

Chapter 11

The Emergence of Sports Law in Kenya

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ABSTRACT

Sports law is a relatively new topic in Kenya. Once played for recreational purposes and entertainment, sports have become professionalized and commercialized. This evolution led to government intervention to prevent a conflict of interest. The government in Kenya created and regulated the infrastructure supporting these sports, as well as provided dispute resolution mechanisms for arising issues. This infrastructure included both the legal and structural frameworks of the industry. The government intervention ran through the legislature and the judiciary. Through the legislature, the government created laws to regulate the sports industry. The judiciary adjudicated issues demanding judicial treatment. Sports have grown into a highly competitive industry with global pervasiveness. This chapter will discuss regulative and structural frameworks within the sports industry by highlighting the legislation primarily providing sports law. The chapter then highlights contemporary issues as well as make recommendations on the same.

INTRODUCTION

This chapter will track sports law in Kenya by studying the country's emergence from pre-colonial colonization to its postcolonial position. This chapter will summarize Kenya's historical background, which will lead to the current government's legal interventions. After defining sports law in Kenya, it will examine both the administrative and legal frameworks under the Sports Act 2013. Then, the chapter

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will focus on contemporary issues in sports. The author's main argument is that Kenya's current sports law does not exhaust all challenges. Therefore, it needs to be amended to regulate sports.

BACKGROUND

Several definitions exist for the term *sport*. According to Elias (1971, p. 88-115), *sport* can refer to *nonwork-related forms of physical activity with or without an element of competition*. In terms of this abstract usage, sport is a socio-cultural universal phenomenon. However, the term can also be used more concretely to refer to a group of competitive physical activities, which are modern in key respects. A sport has physical activity, side-by-side competition, self-motivation, and a scoring system. The difference of purpose is what characterizes sport, as well as the notion of individual skill or prowess.

According to Kenya's Sports Act 2013, *sport* includes all forms of physical or mental activity to express or improve physical and mental well-being, form social relationships, or obtain result in competition at all levels. This is achieved through casual participation, organized participation, or training activities. Therefore, sports can be for leisure or professional competition.

For this study, the Sports Act's definition was adopted. This chapter is concerned with how the law and sports interact in Kenya. Sport, which is now modernized, was a social recreational activity. Following its definition, sport can be recreational, social, or competitive. It ranges from informal participation to serious organized club sport with complete commitment in pursuit of the highest levels of excellence at Olympic and world levels.

Kenya, a country in East Africa, borders states like Uganda and Tanzania. Its surface area is 582,646 square kilometres; its population is 47,251,000 (Kenya National Bureau of Statistics, 2011).

The development of sports law in Kenya is categorized into three periods: (1) pre-colonial; (2) colonial, and; (3) postcolonial. Pre-colonial Kenya traces to a period when Kenya was an unclaimed territory. During this time, groups of individuals first claimed the territory. Reportedly, 2,000 ethnic groups from across Africa settled its vast area, which was later called Kenya by the colonizers (Ndege, 2009).

During this period, the inhabitants engaged in games and activities, including wrestling, racing, stick fights, hunting, board games, bull fights, dances, and rustling (Kamenju, Ritaungu, & Mwangi, 2016). These games, however, were not known as sports. In fact, they developed from daily activities. For example, without trains or cars, people walked or ran long distances to communicate or trade. Spear throwing was necessary for hunting; learning to swim was essential for fishing (Rintaugu,

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