

SOUTH AFRICA / JUDGMENT

Ackerman v Mbombela Golf Club (5584/2023) [2024] ZAMPMBHC 50 (19 July 2024) [2024] ZAMPMBHC 50

COURT

Mbombela High Court, Mpumalanga

BEFORE

S Msibi

CASE / FILE NUMBER

5584/2023

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

MPUMALANGA

DIVISION (MAIN SEAT)

Case

No: 5584/2023

1.

REPORTABLE: YES/ NO

2.

OF INTEREST TO OTHER JUDGES: YES/NO

3.

REVISED.

DATE 19 JULY 2024

[SIGNED]

SIGNATURE

In the matter between:

GERHARDUS JACOBUS

ACKERMAN

APPLICANT

And

MBOMBELA

GOLF CLUB

RESPONDENT

This

judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII.

The date and time for hand-down is deemed to be at 11h30 on 19 JULY 2024.

JUDGMENT

MSIBI AJ:

1. The applicant brought review proceedings in terms of Rule 53 of the Uniform Rules for the review and setting aside of the decision of the respondent to permanently ban him from membership. The application is opposed.
2. The applicant is Mr Gerhardus Jacobus Ackerman, a Chartered Accountant who has been a resident of Matumi Golf Estate for 25 years. He was a member of Mbombela Golf Club (the respondent) from 2000 to 2016.
3. The respondent is Mbombela Golf Club, a voluntary association which, in terms of its constitution, is a juristic person who may act or be acted against in its name and address at Matumi Estate, Wilhem Street, Mbombela.
4. The golf club has rules that are embodied in the Mbombela Golf Club Constitution and all members are obliged to comply therewith.

Background

5. The following facts are largely common case.
6. The applicant served as a captain of the club from 2013 to 2015. In 2016 during a club meeting a certain member of the respondent made derogatory remarks to his wife while she was discussing a document. Aggrieved by the said remarks, the applicant responded with derogatory remarks to the person who made the remarks. He was subsequently found guilty at a disciplinary hearing of behaviour

unbecoming of a member of the respondent. He appealed against the conviction and expulsion, but later abandoned same.

7. As a result of his expulsion the respondent was banned from playing golf on the estate, attending homeowner's association and general meetings as these were held in the premises of the golf club.
8. Eight years after his expulsion, the applicant applied for re-admission as a member of the respondent as prescribed in clause 8 of the constitution. This was rejected by the respondent on 26 September 2023.
9. Consequent to the rejection the applicant launched this application in terms of Rule 53 and Rule 6 in order to have the decision reviewed and set aside.

Reasons

for the rejection of application for re-admission.

10. After completing necessary membership application forms as prescribed by clause 8 of the respondent's constitution; the applicant received a reply from the respondent dated 27 September 2023 which stated as follows:

"As previously communicated to you, your application for membership is indirect breach of the club's constitution in terms of clause 18.7 which reads as

"18.7. After the hearing and or investigation of any complaint as to the conduct of a member, the vice-captain, or in his absence, a nominated management committee member shall have the power to:

18.7.1 Expel such member, such member shall be ineligible for reelection forthwith and all monies paid to the club by him shall be forfeited"

In light of the outcome of your disciplinary enquiry dated 29 April 2016 where you were expelled, we hereby inform you that your application for membership has been declined"

11. The rejection of the applicant's application for re-admission was met with resistance and after correspondence was exchanged, the applicant's legal representative instituted these review proceedings. The applicant contended that based on the content of the respondent's letter the applicant's application was declined due to the fact that he was expelled in 2016, he cannot again be re-elected into membership. The applicant further referred this court to the minutes of the meeting at which the membership of the applicant was rejected that read as follows:

"DP informed the meeting that an application for the life banned golfer Jaco Ackerman was received just prior to the AGM. As discussed in previous meetings, this application is in contradiction of MGC constitution, clause 18.7.1 and a formal reply from the club was still required to be sent to Jaco Ackerman. SS to check the contents of the letter prior to DP sending. NE suggest we get opinion to check on if our club's constitution will stand up to the constitutional master [sic]"

The rules

12. Both parties referred this court to clause 14.2 of the respondent's constitution which stipulates as follows:

"14.2 A member who has been designated a default are or who has been requested to resign or who has been expelled from membership shall not be legible for readmission to the club, unless re-admission is recommended by two thirds (2/3) majority of the management

committee..."

13. The issue before this court is not the legitimacy of the applicant's expulsion in 2016, but the rejection of his application for re-admission as a member.
14. It was argued on behalf of the applicant that the contents of the letter does illustrate the fact that (DP) Mr Plumb only informed the committee that the plaintiff's application was in contradiction to the NSG constitution, namely clause 18.7.1 and that a letter will be sent to him informing him of the committee's decision. This stance is also confirmed In a letter dated 12 April 2023 pertaining to the conduct of one Mr Chris Koch which stated as follows:

"We can only again advice, and as per our warning letter, that Mr Ackerman is serving a lifetime suspension from the club and facility

in terms of the club's constitution"

15. It was further submitted on behalf of the applicant that the committee's decision in this regard was procedurally unfair,

arbitrary and materially influenced by an error in law. This was contrary to section 6 of Act 3 of 2000 (Promotion of Administrative

Justice Act)

16. It was also argued that according to common law precepts he had a right to appear before the committee and be heard before the

committee could decide to reject his application for re-admission. Consequently, he contests the committee's rejection of his application and prays that the committee's decision be set aside.

17. The respondent argues that the provisions Act 3 of 2000 do not apply in that the application for re-admission does not constitute an administrative action under the Act. It constituted an executive action which is not reviewable in terms of PAJA, so continues the argument. Based on this alone the application should be dismissed with costs.

18. In terms of section 21 of the Superior Courts Act, a division has jurisdiction to adjudicate causes of action arising within its area of jurisdiction. The cause of action in this application arose within the area of jurisdiction of this court, as such this court has jurisdiction to hear this application.

19. The respondent argues that in terms of clause 18.7, the committee has authority to expel a member, who shall then be ineligible for re-election. Such a member can be deprived of all right and privileges of his membership during such time or period. By virtue of the respondent's clauses and the fact that their relationship is contractual in nature, the respondent's committee holds absolute discretion regarding the applicant's re-admission
20. It is also true that clause 18.7 and 14.2 are mutually destructive. Despite this fact, both clauses are mandatory and have to be complied with regarding admission, expulsion and re-admission into the club's membership. The applicant was once a member of the respondent's club and also served as a captain of the club. Although clause 18.7 validates and confirms the applicant's termination of membership, clause 14.2 gives him a fair opportunity for his re-application for membership to be heard and decided by a two thirds majority.

Considerations

21. The applicant has been a home owner in the golf estate for 25 years. This is the place he calls home, for himself and his family. The initial termination and expulsion was a due punishment for his conduct. For the said number of years, he could not interact freely in the club, in home owner's meetings and other events at the club. To label the applicant as the "life banned golfer Jaco Ackerman" during his second application for re-admission was procedurally unfair. This creates the impression that a decision had already been made by the member chairing the meeting. It also gives an impression that the application for re-admission was not open for discussion by the committee.
22. When one considers the minutes of the meeting it is clear that it was not the committee that rejected the applicant's application but rather the directive of Mr Plumb. If the decision was made by the committee the minutes of the meeting would need no interpretation.
23. This goes against the rules of natural justice; the applicant had a right to be heard and to have his application adjudicated fairly in terms of clause 14.2. It is highly possible, given the 8-year ban that he had been living under, that he might have learnt a lesson from his previous conduct. The only way for the committee to know this was for them to hear what he had to say. What if he had compelling submissions that he wanted to bring before the committee? The stance taken against this application suggest bias on the side Mr Plumb. If there was no bias, he would have allowed the committee to make decision as directed by clause 14.2. On this matter he acted beyond the scope of the mandate given to him by the constitution. The bias that the applicant demonstrated in this matter is a more fundamental kind which involves pre-judgment of the matter.[1]
24. As it was held in *Turner v Jockey Club South Africa*[2] domestic tribunals must follow a fair procedure to afford persons a fair hearing and allow them to present their evidence. Fair play must be observed, and this must be done honestly and impartially. A tribunal must make fair and bona fide findings of fact, acting honestly and in good faith.

25. Mr Plumb's decision is one sided and biased in that it was based on rule 18.7. He negligently or intentionally omitted to consider and draw the attention of the committee to clause 14.2 of the Constitution. The fact that he refers the applicant as 'the life banned Jaco Ackerman' indicates a pre-conceived notion that he will not allow him to be re-admitted. By so doing he conveyed to the rest of the committee that the application is doomed to fail, since it was not even supposed to be heard in the first place.
26. Seeing that clause 14.2 prescribes the manner in which the committee should be constituted and the procedure to be followed in deciding the application of a previously banned member, it was of paramount importance that this clause is complied with. From the wording of the minutes this was not done.
27. The rejection of the applicant's application for re-admission undoubtedly failed to comply with both procedural and substantive grounds.

Order

In the result the following order is made:

- a) That the decision taken by the management committee of the respondent on 26 September 2023, in terms of which the application for membership by the applicant was rejected, is reviewed and set aside.
- b) The respondent is ordered to pay the costs of this application on the scale as between attorney and own client.

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JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION MBOMBELA

DATE OF HEARING: 28 MAY 2024 DATE OF JUDGMENT: 19 JULY 2024

APPEARANCES

FOR THE APPLICANT: MR G K SLABBER ON INSTRUCTIONS OF SLABBER ATTORNEYS INC. FOR THE RESPONDENT: Adv. JA VAN WYK ON INSTRUCTIONS OF SWANEPOEL AND PARTNERS INC.

[1] 1 Trustees for The Time Being of the Legacy Body Corporate v BAE Estates (PTY) Ltd 2022 (1) SA 424 at page 39) 2 2 1974 (3) 6333 (A)

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