



Football Kenya Federation

Affiliated to CECAFA - CAF - FIFA

P. O. Box 49911-00100
Nairobi

Tel: + 254 709 699 000

Email: info@footballkenya.org
Website: www.footballkenya.org

November 27, 2023

REF. SEN/DSEC/SCLSW/2023/226

PARLIAMENT
OF KENYA
LIBRARY

Mr. J.M. Nyegenye, CBS
Clerk of the National Assembly,
P.O Box 41842 - 00100
Nairobi, Kenya

RE: PETITION REGARDING THE ALLEGED MISMANAGEMENT OF FOOTBALL IN THE COUNTRY BY THE FOOTBALL KENYA FEDERATION

Dear Sir,

Reference is made to your letters dated November 8, 2023 and November 22, 2023 requesting the federation to submit a progress report and appear before the committee at its meeting scheduled to be held on November 30, 2023 at 11.30am.

In this regard, the federation wishes to submit its report and confirm its availability for the said meeting scheduled for November 30, 2023 at Impala Conference Room, KICC Building 5, 2023.

Nonetheless, we wish to kindly request your good office to allow us attend the committee meeting at 12.00pm and not 11.30am as earlier scheduled, due to a prior engagement with the Cabinet Secretary for Sports at 10:00 am, and given the magnitude and importance of both meetings, we aim to avoid rescheduling either.

We thank you for your continued support and good understanding.

Yours Faithfully,

Barry Otieno
General Secretary/ CEO



Nick Mwendwa

President

Email: nick.mwendwa@footballkenya.org

Barry Otieno

General Secretary/CEO

Email: barry.otieno@footballkenya.org

Petra Doris

Vice -President

Email: doris.petra@footballkenya.org

All correspondence should be addressed to the General Secretary



REPORT ON THE ALLEGED MISMANAGEMENT OF FOOTBALL IN KENYA BY THE FOOTBALL KENYA FEDERATION (FKF)

BACKGROUND

On August 18, 2023, Football Kenya Federation received an invitation to a meeting with the Senate Standing Committee on Labour and Social welfare, on September 7, 2023, to deliberate on a petition dated August 10, 2023 received by the committee regarding the alleged mismanagement of football in the country, by FKF.

On September 4, 2023, the Federation requested the esteemed Committee to reschedule the meeting due to prior engagements. On September 27, 2023, the Committee informed the Federation that the meeting had been rescheduled to October 5, 2023.

On October 5, 2023, the Federation attended the rescheduled meeting as summoned by the honourable Senate Committee. The Federation responded to the allegations contained in the petition filed by the County Football Associations as per the attached documentation.

Following deliberations amongst the Federation, CFAs, and the Committee, the Committee directed that the Federation and CFAs enter into a dialogue, in an attempt to resolve the issues raised in the said petition. The Committee ordered that the parties provide an update after one month.

On the same day, October 5, 2023, in compliance with the Committee's directions the Federation and the County Football Associations held a meeting immediately after the Senate Committee's seating at Bunge Towers. The meeting agreed that the federation and the CFAs would schedule a meeting to deliberate on the matters raised by the CFAs. The meeting also agreed that the CFAs would nominate five (5) individuals to represent them in the said meeting. It was agreed that Mr. Wilfred Morori would be the contact person for the CFAs and FKF CEO Barry Otieno would be the contact person for the federation. The two gentlemen were tasked with planning for the FKF/CFA meeting including agreeing on suitable dates for the same. The CFAs promised to share the names of the other four (4) representatives that would join Mr. Marori for the FKF/CFA meeting after consultations.

Subsequently, the Federation through its CEO proactively made multiple attempts to plan for the FKF/CFA meeting as had been agreed on October 5, 2023. Specifically, on several occasions between October 5, 2023 and October 25, 2023, the Federation's CEO reached out to Mr. Wilfred Marori, via phone calls and WhatsApp messages to organize a conciliatory meeting, as had been advised by the Honourable Senate Committee.

Mr. Marori consistently avoided making firm commitments and was evasive in his responses. He cited unspecified scheduling conflicts as reasons for his unavailability to meet. Despite the FKF CEO's emphasise on the time-sensitivity and importance of the matter, Mr. Marori expressed reluctance to make himself available for an in-person discussion.

That notwithstanding, on October 17, 2023, when a petition touching on the same matter came up for mention at the Sports Dispute Tribunal the Federation's advocates notified the Tribunal that the Mr. Marori, who is also the petitioner in the case had lodged a petition at the Senate raising the same or similar issues as those he had raised in his two (2) petitions and that the Senate had advised parties to engage in discussions to attempt and resolve the issues amicably. The tribunal agreed to accord the parties time to resolve the matter and ordered that the matter be mentioned November 8, 2023 to appraise it on the progress.

On October 24, 2023, the federation once again through the CEO formally invited the County Football Associations Secretary and four other members representing County Football Associations (CFAs) to a meeting, on Monday, October 30, 2023, at FKF offices.

On October 25, 2023, FKF received a letter from Mr. Marori declining the federation's invitation, citing that it was improper and un-procedural for him to attend the said meeting as he was invited as an individual, this despite the parties having agreed to Mr. Marori being the contact person for the CFA in their meeting of October 5, 2023.

Moreover, in his letter Mr. Marori declared that the issues raised in his petition at the Sports Disputes tribunal constituted personal matters that cannot be resolved outside the judicial process and rejected the Federation's efforts to reconcile the issues directly with the CFAs.

On November 16, 2023, the two parties appeared before the tribunal, Mr. Marori through his counsel asserted that his client was unwilling to engage the federation citing that the issues raised at the Senate Committee were unrelated to the ones raised at the Tribunal.

The tribunal subsequently allowed the parties sometime to engage and slated the matter for hearing on December 7, 2023.

CONCLUSION

In light of the foregoing, it is evident that Football Kenya Federation made reasonable efforts to comply with the Senate Committee's directions to engage in dialogue with the County Football Associations, with the aim to amicably resolve the issues raised in their petition to both the honourable Senate Committee and the Tribunal.

Specifically, the federation proactively reached out to the CFAs representative Mr. Marori on several occasions via phone, WhatsApp and formally through a letter, to try schedule a meeting for dialogue.

The federation's good faith and intention to engage the CFAs in dialogue was further reinforced when Mr. Marori's matter came up for mention at the Sports Tribunal, where Counsel representing the federation informed the SDT about the directions of the honourable Senate Committee and the

federation's willingness to engage in a dialogue with the CFA and have the matter settled outside of court to avoid Kenya jeopardising her chances of hosting the AFCON 2027 tournament.

Therefore, while the federation made and continues to make concerted efforts to comply with the Senate Committee's directions for dialogue with the CFAs, Mr. Marori and the CFAs remain elusive and non-committal to holding the said dialogue and seem keen to create anarchy in how the game of football is managed.

As demonstrated and reiterated to both the honourable Committee and the Sports Tribunal the federation remains open to engaging the CFAs with a view of addressing the issues raised both to the Committee and at the Tribunal.

The aforementioned notwithstanding, Mr. Marori's failure to withdraw his petition before the Tribunal also makes it untenable for the federation to discuss the petition before the Senate Committee, due to the risk of being prejudiced, as the matter is currently active before court.

FKF trusts that this report has sufficiently appraised the Senate Committee on Labour and Social Welfare on the status of implementation of the Committee's directions following the October 5, 2023 deliberations. The Federation avails itself for any further engagement with the Committee as need arises.

Signed by



Barry Otieno
General Secretary/CEO





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P. O. Box 49911-00100
Nairobi

Tel: + 254 709 699 000

Email: info@footballkenya.org
Website: www.footballkenya.org

October 24, 2023

Via Email

WILFRED MARORI
maroriwilfred@gmail.com
NAIROBI.
Tel: +254724870599

RE: MEETING INVITATION

Dear Sir,

Further to our meeting at the Senate on October 5, 2023, my follow up phone calls and our WhatsApp conversation, the federation wishes to formally invite you and four other members representing County Football Associations (CFAs) to a meeting, preferably on Monday, October 30, 2023, at FKF offices.

The said meeting is aimed at finding a lasting solution to issues raised by the CFAs both at the Senate and the Sports Dispute Tribunal.

We thank you for taking note and for your good understanding, this even as we await your confirmation on the same.

Yours Faithfully,

Barry Otieno
General Secretary/ CEO



Nick Mwendwa
President

Email: nick.mwendwa@footballkenya.org

Barry Otieno
General Secretary/CEO

Email: barry.otieno@footballkenya.org

Petra Doris
Vice -President

Email: doris.petra@footballkenya.org

All correspondence should be addressed to the General Secretary

WILFRED MARORI

TEL: 0724870599

maroriwilfred@gmail.com

25th October 2023

General Secretary,
Football Kenya Federation
P.O Box 49911-00100
NAIROBI.

Dear Sir,

RE: **MEETING INVITATION**

The above subject matter refers in respect of the letter dated 24th October 2023.

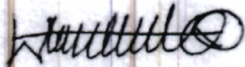
As you are aware, the proceedings at the Senate were instituted in my representative capacity as the Secretary of the Nairobi County Football Association relating to management of football in the country. However, the two petitions (PET no. E022 of 2023 and E028 of 2023) before the tribunal do not relate to matters affecting CFA'S and were instituted in my personal capacity.

The purpose of the meeting based on your letter is to discuss issues raised by the CFA's at the Senate. However, it is addressed to me as an individual and not to the Secretary of the Nairobi County Football Association. As a result, I find it improper and unprocedural to attend a meeting to deliberate on issues affecting 41 CFA's and/or the Nairobi County Football Association unofficially and as an individual.

Furthermore, whereas on 17th October, 2023 your Advocates on record informed the Tribunal that the Federation was interested in engaging in mutual negotiations to attempt to settle the issues raised in the Petitions and the Senate, without prejudice and in good faith, it is my personal observation/view that the prayers sought in the Petitions cannot be settled through alternative dispute resolution mechanisms and therefore the meeting would be rendered futile and an academic exercise.

Be advised accordingly.

Yours faithfully,



WILFRED MARORI



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Affiliated to CECAFA - CAF - FIFA

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Nairobi

Tel: + 254 709 699 000

Email: info@footballkenya.org
Website: www.footballkenya.org



October 2, 2023

REF. SEN/DSEC/SCLSW/2023/195

Mr. J.M. Nyegenye, CBS
Clerk of the National Assembly,
P.O Box 41842 - 00100
Nairobi, Kenya

RE: PETITION REGARDING THE ALLEGED MISMANAGEMENT OF FOOTBALL IN THE COUNTRY BY THE FOOTBALL KENYA FEDERATION

Dear Sir,

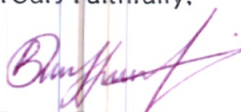
Reference is made to your letters dated August 18, 2023, and September 27, 2023 inviting the federation for a meeting to deliberate on the above subject matter and our subsequent response dated September 4, 2023.

In this regard, we wish to confirm that Football Kenya Federation will attend the said meeting scheduled for October 5, 2023.

Further, please find attached our response for your perusal.

We thank you for taking note and for your good understanding.

Yours Faithfully,


Barry Otieno
General Secretary/ CEO



Nick Mwendwa

President

Email: nick.mwendwa@footballkenya.org

Barry Otieno

General Secretary/CEO

Email: barry.otieno@footballkenya.org

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Petra Doris

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REPORT ON THE ALLEGED MISMANAGEMENT OF FOOTBALL IN KENYA BY THE FOOTBALL KENYA FEDERATION (FKF)

1. That County Sports Associations are registered in line with provisions of the Sports Act (2013)

Response: It is true that both FKF and County Sports Association are registered in line with provisions of the Sports Act (2013). FKF is dully registered as a National Sports Organization with 48 Branches across the country, while County Associations are registered as independent Sports entities operating within a given County. Both FKF and County association have distinct memberships as provided for in their respective constitutions.

2. That FKF is yet to comply with legal requirements for registration as a National Sports.

Response: To the best of my knowledge FKF has fully complied with all legal requirements needing it to be registered as a National Sports Organization and has a valid certificate issued by the Registrar of Sports.

3. That since registration in 2018 FKF has never held elections as required under the Sports Act.

Response: FKF held elections in 2020 as required under the Sports Act (2013) the FKF Constitution (2017), FIFA Statutes and the Kenyan Constitution. The electoral processes was approved by The Sports Dispute Tribunal in SDT number 10 of 2020 (See attached ruling- Annex 1).

4. That FKF is yet to recognize County Football Associations that are dully registered under the Sports Act (2013)

Response: FKF recognizes the independent existence of County Associations as provided for by the Sports Act (2013). However, the said recognition does not make County Associations members of FKF. The federation membership and the application process of becoming a member are provided for in the FKF constitution (2017).

5. That the Cabinet Secretary for Sports removed the FKF National Executive Committee from office and replaced it with a caretaker Committee on November 12, 2021, due to contravention of the Sports Act.

Response: The former Cabinet Secretary for Sports Ambassador Amina Mohamed disbanded the FKF National Executive Committee to allow for further investigation on allegations of mismanagement of government funds and not because of contravention of the Sports Act (2013). The case as since been closed after three courts ruled that the move was not only malicious but an abuse of the court process. (See attached court rulings – Annex 2).

6. That FKF, its president and the Chief Officer appealed the removal of the FKF National Executive Committee to the High Court. The High Court however upheld their removal on May 10, 2022.

Response: FKF appealed against the process that was used to disband the federation's National Executive Committee at the High Court. However, the Court ruled that the Cabinet Secretary was within her powers to disband the FKF National Executive Committee.

7. That the current Cabinet Secretary for Sports reinstatement of the suspended FKF National Executive Committee was unprocedural.

Response: The current Cabinet Secretary acted within his powers to reinstate the FKF National Executive Committee. The decision by the Cabinet Secretary led to FIFA lifting an indefinite suspension that had been imposed on Kenya due to government interference, in the running of football. Further, because of the Cabinet Secretary's decision to reinstate the FKF National Executive Committee Kenya has not only been re-admitted to international football but was also recently awarded the opportunity to host the prestigious AFCON 2027 tournament, jointly with Tanzania and Uganda.

8. That County Football Associations challenged the reinstatement of the FKF National Executive Committee at the Sports Dispute Tribunal. That the Sports Tribunal ruled that the reinstatement of the FKF National Executive Committee was illegal and ordered the Cabinet Secretary for Sports to constitute a Caretaker Committee for FKF until the election of a new FKF Executive Committee is held.

Response: The Sports Tribunal's decision terming the move by the Cabinet to reinstate the FKF National Executive Committee illegal was stayed by the High Court in a Judicial Review Case filed delivered on July 14, 2023. (see attached- Annex 3)

9. That the Cabinet Secretary for Sports continued to violate the High Court and Sports Tribunal judgments respectively.

Response: To the best of my knowledge the Cabinet Secretary has not violated any court ruling. The tribunal decision was stayed by the Judicial Review case and the High Court ruling delivered on July 14, 2023 did not give directions regarding reinstatement of the FKF National Executive Committee.

10. That the Cabinet Secretary declined to facilitate the office of the Sports Registrar to conduct County Football Association elections.

Response: FKF is not privy to this information and as such cannot comment on the matter.

11. That County Sports Associations are yet to benefit from Sports Arts and Social Development Fund.

Response: FKF is not privy to this information and as such cannot comment on the matter.

12. That County Associations have made efforts to have these matters addressed by relevant authorities, all of which have failed to give satisfactory responses.

Response: FKF is not privy to this information and as such cannot comment on the matter.

13. That none of the issues raised in this petition is pending in any court of law, constitutional or other legal body.

Response: This matter is currently active before a court of law and has been raised by the same parties petitioning the Senate Standing Committee on Labour and Social Welfare. (See attached Petition- Annex 4)

Signed by



Nick Mwendwa
FKF President



ANNEX 1

REPUBLIC OF KENYA



THE JUDICIARY
OFFICE OF THE SPORTS DISPUTES TRIBUNAL
PETITION NO. 10 OF 2020

SAMSON NYAMWEYA KEENGU1ST PETITIONER
LORDVIC OMONDI ADUNDA2ND PETITIONER
MICHEAL ESAKWA3RD PETITIONER
ALEX OLE MAGELO.....4TH PETITIONER
STEVE MBURU.....5TH PETITIONER
TWAHA MBARAK.....6TH PETITIONER
NICHOLAS MUSONYE.....7TH PETITIONER
ANGELINE MWIKALI ELIJA.....8TH PETITIONER
BONDENI FOOTBALL CLUB.....9TH PETITIONER
CHEPTIRET FOOTBALL CLUB..... 10TH PETITIONER

-versus-

FKF ELECTORAL BOARD1ST RESPONDENT
KENTICE TIKOLO2ND RESPONDENT
FOOTBALL KENYA FEDERATION3RD RESPONDENT

DECISION

Hearing: 12th October 2020 (Via Zoom)

Panel: John M. Ohaga, SC; C.Arb - (johaga@tripleoklaw.com) - Chairman
Mary N Kimani (kabikim@yahoo.com) - Member
Allan Owinyi (allanmola.am@gmail.com) - Member

Appearances:

- Mr. Nelson Odongo (nelsonnyaduwa@gmail.com) for the 1st to 8th Petitioners;
- Mr. Charles B G Ouma (cbgouma@gmail.com) for the 9th & 10th Petitioners;
- Mr. Charles Njenga(cnjenga@mkn.co.ke) for the 1st & 2nd Respondents;
- Prof. Tom Ojienda SC (ojiendaandassociates@gmail.com); Mr. Victor Omwebu (victor@litoromwebu.co.ke) and Mr. Brian Ochieng (ojiendaandassociates@gmail.com) for the 3rd Respondent;
- Mr. Ken Ochieng (kenwere13@yahoo.com) for various Interested Parties;
- Mr. Japheth Munyendo (jmunyendo@gmail.com) for various Interested Parties;
- Mr. Amos Otieno (advocmo24@gmail.com) for an Interested Party

Background

1. This Petition is a sequel to the Petitions in SDT No. 24 & 29 of 2019 and SDT No. 3 & 4 of 2020 in which the Tribunal nullified the elections of the Football Kenya Federation (**‘the Federation’**) on the basis of various challenges arising

from the structures that the Federation had put in place for the conduct of its National Elections.

2. In SDT No. 24 & 29 of 2019¹, the Tribunal nullified the elections primarily on the basis that there had been insufficient public participation in the formulation and adoption of the Electoral Code and that the Electoral Board was not properly constituted.
3. In SDT No. 3 & 4 of 2020², the Tribunal found *inter alia*, that the **eligibility criteria at Section 4 of the 2020 Electoral Code are unreasonable and designed to lock out potential aspirants and was therefore a gross violation of the principle of free and fair elections contemplated by Section 46 (6) as read with Paragraph (d) of the Second Schedule to the Sports Act and Article 81 of the Constitution of Kenya 2010.**
4. The Tribunal further declared that the term of office of FKF's National Executive Committee to be at an end and that the bodies. It, however, also found that the **bodies established under the Electoral Code such as the Electoral Board and the Appeals Board remain validly in place and will await the appointment of a normalization committee before they can resume their work;**
5. In consequence, the Tribunal recommended the appointment by FIFA of a normalization committee for the purpose of managing the elections. FIFA did not, however, accede to this request.
6. As a post-script, the Tribunal stated as follows:

'Hopefully, the football community can use this COVID-19 imposed hiatus to rectify the defects that the Tribunal has identified in the electoral process and to close ranks so that Kenya can emerge from this period of isolation as a stronger footballing nation with better governance structures and leaders who are accepted as legitimate by the entire football family'.
7. The fact that the parties are still contesting the structures now in place for the holding of elections is testament to the fact that this exhortation may not have been heeded. This is possibly because in Kenya elections of any nature are

¹ Decision dated and delivered on 3rd December 2019;

² Decision dated and delivered on 17th March 2020

bitterly contested and invariably always appear to be produce results that are unsatisfactory to candidates who do not consider that they have been given a proper opportunity to compete.

8. Perhaps the Political Parties Tribunal might have been the more appropriate forum for the contests that have raged between these parties for more than one (1) year now.

The Parties

9. The 1st to 8th Petitioners describe themselves as prospective aspirants in the upcoming FKF National elections while the 9th and 10th Petitioners are clubs which say that they have a stake in the elections.
10. The 1st Respondent was constituted by the FKF National Executive Committee as provided for in Article 39 of the FKF Constitution with the mandate of overseeing National and County Elections and may appoint an individual or institution to oversee the sub-County Elections
11. The 2nd Respondent is the Chairperson of the FKF Electoral Board
12. The 3rd Respondent is the National Sports Organization responsible for the sport of football in Kenya.
13. There are also numerous interested parties who applied to join the action and agitate their positions. The Tribunal also allowed the Sports Registrar to be enjoined to the action as an interested party because of the statutory responsibilities of this office which is central to the conduct of the elections of sports federations.

The Petitioner's Case

14. The present Petition was filed on the 14th August 2020. It is accompanied by the affidavit of the 1st Petitioner, Samson Nyamweya Keengu who has authority of colleagues to make the affidavit; there are also affidavits sworn by David Simiyu Lugoye and Charity Auma Wangoma in support of the positions taken by the 9th and 10th Petitioners.
15. As we have stated, the 1st to 8th Petitioners namely Samson Nyamweya Keengu, Lordvic Omondi Adunda, Micheal Esakwa, Alex Ole Magelo, Steve Mburu,

Twaha Mbarak, Nicholas Musonye, Angeline Mwikali Elija claim to be prospective aspirants in the upcoming FKF elections. It is instructive though, that one of the original Petitioners, Lordvic Omondi Aduda subsequently broke ranks after having had his application for candidature accepted by the 1st Respondent (**'the Board'**) and his application to '*defect*' and join the long list of interested parties was acceded to by the Tribunal.

16. The trigger for the Petitioners' grievance as a press statement dated 6th August 2020 issued by the Board through its chairperson, the 2nd Respondent which statement was to the effect that the Board was in receipt of communication from FIFA with directions on the pending FKF Elections. The statement indicated that the Board would publish a road map and regulations to be used in overseeing the said elections.
17. The Petitioners claim that they had not been informed as to how FIFA changed its position to give the election a green light as there was no stakeholder engagements before the coming into existence of the said roadmap and regulations. They state that there has been no public participation in this matter and that the ruling of the Tribunal declaring the eligibility criteria at Section 4 of the 2020 Electoral Code unreasonable was still in place and therefore the Respondents could not conduct legitimate elections until there had been full compliance with the ruling of the Tribunal.
18. The Petitioners further submit that the Board has no authority or power to issue any regulations or roadmap on the Elections as its mandate is limited to overseeing the National and County Elections; that the Board cannot resume its work until there have been rules of engagement for the elections established by the stakeholders; that therefore, to the extent that the roadmap and regulations on the Federation's elections were made without the involvement of football stakeholders, such regulations are unconstitutional and therefore null and void.
19. The Petitioners principal plank is that because the Tribunal had directed that the Board and the Appeals Committee should await the appointment of the Normalization Committee before resuming work, therefore the fact that FIFA refused to accede to the formation of a normalization committee meant that the orders of the Tribunal were still in place and had not been vacated. This therefore meant that the Board was required to seek directions from the Tribunal as to how to proceed with the elections.

20. The Petitioners rely on two decisions of the Courts, TSC vs KNUT and 2 others Petition No. 23 of 2013[eKLR] and Republic vs Principal Secretary Ministry of Defence and Ex-Parte George Kariuki Waithaka 2019[eKLR] where the courts were emphatic on how court orders are to be treated. They argue that it is fundamental element of the rule of law that court orders must be obeyed and where an individual is required by an order of the court to do or refrain from doing a particular act, he has a duty to carry out that order.
21. The Petitioners submit that this order was issued so as to ensure that all underlying issues that caused the nullification of the elections were resolved before the elections could proceed.
22. It is the Petitioners' further case that the Board is established under Article 61 of the FKF Constitution and its mandate is to **organize and supervise** the electoral process in accordance with the Electoral Code of the FKF. **Section 3 of Electoral Code** underlines the mandate of the Board as administrative and supervisory and that it has no role in the issuance of rules and regulations for the conduct of elections as one cannot be a referee and a rule maker of the same rules.
23. **Section 4** of Electoral Code gives directions on the limitations of FKF Electoral board as not being able to impose any eligibility criteria or any other formal requirements that are not provided for in the FKF Constitution and in the Electoral Code.
24. The Petitioners argue that the forthcoming elections not be free, fair, and constitutional as they are not open to the public as envisaged under the Constitution of Kenya 2010, the Sports Act and the FKF Constitution.
25. Drilling down to the particulars of their grievance, the Petitioners have identified Article 37 of the FKF Constitution which gives clear eligibility criterion that is one should inter alia, have been active in football to be eligible to vie for office. They say that this provision is wide enough to include for, instance, sponsors who have supported football activities and the introduction of criteria that requires one to played a role in football either as a player, member or official of FKF in two of the last five years as was contrary to the FKF Constitution.
26. The Petitioners state, and the Tribunal agrees, that there is no doubt that they have been involved in football activities and have therefore been 'active' in

football in Kenya and the East African region and therefore fit within the criterion dictated by the FKF Constitution.

27. The Petitioners allege therefore that the intention of the Respondents was to lock the Petitioners out of the elections because the requirements introduced in the eligibility criteria are even more stringent than those that had been struck down by the Tribunal.

Respondents' Case

28. Not surprisingly, the Respondents seek to uphold the validity of the process and structures put in place for the elections. Their factual position is set out in the replying affidavits of Kentice Tikolo, the Chairperson of the Board and sworn on the 10th September 2020, together with annexures KT1 to KT5 thereon and that of Barry Otieno, the Secretary General of the Federation.
29. The Respondents take the view that the entire action is *res judicata* as the matters sought to be ventilated in this Petition are the same issues that were directly and substantially in issue in SDT No. 3 & 5 of 2020. The Respondents rely on the case of *Edwin Thuo v Attorney General & Another Nairobi Petition No. 212 of 2012 [unreported]* where the court stated that courts must be vigilant to guard against litigants evading the doctrine of *res judicata* by introducing new causes of action so as to seek the same remedy before the court.
30. The Respondents also ask the Tribunal to decline jurisdiction on the basis that the Elections Board and the Appeals Committee are the forums of first instance for the resolution of the petitioners' disputes. The Petitioners have not exhausted all available avenues of redress before approaching the Tribunal and the Petitioners complaints ought to have been raised in the first instance with the 1st Respondent and if still aggrieved, with the FKF Appeals Committee established as an independent judicial body of the 3rd Respondent under Article 64(1)(c) of the FKF Constitution that provides expressly that the appeals committee is responsible for hearing appeals against decisions determined by all committees.
31. In response to the assertion that the Board did not have the mandate to issue the guidelines and regulations published on 11th August 2020, the Respondents point out that the Tribunal had already found that the Board was legitimately in place to execute the mandate and function of organizing and running the electoral process and therefore it is not sufficient for the petitioners to allege

that the said rules and guidelines are invalid; they should go further and demonstrate that such rules are unfair, unlawful, and otherwise unconstitutional. The case of Ndyanabo vs AG Tanzania [2001] EA, 495 was relied on for this proposition.

32. With regard to the eligibility criteria, the Respondents say that in an effort to cure the flaws identified by the Tribunal in the previous criteria, the Board opted to substitute the criteria with one that is reasonable enough to ensure that as many aspirants as are desirous of vying for the various positions are allowed to contest while ensuring that only *bona fide* stakeholders and active participants in the game of football and its management are cleared to run for the elections.
33. The argument that the Board had overstepped its mandate is misguided in light of the express provisions of the Preamble and Article 3(1) and 6 of the FIFA Standard Electoral Code, Articles 27 (10) & (3) and 61 of the FKF Constitution and Section 3(2) of the FKF Electoral Code which grant the exclusive authority to the 1st and 2nd Respondents to conduct the 3rd Respondent's elections which includes organizing and supervision such elections.
34. The Respondents also take issue with the fact that the Petitioners have not submitted their candidature to the Board and their position is therefore premised on a theoretical premise. They argue that none of the Petitioners, save for the 2nd Petitioner, presented themselves for candidature of any of the positions available in the scheduled FKF elections. This clearly demonstrates that the basis of the suit at hand is not refusal by the Respondents to allow the Petitioners to participate in the elections or the litigation of any real or valid issues arising from the election process thus far but a vivid, malicious and persistent intention by the petitioners to by all means frustrate the conduct of the FKF elections by raising all manner of questions and speculative issues targeting the process, the people and institutions conducting it so as to discredit the same before this Tribunal and the stakeholders in Kenya and worldwide.
35. In any event, the Respondents in particular attack the status of the 1st Petitioner whom they say has no interest in the game as he had long retired from football and had in fact communicated such position to FIFA by letter dated 9th February 2016. Indeed, in Nairobi High Court Constitutional Petition Number 144 of 2017 the 1st Petitioner had expressly averred that the Federation had wrongfully meted disciplinary action against him whilst he was not a member of FKF

having retired from football activities and the administration of football in the year 2016.

36. The Respondents also contend that the Petitioners have not shown that the said eligibility criteria are discriminative, unfair or unconstitutional. They say that in accordance with the Tribunals directions in SDT 3 & 5 of 2020 they ensured that the criteria was not unconstitutional by merely adopting the basic eligibility criterion set out at Article 27 of the FIFA Statutes as codified in the FIFA Standard Electoral Code.
37. The Respondents assert that the 9th and 10th Petitioners are clearly ineligible to vote according to Section 4.3B (iii) of the FKF Electoral Code, which provides that clubs that are eligible to vote are the ones that participated in the FKF Leagues for the last three of four consecutive seasons. Both of these Petitioners have not satisfied the criteria as the 9th Petitioner only participated in the subbranch leagues for only two years while the 10th Petitioner was disbanded in 2019.
38. In conclusion, the 1st and 2nd Respondents reiterate that the Petitioners have not isolated and particularised any instances of bias, prejudice, fraud, irregularity or unlawfulness on the part of the 1st Respondent's conduct of the electoral process and that the petition lacks merit and should be dismissed.
39. There are other secondary arguments advanced by the Respondents which the Tribunal does not consider to be material to its determination of this matter.
40. The Respondents' position was supported by the various interested parties who say that they have made substantial investments in putting forward their candidature and in campaigning for various positions and it would be gravely prejudicial if the elections were to be nullified at the eleventh hour.

Discussion

41. As we stated in opening, the parties to this action have travelled a long path. Such is the treacherous path to office of this Federation.
42. The simple issue for our determination is the question of the validity of the eligibility criteria applied by the Board.

43. The 1st to 8th Petitioners say that they did not need to submit themselves to the nomination formalities because it was evident that these were flawed. However, after the commencement of this Petition, the 2nd Petitioner, Lordvic Aduda appears to have decided to test the criteria by presenting his candidature which was accepted. This simple act significantly undermines the entire premise of the 1st to 8th Petitioners case. The Tribunal accepts that the contentions by these Petitioners is founded on a theoretical framework which has been shown to have been built on quicksand. We do not see how it can be sustained.
44. Article 27 (1) of the FKF Constitution gives an independent electoral board the power to conduct the Federations Elections. The Tribunal agrees that to the extent that FIFA did not agree to the formation of the normalization committee as had been suggested by the Tribunal, it was incumbent upon the Electoral Board to take such steps as it deemed expedient to conduct such elections. This would necessarily have included putting in place such selection criteria as would meet the parameters spelt out by the Tribunal.
45. The ordinary meaning of 'organize' is *to form into a coherent unity or functioning whole; to set up an administrative structure; to arrange by systematic planning and united effort; to cause to develop an organic structure*³;
46. We are satisfied that this definition is wide enough to include the putting into place the criteria which is sought to be challenged.
47. If the 1st to 8th Petitioners had a *bona fide* interest in vying for national office in the Federation, they should have demonstrated this in the first instance by putting forward their candidature. The proposition that this would have been futile is misconceived as already demonstrated by our reference to the 'defection' of the 2nd Petitioner.
48. We think that this conclusion is sufficient to dispose of the Petition and it is not necessary to delve into all the other arguments that were advanced by the parties.
49. For this reason, the Petition is for dismissing and it is duly dismissed.

³ Mariam-Webster Dictionary

50. We were requested to address the question of costs on the basis that this was the third time that a matter of this nature was coming before the Tribunal. After anxious consideration, we agree that there should be some sanction having regard to the lengthy proceedings to which the Respondents have been subjected. The Petitioners will therefore bear the costs of this Petition. Such costs will be limited to the costs of the Respondents only. The Interested Parties joined the action of their own volition to address their particular circumstances and the order for costs does not extend to them.

Dated and delivered at Nairobi this 16th day of October, 2020.

John M. Ohaga

**John M Ohaga, SC; CARb; FCI Arb
Chairperson**

Ms. Maria Kimani, Member

Mr. Allan Owinyi, Member

Covid-19 Protocol: This decision has been delivered by the Tribunal remotely by circulation to the parties' representatives by email. A duly signed copy will be available for collection from the Tribunal registry in due course.

ANNEX 2

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT KIAMBU
KIAMBU LAW COURTS
MCCR CASE NO. E955 OF 2022

BETWEEN

REPUBLIC.....(THRO) THE DPP/RESPONDENT

=VERSUS=

NICHOLAS MWENDWA KITHUKU.....ACCUSED/APPLICANT

RULING

INTRODUCTION

1. The application before this honourable court is dated the 26th day of September, 2022. It is presented by the accused/applicant through the firm of Lotoro & Omwebu Advocates seeking the following orders:
 - 1.1. Spent
 - 1.2. An order of interlocutory injunction or any other interim order stopping the Director of Public Prosecutions from prosecuting or commencing any prosecution of the accused/applicant in respect of the charge sheet dated July 7, 2022 or any other charge sheet as from 6th July, 2022 and registered in this honorable and/or any other criminal process premised upon the preliminary report of Football Kenya Federation (FKF) Inspection Committee dated November 5, 2021 including summoning of the accused person to take a plea on any charge.
 - 1.3. That this court reject and/or strike out the charge sheet dated 7th July, 2022 and/or any other charge sheet prepared and registered in this court by the DPP and/or his prosecutor(s) against the accused person after 6th July, 2022 for being defective, unlawful, unconstitutional and for being an abuse of the court process/criminal justice system.
 - 1.4. That the respondent bears the costs of this application.
2. The applicant's application was hinged on various grounds including inter alia:

- 2.1. That on the 12th day of November, 2021 officers from the DCI arrested him and detained for the weekend without any proper foundation to incarcerate him and on Monday November 15, 2021 the accused was arraigned at the chief magistrate's court at Milimani, Nairobi wherein the investigator through Miscellaneous Application No. E3965 of 2021; Republic through the DCI (serious crimes unit) v/s Nicholas Mwendwa Kithuku sought leave to be granted for a custodial order for a period of 14 days to enable him undertake further investigations.
- 2.2. The court vide a ruling dated the 15th day of November, declined to grant the custodial orders but directed that the prosecution either prefers a charge against the accused person within 7 days or closes the miscellaneous file. The matter was then fixed for mention on November 25, 2021 when the prosecutor informed the court that she had instructions to apply to have the miscellaneous file closed and accordingly the file was closed.
- 2.3. That on Friday November 26, 2021 the accused person was once again arrested and detained in police cells for the weekend and on Monday September 29, 2021 the accused was arraigned before the Milimani Chief Magistrates court(anti-corruption) Anti-Corruption Case E026 of 2021, Republic v/s Nicholas Mwendwa Kithuku on three (3) counts of fraudulent acquisition of public property contrary to section 45(1) (a) as read together with section 48 of the Anti-corruption and Economic Crimes Act and one count of conspiracy to commit an offence of corruption contrary to section 47(a) (3) as read together with section 48 of the Anti-Corruption and Economic Crimes Act.
3. During the hearing of the said matter, the prosecutor said that she had not been able to make a full disclosure and thus sought the court's indulgence for another three (3) weeks so as to enable her make a full disclosure to the defence but the court granted the prosecution only 7 days.
4. When the matter was set for hearing for the 1st time, the prosecution informed the court that it would not be able to proceed with the hearing for the reason that new additional evidence had been received from the investigators including bank documents from KCB and NCBA banks as well as new witnesses and which evidence had not come to the prosecution's attention before. That she and her 3 co-prosecutors had received instructions from the DPP to seek an adjournment to

enable them review the new evidence and to obtain comprehensive directions on the matter. As such the hearing dates were vacated.

5. That on 6th July, 2021 the prosecution once more sought to adjourn the hearing of the matter and when pressed to proceed, the prosecution instead applied to have the matter withdrawn under section 87 (a) of the Criminal Procedure Code and the court allowed the same. In the said application to withdraw, the court observed thus:
 - 5.1. The prosecution had acted in utter disregard of the court's order and that it amounted to contempt of court.
 - 5.2. That the prosecution had chosen to usurp the court's power to manage the trial of the case and the prosecution had taken upon itself to direct when and how this matter shall proceed.
 - 5.3. That the matter was instituted on November 29, 2021 and has been pending in court for a period of 7 months. it is evident that the prosecution is ill prepared to proceed as investigations appear not to have been concluded and it is undesirable that the matter should pend in court for unreasonably long period of time as the investigations are ongoing.
 - 5.4. The prosecution appeared in court on the hearing date purporting to have fresh evidence and casually sought to vacate all hearing dates and this casual manner of handling of a court case cannot be condoned.
 - 5.5. That the DPP, trying to have a third bite of the same cherry, shifted base and registered similar charges in this court and sought to have the accused person arrested.
6. The accused thus avers that the facts and history off this case clearly demonstrate that there have been grave violations of the criminal justice system from November 12, 2021 including the investigations, arrest, incarcerations and blatant abuser of the court process. That it cannot be denied that the there is an element of bad faith on the part of the prosecution in preferring the impugned charges against the accused person.
7. The accused also avers that he has been subjected to publicity and thus his right to fair hearing has been compromised and call upon the court to interrogate the propriety and validity of the intended charges since it is his contention that the rationale and justification for interrogating the intended charges is to demonstrate that there is lack of a foundation.

8. The accused person further sworn and filed into this honorable court on the 26th day of September, 2022. The said affidavit is a regurgitation of the contents of his notice of motion and thus I find no need to outline its contents for the purposes of avoiding repetition.
9. The respondents filed a replying affidavit dated the 7th day of October, 2022 and sworn by one Thelma Nanjaya in response to the notice of motion application by the accused in which it has been deposed that the DCI in exercise of their mandate commenced investigations into the matter and upon conclusion of the investigations reached a finding that the applicant herein fraudulently acquired public property and thus recommended his prosecution.
10. That following the disclosure of new additional documentary evidence, there was need to have a review of the additional material, charges and subsequent disclosure of the evidence to the applicant pursuant to article 50 of the constitution. That upon review of the charges, the prosecution found that the charges fell under the penal code as opposed to the Anti-Corruption and Economic Crimes Act 2003 and thus filed the matter in Kiambu Law Court with charges of stealing contrary to section 268 (I) as read with 275 of the Penal Code.
11. That the matter came up before the Kiambu Magistrates Court on the 7th of July, 2022 for plea taking. The accused person was however not in court hence the issuance of summons against the accused to appear on 12th July, 2022.
12. That instead of complying with the summons, the accused person filed a petition before the anti-corruption High Court at Milimani challenging the charges filed and his prosecution which was dismissed for lack of jurisdiction of the said court.
13. The respondent contends that the application is wrongly brought before this court as the anti-corruption High Court dismissed the application and directed that the same be placed before the high court at Kiambu. That the same should have been the only avenue of the applicant to seek any orders.

LEGAL ANALYSIS AND DETERMINATION

14. I have considered the application filed in this honorable court, the supporting affidavit by the accused/applicant and the replying affidavit by the respondent as well as the rival oral submissions presented by the learned counsels herein alongside the legal authorities and precedents. The learned counsels in this matter

can rest assured that this honorable court considered them in detail. Consequently, I find the following issues to arise for determination:

- a) *Whether this court has the jurisdiction to entertain the application presented by the accused/applicant.*
- b) *Whether reasonable grounds have been disclosed by the accused person to warrant the striking out of the charge sheet dated 7th July, 2022 and/or any other charge sheet prepared and registered in this court by the DPP after 6th July, 2022.*
- c) *Costs of this application.*

15. The respondent has argued that this court lacks jurisdiction to entertain this application for reasons that, the Anti-corruption High Court at Milimani dismissed the application by the accused person and directed that the same be placed before the High Court at Kiambu.
16. Jurisdiction is everything, without which a court of law must down its tools. See **Owners of Motor Vessel v/s Caltex Oil Limited (Lilian S')**. The jurisdiction of a magistrate's court is provided for under the *Magistrates' Court Act*. The same being that the court shall have authority to hear all criminal cases except murder, treason and crimes under international criminal law. Section 6 of the Magistrates' Court Act provides for criminal jurisdiction of a magistrate's court to wit ;
A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a criminal nature as may be conferred on it by —
(a) the Criminal Procedure Code (Cap. 75); or
(b) any other written law
17. As such, having prior established that this honorable court has the jurisdiction to determine applications for redress of denial, violation or infringement of human rights, it is thus clear at the face of it that this court has jurisdiction to hear and determine this application and thus it's not obligated to down its tools.
18. The court of appeal in Kenya **(The National Social Security Fund board of Trustees v/s Kenya Tea Growers Association & 14 others)** cited with approval the decision of the South African Court in **Vuyile Jackson Gcaba v/s Minister for Safety and Security** which held that:

"Jurisdiction is determined on the basis of the pleadings.....they contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits must be interpreted to establish what legal basis of the applicant's claim is.....if however, the pleadings properly interpreted establish that the applicant is asserting a claim, one that is to be determined exclusively by [another court] then the high court would lack jurisdiction." Emphasis mine.

The application by accused person herein does not assert a claim that is under the exclusive jurisdiction of the High Court and thus in all fairness the accused/applicant ought to be heard in this court for the present application.

19. I will now endeavor to determine whether reasonable grounds have been disclosed by the accused person to warrant the striking out of the charge sheet dated 7th July, 2022 and/or any other charge sheet prepared and registered in this court by the DPP after 6th July, 2022.
20. This case was instituted upon the premise of a preliminary report of Football Kenya Federation Inspection Committee dated 5th November, 2021 where the Cabinet Secretary for Sports, Culture and Heritage and the Sports Registrar caused the criminal process to be initiated against the accused/applicant on the basis that he had misappropriated funds at the FKF.
21. However, no further investigations or special audit has been undertaken by any investigative agency to establish the extent to which the misappropriation of funds in FKF may have occurred.
22. The applicant contends that what in essence has taken place is a series of what seems to be an unfounded prosecution of the accused, So, because despite the respondent contending that they conducted investigations and preferred charges against the accused person, the prosecution has always been unable to proceed for hearing and has severally withdrawn the case against the accused person under *Section 87 of the Criminal Procedure Code*.
23. These series of withdrawal and re-arrest of the accused person has been the norm as far as I can ascertain from the documents on record and the case has never proceeded for hearing. It is trite of the law that justice delayed is justice denied.

Article 159 (b) of the Constitution of Kenya 2010 provides expressly that justice shall not be delayed.

24. It is prima facie evidence that the prosecution was not properly prepared to proceed with this case right from the date of its commencement. The case seems to have been instituted while investigations had not been concluded and that lends credence to the observation of the court on 6th July 2022 that the prosecution appeared on the hearing date purporting to have acquired fresh evidence and casually sought to vacate all hearing dates on this ground.
25. The foregoing has seen the matter pend in court for a long time contrary to the object of the express provisions of *Article 50 (2)(e) of the Constitution: - right to have the trial begin and conclude without unreasonable delay*. All the foregoing coupled together only points to one thing, the prosecution has and seeks this court to assist in an abuse of the court process; an act that this honorable court cannot condone.
26. The applicant contends that the press statement dated 7th July 2022 was an abuse of the court process which was said to be issued in public interest. In the case of Kuria & 3 Others vs. Attorney General [2002] 2 KLR 69 as hereunder:

“The effect of a criminal prosecution on an accused person is adverse, but so also are their purpose in the society, which are immense. There is a public interest underlying every criminal prosecution, which is being zealously guarded, whereas at the same time there is a private interest on the rights of the accused person to be protected, by whichever means. Given these bi-polar considerations, it is imperative for the court to balance these considerations vis-à-vis the available evidence. However, just as a conviction cannot be secured without any basis of evidence, an order of prohibition cannot also be given without any evidence that there is a manipulation, abuse or misuse of court process or that there is a danger to the right of the accused person to have a fair trial...”

27. See also Dream Camp Kenya Ltd vs. Mohammed Eltaff and 3 Others Civil Appeal No. 170 of 2012 where it was held that:

“Every litigation is inconvenient to every litigant in one-way or another. Also no one in his right senses enjoys being sued and ipso facto no one cherishes litigation of any nature unless it is absolutely necessary. With respect, we accept litigation is expensive and no litigant would enjoy the rigours of trial. The aftermath of vexatious and frivolous litigations is normally taken care of by way of costs. The

discomfort of litigation would not certainly render the success of the intended appeal nugatory if we do not grant the application sought. If the learned Judge is eventually found wrong on appeal, and the applicant succeeds in its intended appeal, then the orders so made by the learned Judge would be quashed and the applicant would be compensated for in costs."

28. I do not see that merely issuing a press statement being injurious to the applicant as it is my view that the same is just limited to informing members of the public on the status of the matter.

29. In other regard, I find useful guidance in the case of Peter George Anthony Costa v/s Attorney General & anor where the court in quashing a criminal prosecution against the petitioner expressed itself thus:

"The process of the court must be used properly, honestly and in good faith and must not be abused."

30. In interpreting how the DPP exercises his powers, Lenaola J (as he then was) in Republic v/s Director of public Prosecutions Ex-parte Meridian Medical Centre Ltd and 7 others expressed himself as follows:

"I also agree with the submission of Mr. Kilukumi that the decision to prosecute is a quasi-judicial decision which should not be taken lightly given the penal consequences inherent in any criminal proceedings...there is also no doubt that the office of the DPP should exercise its mandate and discretionary power to prosecute within the constitutional limits and the independence of the office." Emphasis mine.

31. By the same token, *Article 157(11) of the Constitution* stipulates that in exercising the powers conferred by this article, the DPP shall have regard to public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process. If it comes to the attention of the court that there has been serious abuse of power by the prosecution, the court should, in my view, express disapproval by stopping it in order to secure the ends of justice and restrain abuse of power.

32. The scenario painted by the applicant herein is that of a man a man more sinned against than sinning and beseeches this honourable court for help as the prosecution takes a third bite at the cherry in the name of public interest.

33. Lest we forget in the case of "STANLEY MUNGA GITHUNGURI vs. REPUBLIC (1985) LLR 3090", the Court of Appeal headed by Madan C.B (Chief Justice) stated as follows:-

"Again, therefore it is not in the public interest to continue with the applicant's prosecution. It is one of the few occasions when public policy is logical. A prosecution is not to be made good by what it turns up. It is good or bad when it starts. The long and short of it is that in our opinion it is not right to prosecute the applicant as proposed.

Stanley Munga Githunguri! You have been beseeching the Court for Order of Prohibition. Take the order. This Court gives it to you. When you leave here raise your eyes up unto the hills. Utter a prayer of thankfulness that your fundamental rights are protected under the juridical system of Kenya".

34. There is something which I have painstakingly directed my mind hereto. That is the concept of the reasonable man. In Stanley Githunguri (Supra), the Reasonable Man at the time of "STANLEY MUNGA GITHUNGURI vs. REPUBLIC (1985)" was the man in the Market, the Man on the Pangani Bus or a Housewife.

"Mr Chunga asked us to read the statements in the National Assembly in the context of the debate, and to say that no assurance was ever given that the applicant would not be prosecuted. In our view both statements, made publicly in no less a forum than the National Assembly, constituted a positive assurance that the applicant would not be prosecuted. That is the conclusion to which the reasonable man in the market hearing those utterances would have come to. That being so the reasonable man in the market would also believe that the Attorney-General's word would be honoured. The reasonable man is the man in the market, the man on the Pangani bus or a housewife.

35. I take it that the reasonable man after being presented with the scenario herein where the applicant has been in custody a number of times with nothing tangible in terms of prosecution and where charges were withdrawn and immediately rearrested on similar charges needs protection of the court considering the circumstances of the case herein.

36. In Republic v/s attorney General & 3 others Ex-parte Kamlesh Mansukhlal Damji Pattni 2013 eKLR it was held that:

"It cannot be gainsaid that Article 50 (2)(e) of the constitution is only limited to the commencement of the trial but also applies to the conclusion thereof."

37. Furthermore, the Supreme Court of India in RP Kapur v/s State of Punjab AIR 1960 SC 866 laid down guidelines to be followed by the court when reviewing prosecutorial powers. They are including inter alia: -

"Where the institution/continuance of the criminal proceedings against an accused may amount to the abuse of the court process or that quashing of the said proceedings would secure the ends of justice..."

38. The applicant raised the contention that it was in bad faith, abuse of the court process and is not in the interest of the administration of justice for the DPP to make submissions before once court that he requires more time to review bulky evidence and within an hour charge him in another court jurisdiction.

39. In the case of R vs. Attorney General exp Kipngeno Arap Ngeny High Court Civil Application No. 406 of 2001: the court held that

"A criminal prosecution which is commenced in the absence of proper factual foundation or basis is always suspect for ulterior motive or improper purpose. Before instituting criminal proceedings, there must be in existence material evidence on which the prosecution can say with certainty that they have a prosecutable case. A prudent and cautious prosecutor must be able to demonstrate that he has a reasonable and probable cause for mounting a criminal prosecution otherwise the prosecution will be malicious and actionable."

40. In Jared Benson Kangwana vs. Attorney General Nairobi High Court Misc. Application No. 446 of 1995 (unreported) (hereinafter "Kangwana Case") Khamoni, J noted that:

"The essence of abuse as stated in the case of *Spautz v Williams*...is that:

'the proceedings complained of were (instigated and) instituted and/or maintained for a purpose other than that for which they were properly designed or exist or to achieve for the person (instigating), instituting them some collateral advantage beyond that which the law offers, or to exert pressure to effect an object not within the scope of the process.'

41. The test as was noted in the *Kangwana Case* is;

"whether there are circumstances which will make the proceedings an abuse of the process of the court. Acts of such abuse are not restricted to what the prosecution

or the State does but extend to acts of any party” and the prosecution or the Respondent should not be telling this court not to rely on anything done by the victim to decide whether there is an abuse...The court should ask whether its process is being fairly invoked...The functions of abuse of the process of the court are not limited to what the prosecution or the State or the court does. They extend to what any other interested party, like the person aggrieved, does and case authorities have shown that it is not the events at the trial that necessarily give rise to the granting of a prohibition on the ground of abuse of the process of the court. They can be events outside the court. They can be events not done by the State but done by the person aggrieved who succeeds in getting the unsuspecting State or Public Prosecutor to prosecute the Accused person.”

42. It was held in Regina vs. Ittoshat [1970] 10 CRNS 385 at 389 that:

“this Court not only has the right but a duty to protect citizens against harsh and unfair treatment. The duty of this Court is not only to see the law is applied but also, which is of equal importance, that the law is applied in a just and equitable manner.”

43. There must be fairness to all sides. In a criminal case particularly, it is a requirement that the court considers a triangulation of interests, which involves taking into account the position of the accused, the victim and his/her family and the public.

44. The issue which I would like to highlight at this point and was repeated severally during the heated oral arguments herein is that as a matter of public interest. Black's Law Dictionary defines “public interest” as the general welfare of the public that warrants recognition and protection and something in which the public as a whole has a stake especial an interest that justifies governmental regulation.

45. From the way I look at in terms of public interest, it is *‘the beautiful game’* read football in our beloved country which suffers when there is a push and pull of this kind. As I was drafting this ruling, three (3) seemingly important things came to my mind which is only fair I pinpoint as I agonized over them. What is the fate of the thousands of youths who wake up in the morning to go to the fields to play football? Will they ever rise to the level of Lionel Messi or Kylian Mbappé and is theirs a lost cause? Why is it easy for most people to mention that famous English

Premier League Club that was given a drubbing of 7 magnificent goals and yet, this same people cannot even mention any five (5) clubs in Kenya and lastly, there will be 10 African qualifiers for an expanded 48-team 2026 World Cup in the United States, Canada and Mexico -- up from five in Qatar. Three (3) years from now, does our national team the Harambee Stars stand a chance to make their debut appearance or will we be glued to our television sets cheering other teams? All of these are what I can term as public interest in a case of this nature.

46. The less I say of this the better in light of the final orders that this honourable court will grant.

47. The upshot of the above analysis is that this court finds that the fair trial of the accused person is grossly threatened with circumstances of this case by the conduct of the prosecution as it were.

48. In conclusion, this court finds that the accused person's application is with merit and allows it as follows.

48.1. This honorable court hereby issues orders to the effect that the charge sheet dated 7th July, 2022 and/or any other charge sheet prepared and registered in this court by the DPP and/or his prosecutor(s) against the accused person after July 6, 2022 be and is hereby struck out for being defective, unlawful, unconstitutional and for being an abuse of the court process/criminal justice system.

48.2. This honourable court orders that no other charges and/or any other criminal process premised upon the preliminary report of Football Kenya Federation (FKF) Inspection Committee dated November 5, 2021 including summoning of the accused person to take a plea on any charge shall be registered in it.

48.3. *Each party to bear their own costs of this application.*

49. It is so ordered.

50. This ruling is delivered remotely through email pursuant to the Honourable Chief Justice's "Practice Directions for the Protection of Judges, Judicial Officers, Judiciary Staff, other court users and the general public from the risk associated with the Global Corona Virus Pandemic (Gazette Notice No. 3137 published in the Kenya Gazette Vol CXXII-No. 67 of 17th April 2020).

DATED, SIGNED AND DELIVERED VIRTUALLY AT KIAMBU
THIS __29__ DAY OF __MARCH__ 2023

WILSON RADING FKCDISRES
PRINCIPAL MAGISTRATE

4th February 2022

Before E.K Nyutu SPM

State Counsel: Onunga

Court Assistant: Alex

Accused: Present

Language: English

Njenga, Omwebu, Matasi for accused

Prosecutor: I confirm that are have now made full disclosure and the same has been served on the defence. We have find an inventory dated 3rd February 2022.

Njenga: I confirm that we have received another set of documents to day. The matter may now proceed to trial.

Court: Hearing on 6th, 7th, 8th July 2022, 12th, 14th July 2022, 2nd, 3rd, 4th, 5th August 2022

Any application other than those that ordinarily arise in the course of a trial shall be formal and shall be heard on any other date except a hearing date.

DPP to supply the list of witnesses and the order in which they intend to call them within 30 days from the date hereof.

5th July 2022

Before E.K Nyutu SPM

State Counsel: Keli, Kahoro, Nanjaya, Odhiambo

Court Assistant: Alex

Accused: Present

Language: English

Mutua, Njenga, Omwebu, Matasi for accused

Muchemi watching brief for the Complainant

Keli: Matter was scheduled for hearing from today. We shall not be able to proceed for the reason that we have received additional evidence from the investigators that had not come to our attention namely bank documents from KCB and NCBA banks as well as new witnesses. We have instructions from the DPP to seek adjournment for review of new evidence and comprehensive directions on the matter. The material presented is bulky and we are going to need time to review it. We rely on Article 50(2)(j) of the Constitution on the duty of disclosure. I request vacation of all hearing dates fixed.

Mutua: The application is opposed on the following grounds. Miscellaneous Application 3965 of 2021 filed on 14th November 2021 the state brought an application seeking more time to detain the accused for purposes of concluding the investigations. The State was granted time within which to conclude investigations and prefer charges. It is assumed that it based on the evidence they had gathered that it was desirable to charge the accused person. From November 2021 to now is a period of close to 9 months. It cannot be reasonable that the DPP is asking for time to gather evidence.

Secondly, the court gave directions on 4th February 2022 as to the manner in which this trial is to be conducted. Those directions have been violated by the court in two ways: The DPP failed to disclose to the defence a list of witnesses 30 days before the hearing date. We did a letter to be DPP on 21st June 2022 a copy which is before the court, reminding them of the need to disclose to us the witnesses who were to testify today and tomorrow. It is only yesterday that WhatsApp message was sent to Mr Njenga informing us that one Rose Wasike and Mike Kimoko were expected to testify today and tomorrow. Despite that late communication we prepared to come to court and proceed.

Secondly the state has failed to provide the defence with all the documents that they have gathered in respect of this trial. We have looked at the witness statements provided to us of Rose Wasike and Mike Kimono which revolves around the FKF inspection report which has not been provided to us to date.

Whereas the DPP have the right to bring more evidence as the trial proceeds the time taken would dictate that at least the trial commence. It is an abuse of the criminal justice system for the state to prefer charges against a citizen and thereafter the state informs the court that it is not ready to proceed and ask the court to vacate all the hearing dates. That borders on abuse of office on the part of DPP. It also borders on dictating to be court on how the matter should proceed. Pray that application be dismissed and accused be acquitted for lack of evidence.

Kahoro: The prosecution is not seeking time to go and gather evidence. It is evidence that has already been gathered. Article 50 is to the advantage of the accused so that he is given every material that is in possession of the prosecution. It would be a greater injustice to the accused if he prosecution is to proceed without disclosing the new material. The material requires a review of both the evidence and the charges. Our application is not unreasonable.

On the issue of the directions given, the prosecution is obliged to obey the orders. We were only able to get access to the letter from Mr. Mutua only the day before yesterday. On the directions, we were unable to comply as we need to review the additional evidence and therefore we did not have witnesses to present before the court. We received the new evidence yesterday. Pray that application be allowed.

Court: The court has considered the application by the prosecution seeking to vacate all the hearings dates namely 6th, 7th, 8th July 2022, 12th, 14th July 2022, 2nd, 3rd, 4th, 5th August 2022 as well as the submissions by the defence in opposing the said application:

1. This matter was instituted on 29th November 2021. As at 4th February 2022 all the pre-trial matters had been concluded and both parties indicated to the court that the matter was ripe for hearing. It is on this basis that hearings dates were fixed.
2. It is now a period of 5 months since this matter was set down for hearing but the investigators purportedly presented the new evidence to the DPP a day to the hearing date. This speaks of utter recklessness and disregard/abuse of the court process
3. It is indeed true that the prosecution has the leeway to bring in additional evidence in the course of a trial. However, when the nature of the purported new evidence is such that they require to take out a whole set of hearing days and put this matter in abeyance for months, it is a clear indication that investigations had not been concluded before bringing this matter to court and therefore the same was not ripe for trial. It is the admission of the DPP that they did not comply with the court's pre-trial directions as they did have witnesses to bring to court. It is also their admission that they have acquired additional witnesses.

4. It is an abuse of court process to bring a matter to the court and expect the court to aid the DPP by donating court's precious time to conduct investigations while the matter is pending in court. The time of a case starts running the moment an accused person takes plea. This court will not tolerate backlog in the name of accommodating the DPP to conclude investigations.
5. For this reason the application to take out the hearing dates is denied. Matter shall proceed tomorrow at 9.30am as scheduled.

6th July 2022

Before E.K Nyutu SPM

State Counsel: Keli, Kahoro, Nanjaya, Odhiambo

Court Assistant: Alex

Accused: Present

Language: English

Mutua, Njenga, Omwebu, Matasi for accused

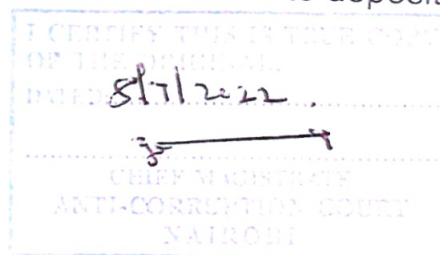
Muchemi watching brief for the Complainant

Court: This court made a ruling yesterday denying the application for adjournment. Today the prosecutor has informed the court that they do not have witnesses in court as they did not bond them. In the absence of witnesses and any proof of having bonded them, despite this hearing date having been fixed by consent 5 months ago, and in the absence of a reasonable explanation as to why they were not bonded, and further in the absence of interim draft amended charges, I find that this utter disregard of the court's order amounts to contempt of Court. Their action clearly shows that they have chosen to usurp the court's power to manage the trial of this case and taken it upon themselves to direct when and how this matter shall proceed. This shall not be condoned as this Court must remain faithful to the constitution Article 159 and Article 50 in ensuring expeditious delivery of justice. This matter was instituted on 29th November 2021. The same has been pending in court for a period of 7 months. It is evident that the prosecution are ill prepared to proceed as investigations appear not to have been concluded. It is undesirable that the matter should pend in court for an unreasonably long period of time as the investigations are ongoing.

The prosecution are alleging that it is their duty to comply with its obligation to disclose. They have relied on the case of **R V. Muneh Wanjiku Ikigu eKLR 2016** and **DPP V. Peter Aguko Abok 2020 eKLR**, among others, to demonstrate their duty to disclose and further to show that the duty to disclose is an ongoing one that should take place even while the trial is pending. I do agree with this position. However, if the prosecution were sincere and diligent about this important duty, they would have made an application earlier than the hearing date so as to allow the defence ample time to consider the evidence in time for the hearing. On the contrary, the prosecution appeared on the hearing date purporting to have acquired fresh evidence and casually sought to vacate all hearing dates on the ground that they had acquired new evidence. This casual manner of handling of a court case cannot be condoned.

Nevertheless this court takes notice that this is a public interest case and that it is in the interest of justice that the same be heard on merit. It is for this reason that the application to withdraw the same under section 87(a) Criminal procedure Code is granted to allow the DPP time to put their house in order as far as this matter is concerned. I am guided by the decision of the high court in **George Taitumu V. CM court Kibera 2014 eKLR**. I make this decision in public interest and in the interest of administration of justice and the need to avoid abuse of the legal process.

Court: Security documents and passport to be released to depositors.



ANNEX 3

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
APPLICATION NO. 5 OF 2022

REPUBLIC.....APPLICANT
-VERSUS-
SPORTS DISPUTES TRIBUNAL.....RESPONDENT
AND

1. FKF NATIONAL EXECUTIVE COMMITTEE
2. FKF LEAGUES AND COMPETITIONS COMMITTEE
3. DORIS PETRA MAO
4. GORDON DAVIS CHEGE
5. MICHAEL OUMA MAJUA
6. JOSEPH OWUOR ANDERE
7. TIMOTHY MURITHI NABEA
8. AHMEDQADAR MOHAMED DABAR
9. BISHOP TONY KWEA
10. GABRIEL MGHENDI
11. BENARD KORIR LAGAT
12. DAVID KIPKORIR BUNEI
13. MARGARET ANYANGO OMONDI
14. CHRIS AMIMO
15. DIMBA PATRIOTS FOOTBALL CLUB
16. MAYENJE SANTOS FOOTBALL CLUB
17. KIBERA SOCCER WOMEN FC
18. CABINET SECRETARY FOR SPORTS AND YOUTH AFFAIRS
19. SAMSON CHEROP
20. MURANG'A SEALS FOOTBALL CLUB
21. VIHIGA BULLETS FC
22. MATHARE UNITED FC
23. GUSHI FC
24. FORTNUE SACCO FC
25. NAIROBI COUNTY FOOTBALL ASSOCIATION
26. BARINGO COUNTY FOOTBALL ASSOCIATION
27. TAITA TAVETA COUNTY FOOTBALL ASSOCIATION
28. MACHAKOS COUNTY FOOTBALL ASSOCIATION
29. VIHIGA COUNTY FOOTBALL ASSOCIATION
30. TANA RIVER COUNTY FOOTBALL ASSOCIATION
31. BUSIA COUNTY FOOTBALL ASSOCIATION

32. ELGEYO MARAKWET COUNTY FOOTBALL ASSOCIATION
 33. LAIKIPIA COUNTY FOOTBALL ASSOCIATION
 34. EMBU COUNTY FOOTBALL ASSOCIATION
 35. KIRINYAGA COUNTY FOOTBALL ASSOCIATION
 36. KITUI COUNTY FOOTBALL ASSOCIATION
 37. MAKUENI COUNTY FOOTBALL ASSOCIATION
 38. THARAKA NITHI COUNTY FOOTBALL ASSOCIATION
 39. NANDI COUNTY FOOTBALL ASSOCIATION
 40. BUNGOMA COUNTY FOOTBALL ASSOCIATION
 41. KAKAMEGA COUNTY FOOTBALL ASSOCIATION
 42. MANDERA COUNTY FOOTBALL ASSOCIATION
 43. KISUMU COUNTY FOOTBALL ASSOCIATION
 44. SIAYA COUNTY FOOTBALL ASSOCIATION
 45. TURKANA COUNTY FOOTBALL ASSOCIATION
 46. NYAMIRA COUNTY FOOTBALL ASSOCIATION
 47. NAKURU COUNTY FOOTBALL ASSOCIATION
 48. KISII COUNTY FOOTBALL ASSOCIATION
 49. TRANSNZOIA COUNTY FOOTBALL ASSOCIATION
 50. NYERI COUNTY FOOTBALL ASSOCIATION
 51. UASIN GISHU COUNTY FOOTBALL ASSOCIATION INTERESTED PARTIES

ex parte:

1. FOOTBALL KENYA FEDERATION
2. NICHOLAS MWENDWA KITHUKU
3. BARRY OTIENO

JUDGMENT

The motion before court is dated 19 December 2022. The applicants have moved this Honourable Court for an order of judicial review whose prayer is couched as follows:

“1. Order of certiorari do issue removing to the High Court for purposes of quashing the entire decision of the respondent dated December 6, 2022 in SDTSC No. E036 of 2022 as consolidated with SDTSC No. E038 of 2022 & E039 of 2022.”

The applicants have also asked for costs of the motion.

The application is brought under section 1A, 1B and 3A of the Civil Procedure Act; section 8 and 9 of the Law Reform Act and Order 53 Rule 1(1) (2) (3) and (4) of the Civil Procedure Rules. It is based on an affidavit sworn on 8 December 2022 verifying the facts relied upon and a statutory statement of even date. The affidavit is sworn by Barry Otieno, who has introduced himself as the general secretary and chief executive officer of Football Kenya Federation (which I will henceforth refer to as “the Federation”).

The origin of the dispute before this Honourable Court is a press statement issued on 9 November 2022 by Football Kenya Federation. The statement was signed by the Federation’s secretary and stated as follows:

“FKF NATIONAL EXECUTIVE COMMITTEE RESOLUTIONS ON THE 2021/2022 LEAGUE SEASON

- 1. That the 2021/2022 FKF premier league, national super league, women premier league, men’s division one and women’s division one leagues will not be recognised and have been declared null and void.***
- 2. That there will be no promotion or relegation in the FKF premier league, national super league and women premier league.***
- 3. That the FKF division one and FKF women’s division one leagues will neither promote nor relegate.***
- 4. That the 2021/2022 FK division two, regional and county leagues run by FKF branches, in accordance with the FKF statutes and the FKF rules and regulations (2019) governing Kenyan football shall be recognised and their decisions upheld.***
- 5. That the 2021/2022 FKF division two, regional and county leagues will promote and relegate clubs in their respective tiers.***
- 6. That the men’s and women’s division one leagues will be expanded for the season 2022/2023 to include teams promoted from the FKF div two and women regional leagues respectively.***
- 7. That the FKF women Div one and FKF men’s division one leagues will be regularised in the 2023/2024 league season.***
- 8. That kick off dates for the FKF Premier league be November 19, 2022 and national super league be November 26, 2022.***
- 9. That in the kick off dates for the FKF women premier league, women div league and men’s division one league be December 3, 2022.***

The resolution by the FKF national executive committee has been guided by the FKF statutes, FIFA statutes, FKF rules and regulations (2019) and the sports disputes tribunal rulings on a number of cases filed at the tribunal, regarding the 2021/2022 league season.”

A section of the Federation membership was aggrieved by this decision and so they lodged petitions before the respondent challenging the decision. According to the applicants, these petitions were registered as SDTC E036, E038 and E029 of 2022.

The respondent assumed jurisdiction and nullified the decision. In its pertinent part, the decision rendered on 6 December 2022 and which is the subject of these proceedings, read as follows:

“148. Having stated the foregoing, it will be evident by now that we have come to the conclusion that the decision of the national executive committee has no legal foundation, is a nullity and cannot be sustained. It is accordingly quashed.”

According to the applicants, this decision is *ultra vires* the powers granted to the respondent by section 58 of the Sports Act 2013.

The applicant’s case is that all decisions of the Federation and the National Executive Committee are appealable within the internal dispute resolution mechanisms as outlined in the Federation’s constitution. Again, rules 10.3.1 and 10.3.5 of the Federation’s Rules and Regulations Governing Kenya football (2019), members have the right to appeal against any decision made by Federation or any of its national committees to the Federation’s appeals committee.

According to the applicants, the jurisdiction granted to the respondent by the Sports Act, 2013 is appellate in nature except for the only one instance in section 58(b) where the respondent has jurisdiction to hear other sports-related disputes that all

parties to the dispute agree to refer to the respondent and the respondent agrees to hear them.

The applicants contend that in entertaining the dispute before it, the respondent arrogated itself jurisdiction which it does not have. And in doing so, the respondent disregarded the doctrine of exhaustion of internal dispute resolution mechanisms as enunciated by the Court of Appeal in **Geoffrey Muthinja Kabiru & 2 Others versus Samuel Munga Henry & 1756 Others (2015) eKLR** where it is said to have been held that where a dispute resolution mechanism exists outside courts, the same must be exhausted before the jurisdiction of the court is invoked and that courts ought to be approached as a last resort and not as the first port of call when a storm brews.

The respondent did not file any response to application.

Dick Arudo filed a replying affidavit on behalf of the 15th interested party opposing the application. He does not dispute that the respondent made the impugned decision but urges that it had the requisite jurisdiction to entertain the dispute out of which the decision arose.

He has also sworn that the 2nd and 3rd applicants were removed from office on 19 July 2022 in SDTSC No. 006 of 2022, *Milton Nyakundi Oriku versus FKF & 17 Others* and that in *Football Kenya Federation & 2 Others versus Cabinet Secretary for Sports, Culture and Heritage & 5 Others; Kariobangi Sharks Football Club & 7 Others (2021) eKLR* the court held that the removal from office of the 2nd and 3rd applicants was lawful.

Contrary to the orders of the court, the 2nd and 3rd applicants together with the 3rd to 14th interested parties convened an executive committee meeting and issued the

resolution of 9 November 2022 which, among other things, nullified the whole of 2021/2022 football season.

Arudo admitted, though, that rule 10.3.1 and 10.3.5 of the Rules and Regulations Governing Football in Kenya (2019) require that parties to a dispute to first lodge an appeal to the appeals committee. He, however, contended that the resolution of 9 November 2022 was not envisaged and, in any event, the persons who purported to make the resolution were not legally in office.

He further swore that his club, Dimba Patriots F.C. had participated in the 2021/2022 division one league and was due for promotion to the national super league before the Federation's national executive committee nullified the 2021/2022 season.

The only other replying affidavit in this matter was sworn by Robert Kenneth Wanyoike Macharia on behalf of Murang'a Seal Football Club, named as the 20th interested party in the application before court. Like Derick Arudo, Macharia has sworn that the 2nd and 3rd applicants were invalidly in office by dint of a gazette notice number 12374 of 11 November 2021 according to which the cabinet secretary for sports disbanded the national executive committee of the federation. The ousting of the applicants, it is urged, was upheld by Ong'udi, J. in constitutional petition no. E473 of 2021. The applicants are also said to have been removed from office in a decision by the respondent in case no. E006 of 2021.

The applicants' application, the responses filed thereto and the submissions made in respect of the positions parties have adopted in supporting or opposing the motion boil down to the question whether the respondent had jurisdiction to determine the dispute that led to the impugned decision. This, in my humble view, is the overarching question the determination of which should resolve the dispute before

me, one way or the other. In considering the answer to this question, the provisions of the Sports Act, 2013 and the constitution of the Federation come to the fore.

Section 58 of the Sports Act is relevant because that is where the jurisdiction of the respondent is prescribed. This section reads as follows:

58. Jurisdiction of the Tribunal

The Tribunal shall determine—

- (a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including —***
 - (i) appeals against disciplinary decisions;***
 - (ii) appeals against not being selected for a Kenyan team or squad;***
- (b) other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and***
- (c) appeals from decisions of the Registrar under this Act.***

The Federation is one such national sports organisation contemplated under section 58 of the Act. This is apparent from article 1(1) of its constitution

1(1) Football Kenya Federation is an organisation of an associative nature registered in Kenya in compliance with the Sport Act. No. 25 of 2013 as a national sports organisation. It is formed for an unlimited period.

The dispute resolution mechanism in the Federation is set out in articles 69 and 70 of the Federation's Constitution. Article 69 reads as follows:

69(1) Disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials shall not be submitted to ordinary courts, unless the FIFA regulations, this constitution or binding legal provisions specifically provide for or stipulate recourse to ordinary courts.

(2) the entities mentioned in par 1 above shall give priority to arbitration as a means of dispute resolution.

(3) the disputes as specified in article 1 shall be taken to an independent arbitration tribunal recognised by FKF or CAF or to the Court of Arbitration for Sports in Lausanne, Switzerland.

(4) the decisions made by the FKF standing committees and the judicial bodies are final and the FKF and members are prohibited from taking such matters to ordinary courts. Any member found in violation of the same shall be subjected to disciplinary measures as stipulated in the disciplinary code of FKF and FIFA.

(5) if any of the parties is dissatisfied by decisions and rulings made by any standing committees and judicial committees, such a party is at liberty to lodge an appeal with the appeals committee whose decision shall be final unless stipulated elsewhere in this constitution.

(6) the first body for electoral disputes shall be the independent electoral board. Any member unsatisfied with the decisions of the board may appeal to the FKF appeals committee.

Article 70, on the other hand, states:

- 1. Recourse may only be made to an arbitration tribunal in accordance with article 68 once all internal channels of FKF have been exhausted.*
- 2. FKF shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to FKF.*
- 3. FIFA shall have jurisdiction when international disputes, i.e. disputes between parties belonging to different associations and/or confederations.*

While the Federation's constitution emphasises in paragraph 2 of article 69 that arbitration as a means of dispute resolution should be given priority, paragraph 1 of article 70 is clear that recourse may only be made to an arbitral tribunal in accordance with article 68 once all internal channels of the Federation have been exhausted.

Paragraph 5 of article 9 gives a glimpse of what these "internal channels" are as far as the dispute out of which the impugned decision arose is concerned. That paragraph is to the effect that if any of the parties to a dispute in the Federation is dissatisfied with the decisions or rulings made by any of the standing committees and judicial committees, such a party is at liberty to lodge an appeal with the appeals

committee whose decision shall be final unless stipulated otherwise in the Federation's constitution.

For the avoidance of doubt, article 67 paragraph 2 of the FKF constitution states unambiguously that:

2. The appeals committee is responsible for hearing all appeals against all decisions determined by all committees.

The appeals committee is itself established as one of the three judicial bodies in article 64 of the Federation's constitution.

Although article 69 paragraph (5) intimates that the decisions made by the standing committees and judicial committees are final, I read 'finality' here to mean that parties to a dispute are precluded from invoking the jurisdiction of courts before exhausting the internal dispute resolution mechanisms prescribed by the Federation's constitution.

This is made clearer in article 67 paragraph 3 of the constitution which discounts any notion that the decision of the appeals committee cannot be challenged. This paragraph reads as follows:

"3. Decisions pronounced by the appeals committee may be appealed to the Court of Arbitration for sports in Lausanne Switzerland or a national, independent arbitration tribunal recognised by FAF, as specified in this constitution."

The respondent is a national independent arbitration tribunal recognised by Federation and to which appeals from the appeals committee would lie.

The impugned decision that is the subject of these proceedings ought to be dissected through the prism of the foregoing provisions of the Sports Act and the Federation's constitution.

The caveat is that this court is not concerned about the merits or lack thereof of the decision. It is only concerned about the process by which the decision was arrived at. In that regard, the proceedings before the respondent and the ultimate decision it reached has to be weighed against the grounds of judicial review upon which the application has been made.

It is, of course, trite that courts may intervene to review a power conferred by statute on the ground of unfairness but only if the unfairness in the purported exercise of the power be such as to amount to an abuse of the power. See **Preston v IRC [1985] 2 All ER 327, [1985] AC 835**, per Lord Templeman.

And in **Chief Constable of the North West Police vs Evans (1982) 3 ALL ER 141 at 154** it was held that:

“Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”

It was held further in this case that:

“The remedy by way of judicial review under RSC..., vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and ...administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner...and not to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.” (Per Lord Hailsham at 1160E-H).

It has already been demonstrated that the genesis of the dispute that eventually landed at the desk of the respondent is the Federation's national executive committee's resolution contained in a press statement released by its secretary or chief executive officer on 9 November 2022.

It has also been demonstrated that when the dispute concerning this resolution was submitted to the respondent for resolution it assumed jurisdiction and nullified the decision.

After considering the provisions of section 58 of the Sports Act on the extent of the respondent's jurisdiction and the internal dispute resolution mechanisms in the Federation's constitution, to which reference has been, I am persuaded that in assuming jurisdiction and eventually nullifying the Federation's national executive's decision, the respondent exceeded its jurisdiction by determining a dispute that ought to have been disposed of by the appeals committee.

As has been noted earlier, according to article 69(5) of the Federation's constitution, decisions by any committee which, in my humble view, would include the national executive committee of the Federation, are appealed to the appeals committee and that recourse may only be made to the sports disputes tribunal once all internal channels have been exhausted.

In the English decision of **R versus Peterkin, ex p Soni (1972) Imm AR 253** Lord Widgery CJ had this to say on the need to exhaust appellate avenues before moving to court:

Where Parliament has provided a form of appeal which is equally convenient in the sense that the appellate tribunal can deal with the injustice of which the applicant complains this court should in my judgement as a rule allow the appellate machinery to take its course. The prerogative orders form the general residual jurisdiction of this court whereby the court

supervises the work of inferior tribunals and seeks to correct injustice where no other adequate remedy exists, but both authority and common sense seem to me to demand that the court should not allow its jurisdiction under the prerogative orders to be used merely as an alternative form of appeal when other and adequate jurisdiction exists elsewhere.

Our very own Court of Appeal has held in the **Speaker of the National Assembly v. Karume, Civil Application No. NAI 92 of 1992** that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

And section 9 (2) of the Fair Administrative Action Act No. 4 of 2015 is also clear that this court should not entertain disputes whose resolution has been provided for elsewhere by an Act of Parliament. It states as follows:

9. (2) Procedure for judicial review.

The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

I am minded that the respondent is not a court as contemplated in these decisions and provision of the law but the need to exhaust internal dispute resolutions mechanisms would apply to tribunals such as the respondent as much as it applies to the courts.

To the extent that the internal channels had not been exhausted, the respondent's decision would fall for exceeding its jurisdiction. It would fall on the judicial review ground of illegality.

This ground, among other grounds for judicial review, was defined Lord Diplock in **Council of Civil Service Unions versus Minister for the Civil Service (1985) A.C. 374,410**. The learned judge said:

“By “illegality” as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

The respondent, by assuming jurisdiction which it did not have, can properly be said to have misapprehended the provisions of section 58 of the Sports Act and the provisions in the Federation’s constitution relating to internal dispute resolution mechanisms. It can also be said that the respondent failed to give effect to these provisions.

Accordingly, an order of certiorari is hereby issued quashing the respondent’s decision dated 6 December 2022 in SDTSC No. 36/2022 as consolidated with STDC No. E038 of 2022 and STDC No. E038 of 2022 and SDTC No. E039 of 2022.

Before I conclude, there were two other applications dated 20 January 2020 by two of the interested parties. They sought, amongst other reliefs, interim reliefs. The substantive motion having been determined, the applications serve no useful purpose. Except for the prayers in those applications that have been granted, the rest of the prayers are declined. Parties will bear their respective costs. Orders accordingly.

Signed, dated and delivered on 14 July 2023


JUDGE

ANNEX 4



REPUBLIC OF KENYA
SPORTS DISPUTE TRIBUNAL AT NAIROBI
PETITION NO OF 2023

IN THE MATTER OF ARTICLES 2(1), 3(1), 10, 22 & 159 OF THE CONSTITUTION OF KENYA
2010

AND

IN THE MATTER OF ARTICLES 22, 23, 24, 25 & 26 OF THE FOOTBALL KENYA FEDERATION
CONSTITUTION, 2017

AND

IN THE MATTER OF SECTIONS 52, 53, AND 54 OF THE SPORTS ACT NO. 25 OF 2013
AND

IN THE MATTER OF GAZETTE NOTICE NO. 12374 DATED 12TH NOVEMBER 2021
DISBANDING THE FKF NATIONAL EXECUTIVE COMMITTEE
AND

IN THE MATTER OF CONSTITUTIONAL PETITION NO. E473 OF 2021 UPHOLDING THE
DECISION OF THE CABINET SECRETARY MINISTRY OF SPORTS, CULTURE AND HERITAGE
DISBANDING THE FKF NATIONAL EXECUTIVE COMMITTEE
AND

IN THE MATTER OF THE FOOTBALL KENYA FEDERATION (FKF) GENERAL ASSEMBLY
SPECIAL GENERAL MEETING HELD ON 26TH MARCH 2022 REVOKING THE MANDATE OF
THE FKF NATIONAL EXECUTIVE COMMITTEE
AND

IN THE MATTER OF THE FOOTBALL KENYA FEDERATION (FKF) GENERAL ASSEMBLY
SPECIAL GENERAL MEETING HELD ON 11TH JUNE 2022 APPOINTING THE AD HOC FKF
MEMBER COMMITTEE TO ASSUME THE ROLES AND MANDATE OF THE FKF NATIONAL
EXECUTIVE COMMITTEE
AND

IN THE MATTER OF THE ILLEGAL AND UNLAWFUL OCCUPATION OF OFFICE BY THE
DISBANDED FKF NATIONAL EXECUTIVE COMMITTEE IN CONTRAVENTION TO THE
DECISION BY THE HIGH COURT IN PET NO. E473 OF 2021 AFFIRMING THE DECISION BY
THE CABINET SECRETARY MINISTRY OF SPORTS, CULTURE AND HERITAGE DISBANDING
THE FKF NATIONAL EXECUTIVE COMMITTEE AND THE RESOLUTION OF THE SPECIAL
GENERAL MEETING HELD ON 26TH MARCH AND 11TH JUNE 2022

BETWEEN

WILFRED MARORI MOKAYAPETITIONER
AND

FOOTBALL KENYA FEDERATION	1 ST RESPONDENT
NICHOLAS MWENDWA KITHUKU	2 ND RESPONDENT
DORIS PETRA MAO	3 RD RESPONDENT
GORDON DAVIS CHEGE	4 TH RESPONDENT
MICHAEL OUMA MAJUA.....	5 TH RESPONDENT
JOSEPH ODUOR ANDERE	6 TH RESPONDENT
TIMOTHY MURITHI NABEA	7 TH RESPONDENT
AHMEDQADAR MOHAMED DABAR	8 TH RESPONDENT
BISHOP TONY KWEYA	9 TH RESPONDENT
GABRIEL MGHENDI	10 TH RESPONDENT
BENARD KORIR LAGAT.....	11 TH RESPONDENT
DAVID KIPKORIR BUNEI	12 TH RESPONDENT
MARGARET ANYANGO OMONDI	13 TH RESPONDENT
CHRIS AMIMO	14 TH RESPONDENT
BARRY OTIENO	15 TH RESPONDENT
ROBERT MACHARIA	16 TH RESPONDENT
AMOS OTIENO	17 TH RESPONDENT
LUTHERS MOKUA.....	18 TH RESPONDENT
CABINET SECRETARY FOR YOUTH AFFAIRS, SPORTS AND THE ARTS	19 TH RESPONDENT
THE REGISTRAR OF SPORTS	20 TH RESPONDENT

PETITION

TO:
THE CHAIRMAN
OFFICE OF THE SPORTS DISPUTE TRIBUNAL
AT NAIROBI

The Humble Petition of WILFRED MARORI MOKAYA ("the Petitioner") whose address of service is care of Udoto & Company Advocates, Localline Gardens, Masaba Rd, Apartment No. 15, P.O. Box 16155-00100, NAIROBI, KENYA, states as follows:

Description of the Parties

1. The Petitioner is an ardent supporter of Kenyan football, a public spirited individual and a promoter of the rule of law.
2. The 1st Respondent is a national sports organization established by the Sports Act. Its address for service for the purpose of this petition is care of Goal Project Premises Kasarani Nairobi.
3. The 2nd to 15th Respondents are the former members of the National Executive Committee of the 1st Respondent.
4. The 16th to 18th Respondents are the current officials of a 13 member committee elected by the General Assembly of the 1st Respondent vide a special general meeting held on 11th June

- 2022 to temporarily undertake the roles and mandate of the FKF National Executive Committee.
5. The 20th Respondent is the the Cabinet Secretary in charge of sports and sports federation in the Republic of Kenya.
6. The 20th Respondent is Sports Registrar appointed in line with section 45 of the Sports Act and is a public officer responsible for the registration and regulation of sports organizations and multi-sports bodies representing sports organizations at the national level.
- Facts In Support of the Petition**
7. On or about 14th October 2021 the 21st Respondent appointed several persons (hereinafter called "the Inspection Committee" to conduct investigations into the affairs of the 1st Respondent in exercise of her powers under Section 52 of the Sports Act.
8. The said Inspection Committee conducted its inspection and investigations and presented their report and recommendation to the 21st Respondent who in turn forwarded the report of the 20th Respondent.
9. Vide Gazette Notice Number 12374 the 220th Respondent disbanded the then National Executive Committee of the 1st Respondent (comprising of the 2nd to 15th Respondents) and replaced it with a caretaker committee.
10. When the Inspection Committee was appointed, the 2nd and 16th Respondents moved to the High Court in Nairobi vide Constitutional Petition number F473 of 2021 for declaration that the appointment of the Inspection Committee and thereafter the Caretaker Committee was unconstitutional.
11. The High Court in a judgement delivered on 10th May 2022 dismissed the said Petition and upheld/affirmed the disbandment of the National Executive Committee of the 1st Respondent and the subsequent appointment of a Caretaker Committee.
12. In addition, the High Court made a finding that the 2nd to 16th respondents never rebutted the allegation of serious violations of the Kenyan Constitution and the Sports Act and allegations of misappropriation of funds and general mismanagement of the FKF.
13. Under Article 37 of the FKF Constitution 2017, the National Executive Committee of the 1st Respondent comprises of the President, the Vice President and 14 other members.
14. By implication therefore, the High Court in upholding the gazette notice disbanding the National Executive Committee, the 20th Respondent legally and lawfully removed from office of FKF, the President, the Vice President and all other members of the National Executive Committee thereby creating vacancies in those offices.

15. In a Special General meeting of the members of the General Assembly of FKF held on 26th March 2022 or thereabout, a resolution was passed in accordance with Article 24 (o) of the FKF Constitution, revoking the mandate of National Executive Committee and directing the 16th Respondent (then Secretary General of FKF) to convene an elective general assembly to replace the NEC members removed from office by the Cabinet Secretary.
16. The 16th Respondent did not convene the elective assembly in contravention of his duties under Article 63 (3) (a) of the FKF Constitution to implement decisions passed by the General Assembly thereby entitling members to invoke Article 31(2) and convene the special general assembly themselves.
17. Consequently, in the meeting of the General Assembly of FKF held on 22nd June 2022 resolutions were passed dismissing the 15th Respondent from the office of the General Secretary of the FKF and appointing/electing a 13 ad hoc member management committee headed by the 16th, 17th and 18th Respondents (as Chairman, Vice Chairman and Secretary respectively) to manage the affairs of FKF for and on behalf of the General Assembly until the substantive office holders of NEC are elected into office in line with Article 37(k) and 42(8) of the 2017 FKF Constitution.
18. In a decision of this tribunal made on 19th July 2022 in Petition Number E006 of 2021 it was held that the 2nd to 15th Respondents herein are barred from making any correspondence, declarations, decisions and/or announcements concerning the running of football affairs within the territory of the Republic of Kenya having been removed from office.
19. No member of the Football Kenya Federation nor any of the 2nd to 18th Respondents herein has challenged in any tribunal and/or court of law either (a) the holding of the 2 special general meetings of the FKF OR (b) any resolutions made thereof.
20. Accordingly, the only persons entitled to run the affairs of the of the FKF until new NEC members are elected into office are the members of the FKF Ad hoc Management Committee elected/nominated in the Special General Meeting of the of the 1st Respondent held on 22nd June 2022.
21. However, on 8th September 2022, the 2nd Respondent authored a letter, which was widely circulated in the print, social and broadcast media, addressed to the FIFA president which was to the effect that he had "**resumed the duties as the FKF President in accordance with Article 42 of the FKF Constitution.**"
22. Article 42 of the FKF Constitution provides for the duties of the FKF President and does not deal with the assumption into and exit from the office of the President of FKF.

23. On the 19th September 2022 or thereabouts, the 2nd to 15th Respondents jointly and severally broke into the compound and premises of the 1st Respondent known as Goal Project.
24. The act of breaking into and taking over the premises of the 1st Respondent by the 2nd to 15th Respondent and jointly and severally holding themselves out as officials of FKF and purportedly running the affairs FKF are in CONTRAVENTION and CONTEMPT of: -
- a) The Judgement in Nairobi High Court Constitutional Petition Number E473 of 2021
 - b) Sports Disputes Tribunal Case Number Eoo6 OF 2021
 - c) The resolutions of the General Assembly of FKF made on 26th March and 22nd July 2022
 - d) The decision of Court of Arbitration of Sport case number CAS 2022/A/8669
25. The 2nd to 15th Respondents in clear contempt of court and in contravention of the Constitution of Kenya, the Sports Act as well as the FKF Constitution 2017 illegally and unlawfully assumed offices as members of the National Executive Committee of the 1st Respondent
26. It is therefore necessary that fresh elections of the FKF President, Deputy President and members of National Executive Committee to enable the said national sports organization be run efficiently and effectively.

Constitutional Foundation of the Petition

27. Article 2(1) of the Constitution of Kenya pronounces the supremacy of the Constitution and asserts that the constitution binds all persons.
28. Article 3(1) Every person has an obligation to respect, uphold and defend this Constitution.
29. Article 10(2) of the Constitution sets out the national values and principles of governance to include the rule of law, good governance, integrity, transparency and accountability.
30. Article 22 (1) of the Constitution entitles any person to institute court proceedings in their own interest and also acting in the public interest claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
31. Article 159 (1) of the Constitution states that Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution. (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles– (a) justice shall be done to all, irrespective of status;

Statutory Foundation of the Petition

32. Section 54 of the Sports Act no. 25 of 2013 gives the Cabinet Secretary powers to remove any official of a sports organization who, in the opinion of the Cabinet Secretary, has caused or contributed to any contravention of any provision of this Act, or any regulations or directions made thereunder or to any deterioration in the financial stability of the sports organization or has conducted himself in a manner which is detrimental to the interest of the relevant sporting discipline, or which has brought the sporting discipline into disrepute.
33. Article (13 (1) a, b) of the FKF Constitution 2017 states that Members of FKF have the right to take part in the General Assembly of FKF, to receive its agenda in advance, to be called to the General Meeting within the prescribed time and to exercise their rights to participate in the debates and discussions and to exercise their voting rights; b) To draw up proposals for inclusion in the agenda of the General Assembly.
34. Article 14(1 c.) of the FKF Constitution 2017 states that Members have the right to convene the General Assembly at regular intervals,
35. Article 21(1) of the FKF Constitution 2017 states that the General Assembly is the supreme and legislative body.
36. Article 24(o) of the FKF Constitution 2017 states that the General Assembly has the authority to revoke the mandate of one or a number of members of a body of FKF;
37. Article 31(2) of the FKF Constitution 2017 states that the National Executive Committee shall convene a Special General Assembly if more than 50% of the delegates representing the Members of FKF make such a request in writing. The request shall specify the items for the agenda. A Special General Assembly shall be held within two months of receipt of the request. If a Special General Assembly is not convened, the delegates representing the Members who requested it may convene the meeting themselves.
38. Article 37(k) of the FKF Constitution 2017 states that if more than 50% of the positions of the National Executive Committee become vacant, the General Secretary shall convoke a Special General Assembly within two months in order to elect the replacements for the remaining term of mandate.
39. Article 42(8) of the FKF Constitution 2017 states that if the President is absent or unavailable, the Vice President shall act. Should the Vice President be unavailable, the members of the National Executive Committee shall appoint one of the members to act.

Violation of the Constitution and Other Laws

40. At the time of filing this Petition, the gazette notice by the 20th Respondent has never been revoked and also the judgement of the High Court has not been set aside or otherwise overturned on appeal.

41. The High Court judgment affirmed that the 19th Respondent acted within her powers through the Gazette Notice and the court declined to reinstate the 2nd to 15th Respondents as members of the National Executive Committee of the 1st Respondent.
42. As such, the removal from office of the 2nd to 15th Respondents by the then Cabinet Secretary for sports ceased being an administrative/executive matter but a judicial one and the 2nd to 15th Respondents could only come back to office by way of a fresh election or a variation of the existing orders of the high court.
43. In a decision of this tribunal made on 19th July 2022 in Petition Number E006 of 2021 it was held that the 2nd to 15th Respondents herein are barred from making any correspondence, declarations, decisions and/or announcements concerning the running of football affairs within the territory of the Republic of Kenya having been removed from office
44. The decision by the 2nd to 15th Respondents to hold the office as members of the National Executive Committee of the 1st Respondent constitutes a violation of the principle of upholding the rule of law as enshrined in **Article 10 of the Constitution**. Disobedience and disregard of the authority of the courts violates national values and the constitution.
45. **Article 159 of the constitution** recognizes the judicial authority of courts and tribunals established under the constitution. Courts and tribunals exercise this authority on behalf of the people. The decisions courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our constitutional democracy.
46. The judiciary acts only in accordance with the constitution and the law (Article 160) and exercises its judicial authority through its judgments decrees orders and or directions to check. For that reason, the authority of the courts and dignity of their processes are maintained when their court orders are obeyed and respected thus courts become effective in the discharge of their constitutional mandate.

The Petitioner's Humble Prayers

- i. A declaration that the 2nd to 15th Respondents are not authorized to act for on behalf of Football Kenya Federation (FKF) or to hold out themselves as officers of FKF;
- ii. A declaration that the 2nd to 15th Respondents, having been removed from office by a Gazette Notice by the 20th Respondent which removal from office was upheld by the High Court in Constitutional Petition number E473 of 2021 can only return to office either by way of a fresh election or a court order;
- iii. A declaration that until new office bearers are elected into office in accordance with FKF Constitution, the bona fide national office bearers of the Football Kenya Federation are the 13 member committee elected/nominated by the FKF General

Assembly meeting of 22nd June 2022 namely Robert Macharia, Amos Otieno, Luthers Mokuu, Alex ole Musikeri, Kenneth Ruto, Kent Libiso, Caleb Amwayi Sikobe, Lilian Kazungu, Boaz Kibet, Ken Ochieng, Abdul Salat, Paul Makumi and Chris Mmbwanga;

- iv. A declaration that the Barry Otieno was removed from the office of the General Secretary of the Football Kenya Federation and is not authorized to act on behalf of FKF;
- v. An Order directing the 17th, 18th, 19th and 21st Respondents to immediately convene upon giving requisite notice a elective general Assembly of Football Kenya Federation for purposes of electing new office bearers for President, Deputy President and members of National Executive Committee;
- vi. That since the Government of Kenya took over the role of the FKF National Executive Committee thereby denying the FKF any independent funding, it is only fair and just that the 20th Respondent be ordered to provide funding and other logistical support to the 17th to 19th Respondents and other members of the FKF ad hoc Management Committee to able to run the affairs of FKF including holding elections.
- vii. Order that costs of this suit and damages be awarded to the Petitioner.
- viii. Any other/further order or relief that this Honourable Court may deem fit to grant.

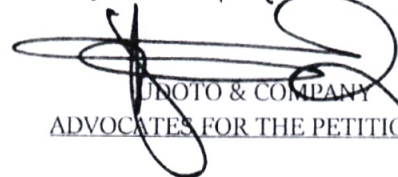
Dated at Nairobi this

15th

day of

August

2023


UDOTO & COMPANY
ADVOCATES FOR THE PETITIONER

DRAWN & FILED BY:

Udoto & Company Advocates,
Localline Gardens,
Masaba Rd, Apartment No. 15,
P.O. Box 16155-00100,.
NAIROBI
info@udotoadvocates.co.ke.

TO BE SERVED UPON:

TO BE SERVED UPON

1. **FOOTBALL KENYA FEDERATION**
Goal Project, Kasarani
P.O. Box 49911-00100

NAIROBI.

info@footballkenya.org

2. NICHOLAS MWENDWA KITHUKU
Nick.mwendwa@footballkenya.org
3. DORIS PETRA MAO
petradoris@yahoo.com
4. GORDON DAVIS CHEGE
Gordondavies77@gmail.com
5. MICHAEL OUMA MAJUA
Michael.majua@footballkenya.org
6. JOSEPH ODUOR ANDERE
Oddy.andere@gmail.com
7. TIMOTHY MURITHI NABEA
muriithinabea@gmail.com
8. AHMEDQADAR MOHAMED DABAR
9. BISHOP TONY KWEYA
tonnykweya@gmail.com
10. GABRIEL MGHENDI
mghendigabbs@yahoo.com
11. BENARD KORIR LAGAT
lagatkor@gmail.com
12. DAVID KIPKORIR BUNEI
buneid@yahoo.com
13. MARGARET ANYANGO OMONDI
maggyomondi@yahoo.com
14. CHRIS AMIMO
chrisamimo@hotmail.com
15. BARRY OTIENO
Barry.otieno@footballkenya.org
16. ROBERT MACHARIA
17. AMOS OTIENO

18. LUTHERS MOKUA
19. CABINET SECRETARY FOR YOUTH AFFAIRS, SPORTS & THE ARTS
20. THE REGISTRAR OF SPORTS

REPUBLIC OF KENYA
SPORTS DISPUTE TRIBUNAL AT NAIROBI
PETITION NO _____ OF 2023

IN THE MATTER OF ARTICLES 2(1), 3(1), 10, 22 & 159 OF THE CONSTITUTION OF KENYA
2010

AND

IN THE MATTER OF ARTICLES 22,23,24,25 & 26 OF THE FOOTBALL KENYA FEDERATION
CONSTITUTION, 2017

AND

IN THE MATTER OF SECTIONS 52,53, AND 54 OF THE SPORTS ACT NO. 25 OF 2013

AND

IN THE MATTER OF GAZETTE NOTICE NO. 12374 DATED 12TH NOVEMBER 2021
DISBANDING THE FKF NATIONAL EXECUTIVE COMMITTEE

AND

IN THE MATTER OF CONSTITUTIONAL PETITION NO. E473 OF 2021 UPHOLDING THE
DECISION OF THE CABINET SECRETARY MINISTRY OF SPORTS, CULTURE AND HERITAGE
DISBANDING THE FKF NATIONAL EXECUTIVE COMMITTEE

AND

IN THE MATTER OF THE FOOTBALL KENYA FEDERATION (FKF) GENERAL ASSEMBLY
SPECIAL GENERAL MEETING HELD ON 26TH MARCH 2022 REVOKING THE MANDATE OF
THE FKF NATIONAL EXECUTIVE COMMITTEE

AND

IN THE MATTER OF THE FOOTBALL KENYA FEDERATION (FKF) GENERAL ASSEMBLY
SPECIAL GENERAL MEETING HELD ON 11TH JUNE 2022 APPOINTING THE AD HOC FKF
MEMBER COMMITTEE TO ASSUME THE ROLES AND MANDATE OF THE FKF NATIONAL
EXECUTIVE COMMITTEE

AND

IN THE MATTER OF THE ILLEGAL AND UNLAWFUL OCCUPATION OF OFFICE BY THE
DISBANDED FKF NATIONAL EXECUTIVE COMMITTEE IN CONTRAVENTION TO THE
DECISION BY THE HIGH COURT IN PET NO. E473 OF 2021 AFFIRMING THE DECISION BY
THE CABINET SECRETARY MINISTRY OF SPORTS, CULTURE AND HERITAGE DISBANDING
THE FKF NATIONAL EXECUTIVE COMMITTEE AND THE RESOLUTION OF THE SPECIAL
GENERAL MEETING HELD ON 26TH MARCH AND 11TH JUNE 2022

BETWEEN

WILFRED MARORI MOKAYAPETITIONER

AND

FOOTBALL KENYA FEDERATION1ST RESPONDENT

NICHOLAS MWENDWA KITHUKU	2 ND RESPONDENT
DORIS PETRA MAO	3 RD RESPONDENT
GORDON DAVIS CHEGE	4 TH RESPONDENT
MICHAEL OUMA MAJUA.....	5 TH RESPONDENT
JOSEPH ODUOR ANDERE	6 TH RESPONDENT
TIMOTHY MURITHI NABEA	7 TH RESPONDENT
AHMEDQADAR MOHAMED DABAR	8 TH RESPONDENT
BISHOP TONY KWEYA	9 TH RESPONDENT
GABRIEL MGIHENDI	10 TH RESPONDENT
BENARD KORIR LAGAT.....	11 TH RESPONDENT
DAVID KIPKORIR BUNEI	12 TH RESPONDENT
MARGARET ANYANGO OMONDI	13 TH RESPONDENT
CHRIS AMIMO	14 TH RESPONDENT
BARRY OTIENO	15 TH RESPONDENT
ROBERT MACHARIA	16 TH RESPONDENT
AMOS OTIENO	17 TH RESPONDENT
LUTHERS MOKUA.....	18 TH RESPONDENT
CABINET SECRETARY FOR YOUTH AFFAIRS, SPORTS AND THE ARTS	19 TH RESPONDENT
THE REGISTRAR OF SPORTS	20 TH RESPONDENT

SUPPORTING AFFIDAVIT.

I WILFRED MARORI MOKAYA a of Post Office box.....do hereby swear this affidavit and state as follows:

1. **THAT** I am a male adult of sound mind and the Petitioner herein well versed with the facts of this matter hence competent to swear this affidavit;
2. **THAT** on or about 14th October 2021 the Registrar of Sports appointed several persons (hereinafter called "the Inspection Committee" to conduct investigations into the affairs of the 1st Respondent in exercise of her powers under Section 52 of the Sports Act.
3. **THAT** the said Inspection Committee conducted its inspection and investigations and presented their report and recommendations to the Sports Registrar who in turn forwarded the report of the Cabinet Secretary for Sports.
4. **THAT** vide Gazette Notice Number 12374 the cabinet Secretary for Sports disbanded the then National Executive Committee of the 1st Respondent (comprising of the 2nd to 15th Respondents) and replaced it with a caretaker committee. (*Annexed and Marked XYZ-1 is a copy of the Gazette Notice.*)

5. **THAT** when the Inspection Committee was appointed, Nick Mwendwa and Barry Otieno (the 2nd and 15th Respondents respectively) moved to the High Court in Nairobi vide Constitutional Petition number E473 of 2021 for a declaration that the appointment of the Inspection Committee and thereafter the Caretaker Committee was unconstitutional. (*Annexed and Marked XYZ-2 is a copy of the Judgement of the Court in E473 of 2021.*)
6. **THAT** the High Court in a judgement delivered on 10th May 2022 dismissed the said Petition and upheld/affirmed the disbandment of the National Executive Committee of the 1st Respondent and the subsequent appointment of a Caretaker Committee.
7. **THAT** I am aware the judgement of the High Court has not been set aside and/or otherwise overturned on appeal hence still in force to date.
8. **THAT** I am aware the 2nd-15th Respondents herein assumed office in clear contravention of an existing judgement still in force and a gazette notice that has not been quashed in an illegal and hooligan manner by storming the offices of the 1st Respondent.
9. **THAT** the implications of the High Court judgement aforesaid is that the removal from office of the 2nd to 15th Respondents by the then Cabinet Secretary for sports is that the said removal ceased from being an administrative/executive matter but a judicial one. As such the 2nd to 15th Respondents can only purport to come back to office by way of a fresh election or a judicial process.
10. **THAT** I am aware that there was a decision of this tribunal made on 19th July 2022 in Petition Number E006 of 2021 where it was held that the 2nd to 15th Respondents herein were barred from making any correspondence, declarations, decisions and/or announcements concerning the running of football affairs within the territory of the Republic of Kenya having been removed from office legally and in a judicial process.
11. **THAT** in clear contempt of a finalized judicial process, an appeal filed by the Kenyan National Women Football team in the Court of Arbitration on Sports (CAS) in Case Number CAS 2022/A/8669 Barry Otieno was found to have acted illegally in withdrawing Kenya from taking part in Africa Women Nations Cup.
12. **THAT** by implication therefore, in disbanding the National Executive Committee, the Cabinet Secretary for Sports removed from office of FKF within her mandate, the President, the Vice President and all other members thereby creating vacancies in those offices.

13. **THAT** I am aware, the members of the FKF in a bid to restore the dignity of the national sports organization, wrote a letter dated 29th December 2021 to the General Secretary requesting that he convenes a Special General Meeting with the agenda clearly set out which letter went unattended. (*Annexed and Marked XYZ-3 is a copy of the said letter.*)
14. **THAT** in a Special General meeting of the members of the General Assembly of FKF held on 26th March 2022 or thereabout, a resolution was passed in accordance with Article 24 (o) of the FKF Constitution, revoking the mandate of NEC and directing the 15th Respondent (then Secretary General of FKF) to convene an elective general assembly to replace the NEC members removed from office by the Cabinet Secretary. (*Annexed and Marked-4 is a copy of the convocation of the Special General Meeting and the Minutes attached thereto.*)
15. **THAT** the 15th Respondent did not convene the Special General meeting in contravention of his duties under Article 63 (3) (a) of the FKF Constitution to implement decisions passed by the General Assembly a clear view of his disrespect to the General Assembly.
16. **THAT** in another meeting of the General Assembly of FKF held on 11th June 2022 resolutions were passed dismissing the 18th Respondent from the office of the General Secretary of the FKF for disrespecting the assembly and appointing/electing a 13 ad hoc member management committee headed by the 19th, 20th and 21st Respondents (as Chairman, Vice Chairman and Secretary respectively) to manage the affairs of FKF for and on behalf of the General Assembly until the substantive office holders of NEC were elected into office. (*Annexed and Marked-5 are Correspondences, minutes and a list of delegates who attended the meeting.*)
17. **THAT** no member of the Football Kenya Federation nor any of the 2nd to 15th Respondents herein has challenged in any tribunal and/or court of law either (a) the holding of the 2 special general meetings of the FKF OR (b) any resolutions made thereof.
18. **THAT** it is clear therefore that the 2nd-15th Respondents herein by purporting to get back to the offices of the 1st Respondent are in clear breach of a final judicial process hence in contempt.
19. **THAT** accordingly, the only persons entitled to run the affairs of the of the FKF until new NEC members are elected into office are the members of the FKF Ad hoc Management Committee elected/nominated in the Special General Meeting of the of the 1st Respondent held on 11th June 2022.
20. **THAT** on 8th September 2022, the 2nd Respondent authored a letter, which was widely circulated in the print, social and broadcast media, addressed to the

FIFA president which was to the effect that he had "*resumed the duties as the FKF President in accordance with Article 42 of the FKF Constitution.*"

21. THAT vide a video published on the 2nd Respondent's twitter handle on the 20/9/2022, the 2nd Respondent is seen clearly opening the gate of the offices of the 1st Respondent in clear disregard of the judgement of the court that had disbanded and removed from office the 2nd-15th Respondent.
22. THAT I am advised by my advocate on record whose advice I verily believe to be true that the act of breaking into and taking over the premises of the 1st Respondent by the 2nd to 16th Respondent have been jointly and severally holding themselves out as officials of FKF and have purportedly been running the affairs FKF in CONTRAVENTION and CONTEMPT of: -
- i. The Judgement in Nairobi High Court Constitutional Petition Number E473 of 2021
 - ii. Sports Disputes Tribunal Case Number E006 OF 2021
 - iii. The resolutions of the General Assembly of FKF made on 26th March and 11th June 2022
 - iv. The decision of Court of Arbitration of Sport case number CAS 2022/A/8669
23. THAT I am advised by my advocate on record that based on the foregoing events, it is only legal, fair and just that fresh elections of FKF are conducted to enable the Federation run efficiently and effectively.
24. THAT I am advised by my advocate on record that FKF being a creature of statute to wit the Sports Act, it follows therefore that its constitution must be in consonance with the provisions of the Sports Act and Rules and Regulations made thereunder.
25. THAT I am advised by my advocate on record which advise I verily believe to be true, that the provisions of Section 47 (5) of the Sports Act provide that a constitution of a sports organization shall contain as a basic minimum provision on the term of office of the Chairperson.
26. THAT, I am aware that the provisions in Clause (c) (ii) of the Second Schedule of the Sports Act provide that "*the chairperson of a sports organization shall*

hold office for a term not exceeding four years, but is eligible for re-election for one more term."

27. **THAT**, I am aware that Article 43 (3) of the FKF Constitution provides that a "*president may be re-elected for a further two (2) terms of office ...* "
28. **THAT**, I am advised by my advocate on record which advise I verily believe to be true, that the said Article 43 (3) of the FKF Constitution envisages a situation where a person will serve as President (read Chairman) of FKF for a period of more than two terms.
29. **THAT** I am advised by my advocate on record which advise I verily believe to be true that Article 43 (3) of the FKF Constitution runs afoul with the Second Schedule of the Sports Act in particular Clause (c) (ii) thereto and is therefore ambiguous and void *in toto*.
30. **THAT** I am aware therefore that the 2nd Respondent having being the "chairperson" of FKF in 2016 and re-elected in 2020 is not eligible to run for any other term as "chairperson/President of Football Kenya Federation.
31. **THAT** I therefore pray in support to this petition that a declaration be issued to the effect that the 2nd to 16th Respondents are not authorized to act for/and on behalf of Football Kenya Federation (FKF) or to hold out themselves as officers of FKF as they currently do.
32. **THAT** I pray for a declaration that the 2nd to 15th Respondents, having been removed from office by a Gazette Notice by the 20th Respondent which removal from office was upheld by the High Court in Constitutional Petition number E473 of 2021 and can only return to office either by way of a fresh election or a court order revoking and/or quashing the gazette notice and/or setting aside the judgement in E473 of 2021.
33. **THAT** I pray for a declaration that until new office bearers are elected into office in accordance with FKF Constitution the bona fide national office bearers of the Football Kenya Federation are the 13 member committee elected/nominated by the FKF General Assembly in line with the FKF Constitution in a held meeting of 11th June 2022 namely Robert Macharia, Amos Otieno, Luthers Mokua, Alex ole Musikeri, Kenneth Ruto, Kent Libiso, Caleb Amwayi Sikobe, Lilian Kazungu, Boaz Kibet, Ken Ochieng, Abdul Salat, Paul Makumi and Chris Mmbwanga
34. **THAT** I pray for a declaration that the Barry Otieno (15th Respondent) was removed from the office of the General Secretary of the Football Kenya Federation and is not authorized to act on behalf of FKF.

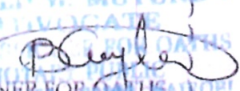
35. THAT I pray for a declaration that Article 43 (3) of the FKF Constitution is inconsistent with the Second Schedule of the Sports Act more specifically Clause (c) (ii) thereto and is therefore void in toto.
36. THAT I pray for a declaration that the Nicholas Kithuku Mwendwa, 2nd Respondent having being the Chairperson/President of FKF in 2016 and re-elected in 2020 is not eligible to run for any other term as "chairperson/President of Football Kenya Federation.
37. THAT an Order do issue directing the 16th, 17th and 18th Respondents to immediately convene upon giving requisite notice an special general Assembly of Football Kenya Federation for purposes of electing new office bearers for President, Deputy President and members of National Executive Committee
38. THAT I pray for the Costs of the suit.
39. THAT I swear this affidavit in support of the petition herein and that what is deponed to herein is true to the best of my own knowledge information and belief.

SWORN BY THE SAID)

WILFRED MARORI MOKAYA) 
) (DEPONENT)

AT NAIROBI)

THIS 15th DAY OF August, 2023)

BEFORE ME) 
COMMISSIONER FOR OATHS)

DRAWN AND FILED BY:

Udoto & Company Advocates,
Lacolline Gardens, Masaba No. 10,
Apartment No. 15, Masaba Road (email: info@udotoadvocates.co.ke),
P.O. Box 16155 - 00100 (Tel: (+254-202 101 036),
NAIROBI. (Ref: UCA/NWSC/77/22).
Adm. No; P105/6308/2006
Practice No; LSK/2022/06804
Email; udoto@udotoadvocates.co.ke
Tel. No; 0722858113

TO BE SERVED UPON

1. **FOOTBALL KENYA FEDERATION**
Goal Project, Kasarani
P.O. Box 49911-00100
NAIROBI.
info@footballkenya.org
2. **NICHOLAS MWENDWA KITHUKU**
Nick.mwendwa@footballkenya.org
3. **DORIS PETRA MAO**
petradoris@yahoo.com
4. **GORDON DAVIS CHEGE**
Gordondavies77@gmail.com
5. **MICHAEL OUMA MAJUA**
Michael.majua@footballkenya.org
6. **JOSEPH ODUOR ANDERE**
Oddy.andere@gmail.com
7. **TIMOTHY MURITHI NABEA**
muriithinabea@gmail.com
8. **AHMEDQADAR MOHAMED DABAR**
9. **BISHOP TONY KWEYA**
tonnykweya@gmail.com
10. **GABRIEL MGHENDI**
mghendigabbs@yahoo.com
11. **BENARD KORIR LAGAT**
lagatkor@gmail.com
12. **DAVID KIPKORIR BUNEI**
buneid@yahoo.com
13. **MARGARET ANYANGO OMONDI**
maggyomondi@yahoo.com
14. **CHRIS AMIMO**
chrisamimo@hotmail.com
15. **BARRY OTIENO**

Barry.otieno@footballkenya.org

16. ROBERT MACHARIA
17. AMOS OTIENO
18. LUTHERS MOKUA
19. CABINET SECRETARY FOR YOUTH AFFAIRS, SPORTS & THE ARTS
20. THE REGISTRAR OF SPORTS

REPUBLIC OF KENYA
OFFICE OF THE SPORTS TRIBUNAL AT NAIROBI
PETITION NO _____ OF 2023

IN THE MATTER OF ARTICLES 2(1), 3(1), 10, 22 & 159 OF THE CONSTITUTION OF KENYA

2010

AND

IN THE MATTER OF ARTICLES 22,23,24,25 & 26 OF THE FOOTBALL KENYA FEDERATION

CONSTITUTION, 2017

AND

IN THE MATTER OF SECTIONS 52,53, AND 54 OF THE SPORTS ACT NO. 25 OF 2013

AND

IN THE MATTER OF GAZETTE NOTICE NO. 12374 DATED 12TH NOVEMBER 2021

DISBANDING THE FKF NATIONAL EXECUTIVE COMMITTEE

AND

IN THE MATTER OF CONSTITUTIONAL PETITION NO. E473 OF 2021 UPHOLDING THE
DECISION OF THE CABINET SECRETARY MINISTRY OF SPORTS, CULTURE AND HERITAGE

DISBANDING THE FKF NATIONAL EXECUTIVE COMMITTEE

AND

IN THE MATTER OF THE FOOTBALL KENYA FEDERATION (FKF) GENERAL ASSEMBLY
SPECIAL GENERAL MEETING HELD ON 26TH MARCH 2022 REVOKING THE MANDATE OF
THE NATIONAL EXECUTIVE COMMITTEE

AND

IN THE MATTER OF THE FOOTBALL KENYA FEDERATION (FKF) GENERAL ASSEMBLY
SPECIAL GENERAL MEETING HELD ON 11TH JUNE 2022 APPOINTING THE AD HOC FKF
MEMBER COMMITTEE TO ASSUME THE ROLES AND MANDATE OF THE NATIONAL

EXECUTIVE COMMITTEE

AND

IN THE MATTER OF THE ILLEGAL AND UNLAWFUL OCCUPATION OF OFFICE BY THE
DISBANDED FKF NATIONAL EXECUTIVE COMMITTEE IN CONTRAVENTION TO THE
DECISION BY THE HIGH COURT IN PET NO. E473 OF 2021 AFFIRMING THE DECISION BY
THE CABINET SECRETARY MINISTRY OF SPORTS, CULTURE AND HERITAGE DISBANDING
THE FKF NATIONAL EXECUTIVE COMMITTEE AND THE RESOLUTION OF THE SPECIAL
GENERAL MEETING HELD ON 26TH MARCH AND 11TH JUNE 2022

BETWEEN

XYZ PETITIONER

AND

FOOTBALL KENYA FEDERATION1ST RESPONDENT

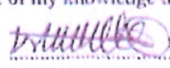
NICHOLAS MWENDWA KITHUKU2ND RESPONDENT

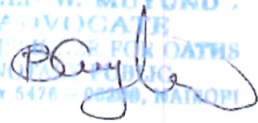
DORIS PETRA MAO	3 RD RESPONDENT
GORDON DAVIS CHEGE	4 TH RESPONDENT
MICHAEL OUMA MAJUA	5 TH RESPONDENT
JOSEPH ODUOR ANDERE	6 TH RESPONDENT
TIMOTHY MURITHI NABEA	7 TH RESPONDENT
AHMEDQADAR MOHAMED DABAR	8 TH RESPONDENT
BISHOP TONY KWEYA	9 TH RESPONDENT
GABRIEL MGHENDI	10 TH RESPONDENT
BENARD KORIR LAGAT	11 TH RESPONDENT
DAVID KIPKORIR BUNEI	12 TH RESPONDENT
MARGARET ANYANGO OMONDI	14 TH RESPONDENT
CHRIS AMIMO	15 TH RESPONDENT
BARRY OTIENO	16 TH RESPONDENT
ROBERT MACHARIA	17 TH RESPONDENT
AMOS OTIENO	18 TH RESPONDENT
LUTHERS MOKUA	19 TH RESPONDENT
CABINET SECRETARY FOR YOUTH AFFAIRS, SPORTS AND THE ARTS	20 TH RESPONDENT
THE REGISTRAR OF SPORTS	21 ST RESPONDENT

VERIFYING AFFIDAVIT

I, **WILFRED MARORI MOKAYA** a resident of Nairobi in the Republic of Kenya and of Post Office Box Number 16155-00100 Nairobi do hereby make oath and state as follows:-

1. THAT I am the Petitioner herein well versed with the facts herein, thus competent to swear this Affidavit.
2. THAT the Petitioner has instructed the firm of UDOTO & COMPANY ADVOCATES, Localline Gardens, Masaba Rd, Apartment No. 15, P.O. Box 16155-00100, NAIROBI, KENYA to act for it in this Petition.
3. THAT I have read and have had explained to me the contents of the Petition herein and verify the same as correct and true.
4. THAT all I have deponed hereto are true to the best of my knowledge and belief.

SWORN by the said **WILFRED MARORI MOKAYA**] 
At Nairobi this 15 day of August 2023] DEPONENT
BEFORE ME]
]]
]]
COMMISSIONER FOR OATHS]

21 
WILFRED W. MUYUNDU
ADVOCATE
COMMISSIONER FOR OATHS
Nairobi
P.O. Box 5476 - 00100, NAIROBI

DRAWN AND FILED BY:

Udoto & Company Advocates,
Localline Gardens,
Masaba Rd, Apartment No. 15,
P.O. Box 16155-00100,.
NAIROBI
info@udotoadvocates.co.ke,

TO BE SERVED UPON

1. FOOTBALL KENYA FEDERATION
Goal Project, Kasarani
P.O. Box 49911-00100
NAIROBI.
info@footballkenya.org
2. NICHOLAS MWENDWA KITHUKU
Nick.mwendwa@footballkenya.org
3. DORIS PETRA MAO
petradoris@yahoo.com
4. GORDON DAVIS CHEGE
Gordondavies77@gmail.com
5. MICHAEL OUMA MAJUA
Michael.majua@footballkenya.org
6. JOSEPH ODUOR ANDERE
Oddy.andere@gmail.com
7. TIMOTHY MURITHI NABEA
muriithinabea@gmail.com
8. AHMEDQADAR MOHAMED DABAR
9. BISHOP TONY KWEYA
tonnykweya@gmail.com
10. GABRIEL MGHENDI
mghendigabbs@yahoo.com
11. BENARD KORIR LAGAT
lagatkor@gmail.com
12. DAVID KIPKORIR BUNEI
buneid@yahoo.com

13. MARGARET ANYANGO OMONDI

maggyomondi@yahoo.com

14. CHRIS AMIMO

chrisamimo@hotmail.com

15. BARRY OTIENO

Barry.otieno@footballkenya.org

16. ROBERT MACHARIA

17. AMOS OTIENO

18. LUTHERS MOKUA

19. CABINET SECRETARY FOR YOUTH AFFAIRS, SPORTS & THE ARTS

20. THE REGISTRAR OF SPORTS

and address him by his assumed name Michael Wairimu Njoroge wa Mahindi only.

Dated the 9th September, 2021.

K. M. MBURU & ASSOCIATES,
*Advocates for Michael Wairimu Njoroge wa Mahindi,
formerly known as Michael Njoroge Wairimu.*

MR/2356824

GAZETTE NOTICE No. 12371

CHANGE OF NAME

NOTICE is given that by a deed poll dated 6th October, 2021, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 4060, in Volume DI, Folio 332/5386, File No. MMXXI, by our client, Bansri Shilen Thakerar, of P.O. Box 40449, 00100, Nairobi in the Republic of Kenya, formerly known as Bansri Vinodlal Ruparel, formally and absolutely renounced and abandoned the use of her former name Bansri Vinodlal Ruparel and in lieu thereof assumed and adopted the name Bansri Shilen Thakerar, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Bansri Shilen Thakerar only.

SEEMA BRIAN,
*Advocates for Bansri Shilen Thakerar,
formerly known as Bansri Vinodlal Ruparel.*

MR/2389054

GAZETTE NOTICE No. 12372

CHANGE OF NAME

NOTICE is given that by a deed poll dated 10th March, 2021, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 3507, in Volume DI, Folio 325/5309, File No. MMXXI, by our client, Susan Njoki Wairimu alias Susan Njoki Kamau, on behalf of Joanna Wairimu Ngugi (minor), of P.O. Box 988 00900, Kiambu in the Republic of Kenya, formerly known as Joanna Wangari, formally and absolutely renounced and abandoned the use of her former name Joanna Wangari and in lieu thereof assumed and adopted the name Joanna Wairimu Ngugi, for all purposes and authorizes and requests all persons at all times to designate, describe and address her by her assumed name Joanna Wairimu Ngugi only.

KIBUNGIE AND CO.,
*Advocates for Susan Njoki Wairimu alias Susan Njoki Kamau,
On behalf of Joanna Wairimu Ngugi (minor),
formerly known as Joanna Wangari.*

MR/2389085

GAZETTE NOTICE No. 12373

CHANGE OF NAME

NOTICE is given that by a deed poll dated 1st September, 2021, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 3614, in Volume DI, Folio 1436/5003, File No. MMXX, by our client, Mohamud Aden Abdille, of P.O. Box 105960-00101, Nairobi in the Republic of Kenya, formerly known as Mohamud Abdille Ibrahim, formally and absolutely renounced and abandoned the use of his former name Mohamud Abdille Ibrahim and in lieu thereof assumed and adopted the Mohamud Aden Abdille, for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Mohamud Aden Abdille only.

Dated the 1st November, 2021

NZAKU & NZAKU ASSOCIATES,
*Advocates for Mohamud Aden Abdille,
formerly known as Mohamud Abdille Ibrahim.*

MR/2356824

GAZETTE NOTICE No. 12374

THE SPORTS ACT

(No. 25 of 2013)

APPOINTMENT

IN EXERCISE of the powers conferred by section 54 (1) of the Sports Act, 2013, the Cabinet Secretary for Sports, Culture and Heritage disbands the National Executive Committee of Football Kenya Federation and appoints a Caretaker Committee comprising the following persons:

Justice (Rtd.) Aaron Ringera – Chairperson
General (Rtd.) Moses Oyugi – Vice Chairperson
Fatma Adan (Hodi)
Philip Musyimi Mue
Anthony L. Isayi
Elisha Chepchieng Kiplagat
Hassan Mahmoud Haji
Fredrick Tureisa Lekesike
Mwangi Muthee
Neddy Atieno Okoth
Ali Amour
Titus Kasuve
Richard Omwela
Bobby Ogola
J.J. Masiga

Secretariat of the Caretaker Committee:

Linda Ogutu – Head of the Secretariat
Michael Muchemi – Secretary
Lorine Nereca Shitubi – Joint Secretary
Caesar Handa
Herbert Mwachiro
Edward Rombo
Hiba Hussein
Gabriel Wangi
Walter Ongeti (Dr.)
Rashid Khamisi Ali Shedu
Hon. Rachel Kamweru
Robin Toskin

1. The mandate of the Caretaker Committee shall be to:

- conduct all the affairs of Football Kenya Federation in accordance with the Constitution of Football Kenya Federation;
- ensure that Football Kenya Federation operates within the provisions of the Sports Act, 2013;
- co-ordinate and ensure the smooth running of Football Kenya Federation operations including team preparations for all local and international sporting events;
- co-ordinate the elections of officials of Football Kenya Federation in accordance with the Sports Act, 2013, and Sports Registrar Regulations, 2016; and
- hand over the management of Football Kenya Federation to the newly elected officials after the election.

2. The Caretaker Committee shall hold office for period of six (6) months with effect from the 11th November, 2021.

3. The Caretaker Committee shall be assisted in the execution of its mandate by the Secretariat.

4. The Caretaker Committee and Secretariat shall be based at the Ministry of Sports, Culture and Heritage headquarters which shall facilitate the Caretaker Committee's and Secretariat's operations.

5. All communication to the Caretaker Committee should be addressed to:

*The Chairperson,
Football Kenya Federation Caretaker Committee,
Ministry of Sports, Culture and Heritage,
Kencom House,
P.O. Box 49849-00100,
Nairobi.*

Dated the 11th November, 2021.

AMINA MOHAMED,
Cabinet Secretary for Sports, Culture and Heritage.

MR. BARRY OTIENO,
GENERAL SECRETARY/CEO,
FOOTBALL KENYA FEDERATION (FKF),
KANDANDA HOUSE.

29th December, 2021

Dear Sir,

RE: REQUEST FOR A SPECIAL GENERAL MEETING

The above matter refers.

We the delegates whose signatures are appended below representing members at the general assembly hereby request that a Special General meeting be convened at the earliest opportunity pursuant to the 2017 FKF Constitution and in conformity with Article 31(2), to discuss the agenda stated below:

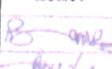
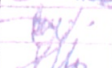
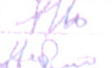
1. Implication of the Directives of the Cabinet Secretary to disband FKF National Executive Committee (NEC) in the year 2021
2. Implication of the actions of the FKF President
3. The way forward.

Yours Faithfully,

	NAME	BRANCHES	TITLE	ID NO	SIGN
1.	KENETH K. RUTIO	BARINGO C.	CHAIRMAN	13064981	
2.	LUCK K. KITHINI	MTANBARUA	CHAIRPERSON	22787411	
3.	ALFRED KIRU	KERICHO	CHAIRMAN	10355008	
4.	FRANCIS OLELE	NAKURU	CHAIRMAN	4582386	
5.	David Sile	BOMET	CHAIRMAN	13010447	
6.	PETER A. MARINO	HARAR	CHAIRMAN	9884710	
7.	ALEX MUSERI	KASIMBO	CHAIRMAN	18088977	
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23	WILLIAM LOKWEE	TURKANA	CHAIRMAN	14448629	
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28	BOAZ-K. KAINO	ELGEYO	CHAIRMAN	12328-869	
29	PATRICK MUTAI	MARAKET	CHAIRMAN	5587629	
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1.	ABDULLAH SAKAT	GAZISSA	CHAIRMAN	0031684	
2.	NASIR AZI ELMI	WASIR	CHAIRMAN	11172766	
3.	ISMAIL MOKHAMA	ISAL MANDOKA	CHAIRMAN	23014108	
	NAME	BRANCHES	TITLE	ID NO	SIGN
1.	PAUL CORD MIGHAMBO	MIGORI	CHAIRMAN	5956361	
2.	MOURICE OGWEND NYAI	HOMHBAY	CHAIRMAN	11634654	
3.	GILBERT NDOLU	KISUMU	CHAIRMAN	1220960	
4.	STEPHEN OTIENO	DIAYA	CHAIRMAN	6420805	
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	NAME	BRANCHES	TITLE	ID NO	SIGN
1.	CHARLES N. NJAGEL	EMBU	CHAIRMAN	23774798	
2.	ELIZAPHAN MACHARIA	THAKAMU	CHAIRMAN	20702561	FN
3.	Mohamed Nave Shige	Margabid	Chairman	12355351	
4.	Swaleh Mohamed Ayuba	Kisumu	Chairman	5756394	
5.	Samuel Mwangi	Makueni	Chairman	11053078	
6.	Abdul Kaka	Rairua	Chairman	1120472	
7.	Christine Ochieng	NYERI	CHAIRMAN	21416889	
8.	Timothy Kinyua	Kisumu	Chairman	14503906	
9.	Amos Othman	Kenya			
10.		EMBU	Chairman	2243616	
11.	WALTER MOKA	NTAMBA	CHAIRMAN	2274274	
12.	JEROME MUGERA	Kisumu	CHAIRMAN	1072727	
13.	ROBERT MACHARIA	MURANG'A	CHAIRMAN	12759489	
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	NAME	BRANCHES	TITLE	ID NO	SIGN
1.	JAMES KAMAU	KIABASHI	CHAIRMAN	14525517	(Signature)
2.	CALEB KIMWELI	NARODI HSE	CHAIRMAN	0076673	(Signature)
3.	AMUS GITHINJI	NARODI HSE	CHAIRMAN	2223616	(Signature)
4.	ROBERT MACHARIA	MURONGI	CHAIRMAN	02754989	(Signature)
	NAME	BRANCHES	TITLE	ID NO	SIGN
1.	HUSSEIN DUMA MOHAM	ISIOLO	CHAIRMAN	0076673	(Signature)
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	NAME	BRANCHES	TITLE	ID NO	SIGN
1.	DICKSON K. ANADRE	KILIFI	CHAIRMAN	13375813	
2.	DUNCAN J. MOKHANA	TANA	CHAIRMAN	10755422	
3.	LAWRENCE SAKWA	ATOMILASA	SAC GEN	25478544	
4.	LILIAN BROSUS KAZENKY	MOMBASA	CHAIRPERSON	22420904	
5.	THOMAS MURUGA	WILSON	V. CHAIRMAN	11198762	
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	NAME	BRANCHES	TITLE	ID NO	SIGN
1.	KELVIN MWANGU	VITITA	CHAIRMAN	234647114	
2.	ERIC MANDWA	BUNYOMA	CHAIRMAN	56156257	
3.	HILLARY MUKUNDI	BUSIA	CHAIRMAN	2319181	
4.	MURINDI ALIAN	KAKAMEGA	CHAIRMAN	26919782	
5.	MICHAEL S. OSADA	VITITA FC	C.E.O	22918378	
6.	EVANKE E. KADENGE	NDA FC	CHAIRMAN	6641613	
7.	COLLINS JUMA	VITITA FC	C.E.O	22693490	
8.	CLEOPHUS SHUMWAYA	WILSON			
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29TH MARCH 2022

**The Secretary General,
Football Kenya Federation
Nairobi**

Dear Mr. SG,

**RE: MINUTES AND RESOLUTIONS OF THE FKF SPECIAL GENERAL
MEETING HELD ON 26TH MARCH 2022 AT THE SPORTS VIEW
HOTEL, NAIROBI**

Find herewith forwarded for your records and actions, the minutes and resolutions of the Special General Meeting which was held on the 26th March 2022 following the expiry of the request notice sent to you by the representatives of members of FKF on the 29th December 2021

The members would appreciate that as directed by Article 37(K) of the FKF Constitution (2017) you proceed and make arrangements to convoke a Special General Assembly within two months from the date of this notification.

Your prompt action in this regard will be appreciated.


Robert Macharia (Chairman)

For and on behalf of the representatives of members present at the SGM.

C.C

- 1. SG FIFA**
- 2. SG CAF**
- 3. REGISTRAR OF SPORTS**

