



Sofapaka Football Club v Sports Dispute Tribunal & 3 others (Judicial Review E028 & E029 of 2023 (Consolidated)) [2024] KEELRC 924 (KLR) (4 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 924 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW E028 & E029 OF 2023 (CONSOLIDATED)**

MN NDUMA, J

APRIL 4, 2024

BETWEEN

SOFAKAKA FOOTBALL CLUB EXPARTE APPLICANT

AND

THE SPORTS DISPUTE TRIBUNAL 1ST RESPONDENT

COLLINS WAKHUNGU 2ND RESPONDENT

FOOTBALL KENYA FEDERATION 3RD RESPONDENT

THE CHIEF MAGISTRATES COURT MILIMANI 4TH RESPONDENT

JUDGMENT

1. The facts of the case are simple and straight forward that the respondents in the consolidated suit, being Collins Wakhungu and Paul Mungai Kiongera who are professional footballers filed suit before the Sports Dispute Tribunal (SDT) on 20th September 2021 and 2nd August 2021 respectively. The cases were SDT case E007 of 2021 and SDT case E013 of 2021.
2. The respondents before the SDT were the applicants herein, the 3rd respondent and the interested party. Pursuant to proceedings before the SDT, the respondents obtained orders from SDT compelling the applicants herein to issue the respondents with a release letter.
3. The exparte applicants issued the two respondents with letters of release on 9/9/2021 and 29/9/2021 respectfully. The exparte applicants had failed to enter appearance nor file a response to the application under certificate of urgency that accompanied the statement of claim in both suits before SDT.
4. The exparte applicants seek orders to have the proceedings and orders of SDT quashed on the basis that the parties had a contract with arbitration clause and so SDT had no jurisdiction to entertain the suits and to issue the orders of release.



5. It is pertinent to note that the exparte applicants before coming to this court had already complied with the orders of SDT.
6. The exparte applicants are indeed engaged in a moot exercise before this court the horse having bolted from the stable.
7. Firstly, the objection being raised before the court should have been taken before the SDT. Ordinarily, arbitration clauses are enforced by our courts as a matter of course. However, if the objection is not timeously taken and the matter proceeds to conclusion before the court, the fact that there was in existence an arbitration clause which neither party to the contract raised at the appropriate forum does not by itself nullify the proceedings before the court or tribunal and the orders issued there upon.
8. The purpose of arbitration clause is to have disputes resolved hastily, efficiently and in a cost-effective manner.
9. In *Magbull Abdi Karim versus Gor Mahia Football Club* [2018] eKLR, the issue of arbitration clause vis-à-vis the jurisdiction of the SDT was discussed at length making reference to a number of decided cases. The SDT found that it had the jurisdiction to hear and determine the matter on the premise that the Tribunal will accept jurisdiction in order not to leave an athlete or sportsman without a remedy.
10. From the depositions filed by the parties in this matter, being chamber summons dated 24/8/2023 and supporting affidavit sworn by Jimmy Carter Ambajo on 14/8/2023 and the replying affidavits of Collins Wakhungu and Paul Mungai Kiongera and the submissions filed thereafter by the parties, the court is of the considered view that the respondents had exhausted internal mechanisms to have them granted letters of release in vain.
11. The respondents went to court upon being frustrated in that endeavor. The exparte applicants did not in those pre-tribunal engagements resort to the arbitration clause. The suit was filed by the respondents in those circumstances and the applicants herein were duly served with SDT processes but failed to enter appearance nor participate in the hearing before SDT issued orders compelling the exparte applicants to issue the letters of release.
12. Accordingly, having considered the law and all the depositions before court, the court finds that this application is a moot exercise meant to further frustrate the two respondents in their endeavor to be released by the exparte applicants and the 3rd respondent.

The consolidated application lack good faith and merit and is dismissed with costs

DATED AT NAIROBI THIS 4TH DAY OF APRIL, 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Ochieng for exparte applicants

Mr. Kiongera for respondents

Mr. Kemboi; Court Assistant

