

The decision to expel the plaintiffs from the defendant was purportedly based on findings and recommendations of the Disciplinary Sub-Committee of the defendant.

The purported findings/report and recommendations upon which the executive committee (EC) of the defendant based its decision to expel the plaintiffs from the defendant were the unilateral work of a single member of the defendant and not the findings/report of the recommendations of DSC.

The defendant in their defence contended that the expulsion of plaintiffs was in accordance with the defendant's constitution and rules. The defendant had a right to appeal the decision of expulsion to the Special general meeting of the club if they were dissatisfied but they never did so.

The plaintiffs were in charge of drinks to be distributed to members of the club during the party. After the party, it was discovered that a large amount of drinks, especially beers and wines, were unaccounted for, the plaintiffs were requested to provide explanations and accountability for the drinks.

The plaintiffs submitted their written explanations which were unsatisfactory and thereafter, they were referred to Disciplinary Sub-Committee. They were invited to the Disciplinary hearing and made their defence to the accusations of theft of drinks and breach of the club constitution and rules.

The Executive Committee of the club acted on the recommendations in the report of the Disciplinary Sub-Committee and expelled the plaintiffs from the club.

The parties filed a joint scheduling memorandum with agreed facts, issues and documents.

Agreed Facts

1. The plaintiffs were members of the Entertainment Sub-Committee of the Defendant.
2. The 1st plaintiff was the Chairman and the 2nd plaintiff was a member 2015 Entertainment Sub-Committee of the defendant (Kampala Club)
3. The plaintiffs were charged with organizing the 2015 end of year party of the defendant (Kampala Club) which was held between 31st-12-2015 and 01-01-2016.
4. The plaintiffs were expelled from the membership of the defendant (Kampala Club)

Issues

1. *Whether the plaintiff's expulsion from the defendant was lawful and justified?*
2. *What remedies are available to the parties?*

The plaintiff was represented by *Mr. Kimuli Moses* while the defendant was represented by *Miss Deborah Brenda*.

The defendant's counsel in their submissions has raised an issue which is rooted in law i.e *Whether the case was properly before this court?*

This court shall interrogate and determine this issue in the exercise of the courts discretion in order to meet the interests of justice in this matter.

Whether the case was properly before the court?

The plaintiffs' counsel is challenging the issue of propriety of the suit before the court because it was never raised as an issue for determination during the scheduling conference. The court can always amend or reframe issues depending on the circumstances of the case before it. The issue being raised is about propriety of the suit and it is a point of law.

The defendant's counsel submitted that Kampala Club is a voluntary private Members Club with rules and regulations that govern the dealings of the members and the Club and this Honourable court should not be used by the plaintiffs to interfere with the private dealings between the club and its members unless there has been deviation from the Constitution and also from the known practices of the Club or where there has been a fundamental breach of the parties fundamental human rights.

The plaintiffs' counsel argued that this suit is not about a fair hearing or breach of fundamental human rights and freedoms enshrined in the Constitution of Uganda, 1995 or judicial review. Their argument is that section 98 of the Civil Procedure Act preserves the inherent jurisdiction of this court to make such orders as may be necessary for the ends of justice. It further their contention that even where no express law or rule applies to any matter in dispute, this court is directed to exercise its jurisdiction in conformity with principles of justice, equity and good conscience.

Analysis

Kampala Club is a voluntary private members' Club with a constitution to govern their affairs and conduct of the members. The plaintiffs' counsel contended that this court has inherent jurisdiction, however we need to appreciate when the inherent jurisdiction should be invoked. Inherent powers of court are evoked when the matter is properly before the court and the court is vested with jurisdiction to hear and determine such a dispute.

In the case of *Samuel Kamau Macharia v Kenta Commercial Bank & others Civil Appeal No. 2 of 2011* the Supreme Court of Kenya had the following to say with regard to Jurisdiction:

"A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the

Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and 2nd respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of a mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings. This court dealt with the question of jurisdiction extensively in the Matter of the Interim Independent Electoral Commission (Applicant), Const. Appl No. 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a Court or tribunal by statute law.”

The plaintiffs’ counsel submitted that this suit is not about a fair hearing or breach of fundamental human rights and freedoms enshrined in the Constitution of Uganda, 1995 or judicial review. Then, what is the case before the High Court? The plaintiffs were expelled from a Private Club-Kampala Club. Should the internal affairs of a Private Club be resolved before the High Court? I think NO.

The courts’ unlimited jurisdiction in respect of Private Clubs should be limited to breaches of fundamental human rights. I agree with the submission of the defendant’s counsel that court should only interfere in affairs of a private members club where there is a breach of fundamental human rights. In the case of *Rose Wangui Mambo & 2 Others Limuru Country Club & 17 Others [2014] eKLR* it was held that courts of law have the jurisdiction to interfere in the internal workings of a private club, is as

far as a breach of the bill of rights is alleged owing to the fact that the constitution empowers the courts to do so and because a person's day to day activities and relations are largely transacted in private sphere, be it commercial or social.

This court would not allow the defendant to wave a private entity card to bar this court, when properly moved, from assuming jurisdiction where there are allegations of breach of fundamental human rights and freedoms by its members or any other person. It cannot be safe, in a progressive democratic society, to arrive at a finding that allows private entities to hide behind the cloak of 'privacy' to escape constitutional accountability.

However, a caveat must be placed that horizontal application of fundamental rights and freedoms is not an open cheque and whether and to what extent the court will exercise jurisdiction will be informed by the circumstances of each individual case. See *Rose Wangui Mambo & 2 Others Limuru Country Club & 17 Others [2014] eKLR*

The constitution of a voluntary organization is a contract, resulting in a contractual relationship between the association and its members. This means the applicant is bound by the constitution and all internal rules and regulations as well as internal mechanisms for resolving such disputes before resorting to filing cases in High Court. Otherwise allowing every dispute in a private club to end in High Court will add to the backlog problem in Uganda. See *Constantinides v Jockey Club of SA 1954 (3) SA 35*

Since the plaintiffs' case was about internal processes of Kampala Club which is a voluntary private members club, the nature of the complaint of unfair or wrongful expulsion should have been dealt with internally guided by their constitution.

Clubs are given great deference to manage their own affairs and in the disciplining of their membership. Courts will not substitute their judgment

for the judgment of the club as to whether a member's conduct should have resulted in discipline, including, but not limited to, suspension and expulsion.

The case was therefore incompetently filed in this court.

Whether the plaintiffs' expulsion from the defendant was lawful and justified?

Counsel for the plaintiff submitted that as the party was coming to the end, the general manager of the defendant gave out chilled but unconsumed drinks to the defendant's staff and members of the ESC. This was not challenged by the defendant rather confirmed by the DW4 that he ferried drinks to PW1'S motor vehicle and security and bar staff were given crates of beer. DW5, further confirmed that staff of the defendant are given drinks at the defendant's parties when there is authority to do so and that as staff, she has on previous occasions been given drinks at such parties. This clearly shows that there was a practice by management of the defendant of giving out free drinks to the staff, etc. at the defendant's functions

Counsel further submitted that it is not in dispute that towards the end of the party, the 2nd plaintiff/PW1 took drinks and bits of white dry wine away from the defendant's premises. Her unchallenged and uncontroverted evidence is that drinks were given by the general manager of the defendant as indicated in paragraph 11 of her witness statement. She returned the empty beer bottles back to the defendant. No evidence was adduced by the defendant to show that the said general manager has no authority to give out drinks in the manner that he did.

Counsel submitted that in the premises, the 2nd plaintiff/PW1 did not fraudulently take the drinks away from the defendant's premises. The 2nd plaintiff/PW1 neither acted willfully and with the specific intent to deceive or cheat nor dishonestly, fraud on her part is negated that, the drinks were

given to her by the general manager of the defendant, she did not take the drinks away secretly, she returned the empty beer bottles back to the defendant and at the DSC hearing, she readily acknowledged taking drinks. However, acknowledged before the DSC that it was wrong and his mistake to exchange the drinks. Therefore, the expulsion of the 2nd plaintiff/PW1 from the defendant was not justified as she had not stolen any drinks belonging to the defendant and his expulsion from the defendant was therefore unjustified.

Counsel for the plaintiff, submitted that the decision to expel the plaintiff's from the defendant was taken by the defendant's Executive Committee (EC) based on the findings and recommendations of the DSC. When DW1 was asked whether there was a resolution of the DSC authorizing to sign a report on behalf of the members of the DSC, he responded that there was no such resolution. The inescapable conclusion to be made is that the report is the work of DW1 as a person and the purported findings and recommendations therein are not the findings and recommendations of a duly constituted meeting of the DSC. The defendant's EC did not have any findings and recommendations or other material upon which it based its decisions to expel the plaintiffs from the defendant. The decisions are therefore null and void and of no legal consequence.

Defence counsel further submitted that the plaintiffs were granted a fair hearing before the decision to expel them from the club was reached. This fact was never disputed by the plaintiffs throughout their case. The plaintiffs admit that they were invited for the disciplinary hearing by the disciplinary committee of the club to which they attended and admitted to their irregular activities during the end of year party. Prior to the hearing, the plaintiffs were informed of the allegations against them in writing and also given an opportunity to respond. During the hearing the plaintiffs

apologized for their misconduct and requested to make a refund of the misappropriated drinks.

The disciplinary committee concluded the hearing and made recommendations to the executive committee for the expulsion of the plaintiffs. This report was not meant for the plaintiffs as they claim but to the executive committee and apart from the plaintiffs alleging that this report was not from the disciplinary committee, neither produced any evidence to prove their allegation nor did they call or witness from the disciplinary committee to challenge the report. It is evident that the plaintiffs were accorded a fair hearing in accordance to *Marvi Baryaruha v. Attorney General Miscellaneous Cause No. 149 of 2016*.

Counsel further cited **Clause 9 (c) of the Constitution of Kampala Club**, stipulates that *“no decision of the committee to expel or suspend shall be final until the lapse of a period of 7 days from the date of the decision during which period a notice of the decision shall be posted in the club.... If a requisition for a special general meeting to rescind the decision of the committee is made within the seven days referred to, the decision shall not take effect until it's upheld by a majority at such special general meeting.”*

The plaintiffs in their letters of expulsion, were informed of their right to appeal the decision of the disciplinary committee within seven days from the date of the decision. The plaintiffs argue that their letter acted as an appeal, the letter did not speak of any appeal, and if it did it was way out of time of the seven days. Thus failed to utilize the remedies under the constitution of the club and chose to run to court.

Counsel further submitted that the 1st and 2nd plaintiffs both admit that they were chairman and member of the entertainment sub-committee of the defendant club respectively for the 2015 end of year party and acted

contrary to the resolutions set for the management of the party and also contrary to the club rules as follows;

- a. Exchanging beers for other drinks contrary to the resolution passed by the entertainment subcommittee

The 1st plaintiff was asked why he went against the committee's decision not exchange drinks and he admits that it was wrong to have gone against the decision of the committee.

- b. Taking away the keys to the drinks store from which beers were missing

In the witness statement of Teddy Nansamba, the internal auditor of the defendant, when carrying out her duties, the stores were closed and key kept by the 1st plaintiff.

However, when opened they on found 2 crates of beer and coupons were not adding up. This meant that the 1st plaintiff was responsible for the missing drinks from the store for which he took away the key contrary to the practices of the club.

- c. Taking drinks out of the club premises

The 2nd plaintiff admitted that it was wrong to take the drinks out of the club premises and also wrote a letter to the club asking to refund

Analysis

The plaintiffs' submission is premised on the evidence given by the PW1 who stated that the General Manager gave them the beer as the party was coming to an end. Counsel also vehemently contended that this evidence was not challenged or controverted by the defendant in cross examination.

The evidence given by the plaintiffs at trial is a departure from their pleadings as set out in the plaint. The plaintiffs were expelled for 'theft of

drinks' and in their pleadings-plaint they merely denied and never put up the defence of being given the drinks by the General Manager. Similarly the defendant in the written statement of defence specifically mentioned the reason behind their expulsion, as being unaccounted for drinks especially beers and wines. The same was never denied by a reply to defence.

The parties are bound by what they say in their pleadings and the court is bound by what the parties have stated in their pleadings as to the facts relied on by them. The evidence adduced must be specifically to support what was pleaded. The evidence of plaintiffs being given by General Manager was a departure from the pleadings and is therefore not relied upon by this court. See *Jani Properties Limited v Dar es Salaam City Council* [1966] EA 281; *Struggle (U) Limited v Pan-African Insurance Company Limited* [1990] KALR 46

The plaintiffs appeared in the disciplinary committee and indeed admitted to some wrong doing contrary to the resolutions and rules of the club. PW1 admitted to exchanging drinks and also taking some drinks out of the club premises during cross-examination "*Kabanda ferried my drinks and those of Mrs Rwechiga into my car*" *I appeared at DC I admitted taking the drinks and I wrote a letter apologizing and asking for leniency*". While PW2 admitted to taking the key to the store and later failed to account for some beers in the store. The Disciplinary committee found the actions of the plaintiff to be contrary to the constitution of the defendant.

This guided the decision to expel the two plaintiffs and the argument of the plaintiff that it was one-man decision is devoid of any merit. The disciplinary proceedings against the plaintiffs began with an enquiry; this was followed by disciplinary committee hearing and was concluded by the final decision being taken as recommended by the disciplinary committee.

This was a fair procedure and the plaintiffs were able to make their case or to rebut any allegations put forward.

Having confirmed that the Plaintiffs faulted **Clause 9 of the Club Constitution**, they had to face the disciplinary committee as they did. Their expulsion was based on the report and recommendations by the disciplinary committee which was fair, and all allegations were confirmed by the plaintiffs and also admitted to them, with apologies and refunds.

If they were not satisfied with their expulsion, the Club Constitution offers an appeal which avenue they did not bother to exploit. The dismissal of the plaintiffs was lawful and justified as per the Constitution of the defendant: **Clause 9 (a) of the Constitution of Kampala Club** stipulates that, *“a member may be expelled or suspended from the club for being guilty of prescribed conduct”*

Clause 9 (b) lists the prescribed behavior as;

- (i) *Conduct, whether within or outside the club premises, which in the opinion of the committee, is unbecoming of a member for this purpose, conduct at any other Club which leads to disciplinary action against a member by that other club is prescribed conduct*
- (ii) *Conduct which is injurious to the welfare and the interest of the club*

Clause 9 (iv) of the Constitution states that, *the committee shall have the power to expel or suspend a member guilty of the prescribed conduct.*

The plaintiffs conduct was below the standard set by the Constitution of Kampala Club and they are wholly responsible for their fate. As noted earlier, it is well established that courts will not interfere with internal affairs of voluntary association and a court therefore, will not determine, as a matter of its own judgment, whether a member should have been suspended or expelled. See *Master v County Club of Landfall (COA18-215)*

Members of private clubs facing discipline should realize that the deck is stacked against them such that seeking forgiveness rather than fighting an uphill battle may be the best course. Club boards and managers, when meting out discipline, should be very careful to follow their governing documents closely and seek legal advice early in the process in dispensing discipline. Getting a cool, independent head involved in the process may be the ounce of prevention that saves a pound of cure.

This suit stands dismissed with costs.

I so order

Obiter dictum

“Private bodies such as sports clubs should therefore tread carefully in future to ensure that when making decisions, they act squarely within the powers provided to them under any constitution or rules and they adhere to accepted standards of due process and natural justice. This will help avoid the risk of court challenge by disgruntled members.”

SSEKAANA MUSA

JUDGE

24th January 2022