



REPUBLIC OF KENYA
THE JUDICIARY
IN THE SPORTS DISPUTES TRIBUNAL AT NAIROBI
PETITION NO.27 OF 2017

SULEIMAN ANGULU.....1ST APPLICANT

OSCAR KAMBONA.....2ND APPLICANT

-versus-

DANIEL. A. MULE.....1ST RESPONDENT

OSCAR IGANDA.....2ND RESPONDENT

OLIVER NAPALI.....3RD RESPONDENT

AFC LEOPARDS SC.....4TH RESPONDENT

DECISION

Hearing: 16th January, 2018

Panel: John M. Ohaga, FCIArb – Chairperson

Gabriel Ouko – Member

Njeri Onyango – Member

Appearances: Mr. Madegwa & Mr. Jumba instructed by Jumba & Co. Advocates for the Applicants

Ms. Sylvia N Matasi instructed by Simba & Simba Advocates for the 1st to 4th Respondents

No appearance for the 5th Respondent

The Parties

1. The 1st and 2nd Applicants are registered members of the 4th Defendant.
2. The 1st to 3rd Respondents are Chairman, Secretary General and Treasurer respectively of the 4th Defendant.

3. The 4th Respondent is a football organization registered previously under the Societies Act but currently transitioning to the Sports Act No. 25 of 2013.

4. The 5th Respondent is the holder of the office of the Sports Registrar, established under section 45 of the Sports Act.

The Dispute

5. Under Certificate of Urgency filed on 4th December, 2017, the Claimants sought the following prayers:

a. That this application be certified as urgency and service of the same be dispensed with at the first instance.

b. That this Honourable Tribunal be pleased to direct the 1st, 2nd, 3rd and 4th Respondents herein to undertake an election of the National Executive Committee (NEC) within a specified period so as to comply with its constitutional provisions as amended.

c. That this Court upon granting this prayer sort (sic) herein above do direct that membership list relied on in the last elections held on 24th July, 2016 as updated by current membership be relied on as the voter register in the said elections prayed for herein.

d. That the costs of this application be borne by the respondents.

6. The Application arises from an Annual General Meeting held on the 25th June 2017 where an amendment to the 4th Respondent's constitution was passed by a resolution of the members present.

7. The Claimant has pleaded that the amendment abolished the NEC, which constituted of a Chairman, Vice-Chairman, Secretary General, Deputy Secretary General, Treasurer, Deputy Treasurer, Organizing Secretary and three (3) Committee members established a new NEC in which the 1st, 2nd and 3rd Respondents retained the positions of Chairman, Secretary General and Treasurer respectively but without subjecting them to an election by the AGM as required by Article 4(2) of the same constitution as amended.

8. The applicant's main grievance is that the retention of office by the 1st, 2nd and 3rd Respondents took place without subjecting them to a fresh election and that the office bearers currently constituting the NEC continue to do so for an undefined period of time and in the absence of elections, the Claimants posit that this defies the doctrine of universal suffrage.

9. On 5th December, 2017 the Registrar of Sports was joined as the 5th Respondent to this suit. There has however been no appearance by the Registrar of Sports.

The Claimants' Case

10. The Claimant filed the following documents in support of its case:

a. Certificate of Urgency sworn by Clarence Jumba Advocate, on 30th November, 2017, Notice of Motion and Supporting Affidavit sworn by Suleiman Angulu, the 1st Claimant on 30th November, 2017 and supporting documents attached therein;

b. Complaint dated 30th November, 2017;

c. Amended Notice of Motion and Amended Complaint dated 6th December, 2017;

d. Supplementary Affidavit sworn by Suleiman Angulu on 9th January, 2018;

e. Skeleton Submissions filed on 11th January, 2018

11. On 25th July 2017, the members of the 4th Respondent resolved to amend the Constitution to reduce the number of office bearers, to facilitate compliance. Ms. Matasi submitted that although a scrutiny of the Sports Act in fact gives no such requirement, the 5th

Respondent insisted that the number of the officials be reduced to three.

12. The amendment abolished the offices of the Vice-Chairman, Deputy Secretary General, Deputy Treasurer, Organizing Secretary and 3 Committee members leaving only the Chairman, Treasurer and Secretary General occupied by the 1st – 3rd Respondent.

13. The Applicants aver that if amendments to a club's Constitution are made, and such amendments are to be effected at a later date, then such later date and process should be covered in the transitional clauses. The Applicants submitted that in the absence of such transitional clauses, the amendments should take effect immediately as they are adopted by the law that envisaged them.

14. It is the Applicants contention that the 1st, 2nd and 3rd Respondents continue to hold offices that have since been abolished by the operation of the law and absent any transitional clauses, there is an illegality which must be cured by requiring the 1st to 3rd Respondents to seek fresh mandate in line with the amended Constitution.

The Response

15. On 18th December, 2017 the 1st to 4th Respondents filed Grounds of Opposition to the application dated 30th November, 2017. Therein they averred that *inter alia* the application is incompetence, misconceived and devoid of merit and the same amounts to an abuse of process.

16. On 16th January, 2018 the 1st to 4th Respondents filed a Replying Affidavit sworn by Dan Mule, who is the 1st Respondent.

17. In the Replying Affidavit, Mr Mule stated that on 25th July, 2017 the 4th Respondent held its Annual General Meeting and among the agenda for the said meeting was amendment of the Club's Constitution to comply with the provisions of the Sports Act, 2013 so as to enable the club obtain a Certificate of Registration from the Office of the Registrar of Sports.

18. He further stated that at the said AGM the members present resolved to amend the Constitution to the effect that the composition of the NEC would be made up of the Chairman, Treasurer and Secretary General who will then co-opt two other members in the event that the 1/3 gender rule is not satisfied in the elections.

19. More importantly is that Mr Mule pleaded that the amended Constitution has since been submitted to the Registrar of Sports for approval. He further indicated that the club has not yet received approval from the Registrar of Sports on the amendments to their constitution.

20. Mr Mule then went on to state that the 1st to 3rd Respondents are the officials of AFC Leopards SC as per the Constitution and are running the club with the full mandate of the members and continue to hold office for the best interests of the club.

21. Mr Mule concluded by urging the Tribunal to allow the current office bearers to complete their term of office and subject to the approval of the office of the Registrar on amendment of the Constitution, allow that the elections of the new officials be held as per the amended Constitution.

22. At the hearing of this matter, Ms. Matasi emphatic that the club could not afford an election. She added that an election is expensive, and the club had no sponsor who could assist to meet the cost of a fresh election.

Determination

23. Although the parties chose not to address themselves to the issue whether this Tribunal has the jurisdiction to hear and determine this dispute. The Tribunal has on its own motion therefore decided to rule on the issue, guided by the celebrated opinion of Nyarangi J. in **The Owners of Motor Vessels 'Lilian S' vs Caltex Oil Kenya Limited (1989) KLR 1**, where he stated:

Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

24. At the hearing, Ms. Matasi confirmed that the Office of the Registrar of Sports was yet to respond and/or offer its position as regards the amendments made to the 4th Respondent's Constitution.

25. Section 45(2) confers the Registrar of Sports with the exclusive jurisdiction to register and regulate the affairs of sports organizations such as the 4th Respondent.

26. Section 49 of the Sports Act provides for registration of transitioning (from the Societies Act to the Sports Act) sports organizations.

27. Section 46 provides organizations seeking registration are required to furnish the Registrar with the Constitution of the organization for the Registrar's approval and consequent registration. Section 45(2) further stipulates that the Registrar of Sports shall be responsible for the arbitration of registration disputes between sports organizations.

28. The jurisdiction of the Sports Disputes Tribunal, is stipulated under section 58 (c) of the Sports Act 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;

(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

29. There was no evidence placed before this Tribunal to demonstrate that the amended Constitution has been submitted to the Registrar of Sports for consideration and/or approval. Further, even if the said constitution, the subject of this dispute, was submitted to the Registrar, it is unknown to this Tribunal whether indeed a decision has been reached. None of the parties to this dispute fully addressed the Tribunal, with supporting evidence, on whether a decision had been made by the Registrar of Sports. The Sports Act is unequivocal that such a dispute or any questions regarding a sports organization's constitution are to be submitted to the Office of the Sports Registrar.

30. Absent any decision by the Sports Registrar in the manner required by section 58(c) of the Sports Act, we must proceed to down our tools until that point when the jurisdiction of the Tribunal is properly invoked.

31. We therefore direct that the application be referred to the attention of the Registrar of Sports for consideration and necessary action.

32. Each party shall bear its own costs.

Dated at Nairobi this 6th day of **February** 2018.

Signed:

John M Ohaga FCI Arb

Chairman, Sports Disputes Tribunal

Signed:

Gabriel Ouko

Njeri Onyango



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