

**REPUBLIC OF
KENYA**



IN THE SPORTS DISPUTES TRIBUNAL AT
NAIROBI SDTSC NO. E020 OF 2022

DENNIS OPIYO ACHIEGO..... PETITIONER

KENYA BASKETBALL FEDERATION 1ST RESPONDENT
AND

PAUL OTULA 2ND RESPONDENT

AMBROSE KISOI..... 3RD RESPONDENT

**ULINZI BASKETBALL CLUB..... 1ST INTERESTED
PARTY**

**EMYBA BASKETBALL CLUB 2ND INTERESTED
PARTY**

**LAKESIDE BASKETBALL CLUB..... 3RD INTERESTED
PARTY**

**KPA BASKETBALL CLUB..... 4TH INTERESTED
PARTY**

DECISION

Hearing: Upon hearing of the case held on 22nd April 2022, the Tribunal directed that it shall rely on the submissions filed by both parties in preparation of the judgment.

Panel

1. Allan Mola Owinyi - Panel Chairperson
2. E. Gichuru Kiplagat – Member
3. Mary N Kimani - Member

Appearances:

The Petitioner is represented by Ms. Nancy Ouko from the firm of Nancy Ouko & Company Advocates.

The 1st Respondent is represented by Mr. Robert Asembo from Asembo & Company Advocates with Mr. Ambrose Kisozi as secretary of the Respondent.

The 3rd interested party is represented by Mr. Moses Omondi from the firm of Omondi, Abande & Company Advocates.

I. THE PARTIES

1. The Petitioner describes himself in the Application for contempt dated 22nd July 2022 as an adult male of sound mind, a member of the public, and having been involved in basketball activities within the country, someone with interest in good governance of the sport.
2. The 1st Respondent is a national umbrella organization in charge of basketball in Kenya registered under the Sports Act No. 25 of 2013 Laws of Kenya.
3. The 2nd and 3rd Respondents are officials of the 1st Respondent as the Chairman and Secretary General respectively.
4. The Interested Parties are basketball teams/clubs playing in the national league known as the Kenya Basketball Federation League, which runs every year with the participation of other teams, and on the basis of laid down rules for competition, qualification, participation and standings.

II. BACKGROUND

5. The Petitioner had filed a Notice of Motion Application dated 13th April 2022 under a Certificate of Urgency asking for orders that the Application be certified urgent and to be heard in the first instance, praying for a temporary stay of the Respondent's men's National Basketball League Playoffs pending the hearing and determination of the said Application, and pending the hearing and determination of the suit filed therein. The Petitioner also urged the Tribunal to enjoin Ulinzi Basketball Club, Lakeside Basketball Club and any other interested parties to the petition and for the costs to be in the cause.
6. Upon consideration of the parties' submissions, the Tribunal pronounced itself on the matter by way of a ruling dated 15th June 2022 wherein the Tribunal issued the following orders and sanctions;
 - a. That the Respondent has violated League and Competition Rules, in particular Rule 7(e), with regard to the qualification of teams for the men's 2021 Kenya Basketball Federation Premier League playoffs.
 - b. That the recently concluded men's Kenya Basketball Federation League playoffs be and is hereby declared null and void.
 - c. Further, the Tribunal invokes the provisions of Clause 10 (b) of the Kenya Basketball Federation League and Competition Rules, 21st Edition in declaring the result between Ulinzi Basketball Club and Lakeside Basketball Club null and void and automatically defaulted 20-0 in favor of Lakeside Basketball Club.

Ulinzi Basketball Club shall be fined as may be determined by the Leagues Committee and ratified by the Executive Committee.

- d. The Respondent is ordered to restart the 2021 national men's Kenya Basketball Federation playoffs based on the correct standings from the point immediately following the match between Ulundi Basketball Club and Lakeside Basketball Club;
- e. The Respondent shall be responsible for meeting the costs incurred by the teams in respect of their participation in the playoffs;
- f. The Tribunal recommends investigations be done together with the relevant forensic/criminal authorities to reach a just conclusion on the matter of allegedly forged scoresheets.
- g. The costs of this claim be borne by the

Respondent

7. The Applicant invited this Tribunal to find that the Respondents were in contempt of the orders issued on 15th June 2022 by way of way of a Notice of Motion dated 22nd July 2022 seeking the following prayers; -

- (i) **THAT** this Application be certified urgent and the same be heard ex parte in the first instance.
- (ii) **THAT** this Honorable Tribunal be pleased to order a temporary stay of the ongoing 1st Respondent's Men's National Basketball League 2022 forthwith pending the hearing and determination of this Application.
- (iii) **THAT** this honorable Tribunal be pleased to order a stay of the 1st Respondent's Men's National League

until the judgement and orders of this Honorable Tribunal given on 16th June 2022 are fully complied with by the Respondents.

- (iv) **THAT** this Honorable Tribunal be pleased to find that the 2nd and 3rd Respondents being officials of the 1st Respondent as the Chairman, Secretary General respectively, to be in contempt of Tribunal orders issued on 15th June 2022.
- (v) **THAT** upon grant of prayer (4) above, the contemnors show cause why they should not be committed to civil jail for such terms as this Honorable Tribunal may deem fit for disobeying and/or non-compliance of the Tribunal Orders issued on 15th June 2022.
- (vi) **THAT** this Honorable Tribunal be pleased to order punishment of the 2nd and 3rd Respondents for contempt of the orders of this Honorable Tribunal.
- (vii) **THAT** the costs of this Application be borne by the Respondents.

8. The said Application is based on the grounds that

- (i) **THAT** this Honorable Tribunal issued its judgement herein on 15th June 2022 against the 1st Respondent.
- (ii) **THAT** according to this Honorable Tribunal, the Respondent was ordered inter alia: -
 - a. To restart the 2021 Men's Kenya Basketball Federation playoffs based on the correct standings from the point immediately following the match between Ulinzi Basketball Club and Lakeside Basketball Club, and

- b. Ulinzi Basketball Club shall be fined as may be determined by the Leagues Committee and ratified by the Executive.
- (iii) **THAT** the 1st, 2nd and 3rd Respondents, in flagrant disobedience of the orders of this honorable tribunal have not made any attempts to organize for the restart of the 2021 Men's Premier League playoffs, nor made any attempts at calling for the forum for the determination of the fine payable by Ulinzi Basketball Club.
- (iv) **THAT** this Honorable tribunal declined to grant an order staying its judgement of 15th June 2022, meaning that the Respondent was required to comply with the orders immediately.
- (v) **THAT** the Respondents are aware of the judgement of this Honorable Tribunal having been in attendance before the Tribunal during the delivery of the judgement.
- (vi) **THAT** in addition to failing to implement the judgement, the Respondents have allowed the continued participation of Ulinzi Basketball Club in the 2022 Men's National League in a manner that undermines embarrasses, and prejudices the other participants in the league, as well as the reputation of the 1st Respondent nationally and internationally, in complete disregard of the direct the orders of this honorable tribunal.
- (vii) **THAT** the 1st Respondent has continued with the 2022 Men's Premier League, and with complete disregard of the 1st Interested Party's plea to be allowed to prepare for the replay of the 2021 playoffs as ordered by this Honorable tribunal.
- (viii) **THAT** the Respondents have undermined the powers, jurisdiction and dignity of this Tribunal and

have treated this honorable tribunal's judgement with contempt in a manner that also brings disrepute to the sport of basketball, to sports as a whole and to the judicial system in general.

- (ix) **THAT** the contempt of this Honorable Tribunals orders follows a finding by this tribunal that the 1st Respondent was in violation of its rules, and it is now in flagrant disobedience of the orders of this Honorable Tribunal, repeatedly conducting itself in a manner that brings total disrepute to this honorable Tribunal and to the sport of basketball.
- (x) **THAT** unless stopped by this honorable Tribunal, the Respondents will continue with the trend of impunity by acting in complete disregard of the law.
- (xi) **THAT** the Respondents should be cited for contempt and that this honorable tribunal should apply the necessary consequences of disobedience of court/tribunal orders.
- (xii) **THAT** this honorable tribunal's orders should not be issued in vain.
- (xiii) **THAT** it is in the interest of justice that this application be allowed as prayed.

9. The Application forms the substratum of the respective parties' submissions and the Tribunal's decision.

III THE CASE

Petitioner's Case

9. It was the Applicant's contention that the Respondents acted in contempt of the Tribunal's orders issued on 15th June 2022. The Notice of Motion was accompanied by a Certificate of Urgency dated 22nd July 2022 by Nancy Ouko & Company

Advocates setting out the reasons why the matter should be certified urgent and be heard on a priority basis.

10. The Application was supported by an Affidavit sworn by the Applicant. The gist of the affidavit was, that this Honourable Tribunal issued its judgement on the 16th of June 2022 against the Respondent.
11. The applicant stated that The Honourable tribunal gave orders to the Respondent; To restart the 2021 Men's Kenya Basketball Federation playoffs based on the correct standings from the point immediately following the match between Ulinzi Basketball Club and Lakeside Basketball Club; and that Ulinzi Basketball Club shall be fined as may be determined by the Leagues Committee and ratified by the Executive.
12. He further stated that the Respondents in flagrant disobedience of the orders of this honourable tribunal have not made any attempts to organize for the restart of the 2021 Men's Premier League playoffs as ordered by this honorable Tribunal, nor made any attempts at calling for the forum for the determination of the fine payable by Ulinzi Basketball Club.
13. The applicant submitted that this honorable Tribunal declined to grant an order staying its judgement of 15th June 2022, meaning that the Respondents were required to comply with the orders immediately and that the Respondents are well aware of the judgement of this Honorable Tribunal having been in attendance before the Tribunal during the delivery of the judgement.

14. The applicant stated that in addition to failing to implement the judgement, the 1st Respondent has allowed the continued participation of Ulinzi Basketball Club in the 2022 Men's National League in a manner that undermines, embarrasses, and prejudices the other participants in the league, as well as the reputation of the 1st Respondent nationally and internationally.
15. He further submitted that the 1st Respondent has continued with the 2022 Men's Premier League, and with complete disregard of the 1st Interested Party's plea to be allowed to prepare for the replay of the 2021 playoffs as ordered by this honourable tribunal, proceeded to schedule games for the 3rd Interested Party, LAKESIDE BASKETBALL CLUB for the 2022 season.
16. The applicant attached exhibit marked DAO-1, a copy of correspondence to the 1st Respondent From Lakeside Basketball Club stating that they had received a memo from Kenya Basketball Federation and were shocked by the move of the Federation to maintain the fixture while they were directly affected by the court ruling.
17. The Applicant filed submissions on the 14th of August 2022. In his submissions he listed the orders sought from the application and the legal precedents he relied upon.
18. He stated that the importance of obeying the court orders was underscored in the case of **Econet Wireless Kenya Ltd v Minister for Information &**

Communication of Kenya & another [2005] KLR

828, where Ibrahim, J. stated as follows:-

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”

19. He relied on the case of **Katsuri Limited v Kapurchand Depor Shah [2016] eKLR**, citing **Kristen Carla Burchell v Barry Grant Burchell (Eastern Cape Division case No 364 of 2005)**, it was stated that “in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove *(i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order.*”

20. The applicant stated that the conditions to be fulfilled in order for an application for contempt to succeed were further expounded underscored in the case of **Carey v Laiken, 2015 SCC 17 by Cromwell J**, writing for the Supreme of Canada thus:

i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in

contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.

ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.

iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.(emphasis)

21.He further submitted that the application remains unopposed, in addition to the fact that the Respondents have failed to attend court or file any response despite being served with the application and hearing notice.

22.The Applicant submitted that he satisfied the requirements of the elements of contempt of court and invited the honourable Tribunal to so find. He added that consequently, the Respondents should be cited for contempt and that this honorable tribunal should apply the necessary consequences of disobedience of court/tribunal orders.

23.He stated that unless stopped by this honorable Tribunal, the Respondents will continue with the trend of impunity by acting in complete disregard of the law. In addition, the continuance of the 2022 League matches results in confusion with the league progression.

24.He added that The teams which are involved in the repeat playoffs have been put in limbo, not knowing when

the playoffs will be scheduled and that the ordinary timetable for playoffs is often released well in advance to allow the teams to prepare adequately, considering that the outcome of the playoffs determine the winner of the league in any particular year, and subsequently, the teams which will represent the country in international assignments.

25. The Applicant submitted that the preparation for playoff matches are often rigorous and involving both physically on the players and also in terms of the time and resources involved. He stated that it was only fair that the teams be given an opportunity to prepare for the repeat playoffs. Instead, the Respondents have proceeded to fix matches for the 2022 league including all the teams participating in the repeat playoffs.

26. He stated that It is on this basis that they urge this honourable Tribunal to issue an order stopping the ongoing 2022 league until the orders of 15th June 2022 are complied with.

Respondents' case

27. The Respondents did not file a response.

Issues for Determination

28. The primary issue for determination before the Tribunal is whether the Respondents are in contempt of the Orders issued by the Tribunal on 15th June 2022.

IV ANALYSIS AND DECISION

29. Before the Tribunal delves into the aforementioned issue, we should point out that we take cognizance of the fact that the Sports Act, 2013 does not provide an express for the Tribunal's powers to punish for contempt.

30. However, as can be seen from Section 64 of the Sports Act, the legislature clearly intended that there should be sanction for those who contravene provisions of the Act. Section 64 provides as follows:

A person who contravenes any of the provisions of this Act commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or both.

31. The Tribunal is established under Section 55 of the Act.

Section 58 of the Act vests the Tribunal with the mandate to 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; 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.

32. The above provisions considered in totality indicate that the Tribunal is clothed with the powers to determine disputes arising under the Act. It would follow that any party that contravenes the orders issued by the Tribunal commits

an offence under the Act and is subsequently liable to penal consequence. This may be a fine or term of imprisonment, whichever the Tribunal deems fit as an enforcement measure having regard to the circumstances.

33. In **Kenya Human Rights Commission vs. Hon. Attorney General & Law Society of Kenya** in paragraph 63, the Court quoted with approval *James Francis Oswald, Oswald's Contempt of Court: Committal, Attachment, and Arrest upon Civil Process (Butterworth & Company, 1910, p. 9* where it was stated as follows: *"punishing through contempt of court is the means by which courts sanction non-compliance with its orders, judgments and decrees, and a court of justice without power to vindicate its own dignity, to enforce obedience to its mandates, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly which could not be permitted to exist in any civilized community. Without such protection, courts of justice would soon lose their hold upon the public respect and the maintenance of law and order would be rendered impossible"*.
[Emphasis ours]

34. Additionally, it is self-evident that the power to punish for contempt is inherent to a court or tribunal. In this respect, the Tribunal finds the following observation by Mr. Justice Chacha Mwita in **Kenya Human Rights Commission v Attorney General & another [2018] eKLR** to be instructive:

"The fact that the power to punish for contempt is inherent and not granted by statute, follows the recognition by the Constitution in Article 159 that judicial authority is derived from the people and vests in, and is exercised by the courts and tribunals established by or under the Constitution.

Judicial authority having been derived from the people, the judiciary serves the public and courts make pronouncements for and on behalf of the people. In doing so, courts act only in accordance with the constitution and the law as demanded by Article 160(1) of the constitution. In that respect, therefore, the powers of the courts must be viewed from the supremacy clause in Article 2(1) of the constitution so that any attempt to limit the power to punish for contempt violates a foundational constitutional value on judicial authority. Any legislation on contempt must be in addition to but not in derogation of the constitution for such limitation or derogation will surely be unconstitutional.

“

35. It follows from the above passage that the Tribunal, like any court of law, does in fact have the inherent power to punish for contempt despite it not being expressly provided for. The Tribunal will therefore now proceed to address the pertinent issue before it, which is whether the Respondents are in contempt of the orders issued by the Tribunal on 15th June 2022.

36. The Applicant submitted that the Respondent in flagrant disobedience of the orders of this honourable tribunal have not made any attempts to organize for the restart of the 2021 Men's Premier League playoffs as ordered by this honorable Tribunal, nor made any attempts at calling for the forum for the determination of the fine payable by Ulinzi Basketball Club.

37. On the subject of contempt of court, there is no shortage of literature. But for the purposes of this decision, we will focus on the four elements—highlighted by the Applicant—that must be met in order to establish a case for civil contempt.

a)The terms of the order were clear and unambiguous and were binding on the Respondents

38. There is no question that the Tribunal had given orders on the 15th of June 2022 and the same were clear, unambiguous and binding on the parties.

39. The Respondent was ordered to restart the 2021 national men's Kenya Basketball Federation playoffs based on the correct standings from the point immediately following the match between Ulinzi Basketball Club and Lakeside Basketball Club.

40. Further, the Tribunal ordered that Ulinzi Basketball Club is to be fined as may be determined by the Leagues Committee and ratified by the Executive.

b)The Respondents' had knowledge of or proper notice of the terms of the order;

41. As part of common practice, the Tribunal serves the parties with all directions, orders, rulings and judgments via their respective e-mail addresses and service of the orders issued on 15th June 2022 was no exception. None of the Respondents contend that they had no knowledge of the Order.

c) The Respondents' has acted in breach of the terms of the order;

42. The 1st Respondent was ordered to restart the 2021 national men's Kenya Basketball Federation playoffs based on the correct standings from the point immediately following the match between Ulinzi Basketball Club and Lakeside Basketball Club and that Ulinzi

Basketball Club is to be fined as may be determined by the Leagues Committee and ratified by the Executive.

43. The 1st Respondent has neither made any efforts to restart the 2021 Men's Premier League playoffs as this honorable Tribunal instructed, nor has it tried to call for the forum to decide the fine Ulinzi Basketball Club must pay. The 1st Respondent has also allowed the continued participation of Ulinzi Basketball Club in the 2022 Men's National League.

c) The Respondents' Conduct was deliberate

44. The Tribunal declined to grant an order staying its judgement of 15th June 2022, meaning that the Respondents were required to comply with the orders immediately and that the Respondents are well aware of the judgement of this Honorable Tribunal having been in attendance before the Tribunal during the delivery of the judgement.
45. The 1st Respondent has continued with the 2022 Men's Premier League and has allowed the continued participation of Ulinzi Basketball Club in the 2022 Men's National League.
46. The 1st Respondent has also failed to attend this court's proceedings on the matter and has not filed a response to this application.

V DETERMINATION

47. The purpose of the Sports Act as can be discerned from the Preamble is to promote the development of sports within

the country, and this is done through the various institutions established under the Act, the Respondents included.

48. It is the Tribunal's view in this particular instance, that the Respondents are entrusted with the responsibility of promoting the sport of basketball in accordance with the objectives of the Act and cannot be seen to be the same ones bringing the sport into disrepute by defying the Tribunal's orders.

49. In **Linus Gerald Marangu v Suleiman Sumba & 3 others [2021] eKLR**, the Court noted that, *'Contempt is conduct that impairs the fair and efficient administration of justice. It is therefore fundamental to the rule of law that orders of courts or tribunals must be obeyed and where an individual is enjoined by an order of the court to do or to refrain from doing a particular act, such person has a duty to carry out that order.'*

50. In view of the above, it is the Tribunal's finding that the 1st, 2nd and 3rd Respondents acted in contempt of the Tribunal's orders issued on 15th June 2022.

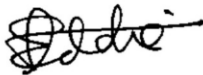
51. The orders that commend themselves to the Tribunal in view of the forgoing are as follows:

- a) The 2nd and 3rd Respondents have by their conduct been contemptuous of the orders of this Tribunal and are convicted accordingly.
- b) The 2nd and 3rd Respondents, being officials of the 1st Respondent are hereby ordered to pay a fine of Kshs. 200,000.00 each personally within fourteen (14) days of

today's date. Failing compliance, the 2nd and 3rd Respondents will be committed to civil jail for three (3) months.

- c) The matter shall be mentioned on 20th September, 2022 virtually to ascertain whether there has been compliance. The 2nd and 3rd Respondents' personal attendance will be required.
- d) Costs of this application to the Applicant.


DATED AT NAIROBI THIS 5th DAY OF SEPTEMBER, 2022



E. Gichuru Kiplagat
Member



Mary Kimani
Member



Allan Owinyi
Panel Chairperson