



Oluoch v Crebral Palsy Sports Federation & 5 others; Milare (Interested Party) (Civil Appeal E162 of 2023) [2023] KEHC 17681 (KLR) (Civ) (24 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17681 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E162 OF 2023

AN ONGERI, J

MAY 24, 2023

BETWEEN

AGNES OLUOCH APPELLANT

AND

CREBRAL PALSY SPORTS FEDERATION 1ST RESPONDENT

**KENYA SPORTS FEDERATION FOR THE MENTALLY
HANDICAPPED 2ND RESPONDENT**

LYDIA IREGI 3RD RESPONDENT

PAULINE AQUOR AWANGE 4TH RESPONDENT

KENYA NATIONAL PARALYMPIC COMMITTEE 5TH RESPONDENT

ELIJAH ALIERO 6TH RESPONDENT

AND

RONALD MILARE INTERESTED PARTY

RULING

1. The application coming for consideration is the one dated March 14, 2023 seeking the following orders;
 - i. That the honourable court be pleased to certify the application herein as urgent and hear the same *ex-parte* in the first instance.
 - ii. That there be a stay of execution of the orders and any consequential action emanating from the decision of the Sports Disputes Tribunal(SDT) – E Gichuru Kiplagat; Mary Nyokabi Kimani;



and Peter Ochieng dated and delivered on February 28, 2023 in SDTSC No E034 of 2022 pending the hearing and determination of this application.

- iii. That there be a stay of execution of the orders and any consequential action emanating from the decision of the Sports Disputes Tribunal – E Gichuru Kiplagat; Mary Nyokabi Kimani; and Peter Ochieng dated and delivered on February 28, 2023 in SDTSC No E034 of 2022 pending the hearing and determination of the applicant’s appeal.
 - iv. That the costs of the application be provided for.
2. It is based on the following grounds;
- i. That the applicant has filed an appeal HCCA E162 of 2023 dated March 8, 2023 against the decision of the Sports Disputes Tribunal – E Gichuru Kiplagat; Mary Nyokabi Kimani; and Peter Ochieng dated and delivered on February 28, 2023 in SDTSC No E034 of 2022.
 - ii. That the appeal is merited and has overwhelming chances of success.
 - iii. That members of the executive committee of KNPC, the 5th Respondent herein have commenced steps towards executing the orders of the Tribunal
 - iv. That any delay in dealing with this application will cause irreparable prejudice and loss to the applicant since in the event of execution the appeal will be rendered nugatory.
3. It is supported by the affidavit of the applicant dated March 14, 2023 in which she deposed that, on October 12, 2022, the claimant/1st, 2nd, 3rd and 4th Respondents filed a claim at the SDT alleging that the Appellant had breached the constitution Constitution of the KNPC by failing to issue the notice of Special General Meeting and election to the 1st, 2nd 3rd and 4th Respondents. They were seeking the following orders;
- a. A declaration be made that the 1st, 2nd and 3rd Respondents breached the Constitution by failing to follow the proper procedure required for nominations by affiliate federations.
 - b. A declaration be made that the 2nd and 3rd Respondents acted in bad faith by declaring themselves successful applicants without proof of appointment from the said affiliated federations.
 - c. A declaration be made that the 2nd and 3rd Respondents abused their office by placing themselves in affiliated bodies to which they are not members.
 - d. A declaration be made that the entire election process is marred with irregularities, illegalities and pure selfishness.
 - e. An order compelling the 1st, 2nd and 3rd Respondents to include the 1st, 2nd, 3rd and 4th claimants in the election process, further provide that the 1st and 2nd claimants provide their list of nominees and participate in the voting.
 - f. An order compelling the 2nd and 3rd Respondents alongside the illegally formed Executive Committee members presently recognized as successful applicants be exempt from running for office on behalf of any affiliate federation.
 - g. Costs of the suit.
 - h. Any other order that the honourable tribunal may deem fit to grant in the circumstances.



4. The Appellant also deposed that in allowing the claimant's case, the tribunal barred the Appellant from contesting KNPC elections as president despite not making a finding as to whether current members of the KNPC Executive Committee are barred from running for office, nor giving reasons for targeting her.
5. That the tribunal further considered extraneous issues not pleaded by the claimants/Respondents yet it is a cardinal principle of law that parties are bound by their pleadings.
6. That it is therefore in the interest of justice that the honorable court does consider and allow this application so as to stop the Respondents from executing the orders of the tribunal as this will render the appeal nugatory.
7. The 4th Respondent filed a Replying Affidavit dated April 18, 2023 opposing the Application.
8. The parties submitted orally in court as follows;
The Appellant submitted that all the officials of Kenya National Paralympic Committee (KNPC) were elected in 2014 and they have been in the office for 8 years.
9. That only the Appellant has been barred from contesting for presidency and yet all the others have not been barred and this is discriminatory against the Appellant.
10. The Appellant further submitted that there were many issues that arose and that no elections have been held due to the number of cases filed at the Sports Disputes Tribunal (SDT)
11. The Appellant raised the issue that in its decision of February 28, 2023, the Tribunal relied on the 2020 KNPC Constitution which was not submitted by the parties during the hearing.
12. The Appellant said that if she is barred from contesting she will suffer irreparably since she will not have another chance to contest the election for presidency of KNPC and the appeal herein will be rendered nugatory.
13. The Appellant further submitted that after the judgment of the SDT a meeting was called which suspended the Appellant together with the 6th Respondent and yet the tribunal had directed that the Respondents work jointly with the Appellant to prepare for the elections within 60 days.
14. The Appellant further submitted that she was out of the country on official duties when she was suspended.
15. The Appellant is now seeking stay of elections scheduled for May 26, 2023. She is also seeking for orders that the 6th Respondent and herself be recognized as Secretary General and president of KNPC respectively since their suspension was illegal and not sanctioned by the SDT.
16. Opposing the application, the Respondents first raised the issue of jurisdiction.
17. This court directed the parties to file submissions on the issue of jurisdiction and a determination was made in a ruling delivered on May 23, 2023 that this court is properly seized of this matter.
18. The Respondents further submitted it is true that the constitution which was submitted to the SDT during the hearing was the 2022 constitution but the tribunal relied on the 2020 constitution upon discovering that the 2022 constitution had not been registered with the Registrar of Sports.
19. The Respondents also submitted that the Appellant had served 8 years and that is why the SDT barred her from contesting for presidency of KNPC.



20. The Respondents also submitted that KNPC will suffer irreparably if the elections are not held since they stood to face sanctions from the international Paralympic committee and several athletes will not be able to participate in international sports activities.
21. The Respondents asked the court to order the Appellant to deposit security for costs for the loss KNPC will incur.
22. The Respondents also said the Appellant is free to contest for any other position other than the presidency. They urged the court not to stay elections scheduled for May 26, 2023.
23. I have carefully considered the submissions by the parties together with the Affidavits filed herein.
24. The issues for determination in the application dated March March 14, 2023 are as follows;
 - i. Whether the appellant is entitled to stay of execution of the judgment and decree of the SDT.
 - ii. Whether the appellant was illegally suspended from presidency of KNPC.
 - iii. Who pays the costs of the application.
25. Whether the appellant is entitled to stay of execution of the judgment and decree of the SDT, the governing provision for stay pending appeal is Order 42 Rule 6 which states as follows;

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside.

No order for stay of execution shall be made under sub rule 1 unless:-

 - a The Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”
26. I find that although this application was filed without delay, there is no evidence that the appellant will suffer substantial loss if she is not allowed to vie for presidency.
27. The Appellant does not dispute that she has served as president since 2014 for a period of 8 years which is the maximum period she is entitled to serve as provided by the *Sports Act* and Rules.
28. I find that there is no dispute that although no other elections were done since 2014, the Appellant has been the de facto president of KNPC until she was suspended.
29. I find that the tenure of office is not determined by the constitution of KNPC but by the Sports Act and Rules made thereunder which supersede the KNPC constitution.
30. The issue of which constitution of KNPC the SDT relied on will not therefore override the statutory provision.



31. I also find that the appellant is at liberty to vie for any other post other than that of president of KNPC and therefore it is not true that she will suffer irreparable loss if the stay of elections is not granted.
32. I find that there are several parties such as the members of the Cerebral Palsy Sports Federation, Kenya Sports Federation for the Mentally Handicapped and several athletes who will suffer irreparably if the stay of elections scheduled for May 26, 2023 is granted due to the threatened sanctions by the International Sports Organizations.
33. I also find that the appellant has not offered to deposit security for the due performance of the decree and judgment of the SDT as by law required.
34. The Appellant is accordingly not entitled to stay of the judgment and decree of the SDT delivered on February 28, 2023.
35. On the issue as to whether the appellant and 6th respondent were illegally suspended, I find that the SDT did not order their suspension and therefore the said issue cannot be raised in this application or the appeal herein.
36. I accordingly find that the application dated March 14, 2023 lacks merit and the same is dismissed.
37. On the issue of costs, I direct that the same to abide the appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
24TH DAY OF MAY, 2023.**

A N ONGERI

JUDGE

In the presence of:

.....for the Appellant/Applicant

.....for the 1st to 4th Respondent

.....for the 5th Respondent

.....for the Interested Party

