



REPUBLIC OF KENYA

THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

APPEAL NO 21 OF 2018

JAQUELINE NJERI WAIDHIMA MWANGI.....1ST APPLICANT
DANIEL KABULOSO ONYANGO.....2ND APPLICANT
STEPHEN KIOKO.....3RD APPLICANT
MUTURA KURIA.....4TH APPLICANT
ELIUD KARANJA.....5TH APPLICANT
TEDDY ANDAJE.....6TH APPLICANT
MICHAEL MUNGE.....7TH APPLICANT
SAMMY SITUMA.....8TH APPLICANT

-VERSUS-

ANTHONY K. MBURU.....1ST RESPONDENT
ROSALINE WAIRIMU KAROGI.....2ND RESPONDENT
LAMECK WAFULA KHAMALA.....3RD RESPONDENT
REGISTRAR OF SPORTS.....4TH RESPONDENT

DECISION

Hearing 9th October, 2018

Panel John Ohaga - Chairman

Elynah Shiveka - Deputy Chairperson

GMT Ottieno - Member

Peter Ochieng - Member

Appearances Ms. Veronica Kimiti, Advocate instructed by Kimiti & Associates for the Applicants; Mr. Lameck Wafula Khamala, 3rd Respondent and Chief Executive Officer of the Kenya Federation of Roller Skating representing the 1st Respondent; Ms. Rosaline Wairimu Karogi, 2nd Respondent and Vice Chairperson of the KFRS;

The Parties

1. The 1st to the 8th Applicants are Skaters whose intention is to represent Kenya at the forthcoming 2nd African Speed Skating Championships scheduled for 26th October to 3rd November, 2018 in Cairo, Egypt.
2. The 1st, 2nd and 3rd Respondents are officials of the Kenya Federation of Roller Skating (KFRS) who are responsible for the sport of Skating in Kenya.
3. The 4th Respondent is the Sports Registrar in Kenya.

Background

4. The proceedings have been commenced by way of a Notice of Motion filed on 19th March, 2018 under certificate of urgency the supporting affidavit of Jaqueline Njeri Waidhima Mwangi sworn on 19th September, 2018 (jointly '**the application**'). The nature of the urgency is that in respect of the selection for the forthcoming 2nd African Speed Skating championships that are scheduled for Egypt, Cairo from the 26th October to 3rd of November, 2018, the 1st to 3rd Respondents did not use clear and transparent criteria to select the Kenya Team to the above championships thus denying the Applicants and others an opportunity to put themselves up for consideration.

5. The Appellants aver that there are indications that the 1st, 2nd and 3rd Respondents intend to rely on a disputed list of representatives without conducting a fresh nationwide selection and that the 1st, 2nd and 3rd Respondents have blatantly failed and or refused to communicate to the various clubs or athletes regarding the selection criteria.

6. The Appellants opine that it is not too late for the best team to represent the country in the forthcoming 2nd African Speed Skating Championships to be selected by holding fresh trials since there is still adequate time to organize and execute such.

7. Tribunal was invited to make the following orders:

i) Compel the 1st, 2nd and 3rd Respondents to organize a fresh, fair and transparent selection race for the 2nd African Speed Skating championships, in Cairo, Egypt from 26th October to 3rd November, 2018.

ii) Bar the 1st, 2nd, and 3rd Respondents from presenting an illegally selected team to participate in the above championships in Cairo, Egypt

iii) Direct the 4th Respondent herein, Sports Registrar, to confirm whether the Kenya Federation of Roller Skating complied with the provisions of sections 46, 47 and 49 of the Sports Act 2013.

iv) The costs of the appeal/application to be provided for.

8. In this case, upon reading the application and having given consideration to the brief submissions of Ms. Veronica Kimiti, Counsel for the Appellants the Tribunal duly certified the matter as urgent and further ordered that the Appellants through their Counsel to ensure service of the same upon the 1st, 2nd, 3rd and 4th Respondents.

9. Compliance of the same was confirmed when the matter came up for mention on 2nd October, 2018 and the matter was accordingly scheduled for hearing on 9th October, 2018 at 2.30pm.

Jurisdiction

10. The Tribunal has undoubted jurisdiction to hear and determine this dispute in view of the provisions of Section 58(a) of the Sports Act, 2013 which states as follows:

The tribunal shall determine –

(a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including –

(i) Appeals against disciplinary decisions

(ii) Appeals against not being selected for a Kenyan team or squad

11. In SDT Appeal No. 1 of 2018 - Khaaliqa Ninji vs. Kenya Squash Rackets Association, the Tribunal identified the policy reason for Parliament giving the Tribunal jurisdiction to determine matters of selection as readily appearing from the spirit in which the Sports Act, 2013 was promulgated. The Tribunal stated as follows:

Without doubt, the purpose of selection of a team to an international event is to ensure that the country is able to send its very best competitors who would represent the country on the international stage. Once it is understood that the country expends funds to send sportsmen and women to international events, it becomes clear that such expenditure must be expended on the basis of the criteria that can be verified, that is ascertainable and objective, and this is in keeping with the Constitutional Principles set out at Article 10 (2) (c) which states that National Values and Principles include good governance, integrity, transparency and accountability.

Brief discussion

12. Upon hearing the matter respective parties and having evaluated documents and submissions by the parties and the nature and urgency of the matter, the Tribunal has come to the conclusion that it is in agreement with the Applicants/Appellants that a selection process must be fair, transparent and inclusive and the terms and conditions thereof must be known to the participants ahead of the selection date.

13. The purpose of a criteria is to enable both players and officials to have an objective and verifiable basis upon which selection decisions can be made. Whilst the Tribunal is alive to the difficulties that Sports organizations face when the number of places available to send players to international events are reduced, this does not change the principle which requires the criteria be followed unless there are extraordinary circumstances which militate against strict adherence to the criteria. Officials of Sports Organizations can no longer arrogate to themselves the power to run associations at their whim and without consultation with their members. Indeed, it is for this reason that the Sports Act requires every sports organization to have a constitution and that selection of athletes to national teams be based on verifiable criteria.

Conclusion

14. The following **orders** therefore commend themselves to the Tribunal:

i) The Kenya Federation of Roller Skating represented by the 1st, 2nd and 3rd Respondents shall organize a credible, fair, transparent and verifiable selection race for the forthcoming African Speed Skating Championships to be held in Cairo Egypt between 26th October and 3rd November, 2018;

ii) That in view of the urgency of the matter, it is hereby directed that the Applicants and the 1st, 2nd and 3rd Respondents being officials of KFRS shall meet on Friday 12th October, 2018 to agree on the selection criteria for the said championships;

iii) That the said selection race shall be held on or before Monday 15th October, 2018 at a venue agreed upon by all parties;

iv) That the said selection criteria shall be filed at the Tribunal on or before Tuesday 16th October, 2018;

v) That the final team list selected following the above order shall be filed at the Tribunal on or before Tuesday the 16th October, 2018;

vi) That the Federation shall prepare for discussion among all its stakeholders and publish a document that provides for a transparent, all inclusive and fair qualification/selection system for all international events;

vii) That in view of the certificate of registration presented at the Tribunal from the 4th Respondent (Sports Registrar), KFRS shall commence with the process of compliance with direction 2, 3, and 4 of the Certificate of Registration No. 86 issued on 9th October, 2018 by the Sports Registrar;

viii) That a programme of compliance with the Sports Registrar's conditions shall be filed at the Tribunal in the next 30 days.

ix) Each party to bear their own costs

x) This matter to be mentioned on Tuesday 16th October, 2018 at 2.30pm.

Dated at Nairobi this 11th day of October, 2018.

Signed:

John M Ohaga

Chairman, Sports Disputes Tribunal

Signed:

Elynah Sifuna-Shiveka

Deputy Chairperson, Sports Disputes Tribunal

Signed:

Gilbert M T Ottieno

Member, Sports Disputes Tribunal

Signed:

Peter Ochieng

Member, Sports Disputes Tribunal



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