



REPUBLIC OF KENYA

THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

APPEAL NO. 36 OF 2016

JOHN KAMETA.....APPELLANT

-VERSUS-

NATIONAL OLYMPIC COMMITTEE OF KENYA (NOCK).....1ST RESPONDENT

THE CHEF DE MISSION, TEAM KENYA RIO 2016 OLYMPIC GAMES.....2ND RESPONDENT

DECISION

Hearing: 14th July, 2016

Panel: John Ohaga Chairperson

GMT Ottieno Member

Gichuru Kiplagat Member

Appearances Gerry Gitonga instructed by Byrant & Associates Advocates for the Appellant

Edward Rombo instructed by Rombo & Company Advocates for the Respondents

The Parties

1. The Appellant, John Kameta is an adult male of sound mind. He is the President of the Boxing Association of Kenya. He is represented in these proceedings by Mr. Gerry Gitonga of Byrant & Associates Advocates, Eden Square Complex, 7th Floor, Block 1 Chiromo Road, P. O Box 27047-00100 Nairobi.

2. The 1st Respondent, the National Olympic Committee of Kenya is a national sports organization responsible for Olympic sports and is an affiliate of the International Olympic Committee. Its broad mandate is to organize and manage Olympic sports in Kenya; the 2nd Respondent is the Chef De Mission of the Kenya Team to the Rio Olympics. Both Respondents are represented in these proceedings by Mr. Edward Rombo of Rombo & Associates Advocates, Shankardass House, New Wing, 1st Floor, Moi Avenue, P.O Box 2704-00100 Nairobi.

Background

3. The proceedings have been commenced by way of an Urgent Appeal filed by the Appellant filed on 12th July, 2016.
4. On 13th July, 2016 the matter was mentioned before the Tribunal for the purpose of taking directions. The Appellant's Advocate informed the Tribunal that the Boxing team was expected to depart for the Rio Olympic 2016 Games on 24th July, 2016 and therefore requested for a hearing on an urgency basis.
5. Due to the urgency of the appeal, the Tribunal directed that the matter be heard on 14th July, 2016. The Appellant's Advocate was directed to serve the Respondents with the Appeal as well as an appropriate hearing notice. The Tribunal further directed that the Respondents would be heard either by affidavit or by *viva voce* evidence in view of the short time accorded to them to prepare and file a response.
6. The Respondents filed a replying affidavit sworn on 14th July 2016 by James Chacha, the Deputy Secretary General of the National Olympic Committee ('**NOCK**').

The Dispute

7. Mr Kameta's grievance is against the Respondents' decision communicated via letter of 7th July, 2016 rejecting his nomination by the Boxing Association of Kenya ('**BAK**') as the Team Manager of the Kenyan Boxing Team to the Rio 2016 Olympic Games.
8. The Appellant pleaded that the appeal was urgent because 'NOCK and its chef de mission's decision to refuse the Boxing Team Manager nominated by BAK has been made within one week to go before the various National Teams start to depart for Rio de Janeiro for the upcoming Olympic Games.'
9. The Appellant stated that the purported reason given for the Respondents' refusal to nominate him is his failure to submit the Games Report for the boxing team when he was Team Manager during the London 2012 Olympic Games despite numerous requests to do so.
10. Mr. Gitonga submitted that the Respondents' decision was unlawful, illegal, a breach of the rules of natural justice and appears to have been made on the 8th February, 2013 without notice to the Appellant.
11. He further argued that the Respondents should have communicated their decision to the BAK as it also affects any future assistance to be offered by the NOCK to the Boxing Federation.
12. Mr. Gitonga asserted that the letter dated 7th July, 2016 from the Respondents raises a disciplinary action against the Appellant and the BAK; that the Respondents did not inform the Appellant that failure to submit the Team Manager's Report was an offence whose penalty was being barred from participating in future Olympic Games. He further submitted that the Respondents had not afforded the Appellant an opportunity to be heard and to respond to any accusations against him.
13. The Appellant explained that he did not submit the report earlier because he was waiting for guidance from the Respondent on the substance and format of the report but the communication was not forthcoming despite writing two letters to the Respondents. He argued that had his client been afforded an opportunity to address the Respondents he would have explained why he had not submitted the report.
14. He added that the refusal by NOCK to accept the nomination of Mr. Kameta as the Team Manager for the boxing team was instigated by other reasons such as vying against Mr. Soi in the NOCK elections of 2013 and concerns he had raised about the management by NOCK of the London 2012 Olympic Games which remain unresolved by NOCK.
15. Mr. Gitonga thus urged the Tribunal to consider the Appellant's input into and good relationship with the boxers to ensure that they receive the requisite tools to perform well. He added that if the Appellant was not going to be the Team Manager it would affect the morale of the boxing team and impact negatively on their performance at the Olympics.
16. Consequently, the Tribunal was invited to make the following orders:

- a. To overturn the decision of the National Olympic Committee- Kenya and the chef de mission against the appointment of John Kameta as the Team Manager of the Kenya Boxing Team to the Rio de Janeiro Olympic Games;
- b. To order NOC-Kenya and its chef de mission to the 2016 Rio de Janeiro Olympic Games to allow BAK's nomination of John Kameta as Team Manager for the Kenya Boxing Team to the Rio de Janeiro Olympic Games next month;
- c. To order NOC-Kenya and its chef de mission to the 2016 Rio de Janeiro Olympic Games to fully assist and facilitate Mr. John Kameta to ensure that he does travel with and fully participate as the Team Manager of the Kenya Boxing Team; and
- d. To order NOC-Kenya and its chef de mission to the 2016 Rio de Janeiro Olympic Games to fully assist and facilitate the relevant BAK athletes and officials to ensure that they are afforded all the necessary financial, logistical and material support necessary for them to adequately prepare for, to travel and fully participate as the Kenya Boxing Team to the Rio de Janeiro Olympic Games.

The Respondents' Submissions

17. The Appeal is opposed by way of a Replying Affidavit sworn by James Chacha on 14th July, 2016.

18. It was pleaded that NOCK has the sole mandate of organizing and sending teams to participate in the Olympics as is set out at Article 40 of the Olympic Charter. Further, that under Article 44.2, participation at the Olympics is not a right and is largely at the discretion of the IOC and by extension the National Olympic Committee ('**NOCK**').

19. Thus, the NOC only enters into the Olympic Games those competitors and officials it approves of. The criteria is based on the sports performance and the ability of the nominated persons to serve as an example to the youth of the country. Mr Chacha pleaded that this is in compliance with Chapter 4 of the Olympic Charter.

20. It was also pleaded that submitting a Team Games Report is a fundamental duty of any Team Manager and the reports are not only vital in helping NOCK record what transpired at the games but are also a vital component in assessing the challenges that the various teams experienced and assisting on the strategy to be taken to improve for the future. Thus, the only reason for rejecting the nomination of Mr Kameta is because of his poor performance as a Team Manager having failed to submit his Games Report.

21. The Respondents annexed as JC-5 to the replying affidavit the minutes of 8th February, 2013 of the Executive Committee Meeting of NOCK wherein it was recorded as follows:

'It was noted with great concern that the Team Managers for Boxing and Swimming had totally failed and/or refused to submit their Games report despite various requests.

It was agreed that the preliminary report be printed without the above reports.

However, as a way forward, any future assistance to the two Federations shall be withheld until their reports are received. Further the respective team managers shall not be considered for any future appointments.'

22. At the hearing, Mr. Rombo for the Respondents submitted that NOCK is empowered under Article 4.18 of its Constitution to act in such manner as it considers conducive to the proper pursuit of its objectives. Mr Rombo submitted that Team managers were well aware of their obligation to write and submit a report in respect of the London 2012 Olympic Games. He added that the Appellant knew he was supposed to submit the report and this is evidenced by his apologies to the Respondents via the letters dated 14th November 2014 and 10th August, 2015.

23. Mr. Rombo further stated that Team Managers usually meet with NOCK Executive Committee three months before flying out of the country for any games and in all these meetings they are advised of the responsibilities and the obligations placed on them with respect to the management of the teams as well as matters relating to accreditation and financial matters. Thus, he argued that Mr. Kameta cannot properly claim that he was not aware that he was required to submit the report yet he even prepared the report and submitted it during the hearing.

24. Mr. Rombo argued that submitting a games report is a fundamental duty of a Team Manager and following Mr. Kameta's failure to submit the report after 4 years, NOCK had no confidence in him taking part in the Rio Olympics as Team Manager and this was communicated to the BAK one week after receiving BAK's nomination; that this could not have been communicated any earlier as NOCK could not pre-empt who BAK would choose as the Team Manager for the Rio Games. He therefore argued that the Appellant's claim that the Respondent's decision was not communicated in time is false.

25. In response to the claim that communication was not forthcoming from the Respondent regarding the two letters the Appellant wrote, Mr. Rombo asserted that there was no need for NOCK to respond to the letters since NOCK had already moved on and did not have to beg for the report. The responsibility remained on the Appellant to submit the report.

26. He added that as far as NOCK is concerned, Mr. Kameta's absence as Team Manager would not be prejudicial to the team in any way; that as a matter of fact, his continued participation as Team Manager would be detrimental to the Boxing Team and the country.

27. Mr. Rombo requested the Tribunal dismiss the Appeal as it had no merit.

Discussion

28. The only issue for determination is whether the decision by NOCK to reject the nomination of John Kameta as Team Manager for the Kenya Boxing team to the Rio Olympic Games is proper, lawful and valid

29. The Sports Act at Section 58(a)(ii) allows appeals to this Tribunal against decisions of a national sports organization or an umbrella sports organization against not being selected for a Kenyan team or squad. The position of team manager of Kenyan team to the Olympics is without doubt part of the Kenyan team and for that reason the appeal is properly before the Tribunal.

30. The Tribunal of course understands and appreciates the concept of natural justice which underpins the whole infrastructure of fair administrative action. In **The Management Committee of Makondo Primary School and Anotr vs. Uganda National Examination Board**^[1] the Court stated as follows:

"It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase 'audi alteram partem' literally translates into 'hear the parties in turn', and has been appropriately paraphrased as 'do not condemn anyone unheard'. This means a person against whom there is a complaint must be given a just and fair hearing."

31. In **Grace Kazungu & Another vs. NSSF**^[2] the Court discussed the issue of natural justice as follows:

"The fundamental principles of natural justice are that a person affected by a decision will receive notice that his or her case is being considered. Second, they will be provided with the specific aspects of the case that are under consideration so that an explanation or response can be prepared and thirdly, they will be provided with the opportunity to make submissions to the case".

32. The Appellant has submitted that he was not given notice that his failure to submit the Games Report of the London 2012 Olympic Games would have the effect of excluding him as Team Manager of the team headed to Rio Olympic Games. He thus argues that this is unfair administrative action as there has been a breach of the rules of natural justice. Additionally, that the decision not to nominate him was reached on 8th February, 2013 by NOCK but was not brought to his attention until he saw the Minutes of the relevant meeting annexed to the replying affidavit of James Chacha.

33. On the other hand, the Respondent submits that it is well known that a Team Manager has a duty to submit the Games Report so as to assist in the proper governance of sport and to assist NOCK in executing its mandate. The Appellant's knowledge of this requirement is evidenced by his two (2) letters of apology dated 14th November 2014 and 10th August 2015. No explanation has been offered for the failure to submit a report 4 years after the last games.

34. As a statutory body charged with the responsibility of determining sports disputes in this Country, this Tribunal is guided by a body of law that includes the Constitution, the Sports Act as well as, in this case, the Olympic Charter which sets out the role of the National Olympic Committees. The NOC is mandated to carry out its mandate with regard to the Olympic Charter and therefore in determining this Appeal, we are obliged to examine whether there has been a violation of the Charter.

35. Article 40 of the Olympic Charter^[3] stipulates as follows:

Participation in the Olympic Games

To participate in the Olympic Games, a competitor, team official or other team personnel must respect and comply with the Olympic Charter and World Anti-Doping Code, including the conditions of participation established by the IOC, as well as with the rules of the relevant IF as approved by the IOC, and the competitor, team official or other team personnel must be entered by his NOC.

36. Article 44.3 of the Olympic Charter (Invitations and Entries) then stipulates as follows:

Any entry is subject to acceptance by the IOC, which may at its discretion, at any time, refuse any entry, without indication of grounds. Nobody is entitled as of right to participate in the Olympic Games.

37. Article 27 of the Olympic Charter sets out the mission and role of NOCs and at sub-article 3 thereof stipulates:

The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and at the regional, continental or world multi-sports competitions patronized by the IOC.

38. Thus as can be seen from Article 40 and 44.3, the selection of an individual to take part in the Olympic Games either as a competitor or an official, is not purely a decision by the NOC but a decision that has to be subjected to the Internal Federation responsible for the particular sport as well as the IOC. Further, the IOC is expressly granted discretion to refuse entry of any person in the Olympic Games thereby establishing the principle that participation in the Olympic Games is not a matter of right. Further, NOCK has exclusive mandate as to who represents Kenya in the Olympic Games.

39. As a secondary issue, the Respondent has pleaded that if they were to allow the nomination of Mr Kameta as the Team Manager for the Boxing team then they would not be promoting good ethics and proper governance in sports.

40. This Tribunal as the apex dispute resolution body in sports in Kenya is mandated by law to promote the purposes of the Sports Act, 2013 which include ensuring that sports is harnessed for development and that there is proper management and administration of sports in our country.

41. Though we criticize the failure by NOCK to inform Mr Kameta of the consequences of not submitting a report on the London 2012 Olympic Games, we note that Mr Kameta's conduct in respect of the submission of the report displays a more than casual attitude. Whilst the Tribunal has some sympathy with Mr. Kameta's position, eventually the fact that report had not been submitted for a period of four (4) years without explanation weighs heavily against him. Further, it was only at the Tribunal's behest that an undated report in respect of the London 2012 Olympic Games was placed before us at the hearing.

42. The only reason put forward by Mr Kameta as to the failure to submit the report was that he was unaware of the required format. Two letters of 14th November, 2014 and 10th August, 2015 were placed before us to show that Mr Kameta had apologetically written to NOCK on the failure to submit the Team Manager's report. However, we note that the two letters are identical and they do not indicate whether and when the report was to be submitted to NOCK.

43. As we understand it, the purpose of a report is to point out any challenges, shortcomings or other matters of note in respect of the previous games with the object of aiding in the planning and preparation for the forthcoming games so as to improve performance, developing a strong team culture, ensure continuing adherence to Olympic team values and reinforce expected team behaviour. The Team Manager of an Olympic Team is a critical role in the Olympic Team Management structure and provides the

link between the Team Executive and the athletes, coaches and other support personnel. This is not a role that can or should be taken lightly.

44. A fundamental principle of Olympism listed in the Olympic Charter is:

Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

45. Article 47(1) of the Constitution stipulates that fair administrative action is that which is expeditious, lawful, reasonable and procedurally fair.

44. In addressing the issue of lawfulness of the decision by NOCK we have sought to address ourselves to the lawfulness of the decision within our local laws and the Olympic Charter.

46. The Olympic Charter on numerous occasions recognizes the autonomy of National Olympic Committees such as NOCK. We must examine however whether this autonomy in the rejection of Mr Kameta as the Team Manager of the Boxing team was exercised within the parameters of Article 47(1).

47. Article 47 of the Constitution stipulates that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The Fair Administration Act^[4], then defines ‘**administrative action**’ at Section 2 to include:

(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates; (emphasis ours)

48. “Decision” is then defined in the Act to mean ‘*any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be*’; and **“empowering provision”** is defined to mean ‘*a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action is taken or purportedly taken*’;

49. The fundamental question therefore, is whether the Appellant had a right to be appointed as Team Manager for the Boxing team and therefore had a legitimate expectation that he would be given an opportunity to be heard within the parameters of the instruments which govern participation in the Olympic games.

50. As can be seen from the foregoing, we do not see that the Appellant could possibly claim that he had any legitimate expectation that he would be appointed as team manager. Certainly, BAK had a legitimate expectation that it would be consulted regarding appointment of a team manager for its boxing team, but BAK is not the Appellant before us and neither was it joined; the Appellant, despite being President of BAK, is certainly not BAK. We do not therefore see that the Fair Administration Act applies to the Appellant in the circumstances of this case.

51. Further, we before we call to question the decision of the NOC, we would require first, to call upon Mr. Kameta to explain the delay in submitting the report, which as we have already observed, he has failed to do. Indeed, a perusal of the report that he presented at the hearing of this dispute is evidence of its importance to the improvement of preparations by NOCK with respect to the manner in which it handles Olympic teams. His assertion that he was awaiting communication from NOCK on the required format is a clear afterthought and we reject it.

52. With respect to the issue of late communication by NOCK of the decision not to accept the nomination of Mr Kameta as the Team Manager, we note that NOCK communicated this decision on 7th July, 2016 having received the nomination by BAK vide its

letter of 27th June, 2016. We do not consider that there was any delay in communicating the NOC's decision such as would warrant an allegation of violation of fair administrative action that is expeditious.

53. We note that there is no prejudice to the boxing team as the NOC has clearly stated that they should nominate another individual to the position of Team Manager. No special qualification was brought to our attention and we do not accept the argument that the team will suffer loss of morale which may affect its performance at the games. By the time an athlete qualifies to compete at the Olympic games, his mental state must be such that he has a single-minded focus on winning irrespective of the obstacles placed in his or her path.

54. In the end, this decision embodies the Tribunal's firm belief that proper governance is the bedrock upon which this Country's future as a sporting nation lies. And it is the obligation of officials entrusted with responsibility at every level to exhibit adherence to the requisite standards if they wish to find favour with the Tribunal.

55. The following orders now commend themselves to this Tribunal:

i. The appeal is dismissed with no order as to costs;

ii. The Boxing Association of Kenya shall submit another name as its nominee for the position of Team Manager to the NOCK by the 20th July, 2016.

56. The Tribunal thanks the counsels for both parties for their extremely helpful contribution, both written and oral and the cordial manner in which they conducted themselves.

DATED and DELIVERED at NAIROBI this 19th day of July, 2016.

Signed:

John M Ohaga, FCI Arb

Chairperson, Sports Disputes Tribunal

In the presence of:

- 1.
- 2.

[\[1\]](#) HC Civil Misc. Application No.18 of 2010

[\[2\]](#) Cause No. 703 of 2010

[\[3\]](#) In force as from 2nd August, 2015

[\[4\]](#) No. 4 of 2015



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