



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E473 OF 2021

FOOTBALL KENYA FEDERATION1ST PETITIONER
NICK MWENDWA2ND PETITIONER
BARRY OTIENO 3RD PETITIONER

VERSUS

CABINET SECRETARY MINISTRY OF SPORTS,
CULTURE AND HERITAGE.....1ST RESPONDENT
SPORTS REGISTRAR2ND RESPONDENT
FKF INSPECTION COMMITTEE 3RD RESPONDENT
THE ATTORNEY GENERAL4TH RESPONDENT
FKF CARETAKER COMMITTEE5TH RESPONDENT
SECRETARY TO THE FKF
CARETAKER COMMITTEE6TH RESPONDENT

AND

KARIOBANGI SHARKS FOOTBALL CLUB1ST INTERESTED PARTY
POSTA RANGERS FOOTBALL CLUB2ND INTERESTED PARTY
BIDCO UNITED FOOTBALL CLUB3RD INTERESTED PARTY
MOMBASA COUNTY FOOTBALL ASSOCIATION.....4TH INTERESTED PARTY
KAKAMEGA COUNTY FOOTBALL ASSOCIATION.....5TH INTERESTED PARTY
MANDERA COUNTY FOOTBALL ASSOCIATION 6TH INTERESTED PARTY
UASIN GISHU COUNTY FOOTBALL ASSOCIATION.....7TH INTERESTED PARTY
MIGORI COUNTY FOOTBALL ASSOCIATION8TH INTERESTED PARTY

RULING

1. The petitioners in their amended petition dated 22nd November, 2021 seeks the following orders:

- i. A declaration that the inspection of 1st petitioner commenced by the 1st respondent through her directive issued to the 2nd respondent dated 14th October, 2021 and all other processes undertaken by the respondents thereafter are irregular, unlawful and a nullity in law;*
- ii. A declaration that an inspection under Section 52 of the Sports Act must be undertaken only after the 2nd respondent has notified a sports organization of such impending action prior and having issued adequate notice of the nature and reasons for the proposed inspection and having accorded the sports organization an opportunity to be heard and to make representations;*
- iii. A declaration that an inspector appointed under Section 52 of the Sports Act, 2013 is a singular person whose identity must be made known to the sports organization being inspected and an inspector so appointed must accord the sports organization being inspected a reasonable opportunity to state its case;*
- iv. An order of certiorari directed at the respondents to remove into the court and quash the 1st respondent's directive to the 2nd respondent dated 14th October 2021 and all the processes undertaken by the respondents pursuant to that directive including the preliminary report of the 3rd respondent dated 5th November 2021 and Gazette Notice No.12374 dated 12th November 2021;*
- v. An order of injunction against the respondents from undertaking any other or further administrative or legal action against the petitioners on the basis of the preliminary report of the 3rd respondent dated 5th November 2021;*
- vi. An order of permanent injunction against the 5th and 6th respondents from taking over the running of football activities in the Republic of Kenya and issuing any directives in that regard; and*
- vii. Costs of the petition to be borne by the respondents.*

2. Likewise in their Notice of Motion of even date they seek the following orders:

- i.spent*
- ii. Grant a conservatory order by way of interlocutory injunction or any other interim order stopping and/or staying the implementation of the 3rd respondent's preliminary report dated 5th November 2021 and the operations of the 5th and 6th respondents with immediate effect pending the hearing and determination of the application;*
- iii. Grant a conservatory order by way of interlocutory injunction or any other interim order restraining the respondents from interfering with the petitioner's organizational structure, management, operations and/or the petitioner's control of the football activity in the Republic of Kenya pending the hearing of the application;*
- iv. Grant a conservatory order by way of interlocutory injunction or any other interim order stopping and/or staying the implementation of the 3rd respondent's preliminary report dated 5th November 2021 and the operations of the 5th and 6th respondents with immediate effect pending the hearing and determination of this petition;*
- v. Grant a conservatory order by way of interlocutory injunction or any other interim order restraining the respondent's from interfering with the petitioner's organizational structure management, operations and/or the petitioner's control of all football activity in the Republic of Kenya pending hearing and determination of the petition; and*
- vi. The respondents to bear costs of the application.*
- vii. An order of permanent injunction against the 5th and 6th respondents from taking over the running of football activities in the Republic of Kenya and issuing any directives in that regard; and*
- viii. Costs of the petition to be borne by the respondents.*

3. In the process of working on the ruling in respect of the Notice of Motion dated 22nd November, 2021 I have observed that the underlying issue in both the application and the petition is whether the actions by the 1st respondent through the 2nd respondent were regular/lawful and whether they should be sustained. This issue must be determined before grant of the orders sought in the Notice of Motion dated 22nd November, 2021.

4. The said issue cannot be determined at interlocutory stage as that would amount to issuing final orders before hearing the petition and the same will have been rendered moot. It is for this reason that I issued the mention notice for parties to appear before the court for this explanation to be given.

5. That being the position, I decline to grant any orders in respect of the Notice of Motion dated 22nd November, 2021. The said application is subsumed in the main petition. Parties are directed to move with speed so that the main petition is heard. Directions on the way forward to be taken today. In the meantime the status quo prevailing will remain in force until the petition is determined.

Orders accordingly.

**DELIVERED ONLINE, SIGNED AND DATED THIS 7TH DAY OF DECEMBER, 2021 IN OPEN COURT AT MILIMANI
NAIROBI.**

H. I. ONG'UDI

JUDGE OF THE HIGH COURT