

CIV\APN\209\91

IN THE HIGH COURT OF LESOTHO

In the matter between:

LESOTHO FOOTBALL ASSOCIATION

Applicant

AND

LESOTHO SPORTS COUNCIL

Respondent

JUDGMENT

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 6th day of September, 1991

This is an application for an order in the following terms:

1. A Rule Nisi calling upon the Respondent to show cause, if any, on a date to be determined by this Honourable Court 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) 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 Honourable Court may deem fit.
- (e) The Respondent shall not be ordered to pay the costs of this Application.

2. An order that prayers 1 (a), (b) and (c) operate as an interim interdict having immediate effect.

On the 26th July, 1991 the Rule Nisi was granted and made returnable on the 2nd August, 1991. The application was finally argued before me on the 23rd August, 1991.

The law which governs all amateur sporting activities is The Lesotho Sports Council Order No.41 of 1970 as amended by Lesotho Sports Council (Amendment) Order No.10 of 1971. The Lesotho Sports Council Regulations are also applicable to this case.

The preamble to Order No.41 of 1970 reads as follows:

"To provide for the establishment of a sports

council to promote and control all sporting activities in and of Lesotho, to dissolve the Lesotho Sports Association and its related organs and to transfer all the assets and liabilities of the Lesotho Sports Association to the Council."

The objects of the Council are set out in section 3 of Order 41 of 1970 as:

- " (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."

Section 14 of the same Order reads as follows:

- (1) Any club, union, organization or sports body in Lesotho formed primarily for the purpose of enabling its members to participate in amateur sporting activities of any kind shall apply to the Council for registration and shall be liable for such fees and dues as may be prescribed by the Council under the provisions of this Order or the Regulations, and shall be subject to the control of the Council.
- (2) The Council shall cause to be kept a register of all

clubs, unions, organizations or sports bodies referred to in subsection (1)."

Section 16 reads follows:

"A club, union, organization 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."

I have set out some of the provisions of the Lesotho Sports Council Order in detail because it seems to me that the real issue in this application is what powers the respondent has over football clubs in this country. The Court shall interpret the word "control" which appears in almost all the sections I have quoted above.

The preamble seems to be clear but it also uses the word "control". It is a well known rule of interpretation of statute that the Court can resort to the preamble where the wording is ambiguous. In Law Union and Rock Insurance Co. v. Carmichael's Executor 1917 A.D. 593 at p. 597 Innes C.J., said:

"A preamble has been described by an old English judge as "a key to open the minds of the makers of the Act and the mischiefs which they intended to redress:. But the key cannot be used if the meaning of the enacting clauses is clear and plain. In cases, however, where the wording is ambiguous, and in cases where the court is satisfied that the legislature must have intended to limit in some way the wide language used, then it is proper to have recourse to the preamble.... The object must always be to ascertain the object of the legislature."

I am of the opinion that in the instant case there is no need for the court to use the preamble because the relevant sections seem to be clear and plain.

The objects of the respondent are stated in section 3 of the Order and the wording is unambiguous but the word "control" is not used in that section.

In section 14 of the Order it is provided that any club, union, organization or sports body in Lesotho formed primarily for the purpose of enabling its members to participate in amateur sporting activities shall apply to the respondent for registration and shall be subject to the control of the respondent. It means that the clubs etc. mentioned above have no choice but are under an obligation to register under the respondent and immediately

after registration they shall be subject to the control of the respondent. The clubs etc. mentioned above can free themselves from being subject to the control of the respondent only by becoming professional, because the law is very clear that as long as their members participate in any amateur sporting activities they shall be subject to the control of the respondent.

I think what is important at this stage is to find the meaning of the word "control" because it appears in a number of provisions of the Order of 1970. In The Concise Oxford Dictionary control means "dominate; command; hold in check (oneself, one's anger); check, verify; regulate (prices etc)."

In Rex v. Mogobaya 1923 T.P.D. 234 at p. 237 De Waal, J.P. said:

"Now the word "control" certainly does not give express power to the council to pass legislation carrying with it prohibition. Does, however, the word impliedly authorise such legislation? That the word "control" to a certain limited extent conveys the meaning of prohibition is true. The right to control a thing necessarily includes the right to impose minor restrictions or prohibitions, e.g. in the present case, the right to fix the age limit of the driver and the speed limit. But it does not confer the power to prohibit in any substantial degree. The decided cases on this point are conclusive. In Rex v. Williams (1914 A.D.

460) it was held that the power to regulate horse racing and betting conferred by Act of Parliament on a provincial council does not empower that council to prohibit betting in a partial but most substantial manner. The Provincial Council of the Cape Province had passed an Ordinance by which betting on a horse race, except by means of a totalisator, was made a criminal offence, and the business of bookmakers was prohibited. It was held in that case that the Ordinance must be regard as prohibition rather than regulation and therefore ultra vires of the provincial council. In giving his judgment Solomon, A.C.J., said: "Now it is important to observe that the matter which is entrusted to the provincial council in terms of the Financial Relations Act is not 'horse racing and betting,' but the 'regulation of horse racing and betting.' It was contended by the Attorney-General in the court below that the power to 'regulate' included the power to 'prohibit,' but the argument has very properly not been insisted upon in this Court. For the decisions of the Privy Council, which unfortunately do not appear to have been brought to the notice of the judges sitting in the Provincial Division, make it clear that a power to regulate does not include the power to prohibit. In the case of the Municipal Corporation of the City of Toronto v. Virgo (1898, A.C.93) Lord Davey, in delivering the judgment of the Privy Council, says: 'Their Lordships think that there is a marked distinction

to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed.' "

The word "control" was defined in the case of Welsh N.O. v. Kirk, 1931 E.D.L. 134 where Graham, J.P. said

"The expression in the rule, not solely within his own control, seems to indicate that if the subscriber's inefficiency arises from causes partially within his control, but not exclusively so, he may still recover. Control, I take it, means power or ability to hinder or prevent."

In Cape united Sick Fund Socy v. Forrest, 1956 (4) S.A. 533 (A.D.) it was held that the word "control" has a very wide meaning, and includes "domination" and "command".

I was referred to section 2 (c) of Human Rights Act No.24 of 1983 which recognises and guarantees the right to freedom of peaceful assembly and association. I do not think that the Human Rights Act has any relevance to the instant case inasmuch as the clubs, unions, organizations or sports bodies whose members participate in the game of football are not in any manner hindered

or stopped from enjoying the freedom of peaceful association and assembly. In this country we have numerous football clubs and this is a clear indication that the Lesotho Sports Council Order 1970 does not interfere with people who form clubs and associations or any sports bodies for the purpose of enabling their members to participate in amateur sporting activities such as football.

The Lesotho Sports Council Order 1970 (The Order) is very clear that as far as the control and promotion of football in Lesotho are concerned only the respondent has those powers. For that purpose the respondent is empowered by section 6 (i) of the Order to appoint as many committees as are necessary from time to time to carry out the duties of the respondent and to further the objects of this Order or the Regulations. It seems that for many years the respondent appointed the Senior Football Executive Committee for the purpose of carrying out the duties of the respondent.

In the founding affidavit it is alleged that the applicant is an association of football clubs in Lesotho which was established on or about the 13th April, 1991. Prior to the establishment of the applicant the activities of football clubs were run by the respondent. On the 7th May, 1991, after a series of deliberations between the respondent and the said football clubs beginning on the 10th June, 1991 the respondent relinquished its aforesaid function of administering the game and leaving it in the hands of the

applicant as should have been the case all along.

The respondent is a body created by a statute and its functions or duties are set out in the Order which created it. I think that the respondent cannot relinquish its powers and functions without amendment of the statute which gave it such powers and functions. The act of the respondent of relinquishing its statutory powers of controlling the game of football in this country was ultra vires. The respondent is empowered to appoint committees to carry out its duties and to further the objects of the Order or the Regulations. The applicant is not such a committee but an association which was established for the purpose of taking all the duties and functions of the respondent.

Regulation 7 (1) (2) (3) of Lesotho Sports Council Regulations 1971 reads as follows:

- " (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 consider necessary.
- (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 M50 if such failure was wilful."

Regulation 9 reads as follows:

"The Council shall in respect of each competition programmed by it make all arrangements necessary for the conduct of that competition, including the appointment of referees, umpires, linesmen and any official that may be necessary."

It seems to me that the function and duty of compiling a sports programme for the year is the responsibility of the respondent and cannot be delegated to any association other than a committee appointed in terms of section 6 (i) of the Order. The whole process of holding a series of meetings and deliberations by the respondent with the football clubs in order to enable the former to relinquish its statutory duties and functions was unlawful and is null and void. If the applicant wants to run, control or administer the game of football in this country it must

seek the repeal or amendment of the existing law.

I am of the opinion that the establishment of the applicant was an unlawful act and it was ultra vires the statutory powers of the respondent which are to appoint committees to carry out its duties and to further the objects of the Order and the Regulations. This application must fail because the function of the courts is to interpret the law, not to legislate. For example, "My function is "jus dicere" not "jus facere" I have only to interpret what the legislature enacts or apparently intends." - Wessels, J. in Seluka v. Suskin & Salkow, 1912 T.P.D. 258 at p. 270.

"Jus dicere non dare" is the function of the court, and the language of an Act of Parliament must neither be extended beyond its natural sense and proper limits in order to supply omissions or defects, nor strained to meet the justice of an individual case." - Hoexter, J.A. in R. v. Tebetha 1959 (2) S.A. 337 (A.D.) at p. 346.

In the instant case what the applicant wants this Court to do is to strain the Act of Parliament to meet justice of the instant case by interdicting the respondent from exercising its lawful duties and forcing it to perform certain things which are obviously unlawful.

In the result the rule nisi is discharged with costs.

J. L. Kheola
J. L. KHEOLA

JUDGE

For Applicant - Mr. Sello

For Respondent - Mr. Mohapi