

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC JUDICIAL REVIEW NO. E007 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

**BANDARI FOOTBALL CLUB
APPLICANT**

VS

**THE SPORTS TRIBUNAL.....1ST
RESPONDENT**

SHEIKH TAHER MOHAMMED

**TWAHIR MOHAMED MUHIDDIN..... 2ND
RESPONDENT**

RULING

1 The Applicant filed a Notice of Motion dated 1st July 2025 seeking orders that: -

1) *the Honourable Court be pleased to grant a judicial review order of PROHIBITION, restraining the Respondent from proceeding with or otherwise staying the 1st Respondent's order of 14th January 2025 and the entire proceedings in the SPORTS TRIBUNAL SC NO. E032 OF 2024 TWAHIR MOHAMED MUHIDDIN VS BANDARI FOOTBALL CLUB.*

2) *the Honourable Court be pleased to issue a judicial review order of CERTIORARI, removing into this Honourable Court and forthwith quashing the 1st*

Respondent's order of 14th January 2025 and the entire proceedings in the SPORTS TRIBUNAL SC NO. E032 OF 2024 TWAHIR MOHAMED MUHIDDIN VS BANDARI FOOTBALL CLUB.

- 3) *the Honourable Court be pleased to grant a judicial review order of MANDAMUS, directing to the 1st Respondent, compelling them to refer the dispute in the SPORTS TRIBUNAL SC NO. E032 OF 2024 TWAHIR MOHAMED MUHIDDIN VS BANDARI FOOTBALL CLUB to arbitration as per clause 8 of the employment contract dated 1st July 2023.*
- 4) *the costs of this application be borne by the Respondents.*

Applicant's Case

- 2 The Applicant avers that on 14th January 2025, the 1st Respondent delivered a ruling on its preliminary objection dated 18th November 2024 which had challenged the 1st Respondent's jurisdiction to hear and determine a dispute between the 2nd Respondent and the Applicant.
- 3 The Applicant avers that the effect of the decision was for the 1st Respondent to abrogate itself jurisdiction to hear and determine an employment dispute between the 2nd Respondent and Applicant despite the express provisions of the Employment Contract between the two parties which required any and every dispute to be resolved by way of arbitration.

- 4 The Applicant avers that the decision by the 1st Respondent is both *ultra vires* and unreasonable to the extent that it confers non-existent jurisdiction on the 1st Respondent which is neither supported by the statute establishing the Tribunal or any other written law.
- 5 The Applicant avers that the 1st Respondent has conducted itself in a manner which no sensible Tribunal/Authority with due appreciation of its responsibilities would have decided as it waived the express provisions of the employment contract between the 2nd Respondent and Applicant.
- 6 It is the Applicant's case that the court's intervention is necessary to restore the intended statutory jurisdictional order to the extent of first allowing the disputes to be resolved as contemplated under contract and where the same has failed, parties be at liberty to approach the Employment and Labour Relations Court.

Applicant's Submissions

- 7 The Applicant submitted on two issues: whether the Sports Disputes Tribunal has the jurisdiction to hear and determine an employment matter; and whether the suit *SPORTS TRIBUNAL SC NO. E032 OF 2024 - TWAHIR MOHAMMED MUHIDDIN VS BANDARI FOOTBALL CLUB* should be referred to arbitration.

- 8 On the first issue, the Applicant submitted that it entered into a contract of employment dated 1st July 2023 in which clause 8 provides for dispute resolution as follows: *“a) All disputes relating to this contract shall be raised with the management and all efforts put into trying to resolve the matter at club level in a reasonable time. b) If the dispute is not resolved in Clause 8 (a) above the matter will be referred to FKF for arbitration. c) Any dispute that is not resolved under Clause 8 (a) or (b) above shall be settled by arbitration in accordance with the Arbitration Act (1995) Laws of Kenya or any statutory modification or re-enactment thereof for the time being in force or in accordance with FIFA regulations.”*
- 9 The Applicant submitted that the 1st Respondent only has jurisdiction to deal with matters related to sports disputes. Its jurisdiction is laid down under Section 55 of the Sports Act as follows: *“The Tribunal shall determine—*
a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including —
(i) appeals against disciplinary decisions;
(ii) appeals against not being selected for a Kenyan team or squad;
b) other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and
c) appeals from decisions of the Registrar under this Act.”

- 10 It is the Applicant's submissions that by filing a Notice of Preliminary Objection and an Application seeking to transfer the suit to Arbitration in the Tribunal, it did not consent to the dispute being heard and determined by the Tribunal. Consequently, the threshold stipulated in Section 55(b) of the Sports Act was not met therefore ousting the jurisdiction of the Tribunal to hear and determine the matter.
- 11 The Applicant submitted that Article 162(2)(9) of the Constitution and Section 12 of the Employment and Labour Relations Act grants the ELRC exclusive and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2)(9) of the Constitution and the provision of this Act or any other written law which extends jurisdiction to the Court related to employment and labour relations including disputes related to or arising of employment between an employer and employee.
- 12 The Applicant submitted that the agreement between it and the 2nd Respondent was between an employer and employee and therefore, the ELRC has jurisdiction to hear and determine the matter. It cited ***Sofapaka Football Club v Sport Tribunal & 2 others [2022] KEELRC 697 (KLR)*** in which the court held that the agreement between Sofapaka and Mike Evans Kibwage was an agreement of an employer and employee and therefore the court had jurisdiction to hear the case.

The Court further found that the case was an employment case, not a sports dispute case.

- 13 It is the Applicant's submission that the case between Bandari Football Club and Sheikh Taher Mohammed Twahir Mohamed Muhiddin is an employment dispute case and not a sports dispute case, therefore, the 1st Respondent, the Sports Dispute Tribunal, has no jurisdiction to hear and determine an employment matter
- 14 On the second issue, the Applicant submitted that Section 10 of the Arbitration Act, 1995 stipulates the extent to which a court can intervene in arbitration matters as it states: *"Except as provided in this Act, no court shall intervene in matters governed by this Act."* This restricts the jurisdiction of the court to matters where the parties submit themselves to arbitration under an arbitration agreement.
- 15 The Applicant submitted that in the instant suit the parties willingly submitted themselves to arbitration by executing the contract of employment dated 1st July 2023, which contained the arbitration agreement under clause 8. Thus, the matter ought to be referred to arbitration in line with the arbitration agreement. It cited ***Sofapaka Football Club v Sport Tribunal & 2 others (supra)***.

2nd Respondent's Submissions

- 16 The 2nd Respondent submitted on three issues: whether Whether the Sports Disputes Tribunal has jurisdiction to

hear and determine the dispute notwithstanding the arbitration clause; whether the existence of an arbitration clause ousts the jurisdiction conferred by statute on the Sports Tribunal; whether the judicial review application meets the threshold for the grant of orders sought.

- 17 On the first issue, the 2nd Respondent submitted that Section 58 of the Sports Act confers jurisdiction upon the Sports Disputes Tribunal to hear and determine all sports-related disputes, including employment disputes arising from engagement in sporting activities.
- 18 It is the 2nd Respondent's submission that the Applicant concedes that the parties are both football stakeholders engaged in sports. The contractual relationship is founded in a sporting context. The dispute is therefore a sports related employment dispute properly falling within the jurisdiction of the Tribunal.
- 19 The 2nd Respondent placed reliance in ***Sports Disputes Tribunal Case No. 20 of 2020 - Bernard Mwarome v FKF (Coach Termination Case)***, where the Tribunal held that: *"Employment disputes arising between coaches, players, and sports clubs fall within the jurisdiction of the Tribunal where the dispute relates to participation in sports."* Further, it submitted that the High Court in ***Republic v Sports Dispute Tribunal Ex parte Football Kenya Federation (FKF) [2017] eKLR***, affirmed that the Tribunal is the first port of call for sports-related disputes.

- 20 The 2nd Respondent submitted that jurisdiction conferred upon the Sports Disputes Tribunal under Section 58 (b) of the Sports Act extends to employment disputes arising within the sporting ecosystem, provided the dispute bears a direct nexus to participation in sport. The engagement between the 2nd Respondent and the Applicant was not a conventional employment relationship but one intrinsically linked to football management and governed by FKF statutes, CAF licensing standards and FIFA technical regulations. Consequently, the dispute falls squarely within the category of 'other sports-related disputes' contemplated under Section 58 (b), and the Tribunal properly assumed jurisdiction.
- 21 The 2nd Respondent submitted that a party who participates in proceedings without protest is estopped from later challenging jurisdiction as held by the Court of Appeal in ***Equity Bank Ltd v West Link MBO Ltd [2013] eKLR***. In the instant suit, the Applicant filed pleadings, a Preliminary Objection and an interlocutory application before the Tribunal without objection to its composition or authority until an adverse ruling was issued. Therefore, the Applicant cannot approbate and reprobate.
- 22 The 2nd Respondent further submitted that Article 159 (2) (c) of the Constitution obliges courts to promote alternative dispute resolution, including statutory tribunals created to handle specialized subject matter. The Sports Act operationalizes this constitutional principle through

the Sports Disputes Tribunal, therefore, judicial restraint requires this Court to respect and reinforce the specialized mechanism that Parliament has designated for sporting disputes, thereby promoting sectoral self-regulation consistent with constitutional values.

- 23 It is the 2nd Respondent's submission that the Applicant's reliance on ***Sofapaka FC v Sports Tribunal & 2 Others [2022]*** is misplaced. In ***Sofapaka***, the Tribunal's decision concerned a private contractual breach detached from any ongoing competition or federation process. In contrast, the present dispute arises from an employment contract executed under FKF registration, with obligations arising directly from football participation. The Tribunal's intervention was therefore not usurpation but exercise of the statutory mandate to ensure fair play, compliance with federation regulations and protection of football stakeholders
- 24 On the second issue, the 2nd Respondent submitted that Section 3 of the Arbitration Act underscores that arbitration is subject to any other written law, meaning statutory jurisdiction prevails where Parliament confers it. Therefore, the existence of an arbitration clause in the employment contract cannot override the mandatory statutory jurisdiction of the Tribunal under the Sports Act.
- 25 The 2nd Respondent submitted that the order of Mandamus sought to compel arbitration is legally untenable as arbitration is a consensual process. Mandamus cannot

compel a party to arbitrate as was held in **Anne Mumbi Hinga v Victoria Njoki Gathara [2009] eKLR**.

- 26 It is the 2nd Respondent's submission that the existence of an arbitration clause cannot oust the Tribunal's jurisdiction expressly conferred by Parliament. Section 3 of the Arbitration Act 1995 subjects arbitral agreements to any other written law. Likewise, in **Kenya Pipeline Co. Ltd v Kenya Oil Co. Ltd [2015] eKLR**, the Court held that contractual clauses cannot override statutory provisions. The Sports Act establishes the Tribunal as the first-instance forum for sports disputes. Accordingly, the arbitration clause in Clause 8 of the employment contract operates only after exhaustion of the statutory process, not in substitution of it.
- 27 On the third issue, the 2nd Respondent submitted that judicial review cannot be used to appeal a lawful decision disguised as a review. Judicial review is concerned with the decision-making process, not the merits of the decision as was held in **Municipal Council of Mombasa v Republic & Umoja Consultants Ltd [2002] eKLR**.
- 28 It is the 2nd Respondent's submission that the Applicant's grievance revolves around the Tribunal's interpretation of contractual and statutory provisions-matters of pure merit rather than process. As held in **Municipal Council of Mombasa v Republic & Umoja Consultants Ltd [2002] eKLR**, judicial review is not an avenue to correct perceived errors of fact or law within jurisdiction. The

Tribunal considered the Applicant's Preliminary Objection, rendered a reasoned decision, and no illegality, irrationality or procedural impropriety has been demonstrated. This Court therefore lacks basis to disturb a lawful exercise of jurisdiction.

29 I have examined all the evidence and submissions of the parties herein. The jurisdiction of the 1st respondent is derived from section 58 of the Sports Act which states as follows:

The Tribunal shall determine—

(a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including —

(i) appeals against disciplinary decisions;

(ii) appeals against not being selected for a Kenyan team or squad;

(b) Other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and

(c) appeals from decisions of the Registrar under this Act.

30 Under the said section the tribunal handles appeals against decisions made by national sports organization which relate to disciplinary decisions and not being elected in the Kenya team. It also handles sports related

disputes that parties refer to the tribunal and matters related to the registrar under the Act.

- 31 The tribunal indeed does not deal with matters related to employment. In the current application, the applicant contends that the Sports Tribunal handled a matter relating to employment. In order to determine this fact, I refer to the pleading filed at the Sports Tribunal in cause No E032/2024. The applicant herein filed a preliminary objection before the Tribunal challenging its jurisdiction to hear and determine a dispute between the 2nd respondent and the ex parte applicant.
- 32 The applicant claimant had filed a dispute where he stated it revolves around breach of contractual obligations and violation of his rights emanating from the abrupt and unlawful termination of his employment by the respondent. He indicated that the crux of the matter involves his examination of the respondent's unfair labour practices, wrongful and high handed termination and the unilateral arbitrary and baseless dismissal of the claimant from his position. The prayers sought included a judgment for compensation for monetary loss suffered due to the unfair termination and also damages for the breach.
- 33 On all fours, the claim before the tribunal was for breaches due to unfair termination. The claimant therein filed the claim in the forum which obviously was not ceased of jurisdiction hence the preliminary objection filed therein and which was dismissed by the tribunal.

34 It is my finding from the reasons given above that the Sports Tribunal did not have the jurisdiction to handle the claim it did and therefore this judicial review application is merited and I find for the applicant and return the verdict that an order of prohibition is issued retraining the respondent from proceedings with or otherwise staying the 1st respondents order of 14th January 2025 and the entire proceedings in the Sports Tribunal **SC NO E032 OF 2024 Twahir Mohamed Muhiddir vs Bandari Football Club,**

35 I also issue an order of certiorari removing into this honourable court and forthwith quashing the 1st respondents order of 14th January 2024 and the entire proceedings in the Sports Tribunal SC No E032 of 2024 **Twahir Mohamed Muhiddin v Bandari Football Club.**

36 The respondent claimant will decide on how to otherwise proceed with his claim. There shall be no order of costs.

Dated, Signed and Delivered Virtually at Nairobi this 27th Day of November 2025.

**HELLEN WASILWA
JUDGE**