

SOUTH AFRICA / JUDGMENT

Newlands Sporting FC and Others v Durban Central Local Football Association and Others (01198/2022) [2023] ZAKZDHC 16 (7 February 2023) [2023] ZAKZDHC 16

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Msiwa

CASE / FILE NUMBER

01198/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL DIVISION, DURBAN

Case

No. 01198/2022

In

the matter between:

NEWLANDS
SPORTING FC & 39 OTHERS APPLICANTS
and
DURBAN
CENTRAL LOCAL FOOTBALL
ASSOCIATION FIRST
RESPONDENT
SOUTH
AFRICAN FOOTBALL
ASSOCIATION
SECOND
RESPONDENT
TINY
KISTEN THIRD
RESPONDENT
SAFA
ETHEKWINI REGION FOURTH
RESPONDENT
SAFA

KWA-ZULU NATAL PROVINCIAL
EXECUTIVE
COUNCIL FIFTH
RESPONDENT
EXECUTIVE

COMMITTEE:

DURBAN
CENTRAL LOCAL SIXTH
RESPONDENT

JUDGMENT

MSIWA AJ

- [1] The applicants approached this Honourable Court on an urgent basis on 14 December 2022. The court placed the parties on terms as to the filing of their affidavits to expedite a disposal of the application.[1]
- [2] On 16th January 2023, the application was adjourned to the opposed roll on a date to be arranged by the Registrar with such preference as granted by a Senior Judge. The costs incurred on 15th January 2023 were costs in the cause.
- [3] The matter finally served before this court on 3rd February 2023.

Background

- [4] On 4th June 2022, the respondents convened an elective conference. At the conference, the first respondent's Executive Committee was elected. According to the standing requirement in terms of the Constitution of the South African Football Association ("SAFA"), for the delegates to be eligible to participate and vote, clubs must be in good standing as members of the first respondent.
- [5] The respondents were, at all material times, aware of the aforesaid requirement and were obliged to comply with it and with the SAFA Electoral Code. It is further the first respondent's obligation to ensure that, for the election's credibility, there must be an electoral committee, appeals committee and an appointed commissioner.
- [6] The applicants are voluntary association football clubs under the auspices and banner of the second respondent, SAFA[2] through their membership of Durban Central Local Football Association ("DCLFA"). The deponent, Mr Adrian Johnson ("Mr Johnson"), an appointed interim chairperson, avers that the DCLFA took a decision at a meeting on its elective conference on 4 June 2022 to elect an Executive Committee.[3]
- [7] In salient form he demonstrates the shortcomings of the elective conference and submits that on both procedural and substantive grounds, the decisions taken in the conference fall to be set aside in their totality. [4] This is the gravamen of the applicants' complaint herein.

- [8] The applicants further contend that since 4th June 2022, when the decision was taken, they engaged both the first and second respondents through their internal appeal mechanism to address their concern, to no avail.
- [9] The respondents argue that the matter is not urgent. Secondly, the deponents' authority to depose to the applicants' founding affidavit is lacking. Lastly, there is no legal nexus between the complaint and the alleged non-participation of clubs in 2023 SAFA football activities.
- [10] The applicants contend that the urgency is no longer an issue because of Justice Vahed's order aforementioned dated 14 December 2022.
- [11] The applicants further contend that the elective conference was procedurally irregular as their exclusion is irrational, arbitrary and procedurally unfair and not authorized by any empowering provisions of SAFA.
- [12] It is common cause between the parties that:
- (a) Prior to the conference being held, all the affiliated football clubs, through their executives, were issued with "Roadmaps to conference" ("RMTC"). This is a mechanism put in place to ensure that any hassle or glitches before the conference could be resolved by 19th May 2022.
 - (b) There are common laws and statutory tiers for any ensuing appeal by the aggrieved club's chairperson/s, being a member of the DCLFA.
 - (c) There is, in terms of the SAFA Constitution, mediation/arbitration stipulations which affords an expeditious and cheap means of resolving any disputes within SAFA structures.
- [13] The applicant did not utilize or heed to the RMTC to pursue whatever dispute or concern they had prior to the conference. The possible reasoning may be that they did not anticipate that they would be locked out and excluded from participating in voting for the Executive Committee election on 4 June 2022.
- [14] Instead, the applicants pursued their grievance by means of an appeal within the tiers of SAFA post facto. They also argued that the application before court is precipitated by the disappointment and frustration of SAFA failing to attend to their complaint. It is also their contention that, the consequences of their non-participation in voting during the elective conference resulted in the exclusion of their football clubs participating in SAFA 2023 league matches.[5]
- [15] The respondents dispute that the matter is urgent and contend that the application is premature. They argued that the applicants'-initiated engagements with the fourth respondent have not yet been finalised. Further, the respondents aver that the applicants were not in good standing for them to be eligible to participate by way of exercising voting rights for the executive election in terms of the SAFA Constitution.

[16] The applicants' stance is that they are averse to mediation/arbitration. In this regard the applicants filed a Notice

of Opposition to mediation/arbitration, after frustrated by SAFA's failure to attend to their grievances internally for a long time.

[17] To adjudicate this application, I must determine the following

issues:

- (a) whether compliance with the "RMTC" was utilised by the applicants;
- (b) whether the applicants were eligible to participate in the conference in June 2022;
- (c) The effect of Judge Vahed's order dated December 2022;
- (d) Authority of the applicants' deponent to depose and institute the application; and
- (e) The referral of the dispute to mediation or arbitration.

Urgency

[18] The order of the 14 December 2022 is merely expediting the hearing of the application, in its entirety, including the urgency. The respondents are correct and it is their right to challenge the urgency of the matter when it serves before me.

[19] The applicants approached the constitutional structures of SAFA to secure a resolution of their dispute. Having been frustrated by SAFA's structures at KZN provincial level, they appealed to SAFA National for its intervention according to the prescripts of the SAFA Constitution and Constitution of the Republic.

[20] Therefore, it cannot be said that the applicants had been dilatory in instituting the application, and consequently there is no merit in the respondent's argument that there is no urgency.[6]

[21] I am of the view that the matter was of sufficient urgency to justify the applicants approaching this court on an urgent basis.

RMTC

[22] Prior to the elective conference on 4 June 2022, an RMTC was published to all the soccer clubs under the banner of SAFA. In terms of the RMTC a procedure was designed for the clubs who were aggrieved with the list. The aggrieved clubs were directed to email their challenges thereof to the fourth respondent on or before 18 May 2022 as the review of the club status would be determined before the conference on 19 May 2022. The applicants did not file any challenge in terms of the RMTC. This is common cause between the parties.

- [23] It is a trite convention that the club's delegates who attended the elective conference must be from the clubs who are in "good standing" to vote in the conference. This is also common cause.
- [24] The respondents' counsel, Mr Mahlobo, made it abundantly clear that the applicants' clubs lacked good standing and that is the reason they were denied the right to participate in the elective conference. The applicants' counsel Mr Veerusamy could not proffer a direct response to the respondents' assertion whether the applicants had a "good standing" status or not to participate in the election of the executive committee.
- [25] This version about lack of good standing of the applicant clubs has not been refuted by the applicants' counsel. Accordingly, I find that the applicants lacked good standing. Consequently, they were not eligible to vote during the election of the Executive of DCLFA.

Authority of the applicants' deposition to affidavit and the institution of the application

- [26] The respondents challenged the authority of Mr Johnson, the applicants' deponent, to depose to the founding affidavit and launched the instant application before court.
- [27] The basis of the challenge is that some of the applicants' football clubs denied authorizing the deponent to depose to any affidavit and pursue the application against the respondents. The specific clubs together with their chairpersons were not identified in the affidavit as those opposing Mr Johnson's authority to depose and institute the application.
- [28] Further the respondents contend that the applicants, in terms of "DC12", have dissociated themselves as members of the second respondent and are under another soccer body.[7]
- [29] I disagree with the interpretation of the letter given to it by the respondents. The letter is penned by one football club not all the applicant's clubs. Therefore, a contention by the respondent that clubs have dissociated themselves as members of SAFA is unfortunate and is inaccurate.
- [30] The applicants furnished the clubs' resolution as a means of compliance with Rule 7(1). The respondents made bald assertions that there are clubs who denied having mandated the applicants' attorney. The clubs' resolution suffices to prove authority of the attorney as well as the mandate from the football clubs.

The crux of the dispute

- [31] It is my view that Annexure "DC12" with its asperity was penned by a frustrated club, hence in a ranting form, as a means of expressing disgruntlement at the dereliction and shoddy attitude in resolving the clubs' dispute it had raised with the respondents.

- [32] Consequently, the applicants have no confidence in the internal SAFA mechanism hence they are averse to mediation and arbitration. It is so because SAFA structures failed to attend to the clubs' grievances. Instead SAFA adopted a radical unfounded stance that clubs are not their members. If SAFA had acted reasonably it would have enquired as to why so many clubs did not participate in voting of the Executive.
- [33] The SAFA administrators must realise the necessity for them to manage the soccer administrative issues in an impeccable and professional manner beyond reproach.

Conclusion

- [34] Since the return of South Africa into International participation, South African soccer and some sporting codes are lagging far behind in sports administration compared to their international counter-parts. It is time for all those sporting codes to improve their acumen to bridge that gap between South Africa and other international sporting codes.
- [35] They should seriously consider expending huge amounts of money in aggressive development of both sport administrators and players in their structures so that the South African sporting fraternity takes its rightful place amongst the families of nations in the world.
- [36] In South Africa, currently the prevailing abject poverty due to the social and economic inequalities as a result of apartheid have riddled the disadvantaged communities. Football or any sport for that matter does wonderfully pre-occupy the people by saving them from being victims of criminal activities, but under good governance of codes, particularly in soccer, the disadvantaged and unemployed sports people shall be able to provide welfare to their families out of participation in sport. This must be promoted by SAFA through its structures as a National soccer body with the eventuality of producing professionals who will participate at international level.
- [37] It is implausible and unfortunate that SAFA National and its Provincial structures in KZN displays procrastination and almost a derelict of its obligations in ensuring that the soccer dispute is resolved timeously without litigation.
- [38] A registration of a dispute by 46 clubs expressing a grievance or complaint in governance, without it attended to by SAFA to date cannot be countenanced for it is at odds with the massive participation of the National Sport Congress ("NSC") advocated in this country since 1992.
- [39] The sporting people of South Africa repose their future and fate in football through the administrators. Presently in South African sport, there is a necessity for urgent migration from unprofessionalism to professionalism of administration by astute and not rapacious administrators of sport, in order for the aspirations of sport persons to be brought to reality.

[40] SAFA as a recognised National Soccer body must jealously and selflessly guard against any betrayal of players aspirations in their development by selfish administrators of football.

Costs

[41] The trite legal principle applicable when the court awards costs is generally that costs follow the result. The award of costs is a matter wholly within the discretion of the court and must be exercised judiciously on the grounds upon which a reasonable man could have come to the conclusion arrived at.[8]

[42] Even though the consideration of costs does not always necessitate a full enquiry into the merits in all cases, a judgment for costs involves a decision on the merits and a claim for costs cannot be viewed in isolation. Ordinarily, the judicial officer would have to apply his mind to the merits of the application which is instituted.

[43] As a general rule, the party who succeeds in (in hoc casu) its case, should be awarded costs and this rule should not be departed from except on good grounds. I find that the present case is one in which the rule should be departed from and the reasons for this are set out hereunder.

[44] I find that, the dispute between the parties were raised over the period of 15 August 2022 to 30 August 2022. The applicants' attorneys wrote a series of letters to the respondents for SAFA to deal with the matter amicably through its internal appeal process. Annexure FA22 and FA23 speak at large. SAFA has internal appeal structures which neglected their obligations at the expense of development of football. For this reason, the respondents are not entitled to costs.

[45] The applicants' counsel could not demonstrate to the court that the applicants indeed were in good standing, in spite of the prolix papers of 459 paged court papers. The issue between the parties is crisp. The applicants' presented a prolix case in verbiage form with a founding affidavit comprised of 146 pages including annexures, entire SAFA statutes, SAFA competitions, Uniform Rules, SAFA Standard Statutes; SAFA Regulations Electoral Code and three applicants' Heads of Argument. On 12 December 2022, the applicants filed two Heads of Argument with each 20 pages on 19 January 2023 another applicants' Heads of Arguments consisting of five pages was filed. This consumes too much time of a presiding Judge in a crisp matter and is an abuse of the court's process.

[46] In conclusion I am of the view that none of the parties would be entitled to costs.

Order

[47] As a result, I make the following order:

1 The application is dismissed.

2 Within 30 days of this order, SAFA must resolve the applicants' dispute.

3 Each party to pay its own costs.

APPEARANCES

Case Number: D11981/2022

Applicant:

Newlands Sporting Football Club and other

Represented by: I

Veerasamy

Applicant attorney: Pather

& Pather Attorneys

3 Nollsworth Crescent, Nollsworth Office park

La Lucia Ridge

(031 304 4212)

Respondent: Durban

Central Football Club and others

Represented by: LA

Mahlobo

Respondent's Attorney: Ayanda Shazi & Associates Inc

Suite 810-823, 8th Floor Salmon Grove Chambers

407 Anton Lembede Street

Durban

4000

Date of Hearing: 03 February 2023

Date of Judgment: 24 March 2023

[1] '(1) The application is adjourned to 16 January 2023, a holding date; (2) Parties to approach the Senior Judge for a preferential allocation for hearing before 1st October 2023; (3) The 1st, 3rd, 4th and 6th Respondents to file their answering affidavits on 15th December 2022; (4) The applicants will deliver their replying affidavit and Heads of Argument by 20th December 2022; (5) The 1st, 3rd, 4th and 6th Respondents will deliver their Heads of Argument by the 28th December 2022; (6) The costs incurred on 14 December 2022 will be costs in the cause.'

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- (6) The costs incurred on 14 December 2022 will be costs in the cause.'

[2] Applicants Founding Affidavit para 5.

[3] Applicant's Deponent Affidavit page 9 para 6.

[4] 'Such decision was taken in circumstances where more than 46 Football clubs who are members of the DCLFA were prevented from

participating in the conference, by being denied the right to vote. The excluded football clubs included all but 8 of the applicants.'

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participating in the conference, by being denied the right to vote.

The excluded football clubs included all but 8 of the applicants.'

[5] Applicants deponents' Answering Affidavit para 13.5. 'If the decision of the elective conference are not set aside before the 2023 Soccer season commences, the impact will be catastrophic; The excluded clubs will not be able to progress beyond their private leagues and would have to wait an entire year if the review is heard after soccer season commences to achieve promotion; Not only do the clubs lose the monetary advantage of precaution from one league to another but the impact is also felt by the individual members of the clubs who lose the opportunity themselves to progress; The development of youth football will be completely stifled and your risk (SIC) preventing a child from progressing beyond the club ranks into provincial and National Selections because of his club association; There is also issue of permit for various municipalities sport grounds which can only be issued to the association or club depending on the location and size of sporting field.'

[5] Applicants deponents' Answering Affidavit para 13.5.

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[6] Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC and Others 2004 (2) SA 81 (SE) at 34.

[7] DC12 dated 15 June 2022 'RE: FITXURES This letter served to confirm Villa Par FC Will not be participating in any fixtures for the reasons: (1) We are deemed to be not in Good Standing. (2) We are not allowed to vote at the Election on 4 June 2022'

[7] DC12 dated 15 June 2022 'RE: FITXURES

This letter served to confirm Villa Par FC Will not be participating in any fixtures for the reasons:

(1) We are deemed to be not in Good Standing.

(2) We are not allowed to vote at the Election on 4 June 2022'

[8] Herbstein and Van Winsen: The Civil Practice of Supreme Court of South Africa 5 Ed at 954-955

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