



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1116 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

MILTON NYAKUNDI ORIKU.....APPLICANT

VERSUS

THE SPORTS DISPUTES TRIBUNAL.....RESPONDENT

RULING

1. The Applicant herein has filed an application by way of a Chamber Summons dated 12<sup>th</sup> October 2020, seeking the following orders:

**I. The matter be certified urgent and heard ex-parte in the first instance.**

**II. An order of certiorari to remove into this court for the purpose of quashing paragraphs 82, 129 (a) and 129 (b) of the decision of the Sports Disputes Tribunal dated 29th September 2020 in SDT Petition 11 of 2020 striking out the petition by decreeing that:**

**82. In view of the foregoing, the Tribunal finds that the affidavit in support of the Petition as being invalid pursuant to section 34(1) of the Advocates Act. Accordingly the Tribunal also finds that the petition as it stands is fatally defective.**

**129. In summary, the Tribunal commends the following orders:**

**a. The affidavit in support of the petition dated 2nd September 2020 and filed on 3rd September 2020 is void and is hereby struck out.**

**b. The petition filed on 14th August 2020 is fatally defective and is hereby struck out.**

**III. The grant of leave to apply for Judicial Review do operate as an ex parte injunction to restrain the FKF Electoral Board; whether by itself, it's servants or agents or howsoever otherwise from proceeding with the electoral process, including the national elections scheduled for Saturday 17th October 2020, until the hearing of the application for judicial review or further orders and SDT Petition 11 of 2020.**

**IV. A declaration that if leave to apply for Judicial Review is granted, the hearing of the application for judicial review and SDT Petition 11 of 2020 be expedited.**

**V. An order of mandamus compelling the Respondent to hear and determine the applicant's case in SDT Petition 11 of 2020.**

**VI. An injunction restraining the FKF Electoral Board from proceeding with the Football Kenya Federation elections scheduled for 17th October 2020 pending the hearing and determination of this application and SDT Petition 11 of 2020.**

**VII. A declaration that the findings at paragraphs 82, 129(a) and 129(b) of the decisions of the Sports Disputes Tribunal dated 29<sup>th</sup> September 2020 in SDT Petition 11 of 2020 striking out the petition was and is invalid, void and of no legal effect.**

VIII. A declaration that the findings at paragraphs 82, 129(a) and 129(b) of the decision of the Sports Disputes Tribunal dated 29th September 2020 in SDT Petition 11 of 2020 striking out the petition violate the provisions of Articles 10, 22, 47, 50, 159 and 165 of the Constitution of Kenya 2010.

IX. A declaration that the finding that the affidavit of the applicant herein in support of SDT Petition 11 of 2020, being a journalist acting for himself in public interest, is not compliant for having been drawn by himself is unconstitutional, null and void as the applicant did not move the court as an advocate and to subject him to the requirements of the Advocates Act amounts to an affront to his right to a fair hearing.

X. A declaration that the Respondent's findings at paragraphs 82, 129(a) and 129(b) which were the premise for striking out my petition are unconstitutional, null and void

XI. A declaration that persons appearing in person or without representation by counsel before the Respondent as unqualified persons within the meaning of the Advocates Act have the right to present their case, including drawing their own affidavits and they should not be turned away for lack of capacity to draw their own affidavits as a way of presenting the evidence to prove their case.

XII. A declaration that the Football Kenya Federation County elections held on 19 September 2020 are null and void for the reason that they were conducted during the penancy of hearing and determination of matters challenging the legality and constitutionality of the electoral process.

XIII. An order for costs.

2. The said application is supported by a statutory statement dated 12<sup>th</sup> October 2020, and an affidavit sworn on the same date by the Applicant. In summary the Applicant is aggrieved with Paragraphs 82, 129(a) and 129(b) of the decision of the Sports Disputes Tribunal dated 29th September 2020 in SDT Petition 11 of 2020, striking out his case on the premise that his affidavit was not drawn by an advocate. He states that he has the right to prepare and file his documents in person, including affidavits and without being subjected to the requirements of the Advocates Act, as he is not and has not purported to appear as an advocate.

3. Given the nature of the orders sought, and that some of the orders sought at this stage are final orders, the question of leave to commence judicial review proceedings against the Respondent requires to be heard *inter partes*. In addition, the Applicant also needs to address the issue whether there are other adequate alternative remedies to address his grievance.

4. I accordingly hereby direct and order as follows:

I. The Applicant shall serve the Respondent with the Chamber Summons dated 12<sup>th</sup> October 2020, (ii) skeletal submissions on the said Chamber Summons (iii) a copy of these directions and (iv) a hearing notice with twenty-one (21) days of today's date.

II. The Respondent and Interested Parties are granted leave to file and serve their responses to the Chamber Summons dated 12<sup>th</sup> October 2020 and skeletal submissions thereon within twenty-one (21) days of service by the Applicant.

III. The Chamber Summons dated 12<sup>th</sup> October 2020 shall be heard on 15<sup>th</sup> December 2020.

IV. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the Applicant's Chamber Summons dated 12<sup>th</sup> October 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

V. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

VI. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

VII. The parties shall also be required to file and send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

VIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 15<sup>th</sup> December 2020.

IX. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Applicant by electronic mail by close of business on Thursday, 15<sup>th</sup> October 2020.

X. Parties shall be at liberty to apply.

5. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF OCTOBER 2020**

**P. NYAMWEYA**

**JUDGE**