

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. E193 OF 2020

JOSEPH KARUERU
(Suing on his own behalf and as the National Chairperson of Family Health Options Kenya).....
.1ST PLAINTIFF
ESTHER CHERUIYOT
(Suing on her own behalf and as the Treasurer of Family Health Options Kenya).....
.....2nd PLAINTIFF
JOSEPH BINAYO.....3RD
PLAINTIFF
PETER YEGON.....4TH
PLAINTIFF
DORIS KATHIA.....5TH
PLAINTIFF
ELIZABETH MURIITHI.....6TH
PLAINTIFF

-VERSUS-

JOHN WAWERU.....
.....1ST DEFENDANT
ROBERT NAMIRANDA.....2ND
DEFENDANT
LUCY ASEWE.....3RD
DEFENDANT
DOMINICAH MWAGANDI.....4TH
DEFENDANT
ELIUD ONYANGO.....5TH
DEFENDANT

TERESA MWILU.....	6TH
DEFENDANT	
MOSES OCHIENG.....	7TH
DEFENDANT	
EDWARD MARIENGA	
(Sued as the Executive Director and Secretary of Family Health Options Kenya.....	
.....8TH DEFENDANT	
NON-GOVERNMENTAL ORGANIZATIONS CO-ORDINATION BOARD.....	9TH DEFENDANT

JUDGMENT

Background

1. The circumstances giving rise to this dispute emanate from allegations of financial impropriety implicating Edward Marienga (the 8 Defendant) made by International Planned Parenthood Federation (IPPF), a partner of Family Health Options Kenya (FHOK) in May 2020. According to Joseph Karueru (1st Plaintiff), the National Chairperson of FHOK at the time, and Esther Cheruiyot (2nd Plaintiff), the Treasurer of FHOK at the time, these allegations required urgent attention. However, this was not possible because of the Covid 19 pandemic, which made it impracticable to convene a physical National Executive Committee (NEC) meeting. The two officials decided to convene a special meeting on 10/06/2020 for the purpose of addressing the allegations. During that meeting, a forensic audit of the FHOK was commissioned and Edward Marienga (the 8th Defendant), the Executive Director of FHOK at the time, was suspended.

2. That action by the 1st and 2nd Plaintiffs, triggered divisions within the FHOK. It became impossible to hold NEC or to engage in any positive reconciliation engagements. The actions of the 1st and 2nd Plaintiffs led to the circumstances giving rise to this dispute.
3. The Plaintiffs alleged that John Waweru (1st Defendant), Lucy Asewe (3rd Defendant) and the 8th Defendant colluded and purported to convene a meeting in the absence of the 1st Plaintiff during which they suspended the 1st Plaintiff and installed the 1st Defendant as the Acting Chairperson; that they organized and executed an Annual Delegates Conference (ADC) on 09/10/2020 without consulting the Honorary Officers and without issuing proper notice as required by the FHOK Constitution and denied the Plaintiffs the chance to attend the ADC because of lack of proper notice. The Plaintiffs accused the Defendants of irregularities in convening and conducting the ADC, among them, lack of proper notice of the ADC, change of venue of the ADC, excluding honorary officials, inclusion of unqualified delegates, pre-selection of candidates for elections, proposed amendments of the constitution and adoption of amendments and withholding the agenda of the ADC, hence this suit.

The Plaintiff

4. The 1st and 2nd Plaintiffs, alongside Joseph Binayo, (3rd Plaintiff), Peter Yegon (4th Plaintiff), Doris Kathia (5th Plaintiff) and Elizabeth Muriithi (6th Plaintiff) filed a plaint dated 20/11/2020 seeking judgment against John

Waweru, (1st Defendant), Robert Namiranda (2nd Defendant), Lucy Asewe (3rd Defendant), Dominica Mwangi (4th Defendant), Eliud Onyango (5th Defendant), Teresa Mwilu (6th Defendant), Moses Ochieng (7th Defendant), Edward Marienga (8th Defendant) and Non-Governmental Organizations Co-Ordination Board (9th Defendant). The Plaintiffs are seeking the following orders:

- (a) A declaration that the purported Annual Delegates Conference held on 9.10.2020 violated the mandatory requirements of Family Health Options Kenya Constitution and is therefore null and void.***
- (b) A declaration that the elections of Family Health Options Kenya held on 9.10.2020 were contrary to the Constitution and therefore null and void and of no effect.***
- (c) A declaration that the purported suspension of the 1st Plaintiff as National Chairperson was unlawful and therefore null and void and of no effect.***
- (d) A declaration that the 1st and 2nd Plaintiffs and the National Executive Committee elected alongside them, being the last duly and lawfully elected officials of Family Health Options Kenya, continue to run, manage and conduct the business of Family Health Options Kenya until such time when proper elections to elect new officials shall be held.***

(e) A permanent injunction staying the proceedings, resolutions and decisions of the purported Annual Delegates Conference held on 9.10.2020.

(f) A permanent injunction against the 1st to 8th Defendants, either by themselves, their agents, employees, servants or others acting on their behalf from managing, running or in any way conducting the business of Family Health Options Kenya unless validly elected in a subsequent election.

(g) A permanent injunction against the 9th Defendant from registering any person as a new official, honorary officer or National Executive Member of Family Health Options Kenya unless validly elected in a subsequent election.

(h) Costs of the suit.

(i) Such other or further remedies as this court may deem fit to grant.

5. The Plaintiffs have pleaded that **Family Health Options Kenya** (hereafter FHOK) is a non-governmental organization registered under the Non-Governmental Organizations Co-Ordination Act No. 19 of 1990; that sometime in May 2020, the 1st Plaintiff, who has at all material times were the National Chairperson of FHOK, received credible information from one of its key international partners, namely, International Planned

Parenthood Federation, of alleged corruption and mismanagement of funds in FHOK; that relying on the said information, the 1st and 2nd Plaintiffs, being honorary officials of FHOK, met on 10.06.2020 and resolved to appoint independent forensic investigators to ascertain the veracity of the allegations and that in the process, the 8th Defendant was suspended to pave the way for the said investigations and to minimize the possibility of interference.

6. It is pleaded that subsequently, on 17.06.2020, the NEC of FHOK was convened during which the 1st Plaintiff tabled the report of the meeting previously held on 10.06.2020; that in the course of the meeting, a faction of the NEC consisting of the 1st and 3rd Defendants, differed with the actions taken by the 1st and 2nd Plaintiffs and disrupted the meeting, forcing an adjournment thereof and that subsequent meetings were not successful.
7. It is pleaded that the 1st and 3rd Defendants illegally convened a meeting, where they purported to suspend the 1st Plaintiff and to appoint the 1st Defendant as acting Chairperson, and further purported to recall the 8th Defendant who had previously been suspended, thereby contravening Article 22(iii) of FHOK's Constitution which mandates that in the absence of the Chairperson, the Treasurer shall assume the duties and responsibilities thereof; that subsequently on 26.08.2020 a forensic audit report was issued, thereby implicating the 8th Defendant and the Director of Finance and Administration in relation to various offences pertaining

to FHOK, including abuse of office; conflict of interest; bribery; and misappropriation of funds and that on 30.08.2020, FHOK through the 1st Plaintiff, wrote to the 8th Defendant, informing him of the impending disciplinary actions that would be taken against him for gross misconduct and that the 1st Plaintiff convened a further meeting of the NEC, which Committee is mandated under the FHOK Constitution with the employment and termination of officials..

8. It was pleaded that the defendants convened the **Annual Delegates Conference** (ADC) in contravention of the FHOK's Constitution by failing to give prior notice of 21 days of the intended ADC and failing to specify the venue thereof; sending out notices solely to a few handpicked delegates while locking out the 1st and 2nd Plaintiffs who are honorary members of FHOK and changing the venue of the ADC at the last minute, with the aim of frustrating the Plaintiffs.
9. The Plaintiffs have pleaded that the 1st to 7th Defendants were elected to take up various positions, notwithstanding the fact that other delegates had previously submitted their names for elections; that the outcome of the ADC was intended to favour the Defendants; that the 1st to 8th Defendants proceeded to propose key amendments to the FHOK Constitution contrary to Article 43 thereof, which requires prior written notice of 21 days to be given pertaining to proposed amendments; that among the proposed amendments was the introduction of the position of Vice Chairperson and that despite the objections from the delegates

present, the 1st to 8th Defendants proceeded with the ADC and purported to pass the agenda in its entirety.

The Defence

10. In their statement of defence, the 1st to 7th Defendants, whilst admitting that leadership wrangles have existed in FHOK at all material times, denied that the same were caused by the Defendants. They have pleaded that, contrary what is pleaded in the Plaint, it is the Plaintiffs, particularly the 1st and 2nd Plaintiffs, who are responsible for the instabilities in FHOK by failure to follow the FHOK's Constitution; that the 1st Plaintiff contravened the FHOK Constitution by suspending the 8th Defendant without consulting the NEC and without a resolution thereof; that the 1st Plaintiff conducted a forensic audit on FHOK and borrowed a substantial sum of Kshs. 6.3 million, in the absence of a resolution or approval by either NEC or ADC; that the 1st Plaintiff ignored requests to deliberate on the looming crisis by way of a meeting, and declined to step aside amidst his suspension from FHOK on a vote of no confidence, on 17.09.2020.

11. The 1st to 7th Defendants have pleaded that the decision to suspend the 8th Defendant lay solely with the NEC and not the 1st and 2nd Plaintiffs; that the said Plaintiffs did not follow the laid down procedure in suspending the 8th Defendant; that contrary to the pleading of the Plaintiffs, the 8th Defendant was reinstated through a court order and not

by way of a resolution; that the forensic audit report is incurably defective, the same having been conducted and prepared in the absence of the requisite resolutions or approvals and that the ADC which was convened by the 1st to 8th Defendants, fully complied with the FHOK Constitutional requirements and was thus valid.

12. The 1st to 7th Defendants have pleaded that sufficient notice of the ADC was issued to all the necessary parties, including the 1st and 2nd Plaintiffs, who confirmed receipt; that in addition, all relevant documents of the ADC including the agenda, were forwarded to all the necessary parties; that the venue of the said meeting was clearly communicated and that there was no change to the venue, contrary to what is averred in the plaint and that in the circumstances, the Plaintiffs are not entitled to the reliefs sought in the plaint, and the suit ought to be dismissed with costs.

13. The 8th Defendant filed his statement of defence dated 6/01/2021 denying the key averments contained in the plaint and liability against him. He has pleaded that the 1st Defendant is the *bona fide* elected Chairperson of FHOK; that the 1st Plaintiff personally set out to appoint forensic investigators with the aim of removing the 8th Defendant from office, but without following the procedures laid out in the FHOK Constitution; that the decision to suspend the 1st Plaintiff was unanimously made, *vide* a NEC meeting held on 17/09/2020, following allegations of fraud on the part of the said Plaintiff as well as the 2nd

Plaintiff; that the 1st Plaintiff faced disciplinary action, with the alleged charges being proved and that the NEC convened a meeting whereby the 1st Defendant was appointed as Interim Chairperson of FHOK pending elections.

14. The 8th Defendant has pleaded that he was appointed to the position of Executive Director of FHOK on 6/02/2012 and that he reports directly to FHOK.; that on 20/08/2020 he received a letter from NEC requiring him to attend a meeting before it, on the following day; that upon conclusion of the meeting held on 21/08/2020, the 8th Defendant received a letter lifting his suspension and reinstating him with immediate effect on the basis that his suspension was in violation of Article 26 of the FHOK Constitution which stipulates that only the NEC has the mandate to appoint, discipline, suspend and terminate the contract of an employee of FHOK and that consequently, the 8th Defendant lodged a claim with the ELRC in a bid to enforce his labour rights with FHOK, which claim was settled by way of a consent.

15. The 8th Defendant has maintained that the ADC was properly convened in compliance with FHOK's Constitutional guidelines. He has questioned the jurisdiction of this court to entertain this suit under the doctrine of exhaustion. He pleaded that Regulations 20 and 21 of the FHOK Constitution clearly set out the procedure and internal dispute mechanisms for challenging elections outcomes, which procedure was not followed by the Plaintiffs.

16. The 9th Defendant, as the record shows, never entered appearance in the matter and therefore did not participated in the instant suit.

The Evidence

17. At the hearing of the suit, the 1st, 2nd and 3rd Plaintiffs testified and called one (1) additional witness. The 1st and 5th Defendants testified on behalf of the 1st to 7th Defendants, and the 8th Defendant testified in support of his case.

18. The 1st Plaintiff testified as **PW1**. He adopted his witness statement dated 20/11/2020 (**P.Ex.1**) as his evidence in chief. In cross-examination, he stated that while the NEC has the mandate to appoint as well as to determine terms and conditions of service of the position of Executive Director, he decided to take the action of terminating the services of the Executive Director at the time since the Covid-19 pandemic restrictions made it impossible for the NEC to physically meet.

19. He testified that he commissioned a forensic audit following the report received on 26/8/2020 and that his attempts at calling for a NEC meeting to address the contents of the report, bore no fruit; that while the entire board of the NEC was invited to deliberate on the aforementioned forensic audit report *vide* a meeting held on 17/09/2020, a section of the board disrupted the agenda of the meeting, causing it to abort. He testified that sometimes, thereafter, the NEC purported to

suspend him before the ADC which was held in September, 2020 and hence he did not attend or participate in the ADC.

20. The 1st Plaintiff maintained that he is the current Executive Director of FHOK and that though he had previously been suspended for a period, he was not terminated from office, stating that he has held the position of Chairman of FHOK since August, 2017 and that his suspension was unprocedural and unconstitutional.

21. He similarly testified that in relation to his purported suspension, he received a letter dated 22/09/2020 from the Disciplinary Committee of FHOK, which letter he responded to but did not honour the invite to attend the said Committee; that subsequently, the Committee sat on 7/10/2020 to address the various allegations that had been raised against the 1st Plaintiff and that at the material time no disciplinary committee existed and hence the resulting decision was arrived at by strangers. He stated that, nevertheless, he did not lodge an appeal against the said decision.

22. The 1st Plaintiff testified, further, that he was an honorary member of the NEC, and that under Regulation 9(i) of the FHOK Constitution, the tenure for NEC members is a maximum 6 years and that as at April, 2020 the he had secured 6 successive years as member of the NEC and was entitled to serve a third term as an honorary officer.

23. In re-examination, the 1st Plaintiff testified that his suspension was based on various allegations including violation of the FHOK

Constitution; taking a loan and appointing auditors to conduct the forensic audit and acquiring properties on behalf of FHOK; that no evidence of the said allegations was ever disclosed to him and that his refusal to appear before the Disciplinary Committee was guided by the fact that the said Committee was not properly constituted at the material time.

24. The 2nd Plaintiff testified as **PW2**. She similarly adopted her witness statement dated 20/11/2020 as her evidence-in-chief. She testified that she has been a National Treasurer at FHOK at all material times since the year 2014.

25. During cross-examination, the 2nd Plaintiff testified that she was equally a member of the NEC at all material times; that she remained in office until 2020, and that in the intervening period, she was unable to exercise her office functions fully due to interferences from the 8th Defendant. Her evidence is similar to that of the 1st Plaintiff in regard to this dispute. She testified that she did not receive an invitation to attend the ADC which was held on 8/10/2020 and that she learned of the said Conference through another member the night before the event and that she is aware that a new NEC was elected at the said ADC.

26. The 2nd Plaintiff admitted that an internal dispute resolution mechanism existed in FHOK but it could not be reasonably invoked in this instance, owing to the tension that ensued amongst members of the NEC.

27. The 3rd Plaintiff testified as **PW3**. His evidence is that he was a branch Chairman of FHOK based in Uasin Gishu. He adopted witness statement dated 20/11/2020 as his evidence-in-chief.
28. In cross-examination, he stated that he received invitation to attend an AGM scheduled to take place at Milele Plaza on 9/10/2020 and noted that the notice was too short as it did not meet the requisite 21 days; that upon his arrival at Milele Plaza on the scheduled date, he learned that the venue of the meeting had changed to a larger facility; namely, Tumaini, due to the Covid-19 restrictions; that despite the short notice which came via email communication, he chose to attend the ADC; that the meeting was held in Nakuru, with a majority of branches being represented; that some of the Plaintiffs attended the ADC; that during the said meeting, the 1st Defendant disclosed to the delegates that he was the interim Chairman; that the 3rd Plaintiff had no knowledge that the 1st Plaintiff had been suspended or that the 2nd Plaintiff was not in attendance.
29. He testified that while the FHOK Constitution provides that in the absence of a Chair and Vice Chair, a chair can be appointed to head the meeting, in that instance, the 1st Defendant had not been elected to chair the meeting in question and that, nonetheless, the 1st Plaintiff having served two (2) terms in the NEC, was not eligible to contest for any position as from 2020.

30. The 3rd Plaintiff testified that during the aforesaid meeting, majority of the members in attendance were not given audience and hence there was a sense of dissatisfaction with the resolutions that were passed therein. He denied, in re-examination that he voted for any resolutions and that any elections were held.

31. **Betsy Kaari Mburugu** testified as **PW4**. She adopted witness statement dated 17.09.2021 as her evidence-in-chief. In cross-examination, she stated that she had contested for the position of Women Representative for Isiolo Branch of the FHOK, during the material elections; that she received the invitation to attend the ADC as a delegate, and that no voting took place prior to the agenda of the said meeting being approved; that some of the delegates in attendance objected to the approval of the agenda, but their objections were entirely dismissed by the interim Chairperson; that the agenda for approval of the proposed amendments to the FHOK Constitution was passed after the proposal seconded, despite various objections being raised and that her personal attempts at raising an objection in the ADC were shut down.

32. PW4 testified, further, that as per her knowledge, both the 1st and 2nd Plaintiffs exercised their first terms in 2017 and that a Chairman can be in office for two (2) consecutive terms of 3 years upon re-election of the first term and thereafter, elections must be held and that at the time the ADC was held, the 1st Plaintiff was still the lawful Chairman and ought to

have chaired the ADC until such time as a new chairperson was re-elected. She testified that the venue of ADC was changed from Tumaini to Milele Plaza in Nakuru, with the 8th Defendant explaining that the change was intended to ensure compliance with the Covi-19 regulations on social distancing.

33. During further cross-examination, the witness stated that she was invited to attend the ADC as an observer, while her counterpart Mr. Kiogora, was invited as a delegate representing Isiolo Branch; that she did not have any evidence to demonstrate that there are persons who presented themselves for election in the ADC but were denied an opportunity for consideration during the election process.

34. Giving evidence in support of the case for the 1st to 7th Defendants, John Waweru, DW1, the 1st Defendant adopted his witness statement dated 5/01/2021 and produced a bundle of documents dated 5/01/2021, as **Defendants' Exhibits**.

35. He testified that he has been a member of FHOK as well as a volunteer, for over 20 years; that the 1st Plaintiff was a Chairman of FHOK for a period of two (2) terms each running three (3) years; that the ADC which was held in Nakuru on 09/10/2020 was properly constituted with prior invitations having been sent to all the necessary parties and that the said Conference resulted in the appointments of new members.

36. In cross-examination, the 1st Defendant stated that he served as Chairman for the Audit Committee of FHOK between the years 2017 and

2020 and later held an elective position of Chairman following elections held during the ADC, in addition to being a member of the Disciplinary Committee. He testified that the 1st Plaintiff was ultimately suspended from his Chairmanship position and a vote of no confidence passed against him; that contrary to the averments by the Plaintiffs, there was no change of venue for the ADC; that the ADC was held in Tumaini cottages which is not situated at the same location as Milele Plaza and that during that ADC, the chairperson, vice-chairperson and treasurer were elected.

37. In re-examination, the 1st Defendant testified that Regulation 2 of the FHOK Constitution makes allowance for the appointment of an interim Chairperson; that the annulment of the ADC held on 09/10/2020 would have no impact, as two (2) other ADCs have been held since then and that all persons who held office at the time; including the Defendants herein are no longer members of the Executive Committee.

38. On the subject of the forensic audit report, the 1st Defendant's testified that it is the 1st Plaintiff, who was the then Chairperson, whole solely authorized for the forensic audit to be conducted.

39. Eliud Onyango, the 5th Defendant, testified as **DW2**. He adopted his witness statement dated 20/01/2021 as his evidence in chief. During cross-examination, he testified that he has been a volunteer member and Chairperson of FHOK since April, 2023 to date; that he attended the ADC on 09/10/2020 as a delegate member, upon receiving an invitation via

SMS and a written letter and that the ADC was peacefully conducted. He, however, pointed out that his name does not appear on the minutes of the said meeting and that while the venue of the ADC changed, the owners of both premises are one and the same.

40. He testified that he has no knowledge as to why he was sued in the present matter since he was not a member of the NEC during the period between 2021 and 2022 and cannot, therefore, speak about the circumstances leading to the alleged removal from office of the 1st Plaintiff.

41. **Edward Marienga**, the 8th Defendant, testified as the **DW3**. He adopted his witness statement dated 7/01/2024 as his evidence-in-chief and produced bundle of documents as **D8. Exhibits 1 to 18**. He testified that the ADC is held every year and that elections are normally conducted during ADCs, with elections being carried out every three (3) years and that the last elections were held in the year 2023.

42. The 8th Defendant testified, further, that while the dispute herein arose from the ADC held on 09/10/2020, subsequent ADCs have been held, resulting in the elections and appointments of separate persons in office, whose terms have not been challenged and that while a party can challenge the outcome of elections by way of an appeal, the Plaintiffs herein did not invoke the necessary internal dispute resolution mechanisms stipulated in the FHOK Constitution, before moving the court.

43. In cross-examination, the 8th Defendant testified that he has worked at FHOK since the year 2012 and that the parties herein are known to him; that the 1st Defendant in particular, first held the position of Chairperson of the Audit Sub-Committee and later became the interim Chair prior to being elected as Chairman of FHOK. that the 1st Plaintiff was suspended from his position as Chairman, during a meeting held on 20/08/2020, owing to disciplinary issues; that previously, the 1st Plaintiff had overstepped his mandate by suspending the 8th Defendant and that the 2nd Plaintiff, who was at all material times the Treasurer of FHOK, was neither suspended nor subjected to any disciplinary action.
44. In relation to his suspension, the 8th Defendant testified that he did not have an opportunity to read the forensic audit report which is said to have implicated him; that requisite notices were sent out within the constitutional timelines in respect of the ADV+C of 09/10/2020; that the written invitation contained the agenda of the said meeting and that the 1st Plaintiff, having been suspended, was not invited and did not therefore attend the ADC.
45. Upon further cross-examination, the 8th Defendant testified that the 1st Plaintiff did not offer a response to the letter of complaint served upon him and equally did not attend the disciplinary proceedings against him and that by virtue of his employment status with the Board, it is the Board that had the mandate to suspend the 8th Defendant, and not the 1st Plaintiff.

46. As relates to the ADC of 09/10/2020, the 8th Defendant testified that while there was a change of the venue, no one was inconvenienced; that the change of venue was necessitated by the Covid-19 regulations which required social distancing and that prior to the amendments to the FHOK Constitution, the position of Vice Chairperson did not exist.

Submissions

47. The Plaintiffs filed their collective submissions dated 21/10/2025. They submitted on three issues as follows:

(a) *Whether the ADC held on 09/10/2020 together with the resolutions passed and the elections held was convened and conducted in compliance with the mandatory provisions of FHOK's constitution and regulations?*

48. The Plaintiffs submitted that the ADC held on 09/10/2020 was both convened and conducted in breach of the procedure set out in the FHOK Constitution; that Article 15 and Regulation 3 (a) of the FHOK Constitution was breached by failing to consult the 1st and/or 2nd Plaintiffs and by neglecting and/or refusing to give 21 days' notice of the intended ADC; that the ADC contravened Article 13 of the FHOK Constitution which provides for only one delegate per branch at the ADC, given that some regional branches of FHOK, including Bungoma, Siaya and Homabay, were represented by more than one delegate and that some branches remained unrepresented due to the lack of proper notice and invitation by the 8th Defendant.

49. The Plaintiffs have further faulted the failure to provide an advance circulation of the proposed amendments to the FHOK Constitution, in contravention of Article 43 which expresses that any proposed amendment to the Constitution must be circulated to all delegates at least 21 days prior to the ADC and must be subjected to deliberation and formal voting. They submitted that, consequently, the delegates who were present at the ADC did not have ample time to consider the proposed changes which were brought forward, thereby invalidating the adoption process of the said amendments and that in the absence of any clause or Article in the FHOK Constitution providing for a position of acting Chairperson, any and all actions undertaken by the 1st Defendant purportedly in such capacity, including calling for the ADC, are a nullity. The Plaintiffs relied on **Cornel Mabatsi & 389 others v Registrar of Trade Unions & another; Kenya County Government Workers Union (Interested Party) [2018] KEELRC 52 (KLR)** where it was held that the action of convening a Special National Delegates Conference by individuals in the absence of the constitutional authority and in disregard of the prescribed notice and procedural requirements, was invalid.

50. The Plaintiffs submitted that the ADC did not meet the constitutional quorum stipulated and was thus invalid, which would mean that any and all discussions and resolutions passed therein cannot stand and ought to be set aside.

(b) Whether the purported suspension of the 1st Plaintiff and appointment of the 1st Defendant as Acting Chairperson were valid and procedurally compliant?

51. The Plaintiffs submitted that the suspension of the 1st Plaintiff as National Chairperson and the appointment of the 1st Defendant as acting Chairperson, were not conducted in accordance with the FHOK Constitution thereby making them procedurally defective. It was submitted that the appointment of the 1st Defendant as the Acting Chairperson bypassed the succession framework under Article 22(iii) of the FHOK Constitution which establishes that the Treasurer assumes the Chairperson's duties where the Chairperson is absent.

(c) Whether the internal dispute resolution mechanisms within FHOK were exhausted?

52. The Plaintiffs submitted that the internal dispute resolution mechanisms provided for under Regulations 20 and 21 the FHOK Constitution, would not have been ineffective in the circumstances of this case, given that both the NEC and the ADC constituted individuals who played an active role in the suspension of the 1st Plaintiff and in the irregularities that took place and that, consequently, the only viable recourse available to the Plaintiffs was to seek redress before the court.

53. On their part, the 1st to 7th Defendants have contended by way of their submissions, that the 1st Plaintiff having been elected into office in the year 2013 and having served two (2) subsequent full terms thereafter, was not eligible to serve any additional terms pursuant to Regulation 9 of

the FHOK Constitution which caps the tenure for the NEC at two (2) terms and that the 1st Plaintiff's suspension was lawfully effected.

54. They have also contended that the ADC of 09/10/2020 was regularly and properly convened and conducted, contrary to the averments being made by the Plaintiffs; that the relevant notices and agendas were adequately and regularly issued and circulated to concerned members, resulting in a properly constituted quorum; that even after the outcome of the ADC, the Plaintiffs did not exhaust the internal dispute resolution mechanisms available to them, which goes to show their decision not to contest the resolutions passed in the ADC; that no orders can be issued removing the Defendants from the NEC, since fresh elections were held in 2023 resulting in the appointment of fresh NEC members who took office and whose election was not challenged or nullified and that this court cannot nullify an election which was never challenged under Regulation 21 of the FHOK Constitution or at all.

55. The 8th Defendant has also put in written submissions dated 24/11/2025 in which he has argued that the present suit has been overtaken by events, since subsequent ADCs have been held following the suit and out of which other officials have been elected and therefore the Plaintiffs cannot be reinstated as officials of FHOK; that the Plaintiffs did not pursue or exhaust the internal dispute resolution mechanisms available under Regulations 20 and 21 of the FHOK Constitution and that

no reasonable explanation has been given for such avoidance, in order to justify filing of the present suit.

56. The 8th Defendant has submitted, further, that the decision to suspend the 1st Plaintiff was lawfully and unanimously made by the NEC at the time, arising from various allegations of misconduct; that, the said suspension together with grounds therefor, were clearly communicated to the 1st Plaintiff, who was given an opportunity to lodge an appeal but which he did not and that in the circumstances, it is not open for the 1st Plaintiff to re-litigate the issues touching on his suspension, before this court.

57. He submitted that the ADC of 09/10/2020 was procedurally convened and conducted, in accordance with the FHOK Constitution; that the 21-day notice was issued prior to the ADC and that the various delegates were in attendance on the scheduled date, as seen in the minutes earlier tendered and that the Plaintiffs cannot purport to challenge or bar him from discharging his lawful duties as Executive Director of FHOK, since this issue was settled by the ELRC in *Edward Omondi Marienga v Family Health Options Kenya - ELRC Cause No. E468 of 2020* with the said court granting a permanent injunction in favour of the 8th Defendant.

Analysis and Determination

58. I have considered the pleadings and evidence tendered by the respective parties. I have identified the following as the key issues arising from this dispute for determination:

- (i) Whether the court has jurisdiction to entertain the present suit;***
- (ii) Whether the suspension of the 1st Plaintiff as the National Chairperson of FHOK was lawfully conducted;***
- (iii) Whether the ADC and related elections held on 9.10.2020 violated the relevant provisions of the FHOK Constitution thereby rendering it null and void;***
- (iv) Whether the 1st and 2nd Plaintiffs and the NEC elected alongside them constitute the rightful officials of FHOK;***
- (v) Whether the Plaintiffs are entitled to the reliefs sought in the plaint.***

59. The **first** issue in particular was raised by the 8th Defendant, who has in sum averred that this court lacks jurisdiction to entertain the present suit, under the doctrine of exhaustion. The 8th Defendant's position is that the Plaintiffs herein did not follow the procedure set out in the FHOK Constitution, for challenging an election related decision.

60. Upon the court's perusal of the material on record, it is not disputed that the FHOK Constitution (**P. Exhibit 4**) sets out the procedure for

dispute resolution under **Regulation 20**; namely, that all disputes shall be referred to the Disciplinary and Appeals Sub-Committee, with a further right of appeal to the NEC. The said Regulation further stipulates that the FHOK dispute resolution process shall be invoked before a party can move the court.

61. In the present instance, there is nothing to indicate that following the ADC, the Plaintiffs herein invoked the internal dispute resolution mechanisms set out in the FHOK Constitution prior to filing the present suit.

62. That said, it is apparent that while the 8th Defendant stated in his statement of defence that he was denying the jurisdiction of the court, he did not file a conditional statement of defence and/or memorandum of appearance. Furthermore, the court has observed that the 8th Defendant fully participated at the hearing of the suit both by way of cross-examination through his advocate, and by way of his oral testimony. In the court's view therefore, the conduct by the 8th Defendant could be taken to constitute an acquiescence of the jurisdiction of the court. In such instances, the legal position is that a party cannot be heard to simultaneously challenge the jurisdiction of a court.

63. The above position was succinctly stated by the Court of Appeal in the case of **Raytheon Aircraft & Another v air al-Faraj Ltd C.A. NO. 29 OF 1999 [Unreported]** thus:

“...a party who seeks to challenge jurisdiction can only do so, if entered conditional appearance or filed a protest to entry of an unconditional appearance or defence. The court of Appeal was very explicit Kanti & Co. Ltd v South Briton Insurance Co. Ltd [1985] KLR page 1 at page 2 it was by court of appeal held interalia;-

“a defendant by entering an unconditional appearance to a summons to enter appearance, submits to the jurisdiction of the court and as long as the unconditional appearance stands, the court is seized of jurisdiction to try the suit, and the defendant cannot after filing such a memorandum of appearance abrogate or annul it unilaterally by entering an amended appearance under protest, without an order of the court releasing him from his admission and acceptance of the jurisdiction.” ”

64. In view of the foregoing circumstances, the court is satisfied that all the relevant parties to the suit submitted themselves to the jurisdiction of the court, by way of their conduct, notwithstanding the dispute resolution mechanism.

65. On the **second** issue concerning whether the suspension of the 1st Plaintiff as the National Chairperson of FHOK was lawfully conducted, the 1st Plaintiff on his part has termed the said suspension as being unprocedural and improper, on the grounds that no disciplinary

committee existed at the time. The Defendants on their part have maintained that the process and decision to suspend the 1st Plaintiff was properly conducted.

66. Upon an examination of the record, it is not disputed that the 1st Plaintiff held the position of National Chairperson of the NEC of FHOK, at all material times. The record shows that following the forensic audit process which was undertaken in FHOK earlier in the year 2020, the NEC held a meeting on 17/09/2020, a copy of whose minutes have been tendered as **D8. Exhibit 2**. the said minutes show that part of the agenda entailed discussions on the alleged misconduct of the 1st Plaintiff during his term as Chairman of the NEC following allegations of abuse of office and mismanagement of funds belonging to FHOK; that a resolution was therefore passed to have the 1st Plaintiff suspended as a volunteer member, pending a hearing before the Disciplinary and Appeals Committee.

67. The aforesaid minutes, show that the 1st Plaintiff had previously been removed as Chairman of the NEC through a vote of no confidence, vide a meeting held on 20/08/2020, the minutes of which were read and confirmed in the aforesaid meeting of 17/09/2020. The record shows that upon his suspension, the 1st Plaintiff was issued with a suspension letter dated 18/09/2020, a copy of which has been tendered as **D.8 Exhibit 3** followed by a letter setting out the grounds for suspension thereof (**D.8**

Exhibit 4). The 1st Plaintiff by way of his oral testimony, admitted to receipt of the suspension letter.

68. The record, further, shows that the 1st Plaintiff was thereafter issued with letter dated 29/09/2020 (**D.8. Exhibit 5**) summoning him to appear before the Disciplinary and Appeals Committee on 7/10/2020 for purposes of being heard in relation to the allegations of misconduct; that the 1st Plaintiff issued a reply to the summons vide a letter dated 5/10/2020 (a copy of which is found on pages 153-154 of the **1st to 7th Defendants' Bundle**); that on the aforementioned date of said hearing, the 1st Plaintiff was not in attendance, and the Appeals Committee upon consideration of the allegations, found that the 1st Plaintiff had violated various FHOK Constitutional provisions and consequently directed that he be expelled from the role of volunteers, a copy of the minutes have been adduced as **D.8. Exhibit 6**.

69. From the foregoing, it is clear that the 1st Plaintiff upon being suspended, was granted an opportunity to be heard before the Disciplinary and Appeals Committee, but did not attend the hearing. Upon considering the explanation given by the 1st Plaintiff for declining to attend the hearing that no proper Appeals Committee had been constituted, I have observed from the record that by way of a meeting previously held on 4/08/2017 and chaired by the 1st Plaintiff himself, among the agenda items deliberated was the recommendation and adoption of the list of members to sit in various Sub-Committees,

including the Disciplinary and Appeals Committee. A copy of the said minutes is found on **pages 127-138** of the **1st to 7th Defendants' Bundle**. The record shows, further, that the approved members are consistent with those who constituted the Committee that entertained the disciplinary proceedings against the 1st Plaintiff, thus rebutting the averments by the 1st Plaintiff that no proper Appeals Committee existed.

70. In view of all the foregoing circumstances, the court is of the view that no cogent material has been tendered to support the Plaintiffs' contention that the decision to suspend and/or expel the 1st Plaintiff was unlawfully conducted.

71. In regards to the **third** issue touching on the legality of the ADC held on 9/10/2020 and the elections resulting therefrom, the Plaintiffs on the one hand have averred that the said Conference violated various FHOK Constitutional provisions regarding the issuance of the requisite advance notices for the scheduled ADC; the issuance of notices for the agenda including any proposed amendments to the FHOK Constitution; and the inclusion of all delegates in the deliberation and voting process. In contrast, the 1st to 7th Defendants, as well as the 8th Defendant, have maintained that the ADC was conducted within the provisions of the FHOK Constitution.

72. I have read Article 12 of the FHOK Constitution (**P. Exhibit 4**), which provides for the ADC, and Articles 13 and 14 of the FHOK Constitution which set out the constitution of members and powers of the ADC,

respectively. According to Article 15 thereof, the agenda for the ADC shall be drawn by the Secretary of the NEC (the Executive Director) in consultation with the Chairperson, and a copy thereof shall be provided to every eligible delegate not less than 21 days before the scheduled date of the Conference. Further, Regulations 3, 4, 5 and 6 of the FHOK Constitution provide for the procedure, business, quorum and voting process at the ADC.

73. That said, on the question whether the requisite notices were issued within the stipulated timelines, the Plaintiffs have on the one part, averred that the notices issued for the ADC were short, whereas the Defendants have averred that the notices were issued in line with the Constitutional timelines.

74. Upon the my consideration of the pleadings and material on record, it is not disputed that the ADC was held on 9/10/2020. Prior to the said meeting, it is apparent that in his capacity as Executive Director/Secretary of the NEC, the 8th Defendant vide a letter dated 18/09/2020 (found on **page 17** of the **1st to 7th Defendants' Bundle**) issued notices to all delegates and members of the NEC, inviting them to attend the ADC at Milele Hotel in Nakuru. The said notice details the agenda for the ADC including the proposed Constitutional amendments.

75. It is also clear from the record that thereafter, the 8th Defendant issued a letter dated 29/09/2020 (found on **page 18** of the **1st to 7th Defendants' Bundle**) inviting members of the NEC to attend a special

NEC meeting to discuss various agenda items including the then anticipated ADC. Those notices for the ADC were sent out via email, according to the averments by the Defence witnesses. However, the 1st to 7th Defendants have tendered an extract of an email correspondence sent by the 1st Defendant in his capacity as the then Interim Chairperson of the NEC, and dated 5/10/2020 (found on **pages 21 to 22** of the **1st to 7th Defendants' Bundle**). The contents of this email were a reminder to the various delegates and members regarding the ADC.

76. A further examination of the record, shows that copies of the signed list of attendees and minutes for the ADC were adduced, to support the Defendants' averment that the said Conference was well attended, as shown on **pages 23 to 41** of the **1st to 7th Defendants' Bundle**. I also noted from the record of minutes that the proposed amendments for the FHOK Constitution were considered and adopted upon deliberation. The minutes also set out that various persons were elected, including the 1st Defendant as National Chairperson.

77. Given the evidence stated above, I hold the view that while it has been asserted by the Plaintiffs that the notice given for the ADC fell short of the 21-day timelines set out in the FHOK Constitution, no credible material was tendered to support those assertions. From the evidence tendered by the defendants, it is clear that the ADC had a reasonable attendance which would make it more plausible than not, that sufficient notice of the ADC was given to the relevant members and delegates.

78. Further to the foregoing, I have not come across any evidence supporting the Plaintiffs' averment that no prior notice of the proposed amendments was given to the relevant members and delegates or to support the averments by the Plaintiffs, that objections to the proposed amendments to the FHOK Constitution were not considered or otherwise disregarded. It is clear from the ADC minutes referenced above, the contents of which have not necessarily been challenged by the Plaintiffs, that the proposed amendments were deliberated upon before being approved. Further, it is my view that no cogent material was adduced to infer that the manner in which the elections were undertaken, contravened the FHOK Constitution. The ADC minutes detail the procedure and outcome of the said elections.

79. On the issue of the venue of the ADC, I have considered the evidence tendered by both parties. While it is apparent that the same was indicated as being Milele Resort vide the notice tendered, going by the minutes, the ADC was held at Tumaini Resort Hotel also in Nakuru. The defendants have explained the reasons behind that change of venue to the effect that both venues were owned by the same entity and that the alternate venue was dictated by the need for social distancing due to the Covid 19 pandemic. I am satisfied that the explanation is reasonable in the circumstances. There is nothing credible on the record to indicate that the change of the venue was due to ill motive or that the said

change was not conveyed to the relevant members and delegates or that any delegate was left out without being facilitated to the new venue.

80. I have also noted, from the record, that the ADC and previous NEC meetings were chaired by the 1st Defendant in his capacity as Interim/Acting Chairperson, before his appointment to the position of Chairperson. According to Regulation 2 of the FHOK Constitution, meetings shall be chaired by the Chairperson and in his absence, by the Vice Chairperson or a member selected in the meeting, in the absence of the Vice Chairperson. The circumstances were that following the removal of the 1st Plaintiff as Chairperson, the 1st Defendant was selected from among the members, to act as Chairperson until such time as elections would be held. During the intervening period, there is nothing to indicate that the position of Vice Chairperson had been occupied, in order to warrant the Vice Chairperson to take over from the Chairperson. Consequently, I have not come across any credible evidence to indicate that the 1st Defendant was irregularly acting as Chair, at all material times.

81. Consequently, it is my finding that the Plaintiffs have not demonstrated, through cogent evidence that the ADC was unprocedurally or unlawfully convened and/or conducted.

82. As relates to the **fourth** issue for determination, it is not in dispute that the 1st and 2nd Plaintiffs were at all material times honorary officials of the NEC, as defined under Article 19 of the FHOK Constitution, which

stipulates that honorary officials shall be the Chairperson and Treasurer. The tenure of honorary members, as set out under Regulation 8, is three (3) years with an option for re-election for a subsequent period of three (3) years, but with a maximum of two (2) consecutive terms.

83. As earlier mentioned, the 1st Plaintiff was removed from his position and subsequently from being a volunteer member of FHOK prior to the ADC. There is no evidence to indicate that he ever challenged the decision by way of an appeal. In the premises, there was no basis for consideration as an official of FHOK thereafter. Concerning the 2nd Plaintiff, the record is clear that she was at all material times the Treasurer of the NEC, having served in the said position since the year 2014. Relying on to Regulation 8, the 2nd Plaintiff would not have been eligible to serve an additional term, by virtue of her having served two (2) consecutive terms between 2014 and 2020. In any case, this court has already found that the NEC elections resulting from the ADC of 09/10/2020 were valid.

84. In the circumstances, I find no basis upon which to deem that the 1st and 2nd Plaintiffs as well as their NEC counterparts at the time, as the current rightfully elected officials and members of FHOK.

85. Consequently, it is my finding that the Plaintiffs have failed to prove their case to the required standard. As to what reliefs the Plaintiffs are entitled to, having failed to prove their case against the Defendants, it

follows that Plaintiffs would not be entitled to the reliefs sought in the
plaint.

86. The outcome of this determination is that the Plaintiffs' case is hereby
dismissed with costs to the 1st to 8th defendant.

87. It is so ordered.

Dated, signed and delivered in Nairobi this 5th day of February 2026.

**S. N. MUTUKU
JUDGE**

In the presence of:

1. Mr. Wamae for the Plaintiffs
2. Mr. Oyagi for the 1st-7th Defendants
3. Mr. Ogembo for the 8th Defendant