



**Issack v Issack & 3 others (Civil Case E004 of 2024)
[2025] KEHC 1985 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CIVIL CASE E004 OF 2024
JN ONYIEGO, J
FEBRUARY 24, 2025**

BETWEEN

ABDULLAHI MAALIM ISSACK PLAINTIFF

AND

ISMAIL MOHAMED ISSACK 1ST DEFENDANT

FKF MANDERA BRANCH 2ND DEFENDANT

FKF FEDERATION ELECTORAL BOARD 3RD DEFENDANT

THE SPORTS REGISTRAR 4TH DEFENDANT

RULING

1. Via a plaint dated 15.11.2024, the plaintiff moved this court seeking orders as listed below:
 - i. A declaration that the Football Kenya Federation Mandera Branch elections scheduled for 16.11.2024 is discriminatory, biased, unfair and therefore illegal.
 - ii. An order stopping the Football Kenya Federation Mandera Branch Elections scheduled for 16.11.2024 until all teams in the six sub counties of Mandera East, Mandera North, Mandera South, Mandera West, Lafey and Banisa are included in the Voter Register.
 - iii. An order directing the defendants to set a new date for Football Kenya Federation Mandera Branch elections with all teams in the six counties included in the Voter Register.
 - iv. An order directing the defendants to make public the Voter Register of all the registered football teams in Mandera County.
 - v. Costs of the suit; and
 - vi. Any other relief that the Honourable Court may deem fit and just to grant.



2. The 2nd defendant entered appearance on 21.11.2024 and as a response, filed a notice of preliminary objection dated 21.11.2024 against the suit urging that the same was incompetent and fatally defective as this court lacked the requisite jurisdiction to handle this matter. It was further noted that vide article 69(6) of the FKF Constitution, 2017 as read with section 7 of the Electoral Code of Football Kenya Federation 2019/2020 (Revised Edition), the same designates that the FKF Electoral Board is the first body responsible for adjudicating all electoral disputes of the Football Kenya Federation. Further, that the Football Kenya Federation and all its decisions are appealable to the FKF Appeals Committee as provided for in articles 67(2) and 69(6) of the Football Kenya Federation constitution. That this suit therefore was incompetent as filed as the plaintiff failed to exhaust the available mechanisms before approaching the court.
3. It was further averred that the subject matter of the suit herein is directly and substantially the same as the subject matter in SDTSC/E043/2024 – Abdisalam Ahmed Lakicha and 4 Others vs Ismail Mohamed Issack & 3 Others which was previously filed against the defendants herein on 07.11.2024 and which is pending hearing and determination. As such, the suit herein offends the doctrine of sub judice.
4. The 3rd defendant despite participating in the suit herein, failed to file submission on the notice of preliminary objection.
5. The plaintiff in his submissions dated 06.02.2025 contended that the High court vide article 165 of *the constitution* has original and appellate jurisdiction to hear and determine civil and criminal matters and therefore, this jurisdiction cannot be taken away by any other piece of legislation. The plaintiff relied on the case of Interactive Gaming & Lotteries Limited vs Safaricom Limited (Commercial Civil Case E684 of 2021 [2021] KEHC 335 (KLR) (Commercial and Tax 2021) in which the court while dismissing a preliminary objection challenging its jurisdiction stated that ‘the civil jurisdiction of the High Court is clearly set out in article 165(3)(a) of *the constitution* which provides that, the High Court shall have ‘unlimited jurisdiction in criminal and civil matters’. The express grant of jurisdiction to the High Court cannot be taken away except with clear and express words of *the constitution* itself’.
6. Further reliance was placed on the case of Dr. Selina Vukinu Ambe vs Ketan Shahshikant Khatri NRB HCCC No. 171 of 2018 [2020] eKLR where Githua J. held the view that a statute purporting to limit the High Court’s jurisdiction as conferred by article 165(3) would to that extent be unconstitutional by virtue of article 2(4) of *the constitution*.
7. The plaintiff submitted that the FKF constitution and the remedies provided therein are subject to *the constitution*, 2010 and therefore cannot purport to override the dictates of *the constitution*, 2010. That any act or omission done in line with the FKF constitution or any other law must conform to *the constitution*, 2010. As such, the supremacy of the country’s constitution cannot be challenged or questioned by any other law including the FKF constitution. Consequently, this court was urged to dismiss the preliminary objection by the 2nd defendant with costs.
8. The 2nd defendant filed submissions dated 21.11.2024 urging that a reading of the plaintiff’s pleadings shows that his concerns revolve around the voter register for the Mandera Branch FKF with allegations of the exclusion of football clubs which he considers eligible to vote in the election. The 2nd defendant invoked section 5 of the *Civil Procedure Act* which stipulates that a court is subject to the provisions contained in the said section in that it has a jurisdiction to try any civil suit except suits that are either expressly or impliedly barred.
9. It was further argued that article 21(7) of the FKF Constitution provides that the 3rd defendant is the body charged with organizing the FKF election process. Additionally, article 69(9) designates the 3rd



defendant as the first port of call for electoral disputes and further, that any member dissatisfied with the decision of the 3rd defendant may appeal to the FKF Appeals Committee.

10. It was further contended that section 7 of the Electoral code provides for appeals to the FKF Appeals Committee. The plaintiff has been faulted for disregarding the doctrine of exhaustion of internal dispute resolution mechanisms as enunciated by the Court of Appeal in the case of Geoffrey Muthinja & Another vs Samuel Muguna Henry & 1756 Others [2015] eKLR where the court held that it is imperative that where there is a dispute resolution mechanism outside court, the same should be exhausted before the jurisdiction of the courts is invoked.
11. In the same breadth, this court was further urged to be persuaded by a determination by Ngaah J. in the case of Nairobi HCJR No. 5 of 2022 Republic vs Sports Disputes Tribunal & 3 Others ex parte Football Kenya Federation & 52 others where the court held that the doctrine of exhaustion is an administrative remedy that should always be explored at the first instance.
12. It was further argued that section 6 of the *Civil Procedure Act* provides that no court shall proceed with the trial of any suit or proceeding in which an issue is directly and substantially before another court between the same parties. That there exists another matter before the Sports Disputes Tribunal in Nairobi in SDTSC/E043/2024 – Abdisalam Ahmed Lakicha and 4 Others vs Ismail Mohamed Issack & 3 Others which was previously filed against the defendants herein on 07.11.2024 and which is still pending hearing and determination.
13. I have read the preliminary objection and the written submissions filed by both parties. The primary issue for determination is whether the notice of preliminary objection by the 2nd defendant dated 21.11.2024 has merit.
14. The Supreme Court in Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others [2014] eKLR cited the leading decision on Preliminary Objections, Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696, where the Court held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.
15. In view of the foregoing, this Court is duty bound to make a finding whether the grounds outlined in the preliminary objection herein, have met the threshold set out in the aforementioned cases.
16. The 2nd defendant has submitted that the plaintiff's main complaint is that his concerns revolve around the voter register for the Mandera Branch of FKF with allegations of the exclusion of football clubs which he considers eligible to vote in the election. The 2nd defendant argued that this court lacks jurisdiction to hear this matter and additionally, that section 5 of the *Civil Procedure Act* which stipulates that a court subject to the provisions contained herein has the jurisdiction to try any civil suit except suits that are either expressly or impliedly barred. On the hand, the plaintiff contended that by virtue of article 165(3) of *the constitution*, this court has original and appellate jurisdiction to hear any matter presented before it and therefore, this suit is properly before this court.



17. The complaint by the plaintiff herein is hinged on the allegation that the FKF Mandera Branch elections scheduled for 16.11.2024 were not only discriminatory, biased, unfair but also illegal for the reason that teams from six sub counties had been excluded from the voter register. The same can be deciphered from para 8 of the plaint. The plaintiff averred that the FKF electoral board colluded with the current outgoing FKF Mandera Branch officials who hail from Mandera East sub County to only register members from sixteen clubs from Mandera East sub County excluding members from clubs from the other five sub counties.
18. It follows that the plaintiff's gravamen is the fact that the other six sub counties were excluded from the election despite them being members and voters. The foregoing was buttressed by the quest of the plaintiff seeking to have the defendants make public the voter register of all registered football teams in Mandera County to ascertain whether indeed all the teams were registered prior to the voting process being conducted.
19. From the said averments as enumerated above, it is clear that the alleged members of the other sub counties who had been excluded from the voters' register ought to have participated in the said election by the fact that they are members.
20. Noting that the matter herein involves elections in the field of football, in my view, the relevant Act as a point of reference is the *Sports Act*. The same in regards to section 58 provides as follows:
Jurisdiction of the Tribunal
The Tribunal shall determine—
 - a. appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including —
 - i. appeals against disciplinary decisions;
 - ii. appeals against not being selected for a Kenyan team or squad;
 - b. other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and
 - c. appeals from decisions of the Registrar under this Act.
21. Noting that the issue herein revolves around football, it therefore follows that the FKF, a registered body that derives its existence from the *Sports Act* and further governs football activities in the country, is another point of reference that I will now focus on.
22. Article 69 on Disputes Resolutions provides that:
 1. Disputes in the Association or disputes affecting Leagues, members of Leagues, Clubs, members of Clubs, Players, Officials and other Association Officials shall not be submitted to Ordinary Courts, unless the FIFA regulations, this Constitution or binding legal provisions specifically provide for or stipulate recourse to Ordinary Courts.
 2. The entities mentioned in par. 1 above shall give priority to arbitration as a means of dispute resolution.
 3. The disputes as specified in art. 1 shall be taken to an independent Arbitration Tribunal recognised by FKF or CAF or to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.



4. Decisions made by the FKF standing committees and the judicial bodies are final and FKF members are prohibited from taking such matters to ordinary courts. Any member found in violation of the same shall be subjected to disciplinary measures as stipulated in the disciplinary code of FKF and FIFA.
 5. If any of the parties is dissatisfied by decisions and rulings made by any of the Standing Committees and judicial committees, such a party is at liberty to lodge an appeal with the Appeals Committee whose decision shall be final unless stipulated elsewhere in this constitution.
 6. The first body for Electoral disputes shall be the Independent Electoral Board. Any member unsatisfied with decisions of the Electoral board may Appeal to the FKF Appeals Committee.
23. In the same breadth, article 70 provides that:
1. Recourse may only be made to an arbitration tribunal in accordance with article 68 once all internal channels of FKF have been exhausted.
 2. FKF shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to FKF.
 3. FIFA shall have jurisdiction when international disputes, i.e. disputes between parties belonging to different associations and/or confederations.
24. My understanding of paragraph 1 of article 70 is that, recourse may only be made to an arbitral tribunal in accordance with article 68 once all internal channels of the Federation have been exhausted.
25. From the pleadings presented before this court, nothing was presented to demonstrate that indeed the internal channels of the FKF had been exhausted to enable recourse before this court. This matter was directly filed before this court without the plaintiff attempting to have the matter settled by the FKF. I say so for the reason that the plaintiff urged that by virtue of article 165(3) of *the constitution*, this court has original and appellate jurisdiction to hear any matter presented before it.
26. It is trite that superior courts have time and again emphasized on the need for litigants to exhaust the dispute resolution mechanism under the statutes before invoking the jurisdiction of the formal court. The doctrine of exhaustion, was succinctly espoused by the Court of Appeal in the case of Geoffrey Muthiga Kabiru & 2 Others vs Samuel Munga Henry & 1756 others (2015) eKLR where the Court stated thus:
- “It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked”. The Court of Appeal upheld the doctrine as a sound one and expressed the view that Courts ought to be fora of last resort and not the first ports of call any time that a dispute arises.
27. Similarly, in the case of International Centre for Policy and Conflict and 5 Others vs The Hon. Attorney-General & 4 Others [2013] eKLR the Court observed as follows;
- “ [109]An important tenet of the concept of the rule of law is that this Court before exercising its jurisdiction under Article 165 of *the Constitution* in general, must exercise restraint. It must first give an opportunity to the relevant constitutional bodies or State organs to deal with the dispute under the relevant provision of the parent statute. If the court were to act in haste, it would be presuming bad faith or inability by that body to act.”



28. Noting that the plaintiff allegedly is a member and/or represents the interests of the alleged excluded clubs, it therefore follows that he is bound by *the constitution* of the football governing body and therefore, he ought to have submitted to the electoral body and process as defined in the FKF constitution before moving this court.
29. Of importance to note is the fact that the plaintiff did not make any response as to whether there exists a similar suit before the Sports Disputes Tribunal in Nairobi being SDTSC/E043/2024 – Abdisalam Ahmed Lakicha and 4 Others vs Ismail Mohamed Issack & 3 Others. Having not been controverted, I will consider the same to be true and correct. That is to say that the suit herein is an abuse of the court process on account of offending the doctrine of subjudice.
30. Having arrived at the aforesaid findings, the court is inclined to hold as follows;
- i. That the defendant’s preliminary objection on the ground of the court lacking the original jurisdiction to hear and determine the suit commenced through the plaint dated 15.11.2024, and the notice of motion of even date predicated on the said suit is hereby upheld.
 - ii. That the plaintiff’s suit and application are hereby struck out with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF FEBRUARY 2025

J. N. ONYIEGO

JUDGE

