



Ochia v Kenya National Paralympic Committee & 2 others (Tribunal Case E011 of 2022) [2022] KESDT 672 (KLR) (11 July 2022) (Decision)

Neutral citation: [2022] KESDT 672 (KLR)

**REPUBLIC OF KENYA
IN THE SPORTS DISPUTES TRIBUNAL
TRIBUNAL CASE E011 OF 2022
E.SIFUNA-SHIVEKA, CHAIR, MN KIMANI & E. G. KIPLAGAT, MEMBERS**

JULY 11, 2022

BETWEEN

EDWARD NYADIMO OCHIA PETITIONER

AND

KENYA NATIONAL PARALYMPIC COMMITTEE 1ST RESPONDENT

AGNES OLUOCH 2ND RESPONDENT

ELIJAH ALIERO 3RD RESPONDENT

DECISION

Panel

1. Mrs Elynah Sifuna- Shiveka – Panel Chairperson
2. Ms Mary Nyokabi Kimani - Member
3. Mr E Gichuru Kiplagat – Member

Appearances

4. The petitioner represented himself.
5. The respondents were represented by Murimi, Thiongo & Kungu Advocates.

The Parties

6. The petitioner claims to be a member of Wheelchair and Amputee Sports Association (WASK)and a sports organization registered under the *Sports Act* and is affiliated to the 1st respondent (hereinafter referred to as KNPC).



7. The 2nd and 3rd Respondents are officials of the 1st Respondent as Chairperson and Secretary respectively.

The Case

8. The petitioner has approached the tribunal vide his petition dated February 17, 2022 filed with the Tribunal.
9. The petitioner prays that the tribunal bars the 2nd and 3rd respondents from acting or transacting for and on behalf of the 1st respondent. He also prays that the tribunal orders the Registrar of Sports to constitute a caretaker committee to take care of the 1st respondent affairs.
10. The petitioner also prayed that the tribunal orders WASK to proceed with the elections. The Petitioner further prayed for orders that the 2nd and 3rd respondents be ordered to refund transport, accommodation and allowances for Kisumu delegates.
11. The petitioner also prayed that the tribunal bars the 2nd and 3rd respondents from contesting or interfering with any activity of WASK. The petitioner also prayed for costs.

The Response

12. The 2nd and 3rd filed an undated replying affidavit and a further replying affidavit dated May 9, 2022. They stated that they are Chairperson and Secretary General of the 1st respondent respectively.
13. They noted that the issues raised by the petition were addressed by this tribunal in its decision of SDT SC No E10 of 2022 delivered on April 19, 2022.
14. They also note that they are bona fide officials of KNPC and if they are barred KNPC will be in disarray to the detriment of federations under it. They also state that setting up a caretaker committee to take control and manage KNPC is unfounded and without basis.
15. They noted that WASK elections that were organized on February 11, 2022 were found to be unprocedurally held by this Tribunal on April 19, 2022 in its decision SDT SC No E10 of 2022.
16. They further noted that this tribunal ordered KNPC to hold elections as well as federations affiliated to KNPC and that the petition has been overtaken by events.
17. They further stated that the petitioner has the duty to bring any information or evidence in support of his case and he cannot shift the burden to any other person and not least the Respondents.
18. They stated too that the petitioner has not disclosed his locus or relationship with WASK or KNPC. Lastly, they prayed that the petition be dismissed with costs to the Respondents.

Hearing

19. The tribunal heard the petition on May 11, 2022.

Determination

20. Having taken into account the parties' pleadings and oral submissions, the tribunal opines as follows.
21. The jurisdiction of this tribunal stems from section 58 of the *Sports Act* that provides:

"The tribunal shall determine—



- (a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the tribunal in relation to that issue including —
 - (i) appeals against disciplinary decisions;
 - (ii) appeals against not being selected for a Kenyan team or squad;
- (b) other sports-related disputes that all parties to the dispute agree to refer to the tribunal and that the tribunal agrees to hear; and
- (c) appeals from decisions of the Registrar under this Act.”

22. The parties herein have by their express conduct submitted themselves to the jurisdiction of this tribunal. We therefore find that we have the jurisdiction needed to determine this petition.

23. The issues related to the WASK elections were sufficiently addressed by this tribunal in the case of SDT SC No E10 of 2022 that was delivered on April 19, 2022. The Tribunal ordered all the parties to abide by the provisions of the WASK constitution on elections yet this was not the case when the impugned WASK elections were called for on February 11, 2022. We therefore find this matter on WASK elections to be *res judicata*.

24. The test to determine whether a matter is *res judicata* was well set out in the case of *DSV Silo v The Owners of Sennar* (1985) 2 All ER 104 and in *Bernard Mugo Ndegwa v James Nderitu Githae and 2 others* [2010] eKLR, read together with section 7 of the *Civil Procedure Act* as follows:

- a) That the matter directly and substantially in issue in the subsequent suit must have been the same matter which was directly and substantially in issue in the former suit.
- b) That the former suit must have been between the same parties or between the parties under whom they or any of them claim.
- c) That the parties must have litigated under the same title.
- d) That the former suit must have been tried by a competent court.
- e) That the former suit must have been heard and finally decided by such competent court.

25. The petitioner herein has not provided any evidence or incriminating material against the 2nd and 3rd respondents that will enable the tribunal carry out the petitioner’s prayers either to bar the 2nd and 3rd respondents from carrying out the activities of KNPC or to bar them from contesting in the elections of WASK.

26. We are also not persuaded that the prayers to set up a caretaker committee for the 1st respondent are tenable. The petitioner has not demonstrated to us why this is imperative yet the tribunal on April 26, 2022 in its wisdom ordered KNPC and its affiliates or federations under it including WASK to hold elections.

27. The petitioner therefore has ample opportunity to participate in the elections with respect to KNPC or any of its affiliates. Based on the reasons aforementioned we find no merit in the petition.

Conclusion

28. It is therefore in consideration of this, as well as the parties’ submissions that the tribunal makes the following orders:



- a. The petition dated February 17, 2022 is hereby dismissed;
- b. Each party shall bear its own costs.

DATED AT NAIROBI THIS 11TH DAY OF JULY, 2022.

MRS ELYNAH SIFUNA-SHIVEKA

DEPUTY CHAIRPERSON, SDT

MR E GICHURU KIPLAGAT

MEMBER, SDT

MS MARY NYOKABI KIMANI

MEMBER, SDT

