



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 299 OF 2016

1.WYCLIFFE OGUTU

2.JOSEPHAT PETER KAMAR

3.ALFRED LUVAHA LUVINDI (suing as

Chairman, General Secretary and Treasurer

Respectively of Kenya Football Referees Association.....PLAINTIFFS

VERSUS

1. GILBERT MOORE TITUS OTTIENO

2. ROBERT MUTHOMI

3. NICK MWENDWA (sued as

Chairman of Football Kenya Federation

4. DORIS PETRA (sued as the Vice chairperson

of Football Kenya Federation.....DEFENDANTS

RULING

The application before the court for determination is the Notice of Motion dated the 11th November, 2016 brought under Order 40 Rules 1 and 2 of the Civil Procedure Rules seeking orders that:

a) Spent

b) Spent

c) Pending the hearing and determination of the suit the 1st, 2nd, 3rd and 4th defendants by themselves, their servants and agents be restrained by an order of temporary injunction from interfering with the affairs of, and soliciting for a collecting funds from the members of, or from calling for, or organizing or conducting the elections of Kenya Football Referees Association.

The application is premised on the grounds listed in the body of the same and its supported by the affidavit of Peter Antony Ghero sworn on 11th day of November, 2016.

The deponent who is the Assistant General Secretary of the Kenya Football Referees Association (herein referred to as KFRA) depones that he is aware that KFRA was registered under the Societies' Act under file no. SOC/1139 but after the enactment of the Sports Act No.25 of 2013 all the sports organizations registered under the Societies Act were required to apply for registration under the new law. He avers that, on the 1st September, 2014, KFRA applied for registration under the Sports Act vide letter Ref. No. SR/AR/18 (2) dated 3rd September, 2014 which application is presently under consideration.

He depones that, while KFRA is affiliated to Football Kenya Federation FKF, the Confederation of Africa Football (CAF) and Federation of

Football Associations (FIFA), the Constitution of KFRA does not permit or allow FKF or any other body which KFRA is affiliated to, interfere with the affairs of, nor concern itself with the election of office bearers of KFRA. That notwithstanding, the 1st defendant on a date unknown to him, and other bonafide officials of KFRA presented to the office of the Sports Registrar an application that KFRA be issued with a licence to recruit, train, examine and grade football's Referees. That, vide a letter dated 18th September 2015, he wrote to the Sports Registrar seeking registration under the Sports Act and that in writing the letter the 1st defendant pretended to write as the national Chairman and stated that Aloise Omondi Odhiambo and one Peter Waswa Barasa were officials of KFRA.

It was averred that the assertions in the letter dated the 18th September 2015 were not only false but fraudulent in that, by a letter dated 2nd August, 2011, the Registrar of Societies confirmed the bonafide office bearers of KFRA which position was confirmed in subsequent letters dated 9th September, 2011, 9th February 2012 and 21st may 2014. It was deponed that while GMT Otieno falsely and fraudulently pretended to be chair of KFRA, he was not even a member because the National Governing Council of KFRA suspended him on the 18th November, 2006 and was later expelled and his membership ceased on 21st October 2007 which decision he challenged, in **Nairobi HCCC No. 286 of 2009 Gilbert Moore Titus Otieno Vs Khamisi Bhargazal, Joel Nyang'au and Luvaha Luvindi** being the Chairman, General Secretary and Treasurer respectively of KFRA. That, his application for injunction filed in the said suit was heard and was dismissed with costs and since then he has not prosecuted the suit.

That, despite the fact that he was expelled as aforesaid, the first defendant, with the connivance of the 2nd and 3rd defendants continued to hold himself as the Chairman of KFRA and has unlawfully continued to Lobby and engage the office of the Registrar of Societies to call for elections notwithstanding that the elections were not due until the year 2013.

Further, it was deponed that, the 2nd defendant and the elected officials of FKF are interfering with the internal affairs of KFRA on pretext that they are addressing purported and non-existent disagreements and discord within KFRA. The examples given for such interference are that, at a meeting held on 19th March, 2006 the lawful officials of KFRA met and resolved to have elections on 7th May, 2016, 14th May 2016 and 28th May 2016 at sub-branch branch, and National levels respectively and notifications dated 21/3/2016 were issued to all the branch Chairmen members of National Executive Council, the FKF and the Registrar of Sports but the 2nd defendant unlawfully torpedoed the lawful resolutions thereby frustrating the program of elections. That, on the 29th March, 2016 the 1st defendant purported to write a letter to KFRA, FKF and KEFORA inviting them for a meeting to chart the way forward for the upcoming elections.

That, as far as the deponent is concerned, there is only one KFRA and for the 2nd defendant to purport to address the letter dated 29th March 2016 to the Chairman KFRA and KEFORA is to Folster confusion, and turmoil and to suggest that there are two associations which is not the case. That, in an undated email by FKF it had been said that the elections will be organized without the input from lawful officials of KFRA. The 1st defendant, had unlawfully published and released timetable with a view to conducting elections of KFRA with effect from 5th December, 2016. The duty of organizing the elections of the officials of KFRA lies on the bonafide officials of KFRA and its only just and reasonable that the orders prayed for in the application are granted.

The first defendant opposed the application by way of a replying affidavit that he swore on 14th day of December, 2016. He avers that the supporting affidavit is sworn by a stranger in that Peter Antony Ghero is not a party to the proceedings and that he is not an assistant General Secretary of KFRA Association as alleged and therefore the same should be struck out.

He contends that the actions by the deponent of the supporting affidavit amounts to an offence relating to the Administration of justice and it offends the provisions of Section 108 of the Penal Code as the deponent has committed perjury. It is averred that the allegations made in the supporting affidavit have no evidential or legal basis for this Honourable court to issue any reliefs sought. That, the applicant's concerns of improper conduct of the Kenya Football Referees Association Elections lacks merits, is bad in law and a cannibalization of the mandatory legal provisions relevant to the suit and the same should be struck out.

The applicant filed a supplementary affidavit on the 27th July 2017 in which he depones that he is the Assistant General Secretary of KFRA which is one of the offices recognized under Article 14 of the applicant's Constitution. He avers that under Article 18 of the same Constitution the Assistant General Secretary is mandated to assist the General Secretary in his absence or act as may be directed by him.

He has referred to the minutes of 19th March, 2016 in which he is recorded as the Assistant General Secretary. As such, he is competent to swear the supporting affidavit. The court has considered the application, the affidavits and the submissions by Counsel for the Applicant. The applicant has sought injunctive orders against the defendants from interfering with the affairs of KFRA. One of the grounds in support of the application is that the 1st defendant ceased to be a member of KFRA following his suspension and subsequent expulsion from the Association and his plea for an injunctive order was dismissed by the court on the 28th July 2009. This fact has not been denied by the first defendant in the replying affidavit and has not even commented on it. With the court order declining to grant the injunctive orders sought by the first defendant, it follows that he stands expelled from KRFA until the court reinstates him if at all after hearing the matter.

It is not in dispute that KFRA is a registered Association having been registered under the Societies Act and with coming into force of the Sports Act, the officials applied for its registration under the Sports Act. Copies of that application have been annexed to the affidavit and marked PAG 1. The Applicant has annexed a letter dated 2nd August, 2011 in which the office of the Registrar of Societies confirmed the bonafide officials of the Association following elections that were held on 5th December, 2009. Looking at that list, none of the defendants is an official of KFRA. The above position has been confirmed in a letter to the Divisional CID dated 9th September 2011 by the Registrar of Societies, also vide a letter dated 9th February, 2012 by the Assistant Registrar of Societies to FKF and lastly via a letter dated the 21st may 2014 by the Deputy Registrar of Societies.

This list of officials has not been disputed by the defendants. It is common knowledge that the affairs of an association are run by the bonafide officials who are elected into the office.

The Applicant has averred that the defendants have been interfering with the running of KFRA and has set out instances when they have done so. I have perused the replying affidavit and the first defendant has not denied that he has interfered with the affairs of KFRA as alleged by the Applicant. In the alternative, he has not stated in what capacity he has been writing the letters annexed to the affidavit in support or in what capacity he has been involving himself with the affairs of the Association. To the contrary, he has concentrated more on the capacity of one Peter Ghero to swear the supporting affidavit. I have looked at the supplementary affidavit filed on 27th July 2017 in which he has explained the capacity in which he swore the affidavit. Annexed to his affidavit are minutes of meetings that was held on the 19th March, 2016 in which, his names appears as Assistant General Secretary. The court has also seen the minutes of the meeting held on 27th July 2013 during which Mr. Peter Ghero was proposed to take up the positions of the assistant General Secretary. Those documents form part of the record and they have not been challenged in any way and therefore, it was in order for Peter Ghero to swear the supporting affidavit in support of the Notice of Motion, the subject matter of this ruling.

Having considered the material before me, I find that the application has merits, and it is hereby granted in terms of prayers (c) and (d). The applicants are awarded the costs of the application.

Dated, Signed and Delivered at Nairobi this 11th day of October, 2018

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L. NJUGUNA

JUDGE

In the presence of:

.....**For the Plaintiffs**

.....**For the Defendants**