



REPUBLIC OF KENYA

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

APPEAL CASE NO. 8 OF 2018

SHIKOKI AKAKA & OTHERSAPPELLANT

VERSUS

KENYA HANDBALL FEDERATION.....RESPONDENT

DECISION

Hearing: 11th September, 2018

Panel:

1. Mr. John M Ohaga CI Arb – Chairperson
2. Ms. Mary N Kimani – Member
3. Mr. Robert Asembo – Member

Appearances:

1. Mr. Shisoka Akaka acting in person for the Appellants;
2. The Respondents is represented by Mr. Edward Rombo, Instructed by Rombo & Co. Advocates.

A. PARTIES

1. The Appellants describe themselves as male adults of sound mind and members of the Kenya Handball Federation.
2. The Respondent (hereinafter referred to as the “**Federation**”) is a Sports Association created and licensed under the provisions of the Sports Act, 2013 and the Sports Registrar Regulations, 2016 with the mandate of promoting, developing, staging and supporting the sport of handball on Kenya.

B. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties’ submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ submissions, pleadings and evidence are set out, where relevant,

in connection with the legal discussion that follows.

4. While the Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, the Tribunal in its Decision refers only to the submissions and evidence it considers necessary to explain the reasoning for supporting the Decision.

5. The following matters are not in dispute:

a. The parties herein have previously appeared before the Tribunal in SDT Appeal No. 42 of 2016 and a decision made by the Tribunal on 24th January, 2017.

b. On 8th June, 2018 the Respondent circulated a notice of a Special General meeting to be held on 30th June, 2018 with the main agenda of conducting elections to select members to the executive committee.

c. The elections scheduled to take place on 30th June, 2018 did not take place.

C. PROCEDURAL HISTORY

6. The Appellants filed a Notice of Appeal on 10th May, 2018 against the Respondent and the same was filed at the Tribunal as Appeal No. 8 of 2018. The matter was listed for mention on 19th June, 2018.

7. At the mention, the Respondents did not appear prompting the Tribunal to issue summons requiring the Respondents to appear.

8. The Respondent entered appearance on 25th June, 2018 being represented by Mr. Edward Rombo, who is instructed by the firm of Rombo & Co. Advocates.

9. The matter next came up on 7th August, 2018 for a mention. At the mention both parties confirmed that they had filed their documents with the Tribunal.

10. The matter came up for hearing on 11th September, 2018 where the parties presented their respective cases. The matter is now before the Tribunal for determination.

D. PARTIES SUBMISSIONS

11. At the hearing, the parties addressed the issues for determination. The Parties submissions, in essence, may be summarised as follows;

- **The Appellants case**

12. Mr. Akaka spoke on behalf of the Appellants. He relied on his affidavit filed on 6th August, 2018.

13. He made his opening submission by stating that the main prayer in this appeal is that the Respondent's elections should not take place until an independent body is appointed to oversee a free and fair election.

14. Mr. Akaka submitted that the independent body appointed to take conduct of the elections was not properly constituted as the chairpersons, secretaries of treasurers of the branches were not consulted during its formation.

15. He submitted that the independent body is not properly constituted and therefore is not competent to undertake the election process. He stated that the committee as it is presently constituted cannot receive the candidate nominations as it is not impartial.

16. He further stated that the Respondent is undergoing a transition due to the changes in its constitution. The new constitution has reduced the number of officials. He submitted that the reduced number of elective slots for officials brought up an issue with regards to the position of the incumbents. He stated that the incumbents should not be allowed to vote despite the.

17. Mr. Akaka submitted that there were issues with the Kenya Defence Forces branch elections as there are different lists of officials as indicated in the annexures NG-3 & NG-4 of the Affidavit sworn by Mr. Akaka and filed on 6th August, 2018. T

18. He stated that the second list (NG-4) is not credible and illustrates the mismanagement and graft that is going on in the election preparation process.

19. He submitted that there is very real danger that the multiple lists will enable illegitimate officials to take part in the national election or be nominated to the national committee.

20. Mr. Akaka also submitted that the Appellants have also exhausted all internal dispute resolution mechanisms available in the federation and that the Appellants strongly oppose the notion that the matter can be handled in a SGM as the Federation has not held an AGM in 8 years.

21. He also submitted that dissemination of information by the national office is limited. He alleged that the national office is using its control on communications to frustrate and lock out certain branches from participating in the election. He directed the Tribunal to his letter marked as NK -5, letter dated 3rd August, 2018.

22. He stated that it is the secretaries are in charge of communication as per the constitution of the Federation. Therefore, the Secretaries General, by sending information to the Chairpersons of branches and not the secretaries were in breach of the constitution and is laced with malice to limit information available to members.

23. The 2nd Appellant, Sam Mwangangi, Secretary KDF Branch further emphasized Mr. Akaka's position by stating that the communication is always disseminated from the Secretary of the national office to the secretaries to the branches and has been the case over the past 20 years.

24. He stated that the Chairpersons of branches are not necessarily handballers but in some cases are investors to the game as opposed to secretaries who as stakeholders in the game of handball and take an active part in its activities.

25. Mr. Akaka also submitted that the Respondent was acting illegally as it had proceeded with the election despite the fact that the Appellants had instituted proceedings at the Tribunal.

26. He also stated that the current constitution needs to be redrafted due to the numerous errors and inconsistencies which has locked out numerous parties from taking part in handball administration and hindered the growth of the sport. He pointed out Articles 3, 5 & 6 as examples of erroneous provisions that required to be redrafted.

27. In conclusion, Mr. Akaka submitted that if the elections were allowed to proceed, they would not be free fair and credible.

• **The Respondent's Case**

28. The Respondent, through its counsel Mr. Rombo, began by reiterating that it opposes the appeal and stated that there is no dispute in this matter that invokes the Tribunals jurisdiction under section 58 of the Act.

29. The Respondent also states that the Appellant has no locus as his branch is not registered as required under section 48 of the Act, it does not have a constitution, nor has he furnished any proof of being a secretary general for Western Branch. The Respondent alleges that Mr. Akaka is acting on his own and is not acting on behalf of the Western Branch.

30. Mr. Rombo further submitted that the Federation has always been registered despite the allegations raised in its affidavit that the

Federation had not been properly registered.

31. The Respondent further stated that the Appellants' grievances could have been resolved at the first instance at the federation level as opposed to being brought forwards to the appeal level.

32. As such the Appellants have not exhausted the remedies available to it internally at the Federation level or by the Sports Act and its subsidiary legislation.

33. Mr. Rombo did concede that Regulation 20(2)(a) of the Sports Registrars Regulations make it a requirement that an independent body should oversee the elections.

34. He submitted that the process of selecting such a body has not yet taken place and as such the Appellant's argument that the body overseeing the elections lacks credibility is premature and false.

35. With regards to the status of the federation's constitution, the Respondent stated that the Appellant is crying foul on the constitution despite being a part of the committee that formed it. Furthermore, he is well aware of the channels where he could raise his grievance.

36. In conclusion, Mr. Rombo stated that the Appellant's have not presented any evidence to support their claims and that this appeal is designed to delay the election process as they are not ready nor are they registered.

37. The Respondent prays that the Tribunal should find that it has no jurisdiction, that there is not dispute in this matter, that Mr. Akaka has no locus in this matter, that the disputes raised should have been resolved internally at the federation level and that the Appellants claims should be dismissed as they are not based on fact but irrational fears.

• Appellant's Response

Mr. Akaka stated that he was indeed the secretary general of western branch and that the branch has a constitution which he could present.

E. REASONING

38. Having taken into account the parties' pleadings and submissions, the Tribunal is now in a position to clearly formulate the issues for determination. These issues are discussed below.

Whether the Tribunal has the requisite jurisdiction to hear and determine the matter the matter at hand

39. The Respondent has challenged the Tribunals jurisdiction as per section 58 of the Sports Act. The Respondent submitted that the matters raised in the Appeal could be resolved at the Federation level or by the Registrar of Sports as opposed to being brought forward to the Tribunal.

40. The Tribunal being a creation of the Sports Act defines its jurisdiction from the statute and thus cannot act beyond the scope provided therein.

41. It is therefore essential for this Tribunal to determine whether it has the jurisdiction in this matter before it proceeds to make a determination on the pertinent issues raised by the parties

42. The Tribunals jurisdictions is set out in section 58 of the Act which states that:

"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;

b) other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and

c) appeals from decisions of the Registrar under this Act.”

43. In this matter, the main contention has been the formation and constitution of an independent body to oversee the elections.

44. After considering the arguments put forward by both parties, the Tribunal determines that the issue in contention should have been raised and resolved at the Respondent’s General Meeting failing which the same could also have been resolved by the Sports Registrar.

45. The Tribunal therefore finds that this dispute should be referred to the Sports Registrar for arbitration and mediation as provided for at Regulation 21 (1) of the Sports Registrar’s Regulations, 2016.

46. If the parties are dissatisfied after the Sports Register’s intervention, they may then approach the Tribunal by way of appeal as provided under Regulation 21 (2) of the Sports Registrar’s Regulations which states that:

“An organization, a body or a person that is dissatisfied with the decision of an arbitrator, mediator, arbitration or mediation panel may appeal to the Tribunal within twenty- one days of the decision of the panel.”

47. The Tribunal therefore finds that this Appeal was filed prematurely and that it does not have the jurisdiction to entertain this matter under section 58 of the Act.

48. In light of this, the Tribunal finds that it lacks competent jurisdiction to hear and determine this Appeal.

F. CONCLUSION

49. Accordingly, having reached the conclusion that it has, the Tribunal consequently directs as follows:

a) The Appellant’s appeal is hereby struck out;

b) Costs are reserved.

Dated at Nairobi this 2nd day of October, 2018

Signed:

John M Ohaga FCI Arb; Chartered Arbitrator

Chairman, Sports Disputes Tribunal

Signed:

Mary N Kimani Member

Robert Asembo Member



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