

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL APPEAL NO. E035 OF 2025

KENYA MOTORIST FEDARATION.....
APPELLANT

VERSUS

CARL TUNDO.....1ST
RESPONDENT

ERICK G. BENGI.....2ND
RESPONDENT

SANGITA S GOHIL.....3RD
RESPONDENT

AND

SPORTS REGISTRAR.....1ST INTERESTED
PARTY

ATTORNEY GENERAL.....2ND INTERESTED
PARTY

254 MOTOR SPORTS CLUB.....3RD INTERESTED
PARTY

(Being an appeal from the judgment before Hon Bernard Wafula Murunga and Allan Mola Owinyi at Sports Dispute Tribunal in SDTSC E003 OF 2025)

JUDGMENT

- 1.** This is an appeal from the decision of a tribunal that raised key fundamental issues that are likely to dispose off the appeal. The first issue is the jurisdiction of the tribunal to hear the matter and secondly, the locus standi of the appellant. This Court must choose what to determine first so as to avoid placing the cart before the horse. Several applications were filed before parties agreed through the guidance of the Court, to go for the main appeal. The issues raised in the applications were set to be canvassed in the main appeal.
- 2.** The first thing that this Court must decide is which comes first for determination: - the jurisdiction of the tribunal to hear the matter or locus standi of the appellant. The issue of locus standi was raised along other issues in a PO and it is my opinion that I shall determine it first before I go to the merits of the appeal.
- 3.** The Respondent stated in the PO that the Appellant had no locus standi to file the appeal because no current company's resolution and CR12 was produced to signify authority to appeal. In the PO, the Respondent contends that the 2023 CR12 on record contained names of directors who are deceased. Despite this issue being raised, this matter proceeded to full hearing of the appeal. The Appellant did not file a current CR12 to counter the serious issue raised on its locus standi. It is a fact that locus standi is a matter of law

and the Courts cannot entertain a party without locus standi. Ordinary, where the issue of locus standi is raised especially in a case like this (there is an old CR12), Courts do not dismiss an appeal instantly but instead, a party is given time to regularize its documents in order to give effect to Article 159(2)(d) of the constitution. Courts are reluctant to rush into dismissing an appeal on technicalities where a matter is substantially before it.

4. The issue that this Court is faced with is whether to ask the Appellant to regularize its documents or proceed to dismiss the Appeal. In this matter, the issue of locus standi was raised with damaging allegations that some of the names in the CR12 are for deceased people. The respondent did not seek leave of the court to introduce a current CR12 leaving the allegations in the PO very conspicuous. This is not an appeal whereby a Court proceeds to hear the main appeal and while in the process of writing judgement, the Court notices that no CR12 was provided or that there was an old CR12 for the Court to give parties a chance to prove locus standi by providing one or a current one. This is an appeal where grave allegations are raised on a locus standi but the appellant does not reply to it. What should the Court do when a party does not reply to an adverse allegation against it that is capable of dismissing its appeal? Should the Court give another chance to the said party to counter the grave allegation after the appeal has been heard? What I know is

that the allegations raised in the PO are serious and cannot be overlooked.

- 5.** The Court must apply Article 159(2)(d) along with the rules in order to ensure that all procedures in courts are observed in order to bring decorum and order in proceedings. Application of this section of the Constitution is not in blatant breach of other articles of the constitution like right to expeditious hearing, offering parties the same treatment without appearing to aid a party who has not complied with the law and general faithfulness of the law. This Court must take judicial notice that Kenya is still under adversarial system of the law which has significantly grown our jurisprudence and adherence of the law. Many advocates today, have diligently complied with Court procedures, filed all relevant documents to avoid their matters being dismissed; - and this has contributed greatly to ease in Court procedures and reduction of unnecessary applications for amendments. In an adversarial system, the Court is considered as an independent referee that must not aid any party but however, the constitution has given Courts discretions to tamper technicalities with substantial justice - but it must be careful lest the rules are broken and procedural chaos start to emerge in earnest. The Court must promote professionalism especially among the advocates in litigation by allowing competition in handling their cases without

appearing to aid any of them. If this Court comes in hand to regularize every instant where advocates fail to provide crucial documents in their matters, then it will discourage diligence, professionalism and lead to waste of Court's time.

- 6.** The fact that the issue of locus standi was raised before the appeal and the appellant failed to regularize his documents to cure the supposedly serious issue on locus may insinuate that if these documents were to be availed, they would be adverse to the appellant well within the meaning of section 116 of the evidence Act. Under these circumstances, the PO served as a notice to produce the current CR 12, the Appellant failed to do so without reasonable explanation yet CR12 is readily available. I had an opportunity to look at the proceedings as I am expected to as the appellate Court and came through several letters of resignation by directors of the Appellant. In fact, two factions of directors of the appellant testified separately at the tribunal further creating confusion as to who actually represents the Appellant. These are factual facts that I would not want to rely on here given that I have decided not to go to the merit of the appeal before deciding on locus standi but however, it is something worth noting given that there is a PO on locus standi.
- 7.** The conclusion of the above is that where a PO is raised on locus standi before the matter is heard like in this instance, the Appellant must seek leave to provide a current CR12

immediately and not to wait for the Court to apply article 159 of the constitution to give him time to avail current board's resolution or CR12 so that the Court cannot make a finding that the documents if produced would be adverse to the Appellant. It is on this basis that I uphold the PO. Consequently, the Appeal is dismissed with costs.

DATED DELIVERED VIRTUALLY AND SIGNED ON THIS 30TH DAY OF APRIL 2026.

L. P. KASSAN
JUDGE