

- ii. A declaration that the decision of the Respondent at the annual general meeting to suspend the Applicant from the Club is null and void having been taken in violation of the Applicant's right to a fair hearing.
 - iii. An order compelling and/or directing the Respondent to immediately reinstate the Applicant as a member of the Club.
 - iv. An injunction restraining the Respondent, its agents or servants from interfering with the Applicant's membership rights at the Club.
 - v. General damages.
 - vi. Exemplary or punitive damages.
 - vii. Costs of this application.
2. Mr. Kenneth Engoru of M/s. Lex Uganda Advocates & Solicitors represents the Respondent and the Applicant is represented by Mr. Joseph Wandabwa of M/s. Mubiru-Musoke & Co. Advocates.
3. The application is supported by the affidavit of the Applicant. The grounds of the application are briefly that the Applicant has always been a member of the Club. He was subjected to a sham disciplinary hearing by the Disciplinary sub- committee, and *ex parte* proceedings by the Executive Committee and the annual general meeting of the Club. The proceedings offended the Applicant's right to a fair hearing in so far as the Disciplinary sub –committee denied the Applicant an opportunity to present his defence and witnesses, the complainant (Executive Committee) which is an organ of the Respondent did not adduce any evidence to support the complaint neither was the Applicant allowed any opportunity to controvert the allegations in the complaint or cross examine the complainant's officials. The Disciplinary sub-committee was biased as some of its members were also members of the Executive Committee which was the complainant.
4. The Applicant further contends that the Executive Committee deliberately refused to avail him with a signed copy of the decision and the record of proceedings of the Disciplinary sub-committee to enable the Applicant prepare and present his appeal. All the members of the

Disciplinary sub- committee and the Executive Committee actively participated in making the decision at the Annual general meeting, yet they were already biased having sat in the same cause before. The Respondents actions and decisions are illegal, offend the cardinal principles of a fair hearing and this is a proper case for the court to grant the orders sought.

5. The application is opposed by the Respondent through the affidavit in reply of Mr. George O. Oguttu- the general manager of the Respondent. He deponed that the club's cashier mistakenly deposited Ug. shs: 4, 082,000 belonging to the club on the Applicant's personal account with Barclays bank. After noticing the mistake some days later, he approached the Applicant requesting for the refund of the money to which he agreed. The club also wrote to him several letters requesting the refund which he did not heed. The Applicant and his law firm M/s. M/s. Mubiru-Musoke & Co. Advocates instead wrote claiming that the club owed them money for legal services rendered. Following the Applicant's failure to refund the money, the Executive Committee of the club referred him to the Disciplinary sub- committee in accordance with the club's constitution, rules and regulations. Disciplinary proceedings were instituted against the Applicant in response to which he wrote a comprehensive reply.
6. Further, that the Applicant appeared before the Disciplinary sub-committee whose proceedings were conducted cordially. During those proceedings, the Applicant admitted that the money was deposited on his account. He however maintained that he could not refund the money because the club owed his firm. The Committee also excluded Mr Wandabwa who accompanied the Applicant because the club's constitution, rules and regulations do not provide for representation of an accused person by a lawyer. Mr. John Musajjakawa and Mr. Alfred Washaba - members of the Executive Committee and ex officio members of the Disciplinary sub-committee did not take part in the decision of the sub- committee. The sub-committee resolved that the Applicant refunds the money within two weeks. The Applicant refused to refund the money and appealed to the Executive Committee. He was invited to appear before the Executive Committee on several occasions but each time set up an excuse for not appearing. The Applicant wrote informing the Executive Committee that he would not appear because he was not availed a copy of the proceedings of the sub- committee. In addition he had earlier informed the Applicant that there were brief minutes of the meeting

which contained other deliberations of the committee. The Executive Committee upheld the decision of the Disciplinary sub- committee that the Applicant should refund the money within 14 days.

7. Following the Applicant's failure to refund the money, the Executive Committee expelled him from the club with immediate effect. The Applicant appealed to the Annual general meeting of the club. He was invited to present his appeal in person on 30th March 2019 but he declined to attend. The annual general meeting reversed the decision expelling the Applicant and resolved that he is suspended until he has refunded the club money. Court ordered the Respondent to pay the Applicant's law firm for legal services rendered in the past and the club paid Ug. Shs. 14, 004,000/= in July 2019. There is therefore no excuse for the Applicant to refuse to refund the money.
8. The Applicant in rejoinder reiterated his affidavit in support of the application. He had an informal discussion concerning the mistakenly deposited money. The Respondent's officials wrongly arrived at their conclusions since they refused to listen to anything he had to say. He always had valid reasons for his inability to attend and duly gave the reasons. The Disciplinary sub-committee only purported to conduct disciplinary hearing/ proceedings, as such there was never a record of proceedings or signed copies of the decision. Members of the Executive Committee fully participated in the hearing and determination of his appeal from their decision. The Respondent's decisions were unfair, unjust because he was never availed the opportunity to present his case.
9. The issues for resolution are:
 1. Whether the Respondent violated the Applicant's right to a fair hearing.
 2. What remedies are available to the parties?

b) Law

10. Article 44(c) of the Constitution provides for non-derogation of the right to fair hearing. Article 50 provides for enforcement of rights and freedoms by court. Section 3(1) of the Human Rights (Enforcement) Act 2019 provides that "In accordance with article 50 of the Constitution, a person or organization who claims that a fundamental or other right or

freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act.” Section 4(1)(a) of the same Act provides that “ the High Court shall hear and determine any application relating to the enforcement or violation of- (a) non-derogable rights and freedoms guaranteed in article 44 of the Constitution.”

11. The right to be heard imposes a peremptory duty on every person, body or tribunal vested with power to resolve a dispute to fairly hear both parties and consider both sides of the case before making a decision on the matter; no man should be condemned unheard. The body or tribunal should not base its decision only on hearing one side; it must hear both sides and not hear one side in the absence of the other. In so doing, it should grant equal opportunity to both parties to present their cases or divergent view points and should hold the scales fairly and evenly between them.¹ An allegation of breach of the right to be heard will relate to all or one of these matters or a similar matter; prior notice, adjournment, cross examination, legal representation, disclosure of information, giving reasons and opportunity to be heard.²
12. A body empowered to decide a matter must afford the person against whom action is sought to be taken, or whose right or interest is to be affected, a real, reasonable and effective opportunity to defend himself. The body must grant the person affected adequate time to prepare his defence and in so doing should be ready to adjourn whenever it becomes apparent that this has not happened.³
13. At the hearing, the body should grant the person who stands to be prejudiced by its decision a fair opportunity to present his case and a fair opportunity to correct or controvert prejudicial statement or evidence brought against him.⁴

¹ Peter Kaluma “Judicial Review Law Procedure and Practice”2nd Edition , at page 177.

² Ibid at page 178.

³ Ibid at page 195.

⁴ Ibid.

14. Although adjudication authorities are entitled to proceed *ex parte*, if the person concerned fails to appear upon notice, they should restore a case for fair hearing where good reasons are given for failure to appear.⁵
15. Before hearing commences, the affected party must be disclosed to all information and material to be used in evidence against him. Opportunity to be heard also demands that a person be afforded a good atmosphere to freely put forth his case. The deciding body must not only keep off any line of conduct that may amount to harassment of a party but must also protect him from harassment by the other party to the proceedings.⁶

c) Analysis

16. I have carefully considered all the pleadings and submissions of the parties. It is not disputed that at the hearing before the Disciplinary sub-committee, the legal representative of the law firm which received the money in issue and for which the Applicant worked was sent out of the hearing. The Respondent submitted that this was done because the club's constitution and rules do not provide for legal representation.
17. The dominant trend in the past was to keep lawyers away from proceedings of informal, domestic or quasi-judicial bodies. Denial of legal representation in such fora was supported by arguments that it enabled such bodies to speedily dispense substantive justice without having to be too formal or technical; and, at minimal expense to the parties.⁷
18. Several cases in the seventies confirm this past approach. In **Enderby Town FC Ltd v. Football ASSOCIATION [1971] CH 591**, for instance, Lord Denning opined that "it may be a good thing for the proceedings of a domestic tribunal to be conducted informally without legal representation. Justice can often be done better by a good layman than a bad lawyer." In **Pett v. Greyhound Racing Association (No.2) [1970] 1QB 46**, Llyell J cast doubt on the necessity of legal representation in under-developed and developing societies stating; "I find it difficult to say that legal representation before a tribunal is an elementary

⁵ Ibid.

⁶ Ibid.

⁷ Ibid at page 188.

feature of the fair dispensation of justice. It seems to me that it arises only in a society which has reached some degree of sophistication in its affairs.”⁸

19. But the position has since changed and prominence is today placed on inclusion rather than exclusion of legal representation in proceedings. This is more so in instances where the charges or consequences of the proceedings pose danger to the rights or interests of an individual or where the issues to be dealt with are complex in nature. In such cases, it has been held that to deny persons who are unable to express themselves the services of counsel would be a misguided kindness. Accordingly, in **Pett v. Greyhound Racing Association**, the English court of appeal upheld the greyhound trainer’s right to legal representation on the ground that the matter in dispute could greatly affect his reputation and livelihood.⁹

20. In many cases, an unrepresented individual is no match for an expert or an aided administrative officer and the right to be heard would be of little avail if legal representation were precluded. Advocates are trained to delineate issues, present the factual contentions in a comprehensible manner, cross-examine witnesses and, safeguard the interest of the affected party. In most Commonwealth democracies, legal representation is currently the rule and non-representation the exception. This is the case in Australia and the United States of America where the right to legal representation is guaranteed for main cases by the combined effect of the ‘due process’ clause of the US Constitution and section 555(b) of the Administrative Procedure Act, 1946.¹⁰

21. Denial of legal representation to a party will amount to denial of natural justice where complex questions of law and fact arise and the affected party is himself not able to handle the case or effectively express himself on the matter; a situation that may be aggravated if the adversary is himself a learned or experienced person and the tribunal is formal. Therefore the right to legal representation may easily be dispensed with in proceedings before domestic tribunals, as against proceedings in ordinary law courts since matters to be determined in the domestic tribunals are in most cases elementary and basic.¹¹

⁸ Ibid at page 188.

⁹ Ibid at pages 188 to 189.

¹⁰ Ibid at page 189.

¹¹ Ibid at page 189.

22. In this case, the Applicant being an advocate of the High court can be said to have easily comprehended the issues at the proceedings in this informal hearing. However if as he says the Disciplinary sub-committee was informed that this lawyer represented the law firm, it was necessary for the Committee to hear the defence of the law firm through this lawyer. In all events the absence of the hearing record makes it difficult to verify whether the Applicant's right to a fair hearing was effectively executed.
23. When the Applicant appealed to the Executive Committee and later to the Annual general meeting, he sought to have the records and decisions of the Disciplinary sub-committee and the Executive Committee. In both incidents, he sought these records before the dates set for the hearing but the Respondent never responded to him. Instead the Respondent notified the Applicant of the hearing dates. In the end the Applicant never appeared for these hearings and the Respondent took decisions which it communicated to the Applicant. In a letter dated 13th February 2019 to the Applicant communicating the Executive Committee's decision, he was informed that the Executive Committee was unable to accept his excuse for non-appearance. It was noted that he had set out his appeal in sufficient detail in two pages in his letter of 21st December 2018 and his insistence on being provided with a record of proceedings was a mere excuse for failure to present his appeal.
24. Disclosure of information entails the right to know the opposing case. It enables the affected party to have a fair and proper notice of the issues intended to be raised against him and obviates ambush and surprises during proceedings. Full material disclosure makes it possible for the affected person to appreciate the case, accusation or charge he is to face and to frame and prepare his own case or defence.¹²
25. An authority cannot base its decision on any material or evidence which the affected party has not been given a chance to see and rebut. Natural justice is infringed if a body decides a matter on the basis of confidential enquiries and information. The right to know the materials on which the authority is to rely is part and parcel of the right to defend oneself.¹³

¹² Ibid at page 190

¹³ Ibid at page 190

26. In **Kanda v. Government of Malaya [1962]AC 322**, the Privy Council quashed the conviction of Kanda who was an Inspector of Police on the grounds that he had not been given the opportunity to see the report of the inquiry into his conduct which was submitted to the investigating officer four days after the commencement of his trial. In an emphatic ruling, Lord Denning asserted that “if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given an opportunity to correct or contradict them.”¹⁴

27. However, it need be remembered that whether or not particular information should be disclosed to the affected party depends on the relevance or materiality of the information to the matter under investigation. Thus, it serves no purpose to disclose information or materials which are irrelevant or which are not to be relied upon as evidence or otherwise to determine a matter. There is no right of disclosure over extraneous or irrelevant information or materials. The position of Kenyan courts on the need for disclosure of material information has been expressed in **R v. Kenya Medical Training College exparte James Chepkonga Kandagor [2006] eKLR** where the High court emphasized that “a person being tried is entitled to disclosure of the charges and the evidence against him. This duty on the part of those laying charges is continuous and applies both at pre-trial and continues during the trial.”¹⁵

28. In this case, evidence from the Disciplinary sub-committee and Executive Committee which was the basis of the decisions against him was material for the Applicant to prepare his defence. It should have been disclosed to him.

29. The argument by the Respondent that the record included other confidential information not connected to this cases is not a good defence in the circumstances of this case and could not be used to deprive the Applicant of the material evidence against him. Such other

¹⁴ Ibid at page 191

¹⁵ Ibid at page 191

information irrelevant to the accused would have been redacted or otherwise excluded and the material evidence for the accused provided safely.

30. If it was necessary, the Respondent should have adjourned the hearings to ensure that the material evidence against the Applicant is presented to him before the hearing. It was well within the Applicant's rights to ask for these records in circumstances where he had not appeared before the Executive Committee. The Respondent also argued that such informal hearings could not be held to the standards in courts of law. This court considers that this argument has continuously paled through the years. However even where it is taken to be valid, it cannot waive the Applicant's fundamental rights to have the record of proceedings which would have enabled him defend himself competently.
31. By depriving him of the record of proceedings, the Respondent unfairly, irrationally and unreasonably deprived the Applicant of his right to a fair hearing under articles 28, 42 and 44 of the Constitution. For this, the three decisions of the Disciplinary sub-committee, the Executive Committee and the Annual general meeting are null and void and are all quashed.
32. I am satisfied that the Applicant has suffered embarrassment and incurred costs stemming from the actions of the Respondent. I am not satisfied however that this is a proper case for the award of punitive and exemplary damages.
33. Based on all the above, the application is allowed with the following declarations and orders:
 - i. The decision of the Respondent to suspend the Applicant from the Club as well as the previous decisions of the Executive Committee and the Disciplinary sub-committee in respect of the same matter were arrived at in violation of the Applicant's right to a fair hearing as enshrined in articles 28, 42 and 44 of the Constitution.
 - ii. The Respondent's decision to suspend the Applicant from the Club is null and void having been taken in violation of the Applicant's right to a fair hearing.

- iii. The Respondent is directed to immediately reinstate the Applicant as a member of the Club.
- iv. An injunction is issued restraining the Respondent, its agents or servants from irregularly and unfairly interfering with the Applicant's membership rights at the Club.
- v. The Applicant is awarded general damages of Ug. shs: 25,000,000/= (Uganda shilling twenty five million only) for the embarrassment, inconvenience and suffering caused to the him by the Respondent.
- vi. The Applicant is also awarded costs of the application.

I so order.

Lydia Mugambe.
Judge.
13th March 2020.