

**FEDERAL COURT**

BETWEEN:

**HIS HIGHNESS PRINCE KARIM AGA KHAN**

Plaintiff

and

**NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials**

Defendants

**AFFIDAVIT OF NAGIB TAJDIN**

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

1. I am a self-represented defendant in this action.
2. I am swearing this affidavit in support of my motion to set aside the Direction/Order of Prothonotary Milszynski dated September 6, 2011, by which the Prothonotary directed and ordered a series of steps to be undertaken by the parties in the assessment of the profits that may have been earned by the defendants.
3. The CMC was conducted for about an hour during which Mr Gray started his representation, criticizing me without any evidence filed by him:
  - with unfounded allegations, spoiling the character of the defendants and declarations
  - he falsely declared that that defendants do not cooperate, all this without filing any evidence on the record.
4. After Mr Gray's portrayal of the Defendants as lousy people, the Referee just decided to ignore me and did not let me speak. Indeed, each time before I could even open my mouth, she was already shaking her head "no" and stopping me from speaking.

5. When I started by showing the book in question, she interrupted me and refused to see it, and after refusing to see the book for which the reference is conducted, she very sarcastically asked if I was going to seeking to deduct travel expenses for 15 years, without actually letting me explain the 15 years of work.
6. Mr Gray mentioned that he wanted unredacted documents. I did not get to explain why the hidden names are irrelevant, and why only the Referee should have access to the name of the printer or the people who have bought the book, and why Mr Gray should only have a copy without names. But the Referee instead of being impartial, ordered exactly what Mr Gray asked without consideration of privacy issues and of the fact that similar information has been misused by Mr Gray in the past, putting even people's life in danger.
7. When the issue of confidentiality came, Mr Gray represented that he would not share the information with anyone except the Aga Khan specifically. However few days later, when I reminded this point in writing to the Referee, Mr Gray exposed in writing to the referee that he would share with others. The referee did not put in her order what was agreed in front of her during the CMC, and instead filed the draft order just as Mr Gray had drafted it.
8. When I proposed in good faith, and for the sake of expediency, that since the Aga Khan was our Imam and we were major donors anyway it would be an honour for me to pay any amount to him and I went to the extent in front of the Referee to propose that Mr Gray ask any amount he wanted, and I shall pay the double, my honest proposal was subject to ridicule by both Mr Gray and the Referee, and Mr Gray insisted that he wanted to go through documents and accounting and more discoveries and more motions against third parties.
9. My family and myself, being major donors of the Aga Khan's Institutions, would have been honoured to gather a large offering payable directly to the Aga Khan, to end the reference in the most expedient manner.
10. After this CMC, Mr Gray wrote on August 29, 2011, to the Referee: "I pointed out that we would need to be free to discuss these documents and information with our client. This necessarily implied discussion with advisers and staff and Ismaili personnel that our client

has designated. We may also need to employ accounting expertise to assess the financial information." Gray added: "We may need to bring motions to receive documents from third parties." This further confirms that the reason for refusing to settle at double the amount that they may ask for damages is unrelated to the Reference but targets the harassment of all persons who may have been linked to the defendants: families, friends, business partners, suppliers.

11. The court had ordered costs of \$30,000 on consent. Because the money was going to the Aga Khan, we did not argue for a reduction or an assessment of costs, whatever was asked, we agreed upon. In any case my family and I are major donors to the Aga Khan's Institutions, to which we regularly contribute large amounts. The relation I have with The Aga Khan, my Imam, is not about money, it is about love and spiritual salvation. It is not about monetary issues. Whatever I have belongs to him without asking for it.
12. Since we were seeking a stay of the damages at one point, we also sought a stay of the costs. The court ordered that if we pay the amount into Court within 2 weeks, then the stay will be affected, otherwise, the stay will expire. Upon reflection, we decided that we would make the payment to the Aga Khan for the costs, with the stipulation that the money is not to be returned to us even if we win the appeal.
13. On May 27<sup>th</sup> 2011, Mr Maheeb Chatur, a concerned Ismaili living in UK, who is not associated to the Golden Edition in any way, and who has never met any of the Defendants, came forward on May 27<sup>th</sup> 2011, and sent a cheque for 19,000 pounds, (which is \$30,000 plus roughly \$300 currency conversion fee) to the Aga Khan as the named Plaintiff in this case. Mr Chatur acted out of a sense of brotherhood towards all Ismailis and devotion to the Aga Khan. He also asked that this amount not be returned to him in the event that the Appeal is won, and that it be used by the Aga Khan as he wishes.
14. I have been informed by Mr Chatur, and I believe it to be true, that:
  - a. To date, the cheque for costs has not been cashed;

- b. He has spoken to Mr Sachedina many times and that Mr Chatur is convinced that the Imam had not initiated this lawsuit or that the Imam supports it;
- c. Sachedina suggested him on one occasion that he should not have paid and could take the cheque back, but Mr Chatur declined, saying that paying the Aga Khan is not an issue and that he or we would gladly give to the Aga Khan, even if it was \$100,000; and
- d. Mr Sachedina told him that he knew that the Publication is a deficit project.
15. Knowing our Imam, knowing that this was a deficit project, knowing that the cheque is not cashed, I believe that His Highness does not want any costs or damages from us.
16. Ismailis have a long-standing tradition of voluntary anonymous service and donation, and I have done all my 10 Farman publication work over 2 decades as a voluntary deficit endeavor.
17. The Imam's words in Farmans are sacred to Ismailis, and all Ismailis have an obligation to study Farmans and live their lives by the Farmans, and since Farmans had been unavailable for me and other Ismailis to read and study for many decades, I spent decades traveling to collect, transcribe and proofread hundreds of unedited Farmans at my own expense in dozens of countries.
18. The Summary Motions Judgment has established that it is an uncontested fact that on August 15th 1992, the Aga Khan, specifically referring to the clearly marked "Volume 1" Farman book, said "Continue what you are doing, succeed in what you are doing, and then we will see what else we can do together". I am bound by the Words of my Imam. And upon this order to "continue", I devoted the next nearly 2 decades in continuing this work, publishing 10 Farman books all as deficit projects where one third of the books or more were given away for free. In fact, even Mr Jiwa has stated in his statement of defense at para 40 that I did not collect monies from him in 2005 and preferred for any funds collected to be donated to the Aga Khan.
19. Five thousand five hundred copies of the Golden Edition were printed and about one third were distributed for free as always, 193 more were gifted to the Aga Khan's ITREB

institution in Kenya well before the hearing of December 2010, about 302 were sold through Paypal for \$50 with a symbolic additional shipping cost, and the rest were sold in person for \$50 inclusive of the electronic MP3 audio device and inclusive of shipping cost. In some cases shipping cost a lot more than what was charged for the books and in some cases double shipping was paid - once shipping from Montreal to Kenya and then from Kenya to other places.

20. The statement of claim admitted at para 25 that the Golden Edition was sold for \$50: "The Defendants promote the Book for sale on their respective websites for \$50.00CAD a volume, to be purchased in multiples of four volumes. The MP3 is offered as a free gift with each book" On 29<sup>th</sup> January 2010, Mr Sachedina forwarded an email to me containing a conversation between the Golden Edition email address and a purchaser where the purchaser was quoted an all-inclusive price of \$50 per book.
21. Asking for further documentation of the price of the book sold constitutes harassment, specially as this undertaking was done as a non-commercial enterprise, and as such documents were never kept by me. Also asking for names of people who bought the book is now irrelevant because they already know the price at which the books were sold, and the Summary Judgment did not require the books to be returned. Asking for names of the persons who purchased the books is simply harassment.
22. From the price of the book and the size, it is apparent that this project, compilation of which has necessitated countless number of travels across the world and over 15 years of sustained work, is a highly deficit project.
23. For example, the Ismaili Constitution, which is a soft cover book of only about 40 pages, is sold by Ismaili institutions for \$20. On the other hand the Golden Edition is a hard-cover sewn-binding book with 1,500+ pages and many manually crafted details, which comes in a decorative box and with an electronic audio bookmark with 7 minutes of audio extracts and weighing 2.5 kg, and it is sold for a maximum of \$50 per set. It is reasonable to understand that this could never be a for-profit project. Furthermore, a large number of books (about a

- third) were given free to promote the words of the Aga Khan within the community.
24. Mohamed Manji is a printer himself (and our community's National Council President) and a person who is instructing counsel in this case along with Sachedina. Manji has publically commented that from his experience of being a printer for over thirty years, such a book (Golden Edition) could never be printed for \$50.00 and one cannot make a profit at all from selling the books for \$50.00 (including postage). Manji's company has been printing for many of our community publications and has faced criticism that compared to the price we sell our books for he charges too much to the community. That is why, I believe, he is causing the harassment of us and is seeking the name of the printer.
  25. The compilation of the Golden Edition has necessitated more then 52 trips in various remote countries, and my current estimate of the revenues and expenses for this publication puts the deficit somewhere between a loss of \$250,000 and \$466,000.
  26. The content of the Golden Edition book itself shows that dozens of travels in many countries were necessary to compile these Farmans. Mr Gray's Affiant Sachedina also has recognized that I have been accompanied sometimes during those trips (Cross-Examination of Sachedina pp.78-79: #328) by several people. Each Farmans are made in different places on different days, increasing work and cost of such project. The Imam has his own means of transport, jets and helicopters and can move very fast from places to places to make his Farmans. More then one person is needed to cover these events. For instance, half day by car is needed to go from Booni to Gharam Chasma. The Imam did a Farman in both place in an interval of an hour in December 2003 because he traveled by helicopter in the mountains. One single person can not cover both events.
  27. In the same manner, it is often not known in how many places the Imam will visit within a country or even if He will make a Farman. For example, I went to Abidjan during the Golden Jubilee year of the Imam's visit because I expected the Imam to see his community of Ivory Coast and make a Farman, but He did not do any Farmans during that trip nor did He have a formal meeting with his community.

28. Various Farmans compiled for the Golden Edition during these trips are prefaced by an introduction to the backdrop of the event, even sometime the temperature, anecdotes, the time the Imam started his Farman (exact minute, even seconds) how many people came, what gift was given, which religious recitation etc.
29. To suggest that accountants are needed to calculate profit for such deficit generating project is not reasonable. Even direct costs of printing, designing and producing the electronic module and shipping would overtake the sale price of \$50 per book, so even the number of books printed does not matter, because this is a reasonably deficit project.
30. I never contemplated profits in this project. I have given away free books in the same manner devoted Christians distribute the Word of the Lord out of their love and devotion for the Christ. Doing good deeds in our faith is not subject to keeping an accounting of the good deeds. Indeed, we believe that keeping accounting would wipe out the spiritual benefit of such deed, and I very much doubt any sensible person would not understand this concept.
31. Farmans are made on occasions called "Didar" where the Imam meets His Community ether in small group or as a whole. Since these Didars are only for Ismailis (except in Tajikistan and Syria), there is a face-to-face registration process carried out on computers by the Ismaili institutions, and entry cards are given to Ismailis coming from other countries. Records are kept including dates, names, passport numbers, and these institutions have therefore all the records necessary to identify and confirm that I have traveled and registered myself and attended Didars in dozens of places in order to compile the Farmans.
32. Mr Gray has asked for the number of trips as well as proof of travel, when Mr Gray knows that this evidence is in the Plaintiff's possession in the electronic records of the Didars collected and kept in the Aga Khan institutions. These demands constitute further harassment.
33. Many other costs were incurred in the creation of the Golden Edition, such as countless meetings, typing, proofreading, hardware, software, etc.. but collecting 15 years' worth of receipts is a gargantuan task without any benefit to parties except to harass the defendants.

Because the basic costs of the project (printing, travels, shipping) already exceeds the price at which the books were sold.

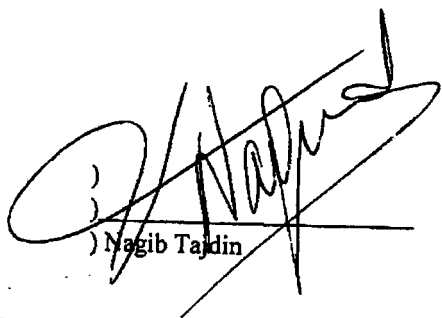
34. Any neutral estimate by a neutral party would immediately conclude that the expense of such project is higher than the price the book has been sold for. It is apparent to me that the demand for further documents for calculating profits is harassment.
35. I do not believe that the demand for cost and the reference are wanted by the Aga Khan. These are demands that have been pursued by the parties that are directing the Plaintiff's counsel, and not by the Aga Khan.
36. Justice Mainville found that there was no need to stay the Reference because the Referee would protect us from the "opponents", and Mr Sachedina is one of our opponents, as the record shows that most of the forged documents in this lawsuit do originate from him.
37. I believe that Mr Sachedina is instructing Mr Gray to harass me in this reference because:
  - a) When Mr Sachedina first approached me to stop the Golden Edition on new years' 2010, Sahedina admitted that he had not yet consulted the Aga Khan;
  - b) Well before the lawsuit, when I discovered the forgery and challenged Sachedina on that criminal act, he vowed to me forcefully that he will ruin me and my reputation in our "Jammat"(community) worldwide. His threat is believable because he has the means, the power, and the opportunity to do so;
  - c) Sachedina also admitted on cross-examination that he never verified his affidavit with the Imam. He also admitted that neither he nor Bhaloo were asked by the Aga Khan nor did they discuss the matter of their giving evidence in this litigation with the Aga Khan;
  - d) On 31<sup>st</sup> August 2011, Mr Gray sent an email about this lawsuit to Mr Abdulla Dharamsey, a self appointed "Founder and Honorary Chair of the Global Ismaili Muslim eForum, with over 32,500 worldwide email recipients" who widely circulated the email. Mr Gray wrote "*However if you would like me to ask His Highness or Shafik Sachedina if I have permission to*



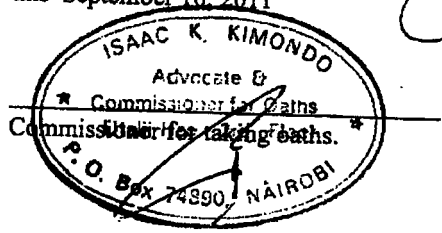
*speak freely to you, I would be happy to do so, or of course you are free to make this request yourself.*" This clearly shows that Mr Gray is receiving permissions and instructions from Mr Sachedina in regards to this lawsuit. Mr Dharamsey has circulated widely his correspondence with Mr Gray and though the Defendants are not in his list, both have received email copies of that correspondence.

38. Mr Gray often leaks information to the press. Mr Gray delivered an Affirmation to us as an attachment to an email whereby he threatened to "widely circulate it" if we do not immediately accept infringement in a settlement, and then leaked it the very day to the press - and this is completely against the character of the Aga Khan. I also note that this Affirmation was subsequently proved to be a forgery by an uncontradicted independent Forensic expert, Mr Graham. No expert, even not the one chosen by Mr Gray, has given a contradicting opinion. In fact during his Discovery, Mr Gray's own forensic expert complained that Mr Gray had not given him any documents signed by His Highness though he asked for it "repeatedly."
39. The forged letters and announcements have inflamed Ismailis and caused many death threats and marginalization of the defendants, as well as of any other persons who have been associated with us in the case.
40. As a result of the campaign against the Defendants, mass emails, defamatory web pages such as lawsuit2010.com, death threats and assaults are on record.
41. In fact, any names disclosed by the Defendants put the persons in security risk. Mr Alibhai received many threatening calls after he submitted his Affidavit in support to the Defendants, and Mr Chatur whose name came into the limelight for paying the Costs ordered by the Court, without even knowing the Defendants, has also been threatened. Furthermore, defamatory and highly inflammatory writings and death threats against Mr. Chatur have appeared on websites and circulated by emails.

SWORN at the City of Nairobi,  
in Kenya,  
this September 16, 2011



) Nagib Tajdin



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**FEDERAL COURT**

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**BETWEEN:**

**HIS HIGHNESS PRINCE KARIM AGA KHAN**

**Plaintiff**

**and**

**NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other  
persons or entities unknown to the plaintiff who are reproducing,  
publishing, promoting and/or authorizing the reproduction and promotion  
of the Infringing Materials**

**Defendants**

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**AFFIDAVIT OF NAGIB TAJDIN**

**sworn on September 16, 2011**

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