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A STUDY OF THE LEGAL ASPECTS OF DOMESTIC  
WITH SPECIAL REFERENCE TO FOOTBALL  
ASSOCIATIONS IN KENYA

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ABBREVIATIONS

A.C.	-	Appeal Cases
A.F.C.	-	All Footballers Cooperative
All E.R.	-	All England Law Reports.
C.L.J.	-	Cambridge Law Journal.
Ch. D.	-	Chancery Division
Cap.	-	Chapter
E.A.	-	Easter Africa Law Reports
F.C.	-	Football Club.
K.F.F.	-	Kenya Football Federation
K.N.S.C.	-	Kenya National Sports Council
L.R. Exch	-	Law Reports of Exchequer Chamber
M.L.R.	-	Modern Law Reports
Q.B.	-	Queen's Bench
W.L.R.	-	Weekly Law Reports.

LIST OF CASES

- Angaha v. Registrar of Trade Unions /1973/EA 297
- Bacon v. Pianta 40 Australian L.J.R. 187.
- Currie v. Misa (1875) L.R. 10 Exch. 153.
- Edwards v. Sogat? /1970/ 3 All ER 689.
- Enderby Town F.C. v. Football Association /1971/ 1 All  
E.R. 215.
- Fisher v. Keane (1879) 11 Ch. D. 353.
- Fountaine v. Chesterton 12 Solicitor's Journal 690.
- Gilmore Application, Re /1957/ 1 All E.R. 796.
- Huxham v. Trustees 21 Australian L. J. 240.
- John v. Rees /1970/ Ch. 345.
- Lee v. Showmen's Guild 2/1952/ 2 Q.B. 329.
- Nagle v. Feilden /1966/ 1 All E.R. 689.
- Rigby v. Connol (1878) 14 Ch. D. 482.
- Russel v. Duke of Norfolk /1949/ 1 All E.R. 109.
- Solomon v. Solomon & Co., /1897/ A.C. 22.

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ABSTRACTION

"Those who wish to confer upon the committee or other governing body of a club or association a power to act unfairly or arbitrarily in derogation of common and universal expectation must make it plain beyond a peradventure that this has been done."

FOUNTAIN v. CHESTERTON 11 SOLICITOR'S

JOURNAL 690 per MEGARRY, J.

## INTRODUCTION

The field of study we shall discuss in this paper is relatively new in terms of the availability of research material. This is however not an excuse for any thorough research which may enable us to discover new facts.

Football clubs as we know them are voluntary associations which are recreational in nature. The popularity of the game in Kenya is clearly indicated by the multiplicity of soccer clubs and the involvement in the game by a good deal of high level manpower from all sectors of public and private life. The game attracts the largest number of spectators so far in Kenya.

It therefore looks unfortunate that although soccer is so popular, no thorough study has been made by any scholar in Kenya to answer some of the puzzling problems in this important area of human interaction. The fact that association is a social factor cannot be underestimated; and when a group of persons come together with a common goal, rules to regulate their conduct must be laid down.

The paper will concentrate mainly on the rules of clubs and how they are expected to be applied. We expect them to be applied fairly. The committees consisting of club officials are the domestic tribunals entrusted with the task of settling disputes and generally

administering the club affairs.

As we shall see in the body of the thesis, domestic tribunals enjoy constitutional protection. If they conduct their affairs within the constitutional framework, the government through the courts cannot interfere in their affairs. Court will only come in when the rules set up by the domestic tribunals have been violated as against the interests of an individual.

The author believes that the paper will be of use to all soccer fans; and also to all those law scholars who like the display of technical legal rules that we always deal with in ordinary life.

## CHAPTER ONE

DOMESTIC TRIBUNALS

"It is impossible even to enumerate the countless thousands of voluntary associations which exist for one purpose or another"  
William Robson: Justice and Administrative Law,  
p. 317.

1.1 What is a domestic tribunal?

The word 'domestic' in its ordinary sense would mean simply 'to do with the home or family.' In the legal sense, the term is used to connote an association which is unincorporated and having members with some common goal. Such associations may be formed to protect social, intellectual, religious, economic, political or sporting interests. They are distinct from other tribunals basically because their jurisdiction is based on contract as opposed to statute.

The constitution of Kenya guarantees the freedom of association. Section 80(1) states as follows:-

"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of ... association ... and in particular to form or belong to trade unions or other associations for the protection of his interests."

Apart from this constitutional provision, associations are not regulated by any statute. The freedom

envisaged in the constitution is a complete safeguard of all these numerous bodies, notwithstanding the exceptions underlined in Section 80. of the constitution. The constitutional provision therefore gives domestic tribunals a free hand in organizing themselves freely without the immediate interference of the government. This factor has made some clubs so powerful that their decisions usually affect the victim thoroughly.

The effectiveness of the rules of an association will depend on its constitution. The constitution is a social contract<sup>1</sup> which each member has to sign with the association. A member may accept a club rule that if he is found guilty of a certain prescribed misconduct and the committee of the association decides that it should be reasonable for such member to be either suspended or expelled, this should be so. In fact in such clear cases, law courts should not be in a position to entertain any complaints or suits.

As we all expect, the state would always wish to intervene to some extent in the running of private associations, for "a legal system by its very nature requires units upon which it can bring its influence to bear in the business of regulating relations."<sup>2</sup>

Domestic tribunals have got no existence apart from the members who constitute them from time to time. They differ from partnerships "because the members are not associated with a view to profit."<sup>3</sup>

Parenthetically, therefore, a domestic tribunal is any club, association, organization or profession which has come together as such and has made a code of rules and regulations for dealing with the day to day matters that may arise under the rules. Although the entire body of members is generally referred to as a domestic tribunal, the committee of such association is the tribunal, caring for the domestic affairs of the members.

### 1.2 Why they are needed.

The neo-capitalist view of domestic tribunals is that they relieve the feeling of passiveness and isolation. This may sound a bit too bourgeois. No wonder, that is the impact of the welfare state. The 19th century doctrine of laissez faire cannot thrive unabated.

Due to the wide powers they wield, and despite the fact that states try to fit them in the socio-economic and political context, these bodies help very much in stabilizing a given political system and also gives it a mature outlook. They serve, in the words of Hon. Jeremiah Nyagah,<sup>4</sup> as 'a buffer' - 'a shock-absorber' - between the individual and the large modern state machinery. They also protect the rights of each one of its members to earn a living and to take advantage of all that goes with it. A professional body will always try hard

to register disappointment at any disreputable and unscrupulous attack. To such a body therefore, it is vital for its existence that some measure of personal freedom should be surrendered to the governing body. The governing body will then be endowed with the power to act on behalf of the entire association. This in fact is what the contract basis of these associations entails.

As much as they protect the interests of their members, associations are expected to adjudicate upon any matter that comes before them arising from within to the satisfaction of both parties. The operating principle being that justice must not only be done but it must be seen to be done.

In Enderby Town F.C. v Football Association,<sup>5</sup> an association had made a rule which excluded legal representation for club members. In dismissing the appeal and holding that legal representation was not a right in domestic tribunals, Lord Denning, M.R. observed that a tribunal was a master of its own rules and procedure; and that if in the proper exercise of its discretion it refused to allow legal representation, the courts will not interfere. He averred further that justice can be done in domestic tribunals better by a good layman than by a bad lawyer, especially in activities like soccer where points of law are not likely to arise.

In Lee v Showmen's Guild of Great Britain<sup>6</sup> the question was whether a member had infringed a rule which prohibited specific kinds of "unfair competition." It was held that it was for the tribunal to decide whether there had been unfair competition because they knew better what their rules state. Again Denning L. J. (as he then was) was ready to defend the role of domestic tribunals. He forcefully argued that the rules are the contract between the members of the Guild. A wrong interpretation given to the rules would definitely give unjust results.

Domestic tribunals are better placed than courts of law to take evidence and decide upon a dispute arising from within their jurisdiction because of the wealth of experience they have in their profession or calling.

### 1.3 The Constitution as a contract.

Chapter V of the Constitution of Kenya talks about fundamental human rights. Association is one of them. But exceptions to the right of association have to be observed. It was in this right that Angaha v Registrar of Trade Unions<sup>7</sup> was decided; public interests were being violated by group interests. The concept of contract apart, it has been a common notion in private bodies that where property is not involved, the courts cannot come in for any aid - because a contract must have a money value.

In Rigby v Connol<sup>8</sup> an injunction could not issue because there was no property value.

There seems to be no justification for such an attitude although we know the part property plays these days.

Fiduciary relationship in clubs is more realistic. Most domestic tribunals entrust their property if any to their trustees. The trustees are usually the decision-making body of the club and members are the beneficiaries.

The contract approach has however been the most practical. If an association has acted in accordance with its rules as we have seen, there is no occasion for judicial intervention. When the rules are ambiguous or do not cover the point in dispute and there is no authoritative interpretation by an organ of the group or association, a reasonable provision should be supplied just as in the construction of any other contract.

This contract theory is not however clear in some respects. It does not for example make it clear who the parties to the contract are and might assume a multiplicity of contracts among all members. The approach does not also explain certain judicial behaviour unique to the associational context, such as lack of personal liability of members responsible for an improper expulsion. The

fact is that a new member does not think of himself as forming any such vast network of executory transactions with the other members, but as entering into a present relation with the association. Chafee<sup>9</sup> compares it with the contract social of Rousseau or the Charter of Darmouth College.

A  
Foot notes

The relation of the member to an association is partly shaped by the terms of its constitution as they exist when he joins or as they are afterwards altered in accordance with provisions for their amendment; but these writings should not be construed as constituting a contract in the ordinary sense. This will be too narrow a view and might even limit activities of the members.

1.4 The types of Domestic Tribunals

Private associations fall into two categories: those in which the management of the affairs of the association is in the hands of the members themselves - usually referred to as "members' clubs"; and those controlled by a proprietor to a greater or lesser extent - called "proprietary clubs".

a) Proprietary Clubs

The basis of these types of clubs is contractual. A contract exists between each member of the club and the proprietor. The member's rights and liabilities will

depend on this contract. Some proprietary clubs are purely commercial enterprises in which the members are mere customers of the proprietor. The proprietor will own all the premises and all necessary services which are incidental to the club.

All soccer clubs in Kenya except for a few clubs adjoined to companies rely on public play grounds which are owned and manned by the social services department of local authorities. When they wish to organize for any practice they have to hire a sports ground such as the Nairobi University Sports Ground. Gor Mahia F.C. has made a move towards owning its own pitch, and this is very encouraging.

b) Members' Clubs.

In these clubs, the coming together of members as one body may create rights and liabilities between one member and another on the one hand and each member and the association on the other. Such rights and liabilities are based primarily on the law of contract and also on the law of tort. A jointly owned fund is established by the payment of subscriptions - which we can call in ordinary contract as consideration. Consideration is:-

"Some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by another."10

In return for consideration, the member becomes entitled to whatever rights are agreed upon at the time the contract is entered into. They are all to be found in the constitution or rules of the club.

The members in this type of club may, if they all agreed, put an end to the club. In that case they will be entitled to have asset divided amongst them, as long as all debts and liabilities, if any, have been settled. Perhaps one area of trouble has been where the members' club gets some aid from some other organization or who are to benefit when it is dissolved.<sup>11</sup>

In Backon v. Pianta,<sup>12</sup> a testator by his will gave the whole of his estate to the Communist Party of Australia for its sole use and benefit. The Communist Party of Australia is an unincorporated voluntary association. The question arose as to who could benefit from the gift under the will. It was held by the court that in the circumstances of the case, including the form of the gift to the party and the party and the fluctuations of membership from time to time, the only criterion was to give the members who were members at the time the gift was made. Accordingly therefore, a gift to an unincorporated association operates prima facie as a gift to the individual members at the time when the bequest becomes operative. Many questions however still remain unanswered. For example, how about if most of the members who existed at the time

the bequest was made are since dead, can the survivors make full claim to such property? Our courts have not yet been confronted with these problems.

Moreover, the question might arise as to whom to sue since such associations are not corporate entities. The aggrieved party has to show that the association is an organized combination, responsible for the act of which he complains. For example on 17th November, 1981, two players of Scarlet F.C. were suspended for a year and the club fined Shs. 1,000/= for allegedly beating a referee. If these two players want to sue the body that suspended them, (the National League Committee),<sup>13</sup> they will only succeed if they can show that the Committee did this as an organized combination. If they try to marshal the membership of the committee on the basis of individual liability, as for example saying that the Chairman of the committee did it, they cannot succeed.

In the case of a club, if a member is suspended by the club, he can sue the club if he feels the decision was wrong. He first has to exclude those who joined the club since his cause and as a member, he has to make it very clear that he excludes himself.

When the tribunal is deciding upon any matter, it only needs to be guided by the ordinary principles of natural justice. The accused also has to be given

adequate notice to enable him prepare his case. If a member is proceeded against wrongly, the court is competent to declare any resolution passed by the committee without previous notice to him to be null and void, and may restrain the committee by injunction from interfering by virtue of such a resolution ~~on~~ with his rights of membership. Other remedies open to the member are declaration and damages.<sup>14</sup>

## CHAPTER TWO

### FOOTBALL CLUBS IN KENYA TODAY

#### 2.1 Introductory

Soccer is increasingly becoming a popular game in Kenya. No wonder, these are signs of an increasingly bourgeois society where social gatherings are a means of relief. On the other hand, soccer administration has proved to be a stepping stone to politics as experience has shown. The leadership of football clubs is generally the middle and upper class and hence the full representation by the bourgeois class. The clubs are growing so many in number and at provincial level, so many have been denied the chance of joining the league. The Kenya Football Federation is urged to register as many of these clubs as possible.

We now proceed to look at the regulatory and administrative organs of football in Kenya at national level and at international level.

#### 2.2 Kenya National Sports Council (KNSC)

This body serves as a "shock-absorber" between the government and the various sports clubs, football clubs inclusive. It is the national body responsible

for promotion and co-ordination of all sporting activities at national level.

The principal officers of K.N.S.C. are the chairman, who at present is Mr. Charles Mukora and the Secretary, Mr. James Tirop. The Secretary to K.N.S.C. has almost invariably been the Principal Sports Officer of the Government in the Ministry of Culture and Social Services.

### 2.3 Kenya Football Federation (KFF)

When soccer politics rose to their top levels, coupled with malpractices and misuse of powers, a committee was set up to investigate into better ways of running football affairs in Kenya. One of the major recommendations was to the effect that the government of Kenya should recognize the Football Association of Kenya (now KFF)

"as the sole national organization responsible for all aspects of football administration in Kenya."1

The situation before this committee chaired by Mr. J. G. Njenga, was that so many organizations claimed to run football affairs in Kenya. The report noted that in Nairobi alone, Seven Organizations were exercising authority, more or less independently, over seventy-seven football clubs. The International Federation of Football Associations (FIFA) could not know which body was representing Kenya in international soccer. Hence

the formation of the Caretaker Committee. The Report recommended that there be set up a Football Association of Kenya, the precursor of K.F.F.

Accordingly, the Kenya Football Federation is vested with the powers to "exercise central control and direction in such matters as constitutions, finance fixtures and the general administration affecting the welfare of all football organizations in the country." It is therefore the sole organization which represents Kenya in the field of football at international level.

The rules of F.I.F.A. are adopted by the K.F.F. Constitution with regard to all matters pertaining to good soccer. For example, under Article 32, it is stated that:-

"Each member of the Association, direct or indirect shall play or control Association Football according to the Laws of the Game as laid down by the International Football Association Board, which alone has authority to alter them."

The Kenya Football Federation has a right to discipline any member or player who does not adhere to the laws of the Game. Under Article 26 (b), it is stated that all players shall be registered with KFF and that they must comply fully with the rules and regulations of any competitions in which their club takes part. This ensures that KFF controls all players and the clubs they belong to quite firmly, and because all complaints and misconduct are channelled through

one recognized organ, the earlier confusion has been wiped out.

Under Article 26(j) clubs are given the right to suspend a player or players who are guilty of misconduct or any breach of club disciplinary rules. The weight of misconduct is a matter for the disciplinary committee, and the player who faces disciplinary action "shall have the right to appeal."<sup>2</sup>

Most of the soccer issues subsequently go through the KFF and then to the K.N.S.C. before they can be sorted out by the relevant government department.

We indicated earlier that sometimes, these two bodies come in conflict. One of the most recent illustrations is when the October KFF elections were called off. The report in the Daily Nation (21st October, 1981) was as follows: "K.F.F. Elections Put off"

"The Kenya Football Federation National Elections scheduled for this Saturday have been postponed indefinitely ..."

This was disclosed by KNSC administrative Secretary. This would appear normal but if one 100 ks deep into it, KNSC is a government representative in Sports affairs. At the same time, the KFF Committee at the movement had been suspended under the Chairmanship of Mr. Dan Owino. In a reaction to the postponement of the elections, Mr. Owino hit out at "some officers in public service" who he

alleged were biased in carrying out functions placed on them by the KFF and the Ministry.

The meeting convened in Nakuru on 24th October, 1981 was a KFF Special General Meeting. Mr. Owino stressed that:-

"The role of other parties in these KFF matters is limited to non-constitutional matters within the harmonization of practical aspects as has discussed all along between KFF and the Ministry of Sports."

Of course one would say that Mr. Owino's contentment was a mere campaign smear because he wanted to recapture his seat. The correct position is that the ruling by the KNSC to suspend the national elections of KFF was illegal. We confirmed from the Registrar of Societies' Office at Sheria House and concurred with the official who told us, that it is only members of a society who are legally competent to convene its general meeting for the purpose of elections. The Minister for Culture and Social Services who ordered the elections of KFF should have arranged for the meeting in consultation with the KFF officials. There was a great confusion which needed a legal expert to give proper interpretation to the rules - governing these bodies. It is a very sad fact that even the Minister. could not know what to do. When Mr. Owino pursued the matter further by Court action, his efforts were frustrated by the seemingly improper ruling.

To me, the whole exercise was a sham and should be declared null and void and an injunction should have been granted to restrain the elections from being held in such circumstances. It was a failure on the part of the Ministry, and we hope it is a warning to them that such miscalculation will never occur any other time.

#### 2.4 Kenya on the International Scene

Kenyans are soccer lovers and have on several occasions carried the national flag through their major soccer clubs. Soccer at international level is more fascinating because local challenges are transformed into a more competitive wider scope of training and technique. The most outstanding teams in Kenya at this moment are A.F.C. Leopards and Gor Mahia F.C. The two are generally of equal strength and have a wide cross-section of supporters. But generally, the former is predominantly Luhya tribe and the latter Luo tribe. Most players in the Kenya National Football League come from one or the other of these two tribes.

These two leading teams have almost invariably represented Kenya in most international tournaments. Take for example ~~the example~~ the much coveted East and Central African Club Championships. About eight nations in this region participate, and Kenya has been winner of this trophy for four consecutive years now. In 1979, AFC Leopards (then Abaluhya FC) were the winners of the

prestigious regional tournament. They beat K.C.C. of Uganda 1 - 0 in Mogadishu, Somalia on February 10th in order to win the cup. Gor Mahia F.C. were the winners of the cup in 1980 and 1981. In 1982, AFC Leopards F.C. won the cup again after beating Rio Tinto F.C. of Zimbabwe 1 - 0 on 27th February 1982, at Nairobi City Stadium.

About the 1982, Championships, A.F.C Leopards met Gor Mahia in the semis on 23rd February. It was a goalless match until penalty stage when Gor Mahia was beaten. Gor Mahia refused to accept the defeat. The matter had to be settled by the confederation of East and Central African Football Association (CECAFA). The ruling by CECAFA as was seen by right thinking members of society was made in favour of AFC Leopards and in fact Gor Mahia was threatened by disciplinary action if they could not accept the truth.

The rivalry continues between the two clubs even in international tournaments but always somehow, and without prejudice, Gor Mahia has let the country down with its own internal scuffles while the country relies on it in some international matches.

#### Most Recent Gor Showdown

Without prejudice to the general political atmosphere in Luoland, Gor Mahia F.C. came up with some miscalculation when their representation was most needed by the nation. On 15th April, 1982, events changed for this club which

hitherto had been enjoying peace and stability and was also in the good books of the government. They were supposed to travel to Madagascar over the following weekend for a return match of Africa cup. Somehow, when they were asked to move from a city hotel to a school camping site in the outskirts of Nairobi, all the 19 players refused and went their own way. The matter grew so serious that the club officials had to put their legal powers in play. The trip was cancelled and a meeting summoned. The ensuing disciplinary action on Gor players was severe. Four of the nineteen players were suspended for three years each<sup>3</sup> and two others suspended for a year each.<sup>4</sup> The captain and his assistant were relieved of their duties. The harsh action was supported by many people. Mr. Oloo-Aringo had earlier commented that the team was to go to Tananarive "as national representatives and that was why the National Anthem was played for them as national flag carriers." He further said that their action "bordered on the betrayal of the nation which was tantamount to treason."

"Sportsmen are no longer members of this or that team or club but national representatives."<sup>5</sup> The Gor crisis could not be dismissed as a club affair. The suspensions have denied the country some of her best players. Dr. Masiga, AFC Leopards Chairman, said that he was least pleased by what had happened with Gor Mahia because the challenge of AFC Leopards rests with these

arch-rivals. "It is no occasion to be happy about," he concluded. Mr. Abby Simwa, AFC Leopards Secretary had a slightly different view. He said that the KFF was very slow in exercising their powers. "The best thing would have been immediate and appropriate response by the KFF: the Federation could have fined the Club en masse," he averred. The KFF gave a cold shoulder to the whole problem under the cover that they were still investigating the matter.

## 2.5 Other Clubs

The two major crowd-pulling clubs we have discussed are an example of purely voluntary clubs, Most other clubs of high standing are institutional clubs such as Kenya Breweries, KTM and Baba. The players in these teams this is a great advantage because many players would also like to have a regular job.

These other clubs are however registered in the same manner as any other and also benefit from the exemption clause of the Societies Act. Teams such as Scarlet and MoW have remained very strong throughout the first half of the 1982 super league. We would like to see some of these other teams winning this most exciting national tournament.

## CHAPTER THREE

CASE STUDY OF A FOOTBALL CLUB AFE LEOPARDS  
SPORTS CLUB.

During the National Leaders' Conference in Nairobi in 1980, all associations bearing tribal names were ordered to disband. Many did so. Football clubs were advised to bear names which do not indicate tribal alignments. Abaluhya F.C. was the first club to change its name on 16th November, 1980. Its new name is now All Footballers Cooperative Leopards Sports Club (in short AFC Leopards S.C.). The new name has brought about even greater unity because Luhyas are fond of calling themselves 'tsingwe' (leopards), And todate therefore, the club still grows from strength to strength.

### 3.1 History of AFC Leopards S.C.

For purposes of convenience, I will refer to the club as 'AFC' at all times even before it adopted this name.

In March, 1964, a few old soccer fans convened a series of meetings both in Nairobi and back at home in Western Province to look into the possibilities of bringing together the numerous luhya dominated teams in order to form one major club. The outcome was what came to be known as Abaluhya United F.C. The decision was applauded

many people because it aimed at unification <sup>of</sup> soccer clubs in order to improve the standards on national and international scale. The colonial era of divide and rule had ended and Kenya was already in the process of moulding a national culture. The constitution of Kenya provided for freedom of association and we could not look at it in a narrow sense lest it serve to sub-divide us even more.

The club started in very high gear and within a month of its inception, it won the holly constested Ahsan cup. At this early stage, the club had combined the best brains from the administrations of the satellites which merged to form the conglomeation. The first chairman of the club, Edward Kidoya saw to it that the collective will of the club won Saba Saba Cup which had been introduced to mark Tanganyika's Independence Day. The match was against Luo Union F.C.

As time went by, the inner circles of administration started developing tensions. The rules of the club ~~had~~ had been set up but there was flagrant disregard of the same. The plyers who sensed that there was to be a major showdown overthrew the chairman. Mr. Joseph Akoya, and took over the leadership of the club. Joe Kadenge, the legendary footballer of the sixties acted as the chairman and promised new elections within a month or so because the players expected to have known what the trouble was within that period.

It is very discouraging that, the committee was found to be indisciplined and in total chaos. It has been the custom to have players blasted for bad behaviour. Was the move taken by players in this case fair? I say yes! History and law have taught us that clubs should be controlled on a collective responsibility basis and any member strictly so called has got interest in whatever is going on in the club. For the more, due to the alleged matpractices which could not be denied specifically by the officials who were ousted, the players were justified in seizing the reigns of power only to extend they did. It was commedable for them to promise to restore an elected executive committee.

In May, 1966, a new committee was set up under the chairmanship of Mr. Christopher Omufira who promised to restore the lost honour of the club. Joe Kadenge was elected player-coach. In the meantime, Abaluhya FC United FC has won the 1966 Kenya National Football league. Out of the twenty-two matches played, the club won fifteen of them and lost only two. For the second time running, the club won the 1967 Kenya National Football league and became the first club in the history of National league competitions to hit such a record. They won eighteen matches out of twenty-two and lost only in one.

#### Abaluhya F.C. "Banned"

Abaluhya United F.C. had its share of problems in the year 1968. Trouble started right in January, in the year 1968 when the club was suspended

for one year and three of the officials of the executive committee suspended for three years each. The disciplinary action was taken by the Football Association of Kenya under the Chairmanship of John Kasyoka. The reason for the harsh discipline was that, the club failed to play an exhibition match against Kisumu Hotstars in honour of the President of F.I.F.A. who was then touring Kenya. F.A.K. threatened to ban the club but the repercussions out of the threat were beyond proportion. The Nairobi City Stadium and Nakuru's Afraha Stadium had to be closed down.

Two weeks later, the football Association lifted the one year suspension on the club and instead, the club was fined Shs. 1,000/= and the suspension of the three officials for three years each was reduced to six months each. An <sup>interim</sup> ~~interim~~ Executive Committee was set up under the chairmanship of Mr. Albert Ongaro. Paradoxically however, the teams services were so much needed by fans and Nation. For no sooner was the ban lifted than the club was selected to represent Kenya in that year's Africa club cup championship. The club was however eliminated in the semi-finals by the Etoile Filante of Togo after a commendable performance all through.

Earlier 1967 East Africa Challenge Cup, Abaluhya United F.C. had paraded nine players in the national team. The only additions to complete the team up were James Sianga (goalkeeper) and William Ouma - both from

Kisumu Hotstars. The team with that formidable combination won the cup. It would therefore have been big blow if A.F.C. would have stayed away from the soccer world for the whole of the 1968 season.

Still the club needed a strong committee or at ~~the~~ least the restoration of the officials who had been suspended now for six months. In the meantime, the suspended officials had failed a case for an injunctim in the High Court of Kenya. Their argument was that F.A.K. which was the defendant in the case had acted in bad faith in suspending them. They sought an order to restrain the F.A.K. from interfering with them in their enjoyment of the use and benefit of the Association, and also to restrain the officials of F.A.K. from enforcing the decision.

Granting a temporarily injunction to the A.F.C. officials.<sup>1</sup> Mr. Justice Harris noted that the proceedings were of considerable importance to ~~kw~~both the individuals plaintiffs and the club who were acting within their powers to go to court and have the differences between them and defendants resolved regally. This was a major test for AFC, and it succeeded. The success apart, it all proved that the F.A.K. arrived at the decision through some irrelevant consideration and intuition which the court assessed and found it lacking substance in the circumstances of the case.

In 1971 and 1973, Abaluhya F.C. won the Kenya National Football League. In both years, the club won with unbeaten record. In the 1971, victory, the club won 17 matches out of 19 and drew in two. Constitutionally, during this period, Peter Shiyuka was the Chairman of the club. His committee had problems with players who again seized power on 19th November, 1974, and appointed interim officials under Joshua Bulico. When election were held in June 1975, James Wamiya took over as the chairman.

Power ~~of the~~ struggle was the order of the day in the club during Wamiya's tenure of office. In January 1976 Joe Kadenge resigned his post of team manager because of being frustrated by some officials and members of the club. The club thus lost one of the best talents it had ever had. In March, Jonathan Niva was relieved of his player-coach role. Anyanzwa took over. As if this was not enough, Wamiya again suspended three other players. No wonder, there was a 'coup' attempted against him in december although it never succeeded.

In elections of 23rd October, 1977, Wamiya was voted out and Paul Nakitale took over as Chairman with Mr. Abby Simwa as the Secretary. The Wamiya era proved to one of the most turbulent in the A.F.C. administration since the inception of the club and perhaps upto now. He did not have the administrative talents and infact had constant fear of non-existence enemies around him. He always resorted to his powers in the club rules to apply

quest for such a move. The Rules of the club have to apply where necessary and to arrest a given genuine situations.

Although Wamiya was defeated in the October 1977 elections, he was not satisfied with the verdict. He wanted to drag the club in yet another very unwarranted legal battle. He appealed to the Registrar of Societies against the outcome of the elections and especially the block voting adopted. The Registrar could not intervene because his was only to get the names of those officials who were validly elected. On 28th November, 1977, the Registrar accepted those officials who were voted in on 23rd October. In deed the new committee did alot for the club and saw the club reach its heights in soccer. One of the most celebrated victories in the club's history was Mogadishu victory of 1979. A.F.C. won the East and Central Africa club cup championships without any prior preparations. At the same time, the club was <sup>runner</sup> ~~manue~~ up in the K.N.F.L. At lot of credit has been placed on peace and tranquility. He did not seek for re-election at the Annual General Meeting of 24th February, 1980 and he was replaced by Dr. Walter Masiga who still holds the portfolio upto now. Mr. Simwa still remains the Secretary

*Mr. Nakitare who restore*

A.F.C. Leopards have been National league champions since 1980. If they win this year's super league title, they will take the trophy for good. They hold both the National league title and the East and Central Africa Club

Cup Championship title. The club is still growing stronger and tribute should be paid to the present committee, the members and players who have so far maintained good discipline in the club.<sup>2</sup>

### 3.2. The Day To Day Activities of the Club

#### a) Finance

AFC Leopards S.C. is neither a political<sup>3</sup> nor a profit making organisation, but as one of the objects of the club, it is supposed<sup>to</sup>:- "provide for and acquire a club house, a ground and any other property..."<sup>4</sup> The club can own properties under this clause to enable it carry out the many financial obligations that it has. This is necessary because if the club has to depend on what it gets from gate collections in stadium it cannot be able to put up with the vigorous demands facing club. Because AFC is an affiliate to KFF, it can only use the stadium after it has been hired by the KFF. Out of the gross collection, Shs. 300/= goes to hiring the stadium, 10% of the remaining amount to the City Council in the case of City Stadium, but for Mombasa, the rates are 20 percent and 15 percent for Nakuru. The KFF itself takes 20 percent of the collection. Out of the balance referees' allowances and transport have to be paid. Usually the transport is 1st class train for those who can use it or its equivalent. The following also have to be paid from the balance security, Ambulance, St. John, and the gate checkers. There is

then left the so called second balance from which the two clubs share 50 percent each. Floodlights have to be paid for also in cases where matches begin at 6.00 p.m. One therefore finds that in the final analysis, clubs may come out with little or no money at all. A club travelling from Western Kenya to the Coast may have to incur need to be remunerated as often as possible.<sup>5</sup> This has forced AFC to stress more on the issue of property though it would not have been really in its interest under the object in Rule 2 para. (a).

For the good running of the property, the Rules envisage a body of trustees in the club. Under Rule 10 para. (a), there should be three trustees "who shall be members of the club and shall be appointed at the annual general meeting..." The general rule that trustee of a club shall be members of the committee has been violated by the Rules of AFC Leopards. This brings one thing clear in mind; the functions of trustees with this formulation and the committee will at one stage conflict. It is very unlikely under the existing <sup>laws</sup> ~~law~~ of the land that a trustee extracted from outside the committee will be held liable for any mess with the property. Although the club tries through its rules to distribute functions, it should always be aware that this has to be done within the limits of recognized trusteeship rules of clubs. This is an area where confidence is overridden by evidence. The rules have to conform with the general practice or they are

bad rules. One thing is clear however; all the moneys and any other property owned by the club ought to be used in the proper way and the officials entrusted with this task ought to exercise their fairness in the interest of the members of the club.

The Auditor comes in to rubber stamp how fair "all club's accounts, records, and documents .."<sup>6</sup> have been put to record. Through this machinery, the club should be able to maintain a reasonable sum of money to keep it going. AFC Leopards is usually a crowd puller in the stadium and we hope that this earns the club some substantial sum of money.

b) The Members

A person qualifies to become a member of the club after he/she attains the age of eighteen years.<sup>7</sup> We believe that this is the normal age of an adult who has reached a stage of making a rational decision. Of course in the club, he will be expected to vote and contribute in other deliberations of general meetings. For players, they can become members without paying membership fee.<sup>8</sup> We suggest that even players should pay membership fee so that they can truly be regarded as members of the club and can participate in activities such as voting. The members of a club per se should have equal rights and this is why Rule 3 para (1) should make it a requirement that players must at least be ordinary card-holding members

of the club. The anomaly is this - Rule 3 para. (4) states that:

"Every member of the club shall pay an annual subscription fee of Shs. 5/="

This is very necessary to show allegiance to the club. One can be entitled as of right to hold office in the club if he is a registered member. Rule 4(ii)(a) clearly states that all office bearers shall be full paid members of the club. This cannot be reconciled with the entry of players without paying subscription. The post of coach and captain is a constitutional post and must be contested for and held by a paid-up member. On many occasions, the club has had player coaches, for example, Niva and Anyanzwa. However competent they might have been, if they were elected under Rule 3 para.(1) with reference to players, this must have been against the known norms of membership.

Moreover Rule 3 para. (7) state that any member may be expelled or suspended from the club on grounds of bad conduct. The general and ordinary meaning of a member will be as stated in Rule 3 para (4) and we have already dismissed Rule 3 para (1) as bad law. This then leaves us with a very queer natural interpretation that players are exempted from suspension or expulsion, not expressly but implicitly from lack of good draftmanship of the fules. Players' conduct should in fact be more jealously checked than that of ordinary members. We

do not on the whole reject the fact that there can be a classification of members although this is not a custom in domestic tribunals. The best the club can do under the circumstances is to define who is a member at the beginning, or more precisely at the end of Rule 3 which deals with members. A model formulation is this:-

"For the purposes of this Rule, except where context otherwise requires, "members" shall include any player whether paid up or not, and all other members who have duly paid their annual subscription."9

We shall be able to understand the Rule better in the context of Rule 3 itself rather than the confusion that is seen and manifest between the member, his rights in the club and the player who seems to be entitled to some of the rights.

In deed, although para 3 or Rule 3 is clear as to holding an executive post in the club, it does not solve the entire problem of what exactly a player should regard himself as. The paragraph states that one can be entitled to hold office after payment of membership fee. This is a way of harbouring potential bandits in the club who may move out any time (even with club assets) without the sanction of the defective rules. Some people can come back any time and stand for office, pass and do anything they think detrimental to the club. This possibility cannot be ruled out in the present circumstances.

Paragraph 6 of Rule 3 even adds to the above. Any member can resign merely by submitting a written notice to the Secretary and such notice:

"shall take effect from the date of receipt by the Secretary of such notice."

can a member who has resigned be chased up (perhaps by a legal suit) if he is found in default after such an immediate resignation? The member will always escape liability. This rule should for sure be tightened up. The secretary and treasurer should be informed and jointly go through the member's records to establish any irregularity before he can be set free. Although there has never been any such irregularity, its possibility cannot altogether be ruled out, and it will not be in the interest of the club for such a thing to occur.

c) Discipline in the Club.

The Rules of the Club prescribe what is to be done to make club members have a certain standard of conduct. We judge discipline from good conduct. Bad conduct will definitely be termed as indiscipline. Indiscipline in any organization is evil and should be dealt with appropriately.

One of the aims of AFC Leopards is:-

"To provide for Rules, Regulations and By-Laws which the club shall deem necessary for the proper and efficient management, control, discipline of players and the club."10

Therefore, apart from the Rules and Regulations in the constitution, by-laws may be made to regulate matter like training sessions, code of conduct etc. The game of soccer can only be promoted<sup>11</sup> if there is discipline among both the players, officials and other members. We saw earlier in the history of the club how the officials can in some instances cause chaos in the club; and when players become discontented and agitated, they cannot be expected to produce good results on the pitch. People will lose confidence in the club and its pecuniary advantage will drop.

The club has not so far been confronted by a crisis to call for severe disciplinary action. We only saw that the mass suspensions carried out by Mr. Wamiya were reaching a crisis point. Mr. Simwa says that the club believes in "quiet discipline." He contends that this is a more effective way. He cites an example of one player who had to be evicted from the training camp due to his frequent sneaking. He later <sup>returned</sup> ~~returned~~ reformed. Again, Mr. Simwa could only recall two incidents when AFC players have been shown red cards in what he called "an outright provocation" from the adverse teams. Even this year, the club has maintained the highest discipline in league matches. So far, no yellow card has been shown to any member.<sup>12</sup>

Every football club must have 36 registered players at any one given time and out of these, sixteen are usually filed whenever the club is going to play a match. Without high standards of discipline, one cannot expect a club to raise all that number of players, players usually look at the stability of the team. If a team is relegated from the super league for example, it can suffer humiliation until players run away.

Discipline will also ensure success to a team. Soccer is based on confidence and goodwill, and although we always have to accept defeat when it comes, we should always aim for victory.

Because most disciplinary powers are carried out by the Executive Committee, I shall first look at the body and underline its functions.

Under Rule 6 para (a), the Executive Committee consists of all the office bearers of the club as well as the following:-

- . three members of the club as selected; and
- . three elected members.

The committee stays in office for two years. In case any vacancy occurs before the two years expire, the committee has the power to fill it.<sup>13</sup> Where an official is suspended removed or expelled from the club, the vacancy can be filled only after the general meeting confirms the candidate. The main function of the committee is to ensure

that the club is managed properly. The general body of administration and decision-making is the Annual General Meeting and the Special General Meeting. The former is held every after two years.<sup>15</sup> It must be held not later than 30th June of the second year since one. It appears from what I gathered from Chairman that it might be delayed.

A Special General Meeting may be convened "for any specific purpose."<sup>16</sup> The Quorum for both the AGM and SGM is one third of the members. The Chairman is expected to preside over both the general meetings and committee deliberations.

Any member has a locus standi to question any irregularities either by way of stipulated quorums or any delay in Annual General Meeting.

The Rules of the Club provide that any member may be suspended or expelled on the ground that his conduct has adversely affected the reputation or dignity of the club or that he has contravened the provisions of the constitution. When a member signs in, he has to understand that one of the foremost things is to understand the rules that he will be subjected to. We generally expect a man of reasonable intelligence to behave rationally.

Rule 3 para (8) states that any expulsion or suspension "shall be done on the recommendation of the Executive Committee or by a resolution of the General Meeting of the Club." If a member is expelled or suspended

by the Executive Committee, he shall have a right to appeal to the general meeting of the club. He shall be given a chance to give his representations to the general meeting and the decision taken by the general meeting "shall be final." The drafters should be warned against finality clauses which in a way try to oust the jurisdiction of the courts. They should know that courts are very jealous of their powers and if there is any rule trying to limit such powers, They will issue certiorari in the case of a public body or a declaration in cases of private clubs, to rule that the decision was invalid. In ex parte Gilmore,<sup>17</sup> a rule of a club which was "final and conclusive" was quashed by issue of certiorari.

Every member of a club should know that he has a right to go to court even after the decision by the general meeting. In any case, an appeal should lie with the KFF. The Constitution of Kenya states that the High Court:-

"shall have unlimited original jurisdiction in civil and criminal matters ..."<sup>18</sup>

The High Court can entertain any claim by any citizen, *provided* that he is not a mere 'busy body' who has neither legal right nor locus standi.

We also note that the AFC Constitution does not provide for legal representation. Can we say that it is implied or a right that cannot be snatched by mere rules? No Lord Denning M.R. in Enderby Town F.C. case<sup>19</sup>

said that the rules themselves have to state whether a member who is aggrieved should be entitled to legal representation. Otherwise if the rules do not provide for legal representation, a member cannot be heard to claim that it is aright for him to be legally represented.<sup>20</sup>

The disadvantage here is that a member may actually apply to be reinstated in a club but the whole contract is based on confidence. When an aggrieved party files a suit in court, the court cannot actually seek to enforce a contract that cannot work. An injunction cannot issue. The member may be entitled to damages if he was wrongly proceeded against. It is hard to force a player who has decided to quit the club to stay on. This is something that cannot be enforced because the club will be in a way enslaving the player who has the freedom to choose which club to play for.

### CONCLUSION AND RECOMMENDATIONS

In *Russel v. Duke of Norfolk*<sup>21</sup> three judges of the English Court of appeal could not agree on how to interpret the rules of domestic tribunal. The Jockey Club had withdrawn the licence of a trainer. The trainer argued that the licence he held constituted a contract under the rules of the club. Asquith, L. J. agreed with the trainer. Another judge held that the stewards of the jockey club retained an absolute discretion to withdraw such licence. Lord Denning put it in a different way. He argued that a club having a monopoly in an important field of human activity had corresponding responsibility. The ratio deciden di was however that jockey club proceeded wrongly against the trainer.

Lord Denning M.R. has contributed a lot to domestic tribunals and has in his endeavour tried to make it very fair for members. He has always insisted that the rules of natural justice should be applied whenever it is possible. If any member is expelled unfairly, he should be entitled to an equitable or common law remedy. The rules of the club still remains the sovereign compacts. Property theory looms large in members' club while the popular contract theory governs the proprietary club. Kenya clubs cut through this stratification and concentrate on the contract theory. Football clubs, although a majority are members' clubs almost neglect the property theory which is

envisaged in their rules but not worked upon. They value the contractual obligation more because of the social ties. The moral consideration override proprietary consideration. At the same time the clubs struggle to fit in the present socio-economic context where money comes first. The government participation has over the years wanting. The government should be able to give an hand to many clubs in order to make them stay on as going concerns.

Soccer standard will apparently be higher and there will be greater National Unity if there is general inter-gration using the contract theory. The constitution of Kenya has at least achieved this in political sense. All institutions in a secular state should function along side each other for purposes of creating a nation. The super-structure does not end with the constitution. One has to go down the ladder and see exactly how people are reacting to it. Voluntary associations are one such reaction. Laws of social organisations are better known by individuals than the constitution, and if clearly articulated and disseminated to members, they will provide a firm basis for society. The origin of state is known to be the family and even if the state withers away in the Engels sense, the family units will still remain.

One main area of discontent we gathered from players, fans and progressive officials was lack of competent nation<sup>al</sup> team. Harambee Stars should have regular players with perhaps a few substitutions from other clubs. The

The national team has often performed poorly due to tribal jealousies in the selection and lack of team spirit. Many countries have not introduced such a system but it pays alot.

Apart from the videos that big Kenyan soccer clubs watch from other countries, it is very necessary that they should travel out quite often to meet some of the popular teams in other parts of the world. The present KFF administration promised to take soccer to the rural areas but has not on the other hand promised to promote international soccer. The idea of rural (league) soccer was brought up in the context of the zonal league which has been scrapped by the government. Div. I, II and III matches entertain the rural masses well enough. What we should infact recommend is that the government should provide aid to the KFF which will give to all the teams affiliated to it. This can help many small teams all over their respective provinces and entertain the rural populace.

It has always been notorious practice especially with league matches of throwing stones and general assault. We may say that tribal identity and sentiments have to a very large extent promoted the standard of soccer in Kenya. Tribal teams' spirit, even after changing their names still have a high team spirit. Even in the stadium, spectators watching matches in tribal groups, occasionally hurling dirty slogans at each other.

They are still very important and an attempt to ruin them will ruin the soccer in this country. There might be more to the so called football hooliganism and I took serious few of the behaviours.

Little is known concerning the number of offences committed by fans outside or even inside the grounds. No statistics seem to have been gathered of types of offenders their ground and the extent of their involvement in football culture. Police have to interfere from time to time. My efforts to gather statics on this proved fruitless. One policeman however told me after ~~arresting~~ arresting a few fans that most of them were charged with disturbing peace. He further told me that some of the fans were arrested and charged with <sup>a</sup> assault or for being drunk and disorderly. All these can be brought to an end if the police are brought to the stadium in large numbers. Many spectators told me that police are only concerned with Gor - Leopards matches and not the others. The government should also try to reduce police reliance on the gate collections.

Working inside the soccer culture, it is possible to reveal to <sup>e</sup> disrupt social order a pattern of social actions which is directed by a set of tacitly held rules of conduct. One outcome <sup>of</sup> this rule framework is a powerful internal constraint - on violent and destructive behaviour. There should be a serious sociological study of both the police in the stadium and the football fans.

FOOTNOTES

CHAPTER ONE

1. See Rousseau's Social Contract: Translated by G.D.H. Cole (J.M. Dent & Sons Ltd.).
2. Harold Ford: Unincorporated Non-Profit Associations PXX.
3. 5 Halsburys Laws (3rd Edition) 253 para 589.
4. Hon. J. Nyagah on T.V. Interview - The Professional View 2nd Feb., 1982.
5. [1971] 1 All ER 215.
6. [1952] 2 Q.B. 329.
7. [1973] B.A. 297.
8. [1878] 14 Ch. D. 482.
9. Zachariah Chafe: The Internal Affairs of Associations 43 Havard Law Review 993, 1003.
10. Currie v. Misa (1875) L.R. 10 Exch. 153.
11. See generally:-
  - a) Brian Green: "Dissolution of Unincorporated Non-Profit Associations" (1980) 43 MLR 626.
  - b) Ricket: Unincorporated Associations and their dissolution (1980) 39 C.L.J.88.
12. 40 Australian Law Journal Review, 187.
13. Reported in Daily Nation 18th Nove., 1981 p. 37.
14. See Fisher v. Keane 1879 11 ch. D 353.  
and Taylor v. National Union of Seamen.

CHAPTER TWO

1. Recommendation No. 14.
2. Article 26 (K).
3. These were: (1) Andrew Obunga  
(2) George Ayuka  
(3) Charles Ondiek  
(4) Mike Ogolla.
4. These were: (1) Nahashon Oluoch.  
(2) George Yoga.
5. Daily Nation Editorial 19th April, 1982.

CHAPTER THREE

1. The injunction was granted on 7th November, 1968. Suspended AFC Officials were Christopher Omufira, Philip Ongaro and Zechariah Shimechero.
2. In this section, we relied mainly on 2 Kenyan Dailies; The Standard and Daily Nation. Also we got some useful material from AFC Leopards Chronicle of 1980 by Rober K. Nganga /consolidated stationers and Printers, Nairobi, 1980\_7.
3. Rule 2 para. (g).
4. Rule 2 para. (d).
5. Rule 12 para.(2).
6. Rule 11 para. (a).
7. Rule 3 para. 1.
8. Ibid.
9. My own formulation.

10. Rule 2 para. (e).
11. Rule 2 para. (a).
12. The Standard 19th May, 1982.
13. Rule 6. para. (d).
14. Rule 7 para. (a).
15. Rule 8 para. (b) (i) but the biennial nature of the meeting defeats the real meaning of AGM.
16. Rule of para. (e).
17. /1957\_7 1 All ER 796.
18. Constitution S. 60 (1).
19. Ante /1971-7 1 All ER 215.
20. See Nagle v. Feilden /1966\_7 1 All ER 689.