



Case Number:	Appeal 10 of 2017
Date Delivered:	05 Dec 2017
Case Class:	Civil
Court:	Sports Disputes Tribunal
Case Action:	Decision
Judge:	John M Ohaga, FCI Arb
Citation:	Kennedy Bwibo & another v Kenneth Ruto & another [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Tribunal
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	order for Compensation is denied.
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**THE JUDICIARY**

**OFFICE OF THE SPORTS DISPUTES TRIBUNAL**

**APPEAL NO.10 OF 2017**

**KENNEDY BWIBO.....1<sup>ST</sup> APPELLANT**

**ALI OBED OGADA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**KENNETH RUTO.....1<sup>ST</sup> RESPONDENT**

**FRANCIS OLIELE.....2<sup>ND</sup> RESPONDENT**

**DECISION**

**Hearing:** 21<sup>st</sup> November, 2017

**Panel:** John M Ohaga, FCI Arb - Chairman

**Appearances:** Mr. Kennedy Bwibo appearing in person

No appearance for the Respondent

**The Parties**

1. The first Appellant has presented himself to the Tribunal as the elected FKF Chairman, Kajiado Branch.
2. The Second Appellant has presented himself to the Tribunal as the FKF elected secretary, Kajiado Branch.
3. The First Respondent is the FKF Chairman, Central Rift Branch.
4. The Second Respondent is the FKF Secretary, Central Rift Branch.

**Brief Background**

1. The Appellants were elected as officials of FKF Kajiado Branch by an election dated 4<sup>th</sup> December 2015.
2. It is the Applicants' assertion that they learnt of their suspension as officials by a newspaper publication dated 11<sup>th</sup> May 2016. It is their contention that the purported suspension has never been communicated to them.
3. On 14<sup>th</sup> March 2017, the Appellants lodged an appeal to this Tribunal seeking reliefs as listed hereunder:
  - a) *Withdrawal of the purported suspension letter suspending the elected leaders;*
  - b) *Suspension of the parallel league managed by non-elected individuals and fixture to be stopped with immediate effect;*

c) *To participate under Nairobi branch and to have PJ Flora FC team promoted to Division II as required by statute;*

d) *Compensation and to be granted a clean bill certificate with regard to the Defamation claim; and*

e) *To have the fixtures affiliated to Nairobi West Branch put on hold pending hearing of the Appeal.*

4. On 17<sup>th</sup> March 2017, the Appellants herein filed a notice of Appeal with the Tribunal substantially seeking the same remedies as sought in the Appeal dated 14<sup>th</sup> March 2017.

5. The Tribunal has made several attempts to engage the Respondents and have this matter resolved internally between the parties herein, but the Respondents have not been responsive.

### **The Appellants' Case**

6. At the Hearing, the 1<sup>st</sup> Appellant laid great emphasis on the fact that they had been sidelined by the FKF Central Branch, yet they are the duly elected officials and the Kajiado sub-branch is currently being managed by other "officials".

7. The 1<sup>st</sup> Appellant informed the Tribunal that he last time he appeared, the Tribunal directed that FKF lawyers convene and agree on internal mechanisms and nothing has happened since. He argued that has never been invited for any hearing by the Respondents.

8. The 1<sup>st</sup> Appellant stated that Kajiado South branch is operating under unelected officials; they have stayed to office in spite of notification from other stakeholders that they are illegally in office.

9. The 1<sup>st</sup> Appellant brought it to the attention of the Tribunal the issue of the Kajiado Branch bank account. The Appellants and the other elected officials are the signatories in the National Bank Account and the other "officials" are operating a separate account at Equity Bank.

10. The 1<sup>st</sup> Appellant informed the Tribunal that the details revolving around opening the account at Equity Bank are highly questionable as how the Equity Bank account was opened as he had clearance from FKF to keep operating the account at National Bank of Kenya to which they (he and other elected officials) remain signatories.

11. The 1<sup>st</sup> Appellant reported that according to him, the proper officials as elected on 4<sup>th</sup> December 2015 are as follows:

i. Kennedy Bwibo-Chair

ii. Raphael Sairiamu-Vice Chair

iii. Ali Obeid-Secretary

iv. Charles Koge-Treasurer

v. Vincent Okoth-Director of Youth

vi. Lensa Akoth-Women Representative

vii. Mr. Bwibo told the Tribunal that the Respondents had purported to suspend them for corruption as they had 2.4 Million in their account yet they only had 4,000 in the account.

12. The 1<sup>st</sup> Appellant submitted that the Respondents had purported to suspend them for corruption as they misappropriated Kenya Shillings 2.4 Million from the Kajiado Branch account when the 1<sup>st</sup> Respondent claims they only had 4,000 in the said account.

### **The Respondents' Case**

13. The Respondents have not filed any response to the Appeal filed by the Applicants in spite of them having been served and made aware of these proceedings at the Tribunal. On 12<sup>th</sup> September 2017 the Respondents' Counsel informed the Tribunal that they were waiting for the Appellants to prosecute their case.

14. The Respondents have occasionally appeared at the Tribunal and agreed to resort to internal mechanisms. The Respondents have not given any feedback to the Tribunal on the progress of resolution by way of internal mechanisms.

15. On 17<sup>th</sup> October 2017, the Appeal was mentioned and one Mr. Udoto appeared holding brief for Mr. Ochieng for the Respondent. He informed the Tribunal that a Committee would be constituted, and a Hearing would be conducted. The Tribunal has not received any report on the Hearing and the Respondent is absent.

### **The Determination**

16. The key issue before this Tribunal is whether the suspension of the Kajiado sub-branch was done in accordance with the laid down procedure and therefore whether it was valid.

17. It is not in dispute that indeed the Appellants were elected as officials of Kajiado sub-branch by an election held on 4<sup>th</sup> December 2015.

18. This Tribunal, at all times, attempts to encourage internal dispute resolution mechanisms. This is in tandem with Article 159(2)(c) of the Constitution of Kenya, 2010.

**19. The Court in relied on Football Kenya Federation Vs Kenyan Premier League Limited & Others Civil Suit No.69 Of 2015 where the court relied on**

*In Safmarine Container Nv Of Antwerp Vs Kenya Ports Authority Mbsa Hc Cc 263 Of 2010, the court held that to the extent that it is not only the Constitution that can limit/confer jurisdiction of court but also any other law may by express provision confer or limit jurisdiction.*

*The leaned judge in the above case relied on Article 159 of the Constitution, clause 2c which provides that in exercising judicial authority, the courts and tribunals shall be guided by the principles that alternative forms of dispute resolution including conciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted.*

20. This Tribunal has rendered its position on internal dispute resolution mechanisms in In **Peter Omwando -vs- Nick Mwendwa & Others (Sued as Officials of Football Kenya Federation)**, where the Tribunal stated as follows at para. 33:

*'The Tribunal has declared severally its strong preference for sporting organizations to resolve their disputes within local structures first before approaching this Tribunal. The Tribunal, however, noted in this instance that the pathway to having the dispute resolved within the local committee was not clearly defined.'*

21. In the spirit of encouraging internal methods of dispute resolution, I wrote to the FKF CEO seeking to have this matter resolved through FKF internal mechanisms before the matter is determined by the Tribunal. Unfortunately, I did not receive a response from FKF.

22. On 4<sup>th</sup> August 2017, the Secretary to the Tribunal, Mr. Luke Luseno wrote to the FKF CEO echoing my sentiments of having this matter resolved through internal mechanisms. The letter was received by FKF but there was no response.

23. Since the parties herein have failed to internally resolve this stalemate, the Tribunal is left with no option but to offer a remedy.

24. I find that this matter largely hinges on the rights of the Appellants herein and the procedure of suspension as set out in the FKF Constitution.

25. The Appellants have brought to the attention of this Tribunal that they were suspended vide a newspaper publication dated 11<sup>th</sup>

May 2011. I however note that this publication did not report that the Appellants had been suspended but was a call/recommendation for the Applicants' suspension.

26. The only communication from the 2<sup>nd</sup> Respondent regarding this suspension is a letter dated 5<sup>th</sup> June 2017 to the Secretary Kajiado sub branch inviting the Appellants to a meeting on 10<sup>th</sup> June 2017. In this letter, I also note that the 2<sup>nd</sup> Respondent wrote that they had proposed that the Appellants be suspended and not that they had been suspended.

27. It is therefore clear that the Appellants have not officially been suspended but that still stands as a recommendation to the FKF National Executive Committee. The Tribunal is further in receipt of a letter dated 18<sup>th</sup> October 2016 in which the FKF General Secretary, Mr. Robert Muthomi acknowledged Mr. Raphael Sairiamu as the duly elected Vice chairperson of the FKF Kajiado sub branch and Mr. Charles Kimutu as the treasurer.

28. I however take issue with the fact that the Appellants have not been officially suspended, they have been practically and substantially suspended and disarmed. As per the submissions made to the Tribunal, there is already a team in place running the Kajiado sub -branch. Further, their financial operations have been paralyzed. It is quite clear that Kajiado sub-branch cannot be run by two sets of officials.

29. The FKF Constitution provides a clear procedure for suspension under Article 14 as follows:

### Suspensions

*1.The General Meeting is responsible for suspending a member. The National Executive Committee may, however, suspend a Member that seriously violates its obligations as a Member with immediate effect. The suspension shall last until the next General Meeting, unless the Executive Committee has lifted it in the meantime.*

*2. A suspension shall be confirmed at the next General Meeting by two thirds of the votes taken. If it is not confirmed, the suspension is automatically lifted.*

*3.A suspended Member shall lose its membership rights. Other members may not entertain sporting contact with a suspended Member. The Disciplinary Committee may impose further sanctions.*

*4.Members that do not participate in the sports activities of FKF for two consecutive years shall be suspended from voting at the General Meeting and their representatives shall not be elected or appointed until they have fulfilled their obligations in this respect.*

**30.** This Tribunal has an unwavering obligation to respect, protect and uphold Constitutional provisions as the Constitution of Kenya, 2010, is the Supreme law of the land. The Court echoed this in **Council Of County Governors vs Hon. Attorney General and Another Constitutional Petition No.56 of 2017** where honourable Justices Mwita and Mativo pronounced themselves as **hereunder:**

*”Ringera J put it more succinctly in Njoya and Others vs Attorney General when he observed that the Constitution is a living document and not like an Act of Parliament when he observed that “the Constitution is the supreme law of the land; it’s a living instrument with a soul and a consciousness; it embodies certain fundamental values and principles and must be construed broadly, liberally and purposely or teleologically to give effect to those values and principles.”*

31. It is a common rule of natural justice that any person accused of a wrong-doing must be accorded an opportunity to give their representation regarding the matter.

32. This is codified under Article 50(1) of the Constitution of Kenya, 2010 which provides that:

*” Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”*

**33.** The right to fair hearing also encompasses that the right to be made aware of the charges or allegations. This was highlighted by

the Court of Appeal in **The Judicial Service Commission Vs Hon. Mr. Justice Mbalu Mutava & another Civil Appeal No. 52 Of 2014 where the court relied on the Decision of the House of Lords in Ridge vs Baldwin**

*“The landmark decision of the House of Lords in Ridge v. Baldwin [1964] AC 40 clarified the law, that the rules of natural justice, in particular right to fair hearing, (audi alteram partem rule) applied not only to bodies having a duty to act judicially but also to the bodies exercising administrative duties. In that case, Lord Hodson at page 132 identified three features of natural justice as:*

- i. the right to be heard by an unbiased tribunal.*
- ii. the right to have notice of charges of misconduct*
- iii. the right to be heard in answer to those charges.*

*On his part, Lord Reid when dealing with class of cases of dismissal from office “where there must be something against a man to warrant his dismissal” said at page 66:*

*“There, I find an unbroken line of authority to the effect that an office cannot be dismissed without first telling him what is alleged against him and hearing his defence or explanation.”*

34. Further, the Court in **Republic vs The Truth, Justice And Reconciliation Commission Judicial Review Miscellaneous Civil Application No. 284 OF 2013** the court relied on **Republic versus The Honourable The Chief Justice of Kenya & Others Ex Parte Moijo Mataiya Ole Keiwua, Nairobi HCMCA No. 1298 of 2004** where the court held as follows:

*“The right to be heard has two facts, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to the individuals or groups, against whom decisions taken by public authorities operate, to participate in the proceedings by which those decisions are made, an opportunity to express their dignity as persons. The ordinary rule which regulates all proceedings is that persons who are likely to be affected by the proposed/ likely action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it and such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence...”*

35. It is rather apparent that the Appellants have not been officially made aware of how they have failed to work harmoniously with the Central Branch thus warranting their suspension.

36. It is further clear that the procedure for suspension as stipulated under Article 14 of the FKF Constitution was not and has not yet been complied with. The Respondents cannot therefore purport to have other officials managing the Kajiado Branch until and unless the Appellants are lawfully ejected.

37. Albeit the Respondents call it a proposal to suspend, the truth of the matter is that the Appellants stand suspended without having been taken through the requisite processes set out in the FKF Constitution.

38. Following that the Appellants were not validly and legally ejected from office, this Tribunal finds that there is no plausible reason for the Respondents or the central Branch to frustrate the Appellants financial muscle and more particularly, National Bank of Kenya Account No.01281081321500 which the FKF General Secretary, by a letter dated 31<sup>st</sup> October authorized that it be reactivated.

39. On the question of compensation for defamation of the Appellants, I find that there was no defamation as there was no hearing conducted and the Appellants were suspended for being at fault which decision turned out to be false. Further, this Tribunal wields no such jurisdiction to determine Tortious suits and award General Damages. Such jurisdiction lies with the courts. On this, I wish to rely on

*“In Ex Parte Mayfair Bakeries Limited vs. Rent Restriction Tribunal and Kirit R (Kirti) Raval Nairobi HCMCC No. 246 of 1981*

*(supra) the Court proceeded to hold that if the legislature had intended that the tribunal should have power to award compensation in respect of the complaints the subject of the appeal it would have made specific provision as the power to award compensation must be express and cannot be implied. To the Court, compensation for damage is a matter for the ordinary court on whose jurisdiction pecuniary limits have been placed. It is therefore clear that a Tribunal's power must be conferred by the Statute establishing it which statute must necessarily set out its powers expressly since such Tribunals have no inherent powers. Unless its powers are expressly donated by the parent statute, it cannot purport to exercise any powers not conferred on it expressly.*

40. I find that some of the orders being sought by the Appellants have already been spent and I shall therefore not make a determination on them.

#### **Orders**

41. Consequently, the Tribunal makes the following orders:

a. The Appellants remain in office as the duly elected officials of FKF Kajiado branch and should be accorded all the necessary support by the FKF Central Branch until they are lawfully ejected under Article 14 of the FKF Constitution if need be.

b. The order for Compensation is hereby denied.

**DATED and DELIVERED** at **NAIROBI** this 5<sup>th</sup> day of **December**, 2017.

Signed:

**John M Ohaga, FCI Arb**

Chairman, Sports Disputes Tribunal



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