

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 one of the defendants 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 a businessman by profession. I am also a freelance photojournalist and author-editor. I have been residing in Kenya since 2006.
3. I am an Ismaili, a follower of the named plaintiff, His Highness Prince Karim Aga Khan (hereinafter the "Imam"). One of the most important traditions of the Ismaili faith is that all Ismailis give their oaths of allegiance to their Imam before they are accepted into the Ismaili faith, and in return, the Imam also reciprocates by giving His promise to protect and guide the Ismailis.
4. I, too, have given my oath of allegiance to my Imam. I have an immense love and respect for my Imam and will never disobey or in any way of form displease my Imam. Displeasing our Imam is one of the worst sins that can be committed by an Ismaili.
5. One of the essential requirements of Ismailis is to abide by their Imam's guidance

which is generally delivered by the Imams orally when they visit Jamats (congregation), and such guidance is known as Farmans. Occasionally, the Imam might send a brief written message to the Jamats or individual Ismailis, which is known as Talika.

6. A Farman made by an Imam remains valid until and unless a new Farman is made by that Imam, or His successor. The Imam's Farman made to any Jamat in any part of the world is binding immediately on all Ismailis wherever they may be living, unless the Imam restricts a Farman for a particular Jamat, or a particular segment of the Jamat, and when the Imam restricts a Farman, He indicates such a restriction when making that Farman.
7. In our home, my family and I all seek to abide by the Farmans made by our Imam. One difficulty I encountered was the lack of accessibility to the Farmans made by our Imam. Often when Farmans were made by the Imam in one area, such as Pakistan, the Farmans were never read to the Jamats residing in other areas, such as Canada, or Africa.
8. It has always been my desire to abide by my Imam's Farmans, and to do that I continued to seek from our local institutional leaders to provide me and also to make available Farmans made by the Imam. The answer given to me by the institutional leadership was that the Farmans were not available.
9. As a result of my inability of having access to the Imam's Farmans, I expanded my search to seek copies of the Farmans privately from various Ismaili leaders and friends, both local and of other places.
10. As I persistently sought for Farmans, I was able to obtain copies of Farmans, sometimes in print and sometimes audio recording of the Farmans, unofficially given to me mostly by various leaders across the world. I would then transcribe the Farmans from the audio tapes that were given to me and continue collecting Farmans for my family's and my use.

11. Many of my friends, neighbours, other Ismailis, and even the institutional leaders, who gave me copies of the audio tapes or their copies of Farmans, routinely sought copies of the Farmans from my library for their use. I freely gave away such copies to anyone who asked me for copies of the Farmans.
12. As my collection of Farmans grew, and as more and more people asked me for copies of Farmans for their family's use, I had all the Farmans checked multiple times for accuracy, against the audio whenever available, and I decided to distribute the Farmans in a book format primarily to ensure that the Farmans' dignity was maintained. I also prepared an index in order to simplify the search and access to specific subjects.
13. In July of 1992, our Imam informed us that He would be visiting us in August of that year. With the impending visit from our Imam, I published the first Farman book, with a red cover and titled, KALAM-E IMAM-E -ZAMAN - FARMANS TO THE WESTERN WORLD, Volume 1 (the "First Farman Book"). Attached hereto as Exhibit "A" is a copy of the cover page of the book.
14. It was my desire to seek Guidance from my Imam before distributing the Farman books, and as such, I did not let any other copy of the book circulate before obtaining Guidance from my Imam and had also decided to destroy the whole print, if the Imam either was unhappy with the print or did not wish me to distribute His Farmans.
15. I received the first batch of the First Farman Book on August 14, 1992, in Montreal, where I was then residing, and our Imam was scheduled to visit us in Montreal on August 15, 1992. Our institutional leaders had decided that only about 20% of the Jamats would be allowed to attend personally before the Imam during His visit to Canada, and that the Jamats who would be allowed to attend before the Imam would be chosen based on alphabetical listing of the Jamats. As my last name starts with "T", I was not, to my deep disappointment, chosen to attend before our Imam to present a Mehmani, which is a religious ceremony when the Murid

[Disciple] gets to present himself in the presence of the Imam with an offering usually a plate of dry fruits, and seeks the Imam's Blessings and Guidance, and the Imam accepts a Murid in his presence, and bestows Blessings and Guidance upon the Murid. This is a very auspicious occasion for any Ismaili to present himself or herself in the presence of the Imam.

16. Since I could not attend personally before the Imam, in the morning of August 15, 1992, I gave a copy of the First Farman Book to a very dear friend of mine, Karim Alibhay (hereinafter "Karim"), who was chosen to attend before the Imam, and I asked Karim to present the First Farman Book before the Imam and to seek, on my behalf, guidance from the Imam respecting the First Farman Book.
17. I was present in the hall on the day in question during the Mehmani ceremony and was very excited when I saw Karim attend before our Imam with his offering plate and the First Farman Book on top of the plate. I was watching the ceremony directly and also on the large closed circuit television, which I know was recorded by the audio visual members. The recording of Karim attending before our Imam with the First Farman Book must be with the Quebec Regional Council or with the Aga Khan National Council for Canada. I saw the Imam bless Karim's food-offering. Thereafter, I saw Karim ask some question and the Imam placing His hand on the First Farman Book, and I saw the Imam speaking with Karim.
18. After the Mehmani was over, Karim informed me that he had asked the Imam how else we can serve Him, and Karim informed me of the Blessings and Guidance given by our Imam, to continue the work that I had embarked upon, and that He blessed for the work to succeed, and the Imam said that later on, after the projects were completed, some work would be undertaken together with the Imam and at that time we should go back to him for further guidance. I was overjoyed at the blessings received from our Imam.
19. Thereafter, I started distributing the First Farman Book. I also distributed later the following Farmans made by our Imam on or around the following dates:

- a. Kalam-e Imam-e -Zaman, Volume 2, printed with a green cover on December 13, 1993, which contained Farmans to Asia and Middle East;
 - b. Precious Guidance, Volume 1, Volume 3, March 21, 1994;
 - c. Kalam-e Imam-e -Zaman, Volume 3, printed with a blue cover on December 13, 1994, which contained Farmans to Africa; and
 - d. Precious Guidance _ Vol. 2, 3, and 4, on March 21, 1998.
20. In addition to the above, I also published Khangi Farmans transcribed from Khojki script to Gujrati Script, and Bahere Rahemat which was also transcribed from Khojki script to Gujrati Script. Both books contained Farmans made by our 48th Imam, Sir Sultan Mahomed Shah Aga Khan (hereinafter "Sultan Mahomed Shah"). To date, I have published a total of 10 Farman books. Attached hereto as Exhibit "B" is a copy of the cover pages of various books published and distributed by me.
21. Finally, on December 13, 2009, I published a white color hardcover book, Kalam-e Imam-e-Zaman - Golden Edition [1957-2009] (hereinafter the "Golden Edition"), which contains all Farmans published in the previous books (except the Farmans set out in paragraph 20 above), published under the same series as above, but the content has been updated to 2009. Attached hereto as Exhibit "C" is a copy of the cover page of this book.
22. From 1992 to the date of the publication of the Golden Edition, I was distributing the Farman books openly to Ismailis. I have never been asked by the Imam to stop the distribution of the Farman books.
23. On November 15, 1998, I gave a full copy of all of the transcribed Farmans made after the first three books and the draft of Volume 4 to the Head of the Secretariat at Aiglemont, Dr. Shafik Sachedina (hereinafter "Shafik"), as a joint project and to enable him to publish and distribute the Farmans, as I felt that it would have wider distribution through the institutions. Shafik said that he had a meeting next month on December 8, 1998, with the Imam, when he would seek the Imam's guidance.

On November 15, 1998, I also gave Shafik a set of five coins from the Fatimid period [a thousand years old] and asked him to give same to the Imam as a gift.

24. On January 2, 1999, Shafik called me at my home in Montreal to wish me happy New Year, and to tell me he had given the gift to the Imam. He also told me then that the Imam had approved to publishing the Farman book as per our prior discussion, and further stated that the only issue outstanding was whether to place the Imam's crest on the front cover or not. Shafik also told me then that the Imam had asked that the book's cover be white.
25. In the end of year 2000, I met Shafik and the then President of the Aga Khan National Council for Canada Aziz Bhaloo (hereinafter "Bhaloo") at the Dorval Hilton, in Montreal, for a breakfast meeting. Our discussion was concerning the publication of the Farman book as previously discussed, except that Shafik stated to me that they wanted to edit the Farmans before publishing the Farman book. I disagreed with Shafik and insisted that transcription of the Farmans should be in accordance with the Farmans actually made by the Imam without any editing.
26. Shafik's response to me was that since the Imam was "thinking in French and speaking in English" they had to "edit" his Farmans. I strongly disagreed with Shafik on this matter. I then asked him why the Farman made by the Imam for his 40th year of Enthronization was not available to the Jamat, or even read to the Jamats. In response, Shafik told me he had asked the Imam to edit the transcript of that Farman and that the Imam responded by saying, "I don't have time for this nonsense". Shafik also informed me that Bhaloo witnessed this conversation he had with the Imam, and Bhaloo also confirmed to me that he was present and heard the Imam's response when they met the Imam at the Ismaili Centre in London. Importantly, although the Imam had said that He did not have time to edit His Farmans, He did not give Shafik (or anyone else) permission to edit that Farman, and the Farman of the 40th year of Enthronization has never been read to the Jamats.

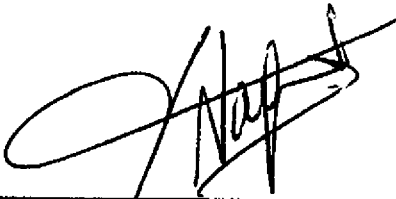
27. In or about February of 2001, I had yet another discussion with Shafik in London at yet another breakfast meeting at the Grosvenor Hotel to summarize to him two days of meetings I had with various staffs at the Institute of Ismaili Studies (hereinafter the "IIS"), and while he approved my suggestions concerning the IIS website and the way the Khojki Ismaili manuscripts should be catalogued, he concluded the meeting saying "the only issue where we differ is the editing of the Farmans".
28. Instead of printing Volume 4 of Kalam-e Imam-e-Zaman Farmans as agreed in 1998, Shafik simply dragged his feet. It became apparent to me that Shafik did not want to publish the Farmans because of the issue of editing the Farmans. I, therefore, decided to continue the project as per the Guidance given in 1992 by the Imam. Shafik has never informed me that the Imam had approved the editing of the Farmans.
29. I have published the Golden Edition, which is an updated version of the previous Farman books, with an updated index, and I commenced distributing it on December 13, 2009, the birthday of the Imam.
30. On January 1, 2010, Shafik sent me email asking to call him. When I spoke with him, he said that he wanted to print the Farmans himself and asked why I printed the Golden Edition. He confirmed that he had not yet seen the book, but believed that book would be well done since it comes from me. His main argument which he repeated was that he was going to publish it himself therefore I should not have published it.
31. My response to Shafik was that it had been over 10 years since I gave him the transcripts of the Farmans for publishing, and he had not confirmed to me that he would publish it without editing the Farmans. Shafik insisted that I withdraw the Golden Edition from distribution, and when I remained steadfast that I would not withdraw the book from distribution, he became very angry at me for refusing to abide by his "order".
32. I continued getting calls from Shafik between January 2nd and January 24th. As

he was insistently asking that I withdraw the book from distribution, I told him I had already sent a report to the Imam. He demanded that I sent him a copy of my letter, by email, telling me there was no trace of my letter at the Secretariat. He demanded to know how and when I had sent the letter to the Imam and the content of it. I said that the letter was sent in a sealed envelope as per Imam's Farmans through the Aga Khan Council in Nairobi on January 4, 2010.

33. On January 16, 2010, I believe it was Shafik who sent an announcement through the Ismaili Leaders International Forum (hereinafter "LIF") to all the Jamatkhans worldwide to tell the Jamats that the Golden Edition was not "authorized" and to discourage the Jamats to purchase it. Notably, the announcement of January 16, 2010, did not indicate that the Imam had said that the Golden Edition was not to be distributed. Attached hereto as Exhibit "D" is a copy of the announcement.
34. Accordingly, I have never been told by the Imam to cease publishing or distributing the Farman books, and I had been openly publishing and distributing these books from 1992 to December of 2009, at the full knowledge of the Ismaili leadership.
35. As noted above, the Imam told us to "continue this work" on August 15, 1992, and to date He has not revoked His authorization and direction given by Him personally on August 15, 1992.
36. None of the above noted Farman books are sold on the web, and none of the Farman books are sold to non-Ismailis. All sales are personally done to ensure the identity of the people purchasing the books. There has never been any profit or intent to make profit in these publications.
37. With the publication of the Golden Edition, I considered my project of publishing Farmans which I had embarked upon in 1992 completed. Therefore, on January 4, 2010, in my report to the Imam, I asked His guidance for next projects because of the instructions received in 1992. I also offered as an anonymous gift from the heart (called Umedwari) one copy of the Golden Edition to be distributed free (paid by me) to each of the estimated 2,000 Jamatkhans in the world.

38. I strongly believe that this lawsuit is detrimental to the reputation of our community, that of the Imam, as well as of the Defendants, and that the earliest the matter is resolved the better for all parties involved.
39. I am making this affidavit in support of my motion to dismiss this action.

SWORN at the*NAIROBI*.....
in the ...*KENYA*.....
this *7th* day of May, 2010

)
)
) 

) Nagib Tajdin

