



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 422 of 2009

ABDUL RASUL SHEIKH.....APPELLANT

VERSUS

THE TRUSTEES OF NAIROBI GYMKHANA

- 1. KISHORILAL L. SAHNI**
- 2. BALOO PATEL**
- 3. MAHEDRA SHAH**
- 4. SHANTILAL SHAH.....RESPONDENTS**

R U L I N G

1. Abdul Rasul Sheikh (hereinafter referred to as the applicant), has moved this court under Order XXXIX Rule 2, 3 and 9; Order XLI Rule 4(6) of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act, seeking orders *inter alia*:

“a temporary injunction do issue against the respondent by its servants or agents or otherwise howsoever and however restraining it from proceeding with the disciplinary hearing against the appellant set for 14th October, 2009 pending the hearing and determination of the appeal herein”.
2. The application was supported by grounds which were stated on the application. It was also supported by an affidavit sworn by the applicant on 13th October, 2009, and a further affidavit also sworn by the applicant on 4th December, 2009.
3. In short, the applicant, who is a member of the Nairobi Gymkhana Club, (hereinafter referred to as the Club), filed a suit against the Trustees of the Club, in which the applicant sought orders as follows:
 - (i) An injunction restraining the respondent by itself its servants or agent from debarring, stopping the applicant from accessing, holding meetings, or enjoying the facilities of the club like all other fully subscribed members,
 - (ii) An order directing the respondent to fully adhere to the respondent’s constitution in trying to discipline the applicant,
 - (iii) General damages,
 - (iv) Costs.
4. The applicant also filed an application contemporaneously with the suit in which he sought *inter alia*, a temporary injunction, seeking to restrain the Club from barring the applicant from accessing the premises of the Club pending the hearing of the suit.
5. The applicant who had been a member of the Club since 1986 was spurred into litigation by a letter from the management committee of the Club which informed the applicant, firstly, that he had been debarred from entering the Club premises for a period not exceeding three months with effect from 9th June, 2009. Secondly, that the disciplinary committee in accordance with the Club’s constitution had been set up and the applicant would be called before the disciplinary committee to answer the case against him. The applicant’s application which was brought under certificate of urgency was heard and dismissed by the lower court on 14th July, 2009. Being aggrieved by the ruling of the lower court, the applicant lodged an appeal in this court on 5th August, 2009.
6. While that appeal was still pending, the Club’s officials wrote to the applicant by a letter dated 12th August, 2009, inviting him to explain allegations made against him by members for alleged misconduct at the Club on 5th and 7th June, 2009. The applicant

responded objecting to the Club's actions and pointing out that his suit was still pending before the court.

7. Notwithstanding the applicant's objections, the respondent wrote to the applicant inviting him to appear before its disciplinary committee on 14th October, 2009, to show cause, why disciplinary action should not be taken against him. The applicant therefore lodged the current application seeking to restrain the respondent from effecting the disciplinary process.
8. Mr. Nyaencha who appeared for the applicant submitted that the applicant had served the 90 days suspension, and that the respondent should therefore be restrained for further breaching the applicant's rights. Mr. Nyaencha argued that the applicant having been suspended, he had already been subjected to the disciplinary process and he cannot therefore be subjected to further discipline. Mr. Nyaencha maintained that the respondent's rules do not allow for the action which was being taken against the applicant. He urged the court to grant the order of temporary injunction maintaining that no prejudice will be suffered by the respondent.
9. The Trustees of the Club responded to the application through an affidavit sworn by Kishorilal L. Sahni. He depones that the actions of the management committee in looking at the complaints against the applicant, were proper and in accordance with the Club's constitution. He maintained that the management committee could not be challenged at that stage as the actions of the management committee were not issues before the trial magistrate. *Muthusi & two others vs Gathogo & 2 others, 1990 [KLR] 90*, was relied upon for the proposition that the court should not interfere with the internal affairs of the respondent in its day to day management.
10. I have given due consideration to the application before me. I find that what is pending before this court is an appeal against the ruling of the trial magistrate, delivered on 14th July, 2009 rejecting the applicant's application for an injunction, restraining the respondents from debarring him from enjoying the facilities of the Club as a fully subscribed member. The applicant's substantive suit against the disciplinary proceedings remains pending in the lower court. In other words, the issue in this appeal is not the propriety of the disciplinary proceedings but whether the respondent should in the interim period be restrained from interfering with the applicant's enjoyment of the Club's facilities.
11. The letter dated 9th June, 2009 which was addressed to the applicant clearly indicated to him that he was debarred from entering the premises for a period not exceeding three months and that in addition a disciplinary committee would be set up. The applicant's complaint that he is being subjected to double jeopardy as he has already served a suspension of 90 days and that he should therefore not be subjected to further disciplinary action, is a matter for consideration during the trial in the lower court.
12. For the above reasons, I find that the applicant's current application for a temporary injunction restraining the respondent from proceeding with the disciplinary proceedings which were set for 14th October, 2009, pending the hearing of this appeal cannot hold as the disciplinary proceedings are not the subject of this appeal. The application is therefore dismissed.

Dated and delivered this 8th day of March, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Nyaencha for the appellant

K'opere for the respondent

Eric - Court clerk