

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
COMPANY CAUSE NO.002 OF 2023
IN THE MATTER OF THE COMPANIES ACT 2012
AND
IN THE MATTER OF UGANDA MUSLIM SUPREME COUNCIL**

1. BABIRYE YUDAYA }
2. BURHAN NAMANYA } ::::::::::::::::::::::::::::::::::: PETITIONERS
3. HUSSEIN SIMBWA }

VERSUS

UGANDA MUSLIM SUPREME COUNCIL: ::::::::::::::::::: RESPONDENT

JUDGMENT

Background

Babirye Yudaya, Burhan Namanya and Hussein Simbwa herein after referred to as the Petitioners brought this petition by way of a company cause against the Uganda Muslim Supreme Council (UMSC) hereinafter referred to as the Respondent. The petition was brought under the provisions of Sections 248 and 250 of the Companies Act 2012 and other enabling laws.

The Petitioners' case as contained in the Petition and the main affidavit in support of the First Petitioner associated with the affidavits of the Second and Third Petitioners is that they are Sunni Muslims and members of the Respondent in the Muslim District of Jinja; that the Respondent is an unlimited company without a share capital whose objectives among others is to promote Islam, promote the spiritual moral and the material welfare of Muslims in Uganda and that the Respondent's Memorandum and Constitution which were amended and registered on the 3rd day of October, 2022 have been breached by the Respondent and the affairs of the Respondent are handled in a manner prejudicial not only to the Applicants' rights but to all other members of the UMSC. The grounds of the Petition are as follows:

- a. That they are Muslim Sunnis, residents of Mafubira, Jinja District and by virtue of Article 1(2) of the Uganda Muslim Supreme Council as amended, they are members of the Respondent with capacity to bring this humble Petition.
- b. That the Uganda Muslim Supreme Council (Respondent herein) under its Constitution is the umbrella unifying body for Muslims in Uganda with duties



and obligations which include, among others, to own and hold properties in its name but for and on behalf of the Muslim Community in Uganda.

- c. That the Respondent has several administrative organs created under its Constitution aimed at enabling the smooth running of the Muslim affairs which include the supreme body (organ) thereof being the General Assembly in which all powers of the Uganda Muslim Supreme Council reside and lie.
- d. That however, and over time, the affairs of the Respondent have been generally conducted in a manner which is unfairly prejudicial to the interests of its members generally including the Petitioners. The circumstances under which the affairs of the Respondent have unfairly and with prejudice been conducted are that:
 - i. The Respondent through its current but ad hoc National Executive Committee and His Eminence the Mufti, have manifested poor management of the Muslim properties, there has been mismanagement, under hand dealings and unscrupulous tendencies where Muslim properties have been sold by the officials of the Respondent without the knowledge of its members including the Petitioners nor the General Assembly and without giving any accountability to the members and the General Assembly of the proceeds of such sales. The National Executive Committee has since sold two square miles of land in Ssembabule District, two (2) acres of the Muslim cemetery in Ntinda, the Muslim cemetery in Mbarara, Plot 2 at Bakuli along Bukasa yet there is no accountability of the said funds to date.
 - ii. The Respondent has since the recently concluded general election in 2022, failed to constitutionally constitute the National Executive Committee and the organs thereunder. That the purported current National Executive Committee of the Respondent was single handedly put in place by the Mufti without the confirmation and approval of the General Assembly; the supreme organ constitutionally mandated to approve the appointments of the National Executive Committee and thereby the joint session and the other sub-committees.
 - iii. Indeed, His Eminence the Mufti illegally and without authorization of the General Assembly went ahead to appoint an acting officer as a Chairman of the Independent Electoral Commission of the UMSC.
 - iv. While the Respondent's above ad hoc executive committee continues with the day to day business of the Respondent, the Respondent since the elections and the swearing in of the members of the General Assembly has not convened any meeting of the General Assembly and

has not presented any budget and/or audited books of account for the previous year. The said National Executive Committee which is illegally in place therefore continues to carry out the activities on behalf of the Respondent and purportedly on behalf of its members including the Petitioners but without the approval of the General Assembly which is contrary to the Constitution of the Respondent.

- v. In addition, and in utter abuse of the Constitution of the Uganda Muslim Supreme Council, the office and/or the person of the Mufti has usurped and taken over the functions of the other organs of the Respondent. Notably, the Mufti, His Eminence Sheikh Shaban Mubaje purportedly conducted the elections of the Chairperson of the General Assembly which under the Constitution is the preserve of the Independent Electoral Commission; the said Mufti in addition and thereafter without authority has since issued a notice purporting to suspend the substantive Chairman of the Independent Electoral Commission of the Respondent.
- vi. The illegal joint session of Respondent on the 5th day of May, 2023 without the approval and resolution of the General Assembly went ahead to dismiss the substantive Secretary General and illegally appointed a one Muhamadi Ali Aluma in acting capacity of the position of Secretary General.
- vii. Currently the only positions/ officials at the headquarters of the Respondent serving in substantive capacity are His Eminence the Mufti and the Chairman of the General Assembly however the latter position is also a subject of HCCS NO:367 of 2022 at the Civil Division of the High Court in Kampala.
- viii. Still and in total disregard of the Constitution and the supreme organ of the Uganda Muslim Supreme Council, the Chairman and the Mufti continue to carry on the business of the Respondent well knowing that all the organs especially the National Executive Committee and the joint session are not duly and legally constituted as required by the Constitution.
- ix. The Muslim district offices of Jinja have never or at all presented before the Muslim community of Jinja nor to the General Assembly audited annual books of accounts of the UMSC which continues to operate without accountability and without any check and balance.
- x. As a result of the prejudicial manner in which the affairs of the Respondent are being handled, the Uganda Muslim Supreme Council is a subject of several court cases among others *Ahamada Izzudin Kibirige*

A handwritten signature in black ink is written over a faint circular official stamp. The signature is stylized and appears to be 'Ahamada Izzudin Kibirige'. The stamp is partially visible behind the signature.

Vs UMSC & 2 Others (HCCS No.56 of 2020; Jinja High Court) which challenges the manner in which Sheikh Basaga Ismail Adi and Dr. Kasim Kalonde were appointed as District Khadhi and Deputy Kadhi respectively.

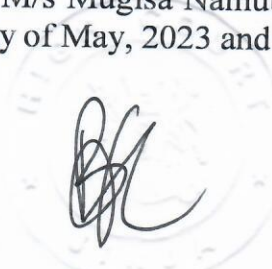
The Petitioners attached documentary evidence in support of their case which included:

- a. The Memorandum of Association of the Respondent (**attached as "A"**)
- b. The Constitution of the UMSC as amended (**attached as "B"**)
- c. The resolution of the General Assembly dated 13th April 2017 (**Attached as "C"**)
- d. Court pleadings in HCCS NO:55 of 2020 (High Court of Jinja) (**attached as "D"**)
- e. Letter dated 24th March 2023 purporting to suspend the Chairman of the Independent Electoral Commission (**attached as "E"**)
- f. Letter dated 5th May 2023 purporting to declare the office of Secretary General as vacant without the approval of the General Assembly (**attached as "F"**)
- g. Letter dated 8th May 2023 purporting to instruct the Secretary General to hand over office (**attached as "G"**)
- h. Letter dated 27th April 2023 calling for the meeting of the Joint Session which continues purports to sit and make resolutions without the approval of the General Assembly (**attached as "H"**)
- i. Pleadings in HCCS NO: 367 OF 2022 (**attached as "I"**)

The Petitioners in their petition sought for the following declaration and orders that:

- i. The manner in which the Respondent is carrying out and/or conducting its affairs is unfairly prejudicial to the interest of the Petitioners and the Muslim community at large.
- ii. The National Executive Committee and any other organ of the Respondent are restrained from further dealing and disposing of the properties and/or any funds registered and/or held in its name without the approval of 2/3 of the General Assembly.
- iii. The Uganda Muslim Supreme Council registered as unlimited company be wound up in public interest and/or in the interest of its members generally.

The Registrar of this court issued the summons to answer to the petition on the 30th day of May, 2023 for service upon the Respondent. When this file was brought to my attention it contained a letter from M/s Mugisa Namutala & Co. Advocates, counsel for the Petitioners dated 30th day of May, 2023 and asking for



the urgent fixing and hearing of the matter. This court as a result fixed this case for hearing on the 8th day of June, 2023 at 11:00am.

When the matter came up for hearing on the 8th day of June, 2023 at 11:00am, only Counsel for the Petitioners, Mr. Allan Musoke appeared in court and no explanation for the nonattendance of the Respondent was furnished to this court. On the court file was an affidavit of service deposed by Waiswa Emmanuel, a clerk of this court who confirmed that he had served both the summons to answer to the petition and the hearing notice for the 8th June, 2023 on the Respondent at its headquarters at Old Kampala, National Mosque and also on the Respondent's legal counsel M/s Makmot Kibwanga & Co. Advocates.

At the hearing, in the interests of justice and in order to hear the matter inter-parties, Court accorded the Respondent an opportunity to file and serve its answer to the petition by 15th June 2023. Court further directed both parties to file written submissions. Court directed that it would deliver its decision by email to the parties on notice.

According to the record of this court, on the 15th day of June, 2023 as directed by this Court, the Respondent filed its answer to the petition and the affidavit in support of the answer to petition affirmed by Hon. Muhammad Ali Aluma, the acting Secretary General of the Respondent and filed its written submissions on the 28th July, 2023. However, the Petitioners did not file any written submissions.

Nonetheless, in fulfilling its obligation to exercise justice as stipulated under Article 126 (2) of the 1995 Constitution of the Republic of Uganda and to avoid creating backlog in the judicial system, this Court decided not to sit back and went ahead to analyze the Petition and the available evidence as presented by both parties through the respective affidavits in support and answer to the petition in order to arrive at a just conclusion.

Sections 248 and 250 of the Companies Act 2012 which are the provisions of the law under which this Petition was brought provide that such a cause is brought by way of a Petition and the court before granting the remedies sought should be satisfied with the Petition. In *Prince Kalemera Vs The Kabaka of Buganda H.C. Misc. Appn. No.1086 of 2017, Bashaija J.* cited with approval in *C.A Elec. Petition Appeal No.43 of 2016* held that affidavits are considered as evidence and as such contain only what has already been pleaded. Therefore, basing on the Petition, the affidavit in support thereof, the answer to the petition and the affidavit in support, this Court has sufficient evidence and is in position to determine the instant petition.



Legal representation:

The petition was filed by M/s Mugisa Namutale & Co. Advocates while the answer to the petition was filed by M/s Makmot-Kibwanga & Co. Advocates.

Analysis of the Petition and Answer to the Petition

Section 103 of the Evidence Act Cap 6 provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. This Court is also alive to the fact that this being a civil matter, the Petitioners had to prove their case on a balance of probabilities and as provided for under Section 250 of the Companies Act, the remedies sought can only be granted if this Court is satisfied.

It is clear from the onset as discerned from both the Petition and Answer to the Petition that the Respondent is registered as an unlimited company without a share capital. It is also not in doubt that the Respondent has a Constitution which is the Respondent's Articles of Association; the said Constitution was amended and registered on the 3rd day of October, 2022. The Petitioners contend that the Respondent's organs and officials have breached and abused the said Constitution ranging from the poor management of Muslim properties, selling of such properties without the consent of and/or accounting to the General Assembly, the said properties listed and alleged to have been illegally sold include two (2) square miles of land at Sembabule, two (2) acres of land at Ntinda, the Muslim cemetery in Mbarara and property comprised in plot 2 at Bakuli, Bukasa.

The Petitioners further contend that the current National Executive Committee was single handedly put in place by the Mufti without the confirmation and approval of the General Assembly. That the Mufti without the consent and approval of the General Assembly went ahead to suspend the substantive Chairman of the Independent Electoral Commission and appointed one in acting capacity – the same happened while dismissing the substantive Secretary General and the appointment of one in acting capacity. That at the time of filing the Petition, the only positions/officials serving in substantive capacity are the Mufti and the Chairman General Assembly but the latter's position is also challenged and a subject of HCCS No.367 of 2022 before the High Court Civil Division.

That due to the prejudicial manner in which the affairs of the Respondent are being conducted, the UMSC has been subject to several court cases which include among others HCCS No.56 of 2020 filed at Jinja High Court.

The Respondent in its answer to the Petition and its written submissions counsel contended that the Petition is premature, is brought in bad faith, is premised on gossip, lacks merit and is a wastage of court's time.

The Respondent further contended that the constitution of UMSC as amended provides for internal mechanisms where such disputes as alleged by the Petitioners can be addressed; that Art 28 thereof created the UMSC Arbitration and Conciliation Council appointed by the joint session.

The Respondent submitted that the Petitioners had the latitude to channel their concerns to the General Assembly through their representatives which they had failed to do.

The Respondent still contended that all the allegations presented in the Petition are baseless and lacked material evidence to substantiate them. The Respondent prayed that the petition be dismissed with costs.

In the case of *Olive Kigongo Vs Mosa Courts Apartment Ltd; H.C Company Cause No.06 of 2015, Musota J.* held that to invoke the principle of "unfair prejudice" two elements must be present for one to succeed in a petition presented under Sec. 248, to wit;

(a) the conduct must be prejudicial in the sense of causing prejudice to the relevant interests of the members or some part of the members of the company i.e. shareholders and;

(b) it must be also unfair.

In the same case the Court observed that unfair prejudice is a flexible concept incapable of exhaustive definition and that the categories of unfair prejudice cannot be closed but include:

1. Exclusion from management in circumstances where there is (legitimate) expectations of participation.
2. The diversion of business to another company in which the majority shareholder holds interest.
3. The awarding of the majority shareholder to himself of excessive financial benefits.
4. Abuses of power and breaches of Articles of Association for example the passing of a special resolution to alter the Company's Articles maybe unfairly prejudicial conduct if such alterations would affect the petitioner's legitimate expectation that he would participate in the management of the company.
5. Repeated failures to hold Annual General Meetings.



6. Delaying accounts and depriving the members of their right to know the state of the Companies affairs.

When this court read the Constitution of the Respondent as amended (Annexure A to the Petition), Article 1 (i) thereof provides that;

“there shall be one perpetual body unifying all muslims of Uganda to be known as the Uganda Muslim Supreme Council (UMSC) with the supreme legislative body called the General Assembly (the Assembly) in which all powers of the UMSC shall reside and such other organs as shall be stipulated in this Constitution.” (Emphasis added)

It follows that the supreme body of the Respondent with legislative power and powers to oversee the affairs and all happenings of the UMSC is the General Assembly. It is the General Assembly of the UMSC to look into the affairs of management and/or the mismanagement of the Respondent's properties; it is the General Assembly that should look into the incomes and expenditures of the Respondent and all such other organs of the UMSC are answerable to the said General Assembly.

Unlike the ordinary companies under the Companies Act, the Respondent is a special kind of company/association. Its mandate is to unify a religion and the subscribers of the Islamic faith in Uganda. It should be in the rarest of occasions that the affairs of such a unifying body are brought to the Courts of law especially and considering that USMC has a General Assembly which provides a form of check and balance at the UMSC.

The Respondent in its submissions admits that the General Assembly under Article 2(15) of the UMSC Constitution has an oversight and supervisory role over the UMSC.

From the Answer to the Petition, this Court has found that the General Assembly is not actively involved in decision making on matters touching the management of the Respondent's properties; the Respondent did not provide any evidence in the form of minutes of the General Assembly to prove that the latter consented to the dismissal of the constitutionally appointed official in the position of Secretary General and the Chairman of the Electoral Commission. The Respondent contended that Mr. Muhammad Ali Aluma was only appointed in acting capacity pending the approval of the General Assembly; I find this a violation in itself; whether one is appointed in acting capacity or substantively, such official must be presented to the General Assembly for approval before taking up any role in UMSC which was not done.



This court is satisfied that in the absence of minutes as proof that the General Assembly has approved the decisions of the Respondent as stipulated under the UMSC Constitution, there is repeated failure by the Respondent to hold meetings of the General Assembly albeit the same being the supreme organ at the Uganda Muslim Supreme Council with supervisory powers.

While the Respondent challenged the Petitioners' documentary evidence attached to the Petition as being suspect, it did not bring evidence to the contrary.

This Court therefore finds that the actions of the Respondent are prejudicial to the interests of the Petitioners especially where the Supreme body/organ (the General Assembly) is not involved in the decision making of the UMSC whereas it's the body that has representatives of the Muslim community.

Remedies.

In addition to the declarations sought in the petition, the Petitioner sought that this Court issues orders that:

- a. The National Executive Committee and/or any other organs of the Respondent are restrained from further dealing and disposing of the properties and/or funds registered and/or held in the name of the Respondent without the approval of two thirds (2/3) of the General Assembly.
- b. Uganda Muslim Supreme Council registered as unlimited company be wound up in public interest or in the interest of its members generally.

This Court having taken cognizance of the purpose and reason for the formation of the UMSC, cannot issue an order for the dissolution and/or winding up of the Respondent for the same would cause more harm than good to the Muslim community in Uganda. This Court, in the interest of justice and harmony within the Muslim community issues the following orders:

- i. In light of Article 1(1) of the Constitution of the UMSC which stipulates that the General Assembly of the UMSC is the supreme body of the Respondent and in the interest of ensuring full participation of the Muslim community, let a special sitting of the General Assembly of the UMSC be immediately called to look into the affairs of the UMSC generally and immediately file a report before this Court; the said General Assembly should sit at any time and from time to time as the circumstances permit.
- ii. The said special General Assembly sitting and/or sittings of the UMSC as directed by this Court shall be called by a person appointed by the Petitioners and the special General Assembly shall sit at a neutral venue.




iii. The said special General Assembly shall be presided over by a neutral and independent Chairperson who shall be appointed by the said special General Assembly at its first sitting as directed by this Honourable Court

iv. Each party shall bear its own costs.

I so order.

Dated, signed and delivered by email on 12th December, 2023.


.....
FARIDAH SHAMILAH BUKIRWA NTAMBI
JUDGE