



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL, JUDICIAL REVIEW DIVISION

MISC. CIVIL APPLICATION NO.78 OF 2016

IN THE MATTER OF: AN APPLICATION BY SAMMY MWANGI KAMAU FOR LEAVE TO
INSTITUTE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI, PROHIBITION
AND MANDAMUS

AND

IN THE MATTER OF: THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF: THE CIVIL PROCEDURE ACT CAP 21 LAWS OF KENYA

AND

IN THE MATTER OF: ARTICLES 1, 2, 3, 19, 20, 21, 22, 23, 27, 28, 47, 159, 165 AND 259 OF
THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: THE FAIR & ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

IN THE MATTER OF: THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF NYALI
GOLF & COUNTRY CLUB LIMITED

AND

IN THE MATTER OF: DISCIPLINARY PROCEEDINGS AND DECISION MADE ON 17TH
OCTOBER, 2016 AND NOTICE ISSUED ON 21ST OCTOBER, 2016 BY THE NYALI GOLF &
COUNTRY CLUB LIMITED MAIN COMMITTEE TO SUSPEND THE APPLICANT FROM
MEMBERSHIP OF THE CLUB AND DIRECTING HIM TO PAY TO THE CLUB SOME OF MONEY

BETWEEN

SAMMY MWANGI KAMAU.....APPLICANT

VERSUS

NYALI GOLF & COUNTRY CLUB LTD.....RESPONDENT

RULING

1. The Applicant filed application herein seeking leave to commence Judicial Review proceedings against the Respondent. The application for leave was denied by court. Subsequently, the entire application was withdrawn by the Applicant but the issue of costs remain outstanding and now forms the bone of contention between the parties. Mr. Mutubia for the Applicant and Mr. Kinyua for the Respondent have disagreed and are unable to agree on costs hence this brief Ruling. Mr. Mutubia's submissions are that since the original application for leave to apply for Judicial Review orders were not given, there were no proceedings to form the basis of awarding costs to the Respondent.

2. Mr. Kinyua's case is that the application for leave to apply for Judicial Review orders was served upon their client who subsequently appointed Mr. Kinyua as advocate. Subsequently, there have been proceedings in this matter which entailed representation, and hence the Respondent is entitled to costs. In the view of this court, proceedings had taken place in this matter and parties have been represented by counsel.

3. Even though the application for Judicial Review orders was served upon the order of the court, it was still served, and upon being served the Respondent appointed an advocate. If the application is subsequently withdrawn, it has to be withdrawn in the absence of any consent from the parties stating otherwise, with costs to the Respondent. It is the finding of this court that the costs are payable to the Respondent.

Dated, Signed and Delivered in Mombasa this 28th day of February, 2017.

E. K. O. OGOLA

JUDGE