



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muchiri v Macharia & another (Sued as Trustees and/or Officials of Njoro Country Club) (Judicial Review Application E001 of 2024) [2025] KEHC 6960 (KLR) (26 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6960 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
JUDICIAL REVIEW APPLICATION E001 OF 2024**

**JM NANG'EA, J**

**MAY 26, 2025**

**BETWEEN**

**JULIUS MUCHIRI ..... APPLICANT**

**AND**

**STEPHEN MACHARIA ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN KIARIE ..... 2<sup>ND</sup> RESPONDENT**

**SUED AS TRUSTEES AND/OR OFFICIALS OF NJORO COUNTRY CLUB**

**JUDGMENT**

1. On 21/2/2024 leave was granted to the Ex-parte Applicant to bring these proceedings following his Chamber Summons Application dated 29<sup>th</sup> December 2023, therefor. Subsequently, a Notice of Motion dated 28<sup>th</sup> February 2024 was brought for these reliefs:-
  1. Spent
  2. (a) An Order of Certiorari to remove into the Honourable court and quash the Decision of Njoro Country Club issued on 21.09.2023.
  - (b) An order of prohibition directed towards the respondents, prohibiting them from charging the applicant from the complainants leading to the decision to suspend the applicant (sic).
  - (c) That this Honourable Court be pleased to grant a Permanent Injunction restraining the Respondents whether by themselves, their agents, officers or whomsoever from charging the applicant from the complainants leading to decision to suspend the applicant (sic).
3. That the costs of this application be provided for.
4. Any other relief is likewise prayer for (sic).



2. The Motion is supported by the Ex-parte Applicant's affidavit evidence; other grounds set out on the body thereof and statutory statement dated 29<sup>th</sup> December, 2023.
3. By his supporting affidavit, the Ex-parte Applicant deposes to the fact that he is Member No. NCC 262 of Njoro Country Club ( hereinafter referred to as the "the Club") of which the Respondents are Trustees. He is also an Engineer working with the National Construction Authority (NCA) as Regional Co-ordinator, Kiambu County.
4. The Ex- Parte Applicant avers that on 21/9/2023 he was suspended from the Club, followed by his removal from the Club's "WhatsApp Group", he said is the only channel of communication on Club matters. The reasons for the Ex-parte Applicant's suspension were given vide the Club's letter dated 21<sup>st</sup> September 2023 alleging that he caused financial and reputational to the Club . The full contents of the letter will be set out later in this judgement.
5. Before his suspension, the Ex-parte Applicant states that he had received a Notice to Show Cause dated 30/8/2023 to which he responded through a letter dated 1/09/2023. He contends in the letter that the Club's Disciplinary Committee exhibited bias against him alleging that the reasons given for the suspension are different from the allegations made in the Notice to Show Cause. The Respondents are said to have relied on irrelevant factors that ever featured in the disciplinary hearing.
6. The Ex-parte Applicant laments that it was false to claim that he had written letters to various third party organizations discrediting the Club's Projects contending that there is no evidence in proof. He asserts that what he did was to ensure that the Club adheres to set standards of construction, including obtaining approvals of various relevant bodies. In particular, the Ex Applicant states that he complained inter alia that construction of the Club's elevated Inter Tower was undertaken without approved structural designs and registration by the N.C.A.
7. The Ex parte Applicant therefore holds the position that his suspension from the Club was marred by bad faith and was unreasonable. He points out that no proof of any purported loss occasioned to the Club by his activities were tendered during the disciplinary proceedings. The Club's action is said to violate his legitimate expectations as a member thereof entitled to fair administrative action.
8. Inter alia, the Ex-parte Applicant further complains that he was not accorded an opportunity to cross examine those who made the allegations against him; that witnesses were not summoned to testify and that he was not supplied with witness statements. According to the Ex-parte Applicant the Club's Disciplinary Committee Members appeared to be the complainants and the decision makers at the same time.
9. The Ex-parte Applicant's affidavit in verification of facts sworn on 29<sup>th</sup> December 2023 reiterate the averments in the affidavit supporting this application. So does the statutory statement of the same date.
10. The Respondents filed an affidavit in reply, described as "Respondent's Witness Statement", through the Club's Honorary Secretary (Mr. Stephen Kiarie) confirming the Ex-Applicant's membership to the Club and his suspension therefrom. He avers inter alia that due process was observed in the disciplinary proceedings, with the Ex-parte Applicant being informed of the charges and afforded a chance to defend himself. Despite communicating his intention to appear before the Club's Disciplinary Committee, it is contended that the Ex-Applicant never showed up. The court is told that the committee even extended its sitting from the appointed time of 12:00 p.m. upto 6:00 p.m. to accommodate him following his plea that he was running mate.
11. The Respondents therefore state that in the circumstances, the matter had to be heard in the absence of the Ex-parte Applicant who is also accused of showing contempt to the Club by declining to appear



- before the Disciplinary Committee. It is deposed that the committee considered the specific charges against the Ex-Parte Applicant and the latter's written response and reached a unanimous verdict to suspend him for a period of 2 years after finding him guilty of all the charges.
12. Upon receipt of the letter of suspension, the Ex-Parte Applicant is said to have by letter dated 26/9/2023, addressed to the Disciplinary Committee, sought review and rescission of the Committee's decision Contrary to the Club's constitution at paragraph 55 which provides that an appeal from such decision is lodged through the Disciplinary Committee to the General Meeting of the Club. According to the Respondents, therefore, there was no valid appeal before the Disciplinary Committee.
  13. The Respondents continue to tell the court that the Ex-parte Applicant admits in his purported appeal authoring two letters dated 27/12/2022 and 2/6/2022 complained of as defamatory to the Club. The former letter written on the letter head of NCA where the Ex-Parte Applicant works as Engineer allegedly led to stalling of the Club's Water Project and attendant losses. The latter letter/email dated 2/6/2022 purportedly written to Crown Paints who are the Club's sponsors and to the Golf Clubs umbrella body, the Kenya Golf Union, allegedly caused loss of sponsorship and bad reputation of the Club. The Ex-parte Applicant is accused of abusing his privileged position as a Club member by using the Club's confidential information to its detriment.
  14. The Club's Secretary avers that they had engaged a competent contractor in the Water Project who was taking all the requisite measures and had obtained all approvals to deliver a safe and complete Water Tower.
  15. For the foregoing reasons among others, the court is told that the Ex-parte Applicant's complaint is baseless and the application ought to be dismissed.
  16. The Ex-parte Applicant filed a Supplementary Affidavit in answer to the contentions in the Respondents' Affidavit evidence. He avers inter alia that he had no chance of fair hearing since the Respondents' Disciplinary Committee wholly comprised Management Committee members whose decision to suspend him he is challenging.
  17. While conceding that he was late for the disciplinary hearing, arriving at 6:00 p.m, he requested the Disciplinary Committee's Chairman for a hearing but his plea was rejected despite the presence of all the committee members.
  18. The Ex-parte Applicant further contends that in a case of suspension of a Club member as is the situation obtaining in this matter, the Club's constitution does not provide for the remedy of appeal and so he was not obliged to file appeal contrary to the Respondents' position, the Respondents are therefore faulted for ignoring the appeal lodged with the Disciplinary Committee.
  19. The Ex-Parte Applicant maintains that the Club's Water Tower Project was being executed illegally as there was no evidence of necessary regulatory approvals as from the NCA and County Government of Nakuru having been sought and obtained. In light of these shortcomings NCA wrote the letter adverted to by the Respondents, according to the Ex-parte Applicant.
  20. Moreover, the court is told that the Club has not offered evidence of any financial loss occasioned by the Ex-parte Applicant's alleged defamatory statements. His complaint about mistreatment by Nakuru Golf Club after he won a price in a Crown Paints sponsored Golf Tournament was allegedly not addressed on his behalf by his Club.



21. Learned Counsel for the Ex-parte Applicant in their Written Submissions make reference to Article 47 of the Constitution on the right to fair administrative action. The Article provides;-
- “ 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;....”
22. In furtherance of the above provisions, Parliament enacted the Fair Administrative Action Act which provides as follows in Section 2;
- “ Administrative Action”
- Includes-
- (a) the powers, functions and duties exercised by judicial 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.”
23. According to Counsel, judicial review orders can be sought in respect of administrative actions of Private Members Clubs by dint of Article 47 of the Constitution and Section 2(b) of the Administrative Action Act supra. The Ex-parte Applicant alludes to case law in Republic vs Commissioner of Lands, Ex-parte Lake Flowers Ltd. Misc. Application No. 1235 of 1998 and Nairobi Civil Appeal No. E510 of 2012 among other judicial determination in support of this constitutional and legal position. These decisions state that apart from the common law grounds of illegality, irrationality and procedural impropriety warranting quashing or setting aside administrative action, a forth test of proportionality has been introduced. The court is now required “to intervene in situations where authorities and persons act in bad faith, abuse power, fail to take into account relevant considerations in the decision making or take into account irrelevant considerations in the decision making or act contrary to legitimate expectations...”
24. The Ex-parte Applicant’s Advocates therefore submit that whether a function in question is public or private, or discharged by a public body is no longer the focus. What is critical is whether; “the function was judicial or quasi-judicial and affected constitutional rights including the right to fair administrative action under Article 47, or the right to natural justice under Article 50.”
25. Learned Counsel further rely on Republic vs Royal Nairobi Golf Club Ex Pare Ooko Erick Obura & Another (2021) eKLR in which similar issues as arising in the instant matter were considered. It is therefore submitted that the Court has jurisdiction to determine this application involving a complaint of administrative action by a Private Members Club.
26. Counsel for the Ex-parte Applicant also pitch tent on Section 4 (3) (g) of the Fair Administrative Action Act which stipulates as hereunder;-
- “(3) Where an administrative action is likely to adversely affect the rights and fundamental freedoms of any person, the administrator shall give the person affected by the decision-



- (g) information, materials and evidence to be relied upon in making the decision of taking the administrative action.”
27. It is contended that no documentary evidence showing the Applicant’s interference with or sabotage of the Club’s Infrastructure Projects, sponsors or failure to pay Club fees as alleged in the Notice to Show Cause sent to him was provided. He argues that such evidence ought to have been supplied to him before or during the time of hearing. The Respondents are therefore said to have infringed the Ex-Parte Applicant’s Constitutional and legal right to Fair Administrative Action [(See Case Law in Republic vs National Cohesion & Integration Commission; Chama cha Mwakili Limited (Ex-parte) (Judicial Review Application E057 of 2022) [2022] KEHC 10206 (KLR) (Judicial Review) 14 July 2022) (Judgement)] also relied upon by the Ex-parte Applicant.
28. The Ex-parte Applicant continues to submit that the decision of the Respondent was procedurally unfair for the reasons that the Club officials were the complainants and the decision makers at the same time in violation of Section 7(2) of the *Fair Administrative Action Act*.
29. It is further submitted on behalf of the Ex-parte Applicant that the decision made against him is not rationally connected to the purpose of the empowering provision. While noting that the Club relied on Article 54 of its Constitution to suspend him, the Ex-parte Applicant thinks that the Article misses out some essential information which he challenges the Club to admit. According to him the misconduct alleged in the subject Notice to Show Cause can only be attributed to a Club member who together with his guest/visitor violates the rules of the Club. As the purported misconduct was not committed or associated with the Ex-parte Applicant and his guest/visitor, then Article 54 of the Club’s Constitution could not be used to justify the suspension decision, according to learned Counsel. Counsel therefore submit that the impugned decision violates the provisions of Section 7(2) (i) (ii) of the *Fair Administrative Action Act*.
30. Finally, it is contended that the Respondent’s action violates the Ex-parte Applicant’s legitimate expectation that inter alia the water project the Club was undertaking be subjected to the required safety standards. The issues raised are said to have been aimed at promoting the interest of the Club and were not expected to invite disciplinary action.
31. The Respondents insist that the Ex-parte Applicant was accorded a fair hearing before the suspension decision was made. Learned Counsel for the Respondents submit citing Nairobi Court of Appeal Civil Appeal No. 121 of 2017 (Jacob Oriando Ochanda vs Kenya Hospital Associates T/A The Nairobi Hospital) among other judicial determinations, that a right to fair hearing does not necessarily solely entail oral hearing.
32. The Respondents further raise an essential point of jurisdiction. It is contended that the Court is bereft of jurisdiction to entertain a judicial review application against a Private Member’s Club that has its own Constitution and rules of engagement with its members. According to the Respondents such application can only be lawfully brought against a public body. The court is told that a Private Members Club is only regulated by its constitution and rules made thereunder. The Respondents tell the court that pursuant to Article 54 of the Club’s Constitution, an errant member may be suspended or expelled. In terms of Article 55, it is stated that an expelled member has the right of Appeal to the General Meeting of the Club.
33. The Respondents submit that the Court’s jurisdiction in this dispute is limited only to determination as to whether the Respondents’ complied with the Club’s internal disciplinary procedures and accorded the concerned member a fair hearing in keeping with the principles of natural justice. I am referred to the Court of Appeal’s decision in Judicial Service Commission vs Mbalu Mutava & Another



(2015) eKLR in which the court pronounced itself thus in relation to the constitutional requirement for procedural fairness in administrative processes;

“The term “procedurally fair” used in Article 47(1) by a proper construction imports and subsumes to a certain degree, the Common Law, and includes rules of natural justice which means that Common Law is complimentary to the right to fair administrative action.”

34. Learned Counsel for the Respondents therefore point out that this court has no jurisdiction to determine whether or not the Ex-parte Applicant was fairly suspended. Rather, it is contended that the court may only interfere with the Respondents’ decision if it is proven that:-

i. due process was not followed;

and

ii. the Ex-parte Applicant was not accorded a fair hearing.

35. The court is further referred to this Court’s judgement in Daniel Mutisya Kivuva vs Machakos Golf Club, Machakos High Court Petition No. 4 of 2019 (2019) eKLR which Counsel describes as being on “all fours” with the instant application. The Court held in that case in part;

“Judicial review is not available to enforce purely private law rights.... Moreover, it is well established that Courts will not interfere with the internal affairs of voluntary associations. A court therefore will not determine as a matter of its own judgement, whether a member should have been suspended or not. The court added that;-

“.... Thus when a plaintiff challenges a voluntary organization’s decision, the case shall be dismissed as non-justiciable unless plaintiff alleges facts showing;-

(i) the decision was inconsistent with due process, or

(ii) the organization engaged in arbitrariness, fraud or collusion.”

36. In a nutshell, therefore, the Respondents submit that they are not guilty of any procedural impropriety that led to the suspension of the Ex- Parte Applicant and want the court to dismiss the application with costs.

37. It is common ground that the Ex-parte Applicant is a member of the Club and has been suspended therefrom vide the letter dated 21/9/2023. The parties also seem to agree that the court has jurisdiction to inquire into the question whether the Ex-parte Applicant was afforded a fair hearing before the decision to suspend him from the Club. Indeed Article 47 of *the Constitution* of Kenya 2010 as amplified in the *Fair Administrative Action Act* grants every person the right to expeditious and procedurally fair administrative action, and to be given reasons for intended administrative action. It is noteworthy that Article 25 (c) of *the Constitution* lists the right to fair hearing as among only four rights under the Bill of Rights that cannot be abrogated or derogated from under any circumstances.

38. Having read through the record including the rival affidavit evidence and Learned Counsel Submissions, the court identifies the following two broad issues for determination;-

a. Whether the Respondents accorded the Ex-parte Applicant his right to fair hearing envisaged in *the Constitution* and the law before the decision to suspend him from the Club.

b. The orders commending themselves to the Court including as to the costs of this application.



39. The Notice to Show Cause issued to the Ex-parte Applicant contains the following charges of alleged “Gross Misconduct” ;
- a. Sabotaging Club infrastructure projects.
  - b. Interfering with Club sponsorships with malicious intentions.
  - c. Failure to pay Club night fees;
- And
- d. Abuse of privilege on Club WhatsApp Group.
40. The Ex-parte Applicant complains inter alia that the Respondents failed to supply him with evidence in support of the allegations to enable him prepare his defence, contrary to the Provisions of Section 4 (3) (g) of the *Fair Administrative Action Act* supra. Indeed no documentary or other relevant evidence or material is provided to back up the allegations against him before the disciplinary measure was taken.
41. Section 7(2) (i) of the Administrative Action Act further Provides;-
- “ A court or tribunal under Subsection (1) may review an administrative action or decision if;-
- i. the administrative action or decision is not rationally connected to-
    - a) The purpose of which it was taken;
    - b) The purpose of the empowering provision;
    - c) The information before the administrator; or
    - d) The reasons given for it by the administrator.”
42. Appreciation of the test of rationality is further given in the case of Republic vs Public Procurement Administrative Review Board; Trippex Construction Company Limited & Edmar Enterprises Limited Ex-parte Rongo University (2018) KEHC 9643 (KLR) among other relevant decisions. While referring with approval to the South African Case of Pharmaceutical Manufacturers Association of South Africa & Another; Re Ex-parte President of the Republic of South Africa and Others the court proffered;-
- “The question whether a decision is rationally related to the purpose for which the power was given calls for an objective inquiry. Otherwise a decision that, viewed objectively, is in fact irrational might pass muster simply because the person who took it mistakenly and in good faith believed it to be rational. Such a conclusion would place form above substance and undermine an important constitutional principle.”
43. As regards the reasonableness test of an administrative action, the case of Tripex Construction Co. Ltd. & Edmar Ent. Ex-parte (2018) eKLR is relevant for the proposition that the test is whether the decision in question was one which a reasonable authority could reach.
44. In Republic vs Betting Control & Licencing Board & Another Ex parte Outdoor Advertising Association of Kenya (2019) eKLR further guidance on what constitutes unreasonableness was given as follows;
- i. Unreasonableness is the reflex of the implied legislative intention that statutory powers be exercised reasonably;



- ii. This ground of review will be made out when the court concludes that the decision fell outside the area of decisional freedom which that legislative assumption authorizes that is, outside the range within which reasonable minds may differ;
- iii) The test of unreasonableness is whether the decision was reasonably open to the decision maker in the circumstances of the case. To say that the decision was “not reasonably open” is the same as saying that “no reasonable decision maker” could have made it.”

45. The Ex-parte Applicant also complains that his legitimate expectation of fair hearing and treatment at the Club was breached. The Supreme Court’s decision in Communications Commission of Kenya & 5 Others vs Royal Media Services & 5 Others Supreme Court Petition Nos. 14, 14A, 14B & 14C of 2014 underscores the underpinning of the doctrine of legitimate expectation. The apex court observed as follows;-

“Legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. Therefore, for an expectation to be legitimate, it must be founded upon a promise of practice by a public authority that is expected to fulfil the expectation.”

46. This applies to a private entity such as the Club as well.

47. The court is satisfied for the reasons given that the Ex-Parte Applicant was not accorded fair hearing contrary to *the constitution* and the law. The Respondents’ failure to supply him with evidence in advance of the disciplinary hearing was also unreasonable and detrimental to his legitimate expectation of a fair hearing. Although the Ex-Parte Applicant arrived late for the disciplinary hearing, this does not take away his guaranteed right to fair hearing. Besides, the disciplinary hearing appears to have been premature on account of the fact that evidence was not provided to the Ex-Parte Applicant. I, however, concur with the Respondents that the court’s duty does not extend to deciding whether or not the Ex-Parte Applicant was lawfully suspended from the Club. Judicial review jurisdiction concerns itself with procedural fairness and not the merits of an administrative decision ( see case law in R vs Kenya Revenue Authority Ex-parte Yaya Towers Limited (2008) eKLR ).

48. The application is accordingly allowed in the following terms;

- a. An order of certiorari issues removing the decision of the Respondents dated 21<sup>st</sup> September 2023 into this court for quashing, and it is hereby quashed.
- b. Prayers 2 (b) and (c) of the Application for apparent prohibition and permanent injunction orders are not clearly framed, and are therefore declined.
- c. Owing to the parties’ relationship as Club members, no orders are made as to the costs of the Application.

**J. M. NANG’EA, JUDGE.**

**JUDGEMENT DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF MAY, 2025 IN THE PRESENCE OF:**

Ex-parte Applicant’s Advocate, Mr. Matoke H.

Respondents’ Advocate, Ms Mwashu for Mr. Githiru



The Court Assistant (Jeniffer)

**J. M. NANG'EA, JUDGE.**

