

IN THE HIGH COURT OF LESOTHO

In the matter between:-

LESOTHO SPORTS COUNCIL

Applicant

and

LESOTHO FOOTBALL ASSOCIATION

Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 12th day of August, 1991

On the 26th July, 1991 the respondent obtained an order in an ex parte application for an interdict in CIV/APN/209/91 and that order was in the following terms :-

1. That a Rule Nisi be and is hereby granted calling the Respondents to show cause, if any, before this Court on Friday the 2nd day of August, 1991 at 9.30 a.m. in the forenoon or so soon thereafter as the matter may conveniently be heard why:

- (a) The Respondent shall not be interdicted from interfering in any manner whatsoever, except by due process of law, with the Applicant's administration of the game of soccer in Lesotho by Applicant's members.
- (b) The Respondent shall not be directed to release forthwith to the Applicant any mail or other items in Respondent's possession addressed to the Applicant.
- (c) The Respondent shall not be directed to cause to be broadcast forthwith, over Radio Lesotho, an announcement withdrawing the one made by it as alleged in the Founding Affidavit herein.
- (d) The Respondent shall not be granted such further or alternative relief as this Court may deem fit.
- (e) The Respondent shall not be ordered to pay the costs of this Application.

2. That paragraphs 1 (a), (b) and (c) of this Rule operate as an interim interdict having immediate effect."

On the night of the same day i.e. the 26th July, 1991 the applicant launched an ex parte counter-application in which it applied for stay of execution of the interim court order in CIV/APN/209/91. The applicant asked that the interim order should operate with immediate effect as an interim relief.

In his founding affidavit Felix Mapholo Borotho deposes that he is the President of the applicant and is duly authorised to make this affidavit by the applicant. He deposes that the applicant suspended the respondent from its activities on the 25th July, 1991. Following that suspension the applicant issued a statement over Radio Lesotho announcing the suspension of the respondent and the appointment of the Senior Football Executive Committee to take control of all soccer matters in the country. On the 25th July, 1991 the respondent terminated its affiliation with the applicant.

Mr. Borotho alleges that the applicant had already made arrangements how the football teams were going to play over the weekend starting on the 26th July, 1991 to the 28th July, 1991. If after its suspension and its termination of affiliation with the applicant the respondent is allowed to resume its functions under the prevailing circumstances, the applicant will not only suffer less of credibility and responsibility in the eyes of the public and sporting community in particular, but what is even more disturbing is that serious confusion is likely to arise among the football clubs affiliated to the applicant which clubs have been informed of the suspension of the respondent and its termination of affiliation with the applicant. Mr. Borotho alleges that there was likely to be public violence or chaos at the football venues where some of the matches arranged by the applicant were to be played.

Mr. Sello, attorney for the respondent, raised three questions of law in terms of Rule 8 (10) (c) of the High Court Rules 1980. The first question of law is that an application for the suspension of an interim interdict granted ex parte cannot be made without notice to the other side as to do so would be to undermine or reverse the very order of the Court. It is gross irregularity for the Court to reverse, even temporarily, its own order without having heard the party in whose favour the order has been given.

I do not agree with this submission and Mr. Sello has not referred to any authority to support it. In terms of Rule 45E this Court has the power to rescind or vary any order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby provided that notice is given to the affected parties. It is very clear that Rule 45 refers to a rescission or variation of an order or judgment of the Court. In the present case we are dealing with a stay of execution of an order of the Court or, as Mr. Sello suggested, a suspension of the order of the Court. If This Court has the power to vary or to rescind its own final order or judgment granted in the absence of another party, I do not find any reason why it cannot stay the execution of its interim order which was erroneously granted in the absence of another party.

I say it was erroneously granted because I had another chance to look at the founding affidavit of Mr. Bambatha Tsita. He makes an allegation that the matter is extremely urgent but

but he does not give any reasons why he thinks it is so urgent that he could not give notice to the respondent.

Rule 8 (22) (b) provides that 'in any petition or affidavit filed in support of an urgent application, the applicant shall set forth in detail the circumstances which he avers render the application urgent and also the reasons why he claims that he could not be afforded substantial relief in a hearing in due course if the periods presented by this Rule were followed.' The announcement over Radio Lesotho that the soccer competition known as Winter Classic had been postponed, was made for the first time on the 24th July, 1991. The respondent did not do anything until two days later when the application was launched. No reason has been given why the matter only became extremely urgent on the 26th July, 1991. What made it so urgent that the other party could not be given notice? Even if the applicant could be given only a few hours' notice that would have been in order.

The present application was brought as an ex parte application. In an ex parte application the Court has the power to hear the applicant in the absence of the other side. It does not matter that the application is for the stay of execution or the suspension of its own order. It is therefore not correct that the Court cannot reverse its order without having heard the party in whose favour the order has been given. The order was not reversed but merely suspended because the applicant convinced the Court that it had been erroneously granted. The applicant

further showed that if the order was not suspended there was likely to be public violence and chaos especially at football venues where some of the matches to be played had been arranged by the Senior Football Executive Committee.

The second question of law raised on behalf of the respondent is that the effect of the interim interdict in CIV/APN/209/91 has been simply to restore the status quo ante the writing of Annexure "B" and consequently causes the applicant no prejudice whatsoever. Annexure "B" is patently high handed and contrary to rules of natural justice inasmuch as not only does it deprive the respondent, without giving it an opportunity to be heard, of functions which, ex facie the same annexure, the respondent lawfully exercises, but gives neither reason for nor the powers in law on which it is grounded.

I do not understand what the respondent means when it says it was not given an opportunity to be heard. On the 24th the applicant called the Executive Committee of the respondent to a meeting and a full explanation was given why the respondent was to be disbanded. The reason was that the constitution of the respondent was being reviewed by the Law Office. The letter which suspended the applicant was written on the 25th July, 1991 by the applicant which is a statutory body established by Order No. 41 of 1970. The objects of the applicant appear in section 3 of the Order and include to promote all amateur sporting activities in Lesotho.

Section 16 of the Order provides that 'a club, union, organisation or sports body which was at the time of the coming into operation of this Order a member of or affiliated to the Lesotho Sports Association shall be registered by the Council under section 11 and subject to its control without formal application, but shall not on that account be exempt from any registration fee which may be prescribed by the Council.' (my underlining)

It is common cause that before the termination of affiliation of the respondent to the applicant, the respondent's clubs were under the control of the applicant but the actual running of the games was in the hands of the respondent. This led to a state of confusion in the administration of football activities in this country leading to the aforesaid suspension of the respondent. The respondent was given a chance to be heard on the 24th July, 1991 but did not accept the decision of the applicant. I am of the view that the applicant was authorised by law to suspend the respondent because the latter was under the control of the former.

The third question of law is that it was irregular for the applicant, instead of anticipating the return date of the Rule Nisi in CIV/APN/209/91, as it is entitled to do, to launch a new application in which it raises issues of fact touching the very application before Court which application invites an answer from the respondent thus causing not only a multiplicity of applications but confusing and compounding the issues unnecessarily.

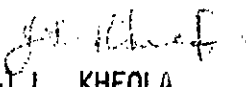
The anticipation of the return date of the Rule Nisi would have forced this Court to sit at midnight because the respondent deliberately brought its ex parte application at the last minute. I have said that there is no reason why the respondent did not launch this application on the 25th July, 1991. On that day they already had in their possession Annexure "B" and the announcement over Radio Lesotho had already been made. The respondent deliberately refrained from annexing the letter of suspension - Annexure "FMBI". The non-disclosure of this important document amounts to failure to disclose a material fact which, in ex parte application, might have influenced the decision of the Court (Milkies Continental Circus v. De Raedt's Circus 1958 (2) S.A. 598). The Court was misled into believing that the only letter purporting to disband the respondent was Annexure "B" which was attacked on the ground that it had no legal basis. In the view that I take the respondent ought to have disclosed that in addition to Annexure "B" there was a letter of suspension made by the applicant which according to law seems to be the proper authority to do a thing like that. The respondent is guilty of failure to show utmost good faith which is one of the most important requirements in ex parte applications.

The applicant was accused of bringing a very unusual application which is not supported by the Rules of the Court. I tend to agree with that submission but I regard this application as a counter-application which was made ex parte. Be that as it may, this Court has a discretion in terms of Rule 59 which

provides that 'notwithstanding anything contained in these Rules the court shall always have discretion, if it considers it to be in the interests of justice, to condone any proceedings in which the provisions of these Rules are not followed.' It was in the interests of justice that an ex parte application in which an interim order was erroneously or irregularly obtained should be suspended.

It was submitted that the announcement over Radio Lesotho was an act of spoliation. There is no substance in that submission inasmuch as the applicant is a statutory body in which certain powers are vested by law. The applicant apparently allowed the respondent to run the administration of football matters from April, 1991 but when the new members of the applicant were appointed by the Minister they reconsidered their position and decided to suspend the respondent. I do not think that there was any spoliation or self-help because the respondent was created by the applicant and it has the power to disband it.

In the result the Rule Nisi is confirmed with costs.


J.L. KHEOLA
JUDGE

12th August, 1991.

For Applicant - Mr. Mhapi
For Respondent - Mr. Sello.