IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM

CIVIL CASE NO. 210 OF 2023

KURBANALI AHMED KHAKI.....PLAINTIFF

VERSUS

AL-MUSTAFA INTERNATIONAL UNIVERSITY.....1ST DEFENDANT

REGISTERED TRUSTEES OF JAMAE MADINATUL-ILM MADRASA.....2ND DEFENDANT

RULING

14th & 22nd May, 2024

DYANSOBERA, J:

The plaintiff herein, is a natural person, a settlor, founder and one of the trustees of the 2nd defendant. The 1st defendant is a public University in the Islamic Republic of Iran having a branch in Tanzania while the 2nd defendant is a legal entity established and operating under the Trustees' Incorporation Act [Cap.318 R.E.2002].

According to paragraph 4 of the plaint, the plaintiff's claims against the defendants are 'dissolution of relationship between the 1st and 2nd defendant, persons/members of the 1st defendant to cease from being trustees in the 2nd defendant, general damages to the tune of not less than Tshs. 10 billion or such other amount as may be assessed by this Honourable court, and cost of this suit from the 1st defendant all resulting from the 1st defendant's breach of contract he signed with the plaintiff and the 2nd defendant.

In order to appreciate the flow of these proceedings, it is necessary to state, albeit briefly, the context or state of affairs in which the parties' dispute arose.

In February, 1994 the plaintiff decided to establish a trust in the name of the Registered Trustees of Jamae Madinatul-ILM Madrasa whereby the plaintiff became the trustee and chairperson and invited Mr. Murtaza Akberali Devji to join him as a trustee. The said trust which stands as the 2nd defendant was officially registered on 16th February, 1995.

In 2010 the 1st defendant represented by Murtadha Yusufali Alidina accompanied by the then Ambassador of Islamic Republic of Iran to Tanzania, Ambassador M. Morahhedi Ghomi, presented herself to the plaintiff and the 2nd defendant convincing the plaintiff as the chairman of the 2nd defendant not to go on with the secondary school complex project and in lieu thereof adopt the Islamic University complex project promising that the 1st defendant was ready and capable of financing it and have the university complex and its structure in place within a period of three years. In consideration of performing a promise for financing the project, the 1st defendant demanded to be given membership positions in the 2nd defendant and required the Constitution of the 2nd defendant to be amended to accommodate the agreement which was to be signed between the plaintiff, the 1st defendant and the 2nd defendant.

That agreement known as Donation and Cooperation Agreement was signed by the plaintiff and the 2nd defendant on 1st October, 2010.

In furtherance of what had been agreed to by the plaintiff, 1st and 2nd defendants, in December, 2010 the Trust Deed/Constitution of the 2nd

defendant was amended to give effect to, *inter alia*, 'the objective of the Trust shall among others to start a higher learning Islamic Institute for student from Tanzania and its neighbouring countries to continue higher education in Islamic Studies and Granting Scholarship to students continuing studies in Qur'anic and religious studies'.

It is also the plaintiff's case that since the signing of the agreement of 2010 and after persons of the 1st defendant were introduced and registered as trustees in the 2nd defendant, the 1st defendant has done nothing and failed to fund and construct the University complex as agreed; instead, he has taken advantage of having majority trustees in the 2nd defendant to force more changes including the introduction of new trustees.

The plaintiff pleads in his plaint that following the failure of the 1st defendant to comply with the contract signed with plaintiff and 2nd defendant, the 1st defendant and trustees mentioned in paragraph 15 herein above, any other persons purported to be the trustee in the 2nd defendant as a result of the agreement of 2010 referred to in paragraph 10 hereinabove, have lost legitimacy of being members and trustees in the Second Defendant.

In short, this is the gist of the of the plaintiff's suit.

On 7th May, 2024 when this suit came for hearing after going through the record and finding that there are sufficient facts *ex facie* on the record establishing want of competence or jurisdiction of this court and after being satisfied that the parties had not drawn the court's attention to that pertinent issue, I *Suo motu*, raised it and invited the parties and/or their

learned counsel to address me on the competence of the suit and the court's jurisdiction to entertain it. The parties' attention was drawn specifically on two issues, namely:-

1. Whether the suit before the court is not a religious matter
2. Whether the suit is competent, and the court is properly clothed with jurisdiction to entertain it.

Generally, the issue of jurisdiction being a fundamental issue, can be raised at any stage of the proceedings during the trial and even at an appeal stage. This issue can be raised by any of the parties or by the court itself *suo motu*.

The basis of this move can be traced from the wisdom of the Court of Appeal in the case of **Fanuel Martin Ng'unda versus Herman M. Ng'unda and Others,** Civil Appeal No. 8 of 1995 (unreported) in whicb it had the following to say: -

> "It (Jurisdiction emphasis is ours) goes to the very root of the authority of the court to adjudicate upon cases of different nature" ..... the question of jurisdiction is so fundamental such that it is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case"

As far as the first issue, that is whether or not the suit before the court is a religious matter, is concerned, Counsel for the plaintiff invited this court to be guided by the cause of action upon which the suit is founded and the principal reliefs claimed by the plaintiff. Putting reliance on Clause 4 of the plaint, he was of the view that the cause of action upon which the suit is based is a breach of a contract. He asserted that the question before the court is not a religious one but it is a question whether

there existed the contract and whether there is a breach of contract by the 1st defendant as claimed by the plaintiff. Counsel for the plaintiff also referred to paragraphs 9, 10, 11, 12 and 16 of the plaint that in the year 2010 the plaintiff, 2nd defendant, through the plaintiff in his capacity as the founder and chairperson, signed a cooperation agreement with the 1st defendant, whereby the 1st defendant was to finance and put in place a University complex on the land of the 2nd defendant and that in consideration for the 1st defendant financing the said University project, the 2nd defendant was to admit the 1st defendant persons into the Board of the Registered Trustees of the 2nd defendant.

This court was also referred to Clause 3.2.4 of the said Agreement and the plaintiff's claims under paragraphs 17, 19, 20, **21**, 22 and 23 of the plaint.

It is argued on part of the plaintiff that the relationship between the plaintiff and 2nd defendant is founded not on the Constitution of the 2nd defendant but on the contract signed by between the plaintiff, 1st defendant and 2nd defendant.

To me the term 'cause of action' is a technical legal term and is not defined under the Civil Procedure Code. However, the Court of Appeal in the case of **Anthony Leonard Msanze and Anor. Vs. Juliana Elias Msanze and 2 others**, Civil Appeal No. 76 of 2012 elucidated on what the expression cause of action entails. The Court stated: -

> 'We laid down relevant legal principles on cause of action in **John Mwombeki Byombalirwa Vs. Agency Maritime Internationale (T) Ltd [1983] TLR 1.** Through this decision, we first pointed out that although the expression "cause of

action" has not been defined under the Civil Procedure Code, but that expression simply means essential facts which a plaintiff in a suit has to plead and later prove by evidence if he wants to succeed in the suit'.

After a careful review of the pleadings in the plaint and the submissions made by counsel for both parties, I accept the invitation of the learned counsel for the plaintiff that this court should be guided by the cause of action upon which the suit is founded which as clearly spelt out under paragraph 21 of the plaint as follows: -

'21. That, following the failure of the 1st defendant to comply with the contract signed with the plaintiff and the 2nd defendant, the 1st defendant and trustees mentioned in paragraph 15 herein above, any other persons purporting to be the trustee in the 2nd defendant as a result of the agreement of 2010 referred to in paragraph 10 hereinabove, have lost legitimacy of being members and trustees in the Second defendant'.

As amply demonstrated by the plaintiff under paragraph 21 of the plaint, the cause of action is the **loosing legitimacy** on part of the the 1st defendant and trustees mentioned in paragraph 15 herein above, any other persons purporting to be the trustee in the 2nd defendant as a result of the agreement of 2010 referred to in paragraph 10 hereinabove the reason being not only the failure by the 1st defendant to comply with the contract signed with the plaintiff and the 2nd defendant but also taking advantage of having majority trustees in the 2nd defendant to force more changes including the introduction of new trustees.

This is why the plaintiff's core claim against the defendants and the principal relief from the court are as averred under paragraph 4 of the plaint and also admitted by counsel for the plaintiff is '**dissolution of**

relationship between the 1st and 2nd defendant, persons/members of the 1st defendant to cease from being trustees in the 2nd defendant. Indeed, this is the principal relief the plaintiff is claiming from this court.

To hold otherwise would be a violation of the principles of pleadings. According to the Court of Appeal in the case of **Makori Wassaga v. Mwanakombo and Another** [1987] T.L.R. 88,

> "A party is bound by his pleadings and can only succeed according to what he has averred in his plaint and proved in evidence; hence he is not allowed to set up a new case".

Likewise, the same Court in **Masaka Mussa Vs. Rogers Andrew Lumenyela and 2 others**, Civil Appeal No. 497 of 2021 observed that-:

> 'It is a settled position of the law that a relief not sought on the pleadings cannot be awarded'

For those reasons, the plaintiff's argument that the cause of action in this case is breach of contract is neither here nor there.

With regard to principal reliefs claimed by the plaintiff, it has amply been pleaded under paragraph 4 of the plaint that it is dissolution of relationship between the 1st and 2nd defendant, persons/members of the 1st defendant to cease from being trustees in the 2nd defendant.

The next issue for consideration is whether this matter is religious in nature. To answer this issue, one has to first determine which makes this suit to be of a religious nature and regard must be had to the plaintiff's averments in his plaint for, the allegations in the plaint determines the suit's nature.

It is the plaintiff's admission under paragraph 9 of the plaint that: -

'In consideration for performing a promise to finance the project, the 1st defendant demanded to be given membership positions in the 2nd defendant. It further required that the Constitution of the 2nd defendant be amended to accommodate the agreement which was to be signed between the plaintiff, 1st defendant and 2nd defendant.

According to the 2010 amended Constitution of Jamae Madinatul-ILM Madrasa, the aims and objectives include: -

3.-

(a) start a higher learning Islamic Institute for students from Tanzania and its neighbouring countries to continue higher education in Islamic studies,

(c) granting scholarships to students continuing studies in Quranic and religious studies

(h)organizing Quranic and educational competition between different Islamic centres

(i)offering spiritual support and guidance to Mosques and Islamic Centres

(j)arranging courses for enhancing knowledge of Islamic scholars and Imams of the Mosques

(k)Publications of Quranic and Islamic books and their translations in Kiswahili

Paragraph 13 of the plaint stipulated that: -

'In furtherance of what were agreed to by the plaintiff, the 2nd defendant and the 1st defendant, in December, 2010, the Trust

Deed/the Constitution of the Second Defendant was amended to give the effect the following: -

(i) The objective of the Trust shall among others to start a **higher learning Islamic Institute** for students form Tanzania and its neighbouring countries to continue **higher education in Islamic Studies** and Granting Scholarships to students continuing **studies in Qur'anic and religious studies'**

With the above pleaded material facts, it cannot be gainsaid that the whole suit is caught in a web of religious matter.

As rightly admitted by counsel for the plaintiff, citing the case of **Hamis Dibagula Vs. the Republic [2004] TLR181 (CA)**, 'where the question before the court is purely religious one, it cannot fall for determination by the court'.

Even if, for the sake of argument, the position of the plaintiff's counsel were the way as he asserts, still the competence of this suit and the jurisdiction of this court to entertain this action would, nevertheless, be questionable on other fronts.

In the first place, according to the defendants' joint submission in chief in support of the jurisdictional issue raised by this court *suo motu*, counsel for the defendants argues that as far as Islamic affairs are concerned, the law recognizes both the Administrator General and BAKWATA as necessary organs of overseeing the trust affairs. Further, the Trustees' Incorporation Act Cap. 318 R.E 2002 has vested statutory powers to the Administrator General and BAKWATA for Muslim Trustees to regulate

and bring order in the affairs of the registered trustees in Tanzania before disputes reach courts of law. According to him, a court cannot assume the role of Administrator General and BAKWATA. In support of his argument, the defendants' counsel relied on Sections 14 and 17 (2) of the Trustees' Incorporation Act.

It is the counsel's further argument that the 2nd defendant is duly registered as per the Trustees' Incorporation Act, thus a body corporate capable of suing and being sued and entering into any agreement and the involvement of the plaintiff in trying to remove the trustees of the 2nd defendant as well as interfering with the affairs of the 2nd defendant is improper and unjustified. With regard to the contract alleged to have been breached, it was argued for the defendants that it is a legal one entered into between the 1st and 2nd defendant. He denied there being any breach and argued that the project is being carried out presently save for the interference from the plaintiff which hinders the said project to be completed. Furthermore, counsel for the defendants contended that the property in dispute is registered under the name of the 2nd defendant, the trust and not under the name of the plaintiff and according to the amended constitution in case of any difference that may arise, then the Jamae Al Mustafa Al Alamiah is vested with power to make decisions. Counsel was of the view that the available remedies are statutory mechanisms to resolve were not exhausted before the matter was brought before a court of law as required by the Act.

I think counsel for the defendants is right. Under Section 14 of the Trustees' Incorporation Act, if the dispute relates to the misuse of

properties or membership, the same should first be referred to the Administrator General. In the suit under consideration, as previously hinted, one of the plaintiff's core claims against the defendant as averred under paragraph 4 of the plaint is for dissolution of the relationship between the 1st and 2nd defendants, persons/members of the 1st defendant to cease from being trustees in the 2nd defendant.

Besides, the plaintiff being a member of the 2nd defendant which is a religious organization with valid trustees was required to employ statutory and internal mechanisms before resorting to court to seek what he was claiming under paragraph 4 of the plaint.

Indeed, this statutory internal mechanism is well recognized by the parties. According to Clause 11 (a) and (b) of the Constitution as amended on 22nd December, 2010 referred to under paragraphs 9 and 13 'the dissolution of the body corporate shall be made by resolution passed at the General Meeting of Trustees with a ¾ minimum majority..... Provided, however, that no dissolution shall be effected without prior permission in writing by the Administrator General upon application made in writing and signed by at least three officer bearers of Jamae Madinatul-Ilm Madrasa'.

As the plaintiff's plaint stands, no minutes of such resolution passed by the General Meeting was either pleaded or annexed to the plaint nor was the written permission by the Administrator General sought and obtained. This violated the provisions of Section 17 (2) of the Trustees' Incorporation Act which enacts that: -

'In case of religious bodies corporate or organizations, they shall each be monitored by their respective relevant supreme authority in

Tanzania by their statutes, charter or instrument of that body corporate or organization.'

The importance of complying with these legal provisions was stressed by this court in the cases of **The Registered Trustees of Noor Masjid Dodoma Vs. Jafary Manyemba and 11 others**, DC Civil Appeal No. 20 of 2020 quoted in Civil Application No. 346 of 2023 between **Kurbanali Ahmed Khaki Vs. Registered Trustees of Jamae Madinatul-Ilm Madrasa**.

Besides, according to paragraph 1 of the plaint, the plaintiff is a settlor, founder and one of the trustees of the 2nd defendant. The settlor of a trust, sometimes referred to as the "grantor," "donor," or "trustor," is the individual who creates the trust. The settlor transfers their own property or assets into the trust, initiating the trust arrangement.

It has to be noted, however, that the settlor's role is fundamental in setting up the trust, but limited after the fact. Once the trust is established and the assets are transferred to the trust, the settlor typically steps back, allowing the trustees to manage the assets on behalf of the beneficiaries. This is particularly important to the management of a discretionary trust, in which the trustees have some degree of control over how the trust's assets are distributed.

Although it can be argued that a settlor, as the present plaintiff is, can be a trustee, it is important to remember that, as a trustee, the settlor has a fiduciary duty to act in the best interests of the beneficiaries of the trust. What the plaintiff is craving for in this suit is, unfortunately, the opposite.

Having so observed, it is sufficient to emphasise that where the legislature has tailored a statutory remedy to address a specific institutional grievance, that remedy must be exhausted before resort is had to court of law. For that reason, a court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government or institution.

The Supreme Court of Canada in the case of **Syndicat Northcrest v. Amselem**, 2004 SCC 47 cited by this court in Civil Case No. 195 of 2019 between **Rev. Peter Makalla and 8 others Vs. Rev. Jacob Mameo Ole Paulo and 2 others had this to observe: -**

> '...the state is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, "obligation" precept, "commandment", custom or ritual. Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of the religion '.

I subscribe to that observation.

Second, the jurisdiction of the court to entertain this suit is also barred by the principal of *res judicata* under section 9 of the Civil Procedure Code. This issue was also addressed to this court by learned Counsel for the defendants in his written submission.

Arguing that this suit is *res judicata* Civil Application No. 346 of 2023 between **Kurbanali Ahmed Khaki Vs. the Registered Trustees of**

Jamae Madinatul-ILM Madrasa and 8 others, Mr. Paul Elias submitted that the plaintiff, among other prayers, was inviting this court to exclude the membership of other trustees of the 2nd defendant and this court in that case dismissed that action after it had found that the plaintiff, then applicant, had failed to establish sufficient grounds to support his application and dismissed it. The plaintiff has not controverted this fact.

In **Black's Law Dictionary** (Ninth) Edition *res judicata* is defined as follows:

> "An affirmative defence barring the same parties from litigating a second law suit in the same claim, or any other claim arising from the same transaction or series of transactions and that could have been raised but was not raised in the first suit."

Section 9 of the Civil Procedure Code [Cap. 33 R.E.2019] provides for doctrine of *res judicata* in the following terms: -

> "No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court of competent jurisdiction to try such subsequent suit or the suit in which such issue has been subsequently raised and suit has been heard and finally decided by such court."

The Court of Appeal the case of **Kamunye and others v The Pioneer General Assurance Society Limited** (1971) EA 263 enunciated the principle of *res judicata* where it stated thus: -

> "The test whether or not a suit is barred by res judicata seems to me to be – is the plaintiff in the second suit trying to bring before the court, in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. **If so the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time – Greenhalgh Mallard**, (1947) 2 ALL ER 255.

According to the case of **Jadva Karsan Vs. Harnam Singh Bhogal** (1953), 20 EACA 74, the subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply-

The same position had been adopted in the case of **Mandavia versus Singh** [1965] EA 118 at 121 where it was stated:

> "In determining whether or not the case is barred by "res-judicata", the test is whether the plaintiff in the second suit is trying to bring in another way, in the form of new cause of action a transaction which has already been presented

before a court of competent jurisdiction in an earlier proceeding which have been adjudicated upon".

This is exactly what the plaintiff doing before this court. He is trying to bring in another way the matter which has already been determined. This is so because in that former action, the plaintiff was inviting the court to exclude the 2nd to 7th respondents from being the trustees of the Registered Trustees of Jamae Madinatul-ILM Madrasa, then 1st respondent but now the 2nd defendant, while in this case, the same plaintiff is seeking an order for 'dissolution of relationship between the 1st and 2nd defendant, persons/members of the 1st defendant to cease from being trustees in the 2nd defendant.

It should be noted that r*es judicata* is a fundamental legal doctrine that there must be an end to litigation. The objective is to bar multiplicity of suits and guarantees finality of litigation.

I hold and find that this suit is *res judicata* Civil Application No. 346 of 2023 between **Kurbanali Ahmed Khaki Vs. the Registered Trustees of Jamae Madinatul-ILM Madrasa and 8 others.**

Third, on the competence of this suit being tested under Section 67 of the Civil Procedure Code [Cap. 33 R.E.2019], it was argued on part of the plaintiff that in order for the above section to apply, it must be well established that the matter in court relates to a public charity organization. Citing Mulla's Civil Procedure Code p. 984, and the case of **Mvinnoa Perumal Vs. M. Sivasubramania Pillai** (1952) AIR 4553, counsel for the plaintiff contended that under Section 92 of the Indian Procedure Code which is the same as Section 67 of the Cap. 33 R.E.2019, the endowment

must be for a public purpose of charitable nature and the beneficial interest must be vested in the public in general or considerable section thereof and does not apply to private trusts. On the criteria for determining whether a trust is private, or public counsel for the plaintiff relied on the decision of the Supreme Court of India in the case of **Deoki Nandan Vs. Murlidhar** (1957) AIR SC 33 where the court stated that: -

> '...that where in the former (private), the beneficiaries are specific individuals, in the latter, they are the public or a class thereof. While in the former, the beneficiaries are the who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of being ascertained'

He elaborated that the existence of a public trust is also essential in establishing whether a charity is a public or private insisting that a mere use or prospective use of a charitable property by the public does not establish creation of a public trust. Relying Mulla at p. 985 counsel for the plaintiff was confident that if there is no evidence the owners divested themselves or dedicated the property to a public, the trust is not a public trust then 67 of the Civil Procedure Code does not apply to the suit. Counsel for the plaintiff was emphatic that the 2nd defendant in the case at hand is not a public charity rather, it is a private charity by virtue of its establishment, it neither receives financial support from the general public nor does it receive the fund from the government.

Insisting that the facts in this case do not squarely fall within the three requirements of Section 67 of the Civil Procedure Code as it is a suit based on breach of contract by the 1st defendant, Counsel for the plaintiff

also placed reliance on the Supreme Court of India in the case of **Tirumalai Devasthanams Vs. Krishnayya Shanbhaga** (1943) AIR 1943 where it was held that: -

> 'Suits brought not to vindicate or establish the right of the public in respect of public trust, but to remedy the infringement of an individual right or to vindicate a private right, do not fall within this section. The mere fact that a suit claims relief specified in the section does not bring the suit under it. It must be brought by individuals or representative of the public for vindication of public right. In deciding whether a suit falls within this section, the court must have regard to the capacity in which the plaintiff is suing and the purpose for which it is brought. Suits outside of these paremetres are instituted in ordinary manner and not under this section.'

Winding up his submission, counsel for the plaintiff asservated that section 67 of the Civil Procedure Code applies to a suit in respect to charitable public nature and where the interests of general public are at stake and that this is the reason for want of involvement of the Attorney General or two or more persons having an interest in the trust.

On his part, learned counsel for the defendant stated that the matter contravenes the section 67 of the Civil Procedure Code in that the plaintiff has prematurely instituted this suit without obtaining written consent from the Attorney General as a requirement under the law.

Section 67 of the Civil Procedure Code referred to me by both Counsel provides as follows: -

'67. In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Attorney-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney-General, may institute a suit, whether contentious or not, in the High Court to obtain a decree-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require'

In view of the submissions of learned counsel of both parties, the issue for consideration and determination is whether this provision applies to the circumstances pertaining to this case. While counsel for the defendants wants the court to answer the issue in the positive, counsel for the plaintiff holds a contrary view. According to him, in order for the above section to apply, it must be well established that the matter in court relates to a public charity organization. As indicated above, in buttressing his argument, he placed much reliance on the decisions of the Supreme Court of India which was interpreting section 92 of the Indian Code of Civil

Procedure which is in *pari materia* with section 67 of our Civil Procedure Code.

With unfeigned respect to counsel for the plaintiff, he is off tangent. The pleadings establish that the 2nd defendant which is a trust is created for public purposes of religious nature. In that case as far as this suit is concerned , the law enjoys the Attorney General to institute a suit whether contentious or not in the High Court to obtain a decree removing any trustee or granting such further or other relief as the nature of the case may require. The argument of the plaintiff's learned counsel that in order for the above section to apply, it must be well established that the matter in court relates to a public charity organization is but a misconception. According to Section 67 of the Civil Procedure Act and the Indian case laws cited by counsel for the plaintiff, if a suit primarily aims at protecting private rights or individual interests, it does not fall under that provision but if the suit is related to trust created for public purposes of religious or charitable character and there are allegations of either the breach of trust or the necessity of having directions from the court for the administration of trust, section 67 of the Code applies.

It is my finding, therefore, that this suit squarely falls within the purview of section 67 of the Civil Procedure Code hence negating the locus standi of the plaintiff to institute this suit

Having considered the cases of **Mvinnoa Perumal Vs. M. Sivasubramania Pillai, Deoki Nandan Vs. Murlidhar, Vidya Sagar Sharma and ors Vs. Anand Swarup Dublish and otrs, and Tirumalai Tirupati Devasthanam Vs. Udiavar Krishnayya**

Shanbhaga and ors, referred to me by Counsel for the plaintiff, I am satisfied that the said authorities do not support the position asserted by the plaintiff's counsel in his written submissions.

In view of the aforesaid, I find this suit legally unmaintainable for want of not only court's jurisdiction but also the plaintiff's locus standi and for it being prematurely filed before the statutory internal remedy having been exhausted.

Consequently, and for the reasons I have adumbrated, this suit should be and is hereby struck out. Since it is the court which *suo motu* raised the question of competence of the suit and the court's jurisdiction, it is inappropriate to make an order for costs.

It is so ordered.

W. P. Dyansobera
JUDGE
22.5.2024

This ruling has been delivered this 22nd day of May, 2024 in the presence of Mr. Gratian Mali and Mr. Revocatus Thadeo learned Advocates for the plaintiff and Mr. Paul Elias, learned counsel for both defendants.

W. P. Dyansobera
JUDGE