



IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO 334 OF 2015

BETWEEN

GLADYS MWANIKI (REGIONAL CLUB)

MARTIN ODUOR (MATHARE NORTH CLUB)

VINCENT OCHIENG' (KISUMU CLUB)

MILKAH AKINYI (MOMBASA CLUB)

YAHYA MOHAMED (KPA CLUB MOMBASA)

FRANCIS NDUATI (KPA CLUB MOMBASA)

MARU MURERU (WAITHAKA CLUB MOMBASA)..... PETITIONERS

AND

GORDON OLUOCH.....1ST RESPONDENT

CHARLES NYABERI.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL (sued on behalf of the Ministry of Sports, Culture and the Arts).....3RD RESPONDENT

AND

WILFRED MUSINGO

MARTIN MALABA

ELIUD MUTALI

PHILIP KHAEMBA

JAYNE FRANCES KITALA.....INTERESTED PARTIES

JUDGMENT

Introduction

1. The petitioners, who describe themselves as professional tae kwon do athletes in the Republic of Kenya, have lodged this petition against the respondents to challenge the selection of the participants to represent Kenya in tae kwon do at the All Africa Games 2015 scheduled to take place in Congo Brazaville this month.
2. The petitioners allege that their rights under Articles 27 and 47 were violated in that the interested party, in scheduling trials to select the participants, did not do so through clubs as required under the Tae kwon do Association constitution but did so directly to participants.
3. The petitioners have lodged their claim against the 1st respondent, who is the Commissioner of Sports in Kenya and the Chef de Mission of Team Kenya to the 11th All Africa Games. The 2nd respondent is the Executive Officer of Team Kenya for the said games, while the 3rd respondent is the Attorney General of the Republic of Kenya whose office is a creation of Article 156 of the Constitution. The petitioners have joined to the petition the interested parties, whom they refer to as the purported officials of the Kenya Tae kwon do Association on the basis that there have been leadership wrangles in the Association.
4. In their amended petition dated 13th August 2015, the petitioners seek the following orders:
 - a. ***THAT this Honourable court be pleased to make a declaration that the trials held by the Respondents at Public Service Commission on 30th May 2015 were unconstitutional, unlawful, violated the Petitioners' rights to an open and fair competition AND to participate in the activities of the Kenya Taekwondo Association and therefore null and void.***
 - b. ***THAT this Honourable Court be pleased to order that the Respondents hold fresh taekwondo trials for the All Africa Games 2015.***
 - c. ***THAT in the alternative, the Respondents be ordered to compensate the Petitioners in the equivalent of what they would lose by exclusion from participation in the All Africa Games 2015.***
 - d. ***THAT the costs of this application be in the cause.***
5. The petition is supported by affidavits sworn by Mr. George Wasonga, Vincent Ochieng', Francis Nduati and Milkah Akinyi, and a further affidavit sworn by Ms. Gladys Mwaniki.
6. The 2nd respondent opposes the petition and has filed an affidavit sworn by Mr. Charles Nyaberi, the treasurer of the Kenya National Sports Council and the Executive Officer of the Management Committee for the Team Kenya to the 11th All Africa Games. The 1st and 3rd respondents also oppose the petition and have filed Grounds of Opposition dated 20th August 2015, while the interested parties rely on an affidavit sworn by Mr. Wilfred Musingo, the Chairperson of the Kenya Tae kwon do Association on 31st August 2015 in opposing the petition. The petitioners and the respondents also filed submissions which they highlighted on 1st September 2015.

The Petitioners' Case

7. The petitioners state that they represent several Tae kwon do athletes. They contend that the trials, which were held on 30th May 2015 at Public Service Commission (sic) were unconstitutional and unlawful, and that they violated the petitioners' rights to an open and fair competition, and of their right to participate in the activities of the Kenya Tae kwon do Association.
8. The petitioners claim that the notice that was sent with respect to the trials was sent to only 3

- clubs, while there are over 50 Tae kwon do clubs in the country. The notice was given by way of a short text message (SMS) sent by Mr. Phillip Khaemba, one of the interested parties. It is their case that as a result of the unreasonably short notice, only 2 Tae kwon do clubs were able to participate in trials; that such clubs consisted mainly of athletes from the Kenya Police and the greater Nairobi region; and that over 47 clubs from the country were either deliberately ignored or left out.
9. The petitioners allege that the trials were thus held in violation of the Constitution, the Sports Act No 25 of 2013, and the World Tae kwon do Federation (WTF) Competition Rules, and ask the Court to grant the prayers sought in the petition.
 10. In her submissions on behalf of the petitioners, Ms. Ontiti reiterated the averments by the petitioners, and the respective roles of the respondents with regard to the selection and the management of the Team Kenya. She submitted that the 1st and 2nd respondent are supposed to provide for accommodation, overseas fare travel and finances for the players, while the interested parties are the purported officials of Kenya Tae kwon do Association.
 11. Ms. Ontiti submitted that around 30th May 2015, a short text message was sent to individual Tae kwon do players from two teams inviting them to converge at the Public Service Club to conduct trials for the team that was to travel to Congo Brazzaville. Her submission was that the normal procedure with respect to selection is that if trials are to be conducted, notices should be sent to clubs as they are the ones who know the best players, and that sending notices by SMS is unprocedural as all players are entitled to be given open notice to present themselves. It was her contention, further, that the petitioners did not receive the SMS and were therefore excluded from participation through an unfair process.
 12. The petitioners submitted therefore that their rights under Articles 27 36, 47 and rule (h) of the Sports Act 2013, as well as Article 4 of the World Tae kwon do Association Rules were violated.
 13. According to the petitioners, they are gold and silver medallists, while those who were chosen were not suited to be included in the team. Ms. Ontiti submitted that the petitioners depend on the sport for their livelihood, and their career advancements depend on the competitions. She relied on various authorities in support of her case, and urged the Court, should it not grant the orders for new trials, to issue an order for compensation in damages to the petitioners.
 14. With respect to the response by the respondents, Ms. Ontiti noted that the 2nd respondent had confirmed in the affidavit of Mr. Charles Nyaberi sworn on 25th August 2015 that he participated in the competition and saw some of the petitioners who were denied participation. With regard to the letter of apology sent to the interested parties by Mr. Francis Nduati, the 6th petitioner, with respect to his presence at the trials and his refusal to participate in the trials, Ms. Ontiti submitted that the evidence of Mr. Nduati, who had sworn an affidavit in support of the petition, should be taken with a pinch of salt.
 15. Ms. Ontiti also dismissed the averments of Mr. Musingo on behalf of the interested parties, arguing that he had not presented any evidence in support of his contention with respect to notices to clubs. Her submission was that the respondent should have shown that they selected qualified participants, as well as that they sent letters regarding the trials to clubs. She also discounted the list of participants presented by the interested parties in the said affidavit, arguing that the list does not indicate the players and or their full names, and there are doubts about its authenticity. It was her submission that the respondents have not shown why the petitioners were excluded from the trials and they therefore merited the redress they sought from the Court.

The 2nd Respondent's Case

16. The 2nd respondent opposes the petition by way of his affidavit sworn on 25th August 2015, as

well as written submissions.

17. According to the 2nd respondent, he is the Executive Officer of the Management Committee for Team Kenya at the 11th All Africa Games. He is not, however, a member or official of the Kenya Tae kwon do Association. His case is that while the petitioners have set out and made allegations regarding the functions of the 1st and 2nd respondents, they have not alleged that the 2nd respondent has any mandate or role to play in the selection of teams for the games.
18. The 2nd respondent's mandate, as submitted by his Learned Counsel, Ms. Omuko, is technical, logistical and financial support of the team going to the All Africa Games. He has no role to play in the selection of teams, nor does he officiate at the trials and selection. He is not involved at all in the matters forming the subject of the petitioners' complaint, as the selection is done by the respective sports organizations and associations, in this case, the Tae kwon do Association. The 2nd respondent relies on a letter by the Kenya Tae kwon do Association addressed to all coaches and clubs, which is also copied to the All Africa Games Management Committee, of which he is the Executive Officer. The 2nd respondent further places reliance on correspondence from the Kenya Tae kwon do Association to the All Africa Games Committee stating that the Association had held successful trials and forwarding the list of members to the Committee.
19. While conceding that he was present at the Tae kwon do trials, the 2nd respondent avers that he was there as an observer, and that he stayed for two hours and left while the trials were still on-going. His position is that the petitioners have not made any claim against him or sought orders directed at him, and the case as against him should be dismissed. Ms. Omuko referred the Court in this regard to the case of **Gideon Mbuvi Kioko vs AG Petition No 223 of 2011**.
20. The 2nd respondent submitted further that in any event, this petition has been brought in bad faith, is misconceived and an abuse of the court process. She observed that from the averments in the affidavit of Mr. Charles Nyaberi, the 2nd respondent, as well as the affidavits of Mr. George Wesonga and Vincent Ochieng sworn in support of the petition, it is evident that the petitioners, who had travelled from all over the country, were present at the Public Service Club during the trials but refused to participate in the trials. The 2nd respondent's submission was that the petitioners could not have travelled from as far away as Mombasa and Kisumu if they had no notice of the trials.
21. Ms. Omuko also drew attention to the letter from Mr. Francis Nduati, one of the petitioners, annexed to the affidavit of Mr. Nyaberi, in which he apologises for not taking part in the last selections, and states that they were misled into not participating in the trials. Ms. Omuko observes that the averments in Mr. Nyaberi's affidavit, particularly in this regard, have not been challenged.
22. It was also the 2nd respondent's position that the petitioners had delayed unduly in challenging the selections. Ms. Omuko submitted that the trials were held on 30th May 2015, but no complaints were received by the Committee of which the 2nd respondent is executive officer with regard thereto, the petitioners choosing to come to court two and a half months later.
23. According to the 2nd respondent, if fresh trials were to be conducted as demanded by the petitioners, then the country would not be represented in Tae kwon do, accreditation by the 11th All Africa Games organizers having closed on 15th July 2015 in accordance with paragraph 5.1 of the Handbook of Heads of Mission.

The Case for the 1st and 3rd Respondents

24. On behalf of the 1st and 3rd respondents, Learned State Counsel, Mr. Kuria, relied on grounds of

opposition dated 20th August 2015. He supported the submissions made on behalf of the 2nd respondent, as well as the averments contained at paragraphs 5, 6, 8, 9 and 14 of the affidavit of Mr Nyaberi on behalf of the 2nd respondent.

25. The case for the 1st and 3rd respondents is that they are wrongly sued in this matter. Aside from being named as respondents, they are nowhere in the affidavits sworn by the petitioners shown to have been involved in the selection of any particular team for the 11th All Africa Games.

26. It is their case, further, that under the Sports Act, it is not within the province of the 1st or 3rd respondents to participate in the selection of any team to participate in any local or international event, such selection, as deposed in the affidavit of Mr. Nyaberi, being reserved for the respective sports organisations or associations under their own rules. Mr. Kuria submitted that the moment the names are forwarded to the National Steering Committee, the purported rights of the petitioners would have crystallized. Further, since the 1st and 3rd respondent are not involved in the selection process of any sporting discipline, they cannot be said to have violated the petitioners rights with respect to the selection in this case.

27. Counsel prayed that the present petition be dismissed, noting that no nexus had been shown between the alleged violation of rights and the issues in controversy.

The Case for the Interested Parties

28. Counsel for the interested parties, Mr. Saluny, relied on the affidavit of Mr. Wilfred Musingo and made oral submissions on behalf of the interested parties. He asked the Court first to strike out the further affidavit sworn by Ms. Gladys Mwaniki which he noted had been served on him the morning of the hearing, and raised new issues which the interested parties could not respond to.

29. Mr. Saluny submitted that it is the mandate of the Kenya Tae kwon do Association to conduct trials and selection of the national team, but that such selection is not a one day event but a continuous process which, in this case, began in January 2014. According to the interested parties, there have been various preliminary tournaments prior to the final trials which were held on 30th May 2015. It is on the basis of these preliminary tournaments that some athletes were identified for further and final trials for selection into the national team.

30. The interested parties submit that the Tae kwon do Association issued a notice on 20th March 2015 of its intention to conduct final trials to all coaches and affiliated clubs. It attached to the notice a preliminary list of players, which included all the present petitioners, who had been selected during the preliminary trials. The letter also requested clubs to forward the names and weight of players who may have been left out of the list, and proposed the 2nd of May 2015 as the date for the trials. The interested parties aver that the trials did not take place as scheduled, and were postponed, by way of the letter dated 30th April 2015 addressed to all clubs, to 30th May 2015.

31. The interested parties submit that the Association conducted the selection at the Public Service Club in the presence of members of the All Africa Games Steering Committee and the Chief de Mission. Their case is that all the petitioners were present during the selection, as were all the other persons on the list. Some players, however, such as the petitioners, refused to participate.

32. The interested parties submit therefore that the Association gave reasonable notice regarding the selection to all the members and their clubs; that it went further to contact all the participants in the tentative list to urge them to participate; and the petitioners have not demonstrated how the calls and SMS sent to individual athletes prejudiced them.

33. To the petitioners' contention that the players selected were not qualified, the interested parties

respond that there has been no demonstration of how the players are not qualified; and further, even if the petitioners, as they submit, are gold and silver medallists and had a right to be selected, they could not be selected if they did not participate at the trials.

34. The interested parties draw attention to the letter written to the Association by Mr. Francis Nduati apologising for not participating in the trials, which confirms that the petitioners did not participate in the selection, noting that the signature in the letter is similar to that in the affidavit sworn by the said Mr. Nduati on 7th August 2015 authorizing the filing of the petition.

35. The interested parties further argue that the allegation by the petitioners that the trials were conducted by unqualified referees as deposed in the affidavit sworn by Mr. Wasonga is confirmation that the petitioners were present at the trials.

36. The interested parties agree with the respondents that the accreditation for the games are closed, and departure dates set for all the teams, in the case of the Tae kwon do participants, the 11th of September 2015. In their view, were the Court to order fresh trials as prayed, then there would be no time for parties not represented in Court to participate in the trials. They therefore pray that the petition be dismissed, noting that all the prayers sought, including the prayer for damages, were directed against the respondents.

Petitioners' Submissions in Reply

37. In her submissions in response, Ms. Ontiti challenged the letters sent by the Association to call for the trials. She submitted that under Article 9(7) of the Tae kwon do constitution, such letters should not have been signed by Mr. Musingo, the Chairman, but by the Secretary General.

38. Ms. Ontiti referred the Court to the provisions of Article 10 of the Constitution of Kenya to submit that it calls for inclusiveness, which did not happen in this case, as well as Rule 47(h) of the Sports Act which requires transparency. She also referred the Court, with regard to the role of the 1st and 2nd respondent, to the second schedule, rule 41(h) of the Sports Act, on the role of the observer. Ms. Ontiti also questioned the authenticity of the document relied on by the respondents to demonstrate that the accreditation of participants is closed, submitting that the author is unknown, and contending that, according to Mr. Wasonga's deposition and rule 25(1) of the WTF Competition Rules (annexure GW3 annexed to the affidavit of Mr. Wasonga), it is done up to the eve of the event.

Determination

39. The petitioners have alleged violation of their rights under Article 10, 27 and 47 of the Constitution. They charge that they were not given formal or sufficient notice to participate in the trials for the selection of participants to the 11th All Africa Games scheduled to take place in Congo Brazzaville this month. Their grievance, as I understand it, is three-pronged: they were not given formal notices to participate, alleging that the notices were sent to individual athletes by way of SMS; that the trials were conducted by unqualified referees; and thirdly, that the athletes selected, unlike the petitioners, were not gold or silver medallists and did not deserve selection.

40. The response of the respondents is that they are improperly joined in this petition; they have no role or mandate in the selection of athletes to participate in any sport; that accreditation for the games is now closed, and the Court should not issue orders in vain.

41. The interested parties, the officials of the Tae kwon do Association which carried out the selection, respond that the petitioners were duly notified of the trials, which had been preceded by preliminary trials, but refused to participate. They have produced letters and a list which they submit demonstrate that the petitioners were fully aware of the trials, were present at the venue, but refuse to participate.

42. I have read and considered the respective pleadings and submissions of the parties, as well as the authorities relied on. As I believe trite law, the onus is on the petitioners to demonstrate which provisions of the Constitution have been violated, and the manner of such violation—see **Anarita Karimi Njeru vs Attorney General (1976-1980) 1KLR 1272** and **High Court Petition No. 229 of 2012- Trusted Society of Human Rights vs The Attorney General and Others**.

43. In this case, the petitioners allege violation of Articles 10, 27 and 47. Article 10 provides as follows:

10. (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

a. **applies or interprets this Constitution;**

(b) enacts, applies or interprets any law; or

(c) makes or implements public policy decisions.

(2) The national values and principles of governance include—

(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;

(b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;

(c) good governance, integrity, transparency and accountability; and

44. Article 27 provides that:

1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

45. Article 47 guarantees the right to fair administrative action as follows:

47. (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

46. The provisions of Article 10, 27 and 47 are indeed clear, and in accordance with the Constitution, are binding on all state organs and all persons. It is a constitutional imperative under Article 10 that there should be inclusiveness and transparency; under Article 27 that there should be no

discrimination on any of the grounds set out in Article 27(4), or any other ground, and the petitioners do indeed have a right to fair administrative action. The question is whether these requirements have been violated with respect to the petitioners by either the respondents or the interested parties.

47. Let me deal first with the position of the respondents. As submitted by their Counsel, and having read the pleadings and submissions of the petitioners, I am unable to find how the liability of the respondents arises, and how they have violated the rights of the petitioners. As the petitioners submit, and the respondents readily accept, the 2nd respondent is the Executive Officer of the Management Committee for the Kenyan team scheduled to participate in the games. The committee gives logistical support, including providing air fare and finances, to the teams which are selected.

48. I have considered the provisions of the Sports Act, No 25 of 2013. My perusal thereof does not disclose any role for the Commissioner of Sports with respect to selections for participation in games, or at all. There is also nothing in the petitioners' pleadings and submissions that demonstrates a violation of their rights by the Commissioner of Sports, either by way of commission or omission in respect of his functions. I have also not been able to find rule 41(h) in the second schedule of the Sports Act which Ms. Ontiti referred to. The schedule provides for matters to be provided for in the constitutions of sports associations, and runs from (a) – (i).

49. Similarly, there is nothing that demonstrates a violation of their rights by the 2nd respondent. I am therefore unable to find any violation of the rights of the petitioner by the 1st and 2nd respondent. From the limited material placed before me, their roles appear to be limited to setting policy and facilitating sports men and women respectively.

The Role of the Tae kwon do Association

50. From the pleadings and submissions of the petitioners, it is evident that their grievance is really against their Association. It is the Association which carried out the selections by which the petitioners are aggrieved. The question is whether the selections were carried out in a manner that violated the petitioners' rights.

51. The material before me discloses the following:

- a. The Association had began preparation for the 11th All Africa Games in January 2014
- b. Various preliminary trials were held, and a list drawn up, which included all the petitioners, for participation in the final trials for the team that would represent Kenya.
- c. Letters were sent to participating clubs inviting them to the final trials scheduled for 30th May 2015.
- d. The participants were also contacted by way of short text messages for the trials which were held on 30th May 2015 at the Public Service Club.

52. While it was submitted on their behalf that they were excluded from the trials, the evidence indicates that the petitioners were aware, and were indeed present, at the Public Service Club during the trials, but did not participate. In the affidavit sworn by Mr. Nyaberi on 25th August 2015, which the petitioners did not respond to, he deposes as follows at paragraph 11 and 12:

11. THAT when I arrived at the Public Service Club, I found the Petitioners together with a group of other taekwondo players standing outside the club. I enquired from them why they were not inside the club attending the trials. The 2nd Petitioner, after making several phone calls and consulting the others, informed me that they will not attend the trials.

12. THAT thereafter, I spoke to the officials of the Kenya Taekwondo Association to find out why the other players had refused to attend the trials. The officials however informed me that no one had been refused from attending the trials and that all the players who

wished to attend the trials could do so. I later went outside and spoke to the Petitioners together with all the players standing outside the club and informed them that they should go inside the club and attend the trials.

53. The presence of the petitioners during trials, which corroborates the respondents' and interested parties' assertion that they had full notice of the trials, is confirmed by two other matters. First is the letter written by Mr. Francis Nduati in which he apologises for not participating in the trials. The letter, which was also not challenged by the petitioners save for the submission by Ms. Ontiti that the evidence of Mr. Nduati should be taken with a pinch of salt, is in the following terms:

22nd August 2015

To the Chairman

Mr Bobby Musingo

Kenya Taekwondo Association

Dear Sir,

RE: APOLOGY LETTER

I Francis Nduati of ID No 25097045 hereby apologies for not taking part during the last selection held at Public Service Club 30th May 2015, that witnessed by the commissioner of Sports Mr Gordon Oluoch and Member of Kenya National Sports Council Mr Nyaberi.

We were misled but it was a lesson well learned.

Kindly I hereby request for the admission to be part of Kenya Taekwondo national team that will represent the country during the 11th All Africa games in Congo brazaville.

I hereby adhere by rules and regulations under your leaderships and per the sports constitution (taekwondo)

54. The petitioners have also questioned the qualifications of the referees who officiated at the selection. Which begs the question: if the petitioners did not have notice and were not present at the trials, how did they know who was officiating, and their qualification? Indeed, there is some contradiction in the petitioners' case. While their position is that there was no notice of the trials, their own evidence is that they were present at the venue, as is evident from the affidavits sworn by Mr. Nduati, Mr. Ochieng and Ms. Akinyi.

55. The petitioners' contentions, in my view, show a lack of candour that does not help their case. They claim that no notices were sent, but do not dispute that they were all present at the trials, but refused to participate. They allege that no formal notices were sent, but when the notices are placed before the Court, they turn around and argue that actually, the notices are not proper as they were not signed or sent by the Secretary General of the Association, but by the Chairman.

56. While the petitioners aver that they are gold and silver medallists, which is commendable, I believe it is not their case that by the fact alone of being previous medal holders, they should have been selected without undergoing trials.

57. Finally, the petitioners have not addressed the Court on the all- important question of delay. The trials were held on 30th May 2015. I have perused the petitioners' documents and have not found a single document that shows that any one of them, or anyone on their behalf, lodged any complaint anywhere with regard to the selections. They have filed the present petition on 7th August 2015, two months after the trials, and less than a month before the start of the games.

58. Ms. Ontiti submitted that the Court can still order new trials as the accreditation does not close, and participants can be accredited even the day before the start of the games. She was, however, unable to point out to the Court any rule that provides that accreditation can take place the day before an event.

59. I have considered the Handbook of the Head of Mission annexed to the affidavit of the 2nd respondent, whose authenticity Ms. Ontiti questioned. The Handbook indicates at paragraph 5.1 that the application for the games must be completed and forwarded by 15th July 2015. I have also considered the **Accreditation Guidebook of the 11th All African Games 2015**, (Available at <<http://www.cojabrazzaville2015.com/wp-content/uploads/2015/08/ACCREDITATION-GUIDEBOOK.pdf>> (accessed 3 September, 2015). It is stipulated at paragraph 2.1 thereof that:

“The accreditation application forms delivered to various delegations have to be returned to the committee of games organization of Brazzaville later than July 15th, 2015, the deadline for reception.”

60. The Guidebook further states that:

“For anyone whose form will reach us after the deadline, it will be difficult on his part to benefit from pre delivery service of accreditation cards. This may result in difficulty of entrance in various games sites and to a long waiting period on the arrival at the frontier checking posts.”

61. It is thus evident that there was a clear stipulated timeline for accreditation, with the deadline being 15th July, 2015. The effect of nullification of the trials held on 30th May 2015 therefore, would in effect mean that the country would have no participants in the sport of Tae kwondo, and would adversely affect the rights of parties who are not party to the present matter. The Guide book does suggest that accreditation could take place later, but the argument that it can take place at this late stage, or the day before the event, is clearly untenable

62. Ms. Ontiti urges the Court to be concerned about the rights of the petitioners, and it does bear them in mind. The Court, however, notes that the petitioners, as they depose in their affidavits which are in exactly the same terms, were unhappy with the trials, which they refused to participate in even though they were present at the venue. Perhaps they were not ready physically for the trials as they aver. Or the venue was wrong. Or the referees were unqualified. However, it is too late in the day for the Court to interfere, particularly since it is not satisfied that any violation of fundamental rights has been made out. What the petitioners are unhappy about are decisions made by the interested party on merit, which are not matters for review by this Court.

63. The interested parties asked the Court to strike out the further affidavit of Gladys Mwaniki which raises issues they had no chance to respond to. Having considered the affidavit, the gist of which is that there are serious problems with the management of the sport of Tae kwon do arising from management wrangles, I do not believe it changes the decision of this Court, one way or the other.

64. In the event, this petition must fail. It is therefore dismissed, but with no order as to costs.

Dated, delivered and Signed at Nairobi this 4th day of September 2015

MUMBI NGUGI

JUDGE

Ms. Ontiti instructed by the firm of P. K. Kamau & Co. Advocates for the petitioners.

Mr. Kuria instructed by the State Law Office for the 1st and 3rd respondents.

Ms. Omuko instructed by the firm of V.A Nyamodi & Co. Advocates 2nd respondents.

Mr. Saluny instructed by the firm of Gachugi, Gichuki & Co. Advocates for interested party.