



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 473 OF 2015

HOCKEY KENYA FEDERATION APPELLANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

CABINET SECRETARY MINISTRY OF SPORTS,

CULTURE AND ARTS.....1ST RESPONDENT

SPORTS REGISTRAR.....1ST RESPONDENT

AND

THE KENYA HOCKEY UNION.....INTERESTED PARTY

RULING

The subject matter of this ruling is the Notice of Motion dated 4th January, 2018 taken out by George Jalang’o Otieno, the Vice Chairman of Hockey Kenya Federation, the Appellant/Applicant herein. In the aforesaid motion, the Applicant sought for the following orders inter alia.

1. The Application filed herewith be certified urgent and be heard exparte in the first instance.
2. An order for temporary injunction restraining Kenya Hockey Union, the Interested Party herein from conducting an Annual General meeting (AGM) on the 13th January, 2018 pending the hearing and determination of the instant suit.
3. The Interested Party herein be compelled to produce before the Honourable court certified copies of;-
 - a. Annual Audited Financial reports from 2013 to date.
 - b. Full list of registered office bearers as per its constitution.
 - c. Copy of their constitution.

The aforesaid Motion is supported by the affidavit of George Jalang’o Otieno. When served with the motion, Kenya Hockey Union, the Interested party herein filed the replying affidavit of Nashon Okoth Randiek, the president of the Interested party.

When the Motion came up for interparties hearing the parties were invited to make oral submissions. I have considered the grounds stated on the face of the motion dated 4th January, 2018 plus the facts deponed in the affidavit filed in support and against the motion. I have also taken into account the rival oral submissions of the parties. It is the submission of the Applicant that the Interested party purported to call for an Annual General Meeting scheduled for 13th January, 2018 where elections of its officials is scheduled to take place among other agendas. The Appellant has argued that if the Annual General Meeting is allowed to go on as scheduled, it will prejudice the outcome of the ruling which has been pending before Honorable Mr. Justice Riechi. The Applicant pointed out that the pending ruling is expected to determine the question as to whether or not this court has jurisdiction to hear and determine the dispute before it. The Appellant/Applicant further argued that according to the Sports Act, clubs members playing in the Kenya Hockey Union League are supposed to participate in the Interested Party's elections. The Applicant annexed to his affidavit a list of club members for the year 2017. The Applicant further argued that the Sports Act and the Constitution of Kenya, 2010 does not recognize the notice calling for an Annual General Meeting because the convener is not a registered sports body. Secondly, that the Interested party has not filed its audited financial report with the cabinet secretary of Sports. Thirdly, that the list of office bearers has not been given contrary to the provision of section 47 (3) (iii) of the Sports Act, 2013. The Applicant further argued that the Interested Party has failed to present a copy of its registered constitution. For the above reasons this court was urged to grant the orders sought in the aforesaid motion.

The Interested party vehemently opposed the motion and submitted that the application is frivolous, vexatious, incompetent and an abuse of the court process. It was pointed out that the issues now being raised before this court were canvassed and determined by the Sports Disputes Tribunal.

The Interested party further argued that the Applicant being unregistered body has no locus standi to seek for the orders it is now seeking before this court. It was also pointed out that the Interested Party is registered and therefore the Applicant's assertion that it is not registered body cannot stand. The Interested party also submitted that since the Applicant is not its member, it has no locus nor legal basis to purport to interfere with its affairs by demanding to be provided with audited reports. This court was informed that the Interested party has expended a lot of money in preparation of its Annual General Meeting and it will cause untold damages and loss if the orders sought are granted.

Having considered the arguments presented by both sides, it is apparent that the Appellant is basically seeking for two main orders. First, an order of injunction to compel the Interested Party to supply the Appellant/Applicant with the Annual audited Financial reports from 2013 to date, the list of office bearers and a copy of the Interested Party's constitution. I think it is appropriate at this stage to give a brief background of this dispute.

Hockey Kenya Federation, the Appellant/Applicant filed a petition before the Sports Disputes Tribunal in which it sought for inter alia, an order for a declaration that Kenya Hockey Union, the Interested party is non existent according to law, unlawful, unfit and lacks the capacity to run any hockey affairs in Kenya. The Applicant argued before the Sports Disputes Tribunal that at the commencement of the Sports Act, 2013, the Interested party and other sports organizations were required to regularize their registration within a year from the date of commencement i.e from 1st August, 2013. The Applicant complained that the Interested party did not review its constitution nor did it conduct elections within a year.

The Applicant further argued before the Sports Disputes Tribunal that the Interested party having failed to comply with the provisions of new Sports Act, it ceased to exist and was therefore an illegal entity. In the end the Applicant's petition was dismissed. Being dissatisfied with the Tribunal's decision, the Appellant/Applicant preferred an Appeal. Pending Appeal, the Applicant has now taken out the motion dated 4th January 2018, the subject matter of this ruling and sought for the orders stated hereinabove.

I have already set out the sort of orders sought by the Appellant/Applicant. Let me start with the prayer for a mandatory order of injunction in which the Appellant/Applicant seeks to have the Interested Party compelled to supply it specified documents namely;

i. ii. Audited Financial reports from 2013 to date

Full list of registered office bearers

iii. A Copy of the constitution

The Interested party resisted this prayer arguing that the documents may be obtained from the office of the Registrar of Sports. It was also contended that the Applicant not being a member nor official of the Interested Party, was not entitled to be given the aforementioned documents. It was also pointed out that the demand by the Applicant is untenable because it is not one of the issues which is raised on appeal and cannot be determined via this application. With respect, I am persuaded by the arguments put forward by the Interested Party. Consequently, I decline to grant the orders sought in prayer 3 of the motion.

Having disposed of prayer 3 of the motion, I now turn my attention to prayer 2 where the Applicant is seeking for an order of injunction to have the Interested Party’s Annual General Meeting scheduled for 13th January, 2018 put off. I have carefully considered the rival arguments put forward in support and against the aforesaid prayer.

It is conceded by the Applicant that it is not a member nor official of Kenya Hockey Union. It is also not disputed that the Applicant is an unregistered entity. With respect, I am persuaded by the Interested Party’s argument that in the circumstances, the Appellant /Applicant lacks the requisite locus standi to pursue the remedy for injunction. The Applicant has therefore failed to establish a prima facie case to be given the orders. The Interested party has also argued that the balance of convenience tilts in favour for the dismissal of the Application. The Interested party has averred that it has expended a huge sum of money to contract an elections board namely: the Centre for Sports Law (CSL) to prepare and book the venue. It is said that the delegates from Mombasa, Eldoret, Kisumu and far flung counties have been paid to attend the Annual General Meeting to be held at Parklands Sports club. I am convinced that it will seriously inconvenience the Interested Party as opposed to the Appellant/Applicant if the order for injunction is granted. The Applicant has also failed to show the irreparable damage it would suffer if the order is denied.

In the end and on the basis of the above reasons, the motion dated 4th January, 2018 is found to be without merit. It is dismissed with costs to the Interested Party.

It is so ordered.

Dated, Signed and Delivered at Nairobi this **11th** Day of **January, 2018**.

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J. K. SERGON

JUDGE

In the Presence of

..... For the Appellant/Applicant

..... For the 1st Respondent

..... For the 2nd Respondent

..... For the 3rd Respondent

.....Interested party