

TANZANIA / JUDGMENT

KURUNGU RULING EDITED

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DECIDED
23 October 2024

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM
MISC. CIVIL CAUSE NO. 427 OF 2018 BETWEEN ALI SAIDI
KURUNGU 1ST PETITIONER KHAMISI SALUMU
ABDALLAH 2ND PETITIONER RAMADHANI M.
LUKALI 3RD PETITIONER SALIM MOHAMED
ABDALLAH 4TH PETITIONER KHALID SAIDI
KITOGO.....5TH PETITIONER VERSUS THE ADMINISTRATOR
GENERAL.....1ST RESPONDENT THE REGISTERED TRUSTEES OF, MASJID
MABOX-MTONI SOKONI.....2ND RESPONDENT UST. ALI MOHAMED
ALI.....3RD RESPONDENT ALI MOHAMED
MTULIA.....4TH RESPONDENT ABUBAKAR SULTANI NGONDO
.....5TH RESPONDENT OMARI MPOTO
KAPILIMA.....6TH RESPONDENT SAIDI SHAHA
KASU.....7TH RESPONDENT SELA RAJABU
ALI.....8TH RESPONDENT SALUM RAMADHANI
LUKALI.....9TH RESPONDENT JUMA OMARI
KAPU.....10TH RESPONDENT SALIM KIFO
MTAMBULO.....11THRESPONDENT IBRAHIM MUSSA
REHANI.....12THRESPONDENT OMARI MBARAKA
PAZI.....13THRESPONDENT

RULING

1 24th September, 23rd October 2024 MWANGA, J. The petitioners filed this petition before this court, praying for the following orders;

- i. A declaration that the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th Respondents were illegally elected into the office of the Board of Trustees of Masjid Mabox Mtoni on 14th December 2015; ii. A declaration that the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th and 13th Respondents are not the Trustees of Masjid Mabox Mtoni, Sokoni; iii. An order that the conducts of the 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th 12th and 13th Respondents on 14th December 2015 are null and void; iv. A declaration that the 1st and 2nd Petitioners are the surviving Trustees of the Registered Trustees of Masjid Mabox Mtoni Sokoni;

- v. An order compelling the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th Respondents to return all the assets, whether movable and immovable, which are a property of the 2nd Respondent, into the hands, and control of the 1st and 2nd Petitioners herein;
- vi. An order of eviction of the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th Respondents and all their allies, friends, followers, supporters, and other unwanted persons from occupation and management of Masjid Mabox Mtoni Sokoni;
- vii. Permanent injunction restraining the Respondents except for the 2nd Respondent and all their supporters, allies, friends, assigns, and sons from engaging themselves in the affairs and management of Masjid Mabox Mtoni Sokoni;
- viii. Specific damages to the tune of Tsh. 2,220,000/= per month for interfering with the smooth operation of the Mosque, being costs for projects allied to Masjid Mabox Mtoni with effect from 14th December 2015 until the date of Judgment.
- ix. An order for the production of proper books of accounts for the collection of dues, Sadak, Zakkat, and contributions by Respondents from 14th December 2015 to the date of

judgment.

- x. General damages as may be assessed by the court;
- xi. Costs of this Petition be provided for by Respondents
- xii. Any other relief(s) the Honourable Court may deem fit to grant. In a nutshell, the brief fact of this case, as can be depicted from the pleadings, goes thus: the 1st and 2nd Petitioners are both the registered Trustees of the 2nd Respondent, both being the surviving founder members of the Registered Trustees of Masjid Mabox - Mtoni Sokoni, who participated in its incorporation in the year 1989. It is also alleged that the 3rd, 4th, and 5th Petitioners are all worshippers of Masjid Mabox - Mtoni Sokoni who have an interest in the mosque where they practice their regular prayers following Islamic teachings and preaches of Al Qadiriyya Islamic sect as founded and promulgated in Tanzania. It appeared that, immediately after its incorporation in the year 1989, the property which vested into the body corporate, the Registered Trustees of Masjid Mabox Mtoni Sokoni, constituting a Mosque at Temeke, was invaded by people who purported to evict the registered trustees of Masjid Mabox - Mtoni Sokoni from their leadership positions and stopping the trustees from conducting their legal functions as a result of which the Trustees instituted a suit challenging the conducts of the said invaders vide Civil Case No. 236 of 1989 in the High Court of Tanzania, at Dar es Salaam. Civil Case No. 236 of 1989 ended in favor of the Registered Trustees of Masjid Mabox - Mtoni Sokoni in 2011 following a decree of the Court and by the deed titled Compromise of Suit dated 15th June 2007. The facts went further that, the Court ordered eviction from the suit premises of the Defendants and any other person acting under the Defendants in Civil Case No. 236 of 1989. Thus, the Registered Trustees of Baraza Kuu la Waislam Tanzania (BAKWATA) filed objection proceedings in Civil Case No. 236 of 1989 whereby the court made a ruling that the status of the Registered Trustees of Baraza Kuu la Waislam Tanzania (BAKWATA) and the Registered Trustees of Masjid Mabox-Mtoni was the same. None had a superior mandate to oversee the other. It is also averred that, on 4th May 2015, the High Court of Tanzania, through a Court Broker, handled the

assets and management of Masjid Mabox - Mtoni Sokoni to the 1st and 2nd Petitioners on behalf of the Registered Trustees of Masjid Mabox- Mtoni Sokoni in execution of the decree in Civil Case No. 236 of 1989 whereby the 1st and 2nd Petitioners and other surviving Trustees took control of the mosque and other assets forthwith. To their dismay, on 23rd November 2015, the 1st and 2nd Petitioners received a letter from the 3rd Respondent bearing the letter head of Baraza 5 Kuu la Waislam Tanzania (BAKWATA) directing the Petitioners to attend a meeting with all worshippers of Masjid Mabox - Mtoni supposed to be convened on 26/11/2015 with a view of conducting election of members of the Registered Trustees purporting to rely on the letter issued by the Administrator General (the 1st Respondent herein) dated 16th November

2015. The 1st Petitioner replied to the letter of the 3rd Respondent, and copies of the said letter were received by the 1st Respondent. Instead of heeding the 1st Petitioner's call and complying with the order and decree of the court in Civil Case No. 236 of 1989, the 3rd and 4th Respondent proceeded to issue another letter dated 7/12/2015 inviting the 1st and 2nd Petitioners and other trustees of Masjid Mabox- Mtoni Sokoni to attend a meeting of the Registered Trustees of Masjid Mabox - Mtoni Sokoni to be held on 10/12/ 2015 at 16.30 hours, and on 10/12/ 2015, the 3rd and 4th Respondents issued a general notice to all worshippers of Masjid Mabox - Mtoni Sokoni requiring them to attend a general meeting for election on 14th December, 2015. It is alleged further that, on 14th December 2015, at around 10.00 am, the 3rd and 4th Respondents, together with a group of people including the 5th to 13th Respondents, invaded the premises of Masjid Mabox Mtoni-Sokoni and took possession of the Mosque forthwith whereby the Petitioners 6 objected to the conducts of the Respondents except the 2nd Respondents which were contravening the order of the High Court of Tanzania in Civil Case No. 236 of 2015. The 1st, with the 3rd to 13th Respondents, used force to evict the 1st , 2nd , 3rd , 4th , and 5th Petitioners from the mosque with all trustees and worshippers of Masjid Mabox who did not accept the Respondents' acts. Later, the Petitioners were notified that the 5th to 13th Respondents were elected as new trustees of Masjid Mabox Mtoni Sokoni following the invasion of 14th December 2015. According to the petitioners, the 5th to 13th Respondents were amongst the allies of the Defendants in Civil Case No. 236 of 1989, who were evicted from the Mosque in May 2015 by the Court Broker who handled the mosque to the 1st and 2nd Petitioners. The petitioner laments that, the conduct of invading and electing new members and continued occupation and control of the Mosque by the 3rd to 13th Respondents from 14/12/2015 to date were not in compliance with the constitution of the Registered Trustees of Masjid Mabox - Mtoni Sokbni and has offended the interests of the Petitioners. Thus, the 3rd to 13th Respondents have taken control of the mosque and its assets, including the commercial leasing structures and the car parking business at the Mosque 7 premises, which earn them money to the tune of Tshs. 2,220,000/= per month. It was alleged further that the petitioners sought the intervention of this court in Miscellaneous Civil Application No.701 of 2016, whereby the High Court ruled that the 1st, 3rd, and 13th Respondents- herein Were not parties to Civil Case No. 236 of 1989, thus

cannot be bound by the court decree and orders arising from that case, immediately after the ruling in Misc. Civil Cause No. 701 of 2016, the 5th to 13th Respondents have forcefully evicted the Petitioners from the mosque and continued to occupy the mosque without any justifiable cause. Facts went on that, the 1st Petitioners inquired the 1st Respondent, requiring him to nullify the proceedings of a purported meeting conducted on 14th December 2015 through various correspondences. Still, the 1st Respondent has persistently refused to honor the demands. That the continued occupation and recognition of the 5th to 13th Respondents as the trustees of a body corporate known as the Registered Trustees of Masjid Mabox Mtoni Sokoni is against the interests of the Petitioners and has contravened the core intention of forming a body corporate in the year

1989. That the 1st and 2nd Petitioners, who were the only surviving trustees, did not participate in organizing, conducting, and chairing the meeting of 8 worshippers of Masjid Mabox Mtoni as required by the constitution of the 2nd Respondent on 14th December 2015, which elected the 5th to 13th Respondents into the office of the Registered trustees of the 2nd Respondent nor did they consent to the election of the 5th to 13th Respondent into the office of the 2nd Respondent. That, the officers of the 1st Respondent were responsible for all the conducts of the 3rd to 13th Respondents resulting in the purported meeting and election of the trustees of Masjid Mabox Mtoni Sokoni without the consent of the 1st and 2nd Petitioners herein. Petitioners resorted to this court by instituting the instance case seeking the court to determine who are the lawful trustees of the Registered Trustees of Masjid Mabox Mtoni Sokoni and determine whether the election of the 5th to 13th Respondents on 14th December 2015 was lawful and other prayers as listed above. Hearing took the form of written submissions, in which Mr. Mohamed Tibanyendera, learned Counsel, prepared the petitioners' submissions, Mr. Swalehe Ngoma, State Attorney, prepared the submissions of the 1st respondent, and Mr. Musa Kiobya, learned advocate, prepared the submissions of the 2nd to 13th respondent. Submitting in support of the petition, Mr. Tibanyendera reiterated the historical background that bred this petition and the prayers to it, as stated 9 in the petition. He then submitted that, the issue before this court is the validity of the election made on 14th December 2015 regarding the Registered Trustees of Masjid Mabox Mtoni –Sokoni conducted by respondents to fill the vacancies of 8 trustees who were dead. According to him, the Masjid Mabox Mtoni-Sokoni is governed by the Constitution and Rules of the Registered Trustees of Masjid Mabox Mtoni Sokoni, which provides who is legally supposed to be the Chairman of the election meeting for new trustees. He cited Article 6A (iii), which read together with 6A (iv), which states that the Board of Trustees is chairman of the annual and special general meetings. He stressed that the surviving Chairman of the Board of Trustees did not chair the purported election of 14th December 2015. Thus, it was illegally conducted. He submitted that, it is absurd that the 1st Respondent blessed such illegal conduct of the 3rd to 13th Respondents. This was confirmed through a letter dated 6th January 2016 addressed to the 1st Petitioner from the 1st Respondent as attached and marked as Annex Mabox 7 to the 2nd to 13th Respondents' Joint Answer to Petition. To him, such a letter by the 1st Respondent blessing this court

cannot uphold serious illegality as the whole election was a nullity abinitio. 10 The counsel contended that the respondent's defense that the election was lawful because it was held and administered by the 3rd and 4th as representatives of BAKWATA, who acted as a supreme body, was long watered down by this Court in Civil Case No. 236 of 1989. The Court of Appeal of Tanzania in Civil Appeal No. 148 of 2019 cemented the same between the parties. He relied on Section 17 (2) of the Trustees Incorporation Act Cap 318, which provides as follows; "No changes of the names of a person who is or who were trustee or trustees of a body corporate or organization incorporated under this Act shall be authorized by the Registrar-General unless he is satisfied that—

- (a) there was held a lawful meeting of the body corporate or organization to elect a person or persons as trustee of such a body corporate or organization;
 - (b) The meeting electing new leaders as trustees or any person to fill any vacancy was monitored by any Government authority. 11
- (2) In the case of religious bodies corporate or organizations, they shall each be monitored by their respective relevant supreme authority in Tanzania by their statutes, charter or instrument of that body corporate or organization." He contended that, according to the provision cited above, the law does not give the supreme authority (BAKWATA) power to administer the election. Its role, if any, was to monitor the election and not administer it, as the election was to be conducted in a General meeting duly chaired by the Chairman of the Board of Trustees of Masjid Mabox Mtoni Sokoni. He lamented that, the 1st Respondent received and registered the names of the respondents as trustees of Masjid Mabox Mtoni Sokoni with full knowledge obtained in violation of the law. In his view, it was wrong for the first respondent to recommend and approve the conduct of the 3rd and 4th Respondents to administer the election of Masjid Mabox Mtoni Sokoni. It was his prayer, therefore that, the election of the 5th to 13th respondents as new trustees of Masjid Mabox Mtoni Sokoni on 14th December 2015 be nullified for being marled with illegalities, this court makes the judgment in favor of 12 the Petitioner and grant the reliefs sought in the Petition as prayed by Petitioners and Costs should abide by the results of the case. In rebuttal, Mr. Njoma, state attorney for the first respondent, was of the view that events have overtaken the petitioner's prayers because the claimed trustees are not at all valid trustees of Masjid Mabox Mtoni Sokoni as their tenure of 5 years from 26th January 2016 when the changes of trustees approved by the Registrar General have been expired since 25th January 2021 under article 4A (i) of the Constitution of Masjid Mabox Mtoni. He said the present trustees are no longer lawful trustees who stand in the office of the Board. He relied on the case of Felix Emmanuel Mkongwa
- v. Andrew Kimwaga, Civil Application No. 249 of 2016 Court of Appeal of Tanzania at Dar es Salaam (Unreported), where the Court in dismissing the application for stay of execution had the following to say: - "It is, therefore, our considered view that the circumstances in respect of which the stay of execution was sought by the applicant in this application have gone beyond the stage at which a stay order would meaningfully serve any purpose to

restrain the respondent. Events have overtaken the application. Whenever it is shown that the application will no longer serve the purpose it was intended to or that an application has been overtaken by events, the Court has in a number of cases dismissed such application". It was his submission that, at the time this matter was instituted, there was a matter in actual controversy which the court was to decide, but to date, events overtake the matter. For that reason, he said it is prudent for this court to dismiss this matter for being overtaken by events, He further stated that, the petitioner's submission lacks merit and comprises much irrelevant information compared to the rolled prayers. According to him, the source of this dispute is the Petitioner's failure to follow and respect the rules of the constitution of Masjid Mabox Mtoni Mtongani in electing the Board of Trustees and misinformation on how to run the Board of Trustees. He said BAKWATA was invited to election processes after the failure of the Board led by the 1st Petition, namely Ali Said Kurungu, to convene and conduct the election as required by their constitution. He submitted that the 1st Respondent had intervened in this matter and instructed BAKWATA, in collaboration with the surviving Trustees, to conduct an election after receiving complaints from the believers, and upon investigation of the matter, it revealed that the members of the Board had fallen below the minimum number. The Office of Registrar General had several times instructed that the Board conduct an unsuccessful election. He said petitioners should understand that the Mosque cannot be inferred as personal property, so some rules and constitutions abide by the trustees, worshippers, and believers. He believed this dispute was premised on ignorance of the law, wrongful inferences, and misusing the mosque's properties. In the circumstances, the Petitioners and Respondents should let go and rebuild their mosque by adhering to the following: -

- (i) Petitioners and Respondents (rival groups) to form an interim committee comprising two representatives from each side and a BAKWATA representative who will be Chairman of the Committee. (ii) The said Committee will be responsible for verifying the Register of the Masjid Mabox Mtoni Mtongani members who will be eligible to participate in the election and amendment of the 15 Constitution from the Register of Members conducted before 2015. (iii) Two-thirds of those members will be the quorum of members to amend the constitution and participate in elections where the members run short of the quorum. (iv) The Interim Committee shall have the power to recruit new members from the believers equivalent to the members from the existing Register after consultation with rival groups. If either party objects to appointing representatives on their side, the Office of Administrator General shall have the power to appoint any believer without considering the rival side to fill the vacant equivalent on that behalf.
- (v) The 1989 version of the constitution of the Registered Trustees of Masjid Mabox Mtoni will be amended to accommodate the current needs. (vi) Upon registration of the new Constitution, the Committee shall conduct an election under the rules of the Constitution. (vii) The incumbent Board of Trustees shall cease to perform the function of the Board and hand over the office to the Interim 16 Committee immediately upon its composition. (viii) The Interim Committee shall continue to perform its duties under the guidance of the

Administrator General/Registrar General until a new Board of Trustees is elected. (ix) The Interim committee shall accomplish their tasks and duties within (90) ninety days after the pronouncement of the decree of the Court. The counsel finally invites this Honorable Court to consider the nature of this dispute and adopt the above procedure to rest down this protracted dispute. On his side, Mr. Kiobya, for the 2nd to 13th respondent, started by explaining the historical background of this petition; he then prayed for leave of the court to adopt the answer to the Petition filed by the 2nd to 13th Respondents to form part of this submission. He then contended that the Petitioners have no locus to sue the Respondents as done in this Petition as the Constitution and Rules of the registered trustees of Masjid Mabox Mtoni Sokoni Under Article 4(A), (i) which provides that; "The Mosque shall be managed by the board of trustees of not less than 12 nor 17 more than 15 who will be elected by the annual general meeting or special General meeting to run the office for 5 years subject to re-election after the expiry of the terms of Office if desirable." He said it is a common cause that the election was conducted on the 14th day of December 2015; hence, their tenure as trustees lapsed on the 13th day of December 2020. It was his submission that there can be no obligation where no person has a right to enforce it. Thus, the trustees whose terms of office had expired could not validly sue or be sued in the capacity of trustees. He submitted that the right to challenge the election cannot be exercised by a former 1st and 2nd trustee whose term of office has perished as if no such incorporation had been effected." He added that, without a resignation letter to the trust, the 1st and 2nd Petitioners cannot sue the trustee and co-trustees, in which they sail in the same boat. Thus, they have no locus stand against the Respondents since their organization was not recognized by law when suing them. Otherwise, this court is robbed of the necessary jurisdiction to entertain the matter in their presence. 18 Concerning the 3rd and 4th Respondents, he said they are officers of the Bakwata and are such a constituent part of it. In this case, it is the registered trustee of BAKWATA. The 3rd and 4th Respondents, during the conduct of the meeting and its subsequent trustee's election, were acting in capacities as officers from the registered trustees of BAKWATA. Therefore, it was lightly irregular for the petitioner to sue them in this petition in their names and personal capacity. He went on to submit that, in the present Petition, the central issue which cumulated to this petition is the election conducted on the 14th day of December 2015 at Masjid Mabox premises as that is where the reliefs from Roman (i) - (Xi) prayed by the petitioners ensued. He said other contentions by them based on the Civil Case No. 236 of 1989, Trustees of Masjid Mabox Versus Abdulbad and 6 Others, which varies with the current Petition; however, the same issue based on this had decided by this Court in Misc. Civil Application No. 701 of 2016 between Trustees of Masjid Mabox Mtoni Sokoni and Another Vs. the Registered Trustees of Baraza Kuu la Waislam Tanzania and 11 others (Respondent in this Petition) when the issue of locus standi arose, and it was decided in that the decree cannot be enforced against the Respondents because was not parties 19 to it. Mr. Kiobya submitted further that to relitigate as a back door in this Petition cannot be allowed since the court is now functus officio to determine it again as was stated in the case of Kamundu v. R (1973) EA 540 the E.A, by the Court of Appeal that: "A court becomes functus officio when it disposes of a case by a verdict of a guilty or passing

sentence or making some orders finally disposing of the case”. Thus, in his view, the Respondents in this petition are strangers in Civil Case No. 236 of 1989, Trustees of Masjid Mabox Versus Abdulbad and 6 Others. The counsel added that, the Allegation that the Petitioner was removed from the mosque is a sheer lie since the report does not show any removal of the Petitioner. He also attacked the allegations that there was a police officer. He argued that no police report indicates a confrontation between the worshipers who attended the general meeting. Still, the first petitioner, with his allies, left the meeting without returning. He was insistent that the election outcome would carry the wishes of the worshipers of Masjid Mabox for their benefit. But with ill motive, the 1st Petitioner attempted several times to nullify the election by convincing the 20 1st Respondent without success to abstain from continuing with quarrels and misunderstandings which aimed at hitching development of the worshipers of Masjid Mabox Mtoni. He said the Petitioners intend to take the Masjid Mabox from worshipers of Mtoni Sokoni to the creature known as Jumuiyatul Kadirriyat Bughdaad Tanzania, which is a strange organization unknown to the 1st respondent, and the same is done with the exclusion of the other worshipers. He implores the court to allow and declare that the newly elected trustees were obtained legally and that the 1st Respondent blessed their election by registering their names in his registry. Currently, they have the same status as the 1st Petitioner and the 2nd Petitioner is no longer interested in seating a trustee. He submitted further the prayer that the election dated 14th day of December 2015 be nullified does not hold water since the tenure of the Board of Trustees of masjid Mabox are no longer legal as per their Masjid Mabox Constitution, since their terms in office expired since December 2020 thus the act have been overtaken by the event. This court cannot grant any prayers that are barred by law. He was insistent that, since the respondents were acting under directives from the 1st respondent, this court should uphold and legalize the newly elected member, i.e., 4th to 13th trustees emanated from the said election were lawfully elected 21 members of the trustee of Masjid Mabox and as alleged thereby proceed to dismiss the entire petition for being devoid of merit. In a short rejoinder, Mr. Tibanyendera submitted that the argument that the events overtake this case has no stand to rely upon because, while the Respondents allege that the tenure of office has elapsed since 2021, the same Respondents are in actual possession and occupation of the mosque known as Masjid Mabox Mtoni Sokoni. This fact is not hidden as the 5th to 13th Respondents have constantly introduced themselves as leaders of the said Masjid until recently when they were engaged in an attempt to reach an amicable settlement of the dispute. He stressed that the Respondents, knowing that their tenure has elapsed, have continued to pose as lawful trustees of a corporate body, the 2nd Respondent. As such, they are dealing with the assets of the said corporate body, including a collection of income and managing the expenditure in exclusion of the Petitioners. The 1st Respondent has never notified the said body corporate to hold a lawful meeting despite the allegations that the 1st Petitioner is still the Chairman of the said corporate. 22 He said the 1st Respondent proposes that the parties herein should let the bygone go and rebuild their relationship; in his view, the Petitioners and the Respondents have had a bad relationship since 1989 by Civil Case No. 236 of 1989, the court forcefully evicted the 5th to 13th Respondents from the said Masjid

Mabox Mtoni Sokoni. They are rival parties due to the nature of history. Thus, to him, an attempted settlement of the dispute by even dividing the land where the mosque is situated could not bear any fruits. In further view of Mr. Tibanyendera, if there is a need to amend the Constitution at all, the process for amendment should be done under the leadership of the Petitioners. If there is a need for a Supreme Authority, the same can be extended to Jumuiya Zawiyatul Qadiriya Tanzania. The office of the District Commissioner can also be used to supervise the election process after a proper verification of eligible voters as recognized by the Petitioners as of 14th December 2015. Given the nature of the dispute between the rival groups, he insisted that it is impossible to form an interim committee without first addressing sensitive faith issues. The issues involving the siting of the moon, the Islamic calendar, the mode of Islamic prayers, Adhkar (dhikri), and the management of Islamic affairs are crucial matters²³ that must be addressed before forming an interim committee. He, therefore, submitted that the proposal to determine the dispute through an interim committee is meritless and should not be upheld by this court since the Respondents have already expressed their clear position that they convened a meeting with their associates called worshippers and resolved not to yield to any settlement. Only forceful eviction and handing over of the mosque to Petitioners can resolve the dispute. Concerning the issue of locus standi raised by Mr. Kiobya, Mr. Tibanyendera contended that, the Petitioners are suing the Respondents jointly and severally for acts they did before and after the illegal election of 14th December 2015. They committed illegal acts before becoming corporate body members and have continued to act as such after being declared trustees by the 1st Respondent. Since there is no dispute that the Petitioners have disclosed a cause of action against the Respondents, the issue of locus standi is baseless. He added that Petitioners should be allowed to manage the mosque in the manner that is practically possible while providing access to any Muslim to enter and conduct his prayers or worship without offending the Islamic preaching.²⁴ In concluding, he submitted that the Petitioners be given a right to manage the process of amendment of the Constitution of Masjid Mabox Mtoni Sokoni and conduct the election of members into the body corporate of the 2nd Respondent in a manner that would comply with Constitutional requirements under current legal requirements. The 1st Respondent should be ordered to facilitate and not hinder the transition process by the 1st and 2nd Petitioners to regularize their corporate body. I have considered the pleadings and submissions supporting and opposing this Application. As can be depicted from the pleadings and submissions, parties are at one on the following matters: firstly, the registered trustees of Masjid Mabox Mtoni Sokoni were incorporated in 1989 with 12 board members; secondly, the number of board members decreased to 4 members as 8 of them died. Thirdly, as per Article 4(1) of the constitution of Masjid Mabox Mtoni Sokoni, the board members are elected by the annual general meeting, in which their tenure is 5 years, subject to re-election after the expiry of the term. Fourthly, a meeting was conducted in December 2015, purported to fill the gaps left by the eight members of trustees who died. Fifthly, the 1st petitioner is the Chairman of the Masjid Mabox Mtoni Sokoni Board of Trustees.²⁵ Now, the parties' center for controversy in this matter is leadership and style of worship in the Masjid Mabox Mtoni Sokoni, in which the petitioners allege that

the 5th to 13th respondents hinder the smooth operation of the Mosque. Petitioners contend that the 5th to 13th respondents trespassed or overthrew them and assumed responsibilities in the mosque, so they contravened the core intention of forming a body cooperate in 1989. The petitioners Prayed to the court to order that the meeting conducted in December 2015 was illegal and declared that the 5th to 13th Respondents are not legally board members, while the respondents asserted that the meeting was lawfully conducted. However, they admit that the members elected have concluded their tenure. Regarding the issue of whether the election conducted on 14th December 2015 was legal or not, the court will not be involved in that matter since the court is warned to be very careful in dealing with religious conflicts and to avoid assuming jurisdiction without leaving the religious institutions to invoke themselves in amicable solutions through the internal mechanism of dispute settlement. This was adumbrated in the case of Rev. Peter Makala & 8 Others versus Rev. Jacob Mameo Ole Paulo and 3 26 Others, Civil Case No. 195 of 2019. This Court sitting at Dar es Salaam observed that: - "When confronted with a dispute of this nature, civil courts usually consider whether the matter is purely religion (sic) or not. It is crucial to scrutinize the pleadings because, most often, disputes of this nature tend to have a mix of religious and temporal matters." Reliance can also be placed in the case of Mr. Loth Oilevo & 2 Others versus Registered Trustees of the Anglican Church of Tanzania (SO 4757) & Onother, Civil Case No. 18 of 2011. In this case, it was held that; "I therefore agree with the 1st defendant counsel that plaintiffs did not exhaust the appellate mechanism provided by their own constitution to solve the problem at hand, and there is no justification to bypass that constitution. That being the case, the application before this court is premature and renders it to lack 27 jurisdiction to determine the matter before it..." What is clear is that preference for a matter of this nature in court only applies after exhausting all internal mechanisms. The records of this petition are barren as to whether the internal dispute mechanism existing in running the Masjid Mabox Mtoni Sokoni has been exhausted before accessing the court's remedy. The petitioner is to impress upon this court that they have inquired the first respondent, requiring him to nullify the procedure of the meeting conducted on 14th December 2024. He attached annexure MM11 to prove so; however, the interpretation, which is predicated on Annexure MM11, is that the 1st respondent instructed the petitioners on the procedures to be followed under the law to change the name of Registered Trustee of Masjid Mabox Mtoni Sokoni, as doing so is changing the constitution, the act which can only be done by the Annual special/ general meeting. The letter further instructed the petitioner to follow the procedures stipulated in their constitution and section 17 of the Trustees Act to fill the vacancy of board members. Therefore, the same does not suggest that petitioners prayed for the revocation of the board members selected on 15th December 2024. 28 With regard to the issue as to whether the 5th to 13th respondents are board members, the same can be entertained by this court under section 26 of the Trustees Act. In determining this, the starting point is Article 4 A (1) of the Constitution of Masjid Mabox Mtoni Sokoni, which speaks voluminously that the tenure period for the board members is 5 years. Thus, whether the election was legal or not, since it is 9 years from when the same was conducted, then 5th to 13th Respondents are no longer board members

and there is apparent a leadership vacancy in the board of trustees of Masjid Mabox Mtoni Sokoni. Thus as per their constitution, the members of Masjid Mabox Mtoni Sokoni have to elect board members while guided by the procedures stipulated in their constitution, especially under Article 6A (ii), 6 A (iii) (i). The same procedure should adhere to Section 17 (1) (a) and (2) of the Trustees Incorporation Act. Therefore, the 1st Respondent should play her role in supervising the said procedure and apply what they suggested to the court for the smooth operation of the Masjid Mabox Mtoni Sokoni and in solving the long-existing dispute between parties. 29 The resultant consequences the petition is dismissed on the reasons explained above. Due to the nature of the matter, I order each party to bear its own cost. Order accordingly. MWANGA J JUDGE. 23/10/2024 COURT: The ruling was delivered at Dar es Salaam on the 23rd day of October 2024 in the presence of Mohamed Tubanyendera Adv for the Petitioners and Samwel Mutabuzi for the 1st Respondent and Musa Kiobya Adv for the 2nd to 13th Respondents. Right of Appeal explained. MWANGA JUDGE 23/10/2024 30

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