REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISCELLANOUS APPLICATION NO. 10 OF 2019

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI , DECLARATION AND PROHIBITION

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT 2015

AND

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA

BETWEEN

RHTM

JBHM AND

RHT (suing through parents and next friend) NCM.....1ST APPLICANT

RM.....2ND APPLICANT

AND

KENYA MOTORSPORT FEDERATION LIMITED.....RESPONDENT

JUDGMENT

The Application

1. The *ex parte* Applicants herein are NCM and RM , also known as R (hereinafter referred to as the "1st and 2nd Applicants"). The said Applicants are the parents and legal guardians of RHTM (R) and JBHM (J), who are both minors, and motor racing enthusiasts participating in the motor racing discipline known as Karting. Kenya Motorsport Federation Limited, which is the Respondent herein, is a corporate body that regulates all forms of motor sports in Kenya, including Karting. The Respondent has in this respect established a Karting Commission to regulate the Karting discipline.

2. Pursuant to leave granted by this Court on 17th January 2019, the 1st and 2nd Applicants moved this Court by way of a Notice of Motion dated 18th January 2019 seeking the following orders:

> **a) An order of Certiorari to remove into the High Court and quash forthwith the decision of the Respondent contained in the email dated 14th January, 2019 announcing winners of Junior Rotax Class and Rotax Mini Max Class of the 2018 Kenya National Karting Championship;**
>
> **b) A Declaration that the Respondent's decision contained in the email dated 14th January 2019 announcing winners of Junior Junior Rotax Class and Rotax Mini Max Class of the 2018 Kenya National Karting Championship notwithstanding the Applicant's intention to appeal lodged on 11th January 2019 was a violation of: Clause 5.4 of the Respondent's National Competition Regulations 2018, the Applicant's constitutional right to fair administrative action and access to justice guaranteed under Articles 47 and 48 of the Constitution of Kenya, 2010, respectively; and the provisions of Section 4(1), (2) & (3) of the Fair Administration Act, 2015;**

c) An oof Prohibition preventing the Respondent from awarding or distributing any prizes for Junior Junior Rotax Class and Rotax Mini Max Class on 19th January 2019 or any other date pending the hearing and determination of the Applicant's appeal against the Respondent's decision to annul the results for rounds 5 & 8 of the 2018 Kenya National Karting Championship contained in the 2018 Kenya National karting Championship Standings published on 11th January 2019;

d) The costs of this Application be provided for.

The Applicants' case

3. The Applicants' case is founded on grounds on the face of the application, a statutory statement dated 17th January 2019 and the verifying affidavit of NCM, the 1st Applicant herein, sworn on the same date. The Applicants filed the Supplementary Affidavit sworn on 20th February 2019 by the same deponent. The Applicants' case in a nutshell is that the Respondents failed to convene an hearing to determine the Applicants' appeal, in violation of the 2018 National Competition Regulations. The events leading to the appeal were described as follows.

4. R and J participated in the 2018 Kenya National Karting Championship. For each race in the championship, the Respondent gave a licence allowing the race to be run, and appointed one of its member clubs to organize the event. After the Respondent issued a licence for the relevant race, it delegated power to the Karting Commission to approve the publication of a notice called Supplementary Regulations for each race. These regulations set out the details of timing, relevant officials and rules relating to the running of that event, although ultimately, all decisions by the Karting Commission were subject to ratification and/or veto by the Respondent's Board of Directors.

5. It is contended that due to organizational difficulties, the clubs running the Respondent's Karting events postponed rounds 5 and 8 of the Championship from their initial dates, and which rounds were not rescheduled until pressure was put on the Respondent to do so. It was contended that there was pressure to have the said rounds postponed indefinitely by certain competitors who were influencing the members of the Karting Commission to prevent the Applicants' sons, who were leading in the points tally, from winning the Championship. It was averred that the Commission subsequently rescheduled the races for rounds 5 and 8 for 24th and 25th November 2018. The Applicants contend that some of the competitors raised several objections during the race which were all dismissed by the Clerk of the Course, upon which the said competitors then withdrew from and refused to participate in the race, in spite of being registered for the said rounds.

6. The Applicants' further contended that the Respondent's Karting Commission then commissioned an audit of rounds 5 and 8 without the Applicants' knowledge and for reasons best known to it. Further, that on 7th January 2019, without reference to the Applicants, the Commission deliberated over an undisclosed audit report and made untenable and illegal findings against their son J. Subsequently, that J's licence was suspended, a fine imposed and he was banned from 3 races in 2019. It is their contention that all this was done without affording him or his parents an opportunity to challenge his accusers, or contest the facts presented before the Karting Commission.

7. It is the Applicants' case that the Karting Commission further annulled the results for rounds 5 and 8 on nebulus and amorphous grounds, yet the Applicants and their sons were not present at the meeting where the illegal findings were made. Further, that they did not participate in the process leading to the audit and the audit report on rounds 5 and 8. It is averred that the Respondent on 11th January 2019 published the results of the Championship, wherein it was revealed that the Karting Commission's decision to annul the said rounds had been implicitly ratified and adopted by the Respondent. The Applicants contend that the Respondent did not invite them or their children to respond to the findings of the Karting Commission's audit report.

8. That, based on the foregoing, the Applicants notified the Respondent via email of their intention to appeal the results of the Championship, and subsequently lodged the intended appeal. It is their contention that in total disregard of the notice of intention to appeal and the appeal itself, the Respondent proceeded to publish a public notice to the entire motorsport fraternity stating who had been crowned champions of the respective motor sporting categories, including the Junior Rotax and Mini Rotax Max Class, notwithstanding that these two categories affected their sons. That, the said notice also stated that the prize giving and award ceremony dubbed the Kenya Motor Sports Federation's Annual Ceremony was slated for 19th January 2019.

9. The Applicants assert that their sons R and J are directly interested in the Championship results since the inclusion of the results for round 5 and 8 would lead to them being crowned champions. The Applicants in this regard annexed copies of the Karting Commission's minutes of 7th January 2017, of the Respondent's email of 11th January 2019 together with the Championship results, a copy of the appeal dated 14th January 2019, and a copy of the Respondent's email dated 14th January 2019 and list of championship winners.

10. It is contended that the 2nd Applicant, vide email to the Respondent dated 15th January 2019, protested against the awards ceremony scheduled for 19th January 2019 in light of the pending appeal. That the 2nd Applicant sought clarification on whether the awards ceremony would hold off pending determination of the appeal, particularly for the two stated categories, pursuant to Rule 5.4 of the National Competition Regulations. It is averred that the Respondent did not respond to this email. The Applicants contend that efforts to write to the Respondents through the Applicants' counsel proved futile as the Respondent's secretariat refused to acknowledge receipt of their letter dated 16th January 2019.

11. The Applicants had therein requested confirmation that the prizes for the two disputed categories would not be issued pending the hearing and determination of the appeal. It is contended that their counsel, Mr. Esmail also sent an email to the Respondent on 16th January 2019 attaching a scanned copy of the letter. That, the Respondent has however not responded to the letter and the request to suspend the award ceremony, and has not indicated in any way when the appeal will be processed and heard.

12. The Applicants contend that it would be an affront to their children's rights to access to access to justice and to fair administrative action as provided under Articles 48 and 47 respectively, for the Respondent to proceed with the award ceremony notwithstanding the pending appeal. It is averred that the Respondent would suffer no prejudice if the orders sought are granted since the orders simply enforce the Respondent's National Competition Regulations and the Applicants' constitutional and due process rights.

13. The Applicants further contended that the Respondent seeks to distract the Court from the actual dispute by focusing on the alleged hearing that happened on 19th December 2018. It is their contention that the only evidence provide by the Respondent in support of its assertion that the 2nd Applicant was invited to a "hearing" is an email sent to the deponent herein on 14th December 2018, which requested J to attend a meeting of a sub-committee constituted by the Commission on 19th December 2018. It is contended that the invite does not mention or infer from a plain reading that the purpose of the meeting was to hold a hearing. That in fact, the only purpose it disclosed was for the Commission to finalise and publish results for rounds 5 and 8 (affected rounds).

14. It is further contended that under the National Competition Regulations, the Commission has no power to do so. That in any case, even if the invite was presumed to be a notification for hearing, it does not disclose the purpose of the hearing and allegations (if any) that J was being called upon to defend himself against. That therefore, J had no opportunity to be informed of the allegations before him to enable him prepare for a defence if necessary.

15. The deponent also termed as untrue the averment that the 2nd Applicant was invited for a hearing. That in fact, the only person invited to the meeting was J, and the 2nd Applicant informed the Respondent that he would attend the meeting as the deponent and J were out of the country for Christmas holidays. It is contended that through an email to the Commission on 18th December 2018, the 2nd Applicant requested for, among other things particulars of the Meeting including the agenda if any. Subsequently, the Commission in an email response of even date stated that the invite was a summons for J to provide more information regarding his participation in the affected rounds and that the summons was issued pursuant to Article 12.3.4 of the Federation Internationale de I`Automobile's International Sporting Code as well as National Competition Regulations. Copies of the said emails were annexed.

16. Noting the absurdity in the Respondent inviting a minor to such a meeting, the deponent asserted that the alleged summons was only raised less than 24 hours before the meeting, and did not contain notice of the facts and circumstances that would have led to J being penalized, contrary to clause 12.3.4 of the Code. It is also averred that the minutes of the meeting of the sub-committee of the Karting Commission held on 19th December 2018 are not signed, hence cannot be confirmed to be a true reflection of what transpired during the meeting and therefore lack in authenticity.

17. The deponent drew the Court's attention to some inconsistencies between the Minutes and actual events at the meeting according to 2 nd Applicant as follows:

i) Surinder S Bharji was not in attendance by telephone;

ii) The audit report was not presented to the 2nd Applicant or tabled at the discussion with him;

iii) The results of the Junior Rotax and Rotax Mini Max Classes were not tabled and no opportunity was given to R to be heard on those results contrary to the Respondent's averment;

iv) The 2nd Applicant was only invited to attend the meeting in part to discuss the allegations against J, K and Y and was not in attendance for the rest of the meeting as implied by the Minutes;

v) The 2nd Applicant was not given an opportunity to defend the minors in respect of the findings in the audit report as the findings were not presented to him;

vi) The 2nd Applicant was only questioned about one aspect of the allegations against J and the findings in the audit report, yet the report refers to other allegations which were not raised by the sub-committee during the meeting;

vii) The 2nd Applicant made it clear that there were questions he could not answer owing to lack of notice on the allegations against him hence it is untrue that he was given the opportunity to defend the minors;

viii) The 2nd Applicant took notes during the meeting for fear that the sub-committee members would falsify the record, as has happened.

It is contended that in any case, going by the Minutes, it is evident that no hearing took place.

18. The deponent refutes the assertion that the Respondent only published provisional results after the Applicants lodged a notice to appeal, and terms the same as perjury. It is contended that the Respondent sent an email on 11th January 2019 informing members to find attached the final 2018 Karting Championship standings; thereafter the 2nd Applicant via email on the same date communicated his intention to appeal the Championship standings. That, they later received an email on 14th January informing them of the winners of the 2018 KMSF Championships and, at no point did the Respondent state that the awards or the table were provisional. It is averred that the Respondent's email actually read "Championship Winners".

19. The deponent refuted the assertion that the Applicants failed to pay the correct fee when they filed the intention to appeal, stating that the Respondent had the opportunity to raise the same earlier but only did so for the first time in its Replying Affidavit, arguing that it was not possible to make the payment without knowing the specific amount required. It is contended that there is no prescribed fee specified in the National Competition Regulations for an intention to appeal challenging the overall championship result as opposed to a particular race.

20. The deponent adds that the Respondent is in fact misinterpreting its own rules to suit its purpose, clarifying that the fee of Kshs. 10,000 quoted by the Respondent is for lodging a protest with the Clerk of Course within 30 minutes at any given race. That, this does not apply to

the circumstances at hand. It is contended that the Applicants have never been requested to pay any fee, and that they would be willing to pay any such requisite fees, but would also require the Respondent to inform them on where the correct fee is prescribed.

21. It is also averred that whereas the Respondent acknowledges that irregularly awarded prizes can always be returned pursuant to Rule 5.4.1 of the National Competition Regulations, it also conveniently ignores the preceding provision that provides that where an intention to appeal has been lodged, the distribution of any affected prizes must be withheld and any list of awards relating thereto must be declared provisional. The Applicants find it absurd that the Respondent would rather issue an award erroneously and determine a pending appeal later, and in any case, the Respondent has not set in motion the mechanism relating to hearing of the appeal and has no intention to do so unless this Court orders so. It is contended that it is the Respondent, and not the Applicants, who has refused to follow the internal mechanisms. The Applicants contend that Article 15.3.5 of the Code mandates the Respondent to determine appeals within a maximum of 30 days. It is their assertion that contrary to the Respondent's sentiments, the Applicants have not misled this Court.

The Response

22. The Respondent filed a replying affidavit and supplementary affidavit sworn on 29th January 2019 and 4th March 2019 respectively, by John Kamau, a Commissioner in the Respondent's Karting Commission. It is averred that the Applicants are dishonest and have failed to disclose to the Court material facts on the issues in question. It is deponed that the 2nd Applicant, RM, has not disclosed that he was invited for a hearing wherein the report in respect to the results of the Junior Rotax and Rotax Min Max Classes were tabled, and given an opportunity to be heard. That, the 2nd Applicant has also failed to disclose that he indeed attended the hearing on behalf of the minors herein and was granted the opportunity to defend them in respect of the findings in the report. Further, that the Applicants have not disclosed that after they lodged the intention to appeal, the Respondent published "provisional results" as opposed to final results. The said deponent annexed a copy of the said invitation, of the minutes of a Karting Commission meeting held on 19th December 2018, and of the provisional results.

23. It is contended that contrary to the Respondent's Regulation Number 7.1.5 which stipulates that an intention to appeal must be accompanied by the correct fee, the Applicants did not pay this fee. Further, that the Applicants contravened the Respondent's Supplementary Regulations in respect of protests, by failing to pay a fee of Kshs. 10,000/= thus rendering their protest and the resultant appeal defective, null and void. The Respondent cited the Applicants' actions of not paying the two requisite fees as being against the principle of equity, as they have come with unclean hands and are hence unworthy of the orders sought.

24. It is averred that the Applicants' contention that their Appeal with the Respondent's Commission will be rendered nugatory if the winners are awarded their trophies is false. That on the contrary, Regulation 5.4.1 clearly stipulates that if a decision is made which affects the results of a competition, any competitor to whom a prize has been awarded but who is adjudged ineligible must return the prize to the organizers on demand. It is also contended that the Applicants have not exhausted the internal mechanisms of dispute resolutions before moving this Court hence this is an abuse of Court process. That therefore, the instant Application ought to be dismissed with costs.

25. It was also deponed that the averments in the Applicants' affidavit are based on hearsay and as such inadmissible as the deponent makes reference to information she was told by Roddy. He reiterates that the Respondent has not failed, and is willing to convene the appeal hearing, but it is rather the Applicants who have not complied with Rules 7.1.5 and 7.1.6 of the National Competition Regulations which stipulates that the intention to appeal must be accompanied by the correct fee which has not been paid up to date.

26. It is also averred that the instant proceedings are wrecked with malice since the Applicants communicated their intention to appeal on 14th January 2019 but proceeded to move this Court on 17th January 2019, only three days later. It is deponed that Rule 7.1.6 of the National Competition Regulations clearly states that Confirmation of Appeal must be presented to the Respondent within ten (10) days of notice of intention, which period had not lapsed at the time the Applicants rushed to Court. That in any case, the Applicants have only filed a notice to appeal, not an appeal, hence rendering the instant proceedings needless and an abuse of the court process. It is thus deponed the Applicants have not exhausted the Respondent's internal mechanism for resolving such dissatisfaction which is through an appeal.

27. The Respondent asserts that it never intended to issue awards in the affected classes during the award ceremony since the results of these categories were marked as provisional. In the circumstances, the instant proceedings are pointless and an abuse of court process.

The Determination

28. The Applicants urged the application through written submissions dated 20th March 2019 filed by Anjarwalla & Khanna Advocates, their Advocates on record. The Respondent's Advocates of record, Murangasia & Associates Advocates, also filed submissions dated 1st April 2019. After perusing the pleadings and submissions, I noted that the Respondent has raised two preliminary issues therein. These are firstly, whether this application is properly before this Court for want of exhaustion of alternative dispute resolution, and secondly, whether this application is amenable to judicial review. These will need to be determined at the outset, as their outcome will affect the feasibility of the other issues raised by the application.

29. On the first preliminary issue, the Respondent urged that there is an internal appeals mechanism within the Respondent that the Applicants ought to exhaust; hence this is an abuse of the Court process. However, this Court in this regard notes that the Applicants' main grievance is that the Respondent has declined to hear their appeal, which they claim is unlawful.

30. Sections 9(2) (3) and (4) of the Fair Administrative Action Act provide as follows in this regard:

> **"(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.**

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice."

31. Exhaustion of alternative remedies is also now a constitutional imperative under Article 159 (2)(c) of the Constitution, and is exemplified by emerging jurisdiction on the subject, which was initially stated in **Speaker of National Assembly vs Karume (1992) KLR 21** in the following words:

"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."

32. The doctrine of exhaustion of alternative remedies was further explained by the Court of Appeal in **Geoffrey Muthinja Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others (2015) eKLR** as follows:

"**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."**

33. The Courts may, in exceptional circumstances, find that the exhaustion of alternative remedies requirement would not serve the values enshrined in the Constitution or law, and permit the suit to proceed before it, particularly, where dispute resolution mechanism established under an Act is not competent to resolve the issues raised in this Petition, or where it is not available or accessible to the parties for various demonstrated reasons. Section 9(4) of the Fair Administrative Action Act however suggests an application to the court, by the aggrieved party, for exemption from the obligation to exhaust an internal remedy.

34. The approach to be taken by the Courts when this issue is raised was suggested by the Court of Appeal in **R vs National Environmental Management Authority (2011) eKLR** as follows*:*

".. in determining whether an exception should be made and judicial review granted, it was necessary for the Court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it…."

35. Upon perusal of the *ex parte* Applicant's pleadings herein, it is evident that the main grounds for the application is that the alternative remedy of the appeal was not accessible or availed to them by the Respondent, and in effect are asking that they be allowed to ventilate their issues in such an appeal or other forum. This is not an issue that can therefore be canvassed in the appeal as it has been overtaken by the events, is one which now falls within this Court's supervisory jurisdiction in terms of addressing the Applicants complaints in the manner that the Respondent has handled the appeal. The exception in section 9(4) of the Fair Administrative Action Act therefore applies.

36. This brings to fore the second preliminary issue as to whether this application is amenable to judicial review. The Respondent's submissions in this regard were that it is a limited liability company incorporated under the Companies Act by various private motor sports clubs, and with its own Memorandum and Articles of Association. Further, that it has its own Rules and Code of Conduct. Further, that it is a member of Federation Internationale de I`Automobile (FIA) which also has its own Rules and Code of Conduct which the Respondent subscribes to, and which rules also provide how the Respondent disciplines competitors in its events.

37. It is submitted that the aforementioned Rules and Code of Conduct and how the Respondent runs its competitions and disciplines the competitors taking part in its competitions is a private affair, within a duly registered Private Limited Company with no element of public interest. As such, it is not susceptible to judicial review. The Respondent cited the case of **Republic vs Kenya Cricket Association & 2 Others [2006] e KLR** where the Court held that the Respondents therein were private bodies and judicial review does not apply to private bodies

38. My views on this issue are two fold. Firstly, Article 47 of the Constitution now grants every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The Fair Administrative Action Act in this regard defines an administrative action to include—

a) the powers, functions and duties exercised by authorities or quasi judicial tribunals; or

b) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

39. In addition, under section 3 of the Fair Administrative Action Act, the provisions of the Act apply to all state and non-state agencies. Therefore, the provisions of the Act as regards fair action also binds the Respondent as a body whose decision is likely to affect the rights and interests of the Applicants. The decision in **Republic v Kenya Cricket Association & 2 Others (supra)** is distinguished on the ground

that it was made before the enactment of the new Constitution and the Fair Administrative Action Act.

40. Secondly, it is not a prerequisite for judicial review that the body that takes action or a decision that is being challenged is in the nature of a governmental or statutory body, as the decisions of private individuals or bodies who exercise a public function, or a function with a sufficiently public element or who are responsible for regulating an industry is amenable to judicial review. The focus therefore, which is in line with the provisions of the Fair Administrative Action Act, is the nature of the function being performed by a decision maker as held in R. **vs Panel on Takeovers and Mergers ex parte Datafin PLC (1987) QB 815**. In the present application, to the extent that any person participating in motor sporting racing is regulated by the Respondent, this is a sufficient public function that makes its decision amenable to judicial review. It is also notable that the Respondent is in this respect also subject to the provisions of the Sports Act.

41. Having found that the instant application is properly before this Court, there are two outstanding substantive issues for determination. The first is whether the Respondent acted fairly in relation to the Applicants' appeal and second, whether the Applicants are deserved of the orders sought. In this respect I note that the Applicants did make submissions on the legality of the Respondent's decision to nullify the results of rounds 5 and 8 of the 2018 Kenya National Karting Championship, which is not for this Court to decide at this stage, as the dispute that essentially before this Court is the processes the Respondent followed in hearing the Applicants' appeal and not the merits of its decisions, which is essentially the subject of the said appeal and not of review.

On Whether the Respondent acted Fairly

42. The Applicant in this respect submitted that the Respondent's failure to convene a hearing before imposing sanctions on the Applicants was unfair and unlawful. It is submitted that the Respondent imposed sanctions on the Applicants without affording them a fair hearing. That, Article 15.3.5 of the Code binds the Respondent to not only convene the hearing of the appeal, but to do so within 30 days. It is submitted that the Respondent also violated Article 50(1) of the Constitution of Kenya which provides for fair hearing . Stating that the Respondent as an administrative body ought to abide by the rules of natural justice, the Applicants cited the case of **Judicial Service Commission v Mbalu Mutava & Another [2015] e KLR** wherein the Court of Appeal stated that the rules of natural justice do not apply only to bodies with a duty to act judicially but also to those bodies exercising administrative functions.

43. In this regard the applicants reiterated that the Respondent did not grant them the right to be heard before imposing the sanctions it did. In like manner, the Applicants submitted that the Respondents failed to notify them of the charges against them as required, in spite of the 2nd Applicant's effort to obtain the information on the charges from the Respondent. It is submitted that the right to be informed of the charges against one particularly where the outcome may be prejudicial is a fundamental tenet of a fair hearing. The Applicants cited various decisions in this regard, including **Kori Erick Nga'ng'a v University of Nairobi [2019] eKLR .**

44. Citing Section 4 of the Fair Administration Act, 2015, the Applicants submitted that the 2nd Applicant requested for the particulars and agenda of the meeting prior to his attendance to afford the Applicants fair opportunity to consider the matters ahead of the meeting. It is submitted that this information was however not provided. Reference was made to the case of **Geothermal Development Company limited v Attorney General & 3 Others [2013] eKLR** and **Halsbury's Laws of England, Volume 61 (2010) 5th Edition) Para. 639** on the right to notice and the right to be heard. It was submitted that the Respondent did not give notice of the charges against the Applicants and further, no evidence of clear charges has been put on record because there is none. It was also submitted that the Respondent's failure to inform the Applicants of the charges against them automatically deprived them of the right to be heard in the answer to the charges. The Applicants cited the High Court case of **Republic v University of Nairobi ex parte Lazarus Wakoli Kunani & 2 Others [2017] e KLR**,

45. Lastly, it is the Applicant submission that **the** Respondent's delay and failure to convene an appeal hearing is an unfair administrative action**.** The Applicants submit that the Respondent's delay in determining the appeal is an affront to the Applicants' legitimate expectation as guaranteed through the NCR Rules and the right to expeditious and efficient administrative action guaranteed under the Constitution. Further, that the Respondent has not given reasons for its failure to convene the appeals board to hear the appeal within the timeframe stipulated in the Code. In this regard, the Applicants cited Article 47(1) of the Constitution, S**ection 4(1)** of the Fair Administrative Action Act and the decisions in **Republic v University of Nairobi ex parte Lazarus Wakoli Kunani & 2 Others [2017] e KLR** and **Republic v County Director of Education & 4 others ex parte Abdukadir Elmi Robleh.** They reiterated that as their children's legal guardians, they did not receive any notice of the charges to enable them offer a sound defence.

46. The Respondent on its part relied on the case of **Republic v National Transport & Safety Authority & 10 Others Ex parte James Maina Mugo [2015] eKLR**, for the proposition that judicial review can only be a remedy where the decision by a Respondent is either illegal, irrational or has procedural impropriety, none of which grounds the Applicants have satisfied. The Respondent submits that it never intended to issue any prizes in the affected classes once they received the Applicants' intention to appeal and reiterate that the results for the said categories were marked as provisional. It is submitted that in any case Regulation 5.4.1 of the NCR Rules provides for the returning of a prize by a competitor to whom it is awarded in the event that a decision is made on appeal which affects the results of a competition, hence the instant Application is pointless.

47. Submitting that judicial review is a discretionary remedy and therefore the conduct of a party applying for it must be considered before granting the same, the Respondent relied on the decision in **Republic v National Transport & Safety Authority & 10 Others Ex parte James Maina Mugo (2015) e KLR** for the position that **the Court has a wide discretion whether to grant relief at all and if so, what form of relief to grant and that in deciding whether to grant relief the court will take into account the conduct of the party applying, and consider whether it has not been such as to disentitle him to relief. Therefore, that the Applicants in failing to pay the fees violated Regulation Number 7.1.5 of the said Rules and have approached the Court with unclean hands.**

48. In considering the issue as to whether the Respondent acted fairly, two key legal principles apply. Firstly, the requirements of natural justice that guide all administrative decisions are that a person must be allowed an adequate opportunity to present their case where his or her interests and rights may be adversely affected by a decision-maker; and that no one ought to be judge in his or her case which is the requirement that the deciding authority must be unbiased when according the hearing or making the decision. The Court of Appeal in this regard observed as follows in the case of **David Oloo Onyango v Attorney-General [1987] eKLR**:

"There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore that in applying the material sub-section the Commissioner is required to act fairly and so to apply the principle of natural justice."

49. Secondly, Article 47 of the Constitution, and the provisions of the Fair Administrative Act import and imply a duty to act fairly by a decision maker in any administrative action. Article 47 of the Constitution provides as follows in this regard:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

50. In addition, section 4 (3) and (4) of the Fair Administrative Action Act lays down the procedure to be adopted by decision makers as follows:

"(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons pursuant to section 6;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to-

(a) attend proceedings, in person or in the company of an expert of his choice;

(b) be heard;

(c) cross-examine persons who give adverse evidence against him; and

(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing."

51. Procedural fairness therefore means acting fairly in administrative decision making. It relates to the fairness of the procedure by which a decision is made, and not the fairness in a substantive sense of that decision . There is no fixed content to the duty to afford procedural fairness. The fairness of the procedure depends on the nature of the matters in issue, and what would be a reasonable opportunity for parties to present their cases in the relevant circumstances.

52. The Court (Onguto J.) summarized the requirement of fair procedure in **Alnashir Popat & 8 others v Capital Markets Authority [supra]** as follows:

"104. Procedural fairness is an aspect of both Article 47 and Article 50 of the Constitution, and I will now consider it in light of the right to fair administrative action.

105. I start by stating that the importance of a decision to an individual affected or to be affected by a decision, constitutes a significant factor affecting the content of the duty of procedural fairness. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be invited and imposed.

106. As Sedley J. (as he then was) stated in R. v. Higher Education Funding Council, ex parte Institute of Dental Surgery, [1994] 1 All E.R. 651 (Q.B.), at p. 667:

In the modern state the decisions of administrative bodies can have a more immediate and profound impact on people's lives than the decisions of courts, and public law has since Ridge v. Baldwin[1963] 2 All E.R. 66, [1964] A.C.40 been alive to that fact. While the judicial character of a function may elevate the practical requirements of fairness above what they would otherwise be, for example by requiring contentious evidence to be given and tested orally, what makes it "judicial" in this sense is principally the nature of the issue it has to determine, not the formal status of the deciding body.

107. Procedural fairness has embedded in it the age old natural justice requirements that no man is to be a a judge in his own cause, no man should be condemned unheard and that justice should not only be done but seen as done: see Kanda *vs.* Government of Malay [1962] AC 322,337 (per Denning LJ). Effectively, procedural fairness requires that decisions be made free from a reasonable apprehension of bias by an impartial decision-maker."

53. In the present case, the Applicants availed the Respondent's 2018 National Competition Regulations which govern inter alia the 2018 Kenya National Karting Competition. Sections 6 and 7 of the said Regulations address appeals and the Appeals Board respectively. Regulation 6.4.1 provides that in championship appeals, an appeal against points awarded or not awarded in a championship must be lodged within 7 days of the first publication of the points in dispute. Appeals from the decisions of the stewards then lie with the Appeals Board, and under Regulation 7.1.5 a notice of intention to appeal to the Board must be made within 30 minutes of the stewards decision, and confirmed within 10 days by sending it to the Respondent and Appeals Board under Regulation 7.1.6. Regulation 7.1.7. to Regulation 7.1.10 provide for the procedure of hearing the appeal. The requirement for fees is provided for in Regulation 7 but the amount of fees to be paid is not stated.

54. It is in this regard not in dispute that the Respondent did make a decision to annul the rounds 5 and 8 of the 2018 Kenya National Karting Championship as evidence by the Minutes of the meeting of the Karting Commission dated 7th January 2019 as follows:

"Minutes of the Karting Commission Meeting – 7 January 2019 – KMSF at 4:00PM

Present: Maina Muturi – Chairman

John Kamau

Mark Hudson

Mindo Gatimu

Apologies: Surinder S. Bhartj

Gareth Dawe

Gurvir Bhabra

Introduction

The Chairman welcomed all members to the meeting. Apologies were noted.

Last Meeting Minutes approval

Members approved the meeting minutes on 14 December 2018.

Introduction

The Chairman welcomed all those present and thanked them for their presence at the meeting. He requested John Kamau to table the audit report for Karting round 5/8/2018.

Report on the audit of Rounds 5 & 8 of the Kenya national Karting Championship

John Kamau presented the report, which highlighted the following:

1. Eligibility of the drivers

2. Eligibility of Karts

3. Running of the race as per the rules

Decision/Action

Organizing Club – SUC

SUC appointed officials who were not competent and not conversant with the rules to run the event allowed KMSF rules to be violated.

Recommendation: Motorsport Council should remove two allocated to SUC in 2019 and re-allocation to other clubs. The MC should also determine a suitable fine against the club these gross violations.

Clerk of Course (Mr. Kigondu Kareithi)

The appointed CofC did not show much competence and allowed serious violation of KMSF NCR's.

Recommendation: the CofC should not be allowed to officiate in any KMSF events and the particular Karting unit in the case of Karting, the Karting Commission is satisfied as to his competence.

Scrutiner (Mr Ramnik Bhatti)

The appointed Srutineer did not show much competence and allowed serious violation of KMSF NCR's in particular allowing violation of the rules by his own children taking part in the event.

Recommendation: the scrutineer should be banned in officiating at any motorsport events and particular Karting.

Rounds 5 & 8

In running their desire racing format, the clerk of course did not run all the races as required by the NCRs hence the two rounds could not count for the national championships.

Recommendations: Due to serious violation of the NCRs in how the event itself was run, the commission decided that the two rounds be nullified and any results be expunged.

Competitors:

1. KR – in round 5 allowed her second engine seal to be used in a different engine.

Recommendation: K R should drive with suspended licence for 6 months and a file of Kshs. 10.000/= applied before issuance of 2019 licence

2. YR – in round 5 he allowed his scrutineered engine to be used by another competitor contrary to the rules.

Recommendation: Y R should drive with suspended licence for 6 month and a file of Kshs. 10.000/= applied before issuance of 2019 licence

3. J M- in round 5 he allowed his scrutineered engine to be used in different classes contrary to the rules. However, in round 8 the seal was changed and used in a different engine.

Recommendation: J M should be banned for the first 3 events of 2019 and drive with suspended licence for remainder of the season and a fine of Kshs 10,000/= applied payable before issuance of 2019 licence

The drivers right to appeal this decision is stipulated in the KMSF NCR's 2018. The FIA International Sporting Code and the 2018 FIA Judicial and Disciplinary Rules.

AOB

1. The Commission scheduled a meeting with all Karting stakeholders on 24 January 2019 at KMSF Offices at 4.99PM

2. KMSF Secretariat to follow up with the FIA. CIK on the 2019 karting academy trophy registration

3. The chairman informed the meeting that the he is working on karting sponsorship with a view of bringing in some potential sponsors.

4. Guvir Bhabra to furnish the commission with the update of the FIA Karting project in the next meeting

Closing of the meeting

The chairman thanked the members of the for their valuable input. The meeting closed at 7.00PM"

55. On 11th January 2019 , the Respondent then sent its members the following email:

"From: **info@motorsportkenya.com**

Sent: **11 January 2019 3.44PM**

To:

Subject: RE: FINAL 2018 KARTING CHAMPIONSHIP POINTS

Dear All,

Kindly find attached the final 2018 Karting Championship Standings to your attention

Kindest regards.

KMSF Secretariat

56. This is the decision that aggrieved the Applicants, who brought evidence that they then gave notice to the Respondent of their intention to appeal the decision by an email dated 11th January 2019 which read as follows:

"From: Roddy M

Sent: Friday, January 11, 2019 6:16 PM

To: Motorsport Kenya

Subject: RE: FINAL 2018 KARTING CHAMPIONSHIP POINTS

Please be in notice that on behalf of R M and J M we are appealing these championship points and standings. We will process our appeal through the procedure set out in the NCRs

Regards

Roddy M"

57. This email was followed by a letter containing the Applicants appeal dated 14th January 2019 and addressed to the Respondents, which read as follows:

"The Appeals Board of KMSF

CC KMSF BOD

14 January 2019

Dear Sirs,

We refer to the provisional Final Championship Points and Table for the Kenya National Karting Championship for 2018 published by the Secretariat on Friday 11 January 2019.

As their parents, we represent three competitors in that Championship namely:

2. Roy M – Junior Rotax Class;

2. J M – Mini Max Class; and

3. Zack M 60_{cc} Comer class.

On behalf of these competitors we are writing to formerly appeal against the points awarded and positions set out in the table on the following grounds;

1. There appear to have been breaches of the appropriate corporate governance and constitutional rules regarding the convening and conduct of recent meetings of the Karting Commission. This includes (but is not limited to) the meetings of the Commission held on 14 December 2018 and 7 January 2019. Given appropriate notice and quorum requirements were not compiled with, it is averred that the meetings were not validly convened and that all decisions taken were therefore not validly resolved. This includes the appointment of a subcommittee to review and investigate the conduct of Rounds 5 and 8. It also appears that certain members of the Karting Commission acted ultra vires in taking action beyond their powers as members of the Commission.

2. The decision to annual the results of Rounds 5 and 8 which has a significant impact on the final standing of the Championship appears to have been taken on very nebulous grounds and does not in any way justify such a draconian penalty. As such this represents a gross miscarriage of justice.

3. The findings against J M are ill-founded and incorrect on the basis that J compelled with the relevant provisions of the NCRs during Rounds 5 and 8 and in any event received approval from the Clerk of course to the course of action taken. The accusation that the seal on his engine was changed in Round 8 is completely false.

4. It appears that the commission has decided to single out Rounds 5 and 8 of the Championship for detailed scrutiny for their own reasons and this is not warranted. Choosing to conduct an in depth and unprecedented audit of rounds 5 and 8 demonstrates an unfair and unbalanced approach. Given issues arising in other rounds that have gone un-noted or un-interrogated, either an audit should have been carried out of the running of all rounds or not at all. For example, the process regarding the re-running of Round 4 of the Championship was extremely flawed. Round 4 was originally not completed because of weather conditions however all rounds of the event other than the final were completed. The current commission however decided to re-run the whole event from the start rather than just re-run the final as provided in NCR Rule 6.10 and as agreed by the CoC at the time. The Commission also moved the event to a different venue ie whistling Morans rather than hold the event at TGRV where the original event had taken place. Not only was this in compliance with the rules but involved competitors having to pay the race fees again when they had already paid the relevant dues at the original event.

Your faithfully

RHR M"

58. On the same day, the Respondent then sent out an email to its members which read as follows:

"From: Motorsport Kenya [malilto:info @motorsportkenya.com]

Sent: Monday, January 14, 2019 10:52 AM

Subject: RE: KMSF's 2018 CHAMPIONS OF MOTOR SPORT TO BE CROWNED

Dear All,

After the end of a captivating season of Motor Sport action across all KMSF disciplines, please find herewith attached the winners of 2018 KMSF Champions that will be crowned at the 2018 KMSF's Annual Awards ceremony at the Carnivore restaurant Nairobi on Saturday 19th January 2019 from 6.30p.m.

Kindest regards.

KMSF Secretariat"

59. The Applicants' Advocates subsequently wrote an urgent letter to the Respondent dated 16th January 2019 in which they sought confirmation that it would not distribute any awards in relation to the Junior Rotax Class and the Mini Max class on 19th January 2019 or any other date prior to the determination of the appeal. The alleged refusal by the Respondent to accept the letter is what precipitated the instant application.

60. The Respondent on its part has brought the following evidence in support of its arguments that it did give a hearing to the Applicants. The first is the invitation to the 1st Applicant on 14th December 2018 to a meeting that was to be held on 19th December 2018 in an email dated 14th December 2018, that read as follows:

"From: Motorsport Kenya <info @motorsportkenya.com]

Sent: 14 December 2018 14:45

To: Noelle M

Subject: RE: Karting Round 5 & 8

Dear J,

Following a review of the documents and results by the Karting Commission a decision was made to request you to attend a meeting with a subcommittee constituted by the Commission on Wednesday 19th December 2018 at 1.00pm at KMSF offices.

Please avail yourself so that the commission can finalise and publish the results for round 5 & 8.

Kindly confirm availability.

Thank you"

61. The minutes of the said meeting were also produced as evidence by the Respondent and were as follows:

"Minutes of the subcommittee - Karting Commission Meeting – 19 December 2018 – KMSF at 12:00PM

Present: Maina Muturi – Chairman

John Kamau

Surinder S. Bhartj – Available on phone

In attendance by invitation:

Kigondu Kareithi – CofC; to clear issues raised in the Karting audit report of round 5 & 8

Roody M – Representing J M, K and Y R

Invites but absent with apologies:

Peter Likimani

Moses Mwenda

Introduction

The Chairman welcomed all those present and thanked them for their presence at the meeting. He explained that following submission of the results for the two rounds to KMSF, the Secretariat on review of the sais documents identified anomalies to the submission that may not have not have been compliant to the National Competition Rules a referral was made to the Chairman of the Interim Karting Commission to review and ensure that the documentation complied with the NCR's. the Chairman requested John Kamau to review the documentation provided to KMSF and report his findings to the commission for necessary action and to ensure compliance with the NCR's. consequently, re requested John Kamau to clarify the Audit report queries with Kigondu Kareithi as he as the clerk of course. The parents of K and Y R as well J M, Kirit R and Roody M respectively were requested to meet with the sub-committee to clarify matters relating to their entered karts. Kirit R requested Rody M to represent him.

Report on the audit of conduct and running of Rounds 5 & 8 of the Kenya National Karting Championship

John Kamau presented the report, which highlighted the following:

1. Eligibility of the drivers

2. Eligibility of Karts

3. Running of the race as per the rules

The audit report was presented to the commission meeting and is attached to these minutes for reference.

Kigondu Kareithi the CofC

Following a review of the audit report, the CofC's attention was drawn to the following issues:

1. List of drivers issued with temporary licenses was high raising the issue of their eligibility to compete in the national championship event as they were included in the championship points sent to KMSF

2. he did not wholly supervise the events, as there was not any waivers bulletin to use, change the Karts in any category.

3. There was only one race meeting for the two rounds. There was clear violation of the rules by both the entered competitors and the CofC failed to enforce the rules on round 8.

4. The CofC changed the racing format A, but the racing schedule as published in Bulletin 1 issued was not complied with as some prescribed races did not take place and also the number of laps required were not run in certain classes.

5. The CofC nominated a scrutineers who also had several of his children racing in the event and no declaration of conflict of interest was recorded by the scrutineer to the CoC;

RM repressing: J M, K and Y R

RM noted that reference to the results of the two rounds, follow up discussion with his VCCCK club chairman, the secretariat had no business in reviewing the documents, and its only role was to submit the results as received. He however, requested to be; told where his son J M breached rules and R's children K and Y who he was representing; which he was; taken through several events and situation that were contrary to the rules including the rules that were breached; Refer to the audit report on the findings.

Insofar as the breaching the rules by the three competitors are concerned, he noted that he could not provide the answers to certain points which are reflected in the audit report until he consults his wife and members of their technical teams. "AS this matter is still considered as being sub judice at this point, I am not commenting on certain of the points in your audit report," he concluded.

Decision of the Karting Commission

The subcommittee tasked John Kama to prepare the final audit document to deliberate the contents of the report and the commission to make the decision.

Closing of the Meeting

The chairman thanked the members of the subcommittee for their valuable input. The meeting closed at 3.45pm. "

62. At the core of the duty to act fairly and the requirement of fairness is the need to ensure that a person affected by a decision has an effective opportunity to make representations before it is taken, so that he or she has the chance to influence it. This requirement is what informs the key procedural steps set down by the law of giving of notice, and provisions of the evidence that will be relied upon as shown in the foregoing. The question of whether failure to observe any of the steps renders the decision making unfair will depend on how it effects a party's ability to make representations.

63. It is evident that the decision to annul the audit report on rounds 5 and 8 of the 2018 Kenya National Karting Championship was made on 7th January 2019, and on 11th January 2019, the Applicants made a first appeal as envisaged under regulation 6.4.1 against the championships points awarded. There is no requirement for fees to be paid at this stage, and it is on the Applicant's second appeal to the Appeals Board on 14th January 2019 that there was a requirement for payment of fees. However, as noted earlier the amount payable is not stated, and in this respect the Respondent relied on supplementary rules on protest fees to claim that the Applicants were required to pay Kshs 10,000/=. It is notable that protests are separately provided for in the Respondent's National Competition Regulations in regulation 5 thereof and are distinct from appeals. Regulation 7.1.5 of the said regulations also seems to indicate that any fees payable are paid within 7 days of sending the intention to appeal.

64. While the Appeals Board under Regulation 7.1.7 has ten days within the receipt of an appeal to give direction thereon, the Respondent nevertheless proceeded to act on the subject matter of the appeal by announcing the contested Championship results on the same date of the Applicants appeal, hence forcing the Applicants' hand so to speak , to file the present proceedings to protect their position.

65. It is also evident that the invitation to the meeting by the Respondent and the subject matter of the meeting held on 19th December 2018 was not on the appeal that had been sent by the Applicants. There is no reference to any such appeal in the invitation or minutes, nor was the meeting a hearing, in the sense that its participation was not limited to the Applicants and the Respondent, and on the issues raised in the said appeal. The said meeting on the contrary a meeting open to all members and dealt generally with a presentation of the audit report on rounds 5 and 8 of the Kenya National Karting Championship, and a review thereof. The meeting then recommended that the audit report be finalised. In any event, the meeting could not have been a hearing as the Applicants appeal, which appeal was filed later on 11th and 14th January 2019

66. Lastly, no evidence was brought by the Respondent that it provided any notice or information to the Applicants of the audit on rounds 5 and 8 of the Kenya National Karting Championship, and the evidence they provide only confirms that this information was brought to the Applicants' notice on 19th December 2018, when the decision to audit the said rounds had already been made and a report thereon prepared with no participation by the Applicants, with a view to get the Applicants to ratify the said decision. It is thus my finding that there was not only no hearing of the Applicant's appeal by the Respondent, but the Respondent also acted unfairly to the extent that it made a decision that affected the Applicants without giving them an opportunity to make representations.

Whether the Applicants are entitled to Relief

67. The 1st and 2nd Applicants have sought the remedies of certiorari, a declaration and prohibition. The Court of Appeal in the case of **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others, (1997) e KLR** explained the circumstances when the orders of certiorari and prohibition can issue as follows:

"Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or

absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons."

68. The remedy of a declaration is on the other hand normally granted to state authoritatively the lawfulness of a decision, action or failure to act, the consequences that follow from a quashing order, the existence or extent of a body's powers and duties, and the rights of individuals or the law on a particular issue.

69. I find that as the Respondent has been found to have acted unfairly by failing to give the Applicants an opportunity to make representations on the audit of rounds 5 and 8 of the 2018 Kenya National Karting Championship, and their appeal in relation to its decision to announce winners on the contested championships the 2018 Kenya National Karting Championship, the Applicants are entitled to the order sought of certiorari. Likewise, they are also entitled to the order of declarations to clarify the legality of the Respondent's actions. Lastly, the orders of prohibition are also merited but only the extent that the Respondent shall not proceed to implement its decisions on the winners of the 2018 Kenya National Karting Championship, until it has heard and determined the Applicants application.

70. This Court is also granted the inherent powers by section 3A of the Civil Procedure Act to make such orders that are necessary in the interests of justice. Section 11 (1) of the Fair Administrative Action Act also provides as follows as regards the orders this Court can make in judicial review proceedings, which have now been greatly expanded:

(1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order-

(a) declaring the rights of the parties in respect of any matter to which the administrative action relates;

(b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;

(c) directing the administrator to give reasons for the administrative action or decision taken by the administrator;

(d) prohibiting the administrator from acting in particular manner;

(e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;

(f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;

(g) prohibiting the administrator from acting in a particular manner;

(h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;

(i) granting a temporary interdict or other temporary relief; or

(j) for the award of costs or other pecuniary compensation in appropriate cases.

71. In this respect, this Court considers it necessary to give additional remedies in light of the fact that it could not address the merits of the Applicants' case at this stage. Section 11 (1) (e) and (h) of the Fair Administrative Action Act in this respect permits this court to remit a matter back to the decision maker for reconsideration, and the Respondent can therefore be compelled to act according to the applicable law.

72. In the premises this Court finds that the Applicant's Notice of Motion dated 18th January 2019 is merited to the extent of the following orders:

(i) An Order of Certiorari be and is hereby issued to bring into this Court for the purposes of quashing, the decision of the Respondent contained in the email dated 14th January, 2019 announcing winners of Junior Rotax Class and Rotax Mini Max Class of the 2018 Kenya National Karting Championship;

(ii) Declaration that the Respondent's decision contained in the email dated 14th January 2019 announcing winners of Junior Junior Rotax Class and Rotax Mini Max Class of the 2018 Kenya National Karting Championship notwithstanding the Applicant's intention to appeal lodged on 11th January 2019 was a violation of the Applicants' constitutional right to fair administrative action guaranteed under Articles 47 of the Constitution of Kenya, 2010 and the provisions of Section 4(1), (2) & (3) of the Fair Administration Act, 2015.

(iii) An order of Prohibition be and is hereby granted preventing the Respondent from awarding or distributing any prizes for Junior Junior Rotax Class and Rotax Mini Max Class on 19th January 2019 or any other date pending the hearing and determination of the Applicant's appeal against the Respondent's decision to annul the results for rounds 5 & 8 of the 2018 Kenya National Karting Championship contained in the 2018 Kenya National karting Championship Standings published on

11th January 2019.

(iv) The Applicants' appeal as stated in their letter dated 14th January 2019 addressed to the Respondent is hereby remitted to the Respondent for hearing and determination in accordance with the provisions of the Constitution, the Fair Administrative Action Act and any other applicable laws or regulations, within six months of the date of this judgment.

(v) The Respondent shall meet the Applicant's costs of the Notice of Motion dated 18th January 2019.

73. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF JULY 2019

P. NYAMWEYA

JUDGE