CIV\APN\164\92

IN THE HIGH COURT OF LESOTHO

In the Application of :

ROMA BOYS FOOTBALL CLUB — Applicant

v

LESOTHO SPORTS COUNCIL — 1st Respondent
AMBASSADORS FOOTBALL CLUB — 2nd Respondent

J U D G M E N T

Filed by the Hon. Mr. Justice M.L. Lehohla on the 4th day of February, 1994

On 26-8-92 the Court dismissed the above application but awarded costs against the successful respondents.

The following are the reasons for the decision just mentioned above

On 24th April 1992 the applicant obtained a rule nisi before Molai J returnable on 18th May 1992 couched as follows :

(a) That the Lesotho Sports Council immediately prepare a full and certified record of proceedings of the matter heard on appeal affecting the B. Division Finals for 1991 and between Roma Boys F.C.,

(b) That such record be presented for review to the Registrar before or on Monday 8th June, 1992 at 9.30 a.m. or soon thereafter as convenient to the parties and the Court.

(c) That copy of such record be served upon the parties herein with due speed regard being had to the urgency of the matter.

(d) That the Respondents show cause if any, on Monday the 8th June, 1992 before the Motion Court why the Applicant should not be granted the relief sought in the main application".

Despite its urgency this matter was postponed several times and the rule accordingly extended each time till 26th August when I was seized of it in the absence of the Judge to whom it was originally assigned.

Needless to state when the application was filed and the order obtained only one match had been played following the conduct of the 1st and 2nd respondents and concerning which the applicant resorted to Court to seek redress.

The question forming the subject matter of the dispute herein concerns the elevation of the 2nd respondent from the "B" or second division to the "A" division of the 1st respondent, in accordance with the rules and regulations of the Lesotho Sports Council.

It is common cause that the end of year finals of the "B" division produce the winning team which qualifies and becomes elevated into the "A" division.

It is also common cause reading from the papers that the position relating to the conduct of soccer games and the question of elevation including relegation of the participant soccer teams which are members of the Lesotho Sports Council is governed by the Lesotho Sports Council (Competition Rules of 1990).

It seems that the source of the dispute centres around the use of two particular players by the 2nd respondent during the finals. All parties by consent found it unnecessary to name these players.

Nonetheless it was maintained by the applicant that use of these two players constituted a breach of the regulations under which the finals were conducted. The particular rule said to have been breached is found in Article eleven.

This Article is headed "Transfer of Club Membership".

It reads in (1)

> "Once a player has been registered and has accepted his club membership of that registering club by playing for it he shall not play for another club in that season unless he has applied for and obtained a transfer in accordance with the provisions of Section 6 of Legal

Notice No.5 of the 1971 Lesotho Sports Council Regulations".

Sub Article 2, says -

"Any player who engages in any sporting activity in contravention of the Provisions of the forgoing section shall be guilty of misconduct and shall be liable to a fine of M500 and suspension for the remaining period of that season, subject to discretionary decision of the Senior Football Executive Committee to the contrary.

Any club fielding such a player shall be guilty of misconduct and therefore liable to a fine of M1 000 and to the forfeiture of the match\matches in which such a player\s was\were fielded".

The submission bringing attention to the breach by these two players was that they were registered but played for teams other than the 2nd respondent during the season ending around the end of 1991.

A protest was lodged with the relevant arm of the 1st respondent i.e. the Senior Football Executive Committee against the apprehended abuse.

It is on the basis of the fact that the 2nd respondent fielded what applicant regards as defaulters who participated in the series of games for teams other than the 2nd respondent before the expiry of the sporting season that the applicant claims that it is entitled to a position in the "A" division.

Significantly the applicant did not file any replying

affidavit even though its version has been opposed in material respects by the 1st and 2nd respondents.

It has been denied by the 2nd respondent that the two players branded as defaulters by the applicant were in fact defaulters.

Things regarded by applicant as common cause have been put in issue by the respondents. The contention that respondents admit that the two players complained of played for the respective teams i.e. Bantu F.C. and Rovers F.C. has been denied yet applicant has not replied to that.

The position in law is that where at the end of the day the Court finds difficulty in determining which of the parties is telling the truth because the applicant has not responded in evidence to a version which contradicts its own version then the Court is at large to accept averments by the respondents.

The question of onus raised on behalf of the applicant would properly relate to an appeal and not review. The nature of the proceeding brought before this Court is a review and not an appeal. It should therefore be observed that because of the narrow application that a review has, this Court cannot go beyond inquiring whether the rules of natural justice have been observed by the subordinate tribunals and further that there was fairness

and absence of bias even if the result reached would differ from one which the reviewing Court would have preferred.

It cannot avail the applicant to just state that the Senior Football Executive Committee was on its own entitled to find that the two players to have been "defaulters" when they engaged in a game for the benefit of 2nd respondent.

The easiest thing to have been done by the applicant would have been to call for witnesses from the two teams for whom these players are alleged to have played or to bring forth league forms to prove that such players did in fact play.

But even so, there would still have been another hurdle for the applicant to go over, namely that when so playing for the 2nd respondent they were in fact defaulting. Proof was necessary to show that those players were registered as lawfully belonging to Bantu F.C. and Rovers F.C. This would have called for presentation of lists submitted to the Sports Council or copies retained by Bantu F.C. and Rovers F.C.

That would be the evidence required of the applicant to furnish. The significance of this is that in the absence of such evidence it cannot be taken for granted that these two players played for those teams as registered members and not as defaulters because it cannot be considered in the applicant's

favour that it was within the peculiar knowledge of the respondents that such is the case. This contention is buttressed by the fact that it is not impossible for players to play as defaulters. Regulation 5(1) envisages such a possibility. It would thus be idle to regard the existence of Regulation 5(1) as vain.

Nothing substantial has been brought forward by the applicant to show that at the time these players were used by the 2nd respondent they were still registered members of Bantu F.C. and Rovers F.C.

Regulation 4(b) and (c) envisages that the Sporting season ends on 31st October of any given year. The S E F C acknowledges this point at page 11 of its judgment in the typed script.

The significance of this period is that as in the instant matter these players were used by the 2nd respondent after 31st October it was important for the applicant to prove that they had been re-registered in their previous teams regard being had to the fact that even if during the 1991 playing season they had been registered with Bantu F C. and Rovers F C their membership of those clubs would have lapsed on 31st October 1991 in terms of Regulation 4(b) of the Lesotho Sports Council.

There would still be need to furnish proof that after 31st

October these two players had registered with the teams in question for this would call for the question of transfer upon which the applicant's case is based.

But my reading of the proceedings before S E F C shows that no evidence was placed before that body to the effect that the two players were registered with either Bantu F C or Rovers F C.

It would have been necessary to furnish evidence relating to dates when these issues took place. But as shown it does not appear anywhere that the applicant took trouble to show when the two players played for either of the two clubs in question.

On this ground alone the application stands to fail.

Needless to stress that the findings of the 1st respondent on all aspects that the applicant bore onus of proof cannot be challenged on basis of bias, irregularity or any of the known grounds on which the remedy sought on review normally consists in. I see no misdirection in the judgment by 1st respondent especially at page 2 which is more relevant to the issues raised in this proceeding.

Thus this Court is unable to substitute its decision for that of the 1st respondent. This is to say that even if this Court felt differently, it would not be proper to disturb the

ruling by a lower tribunal as long as no bias, irregularity or breach of natural justice has been committed.

Indeed in terms of Article 11 as contended on behalf of the applicant that S F E C was entitled on its own to have acted against any malfeasance even if there was no complaint, failure by S F E C to do that however does not entitle the applicant who is apprehensive of suffering loss thereby to sit back and lament at the inactivity of S F E C.

The Court cannot however ignore the plausible conduct of the applicant in that it preferred not to disturb the programme prepared by the S F E C for the games for the year, and holds in question the fact that the games were held much later than 31-10-91 thus showing that the applicant's contention in that regard cannot be said to be baseless. For this it is deemed that an award of costs to applicant despite its failure on merits cannot be out of place or unreasonable.

J U D G E
4th February, 1994

For Applicant Mr Seotsanyana
For 1st Respondent Mr. Mohapi
For 2nd Respondent Mr. Mohau