



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 63 OF 2020

HARPAL SINGH SEHMI.....1ST PLAINTIFF

KENNEDY OBUYA.....2ND PLAINTIFF

KALPESH SOLANKI.....3RD PLAINTIFF

PEARLYNE OMAMO.....4TH PLAINTIFF

OMOLE ASIKO.....5TH PLAINTIFF

-VERSUS-

ZEHRAVANU JANMOHAMMED.....1ST DEFENDANT

TOM TIKOLO.....2ND DEFENDANT

MUKHTAR ASSARIA.....3RD DEFENDANT

CHARLES NYABERI.....4TH DEFENDANT

AND

SPORTS REGISTRAR.....1ST INTERESTED PARTY

MURTAZA TAJBHAI.....2ND INTERESTED PARTY

RULING

1) The 1st and 2nd plaintiffs took out the motion dated 18th May 2020 whereof they sought for inter alia:

i. Pending the hearing and final determination of this suit this honourable court do hereby issue a temporary order restraining the 1st respondent from representing Cricket Kenya at the Africa Cricket Association in any capacity including acting as the Chairlady of the Africa Cricket Association.

ii. Pending the hearing and final determination of the suit this honourable court be hereby pleased to issue a temporary order restraining the sports Registrar from proceeding with any adverse action concerning the registration status of Cricket Kenya under the Sports Act no. 25 of 2013.

iii. Pending the hearing and final determination of the suit this honourable court be hereby pleased to issue a temporary order maintaining the applicants as members of the Interim Executive Board of Cricket Kenya in the following capacities:

a. Harpal Singh Sehmi- chairperson

b. Peralyne Omamo – vice chairperson

c. Kennedy Obuya – treasurer

d. Kalpesh Solanki – Development director

e. Omole Asiko – Board member

f. Mutarza Tajbhai – Board member

iv. Costs of this application.

2) The motion is supported by the affidavits sworn by Kennedy Obuya. When served, the 1st defendant filed a replying affidavit she swore and grounds of opposition to resist the application. The 2nd and 4th defendants filed grounds of opposition to also oppose the aforesaid motion. The 1st and 2nd Interested parties too filed a replying affidavit and grounds of opposition to oppose the aforesaid motion.

3) Learned counsels appearing in this matter made oral Submissions though the Interested Parties filed written submissions. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have also considered the grounds of opposition and the rival oral and written submissions.

4) It is the submission of M/s Kwesiga, learned advocate for the 1st and 2nd plaintiffs that the defendants are in breach of the consent order. She averred that the applicants are seeking for interim orders to protect Cricket Kenya and its employees. The applicants urged this court to grant the orders to maintain the status quo regarding registration and to also enable the plaintiffs to access the association's bank accounts.

5) The 4th plaintiff also sought for near similar orders as those sought by the 1st and 2nd plaintiffs. It is argued that the plaintiffs and the respondents were the officials who recorded a consent order in which an interim executive board was appointed to be in place before a substantive board is appointed.

6) It was pointed out that there is no executive board in place in the organization which receives an annual sum of over ksh.18,000,000/=. The 4th plaintiff complained that Cricket Kenya has breached the consent order and argued that unless the orders sought are granted, this suit shall be rendered useless and the employees of the association will remain unpaid.

7) The 4th plaintiff also stated that the plaintiffs are basically seeking for a limited mandate to keep the organization running.

8) Mr. Amoko, learned advocate for the 1st defendant urged this court to strike out the suit together with the application. He pointed out that the consent order had no provision for extension of the time limit. He also pointed out that Cricket Kenya is not before this court hence no order should be granted.

9) The learned advocate further argued that the plaintiffs have no *locus standi* to file the suit on behalf of Cricket Kenya since their term in office lapsed. It is also argued that there is no cause of action stated in the plaint against the defendants.

10) Mr. Amoko further pointed out that the Sports Act is the comprehensive Law governing all sports matters in Kenya. It was argued that all matters relating to sports regulations and registration are provided for under the Sports Act.

11) It is argued that this dispute should have gone to the Registrar of Sports, then to the Sports Tribunal and eventually to the High Court on Appeal. This court was invited to find that this suit is an abuse of the court process because this court lacks jurisdiction to entertain hence the orders sought cannot be issued.

12) Mr. Anzala, learned Advocate for the 3rd defendant adopted the submissions of the 1st defendant and pointed out that there are no orders sought as against the 2nd, 3rd and 4th defendants in the suit. The learned advocate also stated that the 2nd and 3rd defendants are not officials of Cricket Kenya therefore there is no cause of action against them. For the above reasons this court was beseeched to dismiss the motion.

13) Mr. Munene learned advocate who held brief for Mr. Muriithi for The 1st and 2nd interested Parties opposed the application arguing that the law does not allow issuance of injunctive orders against the Sports Registrar from executing her mandate. He also pointed out that the interim period granted by court lapsed on 10th May 2020 hence the orders sought are untenable and cannot be granted.

14) Having considered the material placed before this court and the rival submissions over the motion dated 18th May 2020, it is apparent that one preliminary issue is the question as to whether this court has jurisdiction to entertain the application and the suit.

15) The 1st interested party also has argued that this court is bereft of jurisdiction to grant an injunction against the Sport Registrar under Section 16(2) of the Government Proceedings Act. It is not in dispute that the plaintiffs have sought for orders of injunction to restraint the sports Registrar from undertaking part of her mandate. With respect, I am persuaded by the submissions of Mr. Munene that the court is barred from issuing such orders under Section 16(2) of the Government Proceedings Act.

16) The other preliminary pointed is that raised by the 1st defendant in which Mr. Amoko argued that the dispute is that which is envisaged under the Sports Act and therefore any such dispute should be dealt with under the sports Act.

17) With respect, I am persuaded by Mr. Amoko's submissions. The dispute now before this court should have started its journey at the Sports Registrar's door step, then proceed to the Sports Tribunal and finally to this court on appeal.

18) In my view the plaintiffs have skipped the steps prescribed by statute and have instead prematurely jumped to this court. In short, this court does not have the original jurisdiction to entertain the dispute. Consequently, the motion dated 18th May 2020 is improperly before this court. The same is ordered struck out with costs to the defendants and the Interested parties.

Dated, signed and delivered online via Microsoft Teams at Nairobi this 2nd day of October, 2020.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant