

FEDERAL COURT OF APPEAL

BETWEEN:

NAGIB TAJDIN AND ALNAZ JIWA

Appellants

and

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent

AFFIDAVIT OF NAGIB TAJDIN

I, Nagib Tajdin, of the City of Nairobi, Kenya, MAKE OATH AS FOLLOWS:

1. I am the appellant in this action and as such have personal knowledge of the matters to which I hereinafter dispose to, except where otherwise stated to be based on information and belief.
2. I am self represented and I reside in Nairobi, Kenya.
3. On 7th of January 2011, Mr. Justice Harrington issued an interlocutory injunction as well as Reasons for Judgment sitting as a motions judge hearing motions for summary judgment brought by the parties. He dismissed the defendants' motions for summary judgment and allowed the plaintiff's motion for summary judgment. Subsequently on 13th of January 2011, he issued corrected Reasons for Judgment.
4. My co-defendant in Federal Court T-514-10 (Appeal file No. A-60-1), Alnaz Jiwa's ("Jiwa") and my Notice of Appeal was issued on February 7th 2011, and was based on the reasons for judgment because Court's Administration staff indicated that the time commenced after the reasons were delivered, and as I did not want to loose my right of Appeal due to technicalities, I issued my Notice of Appeal.
5. After the Judgment was settled and signed by Justice Harrington, on a motion by the Respondent to settle the Judgment, I filed a Motion seeking leave to amend my Notice of Appeal to plead further grounds of appeal, primarily on the issues of Justice Harrington signing Judgment which went beyond what was sought in the Notice of Motion with respect to costs and went beyond his reasons in other issues.

6. In my written motion filed on April 1, 2011, I asked for an order to consolidate our appeals, and to file one appeal book as the documents for both of the appeals are same and it would be a waste of resources to duplicate documents, and for expediting the hearing of our appeals. The Respondent's counsel has consented to this relief that I have requested.
7. I have been advised by Jiwa that he has had an agreement respecting the contents of the appeal book with the Plaintiff's counsel and that the Appeal Book is ready to be bound and filed in Court as soon as the decision on my written Motion has been rendered
8. Justice Sharlow, J.A. rendered decision on April 11, 2011, granting leave to amend the appeal by April 20, 2011. My Amended Appeal will be issued by tomorrow, April 13, 2011, along with the Agreement respecting the Appeal Book which will also be filed at the same time. Both Jiwa and I will have our respective Memorandum of Fact and Law for the appeals finalized shortly thereafter. We will be in a position to perfect our appeals within about two weeks from now.
9. I have given my oath of allegiance to The Aga Khan ("Imam"), the named Respondent in this appeal. I have an immense love and deep respect for my Imam and will never disobey or in any way of form intentionally displease my Imam. My obedience to the Imam is unconditional and unlimited.
10. The intention of my Appeal is therefore only to correct the wrongs done to the named Plaintiff, to His community and to me by a few powerful persons in our community who have some authority to act on behalf of the named Respondent in other matters but not in as far as Farmans (Guidance given by the Imam to His followers) are concerned. For example, Shafik Sachedina's (Sachedina) administrative position gives him access to all incoming and outgoing correspondence from the Aga Khan's Secretariat, access to send out announcements to all Jamatkhanas of the world, and is in a position to influence the religious institutions and leadership of Ismailis though he himself has no religious mandate or authority whatsoever.
11. The copyright of the Imam has never been questioned by me. Farmans are guidance given by the Imam to his followers with expectation that His followers will abide by His guidance (Farmans), and not obeying the Farmans have serious consequences, in that that person is not considered as a part of His followers even if he is not formally expelled from the congregation.

12. In the motions for judgment, my primary defense was that the Imam had expressly granted us consent on August 15, 1992, in Montreal, to publish His Farmans.
13. Attached as Exhibit "J" to the affidavit of Helen Petroulakis dated April 6, 2011, is a copy of the affidavit of Karim Alibhay ("Alibhay") describing the consent given by the named Respondent when he presented on my behalf the first Farman book published by me. Since then I have published and distributed openly these Farman books continuously without any concern expressed by the named Respondent.
14. Alibhay was not cross-examined, and no evidence was led on behalf of the named Respondent denying the giving of consent on August 15, 1992. The affiants who gave evidence on the motions declined to produce the video recording in question to show how and in what condition the First Farman book was presented to the Imam. The Imam placed His hand on the First Farman book when saying "continue doing what you are doing" in response to a question posed to the Imam by Alibhay on how to serve the Imam while he was showing him the book, and no evidence was led to deny this fact, which took place in a public ceremony where I was also present and saw the event directly and on close circuit television giant screen.
15. Notably, no evidence was given by the named Respondent, or by the affiants who gave evidence, denying the consent, or even sought to explain what was meant by the words "continue doing what you are doing" while placing His hand on the Book, and nonetheless Justice Harrington speculated as to what may have been meant by the Imam when He said "continue doing the work you are doing"- a function beyond the mandate of a motions judge.
16. Before publishing the First Farman book in 1992, I had been distributing, at no charge, loose pages of Farmans for many years, and I decided to publish the Farmans in a book format primarily for giving respect to the Farmans as loose pages were often not honorably kept by the people, and also to provide an index to enable the followers to search Farmans on topics (such as faith, service, practices, health, education, avoiding drugs & alcohol etc.) as an efficient way to read up on topics sought by the follower.
17. It is noteworthy that in the Statement of Claim, there is no pleading to find any of my previous publications of Farmans as a violation of the named Respondent's Copyright on those materials.
18. Both Jiwa and I pleaded that the Imam had given His consent to the publication of His

Farmans, and that the Ismaili Constitution does not prohibit the publication of Farmans, an activity actually encouraged by all of the Imams over centuries.

19. According to me, the express consent received from the Imam along with the French word, "Réussissez!" - succeed! - was binding to me as His follower who is mandated to abide due to the oath of allegiance I have given to the Imam and, in direct response, this instruction and order led me to publish 10 books of Farmans over 18 years. This instruction has never been revoked or cancelled even to date, except by after fact correspondence which Experts have shown is not signed by the Imam.
20. In continuing the mandate from the Imam in 1992, the last book I published is titled "Golden Edition", which is a combination of all the Farmans set out in the previous Farman Books published by me and a few more. As noted above, not surprisingly, the previous nine books of Farmans that I have published are not claimed to be an infringement.
21. I ordered 5000 but the printer printed 5500, and I received all 5500 copies of the Golden Edition on 13 December 2009, on the birthday of the Imam, and most copies were either sold or distributed free to Ismailis and delivered by me in various countries to Ismailis (followers of the Imam) only.
22. Furthermore, none of the publications of the Farman book projects were commercial ventures. All of them were done out of my love and affection for the Imam and His followers. In our community the Imam encourages all to give voluntary services in various capacities to the Ismailis and to the local communities.
23. The publication of the Farman books were undertaken in the spirit of service in the same manner as Christians would spread the Good Word without any ulterior motive of making profit. Publishing these books has been a labor of love that required countless hours of sleepless nights and sustained work over decades.
24. After the Golden Edition was published, Sachedina demanded that I withdraw the publication and, thereafter he sent or caused to be sent to me, two letters purportedly signed by the Imam, which appeared to suggest that the Imam frowned upon the publishing of the Golden Edition by me. Subsequently, experts confirmed that the letters were not signed or written by the Imam and that signatures of the Aga Khan were forged.
25. The issue that has pitted some of the leaders against me is the issue of editing the Farmans

made by the Imam. Editing the Farmans is equal to editing the Holy Quran, or the Holy Bible. I publish Farmans as they are delivered by the Imam, verbatim, while some of these leaders edit the Farmans.

26. There is reason for the relentless harassment and threats against me. Some leaders desire to remove from the Farmans things that the Imam says and that they do not wish the congregation to know of. As an example, the Imam during His Golden Jubilee celebration in London, U.K., in 2008, publicly made negative comments about His leaders not passing his Farmans to his Jamat, and the leaders, not wishing the congregation to find out, excised the sentence and in some places edited to suit them.
27. I know of at least of a couple of occasions where the Imam mentioned in very large gatherings of tens of thousands Ismailis that he was not happy about His Farmans being changed or not reported to His Jamat by the official channels.
28. Therefore, these certain persons in positions of power have taken this step (even by forging the Imam's signature), due to their desire to silence me as I bring to the followers the actual words of their Imam without any editing or changes.
29. Farmans become binding upon being delivered by the Imam, and they are usually delivered in person when He visits a country and gives an audience to the congregation. I have no agenda to control the contents of Farmans. I publish them in their integral form without editing, as they are delivered by the Imam as bearer of the Light of God to the congregation, and in the same form in which they became effective and binding on Ismailis on the moment that He spoke them.
30. On rare occasion, the Imam has made sensitive Farmans regarding issues that may have been regional, and he had said specifically in His Farman not publish it. These few Farmans have not been published in my compilation, they have been left aside. I have not even kept their copy for myself to avoid that in the future someone else finds them and publishes them by mistake though they were time bound and not sensitive anymore. For me, as for all true believers, the Farmans of the Imam are final.
31. Farmans released under the leadership of Sachedina are highly edited. Sachedina and few of his powerful supporters have been regularly changing the Farmans before they reach the Community, manipulating them to please their own objectives. I have compared, for example, two Farmans made by the Aga Khan in front of thousands of Ismailis in London in

August 1994. At that time Sachedina was president of the Aga Khan Council in UK. I found more than a hundred discrepancies between what the Imam had said to his Jamat (followers) and what version subsequently was released under the leadership of Sachedina and his friends. Cross-Examination of Sachedina revealed that indeed he believes that the Imam's Farmans need to be edited because according to him, the Imam "Thinks in French and Speaks in English", and makes mistakes, a concept against all Ismaili teachings.

32. Despite the suggestions that the Imam desires our activities to cease, the record shows that the Imam has sent blessings and messages of happiness for me and my family in 1998. By that time I had published several of the Farman books and it is on record that the Aga Khan knew about my contribution. The uncontested Affidavit of Mohamed Tajdin has shown that Sachedina brought a message of the Imam to our family that he was happy with our service to the Imam. And Sachedina has admitted on record that the Imam was well aware of my work since the early nineties.
33. By November 2010, I was left with only 193 copies, which I gave as a gift to ITREB [religious organization of the Ismailis] in Nairobi, Kenya for their use. This is the organization to which Mr. Justice Harrington later ordered all remaining Golden Edition books were to be delivered, but my books were given well before the motions for summary judgment were even heard.
34. I therefore, at this point in time, have no books left in my direct or indirect care and control. I will not publish any more copies of the Golden Edition book up to the time my Appeal is heard and a decision is rendered in my favour.
35. For the hearing of the motions for judgment, almost all material evidence led on behalf of the named plaintiff (Respondent) was non admissible hearsay evidence. Five affidavits were filed to support the plaintiff's motion for judgment: by Sachedina; by Aziz Bhaloo ("Bhaloo"); by Jennifer Colman ("Colman"); by Daniel Gleason ("Gleason"); and by Brian Lindblom ("Lindblom") an expert witness.
36. Sachedina and Bhaloo's affidavits were entirely based on hearsay or double hearsay evidence in respect to material evidence without any evidence as to the necessity and reliability to make their evidence admissible. Their evidence was self-serving, lacked details and corroborating evidence.
37. The motions judge erred in relying on the hearsay (and self-serving) evidence of Sachedina and Bhaloo which was materially contradicted (without justification or explanation) by the

unchallenged (not cross-examined) evidence of Mohamed Tajdin (Mohamed) who has served the Aga Khan and his institutions for 3 continuous decades in various capacity. Currently he (an engineer) and his wife (a physician) are serving the Imam in a voluntary capacity both in a senior position at the Aga Khan University Hospital in Kenya, for a few years, as their gift to the Imam.

38. Not only did Mohamed contradict Sachedina and Bhaloo, Jiwa and I also contradicted their evidence. Yet the motions judge, without explaining why, preferred the contested evidence of Sachedina and Bhaloo over the unchallenged evidence of Mohamed, and our evidence which was not effectively impeached on cross-examinations.
39. Gleason and Colman attached an Affirmation purportedly signed by the Imam as an exhibit, thus preventing me from cross-examining on the Affirmation (an order was made by Justice Heneghan said that we could not cross-examine because it was filed as an Exhibit).
40. The signature on that Affirmation filed as an Exhibit was found by our Forensic Expert to be forged, just as he found that the letters given in evidence as exhibits by Sachedina purportedly signed by the Imam were also not signed by the Imam.
41. I led evidence that Sachedina intercepted my letter to the Imam, and a reply to my letter was sent to me which was later determined to contain a forged signature of the Imam. Numerous other documents containing the Imam's forged signatures were sent to me and or filed in as evidence to support the motions for judgment. 3 independent forensic experts have confirmed to me that they were forgeries.
42. I obtained an expert report who opined that the documents in question (including the Affirmation) were not signed by the Imam. Although Lindblom wrote an opinion responding to my expert's report, contrary to Justice Harrington's finding, the two reports were not contradictory. Whereas my expert, who was cross-examined, maintained that the documents were not signed by the Imam, Lindblom did not state that the signatures were in fact signed by the Imam. On the contrary, Lindblom on cross-examination admitted that he was not retained to opine on the question of whether the documents were signed by the Imam but to critique my expert's report, and also admitted that he asked Counsel for Plaintiff but was not given original documents or representative sample signatures of the Imam.
43. The motions judge erred in dismissing my expert's uncontradicted evidence and choosing to rely on Lindblom's non-existing evidence in holding that the documents in question were

signed by the Aga Khan. However, had both experts' opinions been contradicted, even then the motions judge would be precluded from preferring one over the other when sitting as a motion's judge hearing a motion for summary judgment.

44. The issue of persons other than the Imam controlling the evidence and the proceeding of the case is a serious issue for trial because the whole lawsuit was launched against me following threats by Sachedina to discredit me. The reason he wanted to discredit me in the community was because I had discovered that he had sent me letters containing a forged signature of the Imam and he thought I would be disclosing this information to the public. Written confirmation of these threats, which preceded the lawsuit, was filed as my evidence but was ignored by the Motions Judge. Sachedina also admitted on cross-examination that he never verified his affidavit with the Imam nor was he asked by the Imam to give evidence in this litigation.
45. The motions judge also erred in concluding that the defendant Jiwa joined me in publishing. Jiwa was never involved in the publication of the Golden Edition nor was he ever informed that it was in preparation until it started circulating. He was not involved in the publication of any of the 10 previous Farmans books compiled and published by me in the last 18 years. Accordingly, there is no evidence to the contrary, and the judge's conclusion is without foundation.
46. To summarize, the motions judge erred in admitting hearsay evidence without any evidence of reliability or necessity; relied on hearsay evidence and rejected unchallenged evidence; speculated on the meaning of the words spoken by the Imam without any evidence to the contrary; made findings of facts on non-existing evidence; made inferences on contradictory evidence; determined the complicated question of implied consent, and of authorization; and erroneously made findings of fact as if he were sitting as a trial judge and had heard viva voce evidence.
47. In a case containing serious errors of a motions judge along with uncontradicted evidence of authorization and consent given by the Imam in 1992, the resulting judgment should not be imposed before the appeal is heard in the interest of justice, because it presents the risk that any relief is likely to be misused by persons other than the Imam in order to cause irreparable harm to countless individuals including to the plaintiff and his community.

48. Paragraphs 1, 2, and 3 of the Judgment signed by Justice Harrington will be abided by me (and Jiwa as well) until the Court of Appeal renders its decision.
49. I am seeking paragraphs 4, 5, 6, 7, 8 and 9 of the Judgment be stayed until the Court of Appeal renders its decision.
50. The pleadings in the action specifically refer to the distribution of the Golden Edition as being an infringement. As Ismailis we are encouraged to abide by the Farmans, and having personal copies of the Farmans are not an infringement.
51. The Judgment signed by Justice Harrington is too broad and not in accordance with the claim, and would preclude me from even practicing my faith, the practice of which is encouraged and ordered by the Imam. Not following Him means that I would "lose the right to remain part of the Jamat (followers)."
52. In the Notice of Motion, the relief asked was that costs of \$30,000.00 be paid to AKDN (Aga Khan Development Network) or another charitable organization designated by the Plaintiff. My family and I are Major Donors of these institutions. Donors are considered "major donors" when more than \$100,000 are donated to each of these institutions. In our case the amount is substantial but we did not argue for its reduction due to the expectation that it would be as sought by counsel in his Notice of Motion and submissions at the Court at the argument of the motion.
53. Accordingly, I did not make any submissions with respect to the quantum of costs and consented to the amount sought as it was going to AKDN as per the submissions of counsel at the hearing of the motion.
54. However, in making submissions to the motions judge during the settling of the judgment, the Respondent's counsel sought costs be payable to the plaintiff. The judge was, accordingly, without jurisdiction to order costs as he did without such relief being sought in the Notice of Motion.
55. Although I reside in Kenya, my co-defendant resides in Toronto and is a lawyer working out of his own two offices, one in Toronto and another in Stouffville, and will be well able to pay costs if our appeal fails. However, I am prepared, if the court orders, to place the amount of \$29,700.00 (I have not yet received, from the Respondent's counsel, \$300.00 in costs ordered on October 13, 2010, by Justice Boivin - but counsel just informed on April 5, 2010,

that he has mailed me a cheque, and if so, I can pay the sum of \$30,000.00) into court pending the appeal.

56. On March 29, 2011, the named Respondent's counsel has filed a requisition demanding discovery and accounting for damages as ordered by Justice Harrington. This demand is vexatious and harassment of me by Sachedina. Furthermore, it seems that that the Respondent's counsel wants to conduct "discovery" of me for all of the books sold from 1992, since the First Book was published in 1992. Even though the pleadings were specific to the Golden Edition, counsel has indicated that because most of the Farmans contained in the Golden Edition were printed in 1992-1994 years [18 years ago], he is entitled to seek damages as of 1992.
57. If ordered to continue, it would create an enormous burden on me. I have already produced in my defendant's Affidavit of Documents in October 2010, all relevant and available documents, including the electronic version of the Golden Edition and of the source audio materials, and documents setting out the number of books published, the cost of printing the books, etc.
58. This would be an irreparable damage to me if paragraphs 5, 6 and 7 of the Judgment were allowed to be enforced.
59. All of my work that I have done in collecting, transcribing, publishing, and even distributing the various Farman books published over the past two decades or more, has been done in the nature of service and donation to my community not only without expectation of profits but at enormous personal costs in time and money to me. For example, the Golden Edition was sold for \$50.00 in Canada in Canadian Dollars, but elsewhere it is being sold for \$50.00 in USA dollars, most of it inclusive of postage. Postage to Kenya, and elsewhere is very expensive. The book weight about 2.5 kg with its MP3 audio bookmark and its box. Accordingly, my bulk shipping cost from Canada to Kenya was about \$14.00 per book and another \$10 to ship to East African countries from Nairobi, and whenever anyone ordered books, I paid personally for the postage anywhere from \$10.00 to \$40.00 per book. Almost 3/4 of the 400 books that I brought to Kenya were distributed free by me and still I paid shipping cost for those from my own pocket as I have been doing since 1992, because all of the work undertaken is undertaken out of my dedication to the Imam and to my community.

60. The Golden Edition is a book with 1,514 pages, hard cover, in a decorative box to store it respectfully, with a MP3 Player containing 14 short excerpts of audio Farmans, all for \$50.00. A similar book on the market without the MP3-audio-bookmark would be sold for about \$120.00 to \$200.00 per book, in a for-profit market.
61. Since this undertaking is a voluntary religious undertaking to the community without any expectation of profits and not undertaken as a profit making project nor as a business, I did not keep records of same, I have not prepared financial statements nor filed taxes for same, and I have not or claimed back the losses.
62. I have also taken loans, used up my line of credit, and borrowed the complete cash value of my life insurance to undertake these publications because of my love for the Imam, the named plaintiff. Each of my 10 publications of Farman books in the last 18 years has been a deficit project in the same way as within other faiths many people contribute by disseminating their scriptures in their congregations. I have continued publishing because of the history of sharing Farmans amongst followers, because of the instructions received from the Imam, because of my obedience and love for Him, and I have published with His blessings.
63. In order to gather Farmans and publish these books, I have had to travel extensively to places like Tajikistan, Afghanistan, India, United Kingdom, France, Pakistan, USA, Syria, Uganda, Tanzania, Madagascar, Ivory Coast etc.. And I have even met Sachedina and had a friendly tea with him in several of these locations while discussing of the Farmans issue.
64. I also was a resident of Montreal until 2005 when I relocated to Kenya with my family. I placed many documents in storage in Montreal (and a break in was reported in one such place), and some are in Kenya. If the damages part is to proceed, then I will first of all have to travel to Montreal, review all of my documents and papers to determine and prepare a list of all of my travels, find old bank statements, tickets data, invoices etc. I will have to recreate as best as I can from my records of the travels I undertook, when, where, how long, how much the ticket, visas, cabs, accommodation, etc. seek to obtain receipts of all the ten publications from 1992 to 2009, collect and compile the documents to recreate all of my expenses, and the collections from sale done by me. Cost of printers, scanner, electronic equipment and recorders, shredders, computers, software (word, ocr, pdf, etc), tons of photocopying, office equipment secretarial services (typing, etc), renting meeting rooms, travel for meetings to plan, proofread, working sessions, etc.. This is a gargantuan task, time

consuming, expensive at the least, and may take a few months to a year to obtain supporting documents from banks, travel agents, Visa/Master Card etc.

65. For example, I gave away a lot of free books, for which I will have to find recipients, seek affidavit or witness statements to confirm such give away. I gave many books (prior to the Golden Edition) to Jiwa and told him to deposit the proceeds to the Jamatkhana (prayer halls) from the sales of such books, and will need to document all of these. I also asked many others to do so for many books. (I remember someone in France and someone in Tanzania also) I distributed free books to Ismailis in Jamatkhana in various countries, to our University students to encourage them reading Farmans, to bus loads of Ismaili Senior Citizen from visiting from remote cities and countries in organized group that we regularly hosted in Montreal and elsewhere. I have sent cartons of Farman books free of charge and personally paid on top shipping charges to overseas countries, even one such event that I remember vividly in the early year 2000s. I sent a couple of cartons [about 40 books] of Farmans to Kenya [at my expense, including postage] with instruction to gift any proceeds to the Girl Guides and school of the Nairobi Hawkers Market [which won a BBC award few years later]. All this has to be traced back. Most of the information to be traced covers a time span of 18 years.
66. It might be impossible for me to create all of my expenses and income from these voluntary projects undertaken by me. However, if the matter proceeds to the damages stage I will have to obtain these documents and information which might take me months and thousands of dollars. However, time to do this is not available freely to me.
67. As I noted earlier, I reside in Kenya. I own a bakery business here. In Kenya, there are continuous blackouts (hydro), routine robberies, routine theft by staff and by own security staff, rampant corruption, routine problems. I cannot just pack my bags and go. I have to close my business (as my staff would rob me blind if I left the business operating without me) as I have done several times in the past when I have had to travel for more then few days. All this will lead me to larger losses and loss of clients with no benefit to anyone.
68. For security purposes, it would be stressing and difficult for me to leave my young family alone in this country which is unsafe as it is.
69. Even if I did close my business and traveled to Canada, it would take me a long time to gather all of the documents, seek to obtain back old bank statements, which I might only be able to recover for the past few years, although the named plaintiff's counsel now wants

damages to be calculated as far back as eighteen years, to 1992. I know approximately how many books I ordered in 1992, but I would need to calculate my expenses in order to determine damages, if any can be determined.

70. The Judgment requires that I surrender all material used for the publication. In this age and time, there are no plates, film, blues, molds etc. which are used in the publication process used for this book. Everything is in electronic format and Counsel for named plaintiff has already received from me a copy on DVDs of all audio used and by email all texts of Farmans used in the Book including the final resulting file. There is nothing of substance that Counsel can get, except the opportunity to harass me and insist on getting names of people they can also harass. I ask the Court to protect me and others from our community from these harassments by issuing a Stay Order.
71. Furthermore, and more important, I am probably the only one who has gathered enough evidence that the congregation is being misled by Sachedina and others. It is because I have collected most of the original audio recordings to prove that they make substantial illegal and unauthorized changes to the Farmans they sent to the congregation worldwide, and by asking me to give up all such materials, he can make sure all such materials with which I can prove his wrongdoing is destroyed, or at least out of my hands.
72. Accordingly, ordering me to give up the only proof I have would also compromise me at the trial of the matter. Giving up the audio supporting the texts I have to prove these matters, will seriously compromise me.
73. Furthermore, Jiwa and I are the only ones who have taken the bold step of questioning Sachedina and his associates publicly about the illegal and unauthorized changes, and once the evidence is out of my hands I will lose my ability to prove them wrong, as and when it becomes necessary.
74. Although this litigation gives the appearance that the Imam is after me, I note that the Imam has publicly asked us, the followers, to seek *answerability, accountability and competence* of these leaders, which is what we have been doing to their chagrin, and thus the attempts by them to humiliate and destroy our credibility in the congregation.
75. Recently, after the Judgment was granted by Justice Harrington, but before the final Order, a message purporting to be from the Imam (another forged document) was read in four congregations [out of 35 countries], only where Jiwa and this Appellant reside, to publicly

humiliate and to incite the congregation and our families to put aggressive pressure and/or intimidate us.

76. I have an option of reporting the matter of forgery to the Paris Police, and I would need the evidence of the audio files to deliver to them as evidence, and making me give it all up would seriously compromise my ability to ensure that justice is done. I may also file a civil against Sachedina and some of his associates for damages done to us, and I would also require evidence to support my case.
77. Sachedina and his associates, and a few of the congregation, incited by the forged documents and announcements made to the congregation, are seeking to compel me and Jiwa to a disciplinary hearing under our Constitution to excommunicate us from the Ismaili faith, and only the audio files I have would exonerate us, and giving it up would be tantamount to religious suicide.
78. Sachedina and his few supporters are adamant to making a point in our community to make sure that no one ever challenges them as we have done, by harassing us and making us as an example so that no one dare stand up and take them to task for the forgeries committed.
79. Threats of harm, harassment, and even death threats against the defendants are on record. If a Stay Order is not granted, the Judgment pending Appeal will be considered by members of the Ismaili Community as fair and the threats against both defendants will continue even more forcefully than in the past. The judgment is putting at risk our physical security, and that of our family.
80. I went to attend a hearing in Ottawa in the presence of Judge Boivin on 13 October 2010 concerning the same lawsuit and 4 people [including a Mehboob Kamadia of Toronto whom I know and could identify easily] were in the Court room during the hearing. I saw Mehboob Kamadia give his business card to Counsel for Plaintiff, Mr Gray with the comments "we are on the side of the Plaintiff." When I left the Court, he followed me outside on Sparks Street with 3 other people, they pushed me, hurled insults at me for several minutes, stalking me, punched me in the back and also kicked my bag, they took pictures of me and one of these pictures immediately ended up in 2 websites that have been conducting assassination of character against me, my co-defendant, my family and my affiants. My mother's apartment, where I reside while on holiday in Canada, was also ransacked last year. Jiwa was also attacked by the same group in one of our prayer halls a few months ago for similar reasons.

81. Justice Harrington did not order the return of the sold books and Sachedina would like to get names and addresses of the people who received the books from us, and that is the purpose of the seeking of damages and discoveries.
82. Divulging any names of the people who now has the books would be detrimental to them as they would also be targeted and harassed and would breach their privacy and cause irreparable harm, particularly as the distributed books have not been ordered to be returned.
83. In light of the persecution my family and I now face in our congregation, taking away part of my access to individual religious practice is contrary to our own Constitution. As Ismailis, we read Farmans everyday and we are required to read them in congregation, in small gathering or individually be it a home or in the prayer places - a practice encouraged by the present Imam and by all Imams before him. Turning in all the contents of the Golden Edition as well as all originals in my personal collection deprives me of essential documents needed to practice my faith and infringes on my right to practice my faith.
84. The current Imam has constantly encouraged the sharing of Farmans. Per example, a typical Farman of the current Imam from the 1976 Ismailia Association version available in Ismailis' homes, in ITREBs and in Jamatkhanas says:

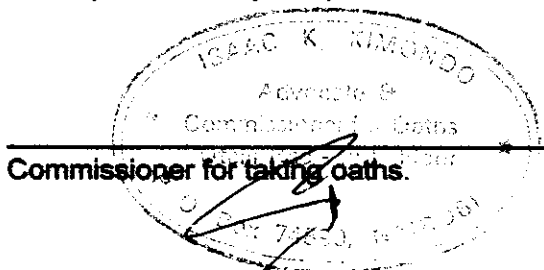
"My beloved spiritual children, Many of you here today have come from outside Kenya. I want you, when you return to your homes, in other parts of Kenya or outside Kenya, to convey the contents of My Farman to your families and to your Jamats. As I consider that the matters I have mentioned to you today, concerning the way you live and concerning the aim of our education for our children, are matters which apply just as much to our Kenyan Jamat as to any Jamat in any other part of the world. And I am including in this not only My spiritual children in the developing countries, but equally those who are living in the U.K., in other parts of Western Europe, in Canada, in the U.S.A. and elsewhere." Sunday, February 15, 1976 [emphasis added]

85. I filed evidence in support of my motions and to oppose the Respondent's motion that many other individuals from our congregation publish Farman books in various countries and in various languages, a tradition of service existing since centuries to record and disseminate Imam's Farmans verbatim in the community, yet Sachedina has only targeted us because we are publicly demanding accountability and answerability of them.

86. Jiwa and I are the only Ismailis in Canada and in the whole world penalized for doing what has been done for centuries in our community. This is shear harassment and discrimination. The judgment discriminates toward us because all other Ismailis can access, read, perform Farmans, but out of the whole Ismaili community only we are deprived of that right. This is a serious matter for our souls and our religious practices.
87. Nevertheless, I volunteer to assure the Court that I will not publish or reprint the contentious material pending the Appeal decision.
88. A Stay will not cause prejudice to Plaintiff, financial or otherwise. There is no urgency on the part of the Plaintiff to implement the injunction. Even though the lawsuit has been ongoing for a year, the named Plaintiff did not seek an interim injunction at anytime and simply waited for the motions to be heard even though he knew that sales and free distribution were being undertaken.
89. No harm has been done to the named Plaintiff by this publication. On the contrary, I have obeyed him. In His Farmans, the named Plaintiff encourages His followers to share and disseminate His Word within the community as has traditionally been done for Centuries. The previous Imam has even said that by distributing His Farman, we are helping in keeping them alive. According to Ismaili Constitution and belief, Farmans of previous Imams are valid up to the time the Farman has been specifically revoked by a subsequent Imam, not by any other person. This Farman is still valid for the community.
90. The question of any continuing harm to the Plaintiff does not even arise since at this point no books remain in my control to be distributed and since I will not be publishing more books before the Appeal is decided.
91. I am making this affidavit in support of my motion.

SWORN at the City of Nairobi

in Kenya, this 12 Day of April, 2011




) Nagib Tajdin

**Dockets: A59-11
A60-11**

FEDERAL COURT OF APPEAL

BETWEEN:

NAGIB TAJDIN

Appellant (Defendant)

and

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent (Plaintiff)

AFFIDAVIT OF NAGIB TAJDIN

sworn on April 12, 2011

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