



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 100 OF 2020

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE
JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI AND PROHIBITION**

BETWEEN

ROBERT MACHARIA.....APPLICANT

VERSUS

SPORTS DISPUTE TRIBUNAL.....RESPONDENT

AND

FOOTBALL KENYA FEDERATION.....1ST INTERESTED PARTY

CHEPTIRET FOOTBALL CLUB.....2ND INTERESTED PARTY

BONDENI FOOTBALL CLUB.....3RD INTERESTED PARTY

SAM NYAMWEYA.....4TH INTERESTED PARTY

LORDVICK OMONDI ADUDA.....5TH INTERESTED PARTY

MICHAEL ESAKWA.....6TH INTERESTED PARTY

ALEX OLE MAGELO.....7TH INTERESTED PARTY

STEVE MBURU.....8TH INTERESTED PARTY

TWAHA MBARAK.....9TH INTERESTED PARTY

ANGELINE MWIKALI ELIJAH.....10TH INTERESTED PARTY

MILTON NYAKUNDI ORIKU.....11TH INTERESTED PARTY

CHEPTIRET UNITED FC.....12th INTERESTED PARTY

BONDENI FOOTBALL CLUB.....13th INTERESTED PARTY

08 COMMUNITY CLUB SOCCER.....14th INTERESTED PARTY

WEST STARS FC.....15th INTERESTED PARTY

SPORTS CLUB KINUNGA FC.....	16 th INTERESTED PARTY
JARED NYAUMA ONDIEKI.....	17 th INTERESTED PARTY
PETER KIMANI.....	18 th INTERESTED PARTY
FKF MOMBASA SUB BRANCH.....	19 th INTERESTED PARTY
NANDI SOUTH SUB BRANCH.....	20 th INTERESTED PARTY
JOSHUA A. OVITA.....	21 st INTERESTED PARTY
STEPHEN KIAMA.....	22 nd INTERESTED PARTY
ZABLON OMayio.....	23 rd INTERESTED PARTY
MBALILWA ELIAKIM.....	24 th INTERESTED PARTY
HASSAN HUSSEIN.....	25 th INTERESTED PARTY
GILBERT M. AMBEYI,	
GREENSTEADS YOUTH.....	26 th INTERESTED PARTY
JUMA THOMAS,	
MANANJE SANTOS SEC.....	27 th INTERESTED PARTY
ROBERT MAERI,	
CHAIRMAN NAKURU.....	28 th INTERESTED PARTY
GEORGE BICHANGA,	
GETANGULA FC.....	29 th INTERESTED PARTY
ANDREW MUYAKA TIGER FC.....	30 th INTERESTED PARTY
WALTER MONG'ARE	
N. SUGAR NGIYA FC.....	31 st INTERESTED PARTY
GEORGE MORARA KINENI FC.....	32 nd INTERESTED PARTY
MOSOMBOR FC.....	33 rd INTERESTED PARTY
KIPSEBWO FC.....	34 th INTERESTED PARTY
KIPKAP FC.....	35 th INTERESTED PARTY
KECHIRE FC	36 th INTERESTED PARTY
KILIMO FC.....	37 th INTERESTED PARTY
MAVUNO FC.....	38 th INTERESTED PARTY
CHEMASE FC.....	39 th INTERESTED PARTY
KOBUJOI FC.....	40 th INTERESTED PARTY

CHEPSIRE FC.....	41 st INTERESTED PARTY
SITOI FC.....	42 nd INTERESTED PARTY
KIPSEBWO FC.....	43 rd INTERESTED PARTY
NANDI TEA YOUTH FC.....	44 th INTERESTED PARTY
CHEMOMI FC.....	45 th INTERESTED PARTY
NANDI TEA FC.....	46 th INTERESTED PARTY
NANDI HILLS BODABODA FC.....	47 th INTERESTED PARTY
KIMIMEI FC.....	48 th INTERESTED PARTY
YOUNG BULLETS FC.....	49 th INTERESTED PARTY
KIBWARI FC.....	50 th INTERESTED PARTY
KEPCHUMO FC.....	51 st INTERESTED PARTY
KABOSWA FC.....	52 nd INTERESTED PARTY
SAVANI FC.....	53 rd INTERESTED PARTY
KIPKEIBON FC.....	54 th INTERESTED PARTY
TEMZO FC.....	55 th INTERESTED PARTY
CHEPTABACH FC.....	56 th INTERESTED PARTY
SIRET FC.....	57 th INTERESTED PARTY
KAPSAMBEIWA FC.....	58 th INTERESTED PARTY
KENYA FOOTBALL	
REFEREES ASSOCIATION.....	59 th INTERESTED PARTY
TWOMOC YOUTH FC.....	60 th INTERESTED PARTY
MINISTARS YOUTH FC.....	61 st INTERESTED PARTY

RULING NO.2

Introduction

1. Robert Macharia, the *ex parte* Applicant herein, states that he is the Chairman-elect of the Muranga branch of the Football Kenya Federation, and also the Chairman and sole financier of Murang'a Seal Football Club which is currently playing in the Football Kenya Federation (FKF) Nationwide Super League.
2. The *ex parte* Applicant is aggrieved by the decision made on 17th March 2020 by the Sports Dispute Tribunal (the Respondent herein), in Sports Dispute Tribunal Case Numbers 3 and 5 of 2020. The *ex parte* Applicant states that the said decision stopped the National Delegates Conference convened by the Electoral Board of the Football Kenya Federation (the 1st Interested Party herein and hereinafter referred to as "FKF"), and directed the International Football Organization (FIFA) to constitute a "normalization committee" to run Kenyan football.
3. The *ex parte* Applicant therefore filed an application by way of Chamber Summons dated 30th April 2020 *inter alia* seeking leave to commence judicial review proceedings, and this Court in a ruling delivered on 18th May 2020 granted the said application on the following terms:

I. The *ex parte* Applicant's Chamber Summons application dated 30th April 2020 be and is hereby certified as urgent, and is hereby admitted for hearing *ex parte* and on a priority basis.

II. The *ex parte* Applicant is granted leave to apply for an order of Certiorari removing into the high court and quashing the proceedings and decision dated 17th March 2020 of the Sports Dispute Tribunal Cases number 3 and 5 of 2020 and all subsequent proceedings.

III. The *ex parte* Applicant is granted leave to apply for an order of Prohibition, prohibiting the Sports Dispute Tribunal from interfering with the electoral process of the Football Kenya Federation Election Board.

IV. Prayer 4 of the *ex parte* Applicant's Chamber Summons dated 30th April 2020 seeking orders that the grant of leave do operate as a stay of the decision dated 17th March 2020 of the Sports Dispute Tribunal Cases number 3 and 5 of 2020 and all subsequent proceedings shall be heard *inter partes*, and a ruling thereon shall be reserved at a hearing to be held on 17th June 2020.

4. The *ex parte* Applicant subsequently filed his substantive Notice of Motion and submissions on the prayer for stay, both dated 22nd May 2020. The 1st Interested Party also filed a replying affidavit and submissions dated 15th June 2020 on the said prayer, as did the 11th Interested Party, who filed submissions of the same date on the issue of stay. While the prayer for stay was pending hearing, the 2nd to 61st Interested Parties filed three Notices of Preliminary Objections, one dated 15th June 2020, and the other two 16th June 2020, on the ground that the *ex parte* Applicant is improperly before this Court.

5. On 17th June 2020, this directed that the 2nd to 61st Interested Parties' Notices of Preliminary Objections to the Applicant's Notice of Motion dated 22nd May 2020 be heard and determined first, and that submissions on the said Preliminary Objections are exchanged between the parties. This ruling is on the said Notices of Preliminary Objections. A summary of the parties' respective submission on the Preliminary Objections is set out in the following sections.

The Preliminary Objections.

6. The 2nd, 3rd 12th to 61st Interested Parties' preliminary point of law as raised in their Notice of Preliminary Objection dated 16th June 2020 was that the *ex parte* Applicant's application and the entire suit is misconceived, frivolous, totally devoid of merit and mala fides for the reason inter alia, that the Applicant has not complied with mandatory provisions of the law namely Articles 14(1), 59(2) and (3) of the Fédération Internationale de Football Association (hereinafter "FIFA") Statutes, as read together with Articles 3 and 11(d) of the Football Kenya Federation (hereinafter "FKF") Constitution 2017. The 4th to 10th Interested Parties similarly raised a preliminary objection dated 6th June 2020, on the ground that the *ex parte* Applicant has not complied with mandatory provisions of the law namely Articles 14(1), 59(2) and (3) of the FIFA Statutes, as read together with Articles 3 and 11(d) of the FKF Constitution 2017.

7. The 11th Interested Party's Notice of Preliminary Objection dated 15th June 2020 was on the ground that the *ex parte* Applicant's application is born of a grave misinterpretation of the application of the FKF Constitution 2017 to the exclusion of Section 46(6) as read with Paragraph(d) of the Second Schedule to the Sports Act and Article 81 of the Constitution of Kenya 2010, as well as the relevant provisions of the FIFA Statutes and the regulations therefrom, including the Standard electoral Code.

8. The 2nd, 3rd 12th to 61st Interested Parties' did not file submissions on their Notice of Preliminary Objection. Kerandi Manduku & Company Advocates, the advocates on record for the 4th to 10th Interested Parties filed written submissions dated 14th July 2020, while the 11th Interested Party filed submissions dated 15th July 2020.

9. The 4th to 10th Interested Parties reiterated that the *ex parte* Applicant had not complied with the mandatory provisions of the of the law namely Articles 14(1), 59(2) and (3) of the FIFA Statutes, as read together with Articles 3 and 11(d) of the FKF Constitution 2017. The counsel for the 4th to 10th Interested Parties submitted that the law giving rise to their Preliminary Objection are the FIFA statutes and accompanying regulations which form the Constitution of football's international governing body, and provide the basic laws for world football. In addition, that Article 2 (5) and (6) of the Constitution of Kenya recognizes that principles of international law and any treaty ratified by Kenya forms part of Kenyan law. The counsel in this respect cited Article 14 of the FIFA statutes which provides for Member associations' obligations and Article 15 which further provides that Member associations' statutes must comply with the principles of good governance. He also relied on Article 59 of the FIFA which deals with Member associations' obligations relating to dispute resolution.

10. It was the 4th to 10th Interested Parties' case that that Articles 14 and 59 of the FIFA statutes as read together with Articles 69 and 70 of the FKF 2017 Constitution deprive this Court of the jurisdiction to hear and determine this matter, as the same relates to a dispute affecting leagues, members of leagues, clubs, members of clubs and players. Further, that failure to comply with these provision may lead to sanctions by FIFA which include being banned from FIFA sanctioned football-related activities. It was further contended that the dispute between the parties herein, ought not to be handled by this court, as the Applicants have not attempted to exhaust the laid down statutory procedures of the FIFA statutes.

11. The 11th Interested Party submitted that that the Court lacks the jurisdiction to entertain this matter on the basis that the *ex parte* Applicant had not exhausted the laid down structures for resolution of the dispute at hand. He relied on Article 69 of the FKF Constitution 2017, section 46 (6) and Paragraph (d) of the Second Schedule to the Sports Act 2013, Articles 2 and 81 of the Constitution of Kenya 2010 and Articles 14 and 99 of the FIFA Statutes.

12. According to the 11th Interested Party, Article 2 of the Constitution of Kenya, 2010 domesticates the FIFA Statutes, which thereby forms

part of the Kenyan laws and as such they take precedence in the context of this dispute, being a football-related matter and therefore regulated by the world football governing body. In this respect the 11th Interested Party cited various Articles of the FIFA statutes, including Article 14 which provides for Member associations' obligations; Article 15 which provides that Member associations' statutes must comply with the principles of good governance; and Article 59 on the obligations of Member Associations with respect to disputes resolution.

13. Reliance was also placed on the dispute resolution mechanism provided for in Article 69 of the FKF Constitution of 2017 that requires any person dissatisfied by decisions and rulings made by any of the Standing Committees and judicial committees, to lodge an appeal with the Appeals Committee whose decision shall be final unless otherwise stipulated elsewhere in the constitution. He added that the first dispute resolution body for electoral disputes is the Independent Electoral Board, and that any member unsatisfied with decisions of the Electoral board may Appeal to the FKF Appeals Committee. Therefore, that this being a football-related dispute as it deals with the issue of the electoral process of the Football Kenya Federation, the applicable statutes are the FKF Constitution and the FIFA Statutes which require that disputes are only to be resolved through arbitration.

14. Lastly, the 11th Interested Party submitted that Article 55 of the Sports Act, 2013 establishes the Sports Disputes Tribunal, whose jurisdiction is set out in Article 58 of the Sports Act. Therefore, that the bodies clothed original and appellate jurisdiction is the Sports Disputes Tribunal or if the ex parte Applicant so wishes, the Court of Arbitration for Sports as provided in both the FKF Constitution and the FIFA Statutes and not this Court. Lastly, the 11th Interested Party contended that as the Applicant had failed to demonstrate how they had exhausted all the other mechanisms provided for by the aforesaid provisions of the law.

The ex parte Applicant's Reply

15. The ex parte Applicant submissions dated 20th July, 2020 in response to preliminary objections by the 4th to the 11th Interested Parties. It was submitted that the 4th to 11th Interested Parties had raised an objection on the basis that the Applicant had not complied with the mandatory provisions of Articles 14 and 59 of the FIFA statutes and Articles 3 and 11 (d) of the FKF Constitution. The ex parte Applicant's case is that the said provisions of the FIFA statutes and Article 11(3)(d) of the FKF Constitution support his Judicial Review application, since they oust the jurisdiction of the municipal courts and tribunals to deliberate disputes whose resolution mechanisms are expressly provided therein. He submitted that the gist of this judicial review application is the illegal and unlawful usurpation of jurisdiction by the Sports Dispute Tribunal contrary to not only its establishing statute but also the laws governing the game of football.

The Determination

16. I have carefully considered the arguments made by the 4th to 11th Interested Parties and the ex parte Applicant. The first question that this Court needs to answer is whether the grounds raised in the 2nd to 61st Interested Parties' preliminary objections raise pure points of law. It is only after determining this question, that this Court can proceed to answer the secondary question as to whether the said preliminary objections have merit and should be upheld.

17. The circumstances in which a preliminary objection may be raised, as explained by the Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, as follows:

“a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

18. A preliminary objection cannot therefore be raised if any fact requires to be ascertained. In the case of **Oraro vs Mbaja, (2005) 1 KLR 141**, the court held that any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. The Court of Appeal also stated in **Mukisa Biscuit Company -vs- West End Distributors Ltd (supra)** that a preliminary objection cannot be raised if what is sought is the exercise of judicial discretion.

19. It is in this respect evident that from the submissions made by the parties that the main ground raised by the 4th to 11th Interested Parties is that this Court is divested of jurisdiction by the provisions on internal dispute resolution of the FIFA statutes and the FKF Constitution. The Interested Parties further argue that the FIFA instruments qualify to be principles of international law within the meaning of Article 2(5) and (6) of the Constitution.

20. A Court's jurisdiction flows from either the Constitution or statute or both, or and by principles laid out in judicial precedent. It is thus clearly a pure question of law. I am in this respect guided by the case of **Owners of Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd (1989) KLR 1** where Justice Nyarangi JA (as he then was) held:

“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 make 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 the opinion that it is without jurisdiction.”

21. The court of Appeal proceeded to define jurisdiction and its source as follows:

“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or

commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

22. In order to determine whether the 4th – 11th Interested Parties’ preliminary objection on this Court’s jurisdiction is merited, it is important and necessary to clarify the dispute that is before this Court at the outset, and whether this Court has or does not have jurisdiction in relation thereto. It is not in dispute in this regard that the *ex parte* Applicant has commenced judicial review proceedings in relation to decision of the Respondent Tribunal, and specifically to quash the decision made on 17th March 2020 by the Tribunal in Sports Dispute Tribunal Case Numbers 3 and 5 of 2020, and to prohibit any further decisions by the said Tribunal on football election disputes.

23. The judicial review jurisdiction of this Court is in this respect granted by Articles 47 and 165(6) of the Constitution, particularly when any contravention and/or violation of constitutional and statutory provisions by a public body is alleged, or unfair action by an administrator is alleged. In addition, Article 165 (6) of the Constitution in this regard provides that the High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function in this regard.

24. It is notable that in the present proceedings, this Court is being asked in exercise its supervisory jurisdiction, to review the lawfulness of the proceedings of the Respondent Tribunal, which is established under the Sports Act, and is therefore both a statutory quasi –judicial body and subordinate court within the meaning of Article 169(1)d of the Constitution. The Respondent is therefore amenable to this Court’s supervisory jurisdiction, to ensure that the exercise of its powers is legal, rational and compliant with the principles of natural justice.

25. Coming to the arguments made by the 4th to 11th Interested Parties, it is indeed the position that the exhaustion of alternative remedies is now a constitutional and legal imperative under Article 159 (2)(c) of the Constitution and section 9(2) and (3) of the Fair Administrative Action Act, and as exemplified by emerging jurisprudence in cases such as those by the Court of Appeal in **Geoffrey Muthinja Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others [2015] eKLR**. This position notwithstanding, the disputes that are covered by the dispute resolution clauses in Article 59 of the FIFA statutes and Articles 69 of the FKF Constitution are not the ones before this Court, and were on the contrary before the Respondent Tribunal in Cause 3 and 5 of 2020, and the subject of the impugned decision made by the Respondent.

26. Article 59 of the FIFA statute in this regard provides as follows:

1. The confederations, member associations and leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS. The same obligation shall apply to intermediaries and licensed match agents.

2. Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Recourse to ordinary courts of law for all types of provisional measures is also prohibited.

3. The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to CAS.

4. The associations shall also ensure that this stipulation is implemented in the association, if necessary by imposing a binding obligation on its members. The associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law.

27. Likewise, Article 69 of the FKF Constitution on dispute resolution provides as follows:

1. Disputes in the Association or disputes affecting Leagues, members of Leagues, Clubs, members of Clubs, Players, Officials and other Association Officials shall not be submitted to Ordinary Courts, unless the FIFA regulations, this Constitution or binding legal provisions specifically provide for or stipulate recourse to Ordinary Courts

2. The entities mentioned in par. 1 above shall give priority to arbitration as a means of dispute resolution.

3. The disputes as specified in art. 1 shall be taken to an independent Arbitration Tribunal recognised by FKF or CAF or to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.

4. Decisions made by the FKF standing committees and the judicial bodies are final and FKF members are prohibited from taking such matters to ordinary courts. Any member found in violation of the same shall be subjected to disciplinary measures as stipulated in the disciplinary code of FKF and FIFA

5. If any of the parties is dissatisfied by decisions and rulings made by any of the Standing Committees and judicial committees, such a party is at liberty to lodge an appeal with the Appeals Committee whose decision shall be final unless stipulated elsewhere in this constitution.

6. The first body for Electoral disputes shall be the Independent Electoral Board. Any member unsatisfied with decisions of the Electoral board may Appeal to the FKF Appeals Committee.

28. As noted in the foregoing, the dispute before this Court does not involve any decisions or actions by leagues, members of leagues, clubs, members of clubs, players, or officials of FIFA or FKF, but solely rests on the decision made on such a dispute by the Respondent Tribunal. The alternative dispute resolution ship has therefore long sailed, since the Respondent Tribunal has already decided on the substantive dispute affecting the parties herein, and all that this Court is being asked to do is to review that decision for legality.

29. The 4th to 11th Interested Parties arguments are in the result only relevant in proceedings as to whether the Respondent was properly seized of jurisdiction, arising from the provisions on alternative dispute resolution in the FIFA statutes and FKF Constitution. In a nutshell, the 2nd to 61st preliminary objections have been raised too late in the day, and at the wrong forum.

30. A related point of law raised by the 4th to 11th Interested Parties was that this Court's jurisdiction is ousted by the FIFA statutes, which take precedence as a result of Article 2(5) and (6) of the Constitution of Kenya. Article 2(5) and (6) provide that the general rules of international law and any treaty and convention ratified by Kenya, shall form part of the law of Kenya. A treaty is an agreement between sovereign states and in some cases international organisations, which is binding at international law. The Vienna Convention of the Law of Treaties of 1969, in this regard defines a treaty, identifies who has the capacity to conclude a treaty, and outlines treaty interpretation, disputes, and reservations.

31. The general rules of international law on the other hand are commonly referred to as customary international law, and are made up written or unwritten rules that form part of the general international concept of justice. When states respect certain rules consistently in their international and internal relations, with legal intentions, these practices become accepted by the international community as applicable rules of customary international law. Unlike treaty law, which is only applicable to those states that are parties to the particular agreement, customary law is binding upon all states, regardless of whether they have ratified a treaty.

32. Professor Mark Janis has commented on the nature of general principles of international law in his text An Introduction to International Law, Fourth Edition at page 6 as follows:

"A second source of international law is the customary practice, other than the making of treaties, of states among themselves. Such international customary practice has municipal analogies in commercial law notions such as "the course of dealing" and "the usage of trade," where practice creates justifiable expectations of future observance. International practice is thought capable of creating binding rules of law known as "customary international law..."

Rather different in conception from the international practice of states as a source of international law is the general municipal practice of states. The idea is that if most or all states observe certain rules as part of their domestic laws, then it may be presumed that these rules are so fundamental as to be more or less automatically a part of international law. Such rules deriving from or reflecting the common municipal laws of states are known as "general principles of law"..."

33. Going by these definitions, the FIFA statutes certainly do not qualify as a treaty or a general rule of international law. The said statutes describe FIFA as a registered association and define its objectives, membership and activities, which while of a global nature and effect, are interventions by FIFA itself, and limited to the organization and regulation of football. FIFA is therefore neither a state or international organization capable of entering into a treaty, and has not entered into any agreement with Kenya for its statutes to qualify as a treaty. Furthermore, its rules have not been created and sustained by the constant and uniform practice of states to assume the character of general principles of international law, but are as a result of FIFA's and its members and stakeholders deliberate enactment.

34. In the premises, the 2nd to 61st Interested Parties preliminary objection are found to be without merit, and are accordingly dismissed, with costs to the *ex parte* Applicant.

35. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF OCTOBER 2020

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS JUDGMENT

In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this judgment will be delivered electronically by transmission to the email addresses of the *ex parte* Applicant's, Respondent's and Interested Parties' Advocates on record.

P. NYAMWEYA

JUDGE