

IN THE HIGH COURT OF LESOTHO

In the Application of

LINKOE F C.

Applicant

V

1	LESOTHO FOOTBALL ASSOCIATION	} Respondents
2	CHELSEA F.C	
3	MASERU PIRATES F C.	
4	MANONYANE F C	
5	ROMA BOYS	

REASONS FOR JUDGEMENT

Delivered by the Honourable Mr Justice W.C M Maqutu
Acting Judge

1 This application was brought (Ex parte by applicant on the 6th January, 1994) Applicant as a matter of urgency was asking for an order in the following terms

- 1 Directing and calling upon the Respondents to show cause if any, on a date to be determined by this Honourable Court why the proceedings and decision of First Respondent to stage the "B" Division clubs soccer Finals on 25th-27th December 1993 to the exclusion of Applicant shall not be reviewed, corrected and set aside.

- 2 Directing and calling upon the Respondents to show cause, if any, on a date to be determined by this Honourable Court why The "B" Division Clubs Soccer Finals for 1993 staged by First Respondent on 25th-27th December 1993 involving Second, Third and Fourth Respondents to the exclusion of Applicant shall not be declared null and void
3. ¹⁾ Declaring that First Respondent acted arbitrarily and in an unfair, irregular and unreasonable manner to the prejudice of the Applicant in staging the said "B" Division Clubs Soccer Finals on 25th-27th December 1993
- 4 Declaring that First Respondent flouted the principles of natural justice in failing to accord Applicant a hearing as requested before proceeding with the said Soccer Finals
- 5 Directing First Respondent to stage "B" Division Clubs Soccer Finals for 1993 involving Applicant, Second, Third and Fourth Respondents
- 6 Postponing the play off between Third and Fifth Respondents scheduled for 9/1/94 pending the finalisation of this application.
- 7 Granting Applicant such further and/or alternative relief as this Honourable Court may deem fit
- 8 Directing Respondents to pay costs only in the event of this application being opposed.
9. Directing that the forms and service provided for in the Rules be dispensed with on account of urgency.

10 Directing and calling upon the First Respondent to despatch the record of proceedings and reasons for the aforesaid decision within three (3) days of receipt of this notice and notify the Applicant in writing that it has done so.

11 That prayer 6 above operates with immediate effect as an interim relief pending the finalisation of this application.

The court after reading the papers made the following order

(a) That Respondents be served with this application as a matter of urgency

(b) Respondents to serve applicant with opposing affidavits if any not later than 10.00 a m. on the 11th January 1994 . Record of proceedings or decisions taken to be made available to Applicant by that time.

(c) This application will be heard on the 12th January 1994 at 2 30 p m.

On the 12th June 1994 the matter was heard as an opposed motion and the court dismissed the application with costs promising to give reasons later These are the reasons

1. In the courts view applicant did not see to it that a decision was reached by the First Respondent on applicant's request for postponement. It seems applicant was promised by Mr. Putsoane (one of the First Respondent's district official) that he would get ~~the finals~~ postponed. This Mr Putsoane failed to do It is doubtful if Mr. Putsoane (even if he was higher official than he was) had the powers he and

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applicant believed he had.

2. The finals were played on the 25th , 26th and 27th December 1993 and applicant failed to turn up for the finals. If applicant had done everything in his power to see that the finals were not played and had in fact brought this application before the finals were played, the court might have probably felt obliged to take a different view of this application
3. Applicant was of the view that it was entitled to two weeks notice of the date of the finals Regulation 6(1) of the Lesotho Football Association Rules and Regulations provides that teams should only be given not less than two days notice
- 4 Applicant's letter annexure "D" states applicant would not attend the finals because the Lesotho Football Association has chosen Christmas as the day for the finals At this time the players had been sent away and the manager of the team will be busy attending to his trading station and finally one of the players of the team had died and would be buried on the day of the finals. This letter does not assist applicant's case at all
- 5 The letter in question (annexure "D") was dated 17th December 1993 while the copy annexed to the application is dated the 20th December 1993 Applicant says the date of 17th December 1993 was written by mistake Applicant claims it was not aware it had not corrected the original This

statement comes out of the replying affidavit not the founding affidavit. Applicant is not supposed to build his case in the Replying affidavit. The court felt it need not determine whether or not applicant is telling the truth because this would not by itself affect the outcome of the application.

- 6 The court is not persuaded that merely because applicant claims he did not receive written confirmation of the finals, applicant was entitled to write annexure "D" and sit back. In any event on the face of what occurred the court is satisfied that applicant knew of the finals more than two days from their commencement.

At the outset applicant's counsel conceded that there was no question of review because the matter of applicant's desire or demand for postponement was never decided upon. As already stated applicant did not see to it that this application for a postponement was heard. In the circumstances this was an urgent matter for which a decision ought to have been made. In such circumstances mora reprobatur in lege (delay is disapproved in law). It is therefore a futile exercise to bring this application after the football finals have taken place.

The crux of this application is that the "B" Division Clubs Soccer finals for 1993 be declared null and void. A declaratory order is discretionary matter for the court. Applicant alleges it sent the letter dated 20th December 1993 or 17th December 1993 (as the original shows). Respondent says it received the said letter on 3rd January 1993. Even if applicant had received the letter before the soccer finals were staged, that would not have affected the outcome of this application because applicant had stated that he would not attend the finals.

Applicant in reply showed he sent the letter to First Respondent's office by hand and has an affidavit to that effect. All this did not come in the founding affidavit. This fact was vital to the outcome of the application and applicant should have foreseen that the timeous receipt of the letter was proved in the founding papers.

Respondent claims he sent out notices and order of play on the 15th December 1993. There is one of the documents that is date stamped 16th December 1993. That being the case the notices were certainly sent after the 15th December 1993. Applicant insists it never received those documents. Applicant says it wrote the letter marked "D" because of the telephone message it got. Applicant says had it in fact received the documents it would have attended the soccer finals. This is a matter on which the court can only speculate.

It remains a fact that, that had First Respondent not provided the court with the original of the letter dated 17th December 1993, the court would have remained under the impression that annexure "D" was dated 20th December 1993. The explanation in the applicant's replying affidavit that this was a mistake is noted. The court is never-the-less mindful of the fact that this was supposed to be an ex parte application brought ten days after the finals. This alteration of the date initially led the court to the conclusion that applicant had done so with fraudulent intent. In the court's mind the words of Grunberg J in Phillip v May 1936 (1) PHC 16 came to mind where he said

"The Rule has been repeatedly laid that in ex parte applications utmost good faith is required".

The court would have been obliged to order applicant to pay attorney and client costs Schlesinger v Schlesinger 1979 (4) SA 342 at page 354

In dealing with this application we must never forget that we are dealing with the game of soccer. Soccer is the ordinary man's sport. To quote from Cross J in Printers and Finisher Ltd v Holloway (1964) 3 ALLER 731 at 736F

"The law will defeat its own object if it seeks to enforce in this field standards which would be rejected by the ordinary man"

Voet 9 2 6 says people participate in sports and games in the "interest of glory and manly worth". In other words spectators and the general public are an important component in the soccer finals. We cannot just consider applicant alone without keeping in mind the other teams that participated and the general public who were spectators. It was from and against them that applicant has to gain glory and prove its manly worth. Wessels ACJ in Riv Clarke and ano 1931 AD 453 at 455 defined a game as "an amusement bringing several people together in competition with each other". Although soccer has at times become big business the courts ought never to forget that it is "an amusement bringing several people together". Applicant had to make a very good case to induce the court (in its discretion) to interfere.

The greatest difficulty applicant had was that since the soccer finals were conducted in compliance with the rules, applicant counsel could not find a rule entitling the court to interfere. It is true that being informed of the date of the soccer finals between four and eight days from the appointed day must have inconvenienced applicant and other teams. It must have upset Christmas plans. The rules say they should give at least two days notice. They have given between eight and four days notice.

Both parties agree that this is more than what the regulations require. Applicant has to realise that the powers of decision are with the Lesotho Football Association and not with the court. There is no doubt that it would have been far better to have given the soccer teams a much longer notice of when the finals would be held. What they did is far from satisfactory.

Applicant did not know the rules. Ignorance of the law is not an excuse. Applicant made far too many mistakes for the court to feel it could help even if it had the power to intervene when it is far too late as it happens to be. The court notes that Mr Putsoane who was a district representative or a member of First Respondent's district committee promised to help. He let applicant down by not giving applicant good advice or pressing for a decision before the finals. If Mr. Ntlhoki the Assistant Secretary listened to applicant with sympathy when applicant told its sad story and promised to do what he could, that does not help applicant at all. Mr Ntlhoki did what this court did, that is, listening, to applicant sympathetically, but when it had to decide the matter it ultimately did what it believed the balance of convenience and the law obliged it to do.

This court cannot substitute its discretion for that of Lesotho Football Association so long as it followed its Rules and Regulations.

It was for these reasons that applicant's application was dismissed with costs on the 12th January, 1994.


W C.M. Maqutu

ACTING JUDGE