



Case Number:	Appeal 27 of 2016
Date Delivered:	21 Jun 2016
Case Class:	Civil
Court:	Sports Disputes Tribunal
Case Action:	Decision
Judge:	John Ohaga - Chairperson , Robert Asembo- Member G. M. T. Ottieno - Member
Citation:	Chess Kenya v Kenya National Sports Council & 3 others [2016] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Tribunal
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal allowed.
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. 27 OF 2016

CHESS KENYA.....APPELLANT

VERSUS

KENYA NATIONAL SPORTS COUNCIL.....1ST RESPONDENT

JOHN MUKABI.....2ND RESPONDENT

BERNARD WANJALA.....3RD RESPONDENT

GILBERT WANDERA.....4TH RESPONDENT

DECISION

Hearing: 3rd and 24th May, 2016

Panel: John M Ohaga Chairperson

Robert Asembo Member

Gilbert M T Ottieno

In an urgent appeal dated 13th April 2016 and filed on 14th April 2016, Joseph Atwoli, the Secretary General of the Chess Kenya Federation (hereinafter “**The Appellant**”) sought the intervention of the Honourable Tribunal following alleged change in the leadership of the management of the affairs of Chess Kenya and sought orders in the realms of:

- (i) a declaration that the purported elections held on March 20th, 2016 are null and void;
- (ii) a mandatory injunction restraining John Mukabi, Bernard Wanjala and Gilbert Wandera respectively, the 2nd, 3rd and 4th Respondents (hereinafter “**the Primary Respondents**”) from continuing to masquerade as officials of Chess Kenya;

The Appellant made the application based on the following stated facts and grounds:

1. The meeting held on 20th March 2016 was not and did not qualify to be a General Meeting for the reason that the attendees were not paid up Chess Kenya members for the year 2016;
2. The notice calling for the meeting did not have elections or appointment of an interim committee as an agenda item;
3. The alleged elections were presided over by one James Akama of the Kenya Nationals Sports Council (hereinafter “**the KNSC**”) who has been disowned by the KNSC.
4. The office of the Registrar of Sports was not represented at the said elections.

5. The purported elections did not conform to provisions of Article 81 of the Constitution of Kenya 2010.

The Appellants, further considered the matter urgent and stated the following grounds as basis for such urgency:

- a) That the illegal office has purportedly selected the National Team to Africa Zone 4.2 Chess Championships scheduled to take place from 29th April 2016;
- b) The Co-operative Bank has frozen the bank accounts in the name of Chess Kenya thereby paralyzing the operations thereof;
- c) The illegal office holders had embarked on writing numerous binding letters and defamatory communication using official Chess Kenya letterheads, hence the need to stop the ensuing damage;
- d) FIDE (World Chess Federation) has recognized an illegal office and there was the need to communicate to FIDE urgently before the upcoming FIDE Annual Delegates Conference;

In the appeal, the Co-operative Bank of Kenya and FIDE were both named as Interested Parties by the Appellant. It is indicated by the Appellant that the Respondents were served on 14th April 2016 with the application and supporting documents.

On the record, there is also the amended application dated 14th April 2016 and filed on 18th April 2016, the grounds of which are similar to the original application dated 13th April 2016 and filed on 14th April 2016 save for one amendment in respect of ground number 2, which is cancelled out altogether.

The Primary Respondents on the other hand through the law firm of E. Wafula & Associates filed a reply to the Appellants application on 26th April 2016, which reply is dated 25th April 2016, the substance of which entails:

1. Failure by Chess Kenya to call and hold AGM since taking office in 2013;
2. Failure by Chess Kenya to present audited accounts since 2013;
3. Failure to prepare and produce members list/register;
4. Failure to transit and/or comply with the Sports Act 2013;
5. Accumulating debts with FIDE (The World Chess Federation)

On 3rd May 2016, the Appellant filed a further urgent application dated the 27th April 2016, which in essence was a response to the Primary Respondent's reply as hereinabove outlined. On this date, the Tribunal heard preliminary arguments from the Appellants on whose behalf, Messrs. Joseph Atwoli and Githinji Hinga argued. On the other side, Mr. Washika, Advocate for the Primary Respondents, equally urged the case on behalf of the Primary Respondents. The outcome of these preliminary arguments was that the Tribunal made a number of directions with respect to how the matter would proceed for hearing on a further date being 24th May 2016. Amongst the directions, were the guidance to the parties on availing the bona fide register of members, and deep familiarization of both parties with the Chess Kenya constitutional provisions on convening an SGM, the quorum thereof, the format of notice, the framing of the agenda amongst others.

These directions were out of necessity for the reason that the Tribunal found the preliminary submissions by the parties to the case as very convoluted. Mr. Washika for the Primary Respondents, and Mr. Joseph Atwoli and Githinji Hinga as the Appellants, all confirmed to the Tribunal that they would be guided appropriately in the foregoing respect.

In the course of the preliminary arguments on 3rd May 2016 a number of issues arose including:-

1. Whether the meeting convened by the Respondents on 20th March 2016 was a "consultative meeting" or Special General Meeting"

2. Whether the delegates to the said meeting were bona fide members and whether there a legitimate register of Chess Kenya members"
3. The issue of a locked up post office and otherwise unlawful access to the mail in the name of Chess Kenya"
4. What happens in terms of responsibility and organization to upcoming events relating to the Chess Kenya calendar"
5. Finally, there was the issue of finances, fund management and operation of bank accounts in the name of Chess Kenya"

A further development arose on 3rd May 2016 when the KNSC, through its Treasurer and Chairperson of the Disciplinary and Arbitration Committee, Mr. Charles B. D. Nyaberi appeared in person having filed submissions in support of the Appellants case.

At the conclusion of the preliminary arguments, the Tribunal issued interim orders restoring the status quo ante, being the position before the alleged SGM.

On 23rd May 2016, the Respondents in a dramatic twist filed what can be termed a "protest application" and purported to withdraw from the proceedings. The submission in this respect is dated 20th May 2016 and was signed by John Mukabi under the banner of Chess Kenya. In a "check-mate" move, the Appellants responded by filing a further urgent application dressed up in mandatory injunction terms and seeking to cite the Primary Respondents for contempt of court.

When the matter came up for hearing on 24th May 2016, the Primary Respondents, true to the intent expressed in their last application dated 20th May 2016 and filed on 23rd May 2016 absented themselves from the proceedings.

A perusal of the application of 20th May 2016 sums up the following to be the reasons for their sudden exit from participation in these proceedings:

a) The Primary Respondents challenged the jurisdiction of the Tribunal citing Section 59 of the Sports Act 2013. Their interpretation being that the constitutional provisions of Chess Kenya, does not allow "this matter to be brought before the Tribunal";

The nature of the summons does not fall in line with Section 59(b) as there was no agreement but summons with a threat that a decision would be made whether we (the Respondents) were present or not"

b) The Respondents allege that at the initial hearing the Tribunal threw unto them the onus of proving that the Appellants are not members of Chess Kenya.

c) The Appellants misled the Tribunal by presenting a list of members directly from a league tournament, to which the Tribunal did not test the veracity thereof.

d) The Appellants ("former officials") clearly confused the Tribunal regarding FIDE (World Chess Federation) organized events and the Tribunal did not allow the Respondents to explain and/or respond. In other words the Tribunal was biased against the Respondents.

e) The Tribunal was making the Respondents accountable for the failures of the Appellants (previous officials), amongst other failures, the Respondents cite poor relations with FIDE and non-compliance with the Sports Act 2013.

The Respondents sign off their protest and withdrawal letter (application) by stating five noteworthy paragraphs which we hereby quote:-

1. "we request a more transparent process of resolving this matter and are prepared to go back to our members even before the six months given at the last special general meeting expires"

and

2. “as the interim committee we had already written to World Chess Federation (FIDE) regarding this Tribunal hearing and expressed our objection to the intended reinstatement of the previous executive as this was against the decisions of the members at the Chess Kenya Special General Meeting held on March 20th, 2016...”.....

3. “we cannot allow the misdeeds of our colleagues of the former Chess Kenya executive committee to negatively affect the opportunities for our players who eagerly look forward to representing our country at the global chess showpiece in Baku.

4. “in the meantime we shall continue representing and protecting the interests of our members who gave us our mandate in line with the resolution of the Special General meeting of March 2016.

And finally, the protest and withdrawal ends with these words (last paragraph).

5. “We look forward to your positive handling of the issue at hand”

We hold this in abeyance as we now embark on the proceedings of the hearing on 24th May 2016, and we shall return shortly to evaluate the relevance of these quotes to the determination herein.

At the hearing on 24th May 2016, Mr. Joseph Atwoli and Mr. Hinga Githinji relied on their various applications dated the 13th April 2016, 18th April 2016, 27th April 2016 and 23rd May 2016.

Mr. Nyaberi for KNSC, expounded the submissions filed on 3rd May 2016.

As we have observed, the Primary Respondents did not appear as they were still aggrieved by the interim orders of the Tribunal which had on 3rd May 2016, retained the Appellants in office pending the hearing and determination of the matter herein.

Mr. Joseph Atwoli and Mr. Githinji Hinga made out their case as follows:-

a) The Special General Meeting convened by the Respondents did not qualify to be a General Meeting, the same did not comprise bona fide members, and hence was unlawful/an illegal meeting, not having been properly convened. They argued that the said delegates to the meeting included non-members, non-citizens and minors. They in addition, challenged the validity of the notice thereof. It was at best a consultative meeting they submitted.

b) The Appellants also argued that the elections were presided over by one James Akama from the KNSC on his own volition and without the mandate of the KNSC, a fact which Mr. Nyaberi (KNSC) came to shed light on.

c) The Appellants took issue with the manner and conduct of the Primary Respondents that negatively affects the name, functionality and standing of Chess Kenya.

They highlighted the following:

a) The Primary Respondents masquading as Chess Kenya bona fide officials (properly elected) publicly.

b) Respondents taking over bank account operations.

c) Respondents accessing the postal (mail) box.

d) Respondents arranging and holding competitions for Chess Championships local and international.

e) Respondents seeking recognition by and officially corresponding with FIDE (World Chess Federation)

f) Respondents ceaseless attacks (of the Appellants) on social media.

Mr. Nyaberi for the KNSC, in his submissions made a case in support of the Appellants and argued on several points key among them being:

a) KNSC had never mandated its officer, James Akama to preside over the Chess Kenya elections, and that disciplinary measures were being contemplated against this officer.

b) KNSC was never invited to the alleged Chess Kenya meeting on 20th March 2016.

c) John Mukabi (one of the Respondents) had invalidated his so called convening notice of SGM by the corrected email of 7th March 2016. As such there was no valid notice and the agenda too was irregular.

d) KNSC was never represented at the said meeting and Mr. James Akama had not been authorized hence all his purported actions were null and void.

e) As the chair of the KNSC's Disciplinary and Arbitration sub-committee functions such as supervising federations' elections and making returns thereof would be squarely within his knowledge and the discharge of the same his responsibility. Unlike in this case, all that James Akama did was null and void for lack of authorization by the said sub-committee of KNSC.

The Tribunal has considered the foregoing oral and written submissions by the Appellants and the KNSC. With respect to the Primary Respondents, though they chose to "protest and withdraw" from these proceedings, the Tribunal has on its record the various pleadings, from which their case can be made out as follows:-

a) They seek to be recognized as interim officials of Chess Kenya for a period of six (6) months from 20th March 2016, meaning upto 19th September 2016, within which period proper elections in respect of Chess Kenya could be held for new officials.

b) They have both acknowledged and challenged the jurisdiction of the Tribunal in equal measure.

c) They consider Chess Kenya to have not transited under the Sports Act 2013 and is hence an illegal sports organization.

d) They have been recognized by FIDE (World Chess Foundation) and African Chess Confederation (ACC) as the mandated officials of Chess Kenya.

The Tribunal is urged to consider the case of the Appellants and the Respondents in the foregoing circumstances.

The Appellants case

The Appellants in this matter seek the intervention of the Tribunal following the meeting with the Primary Respondents of 20th March 2016, from which the Primary Respondents assumed the leadership of Chess Kenya. The Appellants fault the said meeting terming it a merely consultative meeting that should not have amounted to change of guard at the helm of Chess Kenya executive. The Appellants consider the said meeting to have been illegally convened, attended by persons who were not members, erroneously presided over and the outcome of it all being a recipe for confusion and malfunctioning of the Chess Federation in Kenya. The Appellants seek the Tribunal to nullify the agenda, proceedings and outcome of the meeting of 20th March 2016 and to declare the Respondents as non-officials of Chess Kenya, including restraining them from carrying themselves as such officials.

We have considered the evidential material before us and the following key questions prominently emerge:-

1. Whether the Tribunal has jurisdiction over this matter"
2. Whether the meeting of 20th March 2016 was a General Meeting for purposes of elections"

3. Whether the said meeting of 20th March 2016 had the requisite quorum with bona fide members"
4. Whether Chess Kenya is a well-administered sports organization in tandem with the objects of the Sports Act 2013.
5. What is the fate of the Respondents following their appointment as Interim officials"

1. Whether the Tribunal has jurisdiction over this matter"

This is always the primary question in all matters that are filed with us. The Respondents questioned the jurisdiction of the Tribunal on 23rd May 2016, the eve of the hearing, what we may refer to as the "Eleventh hour" in their "protest and withdrawal" application. They cited Section 59 of the Sports Act 2013.

Section 59 of the Sports Act 2013 states that:-

The Tribunal shall determine:-

- a) Appeals against decisions made by the 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.

The Respondents in their "protest and withdraw" application argued that:-

"the constitution of our organization has no rule that allows this matter to be brought before the Tribunal"; "moreover, the nature of summons does not fall in line with article 59(b) as there was no agreement but a summons with a threat that a decision would be made whether we were present or not"

These submissions by the Respondent have called us once again to the consideration of whether our jurisdiction in this matter is proper or ousted. It seems that the Respondents want either express provision in their constitution for disputes where applicable to be referred to the jurisdiction and/or in the alternative an express agreement perhaps written stating the same.

We opine very differently and interpret the said section 59(b) in these terms:-

1. Section 59(b) refers to "other sports related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear;". To this we construe that "*agree to refer to the Tribunal and that the Tribunal agrees to hear*" was fully accomplished by a look at the various mentions and two hearings when all parties (the Appellants, the Primary Respondents, the Tribunal and the KNSC) all appeared at scheduled times and made presentations. Furthermore, the respective parties filed and counter filed several applications and responses in the Tribunal, the gist of which being their arguments in respect of the dispute with clear prayers being sought to be granted by the Tribunal. We have only one inference in the circumstances:- that the jurisdiction of the Tribunal over this dispute was admitted by all the parties. In fact, the Primary Respondents got disgruntled and aggrieved not by the Tribunal being seized of the jurisdiction, but the initial decision of the Tribunal, which decision maintained the status quo ante keeping in office the Appellants. This is clear in their "protest to withdrawal application at page 2, and we quote:-

"Arising from the first hearing of the Tribunal we were also surprised to note that the interim committee (Respondents) was being asked to validate the membership of the Petitioners when this issue of membership was precisely one of the grounds contained in the petition that brought about the special general meeting of March 20,2016.

Further, it is quite apparent that the Respondents having submitted to the jurisdiction of the Tribunal, they would stay in the Tribunal conditionally upon the Tribunal rendering such rulings/decisions/orders favourable to their expectations if the opposite became the outcome, then they would “protest and withdraw”. This fact is best illustrated by the following quotes from the Respondents “protest and withdrawal” application of 23rd May 2016.

1) Page 3

.....”*This was a clear sign that all is not well to former officials (Appellants) will hurt Chess fraternity more*”

2) Page 3

“in addition, we would like to point out another misleading explanation that former officials (Respondents) clearly confused the Tribunal regarding FIDE organized events yet we (Respondents) were never given opportunity to respond”

3) Page 4

“we find ourselves at a loss as to how the tribunal can make the interim Chess Kenya executive committee accountable for the failures of the previous officials.....”

4) Page 4

“We request a more transparent process of resolving this matter and are prepared to go back to our members even before the six months given at the last Special General Meeting expires.....”

“should the Tribunal insist on proceeding on fresh election, we propose the inclusion of either the World Chess Federation (FIDE) or the African Chess Confederation (ACC) and a representative of the Sports Registrar as observers so as to protect the interests of our members.....”

“as the interim committee we (Respondents) had already written to the World Chess Federation regarding this Tribunal hearing and expressed our objection to the intended reinstatement of the previous executive (Appellants).....”

And

Finally on page 5

“We (Respondents) look forward to your (Tribunal’s) positive handling of the issue at hand”

We find it quite despicable that the Respondents were clearly out to offend the principles of natural justice, whereby they assumed the role of being judges in this dispute, preferring this role over the natural one of being parties to a case and urging us on the strengths of their case instead. This is strange and quite unpalatable, but on the strength of the material on record, we have considered their case too and if meritorious in any respect.

To this first issue, we are absolutely convinced that we have jurisdiction and unequivocally so. Suffice it to say, the Respondents should have stated and with appropriate basis, to which forum such a dispute should have found avenue for redress. This they did not.

2. Whether the meeting of 20th March 2016, was a General Meeting for purposes of elections"

And

3. Whether the said meeting had the requisite quorum with bonafide members of Chess Kenya"

The Appellants urged the Tribunal to nullify the meeting of 20th March 2016 for reasons that the meeting did not qualify to be referred to as a General Meeting. The attendees were not paid-up Chess Kenya members. They termed it a consultation meeting. This begs the question whether this was a “General Meeting” or a “Consultative Meeting”.

The Respondents on the other hand argue that the meeting was a “Special General Meeting” convened by bona fide members following a petition to the Appellants as office holders who did not heed nor accede to the demands in the petition.

The Tribunal has looked at the provisions of Chess Kenya in respect to the calling for and convening of (1) a General Meeting (Article 8.1), (2) Special General Meeting (Article 8.3) and/or (3) stakeholders meeting (Article 8.4). We are convinced that indeed the meeting of 20th March 2016 was a meeting under the Chess Kenya Constitution, a stakeholders (Consultative) meeting and properly within the provisions of Article 8.4 which we hereby enumerate:

“8.4 stakeholders meeting.

- a. composition – anyone who is involved in the chess community in whatever capacity.
- b. The stakeholders meeting shall be an informal meeting, it shall be held once a year.
- c. The decisions made are advisory nature and are not binding to the executive or the General Meeting”

A deep study into the Chess Kenya constitution (annexture ICK 2 of the Respondents pleadings dated 25th April 2016 and filed on 26th April 2016) underscores the urgency for the Chess Kenya leadership to review and align their constitution (as their legal and institutional framework) to the Sports Act 2013. We have indeed restrained ourselves, unsuccessfully so, from criticizing the “convoluted document” put forth as the hallowed constitution of Chess Kenya. Be that as it may, it remains to be what guides the affairs of the game of Chess in this country and even if it be a poisoned chalice, the parties hereto remain to be subject to and guided by it. Nonetheless, in the dispute before us, all material facts and evidence presented disqualify the meeting of 20th March 2016 from being a General Meeting and/or Special General Meeting. Conclusively, it leaves the meeting to have been a (consultative) stakeholders meeting (Article 8.4). This then goes to answer and quickly dispense with the question of quorum and bonafide delegates attending.

Obviously being a stakeholders (consultative) meeting, the question of quorum and the need for specified delegates becomes obsolete and quite unnecessary. This is our holding in respect to the twin issues.

4. What is the fate of the Respondents Interim Officials of Chess Kenya'

The Respondents have come out quite strongly presenting themselves and seeking absolute recognition as Interim Executive committee of Chess Kenya, mandated by the Special General Meeting of 20th March 2016. They have not missed nor ignored any and each occasion to tell the world of their mandate. In their “protest and withdrawal” application dated 20th May 2016, they addressed the Tribunal, the World Chess Federation, the African Chess Confederation, the Ministry of Sports, Culture and Arts, the Registrar of Sports as such Interim Officials. They even wrote to the Chess Kenya bankers as such. Unfortunately, the Tribunal has interpreted their “Special General Meeting” of 20th March 2016 to having failed the criterion and qualifications to be such. Indeed, we have already pronounced ourselves on the characteristics and classification of the meeting of 20th March 2016, from which the Respondents acquired their mandate. However interim it may be, their fate is short-lived far much than the intended six (6) months. They (Respondents) must stop forthwith from presenting themselves and/or carrying out the functions of Chess Kenya executive. They are a fruit of a poisoned tree. Their so called “special general meeting was not one contemplated by Article 8.3 of their constitution, hence the outcome and fruits of which, remain improper and must be disposed of as we hereby do.

5. Whether Chess Kenya is a well administered sports organization in tandem with the objects of the Sports Act 2013''

Special issues accusing the Chess Kenya of poor administration have come to fore in this dispute:-

1. Failure to conduct regular General Meeting (AGM). The last one having been in 2013. The Appellants (officials) admitted that their numerous attempts to hold AGM always failed with the key issue being lack of quorum. Chess Kenya must go to the drawing board and quickly address the root cause to this.

2. Failure to avail and/or circulate audited accounts – this is our view is another serious maladministration characteristic of a membership organization in terms of transparency and accountability obligations of the leadership.
3. A contestable membership register – it should be pretty obvious that a modern-day organization/institution should readily avail a list and clear categories of its membership. Chess Kenya must address this.
4. Insecure postal (mailing) address which remained unpaid for long.
5. Disorganized competitions and calendar of events.
6. Poor relations with African and World confederation and Federation (ACC and FIDE).
7. Issues of financial non-accountability and allegations of impropriety.
8. Non-clear communication channels between the leadership and Chess members and fraternity at large.
9. Possible wrangles.

We prescribe the cure to all these nine (9) diseases to be packaged in proper, structured, well-founded constitutional and institutional reforms that Chess Kenya must undertake as soon as possible. Chess Kenya should also pursue to conclusion the transition to the Sports Act 2013. They should hold their Annual General Meeting properly convened and with suitable quorum of bonafide delegates.

As the Tribunal has ruled on many occasions sound management of Sports and administration of sports bodies, is our core drive, in our mandate towards sports development in our beloved country. This dispute calls to quest once again on the proper governance of the sports of Chess in Kenya.

We in the totality of the dispute herein above issue the following orders.

1. The Appellants be and continue to serve as the recognized officials of Chess Kenya for the remainder of their tenure.
2. The Respondents be and are restrained from conducting themselves as officials (interim or otherwise) of Chess Kenya.
3. The Appellants to initiate the convening and holding of the Annual General Meeting and/or Special General Meeting whichever comes earlier per their constitution with the Agenda of holding elections and scrutiny of audited accounts primary among any other agenda. This is any event to be held not later than sixty (60) days from the date of these orders.
4. The Appellants to publish and circulate for scrutiny the members register within seven (7) days from the date of these orders and finalize the same within twenty-one (21) days.
5. Chess Kenya to comply with the provisions of the Sports Act 2013 and to transit not later than one hundred and twenty (120) days from the date of these orders.
6. Each party to bear its own costs.

Delivered and issued at Nairobi 21st this day June 2016.

- 1. John Ohaga.....Chairperson**
- 2. Robert Asembo.....Member**

3. G. M. T. Ottieno.....Member



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