



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
JUDICIAL REVIEW DIVISION
MISC. CIVIL APPLICATION NO. E2 OF 2020
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW ORDERS OF CERTIORARI
AND
IN THE MATTER OF ARTICLE 47 AND 165 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT
AND
IN THE MATTER OF NYANZA CLUB

REPUBLIC.....APPLICANT

VERSUS-

THE CHAIRMAN, SECRETARY AND TREASURER OF NYANZA CLUB

(SUED AS THE OFFICIALS OF THE MANAGEMENT COMMITTEE).....RESPONDENT

EXPARTE APPLICANT.....SULTAN ALI KHAN

RULING

By a Chamber Summons dated 13th October 2020, the Applicant, **SULTAN ALI KHAN**, sought leave to apply for an order of Certiorari, with a view to quashing the decision which the Management Committee of the Nyanza Club made on 8th October 2020.

1. He indicated that the impugned decision had suspended him from accessing the Golf Section of Nyanza Club, as well as all other Golf Clubs that have reciprocating privileges with the Nyanza Club.
2. Secondly, the Applicant sought an order that the grant of leave herein should operate as a stay of the Respondent's decision dated 8th October 2020, until the Court determined the substantive application for Judicial Review.
3. On the same date, (13th October 2020), the Court granted leave to the Applicant to lodge the substantive application for Judicial Review. However, the court did not make a determination on the question as to whether or not the leave that had been granted ought to operate as an order for stay of the impugned decision.
4. In my considered opinion, the court needed to give a hearing to both parties before making an appropriate determination.

5. On 22nd October 2020, the Court encouraged the parties to explore the possibility of resolving the issue amicably.
6. The Court suggested that the Respondent could formulate reasonable conditions which the Applicant had to comply with, as a pre-condition for being allowed to continue using the Golf-course pending the determination of the substantive cause.
7. However, the Respondent said that it could not come up with conditions to be imposed upon the Applicant, to enable the temporary lifting of the Applicant's suspension.
8. On the other hand, the Applicant said that at this stage, the only decision that had been made was that which was handed down by the Golf Committee.
9. The Applicant explained that the Golf Committee had only made a proposal for the suspension of the Applicant.
10. According to the Applicant, it was only the Management Committee which could make a decision on whether or not to suspend him.
11. His understanding was that the Golf Committee lacked jurisdiction to suspend him.
12. But the Respondent said that a decision to suspend the Applicant for a period of six (6) months had, not only been made, but was already being implemented.
13. The court was invited to find that because the decision had already been implemented, the same cannot be stayed.
14. Pausing there, for the moment, I wish to state that the Court has the requisite jurisdiction and mandate to stay the further implementation of the Applicant's suspension. I so hold because when the implementation of a decision had not yet been concluded, through the lapse of time when suspension was to be in force, the court had legal authority to stay the further implementation of the said suspension.
15. In this case, I caution myself about the fact that the case before me is at its early stages. Issues of fact have not yet been determined.
16. However, a perusal of the documents filed in court suggests that before the Respondent made the decision which gave rise to this case, the Respondent invited the Applicant to attend a meeting.
17. It does appear that the Applicant felt that he was unlikely to be accorded fairness, because one of the persons who were to handle the issue, had previously hurled verbal abuses at him.
18. By his letter dated 6th October 2020, the Applicant said the following, to the Secretary of Nyanza Club, Golf Section;

“It is my position, that you are not in a position to summon me to show cause for the reason that I had lodged a complaint against you with the police at Central Police Station following the verbal abuse you made towards me and I see no reason why I should appear before a Committee to which you are a party to and which seeks to judge me, as there is no way you can be a judge, prosecutor and a juror at the same time.”
19. It is the Applicant who provided this court with that letter.
20. On a prima facie basis, I find that the Applicant had been invited to attend before the Golf Section Committee, to answer to allegations of Gross Misconduct and Indiscipline.
21. In answer to the “Show Cause” letter dated 30th September 2020, the Applicant decided that he would not appear before the Golf Section Committee.
22. Considering that the Applicant had been notified that in the event that he chose not to appear before the Committee, as he had requested to do, the Committee would proceed to make a determination, it does appear that the Applicant had made a conscious decision to allow the Committee make its determination without his input.
23. In my considered opinion, if this court were to lift the suspension when the dispute was still pending, the practical effect would be to impose the Applicant upon the Respondent, when the Applicant appears to have little or no regard for the Committee which had the requisite mandate to determine issues between Club Members and the Club.
24. I therefore reject the Applicant's prayer, to have the leave granted to him, operate as a stay of his suspension.
25. However, I am fully alive to the need to speedily determine the substantive application, because otherwise the whole issue may be overtaken by events. The court will therefore strive to have the substantive application heard and determined without any undue delay.

DATED, SIGNED and DELIVERED at KISUMU This 19th day of November 2020.

FRED A. OCHIENG

JUDGE