

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E229 OF 2022

BETWEEN

**DR. JOSEPH KAMAU
MAGACHI.....1ST PETITIONER**

**DUNCUN KAGUURU MURIUKI.....2ND
PETITIONER**

VERSUS

**NAIROBI CLUB.....1ST
RESPONDENT**

**CARETAKER COMMITTEE.....2ND
RESPONDENT**

J U D G M E N T

Introduction

1. The Petition dated 20th May 2022 is supported by the 1st Petitioner's affidavit in support sworn on behalf of the joint Petitioners.
2. The gravamen of the Petition is that Petitioners were barred from nomination to enable them vie for the position of committee members in the 1st Respondent's Main Committee by the 2nd Respondent due to an unlawful suspension from the 1st Respondent which the Petitioners fault on the basis that it was done in violation of the rules of natural justice.

3. Accordingly, the Petitioners seek the following reliefs:
- a) ***A declaration that the Petitioners rights under Articles 27, 38, and 47 of the Constitution have been violated.***
 - b) ***The Court do grant an order directing the Respondents to nominate the 1st and 2nd Petitioners to be eligible to participate and vie in the elections of the main committee of the Respondent herein.***
 - c) ***Compensation for violation of the said rights.***
 - d) ***Costs of this Petition be borne by the Respondent.***
 - e) ***Costs of this Application be borne by the Respondent.***
 - f) ***Such other orders as this Honorable Court Shall deem fit and just.***

Petitioners' Case

4. By way of background, the Petitioners stated that they are members of the 1st Respondent with no outstanding bills or balances. They lodged their applications to be nominated for the elections set for **27th May 2022** so as to serve as committee members in the 1st Respondent's Main Committee.
5. The 1st Petitioner states that their applications were later on revoked. He depones that the 2nd Respondent disqualified him on the ground that his membership had been suspended due to an unpaid **Kshs.1500.00** minimum expenditure

surcharge. Aggrieved, they appealed the decision but the appeal was dismissed by the 2nd Respondent.

6. The 1st Petitioner avers that the 1st Respondent was closed on **8th April 2020 due to COVID 19**. He notes however that the 2nd Respondent continued to charge him the Kshs.1500/- minimum expenditure surcharge. He contends that at the time they could not patronize the club. As a result, he decided to cease paying the amount until the matter was resolved.
7. He depones that in December 2020, he decided to pay all the outstanding balances being Ksh.40000, as he waited for the 1st Respondent to reverse the contentious charge. He claims that the reversal was never made.
8. The 1st Petitioner states that since then, he has been frequenting the Club without any restriction or being informed that he is suspended. With this in mind, he avers that he was in shock when he received the 2nd Respondent's letter stating that he had been suspended from the Club.
9. The 1st Petitioner depones that their protest letters in response including those of their seconder one, Mercy Buku were not responded to. Additionally, their advocates' demand letter to the Respondents was also disregarded.
10. He informs that pursuant to *Article 13(b) of the Club Rules* and *By laws as read with Article 84(b)*, a member must be served with a suspension letter. Further to this, a suspension

is *not automatic but subject to the Committee's discretion*. Additionally, *Rule 83(b)* provides that suspension is only valid until the outstanding account and surcharge is paid in full.

11. In light of this, the 1st Petitioner contends that the suspension was unlawful and a nullity as it did not conform with the *rules of natural justice, Article 50 of the Constitution, the Fair Administrative Action Act and Article 84 (b) of the Club Rules and By-Rules*. He points out that since the alleged bill was cleared, they cannot be said to have been suspended as per the Club rules.

Respondents' case

12. Opposing the Petition, the Respondents filed their Replying Affidavit through the **1st Respondent's, Chief Executive Officer, Walter Nyandiko sworn on 26th October 2022**.
13. He depones that the decision to suspend the Petitioners was made in accordance with the 1st Respondent's Rules and By Laws. He informs that the Petitioners *had unpaid balances on their accounts and therefore were suspended by the Committee in line with Rule 84(b) of the 1st Respondent's Rules*.
14. It is stated as a result that when the Petitioners sought nomination for the Main Committee, they were ineligible as provided *under Rule 13 (b) of the 1st Respondent's Rules and By- Laws*. He asserts that since the Petitioners were not compliant with the 1st Respondent's Rules and By - Laws, they were precluded from accessing their privileges as

members and vying for any position. On this basis, he stresses that their disqualification was lawful.

15. He depones that once the Committee made the decision, he informed the Petitioners of the same **vide the letter dated 6th May 2022**. He avers that *the 2nd Respondent considered the Petitioners appeals on 10th May 2022* and resolved to uphold their decision. This is because the Petitioners had adequately been notified of their suspension. This decision was equally communicated to the *Petitioners on 12th May 2022*.
16. That notwithstanding, *he points out that the issue of elections has since been overtaken by events as a new committee was elected on 27th May 2022*. In view of the foregoing, he denies any malice of the Respondents' part as purported by the Petitioners.
17. Far from this, he states that **Rule 24 of the 1st Respondent's By - laws** provides a dispute resolution mechanism as envisaged under Article 159(2) (c) of the Constitution, which the Petitioners have failed to exhaust. Essentially, **this Rule provides for structured negotiations with the assistance of a mediator and where this fails reference of the matter to arbitration, which shall be final and binding upon the parties.**
18. To this end, he accuses the Petitioners of material non-disclosure and misrepresentation of facts.

19. As such, he reasons that the Petition is misconceived, bad in law, lacking in merit and hence should be dismissed.

Petitioners' Submissions

20. On 28th February 2025, the Petitioners through Wambilianga Majani Associates Advocates filed submissions where Counsel set out the issues for discussion as: *whether the Petitioners were eligible to vie for elections to the main committee and whether the Respondents' letter dated 6th May 2022 and the subsequent decision by the Appeals committee dated 12th May 2022 disqualifying the Petitioners from contesting in the Elections complied with the rules of Fair Administrative justice under Article 47 of the Constitution and the Fair Administrative Act 2015.*
21. Counsel recapped that Article 13 (b) of the Clubs Rules and By - laws must be read contextually with Article 84 (b) which provides that a member must be served with the suspension letter via registered post or electronic mail. Moreover, such a suspension is not automatic, but is subject of the Committee's discretion. Additionally, under Rule 83 (b) such suspension is valid only until the outstanding account and surcharge are paid in full.
22. Counsel submitted that the Petitioners had demonstrated that the issue of their suspension had not been brought to their attention in a timely fashion as contemplated under Article 47 of the Constitution as read with Section 4 (3) of The Fair Administrative Act. Counsel pointed out that the Petitioners were simply informed of the decision to disqualify

them from the elections on 6th May 2022 which they appealed. Counsel submitted that the Petitioners were not granted an opportunity to be heard in the appeal neither given a chance to participate in the proceedings.

23. Counsel as well highlighted that the Respondents had not adduced any minutes of the disciplinary proceedings, if at all any was conducted. Equally, that no notice was issued to the Petitioners of the intended Administrative action by the Respondents as guided under Section 4(4)(d) of the Fair Administrative Action Act.
24. Counsel stressed that the Respondents in this matter made a unilateral decision which violated the Petitioners rights. To buttress these points, reliance was placed in **Geothermal Development Company Limited vs. Attorney General & 3 Others [2013] eKLR** where it was held that:

“Fair and reasonable administrative action demands that the taxpayer would be given a clear warning on the probable consequences of non-compliance with a decision before the same is taken; in this case, the Company should in no uncertain terms have received information as to the implication of the letter and the consequences of its failure to make good the payments demanded in the notice. (See Supreme court decision in TV3 v Independent Radio and Television Commission [1994] 2 IR 439).

In many jurisdictions around the world, it has long been established that notice is a matter of procedural fairness and an important component of natural justice. As such, information provided in relation to administrative proceedings must be sufficiently precise to put the individual on notice of exactly what the focus of any forthcoming inquiry or action will be.”

25. Like dependence was placed in **Onyango Oloo vs. Attorney General [1986-1989] EA 456.**

1st and 2nd Respondent's Submissions

26. M.M. Gitonga Advocates LLP filed submissions dated 24th June 2025 and identified the key issues for discussion as: *whether the Petition is merited and the Petitioners are entitled to the reliefs sought.*
27. On the onset, Counsel submitted that the Petition is not only frivolous and misconceived but also devoid of merit and an abuse of the Court process since it does not outline any reasonable cause for this Court to grant the reliefs sought.
28. According to Counsel, the Petitioners failed to adhere to the 1st Respondent's Rules and By - Laws by failing to pay the outstanding balances on their membership accounts, which led to their suspension in line with Rule 84(b). Counsel objecting the Petitioners allegation that the Respondent did not issue a notice, *noted that the membership statement account issued through email contains an automatic notice at its footer that notifies the members of the amount due and when it is due for payment.* In addition to this, he asserts that the Petitioners had knowledge of the Club rules, *in this case Rule 83(b) which stipulates that a suspension will be effected if a member has outstanding bills and balances.* In his opinion, these notices were clear and granted the

Petitioners reasonable time and opportunity to regularize their accounts.

29. Reliance was placed in **Republic v Kenya Revenue Authority ex parte Yaya Towers Limited [2008]eKLR** where it was held that fairness of an administrative action does not preclude an adverse decision, it requires only that the process be lawful and procedurally fair. Counsel stressed that the Respondent's actions were lawful and procedural.
30. Furthermore, Counsel submitted that the Petitioners had not substantiated their claim on the disputed amount as alleged. Counsel stated that the Petitioners had not shown any communication or correspondence of the said complaint.
31. Counsel noted that in **Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)**, the Court of Appeal affirmed that a Petitioner must plead with precision and adduce evidence of the specific constitutional provision violated and the manner of violation, which the Petitioners had failed to do. Counsel noted that the Petitioners reliance on Article 38 of the Constitution was misplaced and misconceived, as this Article contemplates political rights within the context of public governance whereas the 1st Respondent is a society of members and a private entity.
32. Counsel as well contended that the Petitioners had not exhausted the dispute resolution mechanism provided under Rule 24 of the 1st Respondent's by laws.

Reliance was placed in **Larry Odira Seko -vs- Senate, Pan Africa Christian University & 2 others & 2 others [2022] eKLR** where it was held that:

“The doctrine of exhaustion in Kenya traces its origin from Article 159(2)(c) of the Constitution which recognizes and entrenches the use of alternative mechanisms of dispute resolution in the following terms; 159(2) In exercising judicial authority, the Courts and tribunals shall be guided by the following principles- (a) ... (b)... (c) alternative forms of dispute resolution including resolution, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause 3.”

33. Similar reliance was placed on **Geoffrey Muthinja & Another vs. Samuel Munga Henry & 1756 others (20151 KECA 304 KLR)**.
34. In the following issue, Counsel submitted that since the Petitioners had not established their case in the cited alleged constitutional violations, they were not entitled to the relief sought.
35. Further to this, Counsel urged the Court not to engage in an exercise of futility in a matter that is academic or hypothetical at this juncture. Counsel emphasized that the key question herein is the Petitioners claim that they were not allowed to be nominated for the elections, which has since been overtaken by events since a new committee was elected. Reliance was placed in **Dande & 3 Others vs. Inspector General, National Police Service & 5 Others [2023] KESC 40 (KLR)** where it was held that:

“The doctrine of mootness requires that controversy must exist throughout judicial proceedings including at

the appellate level. An appeal or an issue is moot when a decision will not have the effect of resolving a live controversy affecting or potentially affecting the rights of parties.”

36. Further reliance was placed on **National Assembly of Kenya & another v Institute for Social Accountability & 6 others [2017] eKLR.**

Analysis and Determination

37. It is my considered view that the issues that arise for determination are as follows:

- i. Whether the Petitioners exhausted the 1st Respondent’s internal dispute resolution mechanisms before filing this suit.***
- ii. Whether the Petition offends the principle of mootness.***
- iii. Whether constitutional rights of the Petitioners were violated by the Respondents.***
- iv. Whether the Petitioners are entitled to the reliefs sought.***

Whether the Petitioners exhausted the 1st Respondent’s internal dispute resolution mechanisms prior to the institution of this Petition

38. The doctrine of exhaustion of remedies requires that if a person has a grievance against the decision or action of a public body or organization, he should first utilize the internal dispute resolution processes in that organization before seeking Court’s intervention. Courts invoke judicial restraint and decline jurisdiction where a party overlooks the internal dispute resolution mechanisms and approaches the Court

directly to discourage unnecessary litigation. This principle has now received statutory recognition by dint of Section **9 of the Fair Administrative Action Act** which provides as follows:

Procedure for Judicial Review

- (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.*
- (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.*
- (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).*
- (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.*
- (5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.*

39. This doctrine was articulated by the Supreme Court in **Waity v Independent Electoral & Boundaries Commission & 3 others [2019] KESC 54 (KLR)** as follows:

“[63] Where the Constitution or the law, consciously confers jurisdiction to resolve a dispute, on an organ other than a court of law, it is imperative that such dispute resolution mechanism, be exhausted before approaching the latter. Were it not so, parties would bide their time, overlooking the recognized forums, and later springing a complaint at the courts. Such a scenario would be a clear recipe for forum shopping, an undertaking that must never be allowed to fester in the administration of justice. We are fortified in this regard, by the persuasive authority by the Court of Appeal, in Geoffrey Muthinja Kabiru & 2 Others; [2015] eKLR; wherein the Appellate Court observed:

“It is imperative that where a dispute resolution mechanism exists outside the Courts, the same be exhausted before the jurisdiction of the Courts be invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts.”

40. Further in **Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR)** the Court held:

“52. The question of exhaustion of administrative remedies arises when a

litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts..."

41. There are however a few exceptions to the application of this doctrine. The Court in **William Odhiambo Ramogi (supra)** observed as follows:

"60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.

61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.

62. In the instant case, the Petitioners allege violation of their fundamental rights. Where

a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.”

42. The Respondents were emphatic that the Petitioners had overlooked the internal dispute settlement machinery under ***Rule 24 of the 1st Respondent’s By - laws*** which provides for resolution of disputes through structured negotiations with the assistance of a mediator, and if this fails, reference of the matter to arbitration and which becomes final and binding upon the parties.

43. In paragraph 18 of the Respondent’s replying affidavit, Mr. Walter Nyandiko, the Chief Executive Officer of the 1st Respondent swore as follows:

THAT the said Rule 24 of the by Laws provides that; -

- a) *"Members shall first use reasonable endeavours to amicably settle disputes between themselves under these Rules and By-laws. Where a dispute has not been amicably resolved, the Club and the Member or Members shall enter into structured negotiations with the assistance of a mediator or mediators acceptable to both sides and who shall be a Full Member or Members of the Club of not less than fifteen years standing.*
- b) *Where mediation fails, the parties shall refer the matter to a single arbitrator to be appointed by an agreement between the parties and in default of*

such agreement within fourteen days of the notification of such dispute by either party or the other upon application by either party, the Chairman for the time being of the Kenyan Branch of the Chartered Institute of Arbitrators.

44. The Respondents omitted to exhibit for examination of the Court the said Rule 24 of the By Laws like they had done for the other portions of the by-laws they had made reference to wit- Rule 83b- 'annexure WN 1' and Rule ;13b -annexure WN 2' of the ***RULES & BY-LAWS OF NAIROBI CLUB (AS REVISED UP TO AND INCLUDING 19" FEBRUARY 2015).***
45. Further, a review of the index or table of contents, which lists the entirety of bylaws where even both Rule 83b and 13b are included, Rule 24 is conspicuously missing from the list. The list proceeds directly from rule 23 to Rule 25 skipping Rule 24 completely. Considering Rule 24 is not reflected in the Index or its substance actually exhibited by the Respondents, the Court cannot assume the existence of the said Rule 24 and its content based on the purported reproduction of the said Rule by the Respondent yet the same could not be exhibited like the Respondents it had relied on and given the obvious omission of the said Rule in the Index/Table of contents.
46. I therefore find that that the claim that there existed alternative avenue for dispute resolution cannot be verified by the Court in the circumstances and the same is hereby rejected.

Whether the Petition offends the principle of mootness.

47. The principle of mootness emphasizes that Courts would only assume jurisdiction to determine live and genuine controversies as opposed to abstract issues and disputes that have long been overtaken by events and have no practical significance to the parties in the dispute.
48. The Court of Appeal in **National Assembly of Kenya & another v Institute for Social Accountability & 8 others [2017] KECA 170 (KLR)** elaborated on the principle of mootness as follows:

“[14] The mootness doctrine is entrenched in the common law. The Black’s Law Dictionary, Ninth Edition, defines a moot case as:

“A matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights.”

In an article entitled “Federal Jurisdiction to Decide Moot Cases” published in the University of Pennsylvania Law Review [1946] Vol. 94 - No. 2, the author, Sidney A. Diamond explains the essence of the doctrine thus:

“Common - law courts have long recognized the strict requirement that permits only cases presenting judicial controversies to be decided. This is a jurisdictional limitation. If the parties are not adverse, if the controversy is hypothetical, or if the judgment of the court for some other reason cannot operate to grant any actual relief, the case is moot and the court is without power to render a decision.”

[14.1] In the United States of America, it is a constitutional requirement that federal judicial power extends to “cases” and to “controversies” [section 2(1) of Article 111 of the American Constitution]. Neither our Constitution nor our laws explicitly prohibits the courts from determining abstract, hypothetical or contingent cases or appeals. It follows that the common law is the exclusive source of the mootness doctrine in our jurisdiction. The doctrine is based on judicial policy whose main functions are to protect the functional competence of the courts to make law by ensuring adequate adversity of the parties and judicial economy - that is, rationing scarce judicial resources amongst competing claimants...”

49. Further, in **Daniel Kaminja & 3 others (Suing as Westland Environmental Caretaker Group) v County Government of Nairobi [2019] KEHC 2059 (KLR)** the Court held:

“26. A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner or applicant would be entitled to, and which would be negated by the dismissal of the case. Courts generally decline jurisdiction over such cases or dismiss them on grounds of mootness, save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.

27. The legal doctrine known as 'mootness' is well developed in constitutional law jurisprudence. Accordingly, a case is a moot one if it.

"...seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has actually been asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical effect upon a then existing controversy."

28. Furthermore, a case will be moot-

"...if the parties are not adverse, if the controversy is hypothetical, or if the judgment of the court for some other reason cannot operate to grant any actual relief, and the court is without power to grant a decision."

29. Barron and Dienes put it succinctly when they observe that "a case or controversy requires present flesh and blood dispute that the courts can resolve." Loots, a South African constitutional commentator, endorses these sentiments and points out that a case-

"....is moot and therefore not justiciable if it no longer presents an existing or live controversy or the prejudice, or threat of prejudice, to the plaintiff no longer exists."

30. However, a court will decide a case despite the argument of mootness if to do so would be in the public interest."

50. At paragraph 14 of the Replying affidavit, the Respondent states:

'14. THAT further, the issue of being allowed to vie and participate in the elections of the Main Committee

is already spent and overtaken by events since the elections already took place and a new committee elected on 27th May 2022.'

51. In the submissions of the Respondent, M.M Gitonga & Co. Advocates urged this Court not to engage in an exercise in futility as the key question herein was the claim by the Petitioners that they were not allowed to be nominated for the elections, which is now overtaken by events since a new committee was elected.
52. Upon careful review of the Petition, the substance of the Petitioners' grievance is the manner the administrative action was actually taken against them than being barred to participate in the nomination process was just an immediate trigger, their actual grievance was the manner their decision was processed and arrived at abruptly without affording them an opportunity to be heard.
53. Consequently, besides the fact of being denied the chance to participate in the said nomination's process, their claim is much broader, for the prayers they seek include a declaration and compensation to vindicate their right to administrative action that is lawful, and procedurally fair under Article 47 of the Constitution. The the prayers sought, apart from prayer 2 which is moot, the rest are very much alive and sustainable, they are thus not moot. They include:
 - 1.** *A declaration that the Petitioners rights under Articles 27, 38, and 47 of the Constitution have been violated.*

2. *The Court do grant an order directing the Respondents to nominate the 1st and 2nd Petitioners to be eligible to participate and vie in the elections of the main committee of the Respondent herein.*
3. *Compensation for violation of the said rights.*
4. *Costs of this Petition be borne by the Respondent.*
5. *Costs of this Application be borne by the Respondent.*
6. *Such other orders as this Honorable Court Shall deem fit and just.*

54. The submission that the substratum of the Petition has been extinguished because elections of the Committee were conducted is thus misconceived and is therefore rejected.

Whether constitutional rights of the Petitioner were violated by the Respondents.

55. The 1st Petitioner avers that the 1st Respondent was closed on **8th April 2020 due to COVID 19**. He notes however that the 2nd Respondent continued to charge him the Kshs.1500/- minimum expenditure surcharge. He contends that at the time they could not patronize the club. As a result, he decided to cease paying the amount until the matter was resolved. He however depones that in December 2020, he decided to pay all the outstanding balances being Ksh.40000, as he waited for the 1st Respondent to reverse the contentious charge which was never done. The 1st Petitioner states that since then, he has been frequenting

the Club without any restriction or being informed that he was suspended and was thus shocked when he received the 2nd Respondent's letter stating that he had been suspended from the Club since October, 2020.

56. The Respondents countered this assertion by maintaining that the decision to suspend the Petitioners was made in accordance with the 1st Respondent's Rules and By Laws. They contended that the Petitioners *had unpaid balances on their accounts and therefore were suspended by the Committee in line with Rule 84(b) of the 1st Respondent's Rules* hence when the Petitioners sought nomination for the Main Committee, they were found ineligible as provided *under Rule 13 (b) of the 1st Respondent's Rules and By- Laws.*
57. The Respondent's CEO deponed that once the Committee made the decision, he informed the Petitioners of the same ***vide the letter dated 6th May 2022.*** The 2nd Respondent considered the Petitioners appeals on 10th May 2022 and resolved to uphold their decision given that the Petitioners had adequately been notified of their suspension and decision was equally communicated to the *Petitioners on 12th May 2022.*
58. The Constitution provides for fair administrative action.

Article 47 provides:

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.***

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall -

a) provide for review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and

b) promote efficient administration.

59. The Fair Administrative Actions Act, protects the rights of a person likely to be affected by an administrative decision.

Section 4 - Administrative action to be taken expeditiously, efficiently, lawfully etc

(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

- (d) a statement of reasons pursuant to Section 6;
 - (e) notice of the right to legal representation, where applicable;
 - (f) notice of the right to cross-examine or where applicable; or
 - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
- (4) The administrator shall accord the person against whom administrative action is taken an opportunity to-
- (a) attend proceedings, in person or in the company of an expert of his choice;
 - (b) be heard;
 - (c) cross-examine persons who give adverse evidence against him; and
 - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
- (5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.
- (6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

60. It thus manifest that the Constitution together with the Fair Administrative Actions Act provide for prior notice, reasons for the decision an opportunity to be heard are key defining standards of a reasonable and procedurally fair

administrative action. Administrative actions that do not abide by these constitutional and statutory benchmarks are, unless specifically limited by law, the threshold of being reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and taking into account the nature of the fundamental freedom, the importance and purpose of limitation, the nature and extent of limitation among others as provided in Article 24 (1), any action taken in violation of these principles would not only be unlawful but also unconstitutional.

61. In the submissions by Counsel for the Respondent, Counsel in reaction to the Petitioners contention that the Respondent did not issue a notice argued *that the membership statement account issued through email contains an automatic notice at its footer that notifies the members of the amount due and when it is due for payment.* In addition to this, he asserts that the Petitioners had knowledge of the Club rules, *in particular, Rule 83(b) which stipulates that a suspension will be effected if a member has outstanding bills and balances.* In his opinion, these notices were clear and granted the Petitioners reasonable time and opportunity to regularize their accounts.
62. The Petitioner's Advocates, Wambilianga Majani Associates, argued that Rule 84 (b) provides that a member must be served with the suspension letter via registered post or electronic mail and that such a suspension is not automatic, but is subject of the Committee's discretion. Additionally,

that Rule 83 (b) provides that suspension is valid only until the outstanding account and surcharge are paid in full. Counsel submitted that the Petitioners had demonstrated that the issue of their suspension had not been brought to their attention in a timely fashion as contemplated under Article 47 of the Constitution as read with Section 4 (3) of The Fair Administrative Act but were simply informed of the decision to disqualify them from the elections on 6th May 2022 which they promptly appealed and were not granted an opportunity to be heard in the appeal neither given a chance to participate in the proceedings. He pointed out the Respondents had not demonstrated that any notice was issued notifying the Petitioners that any the action was contemplated or even the minutes of any disciplinary decision were exhibited.

63. Rule 84 of the **RULES & BY-LAWS OF NAIROBI CLUB (AS REVISED UP TO AND INCLUDING 19th FEBRUARY 2015** provide as follows:

ACCOUNTS

83 (a) Members' accounts shall be made up at regular monthly intervals and shall be sent by post and or electronic mail to them. Payment of every account shall be due on the Twentieth day of the month next following the month to which the account refers.

b) If payment on an account is not received by the due date, the Member concerned shall pay a surcharge equal to ten percent of the amount due,

or such other percentage as the Committee may from time to time prescribe. In such event the Committee may additionally, in its discretion, suspend forthwith credit facilities to the Member concerned until the outstanding account and surcharge are paid in full.

- c) *A Temporary Membership shall automatically cease upon the failure of such Temporary Member to pay his account (including any surcharge which may be payable) by the due date.*

84 *(a) If payment of an account is not received by the due date, a reminder notifying the amount outstanding and the fact that a surcharge is payable shall be sent by post and or electronic mail to the Member concerned within a time to be specified by the Committee.*

(b) If payment in full of the outstanding account and surcharge is not received within fifteen days from the due date the Committee may, in its discretion, suspend the defaulting Member from all rights of Membership. In that event, a registered letter and electronic mail shall be sent to the Member concerned informing him or her of the suspension and requiring immediate payment of the original outstanding account and surcharge together with.

64. The Respondent did not demonstrate that it complied with its own Rule 84 (a) of sending *'a reminder notifying the amount outstanding and the fact that a surcharge is payable by post and or electronic mail to the Member concerned within a time to be specified by the Committee.'*

65. There is no evidence that prior action of suspension had been taken and conveyed to the Petitioners before the letter of 6/5/22 that informed them that they could not be nominated by reason of suspension. The Respondent did not

demonstrate that it had informed them of that decision. They were learning about the first for the time. In any case, it is also clear that that assuming there was such suspension, there is no evidence that they were even given an opportunity to be heard prior to suspending them. The letter of 6/5/2022 reads:

Dear Sir,

RE: NOMINATION FOR MAIN COMMITTEE - NAIROBI CLUB

*Thank you for expressing interest to be elected as a Main Member at the Coming 27th May, 2022 Annual General Meeting. Committee In accordance to the Rules and By-Laws, article 13(b), **the Caretaker Committee undertook determination of eligibility of nominees at its meeting of 28th April, 2022 and noted that you had been suspended in October 2020.** You were therefore not cleared to offer your candidature in compliance with the Rules and By-Laws.*

Yours Faithfully.

WALTER NYANDIKO CHIEF EXECUTIVE OFFICER

For Caretaker Committee'

66. A more serious and egregious breach was committed by the Respondent. Not only did it not bring the notice of suspension of October 2020 to the Petitioners which, in any case was imposed without giving them a hearing, but also went ahead, to evidently deny them a hearing when they appealed the decision against the suspension. There are no minutes of the deliberation of the Committee that were presented before this court confirming that, in fact, that this

appeal was even deliberated upon. Instead, what the Respondent relies on is a communication by the CEO vide the letter of 12/5/2022 purporting that the Committee sat and reached the decision that dismissed the appeal. The letter simply reads:

'Dear Sir,

RE: NOMINATION TO COMMITTEE MEMBER - ANNUAL GENERAL MEETING 2022

Reference is made to your letter of 7th May, 2022 appealing against decision of not clearing you to contest for Committee Member position at the coming Annual General Meeting of 27th May, 2022 on account of provisions of Rules and By-Laws article 13(b). The Caretaker Committee relooked at your case at its meeting of 10th May, 2022 and upheld the decision on grounds that there is enough evidence that you were adequately made aware of the suspension.

Yours Faithfully,

WALTER NYANDIKO CHIEF EXECUTIVE OFFICER'

67. In my view, the casual manner the Respondents treated the Petitioners demonstrates prejudice, arbitrariness and disregard for fairness. This bare from letter cannot satisfy this Court to make a definitive finding that the constitutional threshold under Article 47 was met. I thus find that the Respondents violated Article 47 by failing to ensure the administrative action that they took against petitioner was lawful, reasonable and procedurally fair.

Whether the Petitioners are entitled to the reliefs sought.

68. Under the Article 23 of the Constitution, this Court is permitted to grant an appropriate relief if it considers necessary depending on the circumstances of each case.
69. The South African case of Hoffmann v South African Airways (CCT17/00) [2000] ZACC 17 explained the rationale behind granting constitutional reliefs as follows:

“The objectives of an appropriate relief are to:

- (i) address the wrong occasioned by the infringement of the constitutional right;*
- (ii) deter future violations;*
- (iii) make an order that can be complied with; and*
- (iv) of fairness to all those who might be affected by the relief.”*

70. The Court of Appeal addressing itself on the nature of a constitutional relief in Gitobu Imanyara & 2 others vs Attorney General [2016] KECA 557 (KLR) stated:

“...The primary object of constitutional relief was not compensatory but to vindicate the fundamental rights infringement and to deter their future infringement. The test was not what would alleviate the hurt which plaintiff contended for but what was appropriate relief required to protect the rights that had been infringed. Public policy considerations also played a significant role. It was not only the plaintiff's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy.”

71. In my view, the manner the Respondents treated the Petitioners, was arbitrarily and unfair with the sole intention of denying them an opportunity to participate in nominations for the elections citing non-existent suspension that was never communicated to petitioners as the basis. Further they denied them an opportunity for fair appeal process. I grant the following remedies:

- 1. A declaration is hereby issued that the Petitioners rights under Articles 47 of the Constitution were violated by the Respondent.**
- 2. Compensation of Kenya shillings seven hundred thousand (Kshs.700,000/-) is hereby awarded to each Petitioner against the Respondents.**
- 3. Costs of this Petition.**

Dated, signed and delivered virtually at Nairobi this 26th March, 2026.

.....
L N MUGAMBI

JUDGE