



REPUBLIC OF KENYA

THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

CASE NO. 7 OF 2018

DEAF VOLLEYBALL ASSOCIATION OF KENYA..... CLAIMANT

-VERSUS-

KENYA SPORTS FEDERATION OF

THE DEAF & 2 OTHERS.....RESPONDENTS

DECISION

Hearing: 14th August 2018

Panel: Elynah Shiveka (Mrs);

Robert Asembo; and

Peter Ochieng

Appearance: For the Claimant- Mr. Njuguna of Njuguna Ng'ang'a & Associates Advocates; for the Respondents, Mr. Rombo of Rombo & Company Advocates

A. PARTIES

1. The claimant describes itself as a duly registered national association using the sport of the death persons' volleyball activities, registration being under the office of the Registrar of Sports.
2. The 1st Respondent is described as an umbrella sports organization mandated to promote deaf sports in Kenya.
3. The 2nd and 3rd Respondents are the main officials as President and General Secretary of the 1st Respondent.

B. FACTUAL BACKGROUND

4. The Claimant has sought on several occasions to be admitted and recognized as a member of the 1st Respondent without due response and unsuccessfully so.

5. The claimant contests that the 1st Respondent's officials have no legality of office and aver that they have outlived their tenure, beyond known and legal terms of office.
6. The claimant is also opposed to the Respondents and particularly the 2nd and 3rd Respondents exercising the mandate of convening the Annual General Meeting and elections that had been initially scheduled for the 9th June, 2018.
7. The 1st Respondent aver that the claimant is not their member and should not be part and parcel of the 1st Respondent's decision-making events such as constitutional amendments, the Annual General Meeting and elections.
8. On May 3, 2018, the claimant filed a complaint in view of the foregoing with the Tribunal against the Respondents.
9. On May 14, 2018, the Registrar of Sports had written to the 1st Respondent directing that a proper notice for AGM and elections be issued following the 1st Respondent's letter of May 9, 2018.
10. The 1st Respondent through the 3rd Respondent issued a fresh notice of AGM and election on 17th May 2018 scheduled for 9th June, 2018.
11. On May 29, 2018, the matter was mentioned before the Tribunal and adjourned to June 12, 2018 over service and representation preliminaries.
12. On June 8, 2018, one Simon Adem filed an application under Certificate of Urgency seeking to restrain the Respondents from holding the AGM and elections on the next day.
13. On June 19, 2018, Simon Adem and Susan Kirima - the 3rd Respondent both appeared before the Tribunal and the latter sought 7 days to respond to the former's application of June 8, 2018. The application was scheduled for the hearing on June 26, 2018.
14. On June 25, 2018, the Respondents had MR. Rombo and the firm of Rombo & Company Advocates on record to represent them. The requisite Memorandum of Appearance, Replying Affidavit, Defence were consequently filed.
15. On July 3, 2018, the Claimant appointed Mr. Njuguna and the firm of Njuguna Ng'ang'a & Associates as their advocates in the matter.
16. The Tribunal in concurrence of the parties set the matter for hearing on July 31, 2018 and subsequently the claimant filed their submissions on August 14, 2018 while the Respondents complied on August, 28, 2018.

C. THE HEARING

17. At the Hearing, the Claimant called two witnesses and the Respondent matched them with a similar number.
18. The main issues for determination emerging from the Hearing and the materials filed by the parties can be summed up as:-
 - i) The registration status of the 1st Respondent
 - ii) The legality of the consultation of the 1st Respondent specifically in respect to membership.
 - iii) The validity and/or legality of the AGM and notice for elections of the 1st Respondent.
 - iv) The Registration status of the claimant.

The question of Registration status of the 1st Respondent

19. This is the least contested issue judging from the materials and pleadings of the parties of the case. The Claimant in its

submissions stated that the 1st Respondent “is also registered as a sports organization, as such, the 1st Respondent is, or rather should be, an umbrella body for all the deaf sports associations within the country.” (See Part A, Paragraph 2)

20. The Respondents in their statement of defence (filed 28/8/2018) paragraph 1 admit the description by the Claimant of the parties in the Statement of claims further the Respondents have annexed the Certificate of Registration dated December 18, 2017 in the Replying Affidavit of one Peter Kalae (filed on 28/6/2017).

21. It is our considered finding that the 1st Respondent is registered /or has transited in compliance of the sports Act 2013 and the status is clear that it is a National Sports Organization pursuant to Section 47 of the Act, and it is an umbrella body under **Rule 01 (e)** of its own constitution.

The legality of the Constitution of the 1st Respondent, moreso on membership

22. The Claimant argues that the Constitution of the 1st Respondent is unaccommodative and needs amendment. The claimant avers that it is discriminatory and non-inclusive.

23. The Claimant urged the Tribunal to have the 1st Respondent admit and recognize them as ordinary and/or associate members per the 1st Respondent’s constitution under **Rule 03**.

24. The Respondents on their part have not yet recognized nor admitted the claimant as a member. It is apparent that the Respondents have put some conditions against the Claimant. The Respondents also aver that the Claimant is not a legally registered body and cannot in the circumstances operate as a sports organization nor demand membership (and/or recognition).

25. From the evidence on record, it is clear that the Constitution of the 1st Respondent is subject to and amenable to review (amendment). This is well laid out in condition No. 2 of the Certificate of Registration issued by the Registrar of Sports on December 18, 2017. However, the said constitution under **rules 01** (objective) and **03** (membership) has the scope and occasion to accommodate and recognize the Claimant. Our attention is drawn to **Rule 01 (a, b, c, d, e and i)** **Rule 03 (ii) (C)** and **Rule 09** of the 1st Respondent’s Constitution.

26. We are persuaded that the 1st Respondent bears the obligation to accept or reject the membership of the Claimant whenever applied and the duty to communicate the same unfortunately which to date it has abrogated, but must so discharge for clarity, the rejection of an application to the membership of the claimant must be in clear and well stated reason(s). As to the review/amendment of the Constitution, the same should be per laid down procedures and subject to approval of the office of the Registrar of Sports. This should settle issue No. 2 hereinabove.

The legality of the Notice of AGM and Elections

27. The Claimant sought to restrain the Respondents from holding the AGM and elections in May and June, 2018 on the contestation of the legality of officials, the tenure of the office bearers and the composition of membership. Equally, the Registrar of Sports communicated in May 2018 calling off elections and the AGM on grounds that a proper notice had to be issued to affiliate sports organizations of the 1st Respondent.

28. We hold the view that at this point in time, the office of the Registrar of Sports to the proper place as the Tribunal shall lay in wait and not pronounce itself on the legality, validity and or necessities of the AGM and Election Notices and processes. However, we quickly caution that the precedent is well established that we can intervene and always welcome petitions or appeals on the outcome of AGMs or Elections of Sports organization and by law we can nullify or uphold the eventual results.

The registration status of the Claimant

29. The Claimant averred in its submissions that it is “a duly registered national sports association running the deaf persons’ volleyball activities”.

30. The Respondent contested this and argued that the claimant had not presented in evidence their certificate of Registration and

that it is only the supplementary affidavit of one Simon Ngunjiri that provided an acknowledgement letter of August 29, 2014 by the Registrar of Sports with no indication as to the Registration Status of the Claimant since 2014.

31. We readily agree with the Respondents that indeed an acknowledgement of application for Registration is far from being duly registered. Notwithstanding the non-registration of the Claimant, we are persuaded however, that the claimant is a key stakeholder and has noticeable interests in the good management and sound administration of the Deaf Sports as run by the 1st Respondent as an umbrella sports organization.

32. We further take note that registration is a process and the office of the Registrar of Sports is well mandated to keep this forte under the Sports Act 2013.

33. As the Tribunal we remain in wait, once more to the occasion of appeal on the Registrar's decision for non-registration as th case may be under Section 55 of the Sports Act 2013.

D. Conclusion

34. In light of the foregoing, and having considered all the materials, pleadings, testimonies and submissions by the parties and in due regard to facts and the law, the upshot of our decision is that the claim is not entirely unmerited and the following orders do issue:-

i) *The Respondents shall within seven (7) days communicate to the claimant the acceptance or reasons for rejection of Claimant's application to its categories of membership under **rule 03** of 1st Respondent's Constitution.*

ii) *The 1st Respondent's AGM and Election can go on under the strict guidance of the office of the Registrar of Sports.*

iii) *The 1st Respondent to abide by the Registrar of Sports registration conditions in the certificate of registration of 18th December, 2017.*

iv) *Each party to bear its own cost.*

v) *Right of appeal granted and to be within 14 days from this date.*

Dated and delivered this 25th day of October, 2018

Signed:

1. Elynah Shiveka (Mrs)

2. Robert Asembo

3. Peter Ochieng



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