REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW NO. E009 OF 2026

REPUBLIC……APPLICANT

VERSUS

EMBU GOLF & COUNTRY CLUB……1ST RESPONDENT

EMBU GOLFERS' ASSOCIATION……2ND RESPONDENT

DAVID NJUGUNA NJOROGE……3RD RESPONDENT

PENNINAH MAKENA MWENDWA……4TH RESPONDENT

AND

KENYA GOLF UNION……INTERESTED PARTY

EX PARTE

KENNETH NYAGA MWIGE

JUDGMENT

1. The Motion herein, dated 14th January 2026, seeks 2 judicial review reliefs of *certiorari* and *mandamus*. The prayer for the order of *certiorari* seeks to quash the decision of the 2nd and 3rd respondents, to expel the *ex parte* applicant from all the membership, social and communication privileges, including reciprocating rights to many clubs affiliated to the 1st respondent all over Kenya. The *mandamus* order is sought to compel the respondents to reinstate the *ex parte* applicant to full membership privileges, including those relating to access to its communication platforms and full membership rights in all reciprocating clubs in Kenya, and to cease further discrimination, harassment and hostility directed at him.

2. The grounds, upon which the Motion is premised, are set out on the face of the application, as well as on the statutory

statement and the verifying affidavit. The grounds, on the face of the application, are really unnecessary, given that the Motion rides on the statutory statement, as filed at the leave stage, or as amended thereafter, and on the affidavit that verifies that statement, or filed thereafter with leave of court.

3. There is a statutory statement, dated 14th January 2026. It sets out the same prayers narrated in the Motion. It also sets out the grounds upon which those prayers are made. It is averred that private associations and clubs, in exercising dominion and authority over members are subject to the regulatory and constitutional framework in Kenya, as set out in the Constitution and the Fair Administrative Action Act, Cap. 7L, Laws of Kenya, and their decisions ought to comply with constitutional, statutory and jurisprudential standards of procedural propriety, proportionality, fairness, transparency and accountability. Article 47 of the Constitution guarantees the right to fair administrative action, which is expeditious, efficient, lawful, reasonable and procedurally fair, and section 4 sets out the operational framework for enforcement of that right. There are also national and international standards of golf etiquette, governance and membership discipline, which emphasise due process.

4. The *ex parte* applicant avers that he had fully paid for a tournament organised by the Captaincy of the 1st and 2nd respondents, and he proceeded to the venue, with a partner, and his dogs, and played golf without incident. In the middle of the game, the 3rd and 4th respondents caused him to be expelled from the tournament, the golf course, facilities, communication channels and reciprocation rights. The *ex parte* applicant, his partner and his dogs peacefully vacated the premises. It is averred that the expulsion was communicated in a publicly demeaning post, by the 3rd respondent, in the members WhatsApp platform, instead of

being addressed to him personally. It is argued that he was ordered to remove his dogs immediately, despite the said dogs being well attended to, and despite there being no express provision, in the constitution and the byelaws of the 1st and 2nd respondents, prohibiting members from bringing pets to the premises.

5. It is averred that the acts of the 3rd and 4th respondents amounted to double standards and discriminative conduct, which were animated by personal vendetta. It is disclosed that the *ex parte* applicant and the 4th respondent were previously married, and had divorced, and that the 4th respondent was in a romantic relationship with the 3rd respondent. It is averred that the 3rd and 4th respondents had a personal problem with the *ex parte* applicant, arising from those personal entanglements, their acts towards him were an excuse to exact revenge on him, and there was personal bias, animus, jealousy and conflict of interest.

6. It is averred that the said acts were done without notice, written reasons and a hearing, and were contrary to Article 47 of the Constitution and section 4 of the Fair Administrative Action Act. The said acts are also said to be irrational, unreasonable and procedurally unfair, and were carried out without jurisdiction and due process, and were *ultra vires* the rules of natural justice, the Constitution and the Fair Administrative Action Act. It is averred that the most basic disciplinary procedures were not followed, as there was no verbal warning, no letter of caution, no cease and desist, no disciplinary hearing and no opportunity was given for a hearing, review or appeal. It is submitted that there was administrative impunity, public humiliation and unilateral expulsion and exclusion, leading to exposure to public embarrassment, reputational harm and deprivation. It is argued that court intervention would be necessary to

protect constitutional rights, to safeguard the rule of law and ensure accountability in private associations.

7. The statutory statement is supported by a verifying affidavit, sworn on 14th January 2026, by the *ex parte* applicant. It largely regurgitates the contents of the statutory statement, almost word for word, but with some background to the marital troubles between the *ex parte* applicant and the 4th respondent.

8. Several documents are exhibited in the applications, in support of the quest. There is a list of members of the 2nd respondent. There are copies of documents from the divorce proceedings, that the *ex parte* applicant and the 4th respondent were party to. There is a copy of a handwritten letter, by Maureen Wanjiru Muriithi, a partner of the *ex parte* applicant, addressed to the Kenya Ladies Golf Union, complaining about her treatment by the 4th respondent. There is a copy of a replying affidavit that the *ex parte* applicant had sworn and filed, in a children's cause between him and the 4th respondent. There is a copy of a social media platform for members of the 1st respondent. There is a copy of a letter, dated December 2021, from the *ex parte* applicant, addressed to Nyeri Golf Club.

9. There is a copy of a note, in WhatsApp, from the 3rd respondent, as captain, addressed to the *ex parte* applicant, advising that dogs were not allowed on the golf course, and instructing their retrieval. There is a copy of the rules and regulations of the 1st respondent. There is also another letter from the *ex parte* applicant, addressed to the Kenya Golf Union, dated 21st October 2025, complaining about public indecency and indecent exposure by the 3rd and 4th respondents. There is a follow-up letter, from the *ex parte* applicant, addressed to the Kenya Golf Union, dated 7th November 2025. There is a list of fully and partially paid-up members of the 1st respondent. There is a bundle of copies of

letters from golf clubs across the country, with reciprocal agreements with the 1st respondent.

10. Upon being served with the Motion, the respondents entered appearance and responded to the application by a notice of preliminary objection, and a replying affidavit. The preliminary objection, dated 11th February 2026, raises issues around exhaustion of local remedies, ripeness, justiciability, *sub judice* and jurisdiction.

11. The replying affidavit was sworn by the 3rd respondent. He avers to be the male captain for the 1st respondent. He explains that during a tournament on 20th October 2025, the *ex parte* applicant brought his dog to the golf courses, and he was advised, vide WhatsApp message, to remove the dog. In response, the *ex parte* applicant heaped abuse on him, insinuating that he was romantically involved with his former spouse. Those behaviours persisted in other or affiliate WhatsApp platforms, of the 1st and 2nd respondents, where he insulted the 3rd respondent, his family and the 4th respondent, inclusive of disparaging his professional competence. He also sent private WhatsApp messages to the 3rd respondent. He explains that the 4th respondent was the captain for the female golfers, and that they had interacted officially, with respect to the affairs of the 1st and 2nd respondents. He submits that that was the background to his removal from the WhatsApp group, as he was deemed to have not conducted himself with decorum, respect and courtesy. He asserts that the rules allowed him, as captain, to enforce discipline within the 1st respondent, and, on that account, he removed the *ex parte* applicant from the WhatsApp group, to safeguard the membership from embarrassment, misconduct and insults.

12. The 3rd respondent escalated the case to the 2nd respondents, but the *ex parte* applicant chose not to engage, but instead chose to engage entities outside of the 1st

respondent. The *ex parte* applicant is accused of failing to seek solutions from within the 1st respondent, following the established channels of complaint and dispute resolution. It is asserted that the internal dispute resolution mechanisms of the 1st respondent were not exhausted, before the resort to court, and therefore, the cause herein was not ripe, and the doctrine of *sub judice* is cited. It is averred that the *ex parte* applicant was invited to a meeting, but he chose to stay away. It is denied that the 1st respondent has denied access to the *ex parte* applicant to its facilities and benefits, and those of the reciprocating golf clubs. On removal from the WhatsApp Group, it is averred that the same did not amount to deprivation of access to the communication channels of the 1st respondent, as that is not the official channel of communication for the 1st respondent.

13. Several documents are attached to the affidavit. There is a copy of the note advising the *ex parte* applicant that dogs are not allowed at the golf course, and instructing removal. WhatsApp correspondence, featuring texts allegedly from the *ex parte* applicant, complaining about interference with his spouse, use of such language as eff, idiot, pimp, ignorant, *kumbavu*, stupid, among others, with reference to the 3rd respondent; and bitch and *malaya*, with reference to the 4th respondent, are also attached. There is a copy of the rules and regulations for the 1st respondent, dated 6th September 2021, and a copy of the club constitution, dated 1st November 2021. There is also the letter, dated 8th December 2025, addressed to the *ex parte* applicant, from the secretary of the 1st respondent, voicing several complaints about him, with respect to various members, including the 3rd and 4th respondents, with a bundle of letters from the complainants. Finally, there is a notice of a meeting, meant to handle those complaints, to which the *ex parte* applicant was invited.

14. The application was canvassed by way of written submissions, filed by both sides, based on directions that were given on 17th February 2026.

15. The written submissions by the *ex parte* applicant are dated 24th February 2026, and they address both the preliminary objection, and the application. On the preliminary objection, it is submitted that the same does not raise a pure point of law, for the grounds relating to justiciability and exhaustion required some evidence or facts, on the existence, adequacy and effectiveness of internal dispute resolution mechanisms. *Mukisa Biscuit Manufacturing Company Limited vs. West End Distrbutors Limited* [1969] EA 696 and *Oraro vs. Mbaja* [2005] eKLR, are cited.

16. It is submitted that although section 9(2) of the Fair Administrative Action Act does provide that the courts ought not review administrative action or decision, unless internal mechanisms for administrative review have been first exhausted, section 9(4) of the Fair Administrative Action Act does provide exceptions, where those internal dispute resolution mechanisms are not available, are ineffective, the remedy is unreasonable and is not accessible. In his case, he argues that the internal remedy was ineffective, unavailable and tainted with bias, for the 3rd and 4th respondents, being captains, were at the heart of everything. He points at the fact that the 3rd respondent removed him from a WhatsApp group. *Republic vs. National environment Management Authority (NEMA) ex parte Sound Equipment Limited* [2011] eKLR and *Republic vs. Rift Valley Sports Club; Macharia (Ex parte Applicant*) [2024] KEHC 3156 (KLR), are cited in that regard.

17. Regarding *ultra vires* and lack of jurisdiction, it is submitted that the 3rd respondent, as captain, lacked authority under the constitution of the 1st respondent, to

expel a member, and disciplinary proceedings could only be through the Disciplinary Committee. *Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited* [2008] eKLR and *Macfoy vs. United Africa Company Limited* [1961] 3 All ER 1169 are cited. On the jurisdiction of this court to handle the matter, he cites Articles 23(3) and 165(3) of the Constitution, to assert the original jurisdiction of the HC in civil and criminal matters, and power to grant the prerogative orders of *certiorari*, *mandamus* and prohibition. He also cites section 7 of the Fair Administrative Action Act, with respect the right of a party to apply for review of administrative action. He relies on *Republic vs. Public Procurement Administrative Review Board & another Ex parte Selex Sistemi Integrati* [2008] eKLR.

18. The *ex parte* applicant also submits that he sought to resolve the matter amicably outside of court, by writing to the interested party, but the interested party indicated that the 1st respondent was not affiliated to it, hence there was no basis for its intervention. He submits, on that account, that the was effective mechanisms for internal dispute resolution. He asserts that the effort to subject his case to internal dispute resolution mechanisms was after he had been expelled, which he dismisses as an afterthought, tailored to create an illusion that there was due process, for that alleged disciplinary hearing was retrospective, meant to validate an illegal action. *Solanki vs. Nairobi Gymkhana & another* [2025] KEHC 4387 (KLR) and *Muchiri vs. Macharia & another (sued as Trustees and/or officials of Njoro Country Club* [2025] KEH 6960 (KLR) are cited.

19. The *ex parte* applicant argues that his application is not premature, for the impugned decision was made on 20th October 2025, and he approached the court, in Milimani HCJR Misc. No. E151 of 2025, and he obtained a stay order, against expulsion. He asserts that those orders were ignored. He argues that where a decision is made and implemented, it

cannot be said that an application challenging it was premature. He cites *Republic vs. University of Nairobi Ex parte Kiragu* [2014] eKLR.

20. On justiciability, he argues that, by virtue of Article 47 of the Constitution, judicial review proceedings can be mounted against a private club, with respect to administrative action being expeditious, efficient, lawful, reasonable and procedurally fair. He cites *Rose Wangui Mambo & 2 others vs. Limuru Country Club & 17 others* [2014] KEHC 7683. He submits that the horizontal application of the Bill of Rights applies to private clubs. On *sub judice*, it is submitted that that could only arise where there were other suits raising matters that are directly and substantially similar, and asserts that there are none. He cites *Kenya Commission on Human Rights vs. Attorney General & 3 others* [2017] eKLR.

21. On the substance of the Judicial Review application itself, the *ex parte* applicant argues on *certiorari* and *mandamus*. It is submitted that the order of *certiorari* is sought on grounds of illegality, irrationality and procedural impropriety, and *Council of Civil Service Unions vs. Minister for the Civil Service* [1985] AC 374 is cited.

22. On illegality, it is argued that the decision of 20th October 2025 was illegal, for it was made without jurisdiction, for the 3rd and 4th respondents, as the captaincy, had no power, under the constitution of the 1st respondent, to expel a member unilaterally. It is asserted that there was violation of Article 47 of the Constitution, and section 4 of the Fair Administrative Action Act, as there was no prior and adequate notice of the nature and reasons for the proposed action, no opportunity to be heard, no notice of right to review or appeal and no statement of the reasons for the decision. It is argued that the 3rd respondent alluded to receipt of complaints after the decision of 20th October 2025.

23. On irrationality, it is submitted that the decision was unreasonable and irrational, for there was no by-law prohibiting pets at the Club or on the course, and the 4th respondent had herself previously walked dogs on the same course, in the company of the *ex parte* applicant, without any objection. It is submitted that the fact that the decision was driven by other considerations made it unreasonable. *Associated Provincial Picture Houses Limited vs. Wednesbury Corporation* [1948] 1 KB 223 is cited.

24. On procedural impropriety, it is submitted that the decision violated the rules of natural justice, for no prior notice was given of the allegations, an opportunity to be heard was not given, no reasons were given for the decision, the matter was addressed publicly through a WhatsApp group rather than personally, and a chance was not given for remedial action. *R vs. Northumberland Compensation Appeal Tribunal Ex parte Shaw* [1952] 1 KB 338 is cited in support.

25. On the *mandamus* order sought, it is submitted that *mandamus* issues to compel performance of a public duty, and *Republic vs. Kenya National Examinations Council Ex parte Gathenji & others* [1997] eKLR is cited in support. It is asserted that the respondents owed a duty, to the *ex parte* applicant, to accord to him his full membership rights and privileges, as a fully paid-up member, and that deprivation of some of his rights amounted to discrimination and *mala fides*. It is submitted that there had been refusal to comply with the orders of 19th December 2025, to have him reinstated to all membership privileges, particularly those relating to communication platforms on social media, without which a member would not be kept updated on the events and activities within the 1st respondent. It is submitted that the lack of compliance necessitated the grant of the order of *mandamus*.

26. Like the *ex parte* applicant, the respondents have submitted on both the preliminary objection and the main application. However, unlike the *ex parte* applicant, the respondents have collapsed the 2, and generated 6 issues, around exhaustion of internal remedies, ripeness, justiciability, *sub judice*, jurisdiction of the court and the merits of the application.

27. On exhaustion of internal remedies, it is submitted that where an administrative or statutory mechanism for redress exists, a party must first pursue that remedy before seeking judicial intervention. It is submitted that the purpose of the principle is to preserve institutional comity between courts and administrative bodies, to ensure that specialized institutions address disputes within their mandate before courts are called upon, designed to prevent courts from being burdened with matters that can be effectively resolved at the administrative level. It is submitted to be trite law that where a statute or governing instrument prescribes a clear procedure for redress, that procedure must be strictly followed before invoking the jurisdiction of the court, and it cannot be conveniently avoided at the whim of a party. Sections 9(2)(3) of the Fair Administrative Action Act, *Albert Chaurembo Mumba & 7 others vs. Maurice Munyao & 148 others* [2019] eKLR, *Geoffrey Muthinja Kabiru & 2 others vs. Samuel Munga Henry & 1756 others* [2015] eKLR and *Odhiambo & another vs. National Police Service & 3 others; CIC General Insurance Limited & 6 others (Interested Parties)* [2023] KEHC 719 (KLR) are cited to support that argument.

28. It is argued, with respect to the matter, that the central question is whether a dispute resolution mechanism exists that is both accessible and capable of resolving the dispute at hand. It is submitted that the Rules and Regulations of the 1st respondent, 2021, provide such mechanisms. Rule 14 is cited, as stipulating that complaints, criticisms, or suggestions relating to the operations of the Club should be

addressed to the Club Manager or Club Captains, rather than to the staff. Further, Regulation 16is said to provide that violation of any of these rules or conduct prejudicial to the best interests of the Club would subject the violator to disciplinary action in accordance with the Club Constitution. It is also submitted that Article 13 of the Constitution of the 1st respondent establishes a multi-tiered dispute resolution mechanism to address disputes and grievances arising from the conduct of members. It provides for both a Club and Non-Golf Related Disciplinary Committee, vested with powers to discipline any member reported in writing by another member or by employees of the Club for unbecoming behaviour.

29. In addition, it is submitted that the Constitution of the 1st respondent establishes a Golf Disciplinary and Disputes Committee, mandated to issue warnings, suspend the handicap of any member, or take such other action as may be necessary to protect the integrity of the game of golf. Importantly, the decisions of the Golf Disciplinary and Disputes Committee are not final, as any dissatisfied member is entitled to appeal to the Board within 14 days of the decision. From the foregoing provisions, it is submitted that the 1st respondent has put in place internal avenues through which disputes of the nature presently before the Court are to be resolved prior to invoking the jurisdiction of the court. It is submitted that the *ex parte* applicant has not demonstrated the existence of any special or exceptional circumstances that would justify bypassing these mechanisms and thereby clothe this court with jurisdiction. In light of the statutory framework, under Section 9 of the Fair Administrative Action Act, it is submitted that the constitutional principles of orderly dispute resolution, and the jurisprudence of the superior courts, it is submitted that the present suit offends the doctrine of exhaustion of local remedies.

30. On the doctrine of ripeness, it is submitted that the principle of ripeness dictates that the jurisdiction of the Court can only be invoked where there exists an actual controversy between the parties, and it prohibits the court from entertaining hypothetical or academic disputes. This position, it is submitted, has been affirmed in decisions such as *Wanjiru Gikonyo & 2 Others vs. National Assembly of Kenya & 4 Others* [2016] eKLR and *Lubengu vs. Judicial Service Commission & Another; Ojiambo t/a Acorn Law Advocates LLP (Interested Party)* [2025] KEHC 18839 (KLR), where the courts observed that judicial intervention should not be invited in abstract matters.

31. It is argued, with respect to the instant case, that a decision to expel the *ex parte* applicant from the 1st respondent could only be made by the Club and Non-Golf Related Disciplinary Committee, upon conducting investigations, and, according to the *ex parte* applicant, an opportunity to be heard, in line with Article 13(i) of the Constitution of the 1st respondent. It is submitted that it is notable that while investigations are ongoing, the accused member continues to enjoy the services of the Club until such time as the Board communicates its disciplinary action report. From the pleadings filed, it is submitted, it is clear that no decision has yet been made to expel the *ex parte* applicant from membership or to withdraw his attendant privileges and rights, by the Club and Non-Golf Related Disciplinary Committee. It is asserted that the *ex parte* applicant has produced no evidence of such a decision. In effect, the *ex parte* applicant is said to be inviting the court to review a decision that is yet to be made, which is the kind of mischief that the principle of ripeness seeks to prevent, as it prohibits the court from determining abstract matters rather than real controversies.

32. It is further argued that the matter before the court is premature, by virtue of the *ex parte* applicant having

bypassed the internal mechanisms established within the 1st and 2nd respondents. It is submitted that the *ex parte* applicant has failed to exhaust the remedies that were available and readily accessible to him under the Club Constitution and Rules. It is submitted that, in the absence of exhaustion of internal remedies and without a decision of the Club and Non-Golf Related Disciplinary Committee expelling the Applicant as alleged, the matter before the court is unripe for consideration. Consequently, the court is without jurisdiction to entertain the present application, which ought to be dismissed with costs.

33. On the justiciability of the matter, it is submitted that that doctrine may be understood as the threshold principle that determines whether a dispute is fit for judicial determination. It is argued that it is the discipline that ensures that the court is not transformed into fora for abstract debates, speculative grievances, premature controversies, or political contests, but remains guardian of real rights and actual controversies. It is argued that a matter is justiciable only when it presents a mature concrete dispute between parties, framed within a legal context, and capable of resolution through the application of judicial principles.

34. In this sense, it is submitted, justiciability is not merely a procedural nicety; it is the safeguard of judicial integrity, preserving the role of the court as an arbiter of genuine and mature disputes rather than an academic council of opinions. It is argued that it protects the dignity of the judicial process, by ensuring that the scarce time available to the court, and the solemn authority of the court, are reserved for disputes that are ripe and live, and legally cognisable. *Ngugi & 19 Others vs. Attorney General & 2 Others* [2020] KEHC 8819 (KLR) and *Republic vs. National Employment Authority & 3 Others Ex-Parte Middle East*

Consultancy Services Limited [2018] eKLR are cited in support.

35. With respect to this matter, it is submitted that the instant proceedings are not justiciable, for two reasons. First, the decision complained of, namely, the alleged expulsion of the *ex parte* applicant from the 1st and 2nd respondents, has not been made. The matter is still under investigation and consideration by the Club and Non-Golf Related Disciplinary Committee. Consequently, there is no decision capable of being quashed. Equally, since no expulsion has been effected, an order of *mandamus* cannot legitimately or logically issue. It is argued that this Honourable Court cannot reinstate membership rights that have not been withdrawn. Secondly, the proceedings before the court have been brought prematurely. The *ex parte* applicant has failed to invoke and exhaust the internal dispute resolution mechanisms provided under the Constitution and the Rules of the 1st respondent, which are the proper avenues for addressing such grievances in the first instance.

36. On *sub judice*, it is submitted that the respondents have already placed before the court evidence of complaints, against the *ex parte* applicant, filed with the 1st and 2nd respondents for determination. The substance of those complaints is materially similar to the dispute now before the court. Both arise from the same set of facts and circumstances, and are directed at reviewing the decision of the 3rd respondent to remove the *ex parte* applicant from the 1st and 2nd respondents' WhatsApp group. It is argued that it has been demonstrated, that the decision to expel the *ex parte* applicant, from the 1st and 2nd respondents, is yet to be made, leaving only the decision of the 3rd respondent as capable of review, either by this court or through the internal dispute resolution mechanisms of the 1st and 2nd respondents.

37. It is argued that the doctrine of *sub judice* is a safeguard of judicial integrity, ensuring that courts do not simultaneously entertain disputes that are already pending before another competent forum. It is submitted that it protects the judicial process from duplication, inconsistency, and the erosion of orderly dispute resolution. By requiring parties to await the conclusion of proceedings already underway, the doctrine preserves coherence in decision-making and shields litigants from the confusion of conflicting outcomes, it is argued. On this submission, *Kenya National Commission on Human Rights vs. Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] KESC 54 (KLR) and *Republic vs. Paul Kihara Kariuki, Attorney General & 2 Others Ex parte Law Society of Kenya* [2020] eKLR are cited in support.

38. On the matter of the jurisdiction of this court to handle this matter, it is submitted that the jurisdiction of a court is not a matter of convenience or craftsmanship; it emanates strictly from the Constitution and statute law. Jurisdiction is the foundation upon which judicial authority rests, it is argued, and it cannot be conferred by the ingenuity of pleadings, however artful they may appear. *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Ltd & 2 Others* [2012] KESC 8 (KLR) and *Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] KLR 1 are cited. It is submitted that the *ex parte* applicant has bypassed the internal dispute resolution mechanisms of the 1st and 2nd respondents, and that he seeks to invoke the jurisdiction of this court prematurely, thereby offending the doctrines of exhaustion of local remedies.

39. On whether the action of the 3rd respondent amounted to violation of the *ex parte* applicant's constitutional rights to fair administrative action, it is submitted that the 3rd respondent acted within his lawful mandate as the Male

Captain of the 1st and 2nd respondents, for Rule 17 of the Embu Golf Club Regulations, 2022, empowers the captains to enforce the Rules and Regulations of the 1st respondent, and Rules 10 and 11 obligate all members, guests, and visitors, including the *ex parte* applicant, to observe decorum, respect, and courtesy at all times while at the 1st respondent, and prohibits loud, noisy, or insulting language within the premises of the 1st respondent.

40. The question before the court, according to the respondents, is, therefore, whether the 3rd respondent's action, that is the removal from the members' WhatsApp group, was lawful, reasonable, and necessary in the circumstances. It is argued that the evidence shows that the 3rd respondent issued a polite warning, and requested the *ex parte* applicant to remove his dog from the golf course, during a tournament. That was a proportionate response, grounded on concern for decorum, and the comfort and safety of members and guests. It is submitted that Rule 12 requires members to maintain decent conduct, observe golf etiquette, and ensure the comfort of others. The presence of a dog, on the course, during a tournament, was inconsistent with these obligations, and presented a foreseeable risk of danger, discomfort, or disruption. The 3rd respondent's warning was, therefore, justified and measured.

41. The dispute, however, according to the respondents, principally concerns the *ex parte* applicant's subsequent removal from the WhatsApp group, after he directed abusive and disparaging communications at the 3rd respondent, his spouse, and the 4th respondent. The language used was inappropriate, it is argued, for a members' forum, and it undermined the decorum that the Rules protect. It is submitted that the screenshots before the court demonstrate the tone and persistence of those communications. In the circumstances, it is argued, the 3rd respondent was entitled to act under Rule 17, and the

removal from the WhatsApp group was a limited step to contain further abuse on a shared platform, pending referral of the matter to the disciplinary structures of the 1st respondent. It is submitted that that was the least restrictive measure available to protect other members, while ensuring that the substantive issues would be addressed through established processes. Alternative channels, direct messages, email, and in-person notices, remained available; the *ex parte* applicant's membership privileges were not suspended.

42. It is submitted that, on the constitutional claim, the *ex parte* applicant invokes Article 47 of the Constitution, without meeting the threshold for administrative action. Removal from a social messaging group, an informal, non-statutory channel of communication, it is argued, does not, without more, determine or adversely affect legal rights or benefits conferred by statute or by the contract of membership, and on that basis, Article 47 could not be engaged. In any event, it is submitted, even if Article 47 were engaged, the decision meets the tests of lawfulness, reasonableness, and procedural fairness. It is argued that it was lawful under Rule 17; reasonable in light of the documented conduct; and procedurally fair because it was interim, narrowly tailored to the immediate problem, and accompanied by continued access to alternative means of communication pending the disciplinary process. The proportionality criteria are met, it is submitted, on the basis that the measure pursued a legitimate aim, was rationally connected to that aim, impaired the *ex parte* applicant's interests as little as reasonably possible, and struck a proper balance.

43. It is submitted that, for completeness, any incidental limitation is justifiable under Article 24 of the Constitution of Kenya, given the legitimate purpose, narrow scope, and temporary nature of the measure. The Constitution ensures

fair process; it does not immunize members from proportionate consequences of misconduct. It is argued that that position is reflected in *Judicial Service Commission vs. Mbalu Mutava* [2015] eKLR, and in the constitutional analysis of justified limitation, as discussed in the *Coalition for Reform and Democracy (CORD) & 2 others vs. Republic & another; Director of Public Prosecution & 6 others (Interested Parties); Law Society of Kenya & another (Amicus Curiae)* [2015] KEHC 7074 (KLR).

44. On whether the documents annexed to the *ex parte* applicant's submissions meet the threshold for admissibility in evidence, it is submitted that submissions are not evidence, and documents annexed thereto do not, merely by that fact, become admissible evidence before the court. The proper procedure, it is argued, is that documents relied upon to prove facts must be introduced through sworn affidavits or oral testimony, and must satisfy the applicable evidentiary standards under the Evidence Act, Cap 80, Laws of Kenya. It is submitted that in *Mwangi Stephen Muriithi vs. Daniel Toroitich Arap Moi & another* [2014] KECA 273 (KLR), it was held that "*submissions are not evidence; they are a party's arguments on the evidence already on record*." Similarly, *Dardanelli & 6 others vs. Tilito & 3 others* [2025] KEELC 392 (KLR) is cited, where the court emphasized that submissions are not evidence and cannot be relied upon to prove facts. It is submitted that the documents annexed to the *ex parte* applicant's submissions should be disregarded and expunged from the record, insofar as they are relied upon to establish contested facts, as they are procedurally irregular and incapable, in that form, of discharging the *ex parte* applicant's evidentiary burden.

45. The remit of a court, exercising Judicial Review jurisdiction, has been discussed in a number of cases, among them *Municipal Council of Mombasa vs. Republic, Umoja Consultants Limited* [2002] eKLR, where the court discussed

what ought to be considered when judicial review orders are sought. It should be about the process leading up to the making of the impugned decision. That would naturally raise the issue of jurisdiction, to make the decision, as the first criteria. The next would be issues around natural justice, whether the parties affected had been given an opportunity to be heard prior to the decision-making. The issue of what was considered, and an assessment of whether what was considered was relevant. It would not be a review of the merits of the decision, but of the process of the decision-making.

46. *Pastoli vs. Kabale Local Government Council & others* [2008] 2 EA 300 brought into the matrix consideration of issues around illegality, irrationality and procedural impropriety. These summarise jurisdiction, natural justice and fair administrative action.

47. The *certiorari* order issues to quash a decision made without jurisdiction, or attended by or tainted with illegality, irrationality and procedural impropriety. The *mandamus* order is available where a statutory or public duty exists, and it issues to enforce that duty. See *Kenya National Examinations Council vs. Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR.

48. The pleadings, in judicial review proceedings, take the form of the statutory statement. It is trite that parties are bound by their pleadings. Therefore, this determination shall be limited to what is pleaded in the statutory statement filed herein, as elaborated in the verifying affidavit, and the other affidavits filed by the *ex parte* applicant and the respondents.

49. 2 orders are sought in the statutory statement filed herein, namely *certiorari* and *mandamus*. These proceedings are premised on the Common Law remedy of Judicial

Review, rather than the Constitution and the Fair Administrative Action Act, Cap 7L, Laws of Kenya, hence they were not commenced by way of a constitutional petition or an originating motion. The principal pleading, for the purposes of the Common Law Judicial Review, is the statutory statement.

50. The 2 orders are sought on the argument that a decision was made on 20th October 2025, to expel the *ex parte* applicant from membership of the 2nd and 3rd respondents. There is only 1 communication, exhibited herein, by way of a WhatsApp post, dated 20th October 2025, and I suppose that that is the decision that the proceedings herein are premised on. The question, that I have to answer, is whether that communication, of 20th October 2025, provides adequate foundation for grant of the orders sought in the statement and the Motion.

51. The prayer for *certiorari* is premised on a purported decision "to indefinitely expel the Applicant from all Membership, Social, and Communication Rights and Privileges of the 1st and 2nd respondents, including the Applicant's Reciprocating Rights in more than 20 Affiliated Clubs all over Kenya." The prayer for *mandamus* seeks to compel the respondents "to … reinstate the Applicant to full membership and the privileges of the 1st and 2nd respondents, including access to all its communication platforms and participation in club activities …"

52. The claim is, essentially, about being effectively expelled from the 1st respondent and reinstatement to full membership and privileges. Based on that, the evidence that the *ex parte* applicant would be expected to table is that relating to expulsion from membership and withdrawal of privileges. Prayer 2iii in the statutory statement and prayer 4 in the Motion, on stay, which should not even be there, given that that prayer was spent once leave was granted,

identifies or indicates the effective date of expulsion, according to the *ex parte* applicant, as 20th October 2025.

53. The only document or decision that the *ex parte* applicant tabled before the court, bearing the date of 20th October 2025, is the WhatsApp post, which reads:

> "WARNING OF COURSE MISBEHAVIOUR NOTE:
>
> Member Ken Mwige@Kenneth Mwige dogs are not allowed in the course, especially on a tournament day. Let's respect the course and ensure golfers safety.
>
> Kindly retrieve the dogs with immediate effect!
> Captain DNN."

54. The communication, referred to above, appears to be the only material, relating to the events of 20th October 2025, that the *ex parte* applicant is relying on. He has not tabled any other communication or material relating to that day. That communication does not bear any material relating to the indefinite expulsion of "the Applicant from all Membership, Social, and Communication Rights and Privileges of the 1st and 2nd respondents, including the Applicant's Reciprocating Rights in more than 20 Affiliated Clubs all over Kenya.'' It says nothing about his membership status and related matters, for it only dealt with dogs being taken away from the golf course. An advice or instruction, to remove dogs from the golf course, cannot, to my mind, amount to expulsion from the 1st and 2nd respondents. The 1st and 2nd respondents are about golf, not dogs.

55. In the absence of any document or communication, expelling the *ex parte* applicant, from the membership of the 1st and 2nd respondents, it cannot be said that the application herein is well founded, for me to grant the orders sought.

56. It emerges, from the material before me, that there was removal of the *ex parte* applicant, from a WhatsApp group of the 1st and 2nd respondents. That removal did not happen on 20th October 2025, but much later, after nasty exchanges on that WhatsApp platform, between the *ex parte* applicant and the 3rd respondent, which was an escalation of the incident of 20th October 2025, about the dogs. To my mind, the WhatsApp group was not the membership register for the 1st and 2nd respondents, for it to be construed that a removal from the WhatsApp platform amounted to expulsion from the 1st and 2nd respondents. The WhatsApp platform does not appear to be at the core of the 1st and 2nd respondents, for there are no provisions about it in the constitution, rules and regulations of the 1st and 2nd respondents, which would have conferred concrete rights on the *ex parte* applicant, protectable by way of Judicial Review.

57. I am not persuaded, therefore, that there is a case made out, for grant of the Judicial Review orders sought.

58. I would agree with the respondents, that the issues, arising about the dogs and removal from the WhatsApp platform, should have been subjected to internal mechanisms of dispute resolution, before they could be escalated to court. Such mechanisms exist, from what I can see from the constitution, and the rules and regulations of the 1st and 2nd respondent. I also agree, there was no exhaustion of internal dispute resolution mechanisms. I would also agree, the dispute was not ripe for escalation to court, as there was no expulsion in the first place, and the tiff over the dogs and the WhatsApp should have been handled internally first.

59. Of course, it is evident that there is quite a bit of bad blood between the *ex parte* applicant, on the one hand, and the 3rd and 4th respondents, on the other, going by the nasty

correspondence exhibited by both sides, based on the personal circumstances deponed in their respective affidavits. The *ex parte* applicant appears to be of the view that he was treated unfairly on account of that; the 3rd respondent appears to take the view that that was peripheral. Whatever the case, going into that background would take me into the merits of the decision challenged, if at all there was one, and that would be outside the scope of the Judicial Review envisaged under sections 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules.

60. There is argument about the matter herein being *sub judice* the proceedings pending before the internal organs of the 1st and 2nd respondents, brought against the *ex parte* applicant. With respect, the principle of *sub judice* only applies to matters pending before the courts, not such bodies as the internal organs of entities such as the 1st and 2nd respondents. The issue of *sub judice* does not arise in this case.

61. There are arguments around justiciability and jurisdiction. Justiciability is about a claim reaching a threshold of a matter worth placing before the court. The conclusions around ripeness and exhaustion should dispose of the justiciability issue. The claim, by the *ex parte* applicant, was not ripe, for no decision had been made to expel the *ex parte* applicant, and, even if such decision had been made, he should have exhausted the internal dispute resolution mechanisms before approaching the court. The court would not exercise jurisdiction over an unripe claim, and one where internal or domestic resolution mechanisms have not been exhausted or tested.

62. In the end, I am not persuaded that the application, for the Judicial Review orders of *certiorari* and *mandamus*, is substantiated or established, and I find that it lacks merit. It is hereby dismissed. The Motion herein, dated 14th January

2026, is disposed of in those terms. The respondents shall have the costs. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT MILIMANI, NAIROBI, ON THIS 8TH DAY OF MAY 2026.

W MUSYOKA
JUDGE

Mr. Abdirahman, Court Assistant.
Mr. Mwige, the *ex parte* applicant, in person.

Advocates
Mr. Mburu, instructed by MMB Law Advocates, Advocates for the respondent.