

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)**

AT DAR ES SALAAM

(E. Y. MKWIZU, A.A. MBAGWA, AND H.R. MWANGA, JJJ)

CONSTITUTIONAL CASE NO. 27603 OF 2024

**IN THE MATTER OF THE CONSTITUTION OF THE UNITED
REPUBLIC OF TANZANIA OF 1977 CAP 2 R.E. 2002 AS AMENDED**

AND

**IN THE MATTER OF THE BASIC RIGHTS AND DUTIES
ENFORCEMENT ACT [CAP 3 R.E. 2019]**

AND

**IN THE MATTER OF THE BASIC RIGHTS AND DUTIES
ENFORCEMENT (PRACTICE AND PROCEDURE) RULES, 2014
[G.N.NO. 304 OF 2014]**

AND

**IN THE MATTER OF A PETITION CHALLENGING THE
VIOLATIONS OF THE RIGHT TO FREEDOM OF RELIGION, RIGHT
TO**

**FREEDOM OF ASSOCIATION, PROTECTION OF LAW, AND
EQUALITY BEFORE THE LAW AND DISCRIMINATION**

BETWEEN

SHEIKH PROF. HAMZA MUSTAFA NJOZI..... 1ST PETITIONER

SHEIKH PONDA ISSA PONDA.....2ND PETITIONER

USTADH BAKARI BAKARI SHINGO.....3RD PETITIONER

BI RIZIKI SHAHARI NGWALI.....4TH PETITIONER

USTADH JUMA HUSSEIN KILAGHAI 5TH PETITIONER

USTADH ABDALLAH ABDALLAH

MOHAMMED SAID.....6TH PETITIONER

USTADH IBRAHIM HUSSEIN SHERALLY.....7TH PETITIONER

USTADH MUSSA RAFIKI MARUA..... 8TH PETITIONER

USTADH ABUBAKAR IBRAHIM MNGODO.....9TH PETITIONER

USTADH MUSTAFA MOHAMMED ABEDI.....10TH PETITIONER

AND

THE REGISTRAR OF SOCIETIES.....1ST RESPONDENT

THE ADMINISTRATOR-GENERAL..... 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

THE REGISTERED TRUSTEES OF BARAZA

KUU LA WAISLAM TANZANIA (BAKWATA) ... 4TH RESPONDENT

THE REGISTERED TRUSTEES OF BARAZA KUU LA

JUMUIYA NA TAASISI ZA KIISLAMU

TANZANIA.....5TH RESPONDENT

JUDGMENT

Date of last order: 18/12/2025

Date of judgment: 24/12/2025

MKWIZU J.

The petitioners challenge Regulation 2(c)(xviii) of the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations, 1981 [GN No. 133 of 1981] and Item (k) of the Schedule to the National Education Advisory Council (Establishment, Constitution and Procedure)

Order, 2002 [GN No. 290 of 2002] which accord preferential recognition to the 4th Respondent by recognising it as a member of VETA's Board and granting its secretary a seat on the Education Council, thereby excluding other Muslim organisations. They contend that this treatment violates their rights to equality and non-discrimination guaranteed under Articles 13(1)(2)(3) and the fundamental human rights under Article 19(1) (2) and Article 20 (1) of the Constitution of the United Republic of Tanzania of 1977 [Cap. 2 R.E. 2002], as amended. Furthermore, the recognition of the 4th Respondent as the sole Muslim umbrella organisation and the acceptance of registration letters solely from it allegedly breach their rights to freedom of religion and assembly under Articles 19(1)-(2) and Article 20(1).

The petition is brought via originating summons, supported by a joint affidavit under Articles 26(2) and 30(3) of the Constitution, Sections 4 and 5 of the Basic Rights and Duties Enforcement Act [Cap. 3 R.E. 2019], and Rule 4 of the Basic Rights and Duties Enforcement Rules, 2014 [GN No. 304 of 2014], seeking five specific reliefs as follows:

- 1. A declaratory order that the conduct and conditions imposed by 1st and 2nd respondent in registration of societies and incorporation of trustees of Muslim Organizations and institutions violate Article 13(1), (2) and (3); Article 19(1) and (2), Article 20(1) and Article 29(2) of the Constitution of the United Republic*

- of Tanzania of 1977 [Cap. 2 R.E. 2002] as amended and thus unconstitutional, null and void.*
- 2. A declaratory order that Regulation 2(c)(xviii) of the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations, 1981 [GN No. 133 of 1981] and Item (k) of the Schedule to the National Education Advisory Council (Establishment, Constitution and Procedure) Order, 2002 [GN No. 290 of 2002] contravenes Article 13(1) and (2), (3); Article 19(1) and (2), and Article 20(1) of the Constitution of the United Republic of Tanzania of 1977 [Cap 2 R.E. 2002] as amended and thus unconstitutional, null and void, and same be expunged from the statute book.*
 - 3. An order for the 1st, 2nd and 3^d respondents to take necessary steps to ensure in the exercise and performance of their respective duties and the laws does not impose conditions on registration of societies and incorporation of trustees of Muslim Organization and institutions which violate Article 13(1), (2) and (3); Article 19(1) and (2), article 20(1) and article 29(1) of the Constitution and should not recognize for the Muslim Community the 4th respondent as the Muslim Supreme Organizations or Muslim Umbrella Organizations.*
 - 4. Each party to bear his own costs of the petition.*
 - 5. Any other or further order(s) incidental thereto which the Honourable Court shall deem fit and just to grant.*

The 1st to 4th Respondents refuted the allegations, asserting that the registration and incorporation requirements for religious institutions are governed by the Societies Act Cap 337 R.E. 2023 and its Rules, as well as the Trustees Incorporation Act [Cap. 328 R.E. 2023]. These statutes are designed to ensure proper identification and recognition of organisations to prevent infiltration by groups with malicious motives, thereby

safeguarding peace and security, and ensuring the protection of religious freedom. Concerning the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations, G. N. No. 133 of 1981, the Respondents indicated that these regulations were enacted under the Vocational Training Act No. 28 of 1974, which has since been repealed, and therefore cannot be deemed unconstitutional. The fifth respondent supports the petition.

The hearing was conducted mainly through written submissions, with limited oral clarifications at the Court's request. When the matter was called on for clarification, Messrs Daimu Halfan and Abdulfatah Abdallah, learned advocates, appeared for the petitioners, whereas the 1st to 3rd Respondents were represented by Ms Vivian Method, Principal State Attorney, Mr Edwin Webiro, Mr Francis Wisdom, and Mr Swalehe Njoma, all State Attorneys; Mr Saulo Kusakala and Mr Burhani Mussa, learned advocates, appeared for the 4th and 5th Respondents, respectively.

In support of the petition, petitioners' counsels began by citing Article 3(1) of the Tanzanian Constitution, and the case of **Republic v. Minister for Home Affairs & ex parte Sitanize** [2008] 2 EA 323, stating that the United Republic is a democratic, secular and socialist state which adheres to multi-party democracy committed to upholding human rights. They

noted that the right to freedom of religion, association, and the formation of religious organisations is constitutionally protected under Articles 19 and 20(1) which establish three key principles: (i) an unrestricted right to associate and establish religious bodies ; (ii) voluntary membership; and (iii) religious organisations' autonomy to manage their affairs, with the State remaining neutral and impartial. They emphasised that limitations under Article 19(3) must be lawful for security, societal integrity, and national cohesion. These principles, they insisted, are implemented through the Societies Act and the Trustees' Incorporation Act, which detail the procedures for registration and incorporation. The 1st respondent oversees registration under the Societies Act, while the 2nd respondent manages the incorporation of trustees.

The petitioners' advocates submit that the 4th respondent, established in 1968 and registered by the 1st respondent, has been unjustly designated as the sole Muslim organisation, for its constitution restricts membership to Sunni-Shafi'i Muslims who accept its directives, thereby excluding others and violating Muslims' constitutional rights to free association and religious practice. The registration was intended for Muslims meeting specific qualifications, not as an exclusive representative of the entire Muslim community. And therefore, the state's requirement for Muslims to belong solely to the 4th respondent constitutes an unlawful interference

with religious autonomy, contravening Articles 19 and 20 of the Constitution.

They further stated that the 1st and 2nd respondents have unilaterally designated the 4th respondent as the "Muslim religious supreme authority" or the overarching organisation for the Muslim community. One of the conditions for registration by the 1st and 2nd respondents is the submission of a reference or introduction letter from this purported supreme authority- the 4th respondent. Nevertheless, such a requirement is neither constitutionally nor statutorily mandated. Neither the Constitution, the Societies Act, its associated regulations, nor the Trustees' Incorporation Act requires an introduction from a supreme religious authority. Section 17 of the Trustees' Incorporation Act pertains solely to the monitoring of trustee elections. He believed that the religious body must specify the Supreme Authority in its constitution or statutes and that it is not the responsibility of the 1st and 2nd Respondents to select the Muslim organisation's Supreme Authority. And if a supreme authority were needed for registration, it would be included in the Constitution, the Societies Act, or the Regulations.

They contended that the 1st, 2nd, and 3rd respondents unlawfully compelled Muslims and Muslim organisations to affiliate solely with the 4th

respondent, unilaterally elevating it to the status of the sole Muslim Supreme or Umbrella Organisation in Tanzania, contrary to the will of Muslims. This led to the formation of the 5th respondent, The Supreme Council of Islamic Organisations and Institutions of Tanzania (BARAZA KUU), incorporated on 21st June 1993 and registered on 17th March 2014, which is open to all Muslim organisations, including the 4th respondent, and the then accepted introduction letters from Baraza Kuu. Despite this, the 1st and 2nd respondents continued to accept reference or introduction letters from the 4th respondent and from 2020, they persistently refused to accept those issued by BARAZA KUU, insisting on recognition of the 4th respondent as the sole Muslim authority. Reference was made to a letter with reference No. SA. 22073/17 and ADG/T.I/5608/5608, the 1st respondent's communication directing that references must be submitted from BAKWATA, not BARAZA KUU, and the 2nd respondent's statement in her letter with Ref No. ADG/T.I/5608/5608 dated 19th December 2022 and Clause 2(c) and 3 of the letter ref No. SA. 22073/17 dated 15th July, 2020 (Annexure SAM-4 to the Joint Affidavit) and the statement by the 1st respondent's officer named Mr Emanuel Kihampa made on 20th June 2024, all declaring BAKWATA as the supreme body for Muslim organisations, which is also responsible for religious disputes contrary to Articles 3(1), 19(1), and 20(1) of the Constitution. Reliance was made on the report

titled “**Overview of the Court's case- law on freedom of religion**”
prepared by the Research Division of European Court of Human Rights, 19th January 2011 and Updated on October, 2013; case of **Supreme Holy Council of the Muslim Community v. Bulgaria**, Application No. 39023/97 considered Article 9 of the European Convention of Human Rights on freedom of religion the European Court of Human Rights insisting that the role of the state with various religious organization with competing interests is to remain neutral and impartial in exercising its regulatory power and in its relations with the various religions, denominations and beliefs.

It is contended that before the 4th respondent's incorporation, other Muslim organisations existed, including the East African Muslim Welfare Society and the Tanzania Council of East African Muslim Welfare Society, which were declared unlawful societies on 20th December 1968. Their properties were vested in the 2nd respondent and later in the 4th respondent on behalf of BAKWATA, following Government Notices 434 and 435 of 1968 and 169 of 1969. They believe that GN No. 169 of 1969 (Annexure SAM-2) vested the properties directly in the 4th respondent, not as a Muslim trustee representing the community, but as its sole owner insisting that the vesting order, effective from 30th June 1969, was issued

shortly after BAKWATA's registration and incorporation, and improperly excluded other Muslim organisations from ownership, constituting unfair discrimination.

They further argued that the regulations under the National Vocational Training Board and the National Education Advisory Council, specifically Government Notices Nos. Articles 133 of 1981 and 290 of 2002 appear to favour the fourth respondent while excluding other Muslim organisations. This, they contended, perpetuates unjust segregation within the Muslim community. They also asserted that there is no consensus among Tanzanian Muslims that BAKWATA is the supreme authority. This is evidenced by the fourth respondent's involvement in land disputes and internal conflicts, which have been documented in court decisions and highlighted in a research article titled "BAKWATA is Like a Dead Spirit to Oppress Muslims," available online.

They went further to highlight the unequal treatment of Muslims compared to Christians, noting that the government recognises and accommodates Christian umbrella organisations such as TEC, CCT, and CPCT, but does not extend similar protections or recognition to Muslim organisations. This differential treatment, they maintained, constitutes

unjust discrimination. He requested that the Court allow the petition and grant the reliefs sought in the Originating Summons.

The counsel for the fifth respondent supports the petition. He acknowledged that since its incorporation, the fifth respondent, as the supreme Islamic authority, issued introductory letters to Muslim communities to facilitate their registration with the Registrar of Societies and the Administrator General. However, he argued that the authority of the fifth respondent has been unlawfully undermined, particularly by the first respondent, who no longer recognises these introductory letters and is now insisting that Muslim societies obtain such letters exclusively from the fourth respondent, in violation of Muslims' freedom of association. This restriction, the 5th respondent's counsel argued, hampers their ability to associate and practice their religion freely and constitutes unwarranted state interference prohibited by the Constitution.

Opposing the petition, the counsel for the first to third respondents argued that, under Article 19 of the Constitution, the protection of religious freedom is subject to the law. Registration under the Societies Act and the Trustees Incorporation Act is mandatory for religious organisations and their trustees, and such registration is consistent with constitutional provisions. It therefore does not constitute an interference with religious

freedom. The counsel also contended that requiring introduction or reference letters before registration does not violate religious freedom or compel membership. Instead, it serves to ensure proper identification and prevent infiltration by groups with malicious intent, thereby safeguarding peace and security. They emphasised that the respondents do not, as alleged, compel Muslims to join the fourth respondent.

The counsel further explained that the criteria for assessing whether laws or registration conditions violate religious freedom are whether the law has a legitimate secular purpose, does not primarily promote or inhibit religion, and avoids excessive government entanglement with religion. They argued that the contested laws and regulations meet these standards, citing the U.S. Supreme Court case **Lemon v. Kurtzman, Superintendent of Public Instruction of Pennsylvania, et al.**, No. 89, decided on June 28, 1971, as a guiding precedent.

The Respondents' counsel argued that, under Article 13(5) of the Constitution, discrimination occurs when certain groups are treated as inferior and subjected to restrictions or conditions, while others are treated differently without a legitimate objective or reasonable justification. He cited the case of **Jebra Kambole v. United Republic of Tanzania** (Application 018 of 2018, 15 July 2020, African Court on

Human and Peoples' Rights) to support the point that differential treatment must have a legitimate aim and be proportional to avoid discrimination.

He contended that the allegation that Muslims are regarded as weaker and restricted to a single umbrella organisation, with only introduction letters from the 4th Respondent accepted for registration, while Christians are treated differently, is not supported by sufficient evidence. The Respondents had only provided letters and a video purportedly from the 1st Respondent declaring the 4th Respondent as the sole Muslim umbrella organisation, but had not submitted comparable proof for Christians. It was emphasised that the Petitioners failed to demonstrate that Christians have multiple umbrella organisations with accepted introduction letters, rendering their claim of discrimination unproven. He maintained that the Petitioners relied solely on general statements and did not specifically plead or substantiate the alleged discrimination or violation of constitutional rights. Citing the case of **Attorney General v. Dickson Sanga**, Civil Appeal No. 175 of 2020, Court of Appeal of Tanzania (unreported), he stated that allegations of constitutional violations must be specifically pleaded and proved. Since the Petitioners did not

substantiate their claims, the allegations of discrimination against Muslims remain unproven.

He argued that, in constitutional cases, Petitioners have a duty to prove their allegations of rights violations to assist the Court in determining whether the conduct is unconstitutional. He emphasised that such breaches are grave matters that cannot be inferred or speculated; the Petitioners must substantiate that the impugned law, act, or conduct is unconstitutional, citing **Rev. Christopher Mtikila v. Attorney General** [1995] TLR 31 and **Julius Ishengoma Francis Ndyanabo v. Attorney General** [2004] TLR 14. He further noted that, since the Petitioners claimed discrimination against Muslims, restricting them to a single umbrella organisation while Christians are allowed multiple, they had the obligation to specify where such statements were made or to produce evidence supporting the claim. However, they failed to do so. Citing **Bob Chacha Wangwe and Legal and Human Rights Centre v. United Republic of Tanzania** (Application No. 011 of 2020), **George Maili Kemboge v. United Republic of Tanzania** (11 May 2018, 2 AfCLR 369), and **Centre for Strategic Litigation Limited v. Attorney General**, Misc. Civil Cause No. 21/2019, he stated that the Petitioners' general statements, without evidence, rendered the discrimination

allegation unsubstantiated.

He submitted that the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations G.N. No. 133 of 1981, which the Petitioners challenged, are no longer in force following the repeal of the parent Act. He explained that Regulation 2(c)(xviii) of the 1981 Regulations and Item (k) of the Schedule to the 2002 Order, which was alleged to favour the 4th Respondent over other Muslim Societies, was made under the Vocational Training Act No. 28 of 1974. Since this Act was repealed in 1994 by the Vocational Education and Training Act No. 1 of 1994 (VETA ACT), which established a new Board with a different composition, the impugned regulations are no longer part of the law and cannot be challenged as unconstitutional.

He further argued that even if the 4th Respondent were a member of the VETA Board, this would not constitute unfair discrimination among Muslim organisations. The VETA Board's composition is aimed at stakeholders in vocational education and trained experts, and membership of the 4th Respondent would be based on their role as a stakeholder, not on religious grounds. He emphasised that religious institutions are key stakeholders in public services like health and education, and their appointment to various boards is based on their stakeholder status, not

religious identity.

He clarified that under item (k) of the Schedule to the 2002 Order, the Secretary of the 4th Respondent is a member of the National Education Advisory Council by virtue of heading an institution that is a stakeholder in education. The nominations of the Secretary-General of the Christian Education Board of Tanzania and the BAKWATA's Secretary-General were made solely because they head stakeholder institutions, not to represent religious sentiments, as the Petitioners suggested. He added that even if such nominations could be viewed as differential treatment, they are justifiable and aimed at a legitimate goal. He argued that not all religious groups can be represented on the Council, and ruling otherwise could lead to chaos, with other religious groups filing discrimination claims for lack of representation.

Citing **Jebra Kambole v. United Republic of Tanzania**, Application 018 of 2018, 15 July 2020, paras. 71-72] and **Bob Chacha Wangwe and Legal and Human Rights Centre v. United Republic of Tanzania**, Application No. 011 of 2020, he insisted that not all differential treatment amounts to discrimination if it is justified and serves a legitimate aim. He argued that if the Court finds the membership was based on religious grounds, such discrimination would be reasonable,

justifiable, necessary, and proportional. Finally, he urged the Court to declare that the impugned action and regulations are constitutional and do not offend Articles 13(1), (2), and (3); Article 19(1) and (2); Article 20(1); and Article 29(2) of the Constitution of Tanzania of 1977, and to dismiss the petition for lack of merit.

Counsel for the 4th respondent was emphatic that Article 19 of the Constitution safeguards religious freedom, in accordance with applicable legislation such as the Societies Act (Cap. 337) and the Trustees Incorporation Act (Cap. 318), which are supported by subsidiary legislation. These rights are exercisable subject to the law, and the registration of Muslim religious bodies is a legal requirement rather than an infringement of religious liberty. He contended that the statement made by the 1st respondent on 20th June 2024 is not amenable to challenge through this constitutional petition, but should instead be addressed via administrative remedies. And the assertion by the 1st respondent does not constitute a sufficient basis for this petition, as any grievances arising therefrom ought to be pursued through established administrative procedures rather than through a constitutional challenge. He condemned the petitioners for misinterpreting the case of **The Registered Trustees of Masjid Thud vs. Mbwana Udai Shame &**

Others, Civil Case No. 215 of 2022, 24 August 2022, noting that the High Court did not declare or recognise any institution as the supreme authority for Tanzanian Muslims. Instead, the Court acknowledged BAKWATA as the most recognised Muslim institution in Tanzania, unless otherwise specified in its constitution. Therefore, it was correct for the 1st and 2nd respondents to understand BAKWATA's role regarding the registration of petitioners or others. He maintained that the allegations of discrimination against Muslims compared to Christians in religious registration were not specifically pleaded or proved, citing **Attorney General vs. Dickson Paulo Sanga** [2020] TLR 61 in support of his argument. To him, the 1st and 2nd respondents' conduct is in accordance with statutory laws and constitutional guarantees.

Regarding the constitutionality of regulation 2(c)(xviii) of the 1981 Regulations and item (k) of the 2002 Order, he argued that laws that are no longer in effect cannot violate the Constitution. He urged the Court to declare that no constitutional violation exists concerning Articles 13(1)-(3), 19(1)-(2), 20(1), and 29(2) of the 1977 Constitution, and to dismiss the petition for lack of merit.

With the parties' written submissions, the counsel for the respective parties availed themselves of the opportunity to provide further

clarification on a few salient points raised by the court. Their oral clarifications were primarily reiterations of their earlier written submissions, emphasising and elucidating the core arguments already articulated therein. Thus, we find it unnecessary to recapitulate these submissions herein, as such repetition would amount to duplicating matters already on record.

Having appraised the pleadings and the rival submissions, we are of the view that the present petition raises three pertinent issues for determination, namely:

- 1. Whether the alleged complained of acts and conduct of the 1st and 2nd Respondents violate the provisions of Articles 13(1)-(3), 19(1)-(2), 20(1), and 29(2) of the 1977 Constitution, and therefore unconstitutional.*
- 2. Whether the provisions of Regulation 2(c) (xviii) of the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations, 1981 [GN No. 133 of 1981] and item (k) of the Schedule to the National Education Advisory Council (Establishment, Constitution and Procedure) Order, 2002 GN No 290 of 2002, violate the provisions of Articles 13(1)-(3), 19(1)-(2), 20(1), and 29(2) of the 1977 Constitution, and therefore unconstitutional.*
- 3. To what reliefs are the parties entitled?*

Before going to the merits, we find it pertinent to restate a fundamental principle that, in cases challenging the constitutionality of an act, conduct,

or statutory provision, the Petitioners bear the burden of proof to demonstrate that their rights have been infringed. This duty is rooted in the very nature of constitutional review, which demands that any breach of the Constitution be established on more than a speculative basis; it must be substantiated with concrete evidence, as the gravity of such a breach warrants careful and rigorous proof. This position was stated in the cases of **Rev. Christopher Mtikila v. Attorney General** [1995] TLR 31 and **Julius Ishengoma Francis Ndyabo v. Attorney General** [2004] TLR 14, where it was stated that the Court is not permitted to infer violations of constitutional rights based on mere conjecture or inference. The Petitioners, therefore, have the onus to substantiate their claims with factual proof that the impugned law, act, or conduct is indeed unconstitutional, and the standard of proof is on the balance of probabilities. See the cases of **George B Mzigowandevu & 23 Others vs Minister for Agriculture & Another** (Misc. Civil Cause No. 18393 of 2024) [2025] TZHC 302 (14 February 2025, and **the Attorney General vs Dickson Paulo Sanga** (Civil appeal No. 175 of 2020) [2020] TZCA 371 (5 August 2020). We therefore analyse the petitioners' allegations and the evidence adduced in line with this standard of proof.

The first issue is whether conducts and conditions imposed by 1st and 2nd respondent in registration of societies and incorporation of trustees of Muslim Organisations and institutions violate Article 13(1), (2) and (3); Article 19(1) and (2), Article 20(1) and Article 29(2) of the Constitution of the United Republic of Tanzania of 1977 [Cap 2 R.E. 2002] as amended and thus unconstitutional, null and void.

We have read the relevant constitutional provisions. Articles 19 and 20(1) preserve the right to freely associate and establish religious bodies, with membership being voluntary. These provisions unequivocally establish the sacrosanct autonomy of religious organisations to govern their internal affairs, while concurrently reaffirming the State's obligation to maintain a scrupulously neutral and impartial stance. In the context of religious entities, these precepts are given effect through the Societies Act, [Cap. 337 R.E. 2023] and the Trustees' Incorporation Act [Cap. 328 R.E. 2023], both of which prescribe the procedural frameworks governing registration and incorporation. The Societies Act provides a comprehensive statutory framework for the registration and operation of societies, thereby conferring legal personality, defining their purposes and objectives, and safeguarding against any unlawful or unauthorised use. Simultaneously, the Trustees' Incorporation Act empowers the trustees of religious organisations to incorporate, thereby vesting them with the requisite

authority to carry out the corporate functions of their respective entities. By virtue of these enactments, the State's obligation to maintain a neutral and impartial stance is accentuated, while the autonomy of religious organisations to manage their internal affairs is concurrently safeguarded, thereby striking a delicate balance between the State's regulatory authority and the inherent right of religious entities to self-governance.

In paragraphs 1 to 4 of the petitioners' affidavit, the 1st respondent is condemned for **one**, publicly declaring the 4th respondent as the sole representative of Muslims in Tanzania, requiring all Muslim organisations to submit introduction or reference letters from the 4th respondent and refusing to register any Muslim entity lacking such endorsement, thereby restricting the registration of other Muslim organisations. **Two**, for recognising the 4th respondent as the supreme or umbrella organisation for Muslims in Tanzania, a designation that the 4th respondent does not possess statutorily. The above complaints lead us to the provisions of the two Acts governing the registration of societies and their trustees.

We have painstakingly read the provisions of the Societies Act, [Cap. 337 R.E 2023], the Societies (Application for Registration) Rules, and the Trustees Incorporation Act, but we were unable to locate any provision mandating the 1st and 2nd respondents to compel the petitioners to obtain

reference letters from the 4th respondent. We therefore agree with the petitioners' advocate's submissions, who posits that the requirement for submission of an introduction or reference letter from the 4th respondent (BAKWATA) is not a statutory requirement under the Societies Act or the Trustees' Incorporation Act. The reference to the supreme authority of the religious organisations in Section 17 of the Trustees' Incorporation Act is solely for the purpose of facilitating the monitoring of the election of new trustees and office bearers, and not for registration under the said Act. In other words, the provisions of Section 17 are intended to ensure that the supreme authority of the religious organisations is informed and involved regarding the selection of new trustees and office bearers, but such involvement is not a condition precedent to the registration of the society or the appointment of its trustees. Section 17 provides;

17. Monitoring meetings of body corporates and organisations.

(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;*
- (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.** (Emphasis added)*

Subsection 2 of Section 17 sets the framework for overseeing religious bodies incorporated under the Trustees' Incorporation Act. The provision presupposes that each religious body has its supreme authority established under its Constitution. It does not mandate the 1st and 2nd respondents to appoint or designate a supreme authority for any religious organisation. This highlights that the 1st and 2nd Respondents' role is limited to oversight within the organisation's existing Constitution, not to determine or impose a supreme authority for a religious organisation.

We have read the two letters with ref No. SA. 22073/17 dated 15th July, 2020 and Ref No. ADG/T.I/5608/5608 dated 19th December 2022, annexed to the petitioners' affidavit in support of the contention. In its

letter dated 15th July 2020, the 1st respondent refused a reference letter from **Baraza Kuu la Jumuiya na Taasisi za Kiislamu Tanzania** submitted by one of the Muslim organisations seeking registration. Instead, it insisted on a letter from BAKWATA: Part of the said letter from the 1st respondent reads:

“YAH: USAJILI WA TAASISI YENU

*Tafadhali rejea somo tajwa hapo juu na barua yenu yenye **kumb.Na. IBN/WN/VOL.I/01** ya tarehe **24 March,2020***

2. Ofisi ya Msajili wa Jumuiya za Kijamii inakiri kupokea Maombi ya usajili wa Taasisi yenu, mapungufu yafuatayo yamebainika baada ya kupitia nyaraka za usajili: -

- a) Ibara ya 4 na swala namba 5 kwenye fomu **SA.2** maelezo yanapingana*
- b) Cheti cha elimu ya dini kilichowasilishwa hakijatafsiriwa kwa lugha ya Kiswahili au Kiingereza pia barua ya kuthibitisha cheti hicho kutoka chuo husika haijawasilishwa.*
- c) Mnaelekezwa kuwasilisha barua kutoka **BAKATWA** na sio Baraza kuu Tanzania*

3. Tekelezeni maelekezo hayo ili taratibu za usajili ziweze kuendelea.

Eliud B. Mwailafu

Kny: MSAJILI WA JUMUIYA ZA KIJAMII”

In the 2nd letter dated 19th December 2022, the 2nd respondent had required the trustees of one of the Muslim organisations to specifically designate the 4th respondent (BAKWATA) as their supreme authority in their organisation's constitution: The letter partly reads:

**"YAH: SHERIA YA USAJILI WA WADHAMINI (SURA
YA 318 TOLEO LA 2002) BODI YA WADHAMINI WA
MASOUID TAWFIQ ISLAMIC CENTRE (MTIC)
MABADILIKO YA KATIBA FOMU T. 17**

Tafadhali husika na Kichwa cha Habari hapo juu.

2. Nakiri kupokea fomu T.17 ya mabadiliko ya Katiba iliyoambatishwa na Muhtasari wa kikao na nakala ya mabadiliko ya Katiba vyote vilivyopokelewa tarehe 27 Ocktoba, 2022, yote yaliyomo yamezingatiwa.

3. Mabadiliko ya Katiba hayajahifadhiwa katika kumbukumbu za ofisi kutokana na kubainika kwa mapungufu ya ofisi kutokana na kubainika kwa mapungufu yafuatayo kwenye nakala za Katiba mlizowasilisha. Hivyo mnatakiwa kufanya maboresho kwenye Katiba hizo kwenye mambo yafuatavyo: -

- a. Katiba inayowasilishwa ofisini inabidi iwe imebanwa (binded)*
- b. Kulipia malipo ya mabadiliko ya Katiba ya Tsh. 50,000/=*
- c. Kipengele namba 17 kinachoonesha chombo kikuu chenu cha dini kinatakiwa kioneshe dhahiri kuwa **BAKWATA** ndio chombo cha dini kitakachosuluhisha migogoro ya Tasisi yenu endapo itatokea. Hivyo mnatakiwa kurekebisha hicho kipengele.*
- d. Mnashauriwa kujaza fomu T.17 ya mabadiliko ya Katiba isainiwe na kugongwa muhuri wa Ofisi.*
- e. Ninashukuru kwa ushirikiano wenu.*

J. A. Msengezi

Kny: KABIDHI WSII MKUU/AFISA MTENDAJI MKUU"

Unfortunately, in both letters, no legal provision was cited, nor was there any justification for the requirement provided. To cap it all, the 1st to 3rd

respondents, neither in the counter-affidavit nor submissions, cited to the Court any provision of law that enjoins them to impose such a requirement.

In a bid to probe the legitimacy of the 4th respondent (BAKWATA) to the petitioners, we were constrained to trace its history from the inception. According to the materials at our disposal, it would appear that before the existence of the 4th respondent, Tanzanian Muslims had two major organisations, namely, the East African Muslim Welfare Society and the Tanzania Council of East African Muslim Welfare Society. However, these two organisations were deregistered by the Government (declared unlawful societies) through the Government Notice No. 434 published on 20/12/68, namely, the Societies (Declaration of Unlawful Societies) Order, 1968. Consequently, their assets were vested in the 1st respondent (the Administrator-General) through Government Notice No. 435 published on 20/12/68. Unfortunately, the reasons for their deregistration were not stated in the relevant Government Notice.

Following the dissolution of the two organisations, Bara Kuu la Waislam (BAKWATA) was established. According to Certificate of Registration No. 5512 (Annexure SAM – 1 to the petition), BAKWATA was registered under the Societies Ordinance on 17th December 1968. Six months later, that is,

on 9th June 1969, its registered trustees (4th Respondent) were incorporated by the 1st respondent and issued with Certificate of Incorporation No. 517.

Shortly after the incorporation of the 4th Respondent the Government, through Government Notice No. 169 published on 28/6/69, notably, the BAKWATA (Vesting) Order 1969, vested the properties of the erstwhile East African Muslim Welfare Society and the Tanzania Council of East African Muslim Welfare Society in the 4th Respondent.

We eagerly searched for the first Constitution of BAKWATA, to no avail. As a result, on 18th December 2025, we summoned the parties and ordered the respondents to supply the Court with the first Constitution of BAKWATA and the register of its founding members at the time of its registration, that is, 1968. To our dismay, the respondents, including the 1st and 2nd Respondents, who registered BAKWATA and incorporated its registered trustees (4th Respondent), could not provide the Court with the first Constitution, nor were they able to submit even a register or list of the founding members. They brought a copy of the 1984 Constitution, which, however, was of no assistance in answering our query. In that regard, our discussion would focus on the 1999 Constitution, Revised Edition 2018. Article 113 describes the 1999 BAKWATA Constitution as the

first constitution adopted by the BAKWATA since its registration. The Article reads:

'113: Toleo hili la Katiba ya Baraza Kuu la Waislam wa Tanzania (BAKWATA), limezingatia kuweka pamoja marekebisho yote yaliyofanywa katika Katiba ya Baraza Kuu la Waislam wa Tanzania (BAKWATA) tangu ilipotungwa mwaka 1999 hadi tarehe 31/03/2018.'

It is therefore clear from the above provisions that, although the BAKWATA as a society organisation had existed since 1968, its first Constitution was enacted in 1999. To crown it all, the founding members are not indicated in either the Constitution itself or any other document. This buttresses the suspicion that none of the Tanzanian Muslims founded BAKWATA, the ^{4th} respondent, contrary to what it claims.

Moreover, while navigating through BAKWATA Constitution, we noted that it contains some segregative provisions, which deny it the status of supreme authority or an umbrella for all Muslim organisations. For purposes of completeness, we let the relevant provisions speak for themselves:

"Article 80. SIFA ZA VIONGOZI WA BARAZA KUU LA WAISLAM WA TANZANIA (BAKWAIA)
Viongozi wa Baraza Kuu la Waislam wa Tanzania (BAKWATA) kuanzia ngazi ya Msikiti hadi ngazi ya Taifa, kama wanavyoelezwa katika Katiba hii, ni lazima wawe:

1. *Waislam*
2. *Wanaume na Wanawake kwa wanawake wenzao.*
3. *Baalegh*
4. *Wasiwe wendawazimu*
5. *Wasiwe Mafaasiq*
6. *Wawe wacha-Mungu na 'Waadilifu*
7. *Wawe wenye kuchunga murua*
8. *Wawe wenye himma katika Dini*
- 9. *Waweni ahlu Sunna Waljama'a***
- 10.** *Wawe ni wenye kuikubali, Katiba ya Baraza Kuu la Waislam wa Tanzania na miongozo yake.*

Article 83. *Kiongozi yeyote wa Baraza Kuu la Waislam wa Tanzania (BAKWATA) mwenye wadhifa wa Imam wa msikiti, sheikh wa Kata, Katibu wa Baraza la Masheikh la Kata, sheikh wa wilaya, Qadhi wa Wilaya, Katibu wa Baraza la Masheikh la Wilaya. Katibu wa Qadhi wa Wilaya, Sheikh wa Mkoa, Qadhi wa Mkoa na Katibu wa Baraza la Masheikh la Mkoa, Katibu wa Qadhi wa Mkoa, Katibu wa Qadhi wa Wilaya, Naibu Qaadhi Mkuu, Qadhi Mkuu, na Mufti ataendelea kushika wadhifa huo mpaka:-*

- (a) *Atakapovuliwa uongozi na mamlaka husika*
- (b) *Atakapoamua kujiuzulu mwenyewe*
- (c) *Atakapokiuka maadili ya Uongozi.*
- (d) *Atakapoondolewa uongozi na Kikao Rasmi kinachohusika cha Baraza Kuu la Waislam wa Tanzania (BAKWATA).*
- (e) *Atakapoleta maongozi yanayopingana na itikadi na Maadili ya Madhdhebu ya Waislam walio wengi Tanzania ambayo ni Sunni-Shaafiy.***
- (f) *Atakapofariki Dunia". (Bold is ours)***

From the above provisions, in particular Articles 80(9) and 83(e) of the BAKWATA Constitution, it is evident that leadership in BAKWATA is not open to all Muslims. It is open only to Muslims who profess the Ahlu Sunna Waljamaa denomination, specifically the Sunni-Shafi'i branch.

It is important to underscore at this juncture that Islam has two major sects, namely, Sunni Waljamaa and Shia. Of great interest is that the two major groups also have denominations. The Sunni sect, which is predominant in East Africa, has four denominations (schools of thought), namely, Abu Hanifa, Al Shafi'i, Ahmad ibn Hambal, and Malik. See the book titled **'The Four Imams: The Lives and Teaching of their Founders'** by Muhammad Abu Zahra, Dar Al-Taqwa. Further, commenting on the true and fair definition of a Muslim, which should be adopted by an umbrella organisation in a society where various denominations co-exist, Hassan Mwakimako, in his article **'The Supreme Council of Kenya Muslims (SUPKEM): Jostling for Representativeness among Muslims in Kenya'** says:

'A Muslim means any person professing Islamic faith of any school or sect ... introducing any other element in this definition will result in untold complexities for the courts, Kenyans and lawyers.'

BAKWATA claims to be an umbrella of all Tanzanian Muslims and Muslim organisations. However, according to Article 83(e) of its Constitution, a Muslim cannot become its leader unless he professes in Sunni Waljamaa-Shaafiy. Indeed, the above-quoted provisions substantiate the petitioners' contentions that BAKWATA, the 4th respondent, is not an umbrella of all Muslims and Muslim Organisations in that it accommodates only one Islamic sect, that is, Sunni Waljamaa-Shaafiy. This tells it all that BAKWATA not only excludes Shia but also leaves out three other Sunni denominations, namely, Abu Hanifa, Ahmad ibn Hambal, and Malik. Such an organisation cannot be said to be a legitimate representative of all Tanzanian Muslims.

The 1st and 2nd respondents have not denied compelling the petitioners to obtain reference letters from the 4th respondent to register or update the registration of their organisations or requiring the petitioners to designate the 4th respondent as the supreme authority in the Constitutions of their respective organisations. Article 19(1) and (3) of the Constitution of the United Republic of Tanzania guarantees every person the right to freedom of conscience, or faith, and choice in matters of religion, including the freedom to change their religion or faith. The right to freedom of religion extends to the right to freedom of denomination.

Given that the 4th Respondent was not founded by all Tanzanian Muslims and taking into account that the 4th Respondent's Constitution excludes other denominations, it follows that the 1st and 2nd Respondents' conduct and acts, to wit, requiring the petitioners to seek and obtain reference letters from the 4th respondent, tantamount to compelling the petitioners to join the association, (the 4th Respondent) of not their choice. Furthermore, as hinted above, the 4th Respondent is associated with only one sect, that is, Sunni Waljamaa – Shaafiy. Thus, the 1st and 2nd Respondents are compelling the petitioners to profess in the denomination of Sunni Waljamaa – Shaafiy, which is contrary to the dictates of Article 19(1) and (3) of the Constitution. In the case of **Attorney General vs Dickson Paulo Sanga** (Civil Appeal 175 of 2020) [2020] TZCA 371 (5 August 2020) on page 38, the Court held:

'We agree with the respondent that, while the respondent had a duty to establish a prima facie case which he discharged, the burden shifted to the appellant who was duty bound to prove that the impugned provision is not violative of the Constitution.'

Having established that the 4th Respondent is open for only one denomination, Sunni Waljamaa-Shaafiy, and that it was not founded by all Tanzanian Muslims, it was incumbent on the respondents to prove

otherwise. Admittedly, the respondents were expected to adduce evidence showing that the founding members were representing all Tanzanian Muslims to counter the petitioners' contention, but they failed to do so.

In the circumstances, we agree with the petitioners' argument that the 1st and 2nd respondents' acts and conduct violate the provisions of Articles 19 and 20 of the Constitution and are therefore unconstitutional. The first issue is hence answered in the affirmative.

The second issue is whether the provisions of Regulation 2(c) (xviii) of the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations, 1981 [GN No. 133 of 1981] and item (k) of the Schedule to the National Education Advisory Council (Establishment, Constitution and Procedure) Order, 2002 GN No 290 of 2002, violate the provisions of Articles 13(1)-(3), 19(1)-(2), 20(1), and 29(2) of the 1977 Constitution, and therefore unconstitutional. The petitioners have contended that the above provisions are discriminatory against Muslims who are not followers of BAKWATA, the 4th respondent. The thrust of their complaint was that the said provisions give preferential treatment to the 4th respondent against other Muslim organisations. Regulation 2(c)(xviii) of GN No. 133 of 1981 lists the 4th respondent as one of the

representatives in the Board, whilst Item (k) of the Schedule to GN No. 290 of 2002 designates the Secretary-General of the 4th respondent as one of the members of the council. In rebuttal, respondents told the Court that the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations G.N. No. 133 of 1981 were made under the Vocational Training Act No. 28 of 1974, which was repealed by the Vocational Education and Training Act No. 1 of 1994. They expounded that the current Vocational Education and Training Board is established under Section 5 of the VETA Act, and the 4th respondent is not a member of the said board. The respondents concluded that, since GN No. 133 of 1981 is no longer in force, it cannot be declared unconstitutional.

We have skimmed the provisions of the Vocational Education and Training Act No. 1 of 1994 [Cap. 82 R.E. 2023] hereinafter referred to as VETA ACT. Indeed, Section 30 of the VETA Act repealed the former Vocational Training Act under which the impugned Regulations were made. More so, Section 5 of the VETA Act [Cap. 82 R.E. 2023] establishes the Board in which the 4th respondent's Secretary General is not a member. Since the impugned law, that is, the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations, 1981 [GN No.

133 of 1981], is no longer in force, we find the petitioners' contention misplaced and devoid of merit. Consequently, we hereby dismiss them.

Regarding the provisions of Item (k) of the Schedule to the National Education Advisory Council (Establishment, Constitution and Procedure) Order, 2002 GN No. 290 of 2002, the respondents submitted that the 4th respondent's Secretary-General does not represent religious interests, but rather attends to the council by virtue of being a stakeholder.

We have carefully reviewed the provisions of the National Education Advisory Council (Establishment, Constitution and Procedure) Order. Regulation 3(2) read together with the Schedule to the Order. The Schedule provides:

"The Council shall consist of the following members:

- (a) Two members appointed by the Minister from amongst members of Parliament;*
- (b) three members appointed by the Minister;*
- (c) The Vice-Chancellor of the University of Dar es Salaam or his representative;*
- (d) The Vice-Chancellor of the Sokoine University of Agriculture or his representative;*
- (e) The Vice-Chancellor of the Open University of Tanzania or his representative;*
- (f) The Principal of the Institute of Finance Management or his representative;*
- (g) The Commissioner for Budget in the Ministry responsible for finance or his representative;*
- (h) The Secretary-General of Medical Association of Tanzania or his representative;*

- (i) The Secretary-General of Tanzania Teachers Union;*
- (j) The Secretary-General of Christian Education Board of Tanzania;*
- (k) The Secretary-General of BAKWATA;*
- (l) The Secretary-General of the Publishing Association of Tanzania;*
- (m) The Director of National Vocational Training;*
- (n) The Chairman of the Regional Education Officers;*
- (o) The Chairman of the District Education Officers;*
- (p) The Chairman of the Heads of Secondary Schools;*
- (q) The Chairman of School Inspectors;*
- (r) The Chairman of Principals of Teachers Training College; and*
- (s) The Commissioner for Local Government.”*

Upon a critical assessment of the composition of the council, we have been persuaded by the respondents' submission that the 4th respondent's Secretary-General is appointed by virtue of being a stakeholder in the education sector, rather than as a representative of Muslim organisations. For that reason, we find the petitioners' allegations devoid of merit and therefore dismiss them.

Based on the foregoing deliberations, we are settled that the petition is meritorious to the extent indicated. As such, we hold as follows:

1. It is hereby declared that the 4th Respondent (BAKWATA) is not the legitimate supreme Muslim organisation/ the recognised umbrella organisation for all Muslims and Muslim organisations in Tanzania.

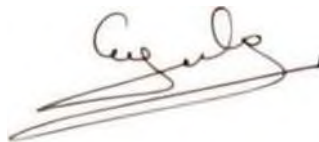
2. The conduct and conditions imposed by the 1st and 2nd respondent in registration of societies and incorporation of trustees of Muslim organisations and institutions, namely compelling the Muslims and Muslim organisations to obtain reference letters from and accept the 4th respondent as their supreme authority are violative of Article 13(1), (2) and (3), Article 19(1) and (2), article 20(1) of the Constitution of the United Republic of Tanzania of 1977 [Cap. 2 R.E. 2002] as amended and thus unconstitutional, null and void.
3. The 1st, 2nd and 3rd Respondents are hereby directed to take all necessary measures to ensure that, in the exercise of their respective duties and in the application of the law, no conditions are imposed on the registration of societies or the incorporation of trustees of Muslim organisations and institutions that violate Articles 13(1), (2), and (3); 19(1) and (2); 20(1); and 29(1) of the Constitution.
4. The petitioners' allegations that Regulation 2(c)(xviii) of the National Vocational Training Board (Constitution and Proceedings of the Board) Regulations, 1981 [GN No. 133 of 1981] and Item (k) of the Schedule to the National Education Advisory Council (Establishment, Constitution and Procedure) Order, 2002 [GN No. 290 of 2002] contravenes Article 13(1) and (2), (3); Article 19(1) and (2), and

Article 20(1) of the Constitution of the United Republic of Tanzania of 1977 Cap 2 R.E. 2002 as amended and thus unconstitutional are devoid of merits and consequently dismissed.

5. Each party is to bear their own costs of the petition.

It is so ordered.

Dated at Dar es Salaam, this 24th day of December 2025.



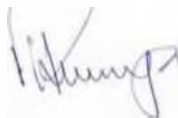
E. Y. MKWIZU

JUDGE



A.A. MBAGWA

JUDGE



H.R. MWANGA

JUDGE