

## **THE BREACH OF DUTY OF MEDICAL CARE**

A case of Precedential Negligence of Professional Kenyan Footballers  
OCHUTSI JAPHETH MUNYENDO

## **Acknowledgment**

My foremost gratitude goes to the Almighty God, who granted me wisdom, knowledge understanding and good health during the entire period of conceptualizing, developing and writing this piece of work. Sincere thanks to my learned Senior and mentor in the realm of Sports Law Mr Felix Majani who encouraged me from the inception of the idea and even crafting of the topic. I will forever be grateful to former Kenyan Internationals Mathew Owino Ottamax, Francis Xavier and Rodgers Kadenge for providing immensely valuable information for this. Sharen Jomo, Mary Munyendo, Edwin Munyendo and Patricia Mitei for all the encouragement and support accorded me that inspired me to courageously pursue the idea and put it into writing

## **DEDICATION**

This research paper is dedicated to the indefatigable contingent of Kenyan footballers'. Those who play at all tiers of the competitive leagues. Those who brave the unrewarding harsh conditions to reward the football loving Kenyan populace with mercurial performances. Those who make us love the game

## **Table of contents**

### **ACKNOWLEDGMENT 1**

<b>1.1 INTRODUCTION AND BRIEF HISTORY .....</b>	<b>4</b>
<b>1.2 FOOTBALL AS A RISK, ITS NATURE AND THE INEVITABILITY OF INJURIES .....</b>	<b>6</b>
<b>1.3 NATURE, CAUSATIVE MECHANISMS, AND CHARACTERISTICS OF INJURIES .....</b>	<b>7</b>
<b>2.1 THE DUTY OF CARE AND MEDICAL TREATMENT BY EMPLOYERS IN KENYA .....</b>	<b>8</b>
<b>2.1.1 A COACH MUST; .....</b>	<b>9</b>
<b>2.1.2 THE FEDERATION VIA REFEREES HAVE A DUTY OF CARE BY .....</b>	<b>9</b>
<b>2.1.3 ACTIONS A FOOTBALLER SHOULD DO TO ADVANCE THE DUTY OF CARE.....</b>	<b>10</b>
<b>2.2 MINIMUM REQUIREMENTS FOR STANDARD PLAYER CONTRACTS .....</b>	<b>10</b>
<b>2.3 BREACH OF EMPLOYERS DUTY .....</b>	<b>11</b>
<b>2.3.1 MANASEH IMBO-MARCH 2011 .....</b>	<b>12</b>
<b>2.3.2 SOLOMON NASIO-MAY 2014 .....</b>	<b>12</b>
<b>2.3.3 GEORGE OPIYO-JANUARY 2014 .....</b>	<b>13</b>
<b>2.3.4 JOSEPH APINDI OCHIENG-2014.....</b>	<b>13</b>
<b>2.3.5 HARRY GENTLE-MARCH 2011 .....</b>	<b>13</b>
<b>2.3.6 SHAFIK BATAMBUZE-SEPTEMBER 2019 .....</b>	<b>14</b>
<b>2.4 THE CASE OF THE NATIONAL TEAM AND ITS PLAYERS .....</b>	<b>14</b>
<b>2.4.1 GEORGE WAWERU-MAY 2014 .....</b>	<b>15</b>
<b>2.4.1 PHILEMON OTIENO-AUGUST 2019 .....</b>	<b>15</b>
<b>2.4.2 FIFA CLUB PROTECTION PROGRAMME .....</b>	<b>16</b>
<b>2.4.3 MATCHES COVERED .....</b>	<b>17</b>
<b>2.4.4. WHICH PLAYERS ARE COVERED AND WHEN DOES THE COVER BEGIN?.....</b>	<b>17</b>
<b>2.4.5 THE COMPENSATION AND HOW IT'S CALCULATED .....</b>	<b>18</b>
<b>2.4.6 EXISTING AND PRE-EXISTING INJURIES .....</b>	<b>18</b>
<b>2.4.7 RECURRING INJURIES .....</b>	<b>18</b>
<b>2.4.8 EXCLUSIONS/CONDITIONS WHAT ARE THE EXCLUSIONS FROM THE FIFA CLUB PROTECTION PROGRAM ..</b>	<b>19</b>

<b>2.9 LAW AND JURISDICTION .....</b>	<b>19</b>
<b>3.0 EMPLOYMENT LAWS-THE NATIONAL HOSPITAL INSURANCE FUND AND WIBA.....</b>	<b>20</b>
<b>3.1 WORK INJURY BENEFITS ACT NO 13 OF 2007 .....</b>	<b>21</b>
<b>3.2 CLUB (EMPLOYER) OBLIGATIONS.....</b>	<b>21</b>
<b>3.3 COMPENSATION/BENEFITS.....</b>	<b>21</b>
<b>3.4 THE NATIONAL HOSPITAL INSURANCE FUND .....</b>	<b>22</b>
<b>3.5 MEMBERSHIP.....</b>	<b>22</b>
<b>3,6 CONTRIBUTIONS .....</b>	<b>22</b>
<b>3.6 BENEFITS OF NHIF .....</b>	<b>22</b>
<b>3.6.1 CATEGORY A (GOVERNMENT HOSPITALS), .....</b>	<b>23</b>
<b>3.6.2 CATEGORY B (PRIVATE AND MISSION) HOSPITALS .....</b>	<b>23</b>
<b>3.6.3 CONTRACT C.....</b>	<b>23</b>
<b>3.6.4 OUTPATIENT.....</b>	<b>23</b>
<b>3.6.5NHIF SUPA COVER .....</b>	<b>23</b>
<b>4.0 CONCLUSION AND RECOMMENDATION.....</b>	<b>23</b>
<b>4.1 PERSONAL POLICIES .....</b>	<b>24</b>
<b>4.2 COMPREHENSIVE POLICIES .....</b>	<b>24</b>
<b>4.3 STANDARD POLICIES .....</b>	<b>24</b>
<b>4.4 BUDGET POLICIES.....</b>	<b>24</b>
<b>4.5 WIBA.....</b>	<b>24</b>



## **1.1 INTRODUCTION AND BRIEF HISTORY**

A European Sports Conference once decreed that Sports is the inalienable right of every person. Before this, it seems as though Britons had foreseen that the right would nobly be second to none. In the advent of the pre-colonial period, Britons, the erstwhile colonial masters, and administrators in collaboration with missionaries and farmers introduced football among a plethora of sports disciplines in Kenya. This attracted a reasonably positive interest given its unwavering demands of physical capabilities that wholesomely existed within the local populace. Ultimately, it led to the crafting of competitive football playing outfits and the establishment of the Kenyan National Team. To regulate and manage football affairs, the Kenya Football Association was registered in 1946 or thereabouts. In light of executing its mandate, the Association faced a litany of challenges which included but was not limited to failure to establish a nationwide national league amidst a rapid yet steady growth fueled by the quest to develop and promote the game amidst constant popularity. This fueled the formation of the Kenya Football Federation in 1960. Consequently, the federation in the same year became affiliated to the world governing body, FIFA. In 1961, the Federation affiliated to CAF and in 1973 to CECAFA<sup>1</sup>. The year 1963 saw the manifestation of, the dream of having a Nationwide National league into a reality. The maiden championships saw the emergence of at least ten clubs compete. Teams that competitively assembled for the Championship hailed from the Coast, Nairobi and the Rift Valley Provinces. Coast Province had two teams; Feisal Fc and Liverpool (which was later renamed Mwenge) Nairobi Province had the huge chunk of Teams, seven herein; Nairobi Heroes, Luo Union, Maragoli United (later renamed Imara United), Marama, Bunyore, Kakamega and Samia Union while Rift Valley had one team, Nakuru All-Stars, to complete the original line-up<sup>2</sup>. The league started with four matches – two in Nairobi and two in Mombasa. The legendary Joe Kadenge,<sup>3</sup> who turned out for Maragoli United, scored the fastest goal of the league. Nakuru All-Stars, coached by Ray Bachelor, colonial Rift Valley provincial sports officer, emerged as the inaugural winners of this competitive league. Notably, Kenyan football players of the pre-independence and post-independence era majorly hailed came from rural communities, a reflection of the rural base of most youth. The 1964 Championship had new winners. Buoyed by the fact that it was the only team that was supported by Members of the Luo Community, it won the second competitive league. Luo Union's thrive did not auger down well with the members of the Luhya community who had a host of Teams that could not tame the winners. Threatened, Luhya leaders converged and resolved to merge Luhya clubs, including Bunyore, Kakamega, Marama, Bunyatso, Samia Union and Bukusu Brotherhood to form Abaluhya United Football Club (later renamed AFC Leopards FC)<sup>4</sup>. Football Management suddenly bore the ire of political rivalry. This led the formation of Luo Sports which was financed and supported by Tom Mboya, then a cabinet Minister against the dominant Luo union supported by Jaramogi Oginga Odinga. The rivalry was a blessing in disguise. In 1968, It led to an amalgamation of the two. The result was the birth Gor Mahia<sup>5</sup> whose chiefly sponsored by the Luo Union of East Africa. This was an umbrella welfare organization bringing all Luo people of East Africa together. The Luo People of East Africa had a Midas touch. The effort to form Gor Mahia was not in vain. The Team clinched the top Honors on its debut<sup>6</sup>. What was christened as Community clubs but essentially had become ethnically composed and supported clubs. These were Gor Mahia and AFC leopards which dominated the Kenyan Premier League until the formation of the Kenya Breweries Football Club in 1969. The three teams would dominate the Kenyan Premier League and the Regional Cecafo Club Championships. However, there were no professional dealings between the Players and the Clubs. There were no formal contracts and only player registration cards bound players from non –institutional clubs. The bulk of the Gor Mahia and Afc Leopards players featured for their teams but in essence, drew salaries as employees of

---

<sup>1</sup> <https://footballkenya.org/home-jevelin/about-us/>

<sup>2</sup> Colonial legacy, minorities and association football in Kenya Wycliffe W. Simiyu Njororai, Soccer & Society Vol. 10, No. 6, November 2009, 866–882

<sup>3</sup> Ibid

<sup>4</sup> See <http://kenyapage.net/football>.

<sup>5</sup> See <https://gormahiafc.co.ke/gor-in-late-60s/>

<sup>6</sup> Ibid

Parastatals and State Corporations. The most notable State Corporations that employed the bulk of this legion of players were *Kenya Railways, Kenya Posts, and Telecommunication, Kenya Airways Corporation*<sup>7</sup>. These club officials had contracts and unwritten agreements with parastatal firms to employ Members of the playing units. The mere thought of employment was lucrative. But the thought of permanent jobs sounded as security and its effect was a sense of stability mainly because the Players assured of continuing with their livelihood even after their retirement. On the other hand, there was the formation of Corporate clubs had footballers raked in as Employees of the Corporate Institutions<sup>8</sup>. Theirs was to perform other duties besides football. Despite the growth of Clubs, the business of football was casually administered bereft of professionalism. Efforts to professionalize Kenyan football were vigorously opposed by a host of hardline Kff officials. This was of dire negative effects to the blossoming nature that the standards were facing. The squabbles and hardline standards affected the management of Kenyan Football Affairs that appeared to be on an upward trajectory in the hands of Kenneth Matiba. His thoughts of transforming football in some form of business acumen into football management could not see the light of the day.

*"I announced my intention to introduce professional football in Kenya. For some reason, still not very clear to me, my suggestion was vigorously opposed even by those who had previously supported me strongly. Because this idea was important to me, I decided not to offer myself for re-election when the elections came. For me, it was either professionalism or no involvement."*<sup>9</sup>

Failure to professionalize football stunted its growth but to the advantage of Community based clubs. The resignation of Matiba had its fair share of effects. So popular was football that it coincidentally endeared its administrators to politics in an ethnically charged environment. Administrators harboring political ambitions used football as a stepping stone to political success. Many came in, chaired the Federation but waded into politics without professionalizing the Sport.<sup>10</sup> The spur in Management of affairs of football via the Federation nosedived. However Kenyan clubs Gor Mahia, Kenya Breweries, AFC Leopards and the National Team reigned supreme in the CECAFA region. Unfortunately, tribalism had taken center stage wrecking the Country's pushing the Executive to issue a decree that; ***all tribal associations be disbanded and that associations with tribal names change them to reflect "a national outlook."*** To abide, the Abaluhya Football Club (AFC) changed into All Footballers Cooperative Leopards Sports Club AFC Leopards, while Gor Mahia wittily proposing to rename itself Great/Gulf Olympic Rangers (GOR). While the Leopards name change stuck, Gor Mahia retained its original name.<sup>11</sup>

Keen to tame soaring tribalism, Government crafted a Policy to weaken tribally oriented clubs which resultantly fueled an upsurge of Corporate-sponsored clubs in the Mid 80s. Football sponsorship and Club retention were seen as 'marketing investment,' tools. Companies suddenly saw the importance of advertisement for a public image via football then a popular sport<sup>12</sup> namely, Nzoia Sugar Fc , Chemilil Sugar Fc ,Nzoia Sugar Fc,Rivatex Fc, Eldoret

---

<sup>7</sup> See <http://www.gormahia.net/gpage6.html>

<sup>8</sup> see <https://www.standardmedia.co.ke/business/article/2000032567/retired-footballer-finds-footing-in-it>

<sup>9</sup> Aiming High, Story of my Life by Kenneth Stanley Matiba

<sup>10</sup> See <https://www.standardmedia.co.ke/sports/article/2001300443/kariobangi-sharks-why-nick-mwendwa-s-boys-had-to-win>

<sup>11</sup> See <https://mobile.nation.co.ke/sports/talk-up/Community-clubs-hold-key-raising-football-fervour-Kenya/3112528-4866120-item-1-15bmp3/index.html>

<sup>12</sup> JOURNAL ARTICLE A TARGET-ORIENTED ANALYSIS OF SPORTS IN KENYA. Mählmann, J.M. Asembo and M. Arap Korir, *Journal of Eastern African Research & Development* Vol. 24 (1994),

KCC Fc posted good results with employment opportunities as a bait lured several talented players. However, their performances were dwarfed by Gor Mahia and AFC Leopards

A Japanese, a Mr. Motukura, assisted by chef-turned coach, Gerry Saurer, an Austrian national who also had a short stint as Harambee Stars coach and Honda formed Kenya's first Professional football, club. Unlike corporate teams, his approach was different; To tame the Leopards-Gor-Breweries dynasty he not only thought of recruiting great players but offering them handsome paycheques just 'to *kick the ball*'. Tellingly, it was a different approach from corporate clubs. Theirs was an all-time football duty. Football was the main business unlike the former who offered jobs with football as a partial affair. Volcano Fc recruited a crop of talented players who caused ripples, upsetting the big boys becoming the talk of the town. However, Volcano Fc could not exist in the long run. In 1988, it succumbed to endless quarrels between clubs and the Federation<sup>13</sup>. Community based clubs started to experience dwindling financial fortunes. Their over-dependence on membership fees, gate collections, and occasional sponsorships contracts with companies to advertise could not yield much. Meanwhile deteriorating Kenyan facilities exposed Football players to injuries. Being a contact game, Players equally incurred injuries. Most corporate clubs had Medical Treatment centers within Institutions with qualified medical staff that treated injured<sup>14</sup>. Injuries that required specialists saw Players referred to major Hospitals. Some players with long term injuries were dropped from playing units and redeployed for other duties. Community-based clubs had un-matching tough financial times. Without contracts, it was even a gargantuan task for their footballers. Despite having employment contracts with several state corporations, none could foot the treatment bills given that they incurred some of the injuries while executing other duties, not in line with their scope of employment. The majority of injured players of Kenya's most prolific clubs stuck with two options whenever they incurred severe injuries; To treat themselves or hang boots from a career so passionate about. So bad was the situation that one injured footballer recovering upon a treatment, had team officials storm his home in search of club uniform unperturbed to his plight.

An adage goes that the head rots from the Top. So the fights within the Federation had a ripple effect on the Clubs. The year 2000 marked the nightmares of Kenyan football management. Crisis after another, disintegration, the emergence of parallel leagues and warring factions mutilated the growth of management of soccer; Premier League Clubs rebelled against Kenya Football Federation herein KFF citing massive corruption and incompetence. Even though some clubs mulled with the idea of turning professional, some had standard form contracts that provided for the treatment of footballers whenever injured in the line of duty. AFC Leopards and Gor Mahia hierarchies severally floated the idea of turning the clubs into limited liability companies<sup>15</sup>. Kenya Breweries later changed to Tusker Fc after structural changes in the Kenya Breweries Company<sup>16</sup>.

When a new dawn came in 2008 with the entrance of the Super Sports and the Formation of the Kenya Premier League Limited, most football clubs in adherence to FIFA Statutes have tailor standard form contracts tailor-made to carter for indemnification of football players upon Injuries.

## **1.2 FOOTBALL AS A RISK, ITS NATURE AND THE INEVITABILITY OF INJURIES**

Compared to other sports disciplines, soccer playing is a demanding vigorous activity that involves physical contact during tackling or contesting for possession of the ball against opponents. It's a game that exposes the involved players to injuries. Ideally, the basic demands of the game may involve heading, kicking, running, turning, jumping, tackling, landing, on the ball.

---

<sup>13</sup> Ibid

<sup>14</sup> Kenya Breweries Fc, Chemili Sugar Fc, Nzoia Sugar Mumias Sugar Fc, had medical centers otherwise referred as clinics with fully-fledged company doctors and nurses.

<sup>15</sup> Ibid 12

<sup>16</sup> See <https://www.nation.co.ke/sports/1090-405658-wtq683/index.html>

This predisposes a footballer to injuries. Thus the occurrence of injuries is purely inescapable. Injuries when well treated heal. But when negligently handled has several ramifications. The cost of proper medical care may repel any efforts of proper treatment. However improper treatment and negligence of the injured players have largely fueled the early exit of talented younger players from competitive Football. Most of these footballers hail from financially deprived backgrounds yet the Sport does not reward as handsomely as it would in other jurisdictions. Therefore gravity of injuries and how well treatment is effected may determine whether a footballer would pursue his professional career given that they earn a living from football, and without other resources to help them, football becomes a very risky sport to play.<sup>17</sup>

*'Anyone involved in sport at whatever level and whatever capacity should be aware that many injuries are avoidable and risks can be minimized. Those with power to do so, should take steps to prevent injuries.'* D. Haley 1989.'

### **1.3 Nature, causative mechanisms, and characteristics of Injuries**

We invoke research results conducted in the past to help decipher some patterns.

'During the 2001 Moi Golden Cup Tournament (Today referred to as a survey was conducted. A total of 24 matches out of 30 were observed and injury statistics are taken while watching live matches live in various stadia around the country. The injuries recorded were those that either led to a temporary stoppage of the match or first aid attention to the affected player. The data was analyzed and descriptively presented. Among other findings, it was established that most injuries, 44(43.14%) occurred in the preliminary phase of the tournament. Most injuries; 50(49%) were caused by an opponent as a result of -tackling or fouling, 28(27.5%). The offensive zone recorded more injuries 37(36.3%) compared to the defensive J and construction zones, which recorded 35 (34.3) and 30(29.4%), respectively. Soft tissue injuries accounted for the highest percentage (77.45%) of injuries during 8% of the tournament. Away teams registered more injuries 58(56.9%) than home teams 44 (43.1%), while winning teams incurred more injuries 54 (53%) than losing teams 48(47%). Anatomically, the lower body was most affected by injuries 67(65.78%).<sup>18</sup>

'Over 75% of injuries to professional players are a strain, sprain, and contusion injuries. Lower extremity injuries represent 60–85% of the total injuries incurred by soccer players of both sexes, with the most susceptible joint being the knee, followed by the ankle. Injury severity is usually classified as minor, moderate, or major depending on the length of time needed for recovery, with over 65% being minor, 25% moderate, and 10% serious. About half of the injuries arise from player to player contact, including tackling, being tackled, and collisions and the remainder (non-contact) arises from actions such as running, shooting, turning, and heading. Although most researchers have noted that the playing position does not influence the occurrence of injury, Hawkins and Fuller found that defenders had a greater risk of injury than other players, suggesting that playing position may be an influential factor. The final quarter of each half is the period when most injuries occur, and the risk of injury is greater in the second half than in the first half, reflecting the most intensive periods of play. Most epidemiological studies indicate that injuries to soccer players are about three times more likely in competition than training.<sup>19</sup>

---

<sup>17</sup> Knee Injuries in Elite League Football During One Season in Kenya: Preliminary Results Dr. Vincent Mutiso

<sup>18</sup> African Journal for Physical, Health Education, Recreation and Dance (AJPHERD) Vol.10, No.3 (September) 2004, pp. 230-237. INJURY SURVEILLANCE IN A SOCCER TOURNAMENT IN KENYA V.OOnywera, W.W.S Njororai and M. Andanje

<sup>19</sup> See <https://bjsm.bmj.com/content/36/5/354>

'In football, the most common injuries, as told by two Kenyan Premier League team physiotherapists and a KPL weight trainer are hamstring issues (usually tears), lateral ankle injuries, knee injuries, quad contusions, and quad and groin muscle pulls. More recently, head and shoulder injuries have become a problem as well. One major problem that footballers face that athletes do not are injuries due to contact. Most ankle, knee, head, and shoulder injuries are a result of contact injuries, and these contact injuries tend to be much greater time-loss injuries. A pulled groin muscle or torn hamstring would rule out a player for a maximum of one month, whereas a broken ankle would be 6-8 weeks, a torn ACL would be 10 months, and a serious concussion could even end a player's career. Also, many football pitches are of very poor quality, and especially during the rainy season there could be potholes and slippery grass which could easily injure a joint such as the ankle or knee'.<sup>20</sup>

## **2.1 The duty of care and Medical Treatment by Employers in Kenya**

Football Industry in Kenya has mutated; like a crawling baby, there's been noteworthy growth. From the ancient period for playing for pride, to merely playing for advertising outfits disguised in employment and the semi-professional era, it has become an attractive source of employment in Kenya. With growth, every aspect as an emerging trend needs laws to regulate or govern. Initially, there was no single law that governed sports in Kenya. Sports rules encompassed a multitude of areas of law brought together in specific ways according to the sport to be participated in with the most applicable areas such as contracts, torts, and antitrust, agency, constitutional, labor, criminal, tax issues<sup>21</sup>. However, the promulgation of the *Sports Act, 2013* heralded a new chapter that required all sports organizations and clubs to register with the Registrar of Sports<sup>22</sup>. Clubs and Organizations that failed to adhere were deregistered.<sup>23</sup>T

This legitimized Football Kenya Federation (FKF). The jurisdiction to manage Kenyan Football squarely lies with Football Kenya Federation. It also promotes and regulates the Kenyan Football. The FKF has through an MOU donated its powers to the Kenya Premier Limited powers to manage the Tier one League herein known as KPL. FKF, however, manages the second and lower tier of League. The women football league is also under the management of the FKF.

Participants of the Premier League and the National Super League have to conform to FKF rules. CAF member countries were directed to comply with *Caf Club Licencing Regulations*. This was to promote and improve the quality and the level of all football in Kenya and to ensure that the clubs have the appropriate infrastructure, knowledge, and application in respect of management and organization. Ultimately this would trigger improvement of the economic and financial statuses of clubs.

When zeroed to footballer's-Club's relationship, there exists a binding contractual relationship. One governed by the law of contracts that must be consistent with all the Kenyan Laws and in tandem with the Fifa Laws. The World Football Governing body FIFA has set the Professional Football Players Contract Minimum Requirements that ought to be adhered to by all FIFA Members. Professional footballers in Kenya are deemed to be employees. Thus Clubs are employers. Both clubs and players have rights and obligations like any other formal relationship existing between employment masters and their servants. Clubs owe a duty of care towards players and have an onus to take reasonable steps to prevent any foreseeable injury.

***'Duty of care -This is a requirement that a person act toward others and the public with the watchfulness, attention, caution, and prudence that a reasonable person in the circumstances would use. If a person's actions do***

---

<sup>20</sup> Sports and Exercise Medicine for Athletes and Footballers: The Case of Kenya Monil Patel SIT Study Abroad

<sup>21</sup> Foul Play, a crisis of Football MANAGEMENT In Kenya

<sup>22</sup> Sec 46(2)(a) Sports Act, 2013

<sup>23</sup> Sec 49(2) Sports Act, 2013

*not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence.'*

The Football Kenya Federation and KPL equally have a duty of care to its subjects

Clubs have own structures of management but within its ranks, the Administrators and Coaches must always reasonably exercise the duty of care

### **2.1.1 A coach must;**

- a) Not field injured players.
- b) Substitute injured players.
- c) Exercise great care in training.
- d) Discourage rough tackles and aggression.
- e) Hire competent medical personnel

### **2.1.2 The Federation via Referees have a duty of care by**

1. Enforcing rules
2. Check playing surface and ensure they conform to standards
3. Warn and penalize on aggression
4. Manage the game in accordance with the rules
5. To ensure that safe playing surfaces and training equipment and apparels are provided.
6. Accredite the right medical personnel.
7. Accredite standard safer stadium
8. On a match, day Ensure presence of emergency medical units provided by the participating clubs
9. Ensure ambulance attending to players during matchday be equipped with all the necessary equipment including DFB machine which can restart the heart in cases of cardiac attacks
10. Ensure the presence of a detachable stretcher to avoid aggravating fractures when moving injured players off the pitch,
11. Ensure portable light oxygen cans that are crucial when a patient is experiencing difficulty in breathing
12. Liaise with clubs to provide continuous training of medical personnel.

Clubs as Employers have a duty of taking reasonable care of players. This can be attained by explanations that appertain to the health and safety policies; This can be attained in the following means

1. Liaise with the federation and authorities to ensure that there are crowd control measures<sup>24</sup>. This cushions players against foreseeable harm in times of crowd trouble.

---

<sup>24</sup> Rule 3.4(a) of Rules of KENYAN Football approved by the FKF Nec 1 on February 18, 2015

2. Organize and plan strict but adequate emergency medical services able to counteract and confine the consequences of mass disasters should they occur
3. Clubs are under an obligation to provide medical treatment to his players during the time of service,
4. Clubs must hire professional medical experts endowed with a competent degree of skills and knowledge, and must exercise a reasonable degree of care.
5. Ensure that the personnel is well trained to use the equipment at their disposal, and then have the equipment in good working condition
6. Provide a consistent highly standardized training capacity that conforms to the changing needs of this ever-growing sports industry.
7. Employees Club should take up mandatory medical insurance coverage for the benefit of its employees and accident.<sup>25</sup>
8. Carry out medical tests to ascertain the fitness of a player.
9. The club is entitled to know the medical status of the player and reserves the right to order a further medical test

### **2.1.3 ACTIONS A FOOTBALLER SHOULD DO TO ADVANCE THE DUTY OF CARE-As per FIFA GUIDELINES**

1. participate in training under the instructions given by the employer;
2. maintain a healthy lifestyle and standard of fitness; obey Club Rules;
3. and avoid risky activities that are not covered by the Club's insurance
4. Inform the Club's medical hierarchy on injuries attained or sickness
5. The player should report immediately to the relevant authorities any injuries sustained while on the course of duty to the club

### **2.2 Minimum Requirements for Standard Player Contracts**

As stated, above FIFA, has set the Professional Football Players Contract Minimum Requirements that all FIFA Members must follow in spirit and to them later. A footballer-club contractual agreement must be tailor-made to suit to these guidelines. Like the Employment Act 2007<sup>26</sup>.

Justice Rika in Wilberforce Kilibwa v Mumias Sugar Co Limited [2013] eKLR was categorical and laid bare the bare minimums;

*'These guidelines require that the Professional Footballer must have a written contract of employment. The document must be made available to the Club, the Player and the Football Federation charged with the football administration. The contract must incorporate the mandatory labor and employment standards of the particular country. Salary and other financial and non-financial obligations of the Club to the Player must be made clear in the contract. The contract must explain the health*

---

<sup>25</sup> Sec 34, CAP 226 of the Laws of Kenya

<sup>26</sup> CAP 226 of the LAWS OF KENYA

*and safety policy of the Club, which includes mandatory insurance coverage of the Player for illness and accident. <sup>27</sup>The Clubs must ensure their Players have access to social security. The essence of social security is to aid the players upon retirement and cushion them from the culture of begging and handouts.'*

### **2.3 BREACH OF EMPLOYERS DUTY**

Unfortunately, the majority of Kenyan clubs featuring in the Country's Premier League have failed to abide by FIFA's expectations of the bare minimums in so far as contracts are concerned. From lacking fully-fledged Medical staff, clubs have failed to indemnify their Employees against Injuries.

'Some teams actively participating in the league can only get one physiotherapist for the whole team. Although incredibly talented and informed, they cannot deal with major injuries that require surgery, and they have many legal limitations, such as the inability to prescribe medicine. Some Teams hire general practitioners who pose as Medical Doctors. These are unfortunately are not trained in Sports Medicine. Sports and Exercise Medicine doctors (SEM) and orthopedic surgeons are very rare in terms of serving as team doctors. SEM doctors, in general, are scarce in Kenya, with only one official doctor who specializes in SEM (and he is also an orthopedic surgeon).'<sup>28</sup>

Despite the Minimum Compliance to the ***CAF Club Licensing Rules of Registration*** cosmetic construction of Contracts with FIFA decreed terms in consonance with the Kenyan Employment Laws, that demands for medical insurance cover, only a handful of clubs participating in the Kenya Premier League have stayed truthful and faithful to the course. Posta Rangers, Tusker FC, Kariobangi Sharks, Bandari, Wazito, and KCB have medical insurance for their players.

Posta Ranger's club's medical cover is limited to Kshs Sh800,000 for inpatient and Sh100,000 outpatient offered by UAP Insurance. Bandari CEO Edwin Oduor puts the club's package at a maximum of Sh4 million for both inpatient and outpatient for each player and their immediate family members offered by Allianz Insurance. The Kenya Commercial Bank Football club players are covered by APA to a tune of Sh1million for inpatient and Sh300,000 for outpatient. Wazito and Tusker have AAR as their service provider with Kariobangi Sharks enjoying the services of Resolution.<sup>29</sup>

*"We have a comprehensive cover that has come in handy for our players in the event of injury. Jackins Atudo and Calvin Odongo underwent surgery on Monday night for anterior cruciate ligament (ACL) injury at Nairobi Orthopedic Centre and will be out for six months. Suleiman Ngotho is back in training after undergoing a knee surgery that kept him off the pitch for a year," said Posta Rangers Waku.<sup>30</sup> "We also give our players enough time to recover and go back to playing after any injury including the long-term ones. In the event their hospital bills go beyond the stipulated amount, we compensate the player for the extra amount spent," said a senior KCB official who sought anonymity.<sup>31</sup>*

---

<sup>27</sup>An accident occurs suffers a bodily injury due to a sudden external force acting on his body. An accident can also be a specific, sudden act of exertion at an identifiable time and place from which the football player suffers a bodily injury. In addition to these defined accidents, heart attacks and strokes are also considered accidents.

<sup>28</sup> See 20

<sup>29</sup> <https://www.pd.co.ke/sports/football/uproar-at-number-of-players-being-dumped-by-their-clubs-7099/>

<sup>30</sup> Ibid

<sup>31</sup> Ibid

The Kenya Premier League (KPL) CEO Jack Ojuda insists that all clubs should have a medical cover included in their contracts with the players per the FIFA standards. *"Clubs are not keen to comply with this issue. Unfortunately, there is nothing we can do to compel them as it is not our mandate."*<sup>32</sup>

The majority of Kenyan Clubs are outrightly notorious for breaching the duty to provide full treatment both as an in-patient and outpatient in case of injury while playing for the club. Like a sparrow clubs dart away from the responsibility of treating with an option of terminating the contract. Players with professional contracts suddenly become a surplus and are dropped like hot discomforting potatoes.

We endeavor to discuss past and present harrowing experiences by the Kenyan Premier League Players in the hands of Clubs featuring in the top tier league and their painful sojourns.

### **2.3.1 Manaseh Imbo-March 2011**

One-time Kenya's joint Premier League top scorer. Turned out for Mafuko Bombers (defunct) Tusker Fc, Kenya Pipeline Fc. He sustained a left knee injury that required surgery to repair the damaged ligaments in 2004 or thereabouts. Imbo had one operation carried out Aga Khan Hospital but a second mandatory wasn't instead left him walking with a heavy limp while enduring pain on his injured knee. He was chasing elusive officers from his erstwhile employers Kenya Pipeline to help him undergo the operation so that he can return to football but in vain.

"I was operated on the knee in 2004 but it was not successful. Efforts to remedy the situation from my former employers have been unsuccessful. I cannot play football now and have been reduced to a beggar," Imbo said.<sup>33</sup>

"Please, someone help me. I am suffering. Football was my life. I was orphaned when I was 10 years and have no one to turn to," Imbo made a plaintive cry.<sup>34</sup>

### **2.3.2 SOLOMON NASIO-MAY 2014**

An astute defender broke his nose in 2013 while playing for Gor Mahia Football. He played with the injured nose until it started bleeding leading to his substitution. Needed Kshs 150,000/= for surgery to treat the injured nose which the club could not raise. Nasio felt excruciating pain and faced difficulties in breathing.

"My attempts to get help from the club have been futile as the management has been avoiding me. They promised to help but nothing has been done so far," Nasio told *Daily Nation Sport*

"It has been a difficult time for me. I was injured in a club assignment but I'm yet to get any help. I've been in and out of the Kenyatta National Hospital for check-ups and this is becoming unbearable for me. The doctors recommended corrective surgery last year but I'm yet to undergo the procedure due to lack of money."<sup>35</sup>

"My team-mates tried to support me by sacrificing their winning bonuses. However, Gor Mahia management stopped this claiming it would embarrass the club," he says.

---

<sup>32</sup> Ibid

<sup>33</sup> <https://www.nation.co.ke/sports/football/Imbo-pleads-for-help-over-knee-injury-/1102-1117912-113712b/index.html>

<sup>34</sup> Ibid

<sup>35</sup> See <https://mobile.nation.co.ke/sports/Big-shame-as-Gor-Mahia-neglects-injured-defender-Nasio/1951244-2313778-format-xhtml-t5ghrd/index.html>

Contacted, club secretary-general Chris Omondi said they were aware of the situation but the club's financial position could not allow them to help Nasio.<sup>36</sup>

### **2.3.3 GEORGE OPIYO-January 2014**

George Opiyo was a Goalkeeper who sustained a knee injury while on duty with Tusker Fc. The club later duly catered for his knee operation but while going recuperating and undergoing rehabilitation when he was sacked.

Tusker FC director claimed that they revoked the contract on mutual agreement. He said the player had had no playing time at Tusker Fc over the past season and was not part of the plans of the new coach and they could not keep him when playing time was not guaranteed. "We, however, are determined to settle all his medical bills at whatever club he joins," Tusker Fc CEO Obiny added.<sup>37</sup>

He was later on signed by Sofapaka Fc who equally quashed the deal alleging that the player had an injury that their medical team had not advised the management on at the signing stage.

"Last year was painful for me. When I picked the injury, I got an assurance that I would be operated on when the season came to an end. The club (Tusker) assured me that after the rehabilitation and getting back to full fitness I would be part of their plans

### **2.3.4 JOSEPH APINDI OCHIENG-2014**

A talented defender joined KCB in MAAI 2011 from Mahakama Fc on a 3-year contract. After 10 months, his contract was terminated after incurring a knee injury during training. The Team doctor thereafter recommended a scan that revealed damaged tissues.

"The doctor referred me to our physician who said the hospital had exaggerated in its diagnosis and advised me to work on the injury in the gym," he recalled. Two months later, there was no improvement and Ochieng was unable to play. In November of the same year, KCB terminated his contract. Ochieng was left stranded with no job; bills to pay and an expectant wife. Three years later, life has become difficult but he hopes that the club would pay his medical bills and the salary that it owes him<sup>38</sup>

"I sought clarity from the chairman about the decision to sack me, yet I had a contract and I required treatment," said Ochieng<sup>39</sup>

### **2.3.5 HARRY GENTLE-MARCH 2011**

A Defender of Nigerian Nationality with AFC Leopards who sustained a toe injury that kept him off active play for several weeks. He needed an urgent operation to treat his toe. AFC Leopards spurned the statutory duty; The duty of care; failing to cater to the medical expenses. His valid contract was instead terminated forcing him to take care of the operation at a cost of 110 thousand shillings.

---

<sup>36</sup> Ibid

<sup>37</sup> See <https://mobile.nation.co.ke/sports/Kenyan-Premier-League-clubs-and-their-players/1951244-2151258-format-xhtml-1ci326z/index.html>

<sup>38</sup> See <https://nairobi.news.nation.co.ke/sports/injured-players-dumped-and-left-penniless>

<sup>39</sup> Ibid

"It is so sad the way AFC Leopards has treated me, am completely depressed now without a club without money and with no hope of playing soon because I am only recuperating from the operation and I will be out of active football for over two months." Said, Harry.<sup>40</sup>

"Injuries do happen in soccer but you don't dump a player after he gets injured playing for your club. This is inhuman and I have reported my case to KPL to highlight what clubs do to players so that this cannot happen to other players in the future," added Harry.<sup>41</sup>

### **2.3.6 SHAFIK BATAMBUZE-SEPTEMBER 2019**

Titile winning left-back of Ugandan origin suffered an aggravated knee sprain while playing for Gor Mahia. He required Kshs 400,000/= for corrective surgery which the club could not afford. The player made appeals to the fans to donate to his medical kitty to get funds that would facilitate the procedure

Upon interview, BATAMBUZE stated that "I am in pain and the sooner I have this surgery the better for me. The club has made it clear that they don't have funds and I have been forced to ask for assistance from fans as I have no other option. My target is to have all that I need for the surgery by the end of the month or thereabout so that I can book and get it done hopefully by mid next month,"<sup>42</sup>

Club CEO told Nation Sport that "You understand the current financial crisis at the club and that is what has made Batambuze take that route and he has our consent and support. He is still our player and we urge our fans to assist him to raise enough funds to cater to his treatment. It is good to speak the truth and that is what we have done,"<sup>43</sup>

### **2.4 THE CASE OF THE NATIONAL TEAM AND ITS PLAYERS**

Unlike clubs participating in the League that has sponsors, Kenya's Football National Teams are directly under the Football Kenya Federation. There are different categories of teams, spanning from male and Female U-15, u-17, u-21, U-23, the Senior National Team. Essentially the Players summoned for to the National sides have binding Contracts with the Federation. FKF owes every footballer summoned for National duties the duty of care.

According to the Rules of Kenyan Football: *'The FKF must ensure that all players have adequate medical and other insurance for any injury, illness or accidental death during their period of duty with a Kenyan National Team. A qualified medical doctor must accompany a Kenyan National Team on all Foreign Trips.'*<sup>44</sup>

The National Team has heavily relied on services Tusker Fc Team Doctor Wycliffe O. Makanga , a renowned sports medicine clinician and a qualified certified CAF Sports medicine instructor. He has been with the National Team for almost two decades. Widely trained he is among the few yet highly celebrated finest doctors in the Sports Industry.

---

<sup>40</sup> <https://www.michezoafrika.com/kpl/harry-gentle-launches-complain-to-kpl-over-afc-mistreatment/1109.aspx>

<sup>41</sup> Ibid

<sup>42</sup> <https://mobile.nation.co.ke/sports/football/Shafik-Batambuze-Gor-Mahia-defender-appeals-for-help/3112512-5287156-ls1dmz/index.html>

<sup>43</sup> Ibid

<sup>44</sup> Article 9.2 of Rules of Kenyan Football Approved by the FKF NEC ON February 18, 2015 'Fairplay on an off the Field'

Whereas the notorious breach of both duties of care of National Team players and **Article 9.2** has not been rampant, we mention two players who have borne the consequences and had to rely on the public to raise funds for treatment,

#### **2.4.1 GEORGE WAWERU-May 2014**

A lanky, no-nonsense defender who graduated from the Junior U-23 side to feature for the Senior National Team side severally. He was in the National Team that represented Kenya in the 2004 Africa Cup of Nation where he sustained a severe neck injury during training, before an AFCON Match. The same was aggravated in the first game Kenya played at the Nations Cup losing 3-0 to Mali.

Waweru accuses the federation of neglecting him upon getting injured and instead came up with a story that he had been attacked by thugs, his club Tusker fired him and he was left to struggle to get medical attention<sup>45</sup>

"People say bad things about how I got injured. Some have said I was mugged but the truth is, I got injured during training and the medical staff did not attend to it well. I think I am lucky to be alive today."<sup>46</sup>

#### **2.4.1 PHILEMON OTIENO-august 2019**

A Defender plying trade with Gor Mahia whose fortunes improved from local club ranks, prominently featured for Harambee Stars in the qualification of AFCON in Egypt and the finals therein. He tore his anterior cruciate ligament during the return leg of the first round 2020 African Nations Championship (Chan) qualifier pitting Harambee Stars against Taifa Stars at Kasarani. Kshs 500,000 was the estimated cost that the reconstruction of the ligament required.

Upon his injury, there were reports that the Federation was planning to fund his treatment. However, a stalemate broke and the player remained stranded forcing club, and the federation coming out to issue contradicting statements. Amidst allegations that Gor Mahia had terminated the Players contract, the club CEO was forced to issue a statement.

"I wrote a letter to FKF on September 4 on the state of Philemon's injury and they have never bothered to answer. The player needs to be treated urgently because he is suffering and is in pain. They wrote to us when they needed the player for a national assignment but now they have ignored us and deserted him yet it is their responsibility to meet his medical cost. Nobody has terminated Philemon's contract, we only severed it for some time and gave his jersey number to another player. He is still our player. What is surprising is that when Brian Mandela got injured in Harambee Stars camp in France, FKF paid for his treatment and didn't refer him to his club in South Africa. Why is that not happening in Philemon's situation?" posed Club CEO Aduda<sup>47</sup>

Acting FKF CEO Barry Otieno retorted contradicting the Federation's Laws claiming that insists that it's not the mandate of the Federation to treat Injured National Team Players.

---

<sup>45</sup> <https://mobile.nation.co.ke/sports/The-sad-story-of-a-former-Harambee-Stars-defender/1951244-2301338-format-xhtml-uphkhmz/index.html>

<sup>46</sup> Ibid

<sup>47</sup> See <https://www.nation.co.ke/sports/football/Gor-Mahia-FKF-tussle-over-treatment-of-Philemon-Otieno/1102-5280546-13kmi3q/index.html>

"There is no law that says the federation should cater for medicals expenses of a player injured while playing for the national team. We also don't have comprehensive insurance cover for players in the national team, we only give them covers when traveling out of the country for matches," said Otieno who urged Gor Mahia to carry their own cross. "Philemon is a Gor Mahia player and the club should help him get treatment. As at now, the federation has no money but the situation would have been different if finances were available"<sup>48</sup> .

After months of exchanges and standoff between the federation and Gor Mahia, Otieno eventually went under the knife at the Kenyatta National Hospital. His national teammates at the National Team herein Jesse Were, Michael Olunga and Captain Victor Wanyama the Kenya Footballers Welfare Association (KEFWA) rallied behind him raising money for his treatment<sup>49</sup> .

Such an incident is likely to sour club-country relationships. Injuries and consequent neglect have previously been a turn off for clubs against releasing their Players to the National Teams. The Players whose valid dreams are to represent the National team and attract scouts from foreign jurisdictions face resilience from Administrators whose main worries are Injuries, cost of treatment and the question of who treats them after incurring injuries while on international duties. However, Clubs face sanctions if they fail to release their players when and if called upon to the National Team.

*When requested by the FKF, clubs must release a player selected for a Kenyan National Team at least 72 hours, before the kick-off for an international friendly match, at least five days before the kick-off for a qualifying match, at least five days before the kickoff for a qualifying match in an international competition and at least fourteen days before the kickoff from the first match in the final competition of an international competition. Players must resume duty with their clubs no later than 48 hours after an international match or the last match in a final competition. These minimum periods of duty can only be changed by mutual agreement in writing between the club and FKF<sup>50</sup>*

The above rule aligns with FIFAs regulations that bequeath the obligation to the club to release players to the national teams for matches and tournaments specified in a calendar published annually by FIFA<sup>51</sup>. As earlier stated, Clubs have tussled with federations on the release of players who get injured and are abandoned by Associations forcing clubs to dig deeper to cater for their treatment. This forced FIFA to come up with a scheme that would ensure that there's compensation.

#### **2.4.2 FIFA CLUB PROTECTION PROGRAMME**

This is an insurance scheme established to provide financial compensation when a player suffers temporary total disablement ("TTD") as a result of an accident while on national duty with his representative "A" team, which prevents him from participating in club footballing activities for more than 28 consecutive days.<sup>52</sup> Its cover for permanent total disablement or death or any costs of medical treatment. The program will compensate the football clubs that employ the

---

<sup>48</sup> Ibid

<sup>49</sup> See <https://citizentv.co.ke/sports/act-of-kindness-three-harambee-stars-players-paid-for-otienos-surgery-285322/>

<sup>50</sup> Period of duty Article 9.3 of Rules Of Kenya Football APPROVED BY THE fkf nec1 On February 18, 2015, Fair play On And Off The Field.

<sup>51</sup> [Annexe 1 of the FIFA Regulations on the Status and Transfer of Players](#) (the "Regulations

<sup>52</sup> Article 2 of the Technical Bulletin-FIFA CLUB PROTECTION PROGRAMME

injured football player(s).<sup>53</sup> Once it's established that a player *can resume full team training activities and/or participate in matches, whichever is the earlier*) established that compensation ceasing to be paid when

### **2.4.3 Matches covered**

An international "A" match means a match for which both member associations field their "A" representative team.<sup>54</sup>

- a) All matches between two "A" representative teams played on the dates of the FIFA international match calendar or on dates covered by the respective release period for such matches as defined in Annexe 1 of the FIFA Regulations on the Status and Transfer of Players, as long as they are also contained in the list of matches published on [www.fifa.com](http://www.fifa.com).
- b) All friendly international "A" matches played by the "A" representative teams participating in confederation final tournaments, the FIFA World Cup™ final tournament, the FIFA Women's World Cup™ final tournament, and the FIFA Confederations Cup final tournament during the preparation period. Coverage includes football players of both "A" representative teams.
- c) All matches between two "A" representative teams not falling under the conditions described above are not covered

### **2.4.4. WHICH PLAYERS ARE COVERED AND WHEN DOES THE COVER BEGIN?**

The FIFA Club Protection Programme will cover<sup>55</sup>

- a) all professional football players who are under an employment contract with a football club and released to an association for international "A" matches for the senior women's or men's "A" representative team for which an obligation to release football players exists according to the FIFA Regulations on the Status and Transfer of Players.
- b) . All professional football players who are employed by football clubs affiliated to a FIFA member association are protected. A professional football player is a football player who has a signed, written contract with a football club and is paid more for his footballing activity than the expenses he incurs for the same activity. All other football players are considered to be amateurs and are not covered under this program
- c) The football players are covered whilst under the control of the respective member association for official international "A" matches of the "A" representative team, including all playing, practicing, training, training matches, traveling and time spent away.
- d) Club protection starts from the moment the football player starts his journey from his home or football club address to report for duty with his association and ends at whichever of the two following options occurs first: at midnight local time on the day he returns to his home or football club from international duty, or 48 hours after leaving the "A" representative team, including direct unbroken travel ("operative time").

---

<sup>53</sup> Ibid

<sup>54</sup> Sec 4(6) of the Regulations Governing International Matches

<sup>55</sup> Article 2 of the Technical Bulletin-FIFA CLUB PROTECTION PROGRAMME

## **2.4.5 THE COMPENSATION AND HOW IT'S CALCULATED**

The program compensates football clubs for up to a maximum of EUR 7,500,000 per football player per accident. The maximum of EUR 7,500,000 is calculated at a daily "pro-rata" compensation of up to EUR 20,548 (1/365), which is payable for a maximum of 365 days. The maximum daily compensation is limited to EUR 20,548 per accident. The maximum capacity ("aggregate limit") of the FIFA Club Protection Programme is EUR 80,000,000 per annum. The program defines how the compensation is calculated<sup>56</sup>

When does compensation stop?

Compensation under the FIFA Club Protection Programme stops when either:<sup>57</sup>

- a) the football player is no longer suffering from a TTD. Payment stops on the date on which the injured football player can resume full team training activities and/or participate in matches, whichever is the earlier and irrespective of whether the opportunity to participate exists or not;
- b) the contract of the football player terminates;
- c) the football player dies
- d) the maximum benefit period of 365 days is exhausted;
- e) the maximum compensation per accident per football player and/or the maximum capacity ("aggregate limit") of the program is exhausted

## **2.4.6 EXISTING AND PRE-EXISTING INJURIES**

An existing injury is a physical injury caused by an accidental incident, degeneration or a degenerative condition for which the football player is under medical treatment from a health care practitioner when the "operative time" commences.<sup>58</sup>

Existing injuries at the start of the "operative time" will not fall under the compensation scheme, save for the exception of the final tournaments (see the section). If a football player who is suffering from an existing injury plays for his association, the FIFA Club Protection Programme will not compensate the player's club for any loss caused by or consequent upon this existing injury. The exclusion is limited to the injured part of the body.<sup>59</sup> A pre-existing injury is a physical and/or psychological impairment, defect, degeneration, degenerative condition or infirmity that existed before the football player joining up for duty with his association.<sup>60</sup> All accidents and/or the consequent bodily injury caused and/or contributed to by pre-existing injuries are covered under the FIFA Club Protection Programme<sup>61</sup>

## **2.4.7 Recurring Injuries**

The Cpc provides for compensation on this. However only injuries recurring within a period of less than 30 consecutive days. If a football player suffers an injury following an accident which occurred while playing for his association and then

---

<sup>56</sup> Ibid

<sup>57</sup> Page 8 Technical Bulletin – FIFA Club Protection Programme

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> Page 9 Technical Bulletin – FIFA Club Protection Programme

<sup>61</sup> Ibid

recovers, but then again suffers a TTD from the same injury within 29 consecutive days and this is medically determined by a health care practitioner, then the FIFA Club Protection Programme will continue to compensate the football club within the limits of the programme. If the football player returns and works for the football club for 30 or more consecutive days, no compensation will be payable from the program should that same specific injury reoccurs<sup>62</sup>

#### **2.4.8 Exclusions/conditions What are the exclusions from the FIFA Club Protection Program**

This scope of cover excludes the following conditions<sup>63</sup>

- a. The first 28 consecutive days of injury;
- b. Any losses caused by or consequent upon the committing of or attempt to commit a felonious or criminal act by the football player or football club;
- c. Any losses caused by or consequent upon any active involvement of the football players as combatants in a conflict that their legally recognized governing authorities have declared to be a war;
- d. Any losses caused by or consequent upon ionizing radiations or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of nuclear fuel, the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof unless caused by or consequent upon terrorism
- e. Any losses caused by or consequent upon sickness (except heart attacks and strokes)
- f. Any losses caused by consequent upon existing injuries
- g. Any losses caused by or consequent upon death and permanent total disablement
- h. Any losses caused by or consequent upon: a) War, whether declared or not, between any of the following countries: China, France, the United Kingdom, the Russian Federation and the United States of America, or b) War in Europe, whether declared or not, other than:
  - (i) civil war,
  - (ii) any enforcement action by or on behalf of the United Nations, in which any of the countries stated in a) above or any armed forces thereof are engaged;

football clubs and football players affected by trade and/or economic sanctions, prohibitions or restrictions due to regulations of the United Nations, the European Union, the United Kingdom, the United States of America or any other applicable national economic or trade sanction law or regulations will not be covered and/or not receive compensation payments during the time the sanctions concerned are in force.

#### **2.9 LAW AND JURISDICTION**

Any disputes between football clubs and FIFA or other football governing bodies arising concerning the program are to be submitted to the Court of Arbitration for Sport (CAS).<sup>64</sup>

---

<sup>62</sup> Ibid

<sup>63</sup> Page 10 Technical Bulletin – FIFA Club Protection Programme

<sup>64</sup>

Disputes between football clubs and one or more insurers in cases of assignments of rights by FIFA to football clubs are subject to Swiss law and to be resolved using ad-hoc arbitration. The respective details are outlined in the insurance policy and disclosed to the football clubs concerned upon assignment of right<sup>65</sup>

### **3.0 EMPLOYMENT LAWS-THE NATIONAL HOSPITAL INSURANCE FUND AND WIBA**

In Wilberforce Kilibwa v Mumias Sugar Co Limited [2013] eKLR the Court stated that;

Professional footballers in Kenya and elsewhere have rights and obligations like any other employee. Labor and Employment laws, such as the Work Injury Benefits Act Number 13 of 2007 and the Employment Act Number 11 of 2007, apply to Professional Footballers as they do to all other employees. Professional Footballers are entitled to the protections afforded by these Legislations.'

### **FACTS**

1. Wilberforce Kilibwa was employed by Mumias Sugar Company as a footballer, between 2000 and 2002. He played for Mumias Sugar Football Club which featured in the Kenya Premier League.
2. On or about 7<sup>th</sup> October 2001, Mumias Sugar Football played against a Mombasa bases Team, Coast Stars in a Premier League match, at the Mombasa Municipal Stadium. A Midfielder, Kilibwa featured in the match. As the match progressed, he vied for a high ball lobbed in his 'D' area, but collided with an opponent thus, falling to the ground. He resultantly injured his left knee. The players were covered through Aon Minet Insurance Company He was treated at the Mater Hospital.
3. He subsequently lodged a claim with his employer for compensation, under the repealed Workmen's Compensation Act Cap 236 the Laws of Kenya. On 25<sup>th</sup> September 2002, the District Labor Office Kakamega wrote to Mumias Sugar Company, assessing compensation payable to Kilibwa at Kshs. 169,322. This amount has not been paid as of September 2013, necessitating the filing of the Statement of Claim on 5<sup>th</sup> December 2011.
4. *He was awarded compensation at Kshs. 169,322*

Justice Rika boldly states that *A Professional Footballer must have a written contract of employment. The document must be made available to the Club, the Player and the Football Federation charged with the football administration. The contract must incorporate the mandatory labor and employment standards of the particular country. Salary and other financial and non-financial obligations of the Club to the Player must be made clear in the contract. The contract must explain the health and safety policy of the Club, which includes mandatory insurance coverage of the Player for illness and accident.*<sup>66</sup> *The Clubs must ensure their Players have access to social security. The essence of social security is to aid the players upon retirement and cushion them from the culture of begging and handouts.'*

---

<sup>65</sup> Section 4 of the Fifa Protection Programme

<sup>66</sup> An accident occurs suffers a bodily injury due to a sudden external force acting on his body. An accident can also be a specific, sudden act of exertion at an identifiable time and place from which the football player suffers a bodily injury. In addition to these defined accidents, heart attacks and strokes are also considered accidents.

Thus, we gather that like any other cadre of Employees all Kenyan footballers with professional contracts automatically accrue rights from the Labor and Employment laws, such as the Work Injury Benefits and the Employment laws among all the other laws that promote Fair Labor Practices Acts in consonance with Article 41 of the Kenyan Constitution.

### **3.1 WORK INJURY BENEFITS ACT No 13 of 2007**

This is an Act of Parliament that covers any part of an Employers<sup>67</sup> Legal liability on matters that relate to bodily injury. This may include death or disease sustained by an Employee<sup>68</sup> arising out in and in the course of Employment. Precisely, we note that Kenyan Clubs are Employers and footballers are Employees. As such both parties have duties to perform under this Act.

### **3.2 CLUB (EMPLOYER) OBLIGATIONS**

Every employer must obtain and maintain an insurance policy, with an insurer approved by the Minister in respect of any liability that the employer may incur under this Act to any of its employees.<sup>69</sup> Thus Kenyan Clubs have no option but to comply by obtaining on behalf of the playing contingent this policy

The Minister may exempt from the provisions of subsection (1) an employer who provides and maintains in force security which complies with the requirements of subsection (3), and any exemption granted in terms of this provision shall continue in force only so long as the security is maintained.<sup>70</sup>

An employer who carries on business in Kenya must within the prescribed period and in a prescribed manner – register with the Director;<sup>71</sup>

keep a register or other record of the earnings and other prescribed particulars of all employees; at all reasonable times produce the register or record on demand to the Director for inspection; retain the register, record or reproduction referred to in subsection (1)(a) for a period of at least six years after the date of the last entry in that register or record.<sup>72</sup>

### **3.3 Compensation/Benefits**

An employee who is involved in an accident resulting in the employee's disablement or death<sup>73</sup> An employer is liable to pay compensation following the provisions of this Act to an employee injured while at work<sup>74</sup>

In the context of an Injured player one will be entitled to payments for;

- I. Permanent Total disablement

---

<sup>67</sup> Sec 4. Meaning of employer (1) In this Act, "employer" means any person who employs an employee

<sup>68</sup> Sec 5. Meaning of employee (1) In this Act, "employee" means a person who has been employed for wages or a salary under a contract of service and includes an apprentice or indentured learner

<sup>69</sup> Sec 7(1) of the Work Injury Benefits Act

<sup>70</sup> Sec 7(2) of the Work Injury Benefits Act

<sup>71</sup> Sec 7(3) of Work Injury Benefits Act

<sup>72</sup> Sec 8(1)(a)(b)(c)

<sup>73</sup> Sec 10(1)

<sup>74</sup> Sec 10(2)

2. Temporary Total disablement
3. Medical Expenses

It's therefore prudent that the said Cover be issued by the clubs

### **3.4 THE NATIONAL HOSPITAL INSURANCE FUND**

Employers must ensure the provision of sufficient and proper medicine for Employees and if possible medical attendance during serious illness.<sup>75</sup>This obligation is fulfilled when an Employee can secure treatment through the state-owned medical Insurance Fund herein National Hospital Insurance Fund .The National Hospital Insurance Fund is established by an Act of Parliament that creates a parastatal that establishes a department under the Ministry of Health. The core function of this fund is to collect contributions from all Kenyans earning over Kshs 1000/= and pay the Hospital needs of the contributions to members and their declared dependents. , Kenyan clubs are competent employers and as such all Employees have a statutory obligation of joining the scheme.

### **3.5 Membership**

The Act makes it compulsory for all Employees earning more than KSHS 1000 and is above the age of 18 years to become Members of the Fund<sup>76</sup>.For a player to feature for Kenya Premier League Team he must be at least 18 years <sup>77</sup>This means that all Kenyan Players who have attained the age of 18 years, have a duty to abide by this provision.

All Employers must deduct the mandatory contribution from an Employee's salary before effecting payment to the later then disburse to the NHIF. However, it's of importance to note that any person interested in joining the scheme is free to do so. Kenyan Premier League Clubs must make it easy for this Parastatal to deliver by remitting deducted contributions.

### **3.6 Contributions**

They are made on an ascending scale and are largely dependent on an Employee's salary. Thus, the lowest contribution is Kshs 150 for Employees earning between KES 5,999/= and less while the highest contribution is Kshs 1700/= for Employees earning over Kshs 100,000/=. There are varying rates capped on earnings that have different values of contributions. For Example, it is expected that a Kenyan Footballer earning over Kshs

- i. KSh 20,000 – 24,999-Ksh 750/=
- ii. KSh 25,000 – 29,999 -850
- iii. Ksh 40,000 – 44,999 -1000
- iv. Ksh 50,000-59999 -1200
- v. Ksh 80000-89999-1500<sup>78</sup>

Failure by Employer to remit the contributions to the parastatal upon deductions attracts a penalty to the Employer<sup>79</sup>.This begs the question, do Kenyan Clubs abide by these statutory obligations?

### **3.6 BENEFITS OF NHIF**

All KPL Clubs have reportedly issued the players with National Hospital Insurance Fund (NHIF) cards. This means that the Clubs have been truthful to the course of the statutory obligations. What benefits accrue from NHIF Membership? Note that the benefits are restricted to NHIF accredited hospitals.

<sup>75</sup> Sec 34 of Employment Act

<sup>76</sup> Sec 15(1)(b) of the National Hospital Insurance Act, Cap 255 of the Laws of Kenya

<sup>77</sup> Sec 5.1 of the Rules of Kenyan Football

<sup>78</sup> See <https://calculator.co.ke/nhif-insurance-contributions-rates.php>

<sup>79</sup> Sec 16(6) of Cap 265 of the Laws of Kenya

Inpatient services

### **3.6.1 Category A (government hospitals),**

members would be able to enjoy full and provides a comprehensive cover for maternity and medical diseases including surgery. Members need not pay for anything on admission provided they are fully paid up members of NHIF.

### **3.6.2 Category B (private and mission) hospitals**

Members are entitled to full and comprehensive cover but exclude surgical charges. As such, Contributors are such to co-pay

### **3.6.3 Contract C**

Applies to high-cost private hospitals where the NHIF Vpays an agreed amount per day on admissions to a recognized hospital for a maximum of 180 days

### **3.6.4 Outpatient**

Limited to expenses incurred concerning drugs, laboratory tests, and diagnostic services, surgical, medical procedures or equipment, physiotherapy, and doctors fees food and boarding and boarding costs.

### **3.6.5NHIF SUPA Cover**

Entails the following benefits

- Outpatient services - Consultation, Laboratory, investigations, daycare procedures, drugs and dispensation, health education, wellness and counseling, physiotherapy services, immunization,/ vaccines as per the KEPI schedule
- Inpatient services
- Reproductive health services: Family Planning
- Renal Dialysis
- Overseas treatment for specialized surgeries not available locally
- Rehabilitation for drugs and substance abuse
- All surgical procedures including transplants
- Emergency road evacuation services
- Radiology imaging services (X-rays, CT Scan, & MRI)<sup>80</sup>

The NHIF cover is however insufficient to carter for treatments owing to a raft of challenges the scheme faces. The cost of treatment and special attention rendered to injuries incurred in sports may not be adequately in the radar of NHIF accredited institutions. It's for this reason that despite all the aforementioned listed services, NHIF remains rather unreliable.

## **4.0 CONCLUSION AND RECOMMENDATION**

Football Players in Kenya deserve treatment for injuries, illnesses arising out of injuries sustained in the course off employment. Given the escalated costs of treatment, such covers must pay for doctors' services, surgeons and anesthetic fees, food and accommodation, bed charges, drugs, diagnostic procedures such as X-rays, cost of theater rand nursing services

---

<sup>80</sup> See <http://www.nhif.or.ke/healthinsurance/supacoverServices>

Clubs finding Insurance Cover rather expensive can opt for Self-funding. This is where an organization chooses to save money that they would have used for medical insurance programs and pay for the medical costs themselves. It's viable and may see a club negotiate directly with doctors, hospitals, and pharmacies. Employee self-funded schemes are useful to cater for outpatient costs for which medical insurance escalates to an expensive level. However, one major disadvantage is that the reimbursement of medical costs by employers is considered a benefit for the employee and it is fully taxable at the employee's highest rate **of tax**.

#### **4.1 Personal policies**

Players should be encouraged to acquire personal policies; these are the individual customer who takes responsibility for arranging their medical coverage and pay their premiums

#### **4.2 COMPREHENSIVE POLICIES**

Are full cost or full refund policies Have a wide array of benefits and services. May cover both inpatient and outpatient.

#### **4.3 STANDARD POLICIES**

Similar to comprehensive policies but with some of the benefits reduced or excluded completely to contain treatment costs and reduce premiums. May require players injured to receive treatment in pre-specified hospitals with doctors whom the insurer has negotiated favorable carted for services rendered.

#### **4.4 BUDGET POLICIES**

These would allow players or potential customers to acquire medical cover at a lower premium. There are limited benefits such that customers acquire cover for strictly the most important and expensive types of treatment. The treatment must only be at a specified network of hospitals which the insurer has negotiated favorable rates

#### **4.5 WIBA**

Players injured in course of duty ought to be enlightened on the course of pursuing Compensation through this scheme.,