



**Migori Youth FC v Football Kenya Federation (Tribunal Case E041 of 2023) [2023] KESDT 670 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KESDT 670 (KLR)

**REPUBLIC OF KENYA  
IN THE SPORTS DISPUTES TRIBUNAL  
TRIBUNAL CASE E041 OF 2023  
A.M OWINYI, CHAIR, GABRIEL OUKO & MN KIMANI, MEMBERS  
NOVEMBER 28, 2023**

**BETWEEN**

**MIGORI YOUTH FC ..... PETITIONER**

**AND**

**FOOTBALL KENYA FEDERATION ..... RESPONDENT**

**RULING**

**The Parties**

1. The Petitioner is a football club based in Migori County and bona fide member of the Football Kenya Federation (FKF).
2. The Respondent is registered as an umbrella football sports federation established under the *Sports Act* and is affiliated to Confederation of African Football (CAF) and Federation Internationale de Football Association (FIFA).

**Background**

3. The Petitioner has approached the Sports Disputes Tribunal ('the Tribunal') under a Notice of Motion and Petition seeking to be heard on a priority basis and generally seeking Conservatory Orders against the decision by the Football Kenya Federation (FKF) League and Competitions Committee that; the full time results of the match shall stand, Migori Stadium is banned from hosting the next five games of the Petitioner, the damaged iPhone 14, media equipment and medical expenses incurred shall be settled by Migori Youth to Darajani Gogo FC and the Appellant is ordered to pay a fine of Kshs. 200,000/=
4. The Tribunal granted the Conservatory Orders certified this matter as urgent and subsequently directed that the Petitioners' Application be served on the Respondents so that it could be heard on a priority basis.



5. The Tribunal gave orders that the Respondent reinstate all league matches scheduled to be played by the Applicant and subsequently have their home matches played at Awendo Green Stadium pending the hearing and determination of the application.
6. Once the Respondent were served with the Application, the Respondent filed a Preliminary Objection dated 24<sup>th</sup> October 2023 challenging the jurisdiction of this Tribunal to hear this matter.
7. The Preliminary Objection was premised on two grounds to wit:
  - i. That this Petition and Notice of Motion Application herein is an abuse of court process as the Petitioner had access to a judicial forum to ventilate its claim, namely, the FKF Appeals Committee established under Article 64(1)(c) of the FKF Constitution (2017) as read together with Rule 10.3.5 of the Rules and Regulations Governing Kenyan Football (2019) and which appeal forum the Appellant/Applicant chose to bypass and/or elected not to invoke.
  - ii. That by dint of the express provisions of Articles 14 (1) (a), Article 67(2) and (3), Article 69(1) and (5) and Article 70(1) and (2) of the FKF Constitution, 2017 as read together with Rule 10.3 of the Rules and Regulations Governing Kenyan Football (2019), the Members of FKF, who include the Appellant, enacted to oust this Tribunal's jurisdiction to entertain appeals from the decision of the Leagues and Competitions such as the one now before this Honourable Tribunal.
  - iii. That this Petition and Notice of Motion Application offend the doctrine of exhaustion of internal remedies.
  - iv. That the Petition herein is in the wrong forum and time barred.
8. The Parties were directed to argue the Preliminary Objection by way of written submissions and the ruling reserved for 28<sup>th</sup> November 2023

### **The Objector's Case**

9. In the Preliminary Objection, the Respondent indicated that the Petitioner being members of the Respondent aggrieved by the decision of the Respondent's Leagues and Competitions Committee ought to have first appealed against the decision of the Respondent of 10<sup>th</sup> October, 2023 to the Appeals Committee before approaching this Honourable Tribunal.
10. Procedurally, according to the Respondent, once a decision is taken by the Leagues and Competitions Committee, a party is afforded the chance to appeal that decision to the Appeal's Committee subject to fulfilling certain conditions such as filing of the Appeal before effluxion of time and the payment of an appeal fee set at Kenya Shillings One Hundred Thousand Only (Kshs. 100,000/=)
11. The Petitioner did not abide by the above cited rules but came straight to the Tribunal 9 days after receiving the decision of the Respondent's Leagues and Competitions Committee and as such failed to exhaust the internal dispute resolution mechanisms of the FKF provided by *the constitution* and rules that bind it before coming to the Honourable Tribunal. The law frowns upon such conduct and the apex courts and this Tribunal have held so.
12. Ergo, the Appellant should have no qualms invoking and exhausting the appeals mechanism properly as provided for under Rule 10.3.5 before attempting to invoke the powers of this Tribunal as provided for in their constitution and rules and regulations.



13. Mativo, J in the case of Godfrey Osotsi vs. Amani National Congress (2019) eKLR elaborately analyzed of the rationale for the exhaustion doctrine at para 29 thus:- “I have severally stated that this doctrine is now of esteemed juridical lineage in Kenya [24] and was felicitously stated by the Court of Appeal [25] in Speaker of the National Assembly v James Njenga Karume [1992] eKLR [26] in the following words:- “Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”
14. Further, the Respondent submits that in the event the Tribunal proceeds to entertain the Petition on merit, it would be inimical of the clear dispute resolution mechanisms enacted and constituted by the Petitioner as well as its chairman who are members and delegates at the FKF legislative assembly, the General Assembly.
15. Furthermore, the Respondent submitted that the Preliminary Objection was on jurisdiction citing the locus classical case of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696 which stated that;

“So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
16. The Respondent in its supplementary submissions reiterated that its trite law that a preliminary objection when being determined by the Court, all facts before the court are assumed to be correct. The Respondent submitted that there is no need to ascertain the facts herein; it is plain to see from the pleadings by the Petitioner that after they got the decision of the Respondent’s Leagues and Competitions Committee they came straight to the Tribunal.
17. Further, the Respondent cited that the tribunal has through various decisions including SDTSC Petition No. E016 of 2023: Samson Cherop vs Nick Mwendwa and 3 Others upheld that parties ought to exhaust all internal remedies before coming before the Tribunal. The Tribunal at para 4 of its decision cited the case of Migori Youth Football Club and 8 Others vs FKF Transition Committee: Leagues and Competitions Committee & 5 Others (Interested Party) (Petition E021 of 2021) (2022) KESDT 678 (KLR) (Civ) (23 August, 2023) wherein it recognized the existence of the Appeals Committee to hear any complaint raised by aggrieved members of FKF. The Petitioner herein was Petitioner in the said case too.

### **Petitioner’s Case**

18. The Petitioner has indicated that the Respondent occasioned an illegality by referring the matter before the Leagues and Competitions Committee whereas the matter at hand concerned questions of misconduct on the part of the petitioner.
19. It is the submission of the Petitioner that the Respondent defied its own rules and had the matter heard and determined by the Leagues and Competitions Committee instead of the Disciplinary Committee.
20. Further, the appellant alleges that this illegality creates an element of bias on the part of the petitioner and thus the Petitioner’s reference of the appeal against the decision by the Leagues and Competitions Committee before the tribunal for impartiality and fairness.



21. The Petitioner submits that FKF is a party to this proceeding from the onset and therefore appealing the decision by the Leagues and Competitions Committee before its Appeals Committee would amount to bias as the Petitioner would not expect a different outcome from what is being appealed against.
22. In effect, the Petitioner is apprehensive of receiving fair adjudication of the dispute in the interest of natural justice from the Appeals Committee and also imputes that the decision by the Leagues and Competitions Committee was also from a body with no jurisdiction on the matter.
23. The Petitioner therefore submits that the Tribunal has the jurisdiction to hear and determine the Petition since a reference to the Respondent's Appeal's Committee would not guarantee impartiality and fairness.

### **Issues**

24. The two issues canvassed and which need the determination of this Tribunal are:
  - i. Whether the Appellant had exhausted the Internal Dispute Resolution Mechanisms of the Football Kenya Federation before approaching the Tribunal.
  - ii. Whether the Football Kenya Federation has ousted the jurisdiction of the Tribunal through its Constitution and the FKF Rules and Regulations Governing Kenyan Football, 2019.

### **Analysis and Determination**

25. At the outset the proceedings before this Tribunal have been objected to by the Respondent. The case that sets the principles to be applied when faced with a preliminary objection is *Mukisa Biscuits Manufacturing Co Ltd v. West End Distributors (1969) EA 696* where Sir Charles Newbold JA had these to say:

“...a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of the pleadings and which if granted as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration....it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.” (Emphasis Ours).

26. We find that the two grounds of the objection meet the *Mukisa Biscuits* test as they are pure points of law.
27. The jurisdiction of this Tribunal stems from Section 58 of the *Sports Act* which provides as follows:

“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.”
28. Section 59 of the *Sports Act* states further that:
- “The Tribunal may, in determining disputes apply alternative dispute resolution methods for sports disputes and provide expertise and assistance regarding alternative dispute resolution to the parties to a dispute.”
29. John Bacroft Saunders in a treatise headed Words and Phrases Legally Defined-Volume 3: I-N the Author states at page 113 the following on the issue of jurisdiction:-
- “By jurisdiction is meant the authority which the Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the Statute, Charter or Commission under which the Court is constituted, and may be extended or restricted by the like means. If no restrictions or limits is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the nature of actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior Court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the Court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the Court or tribunal has been given power to determine conclusively whether the facts exists. Where a Court takes it upon itself to exercise a jurisdiction which it does not possess its decisions amounts to nothing. Jurisdiction must be acquired before Judgment is given.”
30. The Court of Appeal in Phoenix of E.A. Assurance Company Ltd –vs- S.M. Thiga t/a Newspaper Services Ltd (2019) eKLR, observed that:-
- “It is a truism jurisdiction is everything and is what gives a Court or tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction? In common English parlance, jurisdiction denotes the authority or power to hear and determine the judicial disputes or to even take cognizance of the same. This definition clearly shows that before a Court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a Court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such Court will be amenable to being set aside ex debito justitiae.”
31. The ground in the Preliminary Objection that stated that the jurisdiction of the Tribunal has been ousted by *the Constitution* of the Football Kenya Federation and the FKF Rules and Regulations Governing Kenyan Football, 2019 rule is without any legal basis, in our consideration, as it takes a narrow look at Section 58(a) of the *Sports Act*.
32. The Tribunal seeks to remind the parties of its mandate by asserting its creation as a specialized sports external dispute resolution mechanism for parties within the country and clothed with mandate and jurisdiction to adjudicate on sports related matters to the extent that it is able to consider within its powers. It is precisely for this reason that Section 46(5) of the Act makes it obligatory for sports organizations to submit a constitution to the Registrar of Sports prior to registration which shall



contain as a basic minimum, the provisions set out in the Second Schedule to the [Sports Act](#). The Second Schedule then goes ahead to list under (f) that:

*The constitution* of a body seeking registration as a sports organization shall provide that (f) subscription to Court of Arbitration of Sports policies and rules which conform with requirements set out in Sports Disputes Tribunal policy and rules for sports disputes resolution.

33. Nonetheless, the Sports Disputes Tribunal Rules have aligned themselves to the Court of Arbitration for Sport by stipulating under Rule 23 that any party dissatisfied with a decision of the Tribunal may lodge an appeal to the Court of Arbitration for Sport if the rules or policies of the relevant International Federation or National Sports Organization so provide.
34. In our reading, the Second Schedule of the [Sports Act](#) 2013 provides for mandatory subscription to the authority of the Sports Disputes Tribunal by any sporting organization that is registered under the [Sports Act](#). This is the applicable national law. Notwithstanding this external dispute resolution mechanism of the Tribunal, equally important are the internal dispute resolution mechanism which should also be provided for within the Constitutions of sporting organizations.
35. It is therefore without any colour of right for a Federation or its representative to assert that the Federation has ousted a statutorily enacted Tribunal with powers to adjudicate over matters that fall within its purview.
36. On the issue of whether the Appellant had exhausted the internal mechanisms for dispute resolutions that were available to it, the Tribunal has noted the Respondent's submission that Appeals Committee ought to have been the seat of the Appeal and not the Tribunal.
37. The FKF Appeals Committee is established under Article 64(1)c of the FKF Constitution (2017) as read together with Rule 10.3.5 of the Rules and Regulations Governing Kenya Football (2019).
38. The doctrine of exhaustion of administrative remedies states that a person challenging an administrative body's decision must first pursue the agency's available remedies before seeking judicial review. In regard to the doctrine, the Respondent submitted that the Applicant ought to sufficiently exhaust the internal dispute resolution mechanism available to him and every member in regard which it resorted not to. The Appellant is part of the General Assembly that passed the FKF Constitution which gives the League and Competitions and Appeals Committee mandate to adjudicate such matters and for that reason the Petitioner is estopped from claiming otherwise.
39. Notably, it has been shown at this stage that there is the Appeals Committee that is in place. As aforementioned, the sequence of the dispute resolution mechanism should be clear and has to yield to the Tribunal as the ultimate avenue for dispute resolutions mechanism. This is unless the matter is further appealed to the Court of Arbitration of Sports or ventilated in the Kenyan courts of higher standing than the Tribunal.
40. It is not in dispute that a decision has been made by the League and Competitions Committee. Subsequently, the expected path was to present the matter to the Appeals Committee. There are no attempts that have been made to communicate on the intent to appeal the decision to the Appeals Committee, the Petitioner has justified the decision to bypass this step with the reason that FKF is a party to this proceeding from the onset and therefore appealing the decision by the Leagues and Competitions Committee before its Appeals Committee would amount to bias as the Petitioner would not expect a different outcome from what is being appealed against.



41. The rationale for the argument was that the Appellant is apprehensive of receiving fair adjudication of the dispute in the interest of natural justice from the Appeals Committee and also imputes that the decision by the Leagues and Competitions Committee was also from a body with no jurisdiction on the matter.
42. Rule 10.3.5 of the Rules and Regulations Governing Kenyan Football (2019) provides for members to have the right of appeal against any decision made by FKF and/or any of its national committees to the FKF Appeals Committee. All appeals are to be in writing with a stipulated fee of Kshs. 100,000/=, together with other additional guidelines thereof.
43. The Tribunal is guided to adopt the position that the Petitioner failed to exhaust all the proper avenues in place before approaching the Tribunal. The Tribunal also notes that the question on jurisdiction of the Leagues and Competitions Committee to handle misconduct should have been addressed by the Appeals Committee and is not reason enough to by-pass the internal organs in place to deal with such matters.
44. Clearly, the Petitioner ought to first take the dispute to the Appeals Committee before coming to this Tribunal. We have said before that parties ought to first exhaust dispute resolution mechanisms within the federations before moving the Tribunal. We did say as much in Fortune Ladies FC v. FKF Caretaker & Leagues Committee and Others as consolidated with Young Boys FC v. FKF Caretaker and Leagues Committee & Others.
45. The matter is thus not ripe before the Tribunal to hear at this stage for there is no clear demonstration of any attempted pursuit of the matter at the Appeals Committee.
46. In the circumstances, the Tribunal makes the following orders:
  - i. The Respondent's Preliminary Objection dated 24<sup>th</sup> October 2023 is hereby allowed;
  - ii. The petition dated 19<sup>th</sup> October 2023 is dismissed;
  - iii. Each party shall bear its own costs;
  - iv. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**ALLAN MOLA OWINYI**

**PANEL CHAIRPERSON**

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**GABRIEL OUKO**

**MEMBER**

.....

**MARY N KIMANI**

**MEMBER**

