



REPUBLIC OF KENYA

THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

APPEAL NO. 22 OF 2015

VINCENT SAMUEL WAWERU

-VERSUS-

FOOTBALL KENYA FEDERATION

&

FOOTBALL KENYA FEDERATION ELECTORAL BOARD

DECISION

Hearing: 8th March, 2016

Panel: Mr. John M Ohaga Chairperson

Mrs. Elynah Shiveka Vice Chairperson

Mr. Gabriel Ouko Member

Ms. Mary Kimani Member

Appearances: Ms. Muinde for the Appellant

Ms. Mitey for the 1st Respondent

Ms. Abok for the 2nd Respondent

The Parties

1. The Appellant, Vincent Samuel Waweru is an adult male of sound mind. He is the Founder and Chairperson of Ting'ang'a United Football Club which is situate within Kiambu Sub Branch of Aberdare Branch of FKF. He was a delegate in the Kiambu Sub Branch elections and an aspirant for the seat of Secretary in the Kiambu Sub Branch elections in the year 2015. His address of service for purposes of this suit is care of Messrs Ranja & Company Advocates, Lange Lange Apartments, 1st Floor, Suite No.8, Off Milimani Road, P. O Box 26543-00100 Nairobi.

2. The 1st Respondent is the Football Kenya Federation which is the national sports organization in respect of the sport of football in Kenya. Its address for purposes of this suit shall be care of Messrs Sila Munyao & Company Advocates, 3rd Floor, Koin-Eei Plaza, Temple Road, P.O Box 1835 Kericho.
3. The 2nd Respondent is the Football Kenya Electoral Board which had exclusive mandate from the 1st Respondent to run the 1st Respondent's elections for the year 2015. Its address of service for purposes of this suit is care of Messrs Mereka & Company Advocates, Ukulima Co-Operative House, 7th Floor, Haile Sellasie Avenue, P. O Box 41620-00100 Nairobi.
4. The 1st Interested party is the current Secretary General of the Football Kenya Federation Aberdare Branch.
5. The 2nd and 3rd Interested Parties are the outgoing Chairs of the Football Kenya Federation and the Secretary General Kiambu sub branch respectively.
6. The 4th to the 11th Interested Parties are the winners and the officials of the Kiambu sub-branch elections held on the 15th December, 2015. The address of service for the interested parties is care of Messrs W M Njagi & Associates, St. Georges House, 1st Floor, Suite No. 110 Parliament Road, P.O Box 27019-00100, Nairobi.
7. The Appellant and the Respondents in this Appeal entered appearance and filed appropriate documents.

The Background

8. The Institute of Education and Democracy on 4th December, 2015 through the mandate of the Respondents embarked on conducting nation-wide sub-branch elections in 85 sub branches across the country.
9. In the Kiambu Sub- Branch, in particular at the Kiambu Primary school, on the 4th December, 2015, delegates, aspirants, interested parties as well as hired goons engaged in confrontations with the officials from the Institute of Education and Democracy. The issue causing the confrontation was a dispute over the list of clubs and delegates. It was alleged that several clubs that had been illegally included by the 1st Respondent yet they did not meet the required threshold which included a three-year participation in the sub-branch level league.
10. The Institute of Education and Democracy tried to maintain calm and decorum but was left with no other option but to cancel the elections after the dispute escalated to violence.
11. The Appellant, aspirants and delegates alike had reportedly and continuously written to the 2nd Respondent regarding issues with the list of ineligible clubs and delegates who were cleared to participate in the elections.
12. The Kiambu Sub Branch elections were rescheduled to the 15th December 2015 after the botched elections of 4th December, 2015.
13. On 14th December, 2015 the 2nd Respondent uploaded another list of clubs and delegates for the Kiambu sub-branch elections. The Petitioner claims that this violated his right to raise concerns about the list before the elections were held. The 1st Interested Party who is the current Secretary General of KFK Kiambu sub-branch on the other hand avers that complaints to the amended list of parties and delegates were only made by the Appellant after he lost the elections.
14. On 17th December, 2015 the Appellant herein aggrieved with the manner and the results of the Kiambu sub-branch elections filed before the FKF Appels Board, *Petition No. 7 of 2015 Vincent Samuel Waweru versus Football Kenya Federation & Football Kenya Federation Electoral Board* where he sought *inter alia* an order that the Kiambu sub branch elections held on 15th December, 2015 be nullified on the ground of their irregularity and illegality.
15. The Appellant argued that the elections never took place in a number of sub-branches due to various reasons including chaos caused by the uproar over the list of clubs and delegates.
16. The matter was heard in full with all parties testifying before the Football Kenya Appeals Board. The Board delivered its

decision on 30th December, 2015 through which it dismissed the Petition on the grounds that the Petitioner had failed to prove his allegations of non-conformity with the electoral laws and how the said non-conformity, if any, affected the validity of the elections.

17. The Appellant appealed the decision to the Sports Disputes Tribunal vide a Notice of Appeal dated and filed on 29th January, 2016 wherein he prayed for the following orders, *inter alia*:

i. The appeal be allowed with costs to the Appellant;

ii. The decision and the findings of the Football Kenya Appeals Board delivered on 30th December, 2015 be set aside and this Honourable Tribunal do allow the Petition dated 17th December, 2015 as prayed; and

iii. The results of the Kiambu sub branch elections held on 15th December, 2015 be nullified and the officials be suspended from office pending the final hearing and determination of this appeal.

The Preliminary Objection

18. The 1st Respondent raised a preliminary objection and filed the Notice of Preliminary Objection on the 1st March, 2016. Their objection sought to have the Appeal struck out on the grounds that the Honourable Tribunal does not have jurisdiction to hear and determine the Appeal as presented and that further the same was incompetent.

19. The Tribunal listened to parties' arguments on the preliminary objection on the 8th March, 2016 and delivered its oral decision on the same date.

1st Respondent's Arguments

20. The 1st Respondent through their advocate Ms. Mitie argued that the subject of this Appeal was heard and finally determined by the Electoral Appeals Body vide *Petition No. 7 of 2015* whose decision was rendered on the 30th December, 2015.

21. They further argued that the decision of the Electoral Appeals Body is proper and final and that the Sports Disputes Tribunal lacks the jurisdiction to hear and determine the Appeal as presented before it.

22. Ms. Mitie further submitted that the dispute as presented by the Appellant is not a sports related dispute as contemplated by the Sports Act, 2013 and that there were no irregularities or malpractices which affected the validity of the results.

23. The 1st Respondent further averred that they did not by themselves or through their agents commit any electoral offences and that the elections were conducted in accordance with the Football Kenya Federation Constitution, the Football Kenya Federation Electoral Rules and Regulations, 2015 and the laws of Kenya.

24. The 1st Respondent submitted that the elections in the Kiambu Sub Branch reflected the will of the clubs and delegates from the area and that allowing this appeal would not only amount to a violation of the Football Kenya Electoral Rules and Regulations but also an abuse to the Tribunal's own process.

25. The 2nd Respondent through their advocate on record Ms. Abok fully associated with the submissions made by the 1st Respondent and prayed that the preliminary objection be upheld.

Appellant's Arguments

26. The Appellant through his advocate on record Ms. Muinde argued that the preliminary objection as filed by the 1st Respondent is irrelevant and ought to be dismissed with costs. She argued that the instant suit is in fact a sports related dispute as envisaged by section 59(b) of the Sports Act, 2013 as it deals with the governance and regulations of the sport of football in Kenya.

27. Ms. Muinde submitted that the elections of the officials in the Kiambu sub-branch as well as elections in other branches and at

the national level is a matter within the Tribunal's jurisdiction. Therefore, the Tribunal is vested with the powers to determine the fairness and legality of the elections that took place in Kiambu sub-branch on the 15th December, 2015.

28. She further argued that the Football Kenya Appeals Board did not properly consider the evidence presented before it thereby prompting this appeal.

Issues for Determination

29. Having read the pleadings filed and listened to the elaborate submissions by advocates for the parties herein, the Tribunal finds the following as an issue for its determination:

Whether the Tribunal has jurisdiction to hear and determine this appeal

Determination

30. **The Sports Act, 2013** stipulates at **Section 59** the specific instances where the jurisdiction of the Tribunal can be invoked. It 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.

31. The Tribunal continues to reiterate its commitment towards advancing the principles of good governance and transparency in the sporting field and within the relevant bodies and associations that govern sports in Kenya.

32. The Tribunal has also always advocated for ample opportunities for sporting bodies to resolve their own disputes within their own internal mechanisms before approaching the Tribunal.

33. The Tribunal therefore appreciates that parties first sought redress at the Football Kenya Appeals Board and that a decision was delivered on the 30th December, 2015 in relation to the elections that were undertaken on the 15th of the same month.

34. Counsel for the Respondents drew the Tribunal's attention to the FKF Electoral Rules and Regulations, 2015. In particular, they pointed out that Rule 19 (1) is to the effect that the **appeals against any decision in respect of any dispute arising from the electoral process may be filed with the appellate body whose decision shall be final.**

35. Jurisdiction is a fundamental matter in the dispensation of justice. The Tribunal is guided by the Supreme Court **In the Matter of Advisory Opinions of the Supreme Court under Article 163(3) of the Constitution, Constitutional Application No. 2 of 2011** at para. 29 and 30 where the court discussed the issue of jurisdiction in the following terms;

“[29] Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent.

*The classic decision in this regard is the Court of Appeal decision in **Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited** [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14): “I think that it is reasonably plain that a*

question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.

[30] *The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity.*”

36. Guided by the above precedent, the Tribunal finds that it lacks jurisdiction to hear and determine this matter pursuant to Rule 19(1) of the FKF Electoral Rules and Regulations, 2015.

37. **Rule 1(i)** of the FKF Electoral Rules and Regulations, 2015 stipulate as follows:

“Elections for the office of FKF President, Deputy President and NEC members, branch and sub branch officials are governed by the provisions of the Statutes, and these Electoral Regulations.”

38. In this regard, the Tribunal refers to Constantinides -versus- Jockey Club of SA 1954 (3) SA 35 (C) at 44B, the Court recognized that

“the constitution of a voluntary association is a contract, resulting in a contractual relationship between the association and its members”

39. The effect of Rule 1 of the FKF Electoral Rules and Regulations, 2015 is that any matter raised as to the conduct and results of elections are to be strictly governed by the provisions of the Constitution of FKF and the election regulations. Thus, the finality of the decisions of the FKF Electoral Appeals Board must be respected and upheld.

40. The Tribunal also notes that the Appellant consciously agreed to be bound by the said rules and regulations and knew or ought to have known that the decision of the appellate body was final. The Tribunal finds that the Appellant herein is therefore debarred from presenting a further appeal to another institution including, the Sports Disputes Tribunal.

41. We therefore find that the Appeal as presented is not within the ambit of **Section 58** of the Sports Act, 2013 and that therefore the Tribunal does not have jurisdiction to entertain the present case.

42. Further, the Tribunal takes notice that there was no indication from counsel for the Appellant whether the process of determining the dispute within the internal mechanism identified was either flawed or plagued with any irregularities. Due to the absence of evidence to suggest otherwise, the Tribunal on a *prima facie* basis presumes that the process was free, fair and in tandem with the rules of natural justice and therefore finds great difficulty vacating the Board’s decisions on that account.

43. The Tribunal reverberates that as a judicial organ, we must allow bodies to apply their internal dispute resolution mechanisms. Parties can only approach the Tribunal when those rules were not followed or abused in some way otherwise the Tribunal will be negating the very rules the bodies themselves are founded on.

44. The Tribunal thereby upholds the Preliminary Objection dated the 1st March, 2016 and finds that it lacks jurisdiction to examine the merits of the Appeal and therefore the 2nd Respondent’s decision dated 30th December, 2015 stands.

45. The Appellant shall bear the costs of the Appeal.

DATED at NAIROBI this 15th day of March, 2016

Signed:

John M. Ohaga

Chairman, Sports Disputes Tribunal



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