



Mwagiru v Muthaiga Country Club Limited & 3 others (Civil Case 239 of 2013) [2024] KEHC 8675 (KLR) (Civ) (10 July 2024) (Judgment)

Neutral citation: [2024] KEHC 8675 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 239 OF 2013

AN ONGERI, J

JULY 10, 2024

BETWEEN

STEPHEN MBUGUA MWAGIRU PLAINTIFF

AND

MUTHAIGA COUNTRY CLUB LIMITED 1ST DEFENDANT

MUTHAIGA COUNTRY CLUB HOLDINGS LTD 2ND DEFENDANT

COLLIN CHURCH 3RD DEFENDANT

GRAHAM NICHOLLS 4TH DEFENDANT

JUDGMENT

1. The plaintiff in this case Stephen Mbugua Mwagiru sued the four defendants, Muthaiga Country Club Ltd, Muthaiga Contry Club Holding Ltd, Collin Church And Graham Nicholls vide plaint dated 26/6/2013 seeking the following prayers;
 - i. A declaration that his purported suspension and purported expulsion from membership of the 1st defendant on 31st October, 2012 is ultra vires, illegal and void.
 - ii. A permanent injunction to restrain the 1st defendant by its offices, servants or agents or otherwise from breaching the contract of membership the defendants entered into by the plaintiff and 1st and 2nd defendants.
 - iii. A permanent injunction to restrain the 1st defendant by its officers, servant or agents or otherwise from interfering with plaintiff and his family's enjoyment of the facilities offered by Muthaiga Country Club to members of the same.
 - iv. General damages



- v. Costs of this suit.
- vi. Interest on (d) and (e).
2. The plaintiff averred in the plaint that the 2nd defendant, which was incorporated sometimes back in the 1930s, owns the land of Muthaiga Country Club. Historically, all the members of the Club were members of the 2nd defendant.
3. That in anticipation of the promulgation of the constitution, the 2nd defendant was reorganized on 18th August 2010. The Members of the 2nd defendant resolved to reorganize the Club and successfully secure the Club's freehold assets, ahead of the changes to the Constitution of Kenya.
4. The reorganization, entailed the formation of a new company, the first defendant, limited by shares which housed the Members and the retention of the original company, the 2nd defendant limited by guarantee as the holder of the land.
5. That the 2nd defendant a company limited by guarantee is now Muthaiga Country Club (Holdings) Limited and the company limited by shares is now Muthaiga Country Club Limited, the 1st defendant.
6. The plaintiff further avers that during the reorganization of the Club in August 2010, Kenyan citizens retained their membership of the 2nd defendant while all members became shareholders of the 1st defendant. The plaintiff retained his membership of the 2nd defendant and became a shareholder of the 1st defendant. The plaintiff further avers that the 2nd defendant adopted all of the 1st defendant's constitution.
7. The plaintiff further averred that the 1st defendant owns and runs the most prestigious members' club in the Republic of Kenya known as 'Muthaiga Country Club'. Since colonial times, its membership has included the many prominent people from such sectors as politics, farming, business, banking, manufacturing and other professions. It provides its members and their families with first rate recreational facilities. It operates restaurants, a physical exercises facility, a swimming pool, and banqueting facilities. The club is in the high class residential estate known as Muthaiga where embassies and High Commissions of various nations are located.
8. The plaintiff further avers that at all material times, the 1st defendant had about 6,600 members of whom he was one. Under Article 4 of its articles and memorandum of association, the 1st defendant has the following, among others, classes of membership:
 - a. full membership;
 - b. full town membership
 - c. full country membership
 - d. family membership
 - e. junior family member;
 - f. short term membership.
- 9) The most coveted membership of the Muthaiga Country Club is full membership for which a member pays an entry fee of Kshs.160,768/-. Such member may pay Kshs.80,384/- as membership fee for his or her spouse and all their children.
10. The plaintiff further avers in or about 2004 he was, on application to the 2nd defendant, granted a full membership of Muthaiga Country Club and subsequently, a family membership. He duly paid



- the entrance fees for himself and his family. The plaintiff and his family became members, limited by guarantee, of the 2nd defendant. In August 2010 his membership was transferred to the 1st defendant.
11. The plaintiff further avers that under Article 3 of the 1st defendant's memorandum and articles of association, which became effective in August 2010, provided for the automatic issuance of one redeemable preference share to which is attached a designation of his or her membership full, family or otherwise. The plaintiff avers that in 2010, he was issued with a share due to a full member of the 1st defendant who has paid his entrance fee.
 12. The plaintiff further avers that between 2004 and 22nd November, 2012 when his membership was illegally suspended by the 1st defendant, he and members of his family enjoyed all the facilities which are provided by the 1st and 2nd defendants. He contends that he and members of his family are entitled to enjoy all the facilities corresponding with their membership as long as their membership has not been terminated in any of the ways provided in the memorandum and articles of association of the 1st defendant.
 13. The plaintiff avers that Article 26 of the 1st defendant's memorandum and articles of association has vested the control of the club's business in its officers and a committee of twelve full members. By virtue of Article 28 of the said 1st defendant's memorandum and articles of association, its officers are a chairman, two vice-chairmen. The day to day business operations are handled by a manager who serves as the secretary of the 1st defendant's twelve member committee. Under the secretary serves deputy managers. The secretary's office is established by Article 5 of the 1st defendant's memorandum and articles of association.
 14. The plaintiff avers further that the relationship between the plaintiff and the 1st defendant is contractual and the terms of that contract are partly those embodied in the 1st defendant's Memorandum and Articles of association and those which are to be implied by the common law into the said memorandum and articles of association. The plaintiff contends that yet other terms of the contract are supplied by the Constitution of the Republic of Kenya which:
 - a. vide Article 27 prohibits discrimination of any person or any arbitrary or capricious action;
 - b. vide Article 47 gives persons the right to fair administrative action; and
 - c. vide Article 50 gives persons the right to a fair hearing.
 15. The plaintiff further avers that Article 22 of the 1st defendant's memorandum and articles of association vests in the twelve member management committee of the 1st defendant power to discipline those members of the 1st defendant who within the meaning of that Article wilfully refuse or neglect to comply with the memorandum and articles of association or are guilty or accessory to any conduct which is in the opinion of that committee is injurious to the character or interests of the club. The quorum of the committee when disciplining its members is eight members and its decision takes the form of a resolution. Upon finding a member guilty his membership is by virtue of Article 25 automatically suspended pending further decision of the 1st defendant.
 16. The plaintiff contends that there are to be implied in Article 22 of the 1st defendant's memorandum and articles of association, the following terms of the contract of membership entered in to by a member and the 1st defendant:
 - a. That 1st defendant's twelve member committee shall, when disciplining a member under Article 22 pleaded in paragraph 15 above, form its opinion of guilt or otherwise objectively and on the basis of facts and law found by it;



- b. Adhere strictly to the rules of natural justice in that it :
- i. it is under a duty to act fairly;
 - ii. It must not be biased or prejudiced in any way;
 - iii. It must apply the principle that no man must be condemned unheard;
 - iv. First he must be given a notice which sets out clearly and fully the alleged wrongs he has committed where, when and to whom in sufficient detail for him to answer them;
 - v. Secondly he must be given by it an opportunity to be heard with assistance of counsel if required; he must be allowed to confront his accusers and call witnesses to refute the allegations made against him;
 - vi. Thirdly, if the committee has received any prejudicial information and documents about him the same must be disclosed to him by that committee and he be afforded an chance to comment on them and defend him/herself;
 - vii. Fourthly, where a right of appeal is conferred the members must be heard by a body other than the twelve member committee.
 - viii. The plaintiff further avers that Article 23 of the 1st defendant's memorandum and articles of association confers on a person who has been found guilty of a charge by the committee following observance of the rules of justice a right to appeal to a general meeting of the 1st defendant within 28 days of the communication by the committee of the judgment which is termed a resolution by Article 22. The appeal is lodged with secretary of the 1st defendant whose office is established by Article 5 of the 1st defendant's memorandum and articles of association. Article 24 grants to the plaintiff a right to present his case to the general meeting. The plaintiff avers that Article 24 obliges the committee of the 1st defendant to take all the necessary steps to ensure that the plaintiff exercises his rights of appeal. Among other things, the secretary must invite the disciplined member of the 1st defendant to cause twenty members to requisition the general meeting to hear his appeal. Upon hearing the appellant the general meeting may reverse the decision of the committee or uphold or vary it. The plaintiff avers that in breach of his rights under the said Article 24 of the Memorandum and Articles of Association, the defendant has refused/neglected to refer his appeal to the general meeting of the 1st respondent.
 - ix. At all material times, the plaintiff avers that he patronized the Club several times a week. In or about October, 2012, he came across a rumour to the effect that he had allegedly been referred to the 1st defendant's committee for disciplining for an alleged offence of which he was not aware. On inquiring of the validity of the rumour from a Mr. Krop, the 1st defendant's operations manager, he was informed that indeed some complaints had been forwarded to the committee. At all material times, a Mr. Graham Nicholls was the 1st defendant's club secretary and its general manager and had not communicated to the plaintiff either orally or in writing any complaints made against him.
 - x. The plaintiff avers that he received a letter dated 22nd November, 2012, from the Club Secretary of the 1st defendant, in which the 1st defendant asked the plaintiff to resign from membership of the 1st defendant for 'repeated incidents of abuse and



disrespect to staff, failure of which steps would be taken to expel him from membership of the 1st defendant. The secretary purported to communicate a decision of the 1st defendant taken against the plaintiff on 31st October, 2012, in his absence and without his knowledge of the fact or charges made against him. The said letter read as follows:

Dear Mr. Mwangiri.

Re; Mr. Steve Mwangiri-Member No.0220410A.

The subject of your behaviour and treatment of staff at Pink's on 27th September 2012 and in the view of repeated incidents of you being abusive and disrespectful to staff was discussed at the committee meeting that was held on 31st October 2012.

I now write to advise you that under Article 22(1) of the Club's Articles of Association a resolution was passed at that meeting that by reason of your repeated conduct you are guilty or an accessory to conduct which in the opinion of the committee is or might be injurious to the character and interests of the club and you are therefore invited to resign from membership of the Club failing which steps will be taken to expel you from membership of the Club.

In accordance with Article 231 hereby enclose a copy of the resolution that was passed at the committee meeting and in the circumstances advise that before the resolutionbecome effective you have a right to lodge an appeal with secretary of the club within twenty eight days of the date of service of this notice. I would draw your attention to the consequence of not lodging an appeal and to your rights under Article 24 in the event that you do appeal.

17. The plaintiff avers that the resolution referred to in the said letter dated 22nd November, 2.012 was not enclosed. Instead, the enclosure was the purported minutes of the meeting of 31st October 2012 which read as follows:

Minutes Of A Meeting Of The Mcc Main Committee Held On Wednesday 31st October 2012 At 5.00 Pm

MC 95 /12 Membership Matters.

(b). Membership Issues.

Mr. Steve Mwangiri — (Membership number 0220410A)

The procedure set out in Article 22 was discussed. It was noted that quorum of not less than eight committee members was present and therefore competent to pass the resolution.

18. The plaintiff contends that the purported resolution passed against him on 31st October, 2012 was so passed in breach of the terms of the contract entered into by the plaintiff and the 1st defendant pleaded above and is null and void. The 1st defendant's committee —
- i. breached the rules of natural justice pleaded in paragraph 16 above; the plaintiff was not informed of what he allegedly did to the staff at Pink's Restaurant on 27th September 2012; the staff to whom he was allegedly abusive and disrespectful were never named to him at any time before or after 22nd November 2012; no details of the alleged repeated incidents were provided;



the allegedly injurious conduct was never defined to him and was never supplied; he was never given any notice or hearing; he was condemned unheard;

- ii. did not form its opinion after making an objective inquiry;
 - iii. acted arbitrarily or whimsically;
 - iv. illegally suspended the plaintiff's membership.
19. The plaintiff avers that on 4th December, 2012 which was within 28 days, he appealed against the purported decision taken against him on 31st October, 2012. He informed the secretary of the 1st defendant through an email that under Article 23 of the 1st defendant's memorandum and articles of association, he was appealing against the committee's decision pleaded in paragraph 19 above. In part he said, I have just received your letter dated 22nd November 2012 informing of the decision reached at the committee meeting held on 31st October 2012 and my right to appeal the said decision.
- Through this advance email I would like to inform you that I shall be appealing this resolution and I will also be preparing a more comprehensive reply to the said allegations. As I have indicated in my letter dated 14th November 2012 prior to this letter I have never been informed of the exact nature and dates of the alleged transgression, whom my accusers and their witnesses are and I with all respect expected my side of the story heard as well before being condemned. I believe it is only fair that due process is followed before any decision to expel me is reached.
20. To enable him to compile a report for presentation to the members of the 1st defendant, at his appeal to the General Meeting of the 1st defendant on his purported suspension, the plaintiff set out to obtain the background to his purported suspension. He duly wrote to the Committee through the Secretary requesting to meet them and face his accuser.
21. The Plaintiff avers that pursuant to his request which is pleaded in paragraph 21 above, the committee of the 1st defendant invited him to attend and he did attend a meeting convened by it on 8th March 2013. He met 3 "representatives" of the committee.
22. The Plaintiff further avers that at that meeting he was not informed of his alleged misconduct nor told who his accusers were. The Chairman only claimed that there were 21 complaints against him, majority/if not all of which were recorded after the alleged incident of 27th September 2013. The nature of the complaints was not revealed.
23. The Plaintiff further avers that the Club Secretary was present in this meeting. The plaintiff contends that the club secretary acted as the prosecutor against him, and cannot therefore sit as part of the disciplinary committee within the meaning of Article 22 of the Memorandum and Articles of Association.
24. The plaintiff further avers that in late April, 2013, he received from the 1st defendant a letter informing him that the disciplinary committee of the 1st defendant had reviewed his case on 23rd April, 2013 and upheld its decision communicated on 22nd November, 2012 — that the plaintiff be expelled.
25. The plaintiff avers that he does not know what was taken into account during the review of his case. He contends that after the committee passes a decision on a member under Article 22 of the Memorandum and Articles of association, it becomes functus officio it is only the general meeting which has power to review that decision, the committee's purported review of its decision is ultra-vires to the memorandum and articles of association and is null and void.



26. The plaintiff avers that in breach of its contractual obligations under Articles 23 and 24 of the 1st defendant's memorandum and Articles of Association, it has not supplied the plaintiff with information pertaining to his disciplining or referred his appeal to the general meeting after the same was lodged on 4th December 2012. The plaintiff further avers that the defendants continue to deny him and members of his family the use of the club facilities.
27. The plaintiff further avers that on 30th May, 2013, the plaintiff demanded in writing that the defendants do respect his contractual rights of membership of the 1st and 2nd defendants. Despite that demand, and notice of intention to use, the defendants have declined to respect his rights and those of members of his family to use the Muthaiga Country Club facilities thereby making this suit necessary.
28. The defendants entered appearance on 13/8/2013 and filed a statement of defence dated 30/9/2013 denying the plaintiff's claim.
29. The defendants responded as follows to the plaintiff's averments;

In response to paragraphs 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the plaint the Defendant states that the narration by the Plaintiff do not exonerate him from the gross contravention of the 1st Defendant's articles of association and by-laws comprising the rules and regulations which bind all members without exception and that it is not in dispute that:

 - a. Prior to his lawful expulsion, the Plaintiff was a member of Muthaiga Country Club;
 - b. The plaintiff holds one redeemable preference share in the 1st Defendant/Applicant which holding entitled him to invite and or propose persons to join the membership of the 1st Defendant;
 - c. The plaintiff invited/proposed members of his family to join the Club; and
 - d. The Plaintiff was expelled from the 1st Defendant on 31st October 2012 for conduct either in or outside of the premises of 1st Defendant which, in the opinion of the committee of the 1st Defendant, was conduct which, in the opinion of that committee, was or might be injurious to the character or interests of the 1st Defendant.
30. Further to paragraph 3 above, the Defendants state that the 1st and 2nd Defendants/Respondents objects, particularly No. 4, provide, amongst others, that the income and property of the Company whensoever derived shall be applied solely towards promotion of the objects of the Company and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit, to the members of the Company.
31. In particular response to paragraphs 8 and 9, the 1st Defendant admits that it owns and runs the most prestigious members club in the Republic of Kenya known as Muthaiga Country Club whose membership includes many prominent people and therefore to maintain the prestige, prominence and high esteem with which the "Muthaiga Country Club" is associated, it is important that all its members carry themselves with decorum and avoid any conduct either in or out of the Club which might be injurious to the character or interests of the Club as the case may be.
32. In particular response to paragraph 14 of the Plaint, the Defendants state that Article 22 to 26 of the 1st Defendant's Articles of Association, which governs the relationship between the 1st defendant and the plaintiff provides for the disciplinary procedures.



Article 22 provides as follows:

“Expulsion of Members

22.

- (1) If any member shall willfully refuse or neglect to comply with provisions of the Articles of Association or the By-laws of the Club, or shall be guilty of or accessory to any conduct either in or out of the Club which, in the opinion of the Committee, is or accessory to any conduct either in or out of the Club which, in the opinion of the Committee, is or might be injurious to the character or interests of the Club as the case may be, the Committee by a Resolution duly passed at a meeting at which not less than Eight members are present may prohibit such member from making use of the Club until a specified date or the happening of a specified event, or may invite him to resign, or may expel him.
- (2) In the event of an action taken under Article 16 or Article 22 (1), the committee may extend such action to any or all other members within the same membership Group. For these purposes, "Membership Group " shall mean the Members who derive their Membership from the same Full Member or Short Term Member but shall not extend to another Full Member or Short Term Member.

33. Further to paragraph 6 above, and in response to paragraph 14 of the Plaintiff, the defendants state that the action taken against the Plaintiff was in no way arbitrary or capricious as he was well aware of the consequences of his actions having been a member of the Club since the year 2004 as he states in paragraph 10 of his plaint.

34. Further to the above and particular response to paragraph 14 (b) and (c) of the Plaintiff, the Defendants state that following numerous complaints of gross misconduct on the part of the Plaintiff, a Committee Meeting of the 1st Defendant was held on 31st October 2012 where it was resolved to prohibit him from making use of the Club and invited him to resign from membership of the Club, failing which, steps would be taken to expel him. Article 25 provides that:

“ Any Member in respect of whom a Resolution of the Committee has been passed under the provisions of Article 22 shall automatically be suspended from using the Club until either the Resolution has become by effluxion of time full)' effective in default of Appeal or pending the decision of the Members in a General Meeting by virtue of an Appeal.

35. Further to paragraph 8 above, and in response to paragraphs 15, 16, and 17 of the Plaintiff, the plaintiff was by a letter dated 29th November 2012, duly informed of the above provision of the 1st Defendant/ Respondent's Articles of Association and on 4th December 2012, the Plaintiff subjected himself to the jurisdiction of the 1st Defendant's Committee and responded to the suspension by an e-mail where he indicated that he would exercise his right of appeal against the decision of the Committee. He requested for a copy of the 1st defendant's Articles of Association/Club Constitution. The 4th Defendant, in an e-



mail dated 5th December 2012, advised the Plaintiff to collect an additional copy of the Club's Articles of Association at the Front Desk which he acknowledged receipt of in his e-mail of 6th December 2012.

36. The Defendants deny the Plaintiffs averments at paragraphs 14 and 17 as the Plaintiff was on 10th December 2012, advised by the 4th Defendant that his e-mail of 4th December 2012 constituted the lodging of an appeal against the Club's letter of expulsion dated 22nd November 2012 and while fully aware of the provisions of the Articles of Association regarding the mandate of the Committee and the appeal procedure, the Plaintiff abandoned his appeal by failing to, "...within 14 days of the lodging of his appeal, provide the 4th Defendant with a requisition made in writing by not less than Twenty Full Members..."
37. In further response to paragraph 17 of the Plaint, the Defendants maintain that instead of prosecuting his appeal and adhering to the appeal process, the Plaintiff abandoned his earlier denials as to what transpired and proceeded to unequivocally admit his transgressions/ violations of the Clubs Articles and by laws In a letter dated 13th December 2012, where he amongst others, states as follows:

"I would like to take this opportunity to proffer my heartfelt apologies to this honourable committee for any action or conduct of mine that may have been or which is injurious to the character of the Club. I am sorry for any inappropriate behaviour in which any person/s including this committee felt that they were treated in a disrespectful manner.

It has been an honour for me to be a member for the last nine years and during this period I have always aspired to uphold the club decorum and to conduct myself in accordance with the standards that the Club expects of its members.

I assure the Committee, that if given the opportunity, this will not happen again.

Yours sincerely,

Stephen Mwangi

38. The Defendants aver that rather than requisition members as required, the Plaintiff requested for a meeting with the Committee, which request was granted vide a letter dated 5th February 2013 and acknowledged by him on 19th February 2013.
39. At the meeting, held on 8th March 2013, the details of the complaints against the plaintiff were restated to him and he was informed that notwithstanding the fact that his right of appeal was time barred and overtaken by events, the Committee would afford him an audience.
40. The Defendants aver that the plaintiff stated to the committee that he preferred not to dwell on the past and not to go over the detail of his alleged misconduct and that he preferred to give a sincere and unequivocal apology to all those who felt aggrieved by his behaviour.
41. In response to paragraphs 23 and 24 of the Plaint the Defendants aver that after the hearing of 8th March 2012, the Committee acknowledged the Plaintiffs apology which was reported back to the Main Committee of the 1st Defendant, which Committee upheld its decision to expel the Plaintiff from the Club given the grievous and continuing gross misconduct by Mr. Stephen Mbugua Mwangi.
42. The Defendants aver that, in view of his admissions, the Plaintiff's allegations that he was unaware of the serious allegations against him and that he was not given a chance to be heard are an irrelevance designed to subvert the course of justice.
43. In response to paragraph 24 and 25 of the Plaint, the Defendants aver that the Plaintiff failed to comply with the proviso to article 24 of the Memorandum and Articles of Association of the Club. While



he was, on 10th December 2012, advised by the 4th Defendant that his e-mail of 4th December 2012 constituted the lodging of an appeal against the Club's letter of expulsion dated 22nd November 2012, and while fully aware of the provisions of the Articles of Association regarding the mandate of the Committee and the appeal procedure, the Plaintiff abandoned his appeal by failing to, "...within 14 days of the lodging of his appeal, provide the 4th Defendant with a requisition made in writing by not less than Twenty Full Members..."

44. Further to paragraph 15 above the Defendants state that this failure by the Plaintiff to, within 14 days of the lodging of his appeal, provide the 4th Defendant with a requisition made in writing by not less than Twenty Full Members extinguishes his right to have a General Meeting of the full members of the Club convened. All allegations of breach are denied.
45. The hearing of this case proceeded on 6/12/2018. The plaintiff testified as PW 1 and adopted his witness statement dated 26/6/2013 and a supplementary statement dated 27/11/2015 as his evidence in chief.
46. The plaintiff stated as follows in the said witness statement that 2004 to 2012 together with his family member have used the facilities of the club without interference. On 22nd November and 29th November he received letters from the 1st defendant informing him that he was suspended from the 1st defendant on 31/10/2012 without notice. On 4/12/2012 he protested the suspension and lodged an appeal as required by the by-laws of the 1st defendant through an email. The 1st defendant did not place before the general meeting his appeal as required by Article 23 of the 1st defendants memorandum and Articles of association.
47. He stated that since the suspension his family has been stopped from enjoying the club's facilities. That between December 2012 and April 2013 he has exchanged with the 1st defendant correspondence aimed at partly at resolving the dispute between him and the 1st defendant amicably. In may 2013 however he sent a demand letter to the 3rd defendant requiring it to observe the memorandum and articles of association.
48. In cross examination, the plaintiff said he joined the club in the year 2004 and he was expelled on 31/10/2012. He said he was accused of gross misconduct.
49. The plaintiff denied the allegations that he threatened an employee of the 1st defendant and he said he was not aware of the complaint in page 30 of the defendant's bundle of documents.
50. The plaintiff said he wrote an email dated 5/12/2012 asking to be heard by the committee but he was told the matter was dealt with under Article 22.
51. The plaintiff also said he was coerced by the 3rd defendant to admit that he was guilty.
52. The plaintiff said he could not appeal again the decision of the committee because he was not heard in the first place.
53. The defendant called two witnesses DW 1, Jonathan Steward Philip Coulson And Dw 2 Daniel Ngugi Kamau.
54. DW 1 adopted his witness statement dated 22/6/2023 as his evidence in chief. He said as follows in the said statement; he is currently the chairman of Muthaiga Country Club and was the vice chairman at the time of the incident by the plaintiff. He indicated that Muthaiga country Club was Incorporated on 6/11/2009 with the share capital of the Company (1st Defendant) as Kenya shillings one hundred thousand divided into one hundred thousand (100,000) redeemable preference shares of one shilling each and a single ordinary share of one shilling in value.



55. Muthaiga Country Club Holdings is a company limited by guarantee incorporated on 29/3/1935. Muthaiga Country Club is the operating club which houses the members and operations and it leases the land from Muthaiga Country Club Holdings which owns the land, the members of Muthaiga Country Club Holdings comprise entirely made of Kenyan citizens members of Muthaiga Country Club. This step was taken so as to preserve the title to the land given the effects of Articles 65 of the Constitution of Kenya.
56. He stated that Prior to his lawful expulsion, Mr. Stephen Mbugua Mwangi was a Member of Muthaiga Country Club, holding one redeemable preference share in the 1st Defendant, which holding entitled him to invite and or propose persons to join the membership of the 1st Defendant. Mr. Stephen Mbugua Mwangi invited/proposed members of his family to join the Club.
57. The plaintiff was expelled from the 1st defendant on 31/10/2012 for conduct in the opinion of the committee of the 1st defendant which was injurious to the character or interest of the 1st defendant. The details of the plaintiff's gross misconduct was as follows;
- a. On or about 25/4/2012, he abused and threatened an employee of the 1st Defendant, Mr. Francis Mwangi as evidenced by the complaint he filed.
 - b. On or about 26/4/2012, Mr. Stephen Mbugua Mwangi, in the company of several ladies, visited the Club's Pink's Bar at around 12:00am and ordered food. He was informed that the kitchen was closed, he hurled obscenities at the employees and, in a most indecent manner totally unbecoming of a member of the 1st Defendant, urinated in the restaurant's corridor claiming that the toilets were "too far".
 - c. On or about 27/9/2012, Mr. Stephen Mbugua Mwangi, visited Pink's Bar, generally reserved for young adults, to partake of alcoholic drinks. After appearing to be heavily intoxicated, Mr. Stephen Mbugua Mwangi tore chits from the Christmas Box, proceeded to abuse staff with obscenities including "fuck you " and "you thieves".
 - d. On or about 10/10/2012 Mr. Stephen Mbugua Mwangi, visited Pink's Bar, generally reserved for young adults, to partake of alcoholic drinks. After appearing to be intoxicated, Mr. Stephen Mbugua Mwangi proceeded to abuse staff with obscenities.
 - e. On or about 8/11/2012, Mr. Stephen Mbugua Mwangi once again visited Pink's Bar. After imbibing alcoholic drinks substantially at the Pink's Bar, he moved to the Member's Bar (which is about one hundred metres from Pink's Bar) and ordered that his bills be taken to him in that Bar.
 - f. The 1st Defendants' employees at Pink's Bar requested Mr. Stephen Mbugua Mwangi to verify his bills but he refused and, amongst others, attempted to intimidate staff by video recording, using his mobile telephone, without their consent and hurling obscenities.
58. The 3rd defendant made the committee aware that the plaintiff's unacceptable behaviour was not confined to the club's premises and that his propensity to violent acts extended to amongst others Mr. Fabian Phillipart, a Belgian national and General Manager of Kofinaf Company Limited, where Mr. Stephen Mbugua Mwangi was a director. It was reported in the media and brought to the Club's attention that following Mr Mwangi reportedly in a state of high intoxication visited the Manager's Club within the premises of the Company where Phillipart opened the door and when he failed to gain entry, he reportedly broke Mr. Phillipart's kitchen window. The matter was reported at ruiru police station as complaint reference no. OB21/18/02/2012.



59. It was clear that the plaintiff's conduct both in and out of the club was injurious to the character or interests of the club as contemplated under Article 22 of the 1st defendant's Articles of Association. The plaintiff was thereafter expelled from the club under Article 22 to 26 of the 1st defendant's articles of Association which governs the relationship between the 1st defendant and the plaintiff. The allegations by the plaintiff that he was unaware of the serious allegations against him, and that he was not given a chance to be heard were untrue and only designed to subvert the course of justice.
60. In cross-examination, DW 1 said the plaintiff was suspended for gross misconduct and he failed to appeal to the general meeting and he was subsequently expelled.
61. DW 1 also said that the plaintiff was aware what he did and he apologized in a letter dated 13/12/2012 and sought forgiveness.
62. DW 1 said the club did not violate the rules of natural justice.
63. DW 2, Daniel Ngugi Kamau also adopted his witness statement dated 22/7/2015 as his evidence in chief.
64. He stated as follows in the said statement that he is an employee of the 1st defendant having worked as a receptionist for over 10 years. He recalled that on 8/11/12 at about 11.45pm he received a call from Wycliffe at the men's bar who told him to print the plaintiff's bill. After the plaintiff received the bill he called the reception again to request for an envelope and he was in no position to go over to the plaintiff since he had a guest to attend to at the desk. He then requested a cocktail bar man to kindly take the envelope to the plaintiff at the Men's Bar.
65. At around 2.15AM when he went to the Men's Bar to collect a carton, the plaintiff shouted at him to leave the Men's Bar since it belonged to members and not front office staff. He continued to hurl all manner of insults and obscenities at him. He was joined by Mr. Kigundu (a/c 200296) and at one point the plaintiff took picture of him using his phone and insisted that he had been causing disturbance to him and his friends.
66. Before he left the bar he learnt that the plaintiff was upset by the fact that he had requested him to go over to the reception to have a look at his bill. He felt that it was mandatory that he took the bill over to him.
67. In cross-examination he said the plaintiff insulted him when he was unable to take his bill at Pink Bar because he (DW 2) was serving another customer.
68. The parties filed written submissions as follows; the plaintiff submitted that the 1st defendant breached the contract entered into by it and the plaintiff. The plaintiff argued that Article 28 of the Constitution guarantees everyone enjoyment of the dignity of the individual. The plaintiff entered into a contract with the 1st and 2nd defendant following the letter of offer dated 3/3/2004 and his acceptance which was evidence by the fact that he paid consideration quoted in the by-law. That by virtue of paying the subscription fees and settling outstanding fees for goods and services he utilized he is entitled to respect of his rights to associate with other members.
69. The plaintiff argued that he was not accorded a fair administrative action as per Article 47 of the Constitution of Kenya. The plaintiff submitted that the 1st defendant's Articles of Association does not provide administrative action that is efficient, lawful, reasonable and procedurally fair. The plaintiff was not supplied with any complaints on the alleged misconduct or reports alleged misconduct, was not invited for any disciplinary hearing, was not given a chance to present his side of the story but only



received a letter informing him that a resolution had been made on 31/10/2012 to expel him from the club.

70. The plaintiff argued that he was given a chance to appeal the resolution to a committee that comprised of members who had formed part of the first committee which was unlawful, unreasonable and procedurally unfair. He was expelled without being told what he had allegedly done wrong. The chairman of the club admitted that the practices of the club in disciplining members are outdated as they date back to the 1930's.
71. The plaintiff submitted that Justice Onguto at paragraph 40 of his judgment of Petition No. 459 of 2015 between [Kenya Human Rights Commission and Non-Governmental Coordination](#) stated as follows

“Section 4(3) of the *Fair Administrative Action Act*, 2015 provides that 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 prior and adequate notice of the nature and reasons for the proposed administrative action; an opportunity to be heard and to make representations in that regard; notice of a right to a review or internal appeal against an administrative decision, where applicable; a statement of reasons pursuant to section 6.”

Further in paragraph 42

“Thus, a person whose interests and rights are likely to be affected by an administrative action has a reasonable expectation that they will be given a hearing before any adverse action is taken as well as reasons for the adverse administrative action as provided under Article 47 (2) of the Constitution. Generally, one expects that all the precepts of natural justices are to be observed before a decision affecting his substantive rights or interest is reached. It is however also clear that in exercising its powers to superintend bodies and tribunals with a view to ensuring that Article 47 is promoted the court is not limited to the traditional judicial review grounds. The *Fair Administrative Action Act*, 2015 must be viewed in that light.”

72. It was the plaintiff's argument that the 1st defendants memorandum and articles of association conferred power to the committee to expel any member who was found guilty of any conduct that may be injurious to the interests of the Club but the procedure to be followed was unlawful, inefficient and therefore any decision rendered does not amount to fair administrative action.
73. The defendants on the other hand submitted that it is well established that when someone becomes a member of a private club or association they voluntarily submit themselves to the rules, regulations and disciplinary jurisdiction of that organization.
74. The defendants submitted further that if anybody was in breach of contract, it was the plaintiff by failing to adhere to the terms of his membership with the 1st defendant in accordance with the memorandum and Articles of Association which governed the relationship between them. The plaintiff was expelled from the club under Article 22 to 26 of the 1st defendants Articles of Association. The defendants have proved by evidence particularly testimony by DW2 of his interactions with the plaintiff and it was not disputed that the club committee received numerous complaints about the plaintiff's misconduct.
75. The defendants argued that further in a letter dated 13/12/2012 the plaintiff admitted to his misconduct. His admission demonstrated that he breached the terms of the contract entered into



- with the 1st defendant and as such the defendants were well within their rights to initiate disciplinary proceedings which ultimately led to his expulsion from the club.
76. The defendants contended that due process as set out in its memorandum and articles of association was adhered to.
77. It is the duty of the plaintiff to prove his case to the required standard in civil case. Action taken against the plaintiff was in no way arbitrary or capricious as he was well aware of the consequences of his actions having been a member of the club since 2004. That following numerous complaints of gross misconduct a committee meeting of the 1st defendant was held on 31.10/2012 where it was resolved to prohibit the plaintiff from making use of the club and invited him to resign from the club. The plaintiff lodged an appeal and abandoned his earlier denials as to what transpired and proceed to admit his transgressions. The plaintiff requested for a meeting with the committee which request was granted. the plaintiff stated to the committee that he preferred not to dwell in the past and preferred to give a sincere apology to all those who felt aggrieved by his behavior.
78. After the hearing of 8/3/2013 the committee acknowledged the plaintiff's apology which was reported back to the main committee of the 1st defendant which committee upheld its decision to expel the plaintiff from the club. Further the failure by the plaintiff to within 14 days of the lodging of appeal provide the 4th defendant with a requisition made in writing by not less that twenty full members extinguished his right to have a general meeting of the full member of the club convened.
79. The defendant argued that the principles of natural justice are not applicable in case of termination of an arrangement in any contractual field. Termination is neither quasi-judicial nor an administrative act so that the duty to act judicially is not attracted. The plaintiff does not deny that the committee gave him an opportunity to be heard.
80. The issues for determination in this case are as follows;
- i. Whether the plaintiff proved his case to the required standard.
 - ii. Whether the plaintiff is entitled to the declarations he is seeking.
 - iii. Whether the defendants violated the rules of natural justice.
 - iv. Who pays the costs of this suit?
81. On the issue as to whether the plaintiff proved his case, the plaintiff's evidence was that he was suspended from the club without being given a notice or reasons for the same.
82. The plaintiff maintained that the rules of natural justice were violated by the defendants.
83. The defendants on the other hand maintained that it is well established that when someone becomes a member of a private club or association they voluntarily submit themselves to the rules, regulations and disciplinary jurisdiction of that organization.
84. I find that the plaintiff was a member of the club and he was bound by the Articles and Memorandum of association and also the by-laws of the club.
85. There was a valid contract between the parties and the plaintiff voluntarily agreed to be bound by the memorandums and Articles of Association of the club which was to govern their conduct.



86. In the case of *Centurion Engineers & Builders Limited v Kenya Bureau of Standards* (Civil Appeal E398 of 2021) [2023] KECA 1289 (KLR) (27 October 2023) (Judgment), the court held as follows;

“As this Court has severally stated, and now a longstanding principle of law, that parties to contract are bound by the terms and conditions thereof, and that it is not the business of courts to rewrite such contracts. In *National Bank of Kenya Limited v Pipe Plastic Samkolit (K) Ltd* [2002] 2 EA 503 [2011] eKLR at 507, this Court stated:

“A court of law cannot rewrite a contract between parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded or proved.”
See also *Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited* [2017] eKLR.”

87. There is evidence that the plaintiff was suspended in accordance with the memorandums and Articles of Association of the club.

88. The plaintiff was given a chance to appeal to general meeting.

89. There is evidence that he apologized for his unbecoming behavior.

90. He chose not to appeal and he is estopped from denying his obligations.

91. There is no evidence that the plaintiff was coerced to write the apology.

92. I find that the plaintiff has not proved that he was unfairly treated.

93. On the issue as to whether the plaintiff is entitled to the remedies he is seeking, I find that the answer is in the negative.

94. The plaintiff was seeking a declaration that his purported suspension and purported expulsion from membership of the 1st defendant on 31st October, 2012 was ultra vires, illegal and void.

95. He was also seeking a permanent injunction to restrain the 1st defendant by its offices, servants or agents or otherwise from breaching the contract of membership the defendants entered into by the plaintiff and 1st and 2nd defendants.

96. The plaintiff was also seeking a permanent injunction to restrain the 1st defendant by its officers, servant or agents or otherwise from interfering with plaintiff and his family’s enjoyment of the facilities offered by Muthaiga Country Club to members of the same and also general damages and costs of this suit.

97. The defendants submitted that if anybody was in breach of contract, it was the plaintiff by failing to adhere to the terms of his membership with the 1st defendant in accordance with the memorandum and Articles of Association which governed the relationship between them.

98. There is evidence that the plaintiff was expelled from the club under Article 22 to 26 of the 1st defendant’s Articles of Association. The defendants gave evidence that the club committee received numerous complaints about the plaintiff’s misconduct.

99. Article 22 provides as follows;

“Expulsion of Members

22.



- (1) If any member shall willfully refuse or neglect to comply with provisions of the Articles of Association or the By-laws of the Club, or shall be guilty of or accessory to any conduct either in or out of the Club which, in the opinion of the Committee, is or accessory to any conduct either in or out of the Club which, in the opinion of the Committee, is or might be injurious to the character or interests of the Club as the case may be, the Committee by a Resolution duly passed at a meeting at which not less than Eight members are present may prohibit such member from making use of the Club until a specified date or the happening of a specified event, or may invite him to resign, or may expel him.
- (2) In the event of an action taken under Article 16 or Article 22 (1), the committee may extend such action to any or all other members within the same membership Group. For these purposes, "Membership Group " shall mean the Members who derive their Membership from the same Full Member or Short Term Member but shall not extend to another Full Member or Short Term Member."

100. The plaintiff was bound by the Articles and memorandum of association of the club.
101. The plaintiff apologized for his behavior and requested that his 3 daughters be allowed to use the club.
102. The plaintiff did not exercise his right of appeal to the general meeting and I find that he is the author of his own predicament.
103. On the issue as to whether the defendants violated the rules of natural justice, I find that the answer is in the negative.
104. Muthaiga Country Club is a private members club governed by the bylaws of the club together with their Articles of association and the membership is voluntary.
105. I find that the plaintiff has failed to prove his case to the required standard.
106. I dismiss the plaintiff's case at this stage. Had the plaintiff proved his case, he would have been awarded general damages of Kshs. two million.
107. However, the plaintiff did not prove his case to the required standard in civil cases and the same is dismissed accordingly.
108. On the issue as to who pays the costs of this suit, I find that the expulsion of the plaintiff is sufficient punishment and I direct that each party bears its own costs of this suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 10TH DAY OF JULY, 2024.

.....
A. N. ONGERI

JUDGE

In the presence of:



..... for the Plaintiff

..... for the Defendant

