

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MAIN REGISTRY)  
AT DODOMA**

**MISC. CIVIL CAUSE NO. 7969 OF 2024**

**IN THE MATTER OF APPLICATION FOR PREROGATIVE ORDERS OF  
CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND  
MISCELLANEOUS PROVISIONS) ACT, [CAP 310 R.E 2019]**

**AND**

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND  
MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND  
FEES) RULES, G.N NO. 332 OF 2014**

**AND**

**IN THE MATTER OF THE TANGANYIKA LAW SOCIETY ACT [CAP 307 R.E  
2002]**

**AND**

**IN THE MATTER OF TANGANYIKA LAW SOCIETY (MEETINGS)  
REGULATIONS, G.N NO. 523 OF 2020**

**AND**

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION  
OF THE TANGANYIKA LAW SOCIETY THROUGH ITS GOVERNING  
COUNCIL FOR CALLING EXTRA ORDINARY GENERAL MEETING WHICH  
WAS INTENDED TO BE HELD ON 16<sup>TH</sup> DECEMBER, 2023 FOR BEING  
UNREASONABLE, ILLEGAL AND TAINTED WITH PROCEDURAL  
IMPROPRIETY**

**BETWEEN**

**BARTAZARY BOSCO MAHAI.....APPLICANT**

**AND**

**TANGANYIKA LAW SOCIETY .....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

*7<sup>th</sup> & 13<sup>th</sup> June, 2024*

**KAGOMBA, J.**

This is a Ruling on the preliminary objection raised by the respondent to oppose the hearing of the application for judicial review filed by the applicant.

A brief background relevant to determination of this preliminary objection is as follows. On 1<sup>st</sup> December, 2023, the respondent informed its members that its Governing Council had issued a notice calling for an extraordinary general meeting of the respondent on 16<sup>th</sup> December, 2023. The applicant who, boasts to be an active member of the respondent, found something was amiss in the way the meeting was being called. He is of the view that such a notice and the decision to call the said meeting, did not observe proper procedures. He, therefore, sought and obtained leave to apply for orders of *certiorari* to call for, quash and set aside the said decision on account of being unreasonable, illegal, irrational and tainted with procedural impropriety for failure to follow the law.

The applicant also seeks an order of *mandamus* to compel the 1<sup>st</sup> respondent to convene the said extraordinary general meeting in compliance with the law. And, as usual, he also prays for costs and any other orders this Court may deem fit and just to grant.

The applicant's application, was however, greeted by a notice of preliminary objection from the 1<sup>st</sup> respondent carrying one point of law stating thus; "***The application has been overtaken by time***".

On the date of hearing, Ms. Josephine Mzava, learned Counsel appeared for the 1<sup>st</sup> respondent; the 2<sup>nd</sup> respondent was represented by Mr. Edwin Joshua Webiro, learned State Attorney while the applicant fended for himself.

Citing the provision of regulation 5 of the Tanganyika Law Society (Meetings) Regulations, 2020 G.N No. 523 of 2020, Ms. Mzava argued that since the application sought to restrain the convening of the extraordinary general meeting on 16<sup>th</sup> December, 2023, and since under the cited regulation an extraordinary general meeting is usually conducted when a need arises, and since for now there is no necessity of convening such a meeting because already a notice of Annual General Meeting (**AGM**) has been issued whereby the **AGM** will be conducted from 31<sup>st</sup> July to 2<sup>nd</sup> August,

2024 here in Dodoma, the application has been overtaken by time. She, therefore, prayed for dismissal of the application, with costs.

Mr. Webiro, for the 2<sup>nd</sup> respondent had a different opinion altogether. He vehemently opposed the preliminary objection arguing that the application before the Court is not intended to restrain the extraordinary general meeting which was to be convened on 16<sup>th</sup> December, 2023, but looking at the reliefs sought in the chamber summons, the applicant prays for orders of *certiorari* to quash and set aside the decision of the first respondent dated 1<sup>st</sup> December, 2023 calling for extraordinary general meeting and also an order of *mandamus* to compel the first respondent to convene the said extraordinary general meeting in compliance with the law, based on the grounds that the impugned decision of the 1<sup>st</sup> respondent is unreasonable, illegal, irrational and it is tainted with procedural impropriety for failure to follow the law.

Therefore, according to the learned State Attorney, the application was not merely seeking to restrain the aborted meeting but to look into other aspects of the impugned decision. Referring to the cited regulation 5, the learned State Attorney argued that the provision empowers the 1<sup>st</sup> respondent to call for extraordinary general meetings whenever it deemed

fit, and it was that same provision which the 1<sup>st</sup> respondent utilized in call for the aborted meeting, which had to be restrained by an order of this Court made by Hon. Manyanda,J on 12<sup>th</sup> December, 2023. He emphasized that the reason the meeting was not held is the temporary injunctive order aforesaid, which restrained the meeting pending determination of the application for leave and the application for judicial review.

Citing the decision of the Court of Appeal in **Farida Adam (Administratrix of the Estate of the Late Hamza Adam) vs. Geoffrey Kabaka**, Civil Application No. 33 of 2015, the learned State Attorney further argued that for a matter to be deemed to have been overtaken by events, it must be shown that it will no longer serve the purpose it was intended to. He asserted that the application pending in Court still serves unexhausted purposes, such as to call upon this Court to decide whether the 1<sup>st</sup> respondent is legally bound to issue 21days notice to its members when intending to convene extraordinary general meetings; whether, once the notice of a meeting is issued, documents of the meeting are to be circulated to the members within 14 days prior to the meeting as well as to determine whether a notice calling for any meeting of the 1<sup>st</sup> respondent is given by its Secretariat or its President.

It is therefore, contended by Mr. Webiro that in the pendency of the above issues which form the purpose of the application, and while considering that the application was lodged in Court before the said extraordinary general meeting was convened, and in view of the fact that what halted the said meeting is the injunctive order of this Court, the application cannot be said to have been overtaken by events.

Looking at the matter from another perspective, the learned State Attorney also argued that since the legality of the decision of the 1<sup>st</sup> respondent (**Annexure- BBM1**) is yet to be decided upon by this Court, it implies that the impugned decision was still in force. Hence, the application is not overtaken by events.

He wound up his submission by beseeching the Court to overrule the objection and fix the application for hearing in order to determine the legality, reasonableness or rationality of the decision of the 1<sup>st</sup> respondent being challenged by the applicant.

When the applicant herein, was given a chance to make his reply, it appeared as if he was robbed all his points by Mr. Webiro. He ended up

joining hands with the submission made by the learned State Attorney, as well as the prayer to overrule the objection with costs.

In her short rejoinder, Ms. Mzava, by and large, reiterated her submission in chief, adding that even the reliefs sought by the applicant attest to the merit of the preliminary objection. She argued the said reliefs were no longer tenable following the decision of the 1<sup>st</sup> respondent to call for AGM for it was no longer necessary to hold the extraordinary general meeting.

The learned Counsel was on the same page with Mr. Webiro regarding the principle of law stated in **Farida Adam (Administratrix of the Estate of the Late Hamza Adam) vs. Geoffrey Kabaka** (supra), but she insisted that the application at hand no longer serves the purpose with the AGM on the cards.

The above rival submissions give raise to one issue, which is whether the application has been overtaken by time or events. This issue shall not detain me. From the cited decision of the Court of Appeal in **Farida Adam's case (supra)**, the Court is guided to find out whether the application before it has outlived its purpose. Without mincing words, while it may look

apparent that the purpose of the applicant's application, as can be gleaned from the reliefs sought, is to have the impugned decision of calling the extraordinary general meeting on 15<sup>th</sup> December, 2023 quashed and set aside, as well as to compel the 1<sup>st</sup> respondent to call such a meeting by observing the law, it is equally apparent that there are pertinent issues raised by the applicant which form the mantle of the application itself. These issues, are those calling upon the Court to determine who should be issuing notices to members, the lengthy of the notice period and the time period for circulation of meeting papers when the 1<sup>st</sup> respondent calls extraordinary general meetings. It is not disputed that such issues were raised in the application and are still pending for determination. For this reason, I am of a firm view that the application has not outlived its relevancy and it cannot, therefore, be said to have been overtaken by time.

I would agree with Ms. Mzava that the order of *mandamus* to compel the 1<sup>st</sup> respondent to convene an extraordinary general meeting in accordance with the law, becomes awkward in the face of the notice already issued for the AGM. However, there are still residual issues as highlighted hereinabove which need to be addressed in connection with the rest of the reliefs sought.



For the above reason, the sole issue for determination as framed herein above is answered in the negative. Accordingly, the preliminary objection is hereby overruled. The application for judicial review to proceed with hearing on merits. Cost to follow event.

**Dated at Dodoma this 13<sup>th</sup> day of June, 2024.**



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba".

**ABDI S. KAGOMBA  
JUDGE**