

CIV/APN/561B/02

IN THE HIGH COURT OF LESOTHO

In the matter between:

THE SECHABA FOOTBALL ASSOCIATION

APPLICANT

And

MOHAU THAKASO

RESPONDENT

JUDGMENT

Delivered by the Honourable Mr. Acting Justice T. Nomngongo
On the 11th day of December, 2002

The applicant has approached court on a certificate of urgency for an order in the following terms:

1. Dispensing with the normal rules as to form and service on account of urgency.
2. That a *rule nisi* issue returnable on a date and time to be determined by this Honourable Court calling upon the respondent to show cause (if any) why:
 - (a) The respondent shall not be interdicted forthwith from purporting to discharge the duties of the office

of the applicant's President pending the outcome of the disciplinary hearing to be instituted against the respondent within a period of 31 days from the date of moving of this application.

- (b) The respondent shall not be interdicted forthwith from purporting to negotiate with the applicant's sponsors mentioned in Annexure "TSC3" of the founding affidavit concerning the said sponsoring of games administered by the applicant.
- (c) The respondent shall not be interdicted forthwith from holding any meetings with the applicant's affiliates concerning matters of the applicant's administration pending finalization hereof.
- (d) The respondent shall not be directed to pay costs hereof;
- (e) The applicant shall not be granted further and or alternative relief;

3. That prayers 1, 2(a), (b) and (c) operate with immediate effect as an interim order.

On the 5th December my sister Guni J. granted interim relief in terms of the notice of motion. The *rule nisi* issued was returnable on the 11th – yesterday when it was finally argued before me at 5.15 p.m., answering and replying affidavits having been duly filed. Only the respondent filed his heads of argument.

What the applicant is seeking in a nutshell is for this court to enforce its suspension of the respondent as President of itself and to prevent him from holding himself out as such. The applicant says respondent has simply ignored its suspension and gone about business as if nothing has happened, a fact not denied by the applicant.

Arguments were advanced regarding whether proper procedures had been followed in launching this application and this took up most of the time. The merits were also gone into. But in the view that I take the matter can and indeed I go so far to say it must be decided on a consideration that I raised in Chambers that is not directly referred to in the papers nor was addressed to me, my raising it notwithstanding. This is whether the respondent had

been validly suspended in the first place. It seems to me that if the suspension were not valid in the first place, it would be unenforceable in the second.

The letter purportedly suspending the respondent is marked “Annexure TS 3”. It details various serious allegations of misconduct against respondent. It is dated 24th November, 2002 and is accompanied by an unmarked letter dated the 21st November inviting the respondent to a meeting to be held on the 23rd November. It was apparently at that meeting that a resolution was taken to suspend the respondent. The respondent did not attend this meeting. According to him he was unaware of it.

The letter reads: “I have been instructed by the Executive Committee to ask you to meet and brief them on the current logjam which has resulted in the Premier League teams not receiving their monies as scheduled on November 21, 2002. The suggested meeting is to be on Saturday 23rd November 2002 at 5 p.m. at the association’s office. We will appreciate your usual cooperation in this potentially explosive and urgent matter.” A very cordial letter to the President of an association indeed, and nothing to prepare or warn him that his neck was on the line so to speak. Whether he did or did not get this letter, what we know is that he did not attend the

meeting. It was at this meeting that his fate was decided. In short, he did not get any hearing before he was suspended.

Was this justified? Mr. Mohau indicated that he would address me on this when I made reference to it. Unfortunately he did not. I am left with what I have before me on the papers. The stark reality is that respondent was suspended without a hearing. The letter that he received did not warn him of the direct consequences that might follow and in fact that did follow this non-attendance. He was in the circumstances not given an adequate opportunity or notice that his status was at stake so as to be able to put his side of the story.

I hold therefore that the initial suspension of the respondent was not valid for being in violation of the *audi alteraum parteem*. The court cannot therefore come to the assistance of the applicant.

The rule nisi is discharged and the application is dismissed with costs.


T. NOMNGCONGO
ACTING JUDGE

For Applicant : Mr. Mohau

For Respondent : Mr. Mda