



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 53 OF 2013

ANTHONY WAHOME.....APPLICANT

VERSUS

PARMINDER SAIMBI.....1ST RESPONDENT

AMOS WERU2ND RESPONDENT

RIAZ ABDULGANI.....3RD RESPONDENT

(Sued as officials and the management committee of KENYA REGIMENT RIFLE CLUB)

RULING

1. Anthony Wahome, the applicant herein, took out the motion

dated 20th May 2015, whereof he sought for the following orders:

1. ***THAT this honourable court do find, hold and declare that PARMINDER SAIMBI, AMOS WERU, RIAZ ABDULGANI, RICHARD LAW, ALYKHAN KESHAVJEE, MEMBA MURIUKI and ALVING JONES are in contempt of court for disobeying court order of 27th day of February 2013.***
2. ***THAT upon the grant of prayer (1) above, the court do impose a penalty of a fine of Kshs.1,000,000/= against PARMINDER SAIMBI, AMOS WERU, RIAZ ABDULGANI, RICHARD LAW, ALYKHAN KESHAVJEE, MEMBA MURIUKI and ALVING JONES and in default of payment of such fine, all movable an immovable assets of PARMINDER SAIMBI, AMOS WERU, RIAZ ABDULGANI, RICHARD LAW, ALYKHAN KESHAVJEE, MEMBA MURIUKI and ALVING JONES including land and buildings be attached and sold in execution of this order to satisfy the penalty for contempt.***
3. ***THAT upon the grant of prayer (1) above, the court do issue an order that PARMINDER SAIMBI, AMOS WERU, RIAZ ABDULGANI, RICHARD LAW, ALYKHAN KESHAVJEE, MEMBA MURIUKI and ALVING JONES be committed to civil jail for a period of 6 months.***
4. ***The court do grant such further orders or directions as it shall deem fit under the circumstances of this case.***
5. ***The costs of this application be awarded to the applicant.***

2. The motion is supported by the affidavit of the applicant. When

served the respondents filed the replying affidavit of Riaz Abdulgani to resist the motion. When the application came up for interpartes hearing, learned counsels recorded a consent order to have the

same 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 and the rival submissions. The background of this dispute appears to be short and straightforward. On 27.2.2013, this court issued an order staying the decision of the respondent to suspend the applicant. This court also issued an order of temporary injunction to restrain the respondent from holding any disciplinary meeting against the applicant pending the hearing and determination of the application dated 27th February 2013. It is said the order issued in the presence of learned counsels from both sides and later the order is said to have been served with the order. It is alleged that on 14th April 2013 the respondent and the interested parties prevented the applicant from attending a Special General Meeting of the respondent club in which the respondent went ahead and removed the applicant from the mailing list thus effectively cutting him off from information regarding events and club activities which members are generally invited to participate.

4. It is the applicant's contention that the respondent's action is a

direct contravention and defiance of the orders issued on 22nd February 2013, the respondent club through Riaz Abhdulgani, prevented the applicant from attending a golden jubilee shoot which the applicant had confirmed his attendance by paying the participation fees. Riaz Abdulgani is said to have informed the applicant that the respondent club had reached the quota for entries and proceeded to refund the applicant the participation fees he had paid. For the above reasons the applicant urged this court to convict the respondents for contempt.

5. The respondents on their part urged this court to dismiss the

motion because they did not breach the court orders. The respondents have argued that the emails reported to have been sent to 500 members did not reach all members and the applicant is no exception. The respondents have averred that the applicant has failed to prove that he was maliciously denied the right to participate in a competition that required only 32 participants from the club excluding invited participants. It is further argued that the applicants have failed to show that his exclusion was intentional and maliciously unintended to enforce his suspension in defiance of the court order. The respondent have stated that the applicant's omission from the competition was due to quota restrictions and his failure to receive some email communication.

6. After a careful consideration o the material placed before this

court, I form the following view of this matter: First, is that both the applicant and the respondents are in agreement that this court issued both the orders of stay and injunction. Secondly, the question to be answered is whether or not the aforesaid orders were breached. The standard of proof in contempt proceedings was restated in **Alken Connections Ltd = vs = Safaricom Ltd & 2 others (2013) e K.L.R**

“In cases of alleged contempt, the breach for which the alleged contemnor is cited must not only be precisely defined, but also proved to the standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt.”

7. I have already set out the nature of the orders issued by this

court. First, was an order to stay the respondent's decision to suspend the applicant. Secondly, is an order of injunction to restrain the respondent from holding any disciplinary meeting against the applicant. The aforesaid orders were issued in the presence of learned advocates of the respondent. The respondents were later served with extracted order. The respondents do not deny that on 14th April 2013 they restrained the applicant from attending a Special General Meeting of the respondent

club despite the fact that he had received an email informing him of the holding of the meeting. It is in that meeting that the respondents went ahead and removed the applicant from the mailing list thus effectively cutting him off from getting any information from the activities of the respondent club. In my humble view, the respondents acts and conduct of removing the applicant from the mailing lists of all members and refraining him from participating in any of its activities has the effect of suspending the applicant as a member of the respondent club. This in my view is a direct disobedience and contravention of the orders issued by this court on 22.02.2013. This position also applied to the decision of the respondent club through Riaz Abdulgani to restrain the applicant from attending a golden jubilee shoot which the applicant had confirmed attendance. I find the respondents jointly and severally guilty for contempt. They consequently convicted. It is now upon them to come forward to mitigate so as this court can issue the appropriate penalty.

8. The parties which have completely kept off.
9. The interested parties were joined to these proceedings and have been accused of jointly disobeying the court orders. With respect, the Interested Parties were not aware of the existence of the order alleged to have been violated. I therefore find the Interested Parties innocent. Since they only came to know of the existence of the court order when they were served with the motion.
10. In the end, I find motion to be well founded.

Dated, Signed and Delivered in open court this 11th day of December, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant