**FRANCIS OGBORO**

**V.**

**THE REGISTERED TRUSTEES OF LAGOS POLO CLUB AND ANOTHER**

IN THE COURT OF APPEAL OF NIGERIA

THE 22ND DAY OF FEBRUARY, 2016

CA/L/353/2014

**LEX (2016) - CA/L/353/2014**

OTHER CITATIONS

2PLR/2016/41 (CA)

(2016) LPELR-40061(CA)

**BEFORE THEIR LORDSHIPS**

SIDI DAUDA BAGE, J.C.A

JOSEPH SHAGBAOR IKYEGH, J.C.A

YARGATA BYENCHIT NIMPAR, J.C.A

**BETWEEN**

FRANCIS OGBORO - Appellant(s)

AND

1. THE REGISTERED TRUSTEES OF LAGOS POLO CLUB

2. SOMUYIWA ADEDEJI SONUBI (HON. SEC. LAGOS POLO CLUB) - Respondent(s)

**ORIGINATING COURT**

FEDERAL HIGH COURT

**REPRESENTATION**

S. EDU with O. E. ADEDAPO and M. SANNI For Appellant

AND

MATTHIAS DAWODU with O. IKUOMOLA and C. ANYANWU - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CONSTITUTIONAL LAW - FAIR HEARING: Essence of fair hearing – Where parties are given equal opportunity to be heard in the litigation before the Court – Whether they cannot complain of breach of fair hearing principles

NONPROFIT LAW – VOLUNTARY ASSOCIATIONS - CLUBS FORMED FOR SOCIAL PURPOSES:- Whether possess paramount authority to keep up their objects – Reluctance of court to intervene with the exercise of that paramount authority except when where there is a moral culpability – Effect – Whether Court will rarely interfere with decisions of a voluntary association except where rules of natural justice were ignored in arriving at that decision

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - FORMULATION OF ISSUE(S) FOR DETERMINATION: Court duty to decide the crucial issues of dispute between parties - Whether extends to discretion to reframe or abridge some of the issues for determination by the parties – Whether court not bound to consider all the issues in the form or manner presented by the parties if doing so would lead to the resolution of the real points of dispute

JUDGMENT AND ORDER - DECISION OF COURT: Whether Court is bound to list all materials considered in arriving at a decision or in determining issues before it

**MAIN JUDGMENT**

**YARGATA BYENCHIT NIMPAR, J.C.A**. (DELIVERING THE LEADING JUDGMENT):

This appeal is against the judgment of the Federal High Court delivered on the 31st March 2014 by HON. JUSTICE SALIU SAIDU wherein the Court below refused all the reliefs sought by the Appellant in an originating summons seeking the determination of certain questions and reliefs upon answers to the questions.

Briefly, the Appellant a member of the 1st Respondent and was its captain. He wrote to the Nigerian Polo Federation a letter dated 18th September, 2009 calling on the National body to intervene in certain matters, particularly the attempt by the main committee of the 1st Respondent in seeking to convene an Extra ordinary General Meeting for 24th September, 2009, for the purposes of amending Clause 16F and the tenure provisions of the Lagos Polo club. The Appellant alongside 28 other members of the club later wrote the 1st Respondent on the 19th September, 2009 raising reservations on the procedure adopted for the proposed amendment and the letter was copied the National body.

On receipt of the letter, the president of the Club requested that deliberations on the proposed amendments be suspended. Thereafter a member of the club, Habeeb Fashinro petitioned against the Appellant to the main committee of the Club on the letter written by the Appellant to the Nigerian Polo Federation. The main committee constituted a subcommittee to investigate. The sub-committee invited the Appellant by letter to respond to the issues raised in the petition and the Appellant responded via letter dated 26th May, 2010. Upon consideration, the subcommittee found that the Appellant's letter to the Nigerian Polo Federation was not a private correspondence nor written in a private capacity, but in the Appellant's official capacity, that the explanations offered by the Appellant lacked merit and therefore the letter was injurious to the interest of the 1st Respondent. The sub-committee recommended to the main committee that the Appellant be asked to resign from the club within one week failing which he should be expelled under clause 15(a) of the club's Constitution.

The main committee met and instead of demanding for the resignation of the Appellant suspended him for 11 months from the club and demanded for a letter of apology from the Appellant in addition to asking him to retract the letter he wrote to the Nigerian Polo Federation dated 18th September, 2009. Aggrieved by the said decision of the main committee, the Appellant went to the trial Court seeking answers to 6 questions namely:

1. Whether by virtue of the entire provisions [especially Clause 15 [a] - [c] of the Lagos polo club, Ikoyi Lagos, Constitution, 1998, Plaintiff's actions in writing Letter dated 18th September 2009 to the Nigerian Polo Federation inviting its intervention in certain matters of the Lagos Polo Club lkoyi amounts to Conduct Injurious to the Character And Interests of the Lagos2 Polo Club Ikoyi Lagos [hereinafter 'the Club] under Clause 15 [a] - [c] & the entire provisions of the Lagos Polo Club, Ikoyi, Lagos Constitution, 1998 and necessitating the threat issued and by Letter dated 30th June 2010 [but received by the Plaintiff on 1st July 2010] of suspension of the Plaintiff for a period of Eleven [11] Months beginning 16th July 2010 to 17th June 2011 as a Member of the Lagos polo Club lkoyi?

2. Whether by virtue of the entire provisions (especially Clause 15 [a] - [c] of the Lagos polo club lkoyi, Lagos, Constitution, 1998, the Main committee of the Lagos polo club Ikoyi Lagos adhered AT ALL OR strictly to the Procedures provided in Clause 15 [a] - [c] & the entire provisions of the Lagos polo Club lkoyi, Lagos Constitution, 1998 in its deliberations of on or about the 26th day of June 2010 and necessitating threat issued and conveyed by Letter dated 30th June 2010 [but received by the Plaintiff on 1st July 2010] of suspension of the Plaintiff for a period of Eleven [11] Months beginning 16th July 2010 to 17th June 2011 as a Member of the Lagos polo club, Ikoyi on account of the Plaintiff writing Letter dated 18th September 2009 to the Nigerian Polo Federation Inviting its Intervention in certain matters of the Lagos polo Club lkoyi?

3. whether by virtue of the entire provisions [especially clause 15[a]- [c]] of the Lagos Polo Club lkoyi, Lagos, Constitution, 1998, the Main Committee of the Lagos polo Club lkoyi, Lagos were expected to RELY on the opinion of the Disciplinary Committee of the Lagos Polo Club Ikoyi, Lagos in its deliberations of on or about the 26th day of June 2010 and necessitating the threat issue and conveyed by Letter dated 30th June 2010 [but received by the plaintiff on 1st July 2010 of suspension of the Plaintiff for a period of Eleven [11] Months beginning 16th July 2010 to 17th June 2011 as a Member of the Lagos Polo Club Ikoyi on account of the plaintiff writing Letter dated 18th September 2009 to the Nigerian polo Federation Inviting its Intervention in certain matters of the Lagos polo Club Ikoyi?

4. whether by virtue of the entire provisions [especially clause 15 [a] - [c]] of the Lagos Polo club Ikoyi, Lagos, Constitution, 1998, the Opinion of the Disciplinary Committee of the Lagos Polo Club Ikoyi, Lagos can be affirmed by the Main Committee of the Lagos Polo Club Ikoyi, Lagos in reaching the conclusion that the Plaintiff writing Letter dated 18th September 2009 to the Nigerian Polo Federation Inviting its intervention in certain matters of the Lagos Polo club, Ikoyi amount to conduct Injurious to the Character And Interests of the Lagos Polo Club Ikoyi, Lagos [hereinafter 'the Club] under Clause 15 [a] - [c] of the Lagos Polo Club Ikoyi Lagos Constitution, 1998?

The Appellant sought the following relief from the Court, they are as follows:

1. A declaration THAT by virtue of the entire provisions(especially Clause 15[a] - [c]] of the Lagos Polo Club Ikoyi, Lagos, Constitution, 1998, plaintiff's actions in writing Letter dated 18th September 2009 to the Nigerian Polo Federation inviting its intervention in certain matters of the Lagos Polo Club Ikoyi DOES NOT amount to Conduct Injurious to the Character And Interests of the Lagos Polo club Ikoyi, Lagos [hereinafter 'the Club) under Clause 15 [a] - [c] & the entire provisions of the Lagos polo Clue Ikoyi Lagos Constitution, 1998 and necessitating the threat issued and conveyed by Letter dated 30th June 2010 (but received by the Plaintiff on 1st July 2010) of suspension of the Plaintiff for a period of Eleven (1l) Months beginning 16th July 2010 to 17th June 2011 as a Member of the Lagos Polo Club Ikoyi.

2. A declaration THAT by virtue of the entire provisions(especially Clause 15 [a]- [c]) of the Lagos Polo Club Ikoyi Lagos, Constitution, 1998, the Main Committee of the Lagos Polo Club lkoyi, Lagos DID NOT adhere AT ALL OR strictly to the procedures provided in clause 15 [a] - [c] & the entire provisions of the Lagos Polo Club Ikoyi, Lagos Constitution, 1998 in its deliberations of on or about the 26th day of June 2010 and necessitating the threat issued and conveyed by Letter dated 30th June 2010 [but received by the plaintiff on 1st July 2010] of suspension of the plaintiff for a period of Eleven [11] Months beginning l6th July 2010 to 17th June 2011 as a Member of the Lagos polo club Ikoyi on account of the Plaintiff writing Letter dated 18th September 2009 to the Nigerian polo Federation Inviting its intervention in certain matters of the Lagos polo club, Ikoyi.

3. A declaration THAT by virtue of the entire provisions (especially clause 15 [a] - [c]) of the Lagos polo club Ikoyi Lagos, Constitution, 1998, the Main committee of the Lagos Polo clu4 Ikoyi Lagos were NoT expected to RELY on the opinion of the Disciplinary committee of the Lagos Polo club Ikoyi, Lagos in its deliberations of on or about the 26th day of June 2010 and necessitating the threat issued and conveyed by Letter dated 30th June 2010 [but received by the Plaintiff on 1st July 2010) of suspension of the Plaintiff for a period of Eleven [11] Months beginning 16th July 2010 to 17th June 2011 as a Member of the Lagos Polo Club Ikoyi on account of the Plaintiff writing Letter dated 18th September 2009 to the Nigerian Polo Federation Inviting its Intervention in certain matters of the Lagos polo Club, Ikoyi.

4. A declaration THAT by virtue of the entire provisions [especially Clause 15 [a] - [c] of the Lagos polo Club Ikoyi, Lagos, Constitution, 1998, the Opinion of the Disciplinary committee of the Lagos polo club Ikoyi, Lagos CANNOT be affirmed by the Main committee of the Lagos Polo club, Ikoyi, Lagos in reaching the conclusion that the Plaintiff writing Letter dated 18th September 2009 to the Nigerian polo Federation Inviting its intervention certain matters of the Lagos polo club, Ikoyi amounts to Conduct Injurious to the character And interests of the Lagos polo Club, Ikoyi, Lagos, [hereinafter 'the Club] under Clause 15 [a] - [c] of the Lagos polo Club, |Ikoyi, Lagos Constitution, 1998.

5. An order of Court and perpetual Injunction preventing the Defendants whether by themselves or through their agents servants privies or any other persons acting on their behalf from giving effect and recognition to ANY DECISION issued and conveyed by Letter dated 30th June 2010 [but received by the plaintiff on 1st July 2010] threatening the suspension of the plaintiff for a period of Eleven [11] Months beginning 16th July 2010 to 17th June 2011 as a Member of the Lagos Polo Club Ikoyi on account of the Plaintiff writing Letter dated 18th September 2009 to the Nigerian Polo Federation Inviting its Intervention in certain matters of the Lagos polo Club Ikoyi, hinging the same on Clause 15 [A] of the Lagos Polo Club, Ikoyi, Lagos Constitution, 1998.

The trial Court answered all the questions under one issue to the negative and dismissed the originating summons. The Appellant dissatisfied by the decision filed a Notice of Appeal dated 7th day of April 2014 setting out 3 grounds of appeal.

The Appellant filed his Appellant's brief of arguments dated 16th April, 2014 filed on the same day and upon being served with the Respondents' brief of argument, Appellant filed a reply brief dated 3rd June, 2015. The Respondents brief dated 21st May, 2015 was filed on the same day. All the briefs were adopted at the hearing of this appeal. The Appellant in his brief of argument dated 16th April 2014 submitted the following issues for determination:

1. whether on the facts and evidence the Respondents (Defendants in the lower Court) complied with Clause 15 (a) - (c) of the Lagos polo Club Ikoyi, Lagos Constitution, 1998 and the expectations of the law in suspending the Plaintiff as a Member of the Club as held by the lower Court?

2. Whether the Learned Trial Judge considered the material facts and entire case of the Appellant before arriving at its decision?

The Respondent on his part settled the following issues:

1. Whether having regard to all the facts and evidence presented by the parties, and the applicable law, the lower Court was right to have held that the Respondents with the provisions of the Lagos polo Club Ikoyi, Lagos, Constitution 1998 particularly Clause 15 [A] - [C] in suspending the Appellant as a member of the Club and consequently, refused to interfere with the Respondents' decision? (Ground I of the notice of appeal dated 7th April 2014 and Grounds 1, 2 & 3 of the Respondents' notice).

2. whether having regard to the entire provisions of the Club's Constitution (particularly Clause 15 [A] - [C]), the Main Committee of the Club could delegate any part of its disciplinary functions to its Disciplinary Sub - Committee and further affirm and rely on the findings of that subcommittee in reaching its decision to suspend the Appellant? (Ground 2 of the notice of appeal dated 7th April 2014.).

3. Whether the lower Court's failure to expressly consider the Appellant's Further Reply dated 31st October 2011 and his Further Written Address also dated 31st October 2011 were justifiable, having regard to the fact that these processes were incompetent, having been filed contrary to the provisions of the Federal High Court (Civil Procedure Rules, 2009? (Ground 4 of the Respondents' notice).

The Respondent also filed a Respondents' Notice of intention to contend that Judgment should be affirmed on grounds other than those relied on by the Court. Below is what it says shorn of its particulars:

"AND TAKE NOTICE that the grounds on which the Respondents intend to rely are as follows:

1. The Respondents will contend that, assuming, without conceding the fact, that the trial Court would review the opinion of the Main committee of the club wherein it decided that the Appellant's conduct complained of was "conduct Injurious to the character and Interests of the club", the Learned Trial Judge would have reached the same conclusion was the Main committee of the club that the Appellant's conduct was indeed "conduct Injurious to the Character and Interests of the Club." The Respondents will contend that, assuming without conceding the fact that the Appellant was not given an opportunity to respond to the e-mail provided in rebuttal of his assertion that though he wrote the letter complained of by the Respondents, it remained a private document which he never dispatched, the Appellant suffered no miscarriage of justice as a result.

The Respondents will contend that, assuming, without conceding the fact, that the Learned Trial Judge failed to "expressly" consider all the issues canvassed by the Appellant before arriving at his decision dismissing the Appellant's claims, this decision was justified nonetheless as there was ample material before the trial Court in answer to the issues raised by the Appellant, justifying the Learned Trial Judge dismissal of the suit. The Respondents will contend that, assuming, without conceding the fact, that the Learned Trial Judge failed to "expressly" consider the Appellant's Further Reply dated 31st day of October, 2011 and his Further Written Arguments also dated 31st October, 2011, he was justified in doing so as these processes were incompetent, having been filed contrary to the provisions of the Federal High Court (Civil Procedure) Rules 2009."

The issues formulated by both sides are substantially the same except that they are couched differently, the issues settled by the Respondents are clear, direct but not concise however I shall adopt them as issues for determination in this appeal as doing that would enable the Court to determine the Respondents' Notice. I shall consider issues 1 and 2 together because they are interrelated.

ISSUE ONE & TWO:

Whether having regard to all the facts and evidence presented by the parties, and the applicable law, the lower Court was right to have held that the Respondents complied with the provisions of the Lagos Polo Club Ikoyi, Lagos, Constitution, 1998 particularly clause 15 [A] [C] in suspending the Appellant as a member of the Club and consequently, refused to interfere with the Respondents' decision? (Ground I of thenotice of appeal dated

7th April 2014 and Grounds I, 2 & 3 of theRespondents' notice).

Whether having regard to the entire provisions of the Club's Constitution(particularly Clause 15 [A] - [C], the Main Committee of the Club could delegate any part of its disciplinary functions to its Disciplinary Sub -Committee, and further affirm and rely on the findings of that subcommittee in reaching its decision to suspend the Appellant? (Ground 2 of the notice of appeal dated 7th, April 2014.).

The Appellant summarized his case and that of the Respondents before the lower Court and submitted that the lower Court did not evaluate the facts of the case correctly. He also submitted that the Respondents counter affidavit addressed other issues different from the allegations contained in the Appellant's affidavit in support of the originating summons. According to the Appellant, the Court can interfere and question the discretionary powers of the club committee where the conduct of the member is not within the intended scope of the rule, relied on IAN WILE, MRS JENIFFER WILES & MRS. MARGARET ALLAN V BOTHWELL CASTLE GOLF CLUB &10 OTHERS [2005] CSOH 108, [2005] SLT 785, LEE V SHOWMEN'S GUILD OF GREAT BRITAIN [1952]1 ALLER, & 1175, RE: IDOWU LEGAL PRACTITIONER [1971]1 ALL NLR 126.

The Appellant further submitted that the Courts can inquire into the kind of conduct that can be termed 'injurious to the character and interests of the club', relied on LABOUCHERE V EARL OF WHARNCLIFFE, L.R. 13 CH. DIV 346 [350], 1879, ADELEKE V OYO STATE HOUSE OF ASSEMBLY [2OO8] 2 NWLR [PT 1006] 332 and that the Appellant's act of authoring a letter sent to the Nigeria Polo Federation cannot be considered as injurious to the character and interests of the club. The Appellant submitted that the lower Court did not fully appreciate the purport of S. 24 of the Club's Constitution. That the Respondents procedure for inquiry was contrary to the provisions of S. 15(a) of the club's Constitution and to the rules of natural justice, referred to YUILL IRVINE V THE ROYAL BURGESS GOLFING SOCIETY OF EDINGBURGH [2004] S.C.L.R 386, RICHARDSON-GARNER V FREMANTLE [1871] 24 LT 81, DENLOYE V MEDICAL AND DENTAL PARACTITIONERS DISCIPLINARY COMMITTEE [1968] I ALL 306.

He submitted that the main committee is the only body empowered to consider issues of conduct of its members and Clause 15 (a) of the Club's Constitution does not admit acting through a delegated Committee or body. The Appellant urged this Court to uphold his reliefs sought in the originating summons at the trial Court.

In response, the Respondents submitted that the Court has no jurisdiction to interfere in cases such as this where a recognized arm of a club has exercised its powers bonafide in expelling any member whose conduct is said to be injurious to the character and interest of the club, referred to RICHARDSON-GARDNER VFREMANTLE [1871]24 LT 81, CHINWO V OWHONDA [2008] 3 NWLR (PT 1074) 341. That the provision of Clause 15 (a) of the Club Constitution empowers the main committee to use their discretion in determining what conduct is injurious to the character and interest of the club and that it is not within the Court's power to determine whether the conduct was indeed injurious to thecharacter and interests of the club. The Respondent also submitted thatthe cases relied on by the Appellant have no bearing with the facts of this case. That a man who joins a voluntary association is bound by thedecision of that association, whether favorable to him or not, relied on MBANEFO V MOLOKWU [2009] 11 NWLR (PT 1153) 431.

Furthermore, the Respondents contended that the main committee's finding that the conduct of the Appellant in writing the letter dated 18th September 2009 to the Nigerian Polo Federation without first exploring internal mechanisms is injurious to the character and interests of the club, is justified and that the Court below would have come to that conclusion if it was within its jurisdiction to do so. On the issue of breach of the Appellant's right to fair hearing, the Respondents contended that the Appellant had full knowledge of the case against him and was given adequate opportunity to respond as he deemed fit; as such there was no breach to his right to a fair hearing, relied on NEPA V AROBIEKE [2006] 7 NWLR (PT 979) 245.

On the issue of sub-delegation of the powers of the main committee to the disciplinary sub-committee, the Respondents submitted that by virtue of the provisions of Clauses 16 (a) and 18 (a) (v) of the Club's Constitution, the main committee is authorized to delegate its disciplinary powers to additional officials appointed for the purpose, being the disciplinary sub-committee, referred to MORENIKEJI V OSUN STATE POLY [1998] 11 NWLR (PT 572) 145, BAMGBOYE V UNIVERSITY OF ILORIN [1999] 10 NWLR (PT 622) 290, OBAYAN V UNILORIN [2005] 15 NWLR (PT 947) 123. The Respondents further submitted that the Appellant having participated in the meeting where the subcommittee was established without raising any objection, is estopped from contending its establishment. The Respondents submit that the cases relied on by the Appellant on this point have no bearing with this case while the principle of law stated in DE SMITH'S JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS (2nd Edtn.) referred to by the Appellant is not the current position of the law on this point. The Respondents finally submitted that the main committee substantially complied with the procedures in S. 15 (a-c) and the entire provisions of the Club's Constitution in reaching its decision.

RESOLUTION:

The facts surrounding this appeal are straight forward and have been summarized earlier. The Appellant seeks to know if the Respondents complied with the law in suspending him from the club. The trial Court held that the general rule is that a Court will rarely interfere with decisions of a voluntary association except where rules of natural justice were ignored in arriving at that decision see the case of DAWKINS V ANTROBUS (1881) 17 CHD 615. That is the general rule but with recognized exceptions and each case is determined on its peculiar facts.

The Appellant here challenged the procedure adopted by the Respondents in arriving at the decision to suspend him on the ground that the Club's Constitution, particularly clause 15 (a) - (c) was not followed. The said clause stipulates the rules of the club with regard to discipline or investigations. It states thus:

"15(a) In case the conduct of any member, Honorary member, Temporary member or Overseas member (hereinafter for the purposes of this Rule 15 referred as 'Member) either within or out of the club premises shall in the opinion of the committee be injurious to the characters and interest of the Club or if any such member shall refuse to submit to or shall infringe, any of the rules and regulations made for the government of the Club from time to time the committee shall be especially summoned to consider the case. If the member complained shall not explain his conduct to the satisfaction of such Special Meeting of the Committee, the Committee shall call upon him to resign, and if he shall not do so within one week, the committee may thereupon and without further enquiry expel him and cause notice to that effect to be posted on the Notice Board.

(b) Any Member whose cheque presented in the Club is dishonored shall be dealt with under this Rule.

(c) Any dispute or misconduct between members of Club will be referred to the committee and also dealt with under this rule and the decision of the committee shall be final,"

In addition, Clause 24 of the club Constitution makes the decision of the committee final on complaints submitted to it. To contend that this clause relates only to club servants is misconceived. It states thus:

"24. Any cause of complaint that may arise shall be made in writing to the Honorary Secretary who, if he shall be unable to deal with it, shall submit it to the Committee whose decision shall be final. No member is empowered to discipline a club servant."

From the above provision, it is evident that the nature of a complaintand against what class of members or those with interest in the club was left at large. The provision can therefore accommodate the complaint of Habeeb Fashinro. I do not agree with the Appellant that he must choose the forum before which he will defend himself. The allegation against the Appellant was duly brought to his notice by a sub - committee. He replied and explained that the letter to the Polo Federation was a private correspondence, meanwhile in the affidavit supporting the claim, he owned up to sending the letter to the national body calling on it to intervene. If the letter was a private affair, how come it came to limelight and third parties knew about it? A private affair should have remained private. Having come to the public domain, the Appellant had no excuse. The Appellant did not exhaust internal procedures for his observations or ventilating his grievances before rushing to the National body. In fact, he and others only realized to do the needful after the damage had been done. The question of whether he wrote the letter was not denied and his deposition on oath seals any denial that it was not sent.

The question one would then ask is, whether the appellant was given a fair hearing by the investigating committee? The act of asking the complainant to supply further evidence was not wrong, the Appellant had denied sending the letter. The investigation revolved purely on documentary evidence and documents were presented. Having denied that he did not send the letter there was nothing more to be done before the sub-committee by the Appellant. The Appellant was allowed to defend himself and he did so before the suspension. See INEC V MUSA (2003) 3 NWLR (Pt. 806) 72 where the apex Court held thus:

"Fair hearing in essence means giving equal opportunity to the parties to be heard in the litigation before the Court. where parties are given opportunity to be heard, they cannot complain of breach of fair hearing principles."

The trial Court did not misapprehend the case of the Appellant and the cases cited by the Appellant are not applicable. The final decision of the committee is indeed final except against the Court.

I agree that in exceptional cases, the Court can interfere but in this situation, I do not find the need to do so. The act of reporting an internal grievance to a third party before wanting to resolve it internally definitely cannot be acceptable behavior. Such actions paint the main committee as those with no regard for rules and procedure. But the contrary was supported by the suspension of the issue in contention because members protested to the main committee. The Appellant jumped the gun and that act is injurious to the reputation and interest of the club and its members. The case of GARDNER V FREMANTLE (1871) 24 LT 81@ 85 cited by the Respondents is relevant here. It held thus:

"it is to be observed that these clubs are formed for social purposes, and there must be some paramount authority to keep up their objects. In some cases this Court will intervene with the exercise of that paramount authority, but only where there is a moral culpability, as if the decision is arrived at from fraud personal hostility or bias. But in cases of this description all that this Court requires is to be satisfied that the persons who were summoned really exercised their judgment honestly. The Court will not consider whether they did so rightly or wrongly, In the present instance the rule says that in case the conduct of any member either in or out of the club house, shall, in the opinion of the committee, be injurious to its character and interest of the club the committee shall be empowered to recommend such member to resign'. It is not, if the conduct is really injurious, but if it is injurious in the opinion of the committee, then all that the Court requires is that the committee shall form their opinion in a bonafide way. There is no power in this Court to control the judgment or opinion of the committee".

See also the case of CHINWO V OWHONDA (2008) 3 NWLR (pt. 1074) 341 at 360.

Clause 15 of the Club's Constitution is in pari materia with the English case cited above. I do not see the hue and cry over the opinion of the main committee. Their opinion cannot be challenged because it is not subject to being questioned. Their opinion cannot be substituted by the Court. The main committee of the club is empowered to discipline members for misconduct particularly under Clause 15(a) reproduced above, the provision is challenged by the Appellant but was rightly applied by the main committee.

The aspect that the subcommittee should have called for further evidence upon the presentation of proof that the letter was actually sent out served is uncalled for. The Appellant had nothing more to establish having made a negative assertion that he did not send the letter. The burden was on he who asserts, the petitioner to show that the letter was indeed sent and he did exactly that. The Appellant was accorded fair hearing.

The fact is when one joins a voluntary association, he must be prepared to abide with the rules and regulations of the association no matter how unfair they may be legally. He can opt out if he feels strongly about a decision. The decision of the majority over the minority will always prevail, still, the minority should have their say in the appropriate manner, see MBANEFO V MOLOKWWU (2009) 11 NWLR (pt. 1153) 431.

Another pertinent question to ask is whether the main committee can constitute a subcommittee to investigate any alleged acts of misconduct? The 1st Respondent received a complaint from one Hon. Habeeb Fashinro alleging that the Appellant's letter written to the Nigerian Polo Federation contravenes the tenet of the association and is injurious to the character and interest of the club. upon receipt of the complaint, the main committee set up a subcommittee to investigate and report back to the main committee. The subcommittee investigated and turned in its report with recommendation upon which the main committee took action and suspended the Appellant. The main committee under Clause 18 (a) (v) is empowered to do a number of things, it particularly states as follows:

"The committee shall be empowered:-

(v) To appoint additional officials to be in charge of corn, equipment, the school. Discipline, the social activities of the club, Tournaments and for any other purposes considered necessary. Such members may be co-opted by the committee to serve thereon but shall not have a vote."

It is therefore clear that the main committee has the powers to co-optother persons to act under its authority for any purpose(s). The term “any purposes" is wide and unlimited, subject only to the mandate of the main committee. It could include co-opting other members into an investigation committee since doing that was not expressly prohibited by the Constitution of the club. The authority to constitute a subcommittee is incidental to the power of the main committee to co opt persons. After all, discipline is not expressly excluded by the said clause. I therefore find that the committee that investigated the complaint of Mr. Fashinro was competent to do so.

Furthermore, all the subcommittee did was to make recommendations to the main committee. They merely made findings and recommendations which were subject to the decision of the main committee and that proved right when the subcommittee's recommendations were reviewed by the main committee resulting in the suspension of the Appellant. The club's Constitution did not bar the main committee from having a subcommittee and since there is nothing to that effect in the club's constitution, the action in that regard cannot be unconstitutional nor ultra vires of the main committee. Besides, the Constitution of the Disciplinary sub-committee was taken at a meeting of the main committee held on the 18th July, 2009 (Exhibit OE8) and under clause 18(a) (v). The power to discipline is contemplated in the said provision and the main committee acted within the Constitution of the club.

Where delegation of disciplinary power is allowed then the general rule against the delegation of disciplinary powers cannot stand, see BAMGBOYE V UNIVERSITY OF ILORIN (1999) 10 NWLR (pt. 622) 290 and MORONKEJI V OSUN STATE POLY (1998) 11 NWLR (Pt.572) 145 .

While I agree with the Appellant that the jurisdiction to exercise discipline is a contract between individual members and the Constitution of the club, I will also add here that, the Constitution gave the main committee the powers to constitute sub-committees. It is of no consequence whether the conduct of the Appellant can only be viewed from the main committee's opinion and not that of any other person. Furthermore, the Appellant cannot be the one to determine what conduct is injurious, the club's Constitution in this regard gave that power to the main committee and it can only be reviewed by the Court. The main committee did not act ultra vires of its jurisdiction to warrant interference by the Court and the trial Court was therefore on solid ground in dismissing the claim of the Appellant.

I am in agreement with the Appellant that the Court can investigate or interfere where the decision of the club is contrary to the Constitution of the club, but this general rule is not cast in stone. The Court in determining whether the conduct of the Appellant is injurious to the interest of the 1st Respondent must be circumscribed by the Constitution of the club. And it provided in clear and unequivocal language as that which is injurious to the club in the opinion of the main committee. What can be said to be outside the opinion of the main committee will only be what is unlawful or immoral. It must be any act that would ordinarily have no bearing whatsoever to the club. The Constitution gave a wide latitude to the main committee as seen in the application of the test in the case of IAN WILES, MRS JENNIFER WILES & MRS MARGARET ALLAN VBOTHWETL CASTLE GOLF CLUB & 10 OTHERS(2005) CS OH 108.

The case of the Appellant is not made out and issues one and two are hereby resolved against the Appellant.

ISSUE THREE:

Whether the lower Court's failure to expressly consider the Appellant's Further Reply dated 31st October 2011 and his Further Written Address also dated 31st October 2011 were justifiable, having regard to the fact that these processes were incompetent, having been filed contrary to the provisions of the Federal High Court (Civil Procedure) Rules, 2009? (Ground 4 of the Respondents' notice).

The Appellant submitted that from the judgment of the lower Court,it is evident that the Appellant's further reply dated 31st day October, 2011 and the Appellant's further written argument also dated 31st October, 2011 before the lower Court were not considered despite the fact that it was relied and adopted by the Appellant counsel. That its non-consideration by the lower Court occasioned a miscarriage of justice. The Appellant also submitted that the lower Court reformulated a single issue for determination without resolving all the Appellant's issues.

In response, the Respondents submitted that the lower Court's failure to give express consideration to the processes was justifiable as the processes were incompetent, having been filed contrary to the Rules of the Federal High Court. But in reply to the Respondents, the Appellant in his reply brief argued that the Appellant was well within his rights and time limits to file the written address and that the propriety of the Appellant's processes was never raised at the lower Court.

RESOLUTION:

This is Respondent's issue three but Appellants issue two. The challenge here is that the trial Court did not consider all the processes filed by the Appellant in arriving at the decision appealed against. The Appellant listed the processes at pages 23 of his Appellants brief and they are 7 in number. The case of the Appellant is clearly disclosed in the said processes and the Court can frame issues based on its understanding of the issues placed before it. It must not swallow the issues distilled by the parties. The trial Court cannot be faulted in framing an issue for determination. ABBAS ABDULLAHI MICHIKA v SHEHU INUWA IMAM & ORS (2010) LPELR - 4449 (CA), the Court held thus:

"Depending on the peculiar facts and circumstances of a case, the Court or tribunal has the discretion to reframe or abridge some of the issues by the parties in order to decide the crucial issues of dispute between the parties and so is not bound to consider all the issues in the form or manner presented by the parties if doing so would lead to the resolution of the real points of dispute in the case. In the case of FEDERAL MINISTRY OF HEALTH V COMET SHIP AGENCIES LTD (10) 13 WRN 1 at 15, the Supreme Court had put the position beyond argument when it held thus: -"

"A Court can and is entitled to reformulate an issue or issues formulated by a party or counsel in order to give it or them, precision and clarity." See also NEKA V ACB LTD (2004) 1 SC (1) 32, 2004) 1 SCNJ 193 at 202, AGBAREH V MIMRA (2008) 2 NWLR (1071) 378 at 410". Per GARBA, J. C. A.

In determining issues the Court is not bound to list all the material considered one by one in arriving at the decision. The judgment clearly said the Judge considered all materials before it. There is nothing to show otherwise.

As contended by the Respondents, could the decision have been the same if the Court had considered that the processes were filed out of time and without leave of Court of materials before the Court. Except the processes were expressly struck out, all the processes to be relied upon in any application made before the Court in the proceeding are judicially noticed, HON. ZAKAWANU I. GARUBA V. HON. EHI BRIGHT OMOKHODION NSCQR 2011 (VOL 46) 876.

Notice to contend on this point cannot stand because the trial

Court did not pronounce on the competence of the processes which thereforepresupposes that it considered everything before arriving at a decision. The objection was not taken before the trial Court and therefore I am of the opinion that since this new dimension will not add any value to the findings of the Court, the notice to contend on this point is hereby discountenanced. I have shown above that the failure to expressly mention the different processes does not mean the trial Court failed to take them into consideration. The judge had his style of judgment writing which did not occasion a miscarriage of justice. The case of the Appellant is flawed and this issue is resolved against the Appellant.

On the whole, I find that this appeal lacks merit and is hereby dismissed. I hereby affirm the judgment of HON. JUSTICE SALIU SAIDU delivered on the 31st March 2014.

I make no order as to costs.

**SIDI DAUDA BAGE, J.C.A**.:

I agree with the reasoning and conclusion reached in the judgment, just delivered by my learned brother, Y.B. NIMPA, JCA, to the effect that the instant appeal lacks merit and is also hereby dismissed by me. I too hereby affirm the judgment of HON. JUSTICE SALIU SAIDU delivered on the 31st March, 2014.

I make no order as to costs.

**JOSEPH SHAGBAOR IKYEGH, J.C.A**.:

I am in agreement with the judgment prepared by my learned brother, Yargata Byenchit Nimpar, J.C.A., which I had the benefit of reading in draft.