



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA MOMBASA
CIVIL DIVISION
MISC CIVIL APPLI 873 OF 2004

REPUBLIC
.....
..... **APPLICANT**

VERSUS
THE REGISTRAR OF SOCIETIES
.....
RESPONDENTS

EX-PARTE:

- 1. SALIM SUMRA**
- 2. ALI MBARAK**
- 3. AWADH OSHAN**
- 4. TWAHA MBARAK**
- 5. ISMAIL MOHAMED**
- 6. GHAZAL HARIF**
- 7. SULEIMAN KAMONDE**
- 8. SWALEH KHAMIS**
- 9. MOHAMED OMAR**
- 10. SOUD ABDALLA RAMUZI**

Coram: Before Hon. Justice Mwera

Khatib for applicant

Mwakisha for 1st interested party

Kadima for 17th interested party

R U L I N G

When the court was poised to hear the applicants’ judicial review motion dated 9- 12-04 for an order of certiorari, Mr. Omwancha for the 3rd interested party, supported by Mr. Kilonzo for the 2nd interested party and Mr. Kadima for the 17th interested party, sought to argue his preliminary objection dated 3-5-05. First considered whether it could be heard as a point in opposition to the motion, it transpired that its disposal first was the prudent thing to do.

The notice of preliminary objection was three-pronged:

1. That the applicants’ motion was incompetent and an abuse of the court process because it did not comply with the court’s order and it was contrary to O.53 r. 3(4) Civil Procedure Rules.
2. That the application was in competent by virtue of Article XIX of the Kenya Football Federation (KFF) constitution by which the proceedings here ought to have gone for arbitration.
3. Costs.

Mr. Omwancha abandoned the first ground when he seemed to want to push an argument of service of the application on parties who were not his clients. He however quickly moved to ground 2 i.e. the non-compliance with Article XIX of the KFF constitution. The main argument was that the matter before the court now arose from acts/activities in football. That because the said constitution required such to go before an arbitrator, the applicants were in error to come here by way of judicial review. In essence Mr. Omwancha was telling the court that the applicants had an alternative course and remedy and so should not take the judicial review route. It was added that in the past these very applicants had sought the arbitration course in HCCC 266/04 when they sought an injunction in that suit (MBA H.C.C.C. 266/04 Salim Hashim Sumra & Others vs. Kipchoge Keino & Others - The defendants here constituted what the court was told a KFF Normalisation Committee) And that being aware of such a mechanism this motion should be dismissed with costs and at this point. It was added that in a ruling by Serгон J In MBA HCCC 525/03 he had directed the litigants there to go for arbitration under the said Article XIX.

Mr. Kilonzo’s arguments strongly supported the foregoing in all aspects, especially that there was arbitration as an alternative remedy.

Mr. Kadima for the 17th interested party also echoed what Mr. Omwancha and Mr. Kilonzo said particularly that arbitration offered a speedy resolution to the matter irking the parties here.

Mr. Khatib for the applicants put forward his argument thus: that the issue to challenge the deregistration of his clients KFF Coast Branch by the Registrar of Societies (respondent) was not such as to go to arbitration. It was not a matter arising out of football affairs. Further, that when his clients were involved in the 2 suits above (HCCC 266/04, HCCC 525/03) they were still existing as KFF Coast Branch. Now that they were deregistered and therefore no longer are members of KFF, they cannot invoke Article XIX of the KFF constitution. And more, that the registrar of societies, the respondent here, not being a member of KFF cannot similarly be subjected to the KFF constitution’s Article XIX (arbitration). Finally that the only venue for relief to the applicants is this court.

All sides cited authorities but this court found that they did not allude to judicial review proceedings. Perhaps it would do no harm to deal with this preliminary objection on arguments presented vis a vis Article XIX of the KFF constitution.

Beginning with the opening parts of that constitution, the court was attracted to recite the following: Article III has AIMS AND OBJECTIVES of KFF set out and among them this one sticks out:

“(b) To provide by-rules and regulations and bye-laws, the method of deciding and settling all differences

and disputes that may arise among members of the Federation, clubs and players.” (underlining added). And to deal with disputes Article XIX, SETTLEMENT OF DISPUTES – ARBITRATION says:

“1. If any dispute arises between the Federation and/or its Branches or any Standing Committee of the Federation and the clubs; or between any of the clubs and their members on any matters relating to football such disputes shall be referred to arbitration of a person agreed between the parties, or failing such agreement, a person appointed by the Chairman of the Law Society of Kenya upon application of either of the parties. The decision of the arbitrator shall be final.

2. -----“

If it be necessary to break down the strands of Article XIX, there must first arise a dispute. Such a dispute could be between KFF and/or branches. Or between any of the Standing Committees and the clubs OR between the clubs and their members. Now those are the parties to a dispute. That dispute should be about any matters relating to football.

The dispute shall then be referred to an agreed arbitrator or one appointed by the Chairman of the Law Society of Kenya to whom an application has been made in that regard. And the arbitrator’s decision shall be final.

The interested parties here urge this court to throw out this judicial review motion and direct that they go do arbitration under Article XIX above. In one word, they have totally misconceived the application of Article XIX. The court so finds on the following grounds: The application to call up the decision of the registrar of societies to deregister KFF Coast Branch for judicial review is not a dispute either between KFF and or the Branches. It is not a dispute between KFF Standing Committee and club(s) either.

Neither is that a difference between club(s) and their member(s). And lastly the issue to quash the deregistration decision does not concern football matters at all. As those proceedings stand now they involve a group of people who are no longer falling under KFF – the KFF Coast Branch (the applicants). They were deregistered and if one does not belong to a given association, one cannot go by that association’s charter or constitution at all. He will otherwise be termed a meddler, intruder or other in the Charter or constitution or affairs of that association. The other party the registrar of societies (the respondent) is not part of KFF or its branch(es), or Standing Committee.

The respondent is not a club or member of KFF involved in football matters in the manner the KFF constitution and particularly Article XIX envisages. If these two have a matter between them as they do in these proceedings they cannot invoke a resolution mechanism of charter or constitution of a body they do not belong to. They cannot be forced there even if interested parties in the proceedings so push. These two only have audience before this court. No wonder the respondent did not join in the preliminary objection.

In sum the preliminary objection is rejected in its entirety and those who argued for it are ordered to pay costs to the applicants. The notice of motion in question should be set down for hearing as soon the diary allows.

Orders accordingly.

Delivered on 6th July 2005.

J.W. MWERA

JUDGE