



**REPUBLIC OF KENYA**

**THE JUDICIARY**

**OFFICE OF THE SPORTS DISPUTES TRIBUNAL**

**AT NAIROBI**

**CAUSE NO. 9 OF 2017**

**ANDREW SEKAYOMBYA.....1<sup>ST</sup> APPLICANT**

**KEVIN OLANGO.....2<sup>ND</sup> APPLICANT**

**VICTOR OMUNE.....3<sup>RD</sup> APPLICANT**

**-versus-**

**MUHORONI YOUTH FOOTBALL CLUB**

**(SUED THROUGH IT'S MANGEMENT COMMITTEE,**

**THE CHAIRMAN MR. MOSES ADAGALA).....RESPONDENT**

**FOOTBALL KENYA FEDERATION.....INTERESTED PARTY**

**Hearing: 22<sup>nd</sup> March, 2017**

**Panel: Elynah Shiveka - Vice-Chairperson**

**Robert Asembo – Member**

**Gabriel Ouko - Member**

**Appearances: Messrs. Wambilianga and Majani instructed**

**by Wambilianga, Majani Associates, Advocates for the Applicants**

**No appearance for Respondent;**

**DECISION**

1. This is the decision in a claim by ANDREW SEKOYOMBYA, KEVIN OTIENO OLANG'O AND VICTOR OMUNE hereinafter the Claimants against the Muhoroni Youth Football Club, hereinafter the Respondent. The Claimants are represented by the law-firm of Wambilianga, Majani & Associates Advocates, who filed a Statement of Claim in the Tribunal on 07<sup>th</sup> March 2017.

2. The Claimants sought a number of prayers, *to wit*:

a) A declaration that the Respondent breached the employment contract and constructively dismissed the claimant

b) An order directing the Respondent to pay the Claimants respectively:

i. One month's salary in lieu of notice in the respective sums of Kshs. 45,000/-, Kshs. 22,000/-

ii. Loss of income on the respective unexpired contract terms being in the respective sums of Kshs. 855,000/-, Kshs. 630,000/-, and Kshs. 418,000/-

iii. Compensation for unfair termination of employment as the equivalent of various salary for 12 months being in the respective sums of Kshs. 540,000/-, Kshs. 540,000/- and Kshs. 264,000/- to the Claimants.

c) An order compelling the Respondent to issue a Certificate of Service and Release Letter to each of the Claimants.

d) Costs to the cause, with interest at court rates.

3. On 14<sup>th</sup> March 2017, the Claimants' Advocates on record further filed a Certificate of Urgency, Notice of Motion and Supporting Affidavit, all dated and/or sworn on 13<sup>th</sup> March 2017. The same was heard *ex-parte* the very day by the Tribunal and the Honorable Chair, Mr. John Ohaga, determined as follows, THAT:

i. The matter be certified urgent and to be heard spontaneously

ii. Football Kenya Federation be enjoined as the Interested Party

iii. Service upon the Respondent and the Interested Party to be effected by the 15<sup>th</sup> March 2017

iv. the hearing of the application *inter-partes* was fixed for Wednesday 22<sup>nd</sup> March 2017 at 3pm. with the panel being constituted of Elynah Shiveka (Deputy Chairperson), Messrs Robert Asembo and Gabriel Ouko.

v. Costs were to be in the cause.

4. At the hearing on 22<sup>nd</sup> March 2017, neither the Respondent nor the Interested Party had placed on record any responses and/or pleadings. Equally, no appearance was made on their part. The Tribunal being satisfied on service upon the two, by the return of service as deposed to by JONATHAN KIMANZI MUTUA (who effected service on the Interested Party) and GEORGE OMONDI OGONJI (who effected service on the Respondent) both being licensed Court process servers, proceeded to hear the matter, and Messrs. Majani and Wambilianga appeared for the Claimants.

### **The Claimants' Case**

5. Mr. Majani, Counsel for the Claimants relied on the Statement of Claim dated the 03<sup>rd</sup> March 2017. He urged the Tribunal on the urgency of the matter. He cited the fact that the Claimants being professional footballers and out of contract with the Respondent, had their means of livelihood jeopardized. Mr. Majani submitted that the Claimants' chances of joining a club for gainful employment had also been curtailed by the failure of the Respondent to issue the Official Release Letter consequent to the constructive dismissal of the Claimants in the guise of disciplinary suspension. He averred that every effort to have the Respondent

issue the Release Letter in respect of the Claimants has been ignored and for no just cause.

6. Further, Mr. Majani submitted that the Claimants had binding Contracts of Employment with the Respondent, which Contracts were unlawfully terminated on 05<sup>th</sup> November 2016 by the Respondent's Chief Executive Officer-Mr. James Orundu. The terms of which included a regular expected monthly pay of Ksh. 45,000/- and Kshs. 22,000/-as salaries for the Claimants. The contracts had varying running periods of 19 and 14 Months, being the unexpired period as at the time of suspension.

7. Mr. Majani for the Claimants avers that this was a unilateral action by the Respondent and the Claimants were never consulted nor in any way involved towards this end. In other words, his clients was condemned unheard.

8. Mr. Majani urged the Tribunal that the Respondent breached both the Employment Act, 2007 (Section 41) and the FIFA Regulations on the Status and Transfer of Players (Articles 13 and 17). Article 13 of the said FIFA Regulations refers to the Respect of Contract whilst Article 17 is in respect to Consequences of Terminating a Contract without a Just Cause. With respect to compensation by way of damages worth 12 months', Mr. Majani relied on section 49(1)(c) as read with section 50 as cited by Mr. Wambilianga at the hearing.

9. Mr. Majani submitted that on 16<sup>th</sup> November 2016, on the Claimants' instructions they wrote to the Respondent seeking to have a settlement of the matter by compensation of the Claimants. This demand has neither been met nor responded to. Further, Mr. Majani averred that on 13<sup>th</sup> December 2016, they sought the intervention of the Kenyan Premier League's IDCC, but learnt that this organ lacked the requisite quorum to hear the matter as most Members thereof had resigned. The matter was withdrawn on 26<sup>th</sup> January 2017 and was thus filed with the Interested Party - Football Kenya Federation (hereinafter '**the Federation**') when on 09<sup>th</sup> February 2017 they wrote to the Player Status Committee of the Interested Party. As fate would have it, Mr. Majani and the Claimants have not equally benefited from expected redress by the Federation despite much communication with the Federation's Secretary-General/CEO and that this has necessitated their moving to the Tribunal.

10. To date, despite clear evidence of service upon the Respondent and the Interested Party, they seem unmoved and these proceedings have concluded without their pleadings on record nor appearance at all. We are left with no choice but to hear the Claimants. We have proceeded to determine the matter on the Claimants' evidence on record, and by referring to applicable football rules and regulations as well as our municipal law on employment relations.

### **Tribunal's Finding**

We do find and hold as follows:-

11. There is no evidence of any response or attempt to settle the demands of the Claimants as addressed to the Respondent and the Federation failed to intervene as expected under the auspices of its' Player Status Committee. Secondly, there is no evidence of formal termination of the Claimants' Contract, instead what is evident is the seemingly punitive but endless disciplinary suspensions that never had the occasion to be concluded by the Respondent. Neither has the Respondent granted the Claimants the opportunity to defend themselves. This was unprocedural and unfair and offends natural justice principles.

12. By the inertia of the Federation's Player Status Committee and the complete failure to adjudicate on a matter well-within their purview, we find that indeed the Claimants had every reason to explore and/or exploit the available avenue for redress being the Tribunal and consequently find that jurisdiction flows from our end and does apply in the present matter and it remains so uncontested.

13. We find it unreasonable that the Respondent could neither conclude the disciplinary suspensions nor could issue the Release Letters of the Claimants freeing them for any potential engagement once they (the Respondent) were not in need of their services as a Players, and leaving it too late in the season with diminished chances of being alternatively signed on.

14. We further find that the Respondent is in contravention of the Article 13 of the FIFA Regulations on the Status and Transfer of Players (2016) hereinafter FIFA Regulations. Article 13 reads:

**13 Respect of Contract**

A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement

15. It is clear that the Respondent by the action of their disciplinary suspensions, had actually terminated the engagement with the Claimants in breach of Article 13 of the FIFA Regulations. The need for mutual agreement as stipulated in the Article through discussions with the Claimants clearly lacked and/or was ignored. The contracts were and are still running.

16. As a consequence of the breach as aforesaid, we agree with Counsel for the Claimants that under Article 17 of the FIFA Regulations, the compensation of the Claimants for such breach falls on the part of the Respondent. We cite Article 17(1):

**Article 17(1)**

In all cases, the party in breach shall pay compensation.

17. The view on the need for compensation following the breach as in these circumstances is further anchored under our domestic labour laws, wherein as cited quite correctly by counsel for the Claimants, section 41 of the Employment Act 2007 demands that the termination of a contract of employment in the circumstances of the Claimants would have necessitated a suitable notification and hearing before dismissal on the part of the Respondent. This did not happen.

18. Further sanctions also befall the party in breach of the Contract. This position is again well established under Article 17(4) of the FIFA Regulations. As such, we find the Respondent culpable for the breach of the contract with the Claimants, and direct the Federation, to apply and enforce suitable sanctions against the Respondent.

19. In the circumstances and in view of the foregoing, the Claims are allowed in the terms of the following orders:

- I. The Respondent do immediately issue the Release Letters suitable to the Claimants;
- II. The Respondents do pay the Claimants one month's salary in lieu of notice of termination being Kshs. 45,000/- to both ANDREW SEKAYOMBYA and KEVIN OTIENO OLANG'O, AND Kshs. 22,000/- to VICTOR OMUNE;
- III. The Respondent do pay the Claimants the respective sums of KShs. 855,000/- to ANDREW SEKAYOMBYA, Kshs. 630,000/- to KEVIN OTIENO OLANG'O, AND Kshs. 418,000/- to VICTOR OMUNE being the loss of income for the unexpired contract periods to the respective Contracts of the Claimants;
- IV. The Interested Party to issue and enforce such applicable sanctions on the Respondent as stipulated under FIFA Regulation 17(4);
- V. Costs of this cause be borne by the Respondent and the Interested Party in the ratio of 60% to 40% respectively.

**Dated and delivered at Nairobi this 4<sup>th</sup> day of April 2017**

**Signed by:**

- 1. Elynah Shiveka- Vice- Chairperson.....**
- 2. Gabriel Ouko - Member.....**
- 3. Robert Asembo - Member.....**



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