



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 81 of 1996

STANLEY KIMANI NJENGA

OSMAN ABDALLA

**JOSEPH KIMANI (Suihg on behalf of 27 others of Nakuru Amateur Boxing Club)
.....PLAINTIFF**

VERSUS

P.G. KAIRO

J.M. KIMANI

**GITHUA THUKU.....
....DEFENDANTS**

RULING

The Plaintiff's suit is filed by the three plaintiffs on behalf of themselves, and on behalf of all the 27 members of Nakuru Amateur Boxing Club who have been suspended by the three defendants in their official capacity as, Chairman, Secretary and Treasurer of that Club.

The plaintiffs seek orders that

- (a) Their suspension from the said Club is null and void for want of an oral hearing as required by Section 9 of the said Clubs Constitution.
- (b) The defendant's action is irregular, and unprocedural and an abuse of the principles of natural justice.
- (c) The defendants have no locus standi to suspend or expel the plaintiffs.
- (d) Costs be awarded.

The suit was filed together with an application by way of summons in chambers seeking orders that.

- (a) The defendants by themselves, their servants, and or agents be restrained from suspending or expelling the applicants or any other member of Nakuru Amatuer Boxing Club members and

until each one of them has been accorded an oral hearing.

(b) The status quo obtaining prior to 23.1.96 be restored to enable the applicants to continue enjoying the facilities of their Club, pending determination of suit.

Since the applicants have already been suspended, what they seek is a mandatory injunction.

They also seek an order to restrain the defendants, from participating in the Club's elections which had been scheduled for March, 1996, pending determination of suit.

This is a representative suit. The plaintiffs sue in their own capacity and on behalf of 27 other members. The plaintiffs must show that they have a *prima facie* case with a probability of success (See Giella -vs.- Casmann Brown Co. Ltd, 1973 EAL.R 358).

The procedure in bringing representative suits to court is covered in O.1 R 8 of the Civil Procedure Act which provides—

"O.1 R.8(1)

Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued, or may be authorised by the court to defend in such suit, on behalf of or for the benefit of all persons so interested.

" O.1 R.8(2) provides.

The court shall in such case direct the plaintiff to give notice of the institution of the suit to all such persons either by personal service or.....by public advertisement as the court in each case may direct. "Is this application properly before this court? No directions have been granted by the court as is required in O.1 R.8(2). Although O.1 R.8 does state the stage at which the directions should be made, it is clear from the wording of R.8(2), that the directions have to be made before proceedings start. Once a suit has been filed of this nature, it is up to the plaintiffs who have filed a representative suit, to seek directions of the court before proceedings start so that those on whose behalf or for whose benefit the suit is filed, may apply under R.8(3) to be made party to the suit.

The Plaintiffs in the present suit have not sought directions from the court and have gone ahead to file an application for injunction which application has been heard, hence this ruling.

Proceedings have therefore started without the correct plaintiffs being identified/ascertained.

The Plaintiffs cannot say that they have shown that they have a *prima facie* case with a probability of success, when they have not involved the court for directions in accordance with the provisions of O.1 R.8(2), those affected by the suit are not aware that an application has been filed on their behalf, or that a case has been filed to enable them comply with R.8(3) of O.1 to participate in the case and indeed in the application.

On that score alone, the application cannot succeed.

In the application, the plaintiffs seek an order to restrain the defendants from participating in the Club's elections which were due in March, 1996. The Plaintiff seeks no such prayer.

This application is not properly before the court for the reasons contained in this ruling and the same is struck out with an order that the applicants pay the costs of the application to the defendants.

The applicants should consider moving the court for directions under O.1 R.8(2) before any

proceedings can start.

S. C. ONDEYO

JUDGE

21.6.96

This is to certify that this is a true copy of original.

DEPUTY REGISTRAR