

IN THE HIGH COURT OF LESOTHO

In the matter between:

BANTU FOOTBALL CLUB

APPLICANT

and

LESOTHO FOOTBALL ASSOCIATION

1ST RESPONDENT

POPO

MATŠOARA

2ND RESPONDENT

MONTOELI

RANTLO

3RD RESPONDENT

MAHLOMOLA

MATŠOARA

4TH RESPONDENT

REFILOE

MEFANE

5TH RESPONDENT

LEHLOHONOLO

MOHALE

6TH RESPONDENT

LEMOHANG

MOKAKE

7TH RESPONDENT

MOITHERI

LEPHOI

8TH RESPONDENT

KABELO

RAMOLULA

9TH RESPONDENT

MOHANOE

MOTELETSANE

10TH RESPONDENT

MOTOLO

MAKEPE

11TH RESPONDENT

SECHABA

RAMALEFANE

12TH RESPONDENT

CHAKA

MONARE

13TH RESPONDENT

TIEHO

THEJANE

14TH RESPONDENT

REMI

MOHALE

15TH RESPONDENT

ROVERS F.C.

16TH RESPONDENT

J U D G M E N T

Delivered by the Honourable Mr. G.N. Mofolo
on the 10th day of August, 2001.

Judgment in this matter was drafted and was ready for typing. Before typing, it so happened that the court observed certain documents in Sesotho had not been translated into English and the court directed that counsel have these documents translated. In order to avoid translators coming across the draft judgment, the secretary had removed the draft copy for safe keeping. Unfortunately, the draft can no longer be traced. I am to emphasize, as I have done before, that documents in Sesotho or any other language but English have to be translated into English on the lodging of an application or issuance of a summons. As it is, in this case, because there were no translators, with the intervening events, judgment has been delayed.

From the papers, it would appear the applicant Bantu Football Club was founded in 1927. I am also to mention that the application before me was argued on merits.

I can only mention that Bantu, along with Majantja, Matlama, Lioli and Linare are foundation members of what was then called Basutoland Sports Association (B.S.A.) Predecessor to the LESOTHO FOOTBALL ASSOCIATION (LEFA) and importantly that the teams or districts from which the teams come formed the core of Moshoeshoe 1 military regiments.

Therefore, in approaching the question of Bantu Football Club membership of LEFA, one has to be careful lest tempers lying dormant for a long time be ignited.

According to papers before me DIFA, Mafeteng paid M50-00 to Lesotho Football Association (LEFA) per receipt No.5586 dated 28.03.2000 (see annexure "D"). Now according to the annexure, members of DIFA elected on 6 March, 2000 for the period 2000 - 2001 were:-

Mr. Matlamukele Matete	-	Chairman
Mr. Falla Seboko	-	Vice-Chairman
Mrs. 'Mathabo Sesitsi	-	Secretary
Mr. William Ncheke	-	Vice-Secretary
Mr. Leferefere Leferefere	-	Treasurer
Mr. Malise Rammusi	-	P.R.O.

Members

Mr. Goitseman Nthethe
Mr. Mpholeng Letsapo

It is therefore safe to say that when Bantu Football Club affiliated to LEFA the above represented the District Football Association; and yet, according to the Constitution of Bantu Football Club, members of the Executive Committee consist of:

- (i) President

- (ii) Chairman
- (iii) Secretary-General
- (iv) Treasurer
- (v) Manager
- (vi) Two Ordinary members

The Executive Committee for the year 2000, according to annexure "B", consisted of:

- | | | |
|----|--------------------|---------------------------------|
| 1. | President: | Mr. G.G. Nthethe |
| 2. | Chairman: | Mr. J.M. Letsapo |
| 3. | General Secretary: | Mr. M. Motinyane |
| 4. | Treasurer: | Mr. Ncheke |
| 5. | Manager: | Mr. M. Ramorebodi |
| 6. | Members: | Mr. F. Seboko
Mr. M. Rammusi |

This court has not been told why, but it would appear from the correspondence friction materialized between Bantu F.C. and LEFA the governing body.

To start with, the Committee of which G.G. Nthethe was President submitted thirty-six (36) names representing Bantu F.C. players for the year 2000; the names were received by Lefa the 1st respondent on 30 March, 2000 and yet the same year and on 01 November, 2000 further names were received by the 1st respondent. The heading does not say whether they are

players of Bantu F.C. but they are different from those of 30 March, 2000. On 26 April, 2000 a Mr. Ncheke wrote to 1st respondent's secretary complaining his committee is being overlooked by the 1st respondent in favour of a rival committee; he urges the 1st respondent to ratify his decision on account of the decision to accept the other committee having been reached without hearing Ncheke's committee. G.G. Nthethe wrote substantially the same letter to 1st respondent. It is not quite clear but it would appear in reply to G.G. Nthethe's letter above the General Secretary of the 1st respondent responded in his letter of 28 April, 2000 refuting allegations in the said G.G. Nthethe's letter adding that since the election of the committee was unprocedural the properly elected committee was that elected on 11 March, 2000 of whose Chairman was Thabang Joel. The Secretary-General cautioned that the fee paid had been erroneously received and was subject to refund. Again on 28 April, 2000 the Secretary-General of the 1st respondent wrote to Mr. Ncheke reiterating that the lawful committee was that elected on 11 March, 2000 and not on 5 March, 2000. As a result delegates submitted by the committee of 5 March, 2000 were turned down.

The letter of 5 July, 2000 addressed to the Minister of Tourism, Sports and Culture requested a Commission of Inquiry and was signed by

Chairman and Secretary as emanating from the office of G.G. Nthethe & Co. On 27 December, 2000 another letter was written to Secretary-General of the 1st respondent warning him there 'are some cohorts who are claiming to be 'members' of Bantu F.C. and further requesting the General-Secretary of the 1st respondent to 'desist from having any connection/communication/intrusion' with the said club as it is not affiliated demanding, in addition that any further intrusion by the 1st respondent into the affairs of the said Football Club will result in 'drastic legal measures' being 'taken against you.'

To the above letter Mr. T. Khomari Secretary-General of the 1st respondent had responded in his letter of 10 January, 2001 saying he wanted to put the record straight. Amongst other things Mr. Khomari had said Bantu Football Club is a registered member of the 1st respondent per receipt No.5398 dated 11th January, 2000. The rest is nothing but chiding the writer and reminding him that Bantu F.C. problems are common knowledge to be shared and redressed by all concerned.

It is against this background that a wing of Bantu F.C. lodged an application with this court seeking an order as follows:-

1. Dispensing with the forms and service provided for by the Rules of Court on account or urgency.
2. That *Rule Nisi* issue returnable on the date and time to be determined by this Honourable Court, calling upon the Respondents to show cause (if any) why:-
 - (a) The Respondents herein shall not be interdicted forthwith from going ahead with a football game between Rovers Football Club, and a club that goes under the name of Bantu Football Club in Mafeteng on the 11th February, 2001.
 - (b) The 1st Respondent herein shall not be directed forthwith to suspend any games in which a club named Bantu Football Club or Bantu F.C. is fixtured pending the outcome hereof;
 - (c) The 2nd to 15th Respondents inclusive shall not be interdicted from holding themselves out as players of a team they call Bantu Football Club or Bantu F.C. and which is affiliated to the 1st respondent herein;
 - (d) The Applicant herein shall not be declared the only team to lawfully use

the name Bantu Football Club and/or Bantu F.C. in the entire Lesotho;

(e) The 1st Respondent shall not be directed to remove the name of Bantu Football or Bantu F.C. from its fixtures games for the year 2001.

(f) The 1st to 15th Respondents inclusive shall not be directed to pay costs hereof;

3. That prayers 1, 2 (a) and (b) operate with immediate effect as Interim Order of Court.

It would seem on 19 February, 2001 my brother Monapathi J. allowed prayers 1 and 2 (a) and (b) of the Notice of Motion to run with immediate effect as interim interdict orders. The application was opposed.

In his opposing affidavit FALLA SEBOKO has deposed at paragraph 14:

'upon noticing that there was no reciprocal desire on the part of the relevant sporting authorities to settle the question of the elections that held contrary to the 1st respondent's constitution, the applicant's Executive Committee duly resolved not to give any legitimacy to respondent's *de facto*

Executive Committee by participating in any activities including competitions arranged by the said committee, pending the satisfactory resolution of the question of the unconstitutional election of the 1st respondent's executive committee. In the meantime another democratic football association named the football Association of Lesotho (F.A.) came into being and the applicant herein affiliated with it in the football season of 2001. (I have underlined).

para.15

In pursuance of that resolution, the applicant herein wrote the first respondent notifying him that there were some people who masqueraded as members and or players of the applicant herein who had no mandate from the club to have dealings with the 1st respondent herein ----.

para.17

It has come to the notice of the applicant's executive committee that despite clear and unambiguous message of annexure "G" the first respondent has purported to fixture some teams under the names of the applicant herein.

para.18

It is the applicant's contention that there cannot be two Bantu Football Clubs in this country. The only lawful Football Club is the one whose executive committee I am a member, and that

Club has resolved through its lawful executive committee, not to participate in the first respondent's affairs.

para.20

I aver further that the second to the 16th respondents inclusive have wrongfully and unlawfully been holding themselves out as players of Bantu Football Club whereas the only legitimate Bantu Football Club has resolved not to participate in games organised by the first respondent herein because to do so would clothe the first respondent's *de facto* committee with some legitimacy when they are guilty of manipulating the proceedings of the general conference at which they were 'elected' as set out at paragraphs 10 and 11 above.

It would seem, while the applicant has established own Football Association with another body which runs football along the same lines as LEFA and uses Bantu players, the applicant would have this court hold that a rival organisation to LEFA be allowed to walk away from LEFA not only with the players but also with the team's name. Reasons advanced for this appear in the applicant's paragraphs 14, 15, 17 - 20 and can be summarised as:-

- (1) applicant has not given legitimacy to respondent's *de facto* Executive Committee nor is the said committee allowed to participate in any activities including competitions arranged by it pending the satisfactory

resolution of the unconstitutional election of the 1st respondents executive committee.

In the same breath applicant says another 'democratic football association named Football Association (F.A.) has come into being and the applicant is affiliated to it for the year 2001.

As I have said above, the question is whether applicant's establishment of FA does not amount to walking away from LEFA and whether by so walking away and forming a rival association the applicant can be allowed by this court to also walk away with the name Bantu Football Association. As I see things, the applicant Bantu Football Association is a breakaway group from LESOTHO Football Association otherwise known as LEFA. Question is, can a breakaway group with its own association competing with the original group in all respects be allowed to stop other aspirant groups affiliated to the parent group from associating themselves with the parent group under a name affiliated to the parent group?

Secondly, the applicant alleges it resolved as above and pursuant to the resolution it wrote to first respondent notifying it some people masqueraded as members and players of the applicant. Concerning the alleged resolution by the applicant as aforesaid, I have gone through the file and nowhere have

I found that the applicant through its executive committee resolved as alleged. According to the applicant's constitution (and it is to be observed that the constitution is the supreme law of the applicant and that the executive committee derives its powers and functions from the Constitution) powers and functions of the Executive Committee under sec.15 the Executive Committees duties are, inter alia:

sub-section

- (ii) suspend and/or expel members from the club and/or the Executive Committee....

- (viii) act in all internal and external matters of the club;

The only resolution of the applicant is annexure "A" of 9th February, 2001 which I intend reproducing in full reading:

EXTRACTS OF MINUTES OF BANTU
Football Club.

Held at Mafeteng on 9th February, 2001.

Present Quorum:

Resolved:

1. To institute an urgent application interdicting a game to be played in Mafeteng on 11th February,

2001 between Rovers Football Club and a group of individuals who unlawfully call themselves Bantu Football Club or Bantu F.C.

2. To institute an application restraining both LEFA and those individuals from fixturing any team under the name of Bantu Football Club or Bantu F.C.
3. To interdict those individuals from using the name of Bantu Football Club or Bantu F.C.
4. To seek an order declaring Bantu Football or Bantu F.C. represented by the Committee elected in 2000 to be the only Club to lawfully use the name of Bantu Football Club or Bantu F.C.
5. To authorise Mr. Falla Seboko to sign all documents on behalf of Bantu Football Club or Bantu F.C. in pursuit of above decisions.
6. To instruct Messrs G.G. Nthethe & Co. to lodge such application.

Certified Correct Extract of Minutes.

Sgt J.M. Letsapo

CHAIRMAN

I do not take this resolution as authority or resolution by Bantu Football Club 'not to give legitimacy to 1st respondent *de facto* executive committee' or resolution to stop the said *de facto* executive committee recognised by 1st respondent from participating in any activities and competitions of the 1st respondent. When the applicant wrote to the 1st respondent notifying it that 'there were some people masquerading as members and/or players of the applicant' and that these had no mandate from the applicant, the applicant had not resolved as claimed for the resolution before me is nothing but authority to institute proceedings before this court. I do not know how this declaration of independence by applicant from LEFA was mooted. But even if a certain section of Bantu F.C. decided to walk away from the parent body and form own Football Federation or Association as the applicant has done, this could only be done by resolution of Bantu F.C. and as I have said there is no such resolution. Not only this. According to the applicant's constitution section 22:

- (a) Should any member, sub-committee or club members be guilty of improper, dishonest or unsportslike behaviour which is related to the club or otherwise commit a wilful breach of this Constitution and/or regulations of the club, the Executive Committee shall have power to:-

- (b) No member, sub-committee or club member, suspended may take part in any sports or games or any activities organised by the club or organised by major organisations.

Substantively speaking, applicant's complaints to this court are part and parcel of sec. (a) and (b) above of the applicant's constitution. And yet, despite the clear directions of the constitution, applicant has not expelled and/or suspended the erring club members and the so-called Executive Committee masquerading as Bantu F.C. Also, by resolution of the applicant's executive committee, club members and Executive Committee complained of should have been suspended and/or barred from taking 'part in any sports or games or any activities organised by the club or organised by major organisations.' The applicant has done nothing of the sort.

As this court sees things, it is the duty of associations and clubs to carry out the law. Where an association has made a decision and resolved to carry out the letter of the law and thus played its part and an individual or collection of individuals defy such a direction by an association or club, in such a case the association or as it were club is entitled to approach this court to have its direction enforced. In like manner, where an organ acts against the subject, it leaves the latter to seek redress in higher tribunals or

courts of law. As I have said, the applicant should have exercised its power under the constitution instead of expecting the court to do for the applicant what the applicant should have done for itself.

It is understandable if the applicant's case is: or have expelled them and barred them from participation with sporting bodies and we seek leave of court to have our action against them enforced. This, as I understand, is the content and requirement of a declaratory order.

Account has also to be taken of exhaustion of domestic remedies for the idea behind this is to give the other side an opportunity to challenge the decision for where a decision has not been made domestically giving others an opportunity to challenge it, it can not be said that rules of natural justice and fairplay have been complied with. In any event, since the matter is before this court, there is no reason why the court cannot deal with it as it stands to its finality.

Returning to the requisites of a declaratory order, it is unlikely that a court well instructed will grant a declaratory order where parties are in dispute over the nature of their relative rights or where the infringement of the rights is merely feared or anticipated; it would appear a declaratory order

can only be granted where rights have already been infringed - see Innes, C.J. in *Geldenhuis v. Neethling v. Beuthin*, 1918 A.D. 426, 440 - 1. Although the requirement that an order could only be granted if there was concrete infringement of rights has more or less been relaxed - (see *Ex Parte Ginsberg*, 1936 T.P.D. 155, 157 - 8), the courts have remained cautious refusing to interpret the legislation so as to allow declarations that were purely abstract or hypothetical.

Speaking for myself, I have always viewed a declaratory order as superceding a review order so that where an applicant would be expected to proceed by way of review he instead approaches the court for a declaratory order. This has happened in several cases where a party has established rights. Thus in *Kepa v. Anglican Church and Another*, LLR 1995-96 (C of A) 163, the appellant (for what appeared to the Appeal Court to be spurious reasons) was transferred from one school to another. In this case the management had made a decision to transfer the appellant and the appellant instead of approaching the court by way of review had applied for a declaratory order to set aside the purported decision to transfer her and the appeal court had granted the appeal.

In my view, though perhaps not now always, a declaratory order can

only be resorted to to set aside a factual, existing situation for a court cannot set aside something non-existent. Indeed even without the requirement, there has to be some basis for the grant of a declaratory order. There is a basis for the grant of the order where, for example, certain rights having been conferred on an applicant and these are frustrated or denied; in such a case an applicant can approach the court for a declaratory order. These are the sort of cases that land in our courts from time to time and one agrees with the reasoning behind them.

As for an interdict, it is generally accepted that the right to claim an interdict is dependent on three (3) requisites namely; a clear right, an injury actually committed or reasonably apprehended and thirdly, the absence of similar protection by ordinary remedy (see *Setlogelo v. Setlogelo*, 1914 A.D. 21 at 227). I do not find that the applicant has established a clear right to Bantu Football Club; a clear right having not been established it cannot be said that there is an injury committed or reasonably apprehended and consequently there is nothing to protect.

I do not find that 2nd to 15th respondent's association with the 1st respondent is in any way improper, dishonest or unsportsmanlike or that this is in breach of applicant's constitution; nor indeed do I take the so-

called Executive Committee of the 2nd to 15th respondents to be unconstitutional. Moreover, I do not find that applicant's view to treat 2nd to 15th respondents along with their executive committee as outcasts has any basis in law. In addition, I have not been persuaded that the applicant has exclusive rights to Bantu Football Club.

For the foregoing reasons, this court has not hesitated to dismiss this application and accordingly the rule is discharged with costs to the respondents.



G.N. MOFOLO
JUDGE

7th August, 2001.

For the Applicant: Mr. Mohau
For the Respondents: Mr. Ntlhoki