

**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**CASE NO: HCCTA/E012/2025**

**KENNEDY OTIENO OBUYA & 7 OTHERS .....**

**APPELLANTS/RESPONDENTS**

**VERSUS**

**KALPESH SOLANKI .....**

**APPLICANT**

**RULING**

1. This ruling is in respect to the Applicant's Notice of Motion application dated 7<sup>th</sup> April 2026 seeking, *inter alia*, urgent interim reliefs pending the hearing and determination of the appeal.
2. The application is premised on the provisions of the Civil Procedure Rules and the Constitution of Kenya, and is supported by the Applicant's affidavit sworn on 7th April 2026.
3. The Applicant states that elections for the 8th Appellant (Cricket Kenya) are scheduled for 19th April 2026,

- which elections include the position of Vice Chairperson, for which he intends to contest.
4. He avers that he has been barred from contesting in the said elections, allegedly through an irregular and unlawful process.
  5. He states that he lodged a protest with the Independent Elections Panel (IEP), which protest was unsuccessful and that the decision to exclude him was based on a purported suspension arising from a Special General Meeting (SGM) held on 24th May 2025, which he claims was unlawful and fraudulent as he was not given a hearing. He therefore challenges the legality of his suspension on grounds of procedural unfairness and lack of due process, asserting that he was not afforded a hearing.
  6. He further impugns the independence of the Independent Electoral Panel (IEP), contending that it is improperly constituted and lacks neutrality, as demonstrated by the concerns raised by the Sports Registrar in the letter dated 2<sup>nd</sup> April 2026. He maintains that the Respondents have acted in disregard of prior proceedings and court processes and that unless the Court intervenes, he stands to suffer irreparable prejudice as he will be excluded from the electoral process.

## The Respondent's Case

7. The Respondents oppose the application on both jurisdictional and substantive grounds. They filed the Replying Affidavit sworn by Ronald Bukusi contending that the dispute falls within the exclusive jurisdiction of the Sports Disputes Tribunal pursuant to Section 58 of the Sports Act, noting that a similar dispute is already pending before the Tribunal as shown in their exhibit marked "**RB 1**". They further assert that the matter is res judicata, having been determined in previous proceedings, including the Tribunal's judgment of 8<sup>th</sup> May 2025 (exhibit "**RB 2**") and this Court's ruling of 1<sup>st</sup> October 2025 (exhibit "**RB 7**").
8. It is their position that the Applicant has already invoked internal dispute resolution mechanisms under the Cricket Kenya National Election Regulations 2026, culminating in the IEP decision of 4th April 2026 (Exhibits **RB 8, KS 2-4**), and that any challenge thereto lies before the Tribunal.
9. On the merits of the application, the Respondents maintain that the Applicant has not demonstrated irreparable harm and that the suspension was lawfully effected by the 8th Appellant's Council during the meeting of 24<sup>th</sup> May 2025, as evidenced by the minutes (Exhibit **RB 12**) and notice (Exhibit **RB 5**). They further contend that the balance of convenience favours

allowing the elections to proceed, particularly in light of the International Cricket Council (ICC) timelines (Exhibit **RB 9**).

10. Parties relied on their respective pleadings and did not file any written submissions to the application.

## **Issues for Determination**

11. From the pleadings I find that the following issues arise for determination:

- a) ***Whether this Court has jurisdiction to entertain the application in light of the provisions of Section 58 of the Sports Act and the pending proceedings before the Sports Disputes Tribunal.***
- b) ***Whether the application is barred by the doctrine of res judicata.***
- c) ***Whether the Applicant has met the threshold for grant of interlocutory reliefs.***
- d) ***Whether the Respondent's Further Affidavit was properly filed and should be admitted.***

## **Analysis and Determination**

### **Jurisdiction**

12. Section 58 of the Sports Act provides that the Tribunal shall determine appeals against decisions

made by national sports organizations and other sports-related disputes that all parties agree to refer to the Tribunal.

- 13.** In *Speaker of the National Assembly vs. Karume* [1992] KLR 21 the Court of Appeal held that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.
14. The Respondents relied on Exhibit **RB 1** to demonstrate that proceedings are pending before the Tribunal. The Applicant, however, challenges the process and legality of the mechanisms invoked.
- 15.** It is trite that Jurisdiction is foundational and as was stated in *Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] KLR 1, **"Jurisdiction is everything. Without it, a court has no power to make one more step."**
16. In the instant case, the Respondents have demonstrated, through Exhibit **RB 1**, that there exists a pending dispute before the Sports Disputes Tribunal concerning substantially similar issues. Section 58 of the Sports Act vests jurisdiction in the Tribunal over disputes relating to decisions of sports organizations and election-related disputes.

17. The doctrine of exhaustion is now firmly settled. In ***Geoffrey Muthinja & Another vs. Samuel Muguna Henry & 1756 Others*** [2015] eKLR, the Court stated that: -

***“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked.”***

18. The Applicant has admittedly invoked the internal mechanism under the Cricket Kenya Election Regulations and a determination has already been made by the IEP (Exhibits **RB 8, KS 2-4**). Furthermore, a parallel process is pending before the Tribunal.

19. I therefore find that this court lacks jurisdiction at this stage due to the doctrine of exhaustion and the existence of parallel proceedings before the Sports Disputes Tribunal.

### **Res Judicata**

20. Section 7 of the Civil Procedure Act provides that: -  
***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit... and has been heard and finally decided...”***

21. The doctrine of res judicata is founded upon the public policy principle that litigation must come to an end.
22. In ***Independent Electoral & Boundaries Commission vs. Maina Kiai & 5 Others [2017] eKLR***, the Court of Appeal explained that the rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed by issues and suits that have already been determined.
23. The essential elements of res judicata are:
1. *The matter in issue must be directly and substantially in issue in the former suit.*
  2. *The former suit must have been between the same parties.*
  3. *The issue must have been heard and finally determined.*
24. The central question is whether the issues raised in the instant application are the same issues that had previously been determined.
25. The Respondents relied on prior determinations (Exhibits **RB 2 and RB 7**) to argue that the issues raised have already been adjudicated. The Applicant, however, contends that the present dispute introduces new issues relating to the 2026 elections and the IEP process.

26. My finding is that while the Applicant attempts to distinguish the present dispute as arising from the 2026 elections, it is evident that the core issue of his suspension and eligibility has previously been litigated and determined. To my mind, the present application seeks to re-open those findings through interlocutory proceedings. I find that the present application is substantially caught up by the doctrine of res judicata.

### **Interlocutory Relief**

27. The principles governing the grant of interlocutory injunctions were settled in ***Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358** as follows:

***“First, an applicant must show a prima facie case with a probability of success; secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury... thirdly, if the court is in doubt, it will decide the application on the balance of convenience.”***

28. In ***Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR**, the Court held that if prima facie case is not established, then irreparable injury and balance of convenience need no consideration.

29. The Applicant asserted that he will suffer irreparable harm if he is excluded from the elections,

while the Respondents argued that such harm is compensable and that public interest militates against disruption of the electoral process, particularly in light of International Cricket Council (ICC) timelines (Exhibit **RB 9**).

30. On the material before the Court, it is clear that the Applicant's case is anchored on a suspension that has already been upheld in prior proceedings as shown in Exhibit **RB 2**. The IEP has already rendered a determination on his ineligibility (Exhibits **RB 8, KS 2-4**). There is also a pending Tribunal process addressing the dispute (Exhibit RB 1).

31. In ***American Cyanamid Co. vs. Ethicon Ltd*** [1975] AC 396 the court held that the object of the interlocutory injunction is to protect the plaintiff against injury which could not adequately be compensated in damages.

32. In the present case, I find that the Applicant's grievance, being exclusion from an election, is a matter that can be remedied through appropriate legal channels, including the Tribunal process.

33. On balance of convenience, I note that the Respondents have demonstrated, through Exhibit **RB 9**, that failure to conduct elections may expose Cricket Kenya to sanctions by the ICC, raising significant public interest considerations.

34. The potential ICC decision introduces serious public interest considerations, including loss of international recognition and participation, economic loss through withdrawal of funding and sponsorship, Youth and developmental setbacks in cricket and damage to Kenya's national image and unity. There is also the possibility that Kenya may lose regional leadership in African cricket.

35. I further find that the Applicant has failed to establish a prima facie case or irreparable harm, and the balance of convenience tilts in favour of allowing the electoral process to proceed.

### **Admissibility of Further Affidavit**

36. The Appellants contended that the Further Affidavit was filed out of time contrary to directions of 14 April 2026. The Court must therefore weigh procedural compliance against the interests of justice.

37. It is trite that the Court retains discretion in admitting affidavits filed out of time. In ***Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 Others*** [2014] eKLR, the Supreme Court held that extension of time is not a right of a party but is an equitable remedy that is only available to a deserving party.

38. In the instant case, I find that given the urgency of the application and the limited time within which

parties were required to file and exchange their pleadings, it would not have been possible for the Respondents or Applicant to come back to court and seek leave to file a further replying affidavit. I find that it will serve the interest of justice to admit the further affidavit.

39. Having found that this Court lacks jurisdiction, that the application is barred by res judicata and that the threshold for interlocutory relief has not been met, the logical consequence is that the Application cannot be sustained.

40. I therefore make the following final orders: -

- a) The Applicant's Notice of Motion dated 7th April 2026 is hereby dismissed.***
- b) The parties are directed to pursue the dispute before the Sports Disputes Tribunal as provided under Section 58 of the Sports Act.***
- c) Each party shall bear his/its own Costs of the application.***

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF APRIL, 2026.**

**HON. W. A. OKWANY  
JUDGE  
17/04/2026**

**FOR APPELLANT** Shah

**FOR THE RESPONDENT** D. Omari

**COURT ASSISTANT** Abdirizak

File closed

Mention on 21<sup>st</sup> April 2026

ORIGINAL