



**Oluoch v Crebral Palsy Sports Federation & 5 others; Milare (Interested Party) (Civil Appeal E162 of 2023) [2023] KEHC 17647 (KLR) (Civ) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17647 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E162 OF 2023  
AN ONGERI, J  
MAY 23, 2023**

**BETWEEN**

**AGNES OLUOCH ..... APPELLANT**

**AND**

**CREBRAL PALSY SPORTS FEDERATION ..... 1<sup>ST</sup> RESPONDENT**

**KENYA SPORTS FEDERATION FOR THE MENTALLY  
HANDICAPPED ..... 2<sup>ND</sup> RESPONDENT**

**LYDIA IREGI ..... 3<sup>RD</sup> RESPONDENT**

**PAULINE AWUOR AWANGE ..... 4<sup>TH</sup> RESPONDENT**

**KENYA NATIONAL PARALYMPIC COMMITTEE ..... 5<sup>TH</sup> RESPONDENT**

**ELIJAH ALIERO ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**RONALD MILARE ..... INTERESTED PARTY**

**RULING**

1. The respondents in their response to the application dated March 14, 2023 raised the issue of the jurisdiction of this court to hear the appeal from the Sports Disputes Tribunal (SDT).
2. The 4<sup>th</sup> respondent stated at paragraph 14 of the replying affidavit that the *Sports Act* as well as its subsidiary Legislation, the *Sports Disputes Tribunal Rules* 2022 have clearly provided that the proper forum to file this appeal is at the Court of Arbitration for Sport.



3. The parties were directed to file written submissions on the issue of jurisdiction only which I have duly considered.
4. In the celebrated case of *Owners of Motor Vessel "lilian" v Caltex Oil (Kenya) Ltd* 1989 KLR I, Justice Nyarangi JA held as follows;

“I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that the opinion that it is without jurisdiction.”

5. The jurisdiction of the court flows from the Constitution or statute or both. I have perused sections 23(1) (2) & (3) of the Sports Rules which state as follows;

Appeals from the decisions of the Tribunal

(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. (Emphasis provided)

(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.

6. I find that according to said provision, the jurisdiction of the court has to be established from the Constitution of KNPC.
7. The appeal may be lodged to the court of Arbitration for Sport “If the rules or policies of the relevant International Federation or National Sports Organization so provide”.
8. I find that the parties are in agreement that the Constitution submitted to the SDT by the Appellant is the 2022 Constitution.
9. The parties are also in agreement that the SDT referred to the 2020 Constitution which was not referred to by the parties.
10. I find that the issue as to which constitution of KNPC was applicable is one of the grounds of appeal in the memorandum of appeal filed herein.
11. I also find that even if the Constitution provided for arbitration, the parties in this case submitted to the jurisdiction of this court by filing responses to the application dated 14/3/2023 instead of raising the issue of jurisdiction at the earliest opportunity.



12. I also find that the issue as to which of the Constitutions of the KNPC was applicable is one to be determined by adducing evidence and the same is to be canvassed during the hearing of the appeal.
13. I accordingly rule that this court is properly seized of this case and I dismiss the preliminary objection raised by the Respondents on the issue of the jurisdiction of this court to hear this application and the appeal.
14. Since the appellant/applicant had made their oral submissions, the respondents and interested party here accordingly allowed to reply to the same.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
23<sup>RD</sup> DAY OF MAY, 2023.**

.....

**A. N. ONGERI**

**JUDGE**

**In the presence of:**

..... for the Appellant/Applicant

..... for the 1<sup>st</sup> to 4<sup>th</sup> Respondent

..... for the 5<sup>th</sup> Respondent

..... for the Interested Party

