



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION NO. 323 OF 2016

IN THE MATTER OF KENYA PREMIER LEAGUE

AND

**IN THE MATTER OF THE INDEPENDENT DISCIPLINARY AND COMPLAINTS
COMMITTEE**

BETWEEN

SOLOMON NASIO & 7 OTHERS.....CLAIMANTS/APPLICANTS

AND

AFC LEOPARDS (*Sued through its Interim Management Committee*)...RESPONDENT

R U L I N G

The Applicants herein moved this court by way of an ex-parte Chamber Summons dated 21st June, 2016 under Article 165(3) (a) of the Constitution, Sections 33 and 34 of the Kenya Premier League Constitution and Clause 22 of the Kenya Premier League contracts and all other enabling provisions of the law.

They have sought the following orders: -

1. That service of this application be dispensed with and the same be heard ex-parte in the first instance due to the urgency of the matter as more particularly set out in the certificate of urgency filed herewith.
2. That this honourable court be pleased to adopt the orders made on 15th June, 2016 by the independent disciplinary and complainants committee chaired by Ms. Njeri Onyango, advocate as a judgment on its own.
3. That this honorable court be pleased to adopt the judgment made on 17th June, 2016 by the independent disciplinary and complaints committee chaired by Ms. Njeri Onyango, advocate as a judgment of its own.
4. That the claimants/applicants be granted leave to enforce the orders made on 15th June, 2016 by the independent disciplinary and complains committee chaired by Ms. Njeri Onyango, advocate, as

a decree of this honourable court.

5. That the claimants/applicants be granted leave to enforce the judgment made on 17th June, 2016 by the independent disciplinary and complaints committee chaired by Ms. Njeri Onyango, advocate, as a decree of this honourable court.

6. That the respondent be ordered to pay all such costs and expenses as are incidental to the enforcement and execution of the said judgment.

7. That the costs of this application be paid by the respondent.

On the 20th September, 2016, the Respondents filed a Notice of Preliminary Objection to the application based on the following grounds: -

1) The court does not have jurisdiction to entertain the application.

2) The application has no legal basis.

3) The application seeks to have the court countenance an illegality.

When the application came up for hearing on the 29th September, 2016, counsel for Respondents requested that the preliminary objection be heard first. The ruling herein relates to that Preliminary Objection.

Counsel for the Respondent argued that the court does not have jurisdiction to hear the application dated the 21st June, 2016 as it has no legal backing. That the application has been brought under Article 165(3) of the Constitution and it seeks to adopt orders made by independent organ.

That the Disciplinary Committee is not a quasi judicial body and any decision emanating from that committee cannot be adopted by this court.

He relied on the case of **Samuel Kamau Macharia & another Vs K.C.B. Limited & 2 others** in which the court held that jurisdiction of a court can only be donated by either the Constitution or a statute or both. That a court cannot arrogate itself jurisdiction exceeding that which is conferred by the law.

It was further submitted that the complaint that was filed at the independent disciplinary complaints committee and the orders sought therein are labour related. That under Article 165(5) (b) of the Constitution of Kenya, 2010, the High Court has no jurisdiction to hear matters falling within the jurisdiction of the courts contemplated under Article 162(2) of the Constitution and, therefore, the proper court to deal with the matter is the Employment and Labour Relations Court.

On his part, counsel for the applicants submitted that Article 165(3) (a) of the Constitution gives the High Court unlimited jurisdiction to hear and determine disputes brought before it. He submitted that what the Applicants seek to enforce is the decision of the committee to be adopted as the decision of the High Court. He urged the court to dismiss the preliminary objection.

This court has considered the preliminary objection raised by the Respondents herein and the submissions by the learned counsels.

This court has deliberately addressed itself to the submissions that are relevant to the preliminary objection and especially on the jurisdiction and not the substance of the application. The Respondent has argued that under Article 165(5) (b) of the Kenyan Constitution, this honourable court lacks jurisdiction to hear the application dated 21st June, 2016 and that the court with jurisdiction is the Employment and Labour Relations Court.

The Employment and Labour Relations Court is established under Article 162 (2) of the Constitution and under Article 165 (5) (b) the Constitution is very specific that the High Court does not have jurisdiction to hear matters that fall within the jurisdiction of Employment and Labour Relations Court.

This court has perused the documents that have been annexed to the application which formed the basis of the complaint before the independent Disciplinary and Complaints committee. It is very clear that the complaint relates to contracts of employment between the claimants/applicants and the Respondents herein. In paragraph 9 of the supporting affidavit, it is clear that the awards sought to be adopted are an equivalent of 6 month's gross salary based on each Claimant's/Applicant's salary as at the date of termination, being compensation for unlawful termination of their contracts of employment. That fact is not denied by the claimants/applicants.

In the premises aforesaid, I find that this court has no jurisdiction to hear the application dated 21st June, 2016 and the same is transferred to the employment and Labour Relations Court for hearing and determination.

Dated, signed and delivered at Nairobi this 24th day of November, 2016.

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L NJUGUNA

JUDGE

In the presence of

..... *for the Claimant/Applicants*

..... *for the Respondent*