

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CIVIL CASE NO. 8 OF 2020

1. THE REGISTERED TRUSTEES
OF MOSHI SPORTS CLUB 2009
2. GEORGE MUSHI
3. FESTO KIWALE
4. INNOCENT KIMARO
5. LAURENT KINABO
6. RAJABU KASSIM
7. ROBERT SATURINE
8. ENOCK LIMWAGU
9. HASSAN MHINA
10. RAMADHANI KITIKU
11. AZIWA NGOWI
12. IDDI SALUM
13. IMRAN NZIRA

..... PLAINTIFFS

VERSUS

1. RASHIDI BUSHIRI.....1ST DEFENDANT
2. WAHIDA SHANGALI..... 2ND DEFENDANT
3. MOSES CHALAMILA3RD DEFENDANT
4. JONATHAN SHAYO.....4TH DEFENDANT

EX PARTE JUDGMENT

25/2/2022 & 12/4/2022

SIMFUKWE, J.

The plaintiffs herein above sued the defendants for conducting an election in contravention of the constitution of the 1st Plaintiff, which resulted to the election of the defendants as members of interim committee to



manage the Club. To easily capture series of events culminating into the present suit, a summary of evidence availed to Court is appropriate. The summary is to the effect that, the 1st plaintiff is a sports club established for the purposes of supporting sports activities, recreation and entertainment to its members. The rest of the parties that is the 2nd to 13th plaintiffs and defendants are the members of the club. The records further reveal that, on March 2019 the committee comprised of Vice chairman, secretary and sports captains were tasked with a duty of preparing the club By-laws for the purpose of carrying out office bearers' election. However, the selected committee did not fulfil the task and they filed the report on September 2019 to that effect. Therefore, the Club Trustees decided to appoint a Caretaker Committee comprised of four club members to take the task which the selected committee failed to fulfil. The Caretaker Committee successfully prepared By-laws for election of a new management committee to achieve a balanced members and the said draft bylaws were posted on the Notice Board for members to propose any correction or additions.

It has been alleged by the plaintiffs that, on 25/9/2020 the defendants together with other members whom the plaintiffs alleged to be not members of the club conducted an election of Chairman, Vice Chairman, Secretary and Treasurer while there was postponement of such election. Basing on that election, the 4 defendants were elected to the office of the Chairman, Vice chairman, secretary and Treasurer respectively. Believing that the election was against the club constitution, the plaintiffs instituted the instant case praying for the following orders:

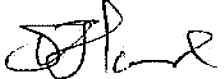
- 1. Declaration order that the election which was held on 25th September 2020 in violation of the constitution null, void and illegal.*
- 2. To issue an order for a temporary injunction in the meantime to restrain the defendants from meddling in any affairs of the club until the main suit is determined.*
- 3. To grant further reliefs as this court may be pleased to grant.*

Mr. Charles Mwanganyi learned Advocate appeared and prosecuted the case on behalf of the plaintiff. The defendants did not enter appearance despite being properly served with summons.

Mr. Mwanganyi prayed to file the witness statements under **Order XVIII Rule 10(2) and (3) of Civil Procedure Act** the prayer was granted.

The plaintiffs through their advocate presented only one statement of witness namely **PW1 Leonard Denis Kiwara**. They had also the following exhibits; the constitution of Moshi Club 2009-**Exhibit P2**, the committee's report elected in March 2019 AGM- **Exhibit P3**, The By-laws which was prepared by the Caretaker Committee-**Exhibit P4**, The Notice which was posted in the Notice Board inviting members to compete for positions in the Management Committee-**Exhibit P6**, A copy of the letter which was received by the Trustees of the club introducing the defendants to be elected to an interim committee to manage the club-**Exhibits P8**.

PW1 Leonard Dennis Kiwara, in his statement of witness stated that he was among the members of the Registered Trustees of Moshi Sport Club (The Club) together with the 4 defendants. The Club had four sporting sections namely Golf, Football, Tennis and Other Games and the 4 defendants belonged to the Football club.



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Narrating on the nature of the club, under paragraph 4,5,6 and 7 of his statement of witness, PW1 stated that the club is an autonomous body with its own constitution and ran by the Management Committee comprising of an elected Chairman, Vice Chairman, Secretary, Treasurer and all the captains of the sports sections. He also stated that the Club has reciprocal membership with 16 other internationally recognised clubs within and outside Tanzania. The elected board of Trustees is responsible for making sure that the club is running smoothly and in accordance with its constitution and other laws of Tanzania.

Testifying on what happened to the Club, PW1 under paragraph 8 to 13 of his witness statement, stated that on March 2019 the Club through its Annual General Meeting (AGM) tasked the committee the duty of preparing By-laws for the purpose of carrying out the election for the office Bearers of the Management Committee in accordance with **Article 13(L) of the Club's Constitution**. Unfortunately, such task was not fulfilled and thus, in September 2019 the elected Committee presented a report of such failure to perform their task within six months. In that report, they requested the Trustees to see how best they could manage the Club.

Basing on that report, the Committee decided to appoint a Caretaker Committee comprising of four Club members to manage the Club and prepare the requisite By-Laws for the purpose of carrying on the election. The task was fulfilled whereby the Caretaker Committee prepared the By-laws for election of a new Management Committee as per **Article 13(I) of the Club's Constitution**. The same was posted on the Notice Board to invite the members to propose any correction or additions. Only one member proposed for corrections which was incorporated into such by



laws. Thereafter, the Trustees organised to hold election on 25/9/2020 and the Notice was given to that effect, inviting those who were interested to be elected to the vacant positions.

PW1 stated further that, two days before the meeting, the Trustees realised that; **one**, the sports sections had not held their meeting to elect their representative as per By-laws, **two**, there was an unusual upsurge in the registration and admission of new members without following the procedures outlined in the Club's Constitution, **three**, the Trustees received information from the Chairman of the Caretaker Committee that their Honorary Patron had advised for postponement of the meeting. PW1 thus contended that in such situation, the Caretaker Committee appointed by Trustees was to continue to manage the Club. Despite the fact that there was such Notice of postponement, a group of members of the Club led by the defendants and other persons who are not members of the Club held an election on the evening of 25th September 2020 of which; according to PW1 was violation of the Club's Constitution. In the said illegal election, the defendants were elected to the Office of Chairman, Vice Chairman, Honorary Secretary and Treasurer.

It was PW1's further evidence that on 6/10/2020 the Board of Trustees received a letter from the Honorary Patron introducing the 4 defendants as having been elected to an Interim Committee to manage the Club. To PW1, this was violation of Club Constitution since there was already a working Care taker Committee which had carried out the task assigned to them satisfactorily up to 25/9/2020. Thus, there was no need of electing another "*Kamati ya Muda*" without consulting the Trustees or the Caretaker Committee. PW1 named what was done as a sham election which was conducted by people who are strangers and without power.



In conclusion, the plaintiff prayed for the orders as summarised in the first page of this judgment. In short that was the summary of the plaintiffs' evidence.

In determining the merits and demerits of this case, I will be guided by only one issue to wit; ***whether there was contravention of the Club's constitution and the reliefs available to the parties.***

In civil cases it is trite law that the one who alleges must prove that the alleged facts exist. **Section 110 of the Evidence Act, Cap 6 R.E 2019** is relevant. The standard of proof in civil cases is on balance of probabilities.

Trustees are led by their Constitution and in the instant matter the 1st plaintiff is controlled by the Club's Constitution (**Exhibit P1**).

It is on record that the Club's election was to be held on 25/9/2020. How the same should be conducted that was in accordance the By-laws which were enacted by the Caretaker Committee as per **Exhibit P4**. However, as per **Exhibit P7** the election was postponed by the Patron of the Club. Through **Exhibit P8** it is revealed that the 4 defendants were elected as interim leaders in the meeting which was held on 25/9/2020 despite there being the notice of postponement (**Exhibit P7**).

Thus, since there is evidence that the defendants were elected in a meeting which was postponed, the task now is to see whether such acts contravened the Club's Constitution.

Article 19 (2) (a) and (b) of the Club's Constitution reads:

"19 (2) (a) There shall be held a half Annual General Meeting in the Club house before the end of September of each year for

purposes of electing the Vice Chairman and the Hon. Secretary of the Club."

(b) The Notice convening the AGM or half AGM shall be posted by the Honorary Secretary on the Club's Notice Board 14 days before the meeting is held."

The above article suggests that the position of Chairman and Secretary of the Club is conducted through election conducted in half Annual General Meeting to be held in September of each year. Despite the fact that the impugned election was conducted in September still the same is void for the reason that the same was postponed.

PW1 in his statement of witness claimed that the four defendants are from the Football Club something which violates the Club's constitution.

I had to peruse the Club's constitution to ascertain this claim and I came to learn that **Article 13(I)** of the Club's Constitution provides for a balanced representation of membership of the Management Committee so that it comprised leaders from various sections. For ease reference the article reads:

"In order to balance representation of the various sections utilizing the facilities of the Club, the positions of Chairman, Vice chairman, Treasurer and Hon. Secretary must be occupied by members from different sections."

From the wording of the above article, I am of considered view that since it was stated by PW1 that all the defendants are from the Football Club, then the impugned election which was done by the defendants contravened **Article 13(I)** of the Club's Constitution.

It is on evidence that there was a special Caretaker committee which was there to monitor the day-to-day activities of the Club. This is in compliance with **Article 13(h)** of the Club Constitution which reads that:

"(h) The Committee may constitute a Special Committee or a Task Force among its members to deal with any matter relating to the welfare of the Club to take up the vacant position in the Committee."

Basing on this provision, as rightly stated by PW1, the act of electing 'Kamati ya Mpito' while there was already Caretaker Committee was of no use and it contravened the Club's Constitution.

Also, **Article 8 of the Club's Constitution**, provides for the procedures for admission to membership. That, a person must apply in writing to the Club's Honorary Secretary. Therefore, the act of the defendants to admit new members and conduct the election in absence of the evidence to show if the outlined procedures were adhered to, is contravention of the Club's Constitution.

From the above findings, this court is strongly convinced by the testimony of PW1 the only witness on part of the plaintiffs as well as documentary exhibits, that his deposed evidence proves on balance of probabilities that the defendants contravened the Constitution of the 1st Plaintiff.

Section 111 of the Evidence Act, (supra) provides that:

"The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side."

In the case of **Barelia Karangirangi vs. Asteria Nyalambwa, Civil Appeal No. 237 of 2017**, CAT at Mwanza at page 8 (unreported), it was held that:


"It is similarly that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on balance of probabilities."

In the case at hand, having found as hereinabove, I am of considered view that the plaintiffs have successfully established their case on balance of probabilities as required by the law. I hereby enter judgment in favour of the plaintiffs and grant all the reliefs as prayed. It is therefore declared and ordered as follows:

1. That, the election which was held on 25th September 2020 in violation of the constitution is declared null, void and illegal.
2. Any acts which were done or are to be done by the defendants for the Club are declared null and void ab initio.
3. The defendants are hereby permanently restrained from meddling in any affairs of the club
4. Costs of this suit to be paid by the defendants.

It is so ordered.

Dated and delivered at Moshi this 12th day of April, 2022.


S. H. Simfukwe
Judge
12/4/2022