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Court:	Sports Disputes Tribunal
Case Action:	Decision
Judge:	Mrs. Elynah Sifuna Shiveka - Deputy Chair & Njeri Onyango - Member
Citation:	Linus Gerald Marangu v Major Rtd Suleiman Sumba & 3 others [2021] eKLR
Advocates:	-
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Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

SDT CAUSE NO. E002 OF 2021

LINUS GERALD MARANGU.....APPLICANT

VERSUS

MAJOR RTD SULEIMAN SUMBA.....1ST RESPONDENT

GEORGE WASONGA.....2ND RESPONDENT

KENYA TAEKWONDO FEDERATION.....3RD RESPONDENT

NATIONAL OLYMPIC COMMITTEE OF KENYA.....4TH RESPONDENT

DECISION

Hearing: 8th July, 2021

Panel: 1. Mrs. Elynah Shiveka - Chairing

2. Mrs. Njeri Onyango – Member

Representation:

1. Mr. Moses Munoko – Advocate instructed by the firm of S.M Munoko & Company Advocates for the Applicant.
2. Mr Wasonga – instructed by the firm of Wasonga B.O & Associates Advocates for the 1st, 2nd and 3rd Respondents
3. Mrs. Paurvi Rawal – instructed by the firm of Paurvi Rawal & Associates Advocates for the 4th Respondent

I. THE PARTIES

1. LINUS GERALD MARANGU hereinafter The Applicant describes himself as a National Coach of the Kenya Taekwondo 2020 Tokyo Olympics Team. He is also an official of the 3rd Respondent Sports Federation, The Kenya Taekwondo Federation (hereinafter “KTF”)

2. The 1st and 2nd Respondents are described as officials of KTF the 1st Respondent being the President; while the 2nd Respondent is secretary General of KTF.

3. The 3rd Respondent KTF is a duly registered National Sports Federation responsible for the management and development of the sport of Taekwondo, which is an Olympic Sport.

4. The 4th Respondent, The National Olympic Committee of Kenya (hereinafter NOC-K) is the umbrella sports body responsible for the organization and management of Olympic sports. It is solely responsible for the entry of both Athlete and Athlete support personnel into Olympic Competitions. It is affiliated to the International Olympic Committee (IOC).

II. BACKGROUND

b On 25th June, 2021, the Applicant filed an Application by way of a Notice of Motion seeking the following prayers

i. **THAT** this Application be certified as urgent

ii. **THAT** pending the hearing and determination of this Application the 1st, 2nd and 3rd Respondent's letter dated 9th June, 2021 and 22nd June, 2021 suspending the Applicant be stayed in their entirety.

iii. **THAT** pending the hearing and determination of the Application, the 4th Respondent be restraint by an order of injunction from stopping, blocking and/or denying the Applicant access to the training camp.

iv. **THAT** pending the hearing and determination of this Application, the 1st, 2nd and 3rd Respondents be restrained by an order of injunction from terminating, interdicting, stopping, blocking and/or denying the Applicant access to the services that will derail his duties as a Taekwondo National Coach to the Tokyo Olympic Games 2020.

v. **THAT** pending the hearing and determination of the claim the 1st, 2nd and 3rd Respondents' letter dated 9th June, 2021 and 22nd June, 2021 suspending the Applicant be stayed in their entirety.

vi. **THAT** pending the hearing and determination of the claim, the 4th Respondent be restraint by an order of injunction from stopping, blocking and/or denying the Applicant access to the training camp.

6. The said Application is based on the following grounds that

a. The 1st, 2nd and 3rd Respondents terminated the services of the Applicant as National Coach of the Taekwondo Olympic Team without according him a hearing.

b. The Secretary General who is an interested party has solely terminated the services of the Applicant and appointed himself as a replacement that amounts to a conflict of interest and abuse of his powers under the Federation's Constitution.

c. The Applicant was never granted an opportunity as per the Constitution of the Federation to defend himself against the malicious and false allegation.

d. The Executive Committee met on 13th June, 2021 and in its agenda 4, the Executive Committee members resolved that the alleged dismissal of the Applicant was irregular because the procedure was not followed.

e. The President and Secretary General acted in total contravention of the Federation Constitution, article 47 of the Constitution, 2010 and the Fair Administrative Actions Act.

f. That unless this honorable Tribunal intervenes, then the Applicant stands to be prejudiced by contravention of his constitutional rights to fair trial.

g. That the athlete's performance at Tokyo is likely to be prejudiced and affected due to the malicious actions of the 1st and Respondents yet this is a matter of national interest where the government and the people of Kenya expect better performance in Tokyo, Japan.

7. The Application was accompanied by a Certificate of Urgency by M/S. S.M Munoko and Company Advocates setting out the reasons why the matter should be certified urgent and be heard on a priority basis.

8. The Application was supported by an Affidavit sworn by the Applicant. The gist of the Affidavit was, that he is the coach of the Taekwondo Olympic Team. He was appointed to this position of Coach sometime in 2019 by the KTF Executive Committee at a meeting properly convened.

9. The Applicant further states that he has been in charge of the team since then trained them and has had athletes who have qualified for Olympics. But there have been interferences especially by the 1st Respondent who has orchestrated grounds for his removal based on selfish personal interests for himself and his cronies. He has thus taken steps to have the Applicant removed from his position as the team Coach and placed himself in that position. A detailed review of the Applicant's position will be set out below.

10. The Application and supporting documents were placed before the Tribunal Chair on 25th June, 2021. Having perused the Application, the Chair issued orders as follows

a. That the Application be and is hereby certified as urgent;

b. That pending the hearing and determination of this Application, the 1st, 2nd, 3rd and 4th Respondents be restrained by an order of injunction from terminating, interdicting, stopping, blocking and/or denying the Applicant access to the training camp that will derail his duties as the Taekwondo National Coach to the Tokyo Olympic Games, 2020;

c. That the Application be served upon the Respondents immediately and in any event before Wednesday 30th June 2021;

d. That the matter be listed for mention for directions on Friday 2nd July, 2021 at 12.00 noon;

e. That there is liberty to apply;

11. On 6th July, the parties appeared virtually before the Chair of the Tribunal. It was then ordered that the Respondents, who had been served were to put in their responses immediately and in view of the urgency the full hearing of the matter was to take place on 8th July 2021 at 4.00 pm, physical hearing. The parties were required to avail their witnesses. A panel to hear the matter would be constituted.

12. On 7th July, 2021, the 1st, 2nd and 3rd Respondents in response to the Application filed a Replying Affidavit by one George Wasonga the 2nd Respondent. The full contents thereof will be reviewed below.

13. The 4th Respondent through the firm of Paurvi Rawal and Associates Advocates filed a response to the Application with annexures. The same shall be reviewed below.

III. HEARING

14. At the physical hearing of the matter, the hearing panel was Mrs. Elynah Shiveka – The Deputy Chair of the Tribunal Chairing and Njeri Onyango – member. The parties Advocates in attendance all confirmed that they had no objection to the panel or any one of them.

15. The hearing Panel then confirmed that the parties each had the requisite documents filed by the other parties as above set out. All parties were available to proceed with witnesses.

16. The Applicants Advocate Mr. Munoko took issue with the Affidavits by Harrison Kalama, John Muleshe and Nesmas Mbatia Wesonga that had been attached to the Affidavit in reply of Mr. George Wasonga.

17. The Panel having granted Mr. Wasonga Advocate a chance to respond did rule to expunge those Affidavits from the record. The panel relied on the decision of the Supreme Court in case number 5 of 2013, **Raila Odinga & 5 others vs IEBC & 3 others [2013] eKLR**. The Respondents were however granted liberty to call the said deponents to give viva voce evidence if they so elect.

18. In regard to the response by the 4th Respondent, it was noted that the Respondent had attached documents to its grounds of response which were neither annexures nor their source and relevance explained. The purported minutes of a meeting of the NOC-K Management Committee were not signed nor could they be authenticated in any manner. Those documents were therefore expunged from the record.

19. The above having been dispensed off, the matter was ready for hearing. The Applicant and the 1st to 3rd Respondents elected to call witnesses to testify.

IV. APPLICANT'S CASE AND WITNESSES

i. Evidence of the Applicant

20. The Applicant was sworn to testify. He wholly adopted the Affidavit deposed on 25th June 2021 together with annexures which were filed with the Application. These were admitted in evidence.

21. Led by his Counsel, the Applicant stated that the meeting held on 22nd May, 2021 at Utawala Nairobi, was not a meeting of the 3rd Respondent's Executive Committee (hereafter EXCO). To his best collection, he had requested for a meeting one on one with the 4th Respondent's President Major Rtd Suleiman Sumba (1st Respondent) who is also the Team Manager of the Olympics Team. The purpose of this call on the President was for him to discuss with the President the interference on the team that had been occasioned by the 2nd Respondent upon the TKF Olympics team then in camp preparing for a competition due in Dakar Senegal.

22. The Applicant also felt injured by rumours about him being paddled by the 1st Respondent and a Mr. Eliakim Otieno (a Coach and also member of KTF EXCO) he wished to register his sentiments with the 1st Respondent. There was no Meeting Notice issued by the 2nd Respondent as Secretary General of KTF regarding this meeting. It was supposed to be a "**man talk**" between the Applicant and the 1st Respondent.

23. According to the Applicant, and as per the Constitution, a formal EXCO meeting of KTF should be called by the Secretary General giving Written Notice to all EXCO members with adequate time to allow for attendance. He was therefore surprised when various other EXCO members attended and the meeting turned to a bashing of him and his alleged misconduct. He stated that he had not received any Notice of a disciplinary hearing against him, he had no prior notice of the charges against him and neither was he afforded an opportunity to respond. To him the 1st Respondents had called in the 2nd Respondent and their cronies within the EXCO to bash him in absence of other EXCO members.

24. The Applicant stated that he was appointed as a National Taekwondo Coach in a meeting of the EXCO of KTF after the All-Africa Games (AAG) 2018. He is a qualified senior Coach with International Certification. He has travelled with the National Team severally to various destinations. Such as Dubai (a pre-Olympics qualifier) Morocco (Olympics qualifier event) in February – March 2020, Dakar Senegal for the Africa Championships (May

– June 2021)

25. Referring to annexure GW3 in the 2nd Respondent's Affidavit filed on 7th July, 2021, he noted that the Secretary General had written stating that he was not a qualified coach which was untrue. He stated that his removal from the Coaching position has a long history since 2018 AAG when the 2nd Respondent as is his habit stepped into the KTF team in camp at Kasarani Stadium and appointed himself as a coach and sent off the then coach. At the time the Applicant was the Team Manager. The 2nd Respondent made the changes despite the fact that he had not been with the team in training or at all. The Applicant was of the view that the present action is a repeat of that 2018 action by the 2nd Respondent. It is notable that he has now purported to place himself, Mr. Eliakim Otieno and Mr. Mbatia as Coaches with acquiescence of the 1st Respondent.

26. He further stated that there were attempts by the Vice President a Mr. Bobby Musingo and other EXCO members to intervene in his being removed from the team but this has been thwarted by the 1st and 2nd Respondents as the NOC-K insist communication must come from the Chair or Secretary General of a Federation to NOC- K.

27. The Applicant stated that he has worked hard to train KTF athletes from the Talent Academy joined later by a coach Moses Muturi. The 2nd Respondent has not made any contribution, never appeared to assist train or coach the athletes but now wants to benefit when they have qualified for Olympics. In fact, in a tournament in Morocco, the 2nd Respondent bulldozed his way to take over an athlete he the Applicant had prepared – Faith Ogallo – when it was clear she would get a medal and qualify for Olympics 2020 otherwise he had and has no working relations with the athlete.

28. The Applicant narrated a previous incident where the 1st Respondent overstretched an athlete causing her hamstring injury as he had no hands-on experience in training. Regarding Faith Ogallo the 2nd Respondent has in fact negatively affected her morale, he talks to her negatively putting her down and thus has caused psychological distress to the athlete. That is what caused her to breakdown leading to the meeting at NOC-K.

29. The Applicant stated that in fact in the camp, it is the sparring partner one Sharon Wakoli who has been problematic and has acted in disregard to Camp protocols, sneaking in and out of camp, even spending nights out yet no action is taken on her by the 1st Respondent, who is the team manager. Such has affected Faith Ogallo's training mental state and has had negative effects.

30. He stated that a meeting was called to discuss the position of the athlete Faith Ogallo even with her institution Kibabii University but he has never seen the outcomes or recommendations from the meeting.

31. On Cross -examination by the Respondent's Counsel Mr Wasonga, the Applicant stated that he is aware of the allegations made of his closeness with a female athlete Faith Ogallo, but stated that those are just rumors with no foundation. He has even financially spent his own resources to help train the athlete. With regard to the report by one Susan Okonji from Kibabii University, he agreed that she travelled with the team to Senegal but denies the contents of her report touching on the purported improper relationship between him and the female athlete. In any event he saw the report for the first time on 8th July 2021 after he saw the Replying affidavit of George Wasonga. He denied the alleged unethical relationship, terming it as malicious and unfounded allegations.

ii. Evidence of Mr. Phillip Khaemba Khakame

32. The Applicant called Mr. Phillip Khaemba Khakame. He had sworn an Affidavit in support of the Applicants Application on 25th June, 2021. He adopted in full the contents of the said Affidavit which was admitted in evidence.

33. He is a member of the EXCO of KTF and a Chair of the technical committee which has not been functional. He denied that he has ever resigned from any position in KTF or position of technical chair and asked for proof of such alleged resignation.

34. Mr Khaemba stated that for proper EXCO meetings to be held, the Secretary General the 2nd Respondent has to issue a formal request to members of the EXCO. In regard to the purported meeting of 22nd May, 2021 or any other meeting set to discuss the alleged misconduct of the Applicant or making decisions to relieve him of his duties, no Notice to him as an EXCO member has ever been received neither is such a decision that of the EXCO. All he is aware of is that a formal EXCO gathering was to be held to discuss the conduct of the Secretary General the 2nd Respondent which was causing distress to an athlete in the camp. A Notice should be in writing. But that the 2nd Respondent failed to issue Notice even after a requisition for the same.

35. Mr. Khaemba narrated that the 3rd Respondent the KTF has had a serious split within the EXCO with two factions since 2018 AAG. There is a camp allied to the Secretary General and that with Bobby Musingo. This arose when Mr Wasonga the 2nd Respondent replaced Coach Eliakim with himself as Coach for the AAG 2018 team without reference to the EXCO and thus without authority. It is his position that the current attempt to remove the Applicant is a similar action which several EXCO members are opposed to but have been muzzled.

36. To his best understanding the Applicant was appointed by the EXCO, his removal should be sanctioned by the EXCO on proper grounds. The 1st and 2nd Respondents cannot purport to act for EXCO, they should have called for a meeting. He stated that the KTF EXCO has been dysfunctional and has not had meetings to his recollection since 2019.

37. In Cross-examination, he discredited the various alleged disciplinary letters and actions. To his best knowledge under the Constitution, disciplinary issues are administrative actions which should fall under the Vice President who is in charge of administration and in deed that is what has happened before.

iii. Evidence of Martin Wanyonyi Malaba

38. The Applicant also called Mr. Martin Wanyonyi Malaba, He stated that he is a member of the EXCO of KTF. He sat in the meeting of the EXCO in 2019, which appointed the Applicant as Coach. This was on grounds that he is a qualified coach in fact one of the very few with higher level certification.

39. He stated that he has never received any invitation for a meeting to discuss the conduct or misconduct of the Applicant. He has heard rumors and allegations against him but has not been presented with any support. He just saw a letter after the Dakar Senegal trip, purporting to remove the Coach from the position. It is his position that the letter does not have the blessings of the EXCO neither is it procedural. The EXCO that appointed him should have a say once presented with proof after due process of the hearing of accusations against him as provided in the Constitution. Otherwise, the present is a sham trial by interested parties.

40. He stated that he was among those who wrote a protest letter to NOC-K. He has also signed letters to the Secretary General in requisition for a meeting of the EXCO. The one on WhatsApp about 10th, 11th or 13th June (he cannot recall exact date) but no quorum was achieved (attendance virtual, himself, Khaemba and Musingo)

41. He also attended another meeting physically at View Park Towers but only three people attended and no discussions. The Secretary General was to call for meetings as requisitioned but he did not, that is why Bobby Musingo acted.

42. As regards the various letters and reports they have not been presented formally to him or the EXCO. He has seen those in the current proceedings such as that of 22nd June. To him they are just allegations as they have not

been taken to EXCO or through a disciplinary process to accord a hearing to the Applicant.

43. On cross-examination, he stated that his last EXCO meeting as he can recollect is 2019, since COVID came no meetings save one virtual one where there was no quorum.

V. 1ST, 2ND AND 3RD RESPONDENTS' EVIDENCE

i. Evidence of Mr. George Wasonga

44. The Respondents called the 2nd Respondent. He had sworn an Affidavit in reply filed at the Tribunal on 7th July, 2021. He adopted that Affidavit and annexures in full save for such annexures as had been expunged.

45. He stated that the Constitution allows for the President and the Secretary General to take action in an emergency. He relied on clause 29 (b) and (d) at page 21 of the Constitution. Such action includes decisions on disciplinary matters of an emergency nature. Such action would then be ratified by the EXCO. In this case, replacement of the Coach was an emergency issue due to his conduct which was unacceptable.

46. The 2nd Respondent stated that the meetings alluded to of 22nd May, 3rd June, 10th June etc. were properly convened meetings called by Notice from himself issued by WhatsApp to all EXCO members. The quorum in all EXCO meetings was achieved.

47. The Applicant has himself to blame, the meeting of 22nd May resulted in a warning to him as per the Constitution, but despite that warning he still misconducted himself. In Dakar Senegal he isolated the female athlete Faith Ogallo, he even went out of camp with her against protocols in a foreign country, that is what led to the meeting of 3rd June, 2021 in Dakar and the decisions taken.

48. The witness also stated that the Coach failed in his duties in Senegal. During competition he refused to attend to other athletes only concentrating on one player almost causing another player to miss his bout and go unattended into the competition stage. It dearly cost the player the match.

49. The witness also referred to the Report by Susan Okonjo which he claimed was independent and professional report and stated that it shows that there was an unhealthy relationship between the Coach and the Player which was disruptive to the Player and the Team.

50. In regard to the Notices for EXCO meetings the witness stated that he had used WhatsApp, text and personal calls to individuals to notify them of the meetings and those who elected not to attend had due notice. He also alleged that the Applicant was aware that his conduct would be discussed. In particular, for the meeting of 22nd May, he denied that it was called for by the Applicant and insists he convened the meeting specifically to discuss the conduct of the Applicant, the Applicant attended and was acquiesced in the proceedings.

51. The witness also stated that the Applicant cannot qualify as a Coach for Olympics in view of an email notice of 10th March, 2021 received by the 1st Respondent from the President of the Taekwondo Federation (hereinafter WT). This email was clear on qualifications that Coaches at different levels needed to be granted status of a Coach at different levels of WT recognized events including the Olympics. That based on the required qualifications the Applicant presently does not hold the requisite status to be a Coach at the Olympics.

52. The witness further stated that the email was forwarded by the president to all Coaches including the Applicant and it was up to each Coach to arrange for their own upgrade of status through the process provided therein but the Applicants failed to do so. That since the process was self-explanatory, the Federation need not have done anything further than to forward the email: For instance, Coach Eliakim took steps to attain the required WT certification.

ii. Evidence of Major Rtd Suleiman Sumba

53. The 1st Respondent also testified, he stated that he is the President of the 3rd Respondent and currently the team manager of the Tokyo 2020 Olympics Taekwondo team.

54. The witness stated that there had been complaints regarding the conduct of the Applicant which were disturbing. He therefore authorized and directed the 2nd Respondent to give notice to EXCO for a meeting on 22nd May 2021 to discuss the matter. He stated that Notice was issued on WhatsApp and that the meeting was held at Total Restaurant Utawala. The Applicant was duly notified, he attended and was given a fair hearing.

55. He further stated that he also travelled with the Team to Dakar Senegal for the Africa Taekwondo Championships but was not residing at the Camp with the Team. He however was notified of the Complaints about the conduct of the Applicant relating to his unusual relationship with the same female athlete Faith Ogallo. A government official who travelled with the team in fact raised concern. This led to the meeting of 3rd June 2021 which the Applicant also attended having been duly notified.

56. Regarding the meeting of 22nd, the witness stated that the sole agenda was to discuss the conduct of the Applicant and that the charges against him were captured in annexure GW1 in the Affidavit of George Wasonga were framed at the meeting in question but that the Appellant had the opportunity to respond to them. Equally in Dakar, the executive met and the Applicant was free to answer the charges against him. That a decision was then made that he be removed as coach of the team as he already had a prior warning from the meeting of 22nd May 2021.

57. The witness was of the view that the Applicant was at all times awarded ample notice and warning but his conduct was unchanged and that the Secretary General and himself took action as per Article 29 (d) of the KTF Constitution and will only await ratification by EXCO.

58. Regarding the qualifications of the Appellant, the witness stated that he received an email of 10th March, 2021 from the President of WT setting out new requirements for Coaches qualifications and certifications which would determine their attendance at various levels of WT events. He forwarded the emails to the EXCO for their action as is, as it was self-explanatory. That he did not do anything else in follow up as is the duty of each individual to attend to the needs of the qualifications not for him or KTF to follow up.

59. Regarding Notices for meetings, the 1st Respondent averred that all were by WhatsApp and texts and that that met the requirements of the Constitution as we are in exceptional times where we have to adapt different modes of relying information and notices as written notices are not appropriate.

VI. THE 4TH RESPONDENT'S POSITION

60. The 4th Respondent's Counsel Mrs. Paurvi Rawal attended on behalf of the 4th Respondent. She indicated that she would call no witness and would fully rely on the Reply to the Applicant's Claim filed on 8th July 2021.

61. The gist of the said Response was that the 4th Respondent for logistical purposes would wish for an early determination of this matter which was essentially a matter between the Applicant and the 1st to 3rd Respondents.

62. The Taekwondo team for 2020 Olympics was due to depart on 17th July, thus good to be sure of the decision of the Tribunal in good time to facilitate travel arrangements.

63. That the 4th Respondent would take no sides but would abide by the decision of the Tribunal as the decision to deny The Applicant access to the team was not that of the 4th Respondent but emanated from the 3rd Respondent.

VII. PARTIES SUBMISSIONS

i. Submissions by the Applicant

a. Applicant's Skeleton Submissions

64. The applicant seeks the orders as enumerated in the claim dated 25th June, 2021 which the 1st to 3rd respondents responded to via affidavit of the 2nd respondent. The matter was heard viva voce due to the urgency and the parties testified including their witnesses save the 4th respondent that stated that it will be bound by the decision of the Tribunal.

VIII. ISSUES FOR DETERMINATION

a. Whether the 1st, 2nd and 3rd respondents accorded the applicant a fair hearing as per the federation Constitution and rules of natural justice"

b. Whether the alleged decisions of the 1st, 2nd and 3rd Respondents were in good faith"

c. Whether the applicant is entitled to the orders prayed"

a. Whether the 1st, 2nd & 3rd Respondents accorded the Applicant a Fair Hearing

65. The applicant's evidence in the Tribunal was that he was never accorded any hearing for the grave allegations of misconduct against him. He further stated that the 1st to 3rd respondents' acted contrary to the Constitution of the Federation by dressing themselves with non-existent powers.

66. He said the meeting of 22/05/2021 was requested by him through the president to address allegations against him but the meeting was a private affair. The president secretly by design changed it to discuss the conduct to the applicant and made it official.

67. During cross-examination of Mr. Wesonga as the Secretary General, failed to prove to the Tribunal that he ever sanctioned any official meeting to discuss the applicant's conduct as per their constitution. Therefore, no notice whatsoever was produced yet he produced minutes alleged to be for meetings held by the executive committee. While articles 9 and 17 of the Federation Constitution provides for disciplinary procedures and disputes resolution mechanisms respectively, the 1st, 2nd and 3rd Respondents ignored and bypassed them hence contravening their own Constitution.

68. Mr. Wesonga sought refuge in article 29 of their Constitution that it empowers the Secretary General and the President to take disciplinary actions then the same is ratified by the Executive Committee (EC) but upon reading it, it provided the contrary. Were that even the case, both the two never produced any evidence calling for the EC meeting to ratify their decision.

69. Further, Article 47 of the Constitution, 2010 on fair administrative actions provide that

"1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action".

70. Equally, section 4 of the Fair Administrative Actions Act (FAAA) provides right for administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair with written reasons for the actions taken. The Act further requires the administrator to give a prior adequate notice, opportunity to be heard, right to legal representation, information, materials and evidence against victim and right to cross examine those with adverse evidence against him.

71. Further, article 50 of the Constitution, 2010 provides for a fair hearing before an independent and impartial tribunal or body. From the hearing and cross-examination of the 1st and 2nd respondents, they failed to prove that they acted fairly and their decisions were not impartial.

72. Therefore, actions of the 1st, 2nd and 3rd respondents breached these fundamental tenets of natural justice espoused by their Constitution, FAAA and Constitution, 2010.

73. In the case of **ANDREW NTHIWA MUTUKU V COURT OF APPEAL & 3 OTHERS** [2021] eKLR Odunga, J with permission quoting **Zahira Habibullah Sheikh & Another vs. State of Gujarat & Others AIR 2006 SC 1367** where it opined that:

"It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted.... Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, the condemnation should be rendered only after the trial in which the hearing is a real one, not a sham or mere farce and pretence..... The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."

74. The alleged accusations leveled against the applicant were that needed proper investigations and higher standards which the respondents failed to adhere to.

IX. WHETHER THE ALLEGED DECISIONS OF THE 1ST, 2ND AND 3RD RESPONDENTS WERE IN GOOD FAITH"

75. From the evidence of the respondent witnesses, their actions were not in good faith but were driven by an ulterior motive with predetermined outcomes. During cross examination of the 1st respondent on how they formulated the agenda on 22/05/2021, he said they were formulated on the floor. The Applicant had said he was the one who requested the meeting then the president turned it into an accusation meeting where the applicant needed to respond to serious allegations without being given the charges, time and materials.

76. Further, the respondents attached annexure "GW-9" report from Susan O. Adisa which they admitted has never been brought to the attention of the applicant. Apart from writing a letter dated 09/06/2021 and 22/06/2021 with a raft of malicious allegations, during the hearing, the 1st and 2nd respondents further advanced their malice by alleging that the applicant has never trained as a coach and that the 3rd respondent does not have money to employ a coach (see paragraphs 5 and 8 of replying affidavit).

77. The actions of the 1st, 2nd and 3rd respondent all means stink of malice, ulterior motive, witch hunt and bad faith contrary to the law since they are the same people who wrote a letter dated 09/06/2021 (LGM-1) to the Chief De Mission, 4th respondent dropping the applicant as a coach. This contradicts their position.

78. On the issue of appeal, it was evident from the cross-examination that the Federation does not have a resident independent appellate body. The 2nd respondent said the EC which apparently is divided and composed of the 1st and 2nd respondents with other beneficiaries of their illegal decisions were to form an "independent" appeal body.

79. While the applicant stated that he'd been appointed by the EC, his alleged replacements as per letter dated 22/06/2021 (Annex GW-3") were never appointed by EC since no such minutes were produced. This was corroborated by the evidence of the applicant's witnesses, Philip Khaemba and Martin Malaba.

80. The 1st and 2nd respondents further exposed their abdication of duties in the manner of communicating the emails from the World Taekwondo. The two said they never communicated to the coaches in their official capacity. In fact, the 1st respondent said that it was not his duty to communicate to the coaches.

81. From the foregoing, then all the allegations leveled against the applicant are malicious, targeted, biased and witch hunt. The reports are not officially sanctioned by the EC but by people with vested interests. The reports were predestined to achieve what they wanted

X. WHETHER THE APPLICANT IS ENTITLED TO THE ORDERS PRAYED:

82. The applicant ably demonstrated to the Tribunal how the 1st, 2nd and 3rd respondents have acted maliciously and in bad faith to block him from being the coach for the Olympics, 2020. He stated that he has solely coached the athlete from 2019 till qualification to the Olympics which fact was never rebutted.

83. Furthermore, the Applicant demonstrated to the Tribunal how the 1st and 2nd Respondents acted in total contravention of the law and rules of natural justice, have acted in total abuse of the powers vested and donated to them by the 3rd Respondent's constitution. They failed to prove that the 2nd respondent as the secretary general has ever called any meeting to discuss the conduct of the Applicant. While the SG said he used to give WhatsApp notices, he never produced any but produced an alleged resignation WhatsApp message of Philip Khaemba though even in non-compliance with Section 146B of the Evidence Act.

84. It is therefore the humble submissions of the applicant that the 1st, 2nd and 3rd respondents are determined to frustrate and block him from attending the Tokyo Olympic Games, 2020. They have contravened his constitutional right under articles 47 and 50 of the Constitution, 2010, FAAA and the Federation Constitution and therefore unless this Honourable Tribunal intervenes by granting him the orders prayed, he stands to be prejudiced and suffer irreparable damage

XI. 1 ST 2ND AND 3RD RESPONDENTS' WRITTEN SUBMISSIONS i.

Introduction

85. Honourable Chairlady and member of the Tribunal, the genesis of this matter is a Notice of Motion dated 25th June, 2021 in which the Applicant has instituted a suit against the Respondents seeking among others that he be reinstated as a coach of the 3rd Respondent to enable him offer his services as a Taekwondo National Coach to the Tokyo Olympic Games, 2020.

86. That the 1st, 2nd and 3rd Respondents herein opposed the Notice of Motion Application vide a Replying Affidavit sworn by GEORGE WASONGA on the 7th July, 2021 (hereinafter **referred to as "the Replying Affidavit"**).

87. During the Tribunal session on the 8th July, 2021, the Tribunal with consent of the parties agreed to proceed with the hearing of the dispute by calling of witnesses. These submissions are therefore in support of the 1st, 2nd

and 3rd Respondents' case.

ii. Applicant's Case

88. During the hearing, the Applicant gave evidence and called two witnesses; Mr. Philip Khaemba and Mr. Martin Wanyonyi. Mr. Linus Marangu stated that he was a trained coach and qualified to coach for the Olympics. Mr. Philip Khaemba confirmed that Mr. Marangu was short of one qualification that is necessary before a coach could be allowed to coach at the Olympics. On the issue of the relationship between him and the athlete in question Mr. Marangu stated that he did not have any unusual closeness with the athlete in question. Mr. Malaba and Mr. Philip Khaemba both stated that Mr. Marangu was qualified to coach at the Olympics. All the parties admitted to having ever heard the issue of the closeness between the Applicant and Ms. Faith Ogallo but they all denied that the same was true. All witnesses for the Applicant denied ever having been called to an Executive meeting to discuss the disciplinary conduct of the Applicant. All witnesses acknowledged that only the Secretary General has the mandate to call for a meeting and that none had been called in a long time.

iii. Respondent's Case

89. During the hearing, the 1st, 2nd and 3rd Respondents called two witnesses, Mr. Suleiman Sumba (the current President of the 3rd Respondent and the 1st Respondent) and Mr. George Wasonga the 2nd Respondent and the Secretary General of the 3rd Respondent. The 1st Respondent and the 2nd Respondent herein both stated that the Applicant does not have the requisite qualifications for a coach at the Olympics as per the annexure of the 1st, 2nd and 3rd Respondents' marked as **GW-7**. Further the 1st and 2nd Respondents testified that even if the Applicant was allowed to travel to Tokyo he will only but be a joyrider and will not be able to coach since he falls short of the qualifications. Both the 1st and 2nd Respondents herein testified that the close relationship between the Applicant and the female athlete, Faith Ogallo, has been in question all through as shown in annexure "**GW 9**".

90. The Respondents' witnesses testified that the conduct of the 1st Applicant has all along been in issue and this is captured in annexure **GW-1**, **GW-2** and **GW-9**. They both confirmed that the Applicant was drunk and disorderly in front of athletes in Senegal, a misconduct which tainted Kenya's name internationally and it is the Applicant's gross misconduct that led to the decision to drop the Applicant from providing voluntary services as a coach. On the issue of the executive meetings the 1st Respondent testified that due to the Covid pandemic, the notices for the meetings are usually sent via WhatsApp and some of the meetings held virtually.

iv. Issues for Determination

91. Arising from the pleadings filed and the evidence tendered during hearing it is the 1st, 2nd and 3rd Respondents case that the following issues arise for determination: -

- I. Whether the 3rd Respondent followed the due process in terminating the Applicant's services,
- II. Whether the integrity issues raised against the Applicant were sufficiently proved to warrant a termination.
- III. Whether the Applicant has proper qualifications to be allowed to coach at Tokyo Olympics 2020.
- IV. Whether the Applicant is entitled to the orders sought in the claim.

I. Whether the 3rd Respondent followed due process in terminating the Applicant's services"

92. It is the 1st, 2nd and 3rd Respondents' case that due process was followed in having the Applicant's services terminated. Even though a notice ought to have been issued as per the Constitution of the 3rd Respondent, it is the

1st, 2nd and 3rd Respondents' case that due to the Covid 19 pandemic in the world (which this Tribunal should take Judicial notice of) it was not possible to do so. It is for this reason that the meeting was called electronically via WhatsApp and through phone calls. The Respondents did provide annexure "GW-1" and "GW-2".

93. The gist of these two annexures is that there were indeed meetings held in Nairobi and Senegal respectively. Most importantly, the issue to be discussed was very urgent, an improper relationship between the athlete and the coach.

94. The Applicant's witnesses confirmed that indeed the meetings referred to in annexures "GW-1" and "GW-2" took place. In annexure "GW-2", the parties agreed to give the Applicant more time to reflect and change which he failed to. It is therefore the Respondents case that there were meetings held which meetings sufficiently deliberated the Applicant's conduct. As to whether the same followed due process, we do submit that due to Covid and the urgency of the matter the same was proper.

95. Further, the Applicant was informed of his right of appeal as per the Constitution of the 3rd Respondent. Unfortunately, he opted not to appeal and jump the gun by filing this matter before the Tribunal.

96. In the case of *Package Insurance Brokers Ltd vs Simon Gitau Gichuru[2019] Eklr* it was stated that where:

"..... in any claim arising out of termination of a contract, the employer shall be required to provide the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45".

97. The 1st, 2nd and 3rd Respondents in their letter dated 22nd June, 2021 stated their reasons for relieving the Applicant from his duties and even went ahead to provide for him an avenue to appeal the matter to an independent disciplinary committee that is usually formed.

98. We therefore submit that due process was followed in relieving the Applicant from his duties. It is worth noting that the 1st, 2nd and 3rd Respondents are allowed under Section 44 of the Employment Act 2007 to summarily dismiss the services of the Applicant for being intoxicated at work;

II. Whether the integrity issues raised against the Applicant were sufficiently proved to warrant a termination.

99. It is the 1st, 2nd and 3rd Respondents submissions that the integrity issues raised were duly proved. In annexure "GW-1" it was shown that the issue was discussed and that the Applicant had been with the athlete to isolated places without permission and in contravention of the camp rules. As per annexure "GW-2", the Applicant continued with this habit including leaving the camp and coming back late without permission and in the company of the athlete. This position was corroborated by the Respondent in a report provided as annexure "GW-9". In the said report, the writer who was the team chaperone and psychologist **indicated that the behavior of the Applicant and Faith Ogalo was quite unbecoming of a trainer and a trainee and points towards an unethical relationship.** With such an observation and considering that the athlete is female, it is important to ensure that the athlete is protected.

100. The Applicant on his part has failed to defend the said allegations against him. It is therefore our humble submissions that even if the procedure of termination was not proper, of which it was, these allegations are so grave as to allow the Applicant to proceed with his coaching duties with the 3rd Respondent.

III. Whether the Applicant has proper qualifications to be allowed to coach at Tokyo Olympics 2020

101. During the hearing, the Respondents witnesses and the Applicant's 3rd witness confirmed that the Applicant does lack some of the qualifications to allow him to coach at the Olympics. **There was need** for the Applicant to attend further training and the link to the same was sent to the Applicant as shown in annexure "GW-7".

102. The link was sent not only to the Applicant but also to other coaches and to the Executive Committee members. The Applicant did not attend the training yet the other coaches did. No reason was given by the Applicant for his failure to attend the said training.

103. The net effect of this failure is that should the Applicant travel for the Olympic games then he will be doing so as a joyrider and not as a properly accredited coach.

104. The replacements appointed by the 3rd Respondent are in fact better qualified.

IV. Whether the Applicant is entitled to the orders sought in the claim.

105. It is the Respondents submission that they were justified in having the Applicant's services terminated. If, however, this Tribunal was to find otherwise, of which it should not, then the Respondents do submit that the Applicant is not entitled to an order of reinstatement as sought.

106. This is for the reason that the position has since been taken up by other parties who were not parties to the proceedings herein. In any event, if the Applicant has suffered any loss due to the said termination, which is denied, the same can be addressed by award of damages.

XII. CONCLUSION

107. The Honourable Chairlady and member, it is our humble submission that the Applicant's case should fail. The Respondents' did follow the rightful procedure in having the Applicant's services terminated. There were proper grounds given for the said termination. These grounds have not been challenged by the Applicant and considering the gravity thereof, this claim should therefore fail and be dismissed with orders as to costs.

XIII. ANALYSIS AND DETERMINATION

108. Having reviewed the parties pleadings, the evidence of the witnesses and submissions by the parties Advocates, the panel considers that the issues that present themselves for determination are

- a. Whether or not the Tribunal has jurisdiction to entertain and determine the Applicant's Application and decisions"
- b. Whether the actions and decisions by the 1st, 2nd, and 3rd Respondents were procedurally and substantively lawful and in conformity with the law and 3rd Respondent's Constitution"
- c. What orders commend themselves in the circumstances"

1. Whether or not the Tribunal has Jurisdiction to entertain and determine Applicant's Application and decision"

109. In the 2nd Respondent's Replying Affidavit at paragraph 6 (vi) the deponent states as follows

That after dropping the Applicant as a coach, the Applicant was given a right to appeal the decision within seven (7) days as per the 3rd Respondent letter dated 22nd June 2021 but he did not utilize this avenue for he instead

rushed to the Sports Tribunal which is supposed to be the last resort of dispute resolution, without exhausting the internal mechanisms if dispute resolution;

110. The gist of that disposition is that the Applicant should have exhausted the internal dispute resolution mechanisms before approaching the Tribunal. The issue as we understand it, is a challenge not of the substantive jurisdiction of the Tribunal, but rather a procedural one. It is trite law and this Tribunal has variously stated, that where internal dispute resolution mechanisms exist, a party cannot approach the Tribunal for resolution of the same matter before exhausting the existing internal mechanism. It is also clear from the provision of Section 59 (a) of the Sports Act 2013 that the Tribunal's Jurisdiction would be by large Appellate. Section 59 (a) and 59 (a) (i) states

59. The Tribunal shall determine –

1. 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-

a. appeals against not being selected for a Kenyan team or squad

111. In order to exit the Jurisdiction of the Tribunal, it has to be demonstrated that there indeed exists an appropriate internal mechanism for resolution of such a dispute.

112. From the parties' pleadings and the evidence presented, there is no evidence that there have been set up appropriate internal dispute resolution mechanisms within the 3rd Respondent.

113. Article 17 of the 3rd Respondent's Constitution provides as follows;

17. CONFLICT AND DISPUTE RESOLUTION PROCEDURES

1. the KTF shall also subscribe to and conform to the policy and rules set out in the Sports Dispute Tribunal set out under the Sports Act of Kenya.

2. The KTF shall set up mechanisms for conflict and dispute resolutions as follows: -

3. The KTF shall set up an independent arbitration committee comprised of five [5] persons. The composition if the committee adhere to the 2/3 gender rule.

4. Disputes shall be referred to the KTF dispute resolution committee.

5. Where a party is not satisfied with the ruling of the KTF arbitration committee. He shall refer his appeal to the Sports Register for arbitration or National Olympic Committee of Kenya, if not satisfied with the ruling of the later three bodies then he shall refer to the dispute to the Sports Dispute Tribunal.

114. It is evident therefrom that the 3rd Respondent is under duty to establish an Arbitral Committee which would act as the first point of call for a person dissatisfied by a decision of the 3rd Respondent or any of its organs or officials which affects him/her. In the instant case and in answer to questions by the panel, the 2nd Respondent conceded that no such Committee has been established by the 3rd Respondent. He however stated that the letter of 22nd June, 2021 which relieved the Applicant of his position gave him 7 days right of Appeal. The said letter states that upon an Appeal the Executive Committee will set up an Independent Disciplinary Committee to hear the Appeal within seven days.

115. This Tribunal is of the view that, that letter and the directions on Appeal are contrary to the clear provisions of

Article 9 and 17 (cited above) of the 3rd Respondent's Constitution. It is also not clear who the Appeal would be addressed to. Article 9 (b) (i) to (iv) states as follows

“9. DISCIPLINARY PROCEEDINGS

b. The National executive committee or the general assembly may commence or cause to commenced disciplinary proceedings against a member, considered to have allegedly: -

a. breached, failed, refused or neglected to comply with a provision of this constitution, the rules and regulations of the federation or any resolution or determination of the general assembly or any duly authorized entity; or

b. acted in a manner unbecoming of a member or prejudicial to the objects and interests of the federation and/or taekwondo; or

c. brought the federation or taekwondo into disrepute.

d. The member will be subject to, and shall submit unreservedly to the jurisdiction, procedures, penalties and appeal mechanisms of the federation”

116. The recognized Appeal mechanism of the 3rd Respondent under its Constitution, is not in the manner set out in the letter of 22nd June, but rather it ought to be to the Arbitral Committee envisaged by Article 17 which by admission of the 1st and 2nd Respondent. does not exist. The Applicant and his witnesses also confirmed that the 3rd Respondent has not set up relevant structures, technical Committees, including the Arbitral Committee.

117. Further as stated by the Applicant's witnesses, which was not controverted by the 1st to 3rd Respondents, there is a split in the Federation EXCO since a fall out after the AAG 2018. It cannot in the circumstances be expected that an Independent Disciplinary Committee would be possibly formed that would afford the Applicant the comfort to subject himself to the same. The appropriate avenue for his grievance under the Constitution should be found in a Committee established under Article 17 which is conceded to be non-existent. In absence of it, there exist no Appeal mechanism within KTF to which the Applicant would be expected to refer his Appeal. Under those circumstances, the Applicant was entitled to look up to the Tribunal to determine his grievance.

118. The Tribunal therefore determines that the KTF failed to establish an internal dispute resolution mechanism as envisaged by its Constitution and in that regard, the Tribunal determines that it is clothed with Jurisdiction.

119. The objection by the 1st, 2nd and 3rd Respondents in regard to lack of jurisdiction by the Tribunal fails and this panel shall proceed to determine the matter procedurally and substantively.

b. Whether the actions and decisions by the 1st, 2nd and 3rd Respondents were procedurally and substantially lawful and in conformity to the law and the 3rd Respondent's Constitution

120. The Applicant and his witnesses have stated that the Applicant was appointed as a Coach at a full executive meeting of the Respondent. Article 13 of the 3rd Respondent's Constitution relates to appointment of Team Coach and the Technical Bench. It is clear from the provisions of that Article that a team Coach shall be appointed by KTF in a free and fair manner (Article 13 (i)) on grounds set out therein and with requirements as to qualification. The dismissal is stated by Article 13 VI: “The KTF shall dismiss a national coach if he shall not perform and yield results as expected.”

121. The duty to relieve a Coach of his duties lies with the KTF acting through its known agent the EXCO who is also the appointing body and it is for the reasons or grounds set out at 13 (vi) above. Article 9 also cited above

gives grounds for other disciplinary action based on breaches set out therein.

122. The Tribunal has noted the seriousness of the alleged breaches raised against the Applicant especially in relation to Article 9 (ii) and (iii), however Article 9 (iv) requires that the matter shall be handled on “procedures, penalties and Appeal mechanism for the Federation.”

123. The 1st to 3rd Respondents have stated that the Applicant’s matter was properly handled in accordance with its procedures. The 1st (first) instance is the contents of the minutes of 22nd May 2021. The heading/title of those minute is “MINUTES OF THE KENYA TAEKWONDO FEDERATION DISCIPLINARY **HEARING** ON COACH MARANGU’S CONDUCT HELD ON THE 22NDMAY 2021 IN TOTAL RESTAURANT UTAWALA NAIROBI **KENYA**.”

124. The quorum is noted as well as the presence of the Applicant. The only Agenda item is “conduct of Mr. Linus Marangu as Coach of the National Taekwondo Olympic Team.

125. It is stated that the Secretary General read out the Charges that were presented by the technical Committee on the Applicant. The accusations were as follows.

1. that ever since Mr. Marangu was given the role to coach the team, he has never made any any documented training program as is required by article 13 (f) VII and VIII of the constitution of the Kenya Taekwondo Federation.

2. That Mr. Marangu fell short of article 13 (F) VI of the constitution of the Kenya Taekwondo Federation

2. that Mr Marangu has failed to observe protocol in the matters of the national team and has hence decided to act with impunity in total disregard of protocol hence by passing the Team Manager and choosing to deal directly with the official team doctor of the Tokyo Olympics Kenya team hence throwing the team’s plans and smooth plans into disarray.

3. That Mr Marangu has sown seeds of discord in the team leading to segregation and discrimination in the team, this goes against the Olympic charter on non- discrimination and also goes against article 6 (c) of the constitution of the Kenya Taekwondo Federation.

4. That Mr. Marangu has offered the athlete inadequate training. The athlete has been training once a day for lesser hours and fewer days. It is noted that the athlete only trains four days and rests three days in a week. This is not acceptable because the normal standards in Taekwondo training requires that an athlete is trained five days a week with two to three sessions of two hours a session with two days total rest.

5. That the team was in a bubble camp at Kasarani in Nairobi from the 11thApril 2021 and brook camp on the 11th May 2021 for the athletes to rest and recover for two weeks. Mr. Marangu without the express consent of the executive committee of the Kenya Taekwondo Federation, and without informing the Taekwondo Olympic Team Manager decided to recall just one of the athletes and pitched camp at Pipeline estate and proceeded with the training of the athlete minus all the sparring partners, the coach is required to work under the team manager who in turn reports to the Kenya taekwondo Federation Executive Committee.

6. That Mr. Marangu has exhibited total disrespect for the leadership of the Kenya Taekwondo federation of which he is one of them in the capacity of Treasurer.

7. That Mr Marangu is said to be too close emotionally to one female athlete in the team.

126. The entire minutes is a litany of misdeeds raised against the Applicant all with severe allegations from members who appear to hold duo status of a disciplinary panel as well as EXCO members of KTF. They are also referred to as the technical Committee They also come out as the accusers, witnesses, prosecutors judge and jury.

127. There is no indication in the Minutes that the Applicant was granted an opportunity to be heard in answer to the very serious allegations and if he did what he said or whether he elected to be silent.

128. Of concern also is that the Tribunal has not been shown how this meeting was convened. No Notice calling for the meeting and setting out the agenda has been provided. There is no indication that the Applicant had any notice of the purpose of the meeting or that he would be discussed with a Notice on the nature of accusations he would have to answer.

129. At the hearing the Applicant testified that he had requested for a meeting on that day between him and the president, the 1st Respondent, to discuss rumors about him. It was not an EXCO meeting and he never received a Notice convening a meeting of the EXCO. His two witnesses supported that position.

130. On the other hand, the 2nd Respondent testified that he issued a notice of the EXCO meeting on that day via WhatsApp and all EXCO members were notified. This Notice has not been produced. On the other hand, the 1st Respondent also claimed it was an EXCO meeting called by the Secretary General at his request to discuss the Applicant. He on questioning by the hearing panel and in Cross examination stated that the charges set out above were formulated on the floor of the meeting and read out to the Applicant who had no prior notice of them.

131. Considering the above position, the meeting in absence of a Notice could not have been an EXCO meeting of KTF as due notice to all EXCO members would be necessary but has not been shown to have been issued and is in fact denied by the Applicant's witnesses Mr. Khaembe and Mr. Maloba.

132. The heading of the minutes and its contents and the conclusion are curious, it reads "The meeting unanimously agreed to give Mr. Marangu to (sic) give severe warning and informed him that a repeat of the same would force the *executive committee to drop him as one of the Coaches of the Kenya Taekwond o Olympic Team.*"

133. It is instructive to note that from the above the meeting purported to be a disciplinary hearing. The EXCO or a part thereof have no powers under the 3rd Respondent's Constitution to convert itself into a disciplinary panel. A disciplinary panel can only be in terms of Article 13 of the 3rd Respondent's Constitution.

134. The purported severe warning by the meeting can therefore only be null and void as it's in breach of the available procedure within the 3rd Respondent's Constitution. The failure to give notice of the accusations to the Applicant in advance formulating charges at the floor of the meeting was an ambush, a fatal administrative procedural defect and contrary to the tenets of Natural Justice rendering the entire process and decisions reached a nullity.

135. It is noted that at paragraph 6(ii) of the Replying Affidavit, the 2nd Respondent also alleges that the Applicant "was called to a disciplinary meeting on the 22nd of May 2021." All that he annexes in support is the minutes already dealt with above but no Notice, neither is there information on how the disciplinary panel was constituted.

136. Turning to the events in Dakar Senegal, the 2nd Respondent at paragraph 6(iii) and (iv) states "*Annexed hereto and marked as "GW- 1" is a copy of the minutes of the disciplinary meeting held on the 22nd May, 2021 at Total Restaurant in Utawala.*

iii. While in Dakar Senegal, the Applicant resorted to taking leisure walks with the athlete out of the camp while

knowing camp rules and without permissions. He therefore abandoned his duties.

iv. The Applicant's persistent misconduct while in Dakar necessitated an emergency meeting being called on the 3rd June, 2021 in which he was also present. It was in this meeting that the Applicant was unable to explain where and why he had taken the athlete for long hours without explanation or asking for permission. It was agreed that the decision to drop the Applicant as a volunteer coach be deliberated on when the team got back to Nairobi.

The minutes of the stated emergency meeting are produced in annexure GW 2. There is no indication how this meeting was convened and Notice if any was issued. It is noted that the president the 1st Respondent is stated to have prevailed upon the meeting to postpone any decision until the team arrived back in Nairobi and **“the Secretary General would call for the Executive Committee meeting to deliberate on the same. Members agree to the President's request.**

137. The Tribunal has not been informed that the EXCO meeting as per the decision in Dakar was ever called. That meeting was on 3rd June, the members' minutes seem to have been signed by all on 10th June 2021

– no indication how they were confirmed and signed. However, on the 9th June, a day before signing the Dakar Minutes, the same persons who later signed the minutes of 3rd June penned a letter to the Chief De Mission of the Team Kenya 2020 Tokyo Olympic. The letter is as follows

Team Kenya-2020 Tokyo Olympics.

Dear Sir,

RE: RELIEVING OF MR LINUS MARANGU GERALD FROM

KENYA TAEKWONDO 2021 OLYMPIC COACHING DUTIES

This is to inform you that, the above-mentioned Kenya Taekwondo Federation Coach Mr. Linus Gerald Marangu has with immediate effect been replaced as the Taekwondo Olympics team 2021 coach due to the following reasons.

1. Contravening the Kenya Taekwondo code of conduct.
2. Failure to follow the approved training programme and reporting procedures
3. Conduct unbecoming of a coach that has tented the image of the Federation both at National and International levels.
4. In adequate skills preparation for the Olympic training team leading to poor performance.

Mr Eliakim Ogengo will now take up the Olympic Taekwondo Team coaching duties with immediate effect. The Federation had earlier requested for the inclusion of Mr. Ogengo on the travel list through a letter sent to the Olympic Kenya on or about 27th May 2021. **Mr. George Wasonga** will be on standby since he is already on the accredited list.

Thank you in advance.

Yours Faithfully

MAJOR RTD SULEIMAN SUMBA

NESMAS MBATI

PRESIDENT ASSISTANT

MANAGER

GEORGE WASONGA

ELIAKIM OGENGA

SECRETARY GENERAL

COMMITTEE MEMBER

138. The effect of the letter is to relieve the Applicant of his duties as Coach of the Tokyo 2020 Team. The grounds are clear and are of a serious nature. In effect they are set out as matters that have been duly investigated, put through a hearing process with a right to reply before an Independent impartial disciplinary or hearing panel. The letter goes ahead to also appoint persons to positions, all the beneficiaries being the players in the meetings on 22nd and 3rd July as well as the signatories to the said letter of 9th June, 2021.

139. In the Tribunal's view this entire process culminating in the letter of 9th June above cited was flawed with procedural breaches, failure to accord the Applicant a fair opportunity to counter the charges more so, they were in breach of the disciplinary process set out in the 3rd Respondent's Constitution. They were also in breach of natural justice and failed to accord the Applicant a fair administrative process as envisaged under Article 47 of the Constitution of Kenya 2010.

140. It is not surprising therefore that on the same day a section of the 3rd Respondent's EXCO penned a letter to the same Chief De Mission questioning the contents of the earlier letter and distancing themselves from its content.

141. The upshoot of the foregoing therefore, is that the actions by the 1st, 2nd and 3rd Respondents were a nullity procedurally and substantively defective. The 1st and 2nd Respondents do not have power to undertake disciplinary actions against members. The alleged powers under Article 29 (d) are limited to and only relate to urgent correspondence where EXCO may not be convened to give directions upon, but not disciplinary matters. Disciplinary powers under Article 17 are properly vested in the Committee to be set thereunder while the duty of the EXCO would therefore be to present any cases of breaches by members, Coaches and other persons to such a committee. In any event the documents relied on by the 1st and 2nd Respondents being the minutes from a meeting in Dakar Senegal clearly stated that the matter would be placed before the KTF EXCO upon return to Nairobi. It is lost to the panel why the EXCO was not called to deal with the matter between return and 9th June when a letter is issued to the Chief De Mission.

142. Further it is curious that a letter to relieve the Applicant of his duties is issued to NOC-K on 9th June, yet the letter to the Applicant setting out these decisions and the grounds is issued on (dated) 22nd June, 2021, well after a decision has been taken and acted upon. It begs the question what purpose the proposed Appeal therein would serve.

143. In the 2nd Respondent's Affidavit there appears the ground of removal of the Applicant for lack of qualification to appear as a Coach in the Olympics. It is to be noted that this reason does not appear in the letters to the Chief De Mission of 9th June and that to the Applicant of 22nd June, but rather raised for the first time in these proceedings.

144. The 1st and 2nd Respondents in their evidence state that the email from the WT President was sent to the Coaches to deal with. The 1st Respondent in fact stated that it was not his duty or that of KTF to ensure that the Coaches took steps to get certification. However, a look at the 3rd Respondents Constitution Article 5 sets out the Aims and Objectives of the Federation. Article 5.1 (vii) at page 2 provides:

"5 Aims and Objects

The aims and objects of K.T.F shall be.....

vii. Coordinating technical information on physical training, equipment, design, coaching and performance analysis.”

Article 19 on International Coaching Courses also provides

“The KTF shall ensure that it sends a minimum one coach to international coaching course each year upon receiving an application from such a coach. The process of selecting the candidates for these courses will be free, fair, transparent and based on merit. This is repeated at Article 5.1 (xvi)

145. It would therefore be improper for the officials of KTF who are under duty to act on behalf of KTF to state that it was up to the Coaches to sort out their certification. Promoting coaches and coaching standards leads to promotion of the level of Sport which is an objective of the KTF as per Article 5 5.1 (i).

146. The Tribunal also takes note that in the minutes that have been relied upon by the 1st to 3rd Respondents at no time has the issue of the Applicant’s qualification arisen. It is curious that this is raised in these proceedings. In any event, none of the alleged qualified coaches’ credentials and certificates obtained after 10th March 2021 have been provided to the Tribunal neither have the Certificates of the Applicant been provided to show which is lacking and how that offends the stated email of 10th March from WT. These issues being an ambush upon the Applicant at these proceedings and the Tribunal not having been shown the lack of qualifications as alleged, the ground fails to meet the required threshold of proof on a balance of probability. It cannot therefore stand.

XIV. FINDINGS AND ORDERS

A. FINDINGS

UPON HEARING THE PARTIES ON 8TH JULY 2021 and upon receiving viva voce evidence and perusing submissions filed by the Counsel for the parties the Tribunal finds as follows

I. THAT the Applicant was appointed to the position of National Coach for the Taekwondo Kenya Team by the Executive Committee of the Respondent.

II. THAT the purported meetings of the executive of the 3rd Respondent stated to have been held on 22nd May, 2021, and 3rd June were held and conducted in breach of the Constitution of the 3rd Respondent, without regard to due process and any decisions made therefore are null and void

III. THAT the letters emanating from the 1st and 2nd Respondents purporting to terminate the appointment of the Applicant from the position of coach for the Taekwondo Tokyo 2020 Olympic team are without authority, are fatally defective null and void and contrary to the 3rd Respondent’s Constitution.

IV. THAT under Article 19 of the 3rd Respondents Constitutions, disciplinary power can only be exercised by the Arbitral Committee appointed thereunder. Such Committee has not been set up by the 3rd Respondent. Accordingly, any exercise of disciplinary action by any other organ or individuals and officials of the 3rd Respondent is null and void.

B. ORDERS

147. In view of the foregoing, the orders that commend themselves to this Tribunal in the current circumstances are:

a. **THAT** all letters emanating from the 1st, 2nd and 3rd Respondent or any other official of the 3rd Respondent cancelling the appointment of the Applicant to the Taekwondo Tokyo 2020 Olympic Team are null and void and are hereby quashed.

b. **THAT** the 1st, 2nd, 3rd and 4th Respondents and their servants, agents, or anyone claiming under them are hereby restrained from interfering, blocking access, or denying the Applicant from discharging his duties as the Coach of the Olympic team.

c. **THAT** the 4th Respondent, the National Olympic Committee of Kenya, its Olympic Tokyo 2020 Organizing Committee and Management are hereby ordered to reinstate the Applicant to the camp, grant him full access to the Taekwondo team and to fully make provision for the Applicant as a member of the Kenya Tokyo 2020 Olympics team granting him all benefits attendant thereto including kitting, travel arrangements, visa and accreditation

d. **THAT** the costs of these proceedings shall be borne by the 1st, 2nd and 3rd Respondents.

DATED AT NAIROBI THIS 12TH DAY OF JULY 2021

SIGNED:

MRS. ELYNAH SIFUNA SHIVEKA, Deputy Chair

NJERI ONYANGO, Member



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