



**United Democratic Alliance (UDA) v Sports Kenya (Civil Case
E137 of 2022) [2022] KEHC 12668 (KLR) (Civ) (4 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12668 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E137 OF 2022

JK SERGON, J

AUGUST 4, 2022

BETWEEN

UNITED DEMOCRATIC ALLIANCE (UDA) PLAINTIFF

AND

SPORTS KENYA RESPONDENT

RULING

1. The subject matter of this ruling is the motion dated 1st August, 2022 taken out by the United Democratic Alliance (UDA), the plaintiff herein in which it sought for the following orders:
 - i. That this application be certified urgent and be heard *ex-parte* in the first instance.
 - ii. That pending inter partes hearing and determination of this application an order does issue suspending the implementation by the defendant/respondent by itself, its employees, servants, agents, successors, assignees or any one acting or claiming through or under the defendant/respondent of the decision contained in the letter dated 20th July, 2022 withdrawing the availability of the suit premises to the applicant on 6th August, 2022.
 - iii. That upon inter-hearing of this application a mandatory injunction does issue compelling the defendant/respondent by itself, its employees, servants, agents, successors, assignees or any one acting or claiming through or under the defendant/respondent to allow the applicant use of the Suit Premises on the 6th August, 2022 as per the contract of hire.
 - iv. That the Officer Commanding Police Division, Langata be directed to ensure compliance of the orders made herein.
 - v. That the costs of this application be provided for.



2. The plaintiff filed in support the affidavit sworn by Veronica Maina, the plaintiff's Secretary General.
3. When served with the aforesaid motion, Sports Kenya, the defendant herein, filed the replying affidavit sworn by Gabriel Kamora, the defendant's Deputy Director, Technical services to oppose the application.
4. I have considered the grounds stated on the face of the motion plus the facts deponed in the rival affidavits. I have further considered the oral submissions made by learned counsels.
5. Mr. Victor Kariuki, learned advocate appeared for the plaintiff. It is the submission of the plaintiff/applicant that by a letter dated 7th June, 2022 the plaintiff made a request for reservation of the Nyayo National Stadium to hold a political rally on 6th August, 2022 and that by a contract of Hire dated 12th July, 2022 the defendant/respondent agreed to hire out the aforesaid facility to the plaintiff/applicant for purposes of holding the rally ahead of the General Elections scheduled for 9th August, 2022.
6. The plaintiff/applicant averred that upon to executing the Contract of Hire, it proceeded to pay the requisite fees of kshs.1,508,000/= . It is said that on July 20, 2022 the defendant/ respondent wrote to the plaintiff/applicant purporting to withdraw the availability of the suit premises together with Moi International Sports Centre – Kasarani on the pretext that there are undisclosed peace concerts scheduled to take place between 5th August 2022 and 7th August 2022.
7. The plaintiff further stated that upon execution of the Contract of Hire, it contacted a third party an event services provider namely: Events & Promotions Ltd for logistical planning of the rally on the 6th day of August 2022 at an estimated cost of ksh.21,103,300/=. It is the submission of the plaintiff/applicant that it is a major contender for the 2022 General Elections scheduled for 9th August 2022.
8. It is also the submission of the plaintiff that the defendant's actions and or omissions will cause irreparable damage which cannot be compensated in monetary terms in that general elections take place once after every 5 years with different political actors and or formations. It is also stated that the irregular withdrawal of the intended use of the suit premises is marred by in malice, political interference and is ill-motivated.
9. The defendant on its part urged this court to dismiss the plaintiff's motion stating that it is mandated under Section 5(f) of the *Sports Act* to regulate the provision of services and use of facilities of sports in Kenya. This court was urged not to entertain the dispute since the defendant merely exercised the public authority of a public body.
10. The defendant further stated that the application does not meet the principles necessary for granting an order of injunction. It is also pointed out that the orders sought in the instant application will essentially determine the whole suit at an interlocutory stage which is not permissible in law.
11. The defendant admits that it received a letter of reservation from Homeboyz Entertainment PLC indicating that it had been commissioned by the Government of Kenya to hold a series of peace concerts between the 5th August and to 7th August ,2022 and that it proceeded to confirm to Homeboyz that the two venues namely Nyayo National Stadium and Moi International Sports Centre- Kasarani were available for them.
12. The defendant stated that it then proceeded to inform the plaintiff of its decision which is to the effect that the facility was not available on 6th August, 2022. The defendant stated that under the conditions for Hire of Sports Kenya Facilities, the defendant's right of admission is reserved.



13. A party, and particularly a public body like the defendant herein cannot be allowed to act in the manner it did. Basically the defendant attempted to blatantly breach the contract of hire it entered with the plaintiff without giving any reasons to justify its action.
14. The defendant's conduct in this matter manifest malice and ill motive on its part. I am convinced that the plaintiff has established a *prima facie* case with high chances of success. It has been argued that if the order of mandatory injunction is granted, the whole suit will have been concluded at an interlocutory stage. A cursory look at the plaint will reveal that the plaintiff also seeks for indemnity from the defendant. It is therefore not true that the suit will conclude upon issuance of the orders sought. The question as to whether or not an order of indemnity should be issued will obviously require a hearing.
15. It is also apparent from the pleadings and the submissions that the defendant reserved Nyayo National Stadium for the plaintiff to use to hold its political rally on 6th August, 2022 after the plaintiff complied with all the requirements. The venue was therefore not available for any other party to use on that particular day since it had been reserved for the plaintiff to hold its rally. The defendant could not therefore purport to reserve it for any other party since it was already committed and paid for.
16. The plaintiff has expressly stated that it had planned to hold its political rally on 6th August 2022 and had even contracted an events organizer to plan for the event. If the order sought is not granted I shudder to say that the plaintiff will suffer irreparable damage which cannot be quantified in monetary terms.
17. In the end, I find the plaintiff's motion dated 1st August, 2022 to be meritorious. It is allowed thus giving rise to issuance of the following orders:
 - i. A mandatory order of injunction is granted compelling Sports Kenya, the defendant herein, by itself, its employees, servants, agents, successors, assignees or any one acting or claiming through or under the defendant to allow the United Democratic Alliance(UDA), the plaintiff herein to use the Nyayo National Stadium on 6th August, 2022 as per the contract of Hire executed on 12th July, 2022.
 - ii. The Officer Commanding Police Division, Lang'ata is directed to ensure compliance of the orders made in (i) above.
 - iii. Costs of the motion to abide the outcome of this suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 4TH DAY OF AUGUST, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Respondent

