CIV/APN/26/91

IN THE HIGH COURT OF LESOTHO

In the Application of :

SWALLOWS FOOTBALL CLUB	Applicant
vs	
LESOTHO SPORTS COUNCIL	1st Respondent
MASERU BROTHERS FOOTBALL CLUB	2nd Respondent
ROYAL LESOTHO MOUNTED POLICE FOOTBALL CLUB	3rd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 15th day of February, 1991

The applicant and the 3rd respondent are engaged in the present legal contest mainly, it seems, because the loser stands to be relegated from the A - division to the B - division of Cup Competitions organised by the 1st respondent and created and governed by the Lesotho Sports Council (Competition) Rules 1990 which came into force on 13th March 1990.

It appears that during a game played pursuant to the above rules, and falling within a series of games preceding the Cup Final Competitions the applicant noted that a player Bernard Motsamai who was then officially registered with the applicant was fielded by the 2nd respondent in a game played between the applicant and the 2nd respondent Maseru Brothers Football Club. This occurred on 31st August 1990 at a game played at Setsoto Stadium in Maseru.

The applicant lodged its protest with the refree who was conducting the match. This was in accordance with

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the Rules of the Competition.

The Court was referred to Lesotho Sports Council Regulations 1971 Regulation 6 which provides that

(a) "A member of the Council may not transfer his club membership from one club to another without the consent of the Council.

(b) "The Council may consent to the transfer of a member if -

(i) the consent of the club of which he is a member has been obtained....."

It is common cause that the applicant's consent was not obtained before the 2nd respondent fielded a member who was at the time legitimately registered with the applicant.

It is true that the 1st respondent's sub-committee, to wit, the Senior Football Executive Committee, sought to justify the fault committed by the 2nd respondent on the ground that the 2nd respondent acted in error in all it did against the interests and to the prejudice of the applicant.

According to a transfer form no doubt created to accommodate provisions of Regulation 6 above three provisions are left for signatures (a) of the secretary of the club from which the transfer is sought, (b) the signature of that club and (c) the signature of the club to which the transfer is sought.

In the instant matter (a) was filled by the secretary or member of the club to which the transfer was sought. Provision under (b) was not filled yet it clearly spells out that the signature should be appended of the club with which the player is "presently" registered. Provision (c) was signed by the club to which the player sought the transfer.

Article 11 of the Lesotho Sports Council(Competition)

/Rules 1990

Rules 1990 clearly indicates in sub-article 2 that

> "Any club fielding such a player shall be guilty of misconduct and therefore liable..... to the forfeiture of the match or matches in which such a player or players was or were fielded."

It would seem to me to be immaterial whether the 2nd respondent was mistaken in acting to the prejudice of the applicant. Thus the 1st respondent erred in endorsing its sub-committee's decision to order a replay in the teeth of the plain meaning and direction made by the provision of the rules in the event of a defaulter being fielded in circumstances outlined above.

It would seem that the 1st respondent or its sub-committee would be precluded from relying on Article 18 which provides that -

> "The Senior Football Executive Committee shall have the right to take whatever appropriate administrative action it may deem necessary in any case not directly covered under the Lesotho Sports Council Rules and Regulations and all related circulars"

because the matter under consideration is covered under Article 11 jointly read with Regulation 6 of the Lesotho Sports Council Regulations 1971.

Mr. Mafisa for the 3rd respondent argued that because the applicant sought administrative intervention as against judicial intervention when the applicant appealed to the Minister of Sports who warned the applicant that it is preferable to go on with the game after protesting, the applicant should be regarded as having accepted and been content with the Minister's ruling in the matter.

I need not dwell much on whether the Minister acted judicially or administratively because the truth of the matter is that resort to the Minister's intervention was based on a law that no longer existed in terms of which appeals from the 1st respondent used to lie to the Minister.

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It would seem therefore wrong to penalise the applicant for mistakenly having sought relief in a wrong forum before approaching this Court, because had the appeal in fact laid to the Minister then a legitimate criticism would fittingly operate against the applicant on the grounds that it approached this Court without having exhausted all domestic remedies or followed proper procedures.

In Golube vs Oosthuizen and Another 1955(3) SA page 1 at 3 reference is made to Shames vs South African Railways and Harbours 1922 AD 228 where Solomon J.A. at 235 said :

> "But the question still remains at what stage of the proceedings is it competent for an aggrieved servant to have recourse to a court of law. Is he entitled to do so at the initial stage, so soon as a penalty has been inflicted upon him, or only at the final stage when he has exhausted all the remedies which under the Act are open to him? This is the question which has not been dealt with in any of the decided cases, so far as I am aware, but I am clearly of opinion that it is only if the irregularity or illegality has been persisted in up to the final stage that it is competent to the servant to take legal proceedings. For non constat that, if he had appealed to the various tribunals which under the Act are open to him, the irregularity complained of may not have been set right, and justice done to him".

It is significant that the applicant appealed to the 1st respondent on 25th September - a day after the 1st respondent's sub-committee had given the decision at which the applicant felt aggrieved. The decision of the 1st respondent was given on 2nd October 1990 whereupon the applicant appealed to the Minister who made his remarks on 15th November 1990.

I am not convinced therefore that the applicant was marking time and watching a wager to see which way the wind blows.

It appears however that the 3rd respondent being apprehensive of the fate likely to befall it or any other

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team which had not performed sufficiently well during fixture matches to escape relegation to lower grade division did diligence in terms of CIV/APN/301/90 wherein the applicant was also joined among respondents who were called upon to condone the irregularities perpetrated by the 1st respondent and its sub-committee.

Shooting itself in the foot the applicant let application CIV/APN/301/90 go by default. Thus the applicant was effectively estopped from upsetting the position to which the 3rd respondent pinned its faith after being led by the applicant's manifest conduct to believe that the applicant had abandoned its claim to the two points which it was entitled to following the 2nd respondent's fielding Mr. Motsamai in a match played between the applicant and the 2nd respondent. I am not aware that any appeal was lodged by the applicant against the decision given by default in CIV/APN/301/90 nor have I been made aware that an application for rescision thereof has either been made or is being contemplated. If the effect of what the applicant is seeking today would necessarily involve this Court giving it in one hand what it denied it in the other, truly such a state of affairs would be untenable. Clearly that would be tantamount to appealing from Philip drunk to Philip sober.

It was for the above reasons that this Court dismissed the application but awarded costs against the 1st respondent.

J U D G E

15th February, 1991

For Applicant : Mr. Mohau

For 3rd Respondent: Mr. Mafisa