



**Republic v Sports Disputes Tribunal; Maina & 3 others (Interested Parties);
Kenya Swimming Federation (Exparte Applicant) (Judicial Review Application
E084 of 2024) [2025] KEHC 5836 (KLR) (Judicial Review) (5 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5836 (KLR)

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

JUDICIAL REVIEW APPLICATION E084 OF 2024

RE ABURILI, J

MAY 5, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE SPORTS DISPUTES TRIBUNAL RESPONDENT

AND

JEN MONYO MAINA INTERESTED PARTY

NATIONAL OLYMPIC COMMITTEE OF KENYA INTERESTED PARTY

FRANCIS MUTUKU INTERESTED PARTY

COLLINS MARIGIRI INTERESTED PARTY

AND

KENYA SWIMMING FEDERATION EXPARTE APPLICANT

JUDGMENT

1. As I write this judgment for delivery on 5th May 2025, it is clear to me and the parties to these proceedings that the subject matter of the dispute is dissipated by effluxion of time. This is so, because, the dispute was over the selection of the Kenya Aquatics Team Manager to the Paris Summer Olympics, 2024, which event already took place from July 26 to August 11, 2024.
2. These proceedings were initiated on 22nd July 2024, four days to the commencement of the Paris Summer Olympics and in a bid to reverse or stay the decision of the respondent, the Sports Disputes



- Tribunal which sanctioned the 1st interested party Jen Monyo Maina to be the Team Manager for the Kenya Aquatics or swimming team to the Paris Summer Olympics.
3. Even the responses to the application were all filed after the Summer Olympics had begun and were ongoing.
 4. I note that on 24th July 2024, the Court, Ngaah J stayed the decision of the Tribunal which allowed the 1st interested party to be the Team Manager for the Kenyan Swimming Team to the Paris Summer Olympics, pending the hearing of the application. The application was then scheduled for hearing on 29th July 2024 during which time, as I have stated above, the Games had already kicked off in Paris, France. It is not clear who the Exparte applicant Federation had on the Team Kenya as their Aquatics Team Manager but the decision of the Tribunal regarding the 1st interested party having been stayed, no doubt, the 1st interested party was not the Team Manager of the Kenyan Swimming Team to the Summer Olympics in Paris.
 5. Even as at 29th July 2024 when this matter was to be heard, the exparte applicant had not filed a further affidavit to the replying affidavit and submissions and the Court granted it leave and a timeline of 7 days to file and serve the said documents with a date for highlighting of the submissions given as 16th /10/2024.
 6. I do not know whether the parties to these proceedings were aware of what was going on but obviously, as time went by, so was the substratum of the case disappearing and rendering these proceedings an academic exercise. This is because the Paris Summer Olympics had by 16th October 2024 taken place and therefore the question is, what decision was the court expected to render, in respect of the disputed decision where the 1st interested party could not be allowed to take charge as the Team Manager and the exparte applicant, therefore, had the discretion to appoint any other person of their choice to be the Team Manager to lead the Kenyan Aquatics Team?
 7. Thus, by 16/10/2024, the learned Judge was on leave as per the notice issued on 13/10/2024 and the matter had to be mentioned before Justice Chigiti SC on 5/11/2024 who deferred it to 5/3/2025. By the latter date, the trial judge had gone on transfer.
 8. The parties, regrettably, did not tell this court anything regarding the mootness of the subject matter.
 9. The question now is, should this court engage in superficial academic exercise and determine the merits of a matter which has been rendered moot? My answer is a clear NO.
 10. Judicial time and resources are so scarce and especially in this judicial review division of the High Court where most cases have statutory timelines for determination and any delay defeats the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 11. Generally, it would not be prudent for a court to give the merits of a case where the subject matter has dissipated and the event being challenged has already taken place, unless certain legal exceptions apply. In this case, the parties did not address the Court on the legal exceptions if any and therefore it would be a waste of judicial time to determine the merits of a matter that is moot. This position is supported in law by the doctrine of mootness which applies when the subject matter of a case has been overtaken by events, when there is no longer a live controversy between the parties because the issue at the heart of the case has already been resolved, or no longer exists. Courts typically dismiss cases that are moot because they no longer have the power to provide meaningful relief to the parties.
 12. Although there are exceptions to this doctrine, in this case, I do not find any meaningful purpose that it will serve the parties if the court delved into the merits of the case that was dependent on timelines for the occurrence of an event.



13. The Paris Summer Olympics having taken place between 26th July to 11th August 2024, it is useless to determine the question of who was the appropriate Team Manager for Team Aquatics, Kenya to represent the country in the swimming sport and event.
14. In *Mohamed Abdi Mahamud v. Independent Electoral and Boundaries Commission & 2 others* [2019] eKLR, the Supreme Court held:

“Courts should not render advisory opinions or engage in academic discourse unless provided for under *the Constitution*...”
15. In *Raila Odinga v. IEBC & Others* [2013] eKLR, the court emphasized that courts exist to resolve real disputes, not to engage in theoretical analysis.
16. In *Republic v Chiloba, Director General Communications Authority of Kenya; Katiba Institute & 5 others (Exparte Applicants)* [2023] KEHC 23791 (KLR) it was held that the Court should not engage in an academic exercise or deal with hypothetical and academic issues.
17. In *John Harun Mwau & 3 Others v Attorney General and 2 Others*, Petition No. 65 of 2011; Petition No. 628 of 2014 consolidated with Petition No. 630 of 20154 and Petition No. 12 of 2015 it was stated that:

“We also agree with the submissions of Prof. Ghai that this Court should not deal with hypothetical and academic issues. In our view, it is correct to state that the jurisdiction to interpret *the constitution* conferred under Article 165(3) (d) does not exist in a vacuum and it is not exercised independently in the absence of a real dispute. It is exercised in the context of a dispute or controversy.”
18. Munby J observed in the case of *The Queen (on the application of (1)A(2)B (by their litigation friend the Official Solicitor) (3) X (4)Y Claimants v East Sussex County Council* [2003] EWHC 167 (Admin) stated as follows, as cited by the Supreme Court in *The Matter of the Interim Independent Electoral Commission (Applicant) (Constitutional Application 2 of 2011)* [2011] KESC 1 (KLR) (20 December 2011) (Ruling):

“...the fact remains that courts exist to resolve real problems and not disputes of merely academic significance. Judges do not sit as umpires on controversies of the Academy. Nor is it the duty of a judge when sitting judicially...to set out to write a textbook or practice manual or to give advisory opinions...it is no function of the court...to give advisory opinions on questions raised in the abstract. The proper application of the law can only be determined in the context of a particular factual situation, decided on the facts of a concrete case...”[emphasis added]
19. In the instant case, as the matter in controversy is moot by effluxion of time and the happening of the event being the conclusion of the 2024 Paris Summer Olympics, the cause of action has already been completed or made irrelevant by external factors hence there is nothing left to be determined and the court cannot embark on the exercise of interpreting the decision of the Sports Disputes Tribunal in the absence of the matters which were in dispute.
20. For all the above reasons, I find and hold that this case is rendered moot and dismissed with no orders as to costs.
21. This file is closed.



DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 5TH DAY OF MAY, 2025

R.E. ABURILI

JUDGE

