



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 1281 of 2006**

1. **ALFRED WEKESA SAMBU**
2. **DANIEL SHEM OMINO**
3. **ALFRED WEKESA SAMBU suing as the Legal Representative of the Kenya Football Federation**
4. **SAMSON K. NYAMWEYA, PETER OMWANDO and CHARLES ONUONGA suing as the officials of Shabana Football Club**
5. **SIMON MUGO, GEORGE GITAU and MAINA WAWERU**  
**suing as the officials of Kangemi United Football Club .. PLAINTIFFS**

**VERSUS**

1. **MOHAMMED HATIMY**
2. **TITUS KASUVE**
3. **JACOB ODUNDO**
4. **MOHAMMED SAID**
5. **LENAH JEMELI**
6. **PETER OCHIEL**
7. **AZIZ MOHAMMED**
8. **JOSEPH KORIR**
9. **GERALD CHEGE**
10. **JAMIL RAHMAN**
11. **WYCLIFF OGUTU**
12. **WILLIAM NYONGESA**

**RULING**

On 4<sup>th</sup> December, 2006 the five named Plaintiffs, being aggrieved by a decision of the National Executive Committee (NEC) of the Kenya Football Federation, to remove them from various offices and positions of authority, filed a suit in this Court seeking the following Orders:

***“(a) An Order of injunction to restrain the Defendants or either of them collectively or singly from implementing and effecting any or all of the resolutions contained in the letter dated 25<sup>th</sup> November 2006 signed by the 1<sup>st</sup> Defendant.***

***(b) A Declaration that the meeting convened and held by the Defendants on an unknown date resulting in the letter date 25<sup>th</sup> November 2006 is in breach of the Constitution and Rules of the Kenya Football Federation and hence illegal and unconstitutional***

***(c) A Declaration that the resolutions made by and between the defendants and evidenced by the letter dated 25<sup>th</sup> November 2006 were made in breach of the Constitution and Rules of the Kenya Football Federation and hence illegal, unconstitutional and ultra vires that Constitution and Rules.”***

The Plaintiffs allege that the meeting removing them from various offices was “illegal”, and the “Resolutions” made at that meeting of 25<sup>th</sup> November, 2006, represented by “Exhibit B” to the application before this Court, are “null and void.”

Simultaneously with the filing of the suit, the Plaintiffs filed an application dated 4<sup>th</sup> December, 2005, under a Certificate of Urgency, seeking the following Orders:

***“(c) An interim injunction do issue restraining the 1<sup>st</sup> Defendant by himself servants and agents or howsoever from convening or causing to be convened a Special General Meeting of the Kenya Football Federation pending the hearing and determination of this suit.***

***(d) An interim injunction do issue restraining the defendants by themselves servants and agents or howsoever to convene or cause to be convened or to attend and participate in a Special General Meeting or any other organ of the Kenya Football Federation until this suit is heard and determined.***

***(e) An interim injunction do issue restraining the defendants by themselves servants and agents or howsoever from executing, implementing or putting into effect their resolutions evidenced by the letter dated 25<sup>th</sup> November 2006 signed by the 1<sup>st</sup> Defendant until this suit is heard and determined.”***

That is the application that is before me presently for determination.

The Defendants/Respondents have filed affidavits in reply stating essentially that the NEC meeting in contention was lawfully convened, but that the alleged resolutions represented in the aforementioned “Exhibit B” are a forgery and presently under investigation by the Police. The Respondents, however, argue that this matter is subject to arbitration in accordance with the Constitution of KFF, and accordingly the suit before this Court is premature, and ought to be struck out.

Indeed, Articles 46 and 47 of the KFF Constitution make it mandatory for members to refer any disputes between them to Arbitration, in accordance with the procedures laid out in the aforesaid Constitution.

Article 46 stipulates that:

***“(1) Member organizations, clubs or member clubs shall not bring before a Court of law disputes with the Federation or other member organization clubs or members of clubs, and they agree to submit any***

*such disputes to an arbitration tribunal appointed by common consent.*

*(2) The member organizations and the clubs and their members have freely renounced their right to appeal to Court of law after arbitration and undertakes to accept the decision of the arbitrator(s) selected.*

*(3) Any disputes arising between the Federation, Branches, Sub-Branched, registered categories of members, officials or between any of the leagues and/or football clubs and their members, officials or licensed agents on any matter relating to football, shall be referred to arbitration.*

*(4) .....*

*(5) .....*

*(6) The arbitration to the dispute shall in all other respects be conducted in accordance with the Arbitration Act (Cap 49) of the Laws of Kenya.”*

Article 47 states that:

*“(1) Members agree to fully comply with any decisions taken by the Federation, CAF and FIFA, which are according to this Constitution, not subject to appeal.*

*(2) They agree to take all necessary steps to ensue that their own members, players and officials comply with these decisions.*

*(3) The members and their own members, players and officials agree that recourse to ordinary Courts of law is prohibited unless specifically provided for in the FIFA regulations as per article 61.2 of the FIFA Statutes.*

*(4) A violation of the aforementioned provisions should be punished in accordance with Article 54 of the Constitution.”*

And, finally, Article 61 of the FIFA Statutes provide as follows:

*“The Confederations, Members and Leagues shall agree to recognize CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS. The same obligation shall apply to licensed match and players’ agents.*

*Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations.*

*To ensure the foregoing, the Associations shall insert a clause in their statutes stipulating that their clubs and members are prohibited from taking a dispute to ordinary courts of law and are required to submit any disagreement to the jurisdiction of the Association, the appropriate Confederation or FIFA.”*

Now, clearly, the parties to the dispute here have chosen, by their agreement to be bound by the KFF Constitution and the FIFA Statutes, and to submit themselves to arbitration to resolve their disputes. The Applicants have not persuaded this Court that the Arbitration Clause in the above Constitution is inapplicable, or that an effort has indeed been made to resolve the dispute utilizing the avenues provided for, and agreed to by the parties. Mr. Amolo, Counsel representing the Plaintiffs/Applicants has made no submission in this regard, and the closest they have come to arguing that the matter need not be referred to arbitration, is in the replying affidavit of Alfred Wekesa Sambu, sworn the 14<sup>th</sup> December, 2006. In his deposition, Mr. Sambu avers (in paragraph 7) that the onus is “on the respondent who wishes to take the benefit of an Arbitration Clause to move the Court and seek appropriate Orders.” He further avers, in paragraph 8 of his affidavit, that “.....the existence of an Arbitration Clause should not and does

not serve to oust the jurisdiction of the Court but should be invoked as dispute resolution mechanisms.” Now, whatever that means, it is clear to me that the parties have agreed to refer their dispute to arbitration in accordance with the instruments governing them. There is no evidence that they have done so. Where members of an organization have chosen, by virtue of their very membership, to settle their disputes through arbitration, I see absolutely no reason why the Courts should interfere in that process. It is not in public interest, nor in the best interests of the organization, that each time they have a dispute with people they have chosen to lead them, that they should rush to the Court to seek redress which is available within the instrument governing such organization. The Courts should encourage, as far as possible, settlement of disputes outside of the Court process. Arbitration is one of several methods of Alternate Dispute Resolution (ADR) and is certainly less expensive, expeditious, informal and less intimidating than the formal Court system. This Court will certainly encourage the use of ADR wherever it is appropriate to do so. Clearly, there are situations where the Court must intervene – where the principles of natural justice have been violated, or where there is, or likely to be, a serious breach of the Constitution of the party leading to irreparable injury. Now, those are extreme situations, and I cannot say that such a situation exists here to warrant the Court’s intervention.

I believe this to be a proper case to be referred to arbitration in accordance with the Kenya Football Federation’s Constitution. I am satisfied that by doing so no party would suffer any prejudice, or be left without a remedy, as the parties are at liberty to come before the Court for any injunctive or other reliefs that the Arbitration process is unable to afford them. **Accordingly, I will invoke Section 6 of the Arbitration Act and stay all further proceedings, and direct that the parties submit themselves to arbitration in accordance with their Constitution. The Defendants/Respondents shall have the costs of this application.**

Dated and delivered at Nairobi this 16<sup>th</sup> day of May, 2007.

**ALNASHIR VISRAM**

**JUDGE**