



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HCCC NO. 400 OF 2015**

MAINA KARAH & 13 OTHERS.....PLAINTIFFS

VERSUS

MATHEW KIMITU & 2 OTHERS.....DEFENDANTS

**RULING**

The Plaintiffs filed this suit seeking the main reliefs that the Defendants be restrained from interfering with their access and use of the facilities at Barclays Sports Club. They also sought a declaration that the action by the Defendants is *ultra-vires* the provisions of the Barclays Sports Club's Constitution, Rules and by-laws. They had pleaded that the Defendants declined to renew their membership vide letter dated 22<sup>nd</sup> October 2015. The suit was filed on 25<sup>th</sup> November 2015.

Together with the plaint the Plaintiffs filed **notice of motion dated 23<sup>rd</sup> November 2015** seeking the main order of temporary injunction to restrain the Defendants from stopping and/or interfering with their access and use of the facilities at Barclays Sports Club (the club). evicting him from the suit premises pending hearing and determination of the suit. The application is supported by the 1<sup>st</sup> Plaintiff's affidavit.

The Defendants opposed the application by **replying affidavit sworn on 10<sup>th</sup> February 2016** by the 3<sup>rd</sup> Defendant one Antony Onyango. They averred that the Plaintiffs being guest members were required to renew their memberships every year and the Executive Committee of the club exercised its power to elect members of all categories into the club, declined to renew the Plaintiff's membership for the year 2015/2016; That as the Plaintiffs are no longer members of the club, they lack standing to institute and maintain the cause of action against these proceedings; That the foundation of a court's jurisdiction to interfere with the running of a club's affairs is the right of property vested in a member which is not the case here; that it is only where property rights of members are affected that interference by a court in internal affairs of a club is warranted; that the club's constitution stipulates that the club's property shall belong to the full members of the club.

Interim injunction was granted and was extended from time to time. The application was canvassed by way of written submissions. Those of the Plaintiff were filed on 17<sup>th</sup> March 2016. The Defendant's submissions were filed on 27<sup>th</sup> May 2016. I have considered those submissions together with the cases cited.

The issue for determination is whether the Plaintiffs are entitled to the orders sought. They seek an injunction whose principles are well established. A party seeking an injunction has to demonstrate a prima facie case with probability of success, the applicant has to show that he will suffer irreparable loss and if the court is in doubt it will decide the case on a balance of convenience (see ***Geilla Vs. Cassman Brown Ltd Company E.A 1973 C.A 51 of 1972 at page 358***).

The Plaintiffs have already been expelled from the club as their membership was not renewed for this year. The Defendants argue that they are not full members owing to the fact that they are not employees of Barclays Bank and their membership is only based on whether the Executive Committee of the club renews it or not. The Plaintiffs have also not proved how they stand to suffer irreparable loss noting that the said club is a social and leisure association. The plaintiffs have raised the issue of due process not

being followed in failing to renew their membership from the club. All these are matters to be determined at full hearing.

The Constitution exhibited by the Defendants does empower the Executive Committee to fail to renew membership of any member based on its whims and without hearing. The Defendants have conceded that they received the Plaintiff's subscription monies vide a cheque but refunded the money for reasons not explained. Therefore, the Plaintiffs had done everything they could to avoid falling into subscription arrears.

In their submissions the Defendants allude to the fact that as long as the Plaintiffs pay their subscription fees, the Court can grant them the injunction they seek. In the circumstances, the Plaintiffs are hereby to pay arrears of subscription to date and until the determination of the suit. The Plaintiffs have demonstrated a *prima facie* case with a probability of success. That being my view of the matter, the application by notice of motion dated 23<sup>rd</sup> November 2015 is meritorious. The same is allowed in terms of prayer 3. Costs shall be in the cause.

It is so ordered.

***Dated, signed and delivered at Nairobi this 15<sup>th</sup> Day of September, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**