



REPUBLIC OF KENYA

THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

SPORTS DISPUTES TRIBUNAL APPEAL NO 3 OF 2015

HOCKEY KENYA FEDERATION

VS.

THE ATTORNEY GENERAL & 2 OTHERS

JUDGMENT

The Parties

1. The Appellant, Hockey Kenya Federation (“**the Federation**”) describes itself as the interim National Hockey Organization.
2. The 1st Respondent is the Honorable the Attorney General of the Republic of Kenya who is joined to this Appeal pursuant to the provisions of Article 156 of the Constitution of Kenya, 2010 (**‘the Constitution’**).
3. The 2nd Respondent is the Cabinet Secretary in the Ministry of Sports, Culture and Arts. He is joined to this Appeal pursuant to the provisions of Article 153 of the Constitution;
4. The 3rd Respondent is the Registrar of Sports who is enjoined to this Appeal as a Respondent pursuant to Section 46 of the Sports Act, 2013 (**‘the Act’**).
5. The Interested Party is the Kenya Hockey Union (“**the Union**”) which was registered under the Societies Act, Cap 108 Laws of Kenya on 30th May, 1961 and whose registration number is SOC/2735.
6. All the Respondents and the Interested Party in this Appeal entered appearance and filed the appropriate documents; as we understand it, the Respondents have a common position as set out in the replying affidavit of Mrs. Rose Wasike and it was therefore not necessary for each of the Respondents to file separate responses.

The Background

7. The Federation lodged its Appeal via a Petition, together with a Supporting Affidavit sworn by George Jalang’o Otieno on the 6th March, 2015.

8. The Petition as originally framed and instituted was against the 1st to the 3rd Respondents but after careful consideration of the Appeal as filed and the issues that arose therein, the Tribunal deemed it necessary to enjoin the Union as an interested party.

9. The Tribunal accordingly issued directions giving the Union 21 days within which to file any pleadings that it deemed appropriate in response to the Petition. This order was complied with and the Union did on 28th August 2015 file its response via the replying affidavit sworn by Nahashon Okoth Randiek.

10. The Tribunal set the matter for hearing on the 1st September, 2015.

The Dispute

12. It is not disputed that the Union has been the body that was in charge of hockey in the country from 30th May 1961. Indeed at paragraph 3 of the Petitioner's Supporting affidavit this assertion is captured in the following words:-

“THAT I am aware that Kenya Hockey Union was a properly registered society under the Societies Act (cap 108) and as such Registration number SOC/2735...”

13. The Petitioner submits that the Act has changed the landscape of sports in this country and in terms of registration required all existing sports organizations to conform to the Act within one year from the commencement of the Act.

14. The Petitioner further submits that the Act commenced on the 1st August 2013 vide Legal Notice No.125 and in that respect, there was a circular by the Cabinet Secretary in charge of Sports, Culture and Arts requiring all sports organizations to regularize their registration within one(1) year from the date of commencement of the Act.

15. The Petitioner submits that more than one (1) year after the commencement of the Act, the Union has not reviewed its constitution; further that through Mr. George Jalang'o Otieno, the Petitioner wrote to the 2nd Respondent asking it to give directions on elections of the Union which according to the Petitioner was way overdue.

16. At paragraph seven (7) of the Supporting Affidavit the Petitioner pleads that it was totally bewildered by the response of the 2nd Respondents through a letter dated 28th March 2013 to the effect that the Union conducted its last elections in the year 2000.

17. The Petitioner contends that in light of the actions of the Union of not reviewing their constitution and not conducting elections within a period of one (1) year from the commencement of the Act it had ceased to exist and was therefore an illegal entity in so far as the Act was concerned.

18. Despite paragraph 17 above, the Petitioner states that the 3rd Respondent proceeded to register the Union as the interim body that is in charge of the game of hockey in the country and that such action is contrary to the Sports Act and the Constitution.

19. Having full knowledge that the office bearers of the Union were illegally in office and that the Union had ceased to exist, and that there would be a lacuna in the management and administration of the game of hockey in the country, the Petitioner says it made an application for registration to the 3rd Respondent for it to be registered as an interim national hockey organization.

20. The Petitioner asserts that its application for registration was accepted and acknowledged by the 3rd Respondent and as such it is the interim national hockey organization in the country and that such registration by the 3rd Respondent of the Union is a nullity, untenable and cannot be sustained in law and that such registration should be set aside.

21. The accordingly Petitioner prays for orders that:-

i. Spent;

ii. Spent;

iii. This Honorable Tribunal does declare that the purported Union is non-existent according to the law, unlawful, unfit and lacks capacity to run any hockey affairs in Kenya;

iv. Spent;

v. Spent;

vi. The costs of this Application be provided for;

vii. Spent.

22. As we have stated above, the Respondents put forward their case through the replying affidavit of Mrs. Rose M. N. Wasike, the Sports Registrar.

23. The 3rd Respondent asserts that the Federation is not a registered Sports Organization within the meaning of Section 46(1) of the Act; that the Union applied for registration on time as a sports organization under section 49(1) of the Act on 28th July 2014 and was consequently transited as a sports organization in accordance with section 49(2) and accordingly a letter dated 27th February 2015 confirming this was issued.

24. The Respondents state that the Petitioner applied for registration on the 31st July 2014 and was seeking registration for the first time and can consequently not purport to be registered.

25. The Union on the other hand vigorously opposed the Petition and relies on the replying affidavit dated 27th August 2015 sworn by Mr. Nashon Okoth Randiek.

26. The Union reiterated in its affidavit that it is a registered society and that it has been the national body mandated to run the affairs of the sport of hockey in Kenya since 30th May 1961 and to that effect it annexed its certificate of registration marked “**NOR 1**”.

27. It further states that upon the advent of the Act, it complied with the provisions with regard to registration of existing organizations by submitting its application to the Sports Registrar on or about the 28th July 2014 in response to which it received both letters of acknowledgement and transition from the Sports Registrar; the letters are dated 8th September 2014 and 27th February 2015.

28. Counsel for the Union submitted that the Petition is not only premature but defective in that the Sports Registrar has not made any decision to register the Union but instead the Registrar has merely acknowledged receipt of its application.

29. He further submitted that under Section 50 of the Act once an existing sports organization has made its application it would be deemed to be duly registered in the interim until and unless the Registrar made a final decision to either accept or reject that application and it is under the auspices of that provision that the Registrar effected that transition.

30. It was submitted on behalf of the Union that elections are not a prerequisite to registration under the Act and neither is a list of office bearers.

Consideration

31. Having read the pleadings filed and listened to the elaborate submissions by Counsel for the Petitioner, the Respondent and the Interested Party, the Tribunal finds the following as issues for determination:-

i. Whether the Sports Registrar is in breach of the Sports Act in recognizing Kenya Hockey Union as the interim national hockey organization;

ii. Whether the application by the Petitioner is premature;

iii. Whether the Petitioner is entitled to be registered as the organization charged with running hockey in Kenya;

Whether the Registrar of Sports is in breach of the Sports Act in recognizing Kenya Hockey Union as the interim national hockey organization;

32. Kenya Hockey Union is a registered society under the Societies Act Cap 108 Laws of Kenya and has been running the sport of Hockey since 30st May 1961(their certificate of registration was produced to this Tribunal).

33. On the 28th July 2014 the Union submitted its application together with the requisite documents to the Registrar of Sports to be registered as the national sports organization in charge of Hockey in the country.

34. Through a letter dated 8th September 2014 the Registrar of Sports acknowledged receipt of its application and subsequently through a letter dated 27th February 2015, the Union was transited as a sports organization and therefore deemed to be registered to operate pending the issuance of a certificate of registration.

35. The Petitioner on the other hand asserts that despite there being massive irregularities in the Union such as failure to review its constitution for 14 years and having fictitious officials in office the registrar further proceeded to acknowledge the Union as the interim national sports organization.

36. Section 50 of the Sports Act provides as follows:-

“(1) A sports organization, which was duly registered under the Societies Act and existing immediately before the commencement of this Act shall be required to apply for registration under this Act within one year after the commencement of this Act.

(2).....”

3) An existing sports organization that does not apply for registration within the time prescribed in subsection (1), shall not be recognized as a sports organization for the purposes of this Act:

Provided that an existing sports organization in respect of which —

(a) an application for registration has been made by it under subsection (1) and has not been rejected; or

(b) an appeal has been lawfully made under this Act and remains undetermined, shall continue to be recognized as a sports organization for the purposes of this Act.

37. From the foregoing it is evident that for an existing sports organization to be transited, all that it needs to do is to apply for registration within the prescribed time frame.

38. It is to be noted that the Act places an obligation on the Sports Registrar to continue recognizing the existing sports organization upon its application by use of the word “shall” under section 50. As Justice A Ringera stated in the case of **Standard Chartered Bank Limited vs. Lucton (Kenya) Ltd HCCC No. 462 of 1997 :**

“as I understand the canons of statutory interpretation, the use of the word “shall” in a statute only signifies that the matter is prima facie mandatory.”

39. Therefore the actions of the Sports Registrar in transiting the Union and recognizing it as the body that will handle the affairs of

hockey in the interim upon application and pending official registration were in accordance with the Act.

Whether the Application by the Petitioners is premature

40. Section 48(1) of the Act states as follows:

“A national sports organization registered under this Act shall be issued with a certificate of registration in the prescribed form.”

41. From the foregoing it is enough to state that a certificate of registration is enough evidence that a sports organization has been registered. From the record no certificate of registration has yet been issued by the Sports Registrar and it is therefore sound to conclude that no sports organization has been registered yet.

42. In the letter dated 27th February, 2015 addressed to the Union, the Registrar of Sports states as follows:

“...you are therefore deemed to have registered as a sports organization under the sports Act and you will continue to operate as such until the organization is issued with a certificate of registration or denied registration after due process of registration has been completed.” (emphasis ours)

43. A message to the same effect was delivered to the Petitioner through a letter dated 26th August 2014 upon it making an application for registration:-

“This is to acknowledge receipt of application for registration.....we are in the process of analyzing your application...”

44. It becomes clear therefore that no final decision as to registration has been made to date and that the Sports Registrar may be said to be considering the applications before delivering a decision as to which body will run the affairs of hockey in the country; it may be the Kenya Hockey Union or the Kenya Hockey Federation.

45. Section 47 of the Act provides as follows:

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.

46. A plain reading of these provision would seem to indicate that it is not available to the sports registrar at this stage to require more from a sports organization seeking registration beyond the documentation set out in the Act and neither is it within the jurisdiction of the Tribunal to expand the requirements already stipulated by the Legislature.

47. Indeed, during this nascent stage in the functioning of the Act, the Tribunal considered that it should not hamper or otherwise curtail the functioning of the office of the Sports Registrar by dictating what considerations should go into the final registration of organizations seeking recognition under the Act.

48. As a matter of fact the jurisdiction of the Tribunal is delimited by the provisions of section 58 of the Act and in particular 58 (c) which gives the Tribunal jurisdiction to determine Appeals from the decision of the Registrar under this Act. It is clear to us that the Registrar in transiting the union has not yet in fact made any decision as is evident from her letter of 24th February 2015 to which we have already referred.

49. To that extent therefore, we agree with counsel for the union that the present Appeal is premature and the Petitioner must await the final determination of the Registrar.

50. In light of the foregoing it would be speculative to pre-determine the decision of the registrar therefore the tribunal finds that the appeal is premature.

51. Having stated the foregoing, it would be clear that the petition is for dismissing and we do so with no orders as to costs. However, it must also be borne in mind that the advent of the Sports Act announces a new dawn in the management and running of sports affairs in this country. The Tribunal, whilst recognizing the right of every sporting body to aspire towards the management of sports will not countenance situations where parties seek to disrupt the proper management and functioning of sporting organizations by introducing competition other than as regulated by the Act and the constitutions of various sports organizations. Rival factions, *coups* and other like conduct in the sporting arena will be struck down swiftly by the Tribunal if brought to its attention and the Tribunal restates the policy of the Act as encapsulated in section 46 of the Act to the effect that the Registrar shall not register more than one national sports organization to run any one discipline.

52. Accordingly, whilst we do not wish to question the *bonafides* of the Petition, there are certain aspects of the Affidavit in support which lead the Tribunal to question the motivations and indeed the organizational structure of the Petitioner. We are certain that the Sports Registrar will take these sentiments into consideration when determining the Applications before her in relation to the sport

of hockey.

53. We therefore summarize our conclusions as follows:

- i. The Tribunal finds that the Sports Registrar acted within the law in recognizing the Kenya Hockey Union as the interim national sports organization in charge of hockey;
- ii. The Tribunal directs the Sports Registrar to arrive at a decision with regards to the applications before it on the organization that will become the national sports organization in charge of the game of hockey within ninety (90) days from the date of this decision;
- iii. Each party shall bear its own costs.

The Tribunal commends Counsels appearing for their cooperation in facilitating the timely hearing and determination of this appeal and for their helpful submissions.

DATED at NAIROBI this 15th day of **September**, 2015

Signed:

John M. Ohaga

Chairman, Sports Disputes Tribunal

Signed:

Mr. Gabriel Ouko

Member, Sports Disputes Tribunal

Signed:

Ms. Mary Kimani

Member, Sports Disputes Tribunal

Delivered in the presence of:

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