

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

AT DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 16 OF 2023

**IN THE MATTER OF AN APPLICATION FOR WRIT OF
CERTIORARI AND PROHIBITION**

BETWEEN

MUSTAFA JUMA CHWANGA.....1ST APPLICANT
RAJAB SAID MUYA.....2ND APPLICANT
JUMANNE RAMADHANI MABOKELA.....3RD APPLICANT
SEIF AMINI OMAR.....4TH APPLICANT
ISMAIL KIGUMI RASHID.....5TH APPLICANT
ABDALLAH HAMIS MTULIA.....6TH APPLICANT
ABDALLAH RASHID KIGUMI.....7TH APPLICANT

AND

**MWENYEKITI SEREKALI YA MTA A KILIMAHEWA TEMEKE
MUNICIPALITY.....1ST RESPONDENT**

OCD CHANG'OMBE TEMEKE

MUNICIPALITY.....2ND RESPONDENT

INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4th RESPONDENT

RULING

Date of Last Order: 31/07/2023

Date of Ruling: 24/08/2023

MARUMA, J.:

This is an application for writ of certiorari and prohibition brought under section 2(3) of the Judicature and Application of Laws Act Cap 358 R.E 2019; section 17(2) of the Law Reform (Fatal Accidents and Miscellaneous provisions) Act Cap 310 RE 2019 and Rule 8(1), (a), (b) and (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014 GN NO. 324 OF 2014.

The applicants herein are for the following orders that;

- a) Certiorari quashing the decision of the 1st respondent contained in a decision titled MWENENDO NA UAMUZI WA SHAURI LA TAASISI YA MADRASSAT IITISWAAM TANDIKA DAR ES SALAAM dated 4.10.2022 (Annexure A to the affidavit)

which appointed interim committee and abolished/stopped operation of the MADRASSAT IITISWAAM.

b) Certiorari quashing the decision of the 2nd respondent dated 21.10.2022, made orally in a meeting held in its office at Chang'ombe Police Station, Temeke Municipality, attended by the applicants, 1st respondent and members of the purported interim committee, declared MADRASSAT IITISWAAM unlawful assembly

c) Prohibition prohibiting and restraining the 1st respondent from interfering with the administration, meetings, decisions, conducts of the applicants' mosque and madrassa called IITISWAAM TANDIKA, TEMEKE MUNICIPALITY, Dar es Salaam a religious institution.

d) Costs of the application.

e) Any other or further order which the Hon. Court shall deem just to grant in favor of the Applicant.

The application is supported by joint affidavit sworn by the seven applicants accompanied by their joint statement and reply to

counter affidavit. On the other hand, statement in reply accompanied by a counter affidavit sworn by Ally Abdallah Mkumba, the principal officer of the 1st respondent was filed to oppose the application.

The genesis of this application, is briefly to the facts that, the applicants are proposed members of the intended board of trustees of an Islamic organization known as Al-Markuzul Islamiya Liliiswaamil Muslimin (MIM) which its registration is still in progress. The applicants together with the Muslim community of Kilimahewa Street, Tandika Temeke Municipal have organized themselves and constructed a Mosque, Madrassa and a house situated at Tandika Temeke Municipality, Dar es Salaam for purposes of practicing and preaching Islamic faith. Exercising their basic right of freedom of religion on 8.8.2022 and 9.8.2022 the worshipers to the mosque make decision to remove from service as a teacher (ustadhi) of madrassa one Hussein Aliy Kingwana. The said action was reported to the 1st respondent, that the said Hussein Ally Kingwana is no longer a teacher to the madrasa and is required to give vacant the

house given to him by virtual of his position. Addressing the issue reported to him, the 1st respondent constituted itself as judicial body and make a decision inter alia, that:-

- (1) Declared the applicants are illegal leaders of the
MADRASSA IITISWAAM TANDIKA
- (2) Appointed interim committee to run and administer the
affairs of the said Madrassa
- (3) Gave his interim committee mandate to register
Registered Board of Trustees of the organization at RITA
Provide the applicants a grace period of 14 days from
the date of the decision, to hand over the madrassa to
his interim committee.
- (4) Closed the madrassa until is rebuild by the interim
committee.

Aggrieved by the said 1st respondent's decision, the applicants, through M/s Nassoro & Co. Advocates, wrote a letter addressing the 1st respondent, inter alia, that his decision is wrong and was made without jurisdiction. In their reply the 1st Respondent defended the

decision. The copy of the letter attached as annexure A collectively. On 19th October 2022 the 1st respondent accompanied with unknown people invaded the madrassa and gave the applicants two days time to hand over the Mosque and the madrassa to the interim committee. The 1st respondent threatened the applicants if they fail to comply with his decision on 21st October 2022, he would forcefully remove the applicants under the arms of police and the applicants will thereby face criminal charges for breach of peace.

Dissatisfied, the applicant referred their matter to Chang'ombe Police station, on 20st October 2022 where the 2nd respondent convened a meeting on 21st October 2022 attended by the applicants, the 1st respondent and the purported interim committee. After the meeting on the same day the 2nd respondent made an oral decision inter alia, that

- (1) The 1st respondent decision is illegal for want of Jurisdiction.
- (2) The applicants and whole conduct of the mosque and madrassa is an illegal assembly for want of registration.

- (3) Directed the 1st respondent to report to him (2nd respondent) if there will be any assembly in the Mosque or Madrassa so that the people who will be found therein arrested and face criminal charges for illegal assembly. Hence this application after the grant of leave by this court in Misc. cause No. 55 of 2022.

During the hearing of the application, the applicants who were present had the service of advocate Juma Nassoro and the respondents were represented by Ms. Kause Kilonzo, State Attorney.

Submitting in support of the application Mr. Nassoro adopted the contents of the joint affidavit and joint statement to form part of his submission. He submitted that for the application to be granted there are conditions as mentioned in a number of cases such as **Sanai Mirumbe & Another vs. Muhere Chacha**, TLR 1990 at pg. 54. Pointed out that one is unreasonably decision without jurisdiction and illegality of the decision. He referred to the 1st respondent's decision (*annexure A*) which closed the applicant's institution and appointed an interim *Kamati ya Uongozi* of the Applicant's religion

institution with no authority to do so, the decision which is very unreasonable. To support his submission he referred this court to the counter affidavit of the 1st applicant which did object the decision but at the same time support the said decision in his affidavit and support of the letter dated 10/12/2022 *annexure A* of the applicant affidavit at pg. 35 of the application. He added that reading a letter of the 1st respondent as it was signed at pg. 37 of the application is the same signature seen in the 1st page of the decision in issue. The same signature in the counter affidavit. He cemented that the statements that the decision was not produced by the 1st respondent is not true.

He further submitted on the claim against the decision of 20th October 2022 orally made by the 2nd respondent (OCD- Chang'ombe police Station) addressing on the issue reported by the applicants to him. It is alleged that 2nd respondent declared that applicant's organization is not registered so any meeting is an illegal assembly. He also directed the 1st respondent to report to him if any assembly will be dealt by the applicant because it will be unlawful assembly.

Mr. Nassoro pointed out that despite the claim against the decision of the 2nd respondent's as read at para 7 of the applicant's affidavit, no counter affidavit made by the 2nd respondent to object the applicants' statement. He added that as the 1st respondent stated that at paragraph 7 that 2nd respondent did not say so but he supported that the applicants' organization was not yet registered so any assembly is unlawful assembly. He argued that unlawful assembly cannot be that if the one assembled are not intended to do an offence referred section 74 of the penal code.

Mr. Nassoro further argued that in an affidavit where another person is mentioned there must be an affidavit of that person which the respondents failed to do so made reference to the cases such as **Jamila Hassan Muyonga vs Almas Charles Mvungi**, Civ. Appl No. 199/17/of 2022 at Pg4. He wined his submission that even if the organization was not registered and the assembly was unlawful one, the 1st respondent did not have an authority to appoint an interim committee for religion institution (*Kamati ya taasisi ya kidini.*) Also, he submitted further that the 2nd respondent did not have

mandate to declare the assembly was unlawful. That is the jurisdiction of the court after the applicant being charged to that offence. So, they prayed for this application be granted as prayed.

Opposing the application, Ms. Kilonzo submitted that this is one of application of exaggerated in nature in regard to the orders requested, one certiorari against the decision of the 1st respondent. She submitted that the record should be clear that the decision was not against the operation of masjid and madrassa but it was against religious society as reflected in paragraph 2 of the applicant's joint affidavit which they agreed that they are proposed member of the board of trustee of the intended religious society. She submitted further that, secondly, the applicants are against the decision of the 2nd respondent given in a meeting of 21st October 2022. Thirdly, is prohibition against the 2nd and 3rd respondent to interfere with the operations of their institution. She argued that section 2 and 3 of Trustee & Corporation Act 2018, requires registration of an institution otherwise it is not recognized by the law. She submitted

that as per pleadings before the Court that institution is not registered despite of being under operation.

Ms. Kilonzo prayed to adopt counter affidavit and all annexures to the affidavit to form part of the submission and went further to submit that an order of certiorari is to question the decision of the body be tribunal or authority where there is no appeal so parties move Court to investigate proceedings of such body to see unprocedural of the decision in question. She informed that the court is not dealing with the decision but only procedural as in the case of **Sanai** (supra).

Clarifying her argument, she started with the 2nd Respondent to see if there is any unprocedural defect making reference to paragraph 7 of the affidavit on the challenged decision. She said that the same paragraph has no anywhere which adduced the statement which was said so the court to make reference. She amplified that the law requires the decision be in writing so to see if there is any compliance of rule of law or not as in the case of decision which was made orally made reference to the conditions laid in the case of

Daudi Paulo & 455 Others vs The Reginal Commissioner of Mtwara, at page 23. It was her submission that in the absence of the statement claimed or decision made it will be difficult for this court to determine the issue.

She submitted that since the decision was not attached and also the words were not produced as the decision was made orally this court cannot determine the question in issue if the law has been offended in the cause of making that decision referring the case of **Joshua Samwel Nassari vs the Spiker of the National Assembly**, Mis. Cause. At pg. 23 which insisted on the attachment of the decision in question. She prayed that this Court to see as good as there is no decision by the 2nd respondent as it was not attached and what is submitted by the Applicant's advocate were mere words to mean nothing be determined by this Court.

On the prayer of prohibition, it was her submission that as there is no decision by the 1st respondent to order Masjid or Madrassa to operate as the applicants want this court to believe. The decision attached as *annexure A* of the applicant's application is

about a religious organization in the name mentioned at para 2 of the application. In that decision there is nowhere it was stated that to be issued against the applicants in this matter. But also, that is not a decision signed by the chair or secretary of that meeting referred. She further submitted that it should be noted that the organization mentioned is the one operates and owns property against section 2 and 3 of Trustee and Incorporation Act, which provide mandatory conditions for this organization to operate. Also, we pray the court to look for the status of the intended members of the trustee. There is no proof that they are the proposed members and annexure OSG2 on the meeting of that institution that the applicants were appointed as follow up of the registration of the institution but not members.

She also requested the court to take note that the decision by the 1st respondent was not proved to come from that office as there is no signature or stamp. She added that it was not a decision but a warning to them as the institution was not registered so it cannot operate under the law. But there is no any document to show that

they are registered trustee. The court should consider the averment as per paragraph 6 and 7 that the applicant was the one went to the 1st Respondent to inform him about the defects going on in the institution and being informed that the institution should be registered to comply with the law. She argued that the claim that there was a signature at pg. 37 and counter affidavit that was the 1st respondent signed the decision and at pg. 10 that all are the same. It was their observation that was not a final decision. The existence of signature at pg. 37 was a different document in the letter and not a decision. So, the decision is not a decision as per conditions in the case of **Joshua Nassari** (supra) and in that decision there is nowhere the applicant were ordered not to operate as the masjid or madrassa but was an organization which was not registered.

On the point of prohibition order, it was her submission that non existing person cannot initiate the case, no hand to prosecute, no eye to see or a mouth to speak as per laws as in the case of **Singida Sisal & 4 Others**, Comm. Review no.17 of 2017 at pg. 5

concerning non-juristic person. She clarified that though the applicants at para 1 -2 admit that the organization was not registered and it will be correct to say that if not that institution the applicants could not be in court today. Thus, their stand is on that institution and not otherwise. She explained that in paragraph 2 of the applicants' affidavit they had admitted that the said institution is in the process of registration as in. Meaning it is not in existing as same as non-juristic person as referred in the case above. All the orders were due to the operations of non-existing institution. Therefore, since the institution is not registered the court should not grant the prayer sought as it will be to bless the non -existing organization to operate without being registered.

On the point of counter affidavit by the 1st, 2nd and 3rd respondents, she submitted that as per the case of **Jamila** (Supra), the principle was misconceived in this case as the circumstances cannot apply as it is not mandatory every party to swear on the affidavit. One party can do as long as it was authorized to do so. In their case there is only one affidavit sworn by one person who

declare that on verification is clearly stated contents para 11 and 12 were information from the respondents therefore no procedural defect on the affidavit. She concluded by praying that the application be dismissed with costs as being exaggerated and not qualified for the orders sought.

Rejoined the submission by the respondents, Mr. Nassoro insisted that there is no proof in counter affidavit that the 1st respondent was authorized to reply for the respondents otherwise, all respondents were supposed to swear affidavit. Regarding the issue of non - juristic person, his submission was that the application for review applicants must show interest as in annexure B of the application. So, the respondent counsel to raise this it has no meaning in the eyes of law.

Mr. Nassoro further submitted that it is true that the applicants are not trustee as it is shown that the application is in the process. However, in the counter affidavit there is annexure OSG 2 a minute of the meeting of 11 August 2017 at page 4 which shows that the applicants were among the 9 members who were appointed

to register as the trustee and the registration is still under the process at RITA. Clarifying on section 2 & 3 of the Trustees and Incorporation Act, it was his response that section 2 is for registration the point which applicants have done. Section 3 is about the trustee to own property of which it is mandatorily be registered. He submitted that the sections are not creating offence and there is no either in Trustees Act or any law that declares the assembled people who runs religion operations before the registration of the organization are doing an offence.

Responding to the argument that the decision was not signed or against the mosque. He submitted that signature is on the 1st page and nowhere it was denied by the 1st respondent that it was not his signature. Also, section 75 (1) of the evidence Act, the court can compare the signature and the decision was defended by the 1st respondent in page 35, therefore the argument that it was not a decision but a warning meaning it is admitted the word to be chosen either decision or warning does not matter. He added that in that decision the respondent did appoint a temporary committee that is

a decision and not a warning. He submitted further that the argument that para 7 did not produced the statement in question is not correct, the words were produced that, "...1. *Aliamua ni kweli maamuzi ya 1st respondent ni illegal. 2. Waleta maombi Pamoja na uendeshaji wa Masjid ni kinyume na Sheria...*" that was said by the 2nd respondent.

Regarding the issue of the 1st respondent to report to the 2nd respondent on any assembly so to take a legal action. It was the submission by the applicants that the one who is supposed to proof was the 2nd respondent himself who choose not to submit his affidavit. Therefore, the argument that the oral decision cannot be challenged by Judicial Review cannot stand as in the case of **Daudi** that also the case of **Joshua Nassari**. Every case has to be decided on its own facts as the circumstances of **Daudi** or **Nassari** are different with circumstances of the case before this court. The circumstances of **Daudi's** case did not show that Reginal Commissioner, of Mtwara did not file a counter affidavit.

Mr. Nassoro further submitted that the case was about the application which was rejected at preliminary objection, but in this case the words were mentioned and no affidavit to counter those words. Also, in the case of **Joshua Nassari**, the decision challenged was from the Speaker but no written decision as the Bunge's decisions are documented different to this case. He also argued that decisions are not binding this court and prayed for this court to differ as the circumstances are different. He made reference to paragraph 8 of the counter affidavit the 1st respondent did stand on the decision of the 2nd respondent who adduced orally. Therefore, why this court should not intervene the decisions which were orally given but continue to affect the applicants. He further submitted that the purpose for judicial review is to supervise the decisions of the body and this is the fit case for supervising the conduct of judicial bodies.

On the last argument that the decisions were not against the applicants. It was the submission by the applicants counsel that was a weak argument as the announcement that the organization was not registered is against all the applicants and once the applicant

sought for leave this was not allowed if it was not accepted at the stage of leave.

Appreciating the lengthy submissions presented by the both counsels in support of and opposition to the application for the reliefs sought. The main issue to be determined in this application is whether the respondent's decisions were made in excess of jurisdiction or unreasonable. However, before proceeding to the main issues, I will commence by addressing the legal issues raised: the validity of the counter affidavit and the competence of the applicants in this application.

Beginning with the first issue on validity of counter affidavit bearing in mind that a general rule of practice and procedure, an affidavit for use in court is a substitute for oral evidence.

Therefore, in determining this application the counter affidavit is a vital document.

According to Mr. Nassoro is that an affidavit where another person is mentioned there must be an affidavit of that person made reference to the case of **Jamila (supra)**. Miss Kilonzo argued that

is not mandatory for every part to swear an affidavit one party can do as long as it was authorised to do so. She acknowledged that they filed one affidavit but upon verification it is evident that the content of paragraph 11 and 12 were information from the respondents.

It is undisputed that the counter affidavit was sworn by the senior officer of the 1st respondent as indicated at page 5 of the counter affidavit. Also, it is reflected in paragraph 1.1 there is a fact that deponent was authorised by all the respondents to depose statements therein as clearly affirmed that;

"That, I am the principal officer from the first respondent office, dully authorized by all respondents herein to depose this statement in reply in this matter in their behalf, thus conversant with the facts about to depose herein".

Moreover, in the verification clause which state the facts based on the knowledge of the deponent in paragraphs 1,2,6,8,9,13 while other facts stated therein were the information received from the principal officer of the 2nd Respondent's office. However, neither of

the respondents nor the officer whose information came from has filed an affidavit to support what is stated in the counter affidavit.

Revisiting the case cited of **Jamila Hassan Muyoga vs. Almas Charles Mvungi** (Supra) where it was held that;

"The law is clear that if an affidavit mentions another person, then that other person should also take an affidavit".

Guided by the standpoint and considering that the facts in the counter affidavit constitute evidence to determine this application. In the absence of respondent's affidavit notwithstanding of the verification clause and the fact that the deponent was sworn counter affidavit on behalf of all respondents. The counter affidavit is less value as hearsay which this court cannot rely to decide this application as it was established in **NBC Ltd vs Superdoll Trailer Manufacturing Company Limited**, Civil Application No. 13 of 2002(unreported) that;

"...an affidavit which mentions another person is hearsay unless that person swear as well ...".

Given that neither the 1st respondent nor the 2nd respondent filed their affidavit and entered appearance during the hearing except for Ms. Kilonzo who was representing all the 1st to 4th respondents. I invoke overriding objective principle and proceed to determine this application on its merit.

Regarding the second issue which concerns the competence of the applicants in this matter. Ms. Kilonzo argues that the applicants are incompetent party to file the application based on section 2 and 3 of Trustee and Incorporation Act of 2018 requires registration of trustee and the position in the case of **Singida Sisal** (Supra) **Products & General Supply vs Rofal General Trading Limited & 4 Others**, Commercial Review No. 17 of 2017 where it was held that,

"...a non-juristic person has no legs to stand, no hands to prosecute, no eyes to see and no mouth to speak either on her own, or on behalf of any other person before any court of law"

Mr. Nassoro counters this argument, stating the circumstances here are distinct from the cited case. Firstly, the trustee is in the

process of registration as indicated in the applicants' affidavit and unchallenged by the respondents. Secondly, one of the conditions for allowing applicants to file this application was to demonstrate their interest which was accepted during the leave stage.

Coming to the main issue of the application, it is fundamental that in cases like this, the court should focus on testing the decision-making body's conditions rather than acting as an executive authority as stated in the case of **Sanai Mirumbe and Another** (Supra), the High Court can scrutinize lower court, tribunal, or public authority proceedings based on several grounds apparent on the record. The conditions to investigate include whether the subordinate authority considered inappropriate matters, neglected relevant matters, exceeded jurisdiction, arrived at unreasonable conclusion, violated natural justice or acted illegally.

In the case at hand, the 1st and 2nd respondents are the public authorities and the challenge pertains to their decisions. Beginning with the jurisdiction issue, the applicants argue that the 1st respondent's decision (*annexure A*) to shut down the applicant's

institution and appoint an interim committee (*Kamati ya Uongozi*) was unauthorized and unreasonable. They reference the challenged decision and a letter dated 10/12/2022 (*Annexure A*) of the applicant affidavit at pg. 35 as evidence. Ms. Kilonzo rebuts this, stating that the decision targeted the religious society's unregistered status, not the mosque or madrasa as reflected in paragraph 2 of the applicant's joint affidavit. She added that what is challenged was not a decision but a warning to the applicants as the institution was not registered under the law.

Upon analysis, it is evident that there no dispute about the existence of the 1st respondent's decision. The disagreement revolves around whether it was directed at the institution's operations or the religious society, and whether it constituted a decision or warning of the Masjid or madrassa but to the appellants as religious society which was not registered. Also, it was a warning rather than a decision.

Examining the decision itself, (annexure A) at page 21 to 31 it is clearly shows that the decisions as produced hereunder;

"... Hivyo basi baraza linatoa maamuzi na maelekezo kama ifuatavyo:

Baraza limejiridhisha kuwa kwa kuwa bodi haikuwa na mamlaka ya kusikiliza kesi, kutoa hukumu yeyoteile, mapaka ufanyike mkutano wa kurekebisha sheria katika katiba yao ambayo ni lazima ipatikane mkutano wa mwaka au mkutano mkuu maalumu na usipungie 2/3 ya waumini wote wa mkutano ambao utaitwishwa mahsusi kwa ajili ya ajenda ya lengo hiyo tu.

- 1. Walalamikaji Itswam hawakuwa na haki ya kufungua kesi au kuomba msaada Serikali ya mitaa wala kudai madai yeyote kwani uongozi wao sio halali mpaka sasa.*
- 2. Hakukuwa na kikao halali cha kuwafukuza waumini hivyo basi waumini hao wana haki saw ana wengine wote katika taasisi hiyo na kufukuzwa kwao ni kinyume na sheria.*
- 3. Baraza limekubaliana na hoja ya kamati ya Serikali kukifinga chou (Madrasa) na wote wahame mpaka*

taarifa rasmi itakapotolewa kutoka katika mamlaka za serikali.

- 4. Baraza limeteuwa kamati ya wajumbe ya watu 8 kusimamia usalama na kuhifadhi mali ya kituo na Kamati mpya ya Itswam kuhakikisha usalama na uhifadhi mali ya kituop, kusismamia na kupatikana katiba mpya ndani ya miezi 6 na kuitisha uchaguzi mkuu na wa haki....*
- 5. Kamati mpya ya Itswan ipeleke taarifa ya usajili na amendeleo yao katika kipindi cha miezi 6 kama agizo la Mkuu wa Wilaya lilivyoagiza barua ya Desemba 2017 ambao uongozi wa muda haukufanya maelekezo hayo....”*

Based on the above quotation, the notion that the decision was not aimed at the operations of the madrasa or masjid has been invalidated by preceding statements, which are also supported by the 1st respondent’s letter dated 11th October 2022 addressed to the applicant’s letter dated (Annexure A). Additionally, the argument presented by the State Attorney that the statement was a warning,

not a decision is a merely a verbal assertion comes from the bar which is untenable. Furthermore, considering the context of the statements it is apparently convey that is a decision.

In this application, the court's focus is on the context of the mentioned decision whether the 1st respondent possesses the authority to challenge the competence of the applicants or establish "Kamati ya Muda" to manage the Masjid and madrasa affairs. The answer to this issue is negative. This is why, the respondents counsel contends that the decision was aimed at the applicants as religious society, which is unregistered, knowing that the 1st respondent lacks the authority to make the challenged decision. Moreover, the argument that the signature only appears on the first page of the decision holds little weight in challenging the fact that the decision was made by the 1st respondent. The absence of the 1st respondent's signature on other pages of the decision does not disturb the substance of the decision, for which the 1st respondent lacks the authority.

Regarding the claim against the orally made decision by the 2nd respondent (OCD - Chang'ombe police Station) on 20th October 2022 which declared that applicant's organization is unregistered. Hence, any meeting is an illegal assembly as stated at para 7 of the applicant's affidavit, Mr. Nassoro argued that an unlawful assembly cannot occur if participants do not intend to do an offense under section 74 of the penal code.

In opposing the application, Ms. Kilonzo argued that no decision attached and words were oral, making impossible for this court to determine if the law was violated during the decision-making process. She referred to the case of **Joshua Samwel Nassari (Supra)** which emphasized the need for the attachment of the decision in question. She contends that without an attached decision, the Court is to see as good as there is no decision made by the 2nd respondent and what was submitted by the Applicant's advocate were mere words to mean nothing be determined by this Court.

I concur with Ms. Kilonzo that, this court is not addressing the decision but merely procedural aspect as in the case of **Sanai** (Supra). However, this point will not extensively detain this court for a simple reason. Despite the State attorney identifying herself as representing the 1st and 4th respondents and the necessity for the facts in the applicant's affidavit to be countered, she lacks right to do so as the 1st, 2nd and 3rd respondents neither filed their affidavits nor entered appearance in this case. This stance is in line with the case of **Inspector Sadiki and others vs Gerald Nkya**, Civil Case No. 8/96 **CAT** at Dar es Salaam (unreported), which it was held that;

"...The proper way to contradict the contents of the counter-affidavit of the respondent was not by making statements from the bar but was by filing a reply to the counter – affidavit..."

Applying the authority mentioned above, the State Attorney is prohibited from challenging the stated facts for these reasons. Consequently, this point lacks merits.

In my considerate view, the decisions by the 1st and 2nd respondents were made administratively under the ambit of

maintaining peace in the society. However, on the face of those decisions, it is apparently clear that the respondents acted in excess power such as the acts of declaring that the applicants were not registered or worshippers were assembled unlawfully, the powers exercised by other bodies by virtue of the statutes. Additionally, the 1st respondent's decision was extended to establish an interim committee to manage the affairs of worshippers and ordered operations of the madrassa to stop. In my humble opinion these actions were unreasonably and touch the constitutional right of freedom of religion guaranteed under Article 19 of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time. Article 19(1) stipulates that,

"...Every person has the right to the freedom to have conscience, or faith, and choice in matters of religion, including the freedom to change his religion or faith..."

Article 19 (2) provides that,

"Protection of rights referred to in this Article shall be in accordance with the provisions prescribed by the laws which

are of importance to a democratic society for security and peace in the society, integrity of the society and the national coercion.”

On the basis of the discussed above, the decision of the 1st respondent endorsed by the decision of the 2nd respondent, evidently contradict the right of worship which should not have been taken away. It is not expected for the entrusted body such of the respondents to overreact and unreasonably ordered a mosque or church to be shut down solely due to the lack of trustee registration or declaration of the believers’ assembly as unlawful. The decisions not only affected the applicants but also all worshippers within the Mosque.

Having found merit in the present application, under section 17 (2) of the Law Reform Fatal Accidents and Misc. provisions Act, the order of certiorari is hereby granted and the decisions of the 1st and 2nd respondents are herewith quashed.

Consequently, the decisions made by the 1st and 2nd respondents are hereby quashed. I proceed to grant the 3rd prayer

by prohibiting and restraining the 1st respondent from interfering with affairs of the mosque and madrassa called IITISWAAM TANDIKA, TEMEKE MUNICIPALITY, Dar es Salaam a religious institution as prayed for.

It is so ordered.

Dated at Dar es salaam, this 24th day of August, 2023.



A handwritten signature in black ink, appearing to be "Z.A. Maruma".

Z.A.Maruma

Judge

24/08/2023