



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 346 OF 2015

GEORGE MWAURA..... PLAINTIFF/APPLICANT

V E R S U S –

BOARD OF MANAGEMENT, SIGONA GOLF CLUB..... DEFENDANT

RULING

1) George Mwaura, the plaintiff/applicant herein, took out the motion dated 1st October, 2015 whereof he sought for the following orders.

- 1. THAT this application be certified as urgent and be heard ex-parte in the first instance.***
- 2. THAT this honourable court be pleased to grant to a temporary injunction restraining the defendant /respondent from further construction of the accommodation suite pending the hearing of this application.***
- 3. THAT this honourable court be pleased to grant a temporary injunction restraining the defendant/respondent from further construction of the accommodation suit pending the hearing of this suit.***
- 4. THAT the applicant's/plaintiff's suspension be and is hereby lifted pending the hearing and determination of this application.***
- 5. THAT the applicant's/plaintiff's suspension be and is hereby lifted pending the hearing and determination of this suit.***

2) The motion is supported by two affidavits of the applicant. When served with the motion, the Board of management, Sigona Golf Club, the defendant/respondent filed the replying and a further affidavit of Dan Mugo to oppose the same. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the matter disposed of by written submissions.

3) I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have further considered the rival written submissions and authorities cited. The brief facts of this dispute can easily be discerned from the pleadings herein. The plaintiff /applicant is a member of Sigona Golf Club, the respondent. The respondent is managed by a board of directors in accordance with the memorandum and articles of association and has set down rules, bye-laws and code of conduct which all members subscribe to and abide by. It is alleged that on 29th April 2015, the board of management of the club convened a Special General Meeting (SGM) which passed a resolution for the construction of accommodation units, gymnasium cum health facility at a cost

of ksh.64,000,000/=. It is further submitted that the board went ahead to commission the construction without subjecting the resolution of all members vide an Annual General Meeting (A.G.M) as required by the bye-laws. The plaintiff/applicant also argued that the board did not tender hence the construction was shrouded in secrecy. For these reasons the plaintiff stated that he and other members started questioning the project and the activities of the board. The plaintiff consequently requisitioned for a Special General Meeting. Upon receipt of the notice for a Special General Meeting, the defendant/respondent summoned the plaintiff/ applicant to appear before a disciplinary committee on 10/9/2015 but the plaintiff did not present him and instead informed the board of his unavailability. The board nevertheless met and proceeded to pass a resolution to suspend the plaintiff's membership from the club. This turn of events forced the plaintiff to file this action.

4) It is the submission of the plaintiff/applicant that the respondent has suspended him indefinitely without according him the right of hearing. It is also argued that the respondent has undertaken construction and purchase of materials without the approval of the Annual General Meeting of members and without even tendering for the project to get a suitable bidder. It is further alleged that the project is meant to enrich the board members and fleece the club of money which will not be accounted for.

5) The respondent strenuously opposed the motion. It is argued that the applicant has admitted there was a Special General Meeting it convened which passed a resolution for the construction of accommodation units and gymnasium cum health facility. It was also pointed out that among the 73 members who attended the Special General Meeting was the applicant. The respondent further argued that in commencing the project, the board followed the club's constitution and the relevant approvals were obtained. This court was urged to dismiss the application.

6) The principles to be considered in determining an application for injunction are well settled. First, an applicant must show a prima facie case with a probability of success. A careful consideration of the applicant's case will reveal that contrary to his assertion that the respondent board did not comply with the respondent's bye-laws and the club constitution, that indeed the respondent held a Special General Meeting which passed a resolution to put up the projects complained of. There is also affidavit evidence showing that the necessary approvals were sought and obtained from the relevant bodies. In short, I am convinced that the applicant has failed to establish a prima facie case with a probability of success.

7) The second principle to be considered is that an applicant must show the irreparable loss he would suffer if the order for injunction is denied. In this dispute, the applicant has alleged that the members including the plaintiff will suffer irreparable loss, in that the project is meant to enrich the board members and fleece the club of money which will not be accounted for. In my considered view I do not think the anticipated damage will be irreparable. There is already an assigned specific budget set aside for the project in the sum of ksh.64,000,000/=. I cannot comprehend how the continuance and completion of the construction will occasion any loss of injury to the plaintiff/ applicant.

8) The third and final principle is where the court is in doubt, the balance of convenience can be used to determine the motion. If this principle is applied, then in the circumstances of this case, it can only be applied in favour of the respondent. In fact to grant the injunction to stop the construction would cause great loss and inconvenience to the respondent as opposed to the applicant.

9) The question relating to the suspension of the plaintiff's/applicant's membership from the club was ably argued by the parties. It is not in dispute that the applicant was invited to appear before a disciplinary committee hearing on 10th September 2015. There is affidavit evidence that the applicant informed the respondent that he was unavailable on the aforesaid date and further requested for the disciplinary proceedings to be rescheduled to 17th September 2015. The respondent turned down the request and proceeded to suspend the applicant indefinitely from the club. There is no doubt that the decision to suspend the applicant from the club was made before hearing the applicant contrary to the provision of club's constitution, specifically clause 34, clause 18.1. 3. The aforesaid provisions clearly state that no resolution for expulsion or suspension of a member shall be carried before the member concerned is given an opportunity to be heard. The respondent therefore failed to accord the applicant a fair administrative action contrary to Article 47 of the constitution of Kenya, 2010. For this reason, I

hereby issue an order lifting the applicant's suspension pending the hearing and determination of this suit.

10) In the end, prayer 3 of the motion is dismissed while prayer 5 of the motion is allowed as prayed. A fair order on costs is to direct which I hereby do, that each party meets its own costs of the motion.

Dated, Signed and Delivered in open court this 25th day of November, 2016.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant