



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E473 OF 2021

FOOTBALL KENYA FEDERATION1ST PETITIONER
NICK MWENDWA2ND PETITIONER
BARRY OTIENO 3RD PETITIONER

VERSUS

**CABINET SECRETARY MINISTRY OF SPORTS,
 CULTURE AND HERITAGE.....1ST RESPONDENT**
SPORTS REGISTRAR2ND RESPONDENT
FKF INSPECTION COMMITTEE 3RD RESPONDENT
THE ATTORNEY GENERAL4TH RESPONDENT
FKF CARETAKER COMMITTEE5TH RESPONDENT
**SECRETARY TO THE FKF
 CARETAKER COMMITTEE6TH RESPONDENT**

AND

KARIOBANGI SHARKS FOOTBALL CLUB1ST INTERESTED PARTY
POSTA RANGERS FOOTBALL CLUB2ND INTERESTED PARTY
BIDCO UNITED FOOTBALL CLUB3RD INTERESTED PARTY
MOMBASA COUNTY FOOTBALL ASSOCIATION.....4TH INTERESTED PARTY
KAKAMEGA COUNTY FOOTBALL ASSOCIATION.....5TH INTERESTED PARTY

MANDERA COUNTY FOOTBALL ASSOCIATION 6TH INTERESTED PARTY

UASIN GISHU COUNTY FOOTBALL ASSOCIATION.....7TH INTERESTED PARTY

MIGORI COUNTY FOOTBALL ASSOCIATION8TH INTERESTED PARTY

RULING

1. The petitioners in their amended petition dated 22nd November, 2021 seeks the following orders:

i. A declaration that the inspection of 1st petitioner commenced by the 1st respondent through her directive issued to the 2nd respondent dated 14th October, 2021 and all other processes undertaken by the respondents thereafter are irregular, unlawful and a nullity in law;

ii. A declaration that an inspection under Section 52 of the Sports Act must be undertaken only after the 2nd respondent has notified a sports organization of such impending action prior and having issued adequate notice of the nature and reasons for the proposed inspection and having accorded the sports organization an opportunity to be heard and to make representations;

iii. A declaration that an inspector appointed under Section 52 of the Sports Act, 2013 is a singular person whose identity must be made known to the sports organization being inspected and an inspector so appointed must accord the sports organization being inspected a reasonable opportunity to state its case;

iv. An order of certiorari directed at the respondents to remove into the court and quash the 1st respondent's directive to the 2nd respondent dated 14th October 2021 and all the processes undertaken by the respondents pursuant to that directive including the preliminary report of the 3rd respondent dated 5th November 2021 and Gazette Notice No.12374 dated 12th November 2021;

v. An order of injunction against the respondents from undertaking any other or further administrative or legal action against the petitioners on the basis of the preliminary report of the 3rd respondent dated 5th November 2021;

vi. An order of permanent injunction against the 5th and 6th respondents from taking over the running of football activities in the Republic of Kenya and issuing any directives in that regard; and

vii. Costs of the petition to be borne by the respondents.

2. Likewise in their Notice of Motion of even date they seek the following orders:

i.spent

ii. Grant a conservatory order by way of interlocutory injunction or any other interim order stopping and/or staying the implementation of the 3rd respondent's preliminary report dated 5th November 2021 and the operations of the 5th and 6th respondents with immediate effect pending the hearing and determination of the application;

iii. Grant a conservatory order by way of interlocutory injunction or any other interim order restraining the respondents from interfering with the petitioner's organizational structure, management, operations and/or the petitioner's control of the football activity in the Republic of Kenya pending the hearing of the application;

iv. Grant a conservatory order by way of interlocutory injunction or any other interim order stopping and/or staying the implementation of the 3rd respondent's preliminary report dated 5th November 2021 and the operations of the 5th and 6th respondents with immediate effect pending the hearing and determination of this petition;

v. Grant a conservatory order by way of interlocutory injunction or any other interim order restraining the respondent's from interfering with the petitioner's organizational structure management, operations and/or the petitioner's control of all football

activity in the Republic of Kenya pending hearing and determination of the petition; and

vi. The respondents to bear costs of the application.

vii. An order of permanent injunction against the 5th and 6th respondents from taking over the running of football activities in the Republic of Kenya and issuing any directives in that regard; and

viii. Costs of the petition to be borne by the respondents.

3. In the process of working on the ruling in respect of the Notice of Motion dated 22nd November, 2021 I have observed that the underlying issue in both the application and the petition is whether the actions by the 1st respondent through the 2nd respondent were regular/lawful and whether they should be sustained. This issue must be determined before grant of the orders sought in the Notice of Motion dated 22nd November, 2021.

4. The said issue cannot be determined at interlocutory stage as that would amount to issuing final orders before hearing the petition and the same will have been rendered moot. It is for this reason that I issued the mention notice for parties to appear before the court for this explanation to be given.

5. That being the position, I decline to grant any orders in respect of the Notice of Motion dated 22nd November, 2021. The said application is subsumed in the main petition. Parties are directed to move with speed so that the main petition is heard. Directions on the way forward to be taken today. In the meantime the status quo prevailing will remain in force until the petition is determined.

Orders accordingly.

DELIVERED ONLINE, SIGNED AND DATED THIS 7TH DAY OF DECEMBER, 2021 IN OPEN COURT AT MILIMANI NAIROBI.

H. I. ONG'UDI

JUDGE OF THE HIGH COURT



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REPUBLIC OF KENYA

MINISTRY OF YOUTH AFFAIRS, THE ARTS AND SPORTS

**RESPONSE TO SENATE STANDING COMMITTEE ON LABOUR AND
SOCIAL WELFARE REGARDING MISMANAGEMENT OF FOOTBALL
MATTERS BY FOOTBALL KENYA FEDERATION (FKF) IN KENYA AS
PETITIONED BY COUNTY FOOTBALL ASSOCIATIONS'
REPRESENTATIVES.**

7TH SEPTEMBER, 2023.

INTRODUCTION

Honourable Chair and Distinguished Committee Members, Good afternoon!

1. It is an honour to address this esteemed Committee on the Petition regarding the mismanagement of football affairs in the Country by FKF.
2. Hon Members, when the Kenya Kwanza administration assumed office, the Ministry faced numerous challenges, **including FIFA's suspension of Kenya from all international football activities.** This situation left Kenyan football in a state of stagnation, **resulting in Harambee Stars and Starlets being disqualified from the ongoing qualifiers for AFCON and FIFA World Cup.**
3. Upon taking office, our top priority was to resolve this crisis, and within one (1) month, **we successfully arranged a face-to-face meeting with FIFA President, Mr. Gianni Infantino,** and after our meeting, the suspension of Kenya by FIFA was lifted in November, 2022.
4. **On January 9, 2023,** a FIFA inspection team visited Kenya to assess the state of football in the country. As part of their visit, FIFA held a meeting with the Cabinet Secretary to discuss the state of football, after which FIFA requested a report. **(The Report to FIFA is attached as Annex A.)**

5. Thanks to the Ministry's intervention, significant progress has been made. The Country recently witnessed Kakamega Homeboyz hosting Libyan side Al Hilal Benghazi in the first round of the CAF Confederation Cup at the Nyayo National Stadium. Vihiga Queens recently participated in the CECAFA Zone qualifiers for the CAF Women's Champions League in Kampala. Harambee Stars have been able to play several friendly matches (Currently in Qatar to play against the Qatari National Team) and are now preparing for the 2026 FIFA World Cup qualifiers starting next November. **Our football is back!**

6. It is crucial to note that Kenya, alongside Tanzania and Uganda, is bidding to host the 2027 Africa Cup of Nations. **This bid showcases the potential for growth and development in Kenyan football. With proper governance and strategic interventions, Kenyan football can achieve unprecedented success.**

STATUS OF FOOTBALL IN KENYA

7. As previously stated, FIFA suspended the Football Kenya Federation (FKF) on February 24, 2022, citing "government interference" in football administration. FIFA expects its affiliates to operate independently on a global scale, which raises essential questions.
 - a. Should the role of the **Government in FKF and other federations be limited to financial support?**
 - b. Should the Government refrain from intervening to prevent the misconduct of sports federation officials, despite the possibility of retaliation from international governing bodies?

These are difficult concerns that frequently place the Government in a bind. Both action and inaction have the potential for negative consequences.

8. And so, the ban as it were, was triggered by the decision of the Ministry to disband the FKF Executive Committee following allegations of misconduct and lack of integrity by the FKF Executives, and the subsequent appointment of a Caretaker Committee by the former Cabinet Secretary.
9. Following the ban, **Honourable Chair**, the FIFA Council determined that the lifting of Kenya's suspension would be subject to fulfilment of these conditions:
 - a. The repeal of the Cabinet Secretary's decision of 11th November, 2021, appointing the Caretaker Committee in lieu of the elected FKF Executive Committee; and
 - b. FIFA's receipt of confirmation from FKF and its management, led by Vice-President Doris Petra and General Secretary Barry Otieno that the FKF and its premises are back under their full and unconditional control.
10. These conditions reaffirm FKF as the authorized FIFA affiliate in Kenya, entrusted with managing football.

With regards to the issues raised by the Petitioners, Ministry wishes to respond as follows: -

ISSUE 1: THAT we are registered as County Sports Associations in line with the provisions of the Sports Act" 2013.

- a. **Honourable Chair**, Indeed Chair, the Petitioners are registered County Football Sports Associations in accordance with the Sports Act No. 25 of 2013. In total, there are 41 County Football Sports Associations.

ISSUE 2: THAT the Football Kenya Federation (hereinafter referred to as "FKF") is yet to comply with legal requirements for registration as a National Sports Organization.

- a. Hon Chair, FKF was initially registered under the Societies Act in 2011 before the Sports Act came into effect in 2013. After the Sports Act came into effect, FKF was temporarily registered and later fully registered on 24th May, 2018, after submitting the required documents.
- b. **Honourable Chair**, it should however be noted that the registration Certificate issued to FKF on 24th May, 2018 by the Ministry had the Following conditions: -
1. **THAT** the organization complies with the Sports Act and any other relevant law.
 2. **THAT** the organization reviews its constitution in line with the Kenya Constitution 2010, the Sports Act No. 25 of 2013 and its international statute.
 3. **THAT** the organization holds elections within ninety days from the date of registration.

4. **THAT** the organization develops short, mid and long-term Strategic Plans.
- c. **FKF has been operating legally since its registration, although it faces various challenges that led to an inspection by the Ministry in November 2021.**

ISSUE 3: THAT since its registration as a National Sports Organization in 2018, FKF has never held elections as required under the Sports Act.

- a. Between February-September, 2020, FKF held three (3) elections. Two (2) of these Elections were cancelled due to legal battles and non-compliance with applicable laws. However, the third Election was endorsed by the SDT. ***(A copy of the Judgment is attached herewith as Annex B).***
- b. The Ministry continues to engage FIFA, FKF and other stakeholders to ensure that the upcoming FKF elections are held in accordance with the relevant laws.

ISSUE 4: THAT FKF and County Governments are yet to recognize county football associations that are duly registered under the Sports Act, 2013.

- a. **Honourable Chair**, indeed County Football Associations are **not members of FKF** but are registered by the Sports Registrar. The Government continues to engage FIFA on a number of issues including the place of county associations in the football architecture.

ISSUE 5: THAT the then Cabinet Secretary for Sports, Culture and Heritage removed the FKF National Executive Committee from office and replaced with it a Caretaker Committee in November, 2021 due to contravention of Sports Act, 2013.

- a. **Honourable Chair**, this is true. The removal of the FKF National Executive Committee by the former Cabinet Secretary in November 2021 was based on an inspection report that recommended the removal **FKF officials from office to pave way for further investigations.**
- b. **The Sports Disputes Tribunal (SDT) in SDT Petition No. E036 declared the Caretaker Committee legally appointed for the first six (6) months.**

ISSUE 6: THAT the FKF, its President and Chief Executive Officer appealed the removal of FKF National Executive Committee to the High Court in Petition No. E473 of 2021. The High Court however, upheld their removal in its judgment delivered on 10th May, 2022.

- a. **Honourable Chair**, with regards to Petition E473 of 2021, The High Court in its Judgment of 10th May, 2022 found that the Cabinet Secretary had acted within her powers with regards to FKF, owing to the dire situation at FKF. However, the Court stated that by not being privy to the recommendations and the outcome of any investigations carried out, it **could not reinstate the National Executive Committee of FKF** which had been disbanded by the respondent *vide* the Gazette Notice that appointed the Caretaker

Committee. **(A copy of the Judgement is attached as Annex C).**

ISSUE 7: THAT the current Cabinet Secretary for Sports, Culture and Heritage reinstated the suspended FKF and its national executive committee unprocedurally.

Honourable Chair, I would like to state as follows: -

- a. The reinstatement of FKF and its national executive committee was done after consultations with FIFA, FKF, and other stakeholders. **Compliance with FIFA conditions were necessary for Kenya's readmission to international football.**
- b. The only available and acceptable option to Kenya was compliance with FIFA conditions, and this we did after widespread consultations with FIFA, FKF and other stakeholders.
- c. I held consultations with premier and National super league clubs, referees' professional body, and the Sports Journalists Fraternity.
- d. The Stakeholders unanimously agreed on the need to comply with FIFA conditions as a way of getting Kenya back to international soccer. **(Copies of Stakeholder Engagement Resolutions as attached as Annex C).**
- e. Following the decision by the current Cabinet Secretary to fulfil the conditions set out by FIFA, a matter (SDT.E36 of 2022) was filed at the SDT in its ruling stated that the FKF NEC was

in office illegally following its disbandment by the former Cabinet Secretary.

- f. FKF filed for a JR of the SDT's decision at the High Court and on July 14, 2023, the High Court delivered ruling on the JR as follows, '**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**'.
- g. In light of the aforementioned, Kenya continues to take part in FIFA organised competitions and matches. Today, the national football team Harambee Stars is in Doha and will play Qatar in an international friendly match as part of the team's 2026 World Cup qualifiers preparations. Kenya is pooled alongside Ivory Coast, the Gambia, Gabon, Burundi and Seychelles.

ISSUE 8: THAT the Cabinet Secretary for Sports, Culture and Heritage has continued to act in violation of the High Court and Sports Disputes Tribunal judgment and ruling respectively.

Honourable Chair, I would like to state as follows: -

- a. The Ministry is committed to upholding the laws of the land while ensuring the revival and growth of football.
- b. It is important to emphasize that FKF is the sole FIFA-recognized authority responsible for overseeing football in Kenya. However, FKF and all other Federations must also comply with the Sports Act, 2013.

ISSUE 9: THAT the Cabinet Secretary for Sports, Culture and Heritage has also declined to facilitate the office of the Sports Registrar to conduct county football associations elections.

- a. The Ministry continues to execute its mandate under difficult financial conditions arising from budgetary constraints affecting all our Departments across board. However, I am in consultation with Parliament and the National Treasury for additional funding to enable the Ministry implement its programmes and activities effectively.

ISSUE 10: THAT county sports associations are yet to benefit from the Sports, Arts and Social Development Fund established under the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018.

- a. **Honourable Chair**, Pursuant to the Regulations, the Fund only finances national sports organizations' programmes and activities. Once the County Football Associations and Clubs are registered as FKF affiliates, then their funding requests will be channelled through FKF.

ISSUE 11: THAT we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.

- a. **Honourable Chair**, I have engaged in multiple consultative meetings with the Ministry and representatives of various registered County Football Associations. These discussions and consultations are ongoing to ensure that a consensus is reached on a wide range of issues that impact football in the country. I assure you that I will

convene another meeting within the next thirty days to further discuss and come to an agreement on any remaining outstanding matter

WHEREFORE, your humble petitioners pray that the Senate urgently investigates this matter and makes appropriate recommendations hereon among them-

a) **the disbandment of the current FKF national executive committee;**

- i. Kenya endured a lengthy and detrimental ban that had a severe impact on our players.
- ii. International football has recently resumed in Kenya after a nine-month ban, which had a detrimental effect on the sport in our country, leaving our soccer sector neglected. Our national teams were excluded from Africa Cup of Nations (AFCON) and Women's African Cup of Nations (WAFCON) qualification matches, causing them to miss out on significant continental championships.
- iii. During the ban, families relying on football for their livelihoods faced significant hardships, and Kenyans were deprived of the opportunity to watch and support their national team in international matches.
- iv. Disbanding FKF is not an immediate priority at the moment. Kenya cannot afford to be excluded by FIFA again, as it would have adverse effects on the athletes, technical officials, and the soccer fraternity in general.

(b) the elections of new FKF national executive committee as a matter of urgency;

- i. The current FKF National Executive Committee Members' term will soon come to an end by the end of February, 2024 whereupon fresh elections shall be held and new officials elected.
- ii. The Ministry has embarked on a robust discussion to resolve an impasse whereupon forty-one (41) county football associations which have registered under the Sports Act are not affiliated to FKF.

(c) recognition of county sports associations by national sports organizations and county governments;

- a) **Honourable Chair**, as indicated earlier, the Ministry is currently holding consultative meetings with all stakeholders to ensure the existence of legally registered organizations, with elected officials who are recognized at both Government levels.

(e) overhaul of Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 to cater for sports and arts exclusively;

- a) **Honourable Chair**, during the official commissioning of the Talanta Plaza, H.E the President directed THAT the SASDF Regulations be amended to ensure that the Sports, Arts and Social Development Fund is ring-fenced to serve the Sports and the Arts sectors exclusively.

(f) alignment of FKF constitution with Kenyan and international sport laws ratified by Kenya; and

- a. The Ministry is presently conducting a review of the 2005 Sports Policy and the 2013 Sports Act with the aim of creating a favourable atmosphere for sports development. The Ministry will actively engage with all stakeholders, including parliament, to ensure comprehensive input.
- b. As part of the review, the Ministry will focus on streamlining the management of Sports Federations to enhance their accountability and responsibility.

DATED 7TH SEPTEMBER, 2023

MINISTRY OF YOUTH AFFAIRS, THE ARTS AND SPORTS



MINISTRY OF YOUTH AFFAIRS, SPORTS AND THE ARTS

BRIEF REPORT TO FIFA ON THE CURRENT SITUATION OF FOOTBALL IN KENYA AFTER THE FIFA INSPECTION MEETING WITH THE CABINET SECRETARY ON 9TH JANUARY, 2023.

BACKGROUND

Subsequent to the appointment of the Caretaker Committee on **11th November, 2021**, and the action of the current Cabinet Secretary on **4th November, 2022**, to meet the conditions set by the FIFA Council, numerous legal suits challenging the appointment and the mandate of the Caretaker Committee, and the legality of the FKF National Executive Committee, have been instituted. Key among them are **Constitutional Petition E473 of 2021** at the High Court and **SDTSC NO. E036 of 2022** at the Sports Disputes Tribunal.

A. HIGH COURT JUDGEMENT OF PETITION E473 OF 2021

- 1) Petition E473 of 2021 arising from the inspection of FKF operations and the subsequent appointment of the FKF Caretaker Committee and Secretary to the FKF Caretaker Committee was filed at the High Court of Kenya **on 22nd November, 2021**.
- 2) The High Court, upon analysis of submissions in the aforementioned Petition found the following issues for determination:
 - i. The status of the FIFA Statutes and its applicability to football in Kenya;

- ii. Whether the appointment of the FKF Caretaker Committee and the Secretary to the FKF Caretaker Committee was in violation of the Constitution of Kenya and the Sports Act, 2013;
- iii. Whether the rights of the petitioners were violated; and
- iv. Whether the reliefs sought by the petitioners should be granted.

3) Issue 2(ii) as mentioned above on the status of the FKF National Executive Committee, forms the basis of this brief.

- 4) The Court, in its judgment, indicated that **Sections 52, 53 and 54 of the Sports Act and Regulation 19 of the Sports Registrar Regulations, 2016**, which allow the Sports Registrar to, at any time, or if directed by the Cabinet Secretary, cause an inspection of any sports organization, **were applicable** in the material Petition.
- 5) Further, the Court stated that by it not being privy to the recommendations of the Inspection Committee and the outcomes of any investigations carried out, **it could not reinstate the FKF National Executive Committee** which was disbanded by the Cabinet Secretary vide the Gazette Notice that appointed the Caretaker Committee. It maintained that the Cabinet Secretary had acted within her powers and mandate owing to the dire situation at FKF.
- 6) It is important to note that the Court, in its judgement, **determined that the Petitioners (FKF, Nick Mwendwa and Barry Otieno) had not been served with the report/recommendations of the Inspection Committee for their reaction and directed the Sports Registrar (Rose M. N. Wasike) to furnish them with the same (within 14 days) of the issuance of the judgment.**
- 7) FKF has since appealed the court's decision on grounds *inter alia* that the Learned Judge erred in Law in finding that the appellants were denied the right to a fair hearing but still held that the respondents were justified in violating the appellants'

right to fair administrative action and application of the principles of natural justice.

THIS APPEAL IS YET TO BE DETERMINED.

B. SPORTS DISPUTES TRIBUNAL RULING ON THE FKF NEC

- 8) The Sports Dispute Tribunal (SDT), on 6th December, 2022, among other issues, determined the **legal and/or consequences of the repeal of the former Cabinet Secretary's decision of 11th November, 2021**, which appointed the Caretaker Committee in lieu of the elected NEC. In its determination, the SDT relied on the High Court judgment of Petition E473 of 2021 where the learned judge stated that the Court could not reinstate the FKF National Executive Committee which was disbanded by the Cabinet Secretary. The SDT further determined that the import of the aforementioned was that the National Executive Committee was disbanded and the FKF Caretaker Committee assumed **the management and control of the FKF for a period of 6 months.**

D. ASSESSMENT

- 9) From the foregoing, it can be argued that **on the basis of the High Court Judgement, there is no NEC in place.** This is because the appeal filed by FKF did not seek a stay of execution of the High Court Judgment in Petition **No. E473 of 2021.**
- 10) It is important for FIFA to appreciate that concerns and questions continue to cloud the status of the leadership of Kenyan football. **These concerns and questions must be resolved with urgency.**
- 11) The Government of Kenya is committed to working with FIFA towards this end.

E. RECOMMENDATIONS

- 12) By reason of the perceived leadership vacuum at FKF and the persistent concerns raised by football stakeholders in Kenya, it would be in the best interest of Kenyan football, for FIFA to investigate the allegations against FKF and its current leadership, and engage the widest possible spectrum of football stakeholders to

find an amicable solution. *(We hereby enclose reports of the Inspection Committee and the Caretaker Committee as **Annexes A and B**, respectively).*

13) In the event that FIFA establishes actionable grounds, or should an amicable solution between the FKF and the football stakeholders prove impossible, then FIFA may want to consider invoking of **Article 8 (2) of the FIFA Statutes**, which provides for the formation of a **Normalization Committee** for a specified period of time.

14) In the spirit of collaboration and partnership essential for returning Kenyan football to normalcy, the Government of Kenya would welcome the input of FIFA in the impending process of amending the Sports Act, 2013 and the FKF Constitution in line with both the law of Kenya and the FIFA Statutes.

Once again, The Government of Kenya will collaborate with FIFA to revitalize Kenyan football.

Dated 10th January, 2023

Ministry of Youth Affairs, Sports and the Arts

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 proceed with 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 infact 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.

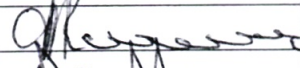

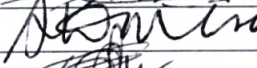
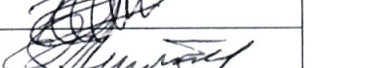
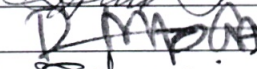
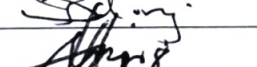
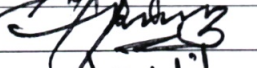





22

RESOLUTION OF THE CHAIRPERSONS OF THE KENYA PREMIER LEAGUE, ON 3RD NOVEMBER 2022 ON THE FIFA BAN

We hereby request the Cabinet Secretary for Youth Affairs, Sports and The Arts, Hon. Ababu Namwamba, EGH to adopt the recommendations by the FIFA Council **THAT:**

1. The Cabinet Secretary should repeal the decision of 11th November, 2021, which appointed the Caretaker Committee in lieu of the elected FKF Executive Committee; and
2. The FKF Secretariat Office be opened with immediate effect;
3. The Vice-president, Doris Petra and the General Secretary, Barry Otieno to write a confirmation to FIFA confirming their full and unconditional control of the Office.

DONE AT NAIROBI, KENYA ON THIS 3RD DAY OF NOVEMBER, 2022.

S/No	NAME	CLUB	SIGNATURE
1.	AMBROSE RACHIER	GOR MATHA	
2.	DR. DAN SHIKANDA	ACC LEOPARDS	
3.	ELCY - KALEWA A	SOTAPAKA	
4.	BOB MUNRO	MATHARE UTD	
5.	EDWARD ODUER	BANDARI FC	
6.	CLEOPHAS SHIMANYUA	HOMEROY 2 FC	
7.	ROBERT MUGGA	SHARKS	
8.	JOEL ODONGO	WAZITO	
9.	MISANGI CESENGI	RUDIA UTD	
10.	ABDULKARIM ADAN	AFC BUMBA	
11.	Wanjiru Makindu	FC Talanta	
12.	Azu Odora	IKCB F.C	

13.	CHRIS MURWAGA	POLICE FC	<i>John</i>
14.	EVANJE KADENGE	NWIND FC	<i>John</i>
15.	JOHN TOZBY	POSTA POLICE	<i>John</i>
16.	COLLINS JUMA	Vihiga Bulls	<i>John</i>
17.	AMOS KIMOTHO	FORTUNE FC	<i>John</i>
18.	ELIOD WERE	ULIZI STARS	<i>John</i>
19.	CHARLES GACHERU	TUSKER FC	<i>John</i>
20.			

REPUBLIC OF KENYA



THE JUDICIARY
OFFICE OF THE SPORTS DISPUTES TRIBUNAL
SDTSC NO. E036 OF 2022

APS BOMET FOOTBALL CLUB..... 1ST PETITIONER
KONA RANGERS FOOTBALL CLUB 2ND PETITIONER

-VERSUS-

FOOTBALL KENYA FEDERATION 1ST RESPONDENT
FOOTBALL KENYA FEDERATION NATIONAL EXECUTIVE
COMMITTEE 2ND RESPONDENT
FOOTBALL KENYA FEDERATION LEAGUES AND COMPETITION
COMMITTEE 3RD RESPONDENT
BARRY OTIENO 4TH RESPONDENT
DORIS PETRA MAO 5TH RESPONDENT
GORDON DAVIS CHEGE 6TH RESPONDENT
MICHAEL OUMA MAJUA 7TH RESPONDENT
JOSEPH OWUOR ANDERE 8TH RESPONDENT
TIMOTHY MURITHI NABEA 9TH RESPONDENT
AHMEDQADAR MOHAMED DABAR 10TH RESPONDENT
BISHOP TONY KWEA 11TH RESPONDENT
GABRIEL MGHENDI 12TH RESPONDENT
BENARD KORIR LANGAT 13TH RESPONDENT
DAVID KIPKORIR LAGAT 14TH RESPONDENT
MARGARET ANYANGO OMONDI 15TH RESPONDENT

- AND -

DIMBA PATRIOTS FOOTBALL CLUB 1ST INTERESTED PARTY
MAYENJE SANTOS FOOTBALL CLUB 2ND INTERESTED PARTY
KIBERA SOCCER WOMEN FC 3RD INTERESTED PARTY
CABINET SECRETARY FOR SPORTS AND YOUTH
AFFAIRS 4TH INTERESTED PARTY

as consolidated with
SDTSC NO. E038 OF 2022

SAMSON CHEROP.....PETITIONER

-VERSUS-

FOOTBALL KENYA FEDERATION.....1ST RESPONDENT
DORIS PETRA MAO.....2ND RESPONDENT
BARRY OTIENO.....3RD RESPONDENT
GORDON DAVIS CHEGE.....4TH RESPONDENT
MICHEAL OUMA MAJUA.....5TH RESPONDENT
JOSEPH ODUOR ANDERE.....6TH RESPONDENT
TIMOTHY MURITHI.....7TH RESPONDENT
AHMEDQADAR MOHAMED DABAR.....8TH RESPONDENT
BISHOP TONY KWEYA.....9TH RESPONDENT
BERNARD KORIR LAGAT.....10TH RESPONDENT
DAVID KIPKORIR BUNEI.....11TH RESPONDENT
GABRIEL MGHENDI.....12TH RESPONDENT
MARGARET ANYANGO OMONDI.....13TH RESPONDENT

AND

NATIONAL COUNTY FOOTBALL
ASSOCIATION AND 26 OTHERS.....INTERESTED PARTIES

as consolidated with
SDTSC NO. E039 OF 2022

MURANG'A SEAL FOOTBALL CLUB.....PETITIONER

-VERSUS-

FOOTBALL KENYA FEDERATION.....1ST RESPONDENT
NICHOLAS MWENDWA KITHUKU.....2ND RESPONDENT
DORIS PETER MAO.....3RD RESPONDENT
GORDON DAVIS CHEGE.....4TH RESPONDENT
MICHEAL OUMA MAJUA.....5TH RESPONDENT
JOSEPH ODUOR ANDERE.....6TH RESPONDENT
TIMOTHY MURITHI NABEA.....7TH RESPONDENT
AHMEDQADAR MOHAMED DABAR.....8TH RESPONDENT
BISHOP TONY KWEYA.....9TH RESPONDENT
GABRIEL MGHENDI.....10TH RESPONDENT
BERNARD KORIR LAGAT.....11TH RESPONDENT
DAVID KIPKORIR BUNEI.....12TH RESPONDENT
MARGARET ANYANGO OMONDI.....13TH RESPONDENT

CHRIS AMIMO.....14TH RESPONDENT
BARRY OTIENO.....15TH RESPONDENT
CABINET SECRETARY FOR YOUTH AFFAIRS,
SPORTS AND THE ARTS.....16TH RESPONDENT

AND

VIHIGA BULLETS FOOTBALL CLUB, MATHARE UNITED FC AND
GUSII FC..... INTERESTED PARTIES/CROSS PETITIONERS

VERSUS

CABINET SECRETARY MINISTRY OF SPORTS, CULTURE AND
HERITAGE.....RESPONDENT

DECISION

Panel:

John M. Ohaga SC, C.Arb	- Chairperson
J Njeri Onyango FCI Arb	- Member
Mary N Kimani	- Member

Appearances:

I. Appearances

- i. Mr. Arthur Kung'u (arthur@aknadvocates.co.ke) instructed by A K Ndumu Advocates for the Petitioners in SDTSC No. E036 of 2022;
- ii. Mr. Victor Omwebu (victor@litoromwebu.co.ke) instructed by Litoro & Omwebu for the 1st Respondent in E036, 1st to 3rd Respondents in E038
- iii. Mr. Munyendo (jmunyendo@gmail.com; jmunyendo@omclaw.co.ke) for the 2nd to 15th Respondents in E036, 4th to 13th Respondents in E038
- iv. Mr. Njoroge Mwaura (mwaura@bmnadvocates.co.ke) instructed by Busaidy Mwaura Ngarua & Company Advocates for the 1st and 2nd Interested Parties
- v. No appearance for the 4th Interested Party
- vi. Mr. Kibue (ekibue@gmail.com) for the proposed 5th Interested Party
- vii. Samson Cherop (samsoncherop@gmail.com) appearing in person in E038 of 2022;
- viii. Mr. Robert Macharia (mashanasta@gmail.com) instructed by Macharia Gakaria & Associates holding brief for Mr. Gakaria for the Petitioner in E039.
- ix. Mr. Njagi Wahome (wahomenjagi@csl.or.ke; wahomenjagi@gmail.com) for Nairobi County Football Association and 26 others;

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CONTENTS

Abbreviations

- | | |
|------------|--|
| 1. CFA | County Football Association |
| 2. FKF | Football Kenya Federation |
| 3. FKF NEC | Football Kenya Federation National Executive Committee |
| 4. FKFCC | Football Kenya Federation Caretaker Committee |
| 5. FKFTC | Football Kenya Federation Transition Committee |
| 6. FIFA | Fédération Internationale de Football Association |
| 7. NSL | National Super League |

A. INTRODUCTION

I. The Parties

1. The parties in SDTSC No. E036 of 2022 were as follows:
 - i. The 1st Petitioner is a professional Men's football Club based in Bomet County and playing the sport of football in the name and style of APS Bomet FC. It is a member of the FKF having its team participating at the material time in FKF's National Super League (hereinafter known as NSL).
 - ii. The 2nd Petitioner is a football Club based in Kakamega County. It is a member of the FKF having its team participating at the material time in the National Division One League.
 - iii. The 1st Respondent is an organization of an associative nature registered in Kenya in compliance with the Sports Act No. 25 of 2013 as a National Sports Organization.
 - iv. The 2nd Respondent is a Committee established under Article 37 of the FKF Constitution.
 - v. The 3rd Respondent is a Committee established under Article 48 of the FKF Constitution.
 - vi. The 4th to 15th Respondents are members of the FKF National Executive Committee, the 2nd Respondent herein.
 - vii. The 1st Interested Party is a football Club based in Nairobi County. It is a member of the FKF having its team participating at the material time in the National Division Two League.
 - viii. The 2nd Interested Party is a football Club based in Busia County. It is a member of the FKF having its team participating at the material time in the National Division Two League.
 - ix. The 3rd Interested Party is a football Club based in Nairobi Club. It is a member of the FKF having its team participating at the material time in the National Division One League.

- x. The 4th Interested Party is a Cabinet Secretary nominated by the President of Kenya to run the affairs in the Ministry of Sports, Culture and Heritage.
 - xi. The 1st to 5th Interested Parties are football clubs registered and taking part in FKF's second tier league known as the National Super League at the material time.
2. The parties in SDTSC No. E038 OF 2022 were as follows:
- i. The Petitioner is the interim treasurer of Baringo County Football Association.
 - ii. The 1st to 13th Respondents are the same parties as the 1st Respondent and the 4th to 15th Respondent in SDTSC No. E036 of 2022.
 - iii. The 1st to 27th Interested Parties are County Football Associations mandated to conduct football at the county level
3. The Parties in SDTSC No. E039 OF 2022 were as follows:
- i. The Petitioner is a limited liability Company incorporated within the Republic of Kenya. It owns and manages a professional football club based in Murang'a County and playing the sport of football in the name and style of Murang'a Seal FC. It is a member of the FKF having its senior team participating at the material time in FKF's second tier league known as the Football Kenya Federation National Super League (hereinafter referred to as the NSL).
 - ii. The 1st, 3rd to 13th and 15th Respondents are the same parties as in SDTSC No. E036 AND E038 of 2022.
 - iii. The 2nd Respondent is the President of the Football Kenya Federation.
 - iv. The 14th Respondent is a member of the FKF National Executive Committee.

- v. The Interested Parties/Cross Petitioners are football clubs playing in the Kenya Premier League at the material time based in Kakamega, Nairobi and Kisii County respectively.

II. Facts

4. The Cabinet Secretary for Sports, Culture and Heritage ('CS') at the material time made a decision on 11th November 2021, exercising her powers under Section 54 (1) of the Sports Act to appoint any person or committee to assume the management, control and conduct of the affairs of a sports organization.
5. To this extent, the Cabinet Secretary appointed the Football Kenya Federation Caretaker Committee to assume the powers and functions of the National Executive Council, a body of the Football Kenya Federation created under Article 37 of the FKF Constitution. The tenure of the Committee as indicated in the Sports Act was to be six (6) months.
6. The FKF Caretaker Committee would carry out its mandate in accordance with Gazette Notice No. 12374. Its functions were to:
 - i) Conduct of the affairs of the Football Kenya Federation in accordance with the Constitution of the FKF;
 - ii) Ensure the FKF operates within the provisions of the Sports Act;
 - iii) Co-ordinate and ensure the smooth running of FKF operations including team preparations for all local and international sporting events;
 - iv) Co-ordinate elections of officials of the FKF according to the Sports Act and the Sports Registrar Regulation of 2016; and
 - v) Hand over the management of FKF to the newly elected officials after the election. (emphasis added)
7. At the tail end of the 6-month period, the FKF Caretaker Committee, on 10th May 2022 submitted to the Cabinet Secretary a report detailing the

- progress on their issued directives. Among these recommendations, the Committee was of the view that the FKF Constitution should be amended to comply with the Constitution of Kenya and the Sports Act. Subsequently, elections to the FKF National Executive Committee would be carried out according to the new FKF Constitution.
8. It is with this recommendation in mind that the Cabinet Secretary of Sports, Culture and Heritage, on 13th May 2022 appointed under Gazette Notice No. 5518 the FKF Transition Committee with the outlined mandate to, *inter alia* co-ordinate and facilitate the validation of the draft Constitution of Football Kenya Federation.
 9. The FKF Transition Committee would, nevertheless, be constituted by the same members as those of the FKF Caretaker Committee.
 10. The FKF Caretaker Committee's tenure, as provided by the Gazette Notice would be for 5 weeks, during which the new constitution of the FKF would be validated and adopted. Moreso, the committee would manage the affairs of the FKF and ensure smooth running of football activities in accordance with the FKF Constitution.
 11. It is after the gazettelement of the Transition Committee that the head of its Secretariat, Lindah Oguttu, sent out a letter on 13th May 2022 informing club officials that the league matches would continue as scheduled in accordance with the fixtures issued by the Caretaker Committee.
 12. Further, the Cabinet Secretary for Sports, Culture and Heritage through Gazette Notice No. 7005 of 16th June 2022 appointed the FKF Transition Committee for a period of 2 months upon expiry.
 13. On 3rd November 2022, the FKF National Executive Committee in a bid to come back to office, regained control of the Federation following the lifting of the ban on Kenyan football by FIFA. They then held a meeting

wherein they resolved to annul all competitions held by the FKF committees appointed by the CS Sports Gender and Welfare.

14. These events necessitated the Claims by the Petitioners in SDTSC E036, E038 and E039 of 2022 herein.

B. PLEADINGS AND PRELIMINARIES

15. The suit in E036 was instituted by way of a Notice of Motion dated 14th of November 2022¹. The Notice of Motion was filed under a Certificate of Urgency seeking *inter alia* orders that the Resolutions made by the FKF National Executive Committee (FKF NEC) on 9th November 2022 be declared null and void.
16. The suits in E038 and E039 were instituted by way of Petitions dated 15th November 2022. The Petitions were filed simultaneously with Notices of Motion under Certificates of Urgency both dated 15th November 2022 seeking the declaration of the decision of FKF National Executive Committee to nullify the Kenya Premier League, National Super League, Women Premier League, Men's Division One and Women's Division One Leagues 2021/2022 as null and void.
17. The Tribunal issued interim orders on 15th November 2022 staying the decision by FKF National Executive Committee on promotions and relegations pending the full hearing and determination of the Petition.
18. To this extent the Petitions in E036, E038 and E039 of 2022 jointly raise the following issues:
 - a) *THAT an order be and is hereby issued declaring the Resolutions made by Football Kenya Federation National Executive Committee on 9th November 2022 as null and void;*

¹ Counsel for the Applicant explained that the failure to file accompanying Petition was occasioned by the speed with which the proceedings were commenced and the failure to file the Petition through the e-filing portal was inadvertent.

- b) *THAT an order be and is hereby issued to stay the decision by the Football Kenya Federation National Executive Committee on promotions and relegations, pending the full hearing and determination of the petition;*
- c) *THAT an order be and is hereby issued to validate the Kenya Premier League, National Super League, Women Premier League, Men's Division One and Women's Division One Leagues 2021/2022 fixture, standings and promotions or relegations as lawful;*
- d) *THAT an order be and is hereby issued to set aside the Resolutions of the 2nd to 15th Respondents declaring that there will be no promotions or relegations in the football leagues for the 2022/2023 season;*
- e) *THAT an order be and is hereby issued to set aside the decision of the 3rd Respondent in E036 not to include the Petitioners and Interested Parties in the recently released football league fixtures for the 2022/2023 season.*

- 19. The Respondents in E036, E038 and E039 of 2022 filed a common Replying Affidavit sworn by Michael Ouma Majua dated 29th November 2022.
- 20. The 1st Interested Party in E036 filed a Replying Affidavit sworn on its behalf by Dick Arudo dated 18th November 2022
- 21. The 2nd Interested Party in E036 filed a Replying Affidavit sworn on its behalf by Joseph Onyango dated 21st November 2022.

C. SUBSTANTIVE CLAIMS

I. The Petitioners' case

- 22. The Petitioners in E036 contended that the decision of the current Cabinet Secretary for Sports to purportedly repeal the previous Gazette Notice

- dated 11th November 2021 to disband the FKF is null and void and was of no legal consequence.
23. They contended that Gazette Notice that was issued by Cabinet Secretary on 11th November 2021 effectively disbanded the FKF NEC and the officials holding those positions at that time. It was not a suspension of those officials as contended by Respondents but a removal from office under powers granted to the Cabinet Secretary under Section 54(1)(b) of the Sports Act through a Gazette Notice. It was confirmed by the High Court in **Petition E473 of 2021** at paragraph 110 where the Court confirmed that the FKF NEC was rightfully disbanded by the Cabinet Secretary.
 24. Additionally, they relied on **SDTSC Petition 006 of 2021 Milton Nyakundi v FKF and others** wherein the Tribunal reaffirmed the position of the High Court and reiterated that the FKF NEC officials were legally removed from office. The Tribunal directed that these officials were effectively barred from making correspondence, decisions and announcements concerning the football affairs in the territory of Kenya having been duly removed from office.
 25. They contended that the declaration by the Cabinet Secretary through a press release does not have any legal authority to revoke that Gazette Notice and that it is trite law that a valid Gazette Notice can only be revoked by a court of law, tribunal or publishing of a subsequent Gazette Notice which did not occur, rather it was done through a verbal declaration by the Cabinet Secretary. Therefore, the declaration could not operate to repeal or overturn the decision of the Hight Court and the Tribunal in the aforementioned cases without further legal steps taken.
 26. They argued that the only way the FKF NEC officials could be reinstated validly was through a court order or by being re-elected as FKF NEC officials through the FKF General Assembly in accordance with the FKF

Constitution which they claimed had not occurred. They submitted that such a verbal declaration did not meet the Constitutional master to authorise and sanction such a public administrative function of such magnitude significance and legal consequence.

27. They argued that Section 54 of the Sports Act which the former Cabinet Secretary relied on to exercise her power to disband the FKF NEC, only empowers the Cabinet Secretary to intervene in the affairs of FKF after an inspection has been carried out pursuant to Section 52 of the Sports Act and it does not donate powers to the Cabinet Secretary to appoint or reinstate any officials removed from office in accordance with s 54(1)(b), therefore the current Cabinet Secretary's decision had no basis in law.
28. The Petitioners in E036 argued that they were entitled to audience before the Tribunal. They argued that the structure of the Appeals Committee established under Article 21 of the FKF Constitution was neither defined in the Constitution nor in the Rules and Regulations of FKF. They contended that since the Appeals Committee comprises of similar officials to the FKF NEC, they had no legal standing to comprise an Appeals Committee having been disbanded, and therefore the Petitioners had every right to seek redress before the Tribunal.
29. Finally, the Petitioners in E036 argued that the decision to nullify the 2021/2022 league was unlawful and their legitimate expectations were infringed upon. Firstly, when the FKF was disbanded by the Cabinet Secretary, the General Secretary issued communication to the football clubs on 11th November 2021 directing them to proceed with the leagues and activities notwithstanding that decision by the Cabinet Secretary which created the legitimate expectation. Secondly, Clause 2.7 of the Rules and Regulations on Promotion and Relegation requires that promotion and relegation should be automatic additional requirements other than performance. Rule 2.7.5 further requires that the promotion

- retention and relegation shall be based on sporting merit which the Petitioners rightfully earned, hence there was a legitimate expectation that that promotion would be honoured.
30. They also argued that the communication by the FKF NEC 9th November 2022 to disband the results of the previous season breached their right to fair administrative action under Article 47 of the Constitution of Kenya and Section 4 of the Fair Administrative Action Act. In the decision of **Petition E473 of 2021** at paragraph 103, the High Court cited the decision in *R v Chief Justice and 6 others, ex parte Moiyo Mataiya Ole Keiwua* [2010] eKLR and required that parties likely to be affected by a decision that infringes administrative action must be afforded an opportunity to be heard. They contended that the Respondents had not discharged the burden set in the above case to show that only in certain circumstance can there be a departure to the requirement for fair administrative action.
 31. Further in conformity with the Statutes of the FKF and the Rules and Regulations, at paragraph 80 of **Petition E473 of 2021**, the court was emphatic that FKF is firstly subject to the Constitution and Laws of Kenya. They claimed that in the press statement issued on 9th November 2022, the General Secretary made no reference to Constitution of Kenya, the Sports Act and the impugned report by leagues and competition committee which warranted the cancellation of the leagues.
 32. They argued that Article 39 of the FKF Constitution does not give the FKF NEC any powers to nullify the league as purported in the communication given by the Respondents and therefore, they acted in *ultra vires*.
 33. The Petitioners in E039 referred to Article 64 of the FKF Constitution which outlines the appointment of the members of the FKF Appeals Committee and contended that the members are put in office by the FKF NEC, and therefore they could not sit on an Appeals Committee by virtue of Article 15 (d) and (i) of the FIFA Statutes which provide that member

associations must ensure that judicial bodies are independent, there is separation of powers and the bodies must avoid conflict of interest.

34. The Petitioners referred to Rule 10.3.4 of the FKF Rules and Regulations which establishes the procedure for lodging an appeal. They argued that the role of the Appeals Committee was to hear appeals in respect to written disciplinary decisions.
35. They argued that an appeal must flow from a complaint lodged under Regulation 10.1 or a protest under Regulation 2.2 and therefore the decision in question made by the FKF NEC was not a decision that could be heard by the Appeals Committee. They contended that the makers of those Regulations did not envision a situation whereby a decision by the FKF NEC could be heard by the Appeals Committee of the same composition.
36. Additionally, they referred to Section 21 of the Statutory Instruments Act, stating that the Gazette Notice of 11th November 2021 is a statutory instrument which could expire after a prescribed amount of time or if the time is not prescribed, not more than 10 years, or after a repeal. They argued that a statutory instrument can only be repealed by another statutory instrument.
37. They also referred the Tribunal to Article 10 of the FIFA Regulations Governing the Application of the Statutes which provides the principles of promotion and relegation. They argued that Article 10(1) does not give discretion to member associations to decide who will be promoted and who will be relegated but shall depend on sporting merit.

II. The Respondents' case

38. The Respondents in E036 filed a Replying Affidavit on behalf of the Federation and its members sworn by Barry Otieno on 29th November 2022 and written submissions on 30th November 2022 which they would rely on.

39. The Respondents contended that the FKF is a private members' organisation of which membership is acquired under Article 11 of the FKF Constitution. They argued that whichever party had not applied to be a member must be defined as a non-member.
40. They argued that it is the duty of the General Secretary to make determinations, decisions or communicate the affairs of the Federation to members, and that the communication on 9th November 2022 was to the members.
41. They stated that members have rights to challenge or ask for further particulars of a decision made by the FKF NEC but contended that Article 67 of the FKF Constitution and Rule 10.3.5 of the FKF Rules and Regulations state that any decision of the FKF NEC is appealable to the FKF Appeals Committee.
42. They argued that the Petitioners should have approached the Tribunal to assert that the Appeals Committee is non-existent or has no capacity or bears no semblance of a forum where any determination can be made that can master any provision of the law under the Article 47 and 50 of the Constitution.
43. They cited the Court of Appeal case in *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR where the Court held that where internal dispute resolution mechanisms exist outside the courts, the same be exhausted before the jurisdiction of the courts is invoked.
44. They went on to argue that the CFAs had launched a public interest litigation because they had asserted that FKF should operate for the public good, and that the Tribunal should not hear every public interest litigation matter. They cited the Indian Supreme Courts' finding in *Ashok Kumar Pandey vs. State of West Bengal* in which the Chief Justice

commented that a public interest litigation must not become a political or private interest litigation.

45. Subsequently, they argued that Article 10.3.4.1 refers to a disciplinary hearing decision which was not the decision before the Tribunal and therefore Article 10.3.4.1 therefore was not available for the Petitioners' contention. Further, that Article 67 of the FKF Constitution places the Appeals Committee to be the body to which all appeals of the FKF committees' decisions are heard.
46. They further stated that under Article 64, the Appeals Committee is appointed by the General Assembly by way of a vote hence the FKF members must have been present and voted for the current Appeals Committee in the Annual General Meeting, and that the members have the capacity to raise the issue of review or removal of those appointments in a Special General Meeting.
47. They stated that under Rule 10.3.5, members have right to appeal against any decision by the FKF or its national committees, and hence the Tribunal cannot create a forum for non-members to challenge the decision.
48. They argued that the Petitioners should have exhausted internal dispute resolution mechanisms under Section 9(2) and (3) of the Fair Administrative Actions Act.
49. They further argued that the Respondents had not challenged the powers of the Cabinet Secretary under Section 54 of the Sports Act but asserted she had a time limit and there was no provision to allow her to extend that time, therefore having exhausted her powers to appoint a committee for 6 months, she had no powers to appoint or intervene in the management of the FKF hence the three Gazette Notices appointing the committees are null and void.

50. They argued that the three subsequent committees acted without any cause of law and the Tribunal should not validate the actions of an entity that is in office unlawfully. Further, that the Cabinet Secretary did not disband FKF as an entity, only the FKF NEC, hence there was no need to have the Transition Committee and FKF was sufficient to run its affairs.
51. The Respondents in E039 filed a Replying Affidavit sworn by Michael Ouma Majua dated 29th November 2022, stating that the Resolutions dated 9th November 2022 were necessary to prevent infringement of the Statutes, Regulations and Standing Order of FIFA, CAF, FKF and the laws of the game, and that the aggrieved Petitioners should have exhausted the prescribed internal mechanisms for redress in the FKF framework.
52. They stated that the Appeals Committee is part of the standing FKF committees and other judicial committees whose appointment is done by FKF NEC and ratified by the General Assembly. They cited SDTSC 21 *Migori Youth Football Club v FKF Transition Committee*, *Gogo v Dimba Sports* and SDTSC 17 *Sofapaka v FKF Caretaker Committee* where the Tribunal noted that the standing committees as constituted were still proper within the FKF Constitution.
53. With regards to Section 54(2) of the Sports Act, they contended that the test that must be employed to determine whether a provision is mandatory or directory, is to consider whether the non-compliance of a particular provision causes inconvenience or an injustice and if it does, the Tribunal will say that the provision has been complied with if it is obligatory in character.
54. With regard to legitimate expectations, they argued that it is not enough that the legitimate expectation should exist, in addition, it must be legitimate.

55. Rule 2.5.1 states that the winner of the league of the country is determined by the FKF from the final table standings and FIFA and CAF recognise one member association per country. They referred to Article 41(1) of FIFA statutes which states that each member has an obligation to ensure that their own affairs are managed independently and not influenced by third parties.
56. They referred to Article 16(3) of the FKF Constitution and argued that CAF came up with a framework to cushion its members from suspension if in any event anything occurred that would have allowed them to interact with Kenya.
57. They stated that what the Petitioners were asking for is an anticipation and not a legitimate expectation but rather a desire or hope. They further stated that third party interference was illegitimate and therefore they could not have a legitimate expectation of something that is illegitimate.
58. They claimed that the reasons why the FKF NEC did not summon the Petitioners was because there was an emergency and impracticability exception and an issue of confidentiality vis a vie the Integrity Department report which would prejudice the investigations by FIFA on match fixing that was rampant in the FKFCC and FKFTC.
59. Finally, they referred to Rule 8.1.5 which provides that no individual, or group of individuals or legal persons will have control in more than one club. They therefore contended that the lead Petitioners are run by the Kenya National Police Service and therefore they should not be entitled to the reliefs sought in the suit.

III. The Interested Parties' case

60. The 1st and 2nd Interested Parties in E036 contended that the Respondents were in contempt of the Tribunal by making the declarations, therefore they could not seek to appeal a decision that ought not to have been made in the first instance.

61. They also argued that Section 54(2) of the Sports Act does not limit the Cabinet Secretary from only appointing one committee but only limits the time for which it can exist and as such none of the three committees exceeded their time limits and therefore their appointments were regular, lawful and in consonance with the Sports Act.
62. They referred to a letter written by the 4th Respondent, Barry Otieno dated 11th November 2021 to all members of the FKF, directing them to continue with normal football activities. They argued that this created a legitimate expectation for all member and clubs because it was a direction to continue all normal football activities and therefore it went against their legitimate expectation to cancel the league.
63. Additionally, they claimed that no club or FKF member was consulted when the resolution was reached and therefore, they went against Article 47 and 50 of the Constitution by not granting the members and clubs a fair hearing yet the decision impacted a number of the members.
64. Further, they argued that it is only Rule 2.6 of the FKF Rules and Regulations 2019 that anticipates that a league can be declared null and void, where due to circumstances of force majeure the league has failed to be completed. They argued that the conditions as stipulated in Rule 2.6 did not occur in the 2020/2021 season to grant the FKF NEC the authority to cancel the league.
65. The 5th Interested Party in E036 argued that the FKF Appeals Committee as defined in the FKF Rules and Regulations 2019 can only hear disciplinary matters or as otherwise provided by the Statute and that therefore this matter does not fall under the jurisdiction of the Appeals Committee.
66. They further argued that Section 54 of the Sports Act does not limit the number of committees that might be set up by the Cabinet Secretary, that if in the opinion of the Cabinet Secretary the matters had not been dealt

with, it does not stop her from appointing another one as long as they do not exceed 6 months.

67. The Interested Parties in E038 contended that football is not a private affair as contended by the Respondents in High Court **Petition E473 of 2021** where they sought a petition seeking to annul the FKF Caretaker Committee. They referred to paragraph 79 of the decision where the Court cited *Robert Macharia v Sports Dispute Tribunal; Football Kenya Federation & 60 others (Interested Parties)* where it determined that FKF cannot operate only its own constitution or rules and regulations, but they must be guided by the Constitution of Kenya and the Sports Act.
68. Further, they argued that the FKF does not represent individuals but Kenya and that in doing so, they must have the interests of all stakeholders in football matters.
69. They claimed that they were not granted affiliation to the national body because FKF was not in compliance with the Sports Act and Sports Regulations which was why the Caretaker Committee was formed. They claimed that if the FKF was in compliance then the County Football Associations would be affiliated to the FKF.
70. They referred again to **Petition E473 of 2021** where the FKF had collected the registration documents for the County Football Associations to be registered as sport associations, but the FKF did not comply. The Court held that the Interested Parties who were County Football Associations had locus because they were stakeholders in football matters in Kenya.
71. The Interested Parties/Cross Petitioners in E039 contended that the FKF NEC decision was premised upon the FIFA Statutes and directives, the FKF Constitution and the Rules of Kenyan Football. They stated that the Petitioners and other Interested Parties had not controverted that the FKF took reports from their internal committees or ask for further particulars of their decision and whether the FKF NEC declined to give it to them.

72. They referred to Rule 10.3.1 of the FKF Rules and Regulations which state that save where the right of appeal is restricted in terms of any FKF Statute and/or these Rules, any party directly affected by any decision made or penalties imposed by any employee or official of FKF and/or any FKF Committee shall have the right to appeal to the FKF Appeals Committee, which they claimed the Petitioners had not pursued.
73. They urged the Tribunal to find that a breach, however blatant of the Fair Administrative Actions Act does not clothe the Tribunal with jurisdiction in view of the dictates under Section 9 of the same Act.
74. With regard to the *locus standi* of the CFAs, they asserted that the CFAs are an independent body with their own rules
75. With regard to the subsequent Gazette notices, they stated that the committees were the same committees with the same mandate so they could not be new committees, and that it is a continuation of what was there which is an infringement of the Sports Act.
76. They referred to Section 51 of the Interpretations and General Provisions Act which stipulates that if a person has the power to appoint any board commission or committee, they shall also have the power to remove or suspend or re-appoint or reinstate such a body.
77. They further contended that if Section 54 of the Sports Act is not complied with, it causes injustice, the injustice in this case the FKFTC running the national leagues in contravention of its mandates after the 6 months lead to the Interested Parties/Cross Petitioners being relegated.
78. They claimed that the FKF NEC relied on a report by the Integrity Department and NEC did not have to be convinced beyond reasonable doubt, they were comfortably satisfied that the league was a nullity in view of that report.

D. ISSUES FOR DETERMINATION

79. Pursuant to the directions of the Tribunal issued on 22nd November 2022, the Petitions in SDTSC No. E036, E038 and E039 of 2022 were consolidated as they all raised similar issues and sought similar orders with regards to staying the decision made by the FKF NEC.
80. Having considered all the facts and the pleadings herein, the Tribunal framed the following issues for determination:
- i. *Whether the Petitioners in SDTSC No. E036 & E039 of 2022 are entitled to audience before the Tribunal in view of the express provisions of Article 67(2) of the FKF Constitution, 2017 as read together with Rule 10.3.5 of the FKF Rules and Regulations Governing Kenyan Football (2019);*
 - ii. *Whether the appointment of the three (3) FKF Transition Committees by the Cabinet Secretary for Sports, Culture and Heritage (as she then was) through Gazette Notices No. 5518 dated May 13, 2022, No. 7005 dated June 16, 2022 and No. 9772 dated August 15, 2022 respectively, was regular, lawful and in consonance with Section 54(2) of the Sports Act, 2013;*
 - iii. *What is the legal effect and/or consequences, if any, of the repeal of the of the former Cabinet Secretary's decision of November 11, 2021 appointing the caretaker committee in lieu of the elected NEC by the current Cabinet Secretary for Youth Affairs, Sports & the Arts?*
 - iv. *Whether the decision nullifying the 2021/2022 league was lawful having regard to the following considerations:*
 - a) *the Petitioners' legitimate expectation;*
 - b) *the Petitioners' right to fair administrative action and fair hearing in terms of Articles 47 and 50 of the Constitution;*
 - v. *Whether County Football Associations have locus to enable them to seek relief of any nature before the Tribunal against the decision of the FKF National Executive Committee ('the NEC') dated 9th November, 2022 ('the decision');*

E. ANALYSIS

I. Whether the Petitioners in SDTSC No. E036 & E039 of 2022 are entitled to audience before the Tribunal in view of the express provisions of Article 67(2) of the FKF Constitution, 2017 as read together with Rule 10.3.5 of the FKF Rules and Regulations Governing Kenyan Football (2019);

81. Section 58 of the Sports Act provides:

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.”

82. Article 37(a) of the FKF Constitution provides for the Composition of the National Executive Committee as follows:

The National Executive Committee consists of the following members:

- i. The President;*
- ii. The Vice President*
- iii. One representative of the FKF Premier League;*
- iv. One representative of the FKF National Super League;*
- v. One female member*
- vi. Nine regional representatives;*
- vii. Two (2) co-opted members.*

83. Article 38 provides for Meetings as follows:

1. *The National Executive Committee shall meet at least once every three months in a year.*
 2. *The President shall convene the National Executive Committee meetings. If 50% of the Executive Committee members request a meeting, the President shall convene it within 21 days failing which the members requesting shall convene the meeting*
 3. *The President shall compile the agenda. Each member of the National Executive Committee is entitled to propose items for inclusion in the agenda. The members of the National Executive Committee must submit the items they wish to be included in the agenda for the meeting to the general secretariat at least seven days before the meeting. The agenda must be sent out to the members of the Executive Committee at least seven days before the meeting.*
 4. *The General Secretary shall take part in the meetings of the National Executive Committee without voting rights but in a consultative role and shall be responsible for taking and circulating the minutes thereof. If the General Secretary is unable to attend a meeting s/he may nominate a representative to attend the meeting on his/her behalf, subject to approval of the National Executive Committee.*
 5. *The meetings of the National Executive Committee shall not be held in public. The National Executive Committee may, however, invite third parties to attend. Those third parties shall not have voting rights, and may only express an opinion with the permission of the Executive Committee.*
84. Article 67 of the FKF Constitution provides for the Appeals Committee. Clause 2 and 3 of the Article provide that:
- "2. The Appeals Committee is responsible for hearing appeals against all decisions determined by all committees.*
 - 3. Decisions pronounced by the Appeals Committee may be appealed to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, or to a national, independent Arbitration Tribunal recognised by FKF, as specified in this Constitution."*

85. Rule 10.3.1 of the Rules and Regulations Governing Kenyan Football (2019) also provide that:
- “Save where the right of appeal is restricted in terms of any FKF Statute and/or these Rules, any party directly affected by any decision made or penalties imposed by any employee or official of FKF and/or any FKF Committee shall have the right to appeal to the FKF Appeals Committee.”*
86. Additionally, Regulation 10.3.5 of the 2019 Rules provides that Appeals shall lie from the decisions of the FKF and any of its Committees to the Appeals Committee.
87. This Tribunal held in **SDTSC E001 of 2022 Fortune Ladies FC vs Ali Amor & Anor** that the appointment of the FKF Caretaker Committee and, effectively, all subsequent Committees, did not negate the mandate of the already existing FKF Bodies, specifically the Standing Committees and Judicial Bodies.
88. The wording of the FKF Constitution is such that the Appeals Committee is constituted for the purpose of determining Appeals from decisions of ‘every committee’.
89. We are, however, not persuaded, having regard to nature of matters that the NEC is required to consider, and the manner in which it is required to consider them, that the NEC is a Committee whose decision is amenable to challenge before the Appeals Committee.
90. The NEC makes policy decisions on administration of Kenyan football. Third parties such as the Secretariat are not involved in the making of decisions as they lack voting rights and can only suggest opinions with the permission of the NEC. The rest of the Committees assist the NEC in executing its mandate as standing committees or judicial bodies. Additionally, the NEC’s manner of appointment is vastly different from the rest of the Committees. The NEC officials are appointed through

elections conducted in the General Assembly in accordance with the provisions of Article 37(d) of the FKF Constitution. In contrast, the appointment of the rest of the Committees is undertaken by the governing National Executive Committee.

91. We are therefore unable to hold that the National Executive Committee falls within the definition of 'Committee' as provided for in Article 67 of the FKF Constitution as well as Rule 10.3 of the Rules Governing Kenyan Football (2019).
92. Having reached this conclusion, it becomes clear that the assertion by the Respondents that the Petitioners should have exhausted the internal dispute resolution mechanism cannot be sustained, as there was no decision capable of being appealed to the Appeals Committee.
93. Once this is understood, the objections premised in the provisions of Section 9 of the Fair Administrative Actions Act fall away and allow the Petitioners direct audience before the Tribunal. Accordingly, we find in favour of the Petitioners on this issue by holding that indeed they had the right of audience before the Tribunal in challenging the decision of the NEC made on 9th November 2021.

II. Furthermore, the question whether the NEC is validly in place has been called into question. As such, whether the Petitioners should have validly brought the challenge as an Appeal before the Appeals Committee shall hinge on this Tribunal's decision as to whether the National Executive Committee that made the decision on the 9th November 2022 was validly constituted. Whether the appointment of the three (3) FKF Transition Committees by the Cabinet Secretary for Sports, Culture and Heritage (as she then was) through Gazette Notices No. 5518 dated May 13, 2022, No. 7005 dated June 16, 2022 and No. 9772 dated August 15, 2022 respectively, was regular, lawful and in consonance with Section 54(2) of the Sports Act, 2013;

94. Section 54 of the Sports Act, 2013 provides for the intervention by Cabinet Secretary in management of Sports Organizations after an inspection has been conducted and the Organization has refused to comply with the recommendations of an inspection. Section 54(1) of the Sports Act provides for situations where the Cabinet Secretary can appoint any person or committee to assume the management, control and conduct of the affairs of a sports organization. Section 54(2) of the Sports Act further imposes a limit on this power and subsequently provides that:

“The appointment of a person or committee under this section shall be for such period as the Cabinet Secretary shall specify in the instrument of appointment, but shall not exceed six months.”

95. The decision of the Cabinet Secretary for Sports, Culture and Heritage (as she then was) to appoint a Committee in place of FKF NEC was first made on 11th November 2021 and published in a Gazette Notice on 12th November 2021. It followed the set procedure stipulated in the Act that is the Inspection, non-compliance with the Recommendations from

Inspection then the Actual appointment of a person or committee in charge of the Organization.

96. The High Court made the finding that the power was legally exercised in a Judgment delivered on 10th May 2022 in **Football Kenya Federation (Fkf & 2 others v Heritage & 5 others; Club & 7 others (Interested Party) (Petition E473 of 2021) [2022] KEHC 3387 (KLR) (Constitutional and Human Rights) (10 May 2022) (Judgment)** where the learned Judge, having examined all the evidence presented before her, stated as follows:

“110. It must also be noted that the caretaker committee appointed to run the affairs of FKF was gazetted on 12th November, 2021. Its term of six (6) months ran from 11th November, 2021. This court not being privy to the Recommendations and the outcome of any investigations carried out cannot reinstate the National Executive Committee of FKF which was disbanded by the 1st Respondent vide the Gazette Notice that appointed the Caretaker Committee. The reason is that the 1st Respondent acted within her powers owing to the dire situation at FKF.

111. After all the above deliberations I find that save for the issue of the petitioners not being served with the report/recommendations for their reaction and which has been well explained, I find that the respondents acted within their mandate under the Sports Act to save FKF.”

97. The import of the above is that the National Executive Committee was disbanded and the FKF Caretaker Committee assumed the management and Control of FKF for a period of 6 months.

98. The Merriam- Webster Dictionary defines ‘disband’ as:

“to break up the organization of: DISSOLVE”

99. The Collins Dictionary further defines ‘disband’ as:

*“If someone **disbands** a group of people, or if the group **disbands**, it stops operating as a single unit.*

Synonyms: dismiss, separate, break up, scatter More Synonyms of disband

100. The Gazette Notice No. 12374 dated 11th November 2021 but published on 12th November 2021 stated that:
- “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...”**
101. The appointment of the FKF Caretaker Committee, primarily in 2021 through Gazette Notice No. 12374, was to effectively replace the National Executive Committee in its constitution and mandate, extinguishing its member’s term in office. This position was held in **Football Kenya Federation & 2 others v Cabinet Secretary Ministry of Sports, Culture and Heritage & 5 others; Kariobangi Sharks Football Club & 7 others (Interested parties) [2021] eKLR.**
102. We heard from the Respondents that this decision has been challenged at the Court of Appeal. However, it was not asserted that the Court of Appeal has stayed the judgement of the High Court and the Tribunal is obliged to abide by the judgment of the High Court until the same is reversed or otherwise stayed.
103. We are aware that the Football Kenya Federation (FKF) have alleged that for the past one (1) year, there was no Kenyan Football taking place in the Country. We assume that the computation of the period was premised on when the Caretaker Committee was first appointed.
104. For the avoidance of doubt, the Tribunal disagrees and is bound by the decision of the High Court in **Petition No. E473 of 2021 *supra*** in finding that the FKF Caretaker Committee was validly instituted and the CS (at the time) correctly exercised her powers by disbanding the NEC and

appointing a Committee to assume management of the affairs of the FKF. Therefore, for the 6 months from 11th November 2021, the FKF Caretaker Committee was legally in charge of Kenyan Football and that the NEC were effectively discharged from their office and duties the ban from FIFA notwithstanding.

105. FKF had previously argued that the Committee was not validly in place by virtue of the FIFA ban and that the appointment breached the FIFA Rules and Regulations. A similar argument had also been advanced by the FKF in *Football Kenya Federation (Fkf & 2 others v Heritage & 5 others; Club & 7 others (Interested Party) supra*. They were reminded that the Regulations made by FIFA are not a treaty as has been held in several decisions and that by virtue of them approaching the Court they recognized that national law applies to them. The Court stated that:

“The 1st petitioner has also come to court on the basis that the 1st and 2nd respondents contravened their mandate under section 52 of the Sports Act and as a result breached their constitutional rights. This is a clear indication that they are subject to the Sports Act and the Constitution of Kenya and the national laws governing the Nation of Kenya, a fact they admitted in their oral arguments. The other assertions are untenable. FKF is first and foremost subject to the Constitution of Kenya and the Laws of Kenya. It receives funding of activities from the National Treasury.”

106. Indeed, the FKF is a creature of the Sports Act and must necessarily comply with municipal law as was affirmed in the above case. We are inclined to agree with the submissions of the Petitioners that the ban was in relation to Kenyan football participating in International Competitions rather than Kenyan football as a whole. Local and national football was legally taking place under the provisions of the Sports Act and the Constitution during the life of the Caretaker Committee.

107. However, upon the expiry of the first six (6) month period, the Cabinet Secretary appointed several Transition Committees. Three (3) FKF Transition Committees were appointed through Gazette Notices No. 5518 dated May 13, 2022, No. 7005 dated June 16, 2022 and No. 9772 dated August 15, 2022 respectively.
108. However, we have outlined that Section 54(2) of the Sports Act deliberately limits the period with which a caretaker committee can be appointed to a period not exceeding 6 months. Despite the urging of the Petitioners' arguments that the CS is unrestricted in the number of committees to be appointed, in our view this provision limits the authority of the CS to interfere with the running of a Sports Organisation for more than 6 months and enhances their independence.
109. Upon expiry of the FKF Caretaker Committee's term of six (6) months from 11th November 2021, the control of the Sports Organisation should have been handed back to the newly elected officials of the Sports Organisation. In our view, the mandate of the Committee or person appointed under Section 54(1) of the Sports Act is limited to running the affairs of the Sports Organisation on an interim basis and with particular focus on implementing the recommendations of the Inspection Report.
110. In further our considered view, the Cabinet Secretary for Sports appreciated that the NEC was disbanded and had also mandated the Caretaker Committee to co-ordinate elections of officials of the FKF according to the Sports Act and the Sports Registrar Regulation of 2016 and to hand over the management of FKF to the newly elected officials after the election.
111. For some reason which we are unable to discern, the Cabinet Secretary seemed to have departed from overseeing the full mandate of the Caretaker Committee and appointed several Transition Committees upon the expiry of the Caretaker Committee's mandate.

112. The import of the Gazette Notice issued on 11th November 2021 is that the FKF did not have a NEC in place. The election of members of NEC is undertaken according to Articles 27 and 28 of the FKF Constitution (2017). Upon the expiry of the Caretaker Committee's mandate on 11th May 2022, there was no lawful body in charge of FKF. There was no NEC and the Cabinet Secretary did not validly exercise her powers in appointing the Transition Committees.
113. The three subsequent Transition Committees therefore constituted a usurpation of the independence of the FKF and their appointment was irregular, unlawful and not in consonance with the provisions of Section 54(2) of the Sports Act, 2013.
114. The FKF Constitution as well as the Sports Act does not envision a scenario where the Cabinet Secretary can reappoint persons as members of the National Executive Committee by Gazette Notice or otherwise. This provision is likely present to prevent third party interference. In their wisdom, Parliament drafted an elaborate procedure before the appointment of a manager (on an interim basis) of a Sports Organisation. To this end, they seem to have a common objective. The Sports Act does not give the Cabinet Secretary for the time being in Charge of Sports the power to appoint an official save for on an interim basis and after the current management has failed to implement the recommendations of the inspection report.
115. We are aware that the High Court made a decision upholding the removal of the NEC members in **Petition No. E473 of 2021** *supra*. It is undisputed that the decision was appealed but there was no decision by either the High Court or the Court of Appeal staying the application of the decision. The actions of the Cabinet Secretary in declaring that the NEC was validly in office on 4th November 2022 was therefore *sub judice* as we understand the validity of the former CS's decision is still under

consideration by the Court of Appeal. The CS could not re-appoint members to office who had in law, ceased to hold those offices.

116. Similarly, and without prejudice to the foregoing, the letter from the CS on 4th November 2022 to FIFA and the communications to the media are not statutory instruments, but declarations which are ineffectual to reappoint members of the NEC to an already disbanded committee. In other words, executive fiat is not sufficient to put in place members of what is otherwise an elected body. We are persuaded that the correct position in compliance with the Sports Act would have been a fresh election of new FKF NEC officials into office.
117. For the avoidance of doubt, from 11th May 2022 to date, there has been no legally constituted body running the affairs of the FKF and the recent declaration by the CS resulting in the disbanded NEC taking over the affairs of the Federation is without lawful basis.

III. The legal effect of the appointment of the caretaker committee in lieu of the elected NEC

118. As already explained above, the appointment of the Caretaker Committee had the effect of removing from office the National Executive Committee as this appears clearly from a reading of Section 54(1) of the Sports Act which provides as follows:

“Where a sports organisation fails to comply with the recommendations of an inspection, the Cabinet Secretary may -

- (a) appoint any person or committee to assume the management, control and conduct of the affairs of a sports organization, to exercise the powers and functions of the sports organization to the exclusion of its officials, including the use of its corporate seal, where the sports

organization concerned has been unable to conduct its affairs in a proper manner; or

(b) 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.”

119. As we have explained above, the High Court has upheld the decision of the Cabinet Secretary and has stated that the National Executive Committee was disbanded. We have gone to significant length to explore the meaning of disband.

120. The effect of the foregoing therefore, is that there was no National Executive Committee in place capable of making the decision of 9th November 2022 which is the subject of the challenge by the Petitioners. This conclusion rises from the understanding in law of the effect of a decision or act that is void. Lord Denning explained this aptly as follows: in the often-cited case of **MacFoy v United Africa Company Limited [1961] 3 All ER 1169** about the effect of nullity:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse. So will this judgment collapse if the statement of claim was a nullity. But if an act is only voidable, then it is not automatically void. It is only an irregularity which may be waived. It is not to be avoided unless something is done to avoid it. There must be an order of the court setting

it aside: and the court has a discretion whether to set it aside or not. It will do so if justice demands it but not otherwise. Meanwhile it remains good and a support for all that has been done under it. So will this statement of claim be a support for the judgment, if it was only voidable and not void."

121. The Tribunal appreciates that this conclusion has significant ramifications for the running of football in Kenya and will return to address this issue.
122. This conclusion makes it unnecessary to explore the issues as to whether the Petitioners' legitimate expectation and whether there was a breach of the Petitioners' right to Fair Administrative Action and a right to fair hearing should be determined. Nonetheless, in the event that we are wrong in our conclusion as to the legal effect of the appointment of the Caretaker Committee, we will give consideration to the additional issues framed by the Tribunal for consideration.

IV. Whether the decision nullifying the 2021/2022 league was lawful having regard to the following considerations:

- a. the Petitioners' legitimate expectation;
123. The Petitioners have contended that the decision to nullify the leagues was against their legitimate expectation because they honoured matches expending considerable resources and played under the management of the Caretaker Committee and the Transition Committees.
124. We shall use the Kenya Premier League as a sample to illustrate the management and control of the FKF Caretaker Committee over the various football leagues in Kenya.
125. The First Match Day of the Kenya Premier League Division 2021-2022 season took place on 25th September 2021. The NEC was the body in

control of the management of Football in Kenya at the time. Matchday 6 was played between 5th and 7th November 2021 and this appears to be the last round of fixtures played under the FKF regime. The Gazette notice issued appointing the Caretaker Committee was issued on 11th November 2021. We have decided that the FKF Caretaker Committee was indeed validly in place and there is no need to rehash that fact.

126. There appears to be a period when no matches were played in one of the FKF leagues, the Kenya Premier League, between 7th November 2021 and 4th December 2021. There seems to be a period where there was uncertainty over whether the league should continue. However, the Clubs decided to participate in the league from 4th December 2021. Three matchdays that is 7, 8 and 9 were affected by the uncertainty and the matches had to be rescheduled. The last match day to be played under the control of the FKF Caretaker Committee was Matchday 29 from 5th to 9th May 2022. The mandate of the Caretaker Committee lapsed on 12th May 2022.
127. The Cabinet Secretary subsequently proceeded to appoint several Transition Committees with compositions that mirror the existing Caretaker Committee to assume and manage football in the Country. She gazetted the same under the auspices of Section 54(1) of the Sports Act, 2013. For the remaining 5 Matchdays, the league was under the care of the Transition Committees.
128. The Petitioners have alleged that the Gazette Notice gave the Committee legal standing to organize the matches in question while the Respondents have disputed the same.
129. We find that the Football Clubs were indeed bound by their duty to honour matches that were organised by the legal Caretaker Committee from 11th November 2021 to 11th May 2022. However, we have determined that the Transition Committees were a usurpation of power

- by the CS and that they were illegal, the body that constituted them did not have any legal standing.
130. The facts are that five matchdays in the FKF Premier League were played under the management and control of the FKF Transition Committees. Several matches had also been played and supervised by the Transition Committee in the lower divisions of the league as well as in the Leagues designated for women football. Unfortunately, the Committees were illegal and every action of theirs was not in consonance with the Constitution and national law.
131. However, it was not the place of the FKF members to decide what is law and what is not. It seems to us that every club decided to participate in the league rather than face a penalty of forfeit and being docked two goals, particularly with the leagues being in the business end of the season where points and goal differences count the most. In our view, because of the Statutory instrument being in place the Clubs had a legitimate expectation that the Committee was validly constituted and they had legitimate power to manage and oversee the league until its completion.
132. The Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others** [2014] eKLR outlined an instance when legitimate expectation would arise as follows:
- “An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil.”*
133. The test for legitimate expectation was outlined in *R v Devon County Council, ex parte Baker and Another*; *R v. Durham County, ex parte Curtis and Another* in support of the proposition that a claim of legitimate expectation can only be established when there is a clear representation, upon which it was reasonable for the claimant to rely; and

if this condition is fulfilled, then the public body will be bound by the representation, unless its promise is inconsistent with its statutory obligations.

134. In adjudicating legitimate expectation claims, the Court follows a two-step approach as explained in the case of **Republic v Principal Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO** [2019] eKLR;

- I. *Firstly, it asks whether the administrator's actions created a reasonable expectation in the mind of the aggrieved party. If the answer to this question is affirmative, then;*
- II. *Secondly, whether the expectation is legitimate. If the answer to the second question is equally affirmative, then the court will hold the administrator to the representation, that is enforce the legitimate expectation.*

135. We find that indeed, the subsequent gazette notices, notwithstanding our finding on their legality, was a clear representation by the Cabinet Secretary that the committees were entitled to run football and that the same was reasonably relied upon by FKF members in participating in fixtures under the control of the Transition Committees given that no interpretation was offered by the Courts of Law as to whether the actions of the Cabinet Secretary in charge of Sports were *ultra vires*.

136. We are persuaded that absent a definitive finding as to the legality or otherwise of the various Transition Committees, the Petitioners as well as other clubs and players participating in the various leagues were entitled to presume that their participation in those leagues was lawful and that the outcome of the matches and competitions held and organized by the Transition Committees would be recognised and upheld.

137. Clubs spent considerable resources in recruiting players, preparing for matches travelling to honour fixtures and generally participating in the activities arranged by the bodies established for the purpose of running football in Kenya.
138. We have demonstrated above that participation in the various leagues commenced before the appointment of the Caretaker Committee and continued throughout the lifespan of both the Caretaker Committee and the subsequent transition committees. It will be a grave injustice to deprive clubs and players of the legitimate expectation that their participation in the leagues would be recognized on the basis of sporting merit the legality or otherwise of the subsequent Transition Committees notwithstanding.
139. We therefore decide this issue in favour of the Petitioners.

b. the Petitioners' right to fair administrative action and fair hearing in terms of Articles 47 and 50 of the Constitution;

140. The Petitioners have advanced the two-pronged argument that the decision was made without regard to the safeguards provided under Articles 47 of the Constitution of Kenya (2010) and the Fair administrative Actions Act as well as in regard the right to a Fair Hearing. Parliament has enacted the Fair Administrative Actions Act to give effect to Article 47(1) of the Constitution. Section 2 of the Act defines Administrative Action to include:
- (i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
 - (ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

141. Section 4(3) of the Act is clear that where an administrative action is likely to adversely affect the rights and fundamental freedoms of any person, the administrator shall give the party affected by the decision:

- i) prior and adequate notice of the nature and reasons for the proposed administrative action;
- ii) an opportunity to be heard and to make representations in that regard;
- iii) notice of a right to a review or internal appeal against an administrative decision, where applicable;
- iv) A statement of reasons pursuant to section 6;
- v) Notice of the right to legal representation, where applicable;
- vi) Notice of the right to cross-examine or where applicable; or
- vii) Information, materials, and evidence to be relied upon in making the decision or taking the administrative action.

142. It is uncontroverted that the Respondent did not allow the Petitioners any opportunity, including prior notice of the impugned decision, to participate in the decision-making process. Indeed, it is the Respondents' case that this was a decision it was entitled to make based on various reports that it received from designated committees. The nature of those reports is not important for the purpose of this decision save to state that it is clear that there was no compliance with the safeguards provided in the Fair Administrative Actions Act.

V. Whether County Football Associations have locus to enable them to seek relief of any nature before the Tribunal against the decision of the FKF National Executive Committee ('the NEC') dated 9th November, 2022 ('the decision');

143. We find it unnecessary to rule on whether the County Football Associations (CFAs) have locus to enable them seek relief of any nature against the decision of NEC. We have established that it was not validly in place and their decision was null and void.

144. However, CFAs are affected by the decisions of the FKF and the FKF has a mandate to organize and supervise football in Kenya at all levels

including County. The decisions of the NEC will trickle down to CFAs and they are therefore entitled to seek relief against a decision of the NEC.

E. DISPOSITION

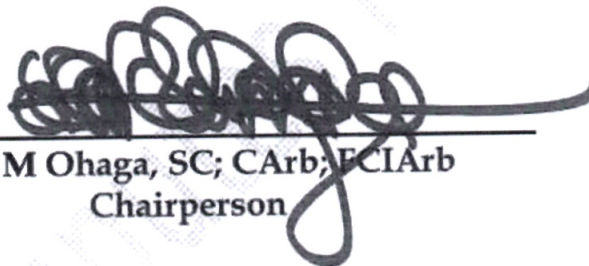
145. We recognize that this conclusion relating to the existence of the National Executive Committee (NEC) has significant ramifications for the running of football in Kenya.
146. We also recognize that Kenyan football has undergone a turbulent period and that significant positive steps have been made towards restoring the place of Kenyan football in the global community of football playing nations.
147. For this reason, we direct that this decision be transmitted to the General Assembly of the FKF together with the Cabinet Secretary responsible for Sports with a view to requiring them to take such steps as are available to them in law to put in place the proper structures and mechanisms to ensure the continued running of Football in Kenya in accordance with the provisions of the Sports Act and the FKF Constitution. We require that this be undertaken within thirty (30) days from the date of this decision.
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.
149. We do not consider it necessary therefore to address the individual prayers sought in the Petitions as these must follow as a matter of course.
150. We appreciate however, that there may be uncertainty with respect to the interpretation of this decision as it affects the secondary issues that the Tribunal had framed, but which were not argued before us and we will allow the parties the opportunity to reflect on this decision and to seek such clarification as may be necessary for the purpose of giving practical

effect to the decision. We will therefore mention the matter for this purpose on 13th December 2022 at 2.30 pm.

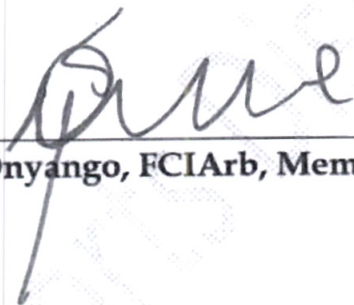
151. Orders accordingly;
152. Costs are reserved,
153. The right of appeal is in accordance with Rule 23 of the Sports Disputes Tribunal, 2022.
154. The Tribunal thanks all Counsel and the Parties for their co-operation in working within the strict timelines and for their industry in addressing the issues before the Tribunal.

Dated this 6th day of December, 2022.

Signed:



John M Ohaga, SC; CARb; FCI Arb
Chairperson



J Njeri Onyango, FCI Arb, Member



Ms. Mary N. Kimani, Member

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 STDC 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

Ngala Jairus
JUDGE



MINISTRY OF YOUTH AFFAIRS, SPORTS AND THE ARTS

BRIEF REPORT TO FIFA ON THE CURRENT SITUATION OF FOOTBALL IN KENYA AFTER THE FIFA INSPECTION MEETING WITH THE CABINET SECRETARY ON 9TH JANUARY, 2023.

BACKGROUND

Subsequent to the appointment of the Caretaker Committee on **11th November, 2021**, and the action of the current Cabinet Secretary on **4th November, 2022**, to meet the conditions set by the FIFA Council, numerous legal suits challenging the appointment and the mandate of the Caretaker Committee, and the legality of the FKF National Executive Committee, have been instituted. Key among them are **Constitutional Petition E473 of 2021** at the High Court and **SDTSC NO. E036 of 2022** at the Sports Disputes Tribunal.

A. HIGH COURT JUDGEMENT OF PETITION E473 OF 2021

- 1) Petition E473 of 2021 arising from the inspection of FKF operations and the subsequent appointment of the FKF Caretaker Committee and Secretary to the FKF Caretaker Committee was filed at the High Court of Kenya **on 22nd November, 2021**.
- 2) The High Court, upon analysis of submissions in the aforementioned Petition found the following issues for determination:
 - i. The status of the FIFA Statutes and its applicability to football in Kenya;

- ii. Whether the appointment of the FKF Caretaker Committee and the Secretary to the FKF Caretaker Committee was in violation of the Constitution of Kenya and the Sports Act, 2013;
- iii. Whether the rights of the petitioners were violated; and
- iv. Whether the reliefs sought by the petitioners should be granted.

3) Issue 2(ii) as mentioned above on the status of the FKF National Executive Committee, forms the basis of this brief.

- 4) The Court, in its judgment, indicated that **Sections 52, 53 and 54 of the Sports Act and Regulation 19 of the Sports Registrar Regulations, 2016**, which allow the Sports Registrar to, at any time, or if directed by the Cabinet Secretary, cause an inspection of any sports organization, **were applicable** in the material Petition.
- 5) Further, the Court stated that by it not being privy to the recommendations of the Inspection Committee and the outcomes of any investigations carried out, **it could not reinstate the FKF National Executive Committee** which was disbanded by the Cabinet Secretary vide the Gazette Notice that appointed the Caretaker Committee. It maintained that the Cabinet Secretary had acted within her powers and mandate owing to the dire situation at FKF.
- 6) It is important to note that the Court, in its judgement, **determined that the Petitioners (FKF, Nick Mwendwa and Barry Otieno) had not been served with the report/recommendations of the Inspection Committee for their reaction and directed the Sports Registrar (Rose M. N. Wasike) to furnish them with the same (within 14 days) of the issuance of the judgment.**
- 7) FKF has since appealed the court's decision on grounds *inter alia* that the Learned Judge erred in Law in finding that the appellants were denied the right to a fair hearing but still held that the respondents were justified in violating the appellants'

right to fair administrative action and application of the principles of natural justice.

THIS APPEAL IS YET TO BE DETERMINED.

B. SPORTS DISPUTES TRIBUNAL RULING ON THE FKF NEC

- 8) The Sports Dispute Tribunal (SDT), on 6th December, 2022, among other issues, determined the **legal and/or consequences of the repeal of the former Cabinet Secretary's decision of 11th November, 2021**, which appointed the Caretaker Committee in lieu of the elected NEC. In its determination, the SDT relied on the High Court judgment of Petition E473 of 2021 where the learned judge stated that the Court could not reinstate the FKF National Executive Committee which was disbanded by the Cabinet Secretary. The SDT further determined that the import of the aforementioned was that the National Executive Committee was disbanded and the FKF Caretaker Committee assumed **the management and control of the FKF for a period of 6 months.**

D. ASSESMENT

- 9) From the foregoing, it can be argued that **on the basis of the High Court Judgement, there is no NEC in place.** This is because the appeal filed by FKF did not seek a stay of execution of the High Court Judgment in Petition **No. E473 of 2021.**
- 10) It is important for FIFA to appreciate that concerns and questions continue to cloud the status of the leadership of Kenyan football. **These concerns and questions must be resolved with urgency.**
- 11) The Government of Kenya is committed to working with FIFA towards this end.

E. RECOMMENDATIONS

- 12) By reason of the perceived leadership vacuum at FKF and the persistent concerns raised by football stakeholders in Kenya, it would be in the best interest of Kenyan football, for FIFA to investigate the allegations against FKF and its current leadership, and engage the widest possible spectrum of football stakeholders to

find an amicable solution. *(We hereby enclose reports of the Inspection Committee and the Caretaker Committee as **Annexes A and B**, respectively).*

13) In the event that FIFA establishes actionable grounds, or should an amicable solution between the FKF and the football stakeholders prove impossible, then FIFA may want to consider invoking of **Article 8 (2) of the FIFA Statutes**, which provides for the formation of a **Normalization Committee** for a specified period of time.

14) In the spirit of collaboration and partnership essential for returning Kenyan football to normalcy, the Government of Kenya would welcome the input of FIFA in the impending process of amending the Sports Act, 2013 and the FKF Constitution in line with both the law of Kenya and the FIFA Statutes.

Once again, The Government of Kenya will collaborate with FIFA to revitalize Kenyan football.

Dated 10th January, 2023

Ministry of Youth Affairs, Sports and the Arts