



**Kibitok v Patter & 6 others (Civil Suit E025 of 2023)
[2024] KEHC 4958 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E025 OF 2023
JRA WANANDA, J
MAY 15, 2024**

BETWEEN

JOASH ANDERSON KIBITOK PLAINTIFF

AND

JAGJIT PATER 1ST DEFENDANT

JOSEPHINE SANDHU 2ND DEFENDANT

**G. S. RANAUTA (ALL SUED AS TRUSTEES OF THE WESTERN KENYA
MOTOR CLUB) 3RD DEFENDANT**

THE KENYA MOTORSPORTS FEDERATION 4TH DEFENDANT

THE KENYA SPORTS REGISTRAR 5TH DEFENDANT

**THE CABINET SECRETARY, YOUTH AFFAIRS, SPORTS AND
ARTS 6TH DEFENDANT**

THE HON. ATTORNEY GENERAL 7TH DEFENDANT

RULING

1. Before this Court for determination are two Applications. Since the two are related and intertwined, it was agreed, and I directed, that the same be canvassed together and one Ruling be delivered relating to both.
2. The background to the Applications is the Plaint filed on 21/11/2023 whereof the Plaintiff sought orders that the 1st, 2nd and 3rd Defendants be restrained by way of a permanent injunction from carrying out any activities of the “The Western Kenya Motor Club”.



3. The 1st Application is the Plaintiff's Notice of Motion dated 21/11/2023. The same is filed through Messrs Kiproop Luseria & Co. Advocates. Prayer (a) to (d) of the Application are spent and the prayers now still pending are now as follows:
 - e. That the 1st, 2nd and 3rd Defendants/Respondents, their agents, servants, or any other person whatsoever acting on their behalf and or direction be restrained by way of a temporary injunction from carrying out the activities of The Western Kenya Motor Club pending hearing and determination of the main suit.
 - e. That the 2nd Defendant/Respondent, its agents, servants, or any other person whatsoever acting on their behalf and or direction be restrained by way of a temporary injunction from assigning any rallies to Western Kenya Motor Club pending hearing and determination of the main suit.
 - e. That the Court be pleased to order the 5th and 6th Defendants to appoint a caretaker committee to conduct the affairs for the Western Kenya Motor Club pending hearing and determination of the main suit.
 - e. Costs be provided for.
4. The Application is expressed to be brought under Order 40 Rules 1 and 2 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act and "all enabling provisions of the law". The Application is then premised on the grounds stated on the face thereof and on the Supporting Affidavit sworn by the Plaintiff, Joash Anderson Kibitok.
5. In the Affidavit, the Plaintiff deponed that the Western Kenya Motor Club (hereinafter referred to as "the Club") is registered under the Societies Act but its officials never complied with the provisions of Section 49(2) of the Sports Act which required all sports organizations registered under the Societies Act to apply for fresh registration within 1 year of the commencement of the Sports Act. He deponed that he is a member of the Club but that the current leadership now illegally in office declined to receive his membership fees since the year 2020, that the 1st, 2nd and 3rd Defendants are illegally in office as they have been holding office in acting capacity since the year 2015, that the 4th Defendant has been assigning rallies to the Club with full knowledge that the same is not registered under the Sports Act and that the leadership currently in office is an illegality.
6. He deponed further that the 4th, 5th and 6th Defendants have allowed the Club to operate illegally since the year 2013 as no elections have ever been held since 2015, no audited accounts have ever been presented and no annual general meeting has ever been held, that the illegal activities at the Club have affected the rights of the Plaintiff and other members who can no longer participate in the activities of the Club as the same is now being run as a private property by the leadership which is illegally in office, that efforts to obtain information relating to the Club have proved futile as no response has been forthcoming and unless the Application is allowed, the Plaintiff stands to suffer irreparable harm and damage.
7. The above Application came up under Certificate of Urgency before my brother, Hon. Justice R. Nyakundi on 21/11/2023 whereupon he certified it as urgent and directed that the same be served for inter partes hearing before this Court for 28/11/2023.
8. On 28/11/2023, the Defendants being absent, there being no response to the Application and there being an Affidavit of Service demonstrating service of the Application, I granted interim orders as sought in prayers (a), (b) and (c) therein, namely, pending hearing and determination of the Application, restraining the 1st, 2nd and 3rd Defendants by way of injunction from carrying out the



activities of the Club and also restraining the 4th Defendant from assigning any rallies to the Club and also directing the 5th and 6th Defendants to appoint a caretaker committee to conduct the affairs of the Club and align it with the *Sports Act* pending hearing and determination of the suit. I also gave directions on hearing of the Application and on filing and exchange of written Submissions and fixed the Application for Ruling for 26/04/2024.

9. It is the above interim orders that prompted the 1st-3rd Defendants to file the 2nd Application, namely, the Notice of Motion dated 14/12/2023. The Application is filed through Messrs Limo R.K. & Co. Advocates and seeks orders as follows:
 - i. [Spent]
 - ii. That pending inter partes hearing and thereafter hearing and determination of this application the Honourable Court be pleased to stay and suspend the orders dated 28th November, 2023 and issued on 29th November, 2023.
 - iii. That the Honourable Court be pleased to stay delivery of its ruling scheduled for 26th April, 2024 and grant the defendant/applicant herein unconditional leave to file response to the application dated 21st November, 2023.
 - iv. That the Honourable Court be pleased to discharge, vary or set aside the orders dated and issued on 28th November, 2023 and 29th November, 2023 respectively.
 - v. That the Complaint dated 21st November, 2023 be struck out with costs.
 - vi. That costs of this application be provided for.
10. The Application is expressed to be brought under Section 7 of the *Civil Procedure Act*, Order 15(1) Rules of the Civil Procedure Rules and Section 7 of the *Limitation of Actions Act*. The Application is then premised on the grounds stated on the face thereof and on the Supporting Affidavit sworn by the 1st Defendant, Jagjit Patter.
11. In the Affidavit, the 1st Defendant deponed that he is the interim Chairperson of the Club, that he was not served with Summons to enter appearance, Complaint or Application alluded to in the orders of this Court dated 28/11/2023 and was only served on 8/12/2023, that in the circumstances, the Plaintiff deliberately misled the Court insofar as the question of service is concerned with the ulterior motive of stealing a match against the 1st Defendant, that the above notwithstanding, and that the Plaintiff approached the Court with unclean hands and obtained the ex parte orders under concealment of material facts. According to him, the Plaintiff is not a member of the Club which is a registered Sports Club under the 4th Defendant, that the Club has been organizing and participating in motor racing disciplines and events for the last 30 years after being issued with requisite licences by the 4th Respondent, that in fact the Club has been licenced by the 4th Defendant to organize motor rally and racing for February 2024 but the same cannot be undertaken in view of the said ex parte orders and the Club stands to lose millions of sponsorship payments.
12. He deponed further that the Plaintiff withheld or concealed the above facts from the Court and that the orders issued and the prayers in the Complaint are the same and similar and amount to final orders which orders are irregular and cannot be granted at interlocutory stage. It was also his contention that in any event, the 4th Defendant regulates all forms of motor sports in Kenya and has internal mechanisms of addressing disputes and whose appeals lie with the “National Appeals Board of the Kenya Motorsports Federation Ltd”. He deponed further that the Plaintiff, although not a member



of the Club, has not utilized the internal mechanisms of dispute resolutions before moving to Court hence this suit is premature.

13. After hearing the parties on 19/12/2023, and upon being satisfied that the existence of the interim orders would cause more harm than good and also upon finding that the Plaintiff had not, at that stage, demonstrated the great prejudice he would suffer if the orders were varied, I discharged the orders and substituted the same with orders that the prevailing status quo do continue pending further directions of the Court.
14. I then, as aforesaid, adopted the parties' proposal that the two Applications be heard together, granted the Plaintiff leave to file a Further Affidavit and also adopted the 1st Defendant's proposal that his Supporting Affidavit above be deemed a response to the 1st Application.

Plaintiff's Further Affidavit

15. In his Further Affidavit filed on 18/12/2023, the Plaintiff insisted that it is not true that the 1st Defendant was served on 8/12/2023 but was served via Whatsapp on 1/12/2023 through his mobile phone number [particulars withheld], that it is the same number that was used to serve the Application and it cannot therefore be true that the 1st Defendant received the Order but failed to receive the Application yet they were both sent via the same number.
16. On the merits of the matter, the Plaintiff insisted that he is a bona fide member of the Club but he has been a victim of the poor leadership thereof as the 1st Defendant has verbally declined to receive his membership fees since the year 2020, that the list of membership presented by the 1st Defendant relates to Uasin Gishu Arts Society and not the Club, that the 1st Defendant and the 4th Defendants have been operating in blatant violation of Section 46 of the Sports Act as the Club is not registered, that what have been produced are permits to run events issued by the 4th Respondent to run events but no audited accounts, that the 1st Defendant has not attached any certificate of registration which is supposed to be issued by the Sports Registrar, and that this Court cannot sanction a violation of the law by allowing the Club to continue operating illegally.
17. The Plaintiff further deponed that Section 58 of the Sports Act is not applicable to the issues raised in this suit because the Club has no constitution and/or rules recognized under the Sports Act to govern any disciplinary process, that the current leadership is an illegality thus lacking capacity to make any decision capable of being appealed to the Tribunal and that in any case, the Sports Act does not in any way oust the jurisdiction of this Court to hear disputes that are not covered by Section 58 and hence the suit is properly before this Court.

5th, 6th and 7th Defendant's Replying Affidavit

18. The 5th, 6th and 7th Defendants, although they had not earlier appeared in Court, also filed a Replying Affidavit through the Attorney General, sworn by one Judy Kiprop on 26/02/2024 and filed on 26/03/2024. The deponent described herself as a State Counsel working at the Office of the 5th Defendant under the 6th Defendant.
19. In the Affidavit, she deponed that the 5th Defendant is established under Section 45 of the Sports Act empowering the 5th Defendant to register sports organizations, licence sports bodies and persons, and that the Act further mandates the Registrar to keep and maintain a register of all sports organizations. She deponed further that the Club herein is not registered as a sports organization under the Sports Act and thus an unlawful organization, that since the Club herein is an old one previously registered under the Societies Act, the 1st-3rd Respondents were required to make fresh applications to the Sports Registrar to be so registered, that it is only upon being registered as a sports organization under the



Act that the 5th Defendant (Sports Registrar) can discharge his mandate of regulating and overseeing the operations of a sports organization.

20. She deponed further that the 4th-6th Defendants have been prematurely joined in this suit as they are unnecessary parties hereto, that once Club herein has been so registered shall the 5th Respondent be in a position to ensure that the Club's books and reports are audited and that elections are properly conducted. In light of the foregoing, she deponed that the orders sought by the Plaintiff cannot be granted against or enforced by the 5th Defendant who does not have in its possession any records relating to the register of members, audited accounts and/or any other information relating to the Club that can be furnished to the Plaintiff as requested.

Hearing of the application

21. No other party having filed Affidavits, it was then agreed, and I directed, that the Applications be canvassed of by way of written Submissions. Pursuant thereto, the Plaintiff filed his Submissions on 1/03/2024 while the 1st-3rd Defendants filed theirs on 22/01/2024. The rest of the parties do not seem to have filed any Submissions.

Plaintiff's Submissions

22. Counsel for the Plaintiff reiterated the matters already set out in the Plaintiff's earlier pleadings and regarding grant of injunctions, he cited the case of *Giella v Cassman & Brown Co. Ltd* (1973) EA 360 and submitted that the Plaintiff has attached evidence establishing a prima facie case with high chances of success. She observed that the 1st-3rd Defendants were at pains to produce any evidence to show that they have conducted elections since 2015 or that they are holding office illegally or that they have been conducting Annual General Meeting since 2015 or that they presented to the members audited accounts of the Club since 2015 or showing that the Club has been registered under the *Sports Act*.
23. On "irreparable loss", Counsel submitted that the Plaintiff stands to suffer loss which cannot be adequately compensated by an award of damages should the injunction orders be denied because the leadership of the Club has refused to accept his membership fees since the year 2020 and his rights have been and continue to be infringed by the leadership since he can no longer participate in the activities of the sports organization yet he is a member of the Club. He added that he also stands to suffer because 1st-3rd Respondents carry out the activities of the Club illegally and at any time may be penalized for not contravening the requirements of the *Sports Act*. Regarding "balance of convenience", Counsel submitted that the Plaintiff will suffer greater loss if the orders are not granted.
24. Counsel then cited Section 54(1) of the *Sports Act* and urged the Court to use it to order the 5th and 6th Respondents to appoint a caretaker committee to conduct the affairs of the Club pending the determination of this suit.
25. Regarding the jurisdiction of this Court to entertain the suit, Counsel submitted that the Plaintiff lodged his complaints with the Club including the refusal of his membership fees since 2020 but the officials have refused to listen to the complaints, that he could not therefore appeal to the National Appeals Board of the 4th Defendant because his case has not been heard via the internal dispute resolution mechanism of the Club yet the only way the said Appeals Board could grant him audience was through filing an Appeal from the decision of the Club which refused to listen to his case. She argued further that the internal rules of the Club do not oust the jurisdiction of this Court since the Club refused to listen to his complaints. He cited the case of *Football Kenya Federation vs. Kenya Premier League Limited vs. Kenya Premier League Limited & 4 Others* [2015] eKLR. She then submitted further that Section 58 of the *Sports Act* is not applicable to the issues herein because the



Club has no Constitution or Rules under the Act to govern disciplinary process, and because the Club has not been registered under the Act

1st, 2nd & 3rd Defendant's Submissions

26. On his part, Counsel for the 1st, 2nd and 3rd Defendants submitted that the Club is registered under the 4th Defendant, that the 4th Defendant is formed by 12 member clubs which are in turn governed under *the Constitution* and Memorandum of Articles of the 4th Defendant, that the Plaintiff is not a member of the Club herein as demonstrated by the member's register and therefore lacks the locus to institute this suit, and that the 4th Defendant regulates all forms of motor sports in Kenya and has internal mechanisms of addressing disputes and whose appeals lie to the National Appeals Board of the 4th Defendant. Counsel therefore wondered why the Plaintiff has not utilized the said mechanism before instituting this suit.
27. Counsel submitted further that the orders being sought are similar to the final orders sought in the Plaintiff and that the same cannot be determined or granted at interlocutory stage, that the orders have the effect of stalling all the operations of the Club which has been hosting rally events for the last 30 years, that the 2024 rally calendar has been released and the Club has been mandated to by the 4th Defendant to host the events, that the Plaintiff concealed these material facts and a party seeking equitable remedies in the nature of injunctions must come to Court with clean hands. He cited various authorities.

Determination

28. Before I proceed further, I may mention that although the parties have argued over whether or not the 1-3rd Defendants were served with the 1st Application prior to this Court granting the interim orders earlier referred to, I find that the issue of service or lack thereof is no longer a substantive issue for determination. This is because the interim orders still stand vacated and/or discharged, even if temporarily, and in any event, the 1st - 3rd Defendants have since obtained audience with the Court and has now fully participated in the hearing and canvassing of the both Applications herein.
29. In view thereof, the one broad issue remaining for determination is “whether, pending hearing and determination of the suit, a temporary injunction should issue to bar the 1st - 3rd Defendants from carrying out the activities of the Western Kenya Motor Club and/or barring the 4th Respondent from assigning any rallies to the Club and/or whether the 5th and 6th Defendants should be ordered to appoint a caretaker committee to conduct the affairs of the Club”
30. Determination on whether to grant interim injunctions is governed by Order 40 Rule 1 of the Civil Procedure Rules which provides as follows;
QUOTE{startQuote “}
Where in any suit it is proved by affidavit or otherwise —
 - (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or



disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

31. The principles that guide Courts in dealing with applications for injunctions were well settled in the celebrated case of *Giella –vs-Cassman Brown and Co. Limited* (1973) E.A. 358 where it was held as follows:

- i. The Applicant must establish a prima facie case with a probability of success.
- ii. Applicant has to demonstrate that it will suffer irreparable injury which cannot be compensated by damages.
- iii. Applicant has to demonstrate that balance of convenience tilts in its favour.

32. Further, in *Nguruman Limited v Jane Bonde Nielsen and 2 Others* NRB CA Civil Appeal No. 77 of 2012 [2014] eKLR, the Court of Appeal reiterated the above principles and gave the following guidelines:

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. (See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86). If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

33. It is also settled that in interim applications, such as in this case, the Court should avoid making final determinations on matters of fact made on the basis of the conflicting Affidavit evidence. In connection thereto, in *Mbuthia vs Jimba Credit Finance Corporation & Another* [1988] KLR 1, the Court of Appeal guided as follows:

“...the correct approach in dealing with an application for an interlocutory injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side’s propositions.”

34. Back to this instant case, the first limb that I have to therefore determine is whether the Plaintiff has established a prima facie case. What constitutes a “prima facie” case was discussed in the case of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, where the Court of Appeal held as follows:

“It may not be easy to define what is meant by “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a sustainable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal



burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant's interest to adopt a genuine and arguable case standard rather than one of a prima facie case, the former being the lesser standard of the two ... In civil cases a prima facie case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

35. In this case, the 1st-3rd Defendants have resisted the Plaintiff's claims by arguing that the Plaintiff is not a member of the Club and thus lacks the locus to institute this suit. In response, the Plaintiff has stated that he has all along been a member of the Club but since the year 2020, the 1st-3rd Respondents, as the officials of the Club, have inexplicably declined to accept his membership fees thus locking him out of participating in the Club's activities. I observe that the 1st-3rd Defendants have not said anything at all in relation to this response. This conspicuous silence by the 1st-3rd Defendants on such a crucial point only leaves this Court with the conclusion that what has been stated by the Plaintiff is indeed true. Having found as such, it follows that the 1st-3rd Defendants cannot be allowed to use their own unexplained refusal to accept the Plaintiff's membership fees to turn around and attempt to lock out the Plaintiff from litigating on the same subject.
36. Similarly, the 1st-3rd Defendants have maintained a studious silence over the Plaintiff's allegations that they have not registered the Club with the 5th Respondent (Kenya Sports Registrar) as required under the *Sports Act* or that they have not organized any elections since the year 2015 or that they have not presented the audited accounts to the members of the Club. Again, this silence by the 1st-3rd Defendants is too loud to be ignored and again, leaves this Court with no option but to accept the Plaintiff's allegations as true.
37. Regarding registration, Section 46 provides as follows:
- “ 46. Registration of sports organizations
- e. A body shall not operate as a sports organization unless it is registered under this Act.
- ii. The Registrar shall register sports organizations as either—
- a. a sports club;
- b. a county sports association; or
- c. a national sports organization”
38. Section 46 is therefore clearly couched in mandatory terms and the 1st-3rd Respondents cannot escape its requirements.
39. It is interesting that the 1st-3rd Defendant's answer to the Application for injunction is that stopping them from running the Club activities would cause prejudice to the Club simply because the 4th Respondent has always been issuing permits to them to arrange rallies, that the Club has been organizing such rallies for the last 30 years and that they have already planned for other upcoming rallies. With due respect, this response smacks of some level of unacceptable arrogance by the 1st-3rd Respondents. The Application before Court accuses the 1st-3rd Respondents of committing illegalities



and it is on this ground that the injunction is sought. Instead of responding to these very serious accusations levelled against them, the 1st-3rd Respondents choose to ignore and trash the same by attempting to assert their entitlement to the position of officials of the Club as if the illegal conduct alleged is immaterial. If the alleged illegalities are demonstrated, the Court can and will issue an injunction. It would not therefore matter that the 4th Respondent has always been issuing permits to the Club to arrange rallies or that the Club has been organizing such rallies for the last 30 years or that the Club has already planned for other upcoming rallies. These excuses will be immaterial in the event that the claims of unlawful conduct by the Defendants are established.

40. I also take cognisance of the contents of the 4th Respondent's (Sports Registrar) Affidavit to the effect that the Club is not registered as a sports organization under the *Sports Act* and that it is therefore an unlawful organization. I agree with the 4th Respondent's contention that since the Club is an old one previously registered under the *Societies Act*, the 1st-3rd Respondents were under a legal obligation to make fresh applications to the Sports Registrar to be registered afresh as a sports organization under the *Sports Act* and that it is only upon such Registration that the Club's existence shall become lawful and for the Sports Registrar to then discharge his mandate of regulating and overseeing its operations.
41. It was also the 1st-3rd Defendants' contention that the 4th Defendant (Kenya Motorsports Federation) regulates all forms of motor sports in Kenya and has internal mechanisms of addressing disputes and whose appeals lie with the "National Appeals Board of the Kenya Motorsports Federation Ltd". He deponed further that the Plaintiff, although not a member of the Club, has not utilized these internal mechanisms of dispute resolutions before moving this Court and that for this reason, this suit is premature.
42. In response to the above claim by the 1st-3rd Defendant that this Court should not entertain this suit because the Plaintiff has not exhausted the available internal resolution mechanism, Counsel for the Plaintiff submitted that the Plaintiff lodged his complaints with the 1st-3rd Defendants as officials of the Club, including complaints on the refusal of his membership fees since 2020, but that the officials have refused to listen to the complaints. He submitted that for this reason, the Plaintiff could not appeal to the National Appeals Board of the 4th Defendant because his case has not been heard via the internal dispute resolution of the Club yet the only way the Appeals Board could grant him audience was through filing an Appeal from the decision of the Club which is the same one that refused to listen to his case. There is a lot of merit in this argument by the Plaintiff's Counsel considering that, as aforesaid, the 1st-3rd Defendants chose not to answer the allegations of refusing to receive the Plaintiff's membership fees and not giving any reasons for such refusal.
43. I am also persuaded by the Plaintiff's argument that not being registered under the *Sports Act* as required by law, the Club may indeed be operating as an illegal outfit and by reason thereof, Section 58 of the *Sports Act*, may not be applicable to the issues raised in this suit because the Club has no Constitution and/or Rules recognized under the *Sports Act* to govern any resolution process. There is therefore merit in the Plaintiff's argument that the current leadership may be an illegality thus lacking capacity to hear any disputes or make any decision capable of being appealed to the Tribunal. For this reason, at this stage of the proceedings, and pending full hearing and determination of all matters at the trial, I am prepared to accommodate the Plaintiff's suit. Needless to state, once evidence is adduced at the trial and witnesses are cross-examined, the Court shall make a conclusive finding on all these issues. Until then, the suit is admitted.
44. In concluding on the issue of establishment of prima facie case, I find that by choosing not to respond to the allegations of being in office illegally, failing to register the Club under the *Sports Act*, failing to present audited accounts, failing to call elections since the year 2015, failing to call Annual General



Meetings and refusing to receive the Plaintiff's membership fees without giving any reasons, the 1st-3rd Defendants have given the Plaintiff an easy time to convince this Court, which I find that he has done, that he has established a prima facie case with the probability of success.

45. On "irreparable loss", I again refer to the Plaintiff's claim that although he has been a member of the Club for many years, the 1st-3rd Defendants, as the officials of the Club, have without giving any reasons refused to accept his membership fees since the year 2020. If this is true, then I also agree with the Plaintiff that he stands to suffer loss which cannot be adequately compensated by an award of damages should the injunction orders be denied since it means that the Plaintiff can no longer participate in the activities of the Club's activities. Allegations of the Club being run illegally for not being registered under the *Sports Act* as required under the law having been made and strongly supported by evidence, and the same not having been responded to or denied, I also find that refusing the injunction is likely to cause irreparable loss to the Plaintiff.
46. For similar reasons as above, I also find that the "balance of convenience", tilts towards granting an order of injunction in view of the grave allegations made against the 1st-3rd Defendants and which they have chosen not to respond to. In my view, the Plaintiff will suffer greater loss if the orders are not granted than the 1st-3rd Defendants.
47. For the above reasons, I find that the Plaintiff has met the threshold and/or satisfied the principles required to grant an interlocutory injunction.

Final Orders

48. The upshot of my findings above is that the Plaintiff's Notice of Motion dated 21/11/2023 partially succeeds and I order as follows:
 - i. The 1st-3rd Defendants are hereby given a **period of thirty (30) days** to align **The Western Kenya Motor Club** with the requirements of the *Sports Act*, including applying for registration under the *Sports Act*. In default, the following shall automatically and immediately come into force, **pending hearing and determination of this suit**:
 - a. An injunction shall issue restraining the 1st, 2nd and 3rd Defendants, their agents, servants, or any other person whatsoever acting on their behalf and or direction by way of a temporary injunction, from carrying out the activities of **The Western Kenya Motor Club** including organizing or overseeing any rallying activities.
 - b. An injunction shall issue restraining the 4th Defendant - **The Kenya Motorsport Federation**, - its agents, servants, or any other person whatsoever acting on its behalf and or direction by way of a temporary injunction from assigning any rallies to **The Western Kenya Motor Club**.
 - c. The Plaintiff shall be at liberty to move this Court for further orders, including, but not limited to, those concerning or relating to the Plaintiff's prayer for the 5th and 6th Defendants to be directed to appoint a caretaker committee to conduct the affairs for **The Western Kenya Motor Club** pending hearing and determination of the main suit.
 - ii. Regarding the 1st, 2nd and 3rd Defendants' Notice of Motion dated 14/12/2023, the only prayer that was still outstanding is prayer (v) thereof which sought the striking out of this suit and which prayer is hereby declined.
 - iii. Costs shall be in the Cause.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 15TH DAY OF MAY 2024



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WANANDA J.R. ANURO

JUDGE

Delivered in the Presence of:

Ms Luseria for Plaintiff
Ms Kibet h/b for Mr. Kibii for 1st-3rd Defendants

Eldoret High Court Civil Case No. E025 of 2023

