



**UNBUNDLING THE KENYAN SPORTS ACT:
ROLE, CHALLENGES AND OPPORTUNITIES IN
THE KENYAN SPORTS ACT 2013**

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Abstract:

The Kenya National Assembly enacted the Sports Act 2013 after many years of suggestions, deliberations and proposals over the making of such a law. The Sports legislation is an Act of Parliament to harness sports for development, encourage and promote drug-free sports and recreation, to provide for the establishment of sports institutions, facilities, administration and management of sports in the country, and for connected purposes. This law has come up with various institutions namely Sports Kenya, National Sports Fund and Kenya Academy of Sports. It also provides for Financial Provisions, procedures for registration and regulation of sports and licensing, arbitration of Sports disputes and miscellaneous provisions. Furthermore, the Act has four schedules namely sports facilities to which the Act applies, matters to be provided for in the constitutions of sports Organizations, the conduct of business and affairs of the board of the authority, board of trustees and council of the institute and transitional provisions. Although the Act is very progressive in the domain of sports in Kenya and the entire East African region because it legitimizes institutions, provide for arbitration mechanisms and recognize research as a core aspect in sports, it has introduced a number of challenges to the sports fraternity. Among these, include aligning the constitutions of various Sports associations to the Act and undergoing the new vigorous process of registering, regulating and licensing sports agencies. Sports professionals therefore need to update with the new Sports Act to retain relevance in their profession and warrant them professional growth. Therefore, it was deemed relevant to enlighten

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the practitioners of these new developments and seek for ways to upgrade their administrative strength and correct any inconsistency in this law through amendments to the Act.

Keywords: Kenya National Assembly, Sports Act, Sports Kenya, National Sports Fund, Kenya Academy of Sports, arbitration, amendments

1. Introduction

Sports in Kenya falls under the Ministry of Sports and the Arts headed by a Cabinet Secretary. These changes were made after the new constitution was promulgated and a new government under this law voted into office on March 4th 2013 (Kenya, 2010). Although the Sports Act 2013 had been enacted before the new government came into being, the changes in governance brought up new dimensions that laid much emphasis on sports including creating a Ministry for sports at times when other Ministries were being merged.

The Sports Act 2013 was published by the Government Printer in the Kenya Gazette Supplementary on 25th of March 2013 after enactment by the 10th Kenya National Assembly. The full title of the Act which gives it mandate is that it is an “*Act of Parliament to harness sports for development, encourage and promote drug-free sports and recreation; to provide for the establishment of sports institutions, facilities, administration and management of sports in the country, and for connected purposes*”. The Act establishes three main institutions namely Sports Kenya, National Sports Fund and Kenya Academy of Sports. The Act further has financial provisions, registration and regulation of sports and licensing, arbitration of sports disputes and miscellaneous provisions. Furthermore, the Act provides four schedules on sports facilities, matters to be provided for in the constitution of sports organizations, conduct of business and affairs of the board of the authority, board of trustees and council of the institute and transitional provisions.

2. Legislation in Sports

Several countries have come up with similar legislations to manage and give direction to sports and sports organizations. Ghana was among the first countries in Africa to enact sports legislation in 1976, the Sports Act 1976 (Ghana, 1976). The Act which commenced in March 1976 has 46 sections that include establishment of a sports council with a secretariat at national, regional and district levels. The main functions of these councils include developing, facilitating and financing sports in the country and

helping Ghanaian teams to participate in regional and other sporting events. The Act also provides for the management of the council. Furthermore, it provides for the establishment of an assembly of sports whose membership includes council members and other stake holders in sports. Its functions include giving advice and opinion on sports matters referred to by the council and submission of proposals to the council. The Act also has provisions for the funding of the council through government grants, loans, proceeds from its activities and gifts which are to be run through a finance and economics board.

Section 42 (a) and (b) of the Ghanaian Sports Act were the most controversial parts of the original Act which led Ghana to be suspended from the International Olympic Committee (IOC) for government interference in the running of the sports affairs (IOC, 2010). The sections were inconsistent with rule 28.9 of the International Olympic Committee Charter which seeks to secure and safeguard the autonomy of sports associations of member countries. The sections were later amended in the year 2010 to deter government interference (Ghana, 2010).

The South Africa Sports law was enacted on 17th November 2007 (Republic of South Africa, 2007). Unlike in Ghana, the South African Sports Act was amended to allow the government to intervene in matters of sports management. In the 2008 amendment, the Act was amended to replace the sports confederation and sport and recreation with a commission and to provide for the Minister to intervene in certain sports disputes, to provide for the issuing of guidelines for the promotion of equity, representation and redress in sport and recreation among others. Such changes are what the Ghanaian Act sought to correct in their initial Act of 1976. The leeway provided in the South African sports law allows the Minister to intervene where he deems necessary. The aspect of equality has been highlighted in the South African Act as had been noted earlier in the United States of America by introduction of Title IX in the Education Amendment Act of 1972. The amendment was introduced by Senator [Birch Bayh](#) who sought for equal opportunity through an Education Act (United States of America, 1972). The Act states in part that *"no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."* The law has not only been applied in sports, but other sectors as civil rights, foreign arbitration and music.

In Malaysia, the sports law was enacted in the year 1997 as Sports Development Act 1997 (Malaysia, 1997). The law has undergone various amendments, the latest being in the year 2006. The Act include sections on sports development, Olympic Council of Malaysia, administration of the Act, registration and supervision of sports bodies,

sports advisory panels, miscellaneous section that include transitional clauses and three schedules. The Malaysian Act gives the Minister sweeping powers in section 41 (2) of the Act where he shall be the final authority in relation to sports and sports related matters. Such a clause is where the differences between governments and international sports federations' conflict as noted in the Ghanaian case. As much as the governments would like to have autonomy over its institutions, many times nations have been suspended from international associations whenever such a clause in the law is applied. Schedule two and three of the Act has also provided for the objectives of the sports bodies under the Act among them promotion of sports, equity and accountability.

Legislation in sports is dynamic and new dimensions come up as time progress. This is very significant in many nations among them South Africa and Malaysia. Beside the Malaysian [Sports Development Act 1997](#), this nation has other numerous sports related legislations as [Merdeka Stadium Corporation Act 1963](#), [National Sports Council Act 1971](#), [National Sports Institute Act 2011](#), [Sports Development Act 1997](#) and [Youth Societies and Youth Development Act 2007](#) (Malaysia, 2012). The South African sports also have several legislations guiding the management of sports beside the [National Sport and Recreation Act, 1998](#). These include [2010 FIFA World Cup South Africa Special Measures Act, 2006](#); [Safety at Sports and Recreational Events Act, 2010](#); [South African Boxing Act, 2001](#) and [South African Institute for Drug Free Sport Act, 1997](#) (Acts Online, 2013). The same developments have also been noted in Nigeria where the football association is managed by an Act of Parliament ([Laws of Nigeria](#), 2013). Such numerous laws are an indication that beside the primary legislation, other nations have developed more sports related legislations to help in the governance of sports.

3. Role and Challenges of the Kenyan Sports Act

The Kenyan Sports Act has various requirements that need to be met by stakeholders in the sports arena. These include registration process of sports organizations and aligning the constitutions of sports organizations to the new law. The Act sets out the office of the registrar of sports who handles all matters pertaining to registration of sports persons and organizations. Among the key requirements for an organization to be registered is to follow the election requirements as per the Act, subscription to anti-doping policies and rules which conform to the World Anti-Doping Agency (WADA) Code. Others include compliance with the requirements set out in an anti-doping policy and rules of the National Anti-Doping Organization. Another key inclusion in this Act is subscription to Court of Arbitration for Sports (CAS) policies and rules which conform to requirements set out in Sports Disputes Tribunal policy and rules for sports

disputes resolution. It is worth noting that WADA (WADA, 2000) and CAS (CAS, 2013) are significant global organizations that regulate issues of drug use and arbitration in sports respectively.

The Kenyan Sports Act also has provisions for an interim management committee appointed by the minister to run the affairs of sports Kenya. The transitional clauses also establish mechanism for transfer of staff, assets and functions from the previous arrangement to the current management under the finance and sports cabinet secretaries.

The enacted Sports Act seems very progressive because it has given sports setting an upper mandate than previously. Furthermore, it legitimizes institutions and establishes boundaries for operation of various institutions under sports. However, not everyone may be happy with the new arrangement like limiting the term of elected officials to two terms and requirements for competitively hiring secretariat staff. The need to meet certain criteria before registration as a sports organization may also be critical to some organizations and personalities hence uncomfortable with the new law. Sports professionals working under various domains have also raised concern that the new sports Act does not recognize them hence, they are not covered. The Act defines a professional sports person as one who is, on the basis of a contract for engagement and remuneration, preparing or training for the purposes of participating in the relevant sports competition (Sports Act, 2013). This definition would have worked well for a professional athlete. On the contrary, there could have been an additional definition for a professional sports person to encompass coaches, teachers, trainers and fitness instructors in sports. Additionally, there could be an additional provision for requirements or accreditation with registered organizations for one to be considered as a professional sports person. The Act could hence be amended to include this caliber of persons in the sports legislation because they are the technical people in the field of sports.

The Kenyan sports Act also does not have a defined commencement date but it mandates the cabinet secretary to issue a notice. The notice for the Act was put up as June 2013, hence all organizations and persons involved were required to start preparing to adapt to the new law. One of the challenges being experience is the term of elected officials of various organizations. It remains unclear whether the two – four year terms started on the commencement date or on the date of the next elections. This is open to interpretation and various stakeholders have taken this date differently. There is thus need for the cabinet secretary to issue a declaration on this and remove any doubt about the commencement date. The most important aspect to various sports organizations is to amend their constitutions to meet the requirements of the new sports

law and the new Kenyan constitution (Kenya, 2010). This would make the organizations viable for registration once the process becomes mandatory.

The institutions established in this Act also have not been established yet. Setting up these vital institutes will open up the Act and make it operational. The key institutions include Sports Kenya, the National Sports Fund, the Kenya Academy of Sports and the Sports Disputes Tribunal.

4. Conclusion

All stakeholders need to embrace the establishment of the Kenya Sports Act because it is very progressive. Where there are grey areas, it needs to be re defined and explained clearly. A Kenyan Parliamentary Act has a lifespan of six (6) months (KNA, 2013) before being amended. There is need to improve on the document especially once it has been operationalized. This is because its deficiencies will be noticed once it has been put under use. The Act also has to be cross checked for consistency with other related laws like those dealing with youth, education, nationality, drug control registration of companies and societies among others. Legislation of other sports related laws as has been observed in South Africa, Nigeria and Malaysia may also be introduced with assurance of consistency to the Kenyan constitution and the Sports Act. This will avoid legal conflicts and debate on interpretation. Comparison with other similar documents elsewhere is also good both for scholarly discourse and to improve on the Kenyan sports law.

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