

REPUBLIC OF KENYA
THE JUDICIARY
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E098 OF 2025

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BETWEEN

MARTIN BWANGAH LUTHER
APPLICANT

VERSUS

THE SPORTS DISPUTE TRIBUNAL 1ST
RESPONDENT

BOXING FEDERATION OF KENYA 2ND
RESPONDENT

THE SPORTS REGISTRAR 3RD
RESPONDENT

RULING

1. The Applicant instituted these proceedings by way of an Originating Notice of Motion dated 8th April 2025 seeking, inter alia, orders of:
 - i. Certiorari to quash the 1st Respondent's decision dated 25th March 2025, which approved and certified the elections of the Boxing Federation of Kenya held on 22nd February 2025 and 1st

March 2025 as lawful and valid despite non-compliance with Regulation 20 of the Sports Registrar Regulations, 2016;

- ii. Certiorari to quash the 2nd Respondent's approval of the said elections;
- iii. Mandamus compelling the 1st and 2nd Respondents to invalidate the elections and direct fresh ones; and
- iv. Prohibition restraining the 3rd Respondent from exercising powers based on the impugned elections.

The 2nd Respondents Case;

2. The 2nd Respondent in response to the Application filed a Notice of Preliminary Objection on a point of Law dated 20th May 2025 on the following grounds:

- 1) This court lacks jurisdiction to hear and determine the matters raised in the suit, which fall within the jurisdiction of the Sports Disputes Tribunal pursuant to the Sports Act and Regulation 20 of the Sports Registrar's Regulations, 2016.
- 2) The issues raised by the Applicant relate to an election conducted under the Sports Act and, by law, fall within the jurisdiction of the Sports Disputes Tribunal under Regulation 20 of the Sports Registrar's Regulations, 2016.
- 3) The suit amounts to an abuse of the court process as it improperly invokes the jurisdiction of this court despite the

existence of a competent statutory forum with jurisdiction over the subject matter.

- 4) The election in question has already taken place, the officials are duly in office, no appeal has been lodged with the Registrar of Sports as required by law, and the orders sought are moot, purely academic.
3. The said Notice of Preliminary objection forms the subject of this ruling.
4. To advance their positions Parties filed and exchanged submissions.
5. The 2nd Respondent argues that it conducted elections on 1st March 2025.
6. Prior to the elections, there were proceedings before the Sports Disputes Tribunal in SDT Cause No. E023 of 2024 concerning the preparatory process and issues leading up to the said elections.
7. The Tribunal rendered a final decision on 25th March 2025, pursuant to which the elections were conducted under the supervision of the 3rd Respondent.
8. It submits that The Applicant, being dissatisfied with the outcome of the elections held on 1st March 2025, ought to have invoked the appellate jurisdiction of the Sports Disputes Tribunal as the competent forum prescribed under statute.
9. According to the 2nd Respondent's the instant proceedings offend Regulation 20(7) provides that "*any person aggrieved by the decision*

of a sports organization election may appeal to the Sports Disputes Tribunal within thirty days of the declaration of results.”

- 10.** Reliance is placed in the case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR** Where it was held that jurisdiction is everything and without it, a court must down its tools. This Honourable Court cannot arrogate to itself jurisdiction expressly vested by Parliament in another body.
- 11.** The 2nd Respondent submits that the Sports Disputes Tribunal is a specialized body established under Section 55 of the Sports Act with clear statutory authority to hear and determine all disputes relating to elections and governance of sports organizations.
- 12.** The Applicant’s resort to this Honorable Court without first exhausting the remedies available before the Tribunal is, therefore, premature and misconceived.
- 13.** The 2nd Respondent further submits that these proceedings are not only procedurally defective but also moot since the elections whose validity is contested have since been concluded, the results duly declared, and officials lawfully assumed office.
- 14.** It submits that The Applicant has not demonstrated any pending appeal before the Sports Registrar or the Tribunal as required under Regulation 20, and therefore the issues raised are now purely academic and incapable of conferring any meaningful relief.
- 15.** In light of the foregoing, the 2nd Respondent humbly urges this Honourable Court to find that it lacks jurisdiction to entertain the

present proceedings, and that the same should accordingly be struck out with costs to the 2nd Respondent.

On the part of the Applicant:

16. According to the Applicant, The 2nd Respondent's contention that this Court lacks jurisdiction because the matter fall within the purview of the Sports Disputes Tribunal (SDT) pursuant to the Sports Act, 2013 and Regulation 20 of the Sports Registrar's Regulations, 2016 is fundamentally flawed.
17. It is his case that the instant Application is not an original dispute or appeal on merits but a judicial review of the SDT's decision dated 25th March 2025.
18. It argues that **Article 165(6) of the Constitution of Kenya, 2010** vests this Court with supervisory jurisdiction over subordinate courts, tribunals, and bodies exercising judicial or quasi-judicial functions, including the SDT, to ensure compliance with principles of fair administrative action under Article 47 and the Fair Administrative Action Act, 2015.
19. He further submits that **Section 58 of the Sports Act, 2013** delineates the SDT's jurisdiction to include appeals against decisions of national sports organizations, other agreed-upon sports-related disputes, and appeals from the Sports Registrar. However, decisions of the SDT itself are amenable to judicial review by the High Court for illegality, irrationality, or procedural impropriety, as affirmed in **Republic v Sports Disputes Tribunal & another Ex parte**

Meto [2025] KEHC 11996, where the High Court held that an SDT decision dated 27th February 2025 was subject to judicial review and liable to be quashed.

- 20.** Reliance is placed in the case of ***Milton Nyakundi Oriku v Sports Disputes Tribunal [2020] eKLR***, the High Court exercised Judicial Review over an SDT decision. Judicial Review attends to matters related to procedural fairness which remains with the High Court.
- 21.** It is argued that this Court has inherent jurisdiction to entertain the Application, and the objection on this ground should fail given that the Tribunal went ahead and made a decision giving the elections a clean bill of health despite the illegalities and irregularities and it is only this court that can correct the irregularities and illegalities.
- 22.** It is his case that while the underlying dispute involves elections, the Applicant seeks the review of the SDT's approval of those elections despite admitted non-compliance with Regulation 20, which requires, inter alia: notification to the Registrar at least four weeks prior, an independent electoral panel, observers from the Registrar's office and umbrella bodies, nondiscrimination, and candidate clearances (as per the Sports Registrar Regulations, 2016).
- 23.** Regulation 20 governs elections but does not oust this Court's supervisory role over the SDT. The SDT has already exercised its jurisdiction under Section 58(a) as an appeal against the sports organization's decisions, and this is now a review thereof.

- 24.** The SDT has adjudicated the underlying dispute and is *functus officio*. Judicial review is the appropriate remedy under Sections 7, 8, and 9 of the Fair Administrative Action Act, 2015 and Rule 11(1) of the Fair Administrative Action Rules, 2024.
- 25.** In **Board of Directors, Kenya Rugby Union Ex parte Applicant v Mutai [2025] KEHC 3623**, the High Court affirmed its very important oversight role.
- 1) The Application promotes accountability and rule of law, not abuse. The objection on this ground is without basis. The court must not allow the 2nd Respondent to make it abdicate its important oversight and judicial review role.
- 26.** The 2nd Respondent argues the election has occurred, officials are in office, no appeal was lodged with the Registrar, and the orders are moot. This presupposes the elections' validity, which is the crux of the Application. The approvals remain in effect, causing ongoing harm to boxing governance and stakeholders, including potential capitulation of the federation according to the Applicant.
- 27.** Mootness arises only where relief is ineffectual; here, quashing and mandamus would remedy the violations. No appeal to the Registrar is required for SDT review in a case where the Tribunal has already pronounced itself.
- 28.** He argues that this ground is misconceived and should be dismissed since The Tribunal allowed sham elections to proceed and approved the very sham elections and it is disingenuous to now ask the Applicant

to appeal to the very institutions that gave unlawful elections a clean bill of health.

Analysis and determination:

The issue for determination is whether or not the Notice of Preliminary Objection by the second Respondent has merit or not.

29. The 2nd Respondent conducted elections on 1st March 2025 pursuant to the provisions of the Sports Act and the Sports Registrar’s Regulations.
30. Prior to the elections, there were proceedings before the Sports Disputes Tribunal in SDT Cause No. E023 of 2024 concerning the preparatory process and issues leading up to the said elections.
31. The Tribunal rendered a final decision on 25th March 2025, pursuant to which the elections were conducted.
32. In that decision, the Tribunal expressly stated that any party aggrieved by the outcome of the elections was at liberty to challenge the same in accordance with Regulation 20(7) of the Sports Registrar’s Regulations.
33. The Sports Act, No. 25 of 2013 and the Sports Registrar’s Regulations, 2016, which establish an elaborate and self-contained dispute resolution framework for matters arising from sports elections.
34. Regulation 20(7) provides that ***“any person aggrieved by the decision of a sports organization election may appeal to the Sports Disputes Tribunal within thirty days of the declaration of results.”***

- 35.** This provision offers a redress mechanism to any person who feels satisfied or disagrees or is unhappy with the decision around elections, touching on a sports organization. It is of interest to note that the reading of that section clearly shows that the avenue is not limited to candidates only. Even non-candidates and even sports persons who did not participate in the elections, including voters who cast their vote in the disputed election elections can approach the tribunal for the address.
- 36.** However, in the interest of bringing fairness and promptness in the closure, the earliest such a person who is challenging the elections results must do so within 30 days. The provision does not provide for the enlargement of time.
- 37.** Section 25 of The Act provides that;
- “A person aggrieved by the decision of the Registrar under these Regulations may appeal to the Tribunal within thirty days from the date of the decision of the Registrar.”*
- 38.** This Section is available to any person who is aggrieved by the decision of the Registrar. It does not address itself to issues around elections.
- 39.** Again, in the interest of prompt access to justice and in the spirit of ensuring an effective efficient determination of such disputes, the time limit for taking the necessary action is set at 30 days.
- 40.** A Preliminary Objection must be on a point of law. The Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd vs**

West End Distributors Ltd [1969) EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say:

“...A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

At page 701 paragraph B-C Sir Charles Newbold, P. added the following:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually 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....”

- 41.** The Supreme Court in **Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) (2019) eKLR** stated as follows:

“... the Court must exercise restraint in exercising its jurisdiction under Article 165. Where there exist alternative methods of dispute resolution, the Court must exercise deference to the bodies statutorily mandated to deal with specific disputes in the first instance.... The foregoing verdict also finds support in an adage principle in administrative law of “Exhaustion of Administrative Remedies” and from the jurisprudence emanating from this Court and the lower Courts, which has been restated with notoriety to the effect that, where there exists an alternative method of dispute resolution established by legislation, the Courts must exercise restraint in exercising their Jurisdiction conferred by the Constitution and must give deference to the dispute resolution bodies established by statutes with the mandate to deal with such specific disputes in the first instance ... In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute... Such a deferred jurisdiction and the postponement of judicial intervention and reliefs until the mandated statutory or constitutional bodies take action rests, not alone on the disinclination of the judiciary to interfere with the exercise of the statutory or any administrative powers, but on the fact of a legal

presumption that no harm can result if the decision maker acts upon a claim or grievance. Such formulation underlies the analogous cases, frequently cited for the exhaustion doctrine, in which the court refuses to enjoin an administrative official from performing his statutory duties on the ground that until he has acted the complainant can show no more than an apprehension that he will perform his duty wrongly, a fear that courts will not allay. Such cases may be expressed in the formula that judicial intervention is premature in the absence of administrative action.”

32. Nevertheless, there are exceptional cases where despite the existence of alternative forum for dispute resolution, the Court may find its intervention necessary especially if it determines that such forums are inadequate to meet the ends of justice in a matter.

*The Court of Appeal in **Fleur Investments Limited vs Commissioner of Domestic Taxes & another [2018] eKLR** reasoned:*

*22. For this proposition the appellant called in aid this Court’s finding in the case of **Speaker of National Assembly vs Njenga Karume (1990-1994) EA 546** where the Court expressed itself in relevant part as follows: -“...where there was an alternative remedy and especially where parliament has provided a statutory procedure, it is only in exceptional circumstances that an order for judicial review would be*

granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully to the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it...”

23.... Whereas courts of Law are enjoined to defer to specialized Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the Constitution and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”

42. The Section 58 of the Sports Act provides that;

The Tribunal shall determine—

- a. ...
- b. ...
- c. 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;
- iii. other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and
- iv. Appeals from decisions of the Registrar under this Act.

- 43.** The SDT has already exercised its jurisdiction under Section 58(a) as an appeal against the sports organization's decisions, and this is now a review thereof.
- 44.** The SDT has adjudicated the underlying dispute and is *functus officio*. Judicial review is the appropriate remedy under Sections 7, 8, and 9 of the Fair Administrative Action Act, 2015 and Rule 11(1) of the Fair Administrative Action Rules, 2024.
- 45.** Article 165(6) of The Constitution 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, but not over a superior court.
- 46.** No doubt this court has the supervisor power over there Sports dispute tribunal. The Applicant is within the law in seeking an order of

Certiorari to quash the 1st Respondent’s decision dated 25th March 2025.

Disposition:

47. Notice of Preliminary Objection lacks merit.

Order;

The Notice of Preliminary Objection is dismissed with costs.

Dated, signed and delivered at Nairobi this 24th day of November, 2025.

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**J. CHIGITI (SC)
JUDGE**