

TANZANIA / JUDGMENT

19860905 TZHC Dar es Salaam

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TZHCDECIDED
5 September 1986

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IN THE HIGH COURT OF TANZANIA at DAR ES SALAAM MI/3CELLAIFEOUS CIVIL CAUSE: NO~44 OF 1986.

1. Majid Seif ·
2. Jimmy David Ngonya ······.AEPLICANT- viei!stis
1. Said Hamad El-Maamry (Chairman of the organizing and Displ.n~ry Committee of the Football Association of Tanzania {F.A~}, -.. ·····~·····, R:S5POI1DENT

JUDGEMENT

Mfi!"ZiWAS _J .K, In November 1985 the secretary General of . Simba Sports Club P~VL, registered one, Francis Mwikalo.--to play for the club in 1986. According to the evidence of the Secretary General, Jimmy David Ngonya (PNI), Francis Mwika.l.,o filled five copies of special forms which he also signed signifying that he had on his own free will decided to ply for Simba Sports Club for 1986.. It was the Secretary General's testimony that after the Football Association of Tanzania (which I will hereinafter for the sake of brevity be refering as FAT had scrutinized the a_i:prfcation forms of Francis MwikBlo it-(FAT) approved the application on 6/1/86 end accordingly Francis Mwikslo became a lawfully registered plc:yer of Simba Sports Clu.b for 1986 super league~ 2 - The application form of Franch:: Mwik&lo which was approved by FAT was produced as exhibit P2. .l:ilso produced and ~rk.ed as exhibit P3 was an identity card issued to Francis Mwikalo by F~T to confirm that the said Francis Mwikalo is one of players of Simba Sports., Club for 1986 super league • Jimmy David Ngonya, (PWI), also testified tllat FAT • also showed Francis Mwikalo as playing for Simba Sports . Club in the list that sho:wed all the clu.bs' players "Exbi t F4 11 • The court was told that MwikalD played for Simba on 1/3/86 in Tanga against Coastal Union Football Club in the su.per l~agua in which Simba won the game by one goal and received two points. It was Ngqnya's evidence that soon after the match he received complaints that Mwikalo was a ragistered player of Muhe~za Shooting Stars end that Muheza Shooting Stars wrote them a letter claiming transfer fees. It was also Ngonya's .testimony that on 2/4/86 FAT wrote a letter to Simba Sports Club in which a registration card of one, Fura Mwikalo was enclosed and tho.t Simba was asked to explain who was this man Fura Mwikalo before 12 noon the following day

- 3/4/86. It was his evidence that the heading of the letter talked of Francis Mwikalo but that registration form talked of Fura Mwikalo - P5 and P6 respectively. The Court was told that Simba replied that it did not have a player by the name of Fura Mwikalo in their club. Soon after Simba received a communication from FLT that they had fielded Francis Mwikalo on 1/3/86 against Coastal Union ... /3 3 while the said Francis Mwikalo was a registered player with another club and that their two points won against Coastal Union on 1/3/86 were withdrawn. It was Ngonya's evidence that Simba Sports Club was not given a hearing before FAT withdrew the two points from them. It was Ngonya's testimony that Simba complained to the National Sports Council which refused to hear them and that they decided to come to Court to seek justice as, it was argued, they had been condemned unheard. The Secretary General of FAT (mvl), related to the Court the procedure regarding registration of players of different team divisions. The court was told that division one teams send their applications for registration of players to the National Executive Committee of FIFA in Dar es Salaam. It was his evidence that one of the players Simba Sports Club sent for registration in November 1984 was Francis Mwikalo. The court was told that FAT found Mwikalo's application for registration to be in order and registered him as one of Simba's players in 1986 Super League. Mr. Saidi Maamry (D.I.), also told the court that later, on his return from Cairo his secretary told him that Simba Sports Club had fielded one player who played with Coastal Union Club before completing transfer formalities regarding the player. On receipt of this report a meeting of the disciplinary committee of FIFA was convened. According to his evidence the committee scrutinized documents from Coastal Union Football Club, Muheza Shooting Stars and Simba Sports Club. ... /4 r r . i .
- 4 - The Court was told that an identity card - exhibit R1 showed that Fura Mwikalo played for Muheza Shooting Stars before he was registered with Simba for 1986 Super League. The disciplinary committee is also said to have found that Muheza Shooting Stars had complained to Simba that it (Simba) had registered Francis Mwikalo as their player for 1986 Super League without first complying with transfer procedures by paying transfer fees to Muheza Shooting Stars - Exhibit R1. The Court was also told that the disciplinary committee received registration form from Regional FIFA (Tanga) showing that Francis Mwikalo was registered player with Muheza Shooting Stars - Exhibit R3. It was Maamry's evidence that after studying these documents he as Secretary General of FAT ordered that Simba Sports Club be asked what it had to say about the revelations regarding Mwikalo's status. A letter "exhibit R5 11 9 was sent to Simba Sports Club asking it to defend itself about the irregularities alleged against it regarding registration of Francis Mwikalo as their player for 1986; Simba replied the letter as shown in exhibit R4. Mr. Maamry told the court that Mr. Ngonya, (P.N.), did not ask for audience before the disciplinary committee to argue its case about what had emerged regarding Francis Mwikalo. It was Maamry's testimony that after scrutinizing all the documents before it, including Simba's letter in defence the disciplinary committee of FIFA came to the conclusion that Francis Mwikalo was unlawfully registered by Simba Sports Club, the respondent 9 as their lawful player for 1986 Division

one Super League and that the two points ... /5 .) 5 earned by Simba on 1/3/86 in their match against Coastal Union had to be withdrawn. salehe zimbabwe (DN2) told the court that he was a commissar in the last 1986 Super League and, i that he is also a member of FAT technical committee. It was his evidence that in compliance with his duties as a commissar he, on 1/3/86 assembled both teams - Simba Sports Club and Coastal Union and the referee before the match started. He said that both Ngonya and Bwawezir officials of Simba and Coastal respectively were present. According to his evidence Bwawazir complained that one of the players in the Simba team was illegally registered with Muheza Shooting Stars and that if the player was fielded by Simba he would lodge a complaint. The witness said - Simba fielded the player and that after the match Bwawazir lodged a complaint to him against Simba and that he, in turn, forwarded Coastal Union's complaint to FAT in Dar es Salaam. On being cross-examined by Mr. Mwaka Janga, learned counsel for the applicant, the witness told the court that the player alleged to have been unlawfully fielded by Simba was Francis Mwikalo, Hassani Bwawazir, (DW3), Secretary General of Coastal Union told the Court that on 1/3/86 before his team played with Simba Sports Club there was a meeting chaired by Zirnbvira (DW2), in which he said he complained that Francis Juma Kasere, who was being fielded by Simba was a registered player of Muheza Shooting Stars. It was also stated that he (DW3) had filed a complaint to the court to 'Jonga' (DW6) The court was told that after the match in which Mwikalo was fielded by Simba he immediately wrote to the Secretary General of FAT and complained - exhibit R.5. It was his testimony when cross-examined by Mr. Mwaka Janga, learned counsel for the applicant that if they had won the match he would not have written the letter of complaint R5 to the Secretary General of FAT. The Chairman of Muheza Shooting stars (DW4) testified to the Court that the said Francis Mwikalo has been playing for his team since 1983. The witness told the Court that Francis sometimes shortens his name with the name Fura. As far as he knew Fura Mwikalo is one and the same person as Francis Mwikalo. It was his evidence that Muheza Shooting Stars had registered Francis Mwikalo for both 1983/84 and 1984/1985. The Court also heard evidence from one, Hassani Juma Kasere, (DW5) Secretary General of Muheza Shooting stars. Like the chairman of Muheza Shooting Stars, (DW4), this witness also said that Francis Mwikalo has been their registered player since 1983; and that he was also registered to play for the same team in 1983/84 and 1984/85 sessions. It was his testimony that later they heard that Simba Sports Club had registered Mwikalo for 1984/85 Super League; and that he wrote a letter of complaint to Simba that their registration of Francis Mwikalo as their player for 1984/85 was invalid as they had not paid transfer fees to Muheza Shooting Stars before registering him as their player. This is an application by Majid Juma and Jimmy David Ngonya who are chairman and secretary general respectively of Simba Sports Club for an order of certiorari to quash the decision of the Secretary General of FAT, Said Hamad El-Maamry, who chaired the organizing and disciplinary committee ... /7 .7 of FAT on 3/4/86 which declared Coastal Union of Tanga the winner of the match played between it and Simba Sports Club the ground that ... on the unlawfully fielded one, Francis Mwikalo, a registered player of Muheza Shooting Stars without complying with regulations regarding transfer of players from another team,

Apparently in this match Simba Sports Club had won the game by one goal. Mr. Ngonya told the Court in his testimony that Simba Sports Club was not given an opportunity to be heard before the decision to deprive them of their victory was reached. It was argued that Simba Sports Club was condemned unheard which, it was submitted, was contrary to rules of natural justice. Basically the applicants craved for a proper hearing. The question this Court has to decide is whether the applicant (applicant's team, Simba Sports Club, was condemned unheard. If the disciplinary committee of FAT heard and determined the dispute between Coastal Union and Simba Sports Club without giving Simba an opportunity to present its defence then the decision of the disciplinary committee will have to be found to be contrary to rules of natural justice and therefore invalid. During the hearing it was shown that Muheza Shooting Stars had written a letter of complaint to Simba Sports Club to the effect that Simba had registered Francis Mwikalo as their player without complying with transfer regulations as it had not invited transfer fees to Muhaza Shooting Stars. This letter was apparently copied to FAT - Regional headquarters and to Fatima Dar es Salaam. The letter was produced as exhibit R11. In this letter Francis Mwikalo is also referred to as Fura. Francis Mwikalo's photograph mounted in his registration card - R1 was also sent to the Secretary General of Simba Sports Club. Ngonya (HY1) argued in his evidence that he did not know Francis Mwikalo was also known as Fura Mwikalo. It may very well be true that initially Ngonya did not know that Francis was also known in short as Fura. Indeed in his testimony Ngonya told the court that Fura and Francis were two different people. And Mr. Mwalajine, learned counsel for the applicants, vigorously supported the applicant's testimony. On the other hand there was the evidence of both the chairman and the secretary general of Muheza Shooting Stars in whose team Francis Mwikalo was registered which was to the effect that Fura Mwikalo and Francis Mwikalo is one and the same person. The applicants would have made this court's work much easier regarding the identity of Francis Mwikalo if they had called him as a witness. If he was called as a witness the court would have had the opportunity to put to him the pertinent question whether he was also known as Fura Mwikalo. As Francis Mwikalo is presently playing with Simba the failure of the applicants to call him as a witness entitles the court to draw an adverse inference against them under section 122 of the Evidence Act and find that if Francis Mwikalo was called as a witness he would have given unfavourable evidence to the applicant's case. It is clear from the Rules and Regulations (exhibit P1) that it is the responsibility of every secretary general of a football club to ascertain the identity of every one of his players before fielding him in his team. From the evidence of Salehe Zimbabwe (DW2), who was the Commissar of the National Super League Ngonye was warned not to field Francis Mwikalo in his team as he (Francis) was a registered player of Muheza Shooting Stars. There was no suggestion leave alone evidence that the Commissar had reason to tell lies against Simba Sports Club. There was evidence which was apparently not seriously disputed by the applicants that Francis Mwikalo was registered to play for Muheza Shooting Stars from 1984/1985. The Rules and Regulations show that before Simba Sports Club registered Francis Mwikalo as one of their players Simba was required first to pay transfer fees to Muhaza Shooting Stars. This was apparently not done

by Simba ~ Coming to the argument that Simba Sports Club was condemned ~ while it is clear from the evidence that the disciplinary committee did not hear Simba's defence, tally before deciding to withdraw the two points it gained from the match played on 1/3/86 with Coastal Union. This, it was submitted by Mr. Mwakajinga, learned counsel for the applicants, was contrary to natural justice. Mr. Marando learned counsel for the respondent on the other hand argued that the fact that Simba Sports Club was not given oral hearing did not necessarily amount to not being heard. In support of his contention the Court was referred to the decision in BOARD OF INDEPENDENT JUDGES v. RICE and Others (1981) MU App. 179 Natural justice requires every person charged with the duty of adjudicating upon disputes between, or upon the rights of others to act fairly, in good faith, without bias and in a judicial temper and to give each party an opportunity of stating his case.

- .../10
- 10 - In the present case FAT received a complaint by Coastal Union that Simba Sports Club had fielded Francis Mwikalo in the said match without complying first with transfer formalities under the laid down Rules and Regulations ... (Exhibit P1) Which ... required Simba to pay transfer fees to Muheza Shooting Stars in which Francis Mwikalo was registered. There is evidence that on receipt of the complaint FAT sent a letter 'Exhibit PV' to Simba asking it to defend itself regarding the allegation. FAT also enclosed documents in support of Coastal Union's allegation that Francis Mwikalo was registered with Muheza Shooting Stars for 1984/85. Simba Sports Club sent a written defence - 'Exhibit RIV' in which the secretary general (PW1) argued that Francis Mwikalo had assured them that he was not registered with any football club and that because of Mwikalo's assurance Simba registered him as their player for 1985/86 Super League. In the last paragraph of 'Exhibit RIV' Mr. Ngonye insisted that Francis Mwikalo was lawfully registered by Simba Sports Club. Taking into account exhibit P1 and RIV it is amply clear that Simba Sports Club was given an opportunity to defend itself regarding the allegations levelled against it by Coastal Union and, as shown in RIV, Simba Sports Club defended itself. It was after the disciplinary committee had scrutinized documents in support of Coastal Union's complaint and, Simba's defence that it came to the conclusion that the fielding of Mwikalo by Simba on 1/3/86 in the match with Coastal Union was irregular as the said Francis Mwikalo had not been transferred to Simba Sports Club as required by the Rules and Regulations. It may well be true that Francis Mwikalo told Ngonye that he was not registered with any other team and Ngonye apparently readily accepted what Mwikalo told him. But whether or not Mwikalo deceived Ngonye about his registration does not absolve Ngonye, as Secretary General of Simba Sports Club, .../11
- 11 - from the responsibility of ascertaining that the player he was registering in his team was not encumbered. From the evidence tendered in Court and the exhibits produced from both sides it is clear that the organizing and disciplinary committee of FAT chaired by Mr. Elviama on 3/4/86 acted fairly and in good faith as was required under the rules of natural justice. From the Rules and Regulations (F1) ... the disciplinary committee was not

required to call witnesses 1 All it was required to do was to obtain information . from both sides in any way it sought best and giving opportunity the parties involved to state their case. From the evidence this is exactly what the disciplinary committee did. If the committee had failed in this duty its order against Simba Sports Club would certainly have been the subject of certiorari and the committee itself would have been the subject of mandamus. ' I agree with Mr. Marando's submission that principles of natural justice were fully observed by the organizing and disciplinary committee in its decision on 3/4/86. The application for orders of certiorari is accordingly dismissed with costs. ;, I; \ '~- N. S. Mnz.avas JAJI KIONGOZI Dir. es salaam 5/9/86

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Prepared on 14 October 2026 · Esheria