



Said v Football Kenya Federation Electoral Board & another (Tribunal Case E041 of 2024) [2024] KESDT 1559 (KLR) (7 November 2024) (Decision)

Neutral citation: [2024] KESDT 1559 (KLR)

**REPUBLIC OF KENYA
IN THE SPORTS DISPUTES TRIBUNAL
TRIBUNAL CASE E041 OF 2024**

**JOHN M OHAGA, CHAIR, E. G. KIPLAGAT, GABRIEL OUKO,
MN KIMANI & BENARD MURUNGA WAFULA, MEMBERS**

NOVEMBER 7, 2024

BETWEEN

SALIM ALI SAID APPELLANT

AND

FOOTBALL KENYA FEDERATION ELECTORAL BOARD ... 1ST RESPONDENT

FOOTBALL KENYA FEDERATION ELECTORAL APPEALS

COMMITTEE 2ND RESPONDENT

DECISION

1. The Appellant Salim Ali Said has approached the Tribunal under certificate of urgency by way of Notice of Motion dated 6th November 2024 presented by his Counsel, Lenny Kimaiti who advanced the position set out in the Notice of Motion as well as the Supporting Affidavit.
2. The Tribunal also gave an opportunity to Mrs. Ligunya, Advocate on behalf of the Electoral Board to make representation as to the basis upon which the candidature of the Appellant has been rejected.
3. Due to the very limited time before the event which is sought to be challenged and in respect of which an injunction is sought, the Tribunal preferred to deal with the merits of the Appeal itself and allowed the parties to address the matter orally and indeed gave significant latitude to the parties representatives to address the matters arising and consult their respective clients as necessary for further instructions or information.
4. The Appellant's candidature is premised on the fact that he has been on the Board of Bandari FC as a board member for three consecutive seasons and has also had affiliation to various other sporting organizations, in particular Volcano FCO



5. As we understand it, the Electoral Board initially upheld the Appellant's candidature. Mrs. Ligunya informed the Tribunal that the basis upon which such candidature was upheld was on a misunderstanding by the Board as to the directions of the Appeals committee which had required the Board to review its decision.
6. She informed the Tribunal that the Board misunderstood the directions related to the review and interpreted that to mean that the Board was required to endorse the candidature of the Appellant.
7. Accordingly, having reviewed the files and the circumstances, the Board undertook a further review and by its decision of 5th November 2024 overturned the Appellant's candidature on the basis that he had not satisfied the Board as to his criteria for election.
8. The Tribunal has given consideration to the competing positions as well as the progression of the matter before the Board and the Appeals Board and has come to the conclusion that the manner in which the Board went about the review of its own decision was in contravention of the Appellant's Article 47 rights and in breach of the Fair Administrative Actions Act. The Board having endorsed the candidature and having represented so to the candidate could not go back on the decision without affording the candidate a further opportunity to clarify any aspects of his participation in football activities that required to be explained.
9. In any event, so far as the Tribunal is concerned, and as the Tribunal has previously expressed, the membership of the Appellant in Mombasa County Football Association cannot be a proper basis for exclusion of the Appellant from competitive election of the Football Kenya Federation because it is inimical to a broad range of constitutional rights including the right of freedom of association as well as to the tenets of the electoral system as required to be applied by sports organizations in the conduct of their elections and as set out in the Second Schedule to the Sports Act, as well as section 46 of the Sports Act which dictates that the membership of sports organizations must be open to the public in their leadership activities and membership.
10. We see no caveat in the statutory prescription and the Board's reading of such prescription does not sit well with the tenets of fair competition to electoral office.
11. For that reason, the Tribunal finds merit in the application and issues an order directing that the Appellant, Salim Ali Said's candidature for office of chairperson to FKF Mombasa branch be and is hereby upheld and he be permitted to participate in the elections scheduled for 9th November, 2024.
12. There shall be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2024.

signed

JOHN M. OHAGA SC, CARB; FCIARB - CHAIRPERSON - SPORTS DISPUTES TRIBUNAL

In the presence of:

HON. E GICHURU KIPLAGAT - MEMBER

HON. GABRIEL OUKO - MEMBER

HON. MARY N KIMANI - MEMBER

HON. BERNARD MURUNGA - MEMBER

