

IN THE HIGH COURT OF LESOTHO

In the Application of:

ROYAL LESOTHO MOUNTED POLICE F.C.

Applicant

vs

THE LESOTHO SPORTS COUNCIL
THE ROYAL LESOTHO DEFENCE FORCE F. C.

1st Responden
2nd Responden

JUDGMENT

Delivered by the Hon. Acting Mr. Justice M. L. Lehohla
on the 24th day of November, 1986

The Notice of Motion was brought ex parte before this Court on 7 November 1986 before the Honourable the Acting Chief Justice who granted a Rule Nisi calling upon the Respondents to show cause (if any) why:-

- (a) First Respondent shall not be compelled to produce the record and/or minutes of their meeting held on or about the 31st October, 1986, on the basis of which their decision regarding the match played between Applicant and Second Respondent on or about 19th October, 1986, was arrived; (I may at this stage point out that this prayer was complied with and the rule regarding it was automatically discharged.)
- (b) The said decision to re-fixture the said match for a replay for 8th November 1986 shall not be reviewed and set aside as null and void and of no legal force and effect;
- (c) The fixtured match for the 8th November 1986 shall not be suspended pending the outcome of this application;
- (d) The decision of the Senior Football Executive Committee awarding goals and points to the Applicant shall not

/be ...

be upheld.

2. Directing the respondents to pay the costs of this application.
3. Granting the applicant such further and/or alternative relief;
4. That prayer 1(c) operate with immediate effect as an interim interdict pending the outcome of the present application.

Applicant relied on the affidavit of Leonard Leoma and the supporting affidavit of Tsotang Makara in support of this Notice of Motion attached to which are a set of Annexures spanning "A" to "f".

It is common cause that applicant and 2nd respondent are football clubs duly registered with the Lesotho Sports Council in accordance with the Laws and Regulations governing sports in Lesotho. It is also common cause that the first respondent is a body corporate duly established in accordance with the Laws of Lesotho.

Section 16 of the Lesotho Sports Council (Amendment) Order No.10 of 1971 shows that sports bodies such as the applicant and 2nd respondent are subject to the control of the Lesotho Sports Council.

To achieve its objectives as set out in Section 3 of Order No.41 of 1970 which are:

- (a) " to promote all amateur sporting activities in Lesotho;
- (b) to provide facilities for the furtherance of all amateur sporting needs of the people of Lesotho; and
- (c) to assist the people of Lesotho to participate in international sporting activities"

/the ...

the Council relies on committees which are appointed by it as envisaged in terms of Section 4(i) as amended.

Once so appointed by Council in terms of the above Section such Committees (relevant here is the Senior Football Executive Committee) "carry out the duties of the Council and further the objects of this order or the Regulations."

The Council is authorised under powers vested in it in terms of (j) to "make Rules which are not inconsistent with this order or the regulations for the conduct of its affairs and the affairs of registered clubs. (my underlining) Implicit in this is the power to prescribe what duties to assign to the committees and the procedure under which to give effect to such duties.

It would appear that the matter under current consideration emanates from competitions held pursuant to Regulation 7 of the Lesotho Sports Council Regulations 1971. See Legal Notice 5 of 1971. To facilitate these 1986 competitions the Lesotho Sports Council (competition) Rules of 1983 were adopted by Council. Relevant sections thereof appear under Articles 2 (relating to protests) 3 (relating to Appeals and to some extent 5 (relating to misconduct)

Leonard Leoma on whose affidavit the applicant has relied averred ad para 4 that on 19th October 1986 the match between applicant and 2nd respondent was commenced and played to the end of the first half and without goals on both sides. After a short break the second half duly commenced and during then applicant scored two (2) goals to Nil (0). After eighteen minutes into the second half of the game it began

/to ...

to rain. The deponent and the Captain of the 2nd respondent were called by the referee who said he was stopping the match because of the rain. The referee was however told by the two that they were still prepared to have the match continued notwithstanding the rain. Consequently the match was allowed to continue.

Ad para 5 he avers that after twenty five minutes of the 2nd half of the game the rain began to fall heavily and again the referee called the deponent and the Captain of the 2nd respondent to inform them that he was stopping the match and he did so. When the rain let up the ground was drained of water and became ready for the game to resume.

Ad para 6 the deponent avers as follows:-

" The referee then called the two teams into the ground to resume the match. My team entered the ground ready to continue with the match, but 2nd respondent fielded thirteen players instead of the required eleven a side and the Captain of 2nd respondent still in a rain coat approached the referee who in turn called me and in his presence the referee told me and I verily believe that the said Captain was saying that his team was not prepared to play because of the condition of the ground. My reply to the referee was that the referee knows the regulations and the action he had to take in the circumstances."

Ad Para 7

" Then there were threats as a result of which the match could not continue so that the referee was forced to blow the whistle signalling that he was stopping the match. But before he could blow the whistle the referee had noted down the 2nd respondent's protest."

/Ad ...

Ad para 8

" It is submitted with respect that the referee once he had called the two teams into the ground and ordered that the game be played to a finish the second respondent had no right to issue threats. They had to abide by the referee's decision and to allow the match to continue."

Ad para 9

" It is submitted that the referee should have stated in his report the reason for stopping the match more clearly, which the referee has not done in his report a copy of which is attached marked Annexure "B"."

Ad Para 10

" The referee was entitled to stop the match as a result of threats under Article 5 Rule 3 and 4 of the Lesotho Sports Council (competition) Rules, 1986 which provide that it is the duty and responsibility of the host team to see to the keeping of Land and Order and that failure to do so leading to the match not being played to a finish such team shall automatically forfeit the match and goals or more if the score showed a greater number of goals for the team declared winner."

Annexure C is a letter addressed to the Secretary L.S.C. by the Chairman of the S.F.E.C. In it the Chairman states that "R.L.D.F. has administratively appealed against the decision of the S.F.E.C. which ordered that R.L.D.F. shall forfeit the points in their match against R.L.M.P. F.C. on 19th October, 1986.

Herewith attached is the letter of R.L.D.F. containing their reasons of appeal and the referee's report. Our decision was based on the ground that according to referee's

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report R.L.D.F. F.C. refused to continue with the game and therefore contravened article 5(3) and (4) of Lesotho Sports Council (Competition) Rules 1986."

I have had the benefit of hearing arguments raised on behalf of applicant, 1st respondent and 2nd respondent by their respective counsel to wit Mr. Mphutlane, Mr. Mpopo and Mr. Ramodibedi. I have had added benefit of exhaustive and useful heads of arguments submitted by them.

In his opening address Mr. Mphutlane for applicant raised a point in limine objecting to the representative capacity of 1st respondent's president in the light of the fact that there hasn't been filed a resolution by the 1st respondent authorising the 1st respondent's president to defend proceedings in this application. Mr. Mphutlane submitted on authorities cited that first respondent is not properly before court by reason of the fact that no resolution which is a sine qua non requirement in respect of a body corporate bringing or opposing proceedings before Court, was filed. He referred me to Morrison vs Belle 1981(1) LLR 206 at 209 where Mofokeng J, as he then was said "there is no resolution of the company that it duly resolved to institute proceedings against respondent nor consequently that those proceedings were instituted at his instance." The learned Judge went further to demur the fact that applicant had not placed a properly worded resolution before Court despite that the onus was on him to do so.

I was referred also to Sand and Co. Ltd vs Kollias 1962(2) S.A. 162 at 163 where it was held that the Court was entitled to look at the power of attorney to sue and the

/document ...

document forming part thereof, to see if the deponent had the necessary authority and where it was held further that "it was irrelevant whether or not the director had been authorised to make the affidavit" where the attorney had power to sue and had signed and finally that as the director had sworn positively to the facts then the affidavit was not defective.

As pointed out in reply by Mr. Mpopo it appeared that the authorities cited by applicant's counsel related to applicants and not respondents and that applicants in the cases in question were not para-statal but were completely non-governmental whereas the 2nd respondent is subject in the final analysis regarding its management and running of its affairs to Ministerial power.

In any event Thelma Court Flats (Pty) Ltd vs McSwigin 1954(3) (S.A) at 461 is authority for the view that "in cases of this nature it would be wiser for a director in his supporting affidavit to make a specific allegation that the company resolved to institute the proceedings and has authorised him to make the affidavit on its behalf" but, despite the absence of such an allegation in either of the two supporting affidavits made by a director of a company it was held that in view of the presence of certain allegations and factors in that case, it would be carrying formality too far to uphold a point in limine that ex facie the documents filed it did not appear that the deponent was duly authorised by applicant company.

Van Winsen in The Civil Practice of the Superior Courts in South Africa 2nd Edition at p 93 makes reference to the phrase "as such" and says because those words were

/capable ...

capable of meaning that the applicant represented the Government in Union Government vs Sacher 1953(2) S.A. 410(c) the objection by respondent as to applicant's locus standi was dismissed. Mr. Kimane's i.e. first respondent's affidavit ad para 1. is on all fours with the above dictum.

On the same basis I am inclined therefore to dismiss the point raised in limine, and it is so ordered. To return to the charge, it appears from the papers and arguments submitted that on the day in question it rained hard during the second half of the match in question and even intensified during the 25th minute of the game. It is common cause that the referee did on two occasions intimate to Captains of the two contesting teams that he was intent on stopping the match due to heavy falling of rain.

It is also a fact that when the final whistle was blown or a signal given for the end of the game there were still twenty minutes left.

It is a fact that matches which were scheduled to take place on the same field that had just been vacated by R.L.M.P. F.C. and R.L.D.F. F.C did not take place because of the state and condition of the ground occasioned by the rain.

It is a fact that the referee's report filled in the match league forms renders the football ground as bad. Further that in respect of the "Attitude of visiting team" he filled "Good" and did not fill anything in respect of the "Attitude of the host team."

I have had occasion to peruse authorities referred to me on behalf of the applicant. A principle that is borne out clearly throughout is "where the tribunal directs its mind to legal issues which it is entitled to and bound /to ...

to decide, such as the interpretation of regulations or other rules, a wrong decision in law cannot be said to prevent it from fulfilling its statutory functions or duties, and the Court will not interfere with the decision on review unless it was one to which no reasonable person could have come."

It has been argued on behalf of applicant that certain rules of procedure have been ignored or overridden by the L.S.C. such as the fact that the second respondent did not follow the procedures laid down as to its lodgment of protest with regard to the condition of the ground and as to its lodgment of their appeal to first respondent.

In answer Mr. Mpopo submitted that it is within the rules that when a protest is made it is registered and that the referee is at large to continue the match thereafter or stop it. In the present case he decided to stop it on account of the rain. The lines of the football ground were invisible and nowhere has this been denied by applicant.

In my view it cannot be a matter of conjecture that when the referee beckoned to players or Captains of both teams for the 3rd time whilst in the field, the Coach had in mind that he was going to persist in his earlier attitude to dismiss the game for that day on account of the condition of the ground. It should not be forgotten that he had ruled the ground bad despite the efforts by Mr. Selebalo to drain the ground of rain water. Yet amazing to relate in his affidavit he says the ground was ready to be played on.

The Court takes judicial notice of the fact that because of rain which had fallen incessantly on previous occasions the condition of the ground even before the falling
/of rain ...

of rain on the day in question was well-nigh saturated. The result is any added rainfall would cause runnels and pools to form in the play ground. Indeed the performance of fantastic feats is not confined to Greek Mythology. For saying this I have in mind the Augean stables in which were kept 3,000 oxen and which ^{stables} were left uncleaned for 30 years, but were cleaned in a day by Hercules who turned the river Alpheus through them.

That Mr. Selebalo performed the Herculean task of draining the ground of water - the result of torrential rain that added to the water already in the soil - and rendered the ground playable within the time reasonably to be construed as the match time of the game started more than two and half hours before is something by virtue of which he deserves a distinct place in the Olympic annals.

Another point raised by applicant relates to the word "otherwise" appearing in Legal Notice No5 of 1971 Section 8 which reads:

" A club may appeal or protest in themanner laid down by the Council in its rules or otherwise"

Applicant contends that appeal or protest envisaged and covered by the use of the word otherwise encompasses only Council and its Committees and does not extend to clubs even if registered. But Section 4(a) read with 6(a) leaves me in no doubt that a Club is a Member of Council and as such provisions of Section 8 apply to it. In the margin opposite Section 4(a) dealing with registration of Clubs the words "Registration as members of Council" appear; while in Section 6(a) reference is made to Transfer of Club Membership /and ...

and the Section leaves me in no doubt that a Club is a member of Council and as such it is affected by the Section dealing with appeals and protests by members in that Section 6(a) reads "A Member of the Council may not transfer his club membership from one Club to another without the consent of the Council.

I agree with the view therefore that the protest presented before S.F.E.C. was on appeal to the Committee's good offices to have the matter straightened out administratively. The Committee in turn forwarded the matter before Council in just that spirit hence the Council intervened administratively as it was empowered to do in terms of Section 8 supra. Hence dispensation with requirements of payment of fees as perceived in terms of provisions of Article 2 on protests and those of Article 3 on appeals.

Another matter of interest appears in Clause 5 of Article 2 dealing with protests. It reads "Any protest relating to the playing field, goal posts, bars or other appurtenances of the playing field, shall not be entertained unless the objection had been lodged with the referee before the commencement of the match." Can this clause be understood to mean that if at the commencement of the match conditions relating to the appurtenances of the ground were good and despite the fact that during the game one of the goal posts broke and fell the game should go on because the protest relating thereto was not lodged before the start of the match?

The referee has submitted a referee's report. In it he makes no mention of the threats offered by 2nd respondent but Leonard Leoma makes mention of these and attributes the stopping of the match to them. Leoma further bemoans the


/fact ...

fact that the referee did not state in his report the reason for stopping the match. To this day nobody knows what his reason for doing so was. What can be gathered from the facts as clear evidence of his reason for stopping the game is the fact that the ground was not playable on account of the rain. It is somewhat obscure to me what clear right as to its personal liberty or property applicant is basing his claim on. Vide 1971-1973 L.L.R. at 27 Makepe vs Minister of Finance.

I agree with the view that since the referee did not complain about the threats offered by the respondent team then it could not be said there were any threats consequently provisions of Article 5(3) and (4) relied on by S.F.E.C. in awarding points to applicant in respect of a game that was not played to the finish on account of the weather and not refusal by 2nd respondent cannot apply. The L.S.C. acted wisely and without prejudice by intervening and ordering a replay of the match. The Balance of convenience too seems to militate against the relief sought by applicant vide CIV/APN/92/79 *Qoaling Highlanders vs L.S.C. & Anor* (unreported). What is more the nature of harm apprehended if the relief sought fails is not such as would not be met by claim for damages. Vide CIV/APN/92/79 *supra*.

In the result the Court cannot entertain this application. Costs are awarded to 2nd respondent. None will be awarded to 1st Respondent on the grounds that it was due to its sub-committee's mistake that applicant sought the relief.

Application is dismissed.


M. L. LEHOHLA
ACTING JUDGE
24th November, 1986

For Applicant : Mr. Mphutlane
for 1st Respondent : Mr. Mpopo
For 2nd Respondent : Mr. Ramodibedi