



**Gor Mahia FC v Sports Disputes Tribunal & another; Ayisi (Interested Party)  
(Petition E170 of 2023) [2023] KEELRC 3224 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3224 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E170 OF 2023**

**B ONGAYA, J  
DECEMBER 7, 2023**

**IN THE MATTER OF ARTICLE 22 (1) OF THE CONSTITUTION OF KENYA  
IN THE MATTER OF THE ALLEGED CONTRAVENTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 27 (1): ARTICLE  
47(1) AND ARTICLE 50(1) OF THE CONSTITUTION OF KENYA, 2010  
IN THE MATTER OF ARTICLE 23 (1) AND (3); ARTICLE 162(2)(A)  
AND ARTICLE 169(1) (D) OF THE CONSTITUTION OF KENYA, 2010  
IN THE MATTER OF THE SPORTS ACT NO. 25 OF 2013 LAWS OF KENYA  
IN THE MATTER OF THE DECISION DATED 8TH AUGUST 2023  
IN SPORTS DISPUTES TRIBUNAL CAUSE NO, E004 OF 2023**

**BETWEEN**

**GOR MAHIA FC ..... PETITIONER**

**AND**

**SPORTS DISPUTES TRIBUNAL ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**CLIFTON MIHESO AYISI ..... INTERESTED PARTY**

**JUDGMENT**

1. The petitioner filed the petition dated 31.08.2023 through M/S Weru Munyoro & Company Advocates. The petitioner prayed for:
  - a. A declaration that the decision is in violation of the Petitioner’s right under Article 27(1) of the Constitution of Kenya 2010.



- b. A declaration that the decision is in violation of the Petitioner’s right under Article 47 of the Constitution of Kenya.
  - c. A declaration that the decision is in violation of the Petitioner’s right under Article 50(1) of the Constitution of Kenya.
  - d. A declaration that the 1<sup>st</sup> Respondent does not have jurisdiction over Employment Disputes under the Sports Act.
  - e. A declaration that parties to a dispute cannot grant a 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 do issue directed at the 1<sup>st</sup> respondent, the Sports Tribunal, to remove into the Employment and Labour Relations Court of Kenya and quash its decision in SDT Cause E004 of 2023.
  - g. The costs of the Petition be provided for.
2. The petition was based upon the supporting affidavit of Ambrose Rachier, Chairman of the Petitioner and exhibits thereto filed together with the petition, sworn on 22.08.2023. The petitioner’s case is as follows:
- a. The interested party instituted a suit before the 1<sup>st</sup> respondent SDT Cause No. E004 of 2023 by a statement of claim dated 02.02.2023 and filed 06.02.2023 and the petitioner was named the respondent.
  - b. In the suit it was alleged that the interested party was employed by the petitioner on 09.08.2019 vide a contract of employment as a football player earning a gross salary of Kshs 150,000 exclusive of other allowances.
  - c. The interested party alleged that he was not paid his signing fee as per the contract and that his salaries and dues had also allegedly not been paid and sought an award in the sum of Kshs 2,225,500 as well as compensation for unfair labour practices.
  - d. The petitioner entered appearance in the said matter and filed a memorandum of response and a preliminary objection dated 14.04.2023 in which it raised an objection on the grounds that;
    - i. The Honourable Tribunal lacks jurisdiction to hear this entire claim on account of the provisions of section 90 of the Employment Act, 2007.
    - ii. The claim for signing bonus is time barred having been brought before this Honourable Tribunal over three (3) years since it became due and payable.
    - iii. The claim for unpaid salaries for October 2020 to July 2021 amount to continuing injuries and are consequently time-barred as they have been brought before this tribunal over one (1) year since the cause of action accrued.
    - iv. That the claim for unpaid training allowances for the period 09.08.2019 to 30.04.2020 and October 2020 to July 2021 amount to continuing injuries and are consequently time-barred as they have been brought before this tribunal over one (1) year since the cause of action accrued.



- v. The claim for unpaid winning allowances for the 2019/2020 and 2020/2021 seasons amount to continuing injuries and are consequently time-barred as they have been brought before this tribunal over one (1) year since the cause of action accrued.
- e. The 1<sup>st</sup> respondent delivered its decision on the objection on 23.05.2023 and found that the objection was not a pure point of law thus dismissing it and directed that the matter proceed to hearing.
- f. Thereafter on 08.08.2023 the 1<sup>st</sup> respondent delivered its judgment on the claim allowing the claim and entering judgment against the Petitioner herein in the sum of Kshs 2,225,500 together with costs.
- g. The 1<sup>st</sup> respondent set out the background facts, the arguments by the parties and a finding by the Tribunal that it has jurisdiction to hear and determine the matter since the claim arose from a football player who had been contracted by a football club and therefore the dispute fell under the jurisdiction granted at section 58 (b) of the [Sports Act](#) touching on the other related sports disputes.
- h. The decision also found that since the matter was a sports dispute, “section 90 of the [Employment Act](#) stricto sensu cannot be applied in these proceedings as the claim is not an employment dispute as contemplated under the [Employment Act](#).”
- i. The petitioner’s case is that the decision of the 1<sup>st</sup> respondent is in clear contradiction of the provisions of Article 162(2)(a) of the [Constitution](#) of Kenya as read with the provisions of the [Employment and Labour Relations Court Act](#).
- j. The decision of the 1<sup>st</sup> respondent is illegal as it purports to extend its jurisdiction beyond the limits set out in law.
- k. The decision of the 1<sup>st</sup> respondent is also illegal as it purports to extend the limitation of time of disputes as between the employer and employee set out in law.
- l. The 1<sup>st</sup> respondent’s decision is irrational as it failed to make a legitimate inquiry into the issues of jurisdiction as per the law or as raised by the petitioner.
- m. The decision of the 1<sup>st</sup> respondent is also irrational for the reason that it failed to analyse the question of what allowances were due yet the same ought to have been considered in the form of special damages which would have required the interested party to plead and prove the particulars of his claim.
- n. The decision of the 1<sup>st</sup> respondent is grossly unreasonable and arbitrary on account of the fact that it does not present any reason for the findings made or any analysis of the arguments by the parties or any justification for departing from its own decisions presented to it as authorities and appears to have been made on a whim.
- o. The decision of the 1<sup>st</sup> respondent frustrates the legislative purpose as codified in the [Constitution](#) of Kenya 2010 and the Employment and Labour Relations Act.
- p. The 1<sup>st</sup> respondent has acted ultra vires of the powers granted to it, has delivered an irrational and unreasonable decision and has violated the petitioner’s legitimate expectation to have the matter determined in adherence with the [Constitution](#) of Kenya 2010, the [Employment and Labour Relations Act](#) and the [Employment Act](#).



3. In reply the 2<sup>nd</sup> Respondent filed a ground of opposition dated 18.10.2023 filed through learned State Counsel Mary Mochoge for Attorney General. It was urged as follows:
  - a. That the 2<sup>nd</sup> respondent has been mis-joined in the proceedings.
  - b. The petitioner is an independent legal entity which can sue and be sued on its own behalf and with the mandate to manage their own human resource functions.
  - c. The application and petition do not disclose any cause of action against the Hon. Attorney General, the 2<sup>nd</sup> respondent.
  - d. This being a private contract of employment/employee relationship, the court cannot issue the 2<sup>nd</sup> respondent with orders with no legal force otherwise the orders will be issued in vain.
  - e. The 2<sup>nd</sup> respondent should not be enjoined in the matter as this is a matter of private contract of employer/employee relationship and the 2<sup>nd</sup> respondent is neither an employer nor an employee in the matter.
  - f. That further, the 2<sup>nd</sup> respondent should not be enjoined in the matter as this is a matter of private contract of employer/employee relationship and not of public interest.
  - g. The 2<sup>nd</sup> respondent therefore prays that it be expunged from the proceedings or in the alternative the petitioner's/applicant's application and petition be dismissed against it with costs.
4. The interested party filed his replying affidavit sworn on 25.09.2023 and through Wambilianga, Majani & Associates Advocates. It was stated and urged as follows:
  - a. The petitioner did not appeal against the ruling of the Tribunal.
  - b. The claim before the tribunal proceeded to its end when the tribunal entered judgment in favour of the interested party for a sum Kshs 2,225,500/= with interests as well as the costs of the suit.
  - c. The petitioner did not appeal against the decision before an appellate court.
  - d. If the petitioner was dissatisfied with the decision of the Tribunal in SDT case no. E004 of 2023, then the right channel to challenge that decision should have been through an appeal against the decision and not a petition as instituted, otherwise this petition is fatally defective ab initio for being res judicata.
  - e. The jurisdiction of this court cannot be conferred through draftsman-ship or craftsmanship and that a petition cannot be converted into an appeal through the craft of pleadings filed before it and that the Court of Appeal erred in *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* (2018) eKLR which held as much is binding upon the Honourable Court.
5. Final submissions were filed for the parties, with an exception of the 1<sup>st</sup> respondent. The Court has considered all the material on record. The Court returns as follows.
6. To answer the 1<sup>st</sup> issue, the respondents have not answered to the issue whether the Sports Tribunal had jurisdiction. The case before the Tribunal was an allegation of a contract of employment between the petitioner and the interested party. As submitted for the petitioner, the constitutional jurisdiction under Article 162(2) (a) as read with the *Employment and Labour Relations Court Act*, the jurisdiction falls upon the Court. It is found as much and the petitioner's case upheld.



1. To answer the 2<sup>nd</sup> issue, the petitioner was entitled to file the petition in terms of Article 23(1) and 258(1) to enforce the Constitution and the alleged violation of the Bill of Rights. While there was an appellate procedure, the dispute was that the Tribunal lacked the jurisdiction and the matter was relating to employment and labour relations. The Tribunal having walked outside its jurisdiction, the decision being a nullity, and the constitutional jurisdiction being the Employment and Labour Relations Court, it is the Court's finding that the procedure by way of the instant petition cannot be faulted.
2. To answer the 3<sup>rd</sup> issue, the Court returns that the Tribunal did not have jurisdiction to hear and determine the employment dispute as had been moved. Section 58(b) of the Sports Act states that 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. While the Tribunal agreed to hear the dispute, there was no agreement shown that the parties agreed to refer the same to the Tribunal. The Court further finds that the parties would not agree to confer the Tribunal with jurisdiction which Article 162(2) (a) has conferred to the Court as per the Employment and Labour Relations Court Act. If parties had indeed entered such agreement then such agreement would be null and void as being contrary to the Constitution, statute and public interest.
3. To answer the 4<sup>th</sup> issue, the Court returns that the 2<sup>nd</sup> respondent was a necessary party by reason of the matters in dispute and the constitutional role of the Honourable Attorney General as the Principal Legal adviser to the Government. The petition was about statutory jurisdictional design for which the 2<sup>nd</sup> respondent's opinion would count seriously.
4. To answer the 5<sup>th</sup> issue, the Court returns that in view of the findings the petition will succeed. In consideration of the unique circumstances and the relationships of the parties, there will be no orders on costs.

In conclusion judgment is hereby entered for the petitioner for:

- a. The declaration that the impugned Tribunal's decision is in violation of the Petitioner's right under Article 27(1) of the Constitution of Kenya 2010.
- b. The declaration that the impugned Tribunal's decision is in violation of the Petitioner's right under Article 47 of the Constitution of Kenya.
- c. The declaration that the impugned Tribunal's decision is in violation of the Petitioner's right under Article 50(1) of the Constitution of Kenya.
- d. The declaration that the 1<sup>st</sup> Respondent does not have jurisdiction over Employment Disputes under the Sports Act.
- e. The declaration 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. The ORder Of Certiorari hereby issued directed at the 1<sup>st</sup> respondent, the Sports Tribunal, to remove into the Employment and Labour Relations Court of Kenya and hereby quashes the decision in SDT Cause E004 of 2023.
- g. There be no orders on costs of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7<sup>TH</sup> DECEMBER, 2023.**



**BYRAM ONGAYA**  
**PRINCIPAL JUDGE**

