

CORPORATE GOVERNANCE PRINCIPLES: A SOLUTION TO POOR ADMINISTRATION IN NATIONAL SPORTS ORGANIZATIONS

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BY

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Declaration

I, [EDMUND STEPHEN ANYA], do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....

Date: .....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: .....

[Supervisor's Name]

## ABSTRACT

The purpose of this study is to analyse the incorporation and implementation of corporate governance principles as a viable solution towards curbing of the emerging instances of poor management and administration by national sports organizations in Kenya. This study will concern itself with the principles of good governance encompassed within the commercial module of business, developed to ensure that bodies vested with the authority to govern organizations conduct their duties in the best interests of all the stakeholders while at the same time in pursuit of the organization's given goals and objectives. Despite this ratification for the need to enshrine the principles of good governance within the operations of not only corporate entities but also "non-profit organizations" such as national sports organizations, the implementation of these principles still remains blatantly absent. Hence this study will explore the theories behind corporate governance relevant to sports organizations and will discuss possible methods of policy implementation that will ensure the observance of these principles. Additionally, this study will make a comparison with the approach taken by other countries in facilitating effective sports governance and will moreover, propose a realistic structure derived from the corporate module of the state of Taiwan.

#### List of Abbreviations

- FKF- Football Kenya Federation
- KRU- Kenya Rugby Union
- AK- Athletics Kenya
- NOCK-Kenya National Olympic Committee
- IOC- International Olympic Committee
- KNSC-Kenya National Sports Council
- KSDA-Kenya Sports Development Authority
- SDT- Sports Dispute Tribunal

#### List of Cases

- Ferdinand Omanyala v Athletics Kenya [2019] Eklr
- Khaaliqa Nimji v Kenya Squash Racquets Association [2018] Eklr
- Sammy Alego & 2 Others v Anthony Kariuki & another [2018] Eklr
- Richard Omwela & 2 others (suing on behalf of the Kenya Rugby Union) v Sports Registrar [2019] Eklr

#### List of Legal Instruments

- Sports Act (No. 25 of 2013)

## The Constitution of Kenya (2010)

### INTRODUCTION

#### 1.0 Background of the study

With the dawn of the 21st Century, we witnessed a movement of the sports industry from its former volunteer-reliant culture to one aiming to deliver sport services in a more business-like manner. This increase in operation of sports federations within the corporate business environment has created the need to codify principles of good governance to ensure the efficient delivery of these sports services. With the rise in sports organizations involved in various corruptions scandals, ranging from mismanagement to match fixing, it has become necessary to incorporate the theme of good governance within the articles of associations of these organizations.

“Today, corrupt sports administrators enjoy massive benefits at the expense of sportsmen and women, many of whom live and die in crushing poverty.” This excerpt drawn from a published Journal, entitled, *The Evolution of Bad Governance in Kenyan Sports*, serves to actualize the effects of poor administration on the most basic of stakeholders, the athletes. From as recently as the year 2015, various sports organizations ranging from the Football Kenya Federation (FKF), the Kenya Rugby Union (KRU), Athletics Kenya (AK), to the Kenya National Olympic Committee (NOCK) have featured in several misappropriation and corruption scandals, thus creating a need to incorporate and implement principles for the protection and preservation of shareholder interests.

The theme of good governance has emerged in various parts of the world under different cultures and theoretical influences. Among the more common theoretical influences posited, is the doctrine of corporate governance. The rapid globalisation and commercialisation of sport has created a host of competing interests such as the increasing role of sports agents and greater impact of media rights and commercial sponsorship rights, as such it has become more evident that the performances of management bodies within the sports industry is now benchmarked against corporate governance principles applicable to other business sectors.

A key difference between sport organisations and business organisations is the way in which performance is measured. Corporate governance is primarily concerned with the economic prosperity and the survival of organisations within the formal business sector, with the inclusion of the sports industry in this sector it has become imperative that sports organisations are aware of and can comply with the principles of good governance as these will be applied to measure their business performance.

In an attempt to address the increased number of scandals within international bodies such as the International Olympic Committee (IOC), certain reforms in its structure and governance were set in place. One of these reforms included the inclusion of a board of directors responsible for the functions of the organization. Additionally, in most governance systems, the board is a critical mechanism because its main responsibility is to make certain that the activities of the organisations are carried out in the best interest of the organization, its members and society. While the board components of corporate organizations are entirely concerned with the profits made by the organizations, non-profit boards, like those of sports organizations are focused on conducting their missions without striving to make a profit with the benefits created delivered to its member and individuals who it exists to serve. As such this study aims to provide an overview of the principles that guide corporate governance while at the same time seeking to assimilate those principles with principles of sports governance, which are accountability, transparency, social responsibility, independence, fairness and discipline.

### 1.1 Statement of the problem

Through the Basic Universal principles of good governance of the Olympic and sports movement, the International Olympic Committee in their Code of Ethics and the Olympic Charter incorporated the theme of good governance to preside over a wide range of sports actors around the world. According to the fundamental principles of the Olympism, all sports organizations within the Olympic movement, inclusive of all staff and players, shall have the responsibility for ensuring that principles of good governance are applied. Moreover the Recommendation on the principles of good governance in sport, stipulates certain steps to strengthen the fight against corruption, these steps include the application of a zero-tolerance policy regarding corruption in sport.

However, despite these righteous intentions, we still witness behaviour within various sports organizations in Kenya that acts in a contrary nature to that of the principles of good governance. Take for example the recent scandal that led to the arrest of top Athletics Kenya officials. The incident brought great shame to Kenya as several athletes found themselves without the assigned athlete sportswear for the Opening Ceremony at the Rio Olympics. Soon after police officers conducted raids at the Athletics Kenya offices only to find stowed away Nike kits that were to be worn by the athletes. As a result of this, faith in these institutions has taken a nosedive, causing stakeholders and sponsors to withdraw from these organizations, leaving them at the mercy of governments to rescue them from their dire situation. More importantly, often the victims of these tendencies of bad governance are not the administrators nor the stakeholders but the sports men and women who make career commitments to the sport only for them to reap scarce benefits and to be abandoned with nothing to show for the years of effort dedicated to the specialization of skills and expertise. This paper will discuss the incorporation of the principles of corporate governance as an addition to the principles of sport governance with the aim of catering for the commercial benefits the sports industry now beholds.

### 1.2 Justification of the study

In spite of the importance of effective governance, it has been acknowledged that little research has been undertaken to investigate sports governance. As a result, this paper will contribute to the academic works related to this topic and will provide an alternative perspective to the solution of poor governance in sports organizations in Kenya.

Moreover, the failure to have an appropriate governance to control and monitor sport organisations can result in withdrawal of sponsorship, decline in membership numbers and participation and possible intervention from external agencies. A realization of these consequences would serve to reduce the socio-economic benefits the sports industry can potentially provide.

### 1.3 Statement of aim and objectives

The aim of this study is to compare the current sports governance structures vis-à-vis corporate governance structures while analysing the possibility of the formation of a structure that is an assimilation of both.

1. To analyse the application the principles of corporate governance in the sports industry
2. To investigate the legal framework surrounding sports governance in Kenya in comparison to the principles of corporate governance
3. To assess the possibility of the creation of a structure that effectively amalgamates both sets of principles.

#### 1.9 Research questions

1. What are the principles pertaining to sports governance in Kenya and the world?
2. What is the legal framework surrounding the implementation of good sports governance principles?
3. What would be the structure of the tool of governance that would pertain to amalgamate the two sets of principles.

#### 1.5 Theoretical Framework

As a result of the growth in governance literature in sport management there has been an increase in attention on board governance due to the importance boards in the decision making and strategic direction of organisations. The use of a board of directors as a tool for governance is a strategy often employed by the doctrine of corporate governance, as such the theories that accompany this theory vary and include the agency theory, resource dependency theory, stakeholder theory, transaction cost theory, political theory and ethics related theories. For the purposes of this study, however, the first two theories will act as a point of reference for the application of sport and cooperate governance principles.

The agency theory assumes the existence of two participants in the contractual relationship, these are the principals (stakeholders) and the agent (board of directors/managers). The agent acts on the behalf of the principal, performing services in their name which assumes a certain amount of authority available to the agent. Under this theory the board is a mechanism to monitor managerial behaviour and to ensure that managerial activities are aligned with the interests of the stakeholders. Additionally, the board of directors are also tasked to ensure that organization engages in activities that are in tandem with community expectations. The key proponents of this theory are William Meckling and Michael Jensen.

More specifically, however, the principal-agent problems occur when the interests of the principal and the agent come into conflict. As such it is critical that sporting organizations create solid corporate policies that minimize instances of conflict. In determining whether an agent acts in their principal's interest a metric known as agency loss is often employed whereby agency loss is the difference between the optimal results for the principal and the consequences of the agent's behaviour. In order to minimize this difference it is important that firstly the principal is mindful of the agent's activities, ensuring that the principal is fully aware of the services being rendered by the agent. Secondly the agent and principal must hold similar interest and desire the same outcome. In

ensuring that the interests of both the agent and the principal are aligned, organizations commonly use incentives encouraging the agent to act in sight of the principal's interests, therefore, this paper will assess other means, over and above incentives, that can be assimilated within corporate policies of sports structures in the country.

The resource dependency theory on the other hand, proposed by Jeffrey Pfeffer and Gerald R. Salancik, states that organisational survival is based on the organisational capability to acquire and maintain resources essential to the organisation. The theory asserts that organizations require resources in order to survive and pursue its goals. These resources can either be obtained through the commercialization of the services they provide or through its environment, specifically other organizations or governments. Often governments obtain revenue from taxes and bonds which they then disperse towards the public and some non-profit actors. However, non-profit sports organizations often rely on donations and good-will contributions as an additional source of funding. Moreover, in applying the resource dependence theory, it is crucial that the governing parties take into account the following considerations, firstly what resource does the organization need and how essential are these resources to the organization's mission? Secondly, to what extent can my organization produce what it needs to produce in order to fulfil its mission without reliance on other organizations? Thirdly, how many individuals or organizations are in a position to provide the resources my organization needs? And lastly how might the connections with other organizations affect my organization's access to these essential resources? This paper will attempt to analyse the suitable application of the resource dependency theory aligned with the intended outcomes of sports organization in Kenya.

One theory alone, would not be sufficient to fully expound on the role of the board of directors in an organization, as such it is necessary to have this double theoretical approach, in an attempt to apply the principles of good corporate governance in unison with those of sport governance. This is because the issues addressed under these two key theories pertain to the issues prevalent in the governance of sports institutions in Kenya. The resource dependency theory touches on the need for access to external funds and their proper appropriation while the agency theory discusses the essential tool of boards of directors and managers as a potential solution of well utilized.

## 1.6 RESEARCH METHODOLOGY

This study will respond to the research questions mainly by the use of doctrinal review. This form of research will entail the review of relevant primary and secondary sources, which include, books, journals, newspaper articles and other online internal resources.

## 1.7 LITERATURE REVIEW

Despite the lack of sufficient research there exist certain authors who have distinguished themselves in the field of sports governance research. A collection of their works will form a large part of the doctrinal review in answer to the questions raised during the course of this research. In order to understand why the application of good governance principles has not been successful, it is important to comprehend the challenges that have impeded this implementation. Some of the articles and journals that will be under doctrinal review will elaborate on a number of these obstacles. What is common however, among these literary works is that strong emphasis for a need to incorporate principles of good governance within the operations of sports organizations.

Firstly, in Nicholas Musonye's article on the Factors Affecting Good Governance in Sports Federations In Kenya, he reports that one of the most evident factors affecting sports governance is that most of the personnel serving in the sports federations are not trained professionals in the areas of sports management and administration. He goes further to state that leadership posts are open to 'every other' person able to win elections. He sets out to show that when organizations are governed at a higher standard with greater ethical decision making it promotes confidence among its stakeholders. Moreover, he comments on the absence of a national sports policy to guide sports development and administration leaving these public entities under their own regulation mechanisms.

Hoye and Cuskelly divide their study of sports governance theory into three sections, firstly the concepts surrounding sports governance, the fundamentals of sports governance and the future of sports governance. In these sections they create a vivid distinction between the corporate and sports governance and pose questions concerning the future of the volunteer movement in the sports industry. Additionally, this book evaluates the performance of international sports organizations by reviewing the success of the respective boards of directors within these bodies.

In the same breath, King in his works, expounds on the position of the stakeholder in the effective application of good governance principles and offers an answer as to what constitutes these principles of good governance. In addition to this, as in Hoye and Cuskelly, he comments on the future of sports governance and discusses the challenges the implementation of these principles may face in the next decade.

In addition to this Taylor and Chien Yeh in their article in the World Leisure Journal, analyse the role of boards in governance models and its incorporation from the corporate governance system. Additionally, this specific article elaborates on the useful theories of corporate governance that can be assimilated to those of sports governance to create a more efficient tool for efficient service provision and protection by sports entities. Over and above this, this article discusses a unique structure of the use of 'the board' mechanism developed in Taiwan that if developed and modified could be utilized to adequately suit the board mechanisms in the sports industry.

Moreover, Goslin and Burger in their article in the South African Journal for Research in Sport, discuss the pillars of best practice governance in sport analysing the principles of accountability, responsibility, fairness, discipline, transparency and independence. Additionally, they offer a reasonable historical outline of the development of corporate governance and its principles. Lastly, Mwisukha and Mbagala in Sports Management Practices in Kenya: Governance Challenges in Sport East Africa, analyses the numerous challenges that governance principles face in the East African region.

It goes without question that the pillars of best practice governance in sport are principles that must be enshrined within the operations of any national or international sports organization. However, the extent to which these organizations adhere to the high standards required of them, greatly varies and for most countries the needed solution to this freedom has been the common answer of legislation. Foreseeably, this form of recourse comes with the unavoidable burden of government intervention, a concept that is subtly frowned upon by the international sports community due to the autonomous nature of sports organizations. Kenya, like most other developing countries is considered to have an interventionist model of government regulation, however, this was only the case since the ascension of the Sports Act in January 2013. Before this sport was generally governed and regulated by individual sports federations with government intervention very minimal involving

mainly recognition and formalization of sporting associations through registration with the registrar of societies under the Societies Act.

### 1.8 Hypothesis

This study is based on the hypotheses that the appropriate application of corporate governance principles as a solution to maladministration among sports organizations in Kenya.

### 1.9 Limitations

Due to the occurrence of an ongoing pandemic, fieldwork pertaining to this study was greatly impeded hence limiting the sources of research to solely online doctrinal review. In addition to this, the lack of extensive online research has necessitated the use of sources and journals that might bear the defect of being slightly out of date. Despite this however, this study has endeavoured to ensure that any information obtained remains of great relevance to the research to be undertaken.

## Chapter Breakdown

Chapter 1: Introduction and Background of the Study

Chapter 2: Principles behind Sport Governance in Kenya and the World

Chapter 3: Legal framework surrounding the implementation of good corporate governance principles.

Chapter 4: An amalgamation of Corporate Governance and Sports Governance principles with an analysis into the Taiwan model of governance

Chapter 5: Summary of Findings, Conclusion and Recommendations

## CHAPTER TWO: PRINCIPLES OF SPORTS GOVERNANCE

### Introduction

It is generally uncontested that sports in its essence differs significantly from other forms of self-application in that within sporting activities one is able to link their heart, mind and body in practice. Furthermore, sport is a key element of a cohesive national community for if well utilized, it acts as a tool for achieving outcomes in areas such as education, health, leadership and sustainable

development. Cognizant of this, it is critical that sporting bodies and organizations develop overarching principles that govern their formation and day to day operation. Moreover, it is through these principles that the theoretically desired concepts, such as proper agent-principal relationships can be transitioned into practice. Across sporting organizations worldwide very little variance is found in comparing the principles that are applied in their governance, commonly several principles tend to be reiterated within the constitutions of these sporting bodies. Within this chapter we will discuss seven of these principles that often cut across all sporting organizations. Moreover, we will attempt to draw a comparison for any similarities with the principles of corporate governance.

### Principles of Sports Governance

In no particular order of importance, the first principle that is ubiquitous among sports bodies is the principle of leadership and the presence of a board of directors which is a group of effective leaders that contain the necessary skills and expertise relevant to their operation. A key responsibility of the board is to scrutinise the organizations performance according to the organisations mission and values. In so doing it falls within the boards mandate to set up structures that are capable of achieving their common goal. These structures also include mechanisms that can evaluate the performance of the board in its operation to ensure it is fit for its purpose and delivering effectively. Moreover, the board has the responsibility to fulfil the company's legal obligations and are legally accountable to its members and stakeholders. Due to these unlimited liability obligations boards have primacy on all matters concerning the organization. However, it is just as important for boards to delegate responsibility for operational issues to the executive team to deliver the operational functions of the organisation.

As has been mentioned in the previous paragraph, it is crucial for every organization to have a vision and mission. The vision statement depicts where the organization aims to be in the future and as such does not change regardless of the circumstances while the mission statement focuses on the present and sets out what the organization will do to create its vision. It is the boards responsibility to identify and review the values of the organisation and strive to achieve its vision and mission by creating a suitable strategic long-term plan. An example of visionary long-term planning includes setting up structures for risk management in the event of unforeseeable obstacles, take for example the most recent global pandemic that has paralyzed the active participation in sport thus crippling its commercial activity a fundamental source of revenue.

A third essential principle in sports governance is the principle of equality and non-discrimination. It is vital that the board of directors intentionally mirrors the demography over which it intends to preside. As such appropriate recruitment policies should be adopted to ensure the right balance of individuals are elected to achieve their mission. Moreover, integral to the independence of the board, directors must not have underlying interests that could influence their objective judgement. Their interests should solely comprise of the organizations mission and vision. Additionally, effective structures and procedures to facilitate frequent board renewal and succession plans to ensure smooth transition for fresh ideas and perspectives.

Another principle that pervades most sports governance structures is the principle of justice and its access thereof. As such there must exist control and compliance structures within the organization. In the operation of their functions the board of directors must keep in mind the legal and fiduciary duties they owe and the legal and regulatory requirements they are to observe. In order to observe these regulatory requirements, articulate policies surrounding finances, scopes of delegated

authority, decision-making and management of performance must be constructed and well implemented. Over and above their duty to comply with the basic legal requirements the board in its operation should aim to operate according to the highest standards of good practice.

The two following principles closely resonate with the basic principles of ethical business operation, this are the principle of integrity and the principle of accountability and transparency. The principle of integrity may arguably be among the most of important of the seven principles. Especially within the sporting industry, integrity pervades all its functions, ranging from the organisation of competitions to the selection of national team players. In addition to contributing to the effective performance of an organisation integrity is crucial in protecting the reputation and legitimacy of the organisation. In acting as a check towards this principle of integrity, the principle of accountability and transparency is undoubtedly a crucial tool in the running of the sports body. In pursuit of this, relevant information relating to, audited accounts, board policies and critical board decisions should be easily available to all its members and stakeholders. Synonymous with integrity, a commitment to accountability ultimately depicts the organisation in positive light and as such encourages their interactions with potential benefactors.

As the custodian of sport and recreative activity in their respective regions' sports organisations. As such the directors of such a sporting body must be fully aware of the landscape and external factors surrounding their operation. As a sports organization, it would be impossible to imagine a scenario whereby the organization operates within a vacuum void of the inevitable ties and connections to the society within which it operates. Therefore, sports actors must pay keen interest to the unique context within which they are to apply their mission. They should aim to understand their organisations position in the landscape and the reputation it has amongst its stakeholders and the public. The right understanding of an organisations external factors facilitates the correct formation of risk management structures and can also act as an asset since it maintains the organizations awareness to opportunities that can boost their performance.

As no-brainer as these principles and rules may seem, it does not come as a shock that numerous sports governing bodies fail to apply more than one of these principles within various tenets of their operation. For example, not until recently did the 'obvious' principle of inclusivity receive its appropriate heralding when more women and minority groups began to be included within the boards and management structures of these organisations, hence the need to recount the principles that would be ideal to the efficient operation of sports bodies.

From this initial analysis of sports governance principles, some great similarities can be drawn with the general principles of corporate governance, albeit over the years corporate governance principles have developed to address more specific functions and roles of those in managerial positions and thus the absence of maturity of the concept of sports governance reflects from the general principles still adopted today within its operation. Nonetheless it still shows some deep-seated similarities with the original principles of corporate governance. For example, the Cadbury Report of the United Kingdom outlines accountability and transparency as two core principles of good corporate governance. Accountability introduces the obligation and responsibility to give an explanation and reasoning behind company's actions and decisions. As discussed above within sports governance this requires the board to avail all information relating to the financial and critical decision-making functions of the board, to all its members and stakeholders. Moreover, another core principle it refers to is the principle of fairness, which resounds greatly with the sports governance principle of equality and non-discrimination.

Additionally, one of the sports governance principles dictates for a board to possess long term vision plan that stipulates the long-term objectives of the organization. This resembles the corporate guiding principle of incorporating corporate strategies that build sustainable long-term value and for management to develop and implement corporate strategy with the goal of long-term value creation. Following this, the next chapter will analyse the relevant legal framework surrounding their implementation.

### CHAPTER THREE: THE LEGAL FRAMEWORK SURROUNDING THE IMPLEMENTATION OF GOOD SPORT GOVERNANCE PRINCIPLES

#### Introduction

Post-independence, development of sport fell under the mandate of the Ministries of Education and Culture and Social Services. The government was essentially the prime facilitator for sports administration and development, through the Kenya National Sports Council (KNSC) while out of school sports activities were run on a voluntary basis. More recently, sports programmes in Kenya are managed by two ministries, youth sports being organized by the Ministry of Education and out-of-school sports organized by national sports organizations under the directive of the Ministry of Sport Culture and Arts. The arrival of national sports organizations capable of competing in the international arena brought about the principle of complete autonomy, national sports free from government intervention. This constant tug of war between national organizations combined with the constant shifting of government priorities from health to youth unemployment has greatly furthered the notion of a general absence of specific sports policy and legal framework in Kenya.

In this chapter I will analyse the legal framework within which sports in Kenya operates. This will be done by discussing firstly the National Sports Policy within the country and then by discussing the most recent Sports Act 2013. Moreover, we will investigate the extent by which the principles of sports governance are incorporated within this legal framework by discussing a handful of cases that have come before the Sports Dispute Tribunal in the past few years.

#### A. National Sports Policy

The 1960s saw great performances from Kenyan sportsmen and women around the world in numerous international competitions. These athletic achievements imbued the need for a deeper internalisation of sports development in within the country, this evoked a new paradigm in sports governance that required the Kenyan government to formulate sport policy. However, the formulation of an effective and stable policy capable of decolonizing sports administration became an elusive exercise with its perpetual postponement up till the late 1990s. Despite the clear need for the formulation of a clear sports framework, it is not until 2002 that we witnessed the first Kenya

Sports Policy produced, with the Sessional Paper No.3 of 2005 on sports development, being passed 3 years later as its official operational document.

This document presented a framework on sustainable growth and development of sports, together with policy guidelines for the growth of sport holistically. This government strategy recognized the need to make sport's organizations and their stakeholders recipients of corporate and government funding. Apart from this the document differed very minimally from the sports policies and functions established in 1987 after the All-Africa Games in Nairobi. Nevertheless, this document and its implementation remained dormant as national priorities shifted towards rapid economic growth and greater corporate governance. The failure to integrate sports development within various national agendas saw the enforcement of a national sports policy take a backseat once more for another five years. Finally, in 2010 the Kenya Cabinet discussed the first draft of the sport policy Bill which was finally ascended to in parliament in January 2013. This brought about the Sports Act No. 25 of 2013.

#### B. Sports Act No. 25 of 2013

As stated in the Kenya National Assembly Report of 2012, the essence of this act was to provide a broad legal framework to manage, regulate and give guidance on how to conduct and administer sporting affairs in the country. Moreover, the goals of this piece of legislation are to harness sports for development, to encourage drug-free sports and recreation and to provide for the establishment of sports facilities and their management. According to the then Minister of Sports, these goals were to be achieved by the establishment of institutions that would manage the country's sports affairs and more importantly taking into equal account the various views of its stakeholders.

The institutions established by the act include, Sports Kenya, which is to the body that replaces the former Sports Stadia Management Board established by the Sessional Paper of 2005. This body was to conduct all the functions formerly performed by its predecessor which included the facilitation of active participation of Kenyans in regional and continental sport together with the maintenance of sports facilities. Another institution was the Kenya Sports Development Authority (KSDA) whose main function was to promote, implement and co-ordinate grassroots, national and international sports programmes for Kenyans. Lastly, another institution set up by the Sports Act was the Kenya National Sports Institute whose main objective was to establish and manage sports training academies to enhance greater sports talent development.

In acknowledging the principle behind Pfeffer's Resource Dependency Theory, the Act also provides for the formation of a National Sports Fund. The fund is to serve as financial support for sports persons and organizations, for the development of infrastructural facilities and facilitating athletes to participate in international competitions. Under this provision, National Sports organizations are required to prepare their annual budgets and with the help of the KNSC the Ministry of Sports determines the allocated budget based on the contribution of the sport to the national performances in international competitions and community engagements.

In addition to this the Sports Act provides specific sections for the management of finances by the aforementioned institutions. These provisions insist on accountability of these institutions and demand for proper book-keeping and auditing of financial records. Moreover, it provides these institutions with the power to borrow and invest funds with the interest of sports organizations.

Lastly, the Second Schedule of the Act prescribes matters that are to be provided for in the constitutions of sports organizations, however within this section only provisions relating to the

election of organization officials are to be found. This section contains a blatant disregard of any conversation relating to the necessary governance principles that must permeate all national sports organizations. This neglect of national sports governance requirements has without a doubt contributed to the poor administration tactics employed by national sports organizations over the years, that has stifled the growth of sport in the country and brought great shame to our nation.

Nonetheless, within the Act and its application some principles of good sport governance have been portrayed. Utilizing cases that have been presented before the Sports Dispute Tribunal, this brief section will illustrate the application of such principles and provide jurisprudential precedence that contributes to the sport's legal framework.

i) **Ferdinand Omanyala v Athletics Kenya [2019] eKLR:** This case involved the applicants contest of the passing of a resolution by the respondent Athletics Kenya, to the effect that any athlete who had been in violation of any anti-doping rules would be barred from representing the country in domestic or international competitions. According to the applicant the resolution was unfair for he had already served his 14-month ineligibility ban when he was found with the doping substance. As such the resolution in place would have the effect of indefinitely extending athletes' bans which is contrary to the rules of justice. The Tribunal held that the resolution was indeed against the sports governance principle of fairness and justice, for the respondent failed to abide by its own constitution in the passing of such a resolution and that the banning of all athletes found to be in violation of anti-doping rules does not distinguish between intentional and unintentional doping violations and thus is invalid.

ii) **Khaaliqa Nimji v Kenya Squash Racquets Association [2018] eKLR:** In this case, the appellant challenged the selection by the respondent of the players to represent Kenya at the Commonwealth Games at the time. The appellants contention was that the team selection was not in accordance with the criteria previously published by the respondent. The Tribunal in their decision quoted that the Sports Act has introduced a new era of transparency, accountability and good governance, as such the purpose of such a criterion is to enable both players and officials to have an objective basis upon which selection decisions can be made. Organizations can no longer arrogate themselves the power to run associations at their whim and must abide by their constitutions. As per the principle of transparency, the respondent is thus tasked with constructing transparent and verifiable trial programs for selection of the country's representatives. A similar ruling advocating for increased transparency is also to be found in **Sammy Alego & 2 Others v Anthony Kariuki & another**.

iii) **Richard Omwela & 2 others (suing on behalf of the Kenya Rugby Union) v Sports Registrar [2019] eKLR:** This case involved the Registrars declination to register elected officials of the Kenya Rugby Union, after a successful Annual General Meeting that saw the democratic election of these said officials. The election was attended by the Union's delegates, a representative of the Registrar and representatives of the KNSC who presided over the elections. According to the respondent the elections were not presided over by an independent body and thus the elections were invalid. The Tribunal held that the KNSC did not fail the test of independence and if the Registrar's intention was that no sports organization should be involved in the conduct of elections for another organization then this must be explicitly stated within their regulations. As such the election that occurred was proper and lawful.

Conclusion

In concluding this chapter, I would like to make a brief comparison between the legal framework that pervades sports governance in Kenya and its counterpart that oversees corporate governance. As much as it is only fair to recognize the massive head start that corporate governance has experienced towards its development, the pronounced stalling of sports governance development can be vividly illustrated by the legal regime it operates within. Whereas statutes that preside over good corporate governance principles delve deeper into the day-to-day issues that concern the operation of corporations, very little attention is given to the operation of national sports organizations that bare a large amount of public interest similar to corporations involved with public securities. Take for example the Code of Corporate Governance Practices for Issuers of Securities to the Public, it stipulates a need for the formation of various committees tasked with safeguarding the interests of its shareholders in various ways. Such an approach effectively deals with issues such as misappropriation and embezzlement of funds, poor delegation and failures to perform mandated obligations, all issues that are majorly symbiotic with sports organizations today.

## CHAPTER FOUR: AN AMALGAMATION OF THE TWO SETS OF PRINCIPLES WITH AN ANALYSIS OF THE TAIWAN MODEL OF GOVERNANCE

The issue with contemporary sports governance structures is not the absence of corporate governance tools but their poor implementation thereof. As such this chapter will attempt to apply the forementioned principles and discuss their further enforcement within sports governance. In addition to this, this chapter will also examine the sports governance structures set in place by Taiwan. Taiwan has experienced a rapid growth in non-profit sports organizations largely attributed to their unique model of governance. It is important to recognize that no empirical data has been collected in proving this connection, however this alternative model provides a different approach towards streamlining governance in sports.

In endeavouring to resolve the governance issues that had become prevalent within public corporations and with the intention to ensure the stakeholders interests are safeguarded, Kenyans came together to ascend to the 2010 Constitution, which highlighted good governance as one of the values of the Kenyan people. From it, was derived the Code of Corporate Governance Practices for Issuers of Securities to the Public greatly due to the high pecuniary duty associated with their operation. Despite the social responsibility that sports organizations owe to the society they are not accorded the same level of importance. As such Kenya has not formulated a Sports Code of Governance specific to the conditions of sports management and operation in Kenya.

Examples of such a code of governance can be drawn from United Kingdom and Australian jurisdictions. In 2019, the UK developed 'A Code for Sports Governance' in order to hold sports organizations to a higher standard of accountability. In ensuring its implementation, the Sports Ministry made it clear that all sports bodies were to adhere to the new Sports Code if they were to expect to receive any future public funding. This code, contained the principles of sports governance as agreed through the consensus of a majority of sports organizations in the country. Additionally, it addresses the different levels within the sports industry and the varying responsibilities they have towards their development. These levels include grass root development, amateur and semi-professional sport and professional sport, all interdependent of each other. This ensures that each level receives the necessary fund allocation and man-power essential to their functioning, a concept that is absent in most African countries Kenya included, by the blatant neglect of grassroots sports in the country. Similarly, Australia has codified a set of principles applicable to their management of sports. The code goes as far as to discuss the presence of a board of directors and the duties and functions of the board and its directors, moreover, it discusses the interests of the various stakeholders and how to balance their interests with that of the organization. Both of these codified rules are derived from the principles of corporate governance within their respective territories.

In coming up with a Kenyan Code of Sports Governance, a lot can be borrowed from our Code of Corporate Governance. We will now discuss some key components of the Code of Corporate Governance relevant to sports governance today. First off, and a key element of transparency and accountability, the concept of access to information. Recommendation 2.3.5 of the Code of Corporate Governance puts it within the mandate of the Board to ensure there is sufficient and necessary dissemination of all information that pertains to be relevant to the stakeholders of the organization. This duty stretches as far as requiring these sports bodies to liaise with media and broadcasting houses in their respective geographic zones to ensure that there is sufficient awareness regarding activities surrounding the sport and major decisions concerning its management.

Another key element within corporate governance guidelines is the presence of various committees with respective critical responsibilities to ensure that good governance is observed by the board and the organization. Such a committee for example would be the Audit Committee. The Audit Committee would be tasked with ensuring the organizations financial statements comply with applicable financial reporting standards and ensure that the reports are reliable sources of financial information. This committee which must include a member with a professional qualification in accounting, will serve to monitor how the organization acquires and spends its funds. Another committee that has proven increasingly critical with the onset of a global pandemic is the risk management committee. It would be concerned with setting in place structures capable of dealing with unforeseen changes in economic stability. Many non-profit and sports organization found themselves facing difficult times as the unpredictable global pandemic forced for reduced interaction consequently leading to a hold on all sports events. This lack of preparedness has led to the depletion of most organizations reserves with several others being forced to default on many of their obligations. However, not all organizations fell to this fate as few other organizations that bothered to allocate funds for the installation of risk management structures despite the glaring need for funds in other departments were able to sustain their continued operation without committing to any forthcoming obligations.

Additionally, within the Code of Corporate Governance, the Capital Markets Authority insists that all corporations contain suitable succession planning structures. Recommendation 2.1.8 asserts that the terms of Board members shall be organised in such a way as to ensure there is a smooth transition between incoming and leaving board members. Likewise, sports organizations should ensure that boards set in place tools that guarantee almost seamless transitions and continue with the long-term projects of its predecessors while at the same time providing a fresh perspective towards achieving the organization's goals.

## SPORTS GOVERNANCE IN TAIWAN

Like most other sports governance structures, Taiwan derives their governance guidelines from already set up corporate guidelines. The difference thus arises in comparing Taiwan's corporate governance structures with those of other, more common, systems. Whereas most commonly we found boards comprising of a single unitary body responsible for all activities within the organization, with all board members working towards the same goal. The United Kingdom, United States and Australia are examples of jurisdictions that possess unitary boards of directors. However, Taiwan, Germany and Japan divide their board of directors into two factions, a board of directors and a board of supervisors.

Section 192 of Taiwan's Corporate Law dictates that directors of a company are elected by shareholders during a general meeting. This serves to ensure that the interests of the shareholders are safeguarded by the persons they elect to office. A board of directors must consist of a minimum of 3 members with the chairperson of the board being elected by these members. Once a chairperson is settled upon, they must then nominate CEOs and managers assigned with specific tasks critical to the operation of the business. On top of this, section 216 of Taiwan's corporate Law demands that all companies limited by shares must possess an entirely independent board of supervisors. This board is to consist of a minimum of two members elected by a general meeting of shareholders. Furthermore, the law clearly dictates that current employees, boards of directors and managers are forbidden from serving in the board of supervisors.

Over and above this, Taiwan creates a clear distinction between for-profit sport organizations, which find their legal base within their incorporation as companies, hence Corporate Law and non-profit sport organizations which find their legal founding within sections 25 to 58 of their Civil Code. In the same breath, non-profit sports organizations are required to register as judicial persons under related supervising government bodies, such as the Ministry of Interior. These sections of the Civil Code capture the basic requirements pertaining to the formation, governance and operation of sports organizations. The Civil Organization Law which complements the Civil Code, articulates that the establishment of any non-profit sports organizations requires a minimum of thirty founding members followed after by the approval of the related government office. Nonetheless, like their Corporate Law, the Civil Organisation Law requires that such a body consists of both a board of directors and a board of supervisors, albeit it does not provide differentiated roles of either of the governing bodies but implores all sports bodies to regulate their functions by referring to the governance guidelines within their Corporate Law.

However, despite the presence of these mechanisms to improve the levels of accountability, shallow studies conducted have shown that many board members take a passive role within their organization, only ratifying decisions already ascended to by executive members, while those tasked with supervision carrying out their role with minimum effect.

In conclusion, much can be borrowed from Taiwan as their structure of corporate governance places a higher standard of accountability upon its board members. If well effected such a structure would promote stakeholder interests while curbing the use of sports organizations for the individual gain of a few of its directors. Due to the ease at which sports organizations are often victims of misappropriated funds and authority, a completely independent body chosen by its stakeholders would demand more of the fiduciary duty required by the board and its directors. Even so, for such a structure to be suitably applied it would require a high level of individual ethical standards in performing the critical roles of those entrusted to develop the organization.

## CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

### 5.1 Introduction

This chapter will serve as the conclusion of the entire study. The study begins by outlining three key objectives and evaluating the theoretical framework within which the corporate and sports organizations operate within. Secondly, the study analyses the legal founding of sports governance in the country comparatively against that of corporate governance structures, moreover, it briefly evaluates the jurisprudence derived from the Sport Dispute Tribunal and its consistency with sports governance principles. It then moves on to propose an amalgamation of both sports and corporate governance structures with the aim of forming an effective sports governance model. Lastly the summary concludes by summarily discussing the findings and recommendations proposed as suitable ways of solving the stated research problem.

### 5.2 The Initial Problem

The study begins by illustrating the need to discuss the issue of poor administration within sports organizations in the country. This need was occasioned by the rampant reports of fund misappropriation and corruption prevalent among various national sports bodies, such as the Athletics Kenya, Kenya Football Federation and the Kenya Rugby Union. By analysing structures from a similar counterpart (corporate governance) the study attempts to affirm how well effected structures of corporate governance can be implemented in order to achieve the desired vision of the organizations and to safeguard the interests of its numerous stakeholders.

The 2010 Kenyan Constitution insists on the principles of good governance as values that are to permeate all fields of administration and management relating to organizations that contain any form of public interest. Moreover, the International Olympic Committee in their Code of Ethics insists for all members of Olympic Sport organizations to observe the principles of good governance throughout their operation. However, despite these legislative demands, sports in the country have somehow still been able to evade the efficient applicability of such principles, mainly alluded to the independent or autonomous nature associated with such organizations.

### 5.3 Summary of Findings

#### 5.3.1 Sports Governance and the Legal Framework

The study determined that the legal framework surrounding the governance of sports organizations inadequately provides for the implementation of good governance principles. This inadequacy can be largely assigned to the numerous delays that have inhibited the formation of specific national policy in Kenya and its development. Moreover, any attempt to form legislative measures that govern the operations of sports organizations lacks the necessary depth required in order to effectively curb the modern-day problems met by such organizations. In doing so, a lot of discretion is left within the mandate of these organizations to self-regulate and set in place structures that would enforce these desired principles. Little to no oversight by independent bodies is witnessed supervising the implementation of good governance principles and that gives room for the abandonment of ethical governance we have observed over the past few years.

### 5.3.2 Determination of sports governance issues before the Sports Dispute Tribunal in Kenya

Despite the numerous deficiencies discussed in evaluating the legal regime surrounding sports governance in Kenya, the Sports Dispute Tribunal has made valiant attempts in maintaining a decent level of consistency upholding the stipulated principles of good governance as affirmed in the Sports Act; fairness, transparency and accountability. The mentioned cases provide suitable precedential law confirming the relevance of the Sports Dispute Tribunal. However, a large number of unfair instances have gone unpunished due to the lack of awareness concerning the presence of such a tribunal and its role. In order to ensure that further accountability is achieved by sports organizations the Sports Dispute Tribunal must supplement as a watchdog institute and provide greater awareness about the role it plays.

### 5.4 Conclusion

In conclusion, as much as it is fair to acknowledge the impact of delayed sports internalisation in Kenya, for us to be able to realize the full potential the sports industry possesses it is necessary to create a robust legal and binding framework that promotes not only stakeholder interests but national ambition as well. As much as it is important to respect the international requirement of autonomous national sports organizations, in the words of Former Minister of Sports Dr. Paul Otuoma, “We also have national interest, and our national interest supersedes our international commitments”. If this endeavour is pursued relentlessly with professionalism investor confidence would surely increase and so would our opportunity to bid for large global events.

### 5.5 Recommendations

Over and above the existing laws, in order for national sports organizations to be subjected to public scrutiny, the Sports Registrar, or such a body, must come up with a clear code for ethical governance that firstly enunciates vividly, the essential principles behind good sports governance. Moreover, such a code must not be so shy as to avoid delving into the structural and operational atmosphere of sports organizations. Through its provisions it must dictate the high standard of professionalism demanded by a nation with a great desire for sporting excellence. Such a code has already been implemented in countries such as the United Kingdom and Australia, and matter of fact, this has been done without any insinuations of unnecessary government intervention in contravention with international obligations.

In adding to a Code for Corporate Governance, if the Registrar requires for the presence of a Board of Directors, such a suggestion must be followed with a similar proposal for the presence of an independent supervisory body that performs oversight duties over the Board of Directors, much like the model adopted in Taiwan sports governance. Furthermore, as far as the structural arrangement of these said organizations is concerned, they would also benefit greatly from the formation of

certain essential committees with specific mandates. Examples of such committees are an audit committee and a risk management committee, both suggestions borrowed from contemporary corporate governance requirements.

Additionally, this study recommends for better dissemination of sports related information, with special regard for important decisions that may affect stakeholder interest and national interest at large. One way of achieving this is through encouraging liaisons between media broadcast houses with sporting organizations so as to provide channels for communication between these bodies and interested persons.

Lastly, in ensuring that structures of good governance outlast those who set them in place, it is important for sports organizations to develop viable succession strategies. This would guarantee undisturbed transitions in between boards and would not serve to set back long-term strategies aimed at developing a sustainable sports industry.