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**SPORTS & THE LAW IN
KENYA**

By Mwathi Bauni

Since independence the Ministry for Sports has changed names and recently, through Executive Order No. 2 of 2023 the Ministry of Youth Affairs, the Arts and Sports was reconstituted and renamed as the Ministry of Youth Affairs and Sports through the notification of Presidential Action to reorganize some of the Ministries.

After the promulgation of the 2010 Constitution, two years later the Sports Bill No. 43 of 2012 was passed and gave birth to the Sports Act, 2013. This Act came into force to cure the ills and challenges facing sports since independence. Some of the challenges included; lack of proper facilities and equipment, inadequate funding of Sports programs, lack of transparency and accountability in leadership among others. Glancing at those challenges, one might put up a strong case that we are still facing the same challenges 60 years post-independence.

What then has the Sports Act, 2013 provided? It has established Sport Kenya, Kenya Sports Academy, the Sports Disputes Tribunal and the office of Registrar of Sports.

Under the Act, the functions of Sports Kenya include promotion, co-ordination and implementation of grassroots, national and international sports programs for Kenyans in liaison with relevant sports organizations and facilitate active participation of Kenyans in regional, continental and international sports. It is also mandated to establish, manage, maintain and develop sports facilities throughout Kenya. Uganda, Kenya and Tanzania will be hosting the Africa Cup of Nations (AFCON) 2027. Perhaps, a question we ought to ask Sports Kenya is whether we have the capacity to host an international tournament on our own, until we accomplish and set such standards Sports Kenya still has got some ground to cover.

Accordingly, the Kenya Academy of Sports is set up to provide relevant training and research in sports science, sports management and sports development to support the sport industry's growth. The Academy is expected to address the perennial problem of inferior performance by Kenyan athletes and inability to

nurture sporting talent due to lack of quality coaching and training in the given sports disciplines. It is to serve as education resource for upgrading coaching and training of athletes through instruction, research and service.

On dispute resolution, there has been a lot of criticism on the tribunal being a 'toothless' dog and this is because the tribunal may exercise jurisdiction in matters concerning sports organizations in Kenya only if their rules provide for the same and with regard to private parties only if they all agree. This significantly limits the tribunal's jurisdiction

During an interview on *Sporton!*, the Chairman of the SDT, SC John Ohaga stated that they mostly face jurisdictional challenges. He stated, "Part of the problem we face as SDT with athletes who have grievances, especially employment grievances, is that there is a competing argument about whether they should go to the employment and Labour Relations Court or come to the SDT."

It is thus evident that the Sports Act has limited the jurisdiction of the SDT. In ***Maqbull Abdi Karim -v- Gor Mahia Football Club*** the Tribunal proceeded to give a lesson on the latin maxim ***Generalia Specialibus non derogant*** where it clarified that;-

"...where a remedy provided to an athlete is ineffective or ineffectual or involves a resort to a municipal court, the Tribunal will accept jurisdiction in order not to leave an athlete or sportsman without a remedy or otherwise offend the principles which most international sporting organizations have put in place which prohibits sporting disputes from being ventilated in courts of law".

Further, every sports organization must be registered with the office of the Registrar of Sports to acquire legality. Any sports organization that is not so registered is an unlawful entity and cannot benefit from the privileges and rights given under the Act. A sports organization may be registered either as a sports club, a county sports association or a national sports organization

Another legal framework for Sports in Kenya is the Anti-Doping Act, 2016. It creates the Anti-Doping Agency of Kenya (Agency) as the national anti-doping organization in Kenya. It is established as a body corporate with requisite legal capacity and attributes with exclusive statutory mandate to carry out anti-

doping activities in Kenya and its authority is to be recognized by all national sports federations in Kenya. The Agency has a number of functions including promoting doping free sports, creating awareness against doping in sports, implementing anti-doping activities in Kenya, carrying out investigations in matters of doping in sports, Sport is a concurrent function of both the national and 47 county governments.

At the national level, there exists both policy and legal framework for sport. There is however yet to be developed a comprehensive sports policy and or law by the county governments. Sports is a multibillion dollar industry and it is for us to understand that for such big business to thrive there is need for laws, rules and regulation that work at par with the development of the sports and also that there is need for the government to put in mechanisms to ensure accountability, prosecuting anti-doping offences before tribunals among others.

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