



**Kenya Basketball Federation v Achiego (Civil Appeal E570 of 2022)
[2025] KEHC 3072 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3072 (KLR)

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

CIVIL

CIVIL APPEAL E570 OF 2022

JN MULWA, J

MARCH 6, 2025

BETWEEN

KENYA BASKETBALL FEDERATION APPELLANT

AND

DENNIS OPIYO ACHIEGO RESPONDENT

RULING

1. Before the Court for determination is the Application filed by Dennis Opiyo Achiego, respondent in the appeal (hereafter the Applicant) dated 25/8/2023 brought pursuant to Section 3, 3A & 80 of the [Civil Procedure Act](#) (CPA) and Order 45 Rule 1 of [Civil Procedure Rules](#) (CPR) seeking: -
 1. Spent
 2. That this Honorable Court be pleased to review and or vary the ruling dated 2nd November 2022 of Hon. Justice J. N. Mulwa.
 3. That this Honorable Court be pleased to uphold the Applicant's preliminary objection dated 28th September 2022.
 4. That the cost of the application be provided for.
2. The grounds on the face of the motion are amplified in the supporting affidavit sworn by Nancy D. Akinyi Ouko, counsel on record for the Applicant. The gist of her deposition is that the Applicant had filed a Preliminary Objection to the motion dated 9/9/2022 by the intended appellant challenging this Court's jurisdiction to determine the application seeking inter alia leave to appeal out of time and vide a ruling delivered on 2/11/2022, this Court dismissed the Preliminary Objection, premised on among other reasons that the [Sports Act](#) is silent on where appeals from the decision of the Sports Tribunal ought to be filed.



3. She goes on to depose that there is an error in the ruling, in that Rule 23 of the *Sports Tribunal Rules* provides that appeals from the decision of the Sports Tribunal lie in the Court of Arbitration for Sports. Further, 23(1), (2) and (4) of the Kenya Basketball Federation Constitution also recognizes the jurisdiction of the Court of Arbitration for Sports and establishes a directive restraining its members from referring disputes to ordinary Courts of law, therefore, this Court should review its ruling on jurisdiction premised on the law and the Kenya Basketball Federation Constitution.
4. Directions were taken on the disposal of the motion by way of written submissions. Despite being accorded ample opportunity the Respondent failed and/or opted not to file a response or submissions. Nevertheless, the Court has duly considered the Applicant's submissions filed in respect of the motion.

Analysis and Determination

5. The Applicant's motion invokes inter alia the provisions of Section 3A of the *CPA* as well as Order 45 Rule 1 of the *CPR*. The former provision, specifically reserves "the inherent power of the court" to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court" of which its implication was reasonably addressed by the Court of Appeal in the case of *Rose Njoki King'au & Micugu Wagathara v Shaba Trustees Limited & City Council of Nairobi* [2018] KECA 216 (KLR).
6. Alongside Section 3A of the *CPA*, the Applicant has equally cited Order 45 Rule 1 of the *CPR*. By dint of Order 45 of the *CPR* as read with Section 80 of the *CPA* this Court is empowered to review its orders or judgments and make such orders as it may think fit, on conditions thereto being: -
 - a. "Discovery of new and important matter or evidence which after due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree or the order made or;
 - b. On account of some mistake or error apparent on the face of the record, or
 - c. For any other sufficient reason and
 - d. That the Application has to be made without unreasonable delay"
7. The purport of Order 45 of the *CPR* has been the subject of numerous decisions within our jurisdiction meanwhile it has since been settled that the provision involves exercise of judicial discretion as observed in *Jason Ondabu t/a Ondabu & Company Advocates & 2 Others v Shop One Hundred Limited* [2020] eKLR. By the grounds amplified in support of the motion, the Applicant seeks to invoke this Court's discretion to review its ruling rendered on 2/11/2022 on what appears to be an error apparent on the face of the record.
8. An application for review specifically premised on Order 45(1)(b) of the *CPR* must appertain to an error or omission, must be self-evident and ought not require an elaborate argument to be established as addressed by the Court of Appeal in *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR and *Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited & 2 Others* [2020] eKLR.
9. Thus, to contextualize the issue before the court, the ruling of this Court delivered on 2/11/2022 was premised on the Applicant's Notice of Preliminary Objection dated 28/09/2022 challenging this Court's jurisdiction to determine the intended appeal filed by the Respondent. By the said ruling, this Court expressed itself at Paragraphs 11, 12 and 13, as follows: -

- " 11. There is no dispute that the *Sports Act, 2013* is silent on where appeals from the Sports Tribunal should lie. Some legislations such as the *Anti-Doping Act*



at Section 32 thereof expressly provide that international organizations such as the World Anti-Doping Agency, the International Olympic Committee, the International Paralympic Committee and the relevant International Federations shall have the right to a second appeal to the Court of Arbitration for Sports (CAS) with respect to the appeal decisions of the Sports Tribunal relating to doping crimes. A quick perusal of the documents before this court reveals that the dispute herein was not related to a doping crime and did not involve an international federation so as to qualify for automatic appeal to the Court of Arbitration of Sport (CAS) in Lausanne as insinuated by the Respondent. Further, nothing has been placed before this court to prove that the Applicant, through its internal Constitution, agreed to submit itself to the jurisdiction of the Court of Arbitration. He who alleges must prove.

12. Does this therefore mean that the Applicant cannot have any recourse if aggrieved by the decision of the Sports Tribunal? I do not think so. Article 165(3) (e) of *the Constitution* clothes this court with appellate jurisdiction which can only be exercised over decisions of subordinate courts and/or certain statutory tribunals. In addition, Article 165(6) of *the Constitution* confers on the High Court supervisory jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function. Since the Sports Disputes Tribunal is a quasi-judicial body constituted of members appointed by the Judicial Service Commission in consultation with national sports organizations, it automatically follows that its decision is amenable to this Court's appellate jurisdiction despite the fact that the *Sports Act*, 2013 does not expressly state so.
 13. In the premises, the Respondent's preliminary objection is found to be without merit and is hereby dismissed with costs to the Applicant."
10. From the above, what begs for determination is whether the Applicant has reasonably demonstrated an error apparent on the face of the record? As rightfully noted in the above ruling, the Applicant had challenged this Court's jurisdiction to entertain the intended appeal however did not premise his objection on any specific provision of any statute in the objection itself. This Court nevertheless proceeded to consider the Applicant's submissions in support thereof and addressed itself to the objection while observing that the intended appeal originated from a decision of the Sports Tribunal rendered on 15/06/2022. Further while addressing the objection this Court was alive to provisions of Article 165(3)(e) & (6) of *the Constitution* which grants this court appellate and supervisory jurisdiction over subordinate Courts or bodies exercising judicial or quasi-judicial authority and Tribunals.
 11. Vide the instant motion the Applicant has now introduced Rule 26 of the *Sports Tribunal Rules* and Article 21(1), (2) and (4) of the Kenya Basketball Federation Constitution to assert that this Court erred by failing to find that the forestated provisions provide that appeals from the decision of the Sports Tribunal lie with the Court of Arbitration for Sports. Here, I must mention that in the motion, the Applicant rather than cite the aforementioned provisions, cited Rule 23 of the *Sports Tribunal Rules* – concerning decisions of the Tribunal – and Article 23 of the Kenya Basketball Federation Constitution – submission to jurisdiction – which have no bearing on the issue in consideration. Rule 26 of the *Sports Tribunal Rules* provides that: -



1. Any party dissatisfied with a decision of the Tribunal may lodge an appeal to the Court of Arbitration for Sport if the rules or policies of the relevant International Federation or National Sports Organization so provide.
 2. An appeal to the Court of Arbitration for Sports shall be lodged within the time specified in the relevant rules of the International Federation or National Sports Organizations or within fifteen days of the date of the decision of the Tribunal where the relevant rules of the International Federation or National Sports Organizations do not specify the time.
 3. Unless the Tribunal or the Court of Arbitration for Sport otherwise order, an appeal shall not operate as a stay of the decision to which the appeal relates.
12. Article 21 of the Kenya Basketball Federation Constitution states that: -
1. Kenya National Sports Council (KNSC)
 - i. This Federation by resolution submits to the jurisdiction of the KNSC to the extent provided by *the constitution* thereof on condition that the Federation is accepted by the KNSC as an affiliate organisation thereof.
 - ii. The Federation and every one of its members shall honour and be bound by all decisions of the Kenya National Sports Council or directions from the Head of that Council which are in accordance with its constitution.
 2. National Olympic Committee of Kenya (NOCK).
 - i. This Federation by resolution submits to the jurisdiction of the NOCK Sports and Dispute Arbitration Committee and Anti Doping Agency on condition that the Federation is accepted by the NOCK as its affiliate.
 - ii. The Federation and every one of its members shall honour and abide by NOCK Sports Dispute Resolution Mechanism and Anti Doping Agency.
 3. The World Anti-Doping Agency - WADA
 - i. The Federation recognises the World Anti-Doping Agency and any of its regional and National affiliates.
 - ii. The Federation will adopt and subscribe to the policies and rules set out by the World Anti-Doping Agency Code and National Anti-Doping agency
 4. The Court of Arbitration of Sport, Lausanne, Switzerland
 - i. The Federation recognizes the Court of Arbitration of Sport, Lausanne, Switzerland
 - ii. Any dispute arising from this Constitution which cannot be settled by the KNSC or by the NOCK Sports and dispute arbitration committee and anti doping agency, or any appeal from decisions issued by the aforementioned bodies shall be definitively settled by a tribunal constituted in accordance with the Statutes and Procedural Rules of the Court of Arbitration for Sport, Lausanne, Switzerland. The parties concerned shall undertake to comply with the Statutes and Procedural Rules of this Court of Arbitration for Sport and to accept and enforce its decision in good faith.



- iii. Unless otherwise provided, members are urged to refrain from submitting disputes related to the specificity of the sport to the ordinary courts of law before exhausting the alternative dispute resolution mechanisms provided for in this Constitution.
13. With the above in reserve, firstly, drawing guidance from the dicta in *National Bank of Kenya Ltd (supra)*, it is evident that questions surrounding Rule 26 of the Sports Tribunal Rules and Article 21(1), (2) and (4) of the Kenya Basketball Federation Constitution were not an issue for consideration before this Court in the ruling delivered on 2/11/2022.
 14. The latter notwithstanding, even if the Court erred on the face of the record by failing to consider the aforementioned provisions, Rule 26(1) of the *Sports Tribunal Rules* is discretionary and conditional with respect to appeals to the Court of Arbitration for Sports given the use of the word “may” and the proviso with respect to rules or policies of the relevant International Federation or National Sports Organization. Further, a reading of Article 21 of the Kenya Basketball Federation Constitution, the same does not specifically ouster this Court of jurisdiction, in light of the subject of the appeal, and wording of Section 58 of the *Sports Act* as read with Article 165(3)(e) & (6) of *the Constitution*, and Section 5 & 12(3) of the *High Court (Organization and Administration) Act*.
 15. Meanwhile, this Court fittingly observed in its ruling that the *Sports Act* was silent on appeals from the Tribunal and thus rightly concluded that the fall back provisions was Article 165(3)(e) & (6) of *the Constitution* notwithstanding the provisions of Rule 26 of the Sports Tribunal Rules and Article 21(1), (2) and (4) of the Kenya Basketball Federation Constitution.
 16. Secondly, Order 45 of the *CPR* specifically mandates that an application for review has to be made without unreasonable delay. Here, the impugned ruling was delivered on 2/11/2022 whereas the instant motion was filed on 25/8/2023. No explanation has been offered for the nine (9) month delay in presenting the instant motion, which delay in itself appears inordinate and in clear disregard of the exhortation by Makhandia JA in *Patrick Wanyonyi Khaemba v Teachers Service Commission, Board of Management, Kapletingi Mixed Day Secondary School & Francis Tanui* [2019] KECA 112 (KLR) wherein it was observed that; -

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained, hence a plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour”.
 17. That said, the Court’s decision delivered on 2/11/2022 was well reasoned, to wit, the Applicant cannot now purport to say that there was an error apparent on the face of the record. Therefore, it is the Court’s firm finding that the asserted ground of error on the face of the record has not been demonstrated. In any event, if the Applicant was aggrieved with the merits of the ruling, an appeal rather than a review would have been more appropriate.
 18. In addition, the Court of Appeal in the case of *Solacher v Romantic Hotels Limited & another* (Civil Appeal 167 of 2019) [2022] KECA 771 (KLR) cited with approval the decision of Bennett J in *Abasi Belinda v Frederick Kangwamu and Another* [1963] EA p.557 rendered that:

“A point which may be a good ground of appeal may not be a good ground for an application for review, and an erroneous view of evidence or of law is not a ground for review, though it may be a good ground for appeal.”



Disposition

19. In the result, the Court’s considered view is that the Applicant’s motion dated 25/8/2023 is without merit. It is hereby dismissed with no orders as to costs, for the Respondent’s lack of participation.

The case shall be listed before the DR Hon. Wambu on 26/3/2025 for directions on the progression of the appeal.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

.....

JANET MULWA.

JUDGE

