

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA  
CIVIL CASE NO. OF 2022

HIGH COURT OF KENYA  
COMMERCIAL  
JUDICIAL DIVISION

21 JUL 2022



- .....1<sup>ST</sup> PLAINTIFF/APPLICANT
- .....2<sup>ND</sup> PLAINTIFF/APPLICANT
- .....3<sup>RD</sup> PLAINTIFF/APPLICANT
- .....4<sup>TH</sup> PLAINTIFF/APPLICANT
- .....5<sup>TH</sup> PLAINTIFF/APPLICANT
- .....6<sup>TH</sup> PLAINTIFF/APPLICANT
- .....7<sup>TH</sup> PLAINTIFF/APPLICANT
- .....8<sup>TH</sup> PLAINTIFF/APPLICANT
- .....9<sup>TH</sup> PLAINTIFF/APPLICANT

=VERSUS=

- 1. BENJAMIN GITONGA
- 2. FEISAL ABEID
- 3. P. MUNYAO
- 4. MICHAEL WANGAMATI
- 5. KHADIJA KHALID
- 6. JOSEPH WELOBA

(As the Management Board,  
of the Mombasa Parent's Club)

.....DEFENDANTS/RESPONDENTS

CERTIFICATE OF URGENCY

I N.K SITONIK, an Advocate of the High Court of Kenya practicing as such in the firm of Sitonik Advocates hereby certify this matter is of utmost urgency and should be heard on priority basis on grounds **THAT:-**

- 1. Mombasa Parents Club (hereinafter "**the Club**") is a member's only club which owns, operates and manages Nyali School (hereinafter "**the School**"). The Plaintiffs/Applicants are paid up members of the Club and Parents at Nyali School. The Defendants/Respondents jointly form the Management Board of the club.
- 2. Mombasa Parents Club is ran and managed in accordance with the Club's Constitution which *inter alia* requires that decisions of the Board of Management be made for the benefit and in the best interest of the club and the school.
- 3. The Defendants/Respondents have now breached the provisions of the Club's constitution by advertising for the position of The Principal of Nyali School on 8/6/2022 via Daily News Paper against the best interests of the club.
- 4. The Plaintiffs/Respondents are now aggrieved by the said breach and are now intending to submit the dispute to arbitration as per the club's constitution.
- 5. The illegal recruitment, selection and ultimately hiring of possibly an inexperienced person as The Principal of Nyali School will be accomplished to the detriment of the



Club, Members and the School and against the Club's Constitution unless this Court certifies and hears this application urgently.

6. The Defendants/Respondents will enter in to contracts with third parties who are not privy to this dispute thus rendering the arbitration case an exercise in futility, a mere academic exercise and thereby greatly jeopardize the Plaintiffs/Applicants who will have an award that cannot be enforced.
7. The Defendants/Respondents stand to suffer no prejudice given that the School already has a competent school principal in acting capacity.

DATED at MOMBASA this 20<sup>th</sup> day of July 2022

**SITONIK ADVOCATES**  
**FOR THE PLAINTIFFS/APPLICANTS**

**DRAWN AND FILED BY: -**

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**TO BE SERVED UPON:-**

1. BENJAMIN GITONGA
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(As the Management Board,  
of the Mombasa Parent's Club) ..... DEFENDANTS/ RESPONDENTS

CHAMBER SUMMONS

(Under Section 7 of the Arbitration Act, Rule 2 of the Arbitration Rules, Section 4 of the  
Access to Information Act, Sections 3A and 63(e) of the Civil Procedure Rules and Order 40  
of the Civil Procedure Rule

**LET ALL PARTIES CONCERNED** attend the Honourable Judge in Chambers on the  
day of \_\_\_\_\_, 2022 at 9 O'clock in the forenoon or soon thereafter as the  
Counsel for the Applicants may be heard for **ORDERS:-**

1. **THAT** the Application be certified as Urgent and Service be dispensed with in the first instance.
2. **THAT** pending the inter-parte hearing of this Application, the Court be pleased to grant a temporary protection measure staying the on-going recruitment exercise by the Respondents for the position of the School Principal, Nyali School as stated in the Press Advertisement of 8/6/2022.
3. **THAT** pending the hearing and determination of the Arbitration proceedings between the Parties herein, the Court be pleased to grant interim protection measure staying the on-going recruitment exercise by the Respondents for the position of school Principal, Nyali School as stated in the Press Advertisement of 8/6/2022.
4. **THAT** Pending the hearing and determination of the Arbitration proceedings between the Parties herein, the Respondents be restrained from spending an amount in excess of Kshs. 500,000/- unless approved by the Special General Meeting of the Mombasa Parents in accordance with the Club's valid Constitution.



5. **THAT** pending the hearing and determination of the Arbitration Proceedings between the Parties herein, the Court be pleased to restrain the 1<sup>st</sup>-6<sup>th</sup> Respondents from conducting any management activities for and on behalf of the Mombasa Parents Club and that there be a Caretaker Committee.
6. The Court be pleased to order the Respondents to supply to the Applicants the pertinent information relating to the Mombasa Parents club and more particularly a copy of the current Club Membership Register, the Club's Notice for an Annual General Meeting that called for the Amendment of the Club's Constitution, any Minutes of the AGM where the changes to the Club's Constitution were approved, and the Consent of the Registrar of Societies as required under Section 20 of the Societies Act for the changes to the Constitution.

**WHICH APPLICATION** is premised on the Supporting Affidavit of **HUSEIN SHARIF ABDALLA** and on the further grounds that:

1. The Mombasa Parents Club (hereinafter "**the Club**") is a Members only Club and the Club owns, operates and manages the Nyali School(hereinafter "**the School**")
2. The Club and the School is managed and run by the 1<sup>st</sup>- 6<sup>th</sup> Respondents as the Management Board in accordance with the Club's Constitution.
3. The Plaintiffs/Applicants are parents at the Nyali school and paid up Members of the Club.
4. The employment term of the substantive Principal of the school terminated on the 31/5/2022.
5. The Respondents then immediately appointed Mr. Omar Babu as the interim Acting Principal of the School.
6. Under Section 39(a) and (b) of the Club's Constitution, the Respondents as members of the Management Board are not to use their position for personal gain or for the benefit of friends or any other person to the prejudice of the Club and are expected to act with integrity and for the benefit and best interest of the Club and Members.
7. The 1<sup>st</sup>-6<sup>th</sup> Respondents have failed to adhere with the dictates of the aforementioned ~Section 39(a) and (b) of the Club's Constitution because:-
  - I. On 8/6/2022, the Respondents advertised for the position of school Principal vide an advertisement in the Daily Nation published on 8/6/2022.
  - II. The Advertisement by the Respondents deliberately limits all possibilities of a competitive filling of the vacancy of school Principal because:
    - a. The advertisement was published on Wednesday the 8/6/2022.
    - b. The final day for receiving Applications from Applicants was declared to be on Friday the 15/06/2022.
    - c. The actual working days from the date of advertisement to close of submissions of application was only 5 days inclusive of date of advertisement and close of applications.
    - d. The 5 day period was not a sufficient period to attract a diverse and wide range of potentially more qualified applicants.



- e. Then extremely short period for inviting applications was not genuinely informed by any need of urgency because the position has and continues to have an experienced person appointed by the Respondents in acting capacity.
  - f. The communication channel for the applications was strictly limited to email, however, the Respondents introduced deliberate confusion on the channel for communication because the Daily Nation Advertisement directed Applicants to use email address mpcsecretary@gmail.com, however, the advertisement posted by the Respondents in the School's official Website directed the applicants to use a different email address mpcsecretary6@gmail.com.
  - g. The email address to be used as per the daily nation advert and the advert in the official website were different.
  - h. The qualifications specifications within the Advertisement were purely designed to attract and/or accommodate one particular Candidate and the period for application coupled with the confusing email addresses was informed by a well-orchestrated move to limit the number of Applicants to increase the chances of a particular applicant.
  - i. In the premises, the advertisement and the current recruitment does not embody the element of competitive recruitment and the same denies the School the benefit of engaging the most qualified Candidate from a rich and diverse pool of qualified Applicants.
- III. In accordance with the Section 28(a) and (b) of the Clubs Constitution, the official term of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent ought to have terminated in May 2021 and elections of other members of the board had been scheduled for 02/04/2022 but later cancelled.
- IV. The Respondents now appear to be in a baseless rush to immediately fill the crucial post of the Principal before the termination of their mandate which is now imminent upon the reschedule of the next AGM.
- V. The success of the School is highly dependent on a qualified Principal and the rush manner that the Respondents are handling the recruitment process clearly demonstrates that the Respondents are not acting in the best interest of the Club, and the members and the School.
8. The members of the Club including the Plaintiffs have raised concerns relating to the integrity of the Respondents and the Respondents have deliberately ignored the Members calls for the recruitment of the Principal to be put on hold to await the next team of the board members.
9. In the face of the various concerns raised, it is now only prudent for the recruitment of the Principal of the School to be conducted by the incoming Committee for purposes of conducting a credible recruitment exercise.
10. The Respondents have also failed to inspire confidence in their management of the club and have been extensively evasive in responding to the concerns of the members because:-
- a) The Club had a Constitution from the date of inception and the said Constitution under Section 30(b) only permitted the management board to incur expenses on any single



project to a limit of Kshs. 500,000/- and any excess expenditure required the prior approval of the Club's Special General Meeting.

- b) However, the Constitution as now published by the Respondents in the Club's website shows a modified Constitution where under Section 33 (b) the Respondents can now incur expenditure of up to Kshs. 20,000,000/- without approval.
  - c) There is no indication as when such changes to the Constitution was approved and the Respondents have declined to supply to the Plaintiffs the pertinent information relating to the changes to the Constitution such as:-
    - i. The Notification of any Annual General Meeting where the Agenda included amendment of the original Constitution.
    - ii. The Minutes of the AGM where the resolution to amend the original constitution was approved by the members showing approval of the changes to the Constitution.
    - iii. The mandatory prior Consent of the Registrar of Societies under Section 20 of the Societies Act permitting the amendment of the original Constitution
  - d) The Respondents have further declined to avail the Membership register for examination by the Plaintiffs.
11. The Respondents no longer inspire confidence in their management of the club and the Plaintiffs as members are now aggrieved.
12. Under Section 49 of the Club Constitution, all disputes arising as between the Club and the members relating to the management of the Club ought to be presented for Arbitration as per the Club's Constitution.
13. The Plaintiffs are now in the process of initiating the Arbitration process for purposes of adjudication of the dispute and grievances now apparent.
14. The Plaintiffs are now seeking the intervention of the Court on interim basis for protection measures in the interest of justice and to ensure that the arbitration proceedings are not rendered nugatory.
15. In the event the orders sought herein are not granted then there is a very high chance that the Arbitration proceedings might be rendered nugatory and the Plaintiff's will suffer irreparable loss and damage as follows:-
- a. The Respondents are likely to complete the recruitment exercise by interviewing and recruiting a Principal and reversal of such an appointment will be complicated and likely to attract an employer-employee dispute as between the Club and the recruited Principal in the event the Arbitration award is in favour of the Plaintiffs.
  - b. In the event the recruitment exercise is completed and the arbitration award is in favour of the Plaintiffs then the school will have been denied the benefit of appointing the most qualified Principal from a rich pool of qualified Applicants.
  - c. In the event the Respondent continue expending the sums of up to Kshs.20,000,000/- without approval and later Arbitration Award is in favour of the Applicants and it is established that the changes to the Constitution on



expenditure from kshs. 500,000/- to kshs. 20,000,000/- had no approval then the Plaintiffs as members of the 'club will have lost a substantial amounts of money and recovery of the same from the respondents will be extremely difficult.

- d. In the event the Respondents continue to discharge their duties in total disregard to the best interest and benefit of the plaintiffs and the members of the club then there is a possibility that the Club's future, reputation and integrity will be ruined and this can possibly lead to resignation by members hence weakening the club membership.
- e. The members of the club are established, reliable and keen on good reputation and the Club still enjoys patronage from members who are previous parents at the school however, the respondents continued indifference in their management of the Club will continue to taint the club and there is a high possibility that there will be an exodus of members especially by the members who are no longer parents at the school.
- f. The failure to supply the pertinent information relating to the management and operation of the Club will continue giving the impression to the membership that the Club's operations are shrouded in secrecy and this in turn diminishes the confidence of the members towards the club and this increases disquiet and possible resignation by members.

16. The Court has unfettered powers under Section 7 of the Arbitration Act to consider granting the orders sought herein pending the intended arbitration proceedings.

DATED at MOMBASA this 20<sup>th</sup> day of July 2022

**SITONIK ADVOCATES**  
**FOR THE PLAINTIFFS/APPLICANTS**

**DRAWN AND FILED BY: -**

SITONIK ADVOCATES

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P.O. BOX 34042 | 80118

MOMBASA

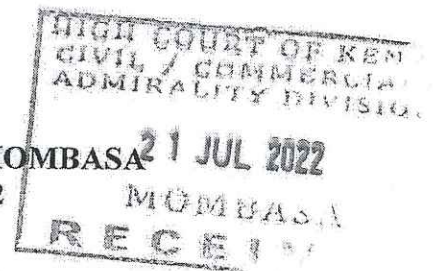
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6. JOSEPH WELUBO

(As the Mombasa parent's club Management Board).....

RESPONDENTS

SUPPORTING AFFIDAVIT

I, HUSEIN SHARIF ABDALLA, of P.O. Box 34042-80100 Mombasa, in the Republic of Kenya, do hereby sincerely and solemnly make oath and state **THAT**: -

1. I am a male adult and the 1<sup>st</sup> plaintiff herein hence competent to swear this Affidavit and also duly authorized by the 2<sup>nd</sup> -8<sup>th</sup> Plaintiffs herein to swear this affidavit for and on their behalf. Annexed is the authorization marked "A-1".
2. The Mombasa Parents Club (hereinafter "**the Club**") , which is a members only club, owns, operates and manages the Nyali School (hereinafter "**the School**")
3. The Club and the School are managed and run by the 1<sup>st</sup>- 6<sup>th</sup> Respondents who jointly form the Management Board of Mombasa Parents Club in accordance with the Club's Constitution. **Attached and marked "A-2" is a copy of Mombasa Parents Club Constitution.**
4. The 2<sup>nd</sup> – 8<sup>th</sup> plaintiffs and I are parents at the School and also fully paid up members of the Club. **Annexed is a bundle of true copies of the current subscription payments marked as "A-3"**
5. On the 18/05/2022, the defendants herein notified all members of the Club that the employment term of the then substantive Principal of the School, Mr. John Kombo would



terminate effective the 31/5/2022. **Annexed is the true copy of the letter dated 18/05/2022 marked "A-4".**

6. In the aforementioned letter of 18/05/2022, the defendants duly appointed Mr. Omar Babu as the Acting School Principal and the duly appointed Acting Principal duly acknowledged the new role vide a letter dated 06/06/2022. **Annexed is a copy of the letter dated 06/06/2022 marked "A-5".**
7. All activities of Mombasa Parents Club and Nyali School are governed and regulated by the Club's Constitution.
8. Under Section 39(a) and (b) of the Club's Constitution, the Respondents as members of the Management Board are not to use their position for personal gain or for the benefit of friends or any other person to the prejudice of the Club and are expected to act with integrity and for the benefit and best interest of the Club and Members.
9. The 1<sup>st</sup>-6<sup>th</sup> Respondents have failed to adhere with the dictates of the aforementioned Section 39(a) and (b) of the Club's Constitution because:-
  - a. On 8/6/2022, the Respondents advertised for the position of school Principal vide an advertisement in the Daily Nation published on 8/6/2022. **Annexed is the true copy of the daily Nation advertisement marked "A-6".**
  - b. The Advertisement by the Respondents deliberately limits all possibilities of a competitive filling of the vacancy of school Principal in the following ways:
    - i. The advertisement was published on Wednesday the 8/6/2022.
    - ii. The final day for receiving Applications from Applicants was declared to be on Friday the 15/06/2022.
    - iii. The actual working days from the date of advertisement to close of submissions of application was only 5 days inclusive of date of advertisement and close of applications.
    - iv. The 5 day period was not a sufficient period to attract a diverse and wide range of potentially more qualified applicants.
    - v. The extremely short period for inviting applications was not genuinely informed by any need of urgency because the position of the Principal has and continues to have an experienced person appointed by the Respondents in an acting capacity.
    - vi. The communication channel for the applications was strictly limited to email, however, the Respondents introduced deliberate confusion on the channel for communication because the Daily Nation Advertisement directed Applicants to use email address [mpcsecretary@gmail.com](mailto:mpcsecretary@gmail.com), however, the advertisement posted by the Respondents in the School's official Website directed the applicants to use a different email address



mpcsecretary6@gmail.com. Annexed is a true copy of the Advertisement posted in the club's website marked "A-7".

- vii. The email address to be used as per the daily nation advert and the advert in the official website were different.
  - viii. The qualifications specifications within the Advertisement were purely designed to attract and/or accommodate one particular Candidate and the period for application coupled with the confusing email addresses was informed by a well-orchestrated move to limit the number of Applicants to increase the chances of the one particular applicant.
  - ix. In the premises, the advertisement and the current recruitment does not embody the element of competitive recruitment and the same denies the School the benefit of engaging the most qualified Candidate from a rich and diverse pool of qualified Applicants.
  - c. In accordance with the Section 28(a) and (b) of the Club's Constitution, the official term of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent ought to have terminated in May 2021 and elections of other members of the board had been scheduled for 02/04/2022 but later cancelled. **Annexed is the copy of the cancelled AGM Notice marked "A-8".**
  - d. The Respondents now appear to be in a baseless rush to immediately fill the crucial post of the Principal before the termination of their mandate which is now imminent upon the rescheduling of the next AGM.
  - e. The success of the School is highly dependent on a qualified Principal and the rush manner that the Respondents are handling the recruitment process clearly demonstrates that the Respondents are not acting to the benefit or in the best interest of the Club, and the members and the School.
10. There are serious concerns relating the integrity of the Respondents and the Respondents have deliberately ignored the Members calls for the recruitment of the Principal to be put on hold to await the next team of the board members. **Annexed is a copy of the letter dated 14/06/2022 marked "A-9".**
11. In the face of the various concerns raised, it is now only prudent for the recruitment of the Principal of the School to be conducted by the incoming Committee for purposes of conducting a credible recruitment exercise.
12. The Respondents have also failed to inspire confidence in their management of the club and have been extensively evasive in responding to the concerns of the members because:-
- a) The Club had a Constitution from the date of inception and the said Constitution under Section 30(b) only permitted the management board to incur expenses on any single project to a limit of Kshs. 500,000/- and any excess expenditure required the prior approval of the Club's Special General Meeting. **Annexed is a copy of the original Constitution marked "A-10"**
  - b) However, the Constitution as now published by the Respondents in the Club's website shows a modified Constitution where under Section 33 (b) the Respondents can now incur expenditure of up to Kshs. 20,000,000/- without approval.



- c) There is no indication as when such changes to the Constitution was approved and the Respondents have declined to supply to the Plaintiffs the pertinent information relating to the changes to the Constitution such as:-
- ix. The Notification of any Annual General Meeting where the Agenda included amendment of the original Constitution
- ii) The Minutes of the AGM where the resolution to amend the original constitution was approved by the members.
- iii) The mandatory prior Consent of the Registrar of Societies under Section 20 of the Societies Act permitting the amendment of the original Constitution.
- d) The Respondents have further declined to avail the Membership register for examination by the Plaintiffs.
13. Consequently, the Respondents no longer inspire confidence in their management of the club and the Plaintiffs/Applicants, as members are now aggrieved.
14. Under Section 49 of the Club's Constitution, all disputes arising as between the Club and any member or members relating to the management of the Club ought to be presented for Arbitration as per the Club's Constitution.
15. The Plaintiffs/Applicants are now in the process of initiating the Arbitration process for purposes of adjudication of the dispute and grievances now apparent.
16. The Plaintiffs are now seeking the intervention of the Court on interim basis for protection measures in the interest of justice and to ensure that the arbitration proceedings are not rendered nugatory.
17. In the event the orders sought herein are not granted then there is a very high chance that the Arbitration proceedings might be rendered nugatory and the Plaintiffs/Applicants, the Club and the School will suffer irreparable loss and damage as follows:-
- a. The Respondents are likely to complete the recruitment exercise by interviewing and recruiting a Principal and reversal of such an appointment will be complicated and likely to attract an employer-employee dispute as between the Club and the recruited Principal in the event the Arbitration award is in favour of the Plaintiffs/Applicants.
- b. In the event the recruitment exercise is completed and the arbitration award is in favour of the Plaintiffs then the school will have been denied the benefit of appointing the most qualified Principal from a rich pool of qualified Applicants.
- c. In the event the Respondent continue expending the sums of up to Kshs.20,000,000/- without approval and later an Arbitration Award is in favour of the plaintiffs and it is established that the changes to the Constitution on expenditure from kshs.500,000/- to kshs.20,000,000/- had no approval then the Plaintiffs/Applicants as members of the club will have lost a substantial amounts of money and recovery of the same from the respondents will be extremely difficult.



- d. In the event the Respondents continue to discharge their duties in total disregard to the best interest and benefit of the Plaintiffs/Applicants and the members of the club then there is a possibility that the Club's future, reputation and integrity will be ruined and this can possibly lead to resignation by members hence weakening the club membership.
- e. The members of the club are established, reliable and keen on good reputation and the Club still enjoys patronage from members who are previous parents at the school, however, the respondents continued indifference in their management of the Club will continue to taint the club and there is a high possibility that there will be a massive exodus of members especially by the members who are no longer parents at the school.
- f. The failure to supply the pertinent information relating to the management and operation of the Club will continue giving the impression to the membership that the Club's operations are shrouded in secrecy and this in turn diminishes the confidence of the members towards the club and this increases disquiet and possible resignation by members.
18. I therefore pray that the prayers contained in the Chamber Summons herein be granted in the interest of justice.
19. I confirm that all that I have deponed to herein are true to the best of my knowledge, information and belief.

**SWORN** by the said **HUSEIN SHARIF ABDALLA** )

At Mombasa on this 20<sup>th</sup> day of July 2022 )

BEFORE ME )

**COMMISSIONER FOR OATHS** )

DEPONENT

**DRAWN AND FILED BY: -**

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