REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CONSTITUTION PETITION NO. 16 OF 2018

IN THE MATTER OF THE RIGHT TO FAIR HEARING UNDER

ARTICLE 90 FAIR HEARING UNDER ARTICLE 50 OF THE CONSTITUTION

BETWEEN

JOHN GITHUI.....PETITIONER

VERSUS

THE TRUSTEES, NAKURU GOLF CLUB.....RESPONDENT

JUDGMENT

1. The Petitioner is an advocate of the High Court of Kenya who habitually practices in this Court and other Courts in Nakuru County and elsewhere in the Republic. He runs a law firm in the name and style of Githui & Co. Advocates.

2. The Petitioner is a member of Nakuru Gold Club, a society within the meaning of the Societies Act ("Club"). The Petitioner joined the Club in 2011 and has been a member in good standing since then. The Respondents are sued on behalf of the Club.

3. As part of his practice of law, the Petitioner says he accepted a legal brief from one Ann Njeri Kamau ("Client"). This was in July, 2018. The Client's complaint was typical: she was aggrieved by what she thought was invasion of her private land. However, her adversary was anything but typical in context: the Respondent was the alleged trespasser to the Client's land.

4. The Petitioner's law firm took up the matter on behalf of the client. After the routine exchange of demand letter and threats to sue, the Petitioner's law firm went ahead and filed suit against the Respondent. The suit is intituled, ***Nakuru Chief Magistrate's Civil Case No. 170 of 2018: Anne Njeri Kamau v Nakuru Golf Club***. It is a suit sounding in trespass. It seeks a permanent injunction restraining the Respondent and its agents or servants from interfering with the Client's quiet possession of all that parcel known as Nakuru Municipality Block 20/283. The suit also seeks eviction of the Respondent from the suit property.

5. It is fair to say that the Respondent was not amused by the Petitioner's decision to represent the Client against it. It responded with a letter dated 03/08/2018 signed by its Honorary Secretary. Its reference by-line betrays its full intention: "Notice to Show Cause Why You Should not be Suspended or Expelled From Membership of the Club for Acting Against the Club's Interests."

6. In short, the letter states that the Club Committee considers the Petitioner's decision to represent the Client "a serious conflict of interests since as a member, [he] should not act against the best interests of the Club and especially so in a case in which has the potential of making the Club lose a piece of its land to the great detriment of the Club."

7. The Petitioner responded to the Notice to Show Cause vide his letter dated 07/08/2018. The Respondent's response and decision came vide its letter dated 15/08/2018. The reasoning and verdict was pithy:

> *The Club Committee considers your continued acting as an advocate in a case filed by your client against the Club as a serious conflict of interests.*
>
> *Indeed, as aforestated, the Club's property (land) is at stake therein thus cannot risk having you as a member, playing in the same course that you are behind the Club's back, fighting to be taken from the Club by your Client.*
>
> *Your membership is thus hereby suspended from the date hereof. You are not allowed any access within the Club precincts until*

your suspension is lifted, and the Club Staff are duly instructed.

8. The Petitioner is aggrieved by this decision by the Respondent. He has brought the present Petition. It seeks the following prayers:

a. A declaration that the proceedings and verdict by the respondents management committee of suspending the petitioner indefinitely is null and void for total want of jurisdiction.

b. A declaration that the issuance of a notice to show cause to the respondent on account of his acting for an adversary in Civil Suit Number CMCC 170 of 2018 Ann Njeri Kamau Vs Nakuru Golf Club and the eventual indefinite suspension/expulsion of the petitioner is an infringement of his constitutional right and freedom of association.

c. A declaration that the verdict of the petitioner of indefinitely suspending the petitioner for acting in CMCC 170 of 2018 Ann Njeri Kamau Vs Nakuru Golf Club from the Nakuru Golf Club constitutes a limitation of the Petitioner's freedom of association that is unreasonable and unjustified in an open and democratic society.

d. A declaration that the commencement of proceedings against the petitioner for infraction of a rule or bye law which was not defined in advance and whose sanction was not prescribed in advance is unreasonable and unjustified and in breach of the Fair Administrative Action Act.

e. A declaration that failure of the respondent to give a reasoned decision for its finding and the manner in which the proceedings were conducted is an infringement of the petitioners right to a fair hearing and fair administrative action.

f. An order of judicial review in the nature of certiorari to quash the letter issued by the respondent and dated 15th August, 2018 indefinitely suspending the petitioner as a member of the Nakuru Golf Club.

g. A specific order to the management committee of the respondent to ensure that the petitioner is provided with access to the club house, amenities, and services to enjoy his right and freedom of association at the Nakuru Golf Club.

h. Damages/compensation for breach of fundamental rights and freedom of association under Article 22 of the Constitution.

9. The Petition is opposed by the Respondent. Through its lawyers the Respondent filed a Reply to Petition and a Notice of Preliminary Objection.

10. The Court directed the parties to file written submissions. On the date set for oral highlighting, both parties indicated that they relied wholly on their written submissions.

11. After duly analyzing the pleadings of the parties and their written submissions, the controversy herein raises six questions for determination – three incidental on jurisdiction of the Court – and three of substantive nature should the suit survive the jurisdictional hurdles. The issues are as follows:

a. Is there fatal misjoinder in the Petition?

b. Is the Petition Procedurally Infirm for violating Order 53 Rule 1 of the Civil Procedure Rules?

c. Is the Petition premature for failure to exhaust local remedies?

d. Did the Respondent violate the Due Process Rights of the Petitioner?

e. Did the Respondent Breach the Petitioner's freedom of association?

f. What reliefs, if any, are appropriate?

12. The issues raised are neither complex nor convoluted and the factual predicate of the controversy is undisputed. The resolution, of the controversy is, therefore, straightforward. I will do so in seriatim.

Is there fatal misjoinder in the Petition?

13. The Respondent submits that the appropriate party to have sued in this Petition is the Nakuru Golf Club Management Committee and not the Respondent. This is because, the Respondent argue, the decision complained against was taken by the Management Committee and not the Trustees.

14. The Petitioner submits that a suit can only be maintained in law by a party who has a defined juridical character. Juridical character of a body exists, argues the Petitioner, in respect of natural persons or incorporated entities. In respect of incorporated entities, reference ought to be made to the articles establishing the bodies. In the present case the memorandum and articles establishing the respondent is the point of reference.

15. Under paragraph 20 of the Memorandum and Articles of Association of the Club, the property of the club shall be held by the Trustees

who hold office for life or until replaced. The Petitioner argues that he been pleaded at paragraph 4 of the Petition that the Respondent is a society within the meaning of the Societies Act and its own Memorandum of Association. On the other hand, the Respondent in its Answer to Petition has admitted that description.

16. As the Petitioner argues, under the Societies Act, suits against a society ought to be filed against the Trustees. The Petitioner is right that the Management Committee has no legal character and it can neither sue or be sued in its name. It therefore appears plainly obvious that the Respondent was the correct party to sue in the circumstances.

17. In any event, as the Petitioners argue, the issue of misjoinder in this context would be a picayune technicality incapable of disposing an entire suit. As the Court stated in ***Rose Wangui Mambo & 2 Others V Limuru Country Club & 17 Others [2014] E-Klr*:**

> *It is also worth mentioning that according to the Rules, a Petition cannot be defeated by reason of the misjoinder or non-joinder of parties. The Court in such an instance is mandated to deal with the matter in dispute according to Rule 5(b) of the Rules, while Rule 5(d) allows the Court at any stage of the proceedings, (either upon or without the application of either party) to order that the name of any party improperly joined be struck out and that the name of any person who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court adjudicate upon and settle the matter be added.*

Is the Petition Procedurally Infirm for violating Order 53 Rule 1 of the Civil Procedure Rules?

18. The Respondent is aggrieved that the Petitioner did not first obtain leave of the Court before bringing the substantive suit herein. Their argument is that Order 53, Rule 1 is couched in mandatory terms that an application for Judicial Review can only be filed after a Court has granted leave for it to be brought. The Respondent cites ***R v County Council of Kwale & Another Ex Parte Kondo & 57 Others*** for the proposition that a Judicial Review suit filed without first obtaining leave of the Court is fatally defective and must be struck out.

19. The Petitioner responds that Article 23 of the Constitution provides that in exercise of its powers under Article 22 of the Constitution, the Court can grant orders in the nature of judicial review. He points out that jurisdiction to grant orders of judicial review under Article 23 of the Constitution is a matter quite apart from jurisdiction to grant orders of orders of judicial review under the Law Reform Act and the Civil Procedure Rules: Under the Law Reform Act and the Civil Procedure Act, jurisdiction to grant orders in the nature of judicial review is statutory. That power is similar to the power granted to the High Court of Justice in England. Essentially, the power is meant to call a public body to account either by compelling it to perform its function or to challenge its decision. On the other hand, the Petitioner argues, jurisdiction to grant order of judicial review under the Constitution is a recent development and it is independent of the statutory and common law strictures.

20. In ***R v Kiambu County Executive & 3 Others ex parte James Gacheru Kariuki (Kiambu Judicial Review No. 4 of 2016)***, I had the following to say about the relationship between suits expressed to be brought under Order 53 of the Civil Procedure Rules and those expressed to be brought under Articles 23 and 47 of the Constitution as read together with FAAA:

> *I wish to begin my analysis here. Our Constitution of 2010 took a decidedly anti-formalist turn. Whereas our previous jurisprudence might have been enamoured of arcane formalist logic on process before one could be permitted to perfect a substantive claim, our 2010 Constitution self-consciously rejects such an approach to adjudicating substantive claims especially those involving public interest. In the case of judicial review, the Constitution of 2010 introduced two new important provisions.*
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> *First, in Article 47, the Constitution expressly constitutionalizes administrative justice as a right and removes it from the clutches of Common Law. Indeed, the FAAA is the legislation required to implement Article 47 of the Constitution.*
>
> *Second, in Article 23, the Constitution, in spelling out the authority of the High Court to uphold and enforce the Bill of Rights, expressly permits the Court to grant any appropriate relief including an order for judicial review (Article 23(3)(f).*
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> *My reading of these two provisions is that they have the functional effect of blitzing the bifurcation between challenges to the exercise of public power using the traditional mechanism of judicial review rooted in the common law (and, in Kenya, the Kenya Law Reform Act) and those based expressly on the Constitution. In a straightforward petition to enforce the Bill of Rights under Article 23 of the Constitution, the High Court can issue an order for Judicial Review. Conversely, one can found a substantive suit challenging the exercise of administrative power under Article 47 of the Constitution or the FAAA which is the statute enacted to perfect that Article*.

21. In ***James Kariuki Gacheru & 22 Others v the County Assembly of Kiambu & 3 Others***, I resolved the issue in the following words:

> *Section 9 of the Kenya Law Reform Act and Order 53 of the Civil Procedure Rules were introduced into our law to give the High Court special jurisdiction to issue the writs of certiorari, mandamus and prohibition. Prior to that, the High Court did not have any such jurisdiction. However, in the Constitution of Kenya, 2010, the jurisdiction of the High Court to review the administrative actions of public (and private) bodies is now expressly provided for in Article 47 of the Constitution as read together with Article 23 of the Constitution. Parliament has, further, enacted the FAAA to give effect to Article 47 of the Constitution. In other words, it is no longer necessary to rely on the Law Reform Act as the law that clothes the High Court with jurisdiction to review administrative decisions and actions by public bodies: the Constitution bequeaths that jurisdiction to the High Court directly by constitutionalizing the right to Fair Administrative Action.*
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> *It is important to recall that the right to fair administrative action is a fundamental right included in the Bill of Rights of the Constitution.…..*
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> *It follows, then, that when a person is aggrieved by an administrative decision, that person's fundamental right as defined in Article*

47 of the Constitution is potentially violated and that such a person may choose to bring a suit for enforcement of her fundamental rights under Article 23 of the Constitution. Parliament, in giving effect to Article 47 of the Constitution has now enacted the FAAA which provides an avenue for bringing such a suit by an aggrieved party. That avenue is provided for in Section 9 of FAAA. Notably, the avenue provided by Parliament does not compel parties to use the straitjacket of Order 53 of the Civil Procedure Rules to access the High Court.

22. My views are still the same: it is perfectly in order for a party to challenge an administrative decision it considers unfair or oppressive by bringing a direct suit or Petition before the Court without relying on Order 53 of the Civil Procedure Rules. As such, it was not necessary for the Petitioner to obtain the leave of the Court before commencing the suit.

Is the Petition premature for failure to exhaust local remedies?

23. The Respondent argues that it was incumbent upon the Petitioner to first exhaust local remedies before approaching this Court. The Petitioner says that the Petitioner has not demonstrated that they pursued local remedies before coming to Court.

24. The Petitioner has responded that there was no appellate procedure and platform to pursue in the first place. What happened here, the Petitioner argues, is that the Management Committee issued a letter to show cause; the Petitioner and responded to the letter; and the Committee issued its verdict. The Petitioner submits that there was no other local mechanism to exhaust. In any event, the Petitioner argues that the exhaustion argument would only have arisen if the Respondent had jurisdiction in the first instance to suspend the Petitioner but that under Article 17 of the Respondent's articles, the Respondent did not have any such jurisdiction.

25. There is no doubt that the doctrine of exhaustion of local remedies is one of esteemed juridical ancestry in Kenya. In ***Republic v IEBC Ex Parte NASA-Kenya & 6 Others [2017] eKLR***, the Court – a three-judge bench -- described our jurisprudential policy on the doctrine of exhaustion which the Respondents raised in a bid to preliminarily swat away the Applicants' suit in the following words:

> ***42.*** *This doctrine [of exhaustion] is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in* ***Speaker of National Assembly v Karume [1992] KLR 21*** *in the following oft-repeated words:-*
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> > *Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.*
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> ***43.*** *While this case was decided before the Constitution of Kenya, 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine. This is* ***Geoffrey Muthinja Kabiru & 2 Others – vs – Samuel Munga Henry & 1756 Others [2015] eKLR****, where the Court of Appeal stated that:-*
>
> > *It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews….. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.*
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> ***45.*** *We have read these cases carefully and considered the salutary decisional rule of law they announce…..*

26. The existence of the doctrine is not in question. What is in question is whether it is applicable in the case at hand. It is instructive that the Respondent does not state what the local remedies which should have been exhausted are. It begs the question, how is the Court to determine if the local remedies have been exhausted or not? On the other hand, there is evidence, as the Petitioner points out, that there has been some internal process that led to the impugned decision by the Management Committee. If the internal regulations call for a further grievance procedure, that has not been pointed out to the Court. As such, this argument is unavailing to the Respondent.

Did the Respondent violate the Due Process Rights of the Petitioner?

27. Now that the suit has survived the jurisdictional challenges erected on its path by the Respondent, I will next address the merits of the controversy. In essence, the Petitioner claims that his due process rights were violated in the decision of the Management Committee to suspend him. He makes two arguments in this regard:

a. First, that the Management Committee acted without jurisdiction.

b. Second, that his rights to fair administrative action was violated.

28. The Petitioner argues that if the Management Committee reached a decision that he had violated the rules of the Club, then Article 17 of the Nakuru Golf Club Rules was to kick in. That Article provides for the procedure to be followed in such a scenario. The Petitioner argues that the procedure was not followed here at all. Instead, the Management Committee purported to suspend him indefinitely – through a procedure unknown to the Club Rules.

29. The Respondent argues that the Management Committee acted within its powers and afforded the Petitioner his due process rights before suspending him. The Respondent points out that Article 17(d) of the Club Rules permit the Management Committee to suspend a member.

30. Article 17(d) of the Club Rules provides as follows:

> ***"(d)*** *If a member infringes any of the Rules, Regulations or By-laws of the Club, or if at any time the Committee shall be of the opinion that the interest of the Club so require it may invite any member by letter to withdraw from the Club (or to appear before the Committee and offer an explanation of his conduct) within a time specified by such letter in default of such withdrawal (or appearance before the Committee and acceptance by the Committee of his explanation) to submit the question of his expulsion to a Special General Meeting to be held within six weeks after the date of such letter. At such meeting the member whose expulsion is under consideration shall be allowed to offer an explanation of his conduct verbally or in writing and if thereafter two-thirds of the members present shall vote for his expulsion he shall thereupon cease to be a member of the Club. Such vote shall be by ballot. Pending the decision of the Special General Meeting, the Committee shall have power to prohibit such member from making the use of the Club House and Grounds. Upon such member being expelled he shall have no claim against the Club or its property but shall pay all debts owing by him to the Club.*

31. The Petitioner argues that the procedure outlined here was not followed and that the Management Committee did not even have the power to suspend him as it did.

32. I think the Petitioner is right. The Rule is quite clear on what should happen if a member has infringed any of the Rules, Regulations or Bye-laws of the Club:

a. The first step is for the Committee to reach that opinion. That happened here.

b. The second step is for the Committee to invite the member to withdraw from the Club or appear before the Committee to offer an explanation of his conduct. There was no offer to withdraw here but there was request to explain the Petitioner's conduct. I would say that this meets the meaning of "appear" in the Rule.

c. The third step is for the Committee, where it does not accept the explanation by the member, to submit the question of the expulsion of the member to a Special General Meeting to be held within six weeks. This third step did not take place. Instead, the Committee decided to suspend the Petitioner indefinitely. The letter to the Petitioner implies that there is a possibility of the suspension being lifted but it does not list the conditions to be met or the process to be followed to lead to the lifting of the suspension.

d. The Rule envisages that the Committee may act in the interim to prohibit the member who is facing the question of expulsion by the membership to make use of the Club House and Grounds.

e. The fourth step under the Rule is for the Special General Meeting to vote on the question of expulsion after an explanation by the member concerned. The vote must be by two-thirds majority of the members present.

33. There was a procedural lapse here because rather than submit the question for determination by the SGM, the Committee proceeded to "suspend" the Petitioner. Even if we were to accept that suspension is what is envisaged in Rule 17(d), the action envisaged there is a time-bound one: it is meant to prohibit the member in question from using the Club House and Grounds pending the SGM. That SGM is meant to take place within six weeks.

34. This is not what happened here. Instead, we have a suspension letter which we can only term "indefinite" because it is not time-bound. Second, there was no demonstration that an SGM was called or considered to consider the matter of expulsion of the Petitioner. Consequently, the suspension is vested with a halo of impunity in its timelessness and unboundedness. The member is expected to remain suspended until the Management Committee says otherwise. And there is no indication how the Management Committee may be moved to say otherwise. Neither is there an indication of when the Management Committee was bound to act.

35. It is therefore my view that the Petitioner's right to fair administrative action was denied.

36. I will next consider the question whether the Petitioner's freedom of association was infringed by the actions of the Respondents.

37. The Petitioner's argument is that his freedom of association guaranteed under Article 36 of the Constitution was limited by the Respondents without adhering to the dictates of Article 24 of the Constitution. The Petitioner argues that the curtailment of his freedom of Association occurred in at least two ways:

a. First, that he is in an association with two other persons in the law firm of Githui & Co. Advocates yet the decision by the Respondents meant that none of the other two lawyers could take up the brief of the Client even though the other two are not members of the Golf Club.

b. Second, the Petitioner argues that it was incumbent upon the Respondents to use the least restrictive means to limit his right of association even if they came to the conclusion that it was a conflict of interests for him to act for the Client in the trespass action. That means, argues the Petitioner, would have been, for example, to make an appropriate motion for recusal of the Petitioner as a lawyer in the civil matter.

c. Third, the Petitioner argues that the blanket rule that a member of the Club cannot represent any person who is suing the Club is

not a reasonable and justifiable restriction on the freedom of association.

38. Before delving into this question, it is appropriate to begin with a reminder of the proper province of Judicial Review in a case such as the present one. Although enunciated in a Judicial Review simpliciter, the remarks of the judges in in ***Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd*** (Civil Appeal No. 185 of 2001) are quit apt. In that case, the Court of Appeal held that:-

> *Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters…The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision.*

39. It is therefore important to remember that this Court does not sit on appeal against the decisions of the Management Committee or the Membership when they vote on an issue. It cannot review the decisions of either organs on their merits; it can only do so for errors; procedural infirmities; and irrationality.

40. Hence, as our Courts have said before, "*where a public authority has acted in exercise of its discretion, the Court is only entitled to interfere with the exercise of discretion in the following situations:- (i) where there is an abuse of discretion; (ii) where the decision-maker exercises discretion for an improper purpose; (iii) where the decision-maker is in breach of the duty to act fairly; (iv) where the decision-maker has failed to exercise statutory discretion reasonably; (v) where the decision-maker acts in a manner to frustrate the purpose of the Act donating the power; (vi) where the decision-maker fetters the discretion given; (vii) where the decision-maker fails to exercise discretion; (viii) where the decision-maker is irrational and unreasonable.*" See ***Republic vs. Minister for Home Affairs and Others Ex Parte Sitamze.***

41. As I see it here, the real question is whether the decision by the Management Committee that the Petitioner had infringed on the Rules of the Club merely by representing the Client in court proceedings is an unconstitutional violation of his freedom of association.

42. I believe that the decision of the Management Committee to take adverse action against the Petitioner for the reason that he represents a client in Court proceedings against the Respondents is an impermissible violation of the rights of the Petitioner and reaches the threshold of "Wednesbury unreasonableness": that it was if it is so unreasonable that no reasonable person or tribunal acting reasonably could have made it." (***Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223***). This is because it is a clear over-reach for the Club to make a blanket decision that any of its members who are lawyers should not represent any clients against the Club by the mere fact that they are members. It is even more preposterous that the rule seems to apply to members even where it is their firms as opposed to them individually representing the clients. Thirdly, as the Petitioners point out, the proper avenue for dealing with conflict of interests issues which might arise from such representation seems to be a proper motion for recusal in the court proceedings. As things stand and as pleaded, it does not appear that the Respondents have requested for the recusal of the Petitioner in the court proceedings. This would be a tell-tale sign that the decision by the Management Committee is fueled by extraneous considerations other than the stated ground of conflict of interests by the Petitioner.

What are the appropriate remedies?

43. Given my analysis above, my findings are as follows:

a. The suit is not fatally defective for misjoinder.

b. The Petition in not procedurally infirm for violating Order 53 Rule 1 of the Civil Procedure Rules: there was no requirement that the Petitioner seeks leave before instituting the present suit.

c. The Petition, as filed, is not premature for failure to exhaust local remedies and is therefore properly before the Court.

d. The Respondents violated the Due Process Rights of the Petitioner by failing to follow the laid down procedures in the Clubs Rules when seeking to discipline the Petitioner.

e. The substratum of the decision by the Management Committee – that it is wrong for the Petitioner *qua* lawyer to represent a client in Court proceedings which are adverse to the Respondent – is definitionally unreasonable and constitutionally impermissible in the circumstances.

44. Given this disposition, the following orders recommend themselves:

a. A declaration hereby issues that the proceedings and verdict by the Respondent's Management Committee of suspending the Petitioner indefinitely is null and void.

b. An order of Judicial Review in the nature of *certiorari* hereby issues to quash the letter issued by the Respondent and dated 15th August, 2018 indefinitely suspending the Petitioner as a member of the Nakuru Golf Club.

c. **A specific order hereby issues to the Management Committee of the Respondent to ensure that the Petitioner is provided with access to the club house, amenities, and ordinary member services to enjoy his right and freedom of association at the Nakuru Golf Club.**

45. In view of the nature of these proceedings, each party will bear its own costs.

46. Orders accordingly.

Dated and Delivered at Nakuru this 25th day of July, 2019

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JOEL NGUGI

JUDGE