



Case Number:	Sports Disputes Tribunal Appeal 7 of 2015
Date Delivered:	23 Jun 2015
Case Class:	Civil
Court:	Sports Disputes Tribunal
Case Action:	Judgment
Judge:	John M. Ohaga Chairman, Sports Disputes Tribunal Signed: Mrs. Elynah Shiveka Deputy Chairperson, Sports Disputes Tribunal Signed: Gichuru Kiplagat Member, Sports Disputes Tribunal
Citation:	Kenya National Paralympic Committee v The Commissioner for Sports & 9 others; Amicus Curiae: Centre for Sports Law [2015] 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

SPORTS DISPUTES TRIBUNAL APPEAL NO. 7 OF 2015

KENYA NATIONAL PARALYMPIC COMMITTEE

-VS-

THE COMMISSIONER FOR SPORTS,

THE CABINET SECRETARY FOR SPORTS, CULTURE AND ARTS,

AGNES FLORA OLUOCH,

THE REGISTRAR OF SPORTS,

KENYA NATIONAL SPORTS COUNCIL,

WHEELCHAIR & AMPUTEE SPORTS ASSOCIATION OF KENYA,

KENYA SPORTS ASSOCIATION FOR THE VISUALLY IMPAIRED,

KENYA SPORTS ASSOCIATION FOR THE MENTALLY HANDICAPPED &

THE CEREBRAL PALSY SPORTS ASSOCIATION OF KENYA

AMICUS CURIAE: CENTRE FOR SPORTS LAW

JUDGEMENT

Introduction

1. The 1st Party, Kenya National Paralympic Committee (hereinafter referred to as 'KNPC') is the Kenyan national umbrella body a constituent of the worldwide Paralympic movement and is an affiliate of the International Paralympic Committee (hereinafter referred to as 'IPC'). KNPC is responsible for the participation of Kenyan sportspersons with disabilities or athletes with disabilities in the Paralympic Games.

2. In the **Application for Sports Related Dispute** filed on 11th May, 2015, KNPC sought the following orders from the Tribunal:

a. A declaration that the purported acts of the 4th Party in continuing to act on behalf of the 1st Party even after her official expulsion as chairperson of the 1st party were illegal and unlawful;

b. A declaration that the 2nd Party's purported acts highlighted in the facts of the case above were done outside of his authority and that the 2nd Party abused his office;

c. Directions to the 3rd Party directing him to instruct the sports registrar to forward to the International Paralympic Committee a list of the bona fide board members of the petitioner led by the current president, Mr. Dennis Muga;

d. A declaration that 2nd Party is unfit to hold the office of ‘chef de mission’ of the Kenyan paralympic team to the African Games scheduled to be held in Congo Brazzaville having shown open hostilities to and willingness to work with the bona fide board members of the 1st party;

e. Any further orders or reliefs this tribunal will deem fit to grant;

f. Damages; and

g. Costs and interest.

Background

3. The facts of this case can be gathered from various depositions made by the parties. On 25th October, 2014, the KNPC held its elections at the Kenya National Sports Council (hereinafter referred to as ‘KNSC’). The elections, as has been pleaded without contravention, were peaceful and the following leaders were elected as bonafide office bearers:

a. Agnes Flora Oluoch- Chairperson

b. 1st Vice Chairperson- Dennis Muga

c. 2nd Vice Chairperson- Patrick Muthiani

d. Secretary General- Elijah Mwandih

e. Treasurer- John Tita

f. Assistant Secretary General- Kennedy Ndungi

g. Assistant Treasurer- Lenah Nyaboke

h. Women Representative- Rose Chesang

i. Member at Large- Pauline Awange

j. Member at Large- Sharon Kashemwa

k. Member at Large- Sospeter Maina

l. Member at Large- Ruth Mueni

m. Member at Large- Bernard On’gondo

4. Among the initial assignments was the selection of a team to attend the Dream Team Program in Gangwon Province, South Korea. The KNPC was required to recommend two youth with disability born between January 1992 and December 2002 and two coaches/guardians.

5. The 4th Party proposed the following members to participate:

- a. Athlete- Shem Maina Mwangi;
- b. Athlete- Daniel Safari Katheku;
- c. Coach/Guardian- Elijah Mwandihhi; and
- d. Coach/Guardian- Peter Mwaura Muchai

6. The 4th Party has submitted that the selection of the above named participants is what has sparked endless disagreement, infighting and chaos in KNPC.

7. On 16th December, 2014 a letter allegedly signed by some Board members was sent to the IPC alleging that the KNPC had resolved to suspend the 4th Party as Chairperson of KNPC.

8. On 10th January, 2015 an executive committee meeting was convened by KNPC and various allegations of misconduct and abuse of office were raised against the 4th Party. She was accorded the opportunity to be heard and after giving an apology, the executive committee pardoned her on condition that the alleged wrong-doing would cease. Thus the motion to suspend her failed.

9. On the same date, an email was sent to the IPC from John Tita's (Treasurer) email address signed off by Dennis Muga (Acting Chairperson) stating that the Board had resolved to suspend the 4th Party as the Chairperson.

10. There was a resolution by KNPC executive committee to suspend the 4th Party prior to the Special General Meeting (hereinafter referred to as the 'SGM'). The intention was that the suspension would be ratified by the SGM.

11. On 11th February, 2014, the 2nd Party wrote to KNPC requesting it not to hold the SGM to ratify the suspension of the 1st Party and also recognized the wrong doing of the 1st Party.

12. On 14th February, 2015 an SGM was convened by KNPC in which a motion to expel the 4th Party was debated and passed.

13. At the said SGM, Mr. Dennis Muga was installed as the new interim chairperson of KNPC pending confirmation at KNPC's Annual General Meeting to be held later in the year.

14. The IPC was thereafter informed of the expulsion of the 4th Party and the installation of Mr. Dennis Muga as the acting chairperson of KNPC.

15. On 14th February, 2015, Mr. Richard Ombeba, a Principal Sports Officer seconded to the Sport's Registrar's Office attended the said SGM as an observer from the office of the Sports Registrar.

16. On 16th February, Mr. Richard Ombeba wrote a letter to the Sports Registrar as is required of observers sent by the office reporting that the SGM adhered to the agenda supplied to the Registrar of Sports and that the 4th Party was unanimously expelled by members of the 1st Party from the office of the chairperson of KNPC.

17. On 19th February, 2015, the 4th Party was notified of her expulsion from the office of the chairperson of KNPC.

18. It has been submitted by the 1st Party and admitted by the 4th Party that she continued to act as the chairperson despite the said expulsion from office, acts of which included communicating with the IPC and the Korean Paralympic Committee.

19. The Korean Paralympic Committee subsequently wrote an e-mail to KNPC notifying it of the communication that had been sent

by the 4th Party and requested that the confusion be cleared up.

20. On the 26th March, 2015 and the 27th March, 2015, the 2nd Party wrote letters to KNPC wherein he challenged the conduct of the SGM and stated that his office would not accept the expulsion of the 4th Party on the grounds that the said SGM flouted the KNPC Constitution.

21. On 15th April, 2015, the IPC wrote to KNPC and notified them of their indefinite suspension from the IPC due to chaos in its management.

22. As a consequence of the suspension, the athletes in the membership of KNPC cannot compete in any international events sanctioned by the IPC unless the suspension is lifted.

Amicus Curiae

23. In the course of the proceedings an application was made for the admission of the Centre for Sports Law as *amicus curiae*. It filed its submissions through which it addressed the role of the KNPC, the international obligations of KNPC and the implications of a suspension by the IPC.

Interested Parties

24. Also in the course of the proceedings, an application by the 4th Party was made for the admission of the Kenya National Sports Council and the four federations under KNPC. Through the Ruling delivered on 21st May, 2015 by the Tribunal, the following organizations were admitted as interested parties:

- Kenya National Sports Council;
- Wheelchair and Amputee Sports Association of Kenya;
- Kenya Sports Association for the Visually Impaired;
- Kenya Sports Association for the Mentally Handicapped; and
- Cerebral Palsy Sports Association of Kenya.

Issues for Determination

25. The Tribunal appreciates the vast pleadings and documents made in support thereof and sets out the following as the issues for determination:

- a. Whether the acts complained of against Agnes Flora Oluoch were a lawful exercise of administrative power and discretion;
- b. Whether the expulsion of Agnes Flora Oluoch is valid and enforceable; and
- c. Whether the acts of the 2nd Party amount to meddling and interference in the affairs of KNPC.

Whether the acts complained of against Agnes Flora Oluoch were a lawful exercise of administrative power and discretion

26. It has been set out by KNPC in its pleadings and submissions that the 4th Party, among other allegations, acted unilaterally without consulting the board members of KNPC, is arrogant and high-handed, issued isas for people to travel under the umbrella of KNPC yet they are not its members and as of 27th May, 2015 in collusion with Mathews Mugenya she allegedly usurped the role of the 1st party's Secretary General and was undertaking the accreditation process for paralympic athletes scheduled to compete at the African Games in Congo Brazaville.

27. Nonetheless, it is also evident that the 4th party was overwhelmingly voted in as chairperson of KNPC in the AGM held on 25th October, 2015.

28. The suit herein has evidently arisen mainly out of the selection of a team to attend the Dream Team Program in Gangwon Province, South Korea.

29. It has been pleaded by KNPC that there was abuse of administrative and discretionary powers by the 4th Party and that she did not consult the executive committee as she ought to in selection of the team.

30. Additionally during the hearing conducted on 2nd June, 2015, Elijah Mwandihhi testified that he had been strong-armed by the 4th Party into making decisions he would not have normally made. He produced a document before the Tribunal to show that the 4th Party nominated herself as the woman representative from Kenya for the International Women's Day Recognition Award. IPC had requested that KNPC nominates a woman who they thought was worthy of the above award. She allegedly asked him to keep it a secret, nominated herself and asked Mr. Muthiani, Chairman of the Kenya Sports Association for the Mentally Handicapped to sign the form. He stated that at this point he bowed to her pressure because he was yet to learn of the intricacies and politics of his office. Later on, he states he became more confident and by 10th January, 2015, the misconduct of Ms. Oluoch was no longer a secret.

31. The Tribunal draws guidance on this issue from **Republic vs. Minister for Home Affairs and Others Ex Parte Sitamze Nairobi HCCC No. 1652 of 2004 [2008] 2 EA 323** stated as follows:

"It is now trite that there are circumstances under which the Court would be entitled to intervene even in the exercise of discretion. This Court is empowered to interfere with the exercise of discretion in the following situations: (1) where there is an abuse of discretion; (2) where the decision-maker exercises discretion for an improper purpose; (3) where the decision-maker is in breach of the duty to act fairly; (4) where the decision-maker has failed to exercise statutory discretion reasonably; (5) where the decision-maker acts in a manner to frustrate the purpose of the Act donating the power; (6) where the decision-maker fetters the discretion given; (7) where the decision-maker fails to exercise discretion; (8) where the decision-maker is irrational and unreasonable. "

33. Further, reference is made to the holding in **Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others Nairobi HCMA No. 743 of 2006 [2007] KLR 240** where the Honourable Court stated as follows :

"On the issue of discretion Prof Sir William Wade in his Book Administrative Law has summarized the position as follows: The powers of public authorities are --- essentially different from those of private persons. A man making his will, may subject to any right of his dependants dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law, this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his landregardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest The whole conception of unfettered discretion, is inappropriate to a public authority which possesses powers solely in order that it may use them for the public good. But for public bodies the rule is opposite and so of another character altogether. It is that any action to be taken must be justified by positive law. A public body has no heritage of legal rights which it enjoys for its own sake, at every turn, all of its dealings constitute the fulfillment of duties which it owes to others; indeed, it exists for no other purpose...But in every such instance and no doubt many others where a public body asserts claims or defences in court, it does so, if it acts in good faith, only to vindicate the better performances of the duties for whose merit it exists. It is in this sense that it has no rights of its own, no axe to grind beyond its public responsibility; a responsibility which define its purpose and justifies its existence, under our law, that is true of every public body. The rule is necessary in order to protect the people from arbitrary interference by those set in power over them... "

32. It must be appreciated that KNPC and the offices established therein are for the benefit of the public. The implication of this as is seen in the two authorities above is that office bearers cannot use the power given unto them as a tool to achieve their own selfish goals or as means to marshal troops in their favor. Such offices should be treated with the dignity expected of them and in the exercise of their duties; they must comply with Chapter Six of the Constitution of Kenya, 2010 on Leadership and Integrity.

33. The **IPC Code of Ethics, IPC Handbook Section 2, Chapter 1.1 published in June, 2013** at Article 10 stipulates the Code of Conduct for all elected or appointed sports leaders and administrators. Some of the principles that the current management of KNPC officials must perform and have to a certain extent disregarded are:

- a. Sports leaders and administrators shall make all decisions with absolute impartiality in the best interest of the athletes and the sport;
- b. All elected sports leaders and administrators shall respect the democratic election process and not offer any material benefits, directly or indirectly, to the voting constituencies to influence the result of an election;
- c. Sports leaders and administrators shall not abuse their positions or capacity in obtaining advantages or benefits;
- d. Sports leaders, administrators, and elected officers shall promote the IPC Code of Ethics by role modelling, peer monitoring and active peer support.

34. It must also be emphasized that the discretion accorded to the office of the Chairperson or any other office in KNPC is not unfettered. There are laws, primarily the Constitution of Kenya, regulations and policies that must be adhered to as the discretion is exercised.

35. The KNPC Constitution at Article 4.3.3.1 sets out the duties of its Chairperson. Subject of this dispute, the powers alleged to have been contravened are:

- a. Represent or designate a representative from among the Executive Committee members to represent the Organization before other parties;
- b. Carry out other duties as may be assigned by the Executive Committee;
- c. Ensure that the organization maintains positive and productive relations with its membership, media, sponsors, donors, other organizations and the community at large.

36. The KNPC Constitution at Article 2.1 lists out the objects of KNPC. Based on the evidence placed before the Tribunal, it finds that the 4th Party in its actions has disregarded the following objectives:

- a. To disseminate relevant information concerning sport and recreational activities for the persons with disability;
- b. To promote sports for athletes with disabilities without discrimination for political, religious, economic, disability, racial, gender or sexual orientation reasons; and
- c. To assist and encourage educational and rehabilitation programs, research and promotional activities to achieve these objects and principles.

37. Further, based on the evidence placed before it the Tribunal finds that the 4th Party was high-handed in the running of affairs of the office and also is in breach of the following principles set out in the KNPC Constitution:

- a. To promote democratic rights to its members for the governance and its management of KNPC;
- b. Collaborate with any organization having objects wholly or in part similar to those of KNPC; and
- c. Ensure that, in sport practiced within the Paralympic Movement, the spirit of fair play prevails, violence is banned, the health risk of the athletes is managed and fundamental ethical principles are upheld.

Whether the expulsion of Agnes Flora Oluoch was valid and enforceable

38. The expulsion of Agnes Flora Oluoch has been declared as unlawful, unprocedural and therefore null and void by several

parties to this suit. However, the Petitioner is adamant that the procedure laid down in the KNPC Constitution was followed and that the Kenyan law and IPC statutes were upheld.

39. In addressing this issue, the Tribunal shall address itself to the following questions:

- a. Whether the KNPC Constitution in so far as it relates to the expulsion of the 4th Party was followed to the letter;
- b. Whether the 4th Party was accorded her right to a fair hearing at the SGM; and
- c. Whether the notice that was issued by the Deputy Secretary General was a nullity.

Whether the KNPC Constitution in so far as it relates to the expulsion of the 4th Party was followed to the letter

40. The 4th Party through its submissions has brought to the attention of the Tribunal the case of **Benjamin Leonard Macfoy vs United Africa Company Limited (1962) AC 152** where the Court stated as follows:

“...If an act is void, then in law it is a nullity. It is not only bad,, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. “

41. Article 3.5.4 of the KNPC Constitution stipulates as follows on expulsion of members:

“A member may be expelled from KNPC for:

3.5.4.1: Failure by the member to comply with its own Constitution or that of KNPC;

3.5.4.2: If it intentionally acts in contravention to the Organization’s interests;

3.5.4.3: For any good cause shown;

3.5.4.6: ...

3.5.4.5: ...

3.5.4.6: If the member refuses to observe the resolutions adopted by the General Assembly or seriously prejudices the interests of the organization...”

42. The Petitioner has presented facts to support the allegations that the 4th Party acted in a manner that was contrary to Article 3.5.4. However, it did not neither did any party address the Tribunal on the procedure that is laid down for the expulsion of a member. The procedure is laid out as follows:

3.5.4.7

A motion to expel may be placed before the Assembly by the Executive Committee or by at least 3 member organizations. A three (3) month notice for such motion shall be mandatory. The Executive Committee must give its opinion on any motion for expulsion. The organization concerned shall have the right of appeal before the General Assembly;

3.5.4.8

A member can be expelled from membership in the organization if there is good cause. Decision as to expulsion shall be made by the General Assembly, after considering the recommendation of the Executive Committee. A written notice of the General Assembly's expulsion resolution including the reasons for such decision shall be served on the member concerned.

43. Parties must note that in the absence in the KNPC Constitution of a provision for the suspension of officials of KNPC, the provisions of Article 3.5.4 have been interpreted to apply to officials, specifically the chairperson of KNPC in recognition of the fact that her rights, duties and obligations as a chairperson are inherent of the fact that she is a member of KNPC.

44. Based on the evidence placed before the Tribunal, at no time did any person, organization or the petitioner move the Executive Committee for the expulsion of the 4th Party. The motion to expel her was raised at the 14th February, 2015 SGM which is in clear contravention of the KNPC Constitution. This was after the Notice to convene the SGM dated 20th January, 2015 listed as part of the agenda of the meeting, "*the expulsion of Agnes Flora Oluoch as chairperson of KNPC and Executive Committee member.*"

45. It is extremely clear that the decision to suspend a member can only be made after the Executive Committee has recommended and notified the General Assembly of the intended expulsion. Additionally, that notice period must last for at least three (3) months.

46. The Tribunal finds that the motion to expel Agnes Flora Oluoch was not raised and passed at an Executive Committee meeting but through the notice to convene the SGM dated 20th January, 2015. This is a disregard of the KNPC Constitution.

47. Further, the amount of time between 20th January, 2015 and 14th February, 2015 was a mere 3 weeks and 4 days which is contrary to the 3-month notice period stipulated under the KNPC Constitution.

48. The Tribunal is alive to the probability that the 16th December, 2014 meeting can be argued out to be the forum through which the 4th party was expelled from office. To this the Tribunal finds as follows: (1) from 16th December, 2015 to 14th February, 2015 there are exactly sixty (60) days; secondly, and (2) the Minutes of the 16th December, 2015 meeting and the letter bearing the same date addressed to IPC indicate that the motion to suspend her was moved and the letter goes further to state that ratification would be done by the General Assembly. The Tribunal has noted with concern that neither of the parties herein are alive to the difference between '*a suspension*' and '*an expulsion*'.

Whether the 4th Party was accorded her right to a fair hearing at the SGM

49. The 4th Party has placed evidence before this Tribunal to support her case that she was not accorded a fair hearing. She has stated that she was not served with a notice of the SGM, she was not notified of the fact that they intended to suspend her and that she was never given an opportunity to be heard before the decision to expel her was made. She has also stated that the change of venue of the SGM affected her attendance as the room was wheel-chair inaccessible.

50. In its defence the Petitioner has stated that the 4th party was all along aware of the SGM as it was served with the notice and the agenda thereof and that the change of venue had no impact on her attendance as she has assistants who can carry her and manipulate the wheelchair along the stairs. Thus, the Petitioner has argued, there was a deliberate choice by the 4th Party not to attend the SGM.

51. The Tribunal directs itself to Article 50 of the Constitution of Kenya, 2010 to which it is bound to observe as it renders this judgement. The obligation stated is set out in Article 10(1) which stipulates as follows:

"The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them...applies or interprets any law or makes or implements any public policy decisions."

52. Further Article 159 (2) (e) stipulates as follows:

"In exercising judicial discretion the courts and tribunals shall be guided by the following principles...

the purpose and principles of this Constitution shall be protected and promoted. " [Emphasis ours]

53. Having set out the obligation on this Tribunal in rendering this judgment, let us proceed to the components of Article 50 as relates to the dispute before us. Article 50 (2) stipulates as follows:

(2) Every accused person has the right to a fair trial, which includes the right:

(a) ...;

(b) to be informed of the charge, with sufficient detail to answer it;

(c) to have adequate time and facilities to prepare a defence;

(d) ...;

(e) ...;

(f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed.”

54. The Tribunal finds that the right to a fair hearing was not accorded to the 4th Party. There was a flagrant disregard of the 4th Party’s constitutional rights by the Petitioner.

Whether the notice that was issued by the Deputy Secretary General was a nullity

55. The Secretary General of KNPC, Mr. Elijah Mwandishi has indicated to this Tribunal through the hearing conducted on 2nd June, 2015 and the Further Affidavit sworn on 27th May, 2015 that the notice for the SGM was issued by his assistant, Mr. Kennedy Ndungi and there was a 21 day notice of the SGM in compliance with the KNPC Constitution. The reason for this is that he was absent from office and delegated his duties to his deputy.

56. The 2nd Party, 4th Party and the four federations joined as interested parties have indicated to this Tribunal that the issuance of the notice to convene the SGM by the Deputy Secretary General was improper and contrary to the KNPC Constitution.

57. Article 4.3.3.4 of the KNPC Constitution stipulates as follows:

“The Deputy Secretary General shall in the absence of the Secretary General perform all duties of the SG and any other duties as shall be assigned to him by the Executive Committee.”

58. Arguments were put forward by counsel for the 4th Party, Ms. Omuku and Mr. Wambugu, counsel for the four federations joined as interested parties to the effect that they equated absence from office to vacancy therein.

59. The Tribunal finds that the notice in as far as it was issued by the Deputy Secretary General is valid. Contrary to what Mr. Oluoch deposed, there is no need for a committee or body to grant powers to the Deputy Secretary General every time the Secretary General would be absent from office. This would result in an absurdity and an administrative nightmare.

60. Further, the act of the Secretary General to ratify the issuance of the notice to convene the SGM suffices to correct any errors that might be posed in opposition to the validity of the said notice premised on the identity of the issuer.

61. The Tribunal notes that the amount of time between 20th January, 2015 and 14th February, 2015 was 3 weeks and 4 days which surpasses the minimum 21 day notice required for convening an SGM under the KNPC Constitution. To this extent the notice to convene the SGM was valid.

62. Finally, the Tribunal finds that the notice to convene the AGM dated 20th January, 2015 was valid as it set the agenda and gave

notice of the meeting as is required under Article 4.3.3.3.5 of the KNPC Constitution.

Whether the acts of the 2nd Party amount to meddling and interference in the management of KNPC

63. The Petitioner attributes the suspension by IPC to the constant meddling and interference in KNPC by the 2nd and 4th Party. To support this allegation, it adduced evidence.

64. On the other hand, the 2nd Party vehemently denies the allegations and stated this at the hearing through its advocate, Ms. Mwangi and through the Commissioner of Sports, Mr. Oluoch.

65. On the allegations of threat to the Dennis Muga led faction, the 2nd Party added that the allegations were not substantiated as there are no letters from the Commissioner threatening any KNPC members. She informed the Tribunal that the letter she had seen indicated the consequences in law for any continued misconduct. Further, the Commissioner was merely asking them not to proceed with the said SGM until reconciliation efforts bore fruit so that there would be a peaceful SGM. It was an effort in good faith.

66. The Amicus Curiae through its advocate, Mr. Wabilianga who was holding brief for Mr. Kanyonge and through its submissions explored in depth the relationship between the autonomy of sports and government interference.

67. While making reference to the International Olympic Committee (IOC) resolution which was adopted by consensus at the 69th regular session of the UN General Assembly (UNGA), it submitted that the concept of autonomy of sports and government interference has two facets. Of significance to the issue at hand is the following facet:

“Governments should not be involved in the selection of teams, coached or other personnel and they should not have the right of approval or ratification, recommendation, veto or appointments. They should not get involved in the day to day decisions of sport and disciplinary issues.”

68. In the submissions *Amicus* appreciated the fact that sport autonomy cannot be absolute. It submitted, a position which the Tribunal adopts, that the government having provided financial assistance to sports organizations has the right to attach conditions to the issuance of these funds. Such conditions as is in the present case include the right to investigate and to ascertain whether the laws to which KNPC is subject to, locally and internationally, have been broken and whether there is good governance.

69. The Tribunal finds that the Commissioner for Sports acted in a manner within the confines of guidance and did not contravene the rules dealing with interference in games. The Commissioner refused, rightly so to recognize the results of the SGM convened by the 1st party.

70. The Tribunal finds that the threat to constitute a caretaker committee has not been substantiated. It only appears as hearsay evidence, to which the Tribunal cannot rely on.

71. It is also clear for all and sundry that the management of KNPC is in chaos which prompted the said Commissioner to invite them for mediation meetings but there was at no time quorum sufficient for him to carry out the said mediation. The Tribunal finds that the Commissioner for Sports acted in good faith and in the interest of good governance in paralympic sports. The 2nd Party acted in good faith as relates to his conduct and the decisions made concerning KNPC and his acts do not amount to meddling or interference in the affairs of KNPC.

Orders

72. Consequently, the following orders commend themselves to the Tribunal:

i. The SGM of 14th February, 2015 is a nullity as it was convened and conducted in disregard of the Constitution of Kenya, 2010 and the KNPC Constitution;

- ii. Agnes Flora Oluoch still is the validly elected chairperson of the Kenya National Paralympic Committee;
- iii. Dennis Muga shall serve the Kenya National Paralympic Committee in his elected capacity as 1st Vice Chair;
- iv. Any decisions, directions, competitions or resolutions passed by the Dennis Muga led faction while he purported to act as the Chairperson are vacated;
- v. All communication from KNPC to IPC or any other stakeholders is the responsibility of the Secretary General in terms of the KNPC constitution;
- vi. The Tribunal directs that pursuant to this judgement, the Sports Registrar shall forward to the IPC a list of the *bona fide* officials of KNPC and request that the suspension of KNPC from IPC be lifted.
- vii. Each party shall bear its own costs of these proceedings.

DATED at NAIROBI this 23rd day of **June**, 2015

Signed:

John M. Ohaga

Chairman, Sports Disputes Tribunal

Signed:

Mrs. Elynah Shiveka

Deputy Chairperson, Sports Disputes Tribunal

Signed:

Gichuru Kiplagat

Member, Sports Disputes Tribunal

Delivered in the presence of:

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