



**REPUBLIC OF KENYA**

**IN THE SPORTS DISPUTES TRIBUNAL**

**PETITION NO. 12 OF 2015**

**IN THE MATTER OF THE SPORTS ACT, 2013 OF LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE REGISTRATION CERTIFICATE FOR**

**AFC SPORTS CLUB**

**Between**

**MATHEWS OPWORA.....1<sup>ST</sup> PETITIONER**

**OKIYA DINDI VICTOR..... 2<sup>ND</sup> PETITIONER**

**MAURICE MURUNGA OSUNDWA..... 3<sup>RD</sup> PETITIONER**

**-VERSUS-**

**ASAVA KADIMA.....1<sup>ST</sup> DEFENDANT**

**DAN MULE.....2<sup>ND</sup> DEFENDANT**

**PETER LICHUNGU.....3<sup>RD</sup> DEFENDANT**

**WALTER ONYINO.....4<sup>TH</sup> DEFENDANT**

**STEPHEN MUNGO..... 5<sup>TH</sup> DEFENDANT**

**PAMALA LUTTAH.....6<sup>TH</sup> DEFENDANT**

**ALLAN KASAVULI..... 7<sup>TH</sup> DEFENDANT**

**GEORGE ALADWA..... 8<sup>TH</sup> DEFENDANT**

**REGISTRAR OF SPORTS ..... 9<sup>TH</sup> DEFENDANT**

**DECISION**

Hearing: 16<sup>th</sup> December 2015

Panel: Mrs. Elinah Shiveka Vice Chairperson

Mrs. Njeri Onyango Member

Ms. Nyokabi Kimani Member

Mr. Gabriel Ouko Ohanya Member

Mr. Peter Ochieng' Member

Appearances: Mr. Maurice Osundwa

Ms. Sylvia Matasi

Ms. Anne Kamande

1. This matter came before the Tribunal for hearing on 16<sup>th</sup> December 2015. Save for the 7<sup>th</sup> Respondent all the parties were duly represented. The 7<sup>th</sup> Respondent though served, neither entered appearance nor filed any document. At the commencement of the hearing, the parties confirmed that they would rely on the pleadings and Affidavits, documents filed by parties and oral submissions, no party expressed the wish to call witnesses. The documents were as follows:

a) On behalf of the Petitioners:

a. - The Amended plaint filed on 12<sup>th</sup> November, 2015

- List of documents and the annexed bundle of documents, dated 7<sup>th</sup> December 2015

- The Affidavit of Maurice Murunga Osundwa

b) On behalf of the Respondents:- The Statement of Defence filed on 11<sup>th</sup> December 2015;

- The list of documents with annexed documents filed on 11<sup>th</sup> December 2015

- An affidavit of the 1<sup>st</sup> Respondent Asava Kadima of 9<sup>th</sup> September 2015

c) The 9<sup>th</sup> Respondent:- The Replying Affidavit of Rose Wasike filed on 11<sup>th</sup> December 2015.

2. **THE PARTIES**

a) The Petitioners (hereinafter "the Petitioners") lay claim as the bona fide officials of AFC Leopards Football Club (hereinafter 'AFC'), having been elected as officials (of an interim or caretaker committee) at a Special General Meeting (hereinafter 'SGM') of AFC convened on 24<sup>th</sup> November/2015 pursuant to the provisions of the Constitution of AFC. The Petitioners have annexed a copy of the said Constitution to their bundle of documents.

b) The 1<sup>st</sup> to 8<sup>th</sup> Respondents (hereinafter "the Respondents") lay claim as officials of AFC pursuant to a mandate given to them by

the club at an Annual General Meeting (hereinafter 'AGM') held in June 2015 and also pursuant to nominations and/or Co-options as prescribed in the Constitution of AFC.

c) The 9<sup>th</sup> Respondent is the Sports Registrar (hereinafter '**the Registrar**') appointed in terms of section 46 of the Sports Act 2013 ('**the Sports Act**').

3. The Sports Dispute Tribunal (hereinafter Tribunal) is a quasi-judicial institution set up in conformity to the provisions of Section 56 of the Sports Act. Its jurisdiction and mandate are set out at Section 58 of the Sports Act. It is mandated to hear and determine disputes arising from Sports matters including claims to leadership of Sports Organizations or clubs.

4. The Petitioners have moved the Tribunal for orders: -

I. That this Honourable Tribunal declares them as the legitimate team to run the club affairs awaiting issuance of the certificate.

II. To enable AFC to legally take part in the key decisions of Football Kenya Federation set for November 2015, this right can only be exercised if the applicants are given the mandate by the office of the Registrar;

III. That this tribunal compels the defendants to stop using the certificate from the registrar of societies as the same ceased to apply to sports organization as at 1<sup>st</sup> August 2014. And the same is illegal.

IV. That the tribunal do issue an injunction to restrain the Defendants/Respondents herein by themselves, friends, relatives, cronies, proxies, servants, employees, agents or any other person(s) or otherwise howsoever from, threatening, interfering or in any other manner dealing with the affairs of AFC;

V. That the Tribunal direct the registrar of sports to issue the petitioners with the certificate of registration as a matter of priority to enable them prepare the team for the coming season.

VI. That the costs of this application be provided for.

5. AFC is a community based football club originally registered under the provisions of the Societies Act, stated to have been established in 1964. It has over the years enjoyed considerable and oftentimes fanatical following from its supporters. It has seen some good seasons when it has won the League title. However, in the recent past, the club's fortunes have not been favourable. It has in a word "survived" through each season barely able to keep the ship afloat. In the just concluded KPL Premier League, it had no sponsor and could barely keep its players leading to an exodus of its top players following its failure to meet player allowances and other team expenses. It is a wonder that it survived relegation. Indeed, the story of football in Kenya cannot be told without reference to AFC (or its previous name "Abaluhya Football Club")

## PARTIES SUBMISSIONS

### THE PETITIONERS:

6. The position of the Petitioners was ably presented by one of the Petitioners, Mr Maurice Murunga Osundwa (hereinafter Mr Osundwa). He relied on the documents set out at 1 (a) to (c) above and argued as follows: The issue at hand is the leadership of AFC, a club established in 1964 under The Societies Act (Cap 108 of the Laws of Kenya). Its functions are spelt out in a Constitution of the Club a copy of the said Constitution can be found at Page 70 of the bundle of documents filed by the Petitioners. Their claim to legitimacy to run the affairs of AFC under the Sports Act. He submitted that the Respondents 1 to 8 have no right to claim leadership of AFC, that though they were elected at an AGM of AFC, then operating under the Societies Act, they failed to transit the Club to bring it under the registration set out under the Sports Act more particularly Section 47 thereof. That all Sports Organizations were required to take steps to transit from the regime of the Societies Act and to register afresh under the Sports Act. That the deadline to do so was August 1<sup>st</sup> 2014 and failure to do so would mean that the sporting organization ceases to exist as a Sports Organization/ Club. The officials of AFC in office (the Respondents) failed to comply with the Law, thus, AFC ceased to exist as at the deadline, 1st August 2014. Having so failed to act, AFC as a Sports organization/club ceased to exist ("died") and

the officials cannot purport to be in office. Further that the said officials mismanaged the club, its finances and players or members, leading to a protest by its membership and a petition for an SGM by the said Club's Members.

7. Mr Osundwa submitted that the Club Members petitioned for an SGM vide a letter of 3<sup>rd</sup> December 2014 addressed to the Secretary General of AFC (Document 1 page 1). The letter gave notice to the Secretary to call for the SGM within 7 days failing which the members would act without further reference to the Respondents. The sole purpose of the SGM was to discuss the requirement for compliance to the Sports Act "and harmonize the administration in the club" which had negatively affected the club's performance in the KPL, 2014 League. This notice is said to have been supported by various branches of AFC with alleged members names, identity card numbers and signatures, as set out at Page 3 to 19 of the bundle of Petitioners documents. The petition letter was copied to the Registrar of Sports (9<sup>th</sup> Respondent), the Secretary of Sports and the Administrative Secretary of the National Sports Council.

8. Mr. Osundwa further submitted that by a letter of 27<sup>th</sup> January 2015, (page 20) the Department of Sports wrote to Mr George Aladwa stating that having failed to transit to registration under the Sports Act, AFC was no longer a Sports Club, the Department therefore declined to deal with matters of AFC. The letter was a response to a letter of AFC Leopards of 22<sup>nd</sup> January 2015 issued by the Respondents, which was seeking intervention by the Police against an SGM due on 24<sup>th</sup> January 2015. That the SGM took place on 24<sup>th</sup> January 2015 anyway and the minutes thereof are at Page 24 to 25 of the Petitioners' documents. The attendance at that meeting under the name of AFC is at Page 26 to 29.

9. Pursuant to the said meeting, Mr Osundwa submitted that the Petitioners among other persons were elected in an Interim Committee to lead in the Registration of AFC under the Sports Act as contained in the letter of the Sports Registrar (9<sup>th</sup> Respondent) dated 16<sup>th</sup> January 2015 (Page 30 to 31 of bundle). That a representative of the National Sports Council representatives of the 9<sup>th</sup> Respondent and one of Football Kenya (FKF) were in attendance.

10. Following the above SGM and the outcome aforesaid, Mr Osundwa submitted that the elected officials then proceeded to pursue the formalities of registration under the Sports Act. They collected Registration forms, processed them and submitted them to the 9<sup>th</sup> Respondent on 13<sup>th</sup> February 2015. They have followed up and are awaiting the Registrar's action. They thus have a right to administer the affairs of AFC.

11. He admitted that the 1<sup>st</sup> to 8<sup>th</sup> Respondents had also submitted an application for registration with the 9<sup>th</sup> Respondent, but stated that they had failed to act when appropriate. They failed to transit the club and never provided for rules to facilitate transiting. They should not be allowed to run the club as they have mismanaged it and its finances. They did not act when petitioned for an SGM as per Club Constitution. That they claim that delay to register was due to constraints of formulation of rules to transit was unfounded.

12. He stated further that in any event the Respondents, that is Messrs. Kasavuli, Kadima and Luvembe, had resigned from AFC Leadership and cannot be recalled to run the club. That the 1<sup>st</sup> to 6<sup>th</sup> Respondents have not made any application to the registrar even after the AGM Mandate.

13. He submitted that the Petitioners have made effort to comply and support the club activities. They are intent on restoring the glory of AFC. Thus the Tribunal should ask the office of the 9<sup>th</sup> Respondent to act on their application. The wrangles on leadership are affecting the club, affecting the standards of football. They seek an opportunity to participate in the forthcoming FKF elections and to pursue sponsorships for the club. This will not be forthcoming unless there is a legally recognized leadership with a certificate from the 9<sup>th</sup> Respondent. While AFC is still registered under the Societies Act it is not legally recognized to participate in Sporting Activities and the Tribunal should assist in achieving registration.

#### THE RESPONDENTS

14. Ms. Matasi for the 1<sup>st</sup> to 6<sup>th</sup> Respondents and the 8<sup>th</sup> Respondent, opposed all claims by the Petitioners. She relied on the Replying Affidavit of the 1<sup>st</sup> Respondent and the various documents in their bundle of documents.

15. Firstly, she submitted that the Petitioners have no *locus* to bring this claim. They are not members of AFC. She referred to the list of members provided in their documents and stated that the Petitioners have not shown by any means that they were/are members of AFC. To be a member, one has to pay membership fees and conform to other requirements set out in the Club's

constitution. That the list of bona fide AFC members is at Page 97 to 109 of the Respondents list of documents.

16. She submitted that the club recognizes 2 sorts of meetings, the AGM and the SGM (clause 99). So far there have been 3 such meetings called for by the Respondents and the 1<sup>st</sup> Petitioner has attended all of them and is bound by the decisions thereof. The method and procedure for meetings is set out in the Constitution.

17. She submitted further that the purported SGM was null and void for failure to follow the procedures set out in the Constitution. No appropriate Notice to the Secretary General was issued or if done it flouted all procedures. Any action flowing there from was thus null and void.

18. The purported list of members supporting the alleged notice is just that, "a list". It is not one of AFC members. She invited the Tribunal to compare that list and the official list of members in the Respondents list of documents. That the members purportedly attending the alleged SGM are not members of AFC. That the list the Respondents presented has not been opposed or in any way challenged.

19. She submitted too, that the alleged SGM has not been shown to have met the requirements as to quorum, as provided for in the Constitution.

20. That the Respondents came to office legally pursuant to elections in an AGM. And while conceding that a number of elected officials resigned, there was a properly Constituted Executive Committee with quorum which co-opted other officials as provided in the Constitution, and there is no vacuum in the offices (the Executive). That at an AGM of AFC in June 2015, the co-options were ratified and the Respondents in office have the full mandate of the registered membership to lead AFC.

21. That the decision contained in the ruling of the Learned Magistrate, Hon. Muholi in CMCC No 4143 of 2015 made on 2<sup>nd</sup> November, 2015 is binding on the parties as it has not been appealed or in any way challenged.

22. That both the Petitioners and the Respondents factions have applied to the Registrar (9<sup>th</sup> Respondent) for registration. The Petitioners were aware of the fact of such application by the Respondents which was first in time, thus the purported elections at the alleged SGM was done out of malice. The Appellants have come to the Tribunal with unclean hands and should not be aided by the Tribunal.

23. That the Respondents despite the confusion created by the Petitioners and the difficult times have continued to support the club and put it through the 2015 KPL League. They have duly exercised their mandate.

24. Regarding the Replying Affidavit by the 9<sup>th</sup> Respondent, she noted that it confirms that an application by the Respondents is pending before the Registrar's office. The first application is that of the Respondents. That while the club has not transited to the Sports Act, the club legally exists under the Societies Act. And it is the Petitioners who have come to spoil and interfere with the process set up by the Respondents.

#### 9<sup>TH</sup> RESPONDENT

25. The 9<sup>th</sup> Respondent had filed a Replying Affidavit on 11<sup>th</sup> December 2015

26. In her submissions, Ms Kamande for the 9<sup>th</sup> Respondent first stated that the parties before the Tribunal are both not registered by the Registrar. For that reason they both have no *locus* to come before the Tribunal and the Tribunal has no jurisdiction in the matter.

27. She confirmed that both parties have presented applications for registration under the name of AFC. The Applications have been pending since February 2015. That the delay has greatly been occasioned by the lack of Regulations as envisaged under the Sports Act. The formulation of the rules and regulations will govern the operations of the Sports Registrar's office.

28. A further delay has arisen from the need to obtain verification of suitability of the Applicants to lead a sports organization from various Government Agencies such as the Police (CID), Ethics and Anti-Corruption Commission (EACC) and the Kenya Revenue

Authority (KRA). The 9<sup>th</sup> Respondent has made follow up with the said Agencies.

29. The 9<sup>th</sup> Respondent thus opposes the present claim as it is premature as against the office of the Registrar.

### ANALYSIS

#### JURISDICTION AND OBJECTIONS

30. The Respondents have raised objections to the Petition herein;

a) Ms Matasi filed a notice of preliminary objection on 17<sup>th</sup> November/2015 stating;

- i. The petition as currently framed, is incompetent and incurably defective.
- ii. The purported petitioners have no *locus standi* to institute the suit in their own name and in the manner it has been instituted.
- iii. The Tribunal has no jurisdiction to hear and determine the said petition.

b) The 9<sup>th</sup> Respondent also raised the issue of jurisdiction of the Tribunal premised on the ground that AFC is not registered by the Registrar of Sports under the Sports Act

31. At the hearing Ms Matasi did not address the Tribunal on the issues raised at (i) and (iii) above. The Tribunal therefore does not have the advantage of hearing the nature of her objection on the two limbs of her preliminary objection. She also stated that she would rely on the Statement of Defence, the Replying Affidavit of the 1<sup>st</sup> Respondent and the documents filed with their list of documents.

32. The issues of jurisdiction and competence of the claim are however important and have to be addressed before other aspects are dealt with. On the question of *Locus Standi* the Respondents represented by Ms Matasi have stated that the 3 petitioners are not officials or members of AFC. That they do not appear on the official list of members presented by the Respondents at Page 97 to 109 of their bundle of documents. The Petitioners on the other hand say that they were elected at an SGM held on 24<sup>th</sup> January 2015.

33. Both parties during their submissions conceded that AFC “died” as far as the Sports Act is concerned for failure to transit to registration under the Sports Act as at 1<sup>st</sup> August 2014. It is also noted that none of the lists submitted by both parties has been or can be authenticated in any material manner. The lists bear names of persons and their National Identity number and no more. None is signed by any official, none bears any membership number. The manner of becoming a member and the classes of membership of AFC is set out at Clause 5a of the Constitution. It requires payment of a membership fees and issuance of a membership card. Annual membership subscriptions are also payable.

34. None of the factions before the Tribunal has presented a list of members that can be said to meet the requirements of Clause 5a (i) to (v). Neither faction has annexed a copy of the members’ membership cards. In any event both parties agree that AFC “died” on 1<sup>st</sup> August 2014 in so far as the Sports Act applies.

35. As regards the jurisdiction of the Tribunal, the Constitution produced by the Petitioners provides at Clause 12(ii) that:

***“The club shall subscribe to the Court of Arbitration for Sports Policies and rules which conform to requirements set out in Sports Disputes Tribunal Policy and rules for Sports disputes resolution”.***

36. The Respondents have not disputed the authenticity of the said Constitution. It must therefore be held that that is the Constitution of AFC as registered under the Societies Act. The clamour at present is for both factions to have their side registered or recognized and registered by the Sports Registrar as the legitimate office bearers of AFC under the Sports Act. Both have presented applications for registration. In view of the above AFC Constitutional provisions, the provisions of Section 58 (b) of the Sports Act

and the Registrar's own admission that the parties have presented applications for registration, the Tribunal holds that it has jurisdiction to entertain the claim and has agreed to entertain the claim.

37. Further Ms Matasi in her submissions referred to the Order of Hon Muholi issued on 2<sup>nd</sup> November 2015, at the Milimani Commercial Court CMCC No 4143 Of 2015. [SULEIMAN ANGULU –VS- WALTER ANYINO & ORS]

38. In that suit the orders issued were as follows:

1. THAT AFC Leopards Sports Club is recognized under the Sports Act 2013.
2. THAT the parties herein did not exhaust the dispute resolution mechanisms under the above two acts before they approach Court. I therefore direct that the parties herein exhaust the said mechanisms before moving the court.
3. THAT since the club exists under Sports Act 2013, the Registrar of Sports does within 7 days of service of this order by either party communicate the parties herein and the Court the recognized officials of the club who will in the interim run the affairs of the club until the elections are held.
4. THAT the parties are to come back before the Court after the expiry of the 10 days for confirmation as to who the registrar recognizes as officials of the club.
5. THAT either of the two parties before the Court does lodge a complaint with the Sports Tribunal in the prescribed manner since the club is recognized by dint of sections 49(3) (a) of the Sports Act 2013.
6. THAT the costs herein shall be borne by each party for the simple reason that both parties have the good will of the club at heart.
7. THAT in case the parties herein do not wish to approach the Sports Tribunal, the Registrar of Societies is therefore to exercise his powers under section 18 of the Societies Act.

38. The order was filed at the Tribunal on 3<sup>rd</sup> November 2015. Despite the parties agreement that AFC 'died' as far as the Sports Act is concerned, none of the parties have disputed the contents of the order nor appealed against it notwithstanding that orders number 1 and 5 assert AFC's existence under the Sports Act. Indeed, Ms Matasi in her submissions asked the Tribunal to refer to the same and adopt them. We do so in so far as the order acknowledges the jurisdiction of the Tribunal and accordingly find and hold that the Tribunal has jurisdiction to entertain this petition.

#### LEGITIMACY OF OFFICE BEARERS

39. Having found as above, we turn to the question of the competing interests and factions clamouring for recognition and registration by the 9<sup>th</sup> Respondent.

40. The Registrar has stated in her Affidavit that she has received two applications. The application by the faction represented by the Respondents 1 to 8 was presented to the Registrar on 23<sup>rd</sup> January 2015. While the faction led by the Petitioners presented their application to the 9<sup>th</sup> Respondent on 13<sup>th</sup> February 2015. Both are pending before the 9<sup>th</sup> Respondent while undergoing scrutiny.

41. The Petitioners position is that AFC members petitioned for an SGM and the events that followed are as set out at 5 to 9 above. They also submitted that upon reading the letter of the Registrar of 16<sup>th</sup> January 2015, the SGM decided to elect an interim/caretaker committee to pursue the quest for registration under the Sports Act.

42. Both parties having conceded that the failure to transit as at 1<sup>st</sup> August, 2014, led to the "demise" of AFC as a Sports Organization and it therefore the finding of this Tribunal that such act opened up the door for all or any interested party or person to take steps to register an organization under the name AFC with the Registrar. It also did not bar the officials of AFC in office as at 1<sup>st</sup> August, 2014 to elect to so register. Indeed on 23<sup>rd</sup> January 2015. The Respondents took that step and accordingly presented an

application with the 9<sup>th</sup> Respondent and which according to the 9<sup>th</sup> Respondent is still before her for analysis and final decision. That application was first in time as against that of the Petitioners. It is the view of the Tribunal that as at 13<sup>th</sup> February 2015 when the Petitioners presented their application for registration, the name 'AFC' was in fact not available as the 9<sup>th</sup> Respondent can by law only register one organization to carry out the same action, in this case to manage the football club known as AFC Leopards. We opine that the application presented by the Petitioners ought to have been declined. It was an error of commission on the part of the 9<sup>th</sup> Respondent and /or the registry to have entertained the same and continue to entertain that application before conclusively dealing with the application presented by the faction represented by the 1<sup>st</sup> to 8<sup>th</sup> Respondents, by either rejecting it or admitting it.

43. In any event, the Petitioners cannot approbate and reprobate in the same breath. They claim legitimacy by a process brought about by the alleged adherence to the provisions of the Constitution of AFC as was as at 1<sup>st</sup> August 2014. They petitioned for an SGM to the Secretary General of the "dead" AFC by their own submissions. If AFC was "dead" as at the date of the requisition for the SGM, could they legitimately call for the meeting, give notice etc.; which members constituted a quorum at the SGM of the "dead" AFC" The old membership or a new outfit" How was quorum achieved or confirmed" Was the SGM, procedural in:-

- a) Issuance of Notice as provided for in the existing constitution"
- b) Was it remitted to all that were entitled to receive it"
- c) Did the advert in the People's Daily meet the required threshold for a notice under the Constitution"
- d) Could the presence of the observers being representatives of the National Sports Council, the office of Sports Registrar and FKF legitimize the meeting as a meeting of the "dead" AFC"

44. The petitioners did not address the above issues but it is clear that as they were meeting as an SGM of the AFC they now say was or is "dead", "elections" of office bearers was not one of the items for discussion in the SGM under the Notice for SGM issued to the Secretary General.

45. It is curious that the National Sports Council elected to get enmeshed further into the matter by writing the letter dated the 28<sup>th</sup> January 2015. James Akama described as the " returning officer" purports to write to the Kenya Commercial Bank setting out the officials of AFC. The only person under the Sports Act who can authoritatively so state is the Sports Registrar, the 9<sup>th</sup> Respondent herein. That letter was issued without authority and cannot aid the Petitioners.

46. The Sports Registrar's letter of 16<sup>th</sup> January 2015 clearly and correctly in our view, states that "*the Sports Registrar therefore cannot sanction your Special General meeting as you do not have locus standi before the Registrar.....*"

47. The foregoing thus demonstrates that the meeting of 24<sup>th</sup> January 2015 can at best be described as a meeting of persons interested in the formation of a Sports Organization with the intent to formalize registration with the 9<sup>th</sup> Respondent in order to manage the affairs of AFC which had as that date failed to register/transit as required by law. But Alas! They were beaten to that by the faction represented by the 1<sup>st</sup> to 8<sup>th</sup> Respondents. And it is the Tribunal's view that until that application has been dealt with by the 9<sup>th</sup> Respondent, the Petitioners cannot claim a better right to manage the affairs of AFC, and as above stated, their application ought not to have been entertained until that presented by the Respondents had been addressed.

48. The Petitioners have alleged that there has been mismanagement of the affairs and finances of AFC. Apart from allegations contained in the Affidavits and in the oral submissions before the Tribunal, no evidence to support that allegation has been presented, and happily the Tribunal for that reason but also on grounds that such a matter does not fall within its direct mandate declines to deal further with it at this stage. The issue can competently be taken up with the 9<sup>th</sup> Respondent upon the registration of AFC with the said office as provided for under Section 46 of the Sports Act. The Tribunal can only deal with an appeal arising from a decision of the Registrar in allowing or disallowing registration. The 9<sup>th</sup> Respondent correctly addressed the issue in the letter of 16<sup>th</sup> January 2015, which stated:

*"I have noted that your Sports club has problems in managing its funds. It is my advice that the club embarks on registration process immediately. Until you are officially registered, the Registrar is not able to assist you, not even to audit your account*

*records as you ceased to exist as a sports Organization/club even though the Registrar is mandated to audit Sports Organizations accounts records''*

49. The Tribunal also takes note of the letter of 4<sup>th</sup> September, 2015 issued by the Secretary of Sports, Ministry of Sports, Culture and the Arts, purporting to declare the office bearers of the AFC and asking all and sundry to “*Treat this (sic) as officials mandated to run the affairs of the club.*”

50. We reiterate that like the National Sports Council, the Secretary of Sport has no mandate to so act. This Tribunal must act to protect the mandate of the Sports Registrar. And for avoidance of doubt, we repeat that only the Registrar of Sports can issue such pronouncements.

#### PETITIONERS' PRAYERS

51. Prayers 1, 2, 3 and 4 shall be dealt with in the Tribunal's directions below. In regard to prayer 5 the Tribunal is unable to issue the said order. The Tribunal cannot issue an order to compel the Registrar to undertake her administrative functions. That is the province of the High Court to issue orders of judicial review for Mandamus. The Tribunal is however mandated to review the decisions of the Registrar by way of an appeal once made. The Tribunal, however, notes that the applications by both factions have been before the Registrar since January and February 2015 respectively, an inordinate delay. We only hope that the processes can be expedited to avoid incidents such as the present and for purposes of meeting the requirement for an expeditious and fair administrative action that the parties are entitled to under the provisions of our country's Constitution.

#### DECISION

52. The Tribunal is painfully aware of the precarious position of the situation pertaining to AFC. The Tribunal is alive to the fact that a team going by the name AFC has participated in the 2015 KPL premier league and has qualified to participate in the 2016 season. Again the Tribunal is alive to the great following AFC has and the emotional and almost cult like passion that exists in regard to that club. Management, leadership and performance of AFC elicits amongst its followers/fans an out pouring of emotions depending on the situation.

53. There are also legitimate expectations of young players who wish to trade their talent and earn an honest living through the club AFC. These expectations must be protected and guarded by this Tribunal if it is to act responsibly.

54. Whilst the tribunal has found as above that the Respondent's faction tendered its application for registration before that of the Petitioners, it is aware of the grave consequences that finding would pose if not further mitigated. The Tribunal as a quasi-judicial body also has powers under section 59 to apply alternative dispute resolution mechanisms.

55. The Tribunal finds this case to be a suitable instance to utilize the above powers to resolve the current dispute in AFC and to ensure the legitimate expectations of the numerous supporters/fans, players and sporting fraternity in the country as well as seeking to bring order and tranquillity in AFC, while protecting the standards of football in the country.

56. The Tribunal has been informed and takes cognisance of the fact that the leadership wrangles have scared away possible sponsors and financiers. There is need to embark on rebuilding the club's team by recruitment, signing of players and the technical bench and generally managing the team that is to participate in the KPL League 2016. The right of AFC to participate in the decision making process of the leadership of FKF in the forthcoming elections is not lost on the Tribunal.

57. It has been submitted and we admit that the various factions before the Tribunal have made efforts to keep the team AFC running otherwise it would not have survived the 2015 season, but unfortunately pulling in different directions has led to more confusion acrimony and discord. They both present that they have the interest of AFC at heart.

58. Having the foregoing in mind, and as stated above in the interest of good order and to meet all legitimate expectations, the Tribunal opines that it will not act as a mortician nor undertaker in the demise of AFC which legally still exists under the Societies Act. The Tribunal elects to act as a surgeon, and chooses to resuscitate AFC from the throes of death. Therefore in lieu of issuing orders in the lines prayed for by the Petitioners under prayers 1, 2, 3 and 4, the Tribunal elects to rely on the powers granted by

statute for alternative dispute resolution, and directs the Petitioners and the 1<sup>st</sup> to 8<sup>th</sup> Respondents and/or the factions they represent to undertake the processes of mediation and reconciliation under the able guidance of the Chairperson of the Tribunal.

59. The Tribunal therefore Orders as follows:-

I. The camps represented by the Petitioners and the 1<sup>st</sup> to 8<sup>th</sup> Respondents shall, within seven (7) days of the date hereof, each provide names of three (3) persons who shall constitute an Interim Management Committee (IMC);

II. The IMC shall with the guidance of the appointed mediator meet as regularly as shall be necessary to agree on issues of the general and overall management of AFC and also to *inter alia*:

- a) Raise funds for the management of the club;
- b) Organize recruitment and signing of players for the club in preparation for the 2016 season;
- c) Negotiate such sponsorships and execute contracts as shall be necessary;
- d) Take into its custody and control all and any assets of AFC and account for the same;
- e) Open and/or operate a bank account for purposes of receiving and managing any funds;
- f) Set out the process of verifying membership of AFC including fresh membership recruitment and collection of subscription fees as required under the constitution of AFC, as registered with the Registrar of Societies as at 1<sup>st</sup> August 2014;
- g) Embark on any relevant amendment of the said Constitution to align it to the Sports Act 2013;
- h) Constitute an inclusive electoral committee/board which will be chaired by a neutral person (one not involved in current or previous AFC disputes) qualified to hold office as a Judge of the High Court of Kenya conversant with matters of Sports. The committee/board will be charged with the preparation of an all-inclusive elections process of AFC from grass roots to national level; vetting of all applicants for any level of leadership in AFC, set the rules inclusive of dispute resolution mechanism in the process;
- i) Arrange elections of office bearers within one hundred and twenty (120) days from the date hereof;
- j) The IMC shall present officials elected as provided for at (h) and (i) above to the Sports Registrar for registration in lieu of the present applications by the current Petitioners and Respondents and the Sports Registrar shall to this end stay any further consideration of the pending applications.

58. All the parties herein are at liberty to apply to the Tribunal for such further or other orders or clarification for purposes of effecting the foregoing orders;

59. The matter will be mentioned before the Tribunal on 26<sup>th</sup> January 2016 to review the progress of compliance with the directions of the Tribunal;

60. In view of the conclusion to which we have come, the Tribunal orders that each party will bear its costs.

**DATED** at **NAIROBI** this 22<sup>nd</sup> day of December, 2015

Signed:

**Elynah Shiveka (Mrs)**

Vice Chairperson, Sports Disputes Tribunal

**Delivered in the presence of:**

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