

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION ORIGINATING MOTION NO.  
E148 OF 2025**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT  
(CAP. 7L)**

**AND**

**IN THE MATTER OF: FAIR ADMINISTRATIVE ACTION RULES,  
2024**

**AND**

**IN THE MATTER OF: THE SPORTS ACT, 2013**

**AND**

**IN THE MATTER OF: THE RULING OF THE OFFICE OF THE  
SPORTS DISPUTES TRIBUNAL AT NAIROBI COUNTY GIVEN ON  
14/10/2025 IN SDTSC/E060/2025**

**BETWEEN**

**NORAH NJERI ONGWENYI.....CLAIMANT**

**-VERSUS-**

**ROYAL NAIROBI GOLF CLUB.....RESPONDENT**

**AND**

**IN THE MATTER OF: THE OFFICE OF THE SPORTS DISPUTES  
TRIBUNAL AT NAIROBI COUNTY ACTING BEYOND THE SCOPE  
OF ITS JURISDICTION**

**BETWEEN**

**ROYAL NAIROBI GOLF CLUB ..... APPLICANT**

**-VERSUS-**

**OFFICE OF THE SPORTS DISPUTE TRIBUNAL .....1ST  
RESPONDENT**

**CHIEF REGISTRAR OF THE JUDICIARY ..... 2ND  
RESPONDENT**

**AND**

**NORAH NJERI ONGWENYI..... INTERESTED PARTY**

**JUDGMENT**

1. The Originating motion dated 4<sup>th</sup> November, 2025 brought under the provisions of the Fair Administrative Action Act, 2015 and Rules 2024 seeks the following reliefs:

- i. spent*
- ii. spent*
- iii. THAT the impugned part of the Ruling by the 1st Respondent given on 14/10/2025 in SDTSC/E060/2025 - Nairobi County between NORAH NJERI ONGWENYI -VS- ROYAL NAIROBI GOLF CLUB (hereinafter referred to as the Ruling) be brought before this Court for nullification/quashing.*
- iv. THAT a Declaration do issue that the 1st Respondent lacks the jurisdiction to hear the dispute between the Applicant and Interested Party as filed before the 1st Respondent.*
- v. THAT any other orders that meet the ends of justice do issue.*
- vi. THAT costs of this Application and/or Suit and interest be provided for.*

2. The Originating Motion is predicated on the grounds set out on the face thereof and supported by an affidavit sworn by Jacob Omondi.

3. The applicant is a body corporate registered under the Companies Act, 2015 operating as a Private Members Golf Club. The 1st Respondent is a Tribunal established under the Sports Act, 2013, while the the 2nd Respondent is the Chief Administrator of the Judiciary an office established under Article 161(2)(c) of the Constitution of Kenya. The Interested Party is an adult of sound mind and a Member of the Applicant herein.
4. From the grounds and supporting affidavit together with annexures, the applicant's case is that the Interested Party had filed an Amended Statement of Claim dated 06/08/2025 before the 1st Respondent seeking orders inter alia:
- i. A declaration that the procedure adopted by the Ladies Committee scheduled for selection of the Ladies team to represent the Applicant Club in Nairobi District Golf Tournaments violated the Interested Party's constitutional rights to equal protection by due process and the rule of law guaranteed to the Interested Party by provisions of Article 27(1) of the Constitution.*
  - ii. That exclusion of the Interested Party from the eligible team selection, exclusive training for selected team representatives and denials of the team uniform breached the Interested Party's contract of membership of the Applicant Club and thereby violated the Interested Party's membership rights to participate in the league and her membership right to offer herself for selection*

*by the committee club as a member of the team to represent the Applicant Club and to fully in participate in the programs of the club as a member.*

- iii. The procedure adopted by the Ladies Committee to select the ladies golf team to represent the Applicant Club at the Nairobi District Golf league matches, distribution of team uniform and selective training for some few lady members by the club violated the Interested Party's constitutional rights to hear presentations by members of the committee in support of their candidates decision and against the Interested Party and denied the Interested Party her rights to make her and unconstitutionally dismissed the Interested Party's case for selection without a hearing in violation of provisions of Article 50 (1) of the Constitution.*
- iv. General damages for violation of Interested Party's fundamental constitutional rights to equal protection under the rule of law, as guaranteed by Articles 50 and 27(1) of the Constitution.*

5. According to the applicant, it filed a Notice of Preliminary Objection dated 25/08/2025 (the P.O) challenging the complaint lodged by the interested party herein, contending that:

- i. The suit is ill advised, prejudicing and an abuse of the Honourable Tribunal's process.*

***ii. The Honourable Tribunal does not have jurisdiction to hear the Suit herein by virtue of Section 58 of the Sports Act,2013 (the Act):***

***2.1 the Claimant has not quoted or demonstrated nor relied on a specific provision or rule allowing her to Appeal to this Honourable Tribunal (by virtue of Section 58 (a) of the Act);***

***2.2 there is no Agreement between the Parties to refer the dispute or any dispute to this Honourable Tribunal (by virtue of Section 58(b) of the Act)***

***iii. THAT it is trite that only the High Court and courts of similar status currently have jurisdiction to hear and determine matters of alleged violation(s) of fundamental rights and freedoms in the Bill of Rights.***

***iv. The Suit raises constitutional issues and seeks constitutional reliefs of which this Honourable Tribunal lacks jurisdiction to determine.***

***v. The Suit is an abuse of process, scandalous, frivolous, vexatious and must be struck out/dismitted with costs.***

6. That the said Preliminary Objection was canvassed vide written submissions and, in its decision, the Sports Disputes Tribunal dismissed the preliminary objection on the ground that some of the issues raised were sports related and not necessarily constitutional violations.

7. The applicant asserts that the 1st Respondent lacked jurisdiction to entertain the complaint filed by the interested party, and that the 1<sup>st</sup> respondent's

jurisdiction stems from Section 58 of the Sports Act, 2013. That the dispute did not constitute an appeal against decisions made by national sports organizations or umbrella national sports organizations or a *sports-related* dispute that parties to the dispute agree to refer to the tribunal or an appeal from decisions of the Registrar under the Sports Act.

8. The applicant avers that the 1<sup>st</sup> respondent's decision was not authorized by the empowering statutory provision; was in excess of jurisdiction or power conferred under written law; is unfair; was materially influenced by an error of law; failed to take into account relevant considerations; is Irrational; and is taken or made in abuse of power.
9. It further asserts that the issues the Interested Party purports to raise are overtaken by events because: the Interested Party misrepresented material facts concealing and failing to disclose that the purported grievances of the Claimant had been amicably addressed through a Mediation Committee established vide the Respondent's Board resolution of 20/05/2025; that following six meetings in which the Claimant participated, raising issues which were addressed and way forward established and already implemented; that the Claimant has not expressed dissatisfaction with the aforesaid resolutions or their consensual implementation but rather seeks a rehearing in an abuse of the 1st Respondent's time and resources; that the Claimant is faulted for forum shopping hereby and that the issues raised

having been resolved and way forward implemented, the same are overtaken by events.

10. The applicant filed a further affidavit sworn on 15<sup>th</sup> December, 2025 by Jacob Omondi in response to the interested party's grounds of opposition and replying affidavit both dated 2/12/2025 reiterating the depositions in support of the application and the grounds adding that: the 1st Respondent lacked jurisdiction because: the Applicant is not a national sports organization; the Applicant is not an Umbrella National Sports Organisation; the Applicant had not made a disciplinary decision; the Applicant had not made any decision on selection to any National team; the Applicant did not agree to refer to the tribunal alleged dispute or any dispute whatsoever and that there was no impugned decision of the Registrar under the Sports Act in issue herewith

11. The applicant maintained that it is not a Sports Club Registered under Section 46 of the Sports Act; that it is a body corporate registered under the Companies Act, 2015 operating as a Private Members Golf Club, which fact the Interested Party being a member is well aware of and that she *malafides* purports to misrepresent to/mislead this Honourable Court.

12. That to the contrary, registering the Applicant as a sports organisation/Club under the Sports Act would be a violation of the Section 47 of the Act and that just like other institutions/entities such as schools and churches whose membership participate in various sporting activities despite a distinct core

mandate, the Applicant's members participate in other sporting activities besides golf such as swimming, squash, gym etc, and other social activities, the core feature being that it is for members only and for invited friends/guests.

13. It is asserted that in fact, the bodies registered and responsible for the running of the discipline of Golf and related competitions in Kenya, is the Kenya Golf Union (KGU) and the Kenya Ladies Golf Union (KLGU) (specifically for Lady Golfers), a fact the Interested Party is well aware of being a handicapped golfer that pays an Annual Subscription fee to these Bodies.

14. That further and contrary to the requirements in the 2nd Schedule regarding constitution of sports organisations under the Sports Act; and that whereas the Applicant being a Private Members Club, the Applicant does not have or run national or branch or sub branch offices; it does not conduct elections every two years at national or branch or sub branch offices; The Applicant is not obligated to subscribe to any Court of Arbitration for Sports policies and rules which conform with requirements set out in Sports Disputes Tribunal policy and rules for sports disputes resolution; The Applicant does not have the mandate to make selection of the Kenyan team and the technical personnel; The Applicant does not have the mandate to register sportspersons and sportspersons' representatives nationally or at any branch or sub branch of any sports organisation.

15. That this Court has the jurisdiction to address the grievance herewith under the Fair Administrative Action Act, when a quasi-judicial body purports to act ultra vires, and or without jurisdiction

16. That the Interested Party did not raise any issue of public interest, that her concern is personal and hinged on her non-selection to represent the Applicant's team.

17. That no prejudice or injustice shall befall the Respondents and Interested Party.

**The Interested Party's replying affidavit and grounds of opposition**

18. Opposing the originating motion, the interested party filed grounds of opposition and replying affidavit both dated 2<sup>nd</sup> December, 2025. The replying affidavit is sworn by the interested party Norah Njeri Ongwenyi,

19. According to the interested party, the assertion by the applicant that the respondent had no jurisdiction to entertain the dispute between her and the applicant herein is without basis. That the applicant misconceives section 46 (1)(2)(4) and (5) of the Sports Act as read with paragraph (f) of the second Schedule to the Act. That the applicant is seeking to relitigate matters which were competently determined by the specialized Tribunal which was clothed with jurisdiction to entertain.

20. The interested party contends that the interested party raised legitimate questions of being excluded from the team selection process, which is a

sports dispute falling within the jurisdiction of the Sports Tribunal hence judicial review would undermine the integrity of the dispute resolution process established by the Sports Act.

21. According to the interested party, although the dispute was addressed through mediation, it was not fully resolved hence only the Tribunal could competently entertain the dispute.

22. That no irreparable harm would occur to the applicant as the interested party's rights to fair treatment and participation in club activities was paramount and should not be compromised by the applicant's attempts to evade accountability. That the Tribunal's decision is essential to upholding the principles of fairness and justice within the club's governance.

23. It was contended that the applicant's allegation that the Tribunal lacked jurisdiction has no legitimate basis in view of section 46 of the Sports Act and the second schedule to the Sports Act which sets out, matters to be provided for in the constitution of sports organizations at paragraph (f).

24. Further, that the interested party's claims before the Tribunal are grounded in her constitutional rights including the right to equal protection of the law, due process and the rule of law guaranteed under Article 27 (1) of the Constitution and that the Tribunal's jurisdiction encompasses the protection of these rights hence the applicant's challenge undermines the legal framework designed to uphold them.

25.It was further contended that the matters at hand concern serious and significant public interest, in ensuring that sports governance is conducted transparently and fairly and that the adjudication of sports disputes by the Tribunal is crucial for maintaining the integrity of sports organizations and that any attempt to undermine the process should be viewed with skepticism.

26.That there is no urgency in the matter herein and that no prejudice will be occasioned to the applicant if the decision of the Tribunal is left to stand.

27.The interested party urged this court to dismiss the originating motion with costs and allow the Tribunal to proceed and conclude the dispute fairly and justly.

28.The grounds of opposition were also replicated in the replying affidavit sworn by the interested party on 2<sup>nd</sup> November, 2025.

### **Submissions**

29.The parties filed written submissions to canvass the originating motion.

### **The applicant's submissions**

30.In its written submissions dated 15th December, 2025, the applicant framed the following issues for determination and submitted on the same.

- i. Whether the Sports Disputes Tribunal had jurisdiction under Section 58 of the Sports Act, 2013 to entertain and retain the dispute in SDTSC/E060/2025, having regard to the nature of the Applicant and the subject matter of the claim.***

- ii. *Whether the Applicant falls within the category of a national sports organization or umbrella national sports organization contemplated under the Sports Act, 2013, so as to clothe the Tribunal with jurisdiction.*
- iii. *Whether the Sports Disputes Tribunal acted ultra vires, in excess of its statutory mandate, or in error of law and their conduct was tainted by unreasonableness, irrationality, procedural unfairness, or abuse of power, contrary to the Fair Administrative Action Act.*
- iv. *Whether the dispute before the Tribunal had been overtaken by events, having been resolved through mediation and implemented, thereby rendering the proceedings an abuse of process.*
- v. *Costs of the Suit*

31. On whether the Sports Disputes Tribunal had jurisdiction under Section 58 of the Sports Act, 2013, the applicant submitted reciting the principle of law that jurisdiction is everything and a Court or Tribunal acting without jurisdiction acts in vain, as was settled in the seminal locus classicus case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1.**

32. It was reiterated that the jurisdiction of the Sports Disputes Tribunal is strictly confined to **Section 58** of the **Sports Act, 2013**. Counsel for the applicant further relied on the Supreme Court decision in **Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others [2012]**

**eKLR** where the apex Court highlighted that “*a court or tribunal’s jurisdiction flows from either the Constitution or statute, and cannot be expanded by judicial craft or sympathy.*”

33. It was reiterated that the jurisdiction of 1<sup>st</sup> Respondent is expressly stated and stems from **Section 58 of the Sports Act, 2013** as reproduced in this Judgment and, according to the applicant, the dispute before the 1<sup>st</sup> Respondent was neither: an appeal from a decision of a national sports organization; an appeal from the Registrar under the Sports Act; nor a sports-related dispute consensually referred to the Tribunal.

34. Further, that the prayers sought before 1<sup>st</sup> Respondent do not fall within the ambit of Section 58 most especially because – (a) this Claim is not an Appeal to any decision by the Applicant - the Interested Party does not state in its pleadings it is such nor can it be implied to be such from the pleadings or at all; the Interested Party has not demonstrated a Sporting Contract nor any Contract, whatsoever, between the Parties conferring jurisdiction to 1<sup>st</sup> Respondent, as required under *Section 58 (b) (supra)* or at all. There is nothing specified or expressed to that effect nor can it be implied, and neither does Interested Party in her pleadings claim that any such Agreement exists. The Interested Party has not stated what part, or any articles of the Applicant’s Articles of Association or Rules that specifically, expressly or impliedly confers jurisdiction to 1<sup>st</sup> Respondent to hear the Claim whereof.

35. Further reliance was placed on the case of **Republic v Rent Restriction Tribunal Ex-parte: Mayfair Bakeries Limited & another [1982] KEHC 10 (KLR)** as cited in **Mokaya v Football Kenya Federation & 20 others (Tribunal Case E022 & E028 of 2023 (Consolidated)) [2024] KESDT 93 (KLR) (6 February 2024) (Decision)** where the Court stated as follows with regards to the Jurisdiction of the Tribunals;

*“Testing whether a statute has conferred jurisdiction on an inferior court or a tribunal... the wording must be strictly construed: it must in fact be an express conferment and not a matter of implication and that a Tribunal is a creature of statute and has only such jurisdiction as has been specifically conferred upon it by the statute. Therefore, where the language of an Act is clear and explicit the court must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature. Further, each statute has to be interpreted on the basis of its own language for words derive their colour and content from their context and secondly, the object of the legislation is a paramount consideration.”*

36. It was submitted that the 1<sup>st</sup> Respondent cannot assume jurisdiction where the statutory preconditions under Section 58 have not been met, and that any decision made in excess thereof is null and void.

37. The applicant submitted that the 1<sup>st</sup> Respondent therefore erred in law by retaining a dispute that fell wholly outside its statutory mandate.
38. On the second issue of *whether the Applicant is a national sports organization or umbrella national sports organization under the Sports Act, 2013*, it was submitted that the Applicant is a Private Members' Club incorporated under the **Companies Act, 2015**, and **not registered as a sports organization** under **Sections 46 and 47** of the **Sports Act**.
39. That participation in sporting activities alone does not clothe the Applicant an entity with the legal status of a sports organization and that therefore the absence of a written consent giving the 1<sup>st</sup> Respondent jurisdiction, deprives the 1<sup>st</sup> Respondent of competence to entertain the dispute.
40. Further submission was that it is judicially noticed that the national sports organization that runs the discipline of golf is the **Kenya Golf Union (KGU)**, and **Kenya Ladies Golfer Union (KLGU)** specifically in respect to Lady Golfers and that therefore, the 1<sup>st</sup> Respondent and Interested Party's assumption that the Applicant was a sports organization, despite uncontested evidence to the contrary, constituted a fundamental misdirection in law and a jurisdictional error.
41. On the third issue of whether the Tribunal acted *ultra vires*, in excess of its mandate, or in a manner that was unreasonable, irrational, procedurally unfair, or an abuse of power, it was submitted that where a tribunal lacks jurisdiction, any further step taken is *ipso facto ultra vires*. Reliance was

placed on English case of **Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147**, where the House of Lords held that a decision tainted by jurisdictional error is a nullity.

42. In the instant case, it was contended that the Tribunal erred by purporting to sever or split the claim into “sports-related” and “constitutional” components. Relying on the case of **Republic v National Land Commission Ex parte Sound Equipment Ltd [2016] eKLR**, it was submitted that in the above case, the Court held *that a tribunal cannot arrogate jurisdiction by recharacterizing or severing claims*.

43. Additionally, that claims alleging violations of Articles 27 and 50 of the Constitution fall squarely within the jurisdiction of the High Court under Article 165. Reliance was placed on **United States International University (USIU) v Attorney General [2012]\_eKLR**, where the Court is said to have affirmed that constitutional interpretation and enforcement lie exclusively with the superior courts.

44. The applicant also relied on **Royal Media Services Ltd v Attorney General & 6 others [2015] eKLR** where Mumbi J (as she then was, faced with a similar issue and in determining whether the HIV/AIDS Tribunal had the requisite jurisdiction to hear a dispute of violation of a constitutional right and freedom, stated:

**“..... I hereby declare that only the High Court and courts of similar status currently have jurisdiction to hear and determine matters of violation of fundamental rights and freedoms in the Bill of Rights.**

**(b) I hereby declare that in the absence of legislation enacted by Parliament to give subordinate courts original jurisdiction to hear and determine matters of denial, violation and infringement of right or fundamental freedom in the Bill of Rights, subordinate courts and tribunals, including, the 2nd respondent, do not have jurisdiction to hear and determine matters arising from the Bill of Rights.”**

45.The applicant submitted that under Section 7 of the Fair Administrative Action Act (*Cap 7L*), this Court is mandated to review decisions that are unreasonable, irrational, or procedurally unfair and that in the instant case, the Tribunal’s decision meets all these thresholds.

46.On the fourth issue of ***whether this Court has jurisdiction to hear and determine the present Judicial Review Application***, it was submitted that the jurisdiction of this Court to entertain the present Judicial Review proceedings is firmly anchored in the Constitution, statute, and settled jurisprudence.

47.The applicant cited Articles 165(6) and (7) of the Constitution on supervisory jurisdiction of the High Court over Tribunals and relied on **Republic v Karisa Chengo & 2 Others [2017] eKLR**, where the Supreme

Court is said to have affirmed that tribunals created by statute fall squarely within the supervisory remit of the High Court under Article 165.

48. It was submitted that Section 7 of the Fair Administrative Action Act (*Cap 7L*), expressly empowers this Court to review administrative and quasi-judicial actions where the decision-maker acted without jurisdiction or in excess of authority; committed an error of law; acted unreasonably or irrationally; violated principles of procedural fairness; or abused power; and that the impugned Ruling by the Sports Disputes Tribunal is challenged on precisely these grounds, thereby properly invoking this Court's jurisdiction.

49. The applicant relied on **Suchan Investment Ltd v Ministry of National Heritage & Culture [2016] eKLR**, where the Court of Appeal is said to have held that judicial review is the primary mechanism through which the High Court exercises constitutional supervision over administrative bodies.

50. On *whether jurisdiction of this Court is ousted by Statute or Doctrine of Exhaustion*, it was submitted that the doctrine of exhaustion does not apply where the impugned body lacked jurisdiction and that it is settled law that where jurisdiction is in issue, the High Court must intervene at the earliest opportunity. The applicant relied on **Republic v National Land Commission ex parte Sound Equipment Ltd [2016] eKLR**, where the High Court is said to have held that the existence of an alternative forum does not oust the Court's jurisdiction where the impugned body acted *ultra vires*, which position was affirmed by the Court of Appeal in **Geoffrey**

**Muthinja & Another v Samuel Muguna Henry & 1756 Others [2015] eKLR**, and later clarified in **Republic v Independent Electoral and Boundaries Commission ex parte National Super Alliance (NASA) [2017] eKLR**.

51. It was submitted that where a Tribunal acts without jurisdiction, there is nothing to exhaust and that therefore, this Court is properly seized of jurisdiction to intervene.

52. On the fifth issue of *whether the dispute was overtaken by events and amounted to an abuse of process*, it was submitted that the Applicant had demonstrated that the dispute had been amicably resolved through Mediation, participated by the Interested Party and fully implemented. The applicant relied on **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR**, where the Court of Appeal is said to have held that abuse of process includes instituting proceedings where no legitimate purpose is served, or where matters have already been settled. A similar position is said to have been taken in **John Florence Maritime Services Ltd v Cabinet Secretary for Transport & Infrastructure & 3 Others [2015] eKLR**, where the Court, according to the applicant, affirmed its duty to prevent forum shopping and re-litigation of resolved disputes.

53. The applicant therefore argued that the continuation of the Tribunal proceedings was oppressive, wasteful and an abuse of the Tribunal's process.

54. On costs of the suit, it was submitted that it is trite that costs do follow the event and that this Application was caused by the unfair violations by the Respondents and Interested Party hence the application should be allowed with costs payable by the interested party to the applicant.

**The interested party's submissions**

55. In the written submissions dated 11<sup>th</sup> December, 2025, the interested party reiterates her grounds of opposition and depositions in her replying affidavit, both dated 2<sup>nd</sup> December, 2025. She maintains that the Tribunal had jurisdiction to entertain the dispute and that the applicant is asking this court to usurp the statutory mandate of the Tribunal. She submits that the originating motion is fundamentally flawed, incompetent and an abuse of court process.

56. That judicial review is concerned with decision making process and not the merits of the decision, citing the case of **R v Chief Registrar of the Judiciary Ex parte Riley Services Ltd [2015] e KLR.**

57. The interested party's counsel submitted that as has been held before, judicial review should not be used as a vehicle to substitute the Court's own views for those of specialized Tribunal or to determine the merits of the decision of the tribunal by way of a second appeal on the substantive issues already determined by the tribunal was held in **Kadamas v Municipality of Kisumu [1986] KLR 495.**

58. That the mere fact that the applicant disagrees with the decision of the Tribunal does not provide it with valid grounds for the extraordinary remedy of judicial review, as the proper process was observed and that the matter was already conclusively determined by the specialized tribunal.

59. According to the interested party, the applicant wants this court to step beyond its mandate and interfere in a sphere where the law has already provided for a mechanism for recourse. That the Sports Act only allows the Sports Disputes Tribunal to review its own decisions. Further, that in sports disputes, the Sports Act only allows for appeals against decisions of the Sports Disputes Tribunal to the Court of Arbitration for Sports, not this Court.

60. It is therefore submitted that this application is intended to circumvent the established statutory appellate frameworks governing sports disputes in Kenya and inappropriately invites this court to usurp the exclusive jurisdiction and mandate bestowed upon the Sports Disputes Tribunal and the Court of Arbitration for Sports by the Sports Act and relevant legal instruments. The interested party urged this court to find the application to be incompetent and an abuse of court process

61. On the applicant's contention that the Sports Disputes Tribunal lacked the necessary jurisdiction to entertain the dispute filed by the interested party against the applicant herein, it was submitted relying on Owners of Motor Vessel Lilian S v Caltex Oil Kenya Limited case where the Court of Appeal

held that jurisdiction was paramount, without it, a court or tribunal must desist from proceedings with the matter and that jurisdiction may be conferred expressly by the statute or by the Constitution,

62. According to the interested party, the Sports Disputes Tribunal derives its jurisdiction from sections 55 to 59 of the Sports Act, 2013 which sections empower the Tribunal to adjudicate matters concerning sports governance, team selections and participation issues. Reliance was placed on **Republic v SDT & another exparte Football Federation of Kenya & another [2017]e KLR** where it is said that the High Court recognized the SDT as the appropriate specialized forum for resolving sports disputes. Further reliance was placed on **Geoffrey Muthinja & another v Samuel Henry & 1756 others [2015] e KLR** where the Court of Appeal is said to have emphasized the necessity for parties to exhaust specialized dispute resolution mechanisms before seeking recourse to the regular courts.

63. She maintained that legal authorities collectively confirm that the SDT possesses the primary jurisdiction over the types of sports related disputes raised by the interested party herein. Therefore, the interested party argues that the applicant's contention that the SDT lacked jurisdiction in the matter, disregards the mandatory framework, noting that section 58 of the Sports Act empowers the Tribunal to handle disputes arising from sports organizations.

64. According to the interested party, section 46(1)-(5) of the Sports Act requires sports organisations to adopt constitutions conforming to the second

including mandatory subscription to the SDT aligned dispute resolution mechanisms, and that paragraph (f) of the second schedule obligates sports organisations to subscribe to the Court of Arbitration for Sport aligned with SDT rules, reinforcing the Tribunal's jurisdiction.

65. It was submitted that the applicant's assertion that the Tribunal lacked jurisdiction to entertain the dispute is fundamentally flawed.

66. Further submission is that under section 46 (1) of the Sports Act, a body cannot operate as a sports organisation unless they are registered under the Act while section 46 (4) requires that the application for registration must be accompanied by a certified copy of the organisation's constitution.

67. According to the interested party, section 46(5) the constitution of the registered sports organisation must contain at a minimum, the provisions laid out in the Second Schedule to the Act. On the other hand, that the Second Schedule at paragraph (f) provides that constitutions of sports organisations must include:

***“Subscription by the sports organisation to the Court of Arbitration for Sports policies and rules which conform with the requirements set out in the Sports Disputes Tribunal policy and rules for sports disputes resolution.”***

68. It was submitted that the applicant is statutorily bound to submit to the jurisdiction of the Tribunal.

69. On alleged failure to disclose material facts and lack of candour, it was submitted that the applicant failed to disclose that the matters currently before the SDT were previously addressed during the mediation process as per the minutes of 20<sup>th</sup> May 2025 where parties discussed these specific issues in an effort to reach an amicable resolution, which mediation did not succeed.

70. It was therefore submitted that the applicant withheld this significant information regarding these prior mediation efforts which omission stands in direct contradiction to the established rule that applicants seeking judicial review must approach the court with utmost candor and transparency as was outlined in **Republic v Kenya Revenue Authority exparte Yaya Towers Ltd [2008] e KLR**.

71. It was submitted that deliberate concealment of the mediation discussions renders these proceedings fundamentally defective as it also violates the procedural requirements for seeking judicial review thereby compromising the legitimacy of the application.

72. On grounds for grant of judicial review orders, the interested party submitted that the applicant had not demonstrated that the decision-making process by the SDT was illegal, irrational or laced with procedural impropriety. She relied on *Municipal Council of Mombasa v Republic and Umoja Consultants Ltd [2002] e KLR* which sets out parameters for judicial intervention by way of certiorari. That in this case, the applicant had not demonstrated that the

SDT exceeded its mandate or scope of its authority or that the decision was unfair or lacked logic to warrant judicial review reliefs.

73. Further submission was that the applicant was simply aggrieved by the SDT's interpretation of the law and legal reasoning which cannot be a ground for judicial review.

74. On the injunctive relief, it was submitted that no irreparable harm had been demonstrated if the relief was not granted, as the applicant had not established the grounds for grant of an injunction as set out in the **Giella v Cassman Brown case [1973]EA 358**. It was submitted that on the other hand, it was the interested party who had been discriminated upon contrary to Article 27(1) of the Constitution.

75. On consideration of public interest and tribunal process, it was submitted that in this case, as was affirmed in trusted Society of **Human Rights Alliance v Cabinet Secretary Devolution and Planning [2017]e KLR**, consideration of public interest is paramount in guiding judicial intervention. Further, that in the instant case, and in the realm of sports governance, and that interference with the jurisdiction of the SDT contravenes legislative intent and threatens to disrupt the stability and reliability of sports governance in Kenya thereby undermining public trust hence the need to safeguard the statutory mandates established for the effective administration of sports disputes.

76. On lack of urgent circumstances, it was submitted that the criteria for urgency had not been satisfied and that the asserted urgency in this matter is self-induced following the dismissal of the applicant's preliminary objection which was, according to the interested party, found to be defective. She relied on **Republic v PPARB Syner Chemie Ltd [2018]e KLR**.

77. On costs, it was submitted that the applicant has engaged in abuse of process and should therefore bear costs of these proceedings.

### **Analysis and Determination**

78. This Court has considered the originating motion and the opposition thereto coupled with the respective parties detailed written submissions citing statutory, constitutional and judicial authorities. There are many issues raised by the parties in their submissions but the main issue that I find to be fundamental for determination is whether the Sports disputes Tribunal had jurisdiction to hear and determine the dispute as filed by the interested party against the applicant herein. This is informed by the fact that the question of jurisdiction was raised by the applicant before the Tribunal as a preliminary objection which the Tribunal dismissed and that is what prompted these judicial review proceedings.

79. Furthermore, once this court determines this issue, and if it is in the affirmative, then all other issues collapse including the question of whether this Court has jurisdiction to determine the judicial review application where

the dispute is alleged by the interested party to entirely fall within the jurisdiction of the Sports Disputes Tribunal.

80. From the onset, it is important to note that this judicial review application initiated by way of originating motion challenges the decision of the Sports Disputes Tribunal (the Tribunal) overruling a preliminary objection on jurisdiction and assuming jurisdiction over a dispute between a private members' club, the applicant herein and the interested party, its member.

81. The facts are undisputed that the applicant is a private members sports club while the interested party is its members. The dispute arose as a result of an alleged discriminatory act by the applicant against the interested party where the applicant allegedly excluded the interested party from the team selection process for the Nairobi District Ladies League Golf matches held on 26<sup>th</sup> January and 9<sup>th</sup> February 2025. The interested party claimed that the Ladies Committee failed to notify her of the meeting, its agenda, and the selection criteria thereby denying her an opportunity to be considered for participation. That the Committee secretly conducted the selection through a secret WhatsApp group to which she was not invited to join hence the lack of transparency in the selection process. She then wrote to a complaint letter to the lady Captain on 10<sup>th</sup> February 2025 but there was not response. She claims that neither the Ladies Committee nor the Club's Board of Directors responded to her concerns which touched on governance, lack of transparency and accountability and equal participation by members.

82. From the documents filed, a Mediation Committee was constituted by the Applicant's Board of Directors which considered the issues raised by the interested party on 12/7/2025 and it appears that although the issue was discussed, the interested party was not satisfied with the conclusion reached hence the filing of the complaint or appeal to the Sports Disputes Tribunal for resolution, seeking declarations that her constitutional rights were violated and more so, that she had been discriminated against in violation of Article 27 and her right to a fair hearing under Article 50 (1) was violated.

83. Upon service of the complaint on the applicant, it filed a preliminary objection dated 25<sup>th</sup> August 2025, which preliminary objection was founded on three grounds: that the interested party had not specified the provision or rule allowing her to appeal to the Tribunal by virtue of section 58(a) of the Sports Act; that there was no agreement between the parties to refer the dispute to the Tribunal by virtue of section 58(b) of the Sports Act; that it was the High Court or courts of equal status that have jurisdiction to hear and determine such like disputes on alleged violation of fundamental rights and freedoms in the bill of rights; and that the suit raised constitutional issues and seeks constitutional reliefs which the Tribunal is not possessed of jurisdiction to hear and determine.

84. In its impugned ruling, the Tribunal found that although it had no jurisdiction to entertain claims of violation of constitutional rights and to grant reliefs for such violations, but that there were other sports related

issues which it severed and held that it had jurisdiction to hear and determine. It is that ruling that prompted these judicial review proceedings.

85. It is now settled law that jurisdiction is everything and must be determined at the earliest opportunity. Where a court or tribunal lacks jurisdiction, it must down its tools (**Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1**).

86. The Sports Disputes Tribunal is a creature of statute, and its jurisdiction is confined strictly to that conferred by Section 58 of the Sports Act. It has no inherent or residual jurisdiction see (**Gor Mahia FC v Sports Disputes Tribunal & another [2023] KEELRC 3224 (KLR)**) where B. Ongaya J of ELRC held *inetera alia* that:

*“to answer the 3rd issue, the Court returnstha the Tribunal did not have jurisdiction to hear and determine the employment dispute as had been moved. Section 58(b) of the Sports Act states that the Tribunal shall determine other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear. While the Tribunal agreed to hear the dispute, there was no agreement shown that the parties agreed to refer the same to the Tribunal. The Court further finds that the parties would not agree to confer the Tribunal with jurisdiction which Article 162(2) (a) has conferred to the Court as per the Employment and Labour Relations Court Act. If parties had indeed entered such*

***agreement then such agreement would be null and void as being contrary to the Constitution, statute and public interest.”***

87. The question here is therefore, whether the dispute between the applicant and the interested party herein fell under section 58 of the Sports Act for the Tribunal to assume jurisdiction to hear and determine.

88. Section 58 of the Act provides for Jurisdiction of the Tribunal 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.***

89. On powers of the Tribunal, section 59 provides that:

***59. The Tribunal may, in determining disputes apply alternative dispute resolution methods for sports disputes and provide expertise and assistance regarding alternative dispute resolution to the parties to a dispute.***

60. I will now examine jurisdiction under the Sports Act under section 58 reproduced above.

61. Section 58(a) confers appellate jurisdiction only in respect of decisions of registered sports organisations or umbrella bodies, where their rules allow an appeal to the Tribunal.

62. It is uncontested that the applicant club herein is a private members' club registered under the Companies Act and there is no evidence on record that it is registered with the Sports Registrar. That fact alone is dispositive in the sense that the Tribunal could not derive jurisdiction under Section 58(a) see this Court's decision in **(Board of Limuru Country Club v Sports Disputes Tribunal; Alexis & 2 others [2025] KEHC)** where the Court analyzed the provisions for registration of a sports organisation and found that a private members' club which was not registered under the Sports Act as required under section 46 of the Act was not a sports organisation. The Court stated as follows, and I find no reason at this moment to depart from that decision:

***“41.For the Tribunal to assume jurisdiction, the dispute must not only be sports-related but must also involve an entity duly recognized as a sports organization within the meaning of the Act. In this regard, such an entity must be registered by the Registrar of Sports and issued with a valid certificate of registration.”***

63. This Court further found that:

*“45. Indeed, Section 46(2) of the Sports Act provides that:*

*The Registrar shall register sports organizations as either—*

*(a) a sports club;*

*(b) a county sports association; or*

*(c) a national sports organization.*

*46. However, from my reading of the judgment of the Sports Disputes Tribunal, there is no evidence that the applicant ever applied and was registered as a sports organization.*

64. In the instant proceedings, just like in the above cited case, there is no material to show that the applicant is or was a registered sports organisation or club as required under section 46 of the Sports Act.

65. Accordingly, I find that jurisdiction of the Tribunal never arose under section 58(a) in hearing and determining the dispute between the interested party and the applicant herein.

66. On whether Jurisdiction Arose under Section 58(b), Section 58(b) permits the Tribunal to hear **other sports-related disputes only where all parties agree to refer the dispute to the Tribunal and the Tribunal agrees to hear it.**

67. Outrightly, consent under this provision is a jurisdictional prerequisite, not a procedural technicality. In the absence of such agreement, the Tribunal has no mandate. In **Gor Mahia FC v Sports Disputes Tribunal &**

another (supra); *Kibunja v Veterinary Laboratory Sports Club & 2 others* [2024] KESDT) the Court stated as follows regarding lack of consent or pre or post dispute agreement to refer a dispute to the Tribunal, which dispute must also involve a club or sports organisation which is registered under the Act as stated above:

*“Section 58(b) of the Sports Act states that the Tribunal shall determine other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear. While the Tribunal agreed to hear the dispute, there was no agreement shown that the parties agreed to refer the same to the Tribunal. The Court further finds that the parties would not agree to confer the Tribunal with jurisdiction which Article 162(2) (a) has conferred to the Court as per the Employment and Labour Relations Court Act. If parties had indeed entered such agreement, then such agreement would be null and void as being contrary to the Constitution, statute and public interest.”*

68. Besides the above decision, which is self-explanatory and which simply restates section 58 (b) of the Sports Act, I have established through my legal research that the Sports Disputes Tribunal, the 1<sup>st</sup> respondent herein, has had to make many other determinations declining jurisdiction on the same ground that parties did not agree or consent to refer the dispute to the Tribunal and that therefore the Tribunal had no jurisdiction to agree to hear

a dispute wherein the parties have not consented to the jurisdiction of the Tribunal.

69. Before I set out those determinations here, it is important to mention that in the present case, there is no clause in the applicant club's constitution referring disputes to the Tribunal, nor was any post-dispute consent shown by any of the parties and even if there was such consent, as stated by B. Ongaya J (as he recently was) in the above cited **Gor Mahia FC** case, the consent would be null and void since the applicant herein is not a registered sports organisation hence it is not subject to the jurisdiction of the Sports Tribunal.

70. **In Ndungu v AFC Leopards Sports Club (Tribunal Case E005 of 2022) [2022] KESDT 671 (KLR) (Civ) (5 July 2022) (Decision)**, the Sports Disputes Tribunal, comprising Mrs. J Njeri Onyango, Panel Chair, Mr. Peter Ochieng, Member and Mr. Gichuru Kiplagat, Member had occasion to determine whether it had jurisdiction to determine a dispute between the parties before it and invoking section 58(b) of the Sports Act, the Tribunal stated as follows, in declining jurisdiction:

*“50. This being a claim arising from a football player who had been contracted by a football club we find that the dispute falls within the definition of section 58(b) as “other sports related disputes”. However, section 58 (b) cannot be fully invoked if all parties in the dispute did not*

*consent to the Tribunal's jurisdiction and if the tribunal did not agree to hear the claim.*

*51. This was well explained by this Tribunal in Dennis Kadito v Sofapaka FC (SDT Appeal No 23 of 2016). The tribunal grappled with section 58 (b) of the Sports Act. This is what the Tribunal said:*

*“As already stated in sports-related dispute such as this one the provision of section 58 (b) can only be satisfied where there is prior agreement to submit to the jurisdiction of this tribunal for example as a term of the contract or subsequent to the dispute the parties enter into a consent to submit themselves to the jurisdiction of the Tribunal. In the absence of any of these circumstances, the Tribunal cannot act without the protection of the law.”*

*52. Despite the fact that the respondent in Kadito above opted not to participate in the proceedings, the tribunal made a finding that it lacked jurisdiction to hear this matter as the parties did not consent to submit themselves to the jurisdiction of the tribunal as per section 58 (b). Secondly, the tribunal opined that jurisdiction under section 58 (b) can also be invoked if it is included as a term of the contract of employment by the parties. This is also not the case here.”*

*53. Similarly, in Mwinyi Kibwana Shami v KCB FC SDT No 22 of 2019, the Tribunal arrived at the same outcome as the claimant did not*

*consent to the Tribunal's jurisdiction. The tribunal did not also find any clause in the contract invoking section 58 (b) of the Sports Act.*

*64. The Tribunal for the reasons stated finds that it has no jurisdiction to hear this claim in terms of section 58(b) of the Sports Act and section 90 of the Employment Act.*

71. Again, in **Victor Ashinga v Club (Tribunal Case E004 of 2022) [2022] KESDT 690 (KLR) (5 July 2022) (Decision)**, the Tribunal comprising the same bench rendered their decision on the same day as the above Ndungu case and stated as follows:

*“37. This being a claim arising from a football player who had been contracted by a football club we find that the dispute falls within the definition of section 58(b) as 'other sports related disputes'. However, section 58 (b) cannot be fully invoked if all parties in the dispute did not consent to the Tribunal's jurisdiction and if the Tribunal did not agree to hear the claim.*

*38. This was well explained by this Tribunal in Dennis Kadito v Sofapaka FC (SDT Appeal No 23 of 2016). The Tribunal grappled with section 58 (b) of the Sports Act. This is what the Tribunal said:*

*'As already stated in sports-related dispute such as this one the provision of section 58 (b) can only be satisfied where there is prior agreement to submit to the jurisdiction of this tribunal for example as a term of the contract or subsequent to the dispute the parties enter into a*

*consent to submit themselves to the jurisdiction of the Tribunal. In the absence of any of these circumstances, the Tribunal cannot act without the protection of the law.'*

*39. Despite the fact that the Respondent in Kadito above opted not to participate in the proceedings, the Tribunal made a finding that it lacked jurisdiction to hear the matter as the parties did not consent to submit themselves to the jurisdiction of the Tribunal as per section 58 (b). Secondly, the Tribunal opined that jurisdiction under section 58 (b) can also be invoked if it is included as a term of the contract of employment by the parties. This is also not the case here.*

*40. Similarly, in Mwinyi Kibwana Shami v KCB FC SDT No 22 of 2019, the Tribunal arrived at the same outcome as the Claimant did not consent to the Tribunal's jurisdiction. The Tribunal did not also find any clause in the contract invoking section 58 (b) of the Sports Act.”*

72. In an earlier decision in **Amazing Sports Talent Agency v Tusker Football Club; Atotos Sports Management (Interested Party) [2022] KESDT 121 (KLR)** the Tribunal rendered on 11<sup>TH</sup> January 2022:

*“64. The Complainant's argument in opposition to the preliminary objection raised by the Respondent is hinged on Section 58(b) of the Sports Act, 2013.*

*65. The Tribunal observed in its decision in the case of Dennis Kadito - vs- Sofapaka FC that Section 58(b) of the Sports Act, 2013 establishes a three-pronged test in determining the jurisdiction of the Tribunal. It held that:*

*“However, a reading of Section 58(b) demonstrates that it is not sufficient that the matter before the Tribunal should be a ‘sports-related dispute’; the parties to the dispute must also agree to refer the matter to the Tribunal and the Tribunal must agree to hear the matter. It is clear that there is therefore a three (3) stage process for establishing the jurisdiction of the Tribunal under Section 58(b). Each limb of the three (3) stage process must be satisfied and each stage depends on a positive answer to the prior stage.”*

*92. The Tribunal is not one to let justice bleed at the altar of technicality, however, a proper understanding of the pre-requisites the Tribunal must satisfy itself of under Section 58(b) of the Sports Act, 2013 obliges this Tribunal to down its tools with regard to the dispute before it and in view of the analysis above.*

*93. The words of the statute in section 58(b) are clear and unambiguous that parties must agree to refer any other dispute of a sports nature to the tribunal and the tribunal after examining the sort of the dispute has to agree to hear it.*

***94. The Tribunal is careful only to decline jurisdiction in instances where the party has an alternative forum through which they can have their dispute resolved.***

**54. In *Awino v Principal Secretary, Ministry of Sports and Culture & 2 others (Appeal E028 of 2022) [2022] KESDT 837 (KLR) (Civ) (6 December 2022) (Decision)* the same Tribunal dealing with the question of whether it had jurisdiction to entertain the sports related dispute where parties had nonetheless not agreed to refer the dispute to the Tribunal held as follows:**

***55. We submit that the claim on the petitioner’s injuries while in Australia falls under section 58 (b) of the Act with respect to, ”other sports related disputes “even though it is unclear when this happened as the information supplied by the petitioner remains scanty. However, section 58 (b) cannot be fully invoked if all parties in the dispute did not consent to the tribunal’s jurisdiction and if the tribunal did not agree to hear the claim.***

***25. In our recent case of SDTSC E009 of 2022 Dennis Okore v Talanta FC while restating our earlier case of *Dennis Kadito v Sofapaka FC (SDT Appeal No 23 of 2016)* the tribunal had this to say on section 58 (b) of the Sports Act:***

*“As already stated in sports-related dispute such as this one the provision of section 58 (b) can only be satisfied where there is prior agreement to submit to the jurisdiction of this tribunal for example as a term of the contract or subsequent to the dispute the parties enter into a consent to submit themselves to the jurisdiction of the tribunal. In the absence of any of these circumstances, the tribunal cannot act without the protection of the law.”*

*26. The respondents in Kadito and Okore above opted not to participate in the proceedings but the tribunal made a finding on both occasions that it lacked jurisdiction to hear the matters as the parties did not consent to submit themselves to the jurisdiction of the tribunal as per section 58 (b). Secondly, the tribunal opined in the two cases that jurisdiction under section 58 (b) can also be invoked if it is included as a term of the contract of employment by the parties. This was also not the case here as the petitioner does not have a contract of employment.*

*27. The tribunal for the reasons stated finds that it has no jurisdiction to hear this claim in terms of sections 58 (a) and 58(b) of the Sports Act as the parties did not agree to appear before us.*

73. Again, in **Jacob Keli Mutungi & 3 others v Ambrose Rachier & 3 others [2018] KESDT 5 (KLR)** the Tribunal had this to say concerning its Jurisdiction:

*27. The starting point must be to acknowledge that the Tribunal is a creature of statute and we must therefore look to its founding statute to establish the length and breadth of its jurisdiction. Without a doubt, the present matter falls under Section 58 (b) of the Sports Act which provides as follows:*

*The Tribunal shall determine-*

*(b) other sports related disputes that all parties agree to refer to the Tribunal and that the Tribunal agrees to hear;*

*28. Section 59 of the Act then provides that:*

*The Tribunal may, in determining disputes apply alternative dispute resolution methods for sports disputes and provide expertise and assistance regarding alternative dispute resolution to the parties to a dispute.*

74. In construing this statutory provision under section 58 (b) of the Sports Act, the Tribunal stated as follows in the case of **Denis Kadito versus Sofapaka Football Club**:

*“However, a reading of Section 58(b) demonstrates that it is not sufficient that the matter before the Tribunal should be a ‘sports-related dispute’; the parties to the dispute must also agree to refer the matter to the Tribunal and the Tribunal must agree to hear the matter. It is clear that there is therefore a three (3) stage process for establishing the jurisdiction of the Tribunal under Section 58(b). Each limb of the three (3) stage process must be satisfied and each stage depends on a positive answer to the prior stage.*

*30. The question therefore is how to discern the agreement entered into by the parties in the context of Sections 58 and 59 of the Sports Act. In order to do this, the Tribunal must consider each contract entered into by the respective Claimants separately and construe this as against the provisions of Section 58(b) and 59 of the Act to determine whether or not the Tribunal is in fact the appropriate forum to hear and determine the dispute.*

*31. Challenges to its jurisdiction have been entertained by the Tribunal since its inception and the Tribunal acknowledges that jurisdiction is a threshold issue which must be dealt with and determined at the outset.*

75. In all the above cited decisions rendered by the same Tribunal herein, it found that Jurisdiction could not arise under Section 58(b) where there was no agreement by the parties to refer the dispute to the Tribunal even if the dispute was sports related and the Tribunal agreed to entertain it.
76. The question is, where did the Tribunal find this jurisdiction in the present case, which jurisdiction it has all along in many of its other cited decisions found that it did not have.
77. My reading of the Sports Act reveals that that position held by the Tribunal in the cases cited, that it had no jurisdiction, where there is no agreement by the parties to refer the dispute to the Tribunal, still stands. In this case therefore, there being no agreement by the parties, who could nonetheless not agree to confer jurisdiction on the Tribunal in view of the applicant not being a registered *sports organisation* and therefore not subject to the jurisdiction of the Tribunal, I am satisfied that there was no jurisdiction on the part of the Tribunal to entertain the subject dispute.
78. The other jurisdictional question is whether the dispute was a sports-related dispute. The Tribunal further justified its assumption of jurisdiction to entertain the dispute filed by the interested party against the applicant herein, on the basis that the dispute involved sporting activities. With respect, and from the onset, that approach is legally untenable. This is because, a dispute does not become **“sports-related”** merely because it arises within a club that engages in sport. It is my finding that the nature of

the dispute, not the recreational character of the institution, is determinative. This is exactly what this Court found in the **Board of Limuru Country Club v Sports Disputes Tribunal** (supra). In the above case, the Court stated as follows:

*“42. Registration under the Act is a matter of fact, to be demonstrated by evidence of compliance with the statutory requirements and the issuance of a certificate of registration by the Registrar of Sports. It is not to be assumed and is not sufficient that a body is affiliated to a registered sports entity or merely engages in sporting or recreational activities; such affiliation or activity does not, in itself, confer the legal status of a registered sports organization within the contemplation of the Act.*

*43. The mere fact that the Club engages in recreational or sporting activities does not, of itself, confer upon it the legal status of a sports entity envisaged under the statute. It follows, therefore, that the dispute arising from the altercations among members of the Club and the subsequent internal disciplinary proceedings conducted by its Management Disciplinary Committee cannot, by any stretch, be deemed to constitute a*

*sports-related dispute falling within the jurisdiction of the Sports Disputes Tribunal.*

*44. In light of the foregoing, it is clear that the matters complained of by the Applicants relate solely to the internal governance and disciplinary processes of a private club, conducted pursuant to its own constitution and being a company limited by guarantee, its Articles of Association. Such matters are private contractual disputes among members and do not fall within the statutory definition of sports-related disputes under the Sports Act. This is not to say that a private company cannot be registered as a sports club or a sports organization, but that to be such, it must be registered under the Act as a sports organization.”*

79. The dispute herein concerns membership rights, internal governance and administration of sports and recreational activities of the applicant enjoyed by its members, the interested party being one of them. Such matters are private law disputes falling within the Club’s constitution which has its own mechanisms for resolving them, outside the statutory remit of the Tribunal see (**Gor Mahia FC v Sports Disputes Tribunal & another** (supra)) and where the internal dispute resolution mechanisms are inadequate or unavailable, an aggrieved party can approach the Court for a

remedy either by way of a constitutional petition or judicial review, as the case may be.

80. Thus, by the Tribunal equating the presence of sporting activities with jurisdiction, my finding is that the Tribunal impermissibly expanded its mandate beyond the Sports Act.

81. With all the above in mind, I now answer the question of whether this court has jurisdiction in this matter. Having found that the Tribunal was devoid of jurisdiction to entertain the dispute subject of these proceedings, the question of whether there being a mediation process which never bore any fruits is immaterial. The quick answer to the jurisdiction of this Court to entertain these proceedings is that yes, the court does possess such jurisdiction conferred by Article 165 of the Constitution.

82. This Court being the High Court, it exercises supervisory jurisdiction conferred by Article 165 (6) and (7) of the Constitution. The Article provides that:

***(6) 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.***

***(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make***

*any order or give any direction it considers appropriate to ensure the fair administration of justice*

83. I however emphasize that jurisdiction cannot be implied, inferred, or assumed on grounds of convenience or perceived subject-matter relevance see (**Samuel Kamau Macharia v Kenya Commercial Bank Ltd [2012] eKLR**). Jurisdiction must be conferred by statute or by the Constitution. A court of law or tribunal cannot arrogate itself jurisdiction that it does not possess, and neither can parties consent to confer jurisdiction to be exercised in their dispute where the law does not permit.

84. Before I conclude on this issue, I must bring to the attention of both parties the High Court decision in **Dennis Kadito v Sports Disputes Tribunal and Sofa Paka Football Club, Nairobi High Court Constitutional petition No. 279 of 2016**, which was a petition filed challenging the decision of the Tribunal declining jurisdiction to hear and determine the dispute between the Petitioner and the 2<sup>nd</sup> Respondent Football Club.

E.C.Mwita (as he then was) was asked to grant the following reliefs:

- a. A declaration that section 58(b) violates the right to access justice.*
- b. Conservatory Orders against implementation of section 58(b) of the Sports Act.*
- c. A declaration that the petitioner's fundamental rights and freedoms to fair administration action, presumption of innocence, fair hearing and right to earn a living have been infringed by the actions*

*of the 1<sup>st</sup> respondent as contained in court's decision of 31<sup>st</sup> May 2016.*

- d. A declaration that section 58(b) of the Sports Act, 2013 in particular the tribunal's interpretation of the word "AGREE" is invalid to the extent that it denies violates and infringes the petitioner's fundamental rights to the presumption of innocence and right to fair hearing based on the rules of natural justice.*
- e. A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents from acting on the decisions made and delivered on 31<sup>st</sup> May 2016 with regard to the contractual dispute between the petitioner and 2<sup>nd</sup> respondent.*
- f. An order of mandamus directed to the 1<sup>st</sup> respondent to forthwith proceed with the hearing of the dispute with regard to the contractual dispute between the petitioner and 2<sup>nd</sup> respondent and allow the petitioner to lawfully continue to arguing its case and determination be made on merit.*
- g. An order of prohibition directing the 1<sup>st</sup> respondent on the correct interpretation of key words of the sports Act 2013 to abide by provisions of the constitution.*
- h. Exemplary damages together with costs of the petition in the event the 1<sup>st</sup> respondent delays or refuse to abide by this Honourable Court decision.*

85. After hearing the parties to the petition, the learned Judge who was recently elevated to the Court of Appeal stated as follows:

*“40. The words of the statute in section 58(b) are clear and unambiguous that parties must agree to refer any other dispute of a sports nature to the tribunal and the tribunal after examining the sort of the dispute has to agree to hear it. That, in my respectful view, does not amount to denying anyone access to justice or amount to different treatment and therefore discrimination.*

*41. The petitioner’s dispute amounted to a breach of contract arising from some form of sports related activity. The fact that the tribunal did not hear that dispute that in itself did not amount to an unreasonable decision capable of being annulled by the Court for being unconstitutional. He could have appealed if an appeal is allowed by the Act or take a different route but not to come to this court by way of a constitutional petition.*

*42. As pointed out above, the petitioner had and still has an opportunity to have his right addressed in a different forum other than the tribunal. Declining jurisdiction did not make that decision amount to the tribunal acting in a technical manner. As correctly pointed out by the tribunal, declining jurisdiction on*

*account of clear provisions of the law cannot be said to be applying technicality. The issue could only be handled by the tribunal if both parties agreed, and even then, the tribunal had to agree to hear it.*

*43. As correctly observed by the tribunal such an agreement could be contained in the contract or a subsequent agreement after the dispute arose. On my part, I do not see any ambiguity or constitutional invalidity in the impugned section, neither can I fault the tribunal in the decision it made. It correctly interpreted and applied the provision of the statute.”*

86. With the above holding declining to strike out section 58(b) of the Sports Act on account of its alleged unconstitutionality, this Court does not comprehend whence the 1<sup>st</sup> respondent Tribunal herein, on several other occasions departed from its own decisions which were upheld by the High Court and decided to interpret the word **agree** in section 58(b) of the Sports Act to suit its own circumstances and in addition, insisting that private members Clubs which are not registered under the Sports Act are subject to its jurisdiction or that any dispute that is sports related in private members clubs which are not statutorily sports organisations as defined under the Sports Act is a dispute subject to the adjudication by the Tribunal.

90. I reiterate that the Sports Disputes Tribunal must operate strictly within the confines of the Sports Act. Neither the existence of sporting activities nor the desirability of a specialized forum can substitute for statutory authority or party consent.

91. In **Kakuta Maimai -vs- Peris Pesi Tobiko & 2 Others** [2013] eKLR, cited by the SDT in SDT Cause No. 24 of 2017 between **Jacob Keli Mutungi & 3 others v Ambrose Rachier & 3 others** [2018] KESDT 5 (KLR) the Court of Appeal stated as follows:

*“So central and determinative is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue is a desideration imposed on courts out of decent respect for economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul-de-sac.”*

92. Moreover, the SDT in the above case of **Jacob Keli Mutungi & 3 others v Ambrose Rachier & 3 others** stated as follows regarding section 58 and 59 of the Sports Act:

***“29. In construing this provision, the Tribunal stated as follows in the case of Denis Kadito versus Sofapaka Football Club:***

***However, a reading of Section 58(b) demonstrates that it is not sufficient that the matter before the Tribunal should be a ‘sports-related dispute’; the parties to the dispute must also agree to refer the matter to the Tribunal and the Tribunal must agree to hear the matter. It is clear that there is therefore a three (3) stage process for establishing the jurisdiction of the Tribunal under Section 58(b). Each limb of the three (3) stage process must be satisfied and each stage depends on a positive answer to the prior stage.”***

93. In the same case, the SDT further stated as follows citing a Supreme Court case on jurisdiction.

***“In the Matter of the Interim Independent Electoral Commission, [2] the Supreme Court pronounced as follows:***

***‘Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent...Such a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity.’***

94. In *Jaldesa Tuke Dabelo v IEBC & Anor* [2015] e KLR per A Visram, M Koome & J Otieno Odek, JJA January 21, 2015, the Court of Appeal stated that:

*“The assumption of jurisdiction by courts in Kenya was a subject regulated by the Constitution, statute law and judicial precedent. A court could not arrogate to itself jurisdiction through craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation was clear and unambiguous.*

87. I have said enough on jurisdiction of the SDT. For all the above reasons, I find that in this case, the Tribunal acted ultra vires in overruling the preliminary objection dated 25<sup>th</sup> August 2025 raised by the applicant herein on account of the Tribunal lacking jurisdiction to entertain the dispute filed by the interested party against the applicant and in assuming jurisdiction that it did not have.

88. For that matter, I find and hold that the Sports Disputes Tribunal lacked jurisdiction under Section 58(a) and 58(b) of the Sports Act; that the dispute was not sports-related within the meaning of the Sports Act; and that the ruling overruling the preliminary objection was made without jurisdiction and is a nullity.

89. In summary, the ratio of this decision is that the *jurisdiction of the Sports Disputes Tribunal* is wholly statutory and is confined to the circumstances expressly set out in Section 58 of the Sports Act, No. 25 of 2013. Where a dispute involves a private members' club that is not registered as a sports organisation with the Sports Registrar and a Certificate of registration as a sports organisation issued and where there exists no provision in the club's constitution nor any agreement by the parties referring disputes to the Tribunal, the Tribunal lacks jurisdiction to entertain the matter and therefore it cannot purport to exercise jurisdiction in such disputes.

90. Additionally, a dispute does not qualify as a **“sports-related dispute”** merely because it arises within a setting where sporting or recreational activities are conducted. The determinative consideration is the legal character of the dispute, not the nature of the activities undertaken by the parties. In such circumstances, the Tribunal cannot assume jurisdiction by implication or by reference to the subject matter alone and any decision purporting to do so is ultra vires, null and void.

91. Accordingly, this Court finds the originating motion dated 4<sup>th</sup> November, 2025 to be merited. I allow it and grant the following orders:

- a. Certiorari is hereby issued removing into this court for purposes of quashing and I hereby quash the entire proceedings and decision rendered by the Sports Disputes Tribunal, the 1<sup>st</sup> Respondent herein on 14/10/2025 in*

***SDTSC/E060/2025 - Nairobi County between NORAH NJERI  
ONGWENYI -VS- ROYAL NAIROBI GOLF CLUB.***

- b. A declaration is hereby issued declaring that the 1st Respondent herein, the Sports Disputes Tribunal lacked the jurisdiction to hear the subject dispute between the Applicant and the Interested Party in SDTSC/E060/2025 - Nairobi County.***
- c. The interested party is at liberty to pursue other remedies before a forum of competent jurisdiction, since she was dissatisfied with the mediation efforts.***
- d. Each party to bear their own costs of the originating motion for reasons that the main dispute between the parties remains unresolved and the parties are free to engage in internal disputes resolution mechanisms available under the constitution of the applicant members' club and or seek judicial intervention as appropriate.***
- e. This file is closed.***
- f. I so order.***

**Dated, Signed & Delivered at Nairobi this 10<sup>th</sup> Day of February, 2026**

**R.E. ABURILI  
JUDGE**