



REPUBLIC OF KENYA

IN THE TRIBUNAL OF KENYA AT NAIROBI COUNTY

COURT NAME: TRIBUNALS

CASE NUMBER: SDTSC/E003/2025

CITATION: ERIC G BENGI AND CARL J TUNDO AND 1 OTHERS VS REGISTRAR OF SOCIETIES AND STATE LAW OFFICE AND 1 OTHERS

### JUDGMENT

Panel:

Mr. Benard Wafula Murunga, Chairperson Sports Disputes Tribunal

Mr. Allan Owinyi Mola, Member Sports Disputes Tribunal

Appearances:

Mr. Tariq Khan instructed by Tariq Khan & Associates for the Claimants

Mr. Munene instructed by the Attorney General for the 1st and 2nd Respondents

Ms. Mouti instructed by Maina & Maina for the 1st Interested Party

Ms. Waliaula instructed by Murangasia & Co. for the 2nd Interested Party

Parties

1. The Claimants in this matter have filed the petition in their capacity as interim officials of Motorsports Kenya. They seek to compel the Sports Registrar to register Motorsports Kenya as the official National Sports Organization for motorsports in Kenya under the Sports Act, 2013.
2. The 1st Respondent is the Sports Registrar, a statutory office established under the Sports Act 2013 and charged with registering Sports Organizations amongst other regulatory functions in the sports industry.
3. The 2nd Respondent is the Attorney General, sued in his official capacity as the legal representative of the Government.
4. The 1st Interested Party is a motorsport club that has been duly recently registered as a sports organization vide Certificate of Registration 1162.
5. The 2nd Interested Party is a private limited company that has also sought registration as the official National Sports Organization for motorsports in Kenya under the Sports Act, 2013. The same has previously operated motorsport activities in Kenya and is affiliated with the international governing body, FIA, but is not registered under the Sports Act.

Background

6. The present dispute arises from what the Claimant considers to be a prolonged delay by the Sports Registrar in determining an application lodged by the Claimants on behalf of Motorsports Kenya to be registered as the National Sports Organization.
7. The Claimants instituted these proceedings by way of a Memorandum of Claim dated 5th



February 2025 in which they sought the following orders:

- i. an order compelling the Respondent to forthwith register Motorsport Kenya as the national sports organization.
- ii. in the alternative, the Tribunal to authorize, permit and sanction the [now 1st] Interested Party to exercise all the functions of a national Organization for Motorsports in the interim.
- iii. an order compelling the 1st Respondent to introduce Motorsports Kenya and its officials to the International, Regional and local sports authorities as the duly instituted National Authority managing motorsports in Kenya.
- iv. a declaration that the 1st Respondent is in contravention of the Sports Act, 2013 and the Sports Registrar Regulations, 2016
- v. any such further or other relief as may to this Honourable Court appear fit and just to grant.

8. The Claimants further filed a Notice of Motion application dated 5th February 2025 under Certificate of Urgency on the same date decrying a lacuna in the motorsport fraternity and seeking temporary orders inter alia:

- i. That the Tribunal grant the Interested Party an order to run and operate all forms of Motorsports in Kenya including but not limited to issue National Competition Rules and Supplementary Regulations for all motorsports events pending the hearing and determination of the Application.
- ii. That the Tribunal grant the Interested Party an order to run and operate all forms of Motorsports in Kenya including but not limited to issue National Competition Rules and Supplementary Regulations for all motorsports events pending the hearing and determination of the suit.
- iii. That the Tribunal grant the Interested Party an order to run and operate all forms of Motorsports in Kenya including but not limited to issue National Competition Rules and Supplementary Regulations for all motorsports events pending the determination of the Claimants Application for registration by the Respondent.
- iv. The Respondent to determine the application for Registration within 14 days of the date of this application.
- v. Any other relief that the Tribunal may grant.
- vi. Costs of the application.

9. The Tribunal subsequently issued interim orders dated 12th February 2025 with the following orders:

- i. The Interested Party, 254 Motor Sports Club, is hereby authorized on an interim basis to issue and publish National Competition Rules and Supplementary Regulations specifically for the 2025 WRC Safari Rally pending the hearing and determination of the main petition. Further, the interested Party should process all necessary documentation required for competitors' participation in the said event. This authorization is strictly limited to the 2025 World Rally Championship Safari Rally event only.
- ii. The Interested Party being a private sports clubs clothed with public functions, the authorization is subject to the conditions that:
  - The Interested Party shall not discriminate against any competitor or applicant based on their membership status with the club;
  - All eligible competitors shall be permitted to register and participate in the WRC Safari Rally regardless of their affiliation with any motorsports organization;
  - The Interested Party shall maintain an open and transparent registration process;
  - Any instance of discrimination or exclusion based on membership status shall result in immediate termination of these interim orders.
- iii. The Interested Party shall submit reports to the Tribunal every 5 days detailing all activities undertaken pursuant to these orders from the date of these interim orders.
- iv. The Kenya Motor Sports Federation is hereby joined as the 2nd Interested Party to these proceedings.
- v. These orders shall not be construed as a determination of the substantive issues raised in the



main petition, conferring any other powers or authority beyond what is specifically outlined in paragraph 1 above or creating any permanent rights or obligations beyond the 2025 WRC Safari Rally.

vi. The Tribunal retains the right to modify or terminate these orders at any time if circumstances warrant such action.

10. Consequently, the 1st Interested party filed a report dated 17th April 2025 and a further and final report pursuant to Order 3 of the Tribunal's Interim orders dated 12th April 2025. The Notice of Motion Application was considered spent even though there were aspects of the Application that remained unresolved including the order sought that the Sports Registrar determine the application for registration within 14 days. All the unresolved matters were then subsumed into the main Claim.

11. In response to the Claim and to the application, the 1st Interested Party filed a Replying Affidavit confirming receipt of multiple applications and asserting, amongst other affirmations, that no final decision had been made due to the complexity of the matter and the need to avoid disruption of the World Rally Championship (WRC) Safari Rally 2025.

12. Further, the 2nd Interested Party were joined as interested parties as per Order 4 of the Tribunal's Orders of 12th April 2025. The 2nd Interested Party opposed the Petition, asserting that it is the internationally recognized affiliate of the Fédération Internationale de l'Automobile (FIA), and that motorsport in Kenya has continued to function under its leadership, including successful hosting of the Safari Rally.

13. The Tribunal also entertained a Notice of Motion dated 23rd April 2025 and filed by the 2nd Interested Party seeking disqualification of the Claimants' Advocates for alleged conflict of interest. The prayers sought in this Application were for:

- i. The Honourable Court be pleased to disqualify the firm of Messers Tariq Khan & Associates Advocates from acting for any party in this matter.
- ii. The Honourable Court be pleased to bar the firm of Tariq Khan & Associates Advocates, by themselves, their partners, servants, or agents, from representing the Claimants in this Claim.
- iii. The Honourable Tribunal be pleased to expunge from the record all pleadings, applications, affidavits, and documents filed by the firm of pleased to bar the firm of Tariq Khan & Associates Advocates, on behalf of the Claimants.
- iv. That the entire Claim be struck out for want of jurisdiction.

14. Directions on the conduct of the matter were taken, and the Tribunal directed that the Application by the 2nd Interested Party would be subsumed in the substantive Petition and a hearing would proceed on 3rd June 2025 at 1p.m. The Claimants additionally applied to have the Sports Registrar appear in person for cross examination and the Tribunal allowed the Application.

15. On 3rd June 2025, all the parties appeared before the Tribunal through their respective counsel: Mr. Tariq Khan for the Claimants, The 1st Respondent appeared in person and through her advocate, Mr. Munene, Ms. Mouti for the 1st Interested Party, and Ms. Waliaula for the 2nd Interested Party.

16. The hearing proceeded with the Tribunal first entertaining arguments on the Application by the 2nd Interested Party and then hearing submissions on the substantive issues in dispute.

17. The 1st Interested Party did not file any documents in Court and fully aligned itself with the position advanced by the Claimants.

18. At the conclusion of the proceedings, the Tribunal gave parties the opportunity to file their written submissions and the matter was further mentioned on 16th July 2025 to confirm that the parties had filed their submissions. The Tribunal directed that the judgment would be delivered on 5th August 2025. In total, the parties appeared before the Tribunal on 11th February, 18th February, 11th March, 8th April, 23rd April, 13th May, 3rd June and 16th July before the matter was reserved for Judgment.

Claimants' Submissions.

19. The Claimants start their arguments by submitting that they lodged a complete and compliant application with the Sports Registrar on 19th August 2024 seeking registration as the National



Sports Organization (NSO) for motorsports under Section 46 of the Sports Act, 2013. They assert that the application was accompanied by a duly ratified constitution, minutes of the meeting electing interim officials, a register of members, compliance with gender principles under Article 27(8) of the Constitution, and endorsement from over 95% of stakeholders in the motorsport fraternity including clubs, drivers, and officials.

20. The Claimants argue that despite meeting all statutory requirements, the Registrar failed to issue a decision on the application within the prescribed 90-day period as required under Regulation 4(6) of the Sports Registrar Regulations, 2016. The Claimants contend that this failure constitutes a breach of both the Registrar's statutory obligations under the Sports Act and the constitutional guarantee to fair administrative action under Article 47 of the Constitution. They argue that the inaction amounts to administrative negligence and procedural unfairness.

21. The Claimants also assert that the Registrar's failure to act is not neutral or benign but is instead characterized by bias and abdication of duty.

22. The Claimants further argue that during cross-examination, the Registrar admitted to deferring the application due to 'executive directives' and the scheduling of the WRC Safari Rally, which had concluded months earlier. They argue that the Registrar further admitted that she recognized Mr. Maina Muturi who is aligned with a KMSFL faction as the FIA liaison based on government instructions, despite KMSFL being unregistered under the Sports Act. The Claimants submit that such admissions confirm undue external influence, a violation of the principle of autonomy in sports administration.

23. In support of this claim, the Claimants rely on Article 10 of the Constitution, which enshrines the national values and principles of governance, including rule of law, transparency, and accountability. They argue that the Registrar, as a public officer, is constitutionally obligated under Article 232(1) to exercise impartiality and respond to applications in a timely and reasoned manner. Her failure to act on a compliant application while entertaining rival, non-compliant submissions undermines these constitutional principles.

24. The Claimants further assert that there is no legally registered National Sports Organization for motorsports in Kenya since the enactment of the Sports Act in 2013. The previous governing body, Kenya Motorsports Federation (KMSF/KMSFL), failed to transition in accordance with Section 49 of the Sports Act, which required all previously registered entities to seek fresh recognition within one year of the Act's commencement. As such, KMSFL ceased to be a valid sports organization and has continued operating in contravention of the law.

25. Additionally, the Claimants contend that the rival applications submitted by factions of KMSFL are fatally defective. Evidence adduced in cross-examination established that neither faction could produce original documents or minutes authorizing their applications, nor did they comply with statutory governance requirements. In contrast, the Claimants submitted that they had presented credible documentation and enjoyed wide stakeholder support, including club and commission resignations from KMSFL and a public petition signed by over 1,000 individuals supporting Motorsports Kenya's registration.

26. The Claimants emphasize that the Registrar's refusal to act not only violates domestic legal norms but also conflicts with international best practices that promote independence in sports governance. They argue that the Sports Act was intended to align Kenya's sports administration with such global standards, including the principle that sports federations must be free from political and governmental interference.

27. On the matter of legal redress, the Claimants rely heavily on the Fair Administrative Action Act, 2015. Specifically, they cite Sections 4(1) and (2), which entitle every person to lawful, reasonable, and procedurally fair administrative action, and to be given written reasons where such action is denied. They also invoke Section 7(2)(f), which permits judicial or tribunal review of administrative action where relevant considerations are ignored or irrelevant ones are improperly prioritized.

28. In rejecting the 2nd Interested Party's application to disqualify their counsel, the Claimants argue that the motion is a procedural ambush lacking factual or legal merit. They cite the Court of



Appeal's decision in *Delphis Bank Ltd v Channan Singh Chatthe* [2005] eKLR, which held that allegations of conflict of interest must be supported by cogent evidence showing possession of confidential information capable of prejudicing the applicant. No such evidence was provided by KMSFL, the Claimants assert, rendering the application frivolous and dilatory.

29. The Claimants submit that this Tribunal has jurisdiction to intervene under Section 58(c) of the Sports Act, which grants it appellate and supervisory powers over administrative decisions made under the Act. While the Registrar may not have issued a formal determination, the Claimants argue that a prolonged and unjustified failure to act amounts to a constructive refusal or decision, thereby activating the Tribunal's oversight function.

30. The Claimants further assert that two individuals who initially submitted or supported the 2nd Interested Party's application had since withdrawn their involvement or endorsement. They are that this implies that the 2nd Interested Party lacks a stable, credible governing structure and no longer has a valid basis for consideration as a National Sports Organization.

31. They further argue that the Tribunal has both the jurisdiction and responsibility to restore legality in motorsport governance, especially given that no lawful National Sports Organization currently exists. They invite the Tribunal to exercise its remedial powers to compel the Registrar to discharge her statutory mandate, regularize governance in the sector, and uphold the rights of stakeholders to participate in a well-regulated and inclusive national federation.

32. Lastly, the Claimants distinguish their petition from mere stakeholder rivalry, stressing that the dispute is not between individuals or factions, but centers on lawful recognition of an entity that has fulfilled all legal criteria. They assert that the continued delay and administrative ambiguity harms not only their organization but also the development of motorsport in Kenya, international reputation, and stakeholder confidence.

33. Accordingly, they pray for substantive orders compelling registration and recognition of Motorsports Kenya as the legitimate National Sports Organization.

#### The 1st Respondent's Response

34. The Sports Registrar, filed a Replying Affidavit sworn on 18th February 2025 in response to the Claim in which she confirmed receipt of three separate applications seeking registration as the National Sports Organization for motorsports in Kenya, including the application by the Claimants.

35. She acknowledged that the registration of a National Sports Organization falls within her statutory mandate under Sections 45 and 47 of the Sports Act, and further admitted that none of the three applications including that of the Claimants had been determined as of the date of the Affidavit that she had sworn. She attributed this delay to the need for thorough evaluation and verification of all submitted materials.

36. The Registrar explained that a joint meeting had been convened on 16th September 2024 with two of the applicants with the aim of reconciling their interests and potentially merging the rival factions. However, this effort was unsuccessful due to deep-rooted disagreements among the parties.

37. Consequently, the Registrar invited each party to submit detailed justifications for why they should be recognized as the National Sports Organization. She emphasized that the volume and complexity of the submissions, coupled with the receipt of a third application shortly thereafter, necessitated additional time to conduct a full evaluation.

38. A key justification advanced by the Registrar for the delay was the need to avoid disruption of the then upcoming World Rally Championship (WRC) Safari Rally event that was scheduled for 20th to 23rd March 2025. She asserted that premature decisions regarding the National Sports Organization designation could risk Kenya's relationship with the FIA, potentially jeopardizing the event.

39. The Registrar also clarified that, due to the historical non-compliance of the Kenya Motorsports Federation with the Sports Act, none of the current applicants including KMSFL could claim lawful recognition as a National Sports Organization. She pointed out that KMSFL had continued to operate as a limited liability company under the Companies Act without transitioning as required



under Section 49 of the Sports Act. As such, the entire motorsports sector was in a state of legal limbo, with no validly registered national body as of that date.

40. Despite acknowledging that the Claimants' application was complete on its face, the Registrar insisted that she could not act selectively or in isolation. She maintained that all applications had to be evaluated fairly and consistently in line with Section 47(2) of the Sports Act, which prohibits the registration of more than one National Sports Organization per discipline. Her argument was that granting the Claimants' application while others were still pending would amount to administrative injustice and could potentially trigger further disputes or appeals.

41. In her affidavit, the Registrar also clarified that the 1st Interested Party was merely a recently registered private club, not a National Sports Organization, and therefore lacked the capacity or authority to issue national guidelines for motorsports or represent Kenya at the international level. This was in reference to an earlier interim order by the Tribunal directing the club to issue guidelines for the Safari Rally. The Registrar asked the Tribunal to vacate that order, arguing that it would create confusion and jeopardize Kenya's standing in international motorsport.

42. A notable part of the Registrar's defence was her reference to the role of the Project Oversight Team (POT) for the WRC Safari Rally, established via Gazette Notice No. 1769 of 2024. She contended that the management of the WRC had already been formally delegated to this government-appointed team, with a Mr. Charles Gacheru as its Chief Executive Officer. She further informed the Tribunal that the FIA had, in a letter dated 7th November 2024, recognized a Mr. Maina Muturi as Kenya's liaison, pending resolution of the National Sports Organization registration process. This recognition, she argued, was functional and did not amount to legal endorsement under Kenyan law.

43. Further, during cross examination, the Registrar cited operational difficulties within her office as a reason for the delay. These included power outages, eviction from office premises due to rent arrears, and loss of access to official records and files. These administrative setbacks, she argued, hampered her ability to process the applications within the statutory timeframe.

44. In conclusion, the Registrar's position is that the matter is not ripe for adjudication and that the Claim was filed prematurely. She asked the Tribunal to allow her office the necessary time and administrative space to conclude the review of the three applications and to make a decision on merit after the WRC event. She prayed that the proceedings before the Tribunal be stayed or dismissed, warning that judicial intervention at this stage could undermine ongoing efforts to regularize motorsport governance and disrupt a critical international event backed by the government and international stakeholders.

#### 2nd Interested Party's Submissions

45. The 2nd Interested Party, the Kenya Motor Sports Federation Limited (KMSFL) filed its submissions in opposition to the Claimants' petition, contending that the matter before the Tribunal is both premature and misplaced. They asserted that it has a pending application for registration as a National Sports Organization before the Sports Registrar and that no final decision had been issued regarding any of the three competing applications. Therefore, it argued that the Tribunal lacked jurisdiction at this stage under Section 58 of the Sports Act, which presupposes the existence of a determination or decision from the Registrar.

46. They further submitted that it is the recognized affiliate of FIA, the international governing body for motorsport and pointed out that it has consistently organized motorsport activities in Kenya, including the Safari Rally. According to KMSFL, its operational track record and international recognition underscore its capacity and legitimacy as the de facto national body for motorsport even if not yet formally registered under the Sports Act.

47. The 2nd Interested Party maintained that the continued functioning of motorsport in Kenya including international and national events demonstrates that there is no governance vacuum as claimed by the Claimants. They pointed out that the World Rally Championship (WRC) Safari Rally has been successfully hosted under their coordination since its reinstatement in 2018. They also



highlighted that Claimants themselves have held licenses issued by KMSFL and have participated in events under its auspices, thus undermining their claim of exclusion or dysfunction.

48. In response to the allegations of illegality and bias raised by the Claimants, KMSFL argued that these assertions were speculative and unsupported by concrete evidence. They contended that no valid or admissible proof was presented to show preferential treatment by the Registrar or malice against the Claimants. They further emphasized that the Registrar had exercised reasonable caution by consulting all applicants and refraining from issuing premature decisions in order to maintain fairness and protect Kenya's international sporting reputation.

49. KMSFL also challenged the procedural posture of the Claim, arguing that the Claimants had failed to exhaust administrative remedies. Citing *Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others* [2012] eKLR, they submitted that jurisdiction must be expressly granted by statute or the Constitution. In their view, the Tribunal's jurisdiction under Section 58(c) of the Sports Act could only be invoked after a decision by the Registrar. Since none had been rendered, the Petition was improperly before the Tribunal and should be struck out.

50. The 2nd Interested Party also took issue with the Claimants' failure to join both factions of KMSFL to the proceedings. They argued that this was a deliberate omission aimed at denying them a right to be heard and misleading the Tribunal into treating the Claimants' application as unopposed. They contended that the dispute could not be fairly resolved without the full participation of all applicants with a stake in the registration process.

51. On the substance of their own application, KMSFL submitted that it had met all legal requirements for registration and had attached all necessary documentation. They emphasized that their longstanding involvement in motorsport governance, technical expertise, and established stakeholder networks made them better placed to serve as the National Sports Organization. They asserted that international recognition by FIA cannot be overridden by administrative haste or stakeholder petitions, and that any appointment of a National Sports Organization must consider both local law and international coordination.

52. KMSFL refuted the suggestion that it was an "illegal" or "non-compliant" entity. While it acknowledged that it operated as a company under the Companies Act, it argued that this did not render its activities unlawful. It submitted that its current efforts to register under the Sports Act were being made in good faith and in compliance with the Registrar's ongoing process. They added that the fact that motorsport has continued under their stewardship further validated their operational legitimacy.

53. In addressing the Claimants' assertion that KMSFL had lost stakeholder confidence, the 2nd Interested Party emphasized that motorsport remains active and vibrant in Kenya, and the hosting of WRC events proves continued engagement from both government and private stakeholders. They argued that temporary resignations by a few clubs or commissions do not discredit the federation as a whole or override the broader public interest in a stable and experienced body.

54. On the question of fair administrative action, KMSFL submitted that delays in complex regulatory processes are not inherently unlawful. They cited the principle that procedural fairness must be balanced against administrative discretion, particularly in contexts involving multiple stakeholders and significant public interest. They argued that the Registrar was entitled to take time to assess the applications thoroughly and holistically before making a decision that could reshape the national sports landscape.

55. The 2nd Interested Party also urged the Tribunal to take judicial notice of the Cabinet Secretary's letter dated 7th November 2024 to FIA which said letter states as follows: This office notes that KMSF is currently registered under the Companies Act, Cap. 486 Laws of Kenya. However, by dint of Section 50 of the Sports Act, all Sports Federations registered before the enactment of the Sports Act, were required to transition to, and be registered under the Sports Act. Accordingly, the current office bearers, led by Mr. Maina Muturi have been advised to work with the Office of the Sports Registrar to ensure compliance with the Laws of Kenya. It is further noted that the process of registration of the national federation is ongoing and is expected to be concluded



timeously.

56. The 2nd Interested Party contends that the letter demonstrates high-level government recognition of their leadership and should be seen as an effort to maintain international engagement rather than an unlawful endorsement.

57. Finally, KMSFL prayed that the Tribunal should dismiss the Claimants' petition with costs, terming it speculative, premature, and disruptive. They urged the Tribunal to allow the Registrar to complete her review of all applications and issue a considered determination, rather than force a decision under pressure. In their view, doing so would preserve legal integrity, institutional credibility, and Kenya's reputation in the international motorsports community.

Issues for Determination

58. Having had a keen look at the applications before the Tribunal and the necessary pleadings, the Tribunal finds the salient issues for determination to be;

Whether this Tribunal has jurisdiction to hear and determine the Claim in light of the absence of a final decision by the Sports Registrar.

Whether the Notice of Motion dated 23rd April 2025 is merited

Whether the Sports Registrar has failed in her statutory and constitutional duties by refusing or neglecting to act on the Claimants' application for registration.

Whether the 2nd Interested Party has the legal capacity to seek recognition as a National Sports Organization under the Sports Act.

Whether the Claimants' application for registration meets the legal threshold for recognition as a National Sports Organization and what reliefs, if any, should be granted.

Analysis

Whether this Tribunal has jurisdiction to hear and determine the Claim in light of the alleged absence of a final decision by the Sports Registrar.

59. The jurisdiction of any court or Tribunal is a fundamental question that goes to the root of its authority to adjudicate matters brought before it. As held in the landmark case of Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd [1989] KLR1, "Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction ...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

60. The Tribunal is established under Section 55 of the Sports Act, with its jurisdiction stipulated under Section 58 of the same Act which includes the determination of:

(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 the Sports Act.

61. The current dispute is brought under Section 58(c) of the Sports Act that provides that decisions from the Sports Registrar can be appealed at the Sports Disputes Tribunal.

62. The Respondent and 2nd Interested Party opposes the Tribunal's jurisdiction, arguing that the matter is premature and not ripe for adjudication. They submit that Section 58(c) of the Sports Act confers appellate jurisdiction upon the Tribunal solely in respect of decisions made by the Sports



Registrar, and since no determination has been issued, there is nothing to appeal against.

63. They rely on the Supreme Court decision in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR, which affirmed that jurisdiction is derived from the Constitution or statute and cannot be assumed or inferred. The 2nd Interested Party argues that the doctrine of ripeness, as established in Kiriro Wa Ngugi & 19 others v Attorney General & 2 others [2020] eKLR, prohibits courts from entertaining hypothetical, premature, or academic disputes that have not fully matured into justiciable controversies.

64. They further contend that the matter offends the doctrine of sub judice as codified under Section 6 of the Civil Procedure Act, since the Claimants' application remains actively pending before the Sports Registrar, and parallel proceedings should be avoided to prevent conflicting decisions and forum shopping.

65. On the other hand, the Claimants argue that this Tribunal has jurisdiction to hear and determine the present matter notwithstanding the absence of a final decision by the Sports Registrar.

66. They contend that the Sports Registrar's prolonged inaction constitutes administrative negligence and a breach of statutory duty that is itself a reviewable administrative action.

67. The Claimants submit that Article 47 of the Constitution guarantees every person the right to administrative action that is "expeditious, efficient, lawful, reasonable and procedurally fair," and that unreasonable delay in making a decision violates this constitutional right.

68. They further argue that Section 46(3) of the Sports Act creates a mandatory duty upon the Registrar to register a sports organization once satisfied that it meets the prescribed requirements, and that the failure to act within a reasonable timeframe constitutes a breach of this statutory obligation. The Claimants rely on the principle established in Dry Associates Ltd v CMA & Another [2012] eKLR that "administrative silence is not neutrality it is abdication," and that citizens have a right to timely administrative decisions, not indefinite delay.

69. The starting point is the recognition that jurisdiction flows from the Constitution, statute, or both, and cannot be exercised in a vacuum. Section 58(c) of the Sports Act grants this Tribunal jurisdiction to hear disputes arising from decisions of the Registrar.

70. This Tribunal finds that the constitutional right to fair administrative action under Article 47 is not merely a right to receive a decision, but encompasses the right to receive such decision within a reasonable timeframe. The Constitution does not contemplate that public officers may hold applications in perpetual limbo under the guise that no decision has been made. Indeed, the very purpose of establishing specialized tribunals like this one is to provide accessible forums for aggrieved parties to challenge administrative conduct in specialized sectors.

71. Section 46(3) of the Sports Act, creates a mandatory duty upon the Registrar couched in imperative terms:

"The Registrar shall register a sports organization if satisfied that it has met the requirements prescribed under this Act."

72. When the above provision is read together with Regulation 4(6) of the Sports Registrar Regulations, 2016 which provides that "The Registrar may, within ninety days of receipt of the application, issue a certificate of registration," the legislative intent becomes clear that applications should be processed expeditiously.

73. The word 'may' in this instance is not used as an option to timeframe but is used in respect of the options available to the Registrar which is to reject or to register a Sports Organization. If the Registrar decides to register the sports organization, and in particular a national sports organization as per Section 47 of the Sports Act, the Registrar is obligated to issue a Certificate of Registration.

74. The same word 'may' is used in Regulation 5 of the Sports Registrar Regulations, 2016 in the same breath by requiring the Registrar upon considering an application to either issue a Certificate or Reject the application.

75. The Tribunal takes notice of the Sports Registrar's own admission during cross examination that she was awaiting executive instructions and the conclusion of the WRC Safari Rally. This is a decision in itself and it is the series of decisions that are made by the Registrar pending her final



decision. It also included the decision to hold mediation talks as part of the resolution of the registration process.

76. When a public official kicks off the process of decision making and stalls midstream, they cannot turn back and say no decision has been made. The decision to be made need not be written. Indeed, under the Fair Administrative Act, part of the decision of administrative action includes 'omission'. The omission to make the decision can therefore constitute a decision as failure to hold so can lead to a decision maker remaining outside the scope of the Tribunal's stratagem by stating that the decision has not been made.

77. Additionally, Section 58(c) uses the words 'decisions of' in relation to the Sports Registrar which would broaden it from decisions made to also decisions deferred.

78. The Sports registrar in her submissions also has indicated why she preferred to defer the decision by stating that the Registrar would not wish to jeopardize an event such as the WRC Safari Rally which is an important event that not only covers the sporting element but is also cross cutting in other sectors such as tourism. This, the Tribunal appreciates, is what may lead to caution in respect of how to handle final decision making without upsetting one sector of industry in the country.

79. Be that as it may, the decision to rely on such events which seem necessary but are entirely extraneous to the statutory criteria for registration demonstrates that the inaction to register is not mere administrative delay but also forms part of deliberate withholding of decision-making. Such conduct falls squarely within the ambit of reviewable administrative action. This could also be understood to mean that the Registrar by not making the decision within the statutory delineated time was making a decision that is reviewable.

80. The Registrar further admitted to various operational difficulties within her office, including power outages, office eviction for rent arrears, loss of access to files, and staff disruptions. While this Tribunal acknowledges that public offices may face genuine administrative challenges, such difficulties cannot constitute a legal defense for the indefinite suspension of statutory duties.

81. The Registrar's further admission that she could provide no definite timeline for resolution demonstrates that these operational challenges have been allowed to completely paralyze a constitutional function. More critically, the Tribunal notes that these operational difficulties did not prevent the Registrar from engaging in meetings, receiving further applications, and conducting other administrative activities, suggesting selective functionality that undermines the credibility of this defense.

82. Additionally, the 2nd Interested Party's invocation of the sub judice rule is misconceived. The sub judice rule prevents parallel proceedings involving the same issues and parties before different competent forums, but it does not prevent judicial review of administrative conduct by the very officer whose decision is awaited.

83. It was further noted in *Republic v Magistrates Court, Mombasa; Absin Synegy Limited* (Interested Party) (Judicial Review E033 of 2021) [2022] KEHC 10 (KLR), that:

"The locus classicus decision in Kenya on jurisdiction is the celebrated case of *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* 11(Supra). A court has no inherent jurisdiction to decline to entertain a matter within its jurisdiction."

84. In *Jacob Keli Mutungi & 3 others vs Ambrose Rachier & 3 others* [2019] eKLR, the Tribunal expressed itself as follows:

"The obligation upon the Tribunal is to ensure there is a mechanism for legal redress, The Tribunal acts as the avenue subject to the provisions of the Sports Act where Legal redress can be sought."

85. Therefore, the Tribunal concludes that the failure to make a decision within a reasonable time, particularly where statutory duties are clear and mandatory, is itself an administrative action that adversely affects the rights of applicants and can be challenged independently of any final determination. This would fall squarely within Section 58(c) of the Sports Act as a decision that can be challenged.

86. While this Tribunal respects the primary jurisdiction of the Sports Registrar to make registration



decisions, it cannot abdicate its constitutional and statutory mandate to ensure good governance and accountability in sports administration when faced with clear evidence of administrative delay.

Whether the Notice of Motion dated 23rd April 2025 is merited

87. The second issue for determination was whether the 2nd Interested Party was justified in seeking disqualification of the Claimants' Advocates for alleged conflict of interest.

88. In this application, the 2nd Interested Party avers that the firm of Tariq Khan & Associates Advocates is conflicted, in contravention of the principles of natural justice and in breach of the fiduciary duties owed by an advocate to a former client. The conflict arises from the fact that the said firm previously acted for the 2nd Interested Party in matters closely connected to the subject matter of these proceedings, during which it obtained access to privileged and confidential information. Furthermore, Mr. Tariq Khan, an advocate practicing under the said firm, currently serves as an alternate director of the 2nd Interested Party, thereby compounding the conflict and raising legitimate concerns regarding the impartiality and propriety of the firm's continued representation in these proceedings.

89. The said involvement, the 2nd Respondent avers, contravenes Rules 8 and 9 of the Advocates (Practice) Rules, that prohibit an advocate from acting in a matter where there exists a conflict of interest or a personal stake that may impair their professional judgment. The impugned conduct further violates the advocate-client privilege as codified under Section 134 of the Evidence Act (Cap. 80, Laws of Kenya), which prohibits an advocate from disclosing or improperly using any confidential information obtained during the course of the advocate-client relationship, save for instances involving the furtherance of an unlawful purpose.

90. The Claimant disputed this and in turn contended that the firm of Murangasia & Associates Advocates had not demonstrated that they were duly authorized to represent the 2nd Interested Party.

91. The Sports Disputes Tribunal Rules at Rule 9 (1) states that:

In any proceedings before the Tribunal, a party may appear in person or may be represented by an advocate of their choice.

This Rule does not give further technical procedures on how the representation by an Advocate ought to be.

92. The Tribunal, just like other progressive institutions of the Judiciary, has moved away from elevating technical matters to a fetish and thus would not be inclined to allow the counter objection filed by the Claimants Advocates on the necessity to prove being appointed Counsel by Resolution or otherwise.

93. We have also considered the various decisions cited including *Uhuru Highway Development Ltd v. Central Bank of Kenya & 2 Others* [2002] eKLR; *Delphis Bank Ltd v. Channan Singh Chatthe & 6 Others* [2005] eKLR; and *Serve in Love Africa (SILA) Trust v. David Kipsang Kipyego & 7 Others* [2017] eKLR where the courts upheld the objections to conflicted Counsel crossing over and appearing against parties they have previously acted for.

94. We have considered the risks that are being contended as potential breaches of confidentiality in this matter. The nature of sports law practice in this country has seen various specialized lawyers with an interest in sport act for certain parties and due to this proficiency and understanding the matters in dispute to also act for another party in another matter. The Tribunal has seen parties acting against National Sports Organizations and then acting for the said National Sports Organizations in the fullness of time. It has to be specifically proved that such Counsel have engaged in professional misconduct and the threshold in this matter does not seem to have been met. The Judicial test for bias does not apply directly to Counsel.

95. In looking at the issues about representation, we have also considered the Ruling of Emukule J. on the duty of advocates in the *H. F. Fire Africa Ltd v AMR Gharieb HCCC No. 665 of 2003*. Quoting the English Court of Appeal in *Rakusen v Ellis Munday & Clarke* (1912) 1 Ch. 831 the learned Judge had this to say:



"that there is no general rule that a solicitor who acted for some person either before or after litigation began could in no case act for the opposite side. The Court must be satisfied in each case that no mischief would result from his so acting; that there could be no danger of any breach of confidence if the solicitor acted for the company and that the injunction must be refused."

96. At the moment, no such mischief has been satisfied to the Tribunal and it would be unsuitable to grant the prayers in this application. The test for procedural irregularity and breach of confidential information has to be higher so that a party's right to be heard is not affected when a Counsel that he has chosen to marshal his premises and address the court is overridden by mere prior acquaintance or involvement.

97. Additionally, the Application is insufficient in terms of only providing general assertions without particularizing the specific confidential information allegedly obtained or demonstrating how such information could be used to their detriment in the current proceedings.

98. Therefore, if previous professional relationships were to automatically disqualify advocates from appearing in subsequent matters involving the same parties or related issues, it would severely limit parties' access to competent legal representation and potentially paralyze the effective administration of sports justice.

99. Consequently, the Tribunal finds that granting the application would create an undesirable precedent that could be exploited to frustrate legitimate proceedings through strategic disqualification applications.

Whether the 2nd Interested Party has the legal capacity to seek recognition as a National Sports Organization under the Sports Act.

100. The Claimants argue that the 2nd Interested Party fundamentally lacks the legal capacity to seek recognition as a National Sports Organization under the Sports Act. They rely on Section 49 of the Sports Act, which mandated all previously registered sports organizations to seek fresh recognition within one year of the Act's commencement, failing which they would cease to be recognized sports organizations.

101. The Respondent submitted that KMSFL is constituted as a company limited by guarantee under the Companies Act and has never transitioned to comply with the Sports Act's requirements since its enactment in 2013. The Registrar further contends that the Sports Act does not contemplate registration of companies limited by guarantee as National Sports Organizations.

102. The 2nd Interested Party vehemently disputes the assertion that it lacks legal capacity to seek NSO registration. They argue that their status as a company limited by guarantee does not per se disqualify them from transitioning to registration under the Sports Act. They submit that Section 49(3)(a) of the Sports Act provides a pathway for previously registered organizations to seek recognition, and their current application represents a good faith effort to comply with this transitional provision. They emphasize that the Sports Act does not expressly prohibit companies from seeking registration, and statutory interpretation should favor inclusivity rather than exclusion where the law is silent.

103. In view of the above, the question of legal capacity strikes at the heart of the Sports Act's governance framework and requires careful examination of both the letter and spirit of the legislation. The statutory scheme established by the Sports Act was designed to bring coherence and standardization to sports administration in Kenya, replacing the previous fragmented system where sports organizations operated under various legal frameworks including the Societies Act and Companies Act.

104. Section 49 of the Sports Act created a clear transitional framework requiring all previously registered sports organizations to seek fresh recognition within one year of the Act's commencement. This provision was not merely procedural but substantive, establishing new legal requirements for sports governance. For full effect, we are minded to reproduce the said Section in this decision:

49. Transition of existing sports organizations

(1) A sports organization, which was duly registered under the Societies Act (Cap. 108) and existing



immediately before the commencement of this Act shall be required to apply for registration under this Act within one year after the commencement of this Act.

(2) A sports organization, which was duly registered under the Societies Act (Cap. 108) and existing immediately before the commencement of this Act shall not be deemed to be an unlawful sports organization before the period prescribed under subsection (1) has expired.

(3) An existing sports organization that does not apply for registration within the time prescribed in subsection (1), shall not be recognized as a sports organization for the purposes of this Act: 10 Provided that an existing sports organization in respect of which—

(a) an application for registration has been made by it under subsection (1) and has not been rejected; or

(b) an appeal has been lawfully made under this Act and remains undetermined, shall continue to be recognized as a sports organization for the purposes of this Act.

105. The Tribunal notes that KMSFL, despite being the incumbent governing body for motorsport, failed to comply with this mandatory transition period, thereby losing its legal status as a recognized sports organization under Kenyan law. The one-year grace period was sufficient and reasonable, and failure to comply cannot be excused by operational continuity or international recognition.

106. Indeed, the very fact that the transition period under Section 49(1) was one year from the date of commencement of the Sports Act which was 1st August 2013 means that the sports organizations had until 31st July 2014 to transition to be sports organizations.

107. This matter is being heard by the Tribunal in 2025 which is more than eleven (11) years after the transition period that was contemplated by Section 49(1) of the Sports Act. Eleven years is an inordinately long time for any sports organization to still be talking about transition.

108. What was the intention of the legislature in prescribing Section 49 of the Act? To our mind, the section was directory and clear on the repercussions that would ensue from non-compliance; status of unlawfulness.

109. Indeed, this in *Football Kenya Federation v Sports Registrar & 64 others (Interested Parties)*, Case No. 3 and 5 of 2020 it was stated as follows:

PARAGRAPH 113 As far back as 1877, Lord Penzance observed as follows in *Howard v Boddington* (1877) 2 P.D. 203 on the distinction drawn between requirements which were 'imperative' on the one hand and 'directory' on the other: "The real question in all these cases is this: A thing has been ordered by the legislature to be done. What is the consequence if it is not done? ... There may be many provisions in Acts of Parliament which, although there are not strictly observed, yet do not appear to the court to be of that material importance to the subject matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure ... On the other hand, there are some provisions in respect of which the court would take the opposite view... I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory." (210-211)

110. An insinuation has been made by the Claimant that the Registrar is to blame for the non-Registration of a national sports organization. Technically, if one considers the period between the Commencement Date of the Sports Act in August 2023 and the filing of registration of applications of the current protagonists for recognition as national sports organizations in 2024, the Sports Registrar is blameless. It is anticipated that the national sports organizations or any sports organizations or that matter will be the ones to move the Sports Registrar for registration. Under Section 46(3) of the Sports Act, it is clear that an application for registration of a national sports organization shall be submitted to the Registrar.

111. There is no imposition on the Registrar the powers to suo moto grant registrations to national sports organizations even if the lack of their having been registered may have repercussions on the development of that discipline in the country. To this extent, the failure to seek registration is



interpreted against the persons who were running the bodies that would have transitioned into national sports organizations. In *Purity Njoki & Another v Kenya National Sports Council and Others*, SDT E006 of 2023, in which incidentally the Sports Registrar was the 6th Interested Party, the Tribunal held as follows:

The Tribunal shall not aid failure to comply with the law by granting relief to unresponsive official conduct that canvasses illegalities. Undeniably, by virtue of their position within the KNSC, the 2nd, 3rd and 4th Respondents enjoyed privileges and exercised identical powers prior to and after their belated transition. Thus, their mischief to deliberately delay registration is subordinate to and is abated by the statute's intention to institute term limits in 2013 granting only a maximum of one year transition period.

112. The Tribunal further observes that the Sports Registrar herself acknowledged during cross-examination that companies limited by guarantee face structural impediments to registration under the Sports Act. It is perhaps this interpretation that led to the attempt by the lawmakers to amend Section 46 of the Sports Act vide the Sports (Amendment) Bill, 2021 with the intended proviso that the Registrar shall not register a body as a sports club unless the body is registered as a company under the Companies Act. This amendment did not however see the light of day and therefore the Registrar has no such obligation to first have a sports organization incorporated as a company.

113. The architecture of national sports organizations is carefully crafted in the Sports Act, 2013. The same are for instance required under Section 46 (b)(i) to have a name, the category under which it is to be registered; the office bearers; the head office; sources of funding; national or international affiliation (if any) and any other information that may be prescribed in Regulations. The Sports Registrar Regulations are germane.

114. It is important to note that Section 46(6) of the Sports Act also requires that the national sports organizations be open to the public in their leadership, activities and membership. In the meeting that was held before the Sports Registrar on 16th September 2024, and whose minutes were placed before the Tribunal, it was noted for instance that Article 2 of the 2nd Interested Party placed a limit of twenty members of the organization which would go against the public nature of a national sports organization.

115. Additionally, the requirement for Kenyan citizenship for the officials of national sports organizations is quite clear in the Sports Act and in particular Schedule 2 of the Sports Act. In *Swaleh Talib Abubakar v Stabilization Committee of the Kenyan Swimming Federation and Others*, SDT E018 of 2023, the Tribunal found that:

Indeed, the Sports Act takes cognizance of the major responsibility of selection to represent the country that it alludes to this being a patriotic duty by insisting under the Second Schedule of matters to be provided for in the constitutions of sports organizations that only citizens of Kenya shall be eligible for election as the chairperson, secretary or treasurer of a body at the national level.

116. The heightened responsibility of national sports organizations explains why the national sports organizations, for instance, get funding from the Sports, Arts and Social Development Fund as established under the Public Finance Management (Sports, Arts and Social Development Fund) Regulations. Under these Regulations, one of the eligibility for funding under Regulation 13(a)(i) is that the sports organization must be registered under the Sports Act.

117. This heightened the reasons why a national sports organization should be in place and why any hint of officials trying to scuttle the registration of one national sports organization has the potential to lead to loss of the sports discipline and the illegality of disbursement of funds to such sports organization.

118. The Tribunal notes that organizations that failed to transition under Section 49 effectively "died" as far as the Sports Act is concerned. The failure to transit opened the door for new entities to seek registration under the same name, the failure of KMSFL to comply with transitional requirements created a governance vacuum that legitimately allowed new entities like Motorsports Kenya to emerge and seek recognition.

119. The Sports Registrar in her Affidavit filed before the High Court in HRCJ E038 of 2025



confirmed that the lack of transitioning by Kenya Motorsports Federation Limited indeed invalidated the advantage it had such as affiliation to FIA. The said averment appeared at paragraph 25 and states:

THAT by virtue of section 47 of the Sports Act, a body cannot seek for affiliation or be affiliated to an international before attaining a legal status in Kenya by registering itself as a national sports organization/federation. The current Kenya Motor Sport Federation which still operate as a company got its affiliation status with FIA long before commencement of the Sports Act in 2013 and therefore the legality of its affiliation ceased on 14th August 2014 when it failed and or refused to transit under section 50 of the Sports Act as a sports organization. This automatically means that its affiliation to the International Motor Sports Federation is illegal.

120. Therefore, the Tribunal is of the opinion and emphasizes that any legal capacity possessed by the 2nd Interested Party cannot be exercised to the exclusion or prejudice of other legitimate applicants. The failure of Kenya Motor Sports Federation Limited to comply with the mandatory transition requirements effectively reset the competitive landscape for motorsport governance, opening the field to new entities established in compliance with the Sports Act's requirements. The Tribunal finds that Kenya Motor Sports Federation Limited's delayed application cannot claim precedence over applications from entities that emerged to fill the governance vacuum created by their non-compliance.

121. Therefore, what would have been the temporal priority of Kenya Motor Sports Federation Limited's application was undermined by their fundamental legal non-compliance and the subsequent emergence of properly constituted alternative entities.

122. The Sports Registrar has noted in an Affidavit that was exhibited before this Tribunal that even the advantage of the affiliation to an international body was lost with the non-transitioning.

123. The Tribunal further notes that Kenya Motor Sports Federation Limited's capacity is significantly affected by the withdrawal of key individuals who initially supported their application. This development undermines their claim to stable governance and raises questions about the continued viability of their application. The Tribunal finds that capacity must be assessed continuously throughout the application process, and material changes in circumstances may affect an applicant's standing.

124. Therefore, the Tribunal holds that while Kenya Motor Sports Federation Limited retains theoretical standing to seek registration, their application must compete on equal terms with other applicants and cannot prevent the Sports Registrar from registering superior applications that demonstrate better compliance with statutory requirements and greater stakeholder support. Whether the Claimants' application for registration meets the legal threshold for recognition as a National Sports Organization and what reliefs, if any, should be granted.

125. The Claimant has provided the evidence to prove that the application for registration of the entity as a national sports organization was made on or about 26th August 2024 whilst the 2nd Interested Party's application was made on or about 12th September 2024.

126. It is clear that the transition of the 2nd Interested Party into a national sports organization was not done due to the failure to transit within the one year. The Tribunal has in the past had to deal with matters where parties left a sports organization to legally die by the failure to transit. In *Mathews Opwora & 2 others v Asava Kadima & Others* SDT 12 of 2015, the Tribunal found as follows:

Both parties having conceded that the failure to transit as at 1st August, 2014, led to the "demise" of AFC as a Sports Organization and it therefore the finding of this Tribunal that such act opened up the door for all or any interested party or person to take steps to register an organization under the name AFC with the Registrar. It also did not bar the officials of AFC in office as at 1st August, 2014 to elect to so register. Indeed on 23rd January 2015, the Respondents took that step and accordingly presented an application with the 9th Respondent [Sports Registrar] and which according to the 9th Respondent is still before her for analysis and final decision. That application was first in time as against that of the Petitioners. It is the view of the Tribunal that as at 13th February 2015 when the



Petitioners presented their application for registration, the name 'AFC' was in fact not available as the 9th Respondent can by law only register one organization to carry out the same action, in this case to manage the football club known as AFC Leopards. We opine that the application presented by the Petitioners ought to have been declined. It was an error of commission on the part of the 9th Respondent and /or the registry to have entertained the same and continue to entertain that application before conclusively dealing with the application presented by the faction represented by the 1st to 8th Respondents, by either rejecting it or admitting it.

127. The Sports Registrar is not bound to automatically register a sports organization simply on the grounds that its officials have desperately attempted to comply, especially where they are guilty of laches in compliance. In the badminton case, Peter Muchiri Kamau & 2 others v Anna Njambi & others SDT 12 & 18 of 2018, the Tribunal pronounced itself as follows:-

The respondents only collected registration forms on 3rd August 2015 and on 1st August 2016 in a desperate attempt to comply with the provisions of the Act. The same was nonetheless not returned by the time the interim certificate was issued to the claimants herein. We therefore agree that the respondent's positions as officials of Badminton Kenya then fell on this basis.

128. This reasoning was upheld by Justice Odunga in Republic v Sports Disputes Tribunal, Registrar of Sports & 3 others (Interested Parties); Shigoli (Exparte) (Application 120 of 2019) [2022] KEHC 18079 (KLR) where at paragraphs 38 and 39 he stated:

It is apparent from these paragraphs that the Respondent (the Sports Disputes Tribunal) considered both the evidence and the law and came to the conclusion that the applicants in the present application could not be registered as officials of Badminton Kenya because the 2nd, 3rd and 4th respondents had been registered as such officials and a certificate to that effect issued. According to the Respondent, the applicants were simply undone by the delay in returning the forms for registration.

Now, it is not for this Honourable Court, in exercise of its judicial review jurisdiction, to endorse the respondent's findings on facts and its conclusions on the law. This is simply because a judicial review court does not sit as an appellate court which ordinarily would be entitled to evaluate the evidence afresh and come to its own conclusions. And unless the tribunal's interpretation of the law is glaringly erroneous or outrageous, this court will also not interrogate whether the tribunal's application of the law to the question at hand was the correct one. It is not open to the judicial review court to substitute its own decision for that of the tribunal simply because it would itself have arrived at a different conclusion from that reached by the tribunal.

129. With the complacency dealt with, the Claimants have asserted that their application comprehensively satisfies all statutory and regulatory requirements for National Sports Organization registration. They submit detailed evidence demonstrating compliance with Section 46 of the Sports Act and Regulation 4 of the Sports Registrar Regulations, including submission of a duly ratified constitution, minutes of meetings electing interim officials, a comprehensive register of members, and adherence to constitutional gender principles under Article 27(8).

130. The Claimants emphasize that their application enjoys overwhelming stakeholder support, with endorsement from over 95% of motorsport stakeholders including clubs, drivers, and officials, as evidenced by a public petition signed by over 1,000 individuals.

131. The Claimants further argue that their organizational structure represents a clean break from the governance failures that have plagued Kenyan motorsport. They submit that Motorsports Kenya was established with broad-based stakeholder participation and democratic processes, contrasting sharply with the factional disputes and legal non-compliance that have characterized Kenya Motor Sports Federation Limited.

132. The Claimants contend that their application demonstrates not only technical compliance with legal requirements but also the legitimacy and stakeholder confidence necessary for effective national sports governance. They pray for immediate registration and recognition as Kenya's National Sports Organization for motorsport to fill the governance vacuum that has persisted since Kenya Motor Sports Federation Limited's failure to transition.



133. The Sports Registrar acknowledges that the Claimants' application appears complete on its face and meets the formal requirements for National Sports Organization registration. However, she maintains that the presence of multiple competing applications creates complexity requiring careful evaluation to ensure the most suitable entity is registered. The Registrar argues that precipitous action in favor of any single applicant could prejudice the rights of other applicants and potentially trigger further disputes or appeals that would destabilize motorsport governance.

134. The Registrar further submits that the unique circumstances surrounding motorsport governance, including international obligations and the recent WRC Safari Rally, required additional caution to avoid decisions that could jeopardize Kenya's standing in international motorsport. She contends that while delay is regrettable, thorough evaluation serves the broader public interest in ensuring stable and effective sports administration.

135. The 2nd Interested Party on the other hand vehemently disputes the assertion that the Claimants' application should be given preferential consideration, arguing that their own application meets all legal requirements and enjoys significant advantages in terms of operational experience, international recognition, and proven track record in motorsport governance.

136. They submit that their longstanding involvement in motorsport administration, technical expertise in organizing national and international events, and established relationships with key stakeholders both domestically and internationally position them as the superior candidate for National Sports Organization registration. Kenya Motor Sports Federation Limited emphasizes that their application includes all necessary documentation and reflects years of accumulated experience in managing complex motorsport operations, including the successful coordination of major international events.

137. However, National Sports Organizations applications must go beyond mere documentary compliance to encompass substantive assessment of organizational capacity, stakeholder legitimacy, and operational viability. It is also important for officials to demonstrate sustained commitment to organizational objectives. Further, leadership legitimacy is derived not merely from initial appointment but from continued stakeholder confidence and operational effectiveness.

138. In this present suit, a critical distinguishing factor is the stability and commitment of interim officials across the competing applications. The evidence before this Tribunal reveals that interim officials of the 2nd Interested Party have subsequently withdrawn their involvement and endorsement from Kenya Motor Sports Federation Limited's application, fundamentally altering the composition and viability of their proposed governance structure.

139. Under the Sports Registrar Regulations, applications for National Sports Organization registration must include properly constituted interim officials who demonstrate commitment to leading the proposed organization. When officials withdraw after application submission, this creates a fundamental deficiency that undermines the application's continued viability and raises serious questions about organizational stability.

140. The Tribunal is particularly persuasive by the reasoning that national sports federations occupy positions of exceptional sensitivity and responsibility, serving as the primary representatives of Kenya in international sporting forums and carrying the burden of maintaining the country's reputation and relationships within global sporting communities. This elevated responsibility requires that officials demonstrate not merely initial willingness to serve but sustained commitment and patriotic dedication to advancing Kenya's interests in international motorsport.

141. Therefore, the withdrawal of interim officials after application submission creates an incomplete application scenario that fundamentally compromises organizational viability.

142. The Tribunal notes that the Claimants' application demonstrates not only technical compliance with registration requirements but also the substantive legitimacy necessary for effective National Sports Organization governance.

143. The Claimants' application represents a fresh start for motorsport governance with clear legal compliance, stable leadership, and demonstrated stakeholder support, while Kenya Motor Sports Federation Limited's application suffers from historical non-compliance, withdrawn officials, and



diminished organizational capacity. Therefore, the Claimants' application satisfies all statutory requirements while maintaining the organizational stability necessary for effective National Sports Organization governance.

#### Disposition

144. Having carefully considered the pleadings filed by all parties, the oral submissions made during the hearing on 3rd June 2025, the applicable legal framework, and the evidence adduced before this Tribunal, and other relevant authorities, this Tribunal makes the following orders and declarations:

- i. The Tribunal declares that it has jurisdiction to hear and determine disputes arising from administrative delays and failures by the Sports Registrar in processing applications for registration under the Sports Act, 2013, notwithstanding the absence of a formal written decision, where such delays constitute unreasonable administrative inaction.
- ii. The Notice of Motion dated 23rd April 2025 filed by the 2nd Interested Party seeking disqualification of the Claimants' advocates is hereby dismissed as lacking merit and being unsupported by cogent evidence
- iii. This Tribunal declares that the Kenya Motor Sports Federation Limited (KMSFL), having failed to comply with the transitional requirements under Section 49 of the Sports Act, 2013, within the prescribed one-year period, ceased to be a recognized sports organization under Kenyan law and lacks legal capacity to claim precedence over properly constituted applications for National Sports Organization registration.
- iv. The Tribunal finds that the withdrawal of interim officials from the 2nd Interested Party's application subsequent to its submission renders said application fundamentally deficient and incapable of supporting effective National Sports Organization governance.
- v. Subsequently, Motorsports Kenya, having demonstrated comprehensive compliance with legal requirements, stable governance structures, and stakeholder support, represents the most suitable vehicle for establishing effective motorsport governance in Kenya.
- vi. As such, the Sports Registrar is hereby directed to proceed immediately with the registration of Motorsports Kenya as the National Sports Organization for motorsports in Kenya under Section 46 of the Sports Act, 2013, within thirty (30) days of this decision with the primary officials as listed on the application.
- vii. The Sports Registrar shall, in the exercise of her powers under the Sports Act and Regulations, impose the following standard conditions upon the registration of Motorsports Kenya:
  - a. Motorsports Kenya shall conduct comprehensive democratic elections for all office bearers at national, regional, and local levels within ninety (90) days from the date of registration, in accordance with its constitution and applicable electoral guidelines;
  - b. Motorsports Kenya shall establish and maintain a comprehensive register of all members, including individuals, clubs, associations, and other entities involved in motorsport activities, and shall implement transparent procedures for membership admission, renewal, and termination;
  - c. Motorsports Kenya shall facilitate the seamless integration of all legitimate motorsport stakeholders currently affiliated with KMSFL or other motorsport entities, ensuring that no individual or organization suffers prejudice or exclusion based on prior affiliations, provided they meet the standard membership criteria;
  - d. Motorsports Kenya shall pursue recognition and affiliation with relevant international motorsport bodies, including the Fédération Internationale de l'Automobile (FIA), as the National Sporting Authority (ASN) to maintain Kenya's standing in international motorsport.
  - e. Motorsports Kenya shall submit detailed progress reports to the Sports Registrar every fifteen (15) days demonstrating compliance with the imposed conditions, including evidence of election preparations, membership registration progress, and integration of existing stakeholders.
- viii. Noting that the proposed Constitution of Motorsport Kenya has a provision for four National Executive Committee members, the Sports Registrar is at liberty to expand the interim officials of Motorsport Kenya from the proposed three primary officials and include one other name from KMSFL as the Deputy President.



ix. All current members, officials, clubs, and stakeholders previously affiliated with KMSFL or any other motorsport organization shall be entitled to transfer their membership and participation to Motorsports Kenya without any impediment, discrimination, or additional requirements beyond standard membership criteria, ensuring continuity of participation in motorsport activities.

x. In view of the public interest nature of this matter and the need to restore effective motorsport governance in Kenya, each party shall bear its own costs.

145. The Tribunal thanks the various Counsel for the Claimant, the Respondents and the Interested Parties for their very helpful contribution to these proceedings.

Dated and delivered at Nairobi this 8 th day of August, 2025.

Signed:

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Benard Wafula Murunga  
Chairperson, Sports Disputes Tribunal

In the presence of:

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Allan Mola Owinyi  
Member

SIGNED BY: BERNARD WAFULA MURUNGA



THE JUDICIARY OF KENYA.  
SPORTS DISPUTES TRIBUNAL  
SPORTS DISPUTES TRIBUNAL  
DATE: 2025-08-08 12:43:13+03

