

CIV/APN/395/01

**IN THE HIGH COURT OF LESOTHO****In the matter between :****AMBASSADORS F.C.****1<sup>ST</sup> APPLICANT****MPHATLALATSANE F.C.****2<sup>ND</sup> APPLICANT****vs****LESOTHO FOOTBALL ASSOCIATION****1<sup>ST</sup> RESPONDENT****LIOLI FOOTBALL ASSOCIATION****2<sup>ND</sup> RESPONDENT****MARADONA JUNIORS F.C****3<sup>RD</sup> RESPONDENT****RULING**

Because of pressure imposed by scarcity of time and urgency of the matter on hand I decided to give the court's verdict prefaced by a brief summary of the facts.

The two applicants, way back on 28<sup>th</sup> September, 2001 approached one Branch of this Court on an urgent basis and obtained **ex parte** a rule nisi emanating from a

Notice of Motion framed as follows, to wit, that application would be made for a rule nisi calling upon the respondents to show cause why the following prayers shall not be made absolute

- (a) dispensing with the normal modes of service due to urgency
- (b) interdicting and restraining the 1<sup>st</sup> Respondent through its Premier League Management Committee from automatically promoting the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to the Premier League pending finalisation of this application
- (c) Ordering the 1<sup>st</sup> Respondent to allow the A Division Management Committee to hold the finals for the A Division
- (d) Nullifying Rule 22 of the Premier League Competition Rules as being **ultra vires** the Lesotho Football Association Rules and Regulations Rule 4
- (e) Ordering the 1<sup>st</sup> respondent to pay the costs of this application

- (f) Ordering the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to pay the costs only in the event of opposition

That prayer 1(a) and (b) operate with immediate effect as a temporary interdict.

I observe that in virtue of the fact that the Court was persuaded to hear the matter **ex parte** rule 1(a) was thereby rendered absolute and there was nothing nisi about it. The rule that became **nisi** was accordingly the one that emanated from prayer 1 (b) above.

I observe also that in the certificate of urgency Mr. Matooane neatly highlighted the need for urgency by indicating that the fixture had already been prepared and was due to start on 4<sup>th</sup> October, 2001 while the 2<sup>nd</sup> and 3<sup>rd</sup> respondents had already been promoted. I however feel constrained to observe that applicants did not consider it worth their while to include an alternative prayer for damages in the event that should the court feel that their grievance is legitimate their order prayed may nonetheless be not met as it presents a rather tall order in the sense that other factors such as balance of convenience etc militate against granting it.

The Court further observes that service of the interim order and founding papers was effected on the respondents within a time span ranging from 1<sup>st</sup> October to 2<sup>nd</sup> October 2001. Since then the applicants have been blissfully sitting on the interim order. While on the one hand it could be argued that the respondents were at large to anticipate the return date which was due on 8<sup>th</sup> October, 2001 i.e. way after the purported starting date of the fixture; on the other hand such an argument cannot detract from a long established principle and well-worn caution in applications moved **ex parte** that by their nature such applications constitute a negation of the **audi alteram partem** rule and as such constitute a procedure that should be exercised with disciplined restraint and for the briefest possible period of time as such a practice is in essence an invasion of the rights of a party without that party being rendered prior hearing or any notice of unilateral invasion of that party's rights. See **Republic Motors vs Lytton Road Service Station 1971 (2) SA at 518**

Significantly the 1<sup>st</sup> applicant relies on the founding affidavit of one Baba Malephane who deposes that he is the 1<sup>st</sup> applicant's Manager who as such is duly authorised to depose to the affidavit in question. Not to be behindhand the 2<sup>nd</sup> applicant casts its lot with the 1<sup>st</sup> applicant by supporting and adopting the 1<sup>st</sup> applicant's deponent's depositions.

In that regard the two applicants can and are legitimately understood as having made common cause in attempting to oust the 2<sup>nd</sup> and 3<sup>rd</sup> respondents from positions held prior to the interim Court Order obtained **ex parte** against them and without notice of hearing, as well as attempting to fault the act of the 1<sup>st</sup> respondent in its endorsing the actions of its Management Committee.

In his well set out heads Mr. Matooane for the applicants submits that the 1<sup>st</sup> respondent was formed in 1993 and in the same year passed a bye law in the form of Lefa Rules and Regulations 1993. Learned Counsel points out that the Management Committee of the Premier League amended its Regulations to provide for automatic promotion of two teams from the A - Division to the Premier League.

Significantly again the self-same Baba Malephane otherwise Manager of the 1<sup>st</sup> applicant is also Secretary General of the A -Division Management Committee. It is in this latter capacity that on 18<sup>th</sup> September, 2001 he wrote letters to leaders and runners up of each of the two streams to prepare for the finals to be held on 5<sup>th</sup> October, 2001. See copies collectively marked "A" and attached to the founding affidavit and copied to the 1<sup>st</sup> respondent.

However on 24<sup>th</sup> September he received a copy of a letter notifying the A-Division Management Committee that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were to be promoted automatically to the Premier League.

The Chairman of the Premier League informed the 1<sup>st</sup> applicant's deponent that the Premier League would commence its season on 4<sup>th</sup> October 2001, with the 2<sup>nd</sup> and 3<sup>rd</sup> respondents participating as legitimate members thereof.

Mr. Sefako for the 2<sup>nd</sup> respondent while aligning himself with Mr. Ntlhoki for the rest of the respondents parts company with Mr. Ntlhoki where the latter maintains that there is no question of misjoinder or non-joinder committed by the applicants. Mr. Sefako insists that the applicants be declared non-suited on grounds of misjoinder. This being a point of law it can be raised any time during proceedings. Indeed it was raised **mero metu** as late as at Court of Appeal level in **C OF A (CIV) NO. 14/98 BCP & ORS vs Director of Elections & ORS** where BNP, BCP and MFP purported to spearhead a complaint against installation of the LCD government in power in disregard of other opposition parties which had substantial interest in the matter and outcome thereof.

I therefore feel there is a case of misjoinder in the matter brought before this Court. On that ground alone the application ought to be dismissed.

Mr. Matooane further prayed that should the Court find the actions of Baba Malephane to be untenable then the Court should not saddle any such fault on the applicants. This argument is hard to follow in view of the fact that the applicants have pinned their faith on the averments of Baba Malephane and cast their lot with him; meaning that they stand to lose or gain depending on his variable fortunes before this Court. See **Maseru United F.C. vs Lesotho Sports Council & anor LAC 1980 - 1984** pg 164 at 165 C-D where the appellants had cast their fortune with the deponent to their founding affidavit Michael Mthembu who among other things failed to fulfil certain requirements because he had travelled overseas. The actual words appearing in Mahomed JA's Judgment as he then was are: "Mr. Mthembu who is the Managing Director of the Appellant who signed the petition of the Appellant in the application stated simply that he had been away overseas and, when he returned, it was too late for him to do anything."

In that case it was never a consideration that his failure should not be saddled on Maseru United F.C. - the prime consideration being that in litigation as in any life

situation the weakest link in a chain is the measure of its strength. In the Maseru United F.C. scenario Michael Mthembu was that weak link! The same principle should operate everywhere else including in the instant matter on account of what follows below.

In his answering affidavit Sello Lesita seizes the bull by the horns in paragraph 6 ad para 11 of Baba Malephane's affidavit where it was averred:

"There was no amendment of the Lesotho Football Association Rules and Regulations especially Regulation 4 read together with Regulation 6".

In response thereto Lesita avers :

"Contents are denied. Once the Premier League Competition Rules were amended and approved by 1<sup>st</sup> respondent by necessary implication the Lesotho Football Association Rules and Regulations 1993 were amended accordingly.

In any event the deponent to the founding Affidavit has not been candid with this Honourable Court. He has deliberately not disclosed that on 9<sup>th</sup> January 2001 he personally wrote to the Secretary-General of 1<sup>st</sup> respondent in terms of which he



sought approval of his Management Committee's "A" Division League Rules and Regulations including fixtures in accordance with the two stream system."

It was late in the day that my attention focussed on paragraph 10 at pg 44 where it is indicated that all matches are to be played in accordance with the laws of the game approved by FIFA and or CAF.

I take judicial notice of the fact that FIFA laws prohibit settlement of disputes concerning games run according to its laws by resort to manucipal courts. I make this observation just in passing that this matter came before this court notwithstanding express provisions of FIFA laws to the contrary on the issue.

It is significant that Baba Malephane fought shy of taking up the gauntlet and reacting to a direct challenge to his lack of candour with this Court. He chose to remain deafeningly silent in that regard. But why? It may be asked. The answer is not hard to find. The truth is that Lesita has dealt him a blow where he can scarcely hope to survive the onslaught.

Very dutifully and most satisfactorily in the view of this Court Lesita has

accordingly attached a letter signed by Baba Malephane the ADMACO-Secretary General addressed to Lefa's Secretary General on the 9<sup>th</sup> January 2001 and containing the following :-

“Dear Sir,

re: "A" DIVISION - SOUTH & NORTH

FIXTURE FOR THE YEAR 2001

Enclosed herewith please find "ADMACO"'s fixture for both streams duly drawn for your attention to bless.” ( Emphasis supplied).

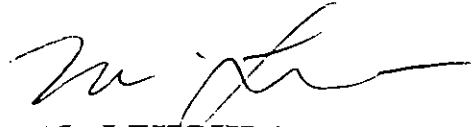
The "A" Division League Rules and Regulations sought to be blessed by LEFA contain among others Clause 4 at page 34 of the instant record. Clause 4 reads “ The winners of the two streams shall automatically be promoted to the premier league for the next season”.

I am reliably informed that the Premier League Management Committee rule on the question given a nod to and endorsed by the mother body Lefa is on all fours with Rule 4 of the A - Division League Rules and Regulations which Baba Malephane solicited Lefa to give a nod to and endorse. Why then this volte-face. If in law there is anything that is intolerable and therefore absolutely unsustainable, it

is a situation where a party is adjudged as blowing hot and cold. Unfortunately this is a position from which Baba Malephane along with his baggage of applicants cannot come out unscathed; much as a man dressed in a tweed jacket cannot take a dip in the Maqalika dam and hope to come out dry as a brick from a hot kiln.

In my view the merit of having the Rules and Regulations of these two bodies streamlined is only too obvious. i.e. they are meant to achieve the same goal, namely that two teams which qualify in terms of A-Division League Rules and Regulations Rule 4 should experience no counter-acting rule in Premier League competitions rules as seems to be suggested by Baba Malephane in his insistence that this time round the 2<sup>nd</sup> and 3<sup>rd</sup> respondents should go into final competitions with clubs they had beaten in the first place in order to qualify to be in the Premier League competitions. The ludicrousness of such a thing would best be pointed at by saying that it would run counter to Rule 4 of the A Division League Rules and Regulations concerning which and moved no doubt by good sense, Baba Malephane fought so hard to have that particular rule blessed by the mother body.

In the result and also on this ground alone the application ought to be dismissed with costs and rule discharged. It is so ordered.



**M.L. LEHOHLA**

**JUDGE**

**19<sup>TH</sup> NOVEMBER, 2001**

For Applicants : Mr. Matooane

For 1<sup>st</sup> and 3<sup>rd</sup> Respondents : Mr. Ntlhoki

For 2<sup>nd</sup> Respondent : Mr. Sefako