



REPUBLIC OF KENYA

THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

APPEAL No. 13 OF 2017

PETER MUCHIRI KAMAU.....PETITIONER

-versus-

NATIONAL OLYMPIC COMMITTEE OF KENYA....1ST RESPONDENT

CENTRE FOR MULTI PARTY DEMOCRACY.....2ND RESPONDENT

REGISTRAR OF SPORTS.....3RD RESPONDENT

DECISION

Hearing: 4th May, 2017

Panel: John M Ohaga, FCI Arb - Chairman

Gabriel Ouko - Member

GMT Otieno - Member

Appearances: Mr Alex K Inyangu instructed by the firm of Ameli Inyangu & Partners, Advocates for the Appellant.

Mr Duncan M Anzala instructed by Henia Anzala Associates, Advocates for the 1st Respondents.

Mr. Edward A Rombo instructed by Rombo & Co., Advocates for the 2nd Respondents.

Ms. Patricia A Chibole Advocate instructed by the Registrar of Sports, the 3rd Respondent.

The Parties

1. The Appellant has described himself as the Chairperson of Badminton Kenya and a stakeholder in sports in the country
2. The 1st Respondent is an umbrella sports organization in Kenya and is affiliated to, among others, the International Olympic Committee. As such, it has wide-ranging powers including the recognition and admission into its membership of national sports

organizations.

3. The 2nd Respondent is the body appointed by the 1st Respondent to conduct the elections at its Annual General Meeting.

4. The 3rd Respondent is a statutory body established under Section 45 of the Sports Act with the mandate of *inter alia* registering and regulating sports organizations and multi-sports bodies representing sports organizations at the national level.

Brief Background

5. This Appeal is brought against the backdrop of the elections for positions in the Executive Committee of the National Olympic Committee of Kenya which were scheduled to be held on 5th May 2017 ('**the NOCK Elections**'). The Elections have generated considerable controversy with respect to the proper persons eligible to represent various federations and have brought into sharp focus the provisions of the Sports Act ('the Act') which govern the registration of sports organizations.

The Appellant's Case

6. The Appellant's case is relatively straight forward. He complains that one Anna Njambi Ng'ang'a has been nominated to represent Badminton Kenya in the NOCK Elections and that such nomination is invalid because she is neither an official of nor a person mandated to run the activities of Badminton Kenya. The Appellant asserts therefore that such nomination is contrary to Article 17 of the NOCK Constitution and is also in defiance of the records held by the Sports Registrar and which have been communicated to the 2nd Respondent by letter dated 2nd May 2017. The Appellant therefore asks that the decision of the 2nd Respondent validating the nomination of Anna Njambi Ng'ang'a to represent Badminton Kenya be reversed and that he be recognized as the proper representative of Badminton Kenya.

The First Responden'ts Case

7. The 1st Respondent asserts through its Advocate, Mr. Edward Rombo, that the Appellant is unknown to the 1st Respondent and that as far as the 1st Respondent is concerned, Anna Njambi Ng'ang'a is the individual that the 1st Respondent has always known and acknowledged as being the *bona fide* chairperson of Badminton Kenya. Therefore, on this ground there is no proper base for the appeal, and the same should be dismissed.

The Second Respondent's Case

8. The 2nd Respondent was represented by Mr. Duncan Anzala Advocate, who is also a member of the Electoral Board created by the 2nd Respondent. Mr. Anzala, essentially relies on the decision of the Electoral Board dated 28th April 2017.

9. Briefly, the background to the dispute as far as the Electoral Board is concerned is that there are two factions competing to represent Badminton Kenya at the NOCK Elections. One faction has Anna Njambi Ng'ang'a as Chairperson and Geoffrey Shigholi as Deputy Chairperson while the other faction has the Appellant, Peter Muchiri Kamau as Chairman, John Mburu as Secretary and Malika Sood as Treasurer.

10. According to Mr. Anzala, both factions presented nomination papers to the Electoral Board on 21st April 2017. Confronted with nomination papers from two competing factions, it was incumbent upon the Board to determine which faction had the requisite authority to represent Badminton Kenya at the elections.

11. It was Mr. Anzala's submission that the faction led by Anna Njambi Ng'ang'a had been able to demonstrate affiliation to the Badminton World Federation and had also shown that they had picked and prepared several national teams to various international events. They were also in the process of amending the Federation's constitution in order to comply with the Sports Act and towards this end had scheduled an Extra-Ordinary General Meeting for 6th May, 2017.

12. The second faction on the other hand has previously been affiliated to the faction led by Anna Njambi Ng'ang'a until early 2017 when the Appellant went to the office of the Sports Registrar to inquire into the registration status of Badminton Kenya only to

discover that there was no organization registered by that name. The Appellant had therefore testified before the Committee that he had made an application for registration of Badminton Kenya as a sports organization with himself as Chairperson and was granted an interim certificate on 21st March 2017.

13. The Electoral Board had, upon considering the matters outlined above, come to the conclusion that the faction led by Anna Njambi Ng'ang'a was the more deserving of recognition because it had demonstrated a closer affiliation to Badminton Kenya and the Board accordingly allowed Anna Njambi Ng'ang'a to participate in the NOCK Election as the representative of Badminton Kenya.

Discussion

14. The circumstances set out above are not new to the Tribunal as the Tribunal is constantly asked to resolve issues with respect to the proper representative of various sports organizations. This mandate does not, however, belong to the Tribunal as the proper body to resolve these issues is the office of the Sports Registrar.

15. Part VI of the Sports Act, 2013 (**'the Act'**) deals with the registration and regulation of sports and licensing and specifies in great detail the process by which sports organizations achieve legitimacy and recognition which is through registration. Section 46 of the Act provides as follows:

(1) There shall be an office of the Sports Registrar which shall be an office within the Public Service.

(2) The Public Service Commission shall appoint the Sports Registrar who shall be—

(a) in charge of the office of the Sports Registrar;

(b) responsible for the registration and regulation of sports organizations and multi-sports bodies representing sports organizations at the national level, in accordance with the provisions of this Act;

(c) responsible for the matters relating to the licensing of professional sports and professional sports persons in accordance with the provisions of this Act; and

(d) responsible for the arbitration of registration disputes between sports organizations.

(3) The Registrar shall keep and maintain a register of the registered sports organizations and such other particulars relating to the registered sports organizations as may be prescribed.

(4) The Registrar shall issue licenses for professional sports in accordance with the regulations and the requirements that the Cabinet Secretary may prescribe and any other relevant law.

(5) A copy of an entry in the register certified by the Registrar shall, for purposes of any written law, be prima facie evidence of the facts stated in the certificate

Section 47 too then provides as follows:

(1) A body shall not operate as a sports organization unless it is registered under this Act.

(2) The Registrar shall register sports organizations as either—

(a) a sports club;

(b) a county sports association; or

(c) a national sports organization.

(3) An application for registration of a national sport organization shall—

(a) be submitted to the Registrar; and

(b) be in the prescribed form and shall specify —

(i) the name of the sports organization;

(ii) the category under which it is to be registered;

(iii) the office-bearers of the applicant;

(iv) the head office and postal address of the applicant;

(v) sources of funding of the applicant;

(vi) national and international affiliation, if any; and

(vii) such other information as the Cabinet Secretary may prescribe.

(4) An application for registration under this section shall be accompanied by —

(a) a certified copy of the constitution of the applicant; and

(b) such fees as the Cabinet Secretary may prescribe.

(5) A constitution submitted under subsection (3) shall contain, as a basic minimum, the provisions set out in the Second Schedule.

(6) All national sports organizations registered under this Act shall be open to the public in their leadership, activities and membership.

(7) A certificate of registration issued under this section—

(a) shall be conclusive evidence of authority to operate throughout the country as may be specified in the certificate of registration; and

(b) may contain such terms and conditions as the Registrar may prescribe.

16. It will be evident from the foregoing therefore that the decision of the office of the Sports Registrar with respect to registration is *prima facie* evidence of the legitimacy of the sports organization and identity of the officials. It follows therefore that it was not available to the 2nd Respondent to look beyond the records of the office of the Sports Registrar in order to determine who the *bona fide* representatives of Badminton Kenya should be.

17. We understood Mr. Anzala to submit that the letter from the Sports Registrar dated 2nd May 2017 came after their decision of

28th April 2017 and that they therefore made this decision without the benefit of the input from the Sports Registrar. The Tribunal does not, however, accept that this is sufficient reason for the decision of the Electoral Board. Once the Electoral Board recognized that they were asked to determine a matter relating to the legitimacy of a sports organization and the proper officials, then it necessarily fell upon the Board to seek guidance from the relevant legislation which is the Sports Act.

18. Part VI of the Act would have led the Electoral Board to the conclusion that the proper custodian of the records relating to sports organization is the Sports Registrar and to this extent the Electoral Board had no discretion in the matter.

19. As the Sports Registrar has now pronounced herself on the matter, the Tribunal's task is straight-forward and that is to follow the statute.

20. The statute dictates that the decision of the Electoral Board be reversed for the simple reason that it has no foundation in law. The result therefore is that the Appellant should be pronounced as the legitimate representative of Badminton Kenya for the purpose of the representation of the Federation at the NOCK Elections. If Anna Njambi Ng'ang'a faction is dissatisfied with the decision of the Registrar, then the proper recourse is to go to the Sports Registrar in the first instance in accordance with Section 46(2)(d) of the Act. An appeal then lies to the Tribunal challenging the decision of the Sports Registrar under Section 58 (c) of the Act.

21. The purpose of this judgment is to set out the reasons for the decision of the Tribunal made *extempore* on 4th May 2017, and summarized in the order which was signed and sealed on the same date.

22. As the communication from the Sports Registrar came after the 2nd Respondent had made its decision, we think that it is only fair that each party bears its own costs.

Dated at Nairobi this 17th day of May 2017

Signed:

John M Ohaga FCI Arb

Chairman, Sports Disputes Tribunal

Signed:

Gabriel Ouko

GMT Otieno



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