

TANZANIA / JUDGMENT

ally saleh vs executive officer registration insolvency trusteeship agency others 2019 tzca 570 14 january 2019

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14 January 2019

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IN THE HIGH COURT OF TANZANIA (MAIN REGISTRY) AT PAR ES SALAAM MISC. CIVIL CAUSE NO. 13 OF 2017 HON. ALLY SALEH..... PETITIONER VERSUS EXECUTIVE OFFICER, REGISTRATION, INSOLVENCY AND TRUSTEESHIP AGENCY.....1st RESPONDENT THE REGISTERED TRUSTEES OF THE CIVIC UNITED FRONT (CUF-CHAMA CHA WANANCHI)..... 2nd RESPONDENT PETER M. MALEBO.....3rd RESPONDENT THOMAS D. C. MALIMA..... 4thRESPONDENT HAJIRA O. SI LIA..... 5th RESPONDENT AZIZ I. DANGESH..... 6th RESPONDENT AMINA T. MSHAMU..... 7th RESPONDENT ABDUL R. MAGOMBA..... 8th RESPONDENT ASHA S. SULEIMANI..... 9th RESPONDENT SALHA H. MOHAMED.....10th RESPONDENT SULEIMAN M. ISSA..... 11th RESPONDENT MUSSA HAJI KOMBO.....12th RESPONDENT HON. ABDALLAH SAID KHATAU.....13th RESPONDENT HON. JORAN LWEHABURA BASHANGE.....14th RESPONDENT HON. ALL MBARAK SULEIMAN..... 15th RESPONDENT HON. JUMA AMEIR MUCHI.....16th RESPONDENT HON. MOHAMED NASSOR MOHAMED.....17th RESPONDENT HON. YOHANA SULEIMAN MBELWA..... 18th RESPONDENT

JUDGMENT

11/01/2019 & 14/01/2019 Masoud. 3. The petitioner, Hon. Ally Saleh, brought an action against the respondents in this court by a petition, claiming that there is uncertainty as to who among two groups namely, the 3rd to the 12th respondents on one hand, and the 13th to the 18th respondents on the other hand, are proper persons to be designated as members of the Board of Trustees of CUF (hereinafter the party) duly elected in accordance with the law and the Party Constitution 2014 Edition. In particular, the reliefs sought by the petitioner were:

- (i) A declaratory opinion as to whether the 13th to 18th respondents are members of the Board of trustees of the Civic United Front- CUF Chama Cha Wananchi. (ii) A declaratory opinion as to whether the 3rd to 12th respondents do qualify in law and under the Civic United Front - CUF Chama Cha Wananchi Constitution 1992 2014 edition to be members of the Board of

Trustees. (Hi) A permanent injunction restraining the 3 d to the i f l respondents to act and or deal in any manner whatsoever in the affairs o f the Civic United Front - CUF Chama Cha Wananchi, as members o f the Board o f Trustees. (iv) Costs of the suit.

- (v) Any other reliefs thdt the Hon. Court msy deem fit to grant The petitioner's case is, as set out in the petition, premised on the following. That, as a member of the Party since 2009, the petitioner has interests in the affairs of the party. That, the governing supreme council of the party elected members of the Board of Trustees of the party on 19/03/2017 following the expiry of the tenure of members who were elected in 2012. The petitioner named the elected members whose names were submitted for notification to the first respondent as follow: Hon. Abdallah Said Khatau (13th respondent), Hon. Ali Mbarak Suleiman (15th respondent), Hon. Juma Ameir Muchi (16th respondent), Hon. Mohamed Nassor Mohamed (17th respondent), Hon. Yohana Suleiman Mbelwa (18th respondent), Hon. Zumba Shomari Kipanduka, Hon. Mwanawetu Said Zarafi, Hon. Blandina Obarry Mwasabwite, and Hon. Mwana Masoud. It was the petitioner's pleading that the first respondent notified the leadership of the party that it was working on the notification and the outcome would in due course be notified to the party. He contended further that the first respondent also received a different notification from an errant group of the party purporting to be an application for change of members of the Board of Trustees of the party. Such notification purported to show that new members of the Board of Trustees of the party to be registered were the 3rd to 12th respondents. 3
- (v) Any other reliefs that' the Hon. Court may deem fit to grant The petitioner's case is, as set out in the petition, premised on the following. That, as a member of the Party since 2009, the petitioner has interests in the affairs of the party, That, the governing supreme council of the party elected members of the Board of Trustees of the party on 19/03/2017 following the expiry of the tenure of members who were, elected in 2012. the petitioner named the elected members whose names were submitted for notification to the first respondent as follow: Hon. Abdallah Said Khatau (13th respondent), Hon. All Mbarak Suleiman (15th respondent), Hon. Juma Ameir Muchi (16th respondent), Hon. Mohamed Nassor Mohamed (17th respondent), Hon. Yohana Suleiman Mbelwa (18lh respondent), Hon. Zumba Shomari Kipanduka, Hon. Mwanawetu Said Zarafi, Hon. Blandina Obarry Mwasabwite, and Hon. Mwana Masoud. It was the petitioner's pleading that the first respondent notified the leadership of the party that it was working on the notification and the outcome would in due course be notified to the party. He contended further that the first respondent also received a different notification from an errant group of the party purporting to be an application for change of members of the Board of Trustees of the party. Such notification purported to show that new members of the Board of Trustees of the party to be registered were the 3rd to 12lh respondents. 3 According to the petitioner, the appointment of such members was illegal as the national governing council of the party was not convened to effect such changes. The appointment was also alleged to be contrary to the party constitution, the law and the notification that had already been submitted to the first respondent for authorization. The petitioners complaint was that the authorization of change of the trustees

submitted by the errant group consisting of 3rd to 12th respondents was solely based on the advice the first respondent received from the Registrar of Political Parties. The petitioner claimed that the registration of the 3rd - 12th respondents by the first respondent created uncertainty as to who amongst persons in the two groups are proper persons to be designated as members of the Board of Trustees of the party. In paragraph 25 of the petition, the petitioner implored the court thus:

25. That, from the facts....there exists a real question as to who is a member of the body corporate under the provision of the Trustees' Incorporation Act Cap. 318 R.E 2002 as this will help in the orderly running of the affairs and activities of the party as well as the preservation of properties. Save for the 13th to 18th respondents who in their joint answers to the petition supported the petitioner's case, the other respondents (1st to 12th respondent) in their respective answer to the petition opposed the petition. The thrust of the pleading of the 1st -12th respondents was that all persons alleged to have been elected on 19/03/2017 as members of the Board of Trustees of the party were not lawful members of the Board of Trustees of the party because their request to be so registered by the first respondent was not accepted. They maintained that the 3rd to 12th respondents were the lawful members of the Board of Trustees of the party authorized by the first respondent on 12/06/2017. When the parties to the petition came up before the court to settle on issues for determination, the following issues were agreed and recorded by the court. Firstly, whether the party has a legally registered Board of Trustees. Secondly, whether there are legally appointed members of the Board of Trustees of the party appointed in accordance with the law. Thirdly, whether the 3rd- 12th respondents qualify in law to be registered as members of the Board of Trustees of the party. Fourthly, whether the 13th to 18th respondents are members of the Board of Trustees of the party. Fifthly, whether orders of permanent injunction can be prayed and granted in the petition under section 26 of the Trustees' Incorporation Act (supra). And sixthly, what reliefs are parties entitled to. The petition was brought under section 26 of the Trustees' Incorporation Act [cap. 318 R.E 2002] which enjoins this court to decide on whether a person is a member of a body corporate. I am accordingly mindful that determination of this matter must have regard to the said provision of section 26 of the Trustees' Incorporation Act (supra). The provision reads thus:-
- 5 S. 26. When any question arises as to whether a person is a member of a body corporate or as to the vesting or divesting of any property under the provisions of this Act, any person interested in such question may apply to the High Court for its opinion on such question and notice of hearing shall be given to such persons and in such manner as the court shall think fit, and any opinion given by the court on an application under this section shall be deemed to have the force of a declaratory decree. In so far as the above provision is concerned, I am settled that the second, third and fourth issues recorded as shown above hinge on the question "...whether a person is a member of a body corporate..." In the present instance, the body corporate is the Board of Trustees of the party. All parties in this petition brought witnesses to support their respective positions. There were three witnesses, namely, Abubakar Khamis Bakari (PW.1), Joran Lwehabura Bashange (PW.2), and Hon. Ally Saleh

who testified for the petitioner. A range of exhibits from Exhibit P.1 to Exhibit P.9 were tendered and admitted in support of the petitioner's case. They included the Constitution of the party (Exhibit P.1); Exchequer receipts Nos 14995169 and 14995170 (Exhibit P.3) for the payment of fees in relation to application for change of trustees. The application for the change of trustees was accompanied by Exhibit P.4 which was a letter by Seif Sharif Hamad, Secretary General of the party, 6 to the first respondent. The application also consisted of notification of change of trustees and return of trustees which were also admitted in evidence as Exhibit P.8. Amongst other exhibits tendered in support of the petition were Exhibit P. 6 which is a letter confirming the first respondent's authorization of change of trustees submitted by the alleged errant group; and membership registration card issued by the party to the petitioner (Exhibit P.9) who also informed the court that he was interested in the matter by virtue of being a member of the party and a member of parliament through the party. On the other hand, the first respondent had two witnesses, namely, Mr Joseph Mwakatobe, an officer of the first respondent (RW.1), and Mr Sisty Nyahoza, an officer working with the Registrar of Political Parties (RW.2). They tendered several documents in evidence as follow. In the first place, there was Exhibit D1 which consisted of a letter dated 26/03/2017 from Hon. Magdalena Sakaya (Acting Secretary General of the party) to the first respondent in respect of change of members of the Board of Trustees of the party. The change of members of the Board of trustees of the party was eventually authorized by the first respondent as per Exhibit P.6. The said Exhibit D.1 also consisted of return of trustees (Form T.I.5) and change of trustees (Form T.I.4) dated 26/03/2017 and 27/03/2017 respectively showing persons who were eventually registered as members of the Board of Trustees of the party and those who were replaced by the new members. 7 In the second place, there was Exhibit D.2 which is a letter dated 22/03/2017 from Prof Ibrahim Haruna Lipumba (as the Chairman of the party) to the first respondent introducing Hon. Magdalena Sakaya as the Acting Secretary General of the party pursuant to article 93(3) of the Constitution of the party. The said Exhibit D.2 also informed the first respondent that official communication concerning the party and the Board of Trustees of the party should be through the office of the Acting Secretary General of the party in Dar es Salaam. It is worthwhile to note that Exhibit D.2 was accompanied by a letter dated 20/03/2017 from the Registrar of Political Parties to Prof Ibrahim Haruna Lipumba (Mwenyekiti wa Taifa) to the effect that the substantive Secretary General of the party had failed to discharge his responsibilities in accordance with article 93(3) of the Constitution of the party and hence the appointment of Hon. Magdalena Sakaya as the Acting Secretary General of the party. Exhibit D.2 made reference to a letter dated 16/03/2017 by Prof. Ibrahim Haruna Lipumba addressed to the Registrar of Political Parties in relation to the appointment of Hon. Magdalena Sakaya as the Acting Secretary General. The referred letter was also tendered and admitted in evidence as Exhibit D.5. In the third place, there was Exhibit D.3. This was a letter dated 20/06/2017 which notified the Registrar of Political Parties about the changes of members of the Board of Trustees of the party. This exhibit indicated the new members of the Board of Trustees who were authorized by the first respondent as new members. There was also 8 to the first respondent The application also consisted of notification of change of trustees and return of

trustees which were also admitted in evidence as Exhibit P.8. Amongst other exhibits tendered in support of the petition were Exhibit P. 6 which is a letter confirming the first respondent's authorization of change of trustees submitted by the alleged errant group; and membership registration card issued by the party to the petitioner (Exhibit P.9) who also informed the court that he was interested in the matter by virtue of being a member of the party and a member of parliament through the party. On the other hand, the first respondent had two witnesses, namely, Mr Joseph Mwakatobe, an officer of the first respondent (RW.1), and Mr Sisty Nyahoza, an officer working with the Registrar of Political Parties (RW.2). They tendered several documents in evidence as follow. In the first place, there was Exhibit D1 which consisted of a letter dated 26/03/2017 from Hon. Magdalena Sakaya (Acting Secretary General of the party) to the first respondent in respect of change of members of the Board of Trustees of the party. The change of members of the Board of trustees of the party was eventually authorized by the first respondent as per Exhibit P.6. The said Exhibit D.1 also consisted of return of trustees (Form T.I.5) and change of trustees (Form T.I.4) dated 26/03/2017 and 27/03/2017 respectively showing persons who were eventually registered as members of the Board of Trustees of the party and those who were replaced by the new members. 7 Exhibit D.4 which was a letter dated 12/07/2017 from the first respondent informing Seif Sharif Hamad that his application for the change of trustees was not authorized. Rather, it was the application lodged by the Acting Secretary General of the party which was authorized as it was found to be correct. Peter Michael Malebo who did not tender any exhibit testified as RW.3 for the second and third respondents. The 4th respondent to 12 respondents called two witnesses, namely, Thomas Malima (RW.4) and Abdul Juma Kambaya (DW.5) who tendered Exhibit D.6. This exhibit consisted of minutes of the meetings of national governing council of the party held on 08-09/10/2016; on 12-13/11/2016; and 28-29/01/2017. According to Exhibit D.6 and the testimonies given, the meetings were not held as there was no quorum required for the meetings. Two witnesses, namely, Abdallah Said Khatau (RW.6) and Shaweji Mohamed Mketo (RW.7) testified for the remaining respondents (13-18th respondents). It was only Exhibit D.7 consisting of the minutes of ordinary meeting of the national governing council of the party held on 06-08/08/2010 at the Head Office of the party in Dar es Salaam which was tendered by RW.7 in support of the 13th - 18th respondents' case. It was the testimony of RW.7 that unlike Exhibit P.7 which was a forged document, Exhibit D.7 represented genuine minutes of the meeting held on the specified days. ' On the issue whether the party has a legally registered Board of Trustees, it suffices to say that it is clear from the pleadings, the 9 evidence on the record and learned counsel final submissions that it was not disputed that the party did incorporate a Board of Trustees under the Trustees' Incorporation Act (supra) consequent to obtaining its full registration as a political party. However, it was not clearly shown by evidence when exactly the first members of the Board of Trustees of the party were incorporated as such and certificate of incorporation accordingly granted. The only evidence in place was from PW.2 which suggested that the members of the Board of Trustees were first registered in 1993. However, this evidence contradicted the pleading that the tenure of members of the Board of Trustees of the party expired in 2017 having been

appointed in 2012. As the evidence on the record shows that there is no dispute as to whether or not the party has had a Board of Trustees incorporated under the Trustees Incorporation Act (supra), I do not hesitate to answer the first issue in the affirmative. I am aware that this answer would necessarily lead to a question as to who is/are present members of the Board of Trustees of the party under the Trustees' Incorporation Act (supra). This is the next question I am going to consider in the light of the evidence on the record. I am settled in my mind that the second, the third, and the fourth issues are based on section 26 of the Trustee' Incorporation Act (supra). The following evidence is accordingly worth considering. It is clear that the 3rd to 12th respondents were authorised by the first respondent as new members of the Board of Trustees of the party. It is however disputed by the petitioner and the 13th - 18th respondents that the 3rd - 12th 10 respondents were properly appointed by the party and eventually authorized by the first respondent as members of the Board of Trustees of the party. It is also disputed by the 1st - 12th respondents that the 13th

- 18th respondent ought to have been authorized by the first respondent as members of the Board of Trustees of the Party. It is the petitioner's pleading that the application for authorizing the 3rd - 12 respondents as members of the Board of Trustees was received and eventually authorized by the first respondent when the first respondent was already in the possession of the application for authorization of change of members of the Board of Trustees of the party from Seif Sharif Hamad as shown in Exhibit P.4. The authorization by the first respondent of the former application at the expense of the latter was unlawful and contrary to the CUF Constitution (Exhibit P.1) as already stated. The petitioner's pleading is supported by the evidence of PW.1, PW.2 and PW.3 which is also in harmony with the evidence of RW.6 and RW.7. The thrust of the evidence of the above mentioned witnesses was that the 3rd-12th respondents were not lawfully appointed and registered as members of the Board of Trustees of the party. The evidence has it that procedural requirements under the relevant law were not complied with. There was no lawful meeting of national governing council that was held to appoint such members in accordance with relevant provisions of the Constitution (Exhibit P.1). The application for change of trustees was made by the alleged Acting Secretary General who is not recognized by > the party. The change of trustees was, as per PW.2 who tendered li Exhibits P.6 and 7, authorized by the first respondent because of the assurance from the Registrar of Political Parties that the application for the change of trustees was submitted by valid leaders of the party, recognized by the office of the Registrar of Political Parties. The testimony as to the alleged assurance relied on the letter dated 12/06/2017 (i.e Exhibit P.6) from the first respondent to "Kaimu Katibu Mkuu wa CUF" regarding the first respondent's approval of the change of trustees. In line with the above evidence, PW.2 had it that the letter in Exhibit P.6 reveals considerations the first respondent made in authorizing change of the members of the Board of Trustees of the party supported by Prof Ibrahim Haruna Lipumba and Hon. Magdalena Sakaya. According to the testimony given, the considerations did not at all reflect the conditions for authorizing change of trustees provided for under the law. It was testified that Prof. Ibrahim Haruna Lipumba and

Hon. Magdalena Sakaya had already ceased to be Chairman and Deputy Secretary of the party as from 21/08/2016 and 28/08/2016 respectively. On the other hand, Exhibit P.4 was relied by the witnesses to support the view that the other persons whose registration was not accepted by the first respondent were lawfully appointed under article 98(1) & (2) of the Constitution of the party (Exhibit P.1) by a valid meeting of the national governing council of the party held on 19/03/2017 in Zanzibar. The court was told that Exhibit P.4 was also accompanied by the minutes of the meeting which made such appointments. The appointed 12 members were, the court was told, eventually submitted to the first respondent for approval as indicated in Exhibits P.3 and P. 8. It was the evidence of PW.2 and PW.3 that the appointment was intended to fill four vacancies in the Board of Trustees of the party whose members were appointed in 2013 and their five years tenure was due to expire in May 2018 as per the Constitution of the party (Exhibit P.1). The evidence had it that the first members of the Board of Trustees of the party were registered on 04/05/1993 and the members' first term of five years expired in May 1998, and as day follows night the fifth term was to expire in May 2018. It was thus testified in particular by PW.2 that out of the nine members submitted to the first respondent, it was only four members that were new appointees nominated for filling the vacancies left. The evidence adduced on the behalf of the petitioner disputed that members of the Board were last appointed in 2012 and their tenure had already expired in 2017. The evidence further denied that the appointment followed the expiry of the five years term of the members of the Board of Trustees of the party in 2017. Rather, the appointment was for the purpose of filling four vacancies. Neither Exhibit P.4 nor Exhibit P.8 was clear that the appointment was for the purpose of filling four vacancies in the Board of Trustees of the party. Since the evidence adduced contradicted the petition, there was therefore no evidence to substantiate the allegation of the petitioner's claim as to the expiry of the tenure of the members of the Board of Trustees and the purposes of holding the alleged meeting. 13 The evidence also disputed that the meeting of the national governing council of 06-08/08/2010 discussed and deliberated on the change of trustees. PW.2 and RW.7 told the court that unlike Exhibit P.7 which consisted of forged minutes of the above meeting, Exhibit D.7 which was earlier in the trial tendered for identification only consisted of the genuine minutes of the above meeting. It was testified that there were by comparison marked differences between the two exhibits in terms of their respective font, style, contents and signatures of the chairman and the secretary of the meeting used in the exhibits. In so far as the 1st - 12th respondents were concerned, it was their evidence that the application for change of the trustees submitted by Hon. Magdalena Sakaya as Acting Secretary General of the party was registered in accordance with the law and as per the information received from the Registrar of the Political Parties as regards to the recognised leaders of the party. The application of change of trustees submitted by Seif Sharif Hamad was considered along with the submission from Hon. Sakaya and was found to be invalid in terms of section 17 of the Trustees' Incorporation Act (supra). The testimony was supported by Exhibit D.1, Exhibit D.2 and Exhibit D.3 which were tendered by RW.1 as well as Exhibit D.5 which was tendered by RW.2. According to RW.2, the national leaders of the party recognised by the Registrar of Political Parties are Hon. Magdalena Sakaya and Prof.

Ibrahim Haruna Lipumba. These leaders were introduced by the said Registrar of Political Parties to the first respondent. However, RW.2 14 could not remember whether the letters by the Registrar of Political Parties (Kumb Na. CHA. 322/362/14/23 of 04/04/2017 and Kumb Na. CHA 322/362/14/30 of 11/05/2017) referred to in Exhibit P.6 were accompanied by the minutes of the meeting that appointed the trustees submitted for authorization to the first respondent by Hon. Magdalena Sakaya. In so far as the minutes of the meeting that appointed persons who were eventually registered are concerned, RW.3 told the court that although he was notified of his appointment as a member and chairman of-the Board of Trustees of the party by Hon Magdalena Sakaya, he has never had opportunity to see the minutes of the meeting of 25- 26/03/2017 of the national governing council that appointed him as such. On his party, RW.4 insisted that the meeting was actually held. It was held pursuant to article 124 of the Constitution of the party (Exhibit P.1) because some members were not eligible to attend the meeting for not attending three consecutive meetings (Exhibit D.6). However, RW.1 who is an officer of the first respondent was not sure whether or not the first respondent had the minutes of the alleged meeting of the national governing council of the party which appointed the trustees submitted by Hon. Magdalena Sakaya as per article 98(1) of the Constitution of the party. In addition, RW.1 was not sure whether the Registrar of Political Parties brought to the first respondent's attention members of the national governing council of the party who were entitled to attend the alleged meeting; and whether the Registrar of Political Parties monitored the alleged meeting that appointed the said 15 members of the Board of Trustees of the party. The chairman and Secretary of the alleged meeting, namely, Prof. Ibrahim Haruna Lipumba and Hon. Magdalena Sakaya respectively were not for no apparent reason called to testify in relation to the alleged meeting. The Forms T.I.4 and T.I.5 (Exhibit D.1) were dutifully signed by RW.3 as the person notifying the first respondent of the changes of the trustees. However, the forms were, according to RW.3, completed by Hon'. Magdalena Sakaya whose covering letter accompanied the application. Although RW.1 and RW.2 admitted that Form T.I.4 and Form T.I.5 (Exhibit D.1) had some defects which were noted by the first respondent, the court was told by RW.1 that the defects were brought to the attention of the relevant applicant and were duly corrected and filed before the change of trustees was authorized by the first respondent. Surprisingly, the corrected forms on the basis of which the change of trustees was authorized by the first respondent were not as admitted by RW.1 produced before the court and were therefore not in the court's record. On the court's record there was only Exhibit D.1 which consisted of the forms which as admitted by RW.1 had some defects which had to be corrected before the authorization. In my scrutiny of the forms which formed part of Exhibit D.1, I could see discrepancy in the number of appointees in Form T.I.4 dated 27/03/2017 and Form T.I.5 dated 26/03/2017. While the former had ten

- (10) names, the latter had eleven (11) names. The forms also appeared to have been noticeably tempered with in several places by using 16 correction fluid. They were nevertheless stamped as received on 27/03/2017 by the first respondent. It was also the testimony of RW.4 that the last appointment of members of the Board of Trustees before the impugned change

of trustees was on 6-8/8/2010 as reflected in Exhibit P.7. It was also the testimony of RW.4 that the signatures of the chairman (i.e Prof Ibrahim Haruna Lipumba) and secretary (i.e Seif Sharif Hamad) of the meeting in Exhibit P.7 are valid ones. Mindful of the foregoing evidence in relation to the question that I am required to determine and give my opinion, I am settled that the Trustees Incorporation Act (supra) is the relevant legislation in this matter. It provides a legal regime for the incorporation of a trustee or trustees as a body corporate and grant of a certificate of incorporation of a body corporate. It is upon the grant of a certificate under section 5(1) of the Act that the registered trustee or trustees become a body corporate. Section 16 of the Act also provides legal means for nomination of trustees and procedures for filling of vacancies in the number of the trustees comprising a body corporate. Power to authorize change of members of such bodies is under section 17 of the Act vested in the Registrar General of the first respondent. The provision of section 17 of this Act sets conditions which have to be considered by the first respondent before authorizing changes of the names of a person who is or who were trustee or trustees of a body corporate. Firstly, the first respondent must be satisfied that there were held a lawful meeting of the body corporate or organization for the 17 purposes of electing a person or persons as a trustee or trustees of such body corporate or organization. And secondly, the meeting electing such a person or persons as a trustee or trustees to fill any vacancy must have been monitored by any of Government authorities. Likewise, the first respondent must under section 4 of the Act be sure that a person elected to be a trustee is not convicted of a criminal offence or any offence involving fraud or dishonesty; and he is not adjudged bankrupt; and that the application is made by legal means specified under section 6 of the Act. My evaluation of the evidence on the record in relation to the issue at stake takes into account the above principles that govern change of trustees comprising a body corporate. I have in particular had regard to the provisions of sections 16 and 17 of the Act which for want of clarity, I have reproduced them herein below as follow:

16. Nomination of trustees, filling of vacancies and return of trustees Act No. 10 of 1999 Sch.
- (1) Where a certificate of incorporation has been granted, vacancies in the number of the trustees comprising the body corporate shall from time to time be filled by such legal means as would have been available for the appointment of a new trustee or new trustees if no certificate of incorporation had been granted.
- (2) When any person ceases to be a trustee and when any new trustee is appointed and when any trustee changes his name or residence or postal address, the change shall, within one month of the happening, be notified in writing to the Administrator- General, in the prescribed manner, by the trustees for the time being.

- (3) Whenever required in writing by the Administrator-General, and in any event within one month after the expiration of each period of twelve months after the grant of a certificate of incorporation, a return shall be made to the Administrator-General by the then trustee or trustees of the names of the trustee or trustees at such time as may be required or at the expiration of each such period, as the case may be, with his or their residences and postal addresses.
17. Monitoring meetings of body corporates, and organisations Act No. 10 of 1999 Sch.
- (1) No changes of the names of a person who is or who were trustee or trustees of a body corporate or organisation incorporated under this Act shall be authorised by the Registrar-General unless he is satisfied that-
- (a) There were held a lawful meeting of the body corporate or organisation for the purposes of electing a person or persons as trustee of such a body corporate or organisation; 19
- (b) The meeting electing new leaders as trustees or any person to fill any vacancy was monitored by any of Government authorities.
- (2) In the case of religious bodies corporate or organisations, they shall each be monitored by their respective relevant supreme authority in Tanzania in accordance with their statutes, charter or instrument of that body corporate or organisation. i In view of the evidence on the record, there were two submissions for registration of change of members of the Board of Trustees of the party. The submission for the changes were submitted to the first respondent by the two conflicting factions within the party. One faction is featured by national leaders recognized by the Registrar of Political Parties while the other is featured by Seif Sharif Hamad, the Secretary General of the party. Both submissions were accompanied by some documents that supported the respective change of trustees sought to be authorized and registered by the first respondent. On one hand, the submission from the faction consisting of the Secretary General of the Party (i.e Seif Sharif Hamad) is evident in Exhibit P.3, Exhibit P.4 and Exhibit P.8. On the other hand, the submission from the faction consisting of national leaders recognised by the Registrar of Political Parties is evident in Exhibit D.1. The submission by the faction consisting of national leaders recognized by the Registrar of Political Parties (i.e Hon. Magdalena Sakaya and Prof Ibrahim Lipumba) was eventually authorized and registered by the first respondent. Exhibit P.5 is a letter by the first respondent to the Acting 20 Secretary General of the party which confirmed the authorization and registration of the change of trustees. The letter in part reads: 12 Juni 2017 Kaimu Katibu Mkuu Chama Cha Wananchi-CUF S.L.P 10979 DARES SALAAM YAH: SHERIA YA MUUNGANISHO WA WADHAMJINI SURA YA 318 TOLEO LA 2002 TAARIFA YA MABADILIKO YA WADHAMINI (FOMU T.I.4) NA KATIBA (FOMU T.1.7J Tafadhali rejea barua yako Kumb. Na. CUF/SG/BGRN/01/2017 ya tarehe 26/03/2017 pamoja na barua kutoka kwa Manz Attorneys wakiwawakilisha kwa barua zao Kumb. MA/CUF2/03/2017 ya tarehe 30.03.2017 na Kumb. MA/CUF2/03/2017 ya tarehe 30.03.2017 iambatishwa na fomu T.I.4 kwa mabadiliko ya wadhamini na fomu T.1.7 kwa mabadiliko ya Katiba. Vilevile ukirejea barua

ya Msajiti wa Vyama vya Siasa Kumb. Na. CHA.322/362/14/23 ya tarehe 04/04/2017 na barua Kumb. Na. CHA. 322/362/14/30 ya tarehe 11 Mei 2017 na yote yaliyomo yamezingatiwa. 21

2. RITA imepokea maombi yenu ya mabadiliko ya wadhamini baada ya wale wa awa/i kumatiza muda wao, vile vile mabadiliko ya Katiba ya Chama Chenu. Maombi hayo yamepitiwa na pamoja na mihutasari ya vikao mbalimbali miivyokaa na kupitisha maamuzi kulingana na Katiba ya CUF
3. Fomu ya mabadiliko ya wadhamini (Fomu T.I.4) na fomu ya mabadiliko ya Katiba (fomu T.I.7) zimeonekana kuwa sahihi na zimewekwa katika kumbukumbu zangu. Wadhamini wanaotambuhwa kwa sasa ni kama ifuatavyo:-
 - i) PETER MICHAEL MALEBO ii) HAJIRA OMAR SIUA iii) AZIZI5SA DAGHESHI iv) ABDUL RAJAB MAGOMBA
 - v) AMINA THOMAS M5HAMU vi) ASHA SAID SULEIMAN ! vii) MUSA HAJIKOMBO viii) SALHA HILAL MOHAMED ix) SULEIMAN MAKAMEISSA
4. Vilevile napenda kuwakumbusha kuwasilisha nakaia ya Kiingereza ya Katiba yenu yam waka 1992 toleo la 2014 kulingana na Sheria ya Muunganisho wa Wawadhamini na Kanuni zake.
5. Tafadhali fahamishwa hivyo. 22 (Sgd) EMMYK. HUDSON KAIMU MSIMAMIZIMKUU WA WADHAMINI/ KABIDHI WASII MKUU Two things are notable in the letter. First, the letter makes reference to " Mihutasari ya vikao mbatimbatr which informed the first respondent's decision. It is in this respect instructive to trace in the evidence whether the "mihutasari ya vikao mbaiimbair included the minutes of the meeting held for the purpose of appointing the trustees. And second, the letter makes reference to Form T.I.4 for change of/or concerning trustees. It is also instructive to trace in the evidence on the record whether there is any evidence in relation to the existence and propriety of the form. The other submission featured by Seif Sharif Hamad (the Secretary General of the Party) was not authorized and therefore not registered. This is evidenced by a letter by the first respondent to Seif Sharif Hamad dated 12/07/2018 (Exhibit D.4). The said letter partly reads:- 12 Juiai 2017 SEIF SHARIF HAMAD Chama Cha Wananchi-CUF S.L.P. 3637 ZANZIBAR YAH: SHERIA YA MUUNGANISHO WA WADHAMINI SURA YA 318 TOLEO LA 2002 23 MABADILIKO YA WADHAMINI YA CHAMA CHA WANANCHI-CUF Tafadhaii rejea barua yako Kumb. Na. CUF/ HQ/AKM/003/R T/001 ya tarehe 24/03/2017 iliyowasilishwa kwangu pamoja na fomu T.I.1 na T.I.4 na malipo husika ya shs. 100,000/- ya ada ya kuweka fomu hizo katika kumbukumbu zangu.
2. Baada ya kupitia Katiba ya Chama cha Wananchi - CUF ya mwaka 1992 toleo /a 2014 na vilevile Sheria ya Muunganisho wa Wadhamini Sura ya 318 toleo la 2002 pamoja na Kanuni zake kuhusiana na uhalali wa kikao/mkutano wa kupitisha wadhamini kama Hivyoieezwa katika kifungu cha 17(1) cha sheria hiyo hapa nanukuu- 17 (1) No changes o f the names o f a person who is or who were trustee or trustees o f a body corporate or organisation incorporated under this Act shall be authorised by the Registrar-General unless he is

satisfied that-

- (a) There were held a lawful meeting of the body corporate or organisation for the purposes of electing a person or persons as trustee of such a body corporate or organisation;
 - (b) The meeting electing new leaders as trustees or any person to fill any vacancy was monitored by any of Government authorities. 24
3. Kumekuwepo kwa uwasilishaji wa fomu za mabadiliko ya wadhamini kutoka pande mbili kati yako wewe na Kaimu Katibu Mkuu wa CUF anayetembuliwa na Msajili wa Vyama vya Siasa. Kisheria Msajili v/a Vyama vya Siasa ndiye anayetambua viongozi v/a Kitaifa wa vyama vya siasa kama inavyoelekezwa katika fdfungu cha 8A(1) cha Sheria ya Vyama vya Siasa Sura ya 258 Toteo la 2015 hapa nanukuu:- n8A(1) There shall be a Register of Political Parties into which names, addresses and other particulars of registered parties or national leaders of political parties shall be entered.
 3. Hivyo basi fomu zilizowasilishwa na Kaimu Katibu Mkuu wa Chama cha CUF ambaye anatambul/wa na Msajili wa Vyama vya Siasa, pamoja na viambatisho mbalimbali zimeonekana kuwa sahihi na zimepokelewa na kuhifadhiwa katika kumbukumbu zangu. Fomu na viambatisho ulivyowasilisha wew/e hazikuwa sahihi na hazikuwekwa katika kumbukumbu zangu. Hivyo nazirejesha kwako. Viitevi/e taratibu za kijasibu zinaendelea za kukurejeshea fedha ulizolipa kwa huduma hiyo.
 4. Tafadhali fahamishwa hivyo. (Sgd) Emmy K. Hudson Kaimu Afisa Mtendaji Mkuu/Kabidhi Wasii Mkuu 25 In the above letter, there are two things that need to be noted. One, it explains the reasons behind the decision made by the first respondent in respect of the two submissions. Two, it refers to the correctness of the forms submitted by the faction featured by Hon. Magdalena Sakaya as' Acting Secretary General recognized by the Registrar of Political Parties. I have scrutinized the change of trustees submitted by Hon. Magdalena Sakaya as evidenced in Exhibit D.1. This exhibit consisted of a covering letter from Hon. Magdalena Sakaya (MP) as Acting Secretary General of the Party addressed to the first respondent; form T.I.5; and form T.I.4. The covering letter referred to the meeting of the national governing council of the party which sat on 25-26/03/2017. The application for the change of trustees was not however accompanied by the minutes of the meeting. Witnesses (RW.1 and RW.2) who adduced evidence on behalf* of the first respondent did not produce in this court the minutes of the meeting. It was clear in cross-examination that the said witnesses were not even sure whether the minutes were on the record of the first respondent. Neither the secretary nor chairman of the alleged meeting that appointed the members of the Board of Trustees was called to testify. No reasons were assigned why they were not called to testify. No wonder that the minutes which could have proved that the meeting was indeed held were not referred to in Exhibit P.6. It was also not surprising that there was no evidence that the meeting was monitored by any relevant government authorities as is required by the law. In the absence of the minutes, there is in my considered view and finding 26 nothing showing that there was a lawful meeting of the

national governing council of the party which was held for the purposes of electing members of the Board of Trustees of the party and properly monitored by the relevant authorities as per section 17(l)(b) of the Act. Besides the absence of evidence as to the holding of a lawful meeting, there is also a problem concerning the forms that were used to request the first respondent to authorize the change of trustees. It was admitted in evidence that the forms which were submitted to the first respondent for authorization of change of trustees had defects. The defects were subsequently addressed and corrected forms were resubmitted for authorization of the change of trustees. The first respondent then authorized the change of trustees based on the corrected forms. However, the corrected forms were not produced before the court for . scrutiny. Before the court there was only Exhibit D.i which consisted of the forms with noticeable defects, as was also admitted by RW.1. Going by the contents of Exhibit P.6, it is evident that the first respondent relied on the information gathered from the Registrar of Political Parties. I have no problem with such endeavor. However in so far as the registration of change of trustees is concerned, the first respondent ought also to have gone further to satisfy itself as to whether the requirements under section 17(1) of the Trustees' Incorporation Act (supra) were complied with before authorizing the change of trustees. It is in this respect noteworthy that the petitioner's complaint was that the first respondent only based its decision on the Information received from the Registrar of Political Parties. Indeed, the evidence on the record is clear that the information which was gathered from the Registrar of 27 Political Parties had nothing on the meeting of the national governing council of the party which was allegedly held for the purposes of appointing members of the Board of Trustees of the party. Rather, the information was mainly on Hon. Magdalena Sakaya being introduced to the first respondent as the Acting Secretary General of the party and the national leaders of the party recognised by the Registrar of Political Parties. At this juncture, I am content that the conditions under section 17(1) of the Trustees' incorporation Act (supra) were not observed by the first respondent when authorizing change of the names of persons who were members of the Board of Trustees of the party. Had the first respondent religiously complied with the requirements of the law, he would not in my opinion have authorized the change of trustees in its present form. Rather, the first respondent would have first inquired into the lawfulness of the meeting in terms of, for example, the following: whether there was a meeting held for such purposes and whether it was held by the appropriate organ of the party according to the party's constitution; whether it was attended by lawful members, and whether the meeting had an agenda item for making such appointments; and whether there was a quorum for the meeting; whether notice of the meeting was indeed issued to members; and whether there were valid minutes of the meeting duly signed by the Chairman and Secretary of the meeting. In my view, this responsibility ought to have been undertaken religiously as there were seemingly two conflicting factions within the party. The other application of change of trustees brought by a covering letter from Seif Sharif Hamad (Secretary General of the party) was not 28 authorized and registered by the first respondent as already pointed out. The persons who were sought to be so registered as members of the Board of Trustees of the party were thus not so registered as members by the first respondent. Such persons

do not, in my view, therefore fall purview of the inquiry envisaged under section 26 of the Trustees Incorporation Act (supra). I have nevertheless scrutinized the application in relation to section 17(1) of the Trustees' Incorporation Act (supra). The application d of receipt for payment of relevant fees, covering letter written by Seif Sharif Hamad (as Secretary General of the party), the minutes of or inary meeting of national governing council of the party held on 19/03/2017 which appointed members of the Board of Trustees and duly signed by Seif Sharif Hamad as a secretary of the meeting and Katani Ahmad Katani as chairman of the meeting, form T.I.4 and form T.I.5, list of appointed members of the Board of Trustees, and verified copy of relevant provisions of the Constitution of the party regarding the Board of Trustees of the party. However, Exhibit D.4 only referred to form T.I.4 and T.I.5 as , documents which were submitted to the first respondent There is nothing indicating that the minutes were accompanied by the I application. I say so because even the covering letter by Seif Sharif Hamad did not indicate that the application was accompanied by the minutes of the alleged meeting or its extract. Even if the application was so accompanied by the alleged minutes of the meeting, there is nothing from the minutes and the evidence adduced on behalf of the peHtioner Showing that the alleged meeting was monitored by any government { On the incidental issue as to whether the minutes of the meeting of the national governing council held on 6-8/08/2010 evidenced in Exhibit P.7 was forged, I would as I hereby do so find that there was no sufficient evidence from the petitioner to substantiate the claim. I am mindful that the secretary of the meeting who drafted or oversaw the drafting of the minutes and signing thereof was not called to testify for no apparent reason. I cannot in the circumstances rule out that if he was called, he would have testified in the manner that does not support the claim. In terms of section 26 of the Trustees' Incorporation Act (supra), I am of the firm opinion that neither the application which was eventually authorized nor the other which was not accepted, was eligible for authorization for reasons well stated herein above. As already stated none of the application met the requirements of section 17(1) of the Act. Neither was I shown in the evidence that such requirements were duly observed. In the end, I declare that, none of the persons who was authorized as a member of the Board of Trustees of the party ought to have been so authorized for the reasons that I have given above. The exception is for a person or persons if any who was or were amongst members of the Board of Trustees of the party whose five years tenure has just ended. Accordingly, the status of members of such Board of Trustees of the party whose five years tenure has already expired will have to be dealt with by the first respondent in accordance with the applicable law and practice. Based on the scope of section 26 of the Trustees' Incorporation Act (supra), I would and I hereby do so, refrain from granting an order for permanent injunction against the 3rd - 12th respondents as sought by the petitioner. In all, the petition is partly allowed and to the extent stated herein. In the circumstances, I will not make any order as to costs. I order accordingly. Dated at Dar es Salaam this 18th day of February, 2019. 18/02/2019 Coram: Hon. Benhaji S. Masoud For the Petitioner - Ms. L. Deniss Advocate For the 1st - 3rd Respondents - Ms. Mtulya - SA Ass. by Mr. Mutabingwa Ass. Admn. General For the 4th— 12th Respondent - Mr. Nassor /Mr. Mashaka Ngole For the 13th — 18th Respondent - Mr. Nassoro Adv. assisted by

Mr. D. Halfani Adv. & Ms. F. Kajoki C/C: Assenga. Court Judgment delivered in the presence of Counsel for both parties and in the presence of the Petitioner this 18th February, 2019.
J^JJfenhajj S. Masoud Judge 18/02/2019 32

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Prepared on 13 October 2026 · Esheria