



REPUBLIC OF KENYA

THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

APPEAL No. 4 OF 2021

PETER DUKE MICHIEKA1ST APPLICANT

JUDY KIRAGU2ND APPLICANT

CHERYL NGIMA.....3RD APPLICANT

VERSUS

CHESS KENYA1ST RESPONDENT

BENARD WANJALA2ND RESPONDENT

JOHN MUKABI3RD RESPONDENT

GILBERT WANDERA4TH RESPONDENT

DECISION

Hearing: 22nd June, 2021

Panel: Gichuru Kiplagat Panel Chairperson

Gabriel Ouko Member

Maria Kimani Member

Appearances Kamunge & Nyakeri Advocates for the Applicants.

Ochutsi Munyendo Advocate for the Respondents.

Background

1. The proceedings have been commenced by way of a notice of motion dated 04/05/2021 filed by the Applicants under

certificate.

2. The applicants claim that the Respondents ought to have conducted elections by 14/02/2021 and that as per the provisions of the Sports Act, the 2nd, 3rd and 4th Respondents term in office came to an end on 14/02/2021 and are thus illegally in office.

3. They further claim that the actions of the Respondents have been negatively affecting the growth and development of chess in Kenya. They note further that the Respondents have ignored the directions of the Registrar of Sports to take prompt initiatives to make Chess Kenya compliant with the law. They relied on the sworn affidavit of **Peter Duke Michieka** the 1st Applicant.

4. The Applicants seek for orders that the tribunal do make a declaration that the 2nd,3rd and 4th Respondents herein are in office illegally and that the tribunal to issue orders of injunction to restrain the 2nd,3rd and 4th Respondents from conducting official Chess Kenya responsibilities. Lastly, that the tribunal appoints an interim independent committee with the sole purpose of conducting democratic elections for the 1st Respondent.

5. The Respondents in response filed grounds of opposition and a preliminary objection both dated 24/05/2021. The Respondents raised a number of points key among them that the tribunal does not have jurisdiction to hear this case and that the Applicants have not exhausted internal mechanisms to have the disputes addressed as per the constitution of the 1st Respondent. The Respondents grounds of opposition replicate the same issues raised by the notice of preliminary objection.

6. The Respondents for the reasons aforementioned asked the tribunal to strike out the suit with costs.

Hearing

7. The matter was heard on 18/05/2021,15/06/2021 and on 22/06/2021. The parties filed their written submissions and on 22/06/2021 highlighted them orally.

Discussion

8. We have examined all the documents and taken into account the oral and written submissions by the parties and opine as follows.

9. The limits of what a preliminary objection should entail was well captured in the case of **Mukisa Biscuits Manufacturing Co Ltd-vs- West End Distributors (1969) EA 696**. Sir Charles Newbold JA stated that:

“...a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of the pleadings and which if granted as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration....it raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

10. The Tribunal has framed these two questions for determination based on the **Mukisa** test above:

a. Whether this Tribunal has jurisdiction to hear this case. b. Whether the Applicants have exhausted internal mechanisms to address the dispute.

11. We will first address the first issue. 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.”

12. 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.”

13. The letter by the Sports Registrar dated 09/12/2020 admonished the Respondents for having not having met the conditional requirements despite issuance of a provisional certificate of registration by her office. This was also based on the order of this tribunal in **Sports Disputes Tribunal Case No.27 of 2016**.

14. However, we note that it was premature for the Applicants to move the Tribunal before the Sports Registrar could exercise and finalize her statutory mandate on registration of Chess Kenya under Part VI of the Sports Act and the Sports Registrar’s Regulations, 2016 in terms of her letter dated 09/12/2020. We also fail to understand why the Applicants failed to bring the Sports Registrar on board as a party in these proceedings given the centrality of her office in this matter.

15. Moreover, it was also premature for the Applicants to move this Tribunal without first exhausting the internal mechanisms provided for under Part VII of the Sports Registrar’s Regulations 2016. Part VII requires anyone with a sports dispute and in this case the pending registration and compliance or lack of it to first seek the intervention of the Sports Registrar in the first instance. Where the party is unhappy with the decision of the Sports Registrar he or she can move the Tribunal within 21 days of such decision. In the case of **Speaker of the National Assembly v James Njenga Karume(2013) eKLR** restated by the Court of Appeal in **Eldoret Civil Appeal No.5 of 2021 Almer Farm Limited v National Land Commission & Others eKLR** the court said:

“...Where there is a clear procedure for redress of any particular grievance prescribed by the constitution or an Act of Parliament that procedure should be strictly followed.”

16. We therefore find that we have no jurisdiction to entertain this claim.

17. On the issue of exhausting the local remedies. The Applicants never presented any material before us to show that they had tried to resolve the dispute through any other mechanisms before moving the Tribunal. This question is also closely

linked to our answer to the first question. We will not belabor further. We thus agree with the Respondents on this question.

18. We have always stated that proper sports governance must be inculcated in our federations and that is what the Sports Act came to address. With these incessant wrangles, it is our sports men and women who end up suffering. Almost all the parties in this instant case were here before us over a somewhat similar dispute in **Sports Disputes Tribunal Case No.27 of 2016**. We have to bring this to an end.

19. We are also alive to the fact that the federation cannot operate in a vacuum given the tournaments that Kenya has to participate in and the attendant sanctions should Kenya fail to participate. This is equally important for the country even as the federation seeks to comply with the Sports Act and the Sports Registrar's letter of 09/12/2020.

20. It is for these reasons that the following orders now commend themselves to this Tribunal:

a. The Notice of Motion dated **04/05/2021** is hereby dismissed;

b. The parties in these matter and all the officials of Chess Kenya are ordered to finalize with the registration of Chess Kenya and ensure the elections thereof are carried out within **six (6) months** from today in full compliance with the Sports Act, Sports Registrar's Regulations, 2016 and the Constitution of Kenya;

c. The Sports Registrar is directed to ensure that order number (b) above is complied with fully;

d. The matter shall be mentioned on **17/08/2021** for further directions;

e. Each party shall bear its costs.

21. The Tribunal thanks 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 13TH DAY OF JULY,

2021.

MEMBER, SPORTS DISPUTES TRIBUNAL

SIGNED:

MARIA KIMANI

MEMBER, SPORTS DISPUTES TRIBUNAL



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