



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
CONSTITUTIONAL AND JUDICIAL REVIEW
PETITION NUMBER 4 OF 2017

EMMANUEL OBIERO OCHIENG.....1st PETITIONER
SPERUS GOR OKECH.....2nd PETITIONER
SADAT ABDALLA KHAMISI.....3rd PETITIONER

VERSUS

KENYA PREMIER LEAGUE LTD.....1ST RESPONDENT
FOOTBALL FEDERATION OF KENYA.....2ND RESPONDENT
SPORTS DISPUTES TRIBUNAL.....3RD RESPONDENT

RULING

When this petition came up for mention today; the parties' advocates sought to address the court as regards misdescription of parties.

Mr. Ogonda advocate for Kenyan Premier League submitted that the correct party that ought to have been sued is Kenyan Premier League and that the interim orders issued against Kenya Premier League cannot be sustained as against his client.

Mr. Ochieng advocate on the other hand argued that his client is not Football Federation of Kenya but Football Kenya Federation which is a society that cannot be sued in its own name and that the interim orders issued against Football Federation of Kenya cannot be enforced against his client.

Mr. Simiyu advocate for the petitioners conceded the misdescription of the 1st and 2nd respondents and sought leave to amend the pleadings. He submitted that the misdescription has not caused any prejudice to the 1st and 2nd respondent or caused confusion as to who the intended respondents are.

I have considered the submission by counsels and I find that this is not a case of non-existent or faceless entities that would invariably be incapable of suing or being sued but is a case of pure misdescription of parties. I find support of that position in the words of **Lenaola J** in the case of **NZOMO WAMBUA v WOTE TOWN COUNCIL (2008) eKLR** while citing the case of **JAMES MWANGAGI & 64 OTHERS VS WOTE TOWN COUNCIL HCC 113/ 2004** that:-

“Clearly, the advocates as did their client knew who was being sued and understood the misdescription in the name of the defendant but that fact does not change the cause of action against it nor the substratum of the suit as well as the questions in dispute. I therefore agree with Wendoh J, in James Mwangagi (supra) when the learned judge stated as follows:-

“the Defendant/Respondent is not properly described but mere misdescriptions of a party cannot render a suit incompetent. This matter has just been filed and the court has wide discretion under Order 1 Rule 10 of Civil Procedure Rule to an amendment of the parties on its own or upon application”

From the foregoing; I find that the misdescription is not fatal to this petition and that the petitioners are at liberty to amend in such manner as may be necessary. Pending the amendment however; this court hereby vacates the interim conservatory order issued on 15th February 2017 since is it incapable of being enforced.

DATED AND DELIVERED THIS 23RD DAY OF FEBRUARY 2017

T. WANJIKU CHERERE

JUDGE

Mr. Simiyu for the petitioner

Mr. Ogonda for Kenyan Premier League.

Mr. Ochieng for Football Kenya Federation.

T.WANJIKU CHERERE

JUDGE

23/02/2017