



Kenya Police Football Club v Sports Dispute Tribunal; Baraza (Interested Party) (Employment and Labour Relations Petition E125 of 2024) [2025] KEELRC 771 (KLR) (6 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 771 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E125 OF 2024**

MN NDUMA, J

MARCH 6, 2025

FORMERLY NYERI E009 OF 2024

BETWEEN

KENYA POLICE FOOTBALL CLUB PETITIONER

AND

SPORTS DISPUTE TRIBUNAL RESPONDENT

AND

FRANCIS BARAZA INTERESTED PARTY

JUDGMENT

1. The petition dated 14th June 2024 was initially filed at Nyeri, ELRC, by the Petitioner against the Respondent and Interested Party. The petition was subsequently transferred to Nairobi, ELRC as Petition E125 of 2024. This matter is treated by the court as an appeal against the decision of the Sports Tribunal. The court has in this regard considered the record and the submissions by the Petitioner and Interested Party.
2. The Petitioner/Appellant is a football club and former employer of the Interested Party as a couch vide a contract of employment entered into between the parties dated 28th June 2023. The contract was a fixed term one for a period of one year from 28th June 2023 to 28th June 2024. The same was renewable upon lapse at the sole discretion of the club. The Interested Party was to be paid a monthly salary of Kshs. 400,000.00 per month.
3. The duties and responsibility of the Interested Party are set out in the contract and so are the obligations of the Petitioner.



4. Clause 15 provides for termination of the contract by mutual settlement between the parties, by the Petitioner for unsatisfactory performance or indiscipline or upon release by the Petitioner if the coach wishes to transfer to another club on agreed terms.
5. Most significant in this dispute is clause 12 on dispute resolution which reads:
 - a. Amicable Settlement
The parties shall use their best efforts to settle amicably any dispute arising from or in connection with the contracts or the interpretation thereof.
 - b. Arbitration
If the dispute has not been settled amicably within thirty (30) days from when the dispute resolution process was instituted any party may elect to commence arbitration. Any dispute that may arise regarding this contract or the interpretation of the terms and conditions thereof shall be formally reported in writing to the relevant FKF independent disciplinary body of arbitration. In case neither party is satisfied with the decision of such a body then the matter will be referred to the Sports Tribunal as per the existing structures.

Pending final settlement and determination of a dispute the parties shall continue to perform their subsisting obligations herein
6. In terms of the said clause, if internal dispute resolution mechanisms stated therein do not resolve a dispute, then the same “will be referred to the Sports Tribunal as per the existing structures.”
7. The petition to this court is by the Football Club, the employer of the Interested Party seeking the following reliefs:
 - a. A declaration be, and is hereby issued, that the impugned Sports Dispute Tribunal’s decision is in violation of the Petitioner’s right under Article 27(1) of *the Constitution* of Kenya 2010.
 - b. A declaration be, and is hereby issued, that the impugned Sports Dispute Tribunal’s decision is in violation of the Petitioner’s right under Article 47(1) of *the Constitution* of Kenya 2010.
 - c. A declaration be, and is hereby issued, that the impugned Sports Dispute Tribunal’s decision is in violation of the Petitioner’s right under Article 50(1) of *the Constitution* of Kenya 2010.
 - d. A declaration be, and is hereby issued, that the Respondent does not have jurisdiction over employment disputes under the *Sports Act*.
 - e. A declaration be, and is hereby issued, that parties to a dispute cannot grant the Tribunal jurisdiction as set out at section 58(b) of the *Sports Act* where *the constitution* and the law have granted jurisdiction to another forum.
 - f. An order of certiorari be, and is hereby issued, directed at the Respondent, the Sports Dispute Tribunal removing into this honourable court and forthwith quashing its decision delivered on 4th June 2024 and the entire proceedings in SDTSC No. E051 of 2023
 - g. Costs of the petition be provided for.
8. The grievance by the Petitioner is against the Sports Dispute Tribunal, the Respondent for assuming jurisdiction of a dispute between the Petitioner and the Interested Party; hearing the dispute and determining the dispute in favour of the Interested Party in its decision delivered on 4th June 2024.



9. From the record of proceedings filed before court the contract of employment of the Interested Party was terminated by the Petitioner by a letter dated 4th October 2023.
10. The Petitioner states that the Interested Party referred the dispute to the Respondent without there being an agreement by the parties to refer the dispute to the tribunal. The Petitioner cites section 58(b) of the *Sports Act* which provides that the tribunal has jurisdiction to hear and determine other sports related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear.
11. The Petitioner filed SDTSC No. E051 of 2023 by way of a Statement of Claim on 21st November 2023, without agreement with the Petitioner.
12. That the Interested Party did not exhaust all avenues of resolving the dispute according to the contract of employment including efforts to amicably settle the dispute since the clause provides that a party may elect to commence arbitration if the dispute is not amicably settled within 30 days. Furthermore, the Petitioner states that the Interested Party did not first report the dispute to the relevant FKF independent disciplinary body for arbitration.
13. The impugned judgment by the Tribunal dated 4th June 2024 awarded the Interested Party wages for September 2023 to June 2024 in the sum of Kshs. 3,600,000.00 and one-month's pay in lieu of notice amounting to Kshs. 400,000.00.
14. The court has considered the detailed decision by the Disputes Tribunal and in its introduction the Tribunal elaborated on its jurisdiction stating that its jurisdiction was invoked by the claimant under section 58 and 59 of the *Sports Act* No. 25 of 2013 which provides as follows:-
 - “The Tribunal shall determine
 - a. ...
 - b. Other sports related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear;
 - c. ...
15. The Claimant contended that the Respondent had engaged the Claimant vide a contract of employment dated 28/6/2023.
16. That to comply with CAF Club license Rules that demand Football Kenya Federation Premier League Clubs are to be managed by coaches who had attained the highest level of certification being CAF. A. license. The Football Kenya Federation organized a five (5) days CAF – ‘A’ Licence coaching referee course from 13th to 18th August 2023. That the Claimant was voluntarily released by the Respondent to attend the said referee course. That during one of the practical sessions, the Claimant unfortunately ruptured his left Achilles tendon due to sudden dorsiflexion of his Plantor flexed left foot. The Claimant’s mobility was constrained and he faced difficulty in walking. The Claimant’s left foot and ankle were initially immobilized in a cast and Claimant had to use crutches to walk. This defeated his effective performance of duties. That the Claimant’s Assistant Coach took full charge of the team preparations but the CEO of the Respondent directed the Claimant to attend league matches given his witty match deciding coaching heroics.
17. However, on 24/9/2023 the Respondent’s Team Manager called the Claimant and asked him to keep off training sessions schedules, interacting with players, or engaging in any affairs of the Respondent until further communication to him on 28/9/2023.



18. The Claimant stated that the Respondent had effectively unfairly, wrongfully and unlawfully terminated the Claimant's contract of employment, by its stated conduct. That this amounted in sum to constructive dismissal and sought to be granted the reliefs sought.
19. The Respondent submitted to the jurisdiction of the Tribunal and filed a Memorandum of Response to the Statement of Claim dated 11/11/2023. The Respondent prayed for the Claimant's case to be dismissed on grounds that the contract of employment between the Claimant and the Respondent was frustrated due to no fault on the part of either party. That indeed on 20/8/2023 when the Claimant got injured, he had engaged in a local legend tournament and playing for his team, Kulundeng, Football Club contrary to the Respondent's regulation that a coach shall not engage in any other tournament while on contract. That notwithstanding the debilitating injury suffered by the Claimant while on a frolic of his own, the contract of employment was in place until 16/9/2023 when the same was terminated pursuant to clause 15(c) of the contract which stipulated that the contract shall automatically be terminated when:
 - a. The club loses or draws in two consecutive matches.
 - b. The club loses or draws in three separate matches.
20. That the Respondent further stated that based on clause 12 of the contract which provided that where a dispute was not settled amicable then a party may refer the dispute to arbitration, the suit was filed prematurely. That the termination of contract was lawful.
21. In its decision the Tribunal found it had jurisdiction to entertain the suit in terms of section 58(b) of the *Sports Act* as read with clause 12 of the contract between the parties.
22. The Tribunal also found that the Respondent was in breach of its obligations and had unlawfully terminated the Claimant's contract.
23. The Tribunal guided by section 49 of the *Employment Act*, 2007 and the case of Alphonse Maganga Mwachanya versus Operation 680 Limited [2013] eKLR, awarded the Claimant salary for the months of September 2023 to June 2024 in the sum of Kshs. 3,600,000.00. The Tribunal further held that the Respondent was to pay the equivalent of one month's salary in lieu of notice in the sum of Kshs. 400,000.00.

DETERMINATION

24. This court finds that nothing prevents an employee and employer to have an alternative dispute resolution clause in the contract of employment. Indeed, this is encouraged by section 15 of the *Employment and Labour Relations Court Act*, as read with Article 159(2)(c) of *the Constitution* of Kenya 2010.
25. It is the court's view that the Claimant did not approach the Sports Tribunal prematurely since he had engaged the Petitioner with a view to have an amicable settlement of the dispute but that was not achieved within the 30 days period provided under clause 12 of the contract of employment. The Claimant also said that he had referred the matter to FKF arbitration committee for resolution but the committee ignored the matter.
26. Clause 58 provides the Tribunal shall determine –
 - (b) other sports related disputes that all parties to the dispute agree to refer to the Tribunal and the Tribunal agrees to hear its matter if matter is to be referred to the Sports Tribunal as per existing structures.



27. The Claimant and the Respondent had in terms of clause 12 of the contract of employment agreed to refer a dispute arising from the employment contract dated 28/6/2023;
28. By any party
- i. To arbitration by any party where there has been no amicable settlement within 30 days.
 - ii. Reference is to the relevant FKF independent disciplinary body for arbitration.
 - iii. Where neither party is satisfied with the decision of FKF independent disciplinary body, then that is to be referred to the Sports Tribunal as per existing structures.
29. Clause 12 finally states
- “pending final settlement or determination of a dispute the parties shall continue to perform their subsisting obligations herein.”
30. The Claimant had specifically stated in the Statement of Claim that he had sought intervention of the Football Kenya Federation Independent Arbitration Committee but no response came from them. Indeed, the Sports Tribunal relied on an email and letter by the Claimant marked exhibits ‘2’ and ‘14’ respectively which letters were by the advocates of the Claimant seeking intervention of FKF Arbitration Committee but the said committee failed to intervene hence the matter was referred to the Sports Tribunal.
31. On the basis of this finding of fact by the Tribunal, it correctly held that it had the jurisdiction to hear and determine this dispute in terms of clause 12(b) of the contract of employment. The committee had failed to act and so the issue of agreement by both parties to refer its dispute to the Sports Tribunal does not arise. The Sports Tribunal was therefore right to conclude that the Tribunal’s jurisdiction was properly invoked.
32. On the facts of the case, it is evidently clear that the Respondent did not provide the Claimant with any due process before terminating his employment. The Sports Tribunal did not err in finding that the Respondent did not prove it had a valid reason to terminate the employment of the Claimant as provided under section 43(1) and (2) as read with section 45 of the *Employment Act*. The Sports Tribunal did not also err in finding that the Respondent did not abide by the provision of section 41 of the *Employment Act* before terminating the employment of the Claimant.
33. Accordingly, this court does not fault the decision by the Sports Tribunal that the termination of the employment of the Claimant was both for no valid reason and that no fair procedure was followed before the termination in breach of the rules of natural justice.
34. The court therefore upholds the decision of the Sports Tribunal with regard to the substantive and procedural findings.

Compensation

35. The Sports Tribunal properly invoked the provision of section 49(1)(c) and (4) in arriving at the award of damages to be awarded to the Claimant but misapplied the provision in material respects.
36. This court notes that the Claimant served under a one-year fixed term contract dated 28/6/2023. The court notes that contract was effectively terminated on 4th October 2023, after the Claimant had served a period of three (3) months. The Claimant was yet to serve about nine months to the expiry of the contract. It was not in dispute that this was a renewable contract after the Claimant had successfully served the first contract. It is also not in dispute that the Claimant earned a monthly salary of Kshs.



400,000.00 per month. The Claimant was not paid any terminal benefits upon termination. Indeed, the Claimant was constructively dismissed without notice or payment in lieu of notice. The Claimant did not receive a certificate of service nor was he compensated for the sudden loss of employment. The Claimant had suffered an injury while attending lawful training associated with his employment as a coach and so did not contribute to the dismissal.

37. The Tribunal awarded the Claimant salary for the remaining term of the contract being nine months that were remaining to the end of the contract. The court finds that this was a misdirection on the part of the Sports Tribunal and sets aside that award.
38. Having considered the aforesaid factors in terms of section 49(1)(c) and (4) of the *Employment Act*, the court awards the Claimant the equivalent of five (5) months' salary in compensation for the unlawful and unfair dismissal in the sum of Kshs. (400,000.00 x 5) Kshs. 2,000,000.00.
39. The court finds that the Tribunal did not err in awarding the Claimant the equivalent of one month's salary in lieu of notice in the sum of Kshs. 400,000.00.
40. In the final analysis the court sets aside the decision of the Sports Tribunal with regard to award of damages and consequently award the same as follows as against the Petitioner/Appellant:
 - a. Kshs. 200,000.00 being the equivalent of five (5) months' salary in compensation for the unlawful and unfair dismissal.
 - b. Kshs. 400,000.00 in lieu of one month notice.
 - c. An award of certificate of service within 30 days of this judgment.
Total award Kshs. 2,400,000.00
 - d. Interest at court rates from date of filing suit till payment in full.
 - e. Costs of the suit.

DATED AT NAIROBI THIS 6TH DAY OF MARCH 2025

MATHEWS NDUMA

JUDGE

Appearance:

Ms. Mwangi for Petitioner

Ms. Munyendo for Interested Party

Mr. Kemboi – Court Assistant

