

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CAUSE NO. 21 OF 2021

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR
ORDERS OF CERTIORARI AND MANDAMUS**

AND

**IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENT AND
MISCELLANEOUS PROVISIONS) ACT, CAP 310**

AND

**IN THE MATTER OF THE DECISION OF THE REGISTRAR OF
SOCIETIES DATED 5TH NOVEMBER, 2021 ON ELECTION
OF SUNNI MUSLIM JAMAAT LEADERS**

BETWEEN

THE TRUSTEES OF SUNNI MUSLIM JAMAAT.....APPLICANT

AND

**THE REGISTRAR OF SOCIETIES.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT**

RULING

3 & 3 Dec, 2021

MGETTA, J:

This is a ruling in respect of the preliminary objection, the notice of which was filed by the respondents namely the Registrar of Societies, the 1st respondent and the Attorney General, the 2nd respondent, that the Trustees of Sunni Muslim Jamaat, the applicant, has no *locus standi* to file this application for leave to apply for prerogative order of certiorari to quash the

decision contained in a letter of Kumb. Na. SO.483/15 dated 5/11/2021 of the 1st respondent in which he gave directives to Sunni Muslim Jamaat, Dar es Salaam to conduct election of members of the Management Committee and the order of mandamus to order the 1st respondent to allow election of the applicant's leaders to be conducted in accordance to the applicant's constitution.

Earlier on, in the chamber summons supported by a statement and an affidavit affirmed by one Sayed Abdul Hai, the applicant is alleging that the 1st respondent's directives to Sunni Muslim Jamaat, Dar es Salaam on to conduct election, are illegal and untenable in law. Upon being served, the respondents filed counter affidavit, reply to statement and a notice of preliminary objection which is the subject matter of this ruling.

When the application was called on for hearing in this morning, Captain Ibrahim M. Bendera, the learned advocate appeared for the applicant; while, the defendants enjoyed a legal service of Mr. Hangi Chang'a, the learned principal state attorney.

In his submission in support of the preliminary objection, Mr. Chang'a submitted that according to **Trustees Incorporation Act Cap. 318**, (henceforth Cap 318), the trustees must be incorporated under section 3. Upon incorporation, the name of the body corporate shall include the words

"Registered Trustees" as mandatorily provided under **section 6(2) of Cap. 318**. He submitted further that the mandatory word used in that subsection is "shall" and according to **section 53(2) of the Interpretation of Laws Act, Cap 1** (henceforth Cap 1) where in a written law the word shall is conferring a function such word should be interpreted that the function so conferred must be performed. He submitted furthermore that the proviso to **section 53 (2) of Cap 1** provide that the word shall is imperative. Since the word shall is not included in the applicant's name, the applicant is not known in law. To fortify his submission, Mr. Chang'a cited to me the case of **Godfrey Kimbe versus Peter Ngonyani**; Civil Appeal No. 41 of 2014 (CA) (DSM) (unreported) and requested me to read page 13 of the judgment and added that there is a problem with this application because the Trustees who filed this application are neither natural persons nor artificial person as recognized by law. He referred me to article 6(3) of Sunni Muslim Jamaat Constitution which provides that the trustees should be registered under the existing laws and regulations made by the Government. Thus, the act of the applicant to file the application as Trustees is against the law.

Mr. Chang'a went on submitting that the courts have on several occasions dismissed or struck out matters brought or filed without including the word "Registered Trustees." He cited to me the case of **Kanisa la**

Anglikana Ujiji versus Abel Samson Heguye; Labour Revision No. 5 of 2019 (HC) (Kigoma) (unreported) at pages 4 to 5 where the issue was whether Kanisa la Anglikana Ujiji, the applicant by then had powers or authority to sue without including the words "Registered Trustees." The court found that it has no power to do so and the case was struck out. To support his submission, Mr. Chang'a also cited the case of the **Registered Trustees of Chama cha Mapinduzi versus Mohamed Ibrahim vers and sons and Another;** Civil Appeal No. 16 of 2008 (CA) (Zanzibar) (inreported) and the case of **Ilela Village Council versus Ansaar Muslim Youth Centre and Another;** Civil Appeal No. 317 of 2019 (CA) (Iringa) (unrepresented).

Mr. Chang'a insisted in his submission that the mistake of not including the words "Registered Trustees" to the applicant's name was a mistake that goes to the root of the matter. He asked me not to apply the overriding principle to this application. To support his submission, he cited to me the case of **Mondorosi Village Council and Two Others versus Tanzania Breweries Limited and Four Others;** Civil Appeal No. 66 of 2017 (CA) (Arusha) (unreported). He thus prayed the court to strike out the application with costs.

In reply Capt. Bendera, the learned advocate for the applicant started to attack the filing of notice of preliminary objection without citing the statutory law and case law to be relied upon by the respondent during the hearing of the preliminary objection on *locus standi*. To support his submission, he referred me to the case of **James Burchard Rugemalira versus The Republic and Another**; Criminal Application No. 59/19 of 2017 (CA) (DSM) (unreported). Capt Bendera submitted further that the application was filed under the law which states that any person who is aggrieved has a right to file application for leave to apply for judicial review and the one who is complaining before this court are the trustees and not registered trustees or the Board of Trustees. Thus, that all cases cited to me by Mr. Chang'a concern with artificial entities or persons, and therefore distinguishable with the present application. He insisted that he who are in court are persons trying to challenge the decision of the 1st respondent.

Capt. Bendera stated that locus standi is governed by common law. The persons in court are aggrieved by the decision of 1st respondent and if they be given leave, they shall show the court how they are interested and affected by the 1st respondent's decision. He thus asked me to dismiss the preliminary objection and allow them to proceed with the hearing of the application for leave.

to do so. The consequence of failure to include the word "Registered" would cause a problem in the process of executing the order of the court.

The above position is cemented by the Court of Appeal decision in the case of **Ilela Village Council Versus Ansaar Muslim Youth Center and Another;** (supra). In that case, the 1st respondent was only served as "Ansaar Muslim youth Centre" while it is registrable religious institution. The words "Registered Trustees" were omitted. In its decision, the Court of Appeal observed and quote that:

"Given the fact that 1st respondent was registered body its name in the application ought to have read "The Registered Trustees of Ansaar Muslim Youth Centre."

For reasons stated herein, I find that by omitting the word "Registered" in its name, the applicant has no authority or power to file the present application for leave. Such omission renders this application incompetent as the applicant lacks *locus standi*. Such anomaly goes to the root of the matter and cannot be salvaged by the principle of overriding objective.

As a result, this incompetent application is accordingly struck out. The order that I made on 18/11/2021 for maintenance of status quo is

accordingly cancelled and or rescinded. As this matter concerns with religious dispute, I order that each party has to bear its own costs.

It is accordingly ordered.

Dated at Dar es Salaam this 3rd day of December, 2021.




J.S. MGETTA

JUDGE

COURT: This ruling is delivered today this 3rd December, 2021 in the presence of Mr. Hangi Chang'a, the learned principal state attorney for the respondents and in the presence of Capt Ibrahim Bendera, the learned advocate for the applicant.


J.S. MGETTA

JUDGE

03/12/2021