REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E395 OF 2025

VETLAB SPORTS CLUB…….1ST EXPARTE APPLICANT

ALLAN AZEGELE……..….2ND EXPARTE APPLICANT

JOHN KARIUKI…….……...….3RD EXPARTE APPLICANT

ERIC KARUGA…….……...…4TH EXPARTE APPLICANT

CAROLINE MUGUKU…….……...…5TH EXPARTE APPLICANT

JOYCE WAMUCII……..…….....…6TH EXPARTE APPLICANT

RACHEL NDEI……...…7TH EXPARTE APPLICANT

SHITUL SHAH…….....8TH EXPARTE APPLICANT

BONIFACE MUNGAI……..9TH EXPARTE APPLICANT

ELIZABETH NGETHE……...10TH EXPARTE APPLICANT

-VERSUS-

SPORTS DISPUTES TRIBUNAL……..1ST RESPONDENT

JARED OUKO……..……...……....…2ND RESPONDENT

BEATRICE KAMAU…….…….……...3RD RESPONDENT

RULING 2

1. On 10th December, 2025, this Court granted the exparte applicants herein leave of court to apply for judicial review orders of certiorari and mandamus challenging the decision of the 1st respondent Sports Deputes Tribunal rendered on 5th December, 2025 in SDTS Case No. E080 of 2025 Jared Ouko Olang'go & another V Allan Azegele & 9 others.

2. The main ground for challenging the decision of the 1st respondent is that the 1st respondent had no jurisdiction to hear and determine the dispute which was filed before it by the 2nd and 3rd respondents herein.
3. This Court did consider the application which was filed under certificate of urgency, exparte in the first instance and upon being persuaded that the intended substantive motion was ***prima facie*** arguable, it granted leave to the exparte applicants to apply for the substantive motion and gave a timeline of 21 days within which to comply.
4. This court further granted the exparte applicants a stay of implementation of the orders of the 1st respondent until the substantive motion once filed, is heard and determined. The court also ordered that the main motion be filed in a fresh judicial review file, which orders the exparte applicants complied with and they filed Judicial Review application number E247 of 2025 which is also due for judgment today.
5. On 15th December, 2025, the applicants herein who are also the 2nd and 3rd respondents filed a notice of motion dated 11th December, 2025 under certificate of urgency seeking to set aside the orders of leave and stay granted in this matter while also seeking for stay of the said orders pending hearing and determination of the notice of motion.
6. The grounds upon which the application is predicated are that on 10th December, 2025, the 2nd and 3rd respondents had been reelected to run the affairs of the 1st applicant Club and that the exparte applicants had failed to

disclose these facts to this court, which was affecting the 2nd and 3rd respondents in running the affairs of the Club.

7. that the exparte applicants had failed to disclose to this court the fact that on 7th December, 2025, at a special general meeting, members of the Club had passed a constitution as per the procedure and that therefore the implementation of the orders issued by this court would deny the 2nd and 3rd respondents their constitutional rights to be governed by validly elected officials.
8. further, that the exparte applicants failed to disclose to this court that there was a case that they had filed before the Civil Division of the High Court being HCC E320 of 2025 which was due for highlighting on 14/1/2026 before Prof Justice Nixon Sifuna hence the orders of this Court were interfering with the proper administration of the 1st applicant to the detriment of the larger 2500 members and its employees.
9. That the exparte applicants are forum shopping and have misguided this court that they have sufficient grounds for commencing judicial review application before this court.
10. That although the exparte applicants know that only the 3rd respondent has the mandate to call for a special general meeting, they had purported to call for an illegal annual general meeting on 10/1/2/2025 at 6pm yet a legitimate meeting was held on the same day at 2pm

11. That the leadership impasse will jeopardize the membership and staff of the Club who may go without salaries owing to the orders issued by this court and that this case is an attempt by the exparte applicants to subvert the course of justice.
12. The notice of motion is supported by the affidavit sworn by Jared Ouko Olango whose depositions reproduce the grounds stated above annexing notice dated 9th December 2025 of temporary closure of the Club on 10th December, 2025 in order to conduct annual general meeting in accordance with the notice issued on 7th November, 2025, the order sought to be set aside and the authority of the 3rd respondent to the 2nd respondent to plead.
13. Opposing the application filed by the 2nd and 3rd respondents, the exparte applicants filed a replying affidavit sworn on 19th January 2026 by Shitul Shah, the 1st exparte applicant's Director who is also the 8th exparte applicant.
14. In the said affidavit, the exparte applicants deny that the 2nd and 3rd respondents were in any way officials of the 1st applicant Club. This is because, according to the exparte applicants, the 2nd and 3rd respondents were suspended on 3rd October 2025 from office by the Board of the 1st applicant on grounds of misconduct and abuse of office as shown by annexed copies of letters in question.
15. That the 2nd and 3rd respondents then filed an appeal to the 1st respondent Tribunal and that the Tribunal, acting devoid of jurisdiction, set aside the

suspension of the 2nd and 3rd respondents on 5th December, 2025 despite the exparte applicant's objection to that jurisdiction and that it was upon being aggrieved by the decision of the Tribunal acting without jurisdiction that the exparte applicants filed these proceedings and obtained leave of court and stay on 10th December, 2025 whose effect is that the 2nd and 3rd respondents remain under suspension until these proceedings are heard and determined.

16. That the orders of leave and stay were served on 10th December 2025 at 1446 hours via WhatsApp and not 17.30 hours as alleged by the 2nd and 3rd respondents.

17. That the Board of the 1st applicants Club held a meeting on 6th November 2025 and passed a resolution to have an annual general meeting which was held on 10th December, 2025 at 6pm as shown by copies of notice annexed to the affidavit but that the 2nd and 3rd respondents also issued their own notice of a general meeting claiming that the Board had issued such notice for a meeting to be held at 2pm on 10th December, 2025 which was not true.

18. That only the Board had the mandate to issue notice for the AGM and not the two respondents herein who were not eligible for election since they were under suspension.

19. That the Club being duly registered under the Societies Act, could not hold an SGM and purport to amend the constitution on 7th November, 2025 without consent of the Registrar of Societies, which process was challenged

by the exparte applicants and the matter is pending vide HCCC E320 OF 2025 at Milimani Law Courts.

20. That the suit before the Civil Division concerns the internal governance management affairs of the 1st applicant Club while these judicial review proceedings challenge orders of the Tribunal which the exparte applicants claim has no jurisdiction to entertain the dispute before it as the 1st applicant is not a registered sports organisation.

21. That the Board comprises 11 directors and therefore two members could not issue a valid notice by Order of the Board and call for an AGM and hold elections hence the unilateral actions of the two suspended directors was malicious and intended to confuse members of the Club and bring the club into disrepute leading to withdrawal of sponsors.

22. That it is contemptuous for the 2nd and 3rd respondents to continue holding themselves as elected officials of the 1st applicant pursuant to the illegitimate meeting held on 10th December 2025.

23. The parties filed submissions to canvass the application. The submissions reiterate the grounds and depositions by the respective parties and in addition, the 1st respondent Tribunal who did not file any response to the application. In the said submissions, the 1st respondent supports the position taken by the 2nd and 3rd respondents asserting that there was material non-disclosure of the parallel pending civil suit being HCC E320 of 2025 and that the exparte applicants are forum shopping. Several decisions of this

court on non-disclosure were cited and which I have taken note of and taken into account in this ruling.

Analysis and Determination

24. I Have considered the application as pleaded, opposed and argued by the parties in their respective submissions and the issue for determination is whether the 2nd and 3rd respondents have satisfied the grounds for setting aside of the exparte orders issued granting leave to apply and for stay of the orders of the Tribunal made on 5th December, 2025.

25. The 2nd and 3rd respondents as supported by submissions of the 1st respondent assert that the leave sought and granted by this Court together with the stay of the orders of the Tribunal made on 5th December 2025 ought not to have been granted, mainly because the exparte applicants are guilty of material non-disclosure and that they are forum shopping which amounts to an abuse of court process.

26. According to the 2nd and 3rd respondents, there is a pending civil suit where the exparte applicants vide HCCE 320 of 2025 have challenged the special general meeting convened by members where an amendment of the constitution of the 1st applicant was undertaken. That the exparte applicants also failed to disclose that the 2nd and 3rd respondents are the bona fide and duly elected officials of the 1st applicant and that the exparte applicants carried out illegitimate AGM on 10th December 2025 at 6pm after the 2nd and

3rd respondents had had a successful meeting which they had called in accordance with the Constitution.

27. The exparte applicants, on their part contend that they did not hide any information from this court. That the civil suit is dealing with internal governance management of the Club following the alleged misconduct of the 2nd and 3rd respondents as directors leading to their suspension by the Board and that upon their suspension, they purported to call for a special general meeting yet they were not authorized by the board to do so, and they purportedly amended the constitution. That the two also filed a case before the 1st respondent Tribunal seeking to lift their suspension and that the Tribunal proceeded to hear and make orders setting aside the suspension yet it did not have jurisdiction under the Sports Act to entertain such a dispute of internal governance and management of a private members Club which is not registered as a sports organisation under the Act.

28. The question therefore at this stage is whether there was material nondisclosure on the part of the exparte applicants.

29. In **High Court Miscellaneous Civil Application No. 1183 of 2004, Republic versus the LAND REGISTRAR KAJIADO AND DIRECTOR OF SURVEY KAJIADO exparte KIRSEK INVESTMENTS LIMITED**, J.G. Nyamu J (as he then was) had this to say concerning exparte orders for leave to apply for judicial review

"NATURE OF EX-PARTE ORDER FOR LEAVE.

It is now accepted that an ex-parte order for leave is in many cases provisional because firstly it is granted on the material available without the other side and is secondly granted upon the establishment of an arguable case on such ex-parte material see NJUGUNA v MINISTER OF AGRICULTURE [2000]1 EA 184 (CAK) Again the English Court of Appeal case of WEA RECORDS LTD v VISIONS CHANNEL 44 & others [1983] 2 ALL ER 589 Although substantially an intellectual property matter it did generally describe the nature of ex-parte orders at pg 593 in these words:

"As I have said ex-parte orders are essentially provisional in nature. They are made by the Judge on the basis of the evidence and submissions emanating from one side only. Despite the fact that the applicant is under a duty to make full disclosure of all relevant information in his application, this is no basis for making a definitive order and every Judge knows this. He expects at a later stage to be given an opportunity to review his provisional order in the light of the evidence. ...?

30. As was stated by the Supreme Court in, **APPLICATION NO. 7 (E013) OF 2022 between Speake of the Senate & 4 others versus Speaker of the National Assembly & 8 others, [2023]eKLR**, and which principles apply to this Court's inherent jurisdiction in setting aside its orders, the court

generally in exercise of its inherent powers, may review, any of its Judgments, Rulings or Orders so as to meet the ends of justice, that is where: (i) The - Judgment, Ruling, or Order, is obtained, by fraud or deceit; (ii) the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;(iii) the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto.

31. As was earlier on held in the *locus classicus* case of **Shah v. Mbogo & Another [1967] EA 116,** the discretionary power to set aside an ex parte order has been held to be intended to avoid injustice and hardship resulting from an accident, inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought to obstruct or delay the course of justice whether by evasion or otherwise.

32. In **CMC Holdings Limited vs. Nzioki [2004] 1 KLR 173** it was held that"

> ***"That discretion must be exercised upon reasons and must be exercised judiciously….. In law the discretion that a court of law has, in deciding whether or not to set aside ex parte order was meant to ensure that a litigant does not suffer injustice or hardship as a result of amongst others an excusable mistake or error. It would not be proper use of such discretion if the Court turns its back to a litigant who clearly demonstrates such an excusable mistake, inadvertence, accident or error. Such an exercise of discretion would be wrong principle...The answer to***

that weighty matter was not to advise the appellant of the recourse open to it as the learned magistrate did here. In doing so she drove the appellant out of the seat of justice empty handed when it had what it might have well amounted to an excusable mistake visited upon the appellant by its advocate".

33. In **Lucy Bosire v. Kehancha Div. Land Disputes Tribunal and 2 others [2013] KEHC 681 (KLR),** citing the above earlier **case of CMC Holdings,** the Court stated that the principles guiding the setting aside ex parte orders are trite that the court has wide powers to set aside such ex parte orders save that where the discretion is exercised the Court will do so on terms that are just.

34. In the instant case, before this court granted the exparte applicant leave to apply, which leave was granted exparte and to operate as stay of implementation of the orders of the Tribunal made on 5th December, 2025, I read the application thoroughly and that is why the ruling on leave and stay is detailed despite the applicants not having appeared.

35. All that the Court was expected to do at the exparte stage for leave was to be satisfied that the applicants have made a prima facie arguable case for interrogation at the substantive stage and as far as stay was concerned, that it was warranted at that stage so as not to render the substantive motion if successful, an academic exercise or cause prejudice and hardship to the applicants.

36. The main reason for the court granting the orders which were sought was the allegation that the 1st respondent Tribunal had no jurisdiction to entertain the dispute relating to internal governance or management affairs of the 1st applicant private members' club as the 1st applicant was not registered as a sports organisation within the meaning of the Sports Act. Similarly, I found that on stay, as the main challenge was that of jurisdiction of the orders of the Tribunal was on account of want of jurisdiction, I could not allow orders which are alleged to have been issued without jurisdiction to be implemented, yet this court exercises supervisory jurisdiction over Tribunals and one of the grounds upon which judicial review orders can issue is where a tribunal is found to have assumed jurisdiction that it did not have in the first place.

37. I however clarified that the fact that I had found that an arguable case had been established, was in itself not conclusive that the applicants would be successful in the main motion. This is a well-established principle applicable in applications for leave and once the main motion is filed and served, the other parties may adduce evidence that displaces the assertions made by the applicants.

38. Following the application subject of this ruling, I have once again read the pleadings filed by the exparte applicants and I note that the exparte applicants fully disclosed that following the suspension of the 2nd and 3rd respondents, the latter purported to convene a special general meeting in

which they allegedly purported to amend the constitution and carry bout elections. That the exparte applicants did file the Civil Suit before the Commercial Division of the High Court which is now Civil Suit No. HCCE 320 of 2025 seeking various orders challenging the actions of the 2nd and 3rd respondents. All the pleadings in the Civil suit are annexed to the application.

39. In addition, the applicant clearly disclosed that they had approached this court under certificate of urgency and sought for stay because the Tribunal had lifted the suspension of the 2nd and 3rd respondents and ordered for disciplinary proceedings to be undertaken in accordance with the internal disciplinary processes which I found to be in existence in the annexed Board Charter.

40. It is worth noting that the issue of an amended constitution is an issue pending determination by the Civil Court. However, the question of jurisdiction of the Tribunal is one that this Court is vested with supervisory jurisdiction under Article 165(6) and (7) of the Constitution over tribunals to ensure that they operate within the law and in the confines of their mandate and jurisdiction and therefore the exparte applicants were well within the law when they approached this Court on the basis that the Tribunal had acted without jurisdiction, which allegation cannot be said to be a hopeless one at this stage, and this Court was not being asked to determine the issues which are pending before the Civil Court, touching on elections, amendment of the

1st applicant's constitution and the internal Board governance wrangles leading to what appears to be splinter groups.

41. Moreover, in these very proceedings, the exparte applicants even filed pleadings of the civil suit in HCCE320 of 2025. All the issues concerning special general meeting convened by the 2nd and 3rd respondents are disclosed in the pleadings and documents annexed to the judicial review chamber summons application.

42. For the above reasons, I am unable to find that there was any material non-disclosure on the part of the exparte applicants.

43. Accordingly, I find the 2nd and 3rd respondents' application to be devoid of merit and the same is hereby dismissed,

44. The 2nd and 3rd respondents are therefore at liberty to file their responses to the substantive motion which was due for judgment today in JR E427 OF 2025, which judgment I have stayed in the interest of justice, to accord the respondents an opportunity to be heard on the substantive motion.

45. I make no orders as to costs.

46. This file is accordingly closed.

Dated, Signed and Delivered at Nairobi this 25th Day of February, 2026

R.E. ABURILI

JUDGE