

IN THE HIGH COURT OF LESOTHO

In the Application of :

MASERU UNITED FOOTBALL CLUB

Plaintiff

v

LESOTHO SPORTS COUNCIL AND
OTHERS

Defendants

J U D G M E N T

Delivered by the Hon. Mr. Acting Justice
B. Goldin on the 5th day of February 1982

Plaintiff is an amateur soccer club. First defendant is the Lesotho Sports Council established under the provisions of the Lesotho Sports Council Order No. 41 of 1970 as amended. The second defendant, the Senior Football Executive Committee, is and has been established by First defendant to fix and administer soccer fixtures played in Maseru and in other districts of the country.

The 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and Fourteenth defendants are amateur soccer clubs in terms of the Lesotho Order in Council 1970.

The second defendant is also responsible for establishing and fixing various leagues in which clubs are entitled to play. The top league being Division A, there are also B and C Divisions.

Upon the establishment of first defendant all clubs affiliated to the Lesotho Sports Association became members of the Council (Sections 5 and 7 of Lesotho Sports Council Order). Plaintiff qualified as such a member subject to the provisions of Lesotho Sports Council (Amendment) Order No.10 of 1971.

The Lesotho Sports Council Regulations 1971 provides

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in sections 3, 4 and 7 as follows :

- "3. A club whose annual subscriptions are overdue shall automatically be regarded as unregistered until such subscriptions plus 25% of such subscriptions shall have been paid to the Council.

Provided that if an annual subscription fee prescribed by the Council is not paid within two months of that fee becoming due and payable the club concerned shall reapply for registration.

4. (a) The secretary of a registered club shall at the time of registration and at the end of each year thereafter notify the Council in writing of the names of all bona fide members of his club and such members shall be registered in the record of the Council.
- (b) Registration in the records of the Council in terms of sub-regulation(a) will take place free of charge during the period 1st November of any particular year to 31st December of that year.
- (c) An application for registration of a member of any registered club reaching the Secretary of the Council during the period 1st January to 31st October of any one year shall be accepted upon payment of a fee of 25 cents.
- (d) It shall be the responsibility of the registered club to ensure that an application for registration reaches the Council.
7. (1) Before the 31st day of December of each year every registered club shall submit to the Council full particulars of the number of club members actively participating in each type of sport and capable of representing that club in sport competitions, together with such other information as the Council may require.
- (2) Within the first two weeks of January of each year the Council shall compile a sports programme for that year setting out the nature, title, venue and date of each competition, the rules according to which each such competition shall be conducted, and such other information as the Council may consider necessary.
- (3) Failure on the part of any club to participate in a competition programmed for it shall carry the penalties laid down by the Council for such failure, including the imposition of a fine not exceeding R25 if such failure was wilful."

The proceedings commenced on notice of motion but on 16th April 1981 the matter was sent to trial. Pleadings have been filed. The only oral evidence related to the application for registration in respect of 1980 and in particular whether

a list of bona fide members of plaintiff club was submitted at the time of payment of the annual subscription or at all. The contents of the affidavits filed by the parties constitute the remaining main evidence in this action.

Plaintiff failed to make payment timeously in respect of 1980. It paid R9 in February and was issued with a receipt on which was written: "Received pending decision of LSC".

A dispute exists whether at the time the payment was made a list of the names of bona fide members of plaintiff club was filed with 1st defendant. Plaintiff contend that it was, and produces MMN2 as a copy of the required list. Defendants deny that such a list was ever filed. Evidence was heard concerning this aspect but in my view it is irrelevant to the decision of the claim before me. This was conceded by Counsel for both parties. The reasons will be explained later.

Nevertheless I will deal briefly with evidence. Defendants' clerk, the only one to whom payments are made and lists submitted, alleged that while R9 was paid no list of bona fide members was given to her. It was the first time in her long experience that such a list did not accompany payment. In my view her evidence was not convincing. There is at least room for error and faulty recollection. She firstly said that she endorsed the receipt because she was puzzled by payment of R9 instead of R5. Later she added the absence of the²⁵ as an additional 7 reason for the endorsement on the receipt. The fact that she never queried or mentioned such a rare departure from normal practice appears surprising in the circumstances. There is no correspondence from defendants referring to the absence of such list. Moreover 2 lists are required by the Regulations. One concerns members and one relates to the proposed players. There is no suggestion that such a list was not submitted. Defendants' witness also appeared unconvincing and unimpressive concerning her alleged reference to the committee of the defendants of payment for 1980 before issuing a receipt and her explanation of her consultation with and instructions from her employers. In the circumstances it cannot be held that a list of bona fide members was not submitted at time of payment of R9.

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Plaintiff was aware of the practice and requirement and had complied with it at all other times. It was the first such failure as far as defendants' clerk and her failure to comment or refer to it justifies an adverse inference. There is no justification for holding that MMN2 is a forgery or a fraudulent document in the sense that it is not what it is alleged to be.

It is undisputed that plaintiff did not play or participate in any games during 1980. Moreover it did not take any measures or make any efforts to participate. Mr. Mthembu, on behalf of plaintiff says that he was away overseas and when he returned "it was too late for me to do anything".

In October 1980 plaintiff applied for registration for the football season for the year 1981 "and submitted along with their application a list of bona fide club members".

By letter dated 5th February 1981 plaintiff was informed by first defendant that it "is accepted as a full member of the Council in the B Division".

The main contention and claim by the plaintiff is that it had always been a member of the A Division, it had played successfully in that division, that it enjoyed a vested right to belong to the A Division and that there was no justification in fact or in law to place it in the B Division in 1981. It is further alleged that by not being included in the A Division in 1981 plaintiff suffered serious loss of fame and suffered in its reputation.

Plaintiff claims the following relief:

1. Declaring that plaintiff is entitled to play and take part in the A Division Soccer League in Lesotho as admitted by First and/or Second Defendants during the 1981 soccer season.
2. Declaring, for so far as may be necessary the League games played in the said A Soccer League Division during 1981 soccer season without plaintiff taking part therein, to be illegal and null and void and of no effect whatsoever.

Plaintiff further claims costs, and further and alternative relief as the Court may deem fit.

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The real dispute is whether first and second defendants were entitled to place plaintiff in the B Division in the 1981 soccer season. The dispute is being heard in February 1982. It is obviously not possible to grant relief enabling plaintiff to play in the A Division in 1981 which was the object of the proceedings when they were launched. Approaching the question on the basis of a declaration that plaintiff was entitled and should have been permitted to play in the A Division raises unforeseen difficulties not covered by the relief originally sought. Nevertheless I will deal with the application. Firstly great reliance is placed on the contention that the plaintiff enjoys a vested right to play in A Division. The decisions in Dawkers v. Antrobus 17 CH.D 615; Turner v. Jockey Club of South Africa 1974(3) S.A. 633 and Annamunthodo v. Oilfields Workers' Trade Union 1961 All E.R. 621. It was submitted that the requirement and application of natural Justice and the doctrine of audi alteram partem was not invoked or applied. First and second defendants placed plaintiff in the B Division without affording plaintiff an opportunity to be heard or consider any grounds for such a decision.

It cannot be said that plaintiff enjoyed a vested right to remain in the A Division. This is not a case involving expulsion, punishment, but relegation to a lower Division. If this had been done capriciously, mala fide or unlawfully the Court would be entitled to intervene and afford relief in a proper case. It is alleged that defendants acted "unilaterally" and this raises the question whether the task of compiling a sports programme and determining the appropriate division in which a team will participate is the type of function or involves such decision as to require defendants to hold an enquiry or canvas the views of registered teams. I do not think so in such circumstances.

The subject of relegation and promotion is expressly mentioned in Lesotho Sports Council Football Competition Rules. Article 10 provides that

"the winner of a C Division will play two matches (home and away) against the bottom most "B" division team mutatis mutandis "B" or "A" teams and the results of such matches shall determine teams qualifying for promotion/relegation and/or reinstatement".

It can be also said that whether to place an existing

/A division

A division team in that division in a new soccer season may depend on the composition of its players. For example that upon examination of the list of club members capable of representing that club in terms of section 7 of Legal Notice No. 5 of 1971 the Council would be entitled to compare the calibre of such players with that of other teams in determining in which division to place a particular team.

The position can be stated as follows. Whether or not plaintiff should have played in A league and there is no reason why he should not have done so in 1980 is irrelevant to the plaintiff's claim that it should have been placed in A League in 1981. The fact is that plaintiff did not play in 1980. Twelve teams were as always selected for that League and plaintiff was not placed in any League. By the end of 1980, plaintiff not having played it was necessary to determine in which League it should be placed in 1981. By not having played in 1980 the teams which did play in 1980 were the candidates for play in 1981. The only relegation or promotion being determined by games between the top team in B League or the bottom team in A League.

Plaintiff cannot, in my view claim that because it should have played in A League in 1980 it retained its right to play in A League in 1981. By not playing in 1980 it cannot rely on past record or notional rights to claim a place in a League in which it did not play for the preceding year.

Defendants would have had to demote a team which played in A League in 1980 in order to create a vacancy for plaintiff. Even if defendant was entitled to do so its failure to do so cannot be interfered with in the manner claimed or at all. The application could only succeed on the alleged vested right which I find to be without substance. A team which does not play in a particular year in which the required 12 teams did play is not entitled to resume playing in the division in which it had ordinarily or originally played.

The relief claimed for a declaratory order relates to 1981 and not 1980. I assume that it would be competent to make such an order although I entertain considerable doubt. If it were declared now that in 1981 plaintiff should have been permitted to play in A League it is difficult to see of

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what practical use or value such an order would be. Plaintiff had not been selected and did not play in 1980. It refused to play in 1981 in B League thereby not rendering itself eligible to be included in A League on merit for 1982. In the result it has not played for 2 years. A declaration that it should have played in A League in 1981 would not have resulted in it playing. Soccer is a game and the rewards emanate from playing. To declare somebody an A League player who never played does not make him an A League player but establishes that he should have played. In the circumstances of this case such a declaration would not qualify it in selection for A League for 1982. By now it has not played for 2 years, it has no right to claim selection on the basis of pre 1980 and notional rights. Other teams have played in A League and relegation and promotion has to be determined as provided by the Rules. I see no basis on which a team which played in 1980 and or 1981 in A League must be demoted to make place for a former player in this League.

The only other relief persisted in was the question of costs. In view of my conclusion it is not necessary to deal with the claim for nullity. It was not argued and it would not be helpful to engage upon a subject which is no longer in issue.

I turn to the question of costs the general rule is that costs follow the result unless special and cogent reasons justify a departure from it. There is no doubt that a great deal of unnecessary matter was included and canvassed. The real issue related to 1981 and the question whether by failing to play in 1980 plaintiff should have been included as of right in the A Division for 1981. In particular the evidence concerning whether MMNA2 was filed or not was irrelevant to the issue before the Court. Defendants' counsel rightly conceded this. Nevertheless it was defendant who asked for such evidence to be heard and it took up the first day's hearing. In my view the cost concerning this evidence should be disallowed. It is relevant that plaintiff did not oppose the application to call it.

In all the circumstances I agree with counsel for first and second defendants that there should be no order concerning the costs of the hearing incurred on the first day of the trial.

/I order

I order as follows :

- (a) Plaintiff's claims are dismissed.
- (b) Plaintiff is liable to pay the costs of the proceedings from the time they were commenced save and except the costs incurred by first and second defendants on the first day of the trial on the 3rd February 1982.

(Sgd) B. Goldin
ACTING JUDGE

For Plaintiff : Mr. Lombard

For Defendants: Mr. Tampi