

**IN THE COURT OF APPEAL OF LESOTHO**

C OF A (CIV) NO.23/2013

In the matter between:-

**MOTLATSI MASEELA AND 8 OTHERS**

**APPELLANTS**

AND

**LESOTHO FOOTBALL ASSOCIATION**

**AND 15 OTHERS**

**RESPONDENTS**

**CORAM** : SCOTT AP  
          HOWIE JA  
          THRING JA

**HEARD** : 2 OCTOBER 2013

**DELIVERED:** 18 OCTOBER 2013

## **SUMMARY**

*Dispute of fact on papers – Rule in **Plascon Evans** applied – award of costs on attorney and client scale justified in the circumstances.*

## **JUDGMENT**

### **SCOTT AP:**

[1] The appellants, save for the eighth appellant which is a football coaches' association, are all members of various football clubs which in turn are members of the District Football Association for the district of Mokhotlong ("DIFA"). DIFA is a semi autonomous body and a "structure" of the Lesotho Football Association ("LEFA") which is a voluntary association registered in accordance with the laws of Lesotho. The appellants' complaint relates to the election on 14 July 2012 of an executive committee of DIFA whose members were to have been delegates at a congress of LEFA to be held in December 2012 at which an executive committee of that body would be elected. The first respondent is LEFA. The remaining respondents are members of the executive committee of LEFA who were elected as such at LEFA's congress held on 22 December 2012 and various other persons and bodies said to be interested parties.

- [2] On 22 January 2013 the appellants, as applicants, launched an urgent application in which they sought far-reaching relief, including orders interdicting the newly elected national executive committee of LEFA from discharging its duties pending finalization of the application; declaring the election of certain of the respondents as members of the national executive committee to be null and void; declaring certain of the respondents not to be lawful members of DIFA's executive committee and certain of the appellants to be lawful members of that committee, and directing LEFA to hold fresh elections for membership of the national executive committee. A rule nisi was issued returnable on 18 February 2013. The respondents filed answering affidavits. A replying affidavit filed by the appellants was subsequently withdrawn. On 27 March 2013 the application came before Mr Justice Nomngongo who dismissed it with costs on the scale as between attorney and client.
- [3] The allegations made in the appellant's founding papers on which they relied for the relief claimed, shortly stated, are the following. On 14 July 2012 the members of DIFA elected an executive committee which was to have participated in the election of a national executive committee of LEFA at the latter's congress. Those elected by DIFA would also themselves have been eligible for election to the national executive

committee. The second to the seventh appellants were so elected by DIFA. A number of unsuccessful candidates complained to LEFA which summoned the seven successful candidates to its office and informed them that their election was set aside and that there would be a fresh election in which they would not be permitted to participate. On 16 September 2012 an attempt to hold an election was made. There was, however, no election because the meeting erupted in violence. In the meantime, the second to the seventh appellants requested the intervention of the Lesotho Sports and Recreation Commission (“LSRC”) which in turn appointed the Constitutional and Policy Development Committee (CPDC) to serve as a fact finding commission. On 21 November 2012 the CPDC produced a report in which it “advised” LEFA to recognize the DIFA executive committee elected on 14 July 2012. In compiling its report, however, the CPDC appears not to have been “favoured” with the other side of the story as LEFA took exception to the LSRC interfering in its domestic affairs. LEFA declined to accept the “advise” contained in the CPDC’s report. In the result, so the appellants contend, the 10<sup>th</sup> to the 12<sup>th</sup> respondents were elected to LEFA’s national executive committee when they were not eligible for election since they had not been lawfully elected as members of DIFA’s executive committee and people who were eligible for election to the national executive committee were precluded from standing for election. Accordingly, so it is contended, the

current structure of LEFA's national executive committee is unlawful.

- [4] The respondents' version of the events in question was materially different. The answering affidavit was made by Mr Mokhosi Mohapi, the general secretary and chief executive officer of LEFA. It was supported by a number of affidavits of persons who were personally involved in the events described by Mr Mohapi. Their version was as follows. The election held by DIFA was a precursor to sending delegates to LEFA's biannual congress at which a national executive committee was to be elected. As was the practice, LEFA arranged for a delegation to monitor and supervise the election process. Following the election, Mr Sekonyela Molefe, the fifth respondent, and others complained to the national executive committee that the elections had been irregular as Mr Khotso Seeiso (the second appellant) and Mr Motsoari Lipholo (the third appellant) who had participated in the elections represented football clubs which had been suspended and for this reason were not entitled to participate. The national executive committee invited the opposing groups to a meeting to discuss the matter with a view to resolving it. When this failed, it appointed an "investigative mission" headed by the first vice-president, Mr Khiba Mohoanyane, who was then the second vice-president and which included the secretary

general (the deponent to the answering affidavit) to establish the correctness or otherwise of the allegations of irregularity pertaining to the elections. On 17 August 2012 the emissary held a meeting at which it ascertained that not only the second and third respondents but also other participants in the elections had represented football clubs that had been suspended for non-payment of fines imposed for unruly behaviour and were accordingly not entitled to take part in the elections. The national executive committee, after hearing representations from both sides, then nullified the elections held on 14 July 2012.

- [5] Fresh elections were then arranged and were held on 16 September 2012 at the Farmer's Training Centre in the town of Mokhotlong. The election process was chaired by Mr Malimatle Ramothoto who compiled a report and subsequently made a supporting affidavit in which he confirmed that the elections had been held freely and in accordance with the statutes of LEFA. However, after the elections had been completed and when the participants attempted to leave the hall they were set upon by the persons who did not qualify to participate and had been excluded from the hall. As a result of their conduct, disciplinary measures have been taken against them. Amongst, those elected on 16 September 2012 were the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> respondents and also the fifth respondent,

all of whom were duly elected as members of the national executive committee at LEFA's congress on 22 December 2012.

- [6] As far as the intervention of the LSRC is concerned, the respondents contend in their answering papers that it had no mandate to do so and that they were in no way bound by the CPDC's report, the contents of which was in any event hearsay evidence. They pointed out that LEFA has its own internal mechanism for the resolution of disputes which includes an arbitration tribunal established in terms of article 34 of its statute. One of the various points raised in limine by the respondents was that in terms of article 12 (b) the appellants were subject to the jurisdiction of that tribunal and were precluded from approaching the court at least until they had exhausted the dispute resolution mechanism so provided. In their answering papers the respondents contend that not only did the LSRC have no jurisdiction to enquire into the domestic affairs of LEFA but that the report of the CPDC was "one-sided" and ignored the fact of the elections held on 16 September.

- [7] LEFA's statute on which it relies for its contention that the appellants were not entitled to approach the court or at least not until it had exhausted its domestic remedies was not

placed before us. In view, however of the conclusion to which I have come on the merits of the appeal I do not propose to decide the point taken in limine. What is apparent from the foregoing is that there is a material dispute of fact which cannot be decided on the papers. In accordance with the rule in **Plascon-Evans Paints Ltd vs Van Riebeeck Paints (Pty) Ltd** 1984 (3) 623 (A), followed consistently by this court, the application had to be decided on the facts as presented in the answering affidavits. There is nothing improbable in the allegations made, nor are they challenged in a replying affidavit. On those facts the appellants have no grounds for the interdict and other relief they seek.

- [8] The appellants sought to rely heavily on the report of the CPDC, particularly its observation that the suspended clubs had not been informed of their suspension. This, however, was not something raised in the appellant's founding affidavits, nor was it raised in a reply. The respondent's assertion that the suspension was as a result of non-payment of a fine makes it unlikely that the clubs would have no knowledge of it. It is also suggested in the report that because the meeting on 14 July of DIFA was a general conference it could have validly reinstated the suspended teams for the purpose of the election. Whether this so or not is not the point. It is not for the CPDC to say what DIFA could have done.

- [9] As far as the award of costs on the attorney and client scale made by the court a quo is concerned, counsel for the appellant contended that there was no justification for such an award, all the more so in the absence of a judgment of the court a quo with which we have regrettably not been favoured. The reason for the award of costs on that scale is clear enough. The respondents in their answering affidavit point out, as observed above, that the appellants were obliged to exhaust their remedies in terms of the internal dispute resolution procedures provided for in the LEFA statute before seeking relief in the court. It was on account of their failure to do so that the respondents claimed and were granted costs on the attorney and client scale. I can see no reason for interfering with the award of costs on that scale.
- [10] In my view there is no merit in the appeal and it is dismissed with costs.

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**D.G. SCOTT**

**ACTING PRESIDENT**

I agree

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**C.T. HOWIE**

**JUSTICE OF APPEAL**

I agree

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**W.G. THRING**

**JUSTICE OF APPEAL**

For the appellant : **L.A. Molati**

For the Respondent : **Q. Letsika**

