



Republic v Sports Tribunal & another; Bandari Football Club (Exparte Applicant) (Employment and Labour Relations Judicial Review E007 of 2025) [2025] KEELRC 1716 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1716 (KLR)

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E007 OF 2025**

HS WASILWA, J

JUNE 12, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE SPORTS TRIBUNAL 1ST RESPONDENT

**SHEIKH TAHER MOHAMMED TWAHIR MOHAMED MUHIDDIN 2ND
RESPONDENT**

AND

BANDARI FOOTBALL CLUB EXPARTE APPLICANT

RULING

1. The ex-parte Applicant filed Chamber Summons dated 17th February 2025 seeking orders that: -
 1. spent
 2. the Honourable Court be pleased to grant leave to the ex-parte Applicant herein to move this Honourable Court for a judicial review order of prohibition, restraining the Respondent from proceeding with or otherwise staying the 1st Respondent’s order of 14th January 2025 and the entire proceedings in the Sports Tribunal Sc No. E032 Of 2024 Twahir Mohamed Muhiddin Vs Bandari Football Club.
 3. the Honourable Court be pleased to grant leave to the ex-parte Applicant herein to move this Honourable Court for a judicial review order of certiorari, removing into this Honourable Court and forthwith quashing the 1st Respondent’s order of 14th January 2025 and the entire proceedings in the Sports Tribunal Sc No. E032 Of 2024 Twahir Mohamed Muhiddin Vs Bandari Football Club.



4. the Honourable Court be pleased to grant leave to the ex-parte Applicant herein to move this Honourable Court for a judicial review order of Mandamus, directing to the 1st Respondent, compelling them to refer the dispute in the Sports Tribunal Sc No. E032 Of 2024 Twahir Mohamed Muhiddin Vs Bandari Football Club to arbitration as per clause 8 of the employment contract dated 1st July 2023.
5. the leave so granted operate as a stay of execution of the 1st Respondent's order dated 14th January 2025 and the entire proceedings in the Sports Tribunal Sc No. E032 Of 2024 Twahit Mohamed Muhiddin Vs Bandari Football Club until this court further directs.
6. the costs of this application be provided for.

Ex-parte Applicant's Case

2. The Ex-parte Applicant avers that on 14th January 2025, the 1st Respondent delivered a ruling on its preliminary objection dated 18th November 2024 which had challenged the 1st Respondent's jurisdiction to hear and determine a dispute between the 2nd Respondent and the Ex-parte Applicant.
3. The Ex-parte Applicant avers that the dispute related to the termination of an employment contract between the 2nd Respondent and the Ex-parte Applicant wherein the 2nd Respondent filed a Memorandum of Claim seeking damages for unlawful termination of the contract.
4. The Ex-parte Applicant avers that upon being served with the Memorandum of Claim, it filed a preliminary objection challenging the jurisdiction of the 1st Respondent to hear and determine the claim on the basis that: the nature of the relationship between the 2nd Respondent and the Ex-parte Applicant was an employer-employee relationship; and there was a dispute resolution clause in the contract that requires parties to first resolve any and all disputed through both internal mechanisms and by way of arbitration.
5. The Ex-parte Applicant avers that upon appearing before the 1st Respondent and filing necessary pleadings and submissions, the 1st Respondent rendered its decision on 14th January 2025. In its decision, the 1st Respondent observed that: the jurisdiction of the Tribunal extends far beyond the narrow interpretation of Section 58 of the *Sports Act*; and internal mechanism provided by the contract being arbitration, may be an impediment to justice and fairness on the part of the employee.
6. The Ex-parte Applicant avers that being aggrieved by the 1st Respondent, it sought this court's intervention to protect its right to fair administrative action right as protected by Article 47 of *the Constitution* as well as the Fair Administrative Action in order to safeguard its interest and rights in pursuit of fairness and justice.
7. The Ex-parte Applicant avers that the 1st Respondent's jurisdiction under Section 58 and 59 of the *Sports Act* read together with Rules 12 and 23 of the Sports Disputes Tribunal Rules, 2022, is limited to appeals against decisions made by national sports organisations or umbrella national sports organisations whose rules allow for appeals against disciplinary decisions and appeals against not being selected for a Kenyan team or squad.
8. The Ex-parte Applicant avers that it neither a national sports organisation nor an umbrella sports organisation and its rules do not allow for appeals to the Sports Tribunal. Section 58 of the *Sports Act* extends the jurisdiction of the Tribunal to other sports related disputes that all parties agree to, however, it did not agree to the 1st Respondent's jurisdiction.



9. Therefore, it is the Ex-parte Applicant's case that the 1st Respondent does not have jurisdiction to entertain the dispute and any further action on the dispute by the 1st Respondent will be ultra vires act in breach of the provisions of Section 58.
10. Additionally, Section 59 delineated the Tribunal's mandate by providing that it applies alternative dispute resolution methods for sports dispute if this was to be categorised as such. And Rules 12 and 23 of the Sports Disputes Tribunal Rules do not contemplate appeals based on the grounds of termination of an employment contract neither do they allow decisions on award of damages for unlawful termination of contract.
11. The Ex-parte Applicant avers that the 1st Respondent's decision is illegal as it takes into account irrelevant considerations and fails to account for the relevant ones such as the nature of dispute before reaching its decision. Therefore, this court is properly vested with the mandate to audit this decision and determine whether or not the 1st Respondent struck within the corners of its mandate.
12. The Ex-parte Applicant avers that the 1st Respondent's decision fails the test of reasonableness and rationality as it is not based on materials and reasoning that logically supports the existence of facts consistent with the pronouncement in order to stand sensibly and not self-contradictory.
13. It is the Ex-parte Applicant's case that the 1st Respondent's decision fails to give proper weight to critical relevant factors such as the nature of the contract, the dispute resolution clause and its own jurisdiction leading to an erroneous and wrongful decision that must be quashed in line with the orders sought.

Respondent's Case

14. In opposition to the Judicial Review Application, the 2nd Respondent filed grounds of opposition dated 3rd March 2025 on the following grounds:
 1. The Judicial Review Application dated 17th February 2025 lacks merit and thus ripe for dismissal.
 2. That the instant application is a veiled appeal against the 14th January 2025 Ruling of the Sports Disputes Tribunal in SDT Case No. E032 of 2024; Twahir Muhidin V. Bandari Football Club guised as a Judicial Review Application.
 3. That even if this application would be one deemed as an appeal or review of the Tribunal's decision of 14th January 2025, this court lacks the jurisdiction to entertain the same by dint of Rule 26 (1) of the Sports Disputes Tribunal Rules that mandates that appeals against the decision of the Tribunal lies with the Court for Arbitration for Sport and not this honourable court.
 4. That the instant application violates Article 169 (1) (d) & (2) of *the Constitution* on the independence and establishment of subordinate's courts, including Tribunals.
 5. That the instant application violates Section 58 of the *Sports Act*.
 6. That the instant application violates the doctrine of exhaustion provided for under Rule 26 (1) of the Sports Disputes Tribunal Rules
 7. That in view of the above, the instant judicial review application is bad in law and ought to be dismissed with costs to the Respondents.
15. The 2nd Respondent further filed a replying affidavit dated 10th March 2025.



16. The 2nd Respondent avers that he was employed by the Ex-parte Applicant under a fixed-term contract of years running from 1st July 2023 to 1st July 2025, however, he his contract was unlawfully and without justification terminated prematurely and without affording him an opportunity to be heard.
17. The 2nd Respondent avers that he then moved the Sports Disputes Tribunal (SDT) vide SDT Case No. E032 of 2025, seeking redress for wrongful termination and breach of contract. Subsequently, the Ex-parte Applicant raised a Preliminary Objection at the Tribunal, challenging its jurisdiction and asserting that only the Employment and Labour Relations Court has jurisdiction over employment matters.
18. The 2nd Respondent avers that upon consideration of the Preliminary Objection, the 1st Respondent delivered a Ruling upholding its jurisdiction and rightfully held that the dispute squarely falls within its competence as a sports dispute within the meaning of the *Sports Act* and related international legal frameworks governing sports, particularly football.
19. It is the 2nd Respondent's case that the Ex-parte Applicant has improperly invoked the Judicial Review jurisdiction of this Court, seeking to overturn the Tribunal's finding on jurisdiction, which is an abuse of court process.
20. The 2nd Respondent avers that under Section 58 of the *Sports Act*, the 1st Respondent is a specialized tribunal with jurisdiction to hear and determine all sports disputes relating in Kenya, including employment disputes arising from sports employment contracts. This a specialized area governed not only by domestic law but also by internationally sports federations, including the FIFA Regulations on the Status and Transfer of Players (RSTP), which extend to disputes involving footballers, and coaches in professional football clubs.
21. The 2nd Respondent avers that Article 22(c) of the FIFA RSTP, acknowledges that national dispute resolution bodies like the Sports Disputes Tribunal are competent in handling contractual disputes involving football clubs and their employees including coaches.
22. Further, the FIFA Circular No. 1010 encourages member associations, including the Football Kenya Federation (FKF), to establish national dispute resolution chambers to handle such employment matters. In the absence of such a chamber within FKF, the 1st Respondent serves this function in Kenya.
23. It is the 2nd Respondent's case that the High Court has on numerous occasions recognized the special nature of sports disputes and the need for such disputes to be resolved within the sports specific dispute resolution structures; and it has previously upheld the unique mandate of the Sports Disputes Tribunal under the *Sports Act*, confirming that sports disputes including employment issues within sports entities are properly within the Tribunal's purview.
24. The 2nd Respondent avers that sports employment contracts are distinct from ordinary employment contracts, given the unique regulatory and disciplinary frameworks imposed by both national and international sporting bodies, including FKF, CAF and FIFA. The need for specialized knowledge and expedited resolution within the sporting framework justifies the Tribunal's jurisdiction.
25. The 2nd Respondent avers that allowing the Ex-parte Applicant to bypass the 1st Respondent and directly move this court would undermine the clear legal and regulatory architecture designed for the resolution of sports disputes.
26. It is the 2nd Respondent's case that the Ex-parte Applicant is using judicial review as a backdoor to appeal the ruling on the preliminary objection at the Tribunal contrary to the well-established principle that judicial review is concerned only with the process and not the merits of a decision.



27. The 2nd Respondent avers that it is in the interest of justice, fairness, and adherence to the principle of exhaustion of alternative dispute resolution mechanisms that this Court should decline to exercise jurisdiction in favour of the ongoing proceedings at the Sports Disputes Tribunal.

Ex-parte Applicant's Submissions

28. To argue the test for grant of leave in judicial review, the Ex-parte Applicant relied on the case of Republic v County Council of Kwale & another ex parte Kondo & 57 others [1998] KEHC 2 (KLR) wherein the court held:

“The purpose of the application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. As was pointed out by Lord Diplock in Republic -vs-Inland Revenue Commissioners ex p National Federation of Self Employed and Small Businesses Ltd [1982] AC 617, the requirement that leave must be obtained before making an application for judicial review is designed to: “Prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.”

Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full interpartes hearing of the substantive application for judicial review. It is an exercise of the courts discretion but as always is has to be exercised judicially. Has the applicant satisfied these principles”

29. The Ex-parte Applicant submitted that the Application herein is arguable as it probes the impugned illegal ruling of the 1st Respondent which held that it has the jurisdiction to hear and determine employment matters. It is trite law that jurisdiction is everything and without it a court should not make any further steps. The presence or lack of jurisdiction is a weighty matter which ought to be disposed off by this court through a judicial pronouncement.

30. It is the Ex-parte Applicant's submissions that jurisdiction to hear and determine any dispute flows from either legislation or *the Constitution* as observed in the Supreme Court case The Matter of the Interim Independent Electoral Commission Constitutional Application No. 2 of 2011 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.... the Lillian "SS" case establishes that jurisdiction flows from the law, and the recipient, the Court, is to apply the same with any limitations embodied therein. 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 (emphasis). In the case of the Supreme Court, Court of Appeal and High Court their respective jurisdiction is donated by *the Constitution*.”

31. The Exparte Applicant submitted that the 1st Respondent's actions amounted to an usurpation of jurisdiction through crafty interpretation which warrants the interference of this court.



32. The Ex-parte Applicant submitted that the 1st Respondent's ruling depicts elements of unreasonableness which amount to abuse of discretion. It highlighted that under paragraph 21 the Tribunal found that Section 58 of the *Sports Act*, ought not to be looked at narrowly, but should be looked at from the very purpose of the establishment of the Sports Disputes Tribunal and the value of the access to justice. Whereas at paragraph 28, the Tribunal found that by upholding its authority to adjudicate sports-related matters, including employment disputes, the Tribunal promotes fairness, equity and the integrity of the sports system in Kenya.
33. The Ex-parte Applicant submitted that under Section 58(b) of the *Sports Act*, 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. This establishes a requirement for the parties to the dispute to agree to refer to the Tribunal the dispute and the Tribunal agrees to hear it. In the instant suit, there was no agreement to refer this dispute to the Sports Tribunal between the parties, therefore, the 1st Respondent's reliance on Section 58 as the anchor for its jurisdiction is without legal basis and an abuse of power and discretion.
34. The Ex-parte Applicant submitted that the contract between the parties had a dispute resolution clause under clause 9 which provided:
- “9. Dispute Resolution
- a. All disputes relating to this contract shall be raised with the management and all efforts put into trying to resolve the matter at club level in a reasonable amount of time.
- b. If the dispute is not resolved the matter will be referred to FKF for arbitration.
- c. Any dispute that is not resolved under clause (a) and (b) above shall be settled by arbitration in accordance with the *Arbitration Act* (1995) laws of Kenya or any statutory modification or re-enactment thereof for the time being in force or in accordance with FIFA regulations.”
35. The Ex-parte Applicant submitted that there is no evidence that there were attempts to resolve the dispute herein as prescribed in the contract. The litigants before this court were at the time of entering into the said agreement, intentional about having all disputes to be resolved through arbitration. Escaping from the same obligation, is an affront to the rule of law and an abuse of the court process.
36. The Ex-parte Applicant submitted that it is a well-established principle that parties are bound by the terms of their contract, therefore, the 2nd Respondent should not escape the terms of a contracts he signed wilfully.
37. It is the Ex-parte Applicant's submission that the material placed before this Court is a question of the legality of the impugned decision and the jurisdiction of the 1st Respondent to hear and determine employment matters. Therefore, there is an arguable case fit for further investigation at a full inter-partes hearing of the substantive application for judicial review.

2nd Respondent's Submissions

38. The 2nd Respondent submitted on three matters: whether the 1st Respondent has jurisdiction to hear and determine the employment dispute involving a football coach; whether the Ex-Parte Applicant



has met the threshold for the grant of judicial review orders; and whether the Application is an abuse of court process.

39. On the first issue, the 2nd Respondent submitted that Section 58 of the *Sports Act* confers jurisdiction upon the Sports Disputes Tribunal to hear and determine all disputes relating to sports in Kenya, including disputes between sports employees and their employers. This jurisdiction is reinforced by Article 22(c) of the FIFA Regulations on the Status and Transfer of Players (RSTP), which permits national dispute resolution bodies to adjudicate employment-related disputes between clubs and their employees, including coaches.
40. On the second issue, the 2nd Respondent submitted that judicial review is concerned with the legality of a decision-making process, not the merits of the decision itself. He relied on the case of Kenya National Examination Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR, where the Court of Appeal held that judicial review remedies are only available where there is illegality, irrationality, or procedural impropriety. The Ex-Parte Applicant has not demonstrated any procedural impropriety, bias or illegality in the Tribunal's ruling; instead, it seeks to relitigate the merits of the Tribunal's decision on jurisdiction, which is beyond the scope of judicial review.
41. On the third issue, the 2nd Respondent submitted that the doctrine of exhaustion of alternative remedies dictates that parties should first pursue remedies available within specialized tribunals before resorting to courts.
42. It is the 2nd Respondent's submission that the Ex-parte Applicant's attempt to bypass the Sports Disputes Tribunal and move to this Court is an attempt to undermine the statutory framework governing sports disputes; allowing this would render the dispute resolution mechanisms within the *Sports Act* redundant.
43. The 2nd Respondent submitted that the Ex-parte Applicant has failed to meet the legal threshold for the grant of judicial review orders, as they seek to challenge the merits of the Tribunal's decision rather than the process.
44. I have examined all averments and submissions of the parties herein. Having considered the submissions of the parties herein, I find the application to institute judicial review proceedings before this court is merited. I allow the application accordingly and direct the applicant to proceed and file the main judicial review application. Costs in the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

