



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**MILIMANI COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL SUIT NO. 415 OF 2005**

**GOING PLACES LIMITED.....**

**PLAINTIFF**

**VS**

**MOHAMED HATIMY**

**SUED AS OFFICIAL OF KENYA FOOTBALL FEDERATION.....JUDGMENT-DEBTOR**

**SAMSON KEENGU NYAMWEYA AS  
CHAIRMAN FOOTBALL KENYA FEDERATION,**

**FOOTBALL KENYA LIMITED.....**

**OBJECTORS**

**RULING**

1. Through a Notice of Motion application dated 30<sup>th</sup> November 2011, the Objectors/Applicants seek orders of this court for the attachment of the Objectors' goods in execution of the decree given in this matter to be set aside and or lifted. The application, is brought under Order 22 Rule 51 and Order 51 Rule 1 of the Civil Procedure Rules and is based on the grounds that the Objectors are the legal and/or beneficial owners of the goods proclaimed, and that the objectors are not parties to the suit from which the decree under execution was given. The application is further supported by the affidavit of Samson Keengu Nyamweya, the Chairman of Football Kenya Federation (FKF), Kenya Football Federation (KFF) and Football Kenya Limited (FKL), the objectors.
2. The background to the present application is that pursuant to a plaint filed on 9<sup>th</sup> May 2005 against Kenya Football Federation through its registered officials, default judgment was entered on 14<sup>th</sup> December 2006 against Dan Omino and Mohamed Hatimy, the then Secretary and Chairman respectively of KFF. Subsequent to the judgment, Mr. Omino successfully applied for the judgment to be set aside against him on 16<sup>th</sup> November 2007. Judgment against Mr. Hatimy remained and does remain in force.
3. In execution of the decree against Mr. Hatimy, warrants of attachment were allocated to M/s Nairobi Connection Services Auctioneers who, on 16<sup>th</sup> November 2011 proclaimed goods within the premises of Football Kenya Limited, which goods the objectors now claim do not belong to the judgment debtor.
4. It is the Objectors' case that the premises from which the goods were proclaimed belong to Kenya Football Federation Academy which is a joint venture between Kenya Football Federation and the International Federation of Football Associations (FIFA) under a project christened 'KFF/FIFA Goal Project'. The Plot on which the academy is built was allotted to KFF and the Sports Stadia Management

Board for the KFF/FIFA project. The goods proclaimed from the Academy are therefore goods that do not belong to the judgment-debtors and cannot be attached in execution of a decree against the judgment-debtor.

5. In his supplementary affidavit sworn on 6<sup>th</sup> March 2012, Mr. Nyamweya avers further that the judgment sought to be executed was entered against Mr. Omino and Mr. Hatimy personally and that Mr. Hatimy had no authority to enter into a consent binding Football Kenya Limited to pay the decretal sum in view of the judgment having been entered against him in his personal capacity. He avers that the attached goods belong to Football Kenya Limited jointly with Sports Stadia management Board as Trustees of FIFA, none of which are parties to the suit herein. He further states that FKL never took over the liabilities of KFF as the former is a limited liability company and the latter a society.

6. In reply to the objection, there is a replying affidavit by Michael Graig the Managing Director of the decree-holder company sworn on 7<sup>th</sup> February 2012. In the affidavit, it is confirmed that the debt forming the basis of the decree under execution was incurred by Mr. Mohamed Hatimy as the vice chairman and later chairman of Kenya Football Federation. Mr. Hatimy had been sued in his capacity as an official of Kenya Football Federation. It is stated further that by a consent recorded in court on 27<sup>th</sup> October 2011, Mr. Hatimy as Chairman, FKL bound FKL to settle the entire decretal sum. The goods proclaimed belong to FKL and KFF and were acquired before FKF came into being. FKF and Sam Nyamweya consequently have no interest whatsoever over the said assets. At the same time, if FKF took over the assets of KFF and FKL, then they also took over the liabilities of the two. In any event, the debt was incurred by KFF as the recognized body in charge of football management in the country and the subsequent change of name cannot defeat execution process sanctioned by the court.

7. I have carefully considered the application and affidavit evidence placed before me. I have also considered the rival submissions by counsel for the parties.

8. Determination of the question of whether or not the goods proclaimed by M/s Nairobi Connection Services belong to the judgment debtor or to the objectors is squarely depended upon determination of whether or not Football Kenya Federation, the current body charged with management of football in this country is the successor to Kenya Football Federation and/or Football Kenya Limited.

9. It is not disputed that in or around August 2002, the decree holder supplied the then Kenya Football Federation with air tickets and arranged accommodation for the national football team players and officials during a tour to the United Kingdom and Portugal. The defence advanced by the plaintiff that the travel was covered under a sponsorship agreement with Kenya Breweries Limited was thwarted by the company in a letter dated 29<sup>th</sup> January 2003 that is on the court record in which the company regretted that it could not cater for the trip as the sponsorship sum of Kshs. 150M had by then been fully utilized. The genesis of the debt forming the basis of the decree and the party responsible for the satisfaction of the decree are therefore unambiguous.

10. Although it is contended that the judgment and decree issued in the suit was against Mr. Hatimy as a person, I do not agree with the contention, as it is clear and consistent from the inception of the suit that Mr. Hatimy was sued in his capacity as vice-chairman and later chairman of KFF. He was never sued in his official capacity. This is evident from the fact that the plaint filed in this matter initially named Mr. Alfred Sambu and Mr. Titus Kasuve as the defendants sued in their capacity as Chairman and Acting Secretary of KFF. Mr. Hatimy and Mr. Omino were only made defendants to the suit through an amended plaint filed on 4<sup>th</sup> May 2006 following their election as the new officials of KFF. This leaves it plain that satisfaction of the decree in this matter must be the obligation of KFF and its successors.

11. Turning to the key question of whether or not FKL and FKF are the successors of KFF, this court takes judicial notice of the many wrangles that have over the years bedeviled football management in this country. These have been characterized by emergence of rival factions all claiming legitimacy as the genuine football management body in the country. At one time, two factions were running parallel football leagues in the country. The position was not helped by FIFA which at one time or the other

supported a given faction. Indeed, even FIFA at one time altogether suspended the country from membership to the body. The result has been obvious: Kenyan football has dwindled to hopeless levels. But that is a story for another day.

12. For now, this court does not find it necessary to recount the numerous management epochs through which football in this country has been subjected to. This is because, for the present purposes, the question of where football management is coming from and where it currently vests has been sufficiently answered through the supporting affidavit of Samson Keengu Nyamweya sworn on 30<sup>th</sup> November 2011. In the affidavit, Mr. Nyamweya begins by stating in paragraph 1:

***“...I am the Chairman of the Football Kenya Federation (FKF) and the Chairman of Kenya Football Federation and a director of Football Kenya Limited.”***

He then goes on to add at paragraph 10:

***“On 29<sup>th</sup> October 2011, I was elected as the Chairman of Football Kenya Federation which Federation replaced Kenya Football Federation and Football Kenya Limited as the only FIFA recognized Football Association in Kenya.”***

At paragraph 11 he confirms the following:

***“...FIFA has directed that the Federation Headquarters be transferred to Football Kenya Federation and we have already taken possession thereof and are in the process of effecting the necessary transfer.”***

13. In my humble view, the above averments leave little doubt that FKF is the successor of both KFF and FKL. FKF is the body that has finally settled the factional debacle that Kenyan football has had to endure. It is the unified football management body in this country and, as stated in the affidavit, is in the process of bringing together the assets of the previous factions that have hitherto existed. One of such assets is the property and assets said to belong to the Football Academy. It is indeed admitted that the Football Academy is owned by Kenya Football Federation as a joint project with FIFA. FIFA itself is the body that brings together national football federations and cannot in that regard be said to own assets in any member country distinctly from the football management body in that country.

14. The conclusion is therefore inescapable that the assets, property and obligations that vested in KFF as of August 2002 when the tickets that resulted in the debt were supplied are the very assets, property and obligations that passed on to FKL when it took charge and are the same assets, property and obligations which have now been bequeathed to FKF, the current football management body in Kenya. Such obligations necessarily include any liabilities that have survived the various metamorphosis of the body. Such liabilities include the present liability. FKF cannot claim to have taken over KFF and FKL in isolation of taking over their existing liabilities.

15. I am therefore satisfied that the attachment of goods levied on the premises of the Football Academy was properly levied on the assets of FKF as the current successor to KFF the judgment debtor in the suit in this matter.

16. For these reasons, I am inclined to order that the Objectors' Notice of Motion dated 30<sup>th</sup> November 2011 be and is hereby dismissed with costs. Execution of the decree may, in the premises, proceed.

**IT IS SO ORDERED.**

DATED, SIGNED AND DELIVERED ON THIS 19<sup>TH</sup> DAY OF APRIL 2012.

**J. M. MUTAVA**

**JUDGE**