it is only the Board of Trustees that was to authorize the Registered Board of Trustees of Nia Njema Trust Fund to file a matter before the court. He supported his argument with the case of the board of **Trustees of Good Neighbors Tanzania V Doreen Augustine Domiding T/A Dawsons Water Point Drilling**. Commercial case No 69 of 2019, H/C Commercial division.

Submitting on the second point of objection, Mr. Mgongolwa argued that this application, being civil, ought to have been preceded by a plaint. He implored the court to find the application premature. And on the third point, Mr. Mgongolwa submitted that the application is incurably defective because the court has no mandate to grant the sought-for orders. He said, Section 21 of the NGO Act, Cap 56 of RE 2022, cited as an enabling provision doesn't clot this court with necessary jurisdiction. The section deals with the suspension or cancellation of the certificate of registration of the NGO. It deals with the situation where the holder is in default of the terms and conditions on which the certificate was issued or is in violation of section 20 of the Act. It is totally inapplicable and therefore misplaced.

Regarding section 95 of the CPC cited in the chamber summons, Mr. Mgongolwa was of the view that this section is also inapplicable in the situation. To him, section 95 is applicable in a situation where no provisions of the law are applicable. He on this relied on **Tanzania Electric Supply Company V IPTL and 2 Others**, Consolidated Civil Appeal No 19 and 27 of 1999(2000) TLR 324 with an invitation to strike out the application with costs.

On the other hand, Ms. Mtanga's advocate readily conceded that Article 21 of the NGO Act doesn't vest this court with the power to adjudicate the matter but, that the power is derived from section 95 of the CPC cited in the chamber summons insisting that the matter is properly before the court.

Responding to the second point of objection, Ms. Mtanga said it was not necessary to have the main case for this application to stand. She readily conceded on the 1st preliminary objection stating that the applicant's application ought to have been authorized by the Board of Trustees which they do not have. She invited the court to strike out the application but with no order as to costs.

I have considered the points raised. I doubt if this court is vested with the power to determine the application. And since the issue of jurisdiction is key to any matter that is brought before the court, I propose to begin with the third preliminary point questioning this court's jurisdiction over the matter.

According to the chamber's summons, this application is preferred under **Article 21 of the Non-Governmental Organization Act, Cap 56 (RE 2019)** and Section 95 of the Civil Procedure Code Cap 33 Re 2019. I have read the entire Non-Government Organization Act, (Cap 56). First, the provisions in the said Act are designated as sections and not articles. And even assuming that by citing Article 21 the applicant was referring the court to section 21 of the said Act, that section does not provide for the applicant's prayer. Section 21 of The NGO Act, Cap 56 RE 2002 provides:

"21. -(1) Where the holder of a certificate is in default of the terms and conditions in respect of which a certificate was issued or is in violation of section 20, the Registrar may serve on the holder a default notice in writing specifying the nature of the default. Procedure for suspension or cancellation

(2) Upon receipt of the default notice, the holder shall make representation in writing to the Registrar regarding remedy or rectification of the default.

(3) Where the holder has failed to remedy or rectify the default within the time specified in the default notice or has not made a representation satisfactory to the Registrar, the Registrar shall submit to the Board recommendation for suspension or cancellation of a certificate.

(4) If the Board is satisfied that a holder of a certificate is in default as provided for in subsection (1), it shall direct the Registrar to suspend or cancel the certificate.

(5) A holder whose certificate has been suspended or canceled may apply to the Board for review of the decision to suspend

or cancel the certificate if he is dissatisfied with the reasons for such suspension or cancellation.

(6) A holder of a certificate who is dissatisfied with the decision of the Board to suspend or cancel a certificate may appeal to the Minister”

As gleaned, the section provides for the procedure for suspension and cancellation of the certificate of the NGO by the Registrar and then to the Board on review and further appeal on the decision to the Minister, not by the Court.

Ms. Mtanga’s argument that the prayers in the chamber summons are maintainable under section 95 of the CPC is without explanation. The settled rule is, the inherent powers of the court obtained under section 95 of the CPC are only applicable where there are no provisions of the law addressing the situation as pronounced by the court in **The Attorney General v. Maalimu Kadau & 16 Others.** (CAT), Civil Application No. 51 of 1996 where was said thus;

*“... It is trite knowledge that the inherent powers of the court provided under this section of the Civil Procedure Code are invoked in situations where **the court has authority or jurisdiction to deal with the matter and there is no specific provision of the law in place.**” (emphasis added)*

The deposed facts in the applicants' affidavits in support of the application are a condemnation of one of the founder trustees for changing the Trust deed, members of the trustee, signatories of the Bank account contrary to the Trusts’ constitution, and other complaints that are well protected by the Trustees Incorporation Act, Cap 318 RE 2002 on which the Trust

is registered and other laws rendering section 95 of the CPC cited inapplicable.

Enough to declare here that the application is incurably defective. I thus uphold the third preliminary objection with an order striking out the application. The applicant is at liberty to file a proper application before the court if she so wishes. Since this point alone suffices to dispose of the matter, I will refrain from determining the other points. Costs to follow the event.

Dated at Dare es salaam, this 4th Day of August 2023



E. Y Mkwizu

Judge

4th August 2023