



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 609 of 2007**

1. SAMSON KEENGU NYAMWEYA
2. TWAHA MBARAK
3. PETER OCHIEL

**(Suing as officials Chairman, Senior Vice Chairman & 3<sup>rd</sup> Vice Chairman of the Kenya Football**

**Federation).....PLAINTIFFS**

**V E R S U S**

1. MOHAMMED HATIMY
  2. TITUS KASUVE
  3. SAMMY OBINGO
  4. JACOB KABANZE ODUNDO .....
- DEFENDANTS**

**R U L I N G**

The Plaintiffs seek by chamber summons dated 7<sup>th</sup> March, 2008 three main orders:-

“1.....

2.....

3. That the Defendants whether by themselves, delegates, agents and/or servants be restrained by injunction from convening, calling for, assembling at, congregation at, chairing, officiating at, or in any other manner purporting to meet at the Annual General Meeting of the Kenya Football Federation pending the hearing and determination of this suit.

4. That the Defendants whether by themselves and/or through delegates and/or agents, employees and/or servants be and are hereby restrained by injunction from discussing, deliberating on, adopting and/or passing and adopting any resolution on the agenda at the Annual General Meeting of the Kenya Football

Federation pending the hearing and determination of this suit.

5. That the Defendant whether by themselves and/or through agents, delegates, or servants and or employees be restrained by injunction from communicating to any legal person and representing themselves out to any such person as officials of the Kenya Football Federation.

6. ....” The application is essentially brought under Order 39, rule 2 of the Civil Procedure Rules (the Rules). It is supported by an affidavit sworn by the 1<sup>st</sup> Plaintiff annexed to the application.

The Defendants have opposed the application upon the grounds set out in the grounds of opposition dated 12<sup>th</sup> March and filed on 10<sup>th</sup> April, 2008. Those grounds are:-

1. That the application is incompetent.
2. That the court lacks jurisdiction to entertain the application.
3. That there is no or proper suit before the court upon which the application is founded.
4. That the Defendants have not been served with summons to enter appearance and copy of the plaint.
5. That the application is an abuse of the process of the ` court.

No replying affidavit has been filed.

I have considered the submissions of the learned counsels appearing. No authorities were cited. It was not demonstrated in the submissions of the learned counsel for the Defendant how the present application is incompetent. Nor was it shown that the court lacks jurisdiction to entertain the application or the suit itself. The fact that the suit may be amenable to reference to arbitration cannot oust the jurisdiction of the court to entertain an application for temporary injunction. The application seeks temporary injunctions under Order 39 of the Rules pending disposal of the suit. The court eminently does have jurisdiction to entertain such application.

It was argued for the Defendants that there is no proper suit before the court for want of service of summons to enter appearance upon the Defendants. The suit was filed on 29<sup>th</sup> August, 2007. Summons to enter appearance were issued on 12<sup>th</sup> September, 2007. Under the law they are valid for 12 months, subject to extension of validity upon application. So, the summons will be valid until 11<sup>th</sup> September, 2008. They can be served any time before that date. For all this see Order V, rule 1 of the Rules.

The final substantive ground of opposition is that the application is an abuse of the process of the court. No such abuse was demonstrated. On the contrary, the Plaintiffs have deponed that they are the *bona fide* National Chairman, Senior Vice-Chairman and 3<sup>rd</sup> Vice-Chairman respectively of the Kenya Football Federation (KFF). They have annexed to the supporting affidavit a copy of a letter dated 20<sup>th</sup> August, 2007 to that effect. The letter is addressed by the Senior Deputy Registrar-General in the Department of the Registrar-General to the Chairman of the Kenya Football Federation.

As already observed, there is no replying affidavit. So the fact of the positions held by the Plaintiffs in KFF has not been challenged. There was attempt to mount such a challenge from the bar; but this cannot be permitted. The Defendants had ample opportunity to file a replying affidavit. They did not.

The material now before the court at this interlocutory stage establishes, *prima facie*, that the Plaintiffs, and not the Defendants, are the *bona fide* officials of KFF. The Plaintiffs have therefore established a *prima facie* case with a probability of success.

The next thing I must consider is whether the Plaintiffs stand to suffer irreparable loss unless the orders sought are granted. The Plaintiffs have brought the suit and application on behalf and for the

benefit of KFF. KFF is apparently a society without the legal capacity to sue or be sued. Football is an important sport in this country; KFF appears to be national organization that manages the sport in the country. It cannot be gainsaid that the affairs of KFF should be run

by its duly elected officials, not by strangers. As already pointed out, the Plaintiffs are, *prima facie*, the duly elected officials of KFF, not the Defendants. The Defendants have therefore, again *prima facie*, illegally and wrongfully constituted themselves as officials of KFF. I am satisfied that to permit them to run the affairs of KFF may do irreparable harm to KFF.

In the circumstances, and for the reasons given above, I will allow this application and grant the orders sought in prayers Nos. 3, 4 and 5 thereof. Those orders are granted subject to the Plaintiffs filing within five (5) days of delivery of this ruling an appropriate undertaking as to damages. Costs of the application shall be in the cause. It is so ordered.

**DATED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2008**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED AT NAIORBI THS 16<sup>TH</sup> DAY OF MAY, 2008**