CIV/APN/262/96

IN THE HIGH COURT OF LESOTHO

In the matter between

ROMA BOYS F.C.	1st Applicant
LINKOE CITY F.C.	2nd Applicant
QALO CITY F.C.	3rd Applicant

and

LESOTHO FOOTBALL ASSOCIATION	1st Respondent
A-DIVISION MANAGEMENT COMMITTEE	2nd Respondent
QOALING FLOWERS F.C.	3rd Respondent
LIJABATHO F.C.	4th Respondent
MANONYANE F.C.	5th Respondent
LIVERPOOL F.C.	6th Respondent
R.L.M.POLICE (MOHALESHOEK) F.C.	7th Respondent
LITS'UKULU F.C.	8th Respondent
M/SHADES F.C.	9th Respondent
LIOLI F.C.	10th Respondent
CHELSEA F.C.	11th Respondent
QOALING HIGHLANDERS F.C.	12th Respondent
BOTHA-BOTHE FAST XI F.C.	13th Respondent
ROARING LIONS F.C.	14th Respondent
RAMOTHAMO LINOTS'I F.C.	15th Respondent
MASERU PIRATES F.C.	16th Respondent
MPHATLALATSANE F.C.	17th Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice M.M. Ramodibedi, Acting Judge, on the 27th day of September, 1996.

On 19th July, 1996 the above mentioned Applicants filed an urgent application with this Honourable Court asking for a Rule Nisi to the following effects:

(a) that 1st Respondent and or 2nd Respondent forthwith suspend the A-Division programme of football as already fixtured pending

(b) that the said respondents are prohibited from substituting any other football programme of or in any wise circumventing the suspension at (a) above;

(c) that the 3rd through 17th Respondents are restrained from participating in any football activities mentioned at (a) above *pending determination of this urgent application*;

(d) ordering the respondents to serve and to file their answering affidavits, if any, before the close of ordinary business of the High Court on the July 1996 failing which they may be barred from proceeding further with their opposition;

(e) That the normal rules of procedure before the honourable court as to the mandating of legal practitioners, the filing of resolutions to sue, as well as notices and service of process be bent to the extent necessary to facilitate expeditious disposal of this urgent application;

(f) that alternative or other relief be granted to the applicants as deemed or viewed necessary by the High Court;

(h) that First Respondent pay costs of this application AND THAT such costs be on the attorney and client scale on the grounds of extreme frivolity of opposition hereto in as much as the prescribed "League-system" for the A-Division is being deliberately and arrogantly violated by LEFA:

(i) that attorney and client costs are to come into play only if the matter is decided by judgment of the court.

The main thrust of Applicant's case against the first two Respondents is contained in paragraph 19 of the founding affidavit of Kevin Manyeli who is the senior official of First Applicant. He states as follows:

"19. The case against the autocracy and oppression of our clubs/teams as well as all A-Division teams by extension on the part of Messrs. LEFA Executive Committee is technically summarized as follows:

(a) The prescribed procedure fo LEFA to follow to determine the promotion and relegation of teams in the A-Division in 1995 as well as in 1996 is what is called "League-system" appearing in Rule/Regulation 4 (c) and 4 (d);

(b) it is not a matter of choice, wish and or subjective whim on the part of the current incumbents of LEFA to choose the procedure;

(c) By jettisoning and or abandoning the league form of competition for 1995 by dividing the A-Division into two zones and thus making it impossible for all teams to be pitted against one another to determine final positions 1st through to 16th LEFA acted irresponsibly, wrongfully, unlawfully and in open violation of the LEFA RULES AND REGULATIONS published for the control of football in Lesotho;

(d) Under the autocratically used system of zones there is neither the top nor the bottom team from the objective point of view as the two streams have artificially been prevented from mutual testing of their relative strengths;

(e) the 15th team of zome A could easily have beaten in competitive play under the league system any or all the teams 1st to 5th of zone B and vice versa to give but one pertinent argument;

(f) the zones were arbitrarily conceived by LEFA and imposed without any prior consultation and or agreement with the teams in the division;;

(g) LEFA has no power or right to do that under any controlling statute of the association. Certainly no statue, law or rule has been cited by LEFA to applicants giving such power or right;

(h) having arrogantly ignored written query of the violation of the rules on the part of at least one of these applicants during the course of the 1995 programme, LEFA should in natural justice be barred from jeopardizing the positions of any A-Division teams after the conclusion of the separate zonal competitions;

(i) we as the prejudiced teams submit to the honorable court with due respect and in all our humility that the violation of the written rules ought to bear LEFA from its present unedifying attempts arbitrarily to determine positions 15 and or 16 in the A-Division for 1995."

I observe at once that all the allegations raised by the applicants in this application remain unsubstantiated to date.

The answering affidavit of the respondents is deposed to by Salemane Phafane who is the Secretary-General of First Respondent. He denies all the material allegations of the Applicants. It proves useful to reproduce his replies in full.

Regarding 19 (c), (d) and (e) above Salemane Phafane states in paragraph 16 of his answering affidavit :

"Applicants are labouring under a misconception due to their obvious ignorance of the regulations. What they do not appreciate is that a league system has three formats, namely -

(i) a round robin format
(ii) a zonal format
(iii) a knock-out format.

The format to be adopted for any division is a matter of choice by First Respondent. Applicants would have done themselves a huge favour if they had acquainted themselves with Regulation 6 of the Lesotho Football Association Rules and Regulations. There would have been no hue and cry about the supposed oppression, autocracy and irresponsibility by First Respondent and /or its Secretary-General."

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As to 19 (f) above Salemane Phafane states:

"The zonal format for the A-Division was not arbitrarily conceived by First Respondent. It was as a result of representations made by the concerned clubs when First Respondent wanted to implement a round robim format similar to the Premier League system wherein all clubs were to be pitted one against all clubs in that Division. The concerned clubs pointed out that they lacked adequate facilities, sponsorship and logistics to travel around the Country. Due to severe financial constraints there would be all sorts of match defaults, namely, failure to honour matches as fixtured. A zonal format would be a far better option. First Respondent acceded to the request and divided the sixteen A-Division clubs into two zones which took off in February 1995. The zonal format was already in use in the B and C Divisions for precisely the same considerations. Applicants have in fact played in and progressed through this format which is not novel is Lesotho or the world."

The Applicants' complaint in 19 (g) above that LEFA has no power or right to employ a zonal format is met by Salemane Phafane with reference to Regulation 6 of the Lesotho Football Association Rules and Regulations 1993.

Regarding 19 (h) Salemane Phafane observes :

"It is surprising that as far back as 1995 there was an alleged query by one of the Applicants. It has waited for the end of the Second year of the format being used to run to Court on a supposedly urgent basis to have the format discarded."

On the question of prejudice in 19 (i) Salemane Phafane states:

"No club is prejudiced. Lerotholi Polytechnic F.C. and Swallows F.C. were promoted from the A-Division into the Premier League at the end of the 1995 football season using this zonal format. So were other clubs relegated to the B division from the A-Division. The true reason for the present proceedings is as follows:

First and Second Applicants dismally performed in the ground during 1996. They are at the bottom of their respective zones. In accordance with the procedure to determine which of the two ought to be relegated to the B-Division, they have to play each other in what is referred to as a play-off divided into two legs. The loser automatically gets relegated whilst the winner has to face Third Applicant.

Third Applicant was a runner-up to the winner in the "B" Division. It has to play a winner between the two First Applicants to determine whether or not it remains in the B-Division or gets promoted into the A-Division. In accordance with the aforesaid procedure for promotion and relegation, First and Second Applicants clashed in the first leg of their play-offs. First Applicant lost and the prospects of relegation to the B-Division became real. On the eve of their clash for the Second leg, these proceedings were launched in a desperate attempt to save it from obvious relegation. These desperate attempts at avoiding relegation by First Applicant in particular come after it had failed to persuade First Respondent not to relegate any club in the A-Division but to increase the number of clubs from sixteen (16) to twenty (20).

> In yet a further attempt to show the frivolity of these proceedings and lack of cohesion and supposed common purpose of the Applicants, after filing these proceedings on 19th July 1996, Third Applicant wrote to the Secretary-General of the First Respondent on 22nd July 1996 indicating their preparedness to go on with the competition as scheduled. A copy of the letter together with a fair translation thereto is herewith attached and marked LEFA "1".

I attach significance to the fact that the applicants have not filed any replying affidavits in the matter. Consequently Salemane Phafane's averments in his answering affidavit have remained unchallenged. Moreover I find that the latter is supported by Regulation 6 of the Lesotho Football Association Rules and Regulations 1993 which provides in part as follows:

> (a) All matches and competitions shall be run by the Executive Committee or its nominated Management Committees.
>
> (b) All matches' Competitions shall be run in either of the following systems:
>
> (i) In a League in which teams/Clubs playing against each other the finalist being declared as a winner firstly in points and in goals called round robin system.
>
> (ii) In a League in which a ground of teams/ Clubs against the finalist being declared as a winner as s sanae **(sic) firstly in points** and in goals, called the zonal system. Whenever in zones may be called to play against winners in other zone to determine a final winner culminating in a knockout or round robin arrangement.
>
> (iii) In a knockout in which teams, Clubs are paired in a process of elimination until

> a winner is found in a final round. Such knockout may be played in two legs of home and away basis. In the event of equality in points and goals after the second leg the team/club which score most goals when away shall be declared the winner. In the event of equality in points and goals and when no team/club has the advantage of away goals the team/club shall be ordered to take penalty kicks in accordance with FIFA Rules.
>
> (c) The Executive Committee of Lesotho Football Association shall decide whether any competition shall be follow (sic) any of the systems described in Rule 6."

I am satisfied therefore that First Respondent has power to decide on the format to be adopted by its clubs and that the zonal format in question was not only been engineered by the clubs themselves but has also been in operation with full participation of the applicants since February 1995 as the uncontroverted version of Salemane Phafane shows.

In my view this is a fit case where the court is entitled to assume the correctness of the version of the Respondent in accordance with the principle laid down in Plascon - Evans Paints v Van Riebeeck 1984 (3) S.A. 623 at 634. See also National University of Lesotho Students Union v National University of Lesotho and others C of A (Civ) No. 10 of 1990 (unreported) at p.19.

I accept therefore that the first two applicants fully participated in the zonal format of clubs starting from February 1995 and that they "dismally performed in the ground during 1996. They are at the bottom of their respective zones."

I accept further that the first two applicants have even proceeded to play each other in a play off purportedly in accordance with the procedure laid down for promotion and relegation where the "first Applicant lost and the prospects of relegation to the B-Division became real" (see paragraph 16 (i) of the Answering affidavit of Salemane Phafane).

Nor is it denied that on the eve of their clash for the second leg, these proceedings were launched in a desperate attempt to save it (First Respondent) from obvious relegation. I find therefore that this application was not bona fide. The Applicant's real remedy lies in my view on the soccer pitch. In Maseru United Football Club v Lesotho Sports Council and others 1982 - 84 LLR 145 Goldin AJ expressed a similar view and I would with respect like to adopt what he said at p 150 of that case:-

> "Soccer is a game and the rewards emanate from playing."

Applicants' fate therefore lies in their own hands through hard work and success on the soccer pitch. This court will not come to their assistance in that respect unless it can be shown that the decision of the Respondents was manifestly wrong. That is not the case here. The principle that courts of law must be very slow to interfere with domestic tribunals is a sound and noble one which must be preserved whenever there are no gross irregularities prejudicial to the parties concerned as in this case. Well as I see it anyway the question of Applicants' relegation does not arise in this application. Consequently it would be premature for this

court to express any finding in that regard at this stage. There is also CIV/APN/191/96 which is pending before this court and it would be improper to prejudge it in this matter.

The case for Third Respondent is even more startling. It is not denied that after filing these proceedings Third Respondent wrote a letter to the Secretary-General of the First Respondent on 22nd July 1996 indicating its preparedness to go on with the competition as scheduled. In my view the frivolity of third applicant's application is beyond question.

In all the circumstances of this case I am satisfied that there is absolutely no substance in the application before me. I find that this application is indeed frivolous and consequently I have no hesitation in dismissing it as such.

I turn then to deal with the question of costs. Mr. Ntlhoki for the first and second respondents submits that this is a fit case for an award of costs on attorney and client scale against the Applicants.

As I had occasion to observe in Sefikeng High School v Maama Masupha CIV/APN/77/96 the court has a discretion in the matter but that discretion must however be exercised judicially. The leading case on the question of costs on attorney and client scale is that of Nel v Waterberg Landbouwers Iko - Operatiowe Vereniging 1946 A.D. 597 per Tindall JA. It is also trite law that as a general rule an award of attorney and client costs will not be lightly granted but each case must be decided on its own merits.

I have already found that this application is frivolous and that in itself is sufficient ground in my judgment to warrant costs on attorney and client scale as a mark of the court's disapproval of frivolous claims being brought to court. There are other factors which I have considered adversely against the Applicants and which I am satisfied warrant costs on attorney and client scale against the Applicants. They are these:

"(a) Urgency

As indicated above this application was brought by way of urgency. I am satisfied however that if there was any modicum of urgency at all (in my view there was none) it was certainly of the making of the Applicants themselves for having slept on their rights so to speak, since 1995 when the zonal format complained of was first introduced and then only taking legal action when the ship was already sinking and could perpahs no longer be saved. I accordingly find that by proceeding on an urgent basis in this matter the applicants were guilty of abuse of court process.

(b) Duplicity of actions

In paragraph 9 of his founding affidavit Kevin Manyeli reveals the following startling information:-

(a) Except for some developments with the passage of time and the inclusion of the rest of the clubs in the A-Division of LEFA as respondents in this application, the thrust of this application is exactly the same as that of CIV/APN/191/96 wherein these three applicants are suing only the first two respondents, proceedings launched as long ago as 3rd June, 1996.

(b) LEFA ignored the urgency of that application and its due resolution as presented for judicial intervention so utterly that intention to oppose was served upon our attorney of record only as late as 20th June 1996.

(c) This lassitude on the part of LEFA and or its honorable General Secretary, advocate S. Phafane, occurs despite the fact that service of the entire application was effected upon them on 3rd June 1996 and that the urgency of the matter was discussed between me, our counsel and the said General Secretary beforehand.

(d) To date, 10th July, 1996 LEFA has not bothered to serve and file answering affidavits, if any, in the matter, and by so doing displaying the disdain or indeed the contempt with which LEFA views the rights of the applicants to seek urgent determination of this dispute."

Indeed as earlier stated it is common cause that the said CIV/APN/191/96 is still pending determination. I consider therefore that it was abuse of court process to institute this application while CIV/APN/191/96 was lis pendens in view of the applicants' own admision that the two applications are "exactly the same."

(c) Exhaustion of domestic remedies

I am satisfied that the applicants failed to exhaust domestic remedies within First Respondent association before launching these proceedings. The applicants justify this application by alleging that there are no such remedies designed to "reign in and or control in any way autocracy, oppression and or open corruption on the part of LEFA in the form of the Executive Committee" (see paragraph 16 of the founding affidavit of Kevin Manyeli. Mr. Seotsanyana for the applicants has vigorously supported this version.

I observe however that the constitution of First Respondent association provides for a general conference and a special conference (sec. 8) where applicants' complaints could well have been addressed.

Section 18 of the said constitution provides for Arbitration Board. Subsections (ii) and (iii) thereof provide as follows:

"(ii) Any parties may elect to subject themselves to jurisdiction of the Board as forum of first instance.

(iii) In all cases the decision of the Board shall be final."

There is also section 35 of the Constitution of the First Respondent association which significantly provides as follows:

"35. Interpretation of the Statutes

The panel of arbitrators appointed by the Executive Committee shall be the sole authority for the interpretation of these Statutes or any of the Rules and Regulations issued under them from time to time and their decision shall be final."

As to the finality of the Arbitration Board's decision I observe that section 18 (a) (i) of First Respondent association provides as follows:

"clubs and members are not permitted to take disputes to courts of law but must submit themselves to arbitration."

Well even though this is clearly an ouster clause which in my view would nonetheless not preclude the court's power or jurisdiction to review the decisions of First Respondent in a proper case I find that no such case has been made for the court's intervention here. There is no reason suggested why the Applicants did not resort to section 35 of the Constitution of First Respondent association as aforesaid.

Even Regulation 23 (a) (c) (e) (f) of First Respondent's Regulations clearly shows that the Association itself is not above the law and it can also be hauled before the disciplinary committee for misconduct such as complained of by the applicants. That regulation reads as follows:-

"(a) The Association and (Disproco) each member shall appoint a Disciplinary and protest Committee (Disproco) to deal with:

(c) all protests, complaints disputes or other matters on behalf of, or against the Association, any affiliated Body, Club or person.

(e) on misconduct being proved to the satisfaction of the Disproco, the Disproco shall have the power.

(f) to suspend a person, team, club, Association or member from all or any specific footballing activity either permanently or for a stated period of time or number of matches."

(d) Failure to make material disclosure

I am particularly disturbed by the Applicants' glaring failure to make material disclosure to the court of the following facts:

(1) that the first two applicants had actually already completed the first leg of the play offs. By implication thereof the zonal fixture complained of had already been completed when this application was launched.

(2) tnat First Applicant had even lost the first leg of the play off.

(e) the serious accusations of autocracy, oppression and or open corruption levelled by applicants against First Respondent and its Executive Committee.

I should express my regret that it has fallen to my lot to read, listen to and consider such a barrage of serious accusations of autocrary, oppression and/or open corruption levelled by Applicants against First Respondent and its Executive Committee particularly the Secretary-General who as the applicants themselves confirm is "a legal practitioner with years of private practice" (see paragraph 9 (h) of the founding affidavit of Kevin Manyeli. The said allegations are of course denied and as I have earlier stated I have no hesitation in accepting the version of the respondents in the matter. What I find very disturbing and totally unacceptable is that these allegations are completely unsubstantiated. It is the court's feeling that the Applicants' conduct in this regard should be discouraged and the court can do so by an appropriate order as to costs envisaged herein. First Respondent can only be expected to perform its functions effectively if it is accorded due respect free from unfounded accusations of corruption. That applies to First Respondent's officials as well.

In all the circumstances of this case it is my view that the court must show its displeasure at the attitude of the applicants as outlined above by imposing an appropriate order of costs.

In the result therefore the application is dismissed with costs to First Respondent only on attorney and client scale.

There shall be no order as to costs in respect of the other respondents. For the avoidance of doubt and in the interests of justice the court leaves the door open for the Applicants to contest the question of their relegation if any and if so advised. I do so because I consider that relegation is such a drastic step that needs to be fully ventilated before a decision thereon is arrived at.

M.M. RAMODIBEDI
ACTING JUDGE

For Applicant : Adv. Seotsanyana

For Respondent: Mr. Ntlhoki