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Sports Act

The Sports Disputes Tribunal Rules

Legal Notice 49 of 2022

Legislation as at 31 December 2022

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The Sports Disputes Tribunal Rules (Legal Notice 49 of 2022)

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THE SPORTS DISPUTES TRIBUNAL RULES
LEGAL NOTICE 49 OF 2022

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1. Citation

These Rules may be cited as the Sports Disputes Tribunal Rules.

2. Application

These Rules shall apply to all proceedings, appeals or matters over which the Tribunal has jurisdiction under [sections 58 and 59](#) of the Act and [section 31](#) of the Anti-Doping Act (Cap. 245B).

3. Interpretation

In these Rules, unless the context otherwise requires—

"appellant" means a person who appeals to the Tribunal under the Act, and includes a duly authorized agent or legal representative of that person;

"Chairperson" means the Chairperson of the Tribunal appointed in accordance with [section 55\(2\)\(a\)](#) of the Act;

"slaimant" means a person who applies to the Tribunal under the Act, and includes a duly authorized agent or legal representative of that person;

"Court of Arbitration for Sports" means the court established by the International Olympic Committee to resolve sports related disputes and operates under the code of sports related arbitration;

"interested party" means a person joined to a proceeding under rule 15;

"Ministry" means the Ministry for the time being responsible for Sports;

"non-Selection" includes the failure to nominate a person to a team or squad;

"proceedings" means any proceedings of the Tribunal including a claim, an appeal, other sports-related disputes, or an anti-doping rule violation application brought under these Rules and shall include alternative dispute resolution mechanisms;

"secretary" means the secretary to the Tribunal appointed in accordance with [section 60](#) of the Act;

"selection" includes the nomination of a person to a team or squad;

"selection criteria" means the method and standards through which persons are nominated or chosen to teams or squads;

"squad" means a group of athletes who have been identified for consideration for selection to a Kenyan sports team including reserves, athletes having accredited status for the purposes of entry to a sporting competition and other persons associated with a squad;

"Tribunal" means the Sports Disputes Tribunal of Kenya established under [section 55](#) of the Act and where appropriate will mean the panel appointed under rule 4.

4. Co-ordination of the Tribunal

- (1) The Chairperson shall coordinate the work of the Tribunal and shall in addition be responsible for—
 - (a) constituting a panel of members of the Tribunal to hear and determine matters brought before the Tribunal; and
 - (b) exercising all functions given to the Chairperson under the Act and these Rules.
- (2) The Chairperson may assign any roles or duties to be performed by the Chairperson to the deputy-Chairperson or any member of the Tribunal.

5. Secretary

- (1) The Judicial Service Commission shall in accordance to [section 60](#) of the Act, appoint a secretary to the Tribunal who shall be the registrar of the Tribunal and responsible for—
 - (a) establishment and maintenance of the registry;
 - (b) acceptances, transmission, service and custody of documents in accordance with these Rules;
 - (c) certifying an order, direction or decision of the Tribunal, the Chairperson, deputy-Chairperson or a member of the Tribunal;
 - (d) keeping and maintaining records of the proceedings and minutes of the meetings of the Tribunal; and
 - (e) undertaking any duties assigned by the Judicial Service Commission.
- (2) The Secretary may with the authorization of the Chairperson consider and dispose of procedural or administrative matters in accordance with these Rules.

6. Statement of claim

A person may institute a claim, other than an appeal under the Act, by way of a statement of claim signed by the claimant or his advocate, setting out concisely the nature of the claim and the grounds upon which it is based, supported by a verifying affidavit signed by the claimant.

7. Service of statement of claim

- (1) The statement of claim together with the verifying affidavit and summons to enter appearance shall be served on the respondent.
- (2) The respondent shall file a response within fourteen days of service with the documents stated under paragraph (1) and a statement of defence within a further fifteen days.

8. Electronic service

- (1) Notwithstanding rule 7, a statement of claim and other documents may be sent by electronic mail service to the party's last confirmed and used E-mail address.
- (2) Service shall be deemed to have been effected when the sender receives a delivery receipt.
- (3) Service shall be deemed to have been effected on the day which it is sent, if it is sent within the official business hours on a business day in the jurisdiction sent, or and if it is sent outside of the business hours and on a day that is not a business day it shall be considered to have been served on the business day subsequent.
- (4) Service may be effected by mobile-enabled messaging Applications to a party's last known and used telephone number.

- (5) An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the delivery receipt confirming service.

9. Representation

- (1) In any proceedings before the Tribunal, a party may appear in person or may be represented by an advocate of their choice.
- (2) A party to any proceedings before the Tribunal shall provide contact details to the Tribunal when filing any pleadings including the party's—
 - (a) postal address;
 - (b) mobile telephone number;
 - (c) email address; and
 - (d) physical address.
- (3) A party shall notify the Tribunal of any changes to the contact details provided under paragraph (2).

10. Language

- (1) The language of the Tribunal shall be English or Kiswahili.
- (2) The Tribunal shall, taking into account all the circumstances, grant the assistance of a competent interpreter free of charge to a party or witness who does not speak or understand the language used at the hearing or who is deaf.

11. Appeals

- (1) A person who intends to appeal to the Tribunal shall file a Notice of Appeal, in writing.
- (2) The appeal shall consist of the Notice of Appeal and an Appeal Brief in prescribed Form 1 and 2, set out in the Schedule, respectively.
- (3) The Appellant shall sign both the Notice of Appeal and the Appeal Brief.
- (4) The Secretary shall acknowledge receipt of both the Notice of Appeal and the Appeal Brief and will advise the Appellant of any further steps required to enable the Tribunal to decide the appeal and the time and place of the hearing of the appeal.

12. Grounds of Appeal

A party may appeal on the following grounds#

- (a) if the disciplinary decision on the penalty is either excessive or inappropriate;
- (b) in relation to decisions relating to the selection or non- selection of the appellant to a Kenyan team or squad,—
 - (i) if the selection criteria has not been followed; or
 - (ii) the person seeking selection was not afforded a reasonable opportunity by the National Sports Organization to satisfy the applicable selection criteria.

13. Appeal by minors and persons with disability

Where the appellant is a minor or a person with disability, the appeal may, subject to any conditions imposed by the Tribunal, be brought by a person legally authorized to act on the appellant's behalf.

14. Response to appeal

- (1) A Respondent who wishes to oppose an appeal shall, within fourteen days from the date of service of the Appeal Brief, file and serve a Response.
- (2) Where no Response is received, the Tribunal may proceed to hear and determine the appeal or issue such directions as it may consider appropriate.

15. Pre-hearing conference to make directions and inquiry

- (1) The Tribunal shall convene within seven days from the date of service of the Statement of Response to give directions on–
 - (a) the manner in which the proceedings are to be conducted;
 - (b) whether the parties are required to attend and give evidence;
 - (c) submissions in advance of the hearing of any witness statements or experts reports;
 - (d) examination and cross examination of witnesses;
 - (e) reduction or extension of any time limits;
 - (f) the award of costs or expenses; and
 - (g) hearing a third party who may be affected by an order or direction given by it.
- (2) The Tribunal may require parties to verify any documents or copies of the documents by an affidavit.
- (3) The Tribunal may in writing inquire into any subject matter of the proceeding by–
 - (a) inspecting and examining documents; or
 - (b) requiring any party to the proceedings to produce for examination any documents in their possession or control and allow copies to be made.
- (4) The Tribunal may at any time, on its own motion, give such directions as it considers fit to secure the just and expeditious conduct of proceedings.

16. Preliminary objections

- (1) A party may raise a preliminary objection to the jurisdiction of the Tribunal or other issue, in writing, and upon filing the preliminary objection with the Tribunal, serve the Claimant or the Appellant with a copy of the preliminary objection.
- (2) If, in the opinion of the Tribunal, the determination of the preliminary objection disposes the matter the Tribunal may treat the preliminary hearing as the hearing of the matter and may make such order disposing of the matter as the Tribunal considers fit.

17. Joinder of parties

- (1) If it appears to the Tribunal, on its own motion or on the application of a party, that it is desirable that any person be made a party to the proceedings, it may order such person to be joined as a party to the proceedings.
- (2) The Tribunal shall direct service of notice to an interested party in Form 4 set out in the Schedule within seven days of the order under paragraph (1).
- (3) The interested party shall within seven days respond to the notice in Form 5, set out in the Schedule.

- (4) An interested party to any proceedings is bound by these Rules and may make submissions and provide evidence as if that person was a party to the proceedings.

18. Place and time of hearing

- (1) The Chairperson, deputy Chairperson or designated member shall, with due regard to the convenience of hearing the parties, fix the date, time and place of the oral hearing.
- (2) The Chairperson, deputy Chairperson or designated member may alter the time and place of any hearing upon notice to the parties.
- (3) The Tribunal may on its own motion or on application made before it, adjourn a hearing and, where the time and place of the adjourned hearing are determined during the adjournment, further notice on the time and place of hearing shall not be required:

Provided that such alteration shall not interfere with the time limits specified in the constitution or rules of a National Sports Organizations, unless there is a provision in the constitution or rules permitting the Tribunal to grant such alteration or unless the parties agree to such an extension.

- (4) Unless otherwise directed, the Tribunal shall transact business from Monday to Friday of every week, except on public holidays.

19. Procedure at hearing

- (1) At the beginning of the hearing, the Chairperson shall explain to the parties the order of proceeding which the Tribunal proposes to adopt.
- (2) The parties shall be heard in such order as the Tribunal may determine, and shall be entitled to give evidence, to call witnesses, to question any witness and to address the Tribunal on the evidence and the subject matter.
- (3) At any hearing the Tribunal may, if it is satisfied that it is just to do so, permit a party to rely on grounds not stated in the party's pleadings or the reply where such grounds were not within the knowledge of the party at the time of filing.
- (4) The Tribunal may make orders to secure the attendance of any person before the Tribunal, discovery or production of any document concerning a matter before the Tribunal as it deems necessary.
- (5) The Tribunal shall require any witness giving evidence to swear an oath or affirm and for that purpose it may administer an oath or affirmation.

20. Mediation

- (1) The Tribunal may, on its own motion or upon the request of parties, order that any in a proceeding be mediated before a member of the Tribunal or an independent person.
- (2) The member of the Tribunal who sits as a mediator under paragraph (1) shall not, unless the parties consent, sit on the panel hearing the substantive matter.
- (3) Costs of the independent mediator shall be borne by parties.
- (4) The Tribunal may refer the parties to such other forms of alternative dispute resolution as it deems appropriate.

21. Appointment of experts

- (1) The Tribunal may, in any proceeding, either on its own motion or on the application of any party, appoint a person who is independent of the parties with expertise in the subject matter of the dispute to assist and advise the Tribunal on the matter.

- (2) The parties may cross-examine the expert who shall disclose any interest in the matter before the Tribunal or any subsequent interest acquired relating to the matter.
- (3) The Tribunal shall be responsible for any fees and expenses incurred by the expert appointed under paragraph (1) unless it otherwise directs.

22. Upholding the dignity of the Tribunal

- (1) If a person—
 - (a) fails to attend the Tribunal after having been required to do so;
 - (b) refuses to take an oath or affirmation before the Tribunal;
 - (c) fails to produce any article or document when lawfully required to do so by the Tribunal;
 - (d) knowingly gives false or misleading evidence before the Tribunal;
 - (e) at any sitting of the Tribunal, insults any member or officer of the Tribunal or interrupts the proceedings; or
 - (f) fails or neglects to comply with a decision, order, direction or notice confirmed by the Tribunal, the Tribunal may make any necessary order to uphold its dignity and integrity.
- (2) The Tribunal may exclude from the hearing any part of the evidence received from any person who is in contempt under paragraph (1) until the contempt is purged.

23. Decisions of the Tribunal

- (1) Unless a unanimous decision is reached, a decision on any matter before the Tribunal shall be by a majority of votes of the panel and in case of an equality of vote, the Chairperson or the person presiding shall have a casting vote.
- (2) The decision of the Tribunal shall—
 - (a) be reduced to writing;
 - (b) contain a statement of the reasons for the decision;
 - (c) be signed and dated by the Chairperson and every member who heard the matter; and
 - (d) delivered orally.
- (3) The decisions of the Tribunal shall have the effect of a decision under the Civil Procedure Act ([Cap. 21](#)) and any rules made thereunder.
- (4) In addition to its decision, the Tribunal may make non-binding recommendations to a National Sports Organization or other relevant party arising out of any proceedings.
- (5) The Tribunal may also make recommendations to the Ministry, the National Sports Organization or the Registrar to suspend or withdraw funding or services made available to a party.
- (6) The Tribunal may recommend that changes be made to any applicable rule, policy or procedure of the relevant National Sports Organization.
- (7) In addition to making the recommendations in paragraphs (5) and (6) the Tribunal may issue—
 - (a) a reprimand or warning;
 - (b) suspend the person from activities of the National Sports Organization;
 - (c) suspend the person's membership of the National Sports Organization or its members;
 - (d) impose a fine;

- (e) impose other penalty as the Tribunal considers commensurate with the offence;
- (f) combination of any of the above penalties as the Tribunal thinks fit.

24. Decisions on selection or non- selection

If the appellant succeeds on an appeal against selection or Non-selection of a national squad, the Tribunal may—

- (a) refer the question of selection back to the National Sports Organization for determination;
- (b) allow the appeal and conclusively determine the issue of selection of appellant if—
 - (i) it would be impracticable to refer the matter back to the National Sports Organization within the time in which entries to the relevant event or competition are to be submitted; or
 - (ii) there has been disregard of the selection criteria by or on behalf of National Sports Organization or that it would be unlikely that the selection criteria will be properly followed or implemented.

25. Application for review

- (1) The Tribunal may on the application of any party or on its own motion review a decision in any of the following circumstances—
 - (a) where after the exercise of due diligence, a new and important matter or evidence has been discovered which was not within their knowledge or could not be produced at the time when the decision was made;
 - (b) mistake or error apparent on the face of the record; or
 - (c) any other sufficient reason.
- (2) A party aggrieved by the decision of the Tribunal may apply for review in writing and shall file the application within twenty-one days of the decision.
- (3) The applicant shall within fourteen days of filing the application serve the application and the supporting documents on all the parties.
- (4) A party served with an application for review shall within fourteen days of service of the application file and serve a statement of response.
- (5) The Tribunal shall make such order in relation to the application for review as it considers fit.
- (6) No application shall be made to review a decision made under paragraph (5).

26. Appeals form the decisions of the Tribunal

- (1) Any party dissatisfied with a decision of the Tribunal may lodge an appeal to the Court of Arbitration for Sport if the rules or policies of the relevant International Federation or National Sports Organization so provide.
- (2) An appeal to the Court of Arbitration for Sports shall be lodged within the time specified in the relevant rules of the International Federation or National Sports Organizations or within fifteen days of the date of the decision of the Tribunal where the relevant rules of the International Federation or National Sports Organizations do not specify the time.
- (3) Unless the Tribunal or the Court of Arbitration for Sport otherwise order, an appeal shall not operate as a stay of the decision to which the appeal relates.

27. Costs

- (1) The Tribunal may, at any stage of the proceedings, make any order relating to the payment of costs by one party to another in respect of the whole or part of the proceedings including an order for security for costs as it considers fit.
- (2) The Tribunal may direct any party against whom an order for costs is made to pay such costs to any other party in a lump sum or such proportion of the costs as may be just within twenty-one days of the decision of the Tribunal decision relating to costs.
- (3) The Tribunal or party may enforce an order relating to cost as if the order was an order under the Civil Procedure Act ([Cap. 21](#)) and any rules made thereunder.

28. Filing fees

- (1) Parties shall pay to the Tribunal such filing and other fees, including fees for service by the Tribunal for any notice or process.
- (2) The Tribunal may, if it considered it to be in the interest of justice, or on grounds of financial hardship on the part of any party waive all or part of the filing fees payable.

29. Irregularities

- (1) Any irregularity resulting from failure to comply with any provision of these Rules may not render the proceedings void where the irregularity does not occasion a miscarriage of justice.
- (2) The Tribunal shall, where any irregularity has come to its attention and is satisfied that a person has been prejudiced by the irregularity, give such directions as it considers just to cure the irregularity before reaching its decision.
- (3) The Tribunal may correct clerical mistakes or errors in any document, recording, direction, order or decision of the Tribunal, arising from an accidental omission, by a certificate issued by the Chairperson.

30. Recording of proceedings

The Tribunal may record proceedings before it in such manner as the Tribunal may determine.

31. Protection from personal liability

The Chairperson, deputy Chairperson, member or secretary of the Tribunal, shall not be liable for anything done in good faith in the performance of their functions.

32. Oath of office

A person who is appointed Chairperson, deputy Chairperson or member of the Tribunal shall take and subscribe to the oath of office administered by the Chief Justice before assuming the duties of that office.

33. Disclosure of interest

- (1) Where a member of the Tribunal, has any interest, that could conflict with the proper performance of the member's function, the member shall disclose the interest to the parties to the proceedings and may not participate during any deliberations on the matter by the Tribunal.
- (2) Parties shall be at liberty to determine whether the member who discloses interest shall participate in the deliberations.

34. Quorum of the Tribunal

- (1) Except where otherwise specifically provided for in these Rules, for purposes of proceedings before the Tribunal, quorum shall be Chairperson or a member acting as Chairperson and two members.
- (2) The Chairperson or deputy Chairperson may select a panel comprising of fewer or more than three members.

35. Official seal

The Tribunal shall have an official seal.