



**REPUBLIC OF KENYA**

**THE JUDICIARY**

**OFFICE OF THE SPORTS DISPUTES TRIBUNAL**

**APPEAL NO. 9 OF 2020**

**KENYA ROWING & CANOE FEDERATION.....1ST APPLICANT**

**JAMES MWEU MAINGI.....2ND APPLICANT**

**ROSE WARUHIU.....3RD APPLICANT**

**VERSUS**

**THE SPORTS REGISTRAR.....1ST RESPONDENT**

**RICHARD OLAKHI.....2ND RESPONDENT**

**MOHAMED SAID.....3RD RESPONDENT**

**NAISON OLE KILAYO.....4TH RESPONDENT**

**AND**

**NATIONAL OLYMPIC COMMITTEE-KENYA.....INTERESTED PARTY**

**DECISION**

**Hearing: 15th February, 2021**

**Panel:**

1. Mrs. Elynah Sifuna-Shiveka – Panel Chairperson
2. Mr. Peter Ochieng - Member
3. Mr. Gichuru Kiplagat – Member

### **Appearances:**

1. The Applicants are represented by Munguti Ngulukyo & Co. Advocates.
2. The 1st Respondent is represented by Martin Munene Advocate
3. The 2nd & 3rd Respondents are represented by Dome & Kedogo Advocates
4. N/A by 4th Respondent
5. N/A for interested party

### **The Parties**

1. The 1st Applicant is registered as such under the Sports Act.
2. The second and third Applicants describe themselves secretary general and member representing persons with special needs respectively with the first Applicant.
3. The first Respondent is a creature of section 45 of the Sports Act.
4. The second, third and fourth Respondents describe themselves as officials of the first Applicant.
5. The Interested Party is the Umbrella body representing all Olympic sports in Kenya and an affiliate of the International Olympic Committee.

### **The Case**

6. The Applicants have approached the Tribunal vide a notice of appeal dated 04/08/2020. They state that the first Applicant conducted its AGM elections on 02/03/2015 where the second and third Applicants were elected as secretary and member respectively pursuant to the federation's constitution.
7. They further state that the first Respondent has refused to register the duly elected officials of the appellant and proceeded to register interim officials in unclear circumstances.
8. They claim that the first Applicant is composed of ten (10) county sports associations who make propositions for the officials to be elected to serve as the Executive Board of the first Applicant.
9. They state that Article 29.3 of the federation's constitution provides that each club/association shall propose a candidate per post in the Executive Board in writing and the candidate shall duly be seconded during the AGM before being eligible for elections.
10. They also note that the federation's constitution under Article 29.4 states that election of members to the executive board shall be done by the delegates with three votes from each side.

11. They note that the 2nd,3rd and 4th Respondents are not members of the county associations and neither were they recommended by the associations or clubs to the executive board and therefore not eligible to hold any position as officials of the appellant.

12. They further note that the sports registrar nominated the 2nd,3rd and 4th respondents as chairman, secretary general and member respectively yet the Sports Act does not grant her such powers. They noted that her actions are ultra vires, illegal and irregular as per the law and the federation's constitution.

13. The Applicants prayed as summarized for the following orders among others:

- a) An order to the 1st Respondent requiring her to bring before the honourable tribunal the provisional registration certificate.
- b) An order restraining the 2nd,3rd and 4th respondents from performing the tasks of office bearers.
- c) A declaration that the actions of the 1st Respondent are illegal, invalid and a nullity.
- d) An order compelling the 1st Respondent to recognize the Applicants among others as duly elected officials of the 1st Applicant.
- e) Costs of the suit.

14. The Appellants also filed written submissions dated 03/03/2021. They relied on the case of **Tom Tikolo & 2 Others v Sports Registrar (Appeal Case No. 11 of 2018)** and that of **Republic v The Cabinet Secretary Hassan Wario Arero & another Ex-Parte (20171 eKLR)**.

### **The Response**

15. The 2nd and 3rd Respondents stated that the dispute herein arose following the application for registration of two different sports organization under the same discipline. Mr. Richard Olakhi the 2nd Respondent herein led one faction, while Mr. Mohamed Bashora led the second faction.

16. They further noted that the Sports Registrar, the 1st Respondent herein could not register the two citing that it was contrary to Section 47 of the Sports Act, 2013. A meeting was therefore called by the Registrar with an aim of merging the two factions into one, subsequent to which she would issue a certificate of registration.

17. They noted that the second appellant failed and/or refused to attend the first meeting. Following the deliberations in the second meeting, the Registrar made a decision on the 27th July, 2018 merging officials from both factions pursuant to Section 45 of the Sports Act. They also noted that the 2nd Appellant was not appointed as one of the officials, since he was disowned by the faction to which he purported to belong.

18. They noted that the appointed officials were required to satisfy all the requirements of the Sports Act, 2013 and the Registrar's Rules and Regulations, 2016 as regards registration of sports organizations for a certificate of registration to issue. They noted that the Registrar's decision was disputed by Mr. James Mweu the 2nd Appellant herein who filed for a **Judicial Review number JR 372/2018 James Mweu Maingi v Sports Registrar [2019] eKLR**, which application was dismissed by the High Court on the 29th of July, 2019.

19. They also stated that following the dismissal of the above cited case, the 2nd Respondent herein having been appointed Chairman (in the interim), convened a Transitional Committee meeting on the 14th of February, 2020 for purposes of planning on

the way forward. Mr. James Mweu characteristically failed and or refused to attend the meeting despite notice to that effect having been issued to him.

20. Following the Transitional Committee meeting above mentioned, an application for registration was made to the Registrar of Sports in compliance with the Sports Act, 2013 and the Registrar's Rules and Regulations 2016.

21. They also noted that having satisfied all the legal requirements, the Registrar proceeded to issue a conditional certificate of Registration on the 10th of March, 2020. One of the conditions was that elections be conducted within 90 days of the date of the Registration Certificate. No one including the 2nd Appellant has been denied a chance to participate/ contest in the elections.

22. They noted that section 46(7) of the Sports Act 2013 provides that issuance of a certificate is conclusive authority to operate and that the registrar has discretion to prescribe terms and conditions while issuing such certificate. They finally submitted that it was well within the powers of the Registrar to issue the Registration Certificate and prescribe conditions as she saw it fit.

23. The 1st responded agreed generally with the submissions of the 2nd and 3rd Respondents save to add that the Registrar invoked section 45 of the Sports Act where the Registrar merged the officials from both factions and issued a conditional certificate of registration on 10/03/2020.

24. The Registrar also noted that Section 47(2) of the Sports Act limits the Registrar from registering more than one national sports organization in any one discipline while Section 45 (2) (d) states that the Sports Registrar shall be responsible for arbitration of registration disputes between sports organizations.

25. The Registrar further contended that the Appellants allegations that the Registrar portrayed the 2nd,3rd and 4th Respondents as duly elected officials of the federation is not true.

26. The Registrar also noted that the purported elections of 02/03/2015 with the 2nd and 3rd Appellants was not in compliance with the Constitution 2010, the Sports Act and the Registrar's Regulations. Equally, the registrar noted that the parties did not comply with the condition to amend the federation's constitution to make it compliant with the Sports Act.

27. The registrar prayed that the Tribunal gives guidance and timelines on the way forward to resolve the impasse.

### **Hearing**

28. The matter came up for hearing on 15th February, 2021. Thereafter, the Tribunal directed the parties to file and serve their written submissions virtually.

### **Determination**

29. The Tribunal has taken into account the parties' pleadings and submissions and determines as follows.

30. The jurisdiction of this Tribunal stems from Section 58 of the Sports Act which provides 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.”**

31. Section 59 of the Sports Act states further that:

**“The Tribunal may, in determining disputes apply alternative dispute resolution methods for sports disputes and provide expertise and assistance regarding alternative dispute resolution to the parties to a dispute.”**

32.This dispute falls within the latitude of section 58 (c) of the Sports Act as can be seen above hence the jurisdiction of the Tribunal has been properly invoked. The crux of this case is whether the registrar had powers under the law to merge the two factions into one and the legality of the elections of 02/03/2015 as well as whether the 1st Appellant’s constitution can stand.

33.Section 49 of the Sports Act required all federations to register afresh under the Act within a period of one year from the date of the commencement of the Act which date is 01/08/2013. Clearly, the federation ought to have fully complied by 02/08/2014.

34.Section 45 (2)(d) grants the Sports Registrar powers to conduct arbitration of registration disputes between sports organization. We submit that by attempting to bring the two parties together the Registrar was exercising this powers and rightfully so under the law.

35.The Appellants have cited this Tribunal’s decision of **Tom Tikolo (SDT Appeal No.11 of 2018)** in support of their case. The Tikolo case is distinguishable from the instant case. The Tikolo case was based on the Registrar’s acts of appointing an interim committee where in fact she had no knowledge of the nature of the dispute. Conversely, as regards the instant case the dispute is on registration.

36.With respect to the elections of 02/03/2015.The elections cannot be validated by this Tribunal for the simple reason that the federation had not transitioned and obtained registration under the Sports Act,2013 by the time the elections were being carried out. The federation constitution cannot also stand for the same reason. Indeed, the registration given to the federation by the 1st Respondent was interim in nature predicated upon fulfilment of certain conditions that were not fulfilled by the parties. We need not say more.

## **Conclusion**

37. It is therefore in consideration of this, as well as the parties’ submissions that the Tribunal makes the following orders:

a. The appeal is dismissed;

- b. The parties will with immediate effect work out a programme for elections and amendment of the federation's constitution in full compliance with the Constitution of Kenya, the Sports Act, the Registrar's Regulations and all applicable law;
- c. The parties to file the above roadmap to the Tribunal by 27th April, 2021.
- d. The Tribunal will supervise the exercise and the matter is fixed for mention on 28/04/2021 for further directions.
- e. Costs are reserved.

**DATED AT NAIROBI THIS \_\_14TH \_\_DAY OF \_\_\_\_\_ APRIL, \_\_\_\_\_2021**

**Mrs. Elynah Sifuna-Shiveka, Panel Chairperson**

**Mr. Peter Ochieng, Member**

**Gichuru Kiplagat, Member**



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